

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4820 GIBRALTAR Thursday 11th February 2021

LEGAL NOTICE NO. 122 OF 2021.

EUROPEAN UNION (WITHDRAWAL) ACT 2019

FINANCIAL SERVICES (RECOVERY AND RESOLUTION) (AMENDMENT) (EU EXIT) REGULATIONS 2021

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

Title.

1. These Regulations may be cited as the Financial Services (Recovery and Resolution) (Amendment) (EU Exit) Regulations 2021.

Commencement.

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

Amendment of the Financial Services (Recovery and Resolution) Regulations 2020.

3. The Financial Services (Recovery and Resolution) Regulations 2020 are amended as follows.

Amendment of Part 1.

4.(1) In regulation 2—

(a) in sub-regulation (1)—

(i) in the opening words, omit “and give effect to the Recovery and Resolution Directive”;

(ii) for paragraphs (d) and (e) substitute—

“(d) Gibraltar parent financial holding companies and Gibraltar parent mixed financial holding companies; and

(e) Gibraltar branches of third-country institutions, which operate in Gibraltar in accordance with the conditions imposed by these Regulations.”; and

(b) for sub-regulation (2), substitute—

“(2) Subject to any specific provision to the contrary, the resolution authority and competent authority, when exercising their functions under the Act and these Regulations in relation to an entity in sub-regulation (1), must take account of–

- (a) the nature of its business;
- (b) its shareholding structure;
- (c) its legal form;
- (d) its risk profile, size and legal status;
- (e) its interconnectedness to other institutions or to the financial system in general;
- (f) the scope and the complexity of its activities; and
- (g) whether it carries on any investment services or activities within the meaning of Schedule 2 to the Act.”.

(2) In regulation 3(1)–

- (a) omit the definition of “appropriate authority”;
- (b) in the definition of “business day”, for “a public holiday in the EEA State concerned” substitute “a bank holiday or public holiday”;
- (c) in the definition of “central bank”, for “has the meaning given by” substitute “is to be construed in accordance with”;
- (d) for the definition of “combined buffer requirement”, substitute–

““combined buffer requirement” has the meaning given in regulation 82(1) of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020;”;

- (e) for the definition of “competent authority”, substitute–

““competent authority” means the GFSC;”;

- (f) omit the definition of “competent ministries”;
- (g) for the definition of “consolidating supervisor” substitute–

““consolidating supervisor” means the GFSC when exercising supervision on a consolidated basis of–

- (a) a Gibraltar parent institution; or
 - (b) institutions controlled by a Gibraltar parent financial holding company or a Gibraltar parent mixed financial holding company;”;
- (h) for the definition of “covered bond”, substitute–
- ““covered bond” means a bond in relation to which the claims attaching to that bond are guaranteed to be paid by an owner from an asset pool it owns;”;
- (i) in the definition of “covered deposits”, for “as defined in Article 2.1(5) of DGS Directive” substitute “within the meaning of section 196(1) of the Act”;
- (j) in the definition of “credit institution”, for “Article 2.5 of the Capital Requirements Directive” substitute “regulation 5 of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020”;
- (k) in the definition of “critical functions”, omit “in one or more EEA States”;
- (l) omit the definition of “cross-border group”;
- (m) in the definition of “deposit guarantee scheme”, for “a deposit guarantee scheme introduced and officially recognised by an EEA State under Article 4 of the DGS Directive” substitute “the deposit guarantee scheme established under Part 15 of the Act”;
- (n) in the definition of “depositor”, for “as defined in Article 2.1(6) of the DGS Directive” substitute “within the meaning of section 204 of the Act”;
- (o) omit the definition of “designated national macroprudential authority”;
- (p) omit the following definitions–
- (i) “EEA parent institution”;
 - (ii) “EEA parent undertaking”;
 - (iii) “EEA subsidiary”;
- (q) after the definition of “financial contracts”, insert–
- ““Gibraltar parent financial holding company” means a financial holding company which is not a subsidiary of–
- (a) an institution established in Gibraltar;
 - (b) another financial holding company established in Gibraltar; or

- (c) a mixed financial holding company established in Gibraltar;

“Gibraltar parent institution” means an institution in Gibraltar which–

- (a) has an institution or financial institution as a subsidiary or which holds a participation (within the meaning of Article 4.1(35) of the Capital Requirements Regulation) in an institution or financial institution; and
- (b) is not a subsidiary of another institution authorised in Gibraltar or of a financial holding company or mixed financial holding company established in Gibraltar;

“Gibraltar parent mixed financial holding company” means a mixed financial holding company which is not a subsidiary of–

- (a) an institution established in Gibraltar;
- (b) another mixed financial holding company established in Gibraltar; or
- (c) a financial holding company established in Gibraltar;

“Gibraltar parent undertaking” means a Gibraltar parent financial holding company, Gibraltar parent institution or Gibraltar parent mixed financial holding company;”;

- (r) omit the definition of “group financing arrangement”;
- (s) in the definition of “group-level resolution authority”, for “resolution authority in the Member State in which the consolidating supervisor is situated” substitute “Gibraltar Resolution Authority when undertaking group-level resolution activities”;
- (t) for the definition of “institution under resolution”, substitute–

““institution under resolution” means an institution, a financial institution, a financial holding company, a mixed financial holding company, a mixed-activity holding company or a Gibraltar parent undertaking in respect of which a resolution action is taken;”;

- (u) omit the definition of “institutional protection scheme”;
- (v) for the definition of “management body”, substitute–

““management body” has the meaning given in regulation 2(1) of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020;”;

- (w) for the definition of “netting arrangement”, substitute–

““netting arrangements” means arrangements, under which a number of claims or obligations can be converted into a net claim or obligation including, in particular, ‘close-out’ netting arrangements, under which actual or theoretical debts are calculated during the course of a contract for the purpose of enabling them to be set off against each other or to be converted into a net debt;”;

(x) in the definition of “normal insolvency proceedings”, for “national law” “the law of Gibraltar”;

(y) omit the following definitions–

(i) “parent financial holding company in an EEA State”;

(ii) “parent institution in an EEA State”; and

(iii) “parent mixed financial holding company in an EEA State”;

(z) for the definition of “relevant parent institution”, substitute–

““relevant parent institution” means a financial holding company, a mixed financial holding company, a mixed-activity holding company or a Gibraltar parent undertaking in relation to which the bail-in tool is applied;”;

(z1) in the definition of “relevant third-country authority”, for “resolution authorities or competent authorities under the Recovery and Resolution Directive” substitute “the Gibraltar Resolution Authority and the GFSC under these Regulations”;

(z2) in the definition of “resolution authority”, for “an authority designated by an EEA State in accordance with Article 3 of the Recovery and Resolution Directive” substitute “the Gibraltar Resolution Authority”;

(z3) omit the definition of “resolution college”;

(z4) in the definition of “resolution entity”–

(i) in paragraph (a), for “an EEA State” substitute “Gibraltar”; and

(ii) in paragraph (b), omit “under Articles 111 and 112 of the Capital Requirements Directive”;

(z5) after the definition of “resolution tool”, insert–

“the “Rome 1 Regulation” means Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) as it forms part of the law of Gibraltar;”;

(z6) for the definition of “senior management”, substitute–

““senior management” has the meaning given in regulation 2(1) of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020;”;

(z7) in the definition of “set-off arrangement”, omit “owed between the institution under resolution and a counterparty”;

(z8) for the definition of “significant branch”, substitute–

““significant branch” is to be construed with regard, in particular, to the following–

- (a) whether the market share of the branch in terms of deposits exceeds 2% in the third country;
- (b) the likely impact of a suspension or closure of the operations of the institution on systemic liquidity and the payment, clearing and settlement systems in the third country; and
- (c) the size and the importance of the branch in terms of number of clients within the context of the banking or financial system of the third country;”;

(z9) omit the following definitions–

- (i) “the SSM Regulation”; and
- (ii) “the State Aid framework”;

(z10) omit the definition of “supervisory college”;

(z11) omit the definition of “systemic crisis; and

(z12) for the definition of “title transfer financial collateral arrangement”, substitute–

““title transfer collateral arrangement” means an arrangement under which a person transfers assets to another person (“P”) on terms providing for P to transfer assets if specified obligations are discharged;

“third country” means a country or territory other than Gibraltar;”.

(3) For regulation 3(3), substitute–

“(3) The expressions “core business lines” and “critical functions”, as defined in sub-regulation (1), must be construed in accordance with any technical standards which specify the criteria for determining–

- (a) the business lines and associated services that are core business lines; and
- (b) the activities, services and operations that are critical functions.”.

Amendment of Part 2.

5.(1) In regulation 4–

- (a) in sub-regulation (2)(a), for sub-paragraphs (vi) to (viii), substitute–
 - “(vi) the scope and the complexity of its activities; and
 - (vii) whether it carries on any investment services or activities within the meaning of Schedule 2 to the Act; and”;
- (b) in sub-regulation (3), for “national macroprudential authority” substitute “Ministry of Finance”;
- (c) omit sub-regulations (6) to (9);
- (d) in sub-regulation (10), omit “subject to direct supervision by the European Central Bank under Article 6.4 of the SSM Regulation or”;
- (e) in sub-regulation (11)(b), omit “(being its EEA State of establishment)”;
- (f) for sub-regulation (12), substitute–
 - “(12) This regulation applies subject to any technical standards which further specify the criteria for assessing the impact of an institution’s failure on financial markets, on other institutions and on funding conditions.”.

(2) In regulation 5–

- (a) in sub-regulation (1), omit “pursuant to Articles 111 and 112 of the Capital Requirements Directive”;
- (b) in sub-regulation (2), for “Article 74 of the Capital Requirements Directive” substitute “regulation 31 of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020”; and
- (c) for sub-regulation (14), substitute–
 - “(14) This regulation applies subject to any technical standards which further specify the information to be included in a recovery plan or the range of scenarios to be used for the purposes of sub-regulation (11).”.

(3) In regulation 6–

- (a) in sub-regulation (3), omit “and after consulting the competent authority of any EEA State where a significant branch is located (so far as is relevant to that branch),”;
- (b) in sub-regulation (12), omit “, without limiting Article 104 of the Capital Requirements Directive,”;
- (c) in sub-regulation (13), for “(11)” substitute “(12)”;
- (d) in sub-regulation (14), for “(11)” substitute “(12)”;
- (e) for sub-regulation (15), substitute–

“(15) This regulation applies subject to any technical standards which further specify the assessment criteria in sub-regulation (3).”.

(4) In regulation 7–

- (a) in sub-regulation (1)–
 - (i) for “EEA” substitute “Gibraltar”; and
 - (ii) after “the” insert “GFSC as”;
- (b) in sub-regulation (2), for “EEA” substitute “Gibraltar”;
- (c) in sub-regulation (3), for “EEA” substitute “Gibraltar”;
- (d) omit sub-regulation (5); and
- (e) in sub-regulation (7)–
 - (i) for “EEA” substitute “Gibraltar”; and
 - (ii) omit “in accordance with the Capital Requirements Directive”.

(5) For regulation 8, substitute–

“Assessment of group recovery plans.

8.(1) The GFSC as consolidating supervisor must review the group recovery plan in accordance with the procedure established in regulation 6 and assess the extent to which it satisfies the requirements and criteria set out in regulations 6 and 7.

(2) The GFSC must makes its decision on those matters within four months of the date on which it receives the group recovery plan in accordance with regulation 7.”.

(6) For regulation 9(7), substitute–

“(7) This regulation applies subject to any technical standards which further specify the qualitative and quantitative indicators to be established for the purposes of this regulation.”.

(7) In regulation 10–

(a) for sub-regulation (1), substitute–

“(1) The Gibraltar Resolution Authority, after consulting the GFSC, must draw up a resolution plan for each institution that is not part of a group subject to consolidated supervision.”;

(b) in sub-regulation (10B), for “Article 104b of the Capital Requirements Directive” substitute “regulation 140B of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020”; and

(c) for sub-regulation (17), substitute–

“(17) This regulation applies subject to any technical standards which further specify the content of resolution plans.”.

(8) In regulation 11–

(a) in sub-regulation (1)(b), for “competent authority” substitute “GFSC”;

(b) in sub-regulation (3), omit “and other resolution authorities”;

(c) in sub-regulation (4), omit “or other resolution authorities”; and

(d) in sub-regulation (5), for “implementing technical standards adopted under Article 11.3 of the Recovery and Resolution Directive” substitute “technical standards which specify procedures and a minimum set of standard forms and templates for the provision of information under this regulation”.

(9) In regulation 12–

(a) for sub-regulation (1), substitute–

“(1) The Gibraltar Resolution Authority, as group-level resolution authority, must draw up group resolution plans.”;

(b) in sub-regulation (2)–

(i) in paragraph (a), for “EEA” substitute “Gibraltar”;

- (ii) in paragraph (b), for “the EEA” substitute “Gibraltar”; and
- (iii) in paragraph (d), for “the EEA” substitute “Gibraltar”;
- (c) in sub-regulation (5)–
 - (i) in paragraph (b), omit “with respect to resolution entities established in the EEA”; and
 - (ii) in paragraph (f), for “sources of funding in different EEA States” substitute “different sources of funding”;
- (d) in sub-regulation (7), omit “in all EEA States concerned”;
- (e) omit sub-regulations (10) and (11); and
- (f) for sub-regulation (12), substitute–
 - “(12) This regulation applies subject to any technical standards which further specify the content of group resolution plans.”.
- (10) In regulation 13–
 - (a) in sub-regulation (1), for “EEA” substitute “Gibraltar”;
 - (b) in sub-regulation (2), for “EEA” substitute “Gibraltar”;
 - (c) omit sub-regulations (3) to (6);
 - (d) for sub-regulation (7), substitute–
 - “(7) The Gibraltar Resolution Authority as group-level resolution authority, after consulting the GFSC, must draw up and maintain group resolution plans.”;
 - (e) in sub-regulation (8), omit “as referred to in Article 51 of the Capital Requirements Directive”;
 - (f) omit sub-regulation (10);
 - (g) in sub-regulation (10A), omit “joint”;
 - (h) for sub-regulation (10B), substitute–
 - “(10B) The Gibraltar Resolution Authority must make its decision on the group resolution plan within four months of the date on which it receives the plan in accordance with sub-regulation (1).”; and

- (i) omit sub-regulations (11) to (30).
- (11) For regulation 14, substitute–
- “Transmission of resolution plans to GFSC.**
14. The Gibraltar Resolution Authority must transmit to the GFSC–
- (a) resolution plans and any changes to them; and
 - (b) group resolution plans and any changes to them.”.
- (12) In regulation 15–
- (a) in sub-regulation (1), omit “and the resolution authority of the jurisdiction in which a significant branch is located (so far as is relevant to the significant branch)”;
 - (b) in sub-regulation (2)(c), omit “, other EEA States or the EEA”;
 - (c) omit sub-regulation (3); and
 - (d) in sub-regulation (6), for “regulatory technical standards adopted under Article 15.4 of the Recovery and Resolution Directive” substitute “technical standards which further specify the matters and criteria for the assessment of the resolvability of institutions or groups”.
- (13) In regulation 16–
- (a) in sub-regulation (1), for “together with the resolution authorities of subsidiaries, after consulting the consolidating supervisor and the competent authorities of those subsidiaries, and the resolution authority of any jurisdiction in which a significant branch is located (so far as is relevant to the significant branch)” substitute “after consulting the GFSC as consolidating supervisor”;
 - (b) in sub-regulation (2)(b)(i), for “systems of the EEA States in which group entities or branches are located or of other EEA States or the EEA” substitute “system of Gibraltar”;
 - (c) omit sub-regulations (3) and (4);
 - (d) omit sub-regulation (8);
 - (e) in sub-regulation (8A), omit “, together with other relevant resolution authorities of the group,”; and
 - (f) in sub-regulation (9), for “regulatory technical standards adopted under Article 15.4 of the Recovery and Resolution Directive” substitute “technical standards adopted under regulation 15(6)”.

(14) Omit regulation 16A.

(15) In regulation 17–

(a) for sub-regulations (1) and (2), substitute–

“(1) Where the Gibraltar Resolution Authority, after consulting the GFSC, has assessed the resolvability of an entity under regulations 15 and 16 and determined that there are substantive impediments to the entity’s resolvability, it must notify the entity and the GFSC of that determination and those impediments.

(2) Following a notification under sub-regulation (1), the requirement for the Gibraltar Resolution Authority to draw up a resolution plan under regulation 10(1) to (3) must be suspended until measures to remove the substantive impediments to the entity’s resolvability have been accepted by the Gibraltar Resolution Authority under sub-regulations (3) and (4) or decided under sub-regulations (5) to (7).”;

(b) in sub-regulation (4)(a), for “Article 141a.1(a) to (c) of the Capital Requirements Directive” substitute “regulation 94A(a) to (c) of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020”;

(c) in sub-regulation (8)(h), for “parent financial holding company in an EEA State or an EEA parent financial holding company” substitute “Gibraltar parent financial holding company”;

(d) in sub-regulation (10)–

(i) for “designated national macroprudential authority” substitute “Ministry of Finance”; and

(ii) for “internal market for financial services, on the financial stability in other EEA States and the EEA as a whole” substitute “market for financial services and on the financial stability of Gibraltar”; and

(e) omit sub-regulation (11).

(16) For regulation 18, substitute–

“Powers to address or remove impediments: groups.

18.(1) The Gibraltar Resolution Authority as group-level resolution authority must–

(a) consider the assessment required by regulation 16; and

(b) reach an initial decision on the application of measures identified under regulation 17(6),

in relation to all resolution entities and their subsidiaries that are entities referred to in regulation 2(1) and are part of the group.

- (2) The Gibraltar Resolution Authority must—
 - (a) prepare a report setting out—
 - (i) its analysis of the substantive impediments to the effective application of the resolution tools and the exercising of the resolution powers in relation to the group, and to resolution groups where a group is composed of more than one resolution group; and
 - (ii) the proportionate and targeted measures that in its opinion, having regard to the impact on the group's business model, are necessary or appropriate to remove those impediments; and
 - (b) submit the report to the Gibraltar parent undertaking.
- (3) Where an impediment to the resolvability of the group is due to a situation of a group entity referred to in regulation 17(4), the Gibraltar Resolution Authority must notify its assessment of that impediment to the Gibraltar parent undertaking
- (4) Within four months of the date of receipt of the report, the Gibraltar parent undertaking may submit to the Gibraltar Resolution Authority observations on, and proposed alternative measures to remedy the impediments identified in, the report.
- (5) Where the impediments identified in the report are due to a situation of a group entity referred to in regulation 17(4), the Gibraltar parent undertaking must, within two weeks of the date of receipt of a notification under sub-regulation (3), propose to the Gibraltar Resolution Authority—
 - (a) possible measures to ensure that the group entity complies with—
 - (i) the requirements in regulation 45E or 45F expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92.3 of the Capital Requirements Regulation and, where applicable, with the combined buffer requirement; and
 - (ii) the requirements in regulation 45E or 45F expressed as a percentage of the total exposure measure referred to in Articles 429 and 429a of the Capital Requirements Regulation; and
 - (b) a timeline for the implementation of those proposed measures which takes account of the reasons for the substantive impediment.

- (6) The Gibraltar Resolution authority, after consulting the GFSC and having taken account of any observations of the Gibraltar parent undertaking on the substantive impediments identified, must—
- (a) assess whether any measures proposed by the Gibraltar parent undertaking address or remove those impediments; and
 - (b) reach a final decision on the measures to be taken in accordance with regulation 17(6) and (7) at the group level.
- (7) A decision must be made—
- (a) in respect of an impediment to resolvability due to a situation referred to in regulation 17(4), within two weeks of the submission of any observations by the Gibraltar parent undertaking in accordance with sub-regulation (5); and
 - (b) in any other case, within four months of the Gibraltar parent undertaking submitting any observations under sub-regulation (4) or, where it has not done so, within one month from the expiry of the four-month period referred to in that sub-regulation.
- (8) A decision must be reasoned and set out in a document which is provided to the Gibraltar parent undertaking.”.
- (17) In regulation 19—
- (a) in sub-regulation (1)—
 - (i) for “parent institution in Gibraltar, an EEA parent institution,” substitute “Gibraltar parent institution”; and
 - (ii) omit “other EEA States or”;
 - (b) omit sub-regulation (4); and
 - (c) in sub-regulation (10), for “their respective competent authorities” substitute “the GFSC”.
- (18) In regulation 20—
- (a) in the heading, for “competent authorities and mediation” substitute “GFSC”;
 - (b) in sub-regulation (1), for “EEA” substitute “Gibraltar”;
 - (c) for sub-regulation (3), substitute—

“(3) The GFSC must–

(a) either–

(i) grant authorisation if it is satisfied that the proposed agreement is consistent with the conditions for financial support set out in regulation 23; or

(ii) may refuse authorisation if it considers that the proposed agreement is inconsistent with those conditions; and

(b) notify the applicant of the decision and reasons for it.”; and

(d) omit sub-regulations (4) to (14).

(19) In regulation 21(1), for “competent authorities” substitute “GFSC”.

(20) In regulation 22, for “relevant resolution authority” substitute “Gibraltar Resolution Authority”.

(21) In regulation 23–

(a) in sub-regulation (1)–

(i) in paragraph (f), omit “in particular in the EEA State of the group entity providing support”;

(ii) in paragraph (g), for sub-paragraphs (i) and (ii) and the closing words, substitute–

“(i) the requirements of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020 relating to capital or liquidity; and

(ii) any requirements imposed under regulation 140(2), (2A) and (2B) of those Regulations,

and the provision of the financial support would not cause the group entity to infringe those requirements, unless authorised by the GFSC;” and

(iii) in paragraph (h), for sub-paragraph (ii) and the closing words, substitute–

“(ii) the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020,

and the provision of the financial support would not cause the group entity to infringe those requirements, unless authorised by the GFSC; and” and

- (b) in sub-regulation (2), for “regulatory technical standards adopted under Article 23.2 of the Recovery and Resolution Directive” substitute “technical standards which further specify the conditions set out in sub-regulation (1)(a), (c), (e) or (i)”.

(22) Omit regulation 25.

(23) In regulation 26(3), for “regulatory technical standards adopted under Article 26.2 of the Recovery and Resolution Directive” substitute “technical standards which specify the form and content of the description required under sub-regulation (1)”.

Amendment of Part 3.

6.(1) In regulation 27–

- (a) in sub-regulation (1), for paragraphs (b) and (c), substitute–
 - “(b) the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020;
 - (c) the Financial Services (Investment Services) Regulations 2020; or”;
- (b) in sub-regulation (3), for “competent authority” substitute “GFSC”;
- (c) in sub-regulation (4)(d), omit “under Article 13 of the Capital Requirements Directive or Article 9 of the MiFID 2 Directive”;
- (d) in sub-regulation (5), omit “Article 104 of the Capital Requirements Directive or”;
- (e) in sub-regulation (8), in both places it occurs, omit “as competent authority”; and
- (f) omit sub-regulation (9).

(2) In regulation 28–

- (a) in sub-regulation (2), omit “as competent authority”; and
- (b) in sub-regulation (3)–
 - (i) for “Gibraltar or European Union law” substitute “enactment”; and
 - (ii) omit “as competent authority”.

(3) In regulation 29–

- (a) in sub-regulation (1), omit “as competent authority”;
- (b) in sub-regulation (2), omit “as competent authority”;

- (c) in sub-regulation (3), omit “as competent authority”;
 - (d) in sub-regulation (11), omit “as competent authority”;
 - (e) in sub-regulation (15), omit “as competent authority”;
 - (f) in sub-regulation (18), omit “as competent authority”; and
 - (g) in sub-regulation (19), omit “European Union law or”;
- (4) For regulation 30, substitute–

“Early intervention and temporary administrators in relation to groups.

30. The GFSC may apply any of the measures in regulation 27 or appoint a temporary administrator under regulation 29 in respect of a Gibraltar parent undertaking where the conditions for doing so are met in relation to that undertaking and after taking account of the impact of those steps on the group entities.”.

Amendment of Part 4.

7.(1) In regulation 31–

- (a) in sub-regulation (2)(d)–
 - (i) for “DGS Directive” substitute “Gibraltar Deposit Guarantee Scheme”; and
 - (ii) for “Investor Compensation Scheme Directive” substitute “Gibraltar Investor Compensation Scheme”; and
- (b) in sub-regulation (4), omit “(or the Recovery and Resolution Directive)”.

(2) In regulation 32–

- (a) in sub-regulation (2)(b), omit “including measures by an IPS.”;
- (b) in sub-regulation (4)–
 - (i) in paragraph (a), for “competent authority” substitute “GFSC”;
 - (ii) in paragraph (d), omit “of an EEA State”;
- (c) in sub-regulation (5), omit “and must be conditional on final approval under the State Aid framework”;
- (d) in sub-regulation (7)–
 - (i) omit “the national, EU or SSM-wide”;

- (ii) for “European Central Bank, the EBA or national authorities” substitute “government and”; and
 - (e) omit sub-regulation (9).
- (3) In regulation 33A–
 - (a) in sub-regulation (2), for paragraphs (a) and (b), substitute–
 - “(a) systems or operators of systems designated in accordance with the Financial Services (Financial Markets and Insolvency: Settlement Finality) Regulations 2020;
 - (b) central counterparties authorised or recognised under EMIR; or”; and
 - (b) in sub-regulation (3), for “the DGS Directive” substitute “Part 15 of the Act”.
- (4) In regulation 34–
 - (a) in sub-regulation (2), for “the EEA and the EEA States, in particular, in the countries where the group operates” substitute “Gibraltar”;
 - (b) omit sub-regulation (3); and
 - (c) in sub-regulation (4), for “Article 5.1 of Council Directive 2001/23/EC” substitute “Part VIB of the Employment Act”.
- (5) In regulation 36–
 - (a) in sub-regulation (6), for “Without affecting the State Aid framework, where” substitute “Where”; and
 - (b) for sub-regulation (21), substitute–
 - “(21) This regulation applies subject to any technical standards which further specify–
 - (a) the methodology for assessing the value an institution’s or entity’s assets and liabilities;
 - (b) the separation of valuations under this regulation and regulation 74; or
 - (c) the methodology for calculating and including a buffer for additional losses in a provisional valuation.”.

(6) For regulation 37(10) and (11), substitute–

“(10) In the event of a systemic crisis, the Gibraltar Resolution Authority may seek funding from alternative financing sources through the use of government stabilisation tools provided for in regulations 56 to 58 where the condition in sub-regulation (11) is met.

(11) The condition is that a contribution to loss absorption and recapitalisation equal to an amount of not less than 8% of total liabilities including own funds of the institution under resolution, measured at the time of resolution action in accordance with the valuation provided for in regulation 36, has been made by the shareholders and the holders of other instruments of ownership, the holders of relevant capital instruments and other bail-inable liabilities through write down, conversion or otherwise.

(12) In sub-regulation (10), “systemic crisis” means an extraordinary disruption in the financial system with the potential to have serious negative consequences for the market and the real economy and, for this purpose, all types of financial intermediaries, markets and infrastructure may be potentially systemically important to some degree.”.

(7) In regulation 38–

(a) in sub-regulation (3), omit “, and in accordance with the State Aid framework”;

(b) in sub-regulation (9), omit “as competent authority”;

(c) for sub-regulation (10), substitute–

“(10) Where a transfer of shares or other instruments of ownership by virtue of an application of the sale of business tool would result in the acquisition of or increase in a qualifying holding in an institution of a kind to which Part 9 of the Act applies, the GFSC must carry out any assessment required under the Act in a timely manner that does not delay the application of the sale of business tool and prevent the resolution action from achieving the relevant resolution objectives.”;

(d) in sub-regulation (11)–

(i) in the opening words, omit “as competent authority of that institution”;

(ii) in paragraph (c), omit “contemplated by Articles 66, 67 and 68 of the Capital Requirements Directive”;

(iii) in paragraph (d), omit “, in accordance with Article 22.5 of the Capital Requirements Directive,”; and

- (iv) in paragraph (f)(iii), omit “contemplated by Articles 66, 67 and 68 of the Capital Requirements Directive”; and
 - (e) omit sub-regulation (13).
- (8) In regulation 39–
- (a) in sub-regulation (3), for “Without affecting the State Aid framework, where” substitute “Where”;
 - (b) in sub-regulation (5), for “EUMAR” substitute “the Market Abuse Regulation”; and
 - (c) omit sub-regulation (7).
- (9) Omit regulation 40(12).
- (10) In regulation 41–
- (a) in sub-regulation (1), omit paragraphs (e) to (g);
 - (b) for sub-regulations (2) to (4), substitute–
 - “(2) Except where the GFSC determines otherwise, a bridge institution must–
 - (a) be authorised under the Act, in accordance with (as applicable)–
 - (i) the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020; or
 - (ii) the Financial Services (Investment Services) Regulations 2020;
 - (b) have permission under Part 7 of the Act or any other authorisation necessary to carry out the activities or services that it acquires by virtue of a transfer made under regulation 63; and
 - (c) be subject to supervision in accordance with the Act, the Capital Requirements Regulation and the applicable regulations under paragraph (a)(i) or (ii).
 - (3) The GFSC may make a determination under sub-regulation (2) only if it considers that doing so is necessary to meet the resolution objectives.
 - (4) At the request of the Gibraltar Resolution Authority, in any determination under sub-regulation (2), the GFSC must specify–
 - (a) the extent to which the bridge institution is exempt from complying with the requirements set out in that sub-regulation; and

- (b) the period for which the exemption is to apply.”;
- (c) in sub-regulation (5), omit “European Union competition rules or”;
- (d) in sub-regulation (8), omit “and in accordance with the State Aid framework”; and
- (e) in sub-regulation (10), for “(8)” substitute “(9)”.

(11) In regulation 42–

- (a) in sub-regulation (6), for “Resolution authorities” substitute “The Gibraltar Resolution Authority”;
- (b) for sub-regulation (7), substitute–

“(7) When applying the asset separation tool, the Gibraltar Resolution Authority must determine the consideration for which assets, rights and liabilities are transferred to the asset management vehicle in accordance with the principles established in regulation 36, but this sub-regulation does not prevent the consideration having nominal or negative value.”; and

- (c) omit sub-regulation (18).

(12) In regulation 43(2)(a)(ii), for “the Capital Requirements Directive or the MiFID 2 Directive” substitute “the Act, in accordance with the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020 or the Financial Services (Investment Services) Regulations 2020”.

(13) In regulation 44–

- (a) in sub-regulation (2)–
 - (i) in the opening words, omit “whether they are governed by the law of an EEA State or of a third country”;
 - (ii) for paragraph (c), substitute–

“(c) any liability that arises by virtue of the holding by the institution or entity concerned of client assets or client money, including client assets or client money held on behalf of UCITS or AIFs, where the client is protected under the applicable insolvency law.”;
 - (iii) in paragraph (f), for sub-paragraphs (i) and (ii), substitute–

- “(i) systems or operators of systems designated in accordance with the Financial Services (Financial Markets and Insolvency: Settlement Finality) Regulations 2020 or to their participants and arising from participation in such a system; or
 - (ii) central counterparties authorised or recognised under EMIR;”;
 - (iv) in paragraph (g), for sub-paragraph (iv), substitute–
 - “(iv) the Gibraltar Deposit Guarantee Scheme arising from contributions due in accordance with Part 15 of the Act;”;
 - (v) in paragraph (h), for “the date the Recovery and Resolution Directive was transposed” substitute “31st December 2014”;
 - (b) in sub-regulation (3), for “Article 92.2 of the Capital Requirements Directive” substitute “regulation 49(1) of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020”;
 - (c) in sub-regulation (6), for “Article 6 of the DGS Directive” substitute “section 214 of the Act”;
 - (d) in sub-regulation (7), for “Capital Requirements Directive” substitute “Financial Services (Credit Institutions and Capital Requirements) Regulations 2020”;
 - (e) in sub-regulation (8)(c), omit “of an EEA State or of the EEA”;
 - (f) in sub-regulation (12)(a), for “by institutions and EEA branches in accordance with Part 7” substitute “made under section 230 of the Act”;
 - (g) in sub-regulation (15)(b), for “raised in accordance with Part 7” substitute “made under section 230 of the Act”;
 - (h) omit sub-regulations (18) and (19); and
 - (i) for sub-regulation (20), substitute–
 - “(20) This regulation applies subject to any technical standards which further specify further the circumstances when exclusion is necessary to achieve the objectives set out in sub-regulations (8) and (9).”.
- (14) In regulation 44A(1)–
- (a) in the opening words, for “MiFID 2 Directive” substitute “Financial Services (Investment Services) Regulations 2020”;
 - (b) in paragraph (a), for “Article 25.2 of the MiFID 2 Directive” substitute “regulation 40(4) of the Financial Services (Investment Services) Regulations 2020”; and

- (c) in paragraph (c), for “Article 25.6 of the MiFID 2 Directive” substitute “regulation 40(11) to (14) of the Financial Services (Investment Services) Regulations 2020”.

(15) In regulation 45B–

- (a) in sub-regulation (6), omit “established in the EEA”;
- (b) in sub-regulation (16)(b), for “Article 104a of the Capital Requirements Directive” substitute “regulation 140A of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020”; and
- (c) in sub-regulation (18)(c), for “Article 104a of the Capital Requirements Directive” substitute “regulation 140A of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020”.

(16) In regulation 45C–

- (a) in sub-regulation (1)–
 - (i) in paragraph (b), for “Capital Requirements Directive or the MiFID 2 Directive” substitute “Act, in accordance with the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020 or the Financial Services (Investment Services) Regulations 2020”; and
 - (ii) in paragraph (c), for “Capital Requirements Directive or the MiFID 2 Directive” substitute “Act, in accordance with the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020 or the Financial Services (Investment Services) Regulations 2020”;
- (b) in sub-regulation (2)(b), for “Capital Requirements Directive, the MiFID 2 Directive” substitute “Act, in accordance with the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020, the Financial Services (Investment Services) Regulations 2020”;
- (c) in sub-regulation (5)(a)–
 - (i) in sub-paragraph (i), for “Article 104a of the Capital Requirements Directive” substitute “regulation 140A of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020”; and
 - (ii) in sub-paragraph (ii), for “Article 104a of the Capital Requirements Directive” substitute “regulation 140A of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020”;
- (d) in sub-regulation (7)(b), for “Article 104a of the Capital Requirements Directive” substitute “regulation 140A of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020”;

- (e) in sub-regulation (9), for “Article 128.6(a) of the Capital Requirements Directive” substitute “of the institution-specific countercyclical capital buffer referred to in regulation 82(1) of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020”;
- (f) in sub-regulation (11)–
 - (i) for “Article 104a of the Capital Requirements Directive” substitute “regulation 140A of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020”;
 - (ii) omit “under that Directive”; and
 - (iii) for “regulatory technical standards adopted by the European Commission under Article 45c.4 of the Recovery and Resolution Directive” substitute “technical standards which further specify the methodology to be used to estimate those requirements and the combined buffer requirement for resolution entities at the resolution group consolidated level where the resolution group is not subject to those requirements”;
- (g) in sub-regulation (13), for “the first subparagraph of this paragraph must meet a level of the requirement referred to in the first subparagraph of this paragraph” substitute “sub-regulation (12) must meet a level of the requirement referred to in that sub-regulation”;
- (h) in sub-regulation (17)(a)–
 - (i) in sub-paragraph (i), for “Article 104a of the Capital Requirements Directive” substitute “regulation 140A of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020”; and
 - (ii) in sub-paragraph (ii), for “Article 104a of the Capital Requirements Directive” substitute “regulation 140A of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020”;
- (i) in sub-regulation (19)(b), for “Article 104a of the Capital Requirements Directive” substitute “regulation 140A of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020”;
- (j) in sub-regulation (21), for “in Article 128.6(a) of the Capital Requirements Directive” substitute “of the institution-specific countercyclical capital buffer referred to in regulation 82(1) of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020”; and
- (k) in sub-regulation (24)(b), for “Article 104a of the Capital Requirements Directive” substitute “regulation 140A of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020”.

(17) In regulation 45D–

(a) in sub-regulation (4)–

(i) in the opening words, omit “and any other relevant resolution authorities”;
and

(ii) in paragraph (b), omit “Union”; and

(b) in sub-regulation (5)(b), for “Article 104a of the Capital Requirements Directive that applies to the resolution group or the Union material subsidiary of a non-EU G-SII” substitute “regulation 140A of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020 that applies to the resolution group or the material subsidiary of a third country G-SII”.

(18) In regulation 45F–

(a) in sub-regulation (3), for “EEA” substitute “Gibraltar”;

(b) in sub-regulation (8)(c), for “as defined in Article 2.1(a) of Directive 2002/47/EC” substitute “(within the meaning of the Financial Collateral Arrangements Act 2004)”; and

(c) in sub-regulation (10), for “regulatory technical standards adopted by the European Commission under Article 45f.6 of the Recovery and Resolution Directive” substitute “technical standards which specify methods for ensuring that instruments which are recognised for the purposes of this regulation but indirectly subscribed, in part or in full, by the resolution entity do not hinder the implementation of the resolution strategy”.

(19) For regulation 45H, substitute–

“Procedure for determining the minimum requirement.

45H.(1) The Gibraltar Resolution Authority must determine–

(a) the amount of the requirement applied at the consolidated resolution group level for each resolution entity; and

(b) the amount of the requirement applied on an individual basis to each entity of a resolution group which is not a resolution entity.

(2) The determination must ensure compliance with regulations 45E and 45F, be fully reasoned and be provided within four months by the Gibraltar Resolution Authority to–

(a) the resolution entity;

- (b) the entities of a resolution group which are not a resolution entity; and
 - (c) the Gibraltar parent undertaking of the group, if it is not a resolution entity from the same resolution group.
- (3) The determination may provide that, where consistent with the resolution strategy and sufficient instruments complying with regulation 45F(5) have not been bought directly or indirectly by the resolution entity, the requirements in regulation 45C(17) to (22) are partially met by the subsidiary in compliance with regulation 45F(5) with instruments issued to and bought by entities not belonging to the resolution group.
- (4) Where more than one G-SII entity belonging to the same G-SII are resolution entities, the Gibraltar Resolution Authority must decide on the application of Article 72e of the Capital Requirements Regulation and any adjustment to minimise or eliminate the difference between the sum of the amounts referred to in regulation 45D(4)(a) and Article 12 of the Capital Requirements Regulation for individual resolution entities and the sum of the amounts referred to regulation 45D(4)(b) and that Article.
- (5) Such an adjustment must not be applied to eliminate differences resulting from exposures between resolution groups.
- (6) The sum of the amounts referred to in regulation 45D(4)(a) and Article 12 of the Capital Requirements Regulation for individual resolution entities must not be lower than the sum of the amounts referred to in regulation 45D(4)(b) and that Article.
- (7) The Gibraltar Resolution Authority, in coordination with the GFSC, must require and verify that entities meet the requirement in regulation 45(1), and make any determination under this regulation in parallel with the development and the maintenance of resolution plans.”.
- (20) In regulation 45I(7), for “implementing technical standards adopted by the European Commission under Articles 45i.5 and 45i.6 of the Recovery and Resolution Directive” substitute “technical standards which specify templates, formats and methodologies for the reporting and disclosure of information under this regulation”.
- (21) Omit regulation 45J.
- (22) In regulation 45K–
 - (a) in sub-regulation (1)–
 - (i) omit paragraph (b); and

(ii) in paragraph (c), for “Article 104 of the Capital Requirements Directive” substitute “regulation 140 of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020”; and

(b) in sub-regulation (2), for “Article” substitute “regulation”.

(23) Omit regulation 45L.

(24) In regulation 46(2)(b)(ii), for “Capital Requirements Directive or the MiFID 2 Directive” substitute “Act, in accordance with the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020 or the Financial Services (Investment Services) Regulations 2020”.

(25) In regulation 47–

(a) in sub-regulation (4)(c), for “GRA” substitute “the Gibraltar Resolution Authority”;

(b) for sub-regulation (5) substitute–

“(5) Despite–

(a) Part 9 of the Act and the requirement to give notice under sections 111 and 127 of the Act;

(b) regulation 12 of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020 and the requirement to give notice under regulation 98 of those Regulations; and

(c) regulation 18 of the Financial Services (Investment Services) Regulations 2020 and the requirement to give notice under regulation 74 of those Regulations,

where the application of the bail-in tool or the conversion of capital instruments would result in the acquisition of or increase in a qualifying holding in an institution to which Part 9 of the Act applies, the GFSC must assess the acquisition or increase in a timely manner that does not delay the application of the bail-in tool or the conversion of capital instruments, or prevent resolution action from achieving the relevant resolution objectives.”; and

(c) omit sub-regulation (7).

(26) Omit regulation 48(7).

(27) In regulation 49(7), for “any regulatory technical standards adopted under Article 49.5 of the Recovery and Resolution Directive” substitute “technical standards specifying the principles and methodologies for the valuation of liabilities arising from derivatives”.

(28) In regulation 50(4), for “guidelines issued by the EBA under Article 50.4 of the Recovery and Resolution Directive” substitute “technical standards on the setting of conversion rates”.

(29) In regulation 52–

- (a) omit sub-regulation (2);
- (b) in sub-regulation (3), for “EEA” substitute “Gibraltar”;
- (c) omit sub-regulation (4);
- (d) in sub-regulation (5), for “sub-regulations (1) and (2)” substitute “sub-regulation (1)”;
- (e) omit sub-regulation (6);
- (f) in sub-regulation (13), omit “as the relevant resolution authority”;
- (g) in sub-regulation (14), omit “as the relevant competent authority”;
- (h) in sub-regulation (19), omit “as competent authority”; and
- (i) in sub-regulation (21), for “regulatory technical standards adopted under Article 52.12 or 52.14 of the Recovery and Resolution Directive and any guidelines issued by the EBA under Article 52.13 of that Directive” substitute “technical standards further specifying the requirements for business reorganisation plans and reports”.

(30) In regulation 53(2)(d), omit “EU”.

(31) In regulation 55–

- (a) in sub-regulation (13), for “regulatory technical standards adopted by the European Commission adopts under Article 55.6 of the Recovery and Resolution Directive” substitute “technical standards made in accordance with sub-regulation (14)(b)”;
- and

- (b) for sub-regulation (14), substitute–

“(14) This regulation applies subject to any technical standards which specify–

- (a) the liabilities to which the exclusion in sub-regulation (1) applies and the contents of the contractual term required by that sub-regulation, taking into account institutions' different business models;

- (b) the conditions under which it would be legally or otherwise impracticable for an institution or entity in regulation 2(1)(b), (c) or (d) to include the contractual term required by sub-regulation (1) in certain categories of liabilities;
- (c) the format or template for a notification under sub-regulation (4);
- (d) the conditions for the Gibraltar Resolution Authority to require the inclusion of a contractual term under sub-regulation (6); or
- (e) the reasonable timeframe for the Gibraltar Resolution Authority to require the inclusion of a contractual term under sub-regulation (6).”.

(32) In regulation 56–

(a) in sub-regulation (1)–

- (i) for “, regulation 37(11) and with the State Aid framework” substitute “and regulation 37(11)”; and
- (ii) omit “or the EEA as a whole”; and

(b) in sub-regulation (5)–

- (i) in paragraph (a), omit “the central bank and”; and
- (ii) in paragraph (b), omit “from the central bank”; and

(c) after sub-regulation (5), number the words “The financial stabilisation tools consist of the following–” as sub-regulation (6).

(33) In regulation 59–

(a) in sub-regulation (3)–

- (i) in paragraph (b), for “appropriate authority” substitute “Gibraltar Resolution Authority”;
- (ii) in paragraph (c), for “appropriate authority of the EEA State of the consolidating supervisor and the appropriate authority of the EEA State of the subsidiary, in accordance with regulation 61, make a joint determination taking the form of a joint decision in accordance with regulation 92(5) to (8)” substitute “Gibraltar Resolution Authority determines”; and
- (iii) in paragraph (d), for “appropriate authority of the EEA State of the consolidating supervisor, in accordance with regulation 61, makes a determination” substitute “Gibraltar Resolution Authority determines”;

- (b) in sub-regulation (5)(b), for “competent authority” substitute “GFSC”; and
 - (c) omit sub-regulations (7) and (8).
- (34) In regulation 60–
- (a) in sub-regulation (5)–
 - (i) in paragraph (a), omit “or other resolution authority of the institution or entity or, where relevant, of the resolution authority of the parent undertaking”; and
 - (ii) in paragraph (d), for “guidelines developed by the EBA” substitute “technical standards”; and
 - (b) in sub-regulation (7), for “resolution authority” substitute “Gibraltar Resolution Authority”.
- (35) Omit regulations 61 and 62.
- (36) In regulation 63–
- (a) in sub-regulation (2)(m), for “by way of derogation from the time-limits set out in Article 22 of the Capital Requirements Directive and Article 12 of the MiFID 2 Directive” substitute “and without the need to comply with any time limits specified in Part 9 of the Act”; and
 - (b) in sub-regulation (5), omit “and any notification requirements under the State Aid framework”.
- (37) In regulation 64(1)(c), omit “under the Listing Directive”.
- (38) In regulation 65–
- (a) omit sub-regulation (3); and
 - (b) in sub-regulation (6), for “guidelines issued by the EBA under Article 62.5 of the Recovery and Resolution Directive” substitute “technical standards which specify the minimum list of services or facilities that are necessary to enable a recipient to effectively operate a business transferred to it.”.
- (39) Omit regulation 66.
- (40) In regulation 68–
- (a) in sub-regulation (1)

- (i) in paragraph (a), for “Directive 2002/47/EC” substitute “the Financial Collateral Arrangements Act 2004”; and
 - (ii) in paragraph (b), for “Directive 98/26/EC” substitute “the Financial Services (Financial Markets and Insolvency: Settlement Finality) Regulations 2020”; and
 - (b) in sub-regulation (7), for “Regulation (EC) No 593/2008 of the European Parliament and of the Council” substitute “the Rome 1 Regulation”.
- (41) In regulation 69–
- (a) in sub-regulation (1), omit “in the EEA State of the resolution authority of the institution under resolution”;
 - (b) in sub-regulation (4)–
 - (i) for “Directive 98/26/EC” substitute “the Financial Services (Financial Markets and Insolvency: Settlement Finality) Regulations 2020”; and
 - (ii) for “Investor Compensation Scheme Directive” substitute “Gibraltar Investor Compensation Scheme”; and
 - (c) in sub-regulation (6), for “the DGS Directive” substitute “Part 15 of the Act”.
- (42) In regulation 70–
- (a) in sub-regulation (1), omit “in the EEA State of the resolution authority of the institution under resolution”;
 - (b) in sub-regulation (2), for paragraphs (a) to (c), substitute–
 - “(a) security interest of systems or operators of systems designated for the purposes of the Financial Services (Financial Markets and Insolvency: Settlement Finality) Regulations 2020;
 - (b) central counterparties or recognised third country central counterparties; or
 - (c) central banks, over assets pledged or provided by way of margin or collateral by the institution under resolution.”.
- (43) In regulation 71–
- (a) in sub-regulation (1), omit “in the EEA State of the resolution authority of the institution under resolution”;
 - (b) in sub-regulation (3), for “in the EEA State where the subsidiary of the institution under resolution is established on” substitute “at the end of”;

- (c) in sub-regulation (4), for paragraphs (a) to (c), substitute–
 - “(a) systems or operators of systems designated for the purposes of the Financial Services (Financial Markets and Insolvency: Settlement Finality) Regulations 2020;
 - (b) central counterparties or recognised third country central counterparties; or
 - (c) central banks.”;
- (d) in sub-regulation (9), for “make the necessary information available to the GFSC or the Gibraltar Resolution Authority to enable them to fulfil their respective responsibilities and mandates under Article 81 of EMIR” substitute “provide the GFSC or the Gibraltar Resolution Authority with the information which the trade repository is required to collect and publish under Article 81.1 and 81.2 of EMIR”; and
- (e) for sub-regulation (10), substitute–
 - “(10) This regulation applies subject to any technical standards which, for the purposes of sub-regulation (8), specify–
 - (a) the minimum set of information on financial contracts which should be contained in detailed records; and
 - (b) the circumstances in which the requirement to maintain detailed records should be imposed.”.

(44) In regulation 71A–

- (a) in sub-regulation (2), in both places it occurs, for “EEA” substitute “Gibraltar”;
- (b) in sub-regulation (4), for “laws of an EEA State” substitute “law of Gibraltar”; and
- (c) in sub-regulation (6), for “regulatory technical standards adopted by the European Commission under Article 71a.5 of the Recovery and Resolution Directive” substitute “technical standards which further specify the contents of the contractual term required under sub-regulation (1), taking into account institutions' and entities' different business models”.

(45) In regulation 74(5), for “regulatory technical standards adopted under Article 10.9 of the Recovery and Resolution Directive” substitute “technical standards which further specify the contents of resolution plans”.

(46) In regulation 76–

- (a) in sub-regulation (2), omit “of another EEA State or”; and

- (b) in sub-regulation (4), for “delegated acts adopted under Article 76.4 of the Recovery and Resolution Directive” substitute “technical standards which further specify the classes of arrangement that fall within the scope of sub-regulation (3)(a) to (f)”.

(47) In regulation 80–

- (a) in sub-regulation (1), for “Directive 98/26/EC” substitute “the Financial Services (Financial Markets and Insolvency: Settlement Finality) Regulations 2020”; and

- (b) for sub-regulation (2), substitute–

“(2) A transfer, cancellation or amendment under sub-regulation (1) must not–

- (a) revoke a transfer order in contravention of rules made under regulation 8(1)(b) of the Financial Services (Financial Markets and Insolvency: Settlement Finality) Regulations 2020;
- (b) modify or negate the enforceability of transfer orders and netting in contravention of regulations 7 or 8 of those Regulations;
- (c) modify or negate the protection of collateral security under regulation 12 of those Regulations; or
- (d) prevent the use of funds, securities or credit facilities under 15 of those Regulations,

and, if made in contravention of any of paragraphs (a) to (d), is void to the extent of that contravention.”.

(48) In regulation 81–

- (a) for sub-regulation (2), substitute–

“(2) The GFSC must inform the Gibraltar Resolution Authority of–

- (a) any notification which the GFSC receives under sub-regulation (1); and
- (b) any crisis prevention measures or actions in regulation 140 of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020 which the GFSC requires an institution or an entity in regulation 2(1)(b), (c) or (d) to take.”;

- (b) in sub-regulation (3)–

- (i) in the opening words, omit “the following authorities, if different”; and

- (ii) for paragraphs (a) to (k), substitute–
 - “(a) the Gibraltar Resolution Authority or the GFSC (as the case may be);
 - (b) the FSRCC, where necessary to enable it to discharge its functions in respect of–
 - (i) the Gibraltar Deposit Guarantee Scheme; or
 - (ii) the resolution financing arrangements; and
 - (c) the Ministry of Finance.”; and
 - (c) omit sub-regulation (4).
- (49) Omit regulation 82(3).
- (50) For regulation 83(1) to (4), substitute–
- “(1) As soon as reasonably practicable after taking a resolution action, the Gibraltar Resolution Authority must notify–
 - (a) the institution under resolution;
 - (b) the GFSC;
 - (c) the FSRCC, as administrator of the resolution financing arrangements;
 - (d) where appropriate, the Gibraltar Deposit Guarantee Scheme or Gibraltar Investor Compensation Scheme;
 - (e) the Ministry of Finance; and
 - (f) where the institution under resolution is an institution within the meaning of the Financial Services (Financial Markets and Insolvency: Settlement Finality) Regulations 2020, the operators of the systems in which it participates.
 - (2) The notification under sub-regulation (1) must include a copy of any order or instrument by which the relevant powers are exercised and indicate the date from which any resolution action is effective.
 - (3) As soon as reasonably practicable after taking a resolution action, the Gibraltar Resolution Authority must publish or ensure the publication of–
 - (a) a copy of the order or instrument by which the resolution action is taken;

- (b) a summary of the effects of the resolution action and, in particular, the effects on retail customers; and
 - (c) if applicable, the terms and period of suspension or restriction referred to in Regulations 69 to 71.
- (4) The information specified in sub-regulation (3) must be published—
- (a) on the GFSC’s website;
 - (b) on the website of the institution under resolution; and
 - (c) where the shares, other instruments of ownership or debt instruments of the institution under resolution are admitted to trading on a regulated market, by the means used for the disclosure of regulated information concerning the institution under resolution in accordance with section 377 of the Act.”.
- (51) In regulation 84—
- (a) in sub-regulation (1)—
 - (i) for paragraph (g), substitute—
“(g) the Gibraltar Deposit Guarantee Scheme;”;
 - (ii) for paragraph (h), substitute—
“(h) the Gibraltar Investor Compensation Scheme;”;
 - (iii) in paragraph (j), omit “the central bank and”;
 - (b) in sub-regulation (3)(b), for “a competent authority or resolution authority” substitute “the GFSC or the Gibraltar Resolution Authority”;
 - (c) in sub-regulation (4)(a), omit “or the Recovery and Resolution Directive”;
 - (d) omit sub-regulation (7);
 - (e) for sub-regulation (8)(b), substitute—
“(b) the GFSC and the Gibraltar Resolution Authority, including their employees and experts, from sharing information with each other and with—
 - (i) third-country authorities that carry out equivalent functions to those of the authorities in sub-regulation (1)(a) to (c) and (g) to (i);
 - (ii) authorities responsible for normal insolvency proceedings;

- (iii) persons charged with carrying out statutory audits; and
- (ii) subject to strict confidentiality requirements, a potential acquirer for the purposes of planning or carrying out a resolution action.”;
- (f) in sub-regulation (9)–
 - (i) for paragraph (b), substitute–
 - “(b) any parliamentary committee or other entity authorised to conduct inquiries in Gibraltar;”;
 - (ii) in paragraph (c), omit sub-paragraph (v); and
 - (iii) in paragraph (d), after “charged” insert “with”; and
- (g) omit sub-regulation (11).

Amendment of Part 5.

8. Omit Part 5.

Amendment of Part 6.

9.(1) For regulation 93, substitute–

“Recognition and enforcement of third-country resolution proceedings.

93.(1) The Gibraltar Resolution Authority may recognise and enforce third-country resolution proceedings relating to a third country institution or parent undertaking.

(2) The Gibraltar Resolution Authority, in making a decision under sub-regulation (1), must give due consideration to the potential impact of the recognition and enforcement of the third-country resolution proceedings on–

- (a) the other parts of the relevant group;
- (b) the interests and, in particular, financial stability of Gibraltar.

(3) The Gibraltar Resolution Authority may do any the following–

- (a) exercise the resolution powers in relation to–
 - (i) assets of a third-country institution or parent undertaking that are located in Gibraltar or governed by the law of Gibraltar;

- (ii) rights or liabilities of a third-country institution that are booked by the Gibraltar branch or governed by the law of Gibraltar, or where claims in relation to such rights and liabilities are enforceable in Gibraltar;
 - (b) perfect, including by requiring another person to take action to perfect, a transfer of shares or other instruments of ownership in a subsidiary established in Gibraltar;
 - (c) exercise the powers in regulation 69, 70 or 71 in relation to the rights of any party to a contract with an entity in sub-regulation (2), where such powers are necessary in order to enforce third-country resolution proceedings; and
 - (d) render unenforceable any right to terminate, liquidate or accelerate contracts, or affect the contractual rights, of entities in sub-regulation (1) and other group entities, where—
 - (i) the right arises from resolution action taken in respect of the third-country institution, parent undertaking of such entities or other group entities, whether by the third-country resolution authority or otherwise under the law or regulatory requirements as to resolution arrangements in that country; and
 - (ii) the substantive obligations under the contract, including payment and delivery obligations, and provision of collateral, continue to be performed.
- (4) The Gibraltar Resolution Authority may take, where necessary in the public interest, resolution action with respect to a parent undertaking where the relevant third-country authority determines that an institution that is incorporated in that third country meets the conditions for resolution under the law of that third country.
- (5) To that end, the Gibraltar Resolution Authority may use any resolution power in respect of that parent undertaking, and regulation 68 applies.”.
- (2) In regulation 94—
- (a) in the opening words—
 - (i) omit “, after consulting other resolution authorities, where a European resolution college is established under regulation 89,”; and
 - (ii) omit “(2) and (3)”;
 - (b) in paragraph (a), omit “or that the proceedings would have adverse effects on financial stability in another EEA State”;

(c) in paragraph (b), for “an EEA” substitute “a Gibraltar”; and

(d) in paragraph (c), for “an EEA State” substitute “Gibraltar”;

(3) In regulation 95–

(a) for the heading, substitute “**Resolution of Gibraltar branches of third-country institutions.**”;

(b) in sub-regulation (1), for “an EEA branch” substitute “a Gibraltar branch of a third country institution”;

(c) in sub-regulation (3)–

(i) in paragraph (a), omit “EEA”;

(ii) in paragraph (b), for “EEA” substitute “Gibraltar”; and

(d) in sub-regulation (4), for “EEA branch” substitute “Gibraltar branch of a third country institution”.

(4) In regulation 96–

(a) for sub-regulation (2), substitute–

“(2) The data protection legislation applies to the handling and transmission of any personal data to third-country authorities.”; and

(b) omit sub-regulations (3) and (4).

Amendment of Part 7.

10.(1) In regulation 97(1)–

(a) omit paragraph (g); and

(b) in paragraph (h), for “(g)” substitute “(f)”.

(2) Omit regulation 98.

(3) In regulation 99(1)(a)(i), for “Article 6 of the DGS Directive” substitute “section 214 of the Act”.

(4) In regulation 100–

(a) in-sub-regulation (1)–

(i) in paragraph (a), omit “the national law governing”; and

- (ii) in paragraph (b), omit “the national law governing”; and
- (b) in-sub-regulation (7)–
 - (i) for “under the DGS Directive” substitute “under Part 15 of the Act”; and
 - (ii) for “Article 6 of the DGS Directive” substitute “section 214 of the Act”; and
- (c) in-sub-regulation (9), for “pursuant to Article 10 of the DGS Directive” substitute “under section 209 of the Act”.

Amendment of Part 8.

- 11.(1) In regulation 102(3), for “EEA” substitute “Gibraltar”.
- (2) In regulation 103(1), omit “or the Recovery and Resolution Directive”.
- (3) Omit regulation 104.

Amendment of the Schedule.

- 12.(1) In Part 2–
 - (a) in the heading, for “RESOLUTION AUTHORITIES” substitute “THE RESOLUTION AUTHORITY”;
 - (b) in the opening words, for “Resolution authorities” substitute “The Gibraltar Resolution Authority”; and
 - (c) in paragraph (19), for “authorities” substitute “Gibraltar Resolution Authority”.
- (2) In Part 3–
 - (a) in the opening words, for “resolution authority” substitute “Gibraltar Resolution Authority”;
 - (b) in paragraph (11), for “resolution authority” substitute “Gibraltar Resolution Authority”;
 - (c) in paragraph (12), for “resolution authorities” substitute “Gibraltar Resolution Authority”;
 - (d) in paragraph (20)–
 - (i) for “EEA resolution authorities” substitute “the Gibraltar Resolution Authority”; and

- (ii) for “EEA” substitute “the Gibraltar Resolution Authority”; and
- (e) in paragraph (22), for “resolution authority” substitute “Gibraltar Resolution Authority”.

Dated: 11th February 2021.

A J ISOLA,
Minister with responsibility for financial services.

EXPLANATORY MEMORANDUM

These Regulations are made in exercise of the powers in section 11 of the European Union (Withdrawal) Act 2019, in order to address failures of retained EU law to operate effectively and other deficiencies arising from Gibraltar’s withdrawal from the European Union. They amend the Financial Services (Recovery and Resolution) Regulations 2020, which gave effect in Gibraltar to Directive 2014/59/EU.