

**EXPLANATORY MEMORANDUM TO**  
**THE FINANCIAL SERVICES (GIBRALTAR) (AMENDMENT) (EU EXIT)**  
**REGULATIONS 2020**

**2020 No. 1274**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Treasury and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 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), which enable specified categories of Gibraltar-based firms to provide financial services in the United Kingdom and facilitate the access by similar types of UK-based firms to Gibraltar's financial services market.

*Explanations*

What did any relevant EU law do before exit day?

- 2.2 The Financial Services and Markets Act 2000 (Gibraltar) Order 2001 ('the Gibraltar Order 2001') (SI 2001/3084) has one key objective: to provide access for authorised UK and Gibraltar-based financial services firms between UK and Gibraltarian markets.
- 2.3 EU law allows authorised financial services firms to access markets across EU member states. However, for the purposes of EU law, the UK and Gibraltar are in effect considered as the same EU member state.
- 2.4 Section 409 of the Financial Services and Markets Act (FSMA) 2000 enables HM Treasury to make an order to modify Schedule 3 of FSMA so as to provide for authorised Gibraltar-based firms to qualify for authorisation under Schedule 3 under specified circumstances. The Gibraltar Order 2001 therefore modifies Schedule 3 of FSMA so that rights equivalent to passporting rights under the European Economic Area (EEA) also apply to authorised Gibraltar-based financial services firms which operate between the UK and Gibraltar.
- 2.5 The Government introduced the Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019 ("the 2019 Regulations") to temporarily enable Gibraltar-based firms to continue operating in the UK in the event of a 'no deal' scenario.

Why is it being changed?

- 2.6 The 2019 Regulations were originally made with the expectation that the Transition Period would come to an end on 31 December 2019. The end of the Transition Period is now expected to take place on 31 December 2020.
- 2.7 Without further action, the temporary arrangements under Parts 2 and 3 of the 2019 Regulations will commence and expire on 31 December 2020.

- 2.8 It is HM Treasury’s intention to use the power available under Regulation 12 to extend the temporary arrangements for 12 months to ensure that market access rights between Gibraltar and the UK are protected beyond the end of the Transition Period and ahead of the commencement of a permanent market access regime as part of the Financial Services Bill that was introduced to Parliament on 21 October 2020.
- 2.9 This instrument will amend the 2019 Regulations which in turn make technical amendments to existing primary and secondary legislation, including the Financial Services and Markets Act 2000 (in particular Section 409 of the Act), Financial Services and Market Act 2000 (Gibraltar) Order 2001 and EEA Passport Rights EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 (SI 2018/1149).

*What will it now do?*

- 2.10 The amendment will ensure that Gibraltar-based authorised financial services firms will be able to continue providing cross-border services and establishing branches in the UK as they do now, and facilitate the access by similar types of UK-based firms to Gibraltar’s financial services market for a 12 month period.
- 2.11 Regulation 2 substitutes “2020” for “2021” in paragraph (1) of regulation 12 of the Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019 (expiry of Parts 2 and 3).

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 The territorial application of this instrument includes Scotland and Northern Ireland.
- 3.3 The powers under which this instrument is made cover the entire United Kingdom and the territorial application of this instrument is not limited either by the Act or by the instrument.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is to the whole United Kingdom.
- 4.2 The territorial application of this instrument is to the whole United Kingdom.

**5. European Convention on Human Rights**

- 5.1 The Economic Secretary to the Treasury, John Glen MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2020 are compatible with the Convention rights.”

**6. Legislative Context**

- 6.1 This instrument amends regulation 12(1) of the 2019 Regulations, which in turn makes amendments to Section 409 of the Financial Services and Markets Act 2000, the Financial Services and Markets Act 2000 (Gibraltar) Order 2001, and the EEA

Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 to maintain the current arrangements under the 2019 Regulations.

## **7. Policy background**

### *What is being done and why?*

- 7.1 Gibraltar is a British Overseas Territory which has 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.
- 7.2 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.
- 7.3 As the common EU membership of the UK and Gibraltar has ended, the Government is committed to enabling financial services firms based in Gibraltar to continue to access the UK market. The Government has already introduced the 2019 Regulations to protect this market access.
- 7.4 These arrangements are however temporary and will be superseded by a new long-term framework as part of the Financial Services Bill that was introduced to Parliament on 21 October 2020.
- 7.5 The Financial Services Bill will establish a new legal and institutional framework that provides for mutual market access and aligned standards in financial services between the two jurisdictions, the Gibraltar Authorisation Regime (GAR). The access of Gibraltar-based firms to the UK's wholesale and retail markets will be conditional on Gibraltar aligning its relevant law and practice with that of the UK, on that access being compatible with certain objectives, such as protection of financial stability and consumers, as well as on the UK and Gibraltar governments and regulators closely cooperating as part of this regime. The Financial Services Bill will also make provisions to facilitate the access of UK-based firms to the Gibraltar market.
- 7.6 As part of the GAR, the Government will operate a periodic review process to ensure that compatibility with the objectives, alignment and cooperation conditions are sustained. HM Treasury will engage with the Government of Gibraltar to resolve any emerging issues bilaterally. Furthermore, HM Treasury will be under a duty to lay before Parliament a report on the operation of the GAR every two years. The report will set out, in particular, whether the three conditions underlying the regime continue to be satisfied.
- 7.7 This instrument will amend Regulation 12(1) of the 2019 Regulations in order to extend the temporary regime by 12 months to avoid disruption for Gibraltar-based firms and UK consumers. This instrument will be superseded by the long-term framework, and it will cease to have effect at the end of the extension unless HM Treasury extends its application by virtue of the powers available in Regulation 12 on a further occasion.
- 7.8 The Government of Gibraltar undertook their own contingency preparations for financial services legislation and passed a new Financial Services Act in 2019.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument is related to EU Exit but is not being made using the powers in the European Union (Withdrawal) Act 2018. These Regulations are made in exercise of the power conferred by regulation 12(2) of the Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019.

## **9. Consolidation**

- 9.1 There are currently no plans to consolidate the relevant legislation.

## **10. Consultation outcome**

- 10.1 HM Treasury has not undertaken a consultation on this instrument. HM Treasury engaged with the Government of Gibraltar and agreed to extend the temporary arrangements by an additional 12 months.
- 10.2 Between March and May 2020, a consultation was undertaken to seek stakeholder views on the future permanent market access arrangements between the UK and Gibraltar, and relevant stakeholders were engaged in this process, including the Government of Gibraltar, the Financial Conduct Authority (FCA), the Prudential Regulatory Authority (PRA), and the Bank of England:  
<https://www.gov.uk/government/consultations/market-access-arrangements-for-financial-services-between-the-uk-and-gibraltar-a-consultation> The engagement revealed support for arrangements that avoid disruption to business and consumers.

## **11. Guidance**

- 11.1 No further guidance is being published alongside this instrument.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An 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 £5 million a year. Due to this limited impact, a de-minimis impact assessment has been carried out.

## **13. Regulating small business**

- 13.1 This instrument applies to activities that are undertaken by small businesses.
- 13.2 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 accessing 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 significant, impact on small businesses in Gibraltar that provide services into the UK or UK-based firms that provide services in Gibraltar.

#### **14. Monitoring & review**

- 14.1 Regulation 12 in Part 5 of the 2019 Regulations provides a power for HM Treasury to extend the time limit on the regulations in this instrument. HM Treasury will be able to make a statutory instrument that extends the effect of the regulations beyond 31 December 2020, by one year at a time. The statutory instrument would be subject to annulment by a resolution of either House of Parliament.
- 14.2 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 framework between the UK government and the Government of Gibraltar.
- 14.3 A statement setting out progress to this effect was laid in Parliament on the same day as these Regulations and is copied at Annex A.

#### **15. Contact**

- 15.1 Maria Pabolaza at HM Treasury. Telephone: 0207 270 5002 or email: [maria.pabolaza@hmtreasury.gov.uk](mailto:maria.pabolaza@hmtreasury.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Katie Fisher, Deputy Director for International Policy and Partnerships, at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Economic Secretary to the Treasury (John Glen MP) can confirm that this Explanatory Memorandum meets the required standard.

## Annex A

# **PROGRESS REPORT ON THE DEVELOPMENT OF NEW PERMANENT MARKET ACCESS ARRANGEMENTS FOR FINANCIAL SERVICES FIRMS BETWEEN THE UK AND GIBRALTAR**

**Laid before Parliament pursuant to regulation 12 of the Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019**

### Background

The Government is committed to creating a new legal and institutional framework that provides for mutual market access and aligned standards in financial services between the United Kingdom and Gibraltar. This will replace the arrangements that existed prior to the UK and Gibraltar leaving the European Union (“EU”) together.

Until the end of the Transition Period, the UK and Gibraltar will continue to enjoy reciprocal market access through a passporting regime similar to that available to EU firms.

To ensure ongoing market access beyond the Transition Period, but prior to the new long-term legal and institutional framework being approved by Parliament, the Government introduced temporary measures in the Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/589) and the Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/680).

Without further action, the Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019 (“the 2019 Regulations”) are set to commence and expire on 31 December 2020. The 2019 Regulations address deficiencies in domestic legislation in relation to financial services market access rights between the UK and Gibraltar and in particular amended the following legislation to maintain access:

- Section 409 of the Financial Services and Markets Act 2000;
- the Financial Services and Markets Act 2000 (Gibraltar) Order 2001 (SI 2001/3084); and
- the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 (SI 2018/1149).

The 2019 Regulations were originally made with the expectation that the Transition Period would come to an end on 31 December 2019. The end of the Transition Period is now expected to take place on 31 December 2020.

It is the Government’s intention to extend by 12 months the transitional arrangements under Parts 2 and 3 of the 2019 Regulations to ensure there is no loss of market access. Regulation 12 of the 2019 Regulations confers a power on HM Treasury to extend their effect by an additional 12 months. In order to use this power, Regulation 12(3) requires that HM Treasury publish and lay a statement before Parliament describing the progress made in preparing the new permanent legislative arrangements between the UK and Gibraltar. The Government would like to give the following update.

## Progress report

Legislation providing for the new market access arrangements in financial services between the UK and Gibraltar, otherwise known as the Gibraltar Authorisation Regime (“GAR”), has been introduced as part of the Financial Services Bill that was introduced to Parliament on 21 October 2020.

Ahead of introduction, the Government took a number of steps to engage stakeholders in the design of the GAR, including:

- Conducting a public consultation between March and May 2020 to seek stakeholder views on the main features of the regime;
- Engaging in a series of technical discussions with the Government of Gibraltar to discuss the design of the GAR; and
- Holding regular discussions with the UK financial services regulators, including the Prudential Regulation Authority (PRA), the Bank of England, and the Financial Conduct Authority (FCA).

The GAR will deliver on the Government’s commitment to enable Gibraltar-based financial services firms to continue to access the UK market on the basis of high shared standards and close regulatory co-operation. The framework will reflect the unique and historical relationship between the two jurisdictions and the arrangements that were in place during our common membership of the EU. These unique circumstances do not apply to other jurisdictions.

Access of Gibraltar-based firms to the UK market will be conditional on Gibraltar aligning its relevant law and practice with that of the UK, on that access being compatible with certain objectives, such as protection of financial stability and consumers, and on close cooperation between the UK and Gibraltar authorities as part of this regime. Subject to approval by Parliament, HM Treasury will be able to specify by statutory instrument the UK regulated activities and corresponding activities regulated in Gibraltar for which market access is available.

As part of the GAR, the Government will operate a periodic review process to ensure that compatibility with the objectives, alignment and cooperation conditions are sustained. HM Treasury will engage with the Government of Gibraltar to resolve any emerging issues bilaterally. Furthermore, HM Treasury will be under a duty to lay before Parliament a report on the operation of the GAR every two years. The report will set out, in particular, whether the three conditions underlying the regime continue to be satisfied.

The Bill also makes provisions to facilitate the access of UK-based firms to the Gibraltar market. Further detail on the GAR can be found in the supplementary documentation of the Financial Services Bill.