

Draft Regulations laid before Parliament under paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2019 No.

EXITING THE EUROPEAN UNION

FINANCIAL SERVICES

**The Financial Services (Gibraltar) (Amendment) (EU Exit)
Regulations 2019**

Made - - - - - *****

Coming into force in accordance with regulation 1(2) and (3)

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The Treasury, in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018^(a), make the following Regulations.

A draft of these Regulations has been laid before, and approved by a resolution of, each House of Parliament in accordance with paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018.

PART 1

Introductory

Citation and commencement

1.—(1) These Regulations may be cited as the Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019.

(2) This Part and Parts 4 and 5 come into force on the day after the day on which these Regulations are made.

(3) Parts 2 and 3 come into force on exit day.

PART 2

Amendments of Financial Services and Markets Act 2000

Amendments of section 409 of Financial Services and Markets Act 2000

2.—(1) Section 409 of the Financial Services and Markets Act 2000^(b) (power to apply passporting provisions to Gibraltar) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (b), for “EEA rights” substitute “the EEA rights that UK firms had immediately before exit day”;

(b) omit paragraph (c);

(c) omit paragraph (f).

(3) Omit subsection (4).

^(a) 2018 c. 16.

^(b) 2000 c. 8. Section 409(1) was amended but none of the amendments is relevant; subsection (4) was amended by S.I. 2011/1043.

(4) In subsection (6), for “and “EEA right have” substitute “means a person whose head office is in the United Kingdom or is otherwise connected with the United Kingdom; and “EEA right” has”.

(5) After subsection (6) insert—

“(7) For the purposes of this section, Schedule 3 and section 264, and regulations made under that Schedule or that section, continue to apply on and after exit day as they had effect immediately before exit day, but subject to any modifications specified in an order under this section.

(8) In relation to the exercise of Gibraltar-related market access rights and persons exercising those rights, the relevant legislation (as defined in subsections (11) and (12)) continues to apply on or after exit day as if it had not been repealed, revoked or amended by regulations under section 8 of the European Union (Withdrawal) Act 2018, but this is subject to—

- (a) subsection (9), and
- (b) any further modifications specified in an order under this section.

(9) The relevant legislation is to be read as if references to a person’s rights under any EU legislation were to the person’s rights deriving from that legislation.

(10) “Gibraltar-related market access rights” means

- (a) rights conferred by virtue of subsection (1)(a) or (d), or
- (b) the rights mentioned in subsection (1)(b).

(11) “The relevant legislation” means—

- (a) in section 31 (authorised persons), subsection (1)(b);
- (b) section 34 (EEA firms)(a);
- (c) section 36 (persons authorised as a result of paragraph 1(1) of Schedule 5)(b);
- (d) section 37 (exercise of EEA rights by UK firms);
- (e) Part 13 (incoming firms: intervention by FCA or PRA) and regulations made under that Part;
- (f) sections 266 to 269 (which relate to schemes recognised under section 264)(c);
- (g) in Schedule 5 (persons concerned in collective investment schemes), paragraphs 1(1) and (2) and 2(1);
- (h) the Financial Services and Markets Act 2000 (Compensation Scheme: Electing Participants) Regulations 2001(d);
- (i) Part 4 (mergers) of the Undertakings for Collective Investment in Transferable Securities Regulations 2011(e);
- (j) any other provision of primary or subordinate legislation which is repealed, revoked, amended or modified by the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018(f);
- (k) any other provision of primary or subordinate legislation which is repealed, revoked, amended or modified on exit day by regulations under section 8(1) of the European Union (Withdrawal) Act 2018 and which relates to—
 - (i) authorisation by virtue of Part 2 of Schedule 3 or by virtue of paragraph 1(1) of Schedule 5, or persons authorised by virtue of those provisions,

(a) Section 34 was amended by paragraph 27 of Part 3 of Schedule 3 to the Financial Services Act 2012 (c.21).

(b) Section 36 was amended by paragraph 3 of part 1 of Schedule 18 to the Financial Services Act 2012.

(c) Section 266 was amended by paragraph 9 of Schedule 18 of the Financial Services Act 2012 and S.I. 2003/2066; section 267 was amended by paragraph 13 of Schedule 18 to that Act; section 268 was amended by paragraph 14 of Schedule 18 to that Act and section 269 was amended by paragraph 15 of Schedule 18 to that Act.

(d) S.I. 2001/1783.

(e) S.I. 2011/1613; amended by S.I. 2012/2015, S.I. 2013/472, S.I. 2013/1388, S.I. 2016/225.

(f) S.I. 2018/1149.

- (ii) the exercise by UK firms of EEA rights (as defined in Schedule 3), or
 - (iii) the recognition of collective investment schemes under section 264, or schemes so recognised.
- (12) “The relevant legislation” does not include—
- (a) in section 137A (FCA’s general rules)(a), subsection (5),
 - (b) in section 137G (PRA’s general rules), subsection (5), or
 - (c) rules made by the FCA or the PRA.”.

PART 3

Amendments of Financial Services and Markets Act 2000 (Gibraltar) Order 2001

Introductory

3. The Financial Services and Markets Act 2000 (Gibraltar) Order 2001(b) is amended as follows.

Interpretation

- 4.—(1) Article 1 (citation, commencement and interpretation) is amended as follows.
- (2) In paragraph (2)—
- (a) for the definition of “Gibraltar-based firm”(c) substitute—
 - ““Gibraltar-based firm” means—
 - (a) a firm which—
 - (i) is an AIFM, as defined in Article 4(1)(b) of the alternative investment fund managers directive(d), reading the reference in Article 4(1)(a)(ii) of that directive to authorisation pursuant to the UCITS directive(e) as a reference to authorisation under the law of Gibraltar which implemented the UCITS directive, and
 - (ii) is authorised as such by the Gibraltar Financial Services Commission under the law of Gibraltar which implemented the alternative investment fund managers directive; or
 - (b) a firm not falling within paragraph (a) which has its head office in Gibraltar.”.
- (3) After paragraph (2) insert—
- “(3) Expressions used in this Order that are defined for the purposes of the Act have the same meaning as in the Act.”.

Exercise of deemed passport rights by Gibraltar-based firms

5.—(1) Article 2 (exercise of deemed passport rights by Gibraltar-based firms) is amended as follows.

- (2) For paragraph (1A)(f) substitute—
- “(1A) A Gibraltar-based firm which—

(a) Sections 137A to 137T were inserted by section 24(1) of the Financial Services Act 2012 (c. 21).
 (b) S.I. 2001/3084.
 (c) The definition of “Gibraltar-based firm” in Article 1 was substituted by S.I. 2014/1292.
 (d) OJ L 174, 1.7.2011, p. 1-73. See the definition in section 425(1) of the Financial Services and Markets Act 2000.
 (e) OJ L 302, 17.11.2009, p. 32-96. See the definition in section 425(1) of the Financial Services and Markets Act 2000.
 (f) Article 2(1A) was inserted by S.I. 2006/1805 and amended by S.I. 2007/2932.

- (a) is an investment firm, as defined in Article 4(1)(1) of the markets in financial instruments directive(a), and
- (b) is authorised under the law of Gibraltar which implemented Article 5 of that directive,

is to be treated as having an entitlement, corresponding to the EEA right deriving from the markets in financial instruments directive that such a firm would have had before exit day, to establish a branch or provide services in the United Kingdom.”

(3) For paragraph (2)(b) substitute—

“(2) A Gibraltar-based firm which—

- (a) is a credit institution as defined in Article 4(1)(1) of the capital requirements regulation, and
- (b) is authorised as such by the Gibraltar Financial Services Commission,

is to be treated as having an entitlement, corresponding to the EEA right deriving from the capital requirements directive that such a firm would have had before exit day, to establish a branch or provide services in the United Kingdom.

(2A) A Gibraltar-based firm which—

- (a) is a financial institution as defined in Article 4(1)(26) of the capital requirements regulation(c), and
- (b) is a subsidiary of the kind mentioned in the first subparagraph of Article 34(1) of the capital requirements directive(d) which fulfils the conditions of that subparagraph, reading references in that subparagraph to a Member State as including the United Kingdom and Gibraltar,

is to be treated as having an entitlement, corresponding to the EEA right deriving from the capital requirements directive that such a firm would have had before exit day, to establish a branch or provide services in the United Kingdom.”

(4) For paragraph (3) substitute—

“(3) A Gibraltar-based firm which—

- (a) is an undertaking pursuing the activity of direct insurance (within the meaning of Article 2 of the Solvency 2 Directive(e), reading references in that Article to a member State as including the United Kingdom and Gibraltar), and
- (b) is authorised by the Gibraltar Financial Services Commission to carry on one or more activities which would have required authorisation in accordance with Article 14 of the Solvency 2 Directive if the United Kingdom and Gibraltar were a member State,

is to be treated as having an entitlement, corresponding to the EEA right deriving from the Solvency 2 Directive that such a firm would have had before exit day, to establish a branch or provide services in the United Kingdom.”

(5) For paragraph (3A) to (3E)(f) substitute—

“(3A) A Gibraltar-based firm which—

- (a) is an insurance intermediary as defined in Article 2(1)(3) of the insurance distribution directive(a), an ancillary insurance intermediary as defined in Article

(a) OJ L 173, 12.6.2014, p. 349-496. See the definition in section 425(1) of the Financial Services and Markets Act 2000.
 (b) Article 2(2) was amended by S.I. 2006/1806 and 2013/3115.
 (c) The definition of “financial institution” is amended by S.I. 2018/1401. “Capital requirements regulation” is defined in section 417(1) of the Financial Services and Markets Act 2000.
 (d) OJ L 176, 27.6.2013 p. 1-155. See the definition in section 417(1) of the Financial Services and Markets Act 2000.
 (e) OJ L 335, 17.12.2009, p.1-155. See the definition in section 425(1) of the Financial Services and Markets Act 2000.
 (f) Article 2(3A) was inserted by S.I. 2005/1 and amended by S.I. 2018/546; Article 2(3B) was inserted by S.I. 2007/3254; Article 3(3C) was inserted by S.I. 2012/2017; Article 2(3D) was inserted by S.I. 2014/1292; and Article 2(3E) was inserted by S.I. 2015/910.

2(1)(4) of that directive or a reinsurance intermediary as defined in Article 2(1)(5) of that directive, and

(b) is registered as such with the Gibraltar Financial Services Commission,

is to be treated as having an entitlement, corresponding to the EEA right deriving from the insurance distribution directive that such a firm would have had before exit day, to establish a branch or provide services in the United Kingdom.

(3B) A Gibraltar-based firm which—

(a) is an undertaking pursuing the activity of reinsurance (within the meaning of Article 2 of the Solvency 2 Directive, reading references in that Article to a Member State as including the United Kingdom and Gibraltar), and

(b) is authorised as such by the Gibraltar Financial Services Commission,

is to be treated as having an entitlement, corresponding to the EEA right deriving from the Solvency 2 Directive that such a firm would have had before exit day, to establish a branch or provide services in the United Kingdom.

(3C) A Gibraltar-based firm which—

(a) is a management company, as defined in Article 2(1)(b) of the UCITS directive, and

(b) is authorised as such by the Gibraltar Financial Services Commission under the law of Gibraltar which implemented the UCITS directive,

is to be treated as having an entitlement, corresponding to the EEA right deriving from the UCITS directive that such a firm would have had before exit day, to establish a branch or provide services in the United Kingdom.

(3D) A firm falling within paragraph (a) of the definition of “Gibraltar-based firm” in Article 1(2) is to be treated as having an entitlement, corresponding to the EEA right deriving from the alternative investment fund managers directive that such a firm would have had before exit day, to establish a branch or provide services in the United Kingdom.

(3E) A Gibraltar-based firm which is a mortgage intermediary admitted by the Gibraltar Financial Services Commission—

(a) to carry out all or part of the credit intermediation activities set out in Article 4(5) of the mortgages directive^(b), or

(b) to provide advisory services (as defined in Article 4(21) of that directive),

is to be treated as having an entitlement, corresponding to the EEA right deriving from the mortgages directive that such a firm would have had before exit day, to establish a branch or provide services in the United Kingdom.

(3F) For the purposes of paragraph (3E), points (5) and (21) of Article 4 of the mortgages directive are to be read as if—

(a) for the purposes of the definition of “consumer” in point (1) of that Article, the reference in Article 3(a) of Directive 2008/48/EC^(c) to transactions covered by that directive were a reference to transactions of the kind that would immediately before exit day have been covered by that directive, and

(b) for the purposes of the definition of “creditor” in point (2) of Article 4 of the mortgages directive and the definition of “credit agreement” in point (3) of that Article, references in Article 3 of the mortgages directive to a Member State included the United Kingdom and Gibraltar.

(3G) In Schedule 3 and in the Passport Rights Regulations—

(a) OJ L 26, 2.2.2016, p.19-59. See the definition in section 425(1) of the Financial Services and Markets Act 2000.

(b) OJ L 60, 28.2.2014, p.34-85. See the definition in section 425(1) of the Financial Services and Markets Act 2000.

(c) OJ L 133, 22.5.2008, p.66-92.

- (a) references to an EEA firm within paragraph 5(a) of that Schedule are to be treated as references to a Gibraltar-based firm within paragraph (1A);
 - (b) references to an EEA firm within paragraph 5(b) of that Schedule are to be treated as references to a Gibraltar-based firm within paragraph (2);
 - (c) references to an EEA firm within paragraph 5(c) of that Schedule are to be treated as references to a Gibraltar-based firm within paragraph (2A);
 - (d) references to an EEA firm within paragraph 5(d) of that Schedule are to be treated as references to a Gibraltar-based firm within paragraph (3);
 - (e) references to an EEA firm within paragraph 5(e) of that Schedule are to be treated as references to a Gibraltar-based firm within paragraph (3A);
 - (f) references to an EEA firm within paragraph 5(da) of that Schedule are to be treated as references to a Gibraltar-based firm within paragraph (3B);
 - (g) references to an EEA firm within paragraph 5(f) of that Schedule are to be treated as references to a Gibraltar-based firm within paragraph (3C);
 - (h) references to an EEA firm within paragraph 5(h) of that Schedule or to an “EEA AIFM” are to be treated as references to a Gibraltar-based firm within paragraph (3D);
 - (i) references to an EEA firm within paragraph 5(i) of that Schedule are to be treated as references to a Gibraltar-based firm within paragraph (3E).”
- (6) Omit paragraph (4)(a).
- (7) In paragraph (5)(b)—
- (a) after “as is mentioned in paragraph (1A), (2),” insert “(2A),”;
 - (b) after “2001,” insert “and”;
 - (c) omit “and the Alternative Investment Fund Managers Regulations 2013”;
 - (d) in paragraph (b), after “(2),” insert “(2A),”;
 - (e) in paragraph (c), for “those rights” substitute “the rights that would before exit day have derived from that directive”;
 - (f) at the end of sub-paragraph (c), omit “and”;
 - (g) after sub-paragraph (d) insert—
 - “(e) “the home state regulator” are to be treated as references to the Gibraltar Financial Services Commission; and
 - (f) “an EEA firm” are to be treated as references to a Gibraltar-based firm referred to in paragraph (1A), (2), (2A), (3), (3A), (3B), (3C), (3D) or (3E).”.
- (8) After paragraph (5) insert—
- “(5A) Paragraph 13 of Schedule 3 is to be read as if—
- (a) in sub-paragraph (1)(b)(i), for “in accordance with” there were substituted “in the manner set out in”;
 - (b) in sub-paragraph (4)—
 - (i) in the definition of “the appropriate UK regulator” for “is” there were substituted “was immediately before exit day”;
 - (ii) in the definition of “host state rules”—
 - (aa) in paragraph (a) for “in accordance with” there were substituted “in implementation of”, and
 - (bb) in paragraph (b) for “are” there were substituted “deal with matters that immediately before exit day were”.

(a) Article 2(4) was amended by S.I. 2005/1, S.I. 2006/1805, S.I. 2007/3254, S.I. 2012/2017, S.I. 2014/1292, and S.I. 2015/910.
 (b) Article 2(5) was amended by S.I. 2012/2017 and 2014/1292. There are other amendments but none is relevant.

(5B) In paragraph 14 of Schedule 3, sub-paragraph (4) is to be read as if—

- (a) in the definition of “the appropriate UK regulator” for “is” there were substituted “was immediately before exit day”;
- (b) in the definition of “host state rules”—
 - (i) in paragraph (a) for “in accordance with” there were substituted “in implementation of”;
 - (ii) in paragraph (b) for “are” there were substituted “deal with matters that immediately before exit day were”.

(5C) Paragraph 15(6) of Schedule 3 is to be read as if after “authorisation granted to the firm under” there were inserted “the law of Gibraltar which implemented”.

(5D) Paragraph 15A of Schedule 3 is to be read as if—

- (a) in sub-paragraph (3)(c), for “required under Article 20(1)” there were substituted “set out in Article 20(1)(a) and (b)”;
- (b) in sub-paragraph (4), the words “and the Commission” were omitted;
- (c) in sub-paragraph (7)—
 - (i) in the definition of “the appropriate UK regulator” for “is” there were substituted “was immediately before exit day”;
 - (ii) in the definition of “specified”, in paragraph (b), for “any directly applicable Community regulation or decision made under the UCITS directive” there were substituted “any EU regulation or decision made under the UCITS directive which is retained direct EU legislation”;
 - (iii) in the definition of “UCITS home state rules” for “falling” substitute “which immediately before exit day fell”.

(5E) Paragraph 15B(2)(b) of Schedule 3 is to be read as if the words “and the Commission” were omitted.

(5F) Paragraph 15C(2) of Schedule 3 is to be read as if—

- (a) in paragraph (a), for “in accordance with” there were substituted “in implementation of”, and
- (b) in paragraph (b) for “are” there were substituted “deal with matters that immediately before exit day were”.

(9) In paragraph (7), after “(2),” insert “(2A),”.

(10) For paragraph (8)(a) substitute—

“(8) For the purposes of paragraph (7)—

- (a) section 194 is to be read as if references to any directly applicable EU regulation or decision made under any EU legislation were a reference to any retained direct EU legislation that was originally made under that EU legislation;
- (b) section 194A is to be read as if—
 - (i) in subsection (3)—
 - (aa) in paragraph (a), for “implements” there were substituted “implemented”;
 - (bb) in paragraph (b), for the words from “directly applicable” to the end there were substituted “EU regulation originally made under that directive which is retained direct EU legislation, or any regulations made by the Treasury, or technical standards made by the FCA, under a power substituted for the power of an EU institution to make EU tertiary legislation under that directive or that regulation”;

(a) Article 2(8) was substituted by S.I. 2013/472 and amended by S.I. 2015/910.

- (ii) in subsection (7), “, ESMA and the Commission” were omitted, and
- (iii) subsection (8) were omitted;
- (c) section 194B is to be read as if—
 - (i) in subsection (2), the reference to the capital requirements directive were a reference to legislation which implemented the capital requirements directive,
 - (ii) subsection (4) were omitted, and
 - (iii) in subsection (8), the reference to “the Commission, EBA and regulators in affected Member States” were a reference to the Gibraltar Financial Services Commission;
- (d) section 194C(6) is to be read as if the reference to the Commission were omitted;
- (e) section 194D(4) is to be read as if “the Commission and EIOPA” were omitted;
- (f) section 195A is to be read as if subsections (11) and (11A) were omitted;
- (g) section 195B is to be read as if subsections (10) and (11) were omitted;
- (h) section 195C is to be read as if—
 - (i) subsection (10) were omitted, and
 - (ii) in subsection (11), “the Commission and EIOPA” were omitted;
- (i) section 199 is to be read as if—
 - (i) in subsection (2)(a)(ii), for “directly applicable Community regulation or decision” there were substituted “retained direct EU legislation originally”,
 - (ii) in subsection (7), for paragraphs (a) and (b) there were substituted “inform the Gibraltar Financial Services Commission”, and
 - (iii) subsections (8), (10) and (11) were omitted.”.

Modification of Passport Rights Regulations

6. After article 2 insert—

“The Passport Rights Regulations: Gibraltar-based firms

2A.—(1) The Passport Rights Regulations apply in relation to a Gibraltar-based firm with the following further modifications.

- (2) Regulation 1(2) is to be read as if—
 - (a) in the definition of “health insurance risks”, in paragraph (b), after “Directive” there were inserted “(reading references in Article 206(2) of the Solvency 2 Directive to a Member State or home Member State as including the United Kingdom and Gibraltar)”;
 - (b) in the definition of “national guarantee fund”—
 - (i) in paragraph (a), after “in accordance with” there were inserted “the law of Gibraltar which implemented”; and
 - (ii) in paragraph (b), after “provided for in” insert “the law of Gibraltar which implemented”; and
 - (c) in the definition of “tied agent”, for “Article 4.1.29 of the markets in financial instruments directive” there were substituted “Article 2(11) of Commission Delegated Regulation (EU) 2017/565 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018)”.
- (3) Regulation 2 is to be read as if—

- (a) in paragraph (2)(c) after “in accordance with” there were inserted “the law of Gibraltar which implemented”,
- (b) in paragraph (3)—
 - (i) in sub-paragraph (c), after “as defined in” insert “the law of Gibraltar which preserves or corresponds to”, and
 - (ii) in sub-paragraph (d), after “under” insert “the law of Gibraltar which preserves or corresponds to”, and
- (c) in paragraph (5), for sub-paragraph (e) there were substituted—
 - “(e) a statement by the Gibraltar Financial Services Commission attesting that the firm covers—
 - (i) the Solvency Capital Requirement calculated in accordance with the law of Gibraltar which implemented Article 100 of the Solvency 2 Directive, and
 - (ii) the minimum capital requirement calculated in accordance with the law of Gibraltar which implemented Article 129 of that directive.”

(4) Regulation 2A(2) is to be read as if for the words from “to which” to “applies” there were substituted “which is required by the law of Gibraltar which implemented Article 28(2) of the capital requirements directive to have an initial capital of 730,000 euro”.

(5) Regulation 3 is to be read as if—

- (a) in paragraph (3)—
 - (i) for paragraph (a) there were substituted—
 - “(a) a statement of the classes of business specified in Annex 1 or 2 to the Solvency 2 Directive which the firm is authorised to carry on in accordance with the law of Gibraltar which implemented the Solvency 2 Directive;”, and
 - (ii) for paragraph (e) there were substituted—
 - “(e) a statement by the Gibraltar Financial Services Commission attesting that the firm covers—
 - (i) the Solvency Capital Requirement calculated in accordance with the law of Gibraltar which implemented Article 100 of the Solvency 2 Directive, and
 - (ii) the minimum capital requirement calculated in accordance with the law of Gibraltar which implemented Article 129 of that directive.”;
- (b) in paragraph (5)(c)(i), after “directive” there were inserted “(reading that Annex as it would have applied immediately before exit day in relation to an AIFM established in Gibraltar and exercising an EEA right deriving from that directive)”.

(6) Regulation 9A is to be read as if—

- (a) in paragraph (3)(a) for “applies” there were substituted “refers”;
- (b) paragraph (4) were omitted.”.

EEA firms satisfying conditions under Gibraltar law

7. Omit article 3 (EEA firms satisfying conditions under Gibraltar law)(a).

(a) Article 3 was amended by S.I. 2007/3254 and 2015/910.

Collective investment schemes constituted under Gibraltar law

8.—(1) Article 3A (collective investment schemes constituted under Gibraltar law)(a) is amended as follows.

(2) Renumber the existing text as paragraph (1) and in that paragraph, for “as it applies” substitute “as it applied immediately before exit day”.

(3) After paragraph (1) insert—

“(2) The Financial Services and Markets Act 2000 (Collective Investment Schemes Constituted in Other EEA States) Regulations 2001(b) are to be read in relation to a collective investment scheme constituted in Gibraltar as if—

- (a) in regulation 3, for the words from “in accordance with” to “that directive” there were substituted “immediately before exit day would have been a UCITS to which the UCITS directive applied”, and
- (b) in regulation 4(b) after “referred to in” there were inserted “the law of Gibraltar which implemented”.”.

Exercise by UK firms of deemed passport rights in Gibraltar

9.—(1) Article 4 (exercise by UK firms of deemed passport rights in Gibraltar) is amended as follows.

(2) In paragraph (1)(b)(c), for “UCITS (as defined in Article 1.2 of the UCITS directive) established in the UK” substitute “UK UCITS as defined in section 237(d) of the Act”.

(3) In paragraph (2)(e), for “its EEA right” substitute “the EEA right that such a firm would have had immediately before exit day”.

(4) In paragraph (3)(f)—

- (a) for “, article 77” substitute “and article 77”;
- (b) omit “and the Alternative Investment Fund Managers Regulations 2013”;
- (c) for “those rights” substitute “the rights that would before exit day have derived from that directive”;
- (d) omit the “and” after sub-paragraph (c);
- (e) after sub-paragraph (d) insert—
 - “; and
 - (e) “host state regulator” are to be treated as references to the Gibraltar Financial Services Commission.”.

(5) After paragraph (3) insert—

“(3A) Paragraph 19 of Schedule 3 is to be read as if—

- (a) in sub-paragraph (4)(b)(i), “pursuant to the provisions of the UCITS directive” were omitted;
- (b) for sub-paragraph (5ZA) there were substituted—
 - “(5ZA) This paragraph does not apply to a UK firm which is a reinsurance undertaking that only carries on—
 - (a) the activity consisting in accepting risks ceded by an insurance undertaking or third-country insurance undertaking, by another reinsurance undertaking

(a) Article 3A was inserted by S.I. 2012/2017.

(b) S.I. 2001/2383.

(c) Article 4(1) was substituted by S.I. 2012/2017.

(d) The definition of “UK UCITS” in section 237 was inserted by S.I. 2011/1613 and amended by S.I. 2013/1388.

(e) Article 4(2) was amended by S.I. 2012/2017.

(f) Article 4(3) was amended by S.I. 2014/1292.

- or by a third-country reinsurance undertaking as defined in Article 2(1) of the Solvency 2 Regulations 2015(a), or
- (b) in the case of the association of underwriters known as Lloyd’s, the activity consisting in accepting risks ceded by any member of Lloyd’s, or by an insurance undertaking or reinsurance undertaking other than the association of underwriters known as Lloyd’s.”;
 - (c) in sub-paragraph (5C) for “has the meaning given in Article 4.1.3 of the markets in financial instruments directive” there were substituted “means any of the services and activities listed in Part 3A of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(b)”;
 - (d) in sub-paragraph (6) “authorised under the capital requirements directive” were omitted;
 - (e) in sub-paragraph (7BA)(c)(ii) for “any directly applicable EU regulation made under that directive” there were substituted “any EU regulation made under that directive which is retained direct EU legislation, or any regulations made by the Treasury, or technical standards made by the FCA, under a power substituted for the power of an EU institution to make EU tertiary legislation under that directive”;
 - (f) in sub-paragraph (7BB)(b) the words “pursuant to Article 6.1 of the alternative investment fund managers directive” were omitted;
 - (g) in sub-paragraph (12), paragraph (aa) (but not the “and” immediately after it) were omitted;
 - (h) sub-paragraph (12ZA) were omitted;
 - (i) in sub-paragraph (14)—
 - (i) in paragraph (a), for “in accordance with” there were substituted “in implementation of”;
 - (ii) in paragraph (b) for “are” there were substituted “deal with matters that immediately before exit day were”.
- (3B) Paragraph 20 of Schedule 3 is to be read as if—
- (a) in sub-paragraph (2B) for “has the meaning given in Article 4.1.3 of the markets in financial instruments directive” there were substituted “means any of the services and activities listed in Part 3A of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001”;
 - (b) sub-paragraph (3B) were omitted;
 - (c) in sub-paragraph (3C)(a), for “as a management company pursuant to the provisions of the UCITS directive” there were substituted “to carry on the activity specified in Article 51ZA(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (managing a UCITS)”;
 - (d) in sub-paragraph (3D)(a)(ii), after “pursuant to” insert “provision made in implementation of”; and
 - (e) in sub-paragraph (3E)—
 - (i) in paragraph (a), for “implementing” substitute “that implemented”; and
 - (ii) in paragraph (b), for “any directly applicable EU regulation made under that directive” there were substituted “any EU regulation made under that directive which is retained direct EU legislation, or any regulations made by the Treasury, or technical standards made by the FCA, under a power substituted for the power of an EU institution to make EU tertiary legislation under that directive”;

(a) S.I. 2015/575.

(b) S.I. 2001/544; Part 3A of Schedule 2 is inserted by S.I. 2018/1403.

- (f) in sub-paragraph (4BA) for “under the second sub-paragraph of Article 34.7 of that directive” there were substituted “as to the identity of the remote members or participants of a multilateral trading facility operated by it”;
- (g) in sub-paragraph (4D) for “which falls within the second sub-paragraph of Article 2(1) of the Solvency 2 Directive” there were substituted “which is a reinsurance undertaking which only conducts reinsurance activities”;
- (h) in sub-paragraph (4G), for “Community” there were substituted “UK-Gibraltar”;
- (i) in sub-paragraph (4H)—
 - (i) in the opening words for “Community” there were substituted “UK-Gibraltar”;
 - (ii) in paragraph (b), for “the EEA” there were substituted “the United Kingdom or Gibraltar”;
 - (iii) in paragraph (c), for the words from “in an EEA State” to the end there were substituted “in Gibraltar, in a case where the leading insurance undertaking is established in the United Kingdom, or from a head office or branch established in the United Kingdom, in a case where the leading insurance undertaking is established in Gibraltar”;
- (j) in sub-paragraph (4I)—
 - (i) in paragraph (a), for “Community” there were substituted “UK-Gibraltar”;
 - and
 - (ii) paragraphs (c) and (d) were omitted.

(3C) Paragraph 20B of Schedule 3 is to be read as if—

- (a) in sub-paragraph (1), for “UCITS established in the United Kingdom” there were substituted “UK UCITS as defined in section 237”;
- (b) the words “or in regulations made by the European Commission under the UCITS directive” were omitted;
- (c) in sub-paragraph (3)(c), after “imposed by” there were inserted “provision made in implementation of”.

(3D) Paragraph 20C of Schedule 3 is to be read as if—

- (a) in sub-paragraph (5)—
 - (i) in paragraph (a), for sub-paragraphs (i) and (ii) there were substituted—
 - “(i) the provisions that implemented the alternative investment fund managers directive,
 - (ii) any EU regulation made under that directive which is retained direct EU legislation, and
 - (iii) any regulations made by the Treasury, or technical standards made by the FCA, under a power substituted for the power of an EU institution to make EU tertiary legislation under that directive, and”, and
 - (ii) in paragraph (b)(ii), for “another EEA State” there were substituted “an EEA State”;
- (b) in sub-paragraph (12), in the definitions of “feeder AIF” and “master AIF”, after “directive” there were inserted “(reading references to an AIF as references to an AIF as defined by regulation 3 of the Alternative Investment Fund Managers Regulations 2013).”(a).

(6) In paragraph (4)(b), for “that right” substitute “the right conferred by that Article before exit day”.

(a) S.I. 2013/1773.

(b) There have been amendments of Article 4(4) but none is relevant.

(7) After paragraph (4) insert—

“(5) Paragraph 28(1)(a) of Schedule 3 is to be read as if for “Article 20.1” there were substituted “Article 20(1)(a) and (b)”.

(6) Paragraph 29 of Schedule 3 is to be read as if—

- (a) the words “in accordance with paragraph 5 of Article 45 of the alternative investment fund managers directive” were omitted;
- (b) for “provide the information or to take the steps referred to in that paragraph” there were substituted “provide the Gibraltar Financial Services Commission with information falling under its responsibility, or to take the necessary steps to put an end to a breach of the law of Gibraltar which implemented the alternative investment fund managers directive”.

Modification of Passport Rights Regulations in relation to UK firms

10. After article 4 insert—

“The Passport Rights Regulations: UK firms

5.—(1) The Passport Rights Regulations apply in relation to a UK firm with the following further modifications.

(2) Regulation 1(2) is to be read as if in the definition of “tied agent”, for “Article 4.1.29 of the markets in financial instruments directive” there were substituted “Article 2(11) of Commission Delegated Regulation (EU) 2017/565 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018)”.

(3) Regulation 17A is to be read as if—

(a) in paragraph (3)(f) after “directive” there were inserted “(reading that Article as it would have applied immediately before exit day to a UK AIFM exercising an EEA right deriving from that directive)”; and

(b) in paragraph (10)—

(i) in the definition of “depository” for the words from “has” to the end there were substituted “means a depository appointed in accordance with provision that implemented Article 21 of the alternative investment fund managers directive”;

(ii) in the definition of “feeder AIF”, after “directive” there were inserted “(reading references to an AIF as references to an AIF as defined by regulation 3 of the Alternative Investment Fund Managers Regulations 2013)”;

(iii) for the definition of “implementing provision” there were substituted—

““implementing provision” means—

(a) a provision made in implementation of the alternative investment fund managers directive,

(b) any EU regulation made under that directive which is retained direct EU legislation, and

(c) any regulations made by the Treasury, or technical standards made by the FCA, under a power substituted for the power of an EU institution to make EU tertiary legislation under that directive,” and

(iv) in the definition of “master AIF”, after “directive” there were inserted “(reading references to an AIF as references to an AIF as defined by

regulation 3 of the Alternative Investment Fund Managers Regulations 2013”); and

(v) in the definition of “retail investor”, for the words from “has the meaning” to the end there were substituted “means an investor who is not a professional client for the purposes of the markets in financial instruments regulation”.

(4) Regulation 19 is to be read as if—

(a) in paragraph (2)(a), the words “(within the meaning of Article 13(7) of the Solvency 2 Directive)” were omitted; and

(b) after paragraph (2) there were inserted—

“(3) In paragraph (2)(a) “reinsurance” has the meaning given in Article 13(7) of the Solvency 2 Directive, but reading—

(a) references to an insurance undertaking, a reinsurance undertaking or a third country insurance undertaking in accordance with the definitions section 417(1) of the Act, and

(b) the reference to a third country reinsurance undertaking in accordance with regulation 2(1) of the Solvency 2 Regulations 2015(a).”.

PART 4

Amendments of EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018

Exclusion of Gibraltar-based firms from transitional arrangements

11.—(1) The EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018(b) are amended as follows.

(2) In regulation 1 (citation, commencement and interpretation), after paragraph (4) insert—

“(5) In these Regulations “Gibraltar firm” means a person whose registered office is in Gibraltar or a person who has no registered office and whose head office is in Gibraltar.”

(3) In regulation 10 (conditions to be satisfied for regulation 8 to apply)—

(a) omit the “and” at the end of sub-paragraph (a),

(b) at the end of sub-paragraph (b) insert—

“and

(c) is not a Gibraltar firm.”

(4) In regulation 13 (conditions to be satisfied for regulation 11 to apply)—

(a) omit the “and” at the end of sub-paragraph (a),

(b) at the end of sub-paragraph (b) insert—

“and

(c) is not a Gibraltar firm.”

(5) In regulation 30 (conditions to be satisfied for regulation 28 to apply: persons who cease to be authorised on exit day), after sub-paragraph (a) insert—

“(aa) who is not a Gibraltar firm.”.

(6) In regulation 35 (application of regulation 34)—

(a) S.I. 2015/575.

(b) S.I. 2018/1149: amended by S.I. 2019/****.

- (a) omit the “and” at the end of sub-paragraph (a),
- (b) at the end of sub-paragraph (b) insert—

“and

- (c) is not a Gibraltar firm.”

(7) In regulation 48 (application of regulation 47), after “49,” insert “49A”.

(8) In regulation 49 (conditions to be satisfied for regulation 47 to apply: persons who cease to be authorised on exit day), after paragraph (a) insert—

- “(aa) who is not a Gibraltar firm.”.

PART 5

Expiry of Parts 2 and 3

Expiry of Parts 2 and 3

12.—(1) Parts 2 and 3 cease to have effect at the end of 31 December 2020.

(2) The Treasury may by regulations made by statutory instrument amend paragraph (1) so as to extend the period during which Parts 2 and 3 have effect, but may only extend that period by 12 months on each occasion.

(3) If the Treasury make regulations under paragraph (2), the Treasury must publish and lay before Parliament a statement describing the progress that they have made in preparing new legislation to replace the legislation amended by Parts 2 and 3.

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

	<i>Name</i>
	<i>Name</i>
Date	Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in section 8 of the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular, under paragraphs (d), (e) and (g) of section 8(2)) arising from the withdrawal of the United Kingdom from the European Union.

They amend section 409 of the Financial Services and Markets Act 2000 and the Financial Services and Markets Act 2000 (Gibraltar) Order 2001, which together make provision about the rights of Gibraltar-based firms to carry on business in the United Kingdom and about the requirements to be met in the United Kingdom by firms based in the United Kingdom that seek to carry on business in Gibraltar.

They also amend the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 (S.I. 2018/1149), so as to exclude firms established in Gibraltar from certain provisions of those regulations.

Regulation 12 provides for Parts 2 and 3 of these Regulations to expire at the end of 2020, but gives HM Treasury power by regulations to keep them in force for successive periods of 12 months.

An impact assessment of the effect that this instrument, and certain other instruments made by HM Treasury under the European Union (Withdrawal) Act 2018, will have on the costs of business, the voluntary sector and the public sector is available from HM Treasury, 1 Horse

Guards Road, London SW1A 2HQ and is published alongside this instrument at www.legislation.gov.uk.