

**SECOND SUPPLEMENT TO THE
GIBRALTAR GAZETTE**
No. 4470 of 31 May, 2018

LEGAL NOTICE NO.125 OF 2018.

UNIVERSITY OF GIBRALTAR ACT 2015

**UNIVERSITY OF GIBRALTAR (REGULATION AND
ACCOUNTABILITY) REGULATIONS 2018**

In exercise of the powers conferred on him by sections 46, 49 and 56 of the University of Gibraltar Act 2015, the Minister has made the following Regulations–

Title and commencement.

1. These Regulations may be cited as the University of Gibraltar (Regulation and Accountability) Regulations 2018 and come into force on the date of publication in the Gazette.

Designations under the Act.

2. The Gibraltar Regulatory Authority, established by section 2 of the Gibraltar Regulatory Authority Act 2000, is designated–

- (a) by order under section 49 of the University of Gibraltar Act 2015 (“the Act”), as the Gibraltar Higher Education Commission, and
- (b) by order under section 46 of the Act, as the Gibraltar Authority for Standards in Higher Education,

for the purposes of the Act.

Memorandum of Regulation.

3.(1) The Gibraltar Regulatory Authority, in its roles as the Gibraltar Higher Education Commission and the Gibraltar Authority for Standards in Higher Education, shall, after consultation with the University of Gibraltar (“the University”), issue a Memorandum of Regulation to the University setting out how–

- (a) the quality and standards of education in the University shall be monitored;
- (b) compliance by the University with its functions, duties and obligations under the Act shall be monitored;
- (c) the use by the University of its funds including any public funds provided to it shall be monitored;
- (d) other aspects of the University's performance are monitored;
- (e) the University is expected to demonstrate effective governance and accountability; and
- (f) the University's autonomy and academic freedom are maintained.

(2) Memoranda issued under sub-regulation (1) may be published in the Gazette and shall be reviewed from time to time in consultation with the University.

(3) The first Memorandum issued under sub-regulation (1) shall be in the form set out in the Schedule to these Regulations and shall come into force on 1 June 2018.

Powers of Gibraltar Higher Education Commission and the Gibraltar Authority for Standards in Higher Education.

Information Notices.

4.(1) The Gibraltar Regulatory Authority, in its role as the Gibraltar Higher Education Commission or the Gibraltar Authority for Standards in Higher Education, may, as is necessary or expedient for the purpose of performing its functions under the Act, by notice in writing (referred to as an "information notice") served on the University, require the University to furnish to it in writing such information as is specified in the information notice within such time specified in the information notice.

(2) Where the Gibraltar Regulatory Authority, in its role as the Gibraltar Higher Education Commission or the Gibraltar Authority for Standards in Higher Education, by reason of special circumstances, is of the opinion that a requirement in the information notice should be complied with urgently it shall include in the information notice—

- (a) a statement to this effect and brief reasons for its opinion;
 - (b) the period within which the requirement must be complied with which must be at least 7 days from the date of service of the information notice.
- (3) No enactment or rule of law prohibiting or restricting the disclosure of information—
- (a) shall preclude the University from furnishing to the Gibraltar Regulatory Authority, in its roles under the Act, any information which is necessary or expedient for the performance by the Gibraltar Regulatory Authority of its functions under the Act;
 - (b) save that (a) does not apply to information which is privileged from disclosure in court proceedings.
- (4) In this regulation references to “the Act” include references to any secondary legislation made under the Act, (including these Regulations), and to any Memoranda of Regulation issued in accordance with these regulations.

Enforcement Notices.

5.(1) If the Gibraltar Regulatory Authority, in its role as the Gibraltar Higher Education Commission or the Gibraltar Authority for Standards in Higher Education, is of the opinion that the University has contravened or is contravening a provision of the Act it may, by notice in writing (referred to as an “enforcement notice”) served on the University require it to take such steps to comply with the provision concerned as are specified in the notice, within such time as is specified.

(2) An enforcement notice shall specify any provision of the Act that, in the opinion of the Gibraltar Regulatory Authority, in its role as the Gibraltar Higher Education Commission or the Gibraltar Authority for Standards in Higher Education, has been or is being contravened and the reasons for its having formed that opinion.

(3) Where the Gibraltar Regulatory Authority, in its role as the Gibraltar Higher Education Commission or the Gibraltar Authority for Standards in Higher Education, by reason of special circumstances, is of the

opinion that a requirement in the enforcement notice should be complied with urgently it shall include in the enforcement notice—

- (a) a statement to this effect and brief reasons for its opinion; and
- (b) the period within which the requirement must be complied with which must be at least 7 days from the date of service of the enforcement notice.

(4) The Gibraltar Regulatory Authority, in its role as the Gibraltar Higher Education Commission or the Gibraltar Authority for Standards in Higher Education, may cancel an enforcement notice and, if it does so, shall notify the University, in writing, accordingly.

(5) In this regulation references to “the Act” include references to any secondary legislation made under the Act, (including these Regulations), and to any Memoranda of Regulation issued in accordance with these regulations.

SCHEDULE

MEMORANDUM OF REGULATION

Foreword

This Memorandum of Regulation is issued by the Gibraltar Regulatory Authority (“the Authority”), in its roles as the Gibraltar Higher Education Commission and the Gibraltar Authority for Standards in Higher Education to the University of Gibraltar (“the University”) in the exercise of its powers under regulation 3 of the University of Gibraltar (Regulation and Accountability) Regulations 2018. It sets out how:

-) The Authority monitors the quality and standards of education in the University:
-) The Authority monitors compliance by the University with its functions, duties and obligations under the University of Gibraltar Act 2015 (“the 2015 Act”):
-) The Authority monitors the use by the University of its funds including any public funds provided to it:
-) Other aspects of University performance are monitored:
-) The University is expected to demonstrate effective governance and accountability:
-) University autonomy and academic freedom are maintained.

The Authority is established under the Gibraltar Regulatory Authority Act 2000. It has been charged under section 46(1) of the 2015 Act to act as the Gibraltar Authority for Standards in Higher Education to provide quality assurance and safeguard academic standards in respect of the University's academic programmes. The Authority has also been charged under section 49 of the 2015 Act as the Gibraltar Higher Education Commission to act as the regulator of the University by monitoring the University's performance and its compliance with the 2015 Act. The Authority is also responsible for ensuring that overall student interests are protected and that there is adequate assurance that the University is effectively governed and managed, and financially sustainable.

The University is established under the 2015 Act with the power to grant degrees and with the purpose of providing education and research. It has been charged under the 2015 Act with the responsibility for maintaining autonomy and academic freedom and operating a mechanism to maintain the quality and standards of education. The 2015 Act sets out the University's functions as well as its powers, responsibilities, obligations and duties. It also provides for the University's governance and financial accountability.

The Authority and the University are in agreement that for the University to succeed it needs to be able to operate autonomously and for the academic portfolio to be determined by the University according to its own educational strategy subject to compliance with the purposes for which the University was established and with its functions, duties and obligations as set out in the 2015 Act. The University has been established with a Board of Governors that is responsible for the management of property, revenue and business and has ultimate authority for academic governance.

This Memorandum sets down a proportionate regime of accountability and regulation that respects the University's self-governing status whilst at the same time enabling the Authority to derive the assurance that the Authority, students and other stakeholders need.

The Authority does not have the authority to intervene in University affairs. However, it will take steps as necessary within its powers to ensure that the University takes appropriate action when the quality and standards of education or student interests are at stake, or when the University is at serious risk. The Authority will promote the University's autonomy and academic freedom and support the Vice-Chancellor and Board of Governors should autonomy or academic freedom be challenged.

This Memorandum comes into effect from 1 June 2018. The two years 2018-19 and 2019-20 will be a transitional period allowing the University and the Authority to develop their processes and sources of information. Notwithstanding that the next two years are regarded as a transitional period, the Authority will monitor compliance by the University and may need to take action if serious risks arise that are not being addressed effectively by the University's Board and Vice-Chancellor. Also during this time, the Authority will hold two meetings per year with the University to assess progress against the requirements of this Memorandum and to discuss issues arising. The frequency of such meetings may need to be reviewed if required.

Chief Executive Officer
Gibraltar Regulatory Authority

Introduction.

This Memorandum sets down the regulatory and accountability requirements on the University arising from the appointments of the Authority under sections 46(1) and 49 of the 2015 Act as the Gibraltar Authority for Standards in Higher Education and the Gibraltar Higher Education Commission respectively.

Responsibilities of the University.

The University is an autonomous statutory body established under the 2015 Act. Like all corporate bodies, it is subject to the general law of Gibraltar. Specifically, it is subject to the functions, duties and obligations set out in the 2015 Act and is required to exercise its powers and responsibilities in accordance with the provisions of the 2015 Act. As a University, it has certain specific obligations including to:

- a. Regulate its own affairs.
- b. Use resources efficiently and effectively.
- c. Be publicly accountable.
- d. Provide reports and information as specified by the Minister including an annual report, complete with financial statements.

The Board of Governors of the University is responsible for:

- a. The management, administration and control of the property, revenue and business of the University.
- b. Academic governance.
- c. Setting, determining and collecting fees.
- d. Administering funds, grants, etc.
- e. Determining student numbers.

This Memorandum of Regulation sets out how the University is required to demonstrate that it meets the above requirements. It also specifies other requirements of the Authority and how the Authority will exercise oversight. Overall, this Memorandum covers:

- a. The quality and standards of education at the University.
- b. The student experience.
- c. Financial sustainability and the use of funds.
- d. Governance and management.
- e. Compliance with the 2015 Act.
- f. The University's autonomy and academic freedom.

This Memorandum also specifies the actions that the Authority will take to monitor the University and to derive the assurances that it needs to discharge its duty and protect the interests of students and other stakeholders.

The quality and standards of education at the University.

The Authority, students and other stakeholders need assurance about the quality and standards of teaching and research. There are three interlinked sources of assurance:

- a. Annual assurance from the University itself.
- b. Periodic independent reviews.
- c. Data.

Annual University Assurance.

The Board of Governors in the University has ultimate responsibility for all affairs but it delegates responsibility for the management of academic affairs (teaching and research) to the Vice-Chancellor and for academic governance to the Academic Board. It is for the University to organise these matters but the Authority needs regular assurance and requires under this Memorandum that the annual report of the Academic Board shall be submitted to the Authority at the same time as it is submitted to the Board of Governors. The report should allow the Authority to understand at a high level how quality and standards have been overseen during the year and how the committee structure and student representation have operated. The Authority expects that the report would in exceptional circumstances discuss material adverse developments including significant criticism from external examiners, professional accreditation bodies, academic partners or research sponsors/contractors.

The Vice-Chancellor shall also submit a written assurance to the Authority confirming that:

- a. The methodologies used as a basis to improve the student academic experience are robust.
- b. The standards of awards for which the University is responsible have been maintained.

Periodic Independent Assurance.

It is standard practice in higher education for universities to undergo periodic independent reviews of academic processes, quality and standards. There is a variety of methodologies for such reviews ranging from comprehensive to light touch, depending on the state of development of institutions' own systems. The Authority expects the University to commission its own initial external review as soon as practicable, and a draft timeline for this exercise is set down in the Appendix to this Memorandum. This timeline will be finalised following consultation with potential external quality review agencies. A timetable for subsequent reviews will be developed by the University and the Authority following the initial review and in due course, the two parties will determine whether a light touch regime can be adopted.

The review shall be commissioned from a qualified external agency which uses the UK Quality Code (as administered by the Quality Assurance Agency for Higher Education) as its benchmark and which meets the requirements of the European Association for Quality Assurance in Higher Education. The scope of the review should cover:

- a. The setting and/or maintenance of academic standards.
- b. The provision of learning opportunities.
- c. The provision of information.
- d. The enhancement of the quality of students' learning opportunities.

The reviews should be commissioned by the University and should report to the Vice-Chancellor, Academic Board and Board of Governors. The Authority will need to be consulted on the terms of reference. The reports of these reviews and any follow-up reports that address recommendations for action shall be shared with the Authority.

Data and Management Information.

The University has invested in a student information system (Quercus) that will in due course enable the generation of extensive data to inform decision making and enable monitoring. There are certain key data items that will assist the Board of Governors and external stakeholders to inform their judgements about the University's quality and standards. The Authority requires that the University shall submit year on year data as and when it becomes available (ultimately a five-year time series) covering:

- a. Student retention rates
- b. Student completion and graduation rates

- c. Graduate destinations.

The student experience.

It is for the University to ensure that the overall student experience meets the requirements of undergraduate or postgraduate education and that students derive full value from the fees that they pay. The Authority will seek to derive assurance that the student experience is satisfactory overall and will in part place reliance on the sources set out above. In addition, the University shall submit to the Authority:

- a. Data showing the relative trend in student complaints.
- b. Summary level data from the annual student survey.

The University shall as soon as appropriate also arrange for periodic independent audits, under the jurisdiction of its Audit Committee, providing an assessment of the value students are deriving from their fees. This should reflect on inputs, such as the resources devoted to teaching and learning, as well as outcomes in the form of qualifications and careers.

Financial sustainability and the use of funds.

The University was established by HM Government of Gibraltar with the expectations that it will be properly accountable and will remain solvent, year on year, taking into account student fees, grant income and other sources of revenue. It is also a charity which brings a public benefit disclosure requirement. The Authority will seek to draw on four sources of assurance concerning finance, all of which shall be made available by the University:

- a. The annual financial statements audited by a qualified firm in accordance with the Gibraltar Financial Reporting Standard and the UK's Statement of Recommended Practice, Accounting for Further and Higher Education 2015. The Authority expects that the auditor will provide an unqualified opinion but will wish to engage with the University if this is not the case.
- b. The University's annual report including confirmation that funds received from HM Government of Gibraltar have been applied as intended. This will require HMGoG to issue an annual grant letter setting out funding levels and specifying the level of broad discretion afforded the University in the application of those funds subject to compliance with the University's annual approved budget and the submission made by the University to HMGoG for public funding.

- c. A set of financial forecasts (business plan) prepared by the University's Vice-Chancellor and Chief Financial and Operations Officer, demonstrating the affordability of the strategic plan, and endorsed by the Finance Committee.
- d. Confirmation that the Minister with responsibility for the University has approved the forthcoming year's University budget.

Governance and management.

The University's governance arrangements are specified in the 2015 Act. The University is governed by a Board of Governors that is responsible for the inclusion of a Corporate Governance Statement and Statement of Primary Responsibilities in the annual financial statements. These are included in the annual report and financial statements and are thus publicly available. The Authority will derive assurance from this source.

The University has established an Audit Committee. The Committee should provide assurances to the Board of Governors and Vice-Chancellor with the Committee's opinions on the adequacy of internal control and risk management. These opinions are to be informed by the Committee's engagement with senior management, the risk register, any internal audit or other reviews, and any control issues raised by the external auditor. This annual assurance shall be submitted to the Authority to inform the Authority's assurance and risk assessment process.

As with other sources of assurance generated internally by the University, the Authority's confidence in governance will be enhanced by independent corroboration. The University will need to commission reviews of the effectiveness of its Board of Governors and Audit Committee from time to time and for the reports and action plans to be shared with the Authority. These reviews will be commissioned at least once in every five years. The reviews can be procured from a variety of sources including legal and consultancy firms, higher education sector bodies and independent consultants. The University should consult with the Authority as such reviews are commissioned in case the Authority has issues that may need to be addressed.

Compliance with the 2015 Act.

The 2015 Act sets out the functions of the University as well as its duties and obligations. The University shall issue an annual report to the Authority

confirming that it has managed its affairs in compliance with the functions, duties and obligations set out in the 2015 Act. The University shall provide to the Authority such further information as the Authority may require should the Authority have any concerns about the University's compliance or manner of compliance with the 2015 Act.

The University's autonomy and academic freedom.

The University's autonomy and its academic freedom are protected under the 2015 Act. This Memorandum commits the Authority to respecting the University's autonomy and sets down that the Authority will only attempt to influence the governance and management of the University in exceptional circumstances, should the University fail to comply with its functions, duties and obligations under the 2015 Act and in respect of this Memorandum. The freedom to develop an academic portfolio and to teach and research any subject or content (within the normal constraints of the law of Gibraltar and subject to compliance with the 2015 Act and the application by the University of funds in the manner for which they are intended) rests with the University: specifically with the Vice-Chancellor and Academic Board acting under delegated authority from the Board of Governors.

The Board of Governors and Academic Board shall confirm annually in, respectively, the corporate governance statement and the annual report of the Academic Board that the University has been able to operate without undue interference. Where the Vice-Chancellor feels that the University's autonomy or academic freedom have been at risk, the matter shall be referred to the Chief Executive Officer of the Authority who can take advice, determine a course of action and include the matter in the annual report of the Authority.

The annual GRA Assurance Review: timescale and process

Wherever possible the information and reports required by the Authority under this Memorandum shall be submitted by 31 December following the end of the academic year. There shall be one formal submission from the Vice-Chancellor on behalf of the University, confirming that the information is complete and accurate. A proposed template for the return by the University is as follows:

“To: The Chief Executive Officer, the Gibraltar Regulatory Authority

Date:

From: Vice-Chancellor, University of Gibraltar

The Chair of the Board of Governors, University of Gibraltar

This is to confirm that for the year ending [] the University of Gibraltar has met its obligations under the University of Gibraltar Act 2015 and the Memorandum of Regulation issued by the Gibraltar Regulatory Authority to the University on []. The University is obliged to provide documentation and assurances as set out below and the relevant papers are attached.

Documentation

- a. *Complete set of audited financial statements.*
- b. *Copy of budget for coming year as submitted to Minister.*
- c. *Copy of updates business plan/financial forecasts.*
- d. *Annual report of Academic Board.*
- e. *Annual assurances from the Audit Committee and Risk Committee.*
- f. *Summary level time series student data on:*
 - o *Recruitment*
 - o *Retention*
 - o *Completion and outcomes*
 - o *Graduate destinations*
 - o *Complaints*
 - o *Annual survey responses.*

Assurances

- a. *The University has produced an annual report including reviews of operations, strategy and finance and a corporate governance statement which confirms that the University has an effective system of corporate governance, internal control and risk management.*
- b. *The University has published audited financial statements which give a true and fair view of the University's affairs.*
- c. *The Academic Board has confirmed to the Board of Governors in its annual report that the methodologies used as a basis to improve the student academic experience and student outcomes are robust and appropriate; and the standards of awards have been appropriately set and maintained.*
- d. *The University has complied with the requirements of the University of Gibraltar Act 2015 and this has included:*
 - o *Discharging its educational duties (s8)*
 - o *Discharging by the Vice Chancellor of his duties (s14)*
 - o *Operating under the oversight of its Board of Governors (ss17-18)*
 - o *Using Government grant for the purposes intended (s35)*
 - o *Managing financial affairs prudently (s36)*
 - o *Providing required information and reports (ss43-44).*

- e. The University has been able to operate throughout the period without undue interference from external bodies.*
- f. There are no new material adverse developments concerning the University that need to be brought to the attention of the Authority.*

Signed and dated: Vice-Chancellor and Chair of the Board of Governors.”

The Authority will process the information within three months and will write formally to the Board of Governors and Vice-Chancellor in one of the following terms:

- a. The Authority confirms that the annual data and reports required from the University under this Memorandum of Regulation meet our requirements and we have identified no significant risks that need to be addressed at this time; or
- b. The Authority confirms that the annual data and reports required from the University under this Memorandum of Regulation meet our requirements except that in respect of [matter(s) to be specified]. We have set out our recommendations in respect of this matter in an Annex and request an early meeting with the Vice-Chancellor to address our concerns; or
- c. The Authority finds that the University is at serious risk and has not complied with this Memorandum of Regulation. We require an urgent meeting with the Board of Governors and Vice-Chancellor of the University. The Minister with responsibility for the University has been advised.

The University Advisory Board established by the Authority will scrutinise the draft decision of the Authority and provide advice to the Authority’s Chief Executive Officer prior to the formal notification as set out above being issued.

Summary

Overall, this Memorandum requires the University to:

- a. Give an annual assurance on quality and standards informed by an annual report from the Academic Board.
- b. Arrange periodic external quality assurance reviews and share outcomes with the Authority.
- c. Share data on student recruitment, retention, completion, destinations and complaints.
- d. Submit audited accounts to the Authority, complete with a corporate governance statement, statement of primary responsibilities and

confirmation that HMGOG funds have been used for the purposes intended.

- e. Give an annual assurance of compliance by the University with the 2015 Act.
- f. Share long-term financial forecasts (business plan) with the Authority.
- g. Submit an annual budget for approval by the Minister.
- h. Produce - and share with the Authority - annual Audit Committee assurances on internal control and risk management.
- i. Arrange periodic independent reviews of Board of Governors and Audit Committee effectiveness and share the reports and action plans with the Authority.
- j. Notify the Authority of any unforeseen material adverse developments that concern quality and standards, finance or internal control.
- k. Alert the Authority to any threats to the University's autonomy and academic freedom.

The Authority will:

- a. Undertake an annual desk-based review of accountability submissions from the University and other information.
- b. Make an annual risk assessment of the University and share this with the Vice-Chancellor and Board of Governors.
- c. Engage with the Vice-Chancellor and/or Board of Governors as appropriate should there be concerns that need to be addressed, questions to be answered, or if there is non-compliance with this Memorandum of Regulation.
- d. Take steps to support the University in the event of serious risks to students or organisational sustainability including commissioning its own focused reviews where appropriate.
- e. Discuss its annual engagement with the University, including the outcomes, in its own annual report.

Footnote

This Memorandum of Regulation will be reviewed from time to time by the Authority in consultation with the University.

APPENDIX TO THE MEMORANDUM OF REGULATION

Proposed University timeline of independent quality assurance – subject to advice from quality review agency

	<i>DATE</i>	<i>ACTION: information available to GRA</i>
A	July 2018	UoG preparation for independent external review commences
B	August 2018	UoG provides GRA with interim assurances of quality
C	December 2018	Summary of Academic Quality and Standards Committee (AQSC) minutes
D	December 2018	Summary of external examiners reports
E	January 2019	Summary Academic Board Annual Report
F	January 2019	Summary of AQSC minutes
G	July 2019	Summary of AQSC minutes
H	September 2019	Summary of External Examiner reports and
I	September 2019	Draft quality manual
J	December 2019	Summary Academic Board Annual Report
K	December 2019	Summary of AQSC minutes
L	Spring 2020	UoG and GRA agree External Review Terms of Reference
M	Autumn 2020	UoG commissions External Institutional Review
N	Early Spring 2021	UoG to undergo mock institutional visit
O	Late Spring 2021	UoG to undergo desk based analysis by external reviewer
P	Spring 2022	UoG to undergo on-site review by external reviewer

Dated 31st May, 2018.

G H LICUDI Q.C.
Minister with responsibility for Education
in respect of the University of Gibraltar.

