EXPLANATORY MEMORANDUM TO

THE FINANCIAL SERVICES (GIBRALTAR) (AMENDMENT) (EU EXIT) REGULATIONS 2025

2025 No. 1182

1. Introduction

1.1 This Explanatory Memorandum has been prepared by His Majesty's Treasury and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Lucy Rigby KC, MP, the Economic Secretary to the Treasury, confirms that this Explanatory Memorandum meets the required standard.

2.2 Rohan Lee, Deputy Director for International Policy and Partnerships at HM Treasury confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Katherine Pride at HM Treasury, email: katherine.pride@hmtreasury.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument extends by 12 months the transitional arrangements under Parts 2 and 3 of the Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019 (SI 2019/589) ("2019 Regulations"), which enable specified categories of Gibraltar-based firms to provide financial services in the United Kingdom ("UK") and facilitate the access by similar types of UK-based firms to Gibraltar's financial services market.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument is to the whole United Kingdom.

4.3 The territorial application of this instrument is to the whole United Kingdom.

5. Policy Context

What is being done and why?

5.1 Gibraltar is a British Overseas Territory with its own institutions of self-government. Gibraltar enjoys legislative autonomy under its own constitution, brought into effect by the Gibraltar Constitution Order 2006. Gibraltar's Parliament has the power to pass internal legislation, including on financial services, while the UK remains responsible for Gibraltar's external relations and defence.

5.2 The financial services industry plays an important role in Gibraltar's economy and Gibraltar-based firms have made extensive use of the existing market access arrangements between the UK and Gibraltar. According to Government of Gibraltar data from 2024, over 95% of Gibraltar's financial services business is with the UK.

Additionally, over 40% of motor insurance policies in the UK are provided by Gibraltar-based insurers[1].

5.3 Gibraltar authorised financial services firms are able to access the UK market under the Gibraltar Order, which also facilitates the access of UK authorised firms to the Gibraltar market. When the common European Union membership of the UK and Gibraltar was ended, the existing arrangements were preserved under Parts 2 and 3 of the 2019 Regulations. These are transitional arrangements.

5.4 These temporary arrangements will be superseded by a new, long-term framework.

5.5 The Financial Services Act 2021 ("FS Act") establishes the Gibraltar Authorisation Regime ("GAR"), the long-term legal and institutional framework that will enable market access in financial services between the jurisdictions. Access of Gibraltar-based firms to the UK's wholesale and retail markets will be conditional on Gibraltar aligning sufficiently its relevant laws, and regulatory and supervisory practices, with those of the UK. Access will be contingent too on fulfilment of 8 broad objectives, such as protection of financial stability and consumers, and on the applicable UK and Gibraltarian authorities demonstrating ongoing and close cooperation. The FS Act makes provision to facilitate the access of UK firms into Gibraltar, which is primarily a question of Gibraltar law.

5.6 Under the GAR, the Government will operate periodic reviews to ensure compatibility is sustained with the conditions of alignment and of cooperation, and the broad objectives. HM Treasury will engage the Government of Gibraltar bilaterally to resolve any emerging issues. HM Treasury will be under a duty to lay before Parliament every two years a report on the operation of the GAR. In particular, this must explain whether the underlying conditions continue to be satisfied.

5.7 Secondary legislation is required to implement the GAR and is being prepared by HM Treasury. Once the GAR enters into force, the temporary arrangements – the Gibraltar Order and other savings provisions – will be repealed.

5.8 In parallel, the Government of Gibraltar passed its Financial Services Act 2019 and is currently working with HM Treasury to implement the GAR.

What was the previous policy, how is this different?

5.9 European Union ("EU") law allows authorised financial services firms to access markets across EU member states. Prior to exit from the EU, for the purposes of EU law, the UK and Gibraltar were, in effect, considered as the same EU member state.

5.10 Section 409 of the Financial Services and Markets Act 2000 ("FSMA") enables HM Treasury to make an order to modify Schedule 3 of FSMA so as to enable authorised Gibraltar-based firms to qualify for authorisation under Schedule 3 under specified circumstances. The Gibraltar Order modifies Schedule 3 of FSMA so that rights equivalent to passporting rights in the European Economic Area apply to authorised Gibraltar-based financial services firms operating between the UK and Gibraltar.

5.11 HM Treasury introduced the 2019 Regulations, with an original time limit of 31 December 2020, extendable by 12 months at a time, to temporarily enable Gibraltar-based firms to continue operating in the UK while a long-term framework is established, and to prevent a sudden loss of market access.

[1] Gibraltar-based insurers also underwrite around 30% of pet insurance contracts in the UK, and an estimated 50-60% of travel insurance policies sold in the UK are processed by Gibraltarian insurance intermediaries.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument amends regulation 12(1) of the 2019 Regulations, which in turn amend section 409 to the Financial Services and Markets Act (2000) (“FSMA”), the Financial Services and Markets Act 2000 (Gibraltar) Order 2001 (“Gibraltar Order”) (SI 2001/3084), and the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 (SI 2018/1149) (“Passport Rights Regulations”), to maintain the current arrangements under the 2019 Regulations.

6.2 The amendment will ensure Gibraltar authorised financial services firms will be able to continue providing cross-border services and establishing branches in the UK, and facilitate the access by similar types of UK-based firms to Gibraltar’s financial services market for a further 12 months. The amendment will prevent an abrupt loss of access when the 2024 extension of the 2019 Regulations expires on 31 December 2025.

6.3 Regulation 2 substitutes “2026” for “2025” in paragraph (1) of Regulation 12 of the 2019 Regulations, preventing the expiry of Parts 2 and 3 on 31 December 2025.

Why was this approach taken to change the law?

6.4 The temporary arrangements can only be extended by 12 months at a time. The 2019 Regulations have been repeatedly extended. The Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2024 (SI 2024/1158) extended the operation of the temporary arrangements to 31 December 2025.

6.5 Pursuant to Regulation 12(2) of the 2019 Regulations, this instrument will amend Regulation 12(1) of the 2019 Regulations which, in turn, make technical amendments to existing primary and secondary legislation, including FSMA (in particular section 409), the Gibraltar Order and the Passport Rights Regulations.

7. Consultation

Summary of consultation outcome and methodology

7.1 HM Treasury has not undertaken a consultation on this instrument. HM Treasury engaged with the Government of Gibraltar and both sides agree to an extension of the temporary arrangements by an additional 12 months.

7.2 Between March and May 2020, a public consultation was undertaken to seek stakeholder views on the future permanent market access arrangements between the UK and Gibraltar. Overall, this revealed support for arrangements that avoid disruption to business and consumers: https://www.gov.uk/government/consultations/market-access-arrangements-for-financial-services-between-the-uk-and-gibraltar-a-consultation. Stakeholders that were engaged in this process include the Government of Gibraltar, the Financial Conduct Authority, the Prudential Regulatory Authority, and the Bank of England.

8. Applicable Guidance

8.1 No further guidance is being published alongside this instrument.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because, in line with Better Regulation guidance, HM Treasury considers that the net impact on businesses will be less than £10 million a year. Due to this limited impact, a de-minimis Impact Assessment has been carried out, a copy of which is published alongside this Explanatory Memorandum on the legislation.gov.uk website.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies.

9.3 The legislation applies to activities that are undertaken by small businesses.

9.4 No specific action is proposed to minimise the effects of this instrument in relation to small business. This instrument is designed to maintain existing passporting rights for Gibraltar-based financial services firms to continue access into the UK market, and facilitate the access by similar types of UK-based firms to Gibraltar's financial services market. It involves no changes in policy. Therefore, there should be no, or no significant, impact on small businesses in Gibraltar that provide services in the UK or on UK-based firms that provide services in Gibraltar.

9.5 There is no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 Regulation 12 in Part 5 of the 2019 Regulations provides a power for HM Treasury to extend its sunset clause beyond 31 December 2020, the original time limit. HM Treasury is able to make a Statutory Instrument that extends the effect of the 2019 Regulations by one year at a time. The last extension, to 31 December 2025, was brought about by the 2024 Regulations. The Statutory Instrument would be subject to annulment by a resolution of either House of Parliament.

10.2 Regulation 12(3) in Part 5 states that HM Treasury's decision to extend the Regulations must also be supported by a Ministerial statement, published and laid before Parliament, that details progress towards the long-term, permanent legal and institutional framework. A copy of the statement is published with this EM on the legislation.gov.uk website.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the UK from the EU insofar as it will update the 2019 Regulations, made under the European Union (Withdrawal) Act, which preserve, as amended, pre-withdrawal arrangements in relation to Gibraltar. This instrument will extend the period during which the 2019 Regulations will have effect by amending regulation 12(1) of the 2019 Regulations. Regulation 12(2) of the 2019 Regulations enables extensions of 12 months on each occasion.