

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4815 GIBRALTAR Thursday 28th January 2021

LEGAL NOTICE NO. 90 OF 2021.

EUROPEAN UNION (WITHDRAWAL) ACT 2019

FINANCIAL SERVICES (DISTANCE MARKETING) ACT 2006 (AMENDMENT AND SAVINGS PROVISIONS) (EU EXIT) REGULATIONS 2021

In exercise of the powers conferred on the Minister by sections 11 and 15 of the European Union (Withdrawal) Act 2019, the Minister has made these Regulations—

Title.

1. These Regulations may be cited as the Financial Services (Distance Marketing) Act 2006 (Amendment and Savings Provisions) (EU Exit) Regulations 2021.

Commencement.

2. These Regulations are deemed to have come into operation on 1st January 2021.

Amendment of the Financial Services (Distance Marketing) Act 2006.

3.(1) The Financial Services (Distance Marketing) Act 2006 is amended as follows.

(2) In section 2(1)—

- (a) in the definition of “the Directive”, after “98/27/EC” insert “as that Directive applied in Gibraltar immediately before IP completion day”;
- (b) omit the definition of “licensee”; and
- (c) after the definition of “Minister” insert—

““regulated activity” means the following regulated activities provided for in the Financial Services Act 2019—

- (a) accepting deposits, in paragraph 3 of Schedule 2 to the Financial Services Act 2019;
- (b) effecting and carrying out contracts of insurance, in paragraph 24 of Schedule 2 to the Financial Services Act 2019;
- (c) investment services and activities, in paragraph 48 to 56 of Schedule 2 to the Financial Services Act 2019; or

- (d) insurance distribution, in paragraph 34 of Schedule 2 to the Financial Services Act 2019; and

“regulated firm” means a firm which has permission given by the GFSC under Part 7 of the Financial Services Act 2019 to carry on a regulated activity.”.

(3) In section 4–

(a) for subsection (1) substitute–

“(1) Sections 7 to 11 do not apply in relation to any contract made between an EEA supplier contracting from an establishment in an EEA State and a consumer in Gibraltar unless the EEA supplier is–

- (a) a payments supplier;
- (b) a relevant EEA AIFM; or
- (c) the operator, trustee or depositary of a relevant recognised scheme.

(1A) Sections 12 and 13 do not apply in relation to any contract made between an EEA supplier contracting from an establishment in an EEA State and a consumer in Gibraltar unless the EEA supplier is–

- (a) an authorised person; or
- (b) a payments supplier.

(1B) Section 15 does not apply in relation to any supply of financial services by an EEA supplier from an establishment in an EEA State to a consumer in Gibraltar unless the EEA supplier is–

- (a) a payments supplier;
- (b) a relevant EEA AIFM; or
- (c) the operator, trustee or depositary of a relevant recognised scheme.

(1C) For the purposes of subsections (1) to (1B)–

“authorised person” has the same meaning as in section 54 of the Financial Services Act 2019;

“payments supplier” means an EEA supplier authorised as an EEA electronic money institution under Directive 2009/110/EC or as an EEA payment institution under Directive (EU) 2015/2366 to whom regulation 7 of the Financial Services (Passport Rights and Transitional Provisions) (EU Exit) Regulations 2020 applies; and

“relevant EEA AIFM” means an EEA AIFM (within the meaning given in regulation 11(1) of the Financial Services (Passport Rights and Transitional Provisions) (EU Exit) Regulations 2020) to whom regulations 12 and 13 of those Regulations applies.”;

(b) in subsection (2)–

- (i) in both places it occurs, for “licensee” substitute “regulated firm”; and
- (ii) in both places it occurs, for “licensed business or” substitute “regulated”;

(c) for subsection (3) substitute–

“(3) Subsection (2) does not apply in relation to any contract or supply of financial services made by a supplier who is the operator, trustee or depositary of a scheme which is a recognised scheme by virtue of Part 18 of the Financial Services Act 2019, where the making or performance of the contract or the supply of the financial services constitutes or is part of a regulated activity carried on by him.”; and

(d) for subsection (4) substitute–

“(4) In subsection (3), “operator” and “trustee” each have the same meaning as in section 289 of the Financial Services Act 2019 and “depository” has the same meaning as in paragraph 94(2) of Schedule 2 to the Financial Services Act 2019.”.

(4) In section 6–

(a) in subsection (2)–

- (i) for “licensee” substitute “regulated firm”; and
- (ii) for “licensed business or” substitute “regulated”; and

(b) in subsection (3)–

- (i) for “licensee” substitute “regulated firm”; and
- (ii) for “licensed business or” substitute “regulated”.

(5) In section 7, for subsection (6) substitute–

“(6) Where the provisions of the Financial Services (Payment Services) Regulations 2020 are also applicable, the requirements of this section, with the exception of paragraphs (2)(c) to (g), (3)(a) and (d) and (4)(b) of Schedule 1, shall be replaced with regulations 22, 23 and 29 of, and Schedule 2 to, those Regulations.”.

(6) In section 16, for subsection (3) substitute–

“(3) This Act shall apply despite any contract term which applies or purports to apply the law of a country or territory other than Gibraltar, if the contract or supply has a close connection with Gibraltar.”.

(7) In schedule 1–

(a) in paragraph 1(b), for “the consumer’s country or territory of residence” substitute “Gibraltar”;

(b) omit paragraph 3(e); and

(c) for paragraph 4(b) substitute–

“(b) The existence of guarantee funds or other compensation arrangements as applicable to the contract.”.

Savings.

4.(1) Despite the amendments made to section 4(1) of the Financial Services (Distance Marketing) Act 2006 (by regulation 3(3) of these Regulations)–

(a) sections 7 to 13 of the Financial Services (Distance Marketing) Act 2006 do not apply in relation to any contract made before 1st January 2021 between an EEA supplier contracting from an establishment in an EEA State and a consumer in Gibraltar; and

(b) section 15 of the Financial Services (Distance Marketing) Act 2006 does not apply to any supply of financial services before 1st January 2021 by an EEA supplier from an establishment in an EEA state to a consumer in Gibraltar.

(2) In this regulation, “consumer” and “EEA supplier” have the meanings given in the Financial Services (Distance Marketing) Act 2006.

Dated: 28th January 2021.

A J ISOLA,

Minister with responsibility for financial services.

EXPLANATORY MEMORANDUM

These regulations are made under the European Union (Withdrawal) Act 2019 and address failures of retained EU law to operate effectively and other deficiencies arising from Gibraltar's withdrawal from the European Union. These regulations amend, with savings, the Financial Services (Distance Marketing) Act 2006, which give effect in Gibraltar to Directive 2002/65/EC.