

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

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LEGAL NOTICE NO. 385 OF 2021

EUROPEAN UNION (WITHDRAWAL) ACT 2019

SECURITISATION (AMENDMENT) (EU EXIT) REGULATIONS 2021

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LEGAL NOTICE NO. 385 OF 2021.

EUROPEAN UNION (WITHDRAWAL) ACT 2019
SECURITISATION (AMENDMENT) (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-

PART 1
PRELIMINARY

Title.

1. These Regulations may be cited as the Securitisation (Amendment) (EU Exit) Regulations 2021.

Commencement.

2. These Regulations come into operation on the day of publication.

Interpretation.

3. In these Regulations—

“the CRA Regulation” means Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies;

“EMIR” means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories;

“the Liquidity Delegated Regulation” means Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions; and

“the Securitisation Regulation” means Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No. 1060/2009 and (EU) No. 648/2012.

PART 2
AMENDMENT OF THE SECURITISATION REGULATION

Amendment of the Securitisation Regulation.

4. The Securitisation Regulation is amended in accordance with this Part.

Article 2.

5.(1) In Article 2–

(a) after the opening words, insert–

“(A1) “the Act” means the Financial Services Act 2019;

(A2) “competent authority” means the GFSC;

(A3) “CRR” means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012;

(A4) “EMIR” means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories;

(A5) “the GFSC” means the Gibraltar Financial Services Commission within the meaning of section 21(1) of the Act;

(A6) “the Minister” means the Minister with responsibility for financial services;

(A7) “third country” means a country or territory other than Gibraltar;”;

(b) for point (5), substitute–

“(5) “sponsor” means a credit institution as defined in Article 4.1(1) of the CRR or an investment firm as defined in section 2(2) of the Act, whether located in Gibraltar or a third country, which:

(a) is not an originator; and

(b) either–

(i) establishes and manages an asset-backed commercial paper programme or other securitisation that purchases exposures from third party entities; or

- (ii) establishes an asset-backed commercial paper programme or other securitisation that purchases exposures from third party entities and delegates the day-to-day active portfolio management involved in that securitisation to an entity which is authorised to manage assets belonging to another person in accordance with the law of the country in which the entity is established.”;
- (c) in point (12)–
 - (i) in point (a), for “point (1) of Article 13 of Directive 2009/138/EC” substitute “regulation 3(1) of the Financial Services (Insurance Companies) Regulations 2020”;
 - (ii) in point (b), for “point (4) of Article 13 of Directive 2009/138/EC” substitute “regulation 3(1) of the Financial Services (Insurance Companies) Regulations 2020”;
 - (iii) for points (c) to (g) substitute–
 - “(c) an IORP, as defined in section 1(1) of the Act that has its main administration in Gibraltar, or an investment manager appointed by an IORP under regulation 29 of the Financial Services (Occupational Pensions Institutions) Regulations 2020, in respect of activity undertaken pursuant to that appointment;
 - (d) an AIFM, as defined in regulation 4(1) of the Financial Services (Alternative Investment Fund Managers Regulations) 2020, which manages or markets alternative investment funds in Gibraltar;
 - (e) a management company as defined in section 289 of the Act;
 - (f) a UCITS as defined by section 292 of the Act, which is an authorised open ended investment company as defined in section 291 of the Act;
 - (g) a credit institution as defined in Article 4.1(1) of the CRR or an investment firm as defined in Article 4.1(2) of that Regulation;”;
- (d) in point (23), omit the second sub-paragraph.

Article 3.

6. In Article 3, in paragraph (1)–

- (a) in the opening words, for “point 11 of Article 4(1) of Directive 2014/65/EU” substitute “regulation 2(1) of the Financial Services (Investment Services) Regulations 2020”; and
- (b) in point (a), for “Article 25(2) of Directive 2014/65/EU” substitute “regulation 40(4) of the Financial Services (Investment Services) Regulations 2020”.

Article 4.

7. In Article 4, in point (b), for “signed an agreement with a Member State to ensure that that third country” substitute “agreed to ensure that it”.

Article 5.

8.(1) Article 5 is amended as follows.

(2) In paragraph 1–

- (a) in point (a)–
 - (i) for “the Union” substitute “Gibraltar”; and
 - (ii) for “points (1) and (2) of Article 4(1) of Regulation(EU) No 575/2013” substitute Article 4.1(1) and (2) of the CRR”;
- (b) in point (c), for “the Union” substitute “Gibraltar”;
- (c) in point (e), at the beginning insert “if established in Gibraltar,”; and
- (d) after point (e), insert–
 - “(f) if established in a third country, the originator, sponsor or SSPE has, where applicable:
 - (i) made available information which is substantially the same as that which it would have made available in accordance with point (e) if it had been established in Gibraltar; and
 - (ii) has done so with such frequency and modalities as are substantially the same as those with which it would have made information available in accordance with point (e) if it had been so established.”.

(3) In paragraph 3, after point (c), insert–

“(d) in point (c)–

(i) the reference to a securitisation notified as STS in accordance with Article 27 includes a reference to a securitisation notified in accordance with that Article before IP completion day, or before the expiry of a period of two years beginning with IP completion day, where the person responsible for the notification (the originator and sponsor or, in the case of an ABCP programme, the sponsor) is established in an EEA State;

(ii) in relation to any securitisation so notified, the reference to the STS notification is a reference to the notification of that securitisation as STS, and a reference to a numbered Article is a reference to the Article so numbered of this Regulation as it had or has effect in relation to an EEA State at any time on and after the date of the notification and before the end of the period referred to in paragraph (i).”.

(4) In paragraph 4–

- (a) in point (e), for “authorities” substitute “authority”; and
- (b) in point (f), for “authorities” substitute “authority”.

(5) In paragraph (5)–

- (a) for “Member States shall ensure that, where” substitute “Where”; and
- (b) for “under Articles 32 and 33” substitute “imposed as a result of the failure”.

Article 6.

9.(1) Article 6 is amended as follows.

(2) In paragraph 2, for “pursuant to Articles 32 and 33” substitute “for the contravention”.

(3) In paragraph 4–

- (a) for the first sub-paragraph substitute–

“Where:

- (a) a mixed financial holding company;
- (b) a Gibraltar parent institution;
- (c) a financial holding company established in Gibraltar; or
- (d) a subsidiary of such a company or institution,

as an originator or sponsor, securitises exposures from one or more credit institutions, investment firms or other financial institutions which are included in the scope of supervision on a consolidated basis, the requirements set out in paragraph 1 may be satisfied on the basis of the consolidated situation of the mixed financial holding company, Gibraltar parent institution or financial holding company concerned.”;

- (b) in the second sub-paragraph, for “and to the Union parent credit institution, financial holding company or mixed financial holding company established in the Union” substitute “and, if the originator or sponsor is a subsidiary, to the mixed financial holding company, Gibraltar parent institution or financial holding company which is the parent undertaking of the subsidiary”; and
- (c) after the second sub-paragraph, insert–

“In this paragraph:

- (a) “credit institution”, “financial holding company”, “financial institution”, “Gibraltar parent institution”, “investment firm” and “subsidiary” have the meaning given in Article 4.1 of the CRR”; and
- (b) “mixed financial holding company” has the meaning given in regulation 2 of the Financial Services (Financial Conglomerates) Regulations 2020.”.

(4) In paragraph 5–

- (a) in point (b), for “point (8) of Article 4(1) of Regulation (EU) No 575/2013 of Member States” substitute “Article 4.1(8) of the CRR”; and
- (b) in point (e), for “Regulation (EU) No 575/2013” substitute “the CRR”.

(5) In paragraph 7–

- (a) in the first sub-paragraph, for “EBA, in close cooperation with the ESMA and the European Insurance and Occupational Pensions Authority (EIOPA) which was established by Regulation (EU) No1094/2010 of the European Parliament and of the Council, shall develop draft” substitute “The Minister may make”; and
- (b) omit the second and third sub-paragraphs.

Article 7.

10.(1) Article 7 is amended as follows.

(2) In paragraph 1–

- (a) in the first sub-paragraph–

- (i) in the opening words, for “authorities” substitute “authority”;
 - (ii) in point (c), for “where a prospectus has not been drawn up in compliance with Directive 2003/71/EC of the European Parliament and of the Council” substitute “where Part 19 of the Act and the Financial Services (Official Listing) Rules 2020 do not require a prospectus to be drawn up”;
 - (iii) in point (g)(iv), for “competent authorities have” substitute “the competent authority has”;
- (b) in the fourth sub-paragraph, for “competent authorities” substitute “the competent authority”;
 - (c) in the sixth sub-paragraph, for “national and Union law” substitute “the law applicable in Gibraltar”; and
 - (d) in the eighth sub-paragraph, for “Competent authorities referred to in Article 29” substitute “The competent authority”.
- (3) In paragraph 2, in the third sub-paragraph, for “no prospectus has to be drawn up in compliance with Directive 2003/71/EC” substitute “Part 19 of the Act and the Financial Services (Official Listing) Rules 2020 do not require a prospectus to be drawn up”.

(4) For paragraph 3, substitute—

“3. The Minister may make technical standards specifying:

- (a) the information that the originator, sponsor and SSPE must provide in order to comply with their obligations under points (a) and (e) of the first subparagraph of paragraph 1, taking into account the usefulness of information for the holder of the securitisation position, whether the securitisation position is of a short-term nature and, in the case of an ABCP transaction, whether it is fully supported by a sponsor;
- (b) the format in which the information in point (a) is to be provided, including by means of standardised templates.”.

(5) Omit paragraph 4.

Article 8.

11.(1) Article 8 is amended as follows.

(2) In paragraph 2—

- (a) in the first sub-paragraph, for “A competent authority designated pursuant to Article 29(2), (3) or (4), as applicable,” substitute “The competent authority”;

- (b) in the second sub-paragraph–
 - (i) for “points (1) and (2) of Article 4(1) of Regulation (EU) No 575/2013” substitute “Article 4.1(1) and (2) of the CRR”;
 - (ii) omit “referred to in the first subparagraph of this paragraph”; and
 - (iii) in both places it occurs, for “resolution authority” substitute “Gibraltar Resolution Authority”; and
- (c) omit the third sub-paragraph.

(3) In paragraph 5–

- (a) in the first sub-paragraph, for “ESMA, in close cooperation with the EBA, may develop draft regulatory” substitute “the Minister may make”; and
- (b) omit the second sub-paragraph.

Article 9.

12. In Article 9–

- (a) in paragraph 2 for “after the entry into force of Directive 2014/17/EU” substitute “on or after 20th March 2014”; and
- (b) in paragraph 4(a) for “the entry into force of Directive 2014/17/EU” substitute “20th March 2014”.

Article 10.

13.(1) Article 10 is amended as follows.

(2) In paragraph 1, for “ESMA” substitute “the GFSC”.

(3) In paragraph 2–

- (a) for “the Union” substitute “Gibraltar”; and
- (b) in both places it occurs, for “Regulation (EU) No 648/2012” substitute “EMIR”.

(4) Omit paragraph 3.

(5) In paragraph 4, for “ESMA” substitute “the GFSC”.

(6) In paragraph 5–

- (a) for “ESMA” substitute “the GFSC”; and

(b) for “Regulation (EU) No 648/2012” substitute “EMIR”.

(7) After paragraph 5, insert–

“5A. For the purposes of this Article, Articles 78, 79 and 80 of EMIR have effect in relation to a securitisation repository as they have effect in relation to a trade repository, but with the following modifications:

(a) a reference to a trade repository is a reference to a securitisation repository within the meaning given by Article 2(23) of this Regulation; and

(b) a reference to EMIR is a reference to this Regulation.”.

(8) In paragraph 6–

(a) in the first sub-paragraph, for “ESMA” substitute “The GFSC”; and

(b) in the second and third sub-paragraphs, in both places it occurs, for “ESMA” substitute “the GFSC”.

(9) For paragraph 7, substitute–

“7. In order to ensure the consistent application of this Article, the Minister may make technical standards specifying:

(a) the procedures referred to in paragraph 2 which are to be applied by securitisation repositories in order to verify the completeness and consistency of the information made available to them under Article 7(1);

(b) the format and process for registration applications referred to in paragraph 5(a);

(c) the format and process for applications for the extension of registration referred to paragraph 5(b), which should be simplified and avoid duplication.”.

(10) Omit paragraph 8.

Article 11.

14. Omit Article 11.

Article 12.

15. In Article 12–

- (a) in paragraph 1, for “ESMA” substitute “The GFSC”; and
- (b) omit paragraph 2.

Article 13.

16. For Article 13, substitute–

“Article 13

Publication and notification of decisions

1. The GFSC must publish on its website a list of securitisation repositories registered in accordance with Article 12 (“the Register”).
2. On the adoption of a decision under Article 12 or 15, the GFSC must notify its decision to the securitisation repository concerned.
3. A refusal of an application to register under Article 12 comes into effect on the fifth working day following its adoption.
4. A withdrawal of registration under Article 15 takes effect:
 - (a) immediately upon the adoption of the decision if the notice states that is the case;
 - (b) on such date as may be specified in that notice; or
 - (c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.
5. A decision to withdraw registration on the GFSC's own initiative under paragraph 1 or 2 of Article 15 may be expressed to take effect immediately (or on a specified date) only if the GFSC, having regard to the ground on which it is exercising its power reasonably considers that it is necessary for the withdrawal or direction to take effect immediately (or on that date).
6. If the decision referred to in paragraph 2 is:
 - (a) to refuse the application for registration made under Article 12,
 - (b) to exercise the GFSC's power under paragraph 1 or 2 of Article 15 to withdraw the registration of the securitisation repository on the GFSC's own initiative, or

- (c) to refuse an application made by a securitisation repository under paragraph 3 of Article 15 to withdraw the registration of the securitisation repository,

the GFSC must give the securitisation repository a written notice.

7. A written notice under paragraph 6 must:

- (a) give details of the decision made by the GFSC;
- (b) state the GFSC 's reasons for the decision;
- (c) state when the decision takes effect;
- (d) inform the securitisation repository that it may appeal to the Supreme Court under section 615 of the Act (and, for that purpose, the notice is to be treated as if it were a decision notice within the meaning of the Act).”.

Article 14.

17. Omit Article 14.

Article 15.

18. For Article 15, substitute–

“Article 15

Withdrawal of registration

1. The GFSC may, on its own initiative, withdraw the registration of a securitisation repository where the securitisation repository:

- (a) expressly renounces the registration or has provided no services for the preceding six months;
- (b) obtained the registration by making false statements or by any other irregular means; or
- (c) no longer meets the conditions for registration.

2. The GFSC may also, on its own initiative, withdraw the registration of a securitisation repository where it is desirable to do so to advance one or more of its regulatory objectives set out in section 23(2) of, and Schedule 5 to, the Act.

3. The GFSC may, on an application by a securitisation repository, withdraw the registration of the securitisation repository.

4. The decision to withdraw the registration of a securitisation repository under paragraph 1, 2 or 3 must be reflected in the Register.”.

Article 16.

19. For Article 16, substitute–

“Article 16 **Regulatory fees**

1. The Minister may by regulations provide for the payment by securitisation repositories and others to the GFSC of such fees as may be specified in the regulations in connection with the exercise of any of the GFSC’s functions under or in connection with of this Regulation.

2. Regulations made under paragraph 1 may, in particular, specify the type of fees, the matters for which fees are due, the amount of the fees and the manner in which they are to be paid.”.

Article 17.

20.(1) Article 17 is amended as follows–

(2) In paragraph 1–

- (a) in point (a), for “ESMA” substitute “the GFSC”;
- (b) omit points (b) to (e);
- (c) in point (f), for “the” substitute “other”;
- (d) for point (g), substitute “the Gibraltar Resolution Authority”; and
- (e) omit point (h).

(3) In paragraph 2–

- (a) in the first sub-paragraph, for “ESMA shall, in close cooperation with the EBA and EIOPA and taking into account the needs of the entities referred to in paragraph 1, develop draft regulatory” substitute “The Minister, taking into account the needs of the entities referred to in paragraph 1, may make”; and
- (b) omit the second and third sub-paragraphs.

(4) In paragraph 3–

- (a) in the first sub-paragraph for “ESMA, in close cooperation with the EBA and EIOPA shall develop draft implementing” substitute “the Minister may make”; and
- (b) omit the second and third sub-paragraphs.

Article 18.

21. In Article 18–

- (a) number the first paragraph as paragraph 1;
- (b) in that paragraph, in point (a), for “ESMA” substitute “the GFSC”;
- (c) for the second paragraph, substitute–

“2. The originator and sponsor involved in a securitisation which is not an ABCP programme or an ABCP transaction and is considered STS must be established in Gibraltar.

The sponsor involved in an ABCP programme considered STS must be established in Gibraltar.

The sponsor involved in an ABCP programme which is not considered STS must be established in Gibraltar if an ABCP transaction within that programme is considered STS.

3. In relation to a relevant securitisation, this Article has effect without the amendments made by regulation 21 of the Securitisation (Amendment) (EU Exit) Regulations 2021.

A “relevant securitisation” is a securitisation:

- (a) which meets all the requirements of Section 1 or Section 2 of this Chapter, and
 - (i) of which ESMA was notified pursuant to Article 27(1) before IP completion day; or
 - (ii) which is notified pursuant to Article 27(1) after IP completion day but before the expiry of a period of two years beginning with IP completion day; and
- (b) which is included in the list referred to in Article 27(5).

In this paragraph a reference to Section 1 or Section 2 of this Chapter or to Article 27 is a reference to that Section or Article as it had or has effect in relation to an EEA State at any time on and after the date of the notification and before the end of the period referred to in the second subparagraph.”.

Article 19.

22. In Article 19, omit paragraph 2.

Article 20.

23.(1) Article 20 is amended as follows.

(2) In paragraph 8, in the third sub-paragraph, for “point (44) of Article 4(1) of Directive 2014/65/EU” substitute “paragraph 44 of Schedule 2 to the Act”.

(3) In paragraph 10, in the third sub-paragraph, for “Article 8 of Directive 2008/48/EC or paragraphs 1 to 4, point (a) of paragraph 5, and paragraph 6 of Article 18 of Directive 2014/17/EU” substitute “section 10 of the Financial Services (Consumer Credit) Act 2011 or regulation 29(1) to (6)(a) of the Financial Services (Mortgage Credit) Regulations 2020”.

(4) In paragraph 11, for “Regulation (EU) No 575/2013” substitute “the CRR”.

(5) In paragraph 14–

(a) in the first sub-paragraph, for “EBA, in close cooperation with ESMA and EIOPA, shall develop draft regulatory” substitute “Minister may make”; and

(b) omit the second and third sub-paragraphs.

Article 23.

24. In Article 23, omit paragraph 3.

Article 24.

25. In Article 24–

(a) in paragraph 15, in the fourth sub-paragraph–

(i) after “Regulation (EU) No 575/2013” insert “(as it had effect immediately before IP completion day)”; and

(ii) for “(44) of Article 4(1) of Directive 2014/65/EU other than corporate bonds,” substitute “paragraph 44 of Schedule 2 to the Act, other than corporate bonds”; and

(b) in paragraph 21–

- (i) in the first sub-paragraph, for “The EBA, in close cooperation with ESMA and EIOPA, shall develop draft regulatory” substitute “The Minister may make”; and
- (ii) omit the second and third sub-paragraphs.

Article 25.

26. In Article 25–

- (a) in paragraph 1, for “under Directive 2013/36/EU” substitute “in accordance with the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020”; and
- (b) in paragraph 3–
 - (i) in the first sub-paragraph for “its competent authority” substitute “the GFSC”; and
 - (ii) in the second sub-paragraph–
 - (aa) for “the competent authority” substitute “the GFSC”; and
 - (bb) for “Article 97(3) of Directive 2013/36/EU” substitute “in regulation 54(3) of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020”.

Article 27.

27.(1) Article 27 is amended as follows.

(2) For paragraph 1 substitute–

“1. Where a securitisation which is not an ABCP programme or an ABCP transaction meets the requirements of Articles 19 to 22, the originator and sponsor involved in the securitisation must jointly notify the GFSC of that fact by means of the template referred to in paragraph 7 of this Article.

Where an ABCP programme meets the requirements of Articles 23 to 26, or an ABCP transaction meets the requirements of Article 24, the sponsor involved in the programme must notify the GFSC of that fact by means of the template referred to in paragraph 7 of this Article.

A notice given in accordance with the first or second subparagraph (“STS notification”) must include an explanation of how the relevant STS criteria set out in Articles 20 to 22 or, as the case may be, Articles 24 to 26 have been complied with.

The GFSC must publish the STS notification on its website pursuant to paragraph 5.

Where the STS notification is given jointly by the originator and sponsor involved in a securitisation, the STS notification must designate one of them to be the first contact point for investors and the GFSC.”.

(3) In paragraph 2, in the second sub-paragraph, for “, its place of establishment and the name of the competent authority that authorised it” substitute “and its place of establishment”.

(4) In paragraph 3 for “points (1) and (2) of Article 4(1) of Regulation (EU) No 575/2013, established in the Union” substitute “Article 4.1(1) and (2) of the CRR, established in Gibraltar”.

(5) In paragraph 4 for “ESMA and inform their competent authority” substitute “the GFSC”.

(6) For paragraph 5 substitute–

“5. The GFSC must maintain on its website a list of all securitisations notified to it as meeting the requirements of Articles 19 to 22 or Articles 23 to 26. The GFSC must add each securitisation so notified to that list immediately and must update the list where a securitisation is no longer considered to be STS following a decision of the GFSC or a notification by the originator or sponsor concerned.

Where the GFSC has imposed a relevant sanction in relation to a securitisation, the FCA must immediately indicate that fact in relation to the securitisation concerned on the list which it maintains in accordance with the first subparagraph.

In the second subparagraph “relevant sanction” means any sanction imposed or other measure taken where by reason of any act or failure, whether intentional or through negligence:

- (a) an originator, sponsor or original lender fails to meet the requirements set out in Article 6;
- (b) an originator, sponsor or original lender fails to meet the criteria set out in Article 9;
- (c) an originator, sponsor or SSPE fails to meet the requirements set out in Article 7 or 18;

- (d) a securitisation is designated as STS and an originator, sponsor or SSPE of that securitisation fails to meet the requirements set out in Article 19 to 22 or Articles 23 to 26;
- (e) an originator or sponsor makes a notification pursuant to Article 27(1) which is misleading;
- (f) an originator or sponsor fails to meet the requirements set out in Article 27(4); or
- (g) a third party authorised pursuant to Article 28 fails to notify a material change to the information provided pursuant to Article 28(1), including any change which could reasonably be considered to affect the competent authority's assessment of the third party's competence to assess STS compliance.”.

(7) For paragraph 6, substitute—

“6. The Minister may make technical standards specifying:

- (a) the information that the originator, sponsor and SSPE are required to provide in order to comply with the obligations referred to in paragraph 1; and
- (b) the templates to be used for the provision of that information.”.

(8) Omit paragraph 7.

Article 28.

28. In Article 28—

- (a) in paragraph 1—
 - (i) in the three places it occurs, for “competent authority” substitute “GFSC”;
 - (ii) in point (b), for “point (4) of Article 2 of Directive 2002/87/EC nor a credit rating agency as defined in point (b) of Article 3(1) of Regulation (EC) No 1060/2009” substitute “regulation 2 of the Financial Services (Financial Conglomerates) Regulations 2020 nor a credit rating agency as defined in Article 3.1 of Regulation (EC) No 1060/2009”;
- (b) in paragraph 2, in both places it occurs, for “its competent authority” substitute “the GFSC”;
- (c) in paragraph 3, for “The competent authority” substitute “The GFSC”; and

- (d) in paragraph 4–
- (i) in the first sub-paragraph, for “ESMA shall develop draft regulatory technical standards specifying the information to be provided to the competent authorities” substitute “The Minister may make technical standards specifying the information to be provided to the GFSC”; and
 - (ii) omit the second and third sub-paragraphs.

Article 29.

29. For Article 29, substitute–

“Article 29
Supervision

1. The GFSC is responsible for supervising institutional investors’ compliance with the obligations set out in Article 5.
2. The GFSC is also responsible for supervising compliance:
 - (a) by sponsors with the obligations set out in Articles 6 to 9;
 - (b) by originators, original lenders and SSPEs with the obligations set out in:
 - (i) Articles 6 to 9; and
 - (ii) Articles 18 to 27; and
 - (c) by third parties with the obligations set out in Article 28.
3. Paragraph 2(b) does not apply with regard to those entities that are merely selling exposures under an ABCP programme or other securitisation transaction or scheme and are not actively originating exposures for the primary purpose of securitising them on a regular basis.
4. In a case to which paragraph 3 applies, the originator or sponsor must verify that those entities fulfil the relevant obligations set out in Articles 18 to 27.
5. This Article applies without limiting the GFSC’s powers under the Act or any other enactment.”.

Article 30.

30. In Article 30–

- (a) for the heading, for “competent authorities” substitute “GFSC”;
- (b) for paragraph 1, substitute–

1. The GFSC may exercise its supervisory, investigatory and sanctioning powers under the Act or any regulations made under it, with any necessary modifications, for the purpose of supervising and enforcing compliance with this Regulation.

Without limiting the first subparagraph, where this Regulation imposes obligations on a person:

- (a) who is not a relevant person for the purposes of section 131(1) of the Act; or
- (b) who, at the time of a contravention of this Regulation, was not an authorised person for the purposes of section 147(1)(b)(i) of the Act,

the GFSC may exercise its powers under Part 10 or 11 of the Act as if that person were a relevant person or authorised person (as the case may be).”;

- (c) in paragraph 2, for “competent authority” substitute “GFSC”;
- (d) in paragraph 3, for “Competent authorities” substitute “The GFSC”;
- (e) in paragraph 4–
 - (i) in the first sub-paragraph, for “competent authority” substitute “GFSC”;
 - (ii) for the second sub-paragraph substitute–

“Where the GFSC identifies a material risk to the financial stability of a financial institution or to the financial system as a whole, it must take action to mitigate those risks and report its findings to the Minister.”; and

- (f) for paragraph 5, substitute–

“5. The GFSC shall monitor any suspected circumvention of the obligations set out in Article 6(2) and ensure that sanctions are applied for a circumvention.”.

Articles 31 to 37.

31. Omit Articles 31 to 37.

Articles 38 to 42.

32. Omit Articles 38 to 42.

Article 43.

33.(1) Article 43 is amended as follows.

(2) After paragraph 4, insert–

“4A. Subject to the second subparagraph, in paragraphs 3 and 4 a reference to a numbered Article is a reference to the Article so numbered of this Regulation as it had effect immediately before IP completion day, or as it has effect on or after IP completion day in relation to an EEA State.

In paragraphs 3(b) and 4, in relation to a STS notification made on or after IP completion day by a person who is established in Gibraltar, a reference to Article 27(1) is a reference to that Article as it has effect on or after IP completion day in Gibraltar. “STS notification” means notification that a securitisation meets the requirements of Section 1 or Section 2 of Chapter 4.”.

(3) In paragraph 5, at the end, insert the following sub-paragraph–

“For the purposes of this paragraph, Articles 407 and 410 of the CRR have effect with the following modifications–

(a) in Articles 407 and 410, a reference to Article 405 is a reference to that Article as modified by regulation 33(3) of the Securitisation (Amendment) (EU Exit) Regulations 2021;

(b) in Article 407, in the first subparagraph, ignore the reference to Article 409; and

(c) in Article 410–

(i) ignore paragraph 1;

(ii) in paragraph 2–

(aa) in the first subparagraph read the opening words as if for “EBA shall develop draft regulatory” there were substituted “The Minister may make”, and ignore point (d);

(bb) ignore the second and third subparagraphs; and

(iii) in paragraph 3–

(aa) in the first subparagraph read the opening words as if for “EBA shall develop draft regulatory” there were substituted “The Minister may make”;

(bb) ignore the second and third subparagraphs.”.

(4) For paragraph 6, substitute –

“6. In respect of securitisations the securities of which were issued before 1st January 2019:

- (a) credit institutions as defined in Article 4.1(1) of the CRR;
- (b) investment firms, as defined in section 2(2) of the Act, to which the CRR applies;
- (c) insurance undertakings and reinsurance undertakings, as defined in regulation 3(1) of the Financial Services (Insurance Companies) Regulations 2020; and
- (d) alternative investment fund managers (AIFMs) as defined in section 2(2) of the Act,

shall continue to apply Article 405 of the CRR, Chapters I to III and Article 22 of Delegated Regulation (EU) No 625/2014, Articles 254 and 255 of Delegated Regulation (EU) 2015/35 and Article 51 of Delegated Regulation (EU) No 231/2013 as they applied on 31st December 2018.

For the purposes of this paragraph, Article 405 of the CRR has effect with the following modifications:

(a) read paragraph 2 as if–

(i) for the first subparagraph there were substituted–

“Where:

- (a) a mixed financial holding company,
- (b) a Gibraltar parent institution which is a credit institution,
- (c) a financial holding company established in Gibraltar, or
- (d) a subsidiary of such a company or institution,

as an originator or sponsor, securitises exposures from one or more credit institutions, investment firms or other financial institutions which are included in the scope of supervision on a consolidated basis, the requirement set out in paragraph 1 may be satisfied on the basis of the consolidated situation of the mixed financial holding company, Gibraltar parent institution or financial holding company concerned.”;

(ii) in the second subparagraph for the words from “, in a timely manner” to the end there were substituted “the information needed to satisfy the requirements set out in Article 409, in a timely manner, to the originator or sponsor and, if the originator or sponsor is a subsidiary, to the mixed financial holding company, Gibraltar parent institution or financial holding company which is the parent undertaking of the subsidiary”; and

(iii) after the second subparagraph there were inserted—

“In this paragraph—

‘credit institution’, ‘financial holding company’, ‘financial institution’, ‘Gibraltar parent institution’, ‘investment firm’ and ‘subsidiary’ have the meaning given in Article 4.1; and

‘mixed financial holding company’ has the meaning given in regulation 2 of the Financial Services (Financial Conglomerates) Regulations 2020.”; and

(b) in paragraph 3, in point (b) ignore “of Member States”.”.

(5) In paragraph 7, for “regulatory technical standards to be adopted by the Commission pursuant to Article 6(7) of this Regulation apply” substitute “Minister has made technical standards pursuant to Article 6(7) of this Regulation”.

(6) In paragraph 8, for “regulatory technical standards to be adopted by the Commission pursuant to Article 7(3) of this Regulation apply” substitute “Minister has made technical standards pursuant to Article 7(3) of this Regulation”.

Articles 44 to 47.

34. Omit Articles 44 to 47.

Final provision.

35. After Article 48, omit “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.

**PART 3
AMENDMENT OF THE CRA REGULATION**

Article 3 CRA.

36. In Article 3.1(l) of the CRA Regulation, for the definition of “securitisation instrument” substitute–

““securitisation instrument’ means a financial instrument or other assets resulting from a securitisation transaction or scheme whereby the credit risk associated with an exposure or pool of exposures is tranced, having the following characteristics:

- (i) payments in the transaction or scheme are dependent upon the performance of the exposure or pool of exposures;
- (ii) the subordination of tranches determines the distribution of losses during the ongoing life of the transaction or scheme; and
- (iii) the transaction or scheme does not create exposures which possess all of the characteristics listed in Article 147.8 of the Capital Requirements Regulation;”.

**PART 4
AMENDMENT OF EMIR**

Article 2 EMIR.

37. In Article 2(30) of EMIR, for “Regulation (EU) No 575/2013” substitute “the Capital Requirements Regulation”.

Article 4 EMIR.

38. In Article 4 of EMIR–

- (a) after paragraph 5 insert–

“5A. In paragraph 5–

- (a) the reference to a securitisation includes a reference to a securitisation notified as STS in accordance with Article 27 of the Securitisation Regulation before IP completion day, or before the expiry of a period of two years beginning with IP completion day, where the person responsible for the notification (the originator and sponsor or, in the case of an ABCP programme, the sponsor) is established in an EEA State; and
- (b) in relation to any securitisation so notified a reference to a numbered Article of the Securitisation Regulation is a reference to the Article so

numbered of that Regulation as it had or has effect in relation to an EEA State at any time on and after the date of the notification and before the end of the period referred to in point (a).

In the first subparagraph “the Securitisation Regulation” means Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation.

In paragraph 6, the reference to paragraph 5 is a reference to paragraph 5 without the modification made by this paragraph.”; and

- (b) in paragraph 6–
 - (i) in the first sub-paragraph, for “ESA’s shall develop draft regulatory” substitute “Minister may make”;
 - (ii) omit the second and third sub-paragraphs.

Article 11 EMIR.

39. In Article 11 of EMIR, after paragraph 15, insert–

“15A. For the purposes of making technical standards under paragraph 15 the level and type of collateral required with respect to an OTC derivative contract which:

- (a) is concluded by a covered bond entity in connection with a covered bond or by a securitisation special purpose entity (within the meaning given in Article 2.2 of the Securitisation Regulation) in connection with a securitisation (within the meaning of Article 2.1 of that Regulation), and
- (b) meets the conditions of Article 4.5 of this Regulation and the requirements set out in Article 18 and in Articles 19 to 22 or 23 to 26 of the Securitisation Regulation,

are to be determined taking into account any impediments faced in exchanging collateral with respect to existing collateral arrangements under the covered bond or the securitisation.

In the first subparagraph ‘the Securitisation Regulation’ means Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation.”.

PART 5 AMENDMENT OF THE LIQUIDITY DELEGATED REGULATION

Amendment of Article 13.

40.(1) Article 13 of the Liquidity Delegated Regulation is amended as follows.

(2) In paragraph 2(g)–

(a) in the opening words, omit “and residential loans referred to in point (ii)”;

(b) in point (i)–

(i) for “the national law of the Member State where the loans originated” substitute “the loans were originated in Gibraltar and the law of Gibraltar”; and

(ii) omit “, and that Member State has notified this law to the Commission and EBA”;

(c) omit point (ii);

(d) in point (iii), for “a Member State” substitute “Gibraltar”;

(e) in point (iv)–

(i) for “a Member State” substitute “Gibraltar”;

(ii) for “agricultural or forestry tractors as referred to in Regulation (EU) No 167/2013 of the European Parliament and of the Council, two-wheel motorcycles or powered tricycles as referred to in Regulation (EU) No 168/2013 of the European Parliament and of the Council” substitute “tractors as defined in Article 3(8) of Regulation (EU) No 167/2013 of the European Parliament and of the Council (as it had effect immediately before IP completion day), powered two-wheelers or powered tricycles as defined in Article 3(68) and (69) of Regulation (EU) No 168/2013 of the European Parliament and of the Council (as it had effect immediately before IP completion day)”; and

(f) in point (v) for “a Member State” substitute “Gibraltar”.

(3) In paragraph 13, for “points 2 to 12 and point 15 of Annex I to Directive 2013/36/EU” substitute “paragraphs 2 to 12 and 15 of the Schedule to the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020”.

(4) In paragraph 14(a), for “(g)(i), (ii)” substitute “(g)(i) and”.

Dated: 2nd September 2021.

A J ISOLA,
Minister with responsibility for financial services.

EXPLANATORY MEMORANDUM

These Regulations are made under 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 Regulation (EU) 2017/2402 (the Securitisation Regulation) and make consequential amendments to Regulation (EC) No 1060/2009 (the CRA Regulation), Regulation (EU) No 648/2012 (EMIR) and Commission Delegated Regulation (EU) 2015/61 (the Liquidity Delegated Regulation).