

# SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4944 GIBRALTAR Thursday 10th March 2022

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LEGAL NOTICE NO. 64 OF 2022.

## EUROPEAN UNION (WITHDRAWAL) ACT 2019 PROCEEDS OF CRIME ACT 2015

### PROCEEDS OF CRIME (EU EXIT) (AMENDMENT) REGULATIONS 2022

In exercise of the powers conferred upon him by section 11 and paragraph 1 of Schedule 3 of the European Union (Withdrawal) Act 2019, the Minister has made the following Regulations-

#### **Title.**

1. These Regulations may be cited as the Proceeds of Crime (EU Exit) (Amendment) Regulations 2022.

#### **Commencement.**

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

#### **Amendments to the Proceeds of Crime Act 2015.**

3.(1) The Proceeds of Crime Act 2015 is amended in accordance with this regulation.

(2) In the long title, omit “, AND AS MAY BE FURTHER AMENDED FROM TIME TO TIME;”.

(3) After section 1ZB insert-

#### **“References to euros.**

1ZC. In this Act—

- (a) references to an amount in euros includes reference to an equivalent amount in any currency;
- (b) the equivalent in sterling (or any other currency) on a particular day of a sum expressed in euros is determined by converting the sum in euros into its equivalent in sterling or that other currency using the London closing exchange rate for the euro and the relevant currency for the previous working day.”.

(4) In section 1A-

(a) in the definition of “Directive”, after “Directive 2006/70/EC,” insert “as amended by Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018,”;

(b) omit the following definitions-

“Egmont FIU”

“EU FIU”.

(5) In section 1F(2), omit “, in particular as regards any exchanges through the FIU.net or its successor”.

(6) Omit section 1G(2).

(7) In section 1IC-

(a) omit subsections (4) to (6);

(b) for subsection (7) substitute-

“(7) Where the GFIU receives a request for the dissemination of information or a document exchanged pursuant to sections 1E to 1I for a purpose beyond that originally approved, it may, on a case by case basis, grant consent to the dissemination of information or document by the FIU to a competent authority, agency or department within the State or Territory of the FIU subject to such restrictions and conditions for the use of that information or document as the GFIU deems appropriate and reasonable.”;

(c) in subsection (9) omit –

(i) “subsection (5) or”; and

(ii) “EU FIU or”.

(8) In section 1K(5) before “GDPR” insert “the Gibraltar”.

(9) In section 1S omit ““EU FIU”,”.

(10) In section 1T-

(a) in the title, for “Part” the first time it appears substitute “Part II”;

(b) in subsection (2)-

- (i) omit the following definitions -

“European Banking Authority” and “EBA”;

“European Insurance and Occupational Pensions Authority” and “EIOPA”;

“European Securities and Markets Authority” and “ESMA”.

- (11) In section 4F(9) omit the definition of “EU FIU”.

- (12) In section 5-

- (a) in subsection (6)-

(i) for “to whom” to “applies” substitute “described in points 3(a) and (b) of article 2(1) of the Money Laundering Directive”;

- (ii) for paragraph (b) substitute-

“(b) both the person making the disclosure and the person to whom it is made perform their professional activities in Gibraltar or in a third country which imposes requirements that have an equivalent effect to those laid down in the Money Laundering Directive; and”;

- (b) in subsection (7)-

(i) in paragraph (a), for “to whom” to “applies” substitute “described in point (1), (2) or (3)(a) or (b) of article 2(1) of the Money Laundering Directive”;

(ii) in paragraph (b), for “the EEA or if outside the EEA,” substitute “Gibraltar or”;

- (c) omit subsection (13).

- (13) In section 7-

- (a) omit the following definitions -

“Consolidated Banking Directive”;

“European institution”;

“European authorised institution”;

“European subsidiary institution”;

“home regulated activity”;

“insurance business”;

(b) for the definition of “credit institution” substitute –

““credit institution” means-

- (a) a credit institution as defined in Article 4.1(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms as that regulation formed part of domestic law on IP completion day and as may be further amended from time to time; or
  - (b) a branch (as defined in Article 4.1(17) of that Regulation located in Gibraltar of an institution falling within subparagraph (a) (or an equivalent institution whose head office is located in a third country) wherever the institution’s head office is located;”;
- (c) in the definition of “Electronic Identification Regulation” after “1999/93/EC” insert “as that regulation formed part of domestic law on IP completion day and as may be further amended from time to time”;
- (d) for the definition of “financial institution” substitute-

““financial institution” means –

- (a) an undertaking, other than a credit institution, which carries out one or more of the operations included in paragraphs 2 to 12, 14 and 15 of the Schedule to the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020, including the activities of currency exchange offices (bureaux de change);
- (b) an insurance undertaking within the meaning of regulation 3 of the Financial Services (Insurance Companies) Regulations 2020, insofar as it carries out life assurance activities to which those Regulations apply;
- (c) an investment firm within the meaning of section 2(1) of the Financial Services Act 2019;
- (d) a collective investment undertaking marketing its units or shares;
- (e) an insurance intermediary or ancillary insurance intermediary within the meaning of paragraph 33 of Schedule 2 to the Financial Services Act 2019;
- (f) a branch located in Gibraltar of a person in paragraphs (a) to (e), wherever the person’s head office is located (or an equivalent person whose head office is located in a third country) when carrying out any activity mentioned in paragraphs (a) to (e);”;

(e) for the definition of “GDPR” substitute –

““the Gibraltar GDPR” has the meaning given to it in the Data Protection Act 2004;”;

(f) for the definition of “Listed Entity” substitute-

““Listed Entity” means a company or other body corporate with shares admitted to trading on a regulated market–

(a) in Gibraltar;

(b) in the European Economic Area; or

(c) listed in Schedule 9;”;

(g) for the definition of “regulated market” substitute-

““regulated market”

(a) within Gibraltar means a regulated market within the meaning of paragraph 1(1) of Schedule 2 to the Financial Services Act 2019 which is authorized and functions regularly in accordance with the provisions contained in or made under that Act;

(b) within the United Kingdom means a UK regulated market, as defined by Article 2(1)(13A) of Regulation (EU) 600/2014 as it applies in the United Kingdom after IP completion day;

(c) outside Gibraltar or the United Kingdom means-

(i) within the EEA, a regulated market as defined by Article 2(1)(13) of Regulation 600/2014/EU as it applies in the EEA; or

(ii) outside the EEA, a regulated financial market which subjects companies whose securities are admitted to trading to disclosure obligations which are equivalent to the specified disclosure obligations;”;

(h) for the definition of “the specified disclosure obligations” substitute-

““the specified disclosure obligations” means disclosure requirements consistent with-

- (a) Articles 17 and 19 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse as that regulation formed part of domestic law on IP completion day and as may be further amended from time to time;
  - (b) requirements in Part 19 of the Financial Services Act 2019; or
  - (c) Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to a regulated market as that regulation formed part of domestic law on IP completion day and as further amended from time to time;”;
- (i) in subsection (1B) after “83/349/EEC” insert “as it had effect immediately before IP completion day”.

(14) In section 9-

- (a) for subsection (1) substitute-

- “(1) For the purposes of this Part, “relevant financial business” means the business of engaging in one or more of the following businesses or activities-
- (a) issuing electronic money or accepting deposits, within the meaning of Schedule 2 to the Financial Services Act 2019, carried on by a person authorised under that Act;
  - (b) business of the Savings Bank;
  - (c) any home regulated activity carried on by a European institution;
  - (d) financial instruments business which is a regulated activity falling within the following provisions of Schedule 2 to the Financial Services Act 2019;
    - (i) Chapter 2 of Part 6 (investment services and investment activities); or
    - (ii) Chapter 3 of Part 6 (sending dematerialized instructions);
  - (e) any of the activities in paragraphs 1 to 12 or 14 of the Schedule to the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020;
  - (f) life insurance activities covered by the Financial Services (Insurance Companies) Regulations 2020 carried on by a person authorised in accordance with those Regulations;

- (g) auditors, insolvency practitioners, external accountants and tax advisors;
- (h) estate agents and letting agents;
- (i) art market participants;
- (j) art storage freeport operators;
- (k) notaries and other independent legal professionals, when they participate whether-
  - (i) by assisting in the planning or execution of transactions for their client concerning the-
    - (A) buying and selling of real property or business entities;
    - (B) managing of client money, securities or other assets;
    - (C) opening or management of bank, savings or securities accounts;
    - (D) organizations of contributions necessary for the creation, operation or management of companies;
    - (E) creation, operation or management of trusts, companies, foundations or similar structures; or
  - (ii) by acting on behalf of and for their client in any financial or real estate transaction;
- (l) a regulated activity within the meaning of any of the following provisions of Schedule 2 to the Financial Services Act 2019–
  - (i) paragraph 19 (providing payment services);
  - (ii) paragraph 29 (insurance management);
  - (iii) paragraph 34 (in respect of life insurance distribution);
  - (iv) paragraph 35 (in respect of life reinsurance distribution);
  - (v) paragraph 106 (establishing, etc. a personal pension scheme);
  - (vi) paragraph 107 (advising on personal or occupational pension schemes);

- (vii) paragraph 118 (granting credit by means of a mortgage credit agreement);
  - (viii) paragraph 119 (acting as a mortgage credit intermediary);
  - (ix) paragraph 120 (providing mortgage credit advisory services);
  - (x) paragraph 126 (company etc. management);
  - (xi) paragraph 131 (acting as a professional trustee or foundation councillor);
  - (xii) paragraph 135 (acting as a bureau de change); or
  - (xiii) paragraph 139 (providing distributed ledger technology services);
  - (m) dealers in all high value goods whenever payment is made or received in case and in an amount of 10,000 euro or more;
  - (n) gambling services;
  - (o) a collective investment scheme authorised, recognised or otherwise regulated by or under the Financial Services Act 2019 and any regulated activity specified in paragraphs 93 to 102 of Schedule 2 to that Act;
  - (p) undertakings that receive, whether on their own account or on behalf of another person, proceeds in any form from the sale of tokenised digital assets involving the use of DLT or a similar means of recording a digital representation of an asset;
  - (q) persons that, by way of business, exchange, or arrange to make arrangements with a view to the exchange of-
    - (i) virtual assets for money;
    - (ii) money for virtual assets;
    - (iii) one virtual asset for another.”;
- (b) omit subsections (2) and (4).

(15) In section 11(4A), after “Directive” insert “or the Register of Ultimate Beneficial Owners, Nominators and Appointors Regulations 2017”.

(16) Omit section 16(4).



(17) In section 17-

(a) in subsection (1)(b) for “the European Commission” substitute “Gibraltar”;

(b) for subsection (2) substitute -

“(2) Notwithstanding subsection (1), enhanced customer due diligence measures need not be invoked automatically in any business relationship or transaction with a customer established in a high-risk third country where that customer is a branch or majority-owned subsidiary of an obliged entity established in a third country if all the following conditions are satisfied –

(a) the entity is-

(i) subject to requirements in national legislation having an equivalent effect to those laid down in the Money Laundering Directive on an obliged entity (within the meaning of that directive); and

(ii) supervised for compliance with those requirements in a manner equivalent to section 2 of Chapter VI of the Money Laundering Directive;

(b) the branch or subsidiary complies fully with procedures and policies established for the group under requirements equivalent to those laid down in Article 45 of the Money Laundering Directive; and

(c) the relevant financial business applying a risk based approach, does not consider that it is necessary to apply enhanced due diligence measures.”;

(c) in subsection (4), omit “, which reproduces Annex III to the Money Laundering Directive”;

(d) omit subsection (5).

(18) In section 20B, for “by a Member State or a third country” substitute “in Gibraltar or by a third country”.

(19) In section 21 –

(a) for subsection (3) substitute-

“(3) In this section “subsidiary undertaking” except in relation to an incorporated friendly society, has the meaning given by section 2 of the Companies Act 2014 and,

(i) in relation to a body corporate in or formed under the law of an EEA State includes an undertaking which is a subsidiary undertaking within the meaning of any rules in force in that State for purposes connected with the implementation of Directive 2013/34/EC of the European Parliament and of the Council on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings as it had effect immediately before 1 January 2021; and

(ii) in relation to a body corporate in or formed under the law of the United Kingdom has the same meaning as in the UK Companies Acts (see section 1162 of and Schedule 7 to, the Companies Act 2006).”;

(b) omit subsection (4).

(20) In section 23 –

(a) in subsection (1B)-

(i) for the words from “established in the European Union” to “Money Laundering Directive” substitute –

“if all of the following conditions are met –

(a) the entity is –

(i) a person who is subject to the requirements in this Act as a relevant financial business within the meaning of section 9 and who is supervised for compliance with them; or

(ii) subject to requirements in national legislation having an equivalent effect to those laid down in the Money Laundering Directive on an obliged entity (within the meaning of that directive) and supervised for compliance with those requirements in a manner equivalent to section 2 of Chapter VI of the Money Laundering Directive;

(b) the branch or subsidiary fully complies with procedures and policies established for the group under –

(i) section 26(1B); or

(ii) requirements in national legislation having an equivalent effect to those laid down in Article 45 of the Money Laundering Directive.”

(b) omit subsection (2)(c);

(c) in subsection (2)(d) for “non-EEA state” substitute “third country”;

(d) in subsection (3)-

(i) omit “(c)(i)”;

(ii) for “another EEA state or a non EEA state” substitute “a third country”;

(e) omit subsection (6).

(21) In section 25 (9), for “another EEA State” in both places it occurs substitute “a third country”.

(22) In section 27(2), for “(i)” substitute “(k)”.

(23) In section 30-

(a) in subsection (3), for “(i), (j)” substitute “(k), (l)”;

(b) in subsection (6) for “the competent authorities of the home EEA State of the obliged entity” substitute “an overseas authority”.

(c) after subsection (6) insert –

“(7) In this section, “overseas authority” means an authority established in a third country which has equivalent functions to a supervisory authority established under this Act.”.

(24) In section 30C –

(a) in subsection (1) omit “under the Exchange of Criminal Records Regulations 2014,”;

(b) in subsection (4) for “Where the person referred to in subsection (1) is a Gibraltarian, the” substitute “The”;

(c) omit subsections (2), (3) and (5).

(25) Omit section 31.

(26) For section 109(9) substitute-

“(9) In a case of urgency, a request for assistance under this section may be sent to the International Criminal Police Organisation (INTERPOL) for forwarding to the court, tribunal, government or authority mentioned in subsection (6).”.

(27) For section 179(8) substitute-

- “(8) In a case of urgency, a request for assistance under this section may be sent to the International Criminal Police Organisation (INTERPOL) for forwarding to the court, tribunal, government or authority mentioned in subsection (5).”.
- (28) In section 183(5A), for “the EEA” substitute “Gibraltar”.
- (29) In section 184(2), omit “EU or”.
- (30) In Schedule 2, in Part 1-
- (a) in paragraph (g)-
    - (i) for “9(1)(ha)” substitute “9(1)(i)”;
    - (ii) for “9(1)(k)” substitute “9(1)(m)”;
  - (b) in paragraph (ga) for “9(1)(hb)” substitute “9(1)(j)”.
- (31) In Schedule 6-
- (a) omit “THIS SCHEDULE REPRODUCES ANNEX II OF THE MONEY LAUNDERING DIRECTIVE”;
  - (b) in the wording before paragraph (1), for “Article” substitute “section”;
  - (c) in paragraph 3(a), for “Member States” substitute “Gibraltar”.
- (32) In Schedule 7-
- (a) omit “THIS SCHEDULE REPRODUCES ANNEX III OF THE MONEY LAUNDERING DIRECTIVE”;
  - (b) in the wording before paragraph 1, for “Article 18(3)” substitute “section 17”;
  - (c) in paragraph 1(g)-
    - (i) for “in Gibraltar, the United Kingdom or a Member State” in the first place it occurs, substitute “of a state”;
    - (ii) for “Gibraltar, the United Kingdom or a Member State” in the second place it occurs, substitute “that state”;
  - (d) in paragraph 3(a) omit “without prejudice to Article 9,”.
- (33) In Schedule 9, omit “LIST OF NON EEA MARKETS”.

Dated: 10<sup>th</sup> March 2022.

F R PICARDO,  
Minister responsible for finance.

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**EXPLANATORY NOTE**  
*(This note is not part of the Regulations)*

These Regulations are made in exercise of the powers in section 11 and paragraph 1 of Schedule 3 the European Union (Withdrawal) Act 2019 in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

The regulations make amendments to the Proceeds of Crime Act 2015.