

2001 No. 3084

FINANCIAL SERVICES AND MARKETS

**The Financial Services and Markets Act 2000 (Gibraltar)
Order 2001**

Made - - - - - 11th September 2001

Laid before Parliament 11th September 2001

Coming into force - - in accordance with article 1

The Treasury, in exercise of the powers conferred on them by sections 409(1) and 428(3) of the Financial Services and Markets Act 2000(a), hereby make the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Gibraltar) Order 2001 and comes into force—

- (a) for the purpose of making rules, on 5th October 2001;
- (b) otherwise, on the day on which section 19 of the Act comes into force.

(2) In this Order—

- “the Act” means the Financial Services and Markets Act 2000;
- “Gibraltar-based firm” means a firm which has its head office in Gibraltar;
- “the Passport Rights Regulations” means the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001(b);
- “Schedule 3” means Schedule 3 to the Act.

Exercise of deemed passport rights by Gibraltar-based firms

2.—(1) Schedule 3(c) applies in relation to a Gibraltar-based firm as follows.

(2) A Gibraltar-based firm falling within paragraph 5(b) or (c) of Schedule 3 is to be treated as having an entitlement, corresponding to its EEA right deriving from the banking consolidation directive so far as relating (only) to activities falling within items 1 to 6 in Annex 1 to that directive, to establish a branch or provide services in the United Kingdom.

(3) A Gibraltar-based firm falling within paragraph 5(d) of Schedule 3 is to be treated as having an entitlement, corresponding to its EEA right deriving from any of the insurance directives, to establish a branch or provide services in the United Kingdom.

(4) For the purposes of paragraphs (2) and (3), references in paragraph 5(b) and (d) of Schedule 3 to the home state regulator are to be treated as references to the competent authority (within the meaning of the relevant single market directive) in Gibraltar in relation to the Gibraltar-based firm concerned.

(a) S.I. 2000 c. 8.

(b) S.I. 2001/2511.

(c) Schedule 3 was amended by S.I. 2000/2952, regulation 8, and by S.I. 2001/1376.

(5) In relation to such a Gibraltar-based firm as is mentioned in paragraph (2) or (3), references in Schedule 3, the Passport Rights Regulations and the Financial Services and Markets Act 2000 (Compensation Scheme: Electing Participants) Regulations 2001(a) to—

- (a) “an EEA State” are to be treated as references to Gibraltar;
- (b) “an EEA right” are to be treated as references to the entitlement mentioned in paragraph (2) or (3);
- (c) rights deriving from a single market directive are to be treated as references to that entitlement, so far as corresponding to those rights; and
- (d) “EEA activities” are to be treated as references to the activities which the firm is seeking to carry on in exercise of that entitlement.

(6) Paragraph 16 of Schedule 3 does not apply to Gibraltar-based firms.

(7) For the avoidance of doubt, a Gibraltar-based firm which is exercising, or has exercised, the entitlement mentioned in paragraph (2) or (3) is to be taken to be an “incoming firm” for the purposes of Part XIII of the Act (incoming firms: intervention by the Authority); but section 199(7) of the Act has effect, in relation to such a Gibraltar-based firm, as if the words “and the Commission” were omitted.

EEA firms satisfying conditions under Gibraltar law

3.—(1) A relevant EEA firm which—

- (a) has satisfied Gibraltar establishment conditions (whether before or after commencement), and
- (b) has (whether before or after commencement) established a branch in the United Kingdom for the purpose of carrying on any relevant activity,

is to be treated as having satisfied the establishment conditions within the meaning of Part II of Schedule 3, and accordingly qualifies for authorisation under paragraph 12(1) of that Schedule.

(2) A relevant EEA firm which—

- (a) has satisfied Gibraltar service conditions (whether before or after commencement), and
- (b) is carrying on any relevant activity by providing services in the United Kingdom,

is to be treated as having satisfied the service conditions within the meaning of Part II of Schedule 3, and accordingly qualifies for authorisation under paragraph 12(2) of that Schedule.

(3) Where a relevant EEA firm has (whether before or after commencement) established a branch, or is providing services, in Gibraltar (but not in the United Kingdom) in exercise of an EEA right, regulations 4 to 7 of the Passport Rights Regulations apply to changes affecting that firm (so far as those changes relate to the establishment of a branch, or the provision of services, in the United Kingdom) as they apply to changes affecting a firm which has established a branch, or is providing services, in the United Kingdom in exercise of an EEA right.

(4) In relation to a firm falling within paragraph (1) or (2)—

- (a) the references in paragraph 15 of Schedule 3 to a “permitted activity” are references to a relevant activity; and
- (b) the reference in paragraph 15(2) of Schedule 3 to the consent notice, regulator’s notice or notice of intention is a reference to whichever of the corresponding notices mentioned in paragraph (5)(d) is applicable.

(5) In this article—

- (a) “commencement” means the beginning of the day on which section 19 of the Act comes into force;
- (b) “Gibraltar establishment conditions” means conditions under the law of Gibraltar corresponding to those in paragraph 13(1) of Schedule 3; and
- (c) “Gibraltar service conditions” means conditions under the law of Gibraltar corresponding to those in paragraph 14(1) of Schedule 3;
- (d) “relevant activity” means an activity specified in the notice corresponding to—
 - (i) the consent notice (within the meaning of paragraph 13 of Schedule 3), or

(a) S.I. 2001/1783.

- (ii) the regulator's notice or the notice of intention (within the meaning of paragraph 14 of Schedule 3),
as the case may be, which was given to the relevant authority in Gibraltar pursuant to the Gibraltar establishment conditions or the Gibraltar service conditions;
- (e) "relevant EEA firm" means an EEA firm other than a Gibraltar-based firm.

Exercise by UK firms of deemed passport rights in Gibraltar

4.—(1) Schedule 3 applies in relation to the establishment by a UK firm of a branch in Gibraltar, or the provision by a UK firm of services in Gibraltar, as follows.

(2) A UK firm is to be treated as having an entitlement, corresponding to its EEA right, to establish a branch or provide services in Gibraltar.

(3) In relation to a UK firm, references in Schedule 3, the Passport Rights Regulations and article 77 of the Financial Services and Markets Act 2000 (Transitional Provisions) (Authorised Persons etc.) Order 2001(a) to—

- (a) "an EEA State" are to be treated as including references to Gibraltar;
- (b) "an EEA right" are to be treated as including references to the entitlement mentioned in paragraph (2);
- (c) rights deriving from a single market directive are to be treated as including references to that entitlement, so far as corresponding to those rights; and
- (d) "EEA activities" are to be treated as including references to the activities which the firm is seeking to carry on in exercise of that entitlement.

(4) In paragraph 24(1)(b) of Schedule 3, the reference to the right conferred by Article 19 of the banking consolidation directive includes a reference to the entitlement mentioned in paragraph (2), so far as corresponding to that right.

Tony McNulty
Graham Stringer

11th September 2001

Two of the Lords Commissioners of Her Majesty's Treasury

(a) S.I. 2001/2636.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for firms authorised and having their head office in Gibraltar to exercise rights to establish branches and provide services in the United Kingdom, corresponding to the “passport” rights of firms authorised in other EEA States, under the EC single market directives relating to financial services. The rights in question of such Gibraltar-based firms are equivalent to “passport rights” under the banking consolidation directive (2000/12/EC) (so far as relating only to activities falling within items 1 to 6 in Annex 1 to that directive), and under the insurance directives (73/239/EEC; 88/357/EEC; 92/49/EEC; 79/267/EEC; 90/619/EEC; and 92/96/EEC).

The Order also makes provision about firms authorised in other EEA States which have exercised their rights under any of the single market directives to “passport” into Gibraltar. Article 3 provides that where such firms carry on in the UK activities covered by their “passport”, they qualify for authorisation under Schedule 3 to the Financial Services and Markets Act 2000. It also imposes on such firms obligations to inform the Financial Services Authority of changes relating to the establishment of branches or the provision of services in the United Kingdom.

Article 4 provides for UK firms which seek to establish branches or provide services in Gibraltar to be treated equivalently to those exercising “passport” rights under any of the single market directives to establish branches or provide services in other EEA States.

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