

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5170 GIBRALTAR Thursday 5th September 2024

LEGAL NOTICE NO.165 OF 2024

FINANCIAL SERVICES ACT 2019

FINANCIAL SERVICES (CORE PRINCIPLES AND CONSUMER DUTY) (AMENDMENT No. 2) REGULATIONS 2024

In exercise of the powers conferred on the Minister by sections 620, 621 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 (Core Principles and Consumer Duty) (Amendment No. 2) Regulations 2024.

Commencement.

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

Amendment of the Financial Services (Core Principles and Consumer Duty) Regulations 2024.

3.(1) The Financial Services (Core Principles and Consumer Duty) Regulations 2024 are amended as follows.

(2) In regulation 5(2), for “this regulation” substitute “these regulations”.

(3) After regulation 6, insert-

“Application to DLT Providers.

6A. The core principles apply to a DLT provider as they apply to other financial services providers but, in the event of any conflict between a core principle and the regulatory principles in the Schedule to the Financial Services (Distributed Ledger Technology Providers) Regulations 2020, the latter principles are to prevail.

Specific requirements consistent with core principles

Operational security requirements.

6B.(1) Principles 2, 3 and 10 impose obligations on financial services providers in respect of the effective business management and control, the exercise of due skill, care and diligence and the need to have adequate resources.

(2) Consistent with those principles, a financial services provider must take appropriate and proportionate technical and organisational measures to manage the risks posed to the security of network and information systems which it uses in its operations.

(3) A financial services provider must take appropriate and proportionate measures to prevent and minimise the impact of incidents affecting the security of the network and information systems used for the provision of services, with a view to ensuring the continuity of those services.

(4) The measures taken by a financial services provider under sub-regulation (2) must, having regard to the state of the art, ensure a level of security of network and information systems appropriate to the risk posed.

(5) The GFSC may issue guidance on the security of networks and information systems, to which a financial services provider must have regard in complying with the obligations imposed by sub-regulations (2) and (3).

Notification of material operational incidents.

6C.(1) Principle 12 requires a financial services provider to deal with the GFSC in an open, cooperative and timely way and to disclose to the GFSC any matter of which it would reasonably expect notice.

(2) Consistent with that principle, a financial services provider must notify the GFSC of any material operational incident.

(3) A “material operational incident” means an incident which has a material impact on the continuity of the services provided by a financial services provider and which—

(a) results in—

(i) a significant loss of data;

(ii) the unavailability or loss of control of the provider’s IT systems; or

(iii) unauthorised access to the provider’s information systems; or

(b) affects a large number of customers.

(4) A notification under sub-regulation (2) must be provided to the GFSC—

(a) without undue delay as soon as the financial services provider is aware that a material operational incident has occurred; and

(b) in the form and manner that the GFSC determines, which must include—

(i) the name of the financial services provider;

- (ii) the services affected;
- (iii) the time and duration of the incident; and
- (iv) information concerning the nature and impact of the NIS incident, including any, or any likely, cross-border impact.

(5) The GFSC may issue guidance on determining whether an incident is a material operational incident, to which a financial services provider must have regard in complying with sub-regulation (2).

(6) The GFSC, acting on the basis of information in a notification under sub-regulation (2), may inform the relevant authorities in a country or territory outside of Gibraltar of a material operational incident if the GFSC considers that the incident has a significant impact on the continuity of services provided in that jurisdiction.

(7) Following receipt of a notification under sub-regulation (2), the GFSC may–

- (a) inform the financial services provider concerned about any relevant information that relates to the incident, including how it has been followed up, in order to assist the provider to deal with the incident more effectively or prevent a future incident; and
- (b) subject to sub-regulation (8), inform the public about the incident, as soon as reasonably practicable, if the GFSC considers that public awareness is necessary in order to deal with the incident or prevent a future incident.

(8) The GFSC must consult the financial services provider concerned before informing the public about an incident under sub-regulation (7) if–

- (a) information is confidential; or
- (b) sharing the information may prejudice the security or commercial interests of a financial services provider.”.

(4) In regulation 9(2), for paragraph (e) and “or” which precedes it, substitute–

- “(e) in the case of personal pensions, a member who is not a professional client; or
- (f) in the case of occupational pension schemes, any person who is or would be a beneficiary in relation to investments held in the scheme.”.

Dated: 5th September 2024.

N FEETHAM KC,
Minister with responsibility for Financial Services.

EXPLANATORY MEMORANDUM

These regulations amend the Financial Services (Core Principles and Consumer Duty) Regulations 2024. They insert provisions which clarify how the core principles apply to DLT providers and impose specific requirements on financial services providers in respect of operational security and the notification of material operational incidents which are consistent with the core principles. They also amend the definition of retail customer as it applies to personal pensions for the purposes of the consumer duty.