



# Financial Services Act 2021

## 2021 CHAPTER 22

### *Access to financial services markets*

#### **23 Power to make provision about Gibraltar**

(1) The Treasury may by regulations—

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- (b) make provision with the same effect as relevant Gibraltar provision repealed or revoked under paragraph (a),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

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*Status: This is the original version (as it was originally enacted).*

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- (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](#));
  - (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.
- (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).