

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

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FINANCIAL SERVICES ACT 2019

FINANCIAL SERVICES (MISCELLANEOUS AMENDMENTS) REGULATIONS 2023

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FINANCIAL SERVICES ACT 2019

**FINANCIAL SERVICES (MISCELLANEOUS AMENDMENTS) REGULATIONS
2023**

In exercise of the powers conferred on the Minister by sections 5, 620, 621, 626 and 627 of the Financial Services Act 2019, the Minister has made these Regulations-

Title.

1. These Regulations may be cited as the Financial Services (Miscellaneous Amendments) Regulations 2023.

Commencement.

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

Amendment of the Financial Services Act 2019.

3.(1) The Financial Services Act 2019 is amended as follows.

(2) In section 2(2), in the definition of “AIF”, in paragraph (b), for “in accordance with Article 5 of the UCITS Directive” substitute “as a UCITS scheme in accordance with Part 18”.

(3) In section 26(1), omit “and the Recovery and Resolution Directive”.

(4) In section 62(1), for the definition of “Gibraltar AIFM” substitute—

““Gibraltar AIFM” means an AIFM which has its registered office in Gibraltar;”.

(5) In section 117—

(a) in subsection (4)(a), for “Article 4.1(7) of the MiFID 2 Directive” substitute “paragraph 44 of Schedule 2”;

(b) in subsection (7), for “Article 2.1(b) of the UCITS Directive” substitute “regulation 3(1) of the Financial Services (UCITS) Regulations 2020”.

(6) In section 119(f)(i), for “Article 1 of the Money Laundering Directive” substitute “section 7(2) of the Proceeds of Crime Act 2015”.

(7) In section 123(4), for paragraph (b), substitute—

“(b) is not subject to supervision under—

- (i) the Financial Services (UCITS) Regulations 2020;
- (ii) the Financial Services (Insurance Companies) Regulations 2020;
- (iii) the Financial Services (Investment Services) Regulations 2020; or
- (iv) the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020.”.

(8) In section 149–

(a) in subsection (1)–

- (i) in paragraph (c), for “a prescribed” substitute “any applicable”;
- (ii) in paragraph (d)(ii), for “a prescribed” substitute “any applicable”;

(b) after subsection (2), insert–

“(3) In this section “applicable retained EU law” means retained EU law which confers regulatory or supervisory powers on the GFSC or is otherwise concerned with or related to the regulation of financial services.”.

(9) In section 240(3), for paragraph (a) substitute–

“(a) for a money laundering offence under the Proceeds of Crime Act 2015 (or the equivalent law of a country or territory outside Gibraltar); or”.

(10) In section 282(1), 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”.

(11) In section 334(5), for “pursuant to the Accounting Directive” substitute “in accordance with Part 7 of the Companies Act 2014”.

(12) In section 358(4)(c), omit “, supervised by the authorities appointed under Article 4 of the Takeover Bids Directive”.

(13) In section 359(6), for “Article 4.7 of the Transparency Directive” substitute “Commission Delegated Regulation (EU) 2019/815”.

(14) In section 360(9), for “Article 17.1(r) of the Accounting Directive” substitute “paragraph 1(j) of Schedule 16 to the Companies Act 2014”.

(15) In section 361(1)–

(a) omit “, as defined in Article 41.1 and 41.2 of the Accounting Directive,”;

(b) for “Chapter 10 of that Directive” substitute “the Companies (Reports by Extractive and Logging Industries) Regulations 2015”.

(16) In section 381(5), for “under the Accounting Directive” substitute “in accordance with Part 7 of the Companies Act 2014”.

(17) In section 613(4), after “section 24(3)(b)” insert “or to which section 24(4) applies”.

(18) In Schedule 2–

(a) for paragraph 18(l), substitute–

“(l) Payment transactions by a provider of electronic communications networks or services provided in addition to electronic communications services for a subscriber to the network or service–

(i) for purchase of digital content and voice-based services, regardless of the device used for the purchase or consumption of the digital content and charged to the related bill; or

(ii) performed from or via an electronic device and charged to the related bill within the framework of a charitable activity or for the purchase of tickets;

where the value of any single payment transaction does not exceed the sterling equivalent of €50 and either the cumulative value of payment transactions for an individual subscriber does not exceed the sterling equivalent of €300 per month or, where a subscriber pre-funds its account with the provider of the electronic communications network or service, the cumulative value of payment transactions does not exceed the sterling equivalent of €300 per month.

In point (l), “electronic communications network” and “electronic communications service” have the meaning given in section 2 of the Communications Act 2006.”;

(b) in paragraph 46(11), for “by an EEA State with the requirements of Directive 2003/87/EC (Emissions Trading Scheme) as it applies in the European Union” substitute “with the requirements of the UK Emissions Trading Scheme or the EU Emissions Trading System”;

(c) in paragraph 95(1)(b), for “has exercised the option mentioned in Article 3.4 of the AIFM Directive to meet the full requirements of the Directive” substitute “is a small AIFM to which regulation 8(4) of the Financial Services (Alternative Investment Fund Managers) Regulations 2020 applies”.

(19) In Schedule 12, for paragraph 3(2)(e) substitute–

“(e) whether the firm is subject to consolidated supervision under–

(i) the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020;

(ii) the Financial Services (Financial Conglomerates) Regulations 2020;

(iii) the Financial Services (Insurance Companies) Regulations 2020; or

(iv) the Financial Services (Recovery and Resolution) Regulations 2020;”.

(20) In Schedule 13, in paragraph 10(2)(c), for “the Capital Requirements Regulation or the Capital Requirements Directive” substitute “the provisions referred to in regulation 15(3) of those Regulations or with the Capital Requirements Regulation”.

(21) In Schedule 26, in paragraph 8(3)–

(a) for “under the Accounting Directive” substitute “in accordance with Part 7 of the Companies Act 2014”;

(b) for “relevant accounting directives (the Bank Accounts Directive or the Insurance Accounts Directive)” substitute “Financial Services (Credit Institutions) (Accounts) Regulations 2021 or the Financial Services (Insurance Companies) (Accounts) Regulations 2021”.

Amendment of the Financial Services (Investment Firms) (Prudential Requirements) Regulations 2021.

4.(1) The Financial Services (Investment Firms) (Prudential Requirements) Regulations 2021 are amended as follows.

(2) In regulation 4(5)(b), for “decides.” substitute “decides,”.

(3) In regulation 8(4)(a)(ii), for “regulation 9(3) applies but the exemption in 9(4) does not” substitute “regulation 9(5) applies but the exemption in regulation 9(6) does not”.

(4) In regulation 30, for “23(2)” substitute “28(4)”.

(5) In regulation 31–

(a) in sub-regulation (1), for “conditions in regulation 23(1)(e) are” substitute “requirement in regulation 28(1)(e) is”; and

(b) in sub-regulation (2), for “conditions in regulation 23(1)(e) are” substitute “requirement in regulation 28(1)(e) is”.

(6) In regulation 80(1), before “this” insert “Subject to regulation 87(4),”.

(7) After regulation 87(3), insert–

“(4) An investment firm that is an S-NII firm must provide the GFSC, on request, with aggregated information concerning the firm’s remuneration, including staff numbers, the total fixed and variable remuneration (cash and non-cash) and the proportion of variable remuneration that is deferred.”.

Amendment of the Financial Services (Insurance Companies) Regulations 2020.

5.(1) The Financial Services (Insurance Companies) Regulations 2020 are amended as follows.

(2) After regulation 199(3) insert–

“(4) The GFSC may direct a group to take such steps as the GFSC considers appropriate for the purposes of complying with a decision under sub-regulation (3).

(5) The GFSC may revoke or vary a direction under sub-regulation (4).”.

(3) For regulation 239(5), substitute–

“(5) For the purposes of sub-regulation (4), the GFSC–

(a) may decide to apply such other methods of supervision or to take such other steps as it considers appropriate, in order to comply with that sub-regulation; and

(b) may direct a group to take such steps as the GFSC considers appropriate for the purposes of complying with a decision under paragraph (a).

(6) The GFSC may–

(a) give a direction subject to conditions; or

(b) revoke or vary a direction.

(7) Without limiting sub-regulation (5)(b), a direction may, in particular, require the group to establish an insurance holding company or mixed financial holding company with its head office in Gibraltar.”.

Amendment of the Financial Services (Electronic Money) Regulations 2020.

6. In regulation 18(2) of the Financial Services (Electronic Money) Regulations 2020, for “issuers” substitute “institutions”.

Amendment of the Financial Services (Experienced Investor Funds) Regulations 2020.

7. In regulation 4(1)(b) of the Financial Services (Experienced Investor Funds) Regulations 2020, for sub-paragraph (iv) substitute—

“(iv) a limited partnership under the Limited Partnerships Act 2021;

(iva) a protected cell limited partnership under the Protected Cell Limited Partnerships Act 2021;”.

Amendment of the Financial Services (Specified Regulatory Decisions) Regulations 2020.

8.(1) The Financial Services (Specified Regulatory Decisions) Regulations 2020 are amended as follows.

(2) In regulation 4—

(a) for paragraph (a), substitute—

“(a) to issue a decision notice under regulation 27(2) in respect of any action under regulations 18 to 21, other than where the recipient of the decision notice has received a warning notice from the GFSC in respect of the same action and—

(i) has agreed in writing to the action proposed in the warning notice being taken; or

(ii) has not made any representations to the GFSC within the notice period specified in regulation 26(3)(a) of those Regulations (and in that event the GFSC may regard the facts and matters set out in the warning notice as undisputed).”;

(b) for paragraph (c), substitute—

“(c) to publish a statement under regulation 31 in respect of any action taken under regulations 18 to 21 other than where—

(i) at the time of giving notice of its intention to take that action, the GFSC has provided the person concerned with the statement it proposes to publish; and

(ii) the person has agreed in writing to its publication.”.

(3) In regulation 5–

(a) for paragraph (a), substitute–

“(a) to issue a decision notice under regulation 8(5), other than when the recipient of the decision notice has received a warning notice from the GFSC in respect of the same action and–

(i) has agreed in writing to the action proposed in the warning notice being taken; or

(ii) has not made any representations to the GFSC within the notice period specified in section 612(2)(a) of the Act (and in that event the GFSC may regard the facts and matters set out in the warning notice as undisputed).”;

(b) for paragraph (b), substitute–

“(b) to issue a decision notice under regulation 9(3), other than when the recipient of the decision notice has received a warning notice from the GFSC in respect of the same action; and

(i) has agreed in writing to the action proposed in the warning notice being taken; or

(ii) has not made any representations to the GFSC within the notice period specified in section 612(2)(a) of the Act (and in that event the GFSC may regard the facts and matters set out in the warning notice as undisputed).”;

(c) for paragraph (d), substitute–

“(d) to publish information under regulation 9(7) in respect of any action taken under regulation 9(3) or 9(5) other than where–

(i) at the time of giving notice of its intention to take that action, the GFSC has provided the person concerned with the information it proposes to publish; and

(ii) the person has agreed in writing to its publication.”.

Amendment of Commission Delegated Regulation (EU) 2017/565.

9. In Commission Delegated Regulation (EU) 2017/565, as it forms part of the law of Gibraltar, omit Article 62.

Dated: 30th March 2023.

A J ISOLA
Minister with responsibility for Financial Services

EXPLANATORY MEMORANDUM

These regulations make miscellaneous and generally minor amendments to the Financial Services Act 2019, several Regulations made under it and Commission Delegated Regulation (EU) 2017/565. The amendments give further effect to the Act, including by making minor corrections, maintaining alignment with UK regulatory requirements, removing and replacing references to EU Directives and addressing deficiencies and other matters arising from Gibraltar's withdrawal from the European Union.