

[^{F1}SCHEDULE 5

Regulation 80

Gibraltar

Textual Amendments

- F1** Sch. 5 inserted (13.1.2018) by [The Payment Systems and Services and Electronic Money \(Miscellaneous Amendments\) Regulations 2017 \(S.I. 2017/1173\)](#), regs. 1(4), **5(d)**

Exercise of [^{F2}market access rights] by Gibraltar-based firms

1.—(1) These Regulations apply as set out in sub-paragraphs (2) and (3) in relation to a firm which—

- (a) has its head office in Gibraltar; and
- (b) is authorised in Gibraltar to issue electronic money and provide payment services in accordance with [^{F3}Gibraltar legislation which implemented] the electronic money directive.

[
^{F4}(1A) Such a firm is referred to in the following provisions of this Schedule as a Gibraltar-based firm.]

[^{F5}(2) A Gibraltar-based firm is to be treated as having an entitlement, corresponding to the passport right deriving from the electronic money directive that such a firm had immediately before IP completion day, to establish a branch or provide services in the United Kingdom.

(2A) Despite their amendment or revocation by the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018, the provisions of these Regulations listed in sub-paragraph (2B), as they had effect immediately before IP completion day, continue to apply for the purposes of this paragraph.

(2B) The provisions referred to in sub-paragraph (2A) are as follows—

- (a) in regulation 2 (interpretation), in paragraph (1), paragraph (c) of the definition of “electronic money issuer”;
- (b) in regulation 4 (the register of electronic money issuers), in paragraph (2), the reference to paragraph (c) of the definition of electronic money issuer;
- (d) in regulation 21 (safeguarding option 1), paragraph (7);
- (e) in regulation 22 (safeguarding option 2), paragraph (3);
- (f) regulation 25 (accounting and statutory audit);
- (g) regulations 29A and 30 (passporting);
- (h) in regulation 34 (requirement for agents to be registered), paragraph (3)(a)(iii);
- (i) regulation 59A and Schedule 2A (credit agreements);
- (j) regulation 63 (prohibition on issuing electronic money by persons other than electronic money issuers);
- (k) in regulation 71 (duty to co-operate and exchange information), paragraph (1);
- (l) in Schedule 3 (application and modification of legislation), paragraphs 2A and 3.

(3) In those provisions as applying for the purposes of this paragraph—

- (a) references to an “EEA authorised electronic money institution” are to be read as references to the firm;

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- (b) references to the home state competent authority are to be read as references to the Gibraltar Financial Services Commission;
- (c) references to a “passport right” are to be read as references to the entitlement mentioned in sub-paragraph (2);
- (d) references to the authorisation of any person as a credit institution, custodian or insurer in accordance with a directive are to be read as a reference to authorisation in accordance with Gibraltar legislation which implemented the directive;
- (e) references to a person's rights or entitlements are to be read as references to the rights or entitlements the person would have, if the person's rights or entitlements were being determined immediately before IP completion day.]

Textual Amendments

- F2** Words in Sch. 5 para. 1 heading substituted (31.12.2020) by [The Electronic Money, Payment Services and Payment Systems \(Amendment and Transitional Provisions\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1201\)](#), reg. 1(3), **Sch. 2 para. 22(2)** (with reg. 4, Sch. 3 Pt. 1) (with further transitional provisions in Sch. 3 Pt. 1A as inserted by S.I. 2019/405, regs. 1, **10** and as amended by S.I. 2019/1010, regs. 1(3), 7; S.I. 2019/1212, regs. 1(2), 7 and S.I. 2020/56, regs. 1, **8**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F3** Words in Sch. 5 para. 1(1)(b) inserted (31.12.2020) by [The Electronic Money, Payment Services and Payment Systems \(Amendment and Transitional Provisions\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1201\)](#), reg. 1(3), **Sch. 2 para. 22(3)(a)** (with reg. 4, Sch. 3 Pt. 1) (with further transitional provisions in Sch. 3 Pt. 1A as inserted by S.I. 2019/405, regs. 1, **10** and as amended by S.I. 2019/1010, regs. 1(3), 7; S.I. 2019/1212, regs. 1(2), 7 and S.I. 2020/56, regs. 1, **8**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F4** Sch. 5 para. 1(1A) inserted (31.12.2020) by [The Electronic Money, Payment Services and Payment Systems \(Amendment and Transitional Provisions\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1201\)](#), reg. 1(3), **Sch. 2 para. 22(3)(b)** (with reg. 4, Sch. 3 Pt. 1) (with further transitional provisions in Sch. 3 Pt. 1A as inserted by S.I. 2019/405, regs. 1, **10** and as amended by S.I. 2019/1010, regs. 1(3), 7; S.I. 2019/1212, regs. 1(2), 7 and S.I. 2020/56, regs. 1, **8**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F5** Sch. 5 para. 1(2)-(3) substituted for Sch. 5 para. 1(2)(3) (31.12.2020) by [The Electronic Money, Payment Services and Payment Systems \(Amendment and Transitional Provisions\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1201\)](#), reg. 1(3), **Sch. 2 para. 22(3)(c)** (with reg. 4, Sch. 3 Pt. 1) (with further transitional provisions in Sch. 3 Pt. 1A as inserted by S.I. 2019/405, regs. 1, **10** and as amended by S.I. 2019/1010, regs. 1(3), 7; S.I. 2019/1212, regs. 1(2), 7, S.I. 2020/56, regs. 1, 8 and [The Financial Services and Economic and Monetary Policy \(Consequential Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1301\)](#), regs. 1, 3, **Sch. para. 6(a)(i)**); 2020 c. 1, **Sch. 5 para. 1(1)**

Exercise by authorised electronic money institutions of [^{F6}market access rights] in Gibraltar

2.—(1) For the purposes of these Regulations, an authorised electronic money institution is to be treated as having an entitlement, corresponding to [^{F7}the passport right that such a firm had immediately before IP completion day,] to establish a branch or provide services in Gibraltar.

[^{F8}(1A) Despite their amendment or revocation by the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018, the provisions of these Regulations listed in sub-paragraph (1B), as they had effect immediately before IP completion day, continue to apply for the purposes of this paragraph.

(1B) The provisions referred to in sub-paragraph (1A) are as follows—

- (a) regulations 28 to 30 (passporting);
- (b) in regulation 33 (use of distributors and agents), paragraph (3);

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- (c) in regulation 34 (requirement for agents to be registered), paragraphs (2), (3), (5A), (10A), (10B) and (12A);
- (d) in regulation 37 (duty to notify change in circumstance), paragraph (1)(a);
- (c) regulation 71 (duty to co-operate).]

[^{F9}(2) In relation to an authorised electronic money institution which establishes a branch or provides services in Gibraltar, those provisions are to be read as if—

- (a) references to an “EEA branch” were references to such a branch;
- (b) references to an “EEA State” were references to Gibraltar;
- (c) references to the host state competent authority were references to the Gibraltar Financial Services Commission; and
- (e) references to a “passport right” were references to the entitlement mentioned in sub-paragraph (1).]

Textual Amendments

- F6** Words in Sch. 5 para. 2 heading substituted (31.12.2020) by [The Electronic Money, Payment Services and Payment Systems \(Amendment and Transitional Provisions\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1201\), reg. 1\(3\), Sch. 2 para. 22\(4\)](#) (with [reg. 4, Sch. 3 Pt. 1](#)) (with further transitional provisions in Sch. 3 Pt. 1A as inserted by [S.I. 2019/405, regs. 1, 10](#) and as amended by [S.I. 2019/1010, regs. 1\(3\), 7; S.I. 2019/1212, regs. 1\(2\), 7](#) and [S.I. 2020/56, regs. 1, 8](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F7** Words in Sch. 5 para. 2(1) substituted (31.12.2020) by [The Electronic Money, Payment Services and Payment Systems \(Amendment and Transitional Provisions\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1201\), reg. 1\(3\), Sch. 2 para. 22\(5\)\(a\)](#) (with [reg. 4, Sch. 3 Pt. 1](#)) (with further transitional provisions in Sch. 3 Pt. 1A as inserted by [S.I. 2019/405, regs. 1, 10](#) and as amended by [S.I. 2019/1010, regs. 1\(3\), 7; S.I. 2019/1212, regs. 1\(2\), 7](#) and [S.I. 2020/56, regs. 1, 8](#)) and [The Financial Services and Economic and Monetary Policy \(Consequential Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1301\), regs. 1, 3, Sch. para. 6\(a\)\(ii\)](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F8** Sch. 5 para. 2(1A)(1B) inserted (31.12.2020) by [The Electronic Money, Payment Services and Payment Systems \(Amendment and Transitional Provisions\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1201\), reg. 1\(3\), Sch. 2 para. 22\(5\)\(b\)](#) (with [reg. 4, Sch. 3 Pt. 1](#)) (with further transitional provisions in Sch. 3 Pt. 1A as inserted by [S.I. 2019/405, regs. 1, 10](#) and as amended by [S.I. 2019/1010, regs. 1\(3\), 7; S.I. 2019/1212, regs. 1\(2\), 7](#) and [S.I. 2020/56, regs. 1, 8](#)) and [The Financial Services and Economic and Monetary Policy \(Consequential Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1301\), regs. 1, 3, Sch. para. 6\(a\)\(iii\)](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F9** Sch. 5 para. 2(2) substituted (31.12.2020) by [The Electronic Money, Payment Services and Payment Systems \(Amendment and Transitional Provisions\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1201\), reg. 1\(3\), Sch. 2 para. 22\(5\)\(c\)](#) (with [reg. 4, Sch. 3 Pt. 1](#)) (with further transitional provisions in Sch. 3 Pt. 1A as inserted by [S.I. 2019/405, regs. 1, 10](#) and as amended by [S.I. 2019/1010, regs. 1\(3\), 7; S.I. 2019/1212, regs. 1\(2\), 7](#) and [S.I. 2020/56, regs. 1, 8](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

[^{F10}References to Gibraltar regulator

2A.—(1) The Treasury may by regulations made by statutory instrument make such amendments of the references in paragraphs 1 and 2 to the Gibraltar Financial Services Commission, or any references previously substituted for those references, as appear to the Treasury to be appropriate in order to take account of any change in the law of Gibraltar.

(2) A statutory instrument containing regulations under sub-paragraph (1) is subject to annulment in pursuance of a resolution of either House of Parliament.]

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Textual Amendments

F10 Sch. 5 para. 2A inserted (31.12.2020) by [The Electronic Money, Payment Services and Payment Systems \(Amendment and Transitional Provisions\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1201\)](#), reg. 1(3), **Sch. 2 para. 22(6)** (with reg. 4, Sch. 3 Pt. 1) (with further transitional provisions in Sch. 3 Pt. 1A as inserted by S.I. 2019/405, regs. 1, **10** and as amended by S.I. 2019/1010, regs. 1(3), **7**; S.I. 2019/1212, regs. 1(2), **7** and S.I. 2020/56, regs. 1, **8**); 2020 c. 1, **Sch. 5 para. 1(1)**

Modification of legislation

F11 3.

Textual Amendments

F11 Sch. 5 para. 3 omitted (31.12.2020) by virtue of [The Electronic Money, Payment Services and Payment Systems \(Amendment and Transitional Provisions\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1201\)](#), reg. 1(3), **Sch. 2 para. 22(7)** (with reg. 4, Sch. 3 Pt. 1) (with further transitional provisions in Sch. 3 Pt. 1A as inserted by S.I. 2019/405, regs. 1, **10** and as amended by S.I. 2019/1010, regs. 1(3), **7**; S.I. 2019/1212, regs. 1(2), **7** and S.I. 2020/56, regs. 1, **8**); 2020 c. 1, **Sch. 5 para. 1(1)**

Firms which have taken action before 13th January 2018

4. Where an authorised electronic money institution or the Authority has taken action before 13th January 2018 under regulation 28, 29 or 34 in respect of the provision of services, the use of an agent or the establishment of a branch in Gibraltar by that authorised electronic money institution, such action is to be treated as if it had been taken under such regulations as they apply by virtue of paragraph 2.]

Changes to legislation:

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Changes and effects yet to be applied to :

- Regulations power to amend conferred by [2021 c. 22 s. 23](#)
- Regulations revoked by [2023 c. 29 Sch. 1 Pt. 2](#)