

Changes to legislation: Financial Services and Markets Act 2000, PART 10 is up to date with all changes known to be in force on or before 02 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULES

[^{F1}SCHEDULE 2A

GIBRALTAR-BASED PERSONS CARRYING ON ACTIVITIES IN THE UK

Textual Amendments

- F1** Sch. 2A inserted (1.9.2023 for specified purposes) by [Financial Services Act 2021 \(c. 22\), s. 49\(5\), Sch. 6](#) (as amended (1.1.2024) by [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendment\) Regulations 2023 \(S.I. 2023/1424\), reg. 1\(2\), Sch. para. 100\(3\)\(b\)](#)); S.I. 2023/934, reg. 2(a)

PART 10

TRANSITION ON CANCELLATION OF UK OR GIBRALTAR PERMISSION

Transition on cancellation of Schedule 2A permission

- 64 (1) Sub-paragraphs (2), (4) and (5) apply where—
- (a) a person's Schedule 2A permission is cancelled under Part 5 of this Schedule, or
 - (b) a person's Schedule 2A permission is varied under Part 4 of this Schedule so as to remove permission to carry on an activity (including by adding or varying a limitation).
- (2) The person is to be treated as continuing to have the Schedule 2A permission, or the permission to carry on the activity, but—
- (a) only so far as is necessary for one or more of the purposes described in sub-paragraph (3), and
 - (b) subject to the time limit in paragraph 68.
- (3) The purposes are—
- (a) for the performance of a protected contract;
 - (b) to reduce the financial risk of a party to a protected contract or a third party affected by the performance of a protected contract;
 - (c) to transfer the property, rights or liabilities under a protected contract to a person authorised to carry on a regulated activity by virtue of section 31(1)(a);
 - (d) to comply with a requirement imposed by or under an enactment.
- (4) A UK regulator may exercise the powers under paragraph 49(1) (UK regulator's initiative: imposing, varying and cancelling requirements) in relation to the person if it appears to the UK regulator that it is desirable to do so in order to advance—
- (a) in the case of the FCA, one or more of its operational objectives, or

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- (b) in the case of the PRA, one of its objectives.
- (5) For the purposes of section 33 (withdrawal of authorisation) a person's Schedule 2A permission is to be treated as being cancelled when the person ceases to be treated as having a Schedule 2A permission by virtue of this paragraph.
- (6) In this paragraph—
 - “enactment” has the same meaning as in paragraph 60;
 - “protected contract” means—
 - (a) an existing contract, or
 - (b) a contract specified or described in a direction by the appropriate UK regulator under paragraph 67(1).
- (7) In sub-paragraph (6), “existing contract”, in relation to a person referred to in sub-paragraph (1), means a contract entered into before the person's permission is cancelled or varied as described in that sub-paragraph, but—
 - (a) does not include a contract specified or described in a direction under paragraph 67(2), and
 - (b) except as otherwise provided in such a direction, does not include—
 - (i) a variation of a contract agreed on or after that day, or
 - (ii) a contract renewed on or after that day.
- (8) In this paragraph, references to the performance of a protected contract include the performance of an obligation under the contract which is contingent or conditional.

Transition on cancellation of Gibraltar permission

- 65 (1) Sub-paragraphs (2) and (4) apply where the Gibraltar regulator—
- (a) cancels a Gibraltar-based person's permission to carry on in Gibraltar an activity in relation to which the person has a Schedule 2A permission, or
 - (b) varies such a permission so as to remove permission to carry on such an activity (including by adding or varying a restriction).
- (2) For the purposes of this Schedule, the person is to be treated as continuing to have the permission from the Gibraltar regulator but—
- (a) only so far as is necessary for one or more of the purposes described in sub-paragraph (3), and
 - (b) subject to the time limit in paragraph 68.
- (3) The purposes are—
- (a) for the performance of a protected contract;
 - (b) to reduce the financial risk of a party to a protected contract or a third party affected by the performance of a protected contract;
 - (c) to transfer the property, rights or liabilities under a protected contract to a person authorised to carry on a regulated activity by virtue of section 31(1) (a);
 - (d) to comply with a requirement imposed by or under an enactment.
- (4) A UK regulator may exercise the powers under paragraph 49(1) (UK regulator's initiative: imposing, varying and cancelling requirements) in relation to the person if it appears to the UK regulator that it is desirable to do so in order to advance—
- (a) in the case of the FCA, one or more of its operational objectives, or

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(b) in the case of the PRA, one of its objectives.

(5) In this paragraph—

“enactment” has the same meaning as in paragraph 60;

“protected contract” means—

- (a) an existing contract, or
- (b) a contract specified or described in a direction by the appropriate UK regulator under paragraph 67(1).

(6) In sub-paragraph (5), “existing contract”, in relation to a person referred to in sub-paragraph (1), means a contract entered into before the person's permission is cancelled or varied as described in that sub-paragraph, but—

- (a) does not include a contract specified or described in a direction under paragraph 67(2), and
- (b) except as otherwise provided in such a direction, does not include—
 - (i) a variation of a contract agreed on or after that day, or
 - (ii) a contract renewed on or after that day.

(7) In this paragraph, references to the performance of a protected contract include the performance of an obligation under the contract which is contingent or conditional.

The appropriate UK regulator

- 66 (1) In this Part of this Schedule, “the appropriate UK regulator” means—
- (a) the PRA, in a case in which the Gibraltar-based person is a PRA-authorized person but not a paragraph 37(1) person, or
 - (b) the FCA, in any other case.
- (2) In this paragraph, “a paragraph 37(1) person” means a person who is treated as having a Schedule 2A permission by virtue of paragraph 64 following the cancellation of that permission by the FCA under paragraph 37(1).

Directions about protected contracts

- 67 (1) A UK regulator may direct that a contract specified or described in the direction is a protected contract for the purposes of paragraph 64 or 65 (or both).
- (2) A UK regulator may, by giving a direction, modify the definition of “existing contract” for the purposes of paragraph 64 or 65 (or both) in the ways provided for in the definitions of that term in those paragraphs.
- (3) A UK regulator that gives a direction under this paragraph may, by a further direction, vary or revoke the direction.
- (4) A UK regulator may give different directions under this paragraph in connection with—
- (a) different activities,
 - (b) different contracts or descriptions of contract, or
 - (c) different Gibraltar-based persons or descriptions of Gibraltar-based person.
- (5) After giving a direction under this paragraph, a UK regulator must—
- (a) publish the direction in the way appearing to the UK regulator to be best calculated to bring it to the attention of persons likely to be affected by it, and

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- (b) give a copy of the direction to the Treasury and the other UK regulator without delay.

End of transition

- 68 (1) A Gibraltar-based person ceases to be treated as having a permission by virtue of paragraph 64 or 65—
- (a) when an event listed in sub-paragraph (2) first occurs, or
 - (b) if the appropriate UK regulator specifies an earlier date, on that date.
- (2) Those events are—
- (a) the person ceases to carry on the regulated activity in the United Kingdom;
 - (b) the person is given permission under Part 4A of this Act in respect of the regulated activity;
 - (c) the regulated activity ceases to be an approved activity;
 - (d) the person obtains (as appropriate)—
 - (i) a new Schedule 2A permission to carry on the activity referred to in paragraph 64(1), or
 - (ii) a new permission from the Gibraltar regulator to carry on the activity referred to in paragraph 65(1).
- (3) If the appropriate UK regulator specifies a date for the purposes of sub-paragraph (1) (b), it may vary the date but only by specifying a later date.
- (4) In sub-paragraph (2), references to “the regulated activity” are references (as appropriate) to—
- (a) the regulated activity in respect of which the Gibraltar-based person is treated as having a Schedule 2A permission by virtue of paragraph 64, or
 - (b) the regulated activity corresponding to the activity in respect of which the Gibraltar-based person is treated as having permission from the Gibraltar regulator by virtue of paragraph 65.
- (5) For the purposes of sub-paragraph (2)(c), a regulated activity does not cease to be an approved activity while it is treated as approved in relation to the Gibraltar-based person under Part 9 of this Schedule (with or without the restrictions under that Part).

End of transition: procedure

- 69 (1) If a UK regulator proposes to specify or vary a date in relation to a person under paragraph 68(1)(b) or (3), it must give the person a warning notice.
- (2) If a UK regulator decides to specify or vary a date in relation to a person under paragraph 68(1)(b) or (3), it must give the person a decision notice.

Right to refer matters to the Tribunal

- 70 If a UK regulator gives a Gibraltar-based person a decision notice under paragraph 69, the person may refer the matter to the Tribunal.]

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act applied (with modifications) by [S.I. 2023/1347 reg. 8](#)
- Act power to apply conferred (temp. until 15.5.2039) by [2014 c. 21 s. 79\(4\)](#)
- Act power to apply conferred (temp. until 15.5.2039) by [2014 c. 21 s. 81\(10\)](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 17 Ch. 3B inserted by [2023 c. 29 s. 64\(3\)](#)
- Pt. 20C inserted by [2016 c. 14 s. 30\(3\)](#)
- s. 31(1)(aa) inserted by [2021 c. 22 s. 22\(2\)](#)
- s. 32A inserted by [2021 c. 22 s. 22\(3\)](#)
- s. 32A power to apply (with modifications) conferred by [2021 c. 22 s. 23\(10\)](#)
- s. 36A and cross-heading inserted by [2021 c. 22 s. 22\(4\)](#)
- s. 71J and cross-heading inserted by [2021 c. 22 Sch. 8 para. 4](#)
- s. 86(9A) inserted by [S.I. 2019/707 reg. 8\(9\)](#) (This amendment not applied to legislation.gov.uk. Reg. 8(6)-(10) omitted (6.9.2019) by virtue of S.I. 2019/1234, regs. 1(2), 13(c))
- s. 87A(11) inserted by [S.I. 2019/707 reg. 10\(5\)](#) (This amendment not applied to legislation.gov.uk. Reg. 10(4)(5) omitted (6.9.2019) by virtue of S.I. 2019/1234, regs. 1(2), 15(b))
- s. 124(10)(c)(i) word omitted by [S.I. 2019/310 reg. 5\(11\)\(b\)](#) (This amendment not applied to legislation.gov.uk. Reg. 5(11)(b) omitted immediately before IP completion day by virtue of S.I. 2020/1385, regs. 1(4), 51(2)(e))
- s. 129(7)(a) word inserted by [S.I. 2019/310 reg. 5\(12\)\(a\)\(i\)](#) (This amendment not applied to legislation.gov.uk. Reg. 5(12)(a)(b) omitted immediately before IP completion day by virtue of S.I. 2020/1385, regs. 1(4), 51(2)(f))
- s. 129(7)(c) omitted and word by [S.I. 2019/310 reg. 5\(12\)\(a\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. Reg. 5(12)(a)(b) omitted immediately before IP completion day by virtue of S.I. 2020/1385, regs. 1(4), 51(2)(f))
- s. 214(5A) inserted by [2021 c. 22 Sch. 8 para. 8](#)
- s. 261E(A1) inserted by [2023 c. 29 s. 64\(2\)\(a\)](#)
- s. 367A inserted by [2021 c. 22 Sch. 8 para. 10](#)
- s. 395(13)(h)(i) inserted by [2021 c. 22 Sch. 8 para. 12\(2\)\(c\)](#)
- s. 395(13)(bc)-(be) word inserted by [2021 c. 22 Sch. 8 para. 12\(2\)\(b\)](#)
- s. 395(14) inserted by [2021 c. 22 Sch. 8 para. 12\(3\)](#)
- s. 427A(3) words substituted by [2002 c. 40 Sch. 17 para. 59](#) (This amendment not applied to legislation.gov.uk. The Financial Services and Markets Act 2000 does not contain a section 427A.)
- Sch. 1ZA para. 32(c) and word inserted by [2021 c. 22 Sch. 8 para. 18](#)
- Sch. 2A para. 19(2)(b)(iia) inserted by [2023 c. 29 Sch. 10 para. 19\(a\)](#)
- Sch. 2A2B power to apply (with modifications) conferred by [2021 c. 22 s. 23\(10\)](#)
- Sch. 2A power to apply (with modifications) conferred by [2021 c. 22 s. 23\(10\)](#)
- Sch. 2B inserted by [2021 c. 22 Sch. 7](#)
- Sch. 2B power to apply (with modifications) conferred by [2021 c. 22 s. 23\(10\)](#)
- Sch. 11A para. 5(3) inserted by [S.I. 2019/707 reg. 38\(5\)\(b\)](#) (This amendment not applied to legislation.gov.uk. Reg. 38(2)-(5)(7)(8) omitted (6.9.2019) by virtue of S.I. 2019/1234, regs. 1(2), 20)

- Sch. 17A para. 12 words substituted by [S.I. 2019/662 reg. 13\(1\)](#) (This amendment not applied to [legislation.gov.uk](#). Reg. 13(1) substituted (25.6.2020) by S.I. 2020/646, regs. 1(2)(c), 11(3))