# Financial Services Act 2021

**2021 CHAPTER 22**

*Access to financial services markets*

**22 Regulated activities and Gibraltar**

(1) Part 3 of the Financial Services and Markets Act 2000 (authorisation and exemption) is amended in accordance with subsections (2) to (4).

(2) In section 31(1) (authorised persons), after paragraph (a) insert—

"(aa) a Gibraltar-based person who has a Schedule 2A permission to carry on one or more regulated activities;".

(3) After section 32 insert—

"**32A Gibraltar-based persons**

(1) The Treasury must, for each reporting period, prepare a report about the operation of Schedule 2A during the period.

(2) The report must, among other things, consider whether the conditions in paragraphs 7, 8 and 9 of Schedule 2A continue to be satisfied in connection with each regulated activity which is an approved activity for the purposes of that Schedule.

(3) The Treasury must consult the FCA and the PRA during the preparation of the report.

(4) The Treasury must lay a copy of the report before Parliament as soon as reasonably practicable after the end of the reporting period.

(5) The reporting periods are—

(a) the period of two years beginning with the day on which Schedule 2A comes fully into force, and

(b) each subsequent period of two years."

(4) After section 36 insert—

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*"UK-based persons carrying on activities in Gibraltar*

**36A UK-based persons carrying on activities in Gibraltar**

Schedule 2B makes provision about the carrying on of activities corresponding to regulated activities in Gibraltar by UK-based persons."

(5) Schedule 6 inserts Schedule 2A to the Financial Services and Markets Act 2000 (Gibraltar-based persons carrying on activities in the UK).

(6) Schedule 7 inserts Schedule 2B to the Financial Services and Markets Act 2000 (UK-based persons carrying on activities in Gibraltar).

(7) Schedule 8 contains minor and consequential amendments.

(8) The Treasury may by regulations—

(a) amend Part 7 of the Financial Services and Markets Act 2000 (control of business transfers) to make provision about the operation of that Part in relation to cases involving a Gibraltar-based person;

(b) amend Part 18A of the Financial Services and Markets Act 2000 (suspension and removal of financial instruments from trading) to make provision about the operation of that Part in relation to cases involving a Gibraltar-based person;

(c) make provision relating to a Gibraltar-based person equivalent to provision in an enactment in force immediately before IP completion day relating to an EEA firm of a kind mentioned in Schedule 3 to the Financial Services and Markets Act 2000, with such modifications as the Treasury consider appropriate.

(9) The powers to make regulations under subsection (8) do not restrict the Treasury's power to make consequential provision under section 45.

(10) Section 45(3) to (5) apply in relation to regulations under subsection (8) as they apply to regulations under that section.

(11) In this section, "Gibraltar-based person" has the same meaning as in Schedule 2A to the Financial Services and Markets Act 2000 (inserted by Schedule 6 to this Act) (see paragraph 1 of that Schedule).

**Commencement Information**

**I1** S. 22(5) in force at 1.9.2023 for specified purposes by S.I. 2023/934, **reg. 2(a)**

**I2** S. 22(7) in force at 1.9.2023 by S.I. 2023/934, **reg. 2(b)**

**I3** S. 22(8)-(11) in force at 1.9.2023 by S.I. 2023/934, **reg. 2(c)**

PROSPECTIVE

**23 Power to make provision about Gibraltar**

(1) The Treasury may by regulations—

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(a) repeal or revoke relevant Gibraltar provision and make changes described in subsection (5),

(b) make provision with the same effect as relevant Gibraltar provision repealed or revoked under paragraph (a),

(c) amend relevant Gibraltar provision so as to restore any aspect of the effect the provision had immediately before IP completion day, and

(d) replace or supplement relevant Gibraltar provision with provision substantially similar to, or to a provision of, section 32A of, or Schedule 2A or 2B to, the Financial Services and Markets Act 2000 (inserted by section 22 of, and Schedules 6 and 7 to, this Act).

(2) In this section—

(a) "Gibraltar provision" means a provision or set of provisions in an enactment so far as it relates to—

(i) the carrying on of activities in the United Kingdom by persons based in Gibraltar,

(ii) the carrying on of activities in Gibraltar by persons based in the United Kingdom, or

(iii) interaction of any other kind between the United Kingdom and Gibraltar, whether relating to persons, activities, financial instruments, other property or other matters,

(b) Gibraltar provision is "relevant" if—

(i) it is a provision of, or applied or modified by, regulations listed in subsection (3),

(ii) it was inserted, amended or otherwise modified by regulations listed in subsection (4),

(iii) it is, or is the subject of, saving provision included in regulations listed in subsection (4), or

(iv) in the case of a set of provisions, it includes provision falling within sub-paragraph (ii) or (iii), and

(c) Gibraltar provision is also "relevant" if it was made by regulations under subsection (1)(b), (c) or (d) or, in the case of a set of provisions, it includes provision made by such regulations.

(3) The regulations referred to in subsection (2)(b)(i) are the following, as amended from time to time—

(a) the Electronic Money Regulations 2011 (S.I. 2011/99);

(b) the Payment Services Regulations 2017 (S.I. 2017/752);

(c) the Data Reporting Services Regulations 2017 (S.I. 2017/699).

(4) The regulations referred to in subsection (2)(b)(ii) and (iii) are the following, as amended from time to time—

(a) regulation 3 of the Building Societies Legislation (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1187);

(b) Parts 2 and 3 of the Credit Transfers and Direct Debits in Euro (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1199);

(c) Part 2 of the Greenhouse Gas Emissions Trading Scheme (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/107);

(d) Chapters 1 and 2 of Part 2 of the Alternative Investment Fund Managers (Amendment etc) (EU Exit) Regulations 2019 (S.I. 2019/328);

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(e) the Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/680).

(5) The changes referred to in subsection (1)(a) are changes that the Treasury consider appropriate to secure that, after the repeal or revocation of the relevant Gibraltar provision, the same provision is made in connection with Gibraltar as is made in connection with most or all other countries or territories outside the United Kingdom.

(6) The Treasury may not make regulations under subsection (1)(b), (c) or (d) unless they are satisfied that doing so is compatible with each of the following objectives—

(a) to protect and enhance the soundness, stability and resilience of the UK financial system;

(b) to protect and enhance public confidence in the UK financial system;

(c) to prevent the use of the UK financial system for a purpose connected with financial crime;

(d) to ensure that, in the United Kingdom, financial markets and significant markets for financial services function well;

(e) to protect consumers;

(f) to protect the operation of the Financial Services Compensation Scheme;

(g) to protect public funds;

(h) to maintain and improve relations between the United Kingdom and other countries and territories with significant financial markets or significant markets for financial services.

(7) Before making regulations under subsection (1)(d), the Treasury must consult—

(a) the government of Gibraltar,

(b) the Financial Conduct Authority, and

(c) the Prudential Regulation Authority.

(8) The powers under subsection (1)(b), (c) and (d) include—

(a) power to make such modifications as the Treasury consider appropriate having regard to changes in the law of any part of the United Kingdom since the relevant regulations listed in subsection (3) or (4) were made, and

(b) power to restate relevant Gibraltar provision in a clearer or more accessible way.

(9) Where provision saving or modifying a provision is repealed or revoked under subsection (1)(a), the power under subsection (1)(b) includes power to make provision with the same effect as the provision that was the subject of the saving or modification, read with the saving or modification.

(10) The power under subsection (1)(d) includes power to make provision applying provisions of section 32A of, or Schedule 2A or 2B to, the Financial Services and Markets Act 2000, with or without modifications.

(11) Regulations under this section may—

(a) make different provision for different purposes;

(b) confer functions on a person, including functions involving the exercise of a discretion;

(c) amend, revoke, repeal or otherwise modify an enactment;

(d) make consequential, incidental, supplementary, transitional, transitory or saving provision.

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(12) Regulations under this section are subject to the affirmative procedure.

(13) For the purposes of this section, provision that is saved or modified by regulations listed in subsection (3) or (4) is Gibraltar provision if, when read with the saving or modification, it relates to a matter described in subsection (2)(a).

(14) In this section—

"consumers" has the meaning given in section 1G of the Financial Services and Markets Act 2000;

"financial crime" has the meaning given in section 1H of the Financial Services and Markets Act 2000;

"public funds" means the Consolidated Fund and any other account or source of money which cannot be drawn or spent other than by, or with the authority of, the Treasury;

"the UK financial system" has the same meaning as in the Financial Services and Markets Act 2000 (see section 1I of that Act).

## 24 Collective investment schemes authorised in approved countries

(1) In Part 17 of the Financial Services and Markets Act 2000 (collective investment schemes), in section 237(3)—

(a) in the definition of "a recognised scheme", after "means" insert " a section 271A scheme or ", and

(b) after that definition insert—

""a section 271A scheme" means a scheme recognised under section 271A (and see also section 271S);".

(2) In Schedule 9—

(a) Part 1 inserts sections 271A to 271S (collective investment schemes authorised in approved countries or territories) in Chapter 5 of Part 17 of the Financial Services and Markets Act 2000 (recognised overseas schemes), and

(b) Part 2 contains minor and consequential amendments.

**Commencement Information**

**I4** S. 24 in force at 23.2.2022 by S.I. 2022/163, **reg. 2(a)**

## 25 Individually recognised overseas collective investment schemes

(1) The Financial Services and Markets Act 2000 is amended as follows.

(2) Chapter 5 of Part 17 (recognised overseas schemes) is amended in accordance with subsections (3) to (5).

(3) In section 272 (individually recognised overseas schemes)—

(a) in subsection (1)—

(i) in paragraph (a) omit the "and" at the end,

(ii) before paragraph (d) insert—

"(ca) does not have the benefit of section 271A, and", and

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(iii) in paragraph (d), for "the following provisions of this section" substitute " subsections (2) to (15) ",

(b) after that subsection insert—

"(1A) For the purposes of subsection (1)(ca), a collective investment scheme has the benefit of section 271A if—

(a) it is authorised under the law of a country or territory which is for the time being approved by regulations under section 271A, and

(b) it falls within a description of schemes specified in the regulations.", and

(c) in subsection (5)(b) omit ", or could be,".

(4) In section 277 (requirement to notify the FCA of proposed alteration to recognised scheme)—

(a) in subsection (1), at the end insert " which, if made, would be a material alteration ",

(b) in subsection (3) omit "At least one month",

(c) after that subsection insert—

"(3A) A notice under subsection (3) must be given—

(a) at least one month before the proposed replacement, or

(b) if that is not reasonably practicable, as soon as is reasonably practicable in the period of one month before the proposed replacement.

(3B) The operator of such a scheme must give written notice to the FCA, as soon as reasonably practicable, of any change to—

(a) the name or address of the operator of the scheme,

(b) the name or address of any trustee or depositary of the scheme,

(c) the name or address of any representative of the operator in the United Kingdom, and

(d) the address of the place in the United Kingdom for service of notices, or other documents, required or authorised to be served on the operator under this Act.", and

(d) after subsection (5) insert—

"(6) The FCA may make rules specifying when a proposed alteration is a material alteration for the purposes of subsection (1)."

(5) After section 282 insert—

"**282A Obligations on operator where recognition is revoked or suspended**

(1) This section applies where—

(a) the FCA gives a decision notice under section 280(2) in relation to a scheme recognised under section 272, or

(b) a direction given by the FCA under section 281(2) in relation to such a scheme takes effect.

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(2) The operator of the scheme must notify such persons as the FCA may direct that the FCA has revoked an order under section 272 for recognition of the scheme or given a direction under section 281 in relation to the scheme (as applicable).

(3) A notification under subsection (2) that relates to a direction under section 281 must set out the terms of the direction.

(4) A notification under subsection (2) must—
- (a) contain such information as the FCA may direct, and
- (b) be made in such form and manner as the FCA may direct.

(5) Different directions may be given under subsection (2) or (4) in relation to—
- (a) different schemes or different descriptions of schemes;
- (b) different persons or descriptions of persons to whom a notification under subsection (2) must be given.

**282B Public censure**

(1) This section applies where the FCA considers that—
- (a) rules made under section 278 have been contravened,
- (b) the operator of a scheme recognised under section 272 has contravened section 277, 277A or 282A, or
- (c) the operator of a scheme recognised under section 272 has contravened a rule made, or a requirement imposed, under section 283.

(2) The FCA may publish a statement to that effect.

(3) Where the FCA proposes to publish a statement under subsection (2) in relation to a scheme or the operator of a scheme, it must give the operator a warning notice setting out the terms of the statement.

(4) If the FCA decides to publish the statement—
- (a) it must give the operator, without delay, a decision notice setting out the terms of the statement, and
- (b) the operator may refer the matter to the Tribunal.

(5) After a statement under subsection (2) is published, the FCA must send a copy of it to the operator and to any person to whom a copy of the decision notice was given under section 393(4).

**282C Recognition of parts of schemes under section 272**

(1) Section 272(1) applies in relation to a part of a collective investment scheme as it applies in relation to such a scheme.

(2) Accordingly, the following include a part of a scheme recognised under section 272—
- (a) the reference to a scheme recognised under section 272 in the definition of “recognised scheme” in section 237(3), and

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(b) other references to such a scheme (however expressed) in or in provision made under this Part of this Act (unless the contrary intention appears).

(3) Provisions of or made under this Part of this Act have effect in relation to parts of schemes recognised, or seeking recognition, under section 272 with appropriate modifications.

(4) The Treasury may by regulations—

(a) make provision about what are, or are not, appropriate modifications for the purposes of subsection (3);

(b) make provision so that a relevant enactment has effect in relation to parts of schemes recognised, or seeking recognition, under section 272 with such modifications as the Treasury consider appropriate;

(c) make provision so that a relevant enactment does not have effect in relation to such parts of schemes.

(5) Regulations under subsection (4)(b) or (c) may amend, repeal or revoke an enactment.

(6) In this section—

"enactment" has the same meaning as in section 271E;

"relevant enactment" means an enactment passed or made before the day on which subsection (1) comes into force that makes provision in relation to collective investment schemes recognised, or seeking recognition, under section 272."

(6) In section 237(3), in the definition of "a recognised scheme", at the end insert " (and see also section 282C) ".

(7) In section 392 (application of third party rights to notices)—

(a) in paragraph (a), after "280(1)," insert " 282B(3), ", and

(b) in paragraph (b), after "280(2)," insert " 282B(4), ".

(8) In section 429(2) (regulations subject to affirmative procedure), before "284A" insert " 282C, ".

**Commencement Information**

**I5** S. 25(1)-(3)(4)(b)-(d)(5)-(8) in force at 23.2.2022 by S.I. 2022/163, **reg. 2(b)**

**I6** S. 25(4)(a) in force at 1.1.2023 by S.I. 2022/163, **reg. 3**

## 26 Money market funds authorised in approved countries

(1) Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds is amended as follows.

(2) In Article 4 (authorisation of MMFs)—

(a) in paragraph 1, after point (a) insert—

"(aa) it is authorised and supervised in a country or territory approved by regulations under Article 4A and satisfies the condition in paragraph 1ZA;", and

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(b) after paragraph 1 insert—

"1ZA An undertaking satisfies the condition in this paragraph if the FCA has received written notification that the undertaking intends to be marketed in the United Kingdom as an MMF.

1ZB A notification under paragraph 1ZA must—

(a) be made by such person, and in such form and manner, as the FCA may direct, and

(b) contain or be accompanied by such information as the FCA may direct.

1ZC Different directions may be given under paragraph 1ZB in relation to different undertakings or categories of undertaking."

(3) After Article 4 insert—

*"Article 4A*

***Approval of country or territory***

1 The Treasury may make regulations for the purposes of Article 4(1)(aa) approving a country or territory in relation to MMFs.

2 The Treasury may not make regulations under paragraph 1 unless satisfied that the law and practice of the country or territory imposes requirements on MMFs which have equivalent effect to the requirements imposed by this Regulation.

3 In making regulations under this Article, the Treasury may have regard to any matter that they consider relevant.

4 When considering whether to make, vary or revoke regulations under this Article, the Treasury may ask the FCA to prepare a report on the law and practice of the country or territory under which MMFs are authorised and supervised, or particular aspects of such law and practice.

5 A request for a report under paragraph 4 must be made in writing.

6 If the Treasury ask for a report under paragraph 4, the FCA must provide the Treasury with the report."

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(4) In Article 6(1) (use of designation as MMF), in each subparagraph, after point (a) insert—

"(aa) the UCITS or AIF is authorised and supervised in a country or territory approved by regulations under Article 4A and satisfies the condition in Article 4(1ZA); or".

**Commencement Information**

**I7** S. 26 in force at 23.2.2022 by S.I. 2022/163, **reg. 2(c)**

## 27 Provision of investment services etc in the UK

(1) Schedule 10 contains amendments of the Markets in Financial Instruments Regulation relating to the provision of investment services, and the performance of investment activities, in the United Kingdom by third country firms.

(2) In this section and Schedule 10, "the Markets in Financial Instruments Regulation" means Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments.

**Commencement Information**

**I8** S. 27 in force at 1.7.2021 by S.I. 2021/739, **reg. 3(o)**

**Status:**
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**Changes and effects yet to be applied to :**

– specified provision(s) amendment to earlier commencing S.I. 2021/671, reg. 5 by S.I. 2021/1163 reg. 2