

## SCHEDULES

### SCHEDULE 8

Section 22

#### GIBRALTAR: MINOR AND CONSEQUENTIAL AMENDMENTS

##### *Financial Services and Markets Act 2000 (c. 8)*

- 1 The Financial Services and Markets Act 2000 is amended as follows.
- 2 In section 3A(3)(a) (expressions in which general definition of “regulator” does not apply), at the end insert—  
““Gibraltar regulator”;
- 3 In section 33(1)(a) (withdrawal of authorisation), after “permission” insert “or Schedule 2A permission”.
- 4 In Part 5 (performance of regulated activities), after section 71I insert—

##### *“Application of this Part to Gibraltar-based persons*

#### **71J Application of this Part to Gibraltar-based persons**

- (1) This section applies to an authorised person that—
    - (a) has a Schedule 2A permission, but
    - (b) does not have a Part 4A permission.
  - (2) The person is only required to comply with the provisions listed in subsection (3) if the person has a branch in the United Kingdom.
  - (3) Those provisions are—
    - (a) section 59(1) or (2) (approval for particular arrangements), or
    - (b) section 63E(1) (certification of employees).
  - (4) In this section, “branch” has the same meaning as in Schedule 2A (see paragraph 3 of that Schedule).”
- 5 After section 137A insert—

#### **“137AA The FCA’s general rules: Gibraltar**

- (1) The FCA’s general rules may not make provision prohibiting a Gibraltar-based person from carrying on, or holding itself out as carrying on, an activity which it has a Schedule 2A permission to carry on in the United Kingdom.
- (2) Subsection (1) does not apply to rules described in section 137C, 137D or 137FD.

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(3) The Treasury may by regulations impose other limitations on what provision applying to Gibraltar-based persons with a Schedule 2A permission to carry on a regulated activity may be made in the FCA’s general rules, but may not impose limitations relating to rules described in section 137C, 137D or 137FD.

(4) Before making regulations under subsection (3), the Treasury must consult the FCA.”

6 After section 137G insert—

**“137GA The PRA’s general rules: Gibraltar**

(1) The PRA’s general rules may not make provision prohibiting a Gibraltar-based person from carrying on, or holding itself out as carrying on, an activity which it has a Schedule 2A permission to carry on in the United Kingdom.

(2) The Treasury may by regulations impose other limitations on what provision applying to Gibraltar-based persons with a Schedule 2A permission to carry on a regulated activity may be made in the PRA’s general rules.

(3) Before making regulations under subsection (2), the Treasury must consult the PRA.”

7 In section 213 (the compensation scheme), after subsection (9) insert—

“(10A) But a person is not to be regarded as a relevant person in relation to a regulated activity if, at that time, the person—

- (a) was a Gibraltar-based person with a Schedule 2A permission to carry on the activity, and
- (b) fell within a prescribed category, either generally or in relation to the activity.

(10B) Regulations prescribing a category of person for the purposes of subsection (10A) may, among other things, make provision by reference to—

- (a) whether the activity is carried on through a branch in the United Kingdom;
- (b) the level of protection provided by the compensation scheme and by any comparable scheme operating in Gibraltar.”

8 In section 214 (provisions of the compensation scheme: general), before subsection (6) insert—

“(5A) The scheme may make different provision according to whether or not a relevant person is a member of both the compensation scheme and another comparable scheme.”

9 In section 224 (scheme manager’s power to inspect documents held by Official Receiver etc), before subsection (4A) insert—

“(4ZA) But a person is not to be regarded as a relevant person in relation to a regulated activity if, at that time, the person—

- (a) was a Gibraltar-based person with a Schedule 2A permission to carry on the activity, and

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(b) fell within a prescribed category, either generally or in relation to the activity.

(4ZB) Regulations prescribing a category of person for the purposes of subsection (4ZA) may, among other things, make provision by reference to—

(a) whether the activity is carried on through a branch in the United Kingdom;

(b) the level of protection provided by the compensation scheme and by any comparable scheme operating in Gibraltar.”

10 After section 367 insert—

**“367A Winding-up petitions: Gibraltar-based persons**

(1) A regulator may not present a petition to the court under section 367 for the winding up of a Gibraltar-based person who has a Schedule 2A permission unless either regulator has been asked to do so by the Gibraltar regulator.

(2) If a regulator receives a request from the Gibraltar regulator to present a petition to the court under section 367 for the winding up of a Gibraltar-based person who has a Schedule 2A permission, it must—

(a) notify the other regulator of the request, and

(b) provide the other regulator with such information relating to the request as it thinks fit.

(3) In this section, “the Gibraltar regulator” has the meaning given in Schedule 2A (see paragraph 2 of that Schedule).”

11 (1) Section 392 (application of sections 393 and 394: warning notices and decision notices) is amended as follows.

(2) In paragraph (a), after “412B(4) or (8)” insert “or paragraph 38, 42 or 69 of Schedule 2A or paragraph 11, 16 or 20 of Schedule 2B”.

(3) In paragraph (b), after “412B(5) or (9)” insert “or paragraph 38, 42 or 69 of Schedule 2A or paragraph 11, 16 or 20 of Schedule 2B”.

12 (1) Section 395 (the FCA’s and PRA’s procedures) is amended as follows.

(2) In subsection (13) (meaning of “supervisory notice”)—

(a) for “section” (in the first place it occurs) substitute “any of the following”,

(b) at the beginning of each of paragraphs (za) to (g), other than paragraphs (bzb), (bzc), (bbzb) and (bba), paragraph (bbb) (inserted by Schedule 2 to this Act) and paragraph (ea) (inserted by Schedule 9 to this Act), insert “section”, and

(c) at the end insert—

“(h) a provision of Schedule 2A listed in subsection (14);

(i) paragraph 18(3), (6) or (8)(b) of Schedule 2B.”

(3) After subsection (13) insert—

“(14) The provisions of Schedule 2A mentioned in subsection (13)(h) are—

(a) paragraph 29(3), (6) or (8)(b);

(b) paragraph 50(3), (6) or (8)(b);

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- (c) paragraph 60(3) or (6).”
- 13 Omit section 409 (Gibraltar).
- 14 In section 417(1) (definitions), at the appropriate places insert—  
     ““Gibraltar-based person” has the meaning given in paragraph 1 of  
     Schedule 2A (read with Part 14 of that Schedule);”,  
     ““Schedule 2A permission” has the meaning given in paragraph 12(4) of  
     Schedule 2A;”, and  
     ““Schedule 2B permission” has the meaning given in paragraph 7(6) of  
     Schedule 2B;”.
- 15 In section 418 (carrying on regulated activities in the United Kingdom), after  
 subsection (5B) insert—  
     “(5C) The eighth case is where—  
     (a) the person’s head office or registered office is in the United  
     Kingdom, and  
     (b) the person is carrying on a restricted activity (as defined in paragraph  
     3 of Schedule 2B) in Gibraltar.”
- 16 (1) Section 429 (parliamentary control of statutory instruments) is amended as follows.  
 (2) In subsection (2) (affirmative procedure)—  
     (a) after “90B” insert “, 137AA(3), 137GA(2)”, and  
     (b) after “333T” insert “or paragraph 5, 6, 58(3)(a), 59(3)(a) or 60(8) of  
     Schedule 2A”.  
 (3) At the end insert—  
     “(9) Any provision that may be made in a statutory instrument under this  
     Act subject to annulment in pursuance of a resolution of either House of  
     Parliament may be made in a statutory instrument which includes regulations  
     under Schedule 2A a draft of which has been laid before Parliament and  
     approved by a resolution of each House.”
- 17 In paragraph 24 of Schedule 1ZA (services for which the FCA may not charge fees),  
 after paragraph (b) insert “, or  
     (c) a fee to be charged in respect of the discharge of the FCA’s functions  
     under paragraph 16 of Schedule 2A or paragraph 10 or 11 of  
     Schedule 2B.”
- 18 In paragraph 32 of Schedule 1ZB (services for which the PRA may not charge fees),  
 after paragraph (b) insert “, or  
     (c) a fee to be charged in respect of the discharge of any of the PRA’s  
     functions under paragraph 16 of Schedule 2A or paragraph 10 or 11  
     of Schedule 2B.”

*Financial Services and Markets Act 2000 (Gibraltar) Order 2001 (S.I. 2001/3084)*

- 19 The Financial Services and Markets Act 2000 (Gibraltar) Order 2001 is revoked.