

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4848 GIBRALTAR Thursday 29th April 2021

LEGAL NOTICE NO. 250 OF 2021.

EUROPEAN UNION (WITHDRAWAL) ACT 2019

FINANCIAL SERVICES (CREDIT INSTITUTIONS AND CAPITAL REQUIREMENTS) (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 (Credit Institutions and Capital Requirements) (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 (Credit Institutions and Capital Requirements) Regulations 2020.

3. The Financial Services (Credit Institutions and Capital Requirements) Regulations 2020 are amended in accordance with regulations 4 to 13.

Amendment of Part 1.

4.(1) For regulation 2, substitute-

“2.(1) In these Regulations, unless the context otherwise requires-

“the Act” means the Financial Services Act 2019;

“ancillary services undertaking” has the meaning given in Article 4.1(18) of the Capital Requirements Regulation;

“asset management company” has the meaning given in Article 4.1(19) of the Capital Requirements Regulation;

“authorisation” has the meaning given in Article 4.1(42) of the Capital Requirements Regulation;

- “branch” has the meaning given in Article 4.1(17) of the Capital Requirements Regulation;
- “central banks” has the meaning given in Article 4.1(46) of the Capital Requirements Regulation;
- “close links” has the meaning given in Article 4.1(38) of the Capital Requirements Regulation;
- “competent authority” means the GFSC;
- “consolidated basis” has the meaning given in Article 4.1(48) of the Capital Requirements Regulation;
- “consolidated situation” has the meaning given in Article 4.1(47) of the Capital Requirements Regulation;
- “consolidating supervisor” has the meaning given in Article 4.1(41) of the Capital Requirements Regulation;
- “control” has the meaning given in Article 4.1(37) of the Capital Requirements Regulation;
- “credit risk mitigation” has the meaning given in Article 4.1(57) of the Capital Requirements Regulation;
- “discretionary pension benefits” has the meaning given in Article 4.1(73) of the Capital Requirements Regulation;
- “electronic money” has the meaning given in paragraph 12 of Schedule 2 to the Act;
- “external credit assessment institution” or “ECAI” has the meaning given in Article 4.1(98) of the Capital Requirements Regulation;
- “financial holding company” has the meaning given in Article 4.1(20) of the Capital Requirements Regulation;
- “financial institution” has the meaning given in Article 4.1(26) of the Capital Requirements Regulation;
- “financial instrument” has the meaning given in Article 4.1(50) of the Capital Requirements Regulation;
- “gender neutral remuneration policy” means a remuneration policy based on equal pay for male and female workers for equal work or work of equal value;

“Gibraltar parent financial holding company” means a financial holding company which is not a subsidiary of an institution authorised in Gibraltar or of a financial holding company or mixed financial holding company set up in Gibraltar;

“Gibraltar parent institution” means an institution in Gibraltar–

(a) which–

(i) has an institution, a financial institution or an ancillary services undertaking as a subsidiary; or

(ii) holds a participation in an institution, financial institution or ancillary services undertaking; and

(b) which is not a subsidiary of–

(i) another institution authorised in Gibraltar; or

(ii) a financial holding company or mixed financial holding company set up in Gibraltar;

“Gibraltar parent mixed financial holding company” means a mixed financial holding company which is not a subsidiary of an institution authorised in Gibraltar, or of a financial holding company or mixed financial holding company set up in Gibraltar;

“global systemically important institution” or “G-SII” has the meaning given in Article 4.1(133) of the Capital Requirements Regulation;

“group” has the meaning given in Article 4.1(138) of the Capital Requirements Regulation;

“institution” has the meaning given in Article 4.1(3) of the Capital Requirements Regulation (that is to say, a credit institution or an investment firm);

“insurance undertaking” has the meaning given in Article 4.1(5) of the Capital Requirements Regulation;

“internal approaches” means–

(a) the internal ratings based approach in Article 143.1 of the Capital Requirements Regulation;

(b) the internal models approach in Article 221 of that Regulation;

(c) the own estimates approach in Article 225 of that Regulation;

- (d) the advanced measurement approaches in Article 312.2 of that Regulation;
- (e) the internal models method in Articles 283 and 363 of that Regulation; and
- (f) the internal assessment approach in Article 259.3 of that Regulation;

“investment firm” has the meaning given in Article 4.1(2) of the Capital Requirements Regulation;

“leverage” has the meaning given in Article 4.1(93) of the Capital Requirements Regulation;

“local firm” has the meaning given in Article 4.1(4) of the Capital Requirements Regulation;

“mixed activity holding company” has the meaning given in Article 4.1(22) of the Capital Requirements Regulation;

“mixed financial holding company” has the meaning given in Article 4.1(21) of the Capital Requirements Regulation;

“model risk” means the potential loss an institution may incur, as a consequence of decisions that could be principally based on the output of internal models, due to errors in the development, implementation or use of such models;

“operational risk” has the meaning given in Article 4.1(52) of the Capital Requirements Regulation;

“originator” has the meaning given in Article 4.1(13) of the Capital Requirements Regulation;

“own funds” has the meaning given in Article 4.1(118) of the Capital Requirements Regulation;

“parent undertaking” has the meaning given in Article 4.1(15) of the Capital Requirements Regulation;

“Part 7 permission” means permission under Part 7 of the Act;

“participation” has the meaning given in Article 4.1(35) of the Capital Requirements Regulation;

“qualifying holding” has the meaning given in Article 4.1(36) of the Capital Requirements Regulation;

- “the Register” means the register which is established and maintained by the GFSC in accordance with both Part 4 of the Act and, in relation to activities listed in the Schedule, regulation 150;
- “reinsurance undertaking” has the meaning given in Article 4.1(6) of the Capital Requirements Regulation;
- “resolution authority” means the Gibraltar Resolution Authority;
- “risk of excessive leverage” has the meaning given in Article 4.1(94) of the Capital Requirements Regulation;
- “securitisation” has the meaning given in Article 4.1(61) of the Capital Requirements Regulation;
- “securitisation position” has the meaning given in Article 4.1(62) of the Capital Requirements Regulation;
- “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;
- “securitisation special purpose entity” has the meaning given in Article 4.1(66) of the Capital Requirements Regulation;
- “senior management” means those individuals who exercise executive functions within an institution and who are responsible, and accountable to the management body, for the day-to-day management of the institution;
- “sponsor” has the meaning given in Article 4.1(14) of the Capital Requirements Regulation;
- “sub-consolidated basis” has the meaning given in Article 4.1(49) of the Capital Requirements Regulation;
- “subsidiary” has the meaning given in Article 4.1(16) of the Capital Requirements Regulation;
- “systemic risk” means a risk of disruption in the financial system with the potential to have serious negative consequences for the financial system and the real economy;

“systemically important institution” means a Gibraltar parent institution, a Gibraltar parent financial holding company, a Gibraltar parent mixed financial holding company or an institution the failure or malfunction of which could lead to systemic risk;

“third country” means a country or territory outside Gibraltar;

“third-country group” means a group, the parent undertaking of which is established in a third country;

“trading book” has the meaning given in Article 4.1(86) of the Capital Requirements Regulation.

(2) In these Regulations, “management body” means the body appointed in accordance with the relevant law of Gibraltar or of a third country, which—

(a) sets an institution’s strategy, objectives and overall direction; and

(b) exercises the supervisory function of overseeing and monitoring management decision-making,

and includes the persons who effectively direct the business of the institution;

(3) Where the managerial and supervisory functions of an institution’s management body are assigned by law to different bodies or to different members within one body, the bodies or members responsible must be determined in accordance with the relevant law.

(4) In these Regulations a reference to an EU Regulation is to that Regulation as it forms part of the law of Gibraltar.”.

(3) Omit regulation 4(7).

(4) In regulation 5—

(a) in sub-regulation (1)—

(i) in paragraph (a), for “members of the European System of Central Banks” substitute “European Central Bank”; and

(ii) in paragraph (f), for “an EEA State” substitute “Gibraltar or a third country”; and

(b) omit sub-regulation (3).

Amendment of Part 2.

5.(1) Omit regulation 7.

(2) For regulation 11(4), substitute–

“(4) The GFSC may give Part 7 permission to particular categories of credit institutions whose initial capital is less than that specified in sub-regulation (1) but is not less than €1,000,000.”.

(3) In regulation 12(5), for “them with the information they” substitute “it with the information it”.

(4) In regulation 14–

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

(b) in sub-regulation (4), for “UK or another EEA State” substitute “United Kingdom”.

(5) Omit regulation 15.

(6) In regulation 16–

(a) in sub-regulation (1)(c)–

(i) for “other” substitute “of the additional”; and

(ii) omit “(which sets out the text of Annex I to the Capital Requirements Directive)”;

(b) omit sub-regulation (2); and

(c) for sub-regulation (3), substitute–

“(3) The requirements of this Chapter apply subject to any technical standards which specify–

(a) the information to be provided to the GFSC in an application for authorisation;

(b) the requirements applicable to shareholders and members; and

(c) obstacles which may prevent effective exercise of the supervisory functions of the GFSC.”.

(7) In regulation 16A–

(a) in sub-regulation (1), omit paragraphs (a) and (b);

(b) in sub-regulation (2), omit “and, where different, the consolidating supervisor;”;

- (c) sub-regulation (3), omit “for the purposes of this regulation the GFSC must coordinate with the consolidating supervisor (if different) and”;
 - (d) in sub-regulation (5)(b), for “relevant resolution authority under the Recovery and Resolution Directive” substitute “Gibraltar Resolution Authority under the Financial Services (Recovery and Resolution) Regulations 2020”;
 - (e) in sub-regulation (9), omit “and the GFSC must share that information with the competent authority in the Member State where the financial holding company or the mixed financial holding company is established”; and
 - (f) omit sub-regulations (14) to (19).
- (8) Omit regulation 16B.
- (9) In regulation 16C–
- (a) in sub-regulation (1), for “is authorised under Title II of the MiFID 2 Directive” substitute “has Part 7 permission given in accordance with the Financial Services (Investment Services) Regulations 2020”;
 - (b) in sub-regulation (4), for “investment firm authorised under Directive 2014/65/EU” substitute “authorised investment firm”;
 - (c) omit sub-regulation (5); and
 - (d) for sub-regulation (7), substitute–
 - “(7) This regulation must be applied in accordance with any technical standards which specify–
 - (a) the information to be provided by an undertaking to the GFSC in an application for authorisation, including the programme of operations provided for in regulation 8(1)(a); or
 - (b) the methodology for calculating the thresholds in sub-regulation (1).”.
- (10) In regulation 17–
- (a) in the opening words, for “the EEA” substitute “Gibraltar”; and
 - (b) in paragraph (a), omit “competent”.
- (11) In regulation 21, omit “insofar as they benefit from the freedom of establishment or to provide services specified in Articles 34 and 35 of the MiFID 2 Directive”.
- (12) In regulation 22–

- (a) in sub-regulation (1)(b), omit “covering the whole territory of the European Union”; and
- (b) in sub-regulation (2)–
 - (i) in the opening words, for “registered under the Insurance Distribution Directive it must comply with Article 10.4 of that Directive” substitute “authorised in accordance with the Financial Services (Insurance Distribution) Regulations 2020, it must comply with regulation 54 of those Regulations”; and
 - (ii) in paragraph (b), omit “covering the whole territory of the European Union”.

Amendment of Part 3.

6.(1) In regulation 25–

- (a) in sub-regulation (4), for “any country other than Gibraltar” substitute “a country or territory outside Gibraltar”; and
- (b) in sub-regulation (5), omit “, either in Gibraltar or, following compliance with the procedures specified in Chapter 2 of Part 7, in the territory of an EEA State”.

(2) In regulation 26(3), for “any country other than Gibraltar” substitute “a country or territory outside Gibraltar”.

(3) In regulation 28, for “any country other than Gibraltar” substitute “a country or territory outside Gibraltar”.

(4) In regulation 29–

- (a) in sub-regulation (1)(a), omit “or EEA firms”; and
- (b) in sub-regulation (2), omit “in accordance with the Capital Requirements Directive or its successor”.

Amendment of Part 4.

7.(1) In regulation 31(3), for “guidelines issued by the EBA under Article 74.3 of the Capital Requirements Directive” substitute “any guidance issued by the GFSC on the arrangements, processes and mechanisms referred to in those sub-regulations”.

(2) Omit regulation 32.

(3) Omit regulation 33(9), omit “as referred to in Article 41 of the Audit Directive”.

(4) In regulation 34–

(a) in sub-regulation (2), for “is without prejudice to the fulfilment of criteria laid down in Part Three, Title I, Chapter 3, Section 1” substitute “applies without limiting Articles 92 to 94”;

(b) in sub-regulation (5), for “is without prejudice to the fulfilment of criteria laid down in Part Three, Title IV, Chapter 5, Sections 1 to 5” substitute “applies without limiting Articles 362 to 377”; and

(c) for sub-regulation (6), substitute–

“(6) This regulation applies subject to any technical standards which make further provision for the purposes of this regulation concerning–

(a) exposures to specific risk which are material in absolute terms;

(b) the thresholds for large numbers of material counterparties; and

(c) positions in debt instruments of different issuers.”.

(5) In regulation 35–

(a) for sub-regulation (3), substitute–

“(3) The GFSC may direct institutions to submit the results of the calculations referred to in sub-regulation (1) to it in a format or using a template specified in the direction.”;

(b) omit sub-regulation (4);

(c) omit sub-regulation (7); and

(d) omit sub-regulations (10) and (11).

(6) In regulation 40(3), for “Part Three, Title IV, Chapter 2,” substitute “Articles 326 to 350”.

(7) In regulation 43–

(a) in sub-regulation (3), for “Member State” substitute “country or territory”;

(b) omit sub-regulation (8);

(c) in sub-regulation (13), for “the European Economic Area” substitute “Gibraltar”;

(d) in sub-regulation (18), omit “in a Member State”; and

- (e) in sub-regulation (21)–
 - (i) omit “the currency of a Member State outside Gibraltar, or”; and
 - (ii) omit “of a host Member State or”.
- (8) In regulation 46–
 - (a) in sub-regulation (1), omit “Member State and”;
 - (b) in sub-regulation (2), omit “in accordance with the Audit Directive”; and
 - (c) omit sub-regulation (3).
- (9) In regulation 48–
 - (a) for sub-regulation (7)(b), substitute–
 - “(b) executive or non-executive directorships held within undertakings (including non-financial entities) in which the institution holds a qualifying holding.”;
 - (b) omit sub-regulation (10).
 - (c) omit sub-regulation (16).
 - (d) for sub-regulation (17), substitute–
 - “(17) In applying this regulation, institutions must have regard to any guidance issued by the GFSC on–
 - (a) the time commitment expected of a member of a management body;
 - (b) the adequacy of the collective knowledge, skills and experience of a management body;
 - (c) the honesty, integrity and independence of mind expected of a member of a management body;
 - (d) the human and financial resources to be devoted to the induction and training of members of a management body; and
 - (e) the diversity issues to be taken into account in selecting members of a management body.”.
- (10) In regulation 51–
 - (a) in sub-regulation (8)–

- (i) in paragraph (c), omit sub-paragraphs (vi) and (vii); and
 - (ii) in paragraph (d) omit “; and this paragraph must be applied in accordance with guidelines published by the EBA under Article 94.1(g)(iii) of the Capital Requirements Directive on the applicable notional discount rate taking into account all relevant factors including inflation rate and risk, which includes length of deferral”; and
- (b) for sub-regulation (19), substitute–
- “(19) This regulation must be applied in accordance with any technical standards which specify–
- (a) the classes of instruments that satisfy the conditions in sub-regulation (13)(b); or
 - (b) criteria for defining–
 - (i) managerial responsibility and control functions;
 - (ii) a material business unit and significant impact on a relevant business unit's risk profile; and
 - (iii) other categories of staff not expressly referred to in regulation 49(2) whose professional activities have an impact on an institution's risk profile comparable to those categories of staff referred to in that regulation.”.
- (11) In regulation 54–
- (a) in sub-regulation (1), omit “, the Capital Requirements Directive”;
 - (b) omit sub-regulation (4C);
 - (c) omit sub-regulation (5);
 - (d) in sub-regulation (6), for “EBA and any relevant authority” substitute “Gibraltar Financial Intelligence Unit”;
 - (e) in sub-regulation (7)(a), for “any relevant authority and notify their common assessment immediately to the EBA” substitute “the Gibraltar Financial Intelligence Unit”; and
 - (f) omit sub-regulation (8).
- (12) In regulation 55–

- (a) in sub-regulation (1)(g), for “Part Three, Title IV, Chapter 5” substitute “Articles 362 to 377”;
 - (b) in sub-regulation (4), omit “in all Member States concerned”; and
 - (c) in sub-regulation (8), omit “or such change as defined in the EBA guidelines”.
- (13) In regulation 56–
- (a) in sub-regulation (2)(c), omit “in Member States”; and
 - (b) omit sub-regulation (5).
- (14) In regulation 57–
- (a) re-number sub-regulation (1) as regulation 57; and
 - (b) omit sub-regulation (2).
- (15) Omit regulation 58(9).
- (16) In regulation 59–
- (a) in sub-regulation (4), for “Part One, Title II, Chapter 2, Sections 2 and 3” substitute “Articles 18 to 24”; and
 - (b) in sub-regulation (7), for “an asset management company as defined in Article 2.5 of the Financial Conglomerates Directive” substitute “a UCITS management company (within the meaning of the Financial Services (Financial Conglomerates) Regulations 2020)”.
- (17) In regulation 60–
- (a) in sub-regulation (5), omit “EU”; and
 - (b) omit sub-regulations (6) to (8).

Amendment of Part 5.

8.(1) For regulation 62 and the crossheading which precedes it, substitute–

“Responsibilities of the GFSC

GFSC responsible for prudential supervision.

62.(1) The GFSC is responsible for the prudential supervision of institutions.”.

(2) Omit regulations 63 to 65.

(3) For regulation 66, substitute–

“GFSC as consolidating supervisor.

66. The GFSC must exercise supervision of the following entities on a consolidated basis–

- (a) Gibraltar parent institutions; and
- (b) institutions controlled by a Gibraltar parent financial holding company or Gibraltar parent mixed financial holding company.”.

(4) Omit regulations 67 to 73.

(5) In regulation 75–

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

“(1) Where a mixed financial holding company is subject to equivalent provisions under these Regulations and the Financial Services (Financial Conglomerates) Regulations 2020, in particular in terms of risk-based supervision, the GFSC may apply only the Financial Services (Financial Conglomerates) Regulations 2020 to that mixed financial holding company.

(2) Where a mixed financial holding company is subject to equivalent provisions under these Regulations and the Financial Services (Insurance Companies) Regulations 2020, in particular in terms of risk-based supervision, the GFSC may apply to that mixed financial holding company only the provisions of these Regulations relating to the most significant financial sector, as defined in regulation 3(2) to (5) of the Financial Services (Financial Conglomerates) Regulations 2020.”; and

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

(6) In regulation 77–

(a) in sub-regulation (1), for “if the GFSC is the competent authority responsible for the authorisation and supervision of those institutions it must” substitute “the GFSC must”; and

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

(7) In regulation 78(1), for “competent authority responsible for the supervision of those institutions” substitute “GFSC”.

(8) In regulation 79–

- (a) re-number sub-regulation (1) as regulation 79; and
 - (b) omit sub-regulations (2) to (5).
- (9) Omit regulation 80.
- (10) In regulation 81–
- (a) in sub-regulation (2)–
 - (i) for “An assessment is to be made by the relevant competent authority as to” substitute “The GFSC must assess”; and
 - (ii) for “the Capital Requirements Directive” substitute “these Regulations”; and
 - (b) omit sub-regulations (4) to (6).
- (11) In regulation 82–
- (a) in sub-regulation (1)–
 - (i) in the definition of “buffer guide”, omit “calculated in accordance with Article 135.1 of the Capital Requirements Directive”; and
 - (ii) omit the definition of “domestically authorised institution”; and
 - (b) in sub-regulation (2), for “listed in points 3 and 6 of Section A of Annex I to the MiFID 2 Directive” substitute “in paragraphs 50 and 53 of Schedule 2 to the Act”.
- (12) In regulation 82A(1)(b), for “Articles 45c and 45d of the Recovery and resolution Directive” substitute “regulations 45C and 45D of the Financial Services (Recovery and Resolution) Regulations 2020”.
- (13) Omit regulation 83(5).
- (14) Omit regulation 84(6).
- (15) In regulation 85–
- (a) in sub-regulation (2), in the three places it occurs, for “an EU” substitute “a Gibraltar”;
 - (b) in sub-regulation (3), in the three places it occurs, for “an EU” substitute “a Gibraltar”;

- (c) for sub-regulation (4), substitute–
 - “(4) O-SIIs may either be an institution or a group headed by a Gibraltar parent institution, a Gibraltar financial holding company or a Gibraltar parent mixed financial holding company.”;
- (d) in sub-regulation (5)(e), omit “, including cross border activity between Member States and between a Member State and a third country”;
- (e) in sub-regulation (7A)(b), omit “, excluding the group’s activities across participating Member States as referred to in Article 4 of the Single Resolution Mechanism Regulation”;
- (f) in sub-regulation (9)(b), omit “of the European Union or”;
- (g) omit sub-regulation (10);
- (h) in sub-regulation (12A), for “Subject to the authorisation referred to in sub-regulation (12C), the” substitute “The”;
- (i) omit sub-regulations (12B) and (12C);
- (j) in sub-regulation (13)(a), omit “of Member States or of the European Union as a whole forming or creating an obstacle to the functioning of the internal market”;
- (k) omit sub-regulation (14);
- (l) in sub-regulation (15);
 - (i) in the opening words, for “an EU” substitute “a Gibraltar”; and
 - (ii) in paragraph (b), omit “, or the rate the European Commission has authorised to be applied to the group on a consolidated basis in accordance with sub-regulation (12C)”;
- (m) in sub-regulation (17)(c), omit “taking into account the Single Resolution Mechanism,”;
- (n) omit sub-regulations (19) and (20); and
- (o) for sub-regulation (27), substitute–
 - “(27) The Minister may make technical standards specifying the methodology–
 - (a) in accordance with which the GFSC must identify an institution or a group headed by a Gibraltar parent institution, a Gibraltar parent financial holding company or by a Gibraltar parent mixed financial holding company as a G-SII; and

- (b) for the definition of the sub-categories and the allocation of G-SIIs in the sub-categories based on their systemic significance, taking into account any internationally agreed standards.”.

(16) In regulation 86–

- (a) in sub-regulation (4), omit paragraphs (c) and (d);
- (b) in sub-regulation (7)(a), omit “of other Member States or of the EU as a whole, which form or create an obstacle to the proper functioning of the internal market”;
- (c) omit sub-regulations (8) to (20); and
- (d) omit sub-regulations (25) and (26).

(17) In regulation 87–

- (a) in sub-regulation (1)–
 - (i) in paragraph (a), for “another Member State in accordance with Article 133 of the Capital Requirements Directive” substitute “a third country”; and
 - (ii) in paragraph (b), for “to exposures located in the Member State which set that rate” substitute “exposures located in that third country”;
- (b) omit sub-regulations (2) and (3); and
- (c) omit sub-regulation (5).

(18) Omit regulation 88.

(19) In regulation 89–

- (a) in sub-regulation (1), omit “designated as the authority”;
- (b) omit sub-regulation (4)(b);
- (c) omit sub-regulation (5)(b);
- (d) in sub-regulation (7), for “Article 140.2 of the Capital Requirements Directive” substitute “regulation 93(3)”;
- (e) in sub-regulation (8)(a), for “sub-regulations (10) to (12)” substitute “sub-regulation (10)”;

- (f) omit sub-regulations (11) and (12).
- (20) In regulation 90–
- (a) in sub-regulation (1)–
 - (i) for “a designated authority, in accordance with Article 136.4 of the Capital Requirements Directive, or a relevant third country authority,” substitute “the relevant authority in a third country”; and
 - (ii) for “join other designated authorities in recognising” substitute “recognise”; and
 - (b) in sub-regulation (2)(b), omit “Member State or”;
- (21) Omit regulation 91.
- (22) In regulation 92–
- (a) in the heading, omit “by designated authorities”;
 - (b) in sub-regulation (1), for “irrespective of whether the ESRB has issued a recommendation to designated authorities as referred to in regulation 91” substitute “where a countercyclical buffer rate has not been set and published by the relevant authority of a third country (“relevant third-country authority”) to which one or more institutions have credit exposures”;
 - (c) in sub-regulation (2), for “referred to in Article 138(a) of the Capital Requirements Directive” substitute “specified in sub-regulation (1)”;
 - (d) omit sub-regulation (5).
- (23) In regulation 93–
- (a) in sub-regulation (1), for “(5)” substitute “(4)”;
 - (b) omit sub-regulation (3);
 - (c) in sub-regulation (6), for “regulatory technical standards adopted” substitute “technical standards made”;
 - (d) in sub-regulation (7)–
 - (i) omit paragraph (a);
 - (ii) in paragraph (b), omit “subject to paragraph (c),”; and

- (iii) omit paragraph (c); and
- (e) in sub-regulation (9), for “regulatory technical standards adopted by the European Commission in accordance with Articles 10 to 14 of the EBA Regulation and Article 140.7 of the Capital Requirements Directive” substitute “any technical standards made by the Minister specifying the method for identifying the geographical location of the relevant credit exposures referred to in sub-regulation (6)”.

Amendment of Part 6.

9.(1) In regulation 96–

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

“(1) A credit institution which is a regulated firm and which contravenes any provision of regulations 24 to 26 must, on becoming aware of it, immediately report full details of the contravention in writing to the GFSC.

- (2) A credit institution which is a regulated firm must report to the GFSC any significant transaction with its parent mixed activity holding company and its other subsidiaries (other than a large exposure which is reported in accordance with Article 395.5 of the Capital Requirement Regulation).”; and

- (b) for sub-regulations (4) and (5), substitute–

“(4) Where a credit institution makes a report to the GFSC under sub-regulation (1), the GFSC, without limiting any other power under the Act or these Regulations, may specify a period of time in which the credit institution must remedy the contravention.

- (5) Where the GFSC specifies a period of time under sub-regulation (4), no person is liable to sanctioning action under Part 11 of the Act in respect of the reported contravention if it is remedied within the specified period.”.

(2) Omit regulation 99.

(3) In regulation 100(1), for “any applicable EU instrument” substitute “law”.

Amendment of Part 7.

10.(1) For the heading to Part 7, substitute “GIBRALTAR AND THIRD COUNTRIES”.

(2) Omit Chapter 1.

(3) For regulation 113, substitute–

“113. This Chapter applies to a Gibraltar firm which is a credit institution or a financial institution.”.

- (4) Omit regulations 114 to 118.
- (5) Omit Chapter 3.
- (6) Omit regulation 131(5).
- (7) In regulation 134–
 - (a) omit sub-regulation (1);
 - (b) re-number sub-regulation (1A) as regulation 134;
 - (c) in paragraph (b) of that regulation, omit “, in particular availability of liquid assets in Member State currencies”; and
 - (d) omit sub-regulations (2) to (3).
- (8) In regulation 135–
 - (a) re-number sub-regulation (1) as regulation 135;
 - (b) in that regulation–
 - (i) in the opening words, for “an agreement between the European Union and third countries under Article 48 of the Capital Requirements Directive (agreements about exercising supervision on a consolidated basis)” substitute “any agreement between Gibraltar and third countries about the exercise of supervision on a consolidated basis”;
 - (ii) in paragraph (a), for “the European Union” substitute “Gibraltar”; and
 - (iii) in paragraph (b), for “one or member States” substitute “Gibraltar”; and
 - (c) omit sub-regulation (2).

Amendment of Part 8.

11.(1) In regulation 136(3), omit “or of any other laws, regulations or administrative provisions transposing the Capital Requirements Directive”.

- (2) In regulation 140C–
 - (a) in the heading, for “authorities” substitute “authority”; and

- (b) for “relevant resolution authorities” substitute “Gibraltar Resolution Authority”.
- (3) In regulation 141(2), for “the Gibraltar or European Union” substitute “national”.
- (4) Omit regulation 143.
- (5) In regulation 146(b), for “the national provisions adopted pursuant to the Money Laundering Directive” substitute “Part III of the Proceeds of Crime Act 2015”.
- (6) In regulation 148–
 - (a) in sub-regulation (1), omit “, the Capital Requirements Directive”; and
 - (b) in sub-regulation (2), omit “in accordance with the Accounting Directive”.
- (7) In regulation 149(1), omit “, the Capital Requirements Directive”.

Amendment of Part 9.

- 12.(1) In regulation 150–
 - (a) in sub-regulation (2), for paragraphs (a) to (c), substitute–
 - “(a) credit institutions which are regulated firms; and
 - (b) third country financial institutions with a branch or representative office in Gibraltar.”;
 - (b) omit sub-regulation (3); and
 - (c) omit sub-regulation (7).
- (2) Omit regulation 151.
- (3) In regulation 154, omit “and, where relevant, with Regulation (EC) No 2018/1725”.
- (4) In regulation 155(2)(a), omit “or the Central Bank of an EEA State”.
- (5) In regulation 156(1)(a), omit “or an EEA firm”.
- (6) Omit regulation 157(1)(b).
- (7) Omit regulations 158 to 163.
- (8) In regulation 164–
 - (a) in sub-regulation (1), omit “, the Capital Requirements Directive”; and

- (b) omit sub-regulations (4) and (5).

- (9) In regulation 165, for paragraphs (b) to (d), substitute—
 - “(b) to impose penalties; and
 - (c) in an appeal against a decision of the GFSC under, or any other court proceedings concerning, the Act, these Regulations or the Capital Requirements Regulation.”.

- (10) Omit regulations 166 to 169.

- (11) In regulation 170, omit sub-regulations (4) to (6).

- (12) Omit regulation 171.

- (13) In regulation 172—
 - (a) in sub-regulation (1), omit “163,”; and
 - (b) omit sub-regulation (3).

- (14) Omit regulation 173.

- (15) Omit regulation 174(1).

- (16) Omit regulations 175B and 175C and the crossheading which precedes them.

- (17) In regulation 176—
 - (a) in sub-regulation (1)—
 - (i) for “Directives 2006/48EC and 2006/49/EC continue to have effect, in the form in which they had effect on 31 December 2013,” substitute “The law of Gibraltar which transposed Directives 2006/49/EC and 2006/48/EC, as it had effect on 31st December 2013, continues to apply”; and
 - (ii) for “points (2) and (4) of Section A of Annex I to Directive 2004/39/EC” substitute “paragraphs 49 and 51 of Schedule 2 to the Act”; and
 - (b) in sub-regulation (2)—
 - (i) for “Directive 2006/48EC continues to have effect” substitute “The law of Gibraltar which transposed Directive 2006/48/EC, as it had effect on 31st December 2013, continues to apply”;

- (ii) omit “(within the meaning of Directive 2002/87/EC as amended by Directive 2011/89/EU)”; and
- (iii) omit “as from the commencement of these Regulations, Directive 2006/48/EC”.

Amendment of the Schedule.

13.(1) For the heading, substitute “ADDITIONAL ACTIVITIES”.

(2) In paragraph 4, for “as defined in Article 4(3) of Directive (EU) 2015/2366” substitute “within the meaning of paragraph 17 of Schedule 2 to the Act”.

(3) In paragraph 5, for “insofar as such activity is not covered by point 4” substitute “to the extent that such activity is not covered by paragraph 4”.

(4) For the final paragraph, substitute–

“16. The services and activities in paragraphs 45(2) and 48 to 56 of Schedule 2 to the Act, in respect to the financial instruments listed in paragraph 46(1) of that Schedule.”.

Amendment of the Financial Services (Credit Institutions and Capital Requirements) (Amendment) Regulations 2020.

14.(1) The Financial Services (Credit Institutions and Capital Requirements) (Amendment) Regulations 2020 are amended as follows.

(2) In regulation 3(9), in the substituted sub-regulation (4), for “adopted by the European Commission under Article 84.5 of the Capital Requirements Directive and any guidelines issued by the EBA in accordance with Article 84.6 of that Directive” substitute–

“specifying, for the purposes of this regulation–

- (a) a standardised methodology that institutions may use for evaluating the risks in sub-regulation (1); and
- (b) a simplified standardised methodology for small and non-complex institutions, within the meaning of Article 4.1(145) of the Capital Requirements Regulation, which is at least as conservative as the standardised methodology.”.

(3) In regulation 3(16)–

- (a) in the substituted sub-regulation (8), omit “(other than those identified by the EBA under paragraph (b) of Article 98.5a of the Capital Requirements Directive and included in technical standards adopted under that Article)”; and

- (b) in the inserted sub-regulation (13), for “adopted by the European Commission under Article 98.5a of the Capital Requirements Directive and any guidelines issued by the EBA in accordance with Article 98.8 of that Directive” substitute–
- “specifying–
- (a) the six supervisory shock scenarios referred to in sub-regulation (7A)(a) and the two supervisory shock scenarios referred to in sub-regulation (7A)(b) to be applied to interest rates for every currency;
 - (b) in light of internationally agreed prudential standards, the common modelling and parametric assumptions, excluding behavioural assumptions, that institutions must reflect in their calculations of the economic value of equity referred to in sub-regulation (7A)(a), which must be limited to–
 - (i) the treatment of the institution's own equity;
 - (ii) the inclusion, composition and discounting of cash flows sensitive to interest rates arising from the institution's assets, liabilities and off-balance-sheet items, including the treatment of commercial margins and other spread components;
 - (iii) the use of dynamic or static balance sheet models and the resulting treatment of amortised and maturing positions;
 - (c) in light of internationally agreed standards, the common modelling and parametric assumptions, excluding behavioural assumptions, that institutions must reflect in their calculations of the net interest income referred to in sub-regulation (7A)(b), which must be limited to–
 - (i) the inclusion and composition of cash flows sensitive to interest rates arising from the institution's assets, liabilities and off-balance-sheet items, including the treatment of commercial margins and other spread components;
 - (ii) the use of dynamic or static balance sheet models and the resulting treatment of amortised and maturing positions;
 - (iii) the period over which future net interest income shall be measured;
 - (d) what constitutes a large decline as referred to in sub-regulation (7A)(b).”.

Dated: 29th April 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 the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020, which gave effect in Gibraltar to the Capital Rights Directive (2013/36/EU), and make consequential amendments to the Financial Services (Credit Institutions and Capital Requirements) (Amendment) Regulations 2020.