

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

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LEGAL NOTICE NO. 31 OF 2024

EUROPEAN UNION (WITHDRAWAL) ACT 2019

SHORT SELLING (AMENDMENT) (EU EXIT) REGULATIONS 2024

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SHORT SELLING (AMENDMENT) (EU EXIT) REGULATIONS 2024

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 Short Selling (Amendment) (EU Exit) Regulations 2024.

Commencement.

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

**PART 2
REGULATION (EU) No 236/2012**

Amendment of Regulation (EU) No 236/2012.

3. Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14th March 2012 on short selling and certain aspects of credit default swaps, as it forms part of the law of Gibraltar, is amended in accordance with this Part.

Scope.

4. In Article 1.1-

- (a) in point (a), for “the Union” substitute “Gibraltar”;
- (b) in point (b) for “points (4) to (10) of Section C of Annex I to Directive 2004/39/EC” substitute “paragraph 46(4) to (10) of Schedule 2 to the Act”;
- (c) in point (c)-
 - (i) in both places it appears, for “a Member State or the Union” substitute “Gibraltar”;
 - (ii) for “points (4) to (10) of Section C of Annex I to Directive 2004/39/EC” substitute “paragraph 46(4) to (10) of Schedule 2 to the Act”;

Interpretation.

5.(1) In Article 2.1–

(a) in point (a), for “Section C of Annex I to Directive 2004/39/EC” substitute “paragraph 46 of Schedule 2 to the Act”;

(b) for point (d), substitute–

“(d) “sovereign issuer” means Gibraltar, including any government department, or an agency or a special purpose vehicle of Gibraltar;”;

(c) omit points (i) and (j);

(d) in point (k)–

(i) for “point (l) of Article 2(1) of Directive 2004/39/EC”, substitute “point (ka);”

(ii) after “Article 17(2)” insert “as it had effect before IP completion day, or by the Minister in accordance with that paragraph as amended;”;

(e) after point (k), insert–

“(ka) for the purposes of point (k), the firms referred to in this point are firms which provide investment services or perform investment activities consisting exclusively in dealing on own account on markets in financial futures or options or other derivatives and on cash markets for the sole purpose of hedging positions on derivatives markets or which deal for the accounts of other members of those markets or make prices for them and which are guaranteed by clearing members of the same markets, where responsibility for ensuring the performance of contracts entered into by such firms is assumed by clearing members of the same markets;”

(f) for point (l), substitute–

““trading venue” means–

(i) a Gibraltar regulated market within the meaning of Article 2.1(13)(a) of Regulation (EU) No 600/2014;

(ii) a Gibraltar MTF within the meaning of Article 2.1(14)(a) of Regulation (EU) No 600/2014;”;

(g) for point (p), substitute–

“(p) “trading day” in relation to a trading venue, means a day during which the trading venue concerned is open for trading;”;

(h) for point (q) substitute–

“(q) “turnover”, in relation to a financial instrument, means the sum of the results of multiplying the number of units of that instrument exchanged between buyers and sellers in a defined period of time, pursuant to transactions taking place on a trading venue or otherwise, by the unit price applicable to each transaction;”;

(i) after point (q), insert–

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

(s) “competent authority” means:

(i) in relation to Gibraltar, the GFSC;

(ii) in relation to an EEA State, the authority which has been designated by that EEA State as its competent authority for the purposes of Article 32 of this Regulation as it applies in the EEA; and

(iii) in relation to a third country which is not an EEA State, the supervisory authority which exercises functions equivalent to those exercised by the GFSC under this Regulation;

(t) “credit institution” has the meaning given in Article 2.1(19) of Regulation (EU) No 600/2014;

(u) “GFSC” means the Gibraltar Financial Services Commission;

(v) “investment firm” has the meaning given in Article 2.1(1) of Regulation (EU) No 600/2014;

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

(x) references to a “third country” (including in expressions including the words “third country”) are to be read as references to a country or territory other than Gibraltar.”.

(2) For Article 2.2, substitute–

“2. The Minister may be regulations amend paragraph 1 and, in particular, specify when a natural or legal person is considered to own a financial instrument for the purposes of the definition of short sale in paragraph 1(b).”.

Short and long positions.

6. In Article 3.7, for the opening words, substitute “The Minister may by regulations specify:”.

Sovereign credit default swap.

7. In Article 4.2, for the opening words, substitute “The Minister may by regulations specify:”.

Transparency of Net Short Positions.

8.(1) In Article 5–

- (a) in paragraph 1, for “relevant competent authority” substitute “GFSC”;
- (b) omit paragraph 3;
- (c) in paragraph 4, for “Commission shall be empowered to adopt delegated acts in accordance with Article 42 modifying” substitute “Minister may by regulations modify”.

(2) In Article 6–

- (a) omit paragraph 3;
- (b) in paragraph 4, for “Commission shall be empowered to adopt delegated acts in accordance with Article 42 modifying” substitute “Minister may by regulations modify”;
- (c) in paragraph 5, omit “regulated by the supervisory authorities appointed by Member States pursuant to Article 4 of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids”.

(3) In Article 7–

- (a) in paragraph 1–
 - (i) for “relevant competent authority” substitute “GFSC”;
 - (ii) omit “concerned”;
- (b) in paragraph 2–
 - (i) for “each sovereign” substitute “the sovereign”;

- (ii) after “paragraph 3”, insert “before IP completion day, or in regulations made by the Minister in accordance with that paragraph as amended”;
- (iii) for the final sentence substitute “The GFSC shall publish on its website the notification thresholds for Gibraltar.”;

(c) for paragraph 3, substitute–

“3 The Minister may by regulations specify the amounts and incremental levels referred to in paragraph 2.

The Minister shall:

- (a) ensure that the thresholds are not set at such a level as to require notification of positions which are of minimal value;
- (b) take into account the total amount of outstanding issued sovereign debt for the sovereign issuer, and the average size of positions held by market participants relating to the sovereign debt of the sovereign issuer; and
- (c) take into account the liquidity of the sovereign bond market.”.

(4) In Article 8–

- (a) for “a competent authority” substitute “the GFSC”;
- (b) for “relevant competent authority” substitute “GFSC”.

(5) In Article 9–

- (a) in paragraph 2, in the final sentence, for “the Member State of the relevant competent authority to whom the relevant position must be notified” substitute “Gibraltar”;
- (b) in paragraph 3, for “a relevant competent authority” substitute “the GFSC”;
- (c) in paragraph 4–
 - (i) for “relevant competent authority” substitute “GFSC”;
 - (ii) omit the final sentence;
- (d) for paragraph 5, substitute–

“5. The Minister may make technical standards specifying the details of the information to be provided for the purposes of paragraph 1.”;

(e) or paragraph 6, substitute–

“6. For the purposes of paragraph 4, the Minister may make technical standards specifying the means by which information may be disclosed to the public.”.

(6) In Article 10, for “within the Union or in” substitute “in Gibraltar or”.

(7) Omit Article 11.

Uncovered short sales.

9.(1) For Article 12.2, substitute–

“2 For the purposes of paragraph 1, the Minister may make technical standards to determine the types of agreements, arrangements and measures that adequately ensure that the share will be available for settlement. In determining what measures are necessary to have a reasonable expectation that settlement can be effected when it is due, the Minister shall take into account, inter alia, the intraday trading and the liquidity of the shares.”.

(2) In Article 13.3–

(a) in the first sub-paragraph–

(i) for “referred to in paragraph 4” substitute “referred to in Commission Delegated Regulation (EU) No 918/2012 or in regulations made by the Minister under paragraph 4”;

(ii) for “relevant competent authority” substitute “GFSC”;

(iii) omit the final sentence;

(b) in the second sub-paragraph, for “relevant competent authority” substitute “GFSC”;

(c) omit the third sub-paragraph.

(3) In Article 13.4–

(a) in the first sub-paragraph, for “Commission shall adopt delegated acts in accordance with Article 42 specifying” substitute “Minister may by regulations specify”;

(b) in the second sub-paragraph, omit “for Member States”;

(c) in the third sub-paragraph, for “each sovereign” substitute “the sovereign”.

(4) For Article 13.5, substitute–

5 For the purposes of paragraph 1, the Minister may make implementing technical standards to determine the types of agreements or arrangements that adequately ensure that the sovereign debt will be available for settlement. The Minister shall, in particular, take into account the need to preserve liquidity of markets, especially sovereign bond and sovereign bond repurchase markets.”.

(5) In Article 14.2–

(a) in the first sub-paragraph–

- (i) for “A competent authority” substitute “The GFSC”;
- (ii) for “sovereign issuers” substitute “the sovereign issuer”;
- (iii) for “issuers’ ability” substitute “issuer’s ability”;

(b) in the second sub-paragraph, for “competent authority” substitute “GFSC”;

(c) omit the third and fifth sub-paragraphs;

(d) in the fourth sub-paragraph, for “relevant competent authority” substitute “GFSC”.

Exemptions.

10.(1) In Article 16–

(a) in paragraph 1, for “the Union” substitute “Gibraltar”;

(b) for paragraphs 2 to 4, substitute–

“2. Where the shares of a company are traded on a trading venue in Gibraltar and a venue located in a third country, the GFSC shall determine, at least every two years, whether the principal trading venue for the trading of those shares is located in a third country.

Where the shares of a company traded on a trading venue in Gibraltar and a venue located in a third country were included in the most recent list published by ESMA under Article 16.2 of this Regulation as it had effect before IP completion day, those shares are to be treated as entitled to the exemption provided for in paragraph 1 for a period of two years beginning with IP completion day.

Every 2 years the GFSC shall publish the list of shares for which the principal trading venue is located in a third country. The list shall be effective for a 2-year period.”;

3. For the purposes of this Article, the Minister may make technical standards specifying the method for calculation of the turnover to determine the principal venue for the trading of a share.

4. For the purposes of paragraphs 1 and 2, the Minister may make technical standards to determine:

(a) the date on which and period in respect of which any calculation determining the principal trading venue for a share is to be made;

(b) the date from which the list is to be effective following its publication.”.

(2) In Article 17–

(a) in paragraph 2, in the first sub-paragraph–

(i) for “Commission may, in accordance with the procedure referred to in Article 44(2), adopt decisions determining” substitute “Minister may by regulations determine”;

(ii) for “Title III of Directive 2004/39/EC” substitute “Title III of Directive 2014/65/EU and Articles 3, 4, 6 and 7 of Regulation (EU) No 600/2014”;

(iii) for “Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)” substitute “Regulation (EU) No 596/2014”;

(b) in paragraph 4, for “Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments” substitute “Commission Delegated Regulation (EU) No 2016/1052 of 8 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the conditions applicable to buy-back programmes and stabilisation measures”;

(c) in paragraph 5, for “competent authority of its home Member State” substitute “GFSC”;

(d) in paragraph 6, for “relevant competent authority” substitute “GFSC”;

(e) after paragraph 6, insert –

“6A. A notification made under paragraph 5 or 6 before IP completion day to a competent authority other than the GFSC is only valid after IP

completion day if a copy of that notification has been provided to the GFSC not less than 30 calendar days before the day of IP completion day.”;

- (f) in paragraph 7–
 - (i) in the first sentence, for “competent authority referred to in paragraphs 5 and 6” substitute “GFSC”;
 - (ii) in the second sentence, for “competent authority” substitute “GFSC”;
- (g) omit paragraph 8;
- (h) in paragraph 9, for “competent authority of its home Member State” substitute “GFSC”;
- (i) in paragraph 10, for “relevant competent authority” substitute “GFSC”;
- (j) in paragraph 11, for “competent authority of the home Member State” substitute “GFSC”;
- (k) omit paragraph 12;
- (l) in paragraph 13, for “ESMA” substitute “The GFSC”;
- (m) omit paragraph 14.

Powers of intervention.

11.(1) In the heading to Chapter V, omit “and of ESMA”.

(2) In Article 18–

- (a) in paragraph (1)–
 - (i) in the opening words–
 - (aa) for “Subject to Article 22, a competent authority” substitute “The GFSC”;
 - (cc) in the second place it appears, for “competent authority” substitute “GFSC”;
 - (ii) in point (a), for “the Member State concerned or in one or more other Member States” substitute “Gibraltar”;
- (b) in paragraph (2), for “competent authority” substitute “GFSC”.

- (3) In Article 19–
- (a) in paragraph (1)–
 - (i) in the opening words, for “Subject to Article 22, a competent authority” substitute “The GFSC”;
 - (ii) in point (a), for “the Member State concerned or in one or more other Member States” substitute “Gibraltar”;
 - (b) in paragraph (2), for “A competent authority” substitute “The GFSC”.
- (4) In Article 20–
- (a) in paragraph (1)–
 - (i) in the opening words, for “Subject to Article 22, a competent authority” substitute “The GFSC”;
 - (ii) in point (a), for “the Member State concerned or in one or more other Member States” substitute “Gibraltar”;
 - (b) in paragraph (2), for “A competent authority” substitute “The GFSC”;
 - (c) in paragraph (3), for “competent authority” substitute “GFSC”.
- (5) In Article 21–
- (a) in paragraph (1)–
 - (i) in the opening words, for “Subject to Article 22, a competent authority” substitute “The GFSC”;
 - (ii) in point (a), for “the Member State concerned or in one or more other Member States” substitute “Gibraltar”;
 - (b) in paragraph (2), for “the competent authority” substitute “the GFSC”.
- (6) Omit Article 22.
- (7) In Article 23–
- (a) in paragraph 1–
 - (i) in both places it appears, for “competent authority” substitute “GFSC”;
 - (ii) omit “of the home Member State for that venue”;

- (b) in paragraph 2, for “competent authority” substitute “GFSC”;
- (c) in paragraph 3, for “competent authority” substitute “GFSC”;
- (d) omit paragraph 4;
- (e) for paragraph 5, substitute–

“5. The fall in value shall be:

- (a) 10% or more in the case of a share which is considered to have a liquid market under Article 1 of Commission Delegated Regulation (EU) No 2017/567 of 18 May 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions; and
 - (b) the amount specified in Commission Delegated Regulation (EU) No 918/2012, or in regulations made by the Minister under paragraph 7, in the case of any share which is not considered to have a liquid market, or for other classes of financial instruments.”;
- (f) for paragraphs 6 to 8, substitute–

“6. The Minister may by regulations:

- (a) modify the thresholds referred to in paragraph 5, taking into account the developments in financial markets;
- (b) specify what constitutes a significant fall in value for financial instruments other than liquid shares, taking into account the specificities of each class of financial instrument and the differences of volatility;
- (c) make technical standards specifying the method of calculation of the 10% fall for liquid shares and of the fall in value as referred to in point b.”.

(8) In Article 25–

- (a) in paragraph 1, for “A competent authority” substitute “The GFSC”;
- (b) in paragraph 2(b), for “competent authority” substitute “GFSC”.

(9) Omit Article 26.

Ministerial Powers.

12.(1) For the heading to Section 2, substitute “Ministerial Powers”.

(2) Omit Articles 27 to 29.

(3) For Article 30, substitute–

“Article 30

Further specification of adverse events or developments

The Minister may by regulations specify the criteria and factors to be taken into account by the GFSC in determining in which cases the adverse events or developments referred to in Articles 18 to 21 arise.”.

(4) Omit Article 31.

Competent Authorities.

13.(1) Omit Articles 32 and 33.

(2) In Article 34–

(a) in paragraph 1, for “competent authority” in each place it occurs, substitute “GFSC”;

(b) omit paragraph 2.

(3) Omit Articles 35, 36 and 37.

(4) In Article 38–

(a) in paragraph 1–

(i) for “The competent authorities shall, where possible,” substitute “The GFSC may”;

(ii) for “the competent authorities to carry out their” substitute “the GFSC to carry out its”;

(iii) omit the final sentence;

(b) in paragraph 2–

(i) for “The” substitute “Any”;

(ii) for “relevant competent authority” substitute “GFSC”;

(c) omit paragraph 3;

(d) in paragraph 4–

- (i) for “The competent authorities shall” substitute “The GFSC may”;
- (ii) for “those competent authorities” substitute “the GFSC”.

(5) For Article 39, substitute–

“Article 39

Transfer and retention of personal data

Nothing in this Regulation is to be taken as authorising a disclosure of personal data in contravention of the data protection legislation.”.

(6) For Article 40, substitute–

“Article 40

Disclosure of information to third countries

The GFSC may transfer data and the analysis of data to a supervisory authority of another country where the transfer does not contravene the data protection legislation. The GFSC must be satisfied that the transfer is necessary for the purposes of this Regulation. Any such transfer shall be made under agreement that the third country shall not transfer the data to the supervisory authority of another third country without the express written authorisation of the GFSC.

The GFSC shall disclose information which is confidential pursuant to Article 34 and which is received from a supervisory authority of a third country to a supervisory authority of another country only where the GFSC has obtained the express agreement of the supervisory authority which transmitted the information and, where applicable, the information is disclosed solely for the purposes for which that supervisory authority gave its agreement.”.

(7) For Article 41, substitute–

“Article 41

Penalties and other sanctions

The Minister may by regulations provide for the imposition by the GFSC of financial penalties and other administrative sanctions for infringements of this Regulation.”.

Articles 42 to 48.

14.(1) Omit Articles 42 to 45.

(2) Omit Article 46.1.

- (3) Omit Article 47.
- (4) In Article 48, omit the fourth sub-paragraph.

PART 3
COMMISSION DELEGATED REGULATION (EU) No 918/2012

Amendment of Commission Delegated Regulation (EU) No 918/2012.

15.(1) Commission Delegated Regulation (EU) No 918/2012, as it forms part of the law of Gibraltar, is amended in accordance with this Part.

(2) In this Part “Commission Delegated Regulation (EU) No 918/2012” means Commission Delegated Regulation (EU) No 918/2012 of 5th July 2012 supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps with regard to definitions, the calculation of net short positions, covered sovereign credit default swaps, notification thresholds, liquidity thresholds for suspending restrictions, significant falls in the value of financial instruments and adverse events.

(3) In Article 1, in the final sub-paragraph, omit “and Article 27 and the threats referred to in point (a) of Article 28(2)”.

(4) For Article 2, substitute–

“Article 2

Definitions

For the purposes of this Regulation:

“group” means those legal entities which are controlled undertakings and the single natural or legal person that controls such undertakings; and

“controlled undertaking” means any undertaking:

- (a) in which a natural person or legal entity has a majority of the voting rights;
- (b) of which a natural person or legal entity has the right to appoint or remove a majority of the members of the administrative, management or supervisory body and is at the same time a shareholder in, or member of, the undertaking in question; or
- (c) over which a natural person or legal entity has the power to exercise, or actually exercises, dominant influence or control.”.

(5) In Article 8–

- (a) in paragraph 1, omit “of different sovereign issuers”;
- (b) in paragraph 3–
 - (i) omit “and with paragraphs 4 and 5”;
 - (ii) omit the second sentence;
- (c) omit paragraphs 4, 5 and 6.

(6) In Article 14.1–

- (a) in point (a), for “the same Member State” substitute “Gibraltar”;
- (b) in point (b), in the opening words, for “the same Member State” substitute “Gibraltar”;
- (c) for point (b)(i), substitute–
 - “(i) references Gibraltar, including any government department, agency or special purpose vehicle of Gibraltar;”;
- (d) in point (c)(i), for “a Member State” substitute “Gibraltar”.

(7) In Article 15–

- (a) in the heading, for “more than one Member State” substitute “Gibraltar and a third country”;
- (b) in paragraph 1–
 - (i) in the opening words, for “more than one Member State” substitute “Gibraltar and a third country”;
 - (ii) in sub-paragraph (a)–
 - (aa) for “one Member State” substitute “a third country”;
 - (bb) for “another Member State” substitute “Gibraltar”;
 - (cc) for “in the Member State” substitute “in the country”;
 - (iii) in sub-paragraph (b)–
 - (aa) for “different Member States” substitute “third country”;

- (bb) for “Member State of” substitute “country of”;
- (iv) in sub-paragraph (c)–
 - (aa) for “in one Member State” substitute “in Gibraltar”;
 - (bb) in the four places it appears, for “second Member State” substitute “third country”;
 - (cc) for “in both Member States” substitute “in Gibraltar and the third country”;
 - (dd) for “debt of the Member State in which the company is established” substitute “debt of Gibraltar”;
- (c) in paragraph 2, in sub-paragraph (a), for “across the Union” substitute “in Gibraltar and in a third country”;
- (d) after paragraph 2, insert–

“3. For the purposes of this Regulation, “sovereign debt” in relation to a third country means a debt instrument issued by:

- (a) a third country, including a government department, an agency or a special purpose vehicle of the third country; or
- (b) in the case of a federal country, a member of the federation.

4. For the purposes of this Article, “supra-national issuer” means:

- (a) the Union;
- (b) a special purpose vehicle for several third countries;
- (c) an international financial institution established by two or more countries which has the purpose of mobilising funding and providing financial assistance to the benefit of its members that are experiencing or threatened by severe financing problems; or
- (d) the European Investment Bank.”.

(8) In Article 16–

- (a) in the opening words, for “competent authority” substitute “GFSC”;
- (b) in point (a), for “that competent authority” substitute “the GFSC”.

- (c) in point (b), for “that competent authority” substitute “the GFSC”.
- (9) In Article 17–
- (a) in point (c), for “the Member State whose sovereign debt is referenced in the credit default swap” substitute “Gibraltar”;
 - (b) in point (d), for “the Member State which is referenced in the sovereign credit default swap” substitute “Gibraltar”.
- (10) In Article 18–
- (a) omit paragraph 2(b);
 - (b) in paragraph 3, for “relevant competent authority” substitute “GFSC”.
- (11) In Article 19.1, for “competent authority” substitute “GFSC”.
- (12) In Article 21.1, for “relevant competent authority” substitute “GFSC”.
- (13) In Article 22–
- (a) in paragraph 1, for “each competent authority” substitute “the GFSC”;
 - (b) in paragraph 3–
 - (i) for “each competent authority” substitute “the GFSC”;
 - (ii) omit “, and inform ESMA of the data used thereafter”;
 - (c) in paragraph 4–
 - (i) for “competent authorities exercise” substitute “GFSC exercises”;
 - (ii) for “they” substitute “it”.
- (14) In Article 24–
- (a) in paragraph 1–
 - (i) in the opening words, for “the Member State concerned or in one or more other Member States” substitute “Gibraltar”;
 - (ii) in point (a)–
 - (aa) for “a Member State” substitute “Gibraltar”;
 - (bb) in both places it appears, for “the Union” substitute “Gibraltar”;

- (iii) in point (b)–
 - (aa) for “any Member State” substitute “Gibraltar”;
 - (bb) for “the Union” substitute “Gibraltar”;
- (iv) in point (c) for “the Union” substitute “Gibraltar”;
- (v) in point (e)–
 - (aa) for “the Union” substitute “Gibraltar”;
 - (bb) for “a Member State” substitute “Gibraltar”;
- (b) omit paragraphs 2 and 3.

Dated: 21st March 2024.

N FEETHAM KC,
Minister with responsibility for Financial Services.

EXPLANATORY MEMORANDUM

These regulations address deficiencies in retained EU law arising from Gibraltar’s withdrawal from the European Union. Part 1 contains preliminary provisions. Part 2 amends Regulation (EU) No 236/2012 on short selling and certain aspects of credit default swaps. Part 3 amends the supplementary Commission Delegated Regulation (EU) No 918/2012.