

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 3965 of 22 November, 2012

LEGAL NOTICE NO. OF 171 2012.

INTERPRETATION AND GENERAL CLAUSES ACT

FINANCIAL SERVICES (OCCUPATIONAL PENSIONS INSTITUTIONS) ACT 2006 (AMENDMENT) REGULATIONS 2012

In exercise of the powers conferred on it by section 23(g)(ii) of the Interpretation and General Clauses Act and in order to further transpose into the law of Gibraltar Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision, and Article 4 of Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority), the Government has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Financial Services (Occupational Pensions Institutions) Act 2006 (Amendment) Regulations 2012 and come into operation on the day of publication.

Amendment of the Financial Services (Occupational Pensions Institutions) Act 2006.

2.(1) The Financial Services (Occupational Pensions Institutions) Act 2006 is amended in accordance with the provisions of this regulation.

(2) In section 2—

- (a) at the end of the definition “the Directive” insert the words “as the same may be amended from time to time”;
- (b) after the definition “the Directive” insert the definition—

““EIOPA” means the European Insurance and Occupational Pensions Authority established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC;”.

(3) After section 5(4) insert the following subsection–

“(4A) Without prejudice to subsection (4), where the holder of a licence under this section intends to pursue cross-border activity prior authorisation by the Authority under section 16 shall be deemed to be a condition of the licence.”.

(4) After section 5 insert the following sections–

“Register.

5A.(1) Every licence issued under this Act shall be entered in a register to be maintained by the Authority in such form as the Authority may require.

(2) In the case of a licensee which is engaged in cross-border activity pursuant to section 16, the register shall also indicate the EEA States in which the institution is operating.

(3) The Authority shall ensure that EIOPA is informed of the particulars in the register.”.

(5) After section 10(2) insert the subsection–

“(3) Any action taken by the Authority under this section shall contain detailed reasons and be notified to the institution in question and to EIOPA.”.

(6) After section 16(7) insert the following subsections–

“(8) The Authority shall ensure that the EIOPA is immediately informed of an authorisation issued under this section.

(9) The Minister shall–

- (a) ensure there is reported to EIOPA national provisions of a prudential nature relevant to the field of occupational pension schemes, except those provisions to which the first paragraph of Article 20(11) applies; and
- (b) update that information on a regular basis and at least every 2 years.”.

(7) The following is inserted after section 16–

“Cooperation.

16A(1) The Authority shall regularly exchange information and experience with equivalent competent authorities in EEA States, with a view to achieving a uniform application of the Directive and developing best practices in this sphere and closer cooperation, and by so doing, preventing distortions of competition and creating the conditions required for unproblematic cross-border membership.

- (2) The Authority shall collaborate closely with the European Commission with a view to facilitating supervision of the operations of institutions for occupational retirement provision.
- (3) The competent authority shall cooperate with EIOPA for the purposes of the Directive, in accordance with Regulation (EU) No 1094/2010 and shall, without delay, shall ensure that EIOPA is provided with all information necessary to carry out its duties under the Directive and under Regulation (EU) No 1094/2010, in accordance with Article 35 of that Regulation.
- (4) The Authority shall ensure there is informed the Commission and EIOPA of any major difficulties to which the application of the Directive gives rise to.
- (5) The Authority shall cooperate with the Commission and EIOPA to examine any difficulties as quickly as possible in order to find an appropriate solution.

(6) Where Gibraltar acts has host jurisdiction to an institution to which this Act applies, the competent authority may ask the competent authority of the home jurisdiction to rule on the ring-fencing of the institution's assets and liabilities, as provided for in Article 16(3) and Article 18(7) of the Directive.

(7) In this section—

“home jurisdiction” means the jurisdiction in which the institution has its registered office and its main administration or, if it does not have a registered office, its main administration;

“host jurisdiction” means the jurisdiction whose social and labour law relevant to the field of occupational pension schemes is applicable to the relationship between the sponsoring undertaking and members.”.

Dated 22nd November, 2012.

G H LICUDI QC,
For the Government.

EXPLANATORY MEMORANDUM

These Regulations transpose article 4 of Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council.

The Regulations amend the Financial Services (Occupational Pensions Institutions) Act 2006 in order to supplement provisions dealing with cooperation with the European Securities and Markets Authority and with the competent authorities of other EEA States.

They also amend the Act so as to further transpose Articles 16, 18 and 21 of Directive 2003/41/EC.