
STATUTORY INSTRUMENTS

2019 No. 589

The Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019

PART 3

Amendments of Financial Services and Markets Act 2000 (Gibraltar) Order 2001

Exercise of deemed passport rights by Gibraltar-based firms

5.—(1) Article 2 (exercise of deemed passport rights by Gibraltar-based firms) is amended as follows.

(2) For paragraph (1A) ^{M1} substitute—

“(1A) A Gibraltar-based firm which—

- (a) is an investment firm, as defined in Article 4(1)(1) of the markets in financial instruments directive ^{M2}, and
- (b) is authorised under the law of Gibraltar which implemented Article 5 of that directive,

is to be treated as having an entitlement, corresponding to the EEA right deriving from the markets in financial instruments directive that such a firm would have had before [^{F1}IP completion day], to establish a branch or provide services in the United Kingdom.”

(3) For paragraph (2) ^{M3} substitute—

“(2) A Gibraltar-based firm which—

- (a) is a credit institution as defined in Article 4(1)(1) of the capital requirements regulation ^{M4}, and
- (b) is authorised as such by the Gibraltar Financial Services Commission,

is to be treated as having an entitlement, corresponding to the EEA right deriving from the capital requirements directive that such a firm would have had before [^{F2}IP completion day], to establish a branch or provide services in the United Kingdom.

(2A) A Gibraltar-based firm which—

- (a) is a financial institution as defined in Article 4(1)(26) of the capital requirements regulation ^{M5}, and
- (b) is a subsidiary of the kind mentioned in the first subparagraph of Article 34(1) of the capital requirements directive ^{M6} which fulfils the conditions of that subparagraph, reading references in that subparagraph to a Member State as including the United Kingdom and Gibraltar,

is to be treated as having an entitlement, corresponding to the EEA right deriving from the capital requirements directive that such a firm would have had before [^{F2}IP completion day], to establish a branch or provide services in the United Kingdom.”

(4) For paragraph (3) substitute—

“(3) A Gibraltar-based firm which—

- (a) is an undertaking pursuing the activity of direct insurance (within the meaning of Article 2 of the Solvency 2 Directive ^{M7}, reading references in that Article to a member State as including the United Kingdom and Gibraltar), and
- (b) is authorised by the Gibraltar Financial Services Commission to carry on one or more activities which would have required authorisation in accordance with Article 14 of the Solvency 2 Directive if the United Kingdom and Gibraltar were a member State,

is to be treated as having an entitlement, corresponding to the EEA right deriving from the Solvency 2 Directive that such a firm would have had before [^{F3}IP completion day], to establish a branch or provide services in the United Kingdom.”.

(5) For paragraph (3A) to (3E) ^{M8} substitute—

“(3A) A Gibraltar-based firm which—

- (a) is an insurance intermediary as defined in Article 2(1)(3) of the insurance distribution directive ^{M9}, an ancillary insurance intermediary as defined in Article 2(1)(4) of that directive or a reinsurance intermediary as defined in Article 2(1)(5) of that directive, and
- (b) is registered as such with the Gibraltar Financial Services Commission,

is to be treated as having an entitlement, corresponding to the EEA right deriving from the insurance distribution directive that such a firm would have had before [^{F4}IP completion day], to establish a branch or provide services in the United Kingdom.

(3B) A Gibraltar-based firm which—

- (a) is an undertaking pursuing the activity of reinsurance (within the meaning of Article 2 of the Solvency 2 Directive, reading references in that Article to a Member State as including the United Kingdom and Gibraltar), and
- (b) is authorised as such by the Gibraltar Financial Services Commission,

is to be treated as having an entitlement, corresponding to the EEA right deriving from the Solvency 2 Directive that such a firm would have had before [^{F4}IP completion day], to establish a branch or provide services in the United Kingdom.

(3C) A Gibraltar-based firm which—

- (a) is a management company, as defined in Article 2(1)(b) of the UCITS directive, and
- (b) is authorised as such by the Gibraltar Financial Services Commission under the law of Gibraltar which implemented the UCITS directive,

is to be treated as having an entitlement, corresponding to the EEA right deriving from the UCITS directive that such a firm would have had before [^{F4}IP completion day], to establish a branch or provide services in the United Kingdom.

(3D) A firm falling within paragraph (a) of the definition of “Gibraltar-based firm” in Article 1(2) is to be treated as having an entitlement, corresponding to the EEA right deriving from the alternative investment fund managers directive that such a firm would have had before [^{F4}IP completion day], to establish a branch or provide services in the United Kingdom.

(3E) A Gibraltar-based firm which is a mortgage intermediary admitted by the Gibraltar Financial Services Commission—

- (a) to carry out all or part of the credit intermediation activities set out in Article 4(5) of the mortgages directive ^{M10}, or
- (b) to provide advisory services (as defined in Article 4(21) of that directive),

is to be treated as having an entitlement, corresponding to the EEA right deriving from the mortgages directive that such a firm would have had before [^{F4}IP completion day], to establish a branch or provide services in the United Kingdom.

(3F) For the purposes of paragraph (3E), points (5) and (21) of Article 4 of the mortgages directive are to be read as if—

- (a) for the purposes of the definition of “consumer” in point (1) of that Article, the reference in Article 3(a) of Directive 2008/48/EC^{M11} to transactions covered by that directive were a reference to transactions of the kind that would immediately before [^{F4}IP completion day] have been covered by that directive, and
- (b) for the purposes of the definition of “creditor” in point (2) of Article 4 of the mortgages directive and the definition of “credit agreement” in point (3) of that Article, references in Article 3 of the mortgages directive to a Member State included the United Kingdom and Gibraltar.

(3G) In Schedule 3 and in the Passport Rights Regulations—

- (a) references to an EEA firm within paragraph 5(a) of that Schedule are to be treated as references to a Gibraltar-based firm within paragraph (1A);
- (b) references to an EEA firm within paragraph 5(b) of that Schedule are to be treated as references to a Gibraltar-based firm within paragraph (2);
- (c) references to an EEA firm within paragraph 5(c) of that Schedule are to be treated as references to a Gibraltar-based firm within paragraph (2A);
- (d) references to an EEA firm within paragraph 5(d) of that Schedule are to be treated as references to a Gibraltar-based firm within paragraph (3);
- (e) references to an EEA firm within paragraph 5(e) of that Schedule are to be treated as references to a Gibraltar-based firm within paragraph (3A);
- (f) references to an EEA firm within paragraph 5(da) of that Schedule are to be treated as references to a Gibraltar-based firm within paragraph (3B);
- (g) references to an EEA firm within paragraph 5(f) of that Schedule are to be treated as references to a Gibraltar-based firm within paragraph (3C);
- (h) references to an EEA firm within paragraph 5(h) of that Schedule or to an “EEA AIFM” are to be treated as references to a Gibraltar-based firm within paragraph (3D);
- (i) references to an EEA firm within paragraph 5(i) of that Schedule are to be treated as references to a Gibraltar-based firm within paragraph (3E).”

(6) Omit paragraph (4) ^{M12}.

(7) In paragraph (5) ^{M13}—

- (a) after “as is mentioned in paragraph (1A), (2),” insert “ (2A), ”;
- (b) after “2001,” insert “ and ”;
- (c) omit “and the Alternative Investment Fund Managers Regulations 2013”;
- (d) in paragraph (b), after “(2),” insert “ (2A), ”;
- (e) in paragraph (c), for “those rights” substitute “ the rights that would before [^{F5}IP completion day] have derived from that directive ”;
- (f) at the end of sub-paragraph (c), omit “and”;
- (g) after sub-paragraph (d) insert—

“(e) “the home state regulator” are to be treated as references to the Gibraltar Financial Services Commission; and

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(f) “an EEA firm” are to be treated as references to a Gibraltar-based firm referred to in paragraph (1A), (2), (2A), (3), (3A), (3B), (3C), (3D) or (3E).”.

(8) After paragraph (5) insert—

“(5A) Paragraph 13 of Schedule 3 is to be read as if—

(a) in sub-paragraph (1)(b)(i), for “in accordance with” there were substituted “ in the manner set out in ”;

(b) in sub-paragraph (4)—

(i) in the definition of “the appropriate UK regulator” for “is” there were substituted “ was immediately before [F⁶IP completion day]”;

(ii) in the definition of “host state rules”—

(aa) in paragraph (a) for “in accordance with” there were substituted “ in implementation of ”, and

(bb) in paragraph (b) for “are” there were substituted “ deal with matters that immediately before [F⁶IP completion day] were ”.

(5B) In paragraph 14 of Schedule 3, sub-paragraph (4) is to be read as if—

(a) in the definition of “the appropriate UK regulator” for “is” there were substituted “ was immediately before [F⁶IP completion day]”;

(b) in the definition of “host state rules”—

(i) in paragraph (a) for “in accordance with” there were substituted “ in implementation of ”;

(ii) in paragraph (b) for “are” there were substituted “ deal with matters that immediately before [F⁶IP completion day] were ”.

(5C) Paragraph 15(6) of Schedule 3 is to be read as if after “authorisation granted to the firm under” there were inserted “ the law of Gibraltar which implemented ”.

(5D) Paragraph 15A of Schedule 3 is to be read as if—

(a) in sub-paragraph (3)(c), for “required under Article 20(1)” there were substituted “ set out in Article 20(1)(a) and (b) ”;

(b) in sub-paragraph (4), the words “and the Commission” were omitted;

(c) in sub-paragraph (7)—

(i) in the definition of “the appropriate UK regulator” for “is” there were substituted “ was immediately before [F⁶IP completion day]”;

(ii) in the definition of “specified”, in paragraph (b), for “any directly applicable Community regulation or decision made under the UCITS directive” there were substituted “ any EU regulation or decision made under the UCITS directive which is retained direct EU legislation ”;

(iii) in the definition of “UCITS home state rules” for “falling” substitute “ which immediately before [F⁶IP completion day] fell ”.

(5E) Paragraph 15B(2)(b) of Schedule 3 is to be read as if the words “and the Commission” were omitted.

(5F) Paragraph 15C(2) of Schedule 3 is to be read as if—

(a) in paragraph (a), for “in accordance with” there were substituted “ in implementation of ”, and

- (b) in paragraph (b) for “are” there were substituted “ deal with matters that immediately before [F⁶IP completion day] were ”.”.
- (9) In paragraph (7), after “(2),” insert “ (2A), ”.
- (10) For paragraph (8) ^{M14} substitute—
- “(8) For the purposes of paragraph (7)—
- (a) section 194 is to be read as if references to any directly applicable EU regulation or decision made under any EU legislation were a reference to any retained direct EU legislation that was originally made under that EU legislation;
- (b) section 194A is to be read as if—
- (i) in subsection (3)—
- (aa) in paragraph (a), for “implements” there were substituted “ implemented ”;
- (bb) in paragraph (b), for the words from “directly applicable” to the end there were substituted “ EU regulation originally made under that directive which is retained direct EU legislation, or any regulations made by the Treasury, or technical standards made by the FCA, under a power substituted for the power of an EU institution to make EU tertiary legislation under that directive or that regulation ”;
- (ii) in subsection (7), “ , ESMA and the Commission” were omitted, and
- (iii) subsection (8) were omitted;
- (c) section 194B is to be read as if—
- (i) in subsection (2), the reference to the capital requirements directive were a reference to legislation which implemented the capital requirements directive,
- (ii) subsection (4) were omitted, and
- (iii) in subsection (8), the reference to “the Commission, EBA and regulators in affected Member States” were a reference to the Gibraltar Financial Services Commission;
- (d) section 194C(6) is to be read as if the reference to the Commission were omitted;
- (e) section 194D(4) is to be read as if “the Commission and EIOPA” were omitted;
- (f) section 195A is to be read as if subsections (11) and (11A) were omitted;
- (g) section 195B is to be read as if subsections (10) and (11) were omitted;
- (h) section 195C is to be read as if—
- (i) subsection (10) were omitted, and
- (ii) in subsection (11), “the Commission and EIOPA” were omitted;
- (i) section 199 is to be read as if—
- (i) in subsection (2)(a)(ii), for “directly applicable Community regulation or decision” there were substituted “ retained direct EU legislation originally ”,
- (ii) in subsection (7), for paragraphs (a) and (b) there were substituted “ inform the Gibraltar Financial Services Commission ”, and
- (iii) subsections (8), (10) and (11) were omitted.”.

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Textual Amendments

- F1** Words in reg. 5(2) substituted (30.12.2020) by [The Financial Services and Economic and Monetary Policy \(Consequential Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1301\)](#), regs. 1, 3, [Sch. para. 32\(b\)\(i\)](#)
- F2** Words in reg. 5(3) substituted (30.12.2020) by [The Financial Services and Economic and Monetary Policy \(Consequential Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1301\)](#), regs. 1, 3, [Sch. para. 32\(b\)\(ii\)](#)
- F3** Words in reg. 5(4) substituted (30.12.2020) by [The Financial Services and Economic and Monetary Policy \(Consequential Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1301\)](#), regs. 1, 3, [Sch. para. 32\(b\)\(iii\)](#)
- F4** Words in reg. 5(5) substituted (30.12.2020) by [The Financial Services and Economic and Monetary Policy \(Consequential Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1301\)](#), regs. 1, 3, [Sch. para. 32\(b\)\(iv\)](#)
- F5** Words in reg. 5(7)(e) substituted (30.12.2020) by [The Financial Services and Economic and Monetary Policy \(Consequential Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1301\)](#), regs. 1, 3, [Sch. para. 32\(b\)\(v\)](#)
- F6** Words in reg. 5(8) substituted (30.12.2020) by [The Financial Services and Economic and Monetary Policy \(Consequential Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1301\)](#), regs. 1, 3, [Sch. para. 32\(b\)\(vi\)](#)

Modifications etc. (not altering text)

- C1** Pts. 2, 3 applied (31.12.2020) by [The Taxes \(Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/689\)](#), regs. 1, [38](#) (with regs. 39-41); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

Commencement Information

- I1** Reg. 5 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

Marginal Citations

- M1** Article 2(1A) was inserted by [S.I. 2006/1805](#) and amended by [S.I. 2007/2932](#).
- M2** OJ L 173, 12.6.2014, p. 349-496. See the definition in section 425(1) of the Financial Services and Markets Act 2000.
- M3** Article 2(2) was amended by [S.I. 2006/1806](#) and 2013/3115.
- M4** “Capital requirements regulation” is defined in section 417(1) of the Financial Services and Markets Act 2000.
- M5** The definition of “financial institution” is amended by [S.I. 2018/1401](#).
- M6** OJ L 176, 27.6.2013 p. 1-155. See the definition in section 417(1) of the Financial Services and Markets Act 2000.
- M7** OJ L 335, 17.12.2009, p.1-155. See the definition in section 425(1) of the Financial Services and Markets Act 2000.
- M8** Article 2(3A) was inserted by [S.I. 2005/1](#) and amended by [S.I. 2018/546](#); Article 2(3B) was inserted by [S.I. 2007/3254](#); Article 3(3C) was inserted by [S.I. 2012/2017](#); Article 2(3D) was inserted by [S.I. 2014/1292](#); and Article 2(3E) was inserted by [S.I. 2015/910](#).
- M9** OJ L 26, 2.2.2016, p.19-59. See the definition in section 425(1) of the Financial Services and Markets Act 2000.
- M10** OJ L 60, 28.2.2014, p.34-85. See the definition in section 425(1) of the Financial Services and Markets Act 2000.
- M11** OJ L 133, 22.5.2008, p.66-92.
- M12** Article 2(4) was amended by [S.I. 2005/1](#), [S.I. 2006/1805](#), [S.I. 2007/3254](#), [S.I. 2012/2017](#), [S.I. 2014/1292](#), and [S.I. 2015/910](#).

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M13 Article 2(5) was amended by [S.I. 2012/2017](#) and 2014/1292. There are other amendments but none is relevant.

M14 Article 2(8) was substituted by [S.I. 2013/472](#) and amended by [S.I. 2015/910](#).

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Changes and effects yet to be applied to :

- Regulations revoked by [2023 c. 29 Sch. 1 Pt. 2](#)