

THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5184 GIBRALTAR Thursday 24th October 2024

B. 29/24

FINANCIAL SERVICES (AMENDMENT No. 2) BILL

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THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

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BILL

FOR

AN ACT to amend the Financial Services Act 2019 to provide for market access arrangements between Gibraltar and the United Kingdom in respect of financial services; to amend the regulatory objective relating to the reputation of Gibraltar; to transfer responsibility for administering the Gibraltar investor compensation scheme to the Financial Services Resolution and Compensation Committee; to make further provision concerning financial promotions; to amend the matters considered by the Decision Making Committee and provide for decision making in exceptional cases; to amend provisions relating to confidentiality, information gathering and the assistance of other regulators and to provide for related offences; to amend the regime for regulated individuals and non-executive directors; to amend publication powers and the time limits for considering applications and certain notices; to amend the definitions of financial crime and designated regulatory objectives; to extend indemnities for costs to include damages; and for connected purposes.

ENACTED by the Legislature of Gibraltar.

Title.

1. This Act may be cited as the Financial Services (Amendment No. 2) Act 2024.

Commencement.

2. This Act comes into operation on the day appointed by the Minister by notice in the Gazette and different days may be appointed for different provisions and for different purposes.

Amendment of the Financial Services Act 2019.

3. The Financial Services Act 2019 is amended as follows.

Amendment of Part 1.

4. In section 3(4), omit paragraph (d) and “or” which precedes it.

Amendment of Part 2.

5. In section 12–

(a) in subsection (1), for “enter or offer to enter into an agreement the making or performance of which by either party constitutes the carrying on of a regulated activity” substitute “engage in investment activity”;

(b) after subsection (1), insert–

“(1A) “Engaging in investment activity” means–

(a) entering or offering to enter into an agreement the making or performance of which by either party constitutes–

(i) the carrying on of a regulated activity; or

(ii) a restricted activity; or

(b) exercising any rights conferred by a controlled investment to acquire, dispose of, underwrite or convert a controlled investment.

(1B) For the purposes of subsection (1A)–

“controlled investment” means an investment of a specified kind or one which falls within a specified class of investment; and

“restricted activity” means an activity of a specified kind or one which falls within a specified class of activity,

and “specified” means specified in regulations made by the Minister.”;

(c) in subsection (5)(b), after “regulated activity” insert “or restricted activity”.

Amendment of Part 3.

6.(1) In section 20, in the definition of “financial crime”, in paragraph (b), after “terrorism” insert “or proliferation financing”.

(2) In section 24–

(a) in subsection (3)–

(i) in paragraph (a)–

(aa) in sub-paragraph (i), omit “7 or”;

(bb) omit sub-paragraph (ii);

(cc) in sub-paragraph (iv), for “382” substitute “382(1)”;

- (ii) for paragraph (b), substitute–
 - “(b) to issue a decision notice under–
 - (i) section 79(2)(a) (other than where section 79(3) applies) imposing a variation–
 - (aa) under section 69(2)(a)(ii); or
 - (bb) under section 69(2)(a)(iii) which is a specified restriction;
 - (ii) section 79(2)(b) (other than where section 79(3) applies)–
 - (aa) imposing under section 70(3)(a) a requirement which is a specified restriction; or
 - (bb) varying under section 70(3)(b) an existing requirement so as to impose a specified restriction;
 - (iii) section 82(2);”;
- (iii) for paragraph (c), substitute–
 - “(c) to give a direction under–
 - (i) section 80(1)(a)(i); or
 - (ii) section 80(1)(a)(ii) or (b) or 516 which imposes a specified restriction;”;
- (iv) for paragraph (d), substitute–
 - “(d) to issue a decision notice withdrawing approval of a regulated individual under section 103(1)(c);”;
- (v) omit paragraph (f);
- (vi) for paragraph (g), substitute–
 - “(g) to refuse to extend the period for making representations–
 - (i) under section 160(8) in respect of a notice issued under section 160(5); or
 - (ii) under section 612(5) in respect of a warning notice concerning a decision which, if confirmed, would be a specified regulatory decision;”;

- (vii) omit paragraph (h);
- (viii) for paragraph (k), substitute—
 - “(k) to—
 - (i) issue a decision notice under section 306(2) or 315(2)—
 - (aa) imposing or varying a condition which is a specified restriction; or
 - (bb) varying an existing condition so as to impose a specified restriction;
 - (ii) issue a decision notice under section 327(6) suspending or revoking a scheme’s authorisation or recognition; or
 - (iii) under section 330(2), issue a direction under section 329(2) which is a specified restriction”;
 - (ix) for paragraph (l), substitute—
 - “(l) to issue a decision notice under section 348ZA(1)(b)—
 - (i) exercising any of the powers in section 347(2)(b) or 348 in respect of a prospectus or any public offering or trading to which a prospectus relates; or
 - (ii) without first issuing a warning notice, in accordance with the procedure in section 348ZA(2);”;
 - (x) for paragraph (m), substitute—
 - “(m) to issue a decision notice—
 - (i) under section 544(2) exercising any of the powers specified in section 544(1)(b) or (c) imposing a specified restriction;
 - (ii) under section 549(1) suspending or revoking a licence under section 546 or giving a direction under section 548(a) or (b); or
 - (iii) under section 549(1) without first issuing a warning notice, in accordance with the procedure in section 549(2);”;
 - (xi) for paragraph (n), substitute—
 - “(n) to issue a decision notice under section 564(3)—

- (i) imposing on an IORP under section 563(2)(a) a condition which is a specified restriction; or
 - (ii) varying an existing condition on an IORP under section 563(2)(b) so as to impose a specified restriction;”;
 - (xii) for paragraph (o), substitute—
 - “(o) to issue a decision notice under section 571(1)—
 - (i) imposing a condition which is a specified restriction on, suspending or revoking an IORP’s authorisation under section 570(1);
 - (ii) suspending or revoking an IORP’s authorisation under section 570(3);
 - (iii) suspending or revoking a small institution’s registration under section 570(5); or
 - (iv) in respect of any matter in sub-paragraphs (i) to (iii) without first issuing a warning notice in accordance with the procedure in section 571(2)”;
 - (xiii) for paragraph (p)(i), substitute—
 - “(i) a decision notice under section 600(3)(b), (c) or (d)—
 - (aa) imposing on a personal pension scheme a condition which is a specified restriction;
 - (bb) varying an existing condition on a personal pension scheme so as to impose a specified restriction; or
 - (cc) revoking the approval of a personal pension scheme;”;
 - (xiv) omit paragraph (q) and “or” which precedes it;
 - (xv) omit paragraph (s);
 - (xvi) omit paragraph (t);
 - (xvii) omit paragraph (u);
- (b) after subsection (3), insert—

“(3A) In subsection (3), “specified restriction” means a condition, requirement, direction or other decision, the terms of which provide or have the effect that the person concerned—

- (a) is prohibited from conducting new business which the person would otherwise be permitted to conduct; or
- (b) must—
 - (i) cease conducting business of a particular class or description which the person conducts or would otherwise be permitted to conduct; or
 - (ii) reduce the level or volume of existing business which the person conducts or would otherwise be permitted to conduct.”;

(c) for subsection (4), substitute—

“(4) A GFSC decision does not fall within subsection (3)(a), (b), (c), (d), (i), (j), (k), (l), (m), (n), (o) (p) or (r) if the person concerned—

- (a) has agreed in writing to the steps proposed being taken by the GFSC; or
- (b) where the proposed decision is set out in a warning notice, has not made any representations to the GFSC within the notice period specified in section 612(2)(a) (and in that event the GFSC may regard the facts and matters set out in the warning notice as undisputed).”;

(d) after subsection (5), insert—

“(6) The Minister may by regulations—

- (a) amend subsection (3) by adding, modifying or removing an entry;
- (b) amend the definition of specified restriction in subsection (3A); or
- (c) prescribe a decision which the GFSC may make, whether under this Act or any other enactment, as a specified regulatory decision to which subsection (2) applies.”.

(3) In section 27—

(a) in subsection (2), for paragraphs (b) and (c), substitute—

“(b) the functions under Part 15 in relation to—

- (i) the financing arrangements for the resolution functions; and

- (ii) the Gibraltar deposit guarantee scheme; and
 - (c) the functions under Part 16 in relation to the Gibraltar investor compensation scheme.”;
- (b) after subsection (3), insert–
- “(4) Schedule 18 makes further provision about the powers and obligations of the FSRCC in exercising its functions under Parts 15 and 16.”.
- (4) In section 30(5)–
- (a) in the opening words, omit “from Gibraltar”;
 - (b) in paragraph (a), for “Chief Executive must” substitute “Chief Executive (or, if the Chief Executive is incapacitated, the Chair of the GFSC) must”.
- (5) In section 38(5), for “the costs of” substitute “all costs and damages incurred in”.

Amendment of Part 5.

7.(1) In section 45–

- (a) in subsection (1), in the definition of “foreign regulator”–
 - (i) for “and the scheme manager” substitute “, the scheme manager”;
 - (ii) after “Compensation Scheme” insert “and the scheme operator of the United Kingdom’s Financial Ombudsman Scheme”;
 - (b) in subsection (2)(a)–
 - (i) after sub-paragraph (i), omit “or”;
 - (ii) after sub-paragraph (ii) insert–

“or
 - (iii) is a former regulated person, in relation to the time when the person was a regulated person;”.
- (2) In section 46(2)(a), for sub-paragraphs (i) and (ii), substitute–
- “(i) a member of the GFSC or any of its committees;
 - (ii) employed by the GFSC; or
 - (iii) engaged to provide services to the GFSC; or”.

(3) For sections 50 and 51, substitute—

“Providing assistance to other regulators.

50.(1) The GFSC, at the request of a foreign regulator, may exercise its powers under Part 10 or arrange for those powers to be exercised by a person appointed by the GFSC for that purpose.

(2) The GFSC may direct a person appointed under subsection (1) to permit a representative of the foreign regulator to attend, and take part in, any interview which the appointed person conducts, subject to any conditions the GFSC considers appropriate.

(3) A representative of a foreign regulator must not be permitted to attend or take part in an interview in accordance with subsection (2) unless the GFSC is satisfied that any information obtained by the foreign regulator as a result of the interview will be subject to safeguards equivalent to those set out in sections 46 and 48.

(4) The GFSC must issue a statement of its policy with respect to the conduct of interviews in relation to which a direction under subsection (2) has been given.

(5) Any statement issued under subsection (4) must be approved by the Minister.

(6) In deciding whether to exercise its powers under subsection (1) or (2), the GFSC may take into account, in particular—

- (a) whether similar assistance would be given to the GFSC in the country or territory of the requesting foreign regulator;
- (b) whether the case concerns the contravention of a law or other requirement which has no close parallel in Gibraltar or involves the assertion of a jurisdiction not recognised by Gibraltar;
- (c) the seriousness of the case and its importance to persons in Gibraltar;
- (d) whether in Gibraltar, in respect of the same person and the same matter—
 - (i) criminal proceedings have been initiated or a criminal penalty has been imposed; or
 - (ii) an administrative sanction has been imposed under this Act,

unless the requesting foreign regulator can show that the relief or sanction sought in any proceedings it has initiated or proposes to initiate is of a different nature to that sought or obtained in Gibraltar; or

- (e) whether the requesting foreign regulator has undertaken to make such contribution towards the costs incurred by the GFSC as the GFSC considers appropriate.

Refusing to provide assistance.

51.(1) Where the GFSC refuses to provide the assistance requested or is unable to do so, it must inform the requesting foreign regulator and provide it with the reasons for the decision.

(2) The GFSC may refuse to act at the request of a foreign regulator on grounds of public interest or essential national interest.

(3) For the purpose of subsection (2) it is for the Minister to determine the public interest or essential national interest, and the GFSC must refuse to act at the request of a foreign regulator when the Minister so determines.”.

- (4) After section 52, insert–

“Offences.

52A.(1) A person (“P”) commits an offence if–

- (a) P discloses confidential information in contravention of this Part or causes or permits such a disclosure; or
- (b) P uses confidential information which has been disclosed to P in contravention of this Part.

(2) In any proceedings for an offence under subsection (1), it is a defence for P to prove–

- (a) that P did not know and had no reason to suspect that–
 - (i) the information was confidential information; and
 - (ii) the information was disclosed in contravention of this Part; and
- (b) that P took all reasonable precautions and exercised all due diligence to avoid committing the offence.

(3) A person who commits an offence under subsection (1) is liable–

- (a) on summary conviction, to imprisonment for six months, to the statutory maximum fine, or both; or
- (b) on conviction on indictment, to imprisonment for two years or a fine, or both.”.

Amendment of Part 6.

8.(1) After section 54(1)(a), insert—

“(b) a UK-based person who has a Schedule 3A permission to carry on one or more regulated activities;”.

(2) After section 55, insert—

“UK-based persons carrying on activities in Gibraltar.

55A. Schedule 3A makes provision about the carrying on of regulated activities in Gibraltar by UK-based persons.

Gibraltar-based persons carrying on activities in the UK.

55B. Schedule 3B makes provision about the carrying on of activities corresponding to regulated activities in the United Kingdom by Gibraltar-based persons.

Provision about market access and alignment.

55C.(1) The Minister may by regulations make such provision as the Minister considers appropriate for the purpose of, or in connection with—

- (a) amending a market access provision; or
- (b) aligning the law and practice concerning or related to the regulation of financial services, in particular, as it affects the carrying on of relevant regulated activities, with the corresponding law and practice of the United Kingdom.

(2) In this section—

a “market access provision” means a provision or set of provisions in an enactment so far as it relates to or affects—

- (a) the carrying on of activities in Gibraltar by UK-based persons;
- (b) the carrying on of activities in the United Kingdom by Gibraltar-based persons; or
- (c) interaction of any other kind between Gibraltar and the United Kingdom, whether relating to persons, activities, financial instruments, other property or other matters; and

a “relevant regulated activity” means a regulated activity which a person in Gibraltar is authorised to carry on there and may also be authorised to carry on in, and under the law of, the United Kingdom.

(3) Without limiting subsection (1)(a), regulations under this section may–

- (a) replace or supplement a market access provision with provisions similar to any provision of Schedule 3A or 3B;
- (b) amend a market access provision so as to restore any aspect of the effect the provision had immediately before IP completion day; or
- (c) amend a market access provision so as to secure that the same provision is made in connection with Gibraltar as is made in connection with most or all other countries or territories outside the United Kingdom.

(4) Regulations under this section may–

- (a) make different provision for different purposes;
- (b) amend, revoke, repeal or otherwise modify an enactment; or
- (c) make consequential, incidental, supplementary, transitional, transitory or saving provisions.”.

(3) In section 56–

- (a) re-number section 56 as subsection (1);
- (b) after that subsection, insert–

“(2) If–

- (a) a UK-based person’s permission under Schedule 3A is cancelled; and
- (b) as a result, there is no regulated activity for which the UK-based person has permission,

the GFSC must give a direction withdrawing the UK-based person’s status as an authorised person.”.

Amendment of Part 7.

9.(1) In section 62(1), for paragraph (b), substitute–

- “(b) the regulatory objective of the protection of consumers; and
- (c) the regulatory objective of the good reputation of Gibraltar,”;

(2) In section 65(2), for paragraph (a), substitute—

“(a) are desirable in order to avoid or reduce significant risk to any of the GFSC’s designated regulatory objectives; and”;

(3) In section 68(3), for paragraph (a), substitute—

“(a) is desirable in order to avoid or reduce significant risk to any of the GFSC’s designated regulatory objectives; and”;

(4) In section 69(1)(d), for sub-paragraph (i), substitute—

“(i) is desirable in order to avoid or reduce significant risk to any of the GFSC’s designated regulatory objectives; and”;

(5) In section 70—

(a) in subsection (2)(c), for sub-paragraph (i), substitute—

“(i) is desirable in order to avoid or reduce significant risk to any of the GFSC’s designated regulatory objectives; and”;

(b) in subsection (5), for paragraph (a), substitute—

“(a) is desirable in order to avoid or reduce significant risk to any of the GFSC’s designated regulatory objectives; and”.

(6) In section 77, for subsections (4) and (5), substitute—

“(4) In any other case, the relevant period is six months.

(5) The GFSC may determine an incomplete application if it considers it appropriate to do so, but must determine such an application within 12 months beginning with the date on which it received the application unless, in its discretion and with the applicant’s consent, the GFSC decides otherwise (but, other than in exceptional circumstances, any additional period must not exceed 12 months).

(5A) The Minister may by regulations prescribe different periods to—

(a) the relevant period specified in subsection (2)(a), (3) or (4);

(b) the additional period specified in subsection (2)(b); or

(c) the periods specified in subsection (5).

(5B) Regulations under subsection (5A) may—

- (a) make different provision in respect of different regulated activities or different classes or types of application;
- (b) make consequential, incidental, supplementary, transitional, transitory or saving provisions; or
- (c) make provision which has retrospective effect in relation to applications received by the GFSC before the coming into operation of subsection (5A).”.

(7) In section 79(3)–

- (a) in paragraph (a), for “(1)(b)” substitute “(1)(a) or (b)”;
- (b) in paragraph (b), for “(2)(b)” substitute “(2)(a) or (b)”;
- (c) for the closing words, substitute–

“does not apply where the regulated firm has consented in writing to the variation or requirement or, in the case of a requirement, has requested it by means of an application under section 70(4) (but see section 79A).”.

(8) For section 83A, substitute–

“GFSC consent to material changes to a regulated firm or its business.

83A.(1) A regulated firm must obtain the GFSC’s consent to any material change that the firm proposes to make to its business plan, financial resources or corporate governance arrangements–

- (a) which may affect the firm’s continuing satisfaction of the threshold conditions in relation to any of the regulated activities for which the firm has permission; or
- (b) which is a specified material change.

(2) An application by a regulated firm to exercise a UK market access right is a material change to which subsection (1) applies.

(3) The GFSC may issue guidance on changes of the kind in subsection (1)(a) which may affect a regulated firm’s continuing satisfaction of the threshold conditions.

(4) A regulated firm must obtain the GFSC’s consent before implementing a change to which subsection (1) applies.

(5) A consent application must–

- (a) be made in the form and manner the GFSC directs;

- (b) contain such information as the GFSC reasonably requires; and
 - (c) be accompanied by any prescribed fee.
- (6) The GFSC may, in respect of an application made under subsection (5)–
- (a) give consent;
 - (b) give consent subject to conditions; or
 - (c) refuse consent.
- (7) Where the GFSC–
- (a) decides to give consent, it must give the regulated firm written notice of that decision and the date from which it takes effect; or
 - (b) proposes to give consent subject to conditions or to refuse consent, it must give the regulated firm written notice specifying–
 - (i) the GFSC's reasons for proposing to do so; and
 - (ii) the period during which the firm may make representations to the GFSC about the proposal.
- (8) Before reaching a decision to which subsection (7)(b) applies, the GFSC must have regard to any representations made by the regulated firm during the period specified and must give the regulated firm written notice of the decision reached and the reasons for that decision.
- (9) The conditions which the GFSC may impose under subsection (6)(b) are such conditions relevant to the material change to which the consent application under subsection (5) relates as it considers appropriate having regard to all the circumstances including, in particular, conditions which have the effect of varying, or imposing requirements on, the regulated firm's Part 7 permission.
- (10) A variation or requirement imposed under subsection (9) has the same effect as if it were imposed under section 69 or 70 (as the case may be) but its imposition is not a specified regulatory decision to which section 24(3) applies.
- (11) The Minister may by regulations specify changes to a firm's business plan, financial resources or corporate governance arrangements to which subsection (1) applies (a "specified material change").
- (12) Regulations under subsection (11) may–
- (a) make different provision for different purposes;

- (b) make further provision as to how consent to specified material changes is given or refused including, in particular, requiring the Minister to be consulted on any change which may affect any macro-economic or other public interest of Gibraltar; or
- (c) make consequential, incidental, supplementary, transitional, transitory or saving provisions.

(13) In this section –

“specified material change” has the meaning given in subsection (11); and

“UK market access right” means a deemed passporting right to carry on business in the United Kingdom provided by the Financial Services (Passport Rights and Transitional Provisions) (EU Exit) Regulations 2020 and the corresponding law of the United Kingdom.

(14) This section applies without limiting any notification obligation imposed by any other provision of this Act or any regulations made under it.”.

Amendment of Part 8.

10.(1) In section 85–

(a) after the definition of “candidate” omit “and”;

(b) after that definition, insert–

““independent”, in relation to a non-executive director, has the meaning given in Schedule 15;

“large investment firm” means an investment firm to which regulation 4(3) of the Financial Services (Investment Firms) (Prudential Requirements) Regulations 2021 applies;

“non-executive director” has the meaning given in Schedule 15;

“outsourced provider” has the meaning given in section 94A(2);

“regulated individual” means an individual who has been approved under section 93 by the GFSC to perform a specified regulated function and includes a non-executive director to whom section 88A(2) applies;”;

(c) after the definition of “RI firm” insert–

““senior independent director” has the meaning given in Schedule 15.”.

(2) In section 86–

(a) for subsection (1), substitute–

“(1) A regulated function is a function, in a regulated firm or audit firm, listed in Part 1, 2 or 3 of Schedule 14.”;

(b) in subsection (2), for “a regulated firm” substitute “an RI firm”.

(3) In section 87–

(a) in subsection (2), for “A regulated firm” substitute “An RI firm”;

(b) in subsection (2A), in the opening words, for “Schedule 15” substitute “Part 3 of Schedule 14”;

(c) for subsection (2A)(b), substitute–

“(b) the GFSC has waived the application of this Part to that function–

(i) in the firm, by agreement with that firm; or

(ii) in firms of a specified class or description to which the firm belongs.”;

(d) after subsection (2A), insert–

“(2B) For the purposes of subsection (2A)(b)(ii), “specified” means specified by the GFSC, with the consent of the Minister, in a notice published in the manner it considers appropriate.”.

(4) In section 88–

(a) in subsection (1), for “an individual who has been approved by the GFSC (“a regulated individual”)” substitute “a regulated individual”;

(b) after subsection (4), insert–

“(5) Without limiting subsection (4), where the GFSC is satisfied that–

(a) a person (“P”) has at any time performed a regulated function without being a regulated individual; and

(b) at that time P knew, or could reasonably be expected to have known, that P was performing a controlled function without approval,

it may impose such sanctions under Part 11 on P as it considers appropriate.”.

(5) After section 88, insert–

“Non-executive directors.

88A.(1) Schedule 15 requires certain categories of RI firm—

- (a) to appoint one or more non-executive directors; and
- (b) to ensure that certain regulated functions are performed by non-executive directors.

(2) Subject to subsection (3), an individual appointed as a non-executive director, whether or not they perform any other regulated function, must be a regulated individual.

(3) Paragraph 2(4) of Schedule 15 provides for certain categories of RI firm to appoint non-executive directors who may but need not be regulated individuals.”.

(6) In section 89—

- (a) re-number section 89 as subsection (1);
- (b) in subsection (1), for “a regulated firm” substitute “an RI firm”;
- (c) after subsection (1), insert—

“(2) In the case of an RI firm which is part of a group, a person (“P”) exercises significant influence over a regulated firm if P is an individual within the firm’s parent entity or another entity within the group who has a significant influence on the management or conduct of one or more aspects of the firm’s affairs in relation to its regulated activities.”.

(7) For section 91, substitute—

“Power to amend Schedules 14 and 15.

91.(1) The Minister may by regulations amend Schedule 14 or 15.

(2) Without limiting subsection (1), regulations under this section may, in particular—

- (a) add, modify or remove a regulated function, a category of RI firm or any other entry;
- (b) specify a regulated function which may or may not be performed by an outsourced provider or specified category of outsourced provider; or
- (c) specify a regulated function which must be performed by a non-executive director (including whether the director must be independent).”.

(8) In section 94–

(a) after subsection (1), insert–

“(1A) Without limiting subsection (1)(a), in considering whether an individual is fit and proper, the GFSC must have regard to whether the individual (whether in Gibraltar or elsewhere) has at any time–

- (a) participated in serious misconduct in relation to the business of an authorised person;
- (b) been the subject of a prohibition or other serious adverse decision by a financial services or professional regulatory body;
- (c) engaged in serious or persistent non-compliance or other misconduct in relation to the individual’s tax obligations or participated in such non-compliance or misconduct in relation to the tax obligations of an authorised person;
- (d) been convicted of an offence involving–
 - (i) fraud, dishonesty, deception or breach of trust;
 - (ii) money laundering, terrorist financing or proliferation financing; or
 - (iii) tax evasion;
- (e) been disqualified or prohibited from being a company director or a trustee of any trust; or
- (f) been adjudged bankrupt or made a composition or arrangement with creditors.”;

(b) for subsection (2), substitute–

“(2) Without limiting subsection (1)(b), in considering whether an individual is able to perform a regulated function, the GFSC must have regard to whether the individual has the skills, qualifications, experience and capacity required to do so.

(3) For the purposes of subsection (2), whether an individual has the capacity to perform a regulated function means whether that individual has adequate time to perform the function and meet the responsibilities associated with that function.”.

(9) After section 94, insert–

“Additional requirements for outsourced providers.

94A.(1) An RI firm may seek approval for a regulated function in Schedule 14 to be performed by an outsourced provider where, and to the extent, that Schedule so provides.

(2) In this Part an “outsourced provider” means an individual who is not an employee, officer or director (or equivalent) of the RI firm.

(3) The GFSC may only approve an outsourced provider if, in addition to meeting the criteria for approval in section 94, it is satisfied that the appointment of that individual—

- (a) whether on its own or when considered with other regulated individuals appointed within the RI firm, will not result in the RI firm’s senior management delegating its responsibility for complying with the requirements imposed on the firm by or under this Act;
- (b) will not impair—
 - (i) the quality of the firm’s internal controls and system of governance;
 - (ii) the firm’s compliance with the obligations it must meet in order to be and remain authorised; or
 - (iii) the GFSC’s ability to supervise the firm’s compliance with its obligations; and
- (c) is or will be the subject of a legally enforceable agreement between the RI firm and the outsourced provider (or any employer or other third party through whom the outsourced provider is engaged) which—
 - (i) clearly defines the rights and obligations of the RI firm and the outsourced provider (and any relevant third party);
 - (ii) enables the RI firm to terminate the outsourcing arrangement, if necessary, without detriment to the continuity and quality of its provision of services to clients; and
 - (iii) requires the outsourced provider and any relevant third party to cooperate with the GFSC in connection with the outsourced provider’s activities.”.

(10) In section 97—

- (a) for subsection (1), substitute—

“(1) The GFSC may approve a candidate’s application if–

- (a) the candidate satisfies the criteria for approval in section 94; and
- (b) where the candidate is an outsourced provider, the GFSC is satisfied that the additional requirements in section 94A are met.”;

(b) for subsection (2), substitute–

“(2) The GFSC may give approval subject to such conditions as it considers appropriate and desirable to advance one or more of its regulatory objectives.”.

(11) In section 98–

(a) in subsection (1)–

- (i) in paragraph (a), after “Part 7” insert “or approval under Part 24”;
- (ii) in paragraph (b)–
 - (aa) for “30 days (excluding public and bank holidays)” substitute “30 working days”;
 - (bb) for “application under this Part” substitute “completed application”;

(b) after subsection (1), insert–

“(1A) If the GFSC imposes a requirement under section 95(3), the application is not to be regarded as a completed application until the day that the interview process is completed.”.

(12) In section 100–

(a) in subsection (1)–

- (i) for “considers, and can demonstrate,” substitute “is satisfied”;
- (ii) after “criteria for approval” insert “or, where the individual is an outsourced provider, the additional requirements in section 94A are no longer met”;

(b) in subsection (2)–

- (i) in the opening words, after “consider” insert “the matters in section 94(1A) or”;
- (ii) after paragraph (b), insert “or”;

(iii) omit paragraph (d) and “or” after paragraph (c).

(13) In section 101(4), for “30 days (excluding public and bank holidays)” substitute “30 working days”.

(14) In section 104(1)(c), after “disciplinary action” insert “(or, in the case of an outsourced provider, any other steps)”.

Amendment of Part 9.

11.(1) In section 113(1)–

(a) after “must” insert “as soon as reasonably possible”;

(b) omit “before the end of the second working day following receipt”.

(2) For section 120(2), substitute–

“(2) The GFSC may only impose conditions where–

(a) if it did not impose those conditions, it would propose to object to the acquisition; or

(b) it appears to the GFSC that imposing those conditions is desirable in order to advance one or more of its regulatory objectives.”.

(3) In section 122–

(a) for subsection (1), substitute–

“(1) The GFSC must act under section 118 within the assessment period, which–

(a) begins on the day the GFSC acknowledges receipt of a completed section 111 notice; and

(b) ends on the day–

(i) 60 working days later in the case of a change of control which the GFSC considers to be non-complex or moderately complex; or

(ii) 6 months later in the case of a change of control which the GFSC considers to be complex.”;

(b) in subsection (2), omit “, no more than once,”;

(c) in subsection (4), for “within two working days of” substitute “as soon as reasonably possible after”;

(d) omit subsection (6).

(4) After section 122, insert–

“Duration of approval.

122A.(1) Approval of an acquisition (whether granted unconditionally or subject to conditions) is effective for such period as the GFSC may specify in writing.

(2) Where the GFSC has specified a period under subsection (1), it may extend the period.

(3) Where the GFSC has not specified a period, the approval is effective for one year beginning with the date of–

(a) the notice given under section 122(4)(a) or (b)(i); or

(b) any decision on an appeal under section 122(7) which results in the person receiving approval.”.

(5) In section 123–

(a) in subsection (1), for “, no later than the 50th working day of the assessment period,” substitute “by notice”;

(b) after subsection (1), insert–

“(1A) A notice under subsection (1) must be given no later than–

(a) the 50th working day of the assessment period, in any case to which section 122(1)(b)(i) applies; or

(b) the last day of the fifth month of the assessment period, in any case to which section 122(1)(b)(ii) applies.”;

(c) in subsection (2)–

(i) for “On the first occasion that” substitute “If”;

(ii) omit “(“the interruption period”)”;

(d) omit subsections (3) to (5);

(e) in subsection (6)–

(i) after “must” insert “as soon as reasonably possible”;

(ii) omit “before the end of the second working day following receipt”.

(6) After section 123, insert—

“Incomplete notices.

123A. The GFSC may determine an incomplete section 111 notice if it considers it appropriate to do so, but must determine such a notice within 12 months beginning with the date on which it was received unless, in its discretion and with the section 111 notice-giver’s consent, the GFSC decides otherwise (but, other than in exceptional circumstances, any additional period must not exceed 12 months).”.

(7) Omit section 124(5).

(8) In section 129—

(a) after subsection (4), insert—

“(4A) A person who makes an acquisition after the GFSC’s approval for the acquisition has ceased to be effective by virtue of section 122A commits an offence.”;

(b) in subsection (7), after “(3),” insert “(4A),”.

(9) In section 130—

(a) in the heading, after “etc.” insert “or deadlines.”;

(b) re-number section 130 as subsection (1);

(c) after subsection (1), insert—

“(2) The Minister may by regulations prescribe different periods to those specified in—

(a) section 122(1) for assessing a section 111 notice;

(b) section 123(1A) for seeking further information in respect of a section 111 notice; or

(c) section 123A for the determination of incomplete notices.”.

Amendment of Part 10.

12.(1) In section 131—

(a) in subsection (1)—

(i) in paragraph (e)(iv), omit “or”;

(ii) for paragraph (f), substitute—

- “(f) a person who has or at any time had a direct or indirect proprietary, financial or other interest in a person in the preceding paragraphs or who is seeking to obtain such an interest;
- (g) a person who is or was involved, directly or indirectly, in a transaction which the GFSC considers to be relevant to the discharge of its functions under this Act or any other enactment; or
- (h) a connected person.”;

(b) in subsection (2), for “(d) or (e)” substitute “(d), (e) or (f)”.

(2) In section 132–

(a) for subsection (2), substitute–

“(2) Subsection (1) only applies to information and documents that the GFSC reasonably requires for the purpose of or in connection with–

- (a) exercising any function conferred on it by or under this Act; or
- (b) assisting a foreign regulator in accordance with section 50.”;

(b) for subsection (7), substitute–

“(7) The GFSC may require a person (“P”), who is neither the relevant person specified in a notice under subsection (1) (the “relevant notice”) nor a person connected with the relevant person–

- (a) to provide any information or produce any document specified in the relevant notice to the GFSC if it appears to the GFSC that P is in possession of that information or document; or
- (b) to attend before the GFSC, at a specified time and place, to–
 - (i) answer questions appearing to the GFSC to be relevant; and
 - (ii) provide any information or produce any document appearing to the GFSC to be relevant.

(7A) Where it appears to the GFSC that there are reasonable grounds to suspect that a provision made by or under this Act has been contravened, or for the purpose of assisting a foreign regulator in accordance with section 50, the GFSC may require a person–

- (a) to provide any information or produce any document to the GFSC which appears to the GFSC to be in that person’s possession and relevant; or

- (b) to attend before the GFSC, at a specified time and place, to—
 - (i) answer questions appearing to the GFSC to be relevant; and
 - (ii) provide any information or produce any document appearing to the GFSC to be relevant,

where the GFSC is satisfied that doing so is necessary or expedient for the purposes of exercising its functions in connection with the suspected contravention or assisting the foreign regulator.

(7B) The GFSC may retain any document which is produced under subsections (1), (7) or (7A) for so long as it is necessary to retain it in connection with the exercise of its functions under this Part.”.

(3) In section 145(1)(a)—

- (a) in sub-paragraph (i), after “(b)” insert “, (7)(a) or (b)(ii) or (7A)(a) or (b)(ii)”;
- (a) in sub-paragraph (ii), after “(c)” insert “, (7)(b)(i) or (7A)(b)(i)”.

Amendment of Part 13.

13. In section 176—

- (a) renumber the section as subsection (1);
- (b) in that subsection (1)(a), after “Act” insert “or any applicable retained EU law”;
- (c) after subsection (1), insert—

“(2) In this section “applicable retained EU law” means retained EU law which confers regulatory or supervisory powers on the GFSC or is otherwise concerned with or related to the regulation of financial services.”.

Amendment of Part 15.

14. Omit section 197(2).

Amendment of Part 16.

15.(1) In section 237(1)—

- (a) omit the definition of “the Board”;
- (b) after the definition of “branch”, insert—

““FSRCC” has the meaning given in section 27;”;

(c) in the definition of “Gibraltar Scheme”, for “Scheme” substitute “scheme”.

(2) In section 238, for “Board” substitute “FSRCC”.

(3) In section 240(4), for “Board” substitute “FSRCC”.

(4) In section 244–

(a) in subsection (1), in both places it appears, for “Board” substitute “FSRCC”;

(b) in subsection (2)–

(i) in the opening words, for “Board” substitute “FSRCC”;

(ii) in paragraph (b), for “Board’s” substitute “FSRCC’s”;

(iii) in paragraph (c)(v), for “Board” substitute “FSRCC”;

(c) in subsection (3), for “Board” substitute “FSRCC”;

(d) in subsection (4), for “Board” substitute “FSRCC”;

(e) in subsection (5), for “Board” substitute “FSRCC”;

(f) in subsection (6), for “Board” substitute “FSRCC”.

(5) In section 245–

(a) in subsection (1), for “Board” substitute “FSRCC”;

(b) in subsection (2)–

(i) in paragraph (c), for “Board” substitute “FSRCC”;

(ii) in paragraph (d), for “Board” substitute “FSRCC”.

(6) In section 254(2), for “Board” substitute “FSRCC”.

(7) In section 255–

(a) in subsection (2), for “Board” substitute “FSRCC”;

(b) in subsection (3), for “Board” substitute “FSRCC”.

(8) In the crossheading before section 257, for “Board” substitute “FSRCC”.

- (9) In section 257–
- (a) in the heading for “Board” substitute “FSRCC”;
 - (b) in subsection (1) in both places it appears, for “Board” substitute “FSRCC”;
 - (c) in subsection (2)(c), for “Board” substitute “FSRCC”;
 - (d) in subsection (3) in both places it appears, for “Board” substitute “FSRCC”.
- (10) In section 258(3), for “Board” substitute “FSRCC”.
- (11) Omit section 267 and the cross heading before it.
- (12) In section 268, for “Board” substitute “FSRCC”.
- (13) In section 269–
- (a) in subsection (1)–
 - (i) for “Board” substitute “FSRCC”;
 - (ii) after “Administration Fund” insert “which is separate from any administration fund it maintains under section 198(1)(c)”;
 - (b) in subsection (2), for “Board” substitute “FSRCC”;
 - (c) in subsection (3) in the seven places it appears, for “Board” substitute “FSRCC”;
 - (d) in subsection (4), for “Board” substitute “FSRCC”;
 - (e) in subsection (5) in both places it appears, for “Board” substitute “FSRCC”;
 - (f) in subsection (6)–
 - (i) in paragraph (a), for “Board” substitute “FSRCC”;
 - (ii) in paragraph (c), for “Board” substitute “FSRCC”;
 - (iii) in paragraph (d), for “board” substitute “FSRCC”.
- (14) In section 270–
- (a) in subsection (1), for “Board” substitute “FSRCC”;
 - (b) in subsection (2)–
 - (i) for “Board” substitute “FSRCC”;

- (ii) after “administrative expenses” insert “under this Part”;
 - (c) in subsection (3), for “Board” substitute “FSRCC”;
 - (d) in subsection (4)(b), for “Board” substitute “FSRCC”.
- (15) In section 271–
- (a) in subsection (2), for “Board” substitute “FSRCC”;
 - (b) in subsection (3), for “Board” substitute “FSRCC”;
 - (c) in subsection (4), for “Board” substitute “FSRCC”.
- (16) In section 272–
- (a) in subsection (1), for “Board” substitute “FSRCC”;
 - (b) in subsection (2), for “Board” substitute “FSRCC”;
 - (c) in subsection (3), for “Board” substitute “FSRCC”.
- (17) In section 273–
- (a) in subsection (2)–
 - (i) in the opening words, for “Board” substitute “FSRCC”;
 - (ii) in paragraph (b), for “(or alternate) of the Board” substitute “of the FSRCC”;
 - (b) in subsection (3), in both places it appears, for “Board” substitute “FSRCC”.
- (18) In section 274–
- (a) in subsection (1), for “Board” substitute “FSRCC”;
 - (b) in subsection (2)–
 - (i) in paragraph (a), for “Board” substitute “FSRCC”;
 - (ii) in paragraph (b), in both places it appears, for “Board” substitute “FSRCC”;
 - (iii) in paragraph (c), in both places it appears, for “Board” substitute “FSRCC”;
 - (iv) in paragraph (d), for “Board” substitute “FSRCC”;

(c) in subsection (3)–

- (i) in the opening words, in both places it appears, for “Board” substitute “FSRCC”;
- (ii) in paragraph (b), for “Board” substitute “FSRCC”.

(19) In section 275(7), for “Board” substitute “FSRCC”.

(20) In section 276, for “Board” substitute “FSRCC”.

(21) In section 279, for “Board” substitute “FSRCC”.

(22) In section 280, for “Board” substitute “FSRCC”.

Amendment of Part 17.

16. In section 286(2), for “the costs of” substitute “all costs and damages incurred in”.

Amendment of Part 19.

17. After section 348, insert–

“Notice: sections 347 and 348.

348ZA.(1) The GFSC must give the person concerned–

- (a) a warning notice, if the GFSC proposes to exercise any power under section 347(2)(b) or section 348; or
- (b) a decision notice, if the GFSC decides to exercise any of those powers.

(2) Subsection (1)(a) does not apply if the GFSC is satisfied that–

- (a) there is an immediate risk of substantial damage to–
 - (i) the interests of consumers;
 - (ii) the public interest; or
 - (iii) the reputation of Gibraltar; and
- (b) the exercise of the power is–
 - (i) to a material extent, likely to avoid the occurrence or reduce the extent of that damage; and

- (ii) proportionate to the achievement of that objective having regard, in particular, to the adverse consequences for the person concerned that may result from that direction.

(3) A decision notice in respect of any decision to which subsection (2) applies has immediate effect.”

Amendment of Part 25.

18.(1) In section 543–

- (a) in the heading, after “conditions” insert “or restrictions”;
- (b) in subsection (1), after “conditions” insert “or restrictions”;
- (c) in subsection (2), in both places it appears, after “conditions” insert “or restrictions”.

(2) In section 544–

- (a) in subsection (1)–
 - (i) in paragraph (b), after “conditions” insert “or restrictions”;
 - (ii) in paragraph (c), after “conditions” insert “or restrictions”;

(b) after subsection (3), insert–

“(4) Subsections (1) to (3) do not apply where the GFSC exercises its powers under section 543(2) to impose a condition or restriction at the request or with the consent of the applicant or insolvency practitioner.

(5) In a case to which subsection (4) applies, the GFSC must give the applicant or insolvency practitioner notice of the condition or restriction and the date from which it has effect.”

(3) After section 546(2), insert–

“(3) For the purposes of assessing whether a licence holder is fit and proper the GFSC may have regard, among other things, to the matters in section 94(1A).”

Amendment of Part 28.

19.(1) After section 612(5), insert–

“(6) A person to whom a warning notice is given or copied may not publish the notice or any details concerning it unless the GFSC has published the notice or those details.”

(2) In section 613–

(a) in subsection (4), for “which has been confirmed by the DMC under section 24(3)(b) or” substitute “or any decision notice”;

(b) for subsection (7), substitute–

“(7) A person to whom a decision notice or discontinuance notice is given or copied may not publish the notice or any details concerning it unless the GFSC has published the notice or those details.”.

(3) In the crossheading before section 616, after “sanctions” insert “, supervisory action”.

(4) In section 616–

(a) in subsection (1), for “may publish on its website only details” substitute “must publish on its website such details as it considers appropriate”;

(b) for subsection (4), substitute–

“(4) The GFSC must ensure that any publication is maintained on its website for a proportionate period of not more than five years.”;

(c) in subsection (5), for “the website” substitute “its website”.

(5) After section 616, insert–

“Publication of supervisory action.

616A.(1) Subject to section 617, where the GFSC has issued a decision notice in respect of any supervisory action, it may publish such information about the matters to which the notice relates as it considers appropriate.

(2) In this subsection (1) “supervisory action” means any action provided for by or under this Act other than the imposition of a sanction for contravention of a regulatory requirement.

(3) The GFSC must ensure that any publication on its website is for a proportionate period of not more than five years and that personal data is only retained on its website for so long as is necessary, in accordance with the data protection legislation.”.

(6) In section 617(1)(a), for “a sanctioning action” substitute “any sanctioning or supervisory action”.

(7) In section 617A–

(a) in subsection (1), in the opening words, for “until” substitute “unless and until”;

(b) after subsection (1), insert—

“(1A) In deciding whether to issue or publish a statement to which subsection (1) applies the GFSC must have regard, among other things, to the matters in section 617(1)(a) to (c).”.

Amendment of Part 29.

20.(1) In section 620(2)—

(a) in the opening words, after “may” insert “, in particular,”;

(b) after paragraph (b), omit “or”;

(c) at the end of paragraph (c), omit the full stop;

(d) after paragraph (c), insert—

“; or

(d) persons applying for any form of authorisation, permission, licence, approval or registration under any provision made by or under this Act.”.

(2) In section 621(2), in the opening words, after “620(2)” insert “(a) to (c)”.

(3) In section 626—

(a) in subsection (1), for “that Gibraltar’s withdrawal from the European Union may have on provisions of or made under this Act” substitute—

“on—

(a) any provision made by or under this Act; or

(b) the regulation of financial services or any other activity regulated by or under this Act,

that arises as a consequence of Gibraltar’s withdrawal from the European Union.”; and

(b) in subsection (2)—

(i) after “effect”, insert “(with any appropriate modification)”; and

(ii) for “at any time”, substitute “or comes into operation”.

(4) In section 626A—

(a) for subsection (1), substitute—

“(1) The Minister may make technical standards where–

(a) regulations made under–

- (i) section 11 of the European Union (Withdrawal) Act 2019; or
- (ii) section 4 of the European Union Laws (Voluntary Implementation) Act 2019,

substitute for a requirement to the effect that a provision is to be applied subject to EU tertiary legislation a requirement to the effect that is to be applied subject to technical standards; or

(b) a provision of EU-derived domestic legislation was, before IP completion day, required by or under the EU Directive it transposed to be applied subject to EU tertiary legislation and the Minister considers that it would be more appropriate for it to be applied subject to technical standards.”;

(b) in subsection (3)(b)(ii), for “original EU” substitute “EU tertiary”;

(c) in subsection (4)–

- (i) after “In this section” insert ““EU-derived domestic legislation” and”;
- (ii) for “section 3(1)” substitute “section 3”.

(5) After section 626A, insert–

“Provision for international agreements.

626B.(1) The Minister may by regulations make such provision as the Minister considers appropriate for the purposes of, or in connection with, applying an international agreement which concerns financial services or related matters.

(2) An “international agreement” means–

- (a) a convention, treaty or other agreement which applies to Gibraltar; or
- (b) an agreement or arrangement between the members of an international organisation which applies to Gibraltar, whether by virtue of membership of the organisation or otherwise.

(3) Regulations under this section may, in particular–

- (a) make different provision for different purposes;
- (b) amend, repeal, revoke or otherwise modify an enactment; or

- (c) make consequential, incidental, supplementary, transitional, transitory or saving provisions.”.

(5) In section 627–

- (a) in subsection (1), for “of this Act” substitute “made by or under this Act”; and

- (b) for subsections (2) and (3), substitute–

“(2) Regulations under this section may, in particular–

- (a) make different provision for different purposes; and
- (b) amend, repeal, revoke or otherwise modify an enactment.

(3) Where the functions of a body governed by or under this Act (the “old body”) are transferred to another body governed by or under this Act (the “new body”), regulations under this section may, in particular, provide–

- (a) for the transfer of property, rights or liabilities from the old body to the new body;
- (b) for legal proceedings commenced by or against the old body to be continued by or against the new body; or
- (c) for the new body to be treated for some or all purposes as the same person in law as the old body.”.

New Schedules 3A and 3B.

21. After Schedule 3, insert–

“SCHEDULE 3A

Section 55A

UK-BASED PERSONS CARRYING ON ACTIVITIES IN GIBRALTAR

**PART 1
INTERPRETATION**

Interpretation.

1.(1) In this Act, “UK-based person” means—

- (a) an individual;
- (b) a body corporate;
- (c) a partnership; or
- (d) an unincorporated association,

which has its head office and, if it has one, registered office in the United Kingdom.

(2) In this Schedule—

“branch” means—

- (a) a place where a person carries on an activity for an indefinite period and which does not have legal personality; or
- (b) any other description of place specified in regulations made by the Minister;

“corresponding activity” means a regulated activity that corresponds to an activity which a UK regulator has authorised, or may authorise, a person to carry on in the United Kingdom;

“designated activity” means a regulated activity for the time being designated by regulations under paragraph 2;

“Gibraltar entities” means—

- (a) the Government; and
- (b) the GFSC;

“own-initiative conditions” means the conditions in paragraph 21;

“Schemes” means—

- (a) the Gibraltar deposit guarantee scheme; and
- (b) the Gibraltar investor compensation scheme;

“UK entities” means—

- (a) HM Treasury;
- (b) the UK regulators; and
- (c) the scheme manager of the UK Financial Services Compensation Scheme;

“UK regulator” means—

- (a) the Financial Conduct Authority (FCA); or
- (b) the Prudential Regulation Authority (PRA),

and a reference to “a UK regulator” or “the UK regulator” is a reference to whichever of the PRA or FCA is the appropriate regulator in the circumstances.

PART 2 DESIGNATED ACTIVITIES

Designation of regulated activities.

2.(1) The Minister may by regulations designate a regulated activity that the Minister considers is a corresponding activity.

(2) The power under sub-paragraph (1) includes power to designate a regulated activity—

- (a) only so far as it is carried on by a person of a description specified in the regulations;
- (b) only so far as it is carried on through a branch in Gibraltar;
- (c) only so far as it is carried on in other circumstances specified in the regulations; or
- (d) subject to other limitations.

(3) In making regulations under this paragraph, the Minister may have regard to any matter that the Minister considers relevant.

Objectives.

3.(1) The Minister may not make regulations under paragraph 2 unless the Minister is satisfied that doing so is compatible with each of the following objectives—

- (a) to protect and enhance the soundness, stability and resilience of the Gibraltar financial system;
- (b) to protect and enhance public confidence in the Gibraltar financial system;
- (c) to prevent the use of the Gibraltar financial system for a purpose connected with financial crime;
- (d) to ensure that the relevant markets in Gibraltar function well;
- (e) to protect consumers;
- (f) to protect the operation of the Schemes;
- (g) to protect public funds;
- (h) to maintain and improve relations between Gibraltar and other countries and territories with significant financial markets or significant markets for financial services.

(2) In this paragraph—

“consumer” means persons who—

- (a) use, have used or may use—
 - (i) regulated financial services, or
 - (ii) services provided by persons other than authorised persons that are provided in carrying on regulated activities;
- (b) have rights or interests which are derived from, or otherwise attributable to, the use of such services by other persons; or
- (c) have rights or interests which may be adversely affected by the use of any such services by persons acting on their behalf or in a fiduciary capacity in relation to them,

and, if a person is providing any service within paragraph (a) as a trustee, the persons who are, have been or may be beneficiaries of the trust are to be treated as persons who use, have used or may use the service;

“financial crime” has the meaning given in section 20;

“the relevant markets” means the markets for services provided by persons carrying on the regulated activity or designated activity (as appropriate) to which the regulations relate.

Alignment of law and practice.

4.(1) The Minister may not designate a regulated activity unless the Minister considers that, having regard to the objectives in paragraph 3(1), the relevant law and practice of Gibraltar and the United Kingdom are sufficiently aligned.

(2) In this paragraph, “the relevant law and practice” means—

(a) in relation to Gibraltar—

(i) law and practice under which the carrying on of what is or would be the designated activity is authorised and supervised; and

(ii) other law and practice relevant to the carrying on of that activity;

(b) in relation to the United Kingdom—

(i) law and practice under which the carrying on of what would be the corresponding activity is authorised and supervised; and

(ii) other law and practice relevant to the carrying on of that activity; and

(c) in relation to both Gibraltar and the United Kingdom, law and practice relevant to the objectives in paragraph 3(1).

(3) In sub-paragraph (1), the reference to alignment between the law and practice of Gibraltar and the United Kingdom includes both alignment as regards the effect of the law and practice and alignment of the text of the law and of any guidance or other documents relating to practice.

Co-operation.

5.(1) The Minister may not designate a regulated activity unless the Minister is satisfied that, having regard to the objectives in paragraph 3(1), there is, or will be, adequate co-operation between the Gibraltar entities and the UK entities.

(2) In determining whether the requirement in sub-paragraph (1) is satisfied, the Minister must have regard to—

(a) any memoranda describing how the Gibraltar entities and the UK entities intend to co-operate;

- (b) arrangements for the Gibraltar entities to obtain information and documents from the UK entities;
- (c) arrangements for the verification of such information and documents (whether by, or by a person appointed by, a Gibraltar entity or a UK entity);
- (d) arrangements for the UK entities to obtain information and documents from the Gibraltar entities; and
- (e) anything else that the Minister considers relevant.

Consultation.

6. The Minister must consult the GFSC and HM Treasury before making regulations under paragraph 2.

Withdrawal of designation.

7.(1) The restrictions in paragraphs 3, 4 and 5 do not apply in relation to regulations under paragraph 2 to the extent that the regulations—

- (a) revoke other regulations under paragraph 2;
- (b) otherwise amend other regulations under paragraph 2 in order to withdraw the designation of a regulated activity.

**PART 3
PERMISSION TO CARRY ON A DESIGNATED ACTIVITY**

Obtaining permission to carry on a designated activity.

8.(1) If the GFSC receives a notification from a UK regulator that a UK-based person wants to be able to carry on a designated activity in Gibraltar, the person obtains permission to do so at the end of the period for considering the notification, as it relates to the activity.

(2) The person does not obtain permission to carry on an activity under sub-paragraph (1) if, during the period for considering the notification—

- (a) the GFSC rejects the notification, as it relates to the activity; or
- (b) the UK regulator withdraws the notification, as it relates to the activity.

(3) References in this Part to a notification are references to a notification for the purposes of this paragraph.

(4) A permission obtained under this paragraph is referred to in this Act as a “Schedule 3A permission”.

Schedule 3A permission.

9.(1) A Schedule 3A permission for a person to carry on an activity is a permission to do so only if and to the extent that—

- (a) the person is a UK-based person;
- (b) the activity is a designated activity; and
- (c) the person has permission from a UK regulator to carry on the corresponding activity in the United Kingdom,

subject to the transitional arrangements in Parts 9 and 10 of this Schedule.

(2) A UK-based person’s Schedule 3A permission to carry on an activity is a permission to do so—

- (a) on terms equivalent to the terms of the person’s permission from the UK regulator to carry on the corresponding activity in the United Kingdom; and
- (b) subject to any limitations specified in the notification (for example, as to the circumstances in which the activity is to be carried on in Gibraltar).

(3) The reference in sub-paragraph (2)(a) to the terms of the person’s permission from the UK regulator to carry on the corresponding activity in the United Kingdom includes—

- (a) any restrictions included in the permission; and
- (b) any other restrictions imposed by the UK regulator on the carrying on by the person of the activity in the United Kingdom.

Notifying the GFSC.

10.(1) A notification must—

- (a) name the UK-based person;
- (b) state the address of the person’s head office in the United Kingdom;
- (c) specify the designated activity which the person wants to be able to carry on in Gibraltar, including any limitations;
- (d) specify the corresponding activity, including any restrictions;

- (e) state that the person has permission from the UK regulator to carry on the corresponding activity in the United Kingdom;
- (f) state that the UK regulator consents to the person carrying on the designated activity in Gibraltar;
- (g) identify each person who is responsible for managing an aspect of the UK-based person's affairs relating to the designated activity and describe that person's responsibilities as regards those affairs;
- (h) state whether the UK-based person wants to carry on the activity through a branch in Gibraltar and, if so—
 - (i) identify each person who is or will be responsible for managing an aspect of the affairs of the branch; and
 - (ii) describe that person's responsibilities as regards those affairs; and
- (i) contain, or be accompanied by, any further information specified in a direction given by the GFSC under paragraph 48 and in force when the notification is given.

(2) A notification may relate to more than one designated activity.

(3) In sub-paragraph (1), the references to managing an aspect of a person's affairs or a branch's affairs includes a reference to taking decisions, or participating in the taking of decisions, about how that aspect of the affairs should be carried on.

(4) The Minister may by regulations amend the information that a notification must contain.

(5) Regulations under sub-paragraph (4) may amend this paragraph, but may not amend or repeal sub-paragraph (1)(i).

(6) Before making regulations under sub-paragraph (4), the Minister must consult the GFSC and HM Treasury.

Considering a notification.

11.(1) Where the GFSC receives a notification, it must acknowledge receipt in writing without delay.

(2) The period for considering a notification is—

- (a) so far as it relates to an activity that is to be carried on through a branch in Gibraltar, the period of two months beginning with the day on which the GFSC receives the notification; and

(b) so far as it relates to any other activity, the period of one month beginning with that day.

(3) If, before the end of the period described in sub-paragraph (2), the GFSC gives the UK-based person a confirmation notice in respect of a designated activity specified in the notification, then the period for considering the notification as it relates to the activity ends when the notice is given.

(4) A “confirmation notice” is a written notice confirming that the person has a Schedule 3A permission in relation to the designated activity.

(5) A confirmation notice may relate to more than one activity.

Rejecting a notification.

12.(1) The GFSC may not reject a notification unless—

- (a) it is required to do so under paragraph 13; or
- (b) it has power to do so under paragraph 14 or 15.

(2) A notification is rejected when the GFSC gives a written notice of the rejection to the UK regulator.

(3) The rejection of a notification does not prevent the UK regulator from giving a further notification relating to the same person and the same activity.

Duties to reject.

13.(1) The GFSC must reject a notification if satisfied that the notification does not satisfy one or more of the requirements in paragraph 10(1).

(2) The GFSC must reject a notification, so far as it relates to an activity, if the activity ceases to be a designated activity.

(3) The GFSC must reject a notification, so far as it relates to a designated activity, if satisfied that the UK-based person does not have permission from the UK regulator to carry on the corresponding activity in the United Kingdom.

Power to reject: prohibition order in respect of senior manager.

14.(1) The GFSC may reject a notification, so far as it relates to a designated activity, if satisfied that a person with responsibility for managing an aspect of the UK-based person’s affairs—

- (a) is prohibited from performing a function by a prohibition order; and

- (b) performs a senior management function in relation to the carrying on of the designated activity by the UK-based person in Gibraltar, the United Kingdom or elsewhere or is expected to do so if the person obtains a Schedule 3A permission to carry on the designated activity in Gibraltar.

(2) In sub-paragraph (1)–

- (a) the reference to managing an aspect of a person’s affairs includes a reference to taking decisions, or participating in the taking of decisions, about how that aspect of those affairs should be carried on;
- (b) “prohibition order” means–
 - (i) a decision by the GFSC to refuse or withdraw approval of the person as a regulated individual under Part 8 of this Act; or
 - (ii) an order under the law of the United Kingdom which the GFSC considers to be equivalent to such a decision; and
- (c) “senior management function”, in relation to the carrying on of an activity by the UK-based person, means a function which requires a person to manage an aspect of the UK-based person’s affairs which involves, or might involve, a risk of serious consequences–
 - (i) for the UK-based person; or
 - (ii) for business or other interests in Gibraltar, the United Kingdom or elsewhere.

Power to reject: loss of access right and serious threat to Gibraltar.

15.(1) The GFSC may reject a notification if satisfied that the UK-based person–

- (a) lost a relevant access right at any time; and
- (b) poses, or is likely to pose, a serious threat to–
 - (i) the interests of consumers; or
 - (ii) the soundness, stability and resilience of the Gibraltar financial system or a part of that system.

(2) The GFSC may reject a notification if satisfied that–

- (a) the UK-based person–
 - (i) is a member of the same group as a person that lost a relevant access right at any time; or

- (ii) has close links with such a person; and
- (b) given the nature of the relationship between that person and the UK-based person, the UK-based person poses, or is likely to pose, a serious threat to—
 - (i) the interests of consumers; or
 - (ii) the soundness, stability and resilience of the Gibraltar financial system or a part of that system.
- (3) For the purposes of this paragraph, a person lost a relevant access right if—
 - (a) its Part 7 permission was cancelled;
 - (b) its Schedule 3A permission was cancelled; or
 - (c) it ceased to qualify to exercise passport rights (other than by virtue of the repeal of those rights).
- (4) When deciding whether to reject a notification under this paragraph, the GFSC must have regard, among other things, to the reasons why the person lost the relevant access right.

PART 4 VARIATION OF PERMISSION

Variation of permission.

- 16.(1) A Schedule 3A permission may be varied in accordance with this Part—
- (a) on the initiative of a UK regulator; or
 - (b) on the initiative of the GFSC.
- (2) References in this Part to the variation of a Schedule 3A permission (however expressed) are to its variation by—
- (a) adding a designated activity to those to which the permission relates;
 - (b) removing a designated activity from those to which the permission relates;
or
 - (c) varying the description of an activity to which the permission relates (including by adding, removing or varying a limitation).
- (3) Where a limitation is added, removed or varied under this Part, paragraph 9(2)(b) has effect as if it referred to the limitations (if any) that have effect after that change.

UK regulator's initiative: notification.

17.(1) If the GFSC receives a notification from a UK regulator requesting the variation of a UK-based person's Schedule 3A permission, the permission is varied—

- (a) if the notification specifies a time for the variation to take effect which falls after the end of the period for considering the notification as it relates to the variation, at that time; or
- (b) otherwise, at the end of the period for considering the notification, as it relates to the variation.

(2) A variation requested in a notification does not take effect under sub-paragraph (1) if, during the period for considering the notification—

- (a) the GFSC rejects the notification, as it relates to the variation; or
- (b) the UK regulator withdraws the notification, as it relates to the variation.

(3) References in this Part to a notification are references to a notification for the purposes of this paragraph.

UK regulator's initiative: notifying the GFSC.

18.(1) A notification must—

- (a) state the desired variation;
- (b) specify the designated activity or designated activities which the UK-based person wants to carry on following the variation, including any limitations;
- (c) specify the corresponding activity, including any restrictions;
- (d) state that the person has permission from the UK regulator to carry on the corresponding activity in the United Kingdom;
- (e) state that the UK regulator consents to the variation; and
- (f) contain, or be accompanied by, any further information specified in a direction given by the GFSC under paragraph 48 and in force when the notification is given.

(2) A notification may state when the desired variation is to have effect.

(3) A notification may relate to more than one variation.

UK regulator’s initiative: considering a notification.

19.(1) Where the GFSC receives a notification, it must acknowledge receipt in writing without delay.

(2) The period for considering a notification is—

- (a) so far as it relates to a variation in respect of an activity carried on through a branch in Gibraltar, the period of two months beginning with the day on which the GFSC receives the notification; and
- (b) so far as it relates to any other variation, the period of one month beginning with that day.

(3) If, before the end of the period described in sub-paragraph (2), the GFSC gives the UK-based person a confirmation notice in respect of a variation specified in the notification, then the period for considering the notification as it relates to the variation ends when the notice is given.

(4) A “confirmation notice” is a written notice confirming that the variation has effect as specified in the notification.

(5) A confirmation notice may relate to more than one variation.

UK regulator’s initiative: rejecting a notification.

20.(1) The GFSC may not reject a notification unless—

- (a) it is required to do so under sub-paragraph (3) or (4); or
- (b) it has power to do under sub-paragraph (5).

(2) A notification is rejected when the GFSC gives a written notice of the rejection to the UK regulator.

(3) The GFSC must reject a notification if satisfied that the notification does not satisfy one or more of the requirements in paragraph 18(1).

(4) The GFSC must reject a notification if it would be required to do so by paragraph 13(2) or (3) if the notification were a notification under Part 3 of this Schedule relating to—

- (a) the UK-based person; and
- (b) the activities that the person would have a Schedule 3A permission to carry on if the permission were varied as specified in the notification.

(5) The GFSC may reject a notification if it would have power to do so under paragraph 14 or 15 if the notification were a notification under Part 3 of this Schedule relating to–

- (a) the UK-based person; and
- (b) the activities that the person would have a Schedule 3A permission to carry on if the permission were varied as specified in the notification.

(6) The rejection of a notification does not prevent the UK regulator from giving a further notification.

GFSC’s own-initiative.

21.(1) The GFSC may vary the Schedule 3A permission of a UK-based person where one of conditions A to C (the “own-initiative conditions”) is satisfied.

(2) Condition A is that GFSC considers that–

- (a) it is desirable to exercise the power in order to advance one or more of its objectives; and
- (b) the UK regulator–
 - (i) is aware, or ought reasonably to be aware, of the reasons why the GFSC considers that to be the case; and
 - (ii) has had time to take steps, or indicate what steps (if any) it is likely to take, in response.

(3) Condition B is that the GFSC considers that–

- (a) it is desirable to exercise the power in order to advance one or more of its regulatory objectives; and
- (b) a delay in exercising the power would be materially detrimental to–
 - (i) the interests of consumers; or
 - (ii) the soundness, stability and resilience of the Gibraltar financial system or a part of that system.

(4) Condition C is that the GFSC considers that–

- (a) the UK-based person is contravening, or has contravened, this Act or regulations made under it or a requirement imposed on it by the GFSC under Part 6 of this Schedule; and

- (b) the contravention is not minor, having regard to the nature of the contravention, its consequences or both.

GFSC's initiative: procedure.

22.(1) The variation of a Schedule 3A permission under paragraph 21 takes effect—

- (a) immediately, if the notice given under sub-paragraph (3) states that is the case;
- (b) on such date as may be specified in the notice; or
- (c) if no date is specified in the notice—
 - (i) at the end of the period for bringing an appeal if no appeal is brought; or
 - (ii) when any appeal is finally determined or withdrawn.

(2) The variation of a Schedule 3A permission under paragraph 21 may be expressed to take effect immediately, or on a specified date, only if the GFSC reasonably considers that it is necessary for the variation to take effect immediately or on that date, having regard to the own-initiative condition on which it is relying for the purposes of that paragraph.

(3) If the GFSC—

- (a) proposes to vary a Schedule 3A permission under paragraph 21; or
- (b) varies a Schedule 3A permission under that paragraph with immediate effect,

it must give the UK-based person a written notice.

(4) The notice must—

- (a) give details of the variation;
- (b) state the GFSC's reasons for varying the permission;
- (c) inform the UK-based person that the person may make representations to the GFSC within the period specified in the notice;
- (d) inform the UK-based person of when the variation of the permission takes effect; and
- (e) inform the UK-based person of the person's right of appeal.

(5) The GFSC may extend the period allowed under the notice for making representations.

(6) If, having considered any representations made by the UK-based person, the GFSC decides—

- (a) to vary the permission in the way proposed; or
- (b) if the permission has been varied, not to rescind its variation,

it must give the UK-based person a written notice.

(7) A notice under sub-paragraph (6) must inform the UK-based person of the person's right of appeal.

(8) If, having considered any representations made by the UK-based person, the GFSC decides—

- (a) not to vary the permission in the way proposed;
- (b) to vary the permission in a different way; or
- (c) to rescind the variation,

it must give the UK-based person a written notice.

(9) A notice under sub-paragraph (8)(b) must comply with sub-paragraph (4).

Right of appeal.

23. A UK-based person who is aggrieved by the exercise by the GFSC of a power under paragraph 21 in relation to the person may appeal to the Supreme Court in accordance with section 615 and, for that purpose, a written notice under paragraph 22 is to be treated as if it were a decision notice.

PART 5 CANCELLATION OF PERMISSION

Cancellation of permission.

24. A Schedule 3A permission may be cancelled in accordance with this Part—

- (a) on the initiative of a UK regulator; or
- (b) on the initiative of the GFSC.

UK regulator’s initiative: notification.

25.(1) If the GFSC receives a notification from a UK regulator requesting the cancellation of a UK-based person’s Schedule 3A permission, the permission is cancelled when the period for considering the notification ends.

(2) A Schedule 3A permission is not cancelled under sub-paragraph (1) if, during the period for considering the notification—

- (a) the GFSC rejects the notification; or
- (b) the UK regulator withdraws the notification.

(3) References in this Part to a notification are references to a notification for the purposes of this paragraph.

UK regulator’s initiative: notifying the GFSC.

26. A notification must—

- (a) state the reason for requesting the cancellation of the permission;
- (b) state that the UK regulator consents to the cancellation; and
- (c) contain, or be accompanied by, any further information specified in a direction given by the GFSC under paragraph 48 and in force when the notification is given.

UK regulator’s initiative: considering a notification.

27.(1) Where the GFSC receives a notification, it must acknowledge receipt in writing without delay.

(2) The period for considering a notification is—

- (a) where the Schedule 3A permission relates to one or more activities carried on through a branch in Gibraltar, the period of two months beginning with the day on which the GFSC receives the notification; and
- (b) otherwise, the period of one month beginning with that day.

(3) If, before the end of the period described in sub-paragraph (2), the GFSC gives the UK-based person a confirmation notice in respect of the notification, then the period for considering the notification ends when the notice is given.

(4) A “confirmation notice” is a written notice confirming that the Schedule 3A permission is cancelled.

UK regulator’s initiative: rejecting a notification.

28.(1) The GFSC may not reject a notification unless—

- (a) it is required to do so under sub-paragraph (3); or
- (b) it has power to do so under sub-paragraph (4).

(2) A notification is rejected when the GFSC gives a written notice of the rejection to the UK regulator.

(3) The GFSC must reject a notification if satisfied that the notification does not satisfy a requirement in paragraph 26.

(4) The GFSC may reject a notification if it appears to the GFSC that it is desirable to do so in order to advance one or more of its regulatory objectives.

(5) The rejection of a notification does not prevent the UK regulator from giving a further notification.

GFSC’s initiative.

29.(1) The GFSC may cancel a Schedule 3A permission where one of the own-initiative conditions is satisfied.

(2) The GFSC must cancel a Schedule 3A permission where—

- (a) the permission no longer enables the person to carry on a designated activity (whether by virtue of paragraph 9 or otherwise); and
- (b) the GFSC is satisfied that it is no longer necessary to keep the permission in force.

GFSC’s initiative: procedure.

30.(1) If the GFSC proposes to cancel a UK-based person’s Schedule 3A permission under paragraph 29, it must give the person a warning notice.

(2) If the GFSC decides to cancel a UK-based person’s Schedule 3A permission under paragraph 29, it must give the person a decision notice.

Right of appeal.

31. If the GFSC gives a UK-based person a decision notice under paragraph 30, the person may appeal to the Supreme Court in accordance with section 615.

PART 6 REQUIREMENTS

Requirements.

32.(1) A requirement may be imposed on a UK-based person in accordance with this Part—

- (a) by the GFSC as part of the process of considering a notification under Part 3 or 4 of this Schedule;
- (b) on the initiative of the UK regulator; or
- (c) on the GFSC's initiative.

(2) Requirements imposed on a UK-based person in accordance with this Part may be varied or cancelled in accordance with this Part—

- (a) on the initiative of the UK regulator; or
- (b) on the GFSC's initiative.

Imposing requirements in connection with Part 3 or 4 notification.

33.(1) This paragraph applies where the GFSC has received—

- (a) a notification for the purposes of paragraph 8 in respect of the carrying on of an activity by a UK-based person; or
- (b) a notification for the purposes of paragraph 17 in respect of the variation of a UK-based person's Schedule 3A permission.

(2) The GFSC may impose requirements on the UK-based person where the GFSC considers that it is desirable to do so in order to advance one or more of its regulatory objectives.

(3) A requirement may not be imposed under this paragraph—

- (a) after the end of the period for considering the notification mentioned in sub-paragraph (1); or
- (b) so as to take effect before the end of that period.

Imposing requirements in connection with Part 3 or 4 notification: procedure.

34.(1) If the GFSC proposes to impose a requirement on UK-based person under paragraph 33, it must—

- (a) give the person a warning notice;
- (b) give the UK regulator a written notice of the proposed requirement, stating the GFSC's reasons for imposing the requirement; and
- (c) consider any representations made by the UK regulator within the period specified in the notice.

(2) If the GFSC decides to impose a requirement on a UK-based person under paragraph 33, it must give the person a decision notice.

Right of appeal.

35. If the GFSC gives a UK-based person a decision notice under paragraph 34, the person may appeal to the Supreme Court in accordance with section 615.

UK regulator's initiative: notification.

36.(1) If the GFSC receives a notification from the UK regulator—

- (a) asking for a requirement to be imposed on a UK-based person with a Schedule 3A permission; or
- (b) asking for a requirement imposed on a UK-based person with a Schedule 3A permission to be varied or cancelled,

the requirement is imposed, varied or cancelled as specified in the notification at the end of the period for considering the notification, as it relates to the requirement.

(2) The requirement is not imposed, varied or cancelled under sub-paragraph (1) if, during the period for considering the notification—

- (a) the GFSC rejects the notification, as it relates to the requirement; or
- (b) the UK regulator withdraws the notification, as it relates to the requirement.

(3) References in this Part to a notification are references to a notification for the purposes of this paragraph, except where otherwise stated.

UK regulator's initiative: notifying the GFSC.

37. A notification must—

- (a) state the requirement to be imposed or the desired variation or cancellation (as appropriate);
- (b) state the reason for asking for the requirement to be imposed, varied or cancelled;

- (c) state that the UK regulator consents to the requirement being imposed, varied or cancelled; and
- (d) contain, or be accompanied by, any further information specified in a direction given by the GFSC under paragraph 48 and in force when the notification is given.

UK regulator’s initiative: considering a notification.

38.(1) Where the GFSC receives a notification, it must acknowledge receipt in writing without delay.

(2) The period for considering a notification is—

- (a) so far as it relates to a requirement to be imposed on a UK-based person with a branch in Gibraltar, the period of two months beginning with the day on which the GFSC receives the notification; or
- (b) so far as it relates to any other requirement, the period of one month beginning with that day.

(3) If, before the end of the period described in sub-paragraph (2), the GFSC gives the UK-based person a confirmation notice in respect of a requirement specified in the notification, then the period for considering the notification as it relates to the requirement ends when the notice is given.

(4) A “confirmation notice” is a written notice confirming that the requirement is imposed, varied or cancelled as requested in the notification.

UK regulator’s initiative: rejecting a notification.

39.(1) The GFSC may not reject a notification so far as it relates to a requirement unless—

- (a) it is required to do so under sub-paragraph (3); or
- (b) it has power to do under sub-paragraph (4).

(2) A notification is rejected when the GFSC gives a written notice of the rejection to the UK regulator.

(3) The GFSC must reject a notification if satisfied that the notification does not satisfy one or more of the requirements in paragraph 37.

(4) The GFSC may reject a notification, so far as it relates to a requirement, if it appears to the GFSC that it is desirable to do so in order to advance one or more of its regulatory objectives.

(5) The rejection of a notification does not prevent the UK regulator from giving a further notification in respect of the same requirement.

GFSC’s initiative: imposing, varying and cancelling requirements.

40.(1) The GFSC may exercise the powers under this paragraph in relation to a UK-based person only where one of the own-initiative conditions is satisfied.

(2) The GFSC may—

- (a) impose a requirement on a UK-based person with a Schedule 3A permission;
- (b) vary a requirement imposed by the GFSC under this Part; or
- (c) cancel such a requirement.

GFSC’s initiative: procedure for imposing or varying requirements.

41.(1) The imposition or variation of a requirement under paragraph 40 takes effect—

- (a) immediately, if the notice given under sub-paragraph (3) states that is the case;
- (b) on such date as may be specified in the notice; or
- (c) if no date is specified in the notice—
 - (i) at the end of the period for bringing an appeal if no appeal is brought; or
 - (ii) when any appeal is finally determined or withdrawn.

(2) The imposition or variation of a requirement under paragraph 40 may be expressed to take effect immediately, or on a specified date, only if the GFSC reasonably considers that it is necessary for the imposition or variation of the requirement to take effect immediately or on that date, having regard to the own-initiative condition on which it is relying for the purposes of paragraph 40(1).

(3) If the GFSC—

- (a) proposes to exercise the power under paragraph 40 to impose a requirement on a UK-based person, or vary a requirement imposed on a UK-based person; or

- (b) exercises that power so as to impose a requirement on a UK-based person, or vary a requirement imposed on a UK-based person, with immediate effect,

it must give the person a written notice.

(4) The notice must—

- (a) give details of the requirement or its variation;
- (b) state the GFSC's reasons for imposing or varying the requirement;
- (c) inform the UK-based person that the person may make representations to the GFSC within the period specified in the notice;
- (d) inform the UK-based person of when the imposition or variation of the requirement takes effect; and
- (e) inform the UK-based person of the person's right of appeal.

(5) The GFSC may extend the period allowed under the notice for making representations.

(6) If, having considered any representations made by the UK-based person, the GFSC decides—

- (a) to impose the requirement or vary the requirement in the way proposed; or
- (b) if the requirement has been imposed or varied, not to rescind its imposition or variation,

it must give the UK-based person a written notice.

(7) A notice under sub-paragraph (6) must inform the UK-based person of the person's right of appeal.

(8) If, having considered any representations made by the UK-based person, the GFSC decides—

- (a) not to impose the requirement or vary the requirement in the way proposed;
- (b) to impose a different requirement or vary the requirement in a different way; or
- (c) to rescind a requirement or variation which has effect,

it must give the UK-based person a written notice.

(9) A notice under sub-paragraph (8)(b) must comply with sub-paragraph (4).

GFSC’s initiative: procedure for cancellation.

42.(1) If the GFSC proposes to exercise a power under paragraph 40 to cancel a requirement imposed on a UK-based person, it must give the person a written notice.

(2) The notice must specify the date on which the cancellation takes effect.

Right of appeal.

43. A UK-based person who is aggrieved by the exercise by the GFSC of a power under paragraph 40 to impose a requirement on the person, or vary a requirement imposed on the person, may appeal to the Supreme Court in accordance with section 615 and, for that purpose, a written notice under paragraph 41 is to be treated as if it were a decision notice.

Assets requirements.

44.(1) This paragraph makes provision about a requirement imposed on a UK-based person (“P”) by the GFSC under this Part—

- (a) prohibiting the disposal of, or other dealing with, any of P’s assets (whether in Gibraltar, the United Kingdom or elsewhere) or restricting such disposals or dealings; or
- (b) requiring that some or all of P’s assets, or some or all assets belonging to consumers but held by P or to P’s order, must be transferred to and held by a trustee approved by the GFSC.

(2) If the GFSC—

- (a) imposes a requirement described in sub-paragraph (1)(a); and
- (b) gives notice of the requirement to an institution with whom P keeps an account,

the notice has the effects set out in sub-paragraph (3).

(3) Those effects are that—

- (a) the institution does not act in breach of a contract with P if, having been instructed by P (or on P’s behalf) to transfer a sum or otherwise make a payment out of P’s account, it refuses to do so in the reasonably held belief that complying with the instruction would be incompatible with the requirement; and

(b) if the institution complies with such an instruction, it is liable to pay to the GFSC an amount equal to the amount transferred from, or otherwise paid out of, P's account in contravention of the requirement.

(4) If the GFSC imposes a requirement described in sub-paragraph (1)(b), no assets held by a person as trustee in accordance with the requirement may, while the requirement is in force, be released or dealt with except with the consent of the GFSC.

(5) If, while a requirement described in sub-paragraph (1)(b) is in force, P creates a charge over any assets of P held in accordance with the requirement, the charge is (to the extent that it confers security over the assets) void against the liquidator and P's creditors.

(6) Assets held by a person as trustee are to be taken to be held by the trustee in accordance with a requirement mentioned in sub-paragraph (1)(b) only if—

(a) P has given the trustee a written notice that those assets are to be held by the trustee in accordance with the requirement; or

(b) they are assets into which assets to which paragraph (a) applies have been transposed by the trustee on the instruction of P.

(7) A person who contravenes sub-paragraph (4) commits an offence and, on summary conviction, is liable to a fine at level 5 on the standard scale.

(8) In this paragraph, references to imposing a requirement (however expressed) include imposing a requirement by varying an existing requirement.

(9) In this paragraph, "charge" includes a mortgage or other security over property.

(10) Sub-paragraphs (4) and (6) do not affect any equitable interest or remedy in favour of a person who is a beneficiary of a trust as a result of a requirement described in sub-paragraph (1)(b).

Further provision about requirements.

45.(1) A requirement imposed on a UK-based person under this Part may, among other things, be imposed so as to require the person—

(a) to take specified action; or

(b) to refrain from taking specified action.

(2) A requirement imposed under this Part may extend to activities which are not designated activities.

(3) A requirement imposed on a UK-based person under this Part may be imposed by reference to the person's relationship with—

- (a) the person's group; or
- (b) other members of the person's group.

(4) A requirement imposed under this Part may be expressed to expire at the end of a specified period (but the imposition of such a requirement does not affect the GFSC's powers to impose a new requirement).

(5) A requirement imposed on a UK-based person under this Part may refer to the past conduct of the person (for example, by requiring the person concerned to review or take remedial action in respect of past conduct).

Contravention of requirement imposed under this Part.

46.(1) Contravention of a requirement imposed under this Part does not—

- (a) make a person guilty of an offence;
- (b) make a transaction void or unenforceable; or
- (c) subject to sub-paragraph (2), give rise to a right of action for breach of statutory duty.

(2) A contravention of a requirement imposed under this Part is actionable at the suit of a person who suffers loss as a result of the contravention where—

- (a) the action would be brought at the suit of a private person; or
- (b) the conditions in sub-paragraph (3) are met,

subject to the defences and other incidents applying to actions for breach of statutory duty.

(3) The conditions mentioned in sub-paragraph (2)(b) are that—

- (a) the action would be brought by a person acting in a fiduciary or representative capacity on behalf of a private person; and
- (b) any remedy would be exclusively for the benefit of that private person and could not be obtained through an action brought otherwise than at the suit of the person acting in a fiduciary or representative capacity.

(4) Sub-paragraph (2) does not apply where the requirement contravened is a requirement to have or maintain financial resources.

(5) In this paragraph, "private person" has such meaning as may be prescribed.

**PART 7
CHANGES**

Duty to notify GFSC of changes.

47.(1) The GFSC may direct that a change relating to a UK-based person with a Schedule 3A permission is subject to the requirements in this paragraph.

(2) A direction under sub-paragraph (1) may only be given in relation to a change relating to a matter about which information must be provided in a notification given to the GFSC for the purposes of paragraph 8 or 17.

(3) Where, by virtue of a direction under sub-paragraph (1), a change is subject to the requirements in this paragraph, a UK-based person with a Schedule 3A permission must notify the UK regulator and the GFSC of the change.

(4) A direction under sub-paragraph (1) in respect of a change may specify when the action described in sub-paragraph (3) must be taken in connection with the change.

(5) If a direction in respect of a change does not specify when the action described in sub-paragraph (3) must be taken in connection with the change, the action must be taken—

- (a) before the change is made, where that is reasonably practicable; or
- (b) otherwise, as soon as reasonably practicable after the change is made.

(6) A direction under this paragraph—

- (a) may make different provision for different purposes; but
- (b) may not make provision in relation to a specific UK-based person.

(7) The GFSC may, by a further direction, vary or revoke a direction it has given under this paragraph.

(8) The GFSC must consult the Minister before giving a direction under this paragraph.

(9) After giving a direction under this paragraph, the GFSC must publish the direction in the way appearing to the GFSC to be best calculated to bring it to the attention of persons likely to be affected by it.

PART 8
GFSC DIRECTIONS ABOUT INFORMATION

Directions about information to be included in notifications.

48.(1) The GFSC may direct that a notification for the purposes of paragraph 8, 17, 25 or 36 must include information specified in the direction.

(2) In a direction, the GFSC may only specify information which it reasonably considers necessary to enable it to discharge functions conferred on it by or under this Act in relation to persons with a Schedule 3A permission.

(3) The GFSC may, by a further direction, vary or revoke a direction it has given under this paragraph.

(4) A direction under this paragraph—

- (a) may make different provision for different purposes; but
- (b) may not make provision in relation to a specific person.

(5) The GFSC must consult the Minister before giving a direction under this paragraph.

(6) After giving a direction under this paragraph, the GFSC must publish the direction in the way appearing to the GFSC to be best calculated to bring it to the attention of persons likely to be affected by it.

PART 9
TRANSITION ON WITHDRAWAL OF DESIGNATION ETC

Transition on withdrawal of designation of regulated activity.

49.(1) Sub-paragraph (2) applies where—

- (a) the designation of a regulated activity for the purposes of this Schedule is withdrawn (by the amendment or revocation of regulations made under paragraph 2); and
- (b) immediately before designation is withdrawn, a person had a Schedule 3A permission to carry on the activity.

(2) The regulated activity is to be treated as designated under this Schedule but—

- (a) only so far as carried on by the person;
- (b) subject to the time limit in sub-paragraph (3); and

(c) subject to any restriction under paragraph 50.

(3) The regulated activity ceases to be treated as designated under this Schedule by virtue of sub-paragraph (2)–

(a) at the end of the period specified by the Minister by regulations; or

(b) if earlier, when an event listed in sub-paragraph (4) first occurs.

(4) Those events are–

(a) the person ceases to carry on the regulated activity in Gibraltar;

(b) the person ceases to have permission from the UK regulator to carry on the corresponding activity in the United Kingdom;

(c) the person ceases to have a Schedule 3A permission in respect of the activity;

(d) the person is given permission under Part 7 of this Act in respect of the activity;

(e) the Minister designates the activity for the purposes of this Schedule, by making regulations under paragraph 2.

(5) Where the designation of the regulated activity referred to in sub-paragraph (1)(a) is subject to limitations, references in this Part to that activity are to that activity subject to those limitations.

(6) Where the withdrawal of the designation of the regulated activity referred to in sub-paragraph (1)(a) is subject to limitations, references in this Part to that activity are to that activity subject to those limitations.

(7) For the purposes of sub-paragraph (4)(b) and (c), a person does not cease to have permission in respect of an activity while it has permission to carry on the activity by virtue of, and subject to the restrictions in, Part 10 of this Schedule.

Restricting transitional permission.

50.(1) Sub-paragraph (2) applies where, by virtue of paragraph 49(1), a regulated activity is treated as designated under this Schedule so far as carried on by a person to whom that paragraph applies.

(2) The GFSC may decide that the person may only carry on the regulated activity in Gibraltar so far as is necessary for one or more of the following purposes–

(a) for the performance of a protected contract;

- (b) in order to reduce the financial risk of a party to a protected contract or a third party affected by the performance of a protected contract;
 - (c) in order to transfer the property, rights or liabilities under a protected contract to a person authorised to carry on a regulated activity by virtue of a Part 7 permission; or
 - (d) in order to comply with a requirement imposed by or under an enactment.
- (3) If the GFSC proposes to make a decision under sub-paragraph (2) it must give the person a written notice.
- (4) The notice must—
- (a) give details of the proposed decision; and
 - (b) inform the person that the person may make representations to the GFSC within the period specified in the notice.
- (5) The GFSC may extend the period allowed under the notice for making representations.
- (6) If, having considered any representations made by the person, the GFSC decides to restrict the person’s activities as described in sub-paragraph (2), it must—
- (a) give the person a written notice (a “restriction notice”); and
 - (b) inform the UK regulator in writing without delay.
- (7) A restriction notice must—
- (a) specify the date on which it takes effect; and
 - (b) inform the person of the person’s right of appeal.
- (8) The Minister may by regulations provide that a restriction notice may not specify a date falling before the end of a period specified or described in the regulations.
- (9) In this paragraph, “protected contract” means a contract specified or described in a direction by the GFSC under paragraph 51 and references to the performance of a protected contract include the performance of an obligation under the contract which is contingent or conditional.

Directions about protected contracts.

51.(1) The GFSC may direct that a contract specified or described in the direction is a protected contract for the purposes of this Part.

(2) The GFSC may, by a further direction, vary or revoke a direction it has given under this paragraph.

(3) A direction under this paragraph may make different provision for different purposes, including different provision in connection with—

- (a) different activities;
- (b) different contracts or descriptions of contract; or
- (c) different UK-based persons or descriptions of UK-based person.

(4) The GFSC must consult the Minister before giving a direction under this paragraph.

(5) After giving a direction under this paragraph, the GFSC must publish the direction in the way appearing to the GFSC to be best calculated to bring it to the attention of persons likely to be affected by it.

Right of appeal.

52. Where a person in respect of whom a decision under paragraph 50(2) is made is aggrieved by the decision, the person may appeal to the Supreme Court in accordance with section 615 and, for that purpose, a restriction notice under paragraph 50(6) is to be treated as if it were a decision notice.

Further powers.

53.(1) The Minister may by regulations—

- (a) extend the period under section 77 for determining an application which—
 - (i) is for a Part 7 permission or a variation of a Part 7 permission; and
 - (ii) relates only to the carrying on of an activity which the applicant is carrying on in Gibraltar by virtue of this Part of this Schedule; or
- (b) extend the period under section 98 for consideration of an application which—
 - (i) is for approval of an individual as a regulated individual; and
 - (ii) relates only to performance of a regulated function in relation to the carrying on of an activity which the applicant is carrying on in Gibraltar by virtue of this Part of this Schedule.

(2) The power under sub-paragraph (1) includes power to amend sections 77 and 98.

PART 10
TRANSITION ON CANCELLATION OF GIBRALTAR OR UK
PERMISSION

Transition on cancellation of Schedule 3A permission.

54.(1) Sub-paragraphs (2), (4) and (5) apply where—

- (a) a person's Schedule 3A permission is cancelled under Part 5 of this Schedule; or
- (b) a person's Schedule 3A permission is varied under Part 4 of this Schedule so as to remove permission to carry on an activity (including by adding or varying a limitation).

(2) The person is to be treated as continuing to have the Schedule 3A permission, or the permission to carry on the activity, but—

- (a) only so far as is necessary for one or more of the purposes described in sub-paragraph (3); and
- (b) subject to the time limit in paragraph 57.

(3) The purposes are—

- (a) for the performance of a protected contract;
- (b) to reduce the financial risk of a party to a protected contract or a third party affected by the performance of a protected contract;
- (c) to transfer the property, rights or liabilities under a protected contract to a person authorised to carry on a regulated activity by virtue of a Part 7 permission; or
- (d) to comply with a requirement imposed by or under an enactment.

(4) The GFSC may exercise the powers under paragraph 40(1) in relation to the person if it appears to the GFSC that it is desirable to do so in order to advance one or more of its regulatory objectives.

(5) For the purposes of section 56 a person's Schedule 3A permission is to be treated as being cancelled when the person ceases to be treated as having a Schedule 3A permission by virtue of this paragraph.

(6) In this paragraph—

“protected contract” means—

- (a) an existing contract; or
- (b) a contract specified or described in a direction by the GFSC under paragraph 56(1).

(7) In sub-paragraph (6), “existing contract”, in relation to a person referred to in sub-paragraph (1), means a contract entered into before the person’s permission is cancelled or varied as described in that sub-paragraph, but—

- (a) does not include a contract specified or described in a direction under paragraph 56(2); and
- (b) except as otherwise provided in such a direction, does not include—
 - (i) a variation of a contract agreed on or after that day; or
 - (ii) a contract renewed on or after that day.

(8) In this paragraph, references to the performance of a protected contract include the performance of an obligation under the contract which is contingent or conditional.

Transition on cancellation of UK permission.

55.(1) Sub-paragraphs (2) and (4) apply where the UK regulator—

- (a) cancels a UK-based person’s permission to carry on in the United Kingdom an activity in relation to which the person has a Schedule 3A permission; or
- (b) varies such a permission so as to remove permission to carry on such an activity (including by adding or varying a restriction).

(2) For the purposes of this Schedule, the person is to be treated as continuing to have the permission from the UK regulator but—

- (a) only so far as is necessary for one or more of the purposes described in sub-paragraph (3); and
- (b) subject to the time limit in paragraph 57.

(3) The purposes are—

- (a) for the performance of a protected contract;
- (b) to reduce the financial risk of a party to a protected contract or a third party affected by the performance of a protected contract;

(c) to transfer the property, rights or liabilities under a protected contract to a person authorised to carry on a regulated activity by virtue of a Part 7 permission; or

(d) to comply with a requirement imposed by or under an enactment.

(4) The GFSC may exercise the powers under paragraph 40(1) in relation to the person if it appears to the GFSC that it is desirable to do so in order to advance one or more of its regulatory objectives.

(5) In this paragraph—

“protected contract” means—

(a) an existing contract; or

(b) a contract specified or described in a direction by the GFSC under paragraph 56(1).

(6) In sub-paragraph (5), “existing contract”, in relation to a person referred to in sub-paragraph (1), means a contract entered into before the person’s permission is cancelled or varied as described in that sub-paragraph, but—

(a) does not include a contract specified or described in a direction under paragraph 56(2); and

(b) except as otherwise provided in such a direction, does not include—

(i) a variation of a contract agreed on or after that day; or

(ii) a contract renewed on or after that day.

(7) In this paragraph, references to the performance of a protected contract include the performance of an obligation under the contract which is contingent or conditional.

Directions about protected contracts.

56.(1) The GFSC may direct that a contract specified or described in the direction is a protected contract for the purposes of paragraph 54 or 55 (or both).

(2) The GFSC may, by giving a direction, modify the definition of “existing contract” for the purposes of paragraph 54 or 55 (or both) in the ways provided for in the definitions of that term in those paragraphs.

(3) The GFSC may, by a further direction, vary or revoke a direction it has given under this paragraph.

(4) The GFSC may give different directions under this paragraph in connection with—

- (a) different activities;
- (b) different contracts or descriptions of contract; or
- (c) different UK-based persons or descriptions of UK-based person.

(5) The GFSC must consult the Minister before giving a direction under this paragraph.

(6) After giving a direction under this paragraph, the GFSC must publish the direction in the way appearing to the GFSC to be best calculated to bring it to the attention of persons likely to be affected by it.

End of transition.

57.(1) A UK-based person ceases to be treated as having a permission by virtue of paragraph 54 or 55—

- (a) when an event listed in sub-paragraph (2) first occurs; or
- (b) if the GFSC specifies an earlier date, on that date.

(2) Those events are—

- (a) the person ceases to carry on the regulated activity in Gibraltar;
- (b) the person is given permission under Part 7 of this Act in respect of the regulated activity;
- (c) the regulated activity ceases to be a designated activity; or
- (d) the person obtains (as appropriate)—
 - (i) a new Schedule 3A permission to carry on the activity referred to in paragraph 54(1); or
 - (ii) a new permission from the UK regulator to carry on the activity referred to in paragraph 55(1).

(3) If the GFSC specifies a date for the purposes of sub-paragraph (1)(b), it may vary the date but only by specifying a later date.

(4) In sub-paragraph (2), references to “the regulated activity” are references (as appropriate) to—

- (a) the regulated activity in respect of which the UK-based person is treated as having a Schedule 3A permission by virtue of paragraph 54; or
- (b) the regulated activity corresponding to the activity in respect of which the UK-based person is treated as having permission from the UK regulator by virtue of paragraph 55.

(5) For the purposes of sub-paragraph (2)(c), a regulated activity does not cease to be a designated activity while it is treated as designated in relation to the UK-based person under Part 9 of this Schedule (with or without the restrictions under that Part).

End of transition: procedure.

58.(1) If the GFSC proposes to specify or vary a date in relation to a person under paragraph 57(1)(b) or (3), it must give the person a warning notice.

(2) If the GFSC decides to specify or vary a date in relation to a person under paragraph 57(1)(b) or (3), it must give the person a decision notice.

Right of appeal.

59. If the GFSC gives a UK-based person a decision notice under paragraph 58, the person may appeal to the Supreme Court in accordance with section 615.

**PART 11
POLICY STATEMENTS**

Policy statements.

60.(1) The GFSC must prepare and issue a statement of its policy with respect to—

- (a) its powers to vary or cancel a Schedule 3A permission under Part 4 or 5 of this Schedule other than on a notification by a UK regulator;
- (b) its powers to impose, vary or cancel requirements under Part 6 of this Schedule, other than on a notification by a UK regulator; and
- (c) its power to give directions under Part 7 of this Schedule.

(2) Where the GFSC has issued a statement under sub-paragraph (1), it may prepare and issue a revised statement.

(3) In exercising a power described in sub-paragraph (1), the GFSC must have regard to any relevant statement of policy issued under this paragraph and in force at the time.

(4) Before issuing a statement under sub-paragraph (1) or (2), the GFSC must consult the Minister.

(5) The GFSC must publish any policy statement issued under this paragraph in the way appearing to the GFSC to be best calculated to bring it to the attention of persons likely to be affected by it.

PART 12 DUTY TO INFORM UK REGULATORS

GFSC's duty to inform UK regulator.

61.(1) The GFSC must inform the UK regulator in writing before giving a confirmation notice under—

- (a) paragraph 11;
- (b) paragraph 19;
- (c) paragraph 27; or
- (d) paragraph 38.

(2) The GFSC must inform the UK regulator in writing without delay after—

- (a) varying a Schedule 3A permission under paragraph 21;
- (b) cancelling a Schedule 3A permission under paragraph 29;
- (c) imposing a requirement under paragraph 33; or
- (d) imposing, varying or cancelling a requirement under paragraph 40.

PART 13 CO-OPERATION AND ASSISTANCE

Duties to co-operate.

62.(1) The GFSC must take such steps as it considers appropriate, for the purposes in sub-paragraph (2), to co-operate with the Government and the UK entities.

(2) Those purposes are—

- (a) to secure that the GFSC, the Government and the Minister are able to perform their functions under this Schedule; and
- (b) to secure that, so far as is reasonably possible, there is co-operation between the Gibraltar entities and the UK entities which the Minister, having regard to the objectives in paragraph 3(1), considers adequate.

(3) For the purposes of sub-paragraph (2), the GFSC must, among other things, have regard to the memoranda and arrangements described in paragraph 5(2)(a) to (d).

(4) The GFSC must ensure that one or more memoranda describing how it intends to comply with sub-paragraph (1) are prepared and maintained.

(5) When carrying out functions under this Schedule, the GFSC must, among other things, have regard to any relevant arrangements in force at the time for co-operation between the Gibraltar entities and the UK entities.

Publication and review of arrangements for co-operation.

63.(1) The GFSC must—

- (a) ensure that a copy of each memorandum describing how it intends to comply with paragraph 62(1), and of any other document recording arrangements that it enters into for the purpose of complying with paragraph 62(1), is given to the Minister (unless the Government also entered into the arrangement);
- (b) ensure that each memorandum is published in the way appearing to the GFSC to be best calculated to bring it to the attention of the public; and
- (c) review the memoranda that it has in place for the purpose of complying with paragraph 62(1) on a regular basis.

(2) Where the Government enters into arrangements with the UK entities or the GFSC for a purpose described in paragraph 62(2), the Minister must—

- (a) ensure that any memorandum recording the arrangements is published in the way appearing to the Minister to be best calculated to bring it to the attention of the public; and
- (b) review the memoranda that the Government has in place for a purpose described in paragraph 62(2) on a regular basis.

PART 14 SPECIAL CASES

UK-based individuals carrying on insurance distribution business.

64.(1) For the purposes of paragraph 1(1), an individual without a head office in the United Kingdom is to be treated as having a head office there if the individual—

- (a) is normally resident in the United Kingdom; and
- (b) has permission from the UK regulator to carry on insurance distribution business in the United Kingdom.

(2) A notification for the purposes of paragraph 8 in respect of an individual who is a UK-based person by virtue of this paragraph satisfies paragraph 10(1)(b) if it states the main address where the individual carries on insurance distribution business in the United Kingdom.

(3) The Minister may by regulations replace the requirement in sub-paragraph (1)(a) with a different requirement relating to residence in the United Kingdom.

(4) In this paragraph, “insurance distribution business” means carrying on the regulated activity of insurance or reinsurance distribution within the meaning of paragraph 34 or 35 of Schedule 2.

SCHEDULE 3B

Section 55B

GIBRALTAR-BASED PERSONS CARRYING ON ACTIVITIES IN UK

**PART 1
INTERPRETATION**

1.(1) In this Act—

“Gibraltar-based person” means—

- (a) an individual;
- (b) a body corporate;
- (c) a partnership; or
- (d) an unincorporated association,

which has its head office and, if it has one, registered office in Gibraltar.

(2) In this Schedule—

“branch” has the meaning given in Schedule 3A;

“consent notice” has the meaning given in paragraph 3;

“consent to variation notice” has the meaning given in paragraph 9;

“controlled activity” means—

- (a) an activity which, when carried on in Gibraltar, is a regulated activity;
- (b) marketing a UCITS; or
- (c) marketing an AIF;

“variation notice” has the meaning given in paragraph 9;

“UK activity notice” has the meaning given in paragraph 3;

“UK regulator” has the meaning given in Schedule 3A;

(3) For the purposes of this Schedule, “marketing”, in relation to a UCITS, means, in the course of business, communicating an invitation or inducement to a person to participate in the UCITS (and related expressions are to be interpreted accordingly).

(4) In sub-paragraph (3), “communicating” includes causing a communication to be made.

(5) Regulations under section 6(1) apply for the purposes of sub-paragraph (3) as they apply for the purposes of section 5(1)(b).

(6) For the purposes of this Schedule—

(a) an AIFM markets an AIF when—

- (i) the AIFM makes a direct or indirect offering or placement of units or shares of an AIF managed by it to or with an investor; or
- (ii) another person makes such an offering or placement at the initiative of, or on behalf of, the AIFM; and

(b) an investment firm markets an AIF when it makes a direct or indirect offering or placement of units or shares of the AIF to or with an investor at the initiative of, or on behalf of, the AIFM of the AIF.

(7) For the purposes of this Schedule, a person markets a UCITS or an AIF in the United Kingdom only if the marketing is capable of having an effect in the United Kingdom.

PART 2

PERMISSION REQUIRED TO CARRY ON ACTIVITIES IN UK

Prohibition.

2.(1) A Gibraltar-based person may not carry on a controlled activity in the United Kingdom unless it has permission to do so under this Schedule.

(2) A Gibraltar-based person who is not an authorised person and who contravenes the prohibition in sub-paragraph (1) commits an offence and is liable—

- (a) on summary conviction, to the statutory maximum fine; or
- (b) on conviction on indictment, to a fine.

Obtaining permission to carry on a controlled activity in the UK.

3.(1) A Gibraltar-based person obtains permission to carry on a controlled activity in the United Kingdom when Conditions A to C are satisfied.

(2) Condition A is that the Gibraltar-based person has given the GFSC notice that it wants to carry on the controlled activity in the United Kingdom (a “UK activity notice”).

(3) Condition B is that the GFSC has given notice to the UK regulator consenting to the Gibraltar-based person carrying on the controlled activity in the United Kingdom (a “consent notice”).

(4) Condition C is that the waiting period has ended.

(5) In sub-paragraph (4), “the waiting period” means—

- (a) in relation to an activity that is to be carried on through a branch in the United Kingdom, the period of two months beginning with the day on which the GFSC gave the UK regulator the consent notice; and
- (b) in relation to any other activity, the period of one month beginning with that day,

unless the GFSC specifies a shorter waiting period in the consent notice.

(6) A permission under this paragraph is referred to in this Act as “a Schedule 3B permission”.

Schedule 3B permission.

4.(1) A Schedule 3B permission for a person to carry on a controlled activity is a permission to do so only while the person has a relevant Part 7 permission.

(2) In this paragraph, “relevant Part 7 permission” means, if the controlled activity is an activity which, when carried on in Gibraltar, is a regulated activity, a Part 7 permission in respect of that regulated activity.

UK activity notices.

5.(1) A UK activity notice must—

- (a) name the Gibraltar-based person giving the notice;
- (b) state the address of the person’s head office or registered office in Gibraltar;
- (c) identify the activity that the Gibraltar-based person wants to carry on;
- (d) state whether the Gibraltar-based person wants to carry on the activity through a branch in the United Kingdom;
- (e) contain, or be accompanied by, such other information as the GFSC may direct; and
- (f) be given in such form and manner as the GFSC may direct.

- (2) A UK activity notice may relate to more than one activity.
- (3) A UK activity notice may ask the GFSC to specify a shorter waiting period for the purpose of paragraph 3(4).
- (4) The GFSC may, by a further direction, vary or revoke a direction it has given under sub-paragraph (1)(e) or (f).
- (5) A direction under this paragraph may make different provision for different purposes, including different provision in relation to different persons.
- (6) The GFSC must consult the Minister before giving a direction under this paragraph.
- (7) After giving a direction under this paragraph, the GFSC must publish the direction in the way appearing to the GFSC to be best calculated to bring it to the attention of persons likely to be affected by it.

Consent and confirmation.

- 6.(1) After receiving a UK activity notice, the GFSC must without delay–
- (a) give a consent notice; and
 - (b) give a written notice to the Gibraltar-based person confirming that it has given the consent notice,
- unless it intends to refuse to give a consent notice in accordance with paragraph 7.
- (2) A consent notice–
 - (a) may specify a shorter waiting period for the purpose of paragraph 3(4); and
 - (b) must contain, or be accompanied by, the UK activity notice.
 - (3) A notice under sub-paragraph (1)(b) must–
 - (a) state the date on which the consent notice was given to the UK regulator; and
 - (b) if the consent notice specified a shorter waiting period for the purpose of paragraph 3(4), specify that period.
 - (4) Where a UK activity notice relates to more than one activity, the GFSC may give a consent notice in relation to one activity and refuse to do so in relation to another.

Refusing consent.

7.(1) The GFSC may refuse to give a consent notice in relation to a regulated activity only if—

- (a) it is satisfied that the UK activity notice does not satisfy one or more of the requirements in paragraph 5; or
- (b) it appears to the GFSC that it is desirable to refuse to do so in order to advance one or more of its regulatory objectives.

(2) If the GFSC proposes to refuse to give a consent notice, it must give the Gibraltar-based person a warning notice.

(3) If the GFSC decides to refuse to give a consent notice, it must give the Gibraltar-based person a decision notice.

(4) If the GFSC gives the Gibraltar-based person a decision notice under subparagraph (3), the Gibraltar-based person may appeal to the Supreme Court in accordance with section 615.

**PART 3
VARIATION OF PERMISSION**

Variation of permission.

8.(1) A Gibraltar-based person's Schedule 3B permission may be varied in accordance with this Part—

- (a) on the initiative of the Gibraltar-based person; or
- (b) on the initiative of the GFSC.

(2) In this Part, references to the variation of a Schedule 3B permission (however expressed) are to its variation by—

- (a) adding an activity;
- (b) removing an activity; or
- (c) varying the description of an activity.

Gibraltar-based person's initiative.

9.(1) A Schedule 3B permission is varied in accordance with this paragraph when conditions A to D are satisfied in connection with the variation.

(2) Condition A is that the Gibraltar-based person has given the GFSC notice of the proposed variation (a “variation notice”).

(3) Condition B is that the GFSC has given notice to the UK regulator consenting to the variation (a “consent to variation notice”).

(4) Condition C is that the waiting period has ended.

(5) In sub-paragraph (4), “the waiting period” means—

(a) in relation to a variation in respect of an activity carried on through a branch in the United Kingdom, the period of two months beginning with the day on which the GFSC gave the UK regulator the consent to variation notice; and

(b) in relation to any other variation, the period of one month beginning with that day,

unless the GFSC specifies a shorter waiting period in the consent to variation notice.

(6) Condition D is that the GFSC has not cancelled the permission.

Gibraltar-based person’s initiative: variation notice.

10.(1) A variation notice must—

(a) name the Gibraltar-based person giving the notice;

(b) state the address of the person’s head office or registered office in Gibraltar;

(c) specify the proposed variation;

(d) where relevant, state whether the Gibraltar-based person wants to carry on an activity through a branch in the United Kingdom;

(e) contain, or be accompanied by, such other information as the GFSC may direct; and

(f) be given in such form and manner as the GFSC may direct.

(2) A variation notice may ask the GFSC to specify a shorter waiting period for the purpose of paragraph 9(4).

(3) The GFSC may, by a further direction, vary or revoke a direction it has given under sub-paragraph (1)(e) or (f).

(4) A direction under this paragraph may make different provision for different purposes, including different provision in relation to different persons.

(5) The GFSC must consult the Minister before giving a direction under this paragraph.

(6) After giving a direction under this paragraph, the GFSC must publish the direction in the way appearing to the GFSC to be best calculated to bring it to the attention of persons likely to be affected by it.

Gibraltar-based person's initiative: consent and confirmation.

11.(1) After receiving a variation notice, the GFSC must without delay—

- (a) give a consent to variation notice; and
- (b) give a written notice to the Gibraltar-based person confirming that it has given the consent to variation notice,

unless it intends to refuse to give a consent to variation notice in accordance with paragraph 12.

(2) A consent to variation notice—

- (a) may specify a shorter waiting period for the purpose of paragraph 9(4); and
- (b) must contain, or be accompanied by, the variation notice.

(3) A notice under sub-paragraph (1)(b) must—

- (a) state the date on which the consent to variation notice was given to the UK regulator; and
- (b) if the consent notice specified a shorter waiting period for the purpose of paragraph 9(4), specify that period.

(4) Where a variation notice relates to more than one variation, the GFSC may give a consent notice in relation to one variation and refuse to do so in relation to another.

Gibraltar-based person's initiative: refusing consent to variation.

12.(1) The GFSC may refuse to give a consent to variation notice in relation to a proposed variation only if—

- (a) it is satisfied that the variation notice does not satisfy one or more of the requirements in paragraph 10; or
- (b) it appears to the GFSC that it is desirable to refuse to do so in order to advance one or more of its regulatory objectives.

(2) If the GFSC proposes to refuse to give a consent to variation notice, it must give the Gibraltar-based person a warning notice.

(3) If the GFSC decides to refuse to give a consent to variation notice, it must give the Gibraltar-based person a decision notice.

(4) If the GFSC gives the Gibraltar-based person a decision notice under sub-paragraph (3), the Gibraltar-based person may appeal to the Supreme Court in accordance with section 615.

GFSC's initiative.

13.(1) The GFSC may vary a Schedule 3B permission if it appears to the GFSC that it is desirable to do so in order to advance one or more of its regulatory objectives.

(2) The GFSC may vary a Schedule 3B permission by—

- (a) adding a controlled activity;
- (b) removing a controlled activity; or
- (c) varying the description of a controlled activity in a way which does not, in the GFSC's opinion, widen the description.

GFSC's initiative: procedure.

14.(1) The variation of a Schedule 3B permission under paragraph 13 takes effect—

- (a) immediately, if the notice given under sub-paragraph (3) states that is the case;
- (b) on such date as may be specified in the notice; or
- (c) if no date is specified in the notice—
 - (i) at the end of the period for bringing an appeal if no appeal is brought; or
 - (ii) when any appeal is finally determined or withdrawn.

(2) The variation of a Schedule 3B permission under paragraph 13 may be expressed to take effect immediately, or on a specified date, only if the GFSC reasonably considers that it is necessary for the variation to take effect immediately or on that date, having regard to the ground on which the GFSC is exercising its power to vary.

(3) If the GFSC—

- (a) proposes to vary a Schedule 3B permission under paragraph 13; or

(b) varies a Schedule 3B permission under that paragraph,
with immediate effect, it must give the Gibraltar-based person a written notice.

(4) The notice must—

- (a) give details of the variation;
- (b) state the GFSC's reasons for varying the permission;
- (c) inform the Gibraltar-based person that the person may make representations to the GFSC within the period specified in the notice;
- (d) inform the Gibraltar-based person of when the variation of the permission takes effect; and
- (e) inform the Gibraltar-based person of the person's right of appeal.

(5) The GFSC may extend the period allowed under the notice for making representations.

(6) If, having considered any representations made by the Gibraltar-based person, the GFSC decides—

- (a) to vary the permission in the way proposed; or
- (b) if the permission has been varied, not to rescind its variation,

it must give the Gibraltar-based person a written notice.

(7) A notice under sub-paragraph (6) must inform the Gibraltar-based person of the person's right of appeal.

(8) If, having considered any representations made by the Gibraltar-based person, the GFSC decides—

- (a) not to vary the permission in the way proposed;
- (b) to vary the permission in a different way; or
- (c) to rescind the variation,

it must give the Gibraltar-based person a written notice.

(9) A notice under sub-paragraph (8)(b) must comply with sub-paragraph (4).

Right of appeal.

15. A Gibraltar-based person who is aggrieved by the GFSC's exercise of a power under paragraph 13 in relation to the person may appeal to the Supreme Court in accordance with section 615 and, for that purpose, a written notice under paragraph 14 is to be treated as if it were a decision notice.

**PART 4
CANCELLATION OF PERMISSION**

Cancellation of permission.

16.(1) The GFSC may cancel a Schedule 3B permission if—

- (a) it receives a written request from the Gibraltar-based person to do so; or
- (b) it appears to the GFSC that it is desirable to do so in order to advance one or more of its regulatory objectives.

(2) If the GFSC proposes to cancel a Gibraltar-based person's Schedule 3B permission under sub-paragraph (1)(b), it must give the Gibraltar-based person a warning notice.

(3) If the GFSC decides to cancel a Gibraltar-based person's Schedule 3B permission under sub-paragraph (1)(b), it must give the Gibraltar-based person a decision notice.

(4) If the GFSC gives the Gibraltar-based person a decision notice under sub-paragraph (3), the Gibraltar-based person may appeal to the Supreme Court in accordance with section 615.

(5) If the GFSC cancels a Schedule 3B permission under this paragraph, it must notify the UK regulator in writing without delay.

**PART 5
PUBLIC REGISTER**

Information to be included in register.

17. The GFSC must include in the register that it maintains under section 44, in relation to a Gibraltar-based person, information about the controlled activities that the person has a Schedule 3B permission to carry on in the United Kingdom, including whether the person has a branch in the United Kingdom.

**PART 6
SPECIAL CASES**

Gibraltar-based individuals carrying on insurance distribution business.

18.(1) For the purposes of paragraph 1(1), an individual without a head office in Gibraltar is to be treated as having a head office in Gibraltar if the individual has a Part 7 permission to carry on insurance distribution business in Gibraltar.

(2) A UK activity notice in respect of an individual who is a Gibraltar-based person by virtue of this paragraph satisfies paragraph 5(1)(b) if it states the main address where the individual carries on insurance distribution business in Gibraltar.

(3) A variation notice in respect of an individual who is a Gibraltar-based person by virtue of this paragraph satisfies paragraph 10(1)(b) if it states the main address where the person carries on business in Gibraltar.

(4) In this paragraph, “insurance distribution business” means carrying on the regulated activity of insurance or reinsurance distribution within the meaning of paragraph 34 or 35 of Schedule 2.”.

Amendment of Schedule 5.

22. In Schedule 5–

(a) for paragraph 4, substitute–

“4. The Protection of the Good Reputation of Gibraltar.

The protection of the good reputation of Gibraltar objective is protecting and enhancing the good reputation of Gibraltar as a financial centre.

In pursuit of this objective, the GFSC must take such action that–

(a) the GFSC considers necessary, having considered the impact on the financial sector; or

(b) the Government may require.”;

(b) in paragraph 5, in the first sub-paragraph, for “consumers’ objective” substitute “consumers objective”.

Amendment of Schedule 6.

23. In Schedule 6–

(a) for paragraph 4(5), substitute–

“(5) If at any time, as a result of members being unable to act due to conflicts of interest or otherwise unavailable, there are insufficient members available to discharge the DMC’s functions (whether generally or in relation to a particular matter), the Minister may–

- (a) after consulting with the DMC Chair, direct that the DMC’s functions in respect of a particular matter are to be exercised by the DMC Chair or another legally qualified member, acting alone; or
- (b) after consulting with the GFSC, appoint temporary members for a specified period or to make decisions in respect of a particular matter.”
- (b) in paragraph 4(6), for “appointed temporary members under sub-paragraph (5)” substitute “taken any steps under sub-paragraph (5) that the Minister considers appropriate”;
- (c) after paragraph 5, insert–

“Exceptional cases.

5A.(1) If, due to the nature or circumstances of a particular matter before the DMC, the Minister considers that–

- (a) it is not feasible to appoint a panel in accordance with paragraphs 1 and 4 to decide the matter; and
- (b) it would be inappropriate to exercise the power in paragraph 4(6) to direct the members of the GFSC to decide the matter,

the Minister, after consulting the GFSC, may appoint a suitably qualified individual to act in place of the DMC and decide the matter.

(2) An individual is suitably qualified for appointment under sub-paragraph (1) if the Minister considers that the individual has the necessary expertise to decide the matter.

(3) The Minister must not appoint an individual under sub-paragraph (1) if it appears to the Minister that the individual has a direct interest in any matter to which the matter relates or a close association with an interested party.

(4) An individual appointed under sub-paragraph (1) is to be appointed on such terms as the Minister may specify in the instrument of appointment and, in respect of the particular matter for which the individual is appointed, is to be treated as–

- (a) the DMC for the purposes of exercising any function conferred on the DMC by or under this Act (which the individual may do acting alone); and
- (b) as a member of the DMC for all relevant purposes under this Act including, in particular, immunity under paragraph 7.

(5) The following provisions of this Schedule do not apply to an appointment under sub-paragraph (1)–

- (a) paragraph 1(1) to (6) and (10);
- (b) paragraph 4(1) to (3) and 5 to (7); and
- (c) paragraph 5.”.

(d) in paragraph 7(3), for “the costs of” substitute “all costs and damages incurred in”.

Amendment of Schedule 7.

24. In Schedule 7, in paragraph 6(4), for “the costs of” substitute “all costs and damages incurred in”.

Amendment of Schedule 9.

25. In Schedule 9–

- (a) omit “Gibraltar Investor Compensation Board;”
- (b) after “Office of Criminal Prosecutions & Litigation;” insert–
“Office of Fair Trading;”.

Amendment of Schedule 14.

26. In Schedule 14–

- (a) before Part 1, insert–

“Notes

* These functions may be outsourced but, where an entry contains any restriction or limitation on doing so, only to the extent provided (see section 94A).

† In a regulated firm to which paragraph 2(1) of Schedule 15 applies, these roles must be performed by independent non-executive directors (see paragraph 4 of that Schedule).”;

- (b) for Part 1, substitute–

“Part 1 Regulated Functions: All RI Firms

*Head of Compliance (may only be outsourced by an insurance undertaking, reinsurance undertaking or insurance intermediary, and only to an individual from either an entity within the same group or a Gibraltar-based authorised insurance manager)

Money Laundering Reporting Officer (other than firms which are general insurance undertakings, general reinsurance undertakings or general insurance intermediaries)

Executive director (if firm is a company)

Non-executive director to whom section 88A(2) applies (if firm is a company)

Partner (if firm is a partnership)

Sole trader (if firm is a sole trader)

Branch manager (if firm has one or more branches, whether in or outside Gibraltar)

(c) In Part 2, in the entries relating to insurance and re-insurance undertakings–

(i) for “Head of Actuarial function” substitute “*Head of Actuarial function”;

(ii) for “Head of Risk management” substitute “*Head of Risk management (may only be outsourced to an individual from either an entity within the same group or a Gibraltar-based authorised insurance manager)”;

(iii) for “Head of Finance” substitute “*Head of Finance”;

(d) after Part 2, insert–

**“Part 3
Other Regulated Functions**

†Chair (if regulated firm is a company)

Chief Executive or Managing Director (if regulated firm is a company)

†Chair of the Risk committee (if regulated firm is a company)

†Chair of the Audit committee (if regulated firm is a company)

Head of Finance

Chief Operating Officer

Head of Credit (if regulated firm is a Credit institution)

Head of Trading (if regulated firm is an Investment firm or a DLT provider)

Head of Markets (if regulated firm is a DLT provider)

Head of operations (if regulated firm is a Regulated market or a DLT provider)

Head of underwriting (if regulated firm is an insurance or reinsurance undertaking or intermediary)

Head of claims (if regulated firm is an insurance or reinsurance undertaking or intermediary)

Head of Client Asset Oversight

Head of Customer Care (if regulated firm is a DLT provider)

Head of Business Continuity (if regulated firm is a DLT provider)".

Amendment of Schedule 15.

27. For Schedule 15, substitute—

“SCHEDULE 15

Section 88A

NON-EXECUTIVE DIRECTORS

Interpretation.

1. In this Schedule—

“independent” is to be construed in accordance with paragraph 3;

“non-executive director” means an individual who is a member of a company's board of directors who has no executive responsibilities in, and is not an employee of, the company;

“senior independent director” means the independent non-executive director appointed by a company's board of directors to lead oversight of—

- (a) the performance of the Chair; and
- (b) the adequacy and quality of the resources provided by the firm to enable the Chair to fulfil that role.

Requirement to have non-executive directors.

2.(1) A regulated firm that is a company which is—

- (a) a credit institution;
- (b) an insurance or re-insurance undertaking (other than a captive insurer or captive reinsurer);
- (c) a large investment firm;
- (d) an electronic money institution; or
- (e) a DLT provider,

must have not less than two independent non-executive directors who must be approved as regulated individuals.

(2) The GFSC may waive or modify the application of sub-paragraph (1) to a regulated firm where the GFSC is satisfied that doing so is appropriate, and a waiver or modification may be for such period or subject to such conditions as the GFSC may specify.

(3) A regulated firm which is a company other than one to which sub-paragraph (1) applies must have at least one independent non-executive director, but such a director does not need to be approved as a regulated individual.

(4) The requirement in sub-paragraph (3) does not apply—

(a) to a regulated firm which is only authorised as one or more of the following—

- (i) company manager;
- (ii) professional trustee or foundation councillor;
- (iii) trust administrator; or
- (iv) bureau de change; or

(b) where the GFSC has agreed to waive its application to—

- (i) a firm, by agreement with that firm; or
- (ii) firms of a specified class or description to which the firm belongs.

(5) For the purposes of sub-paragraph (4)(b)(ii), “specified” means specified by the GFSC, with the consent of the Minister, in a notice published in the manner it considers appropriate.

(6) The GFSC, acting in accordance with section 70, may require a regulated firm to which sub-paragraph (1) or (3) applies to have more than the minimum number of non-executive directors (whether independent or not) specified in the relevant sub-paragraph.

Independence of non-executive directors.

3.(1) A regulated firm to which paragraph 2(1) or (3) applies must identify in its annual report each non-executive director it considers to be independent.

(2) A non-executive director may be regarded as independent if the individual has no business, family or other interest or relationship (and has not recently had such an interest or relationship) which may influence, or may reasonably be perceived to influence, the individual’s capacity to make independent judgements on issues before the company’s board and to act in the best interests of the company as a whole.

(3) A non-executive director is not to be regarded as having (or having had) an interest or relationship to which sub-paragraph (2) applies solely on the basis that the individual is acting or has acted for the company as a professional adviser in the ordinary course of professional practice.

(4) Where a non-executive director which the company considers to be independent has or recently had—

- (a) an interest or relationship of the kind in sub-paragraph (2); or
- (b) a professional connection of the kind in sub-paragraph (3),

the company must provide a clear explanation of its decision in its annual report.

Regulated functions to be performed by non-executive directors.

4.(1) In a regulated firm that is a company to which paragraph 2(1) applies, each of the following regulated functions in Part 3 of Schedule 14 must be performed by independent non-executive directors—

- (a) Chair;
- (b) Chair of the risk committee;
- (c) Chair of the audit committee.

(2) In such a firm the same independent non-executive director may not be appointed as both the Chair and the Chair of the audit committee.

Requirement to have senior independent director.

5. Where a regulated firm to which paragraph 2(1) or (3) applies has three or more non-executive directors, it must appoint one of them to be the senior independent director.”.

Amendment of Schedule 18.

28. In Schedule 18—

- (a) in the heading—
 - (i) for “section 197” substitute “Section 27(4)”;
 - (ii) for “PART 15 POWERS AND OBLIGATIONS” substitute “FUNCTIONS UNDER PARTS 15 AND 16”;
- (b) in paragraph 1(1), after “Part 15” insert “or 16”;
- (c) in paragraph 2(1), for “this Part” substitute “Part 15 or 16”;
- (d) in paragraph 3—

- (i) in sub-paragraph (1), for “Part 15” substitute “Parts 15 and 16”;
- (ii) after sub-paragraph (1), insert—

“(1A) The FSRCC must keep separate accounts and accounting records, and prepare separate statements—

 - (a) in respect of—
 - (i) the deposit guarantee scheme;
 - (ii) the resolution financing arrangements; and
 - (iii) the administration fund maintained under section 198(1)(c); and
 - (b) in respect of—
 - (i) the investor compensation scheme; and
 - (ii) the administration fund maintained under section 269(1)(a).”;
 - (iii) in sub-paragraph (2), after “accounts” insert “and for the accounts in sub-paragraph (1A)(a) to be audited separately from those in sub-paragraph (1A)(b)”;
 - (iv) in sub-paragraph (3), after “copy” insert “of each”;
- (e) in paragraph 4—
 - (i) for sub-paragraph (1)(a), substitute—

“(a) providing information on the exercise of its functions under Parts 15 and 16 during that year, including its activities in respect of—

 - (i) the deposit guarantee scheme;
 - (ii) the resolution financing arrangements; and
 - (iii) the investor compensation scheme;”;
 - (ii) in sub-paragraph (4), for “this Part” substitute “Part 15 or 16”;
- (f) in paragraph 6, for “Part 15” substitute “Parts 15 and 16”.

Amendment of Schedule 21.

29. Omit Schedule 21.

EXPLANATORY MEMORANDUM

This Bill amends the Financial Services Act 2019 (“the Act”). Its main purpose is to give effect to the Gibraltar Authorisation Regime (GAR), a new permanent market access regime which provides for Gibraltar-based firms to carry on financial services activities in the United Kingdom and UK-based firms to carry similar activities in Gibraltar, based on the alignment of relevant law and practice and close regulatory cooperation.

The GAR provisions, which are set out in Clauses 8 and 21, are principally a ‘mirror-image’ version of the relevant UK provisions (sections 32A and 36A of, and Schedules 2A and 2B to, the UK Financial Services and Markets Act 2000). The drafting follows the UK legislation, but some changes have been made so that there is a clear distinction between Gibraltar and UK terminology. For example, what will be “approved” and “restricted” activities in the UK are defined as “designated” and “controlled” activities respectively in Gibraltar. The UK’s formal review and reporting on alignment have also not been adopted; in Gibraltar a simpler ministerial designation power will apply. The provision to make market access regulations has also been extended to include alignment with UK law. Clause 20 makes related and other amendments to the regulation-making powers in Part 29 of the Act, including adding a new power to address the application of international agreements.

Clause 5 extends the restriction on unregulated financial promotions to controlled investments and restricted activities.

Clause 6(1) amends the definition of “financial crime” to include terrorism and proliferation financing.

Clauses 6(2) and 19(2) remove initial GFSC authorisation decisions from those which need to be referred to the GFSC’s Decision Making Committee, so that the Committee’s focus is scrutinising decisions that affect established firms. Clause 23(a) to (c) provides for decision-making in exceptional cases by a suitably qualified individual appointed by the Minister.

Clauses 6(3), 14, 15, 25(a), 28 and 29 transfer responsibility for the Gibraltar investor compensation scheme to the GFSC’s Financial Services Resolution and Compensation Committee, which administers the Gibraltar deposit guarantee scheme.

Clauses 6(5), 16, 23(d) and 24 amend sections 38 and 286 of, and Schedules 6 and 7 to, the Act. They extend the costs indemnity for members, employees, etc. of the GFSC, its statutory committees and the Gibraltar Resolution Authority to include damages.

Clause 7 amends the provisions in Part 5 of the Act relating to confidentiality and assistance by the GFSC of other regulators, including inserting a new section 52A making it a criminal offence to breach those confidentiality provisions.

Clause 9 amends the definition of designated statutory objectives, extends the period in which the GFSC may process incomplete permission applications and provides for specified changes to be material changes for the purposes of section 83A of the Act.

Clauses 10, 26 and 27 amend Part 8 of, and Schedules 14 and 15 to, the Act, to require certain types of regulated firm to appoint non-executive directors and provide for functions performed by regulated individuals to be outsourced subject to additional regulatory safeguards.

Clause 11 amends the time limits for processing change of control notices.

Clause 12 amends Part 10 of the Act and Clauses 19(1) and (3) to (7) amend Part 28 of the Act, to align the GFSC's information gathering powers in respect of third parties and the publication of sanctions and supervisory action with those of the UK regulators.

Clause 13 amends section 176 of the Act, to bring within the definition of "relevant requirements" retained EU law that regulates financial services or confers powers on the GFSC.

Clause 17 adds notice procedures to Chapter 3 of Part 19 of the Act, relating to prospectuses.

Clause 18 amends Part 25 of the Act, concerning the licensing of insolvency practitioners. The amendments clarify that the prescribed notice procedure does not apply where a licence condition or restriction is imposed with the applicant's or holder's consent or at their request and make other minor changes.

Clause 22 amends Schedule 5. It introduces a more concise version of the regulatory objective in relation to the reputation of Gibraltar.

Clause 25(b) adds the Office of Fair Trading to the list of domestic authorities in Schedule 9 to the Act.

The Bill also makes other, mostly minor, amendments.

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