



No: 187/2019

Date: 18th March 2019

Technical Notice – No Deal Brexit – Financial Services

In November 2018, the European Union and the United Kingdom concluded the terms of an agreement for the orderly departure of the UK from the European Union. Gibraltar was part of that Agreement.

The Agreement includes a transitional period until the end of 2020, which also covers Gibraltar. It has been debated and voted upon at length but is still subject to ratification by the UK Parliament and by the European Parliament.

In the meantime, HM Government of Gibraltar continues to plan for the eventuality that the UK and Gibraltar leave the European Union without this Agreement. The guidance to the financial services sector below covers that eventuality.

Financial Services Framework after Brexit

In the event of a no deal Brexit on 29 March 2019, HM Government of Gibraltar will be ready for departure from the EU with our legislation amended to ensure a fully functioning financial services regime across all sectors.

Gibraltar's position in the European Union derives from the UK's position and Gibraltar will follow the UK in whatever arrangement is finally agreed.

Status of Gibraltar under EU Law

Gibraltar has a special status in the EU by virtue of Article 355(3) of the Treaty on the Functioning of the European Union (previously Article 299(4) of the EC Treaty) which states that:

The provisions of the Treaties shall apply to the European territories for whose external relations a Member State is responsible.

Gibraltar is a separate territory to which the EU Treaties apply and Gibraltar has transposed all relevant EU Directives, including all EU Directives that apply to financial services.

EU law is directly given effect in Gibraltar by the operation of Gibraltar's own European Communities Act 1972, which is primary legislation passed by the Gibraltar Parliament. The Government of Gibraltar has enacted its own EU (Withdrawal) Act 2019 ("EUWA"), which forms



part of the wider work the Government is undertaking to prepare for the UK's and Gibraltar's withdrawal from the EU. The EUWA is in similar terms to the UK's EU Withdrawal Act 2018.

The EUWA

As there is a risk that there will not be an arrangement in place on 29 March 2019, the Government must plan for a 'no deal' scenario. The Government intends to use powers in the EUWA to ensure that Gibraltar continues to have a functioning financial services regulatory regime in all scenarios.

The EUWA will repeal the European Communities Act 1972 on exit day and converts into Gibraltar domestic law the existing body of directly applicable EU law (including EU Regulations). It also preserves Gibraltar laws relating to EU membership – e.g. legislation implementing EU Directives. This body of law is referred to as “retained EU law”. The EUWA also gives Ministers powers to prevent, remedy or mitigate any failure of EU law to operate effectively, or any other deficiency in retained EU law, through regulations.

The regulations are not intended to make policy changes, other than to reflect Gibraltar's new position outside the EU, and to smooth the transition to this situation. The scope of the Ministerial power reflects this.

Arrangements between the UK and Gibraltar

The Financial Services and Markets Act 2000 (Gibraltar) Order 2001 (the Gibraltar Order) controls the arrangements between Gibraltar and the UK for access to each other's markets. The Gibraltar Order provides for access arrangements through deemed passporting rights.

The UK has laid two Statutory Instruments which amend the Gibraltar Order as well as other EU derived and EU exit legislation to preserve passporting arrangements between the UK and Gibraltar, and to ensure that existing regulatory treatments in relation to Gibraltar continue to function effectively in UK law after exit day. The UK has unequivocally confirmed that the current access arrangements for Gibraltar financial services firms to access the UK market will continue post Brexit and Gibraltar has equally confirmed access for UK firms into Gibraltar.

Similarly, in the event of no deal, the Government will be introducing draft regulations to retain reciprocal market access arrangements between Gibraltar and the UK. *The draft Financial Services (Passport Rights and Transitional Provisions) (EU Exit) Regulations 2019* (the Regulations), made under the EUWA, will:

- Retain reciprocal passporting rights for Gibraltar and UK firms in respect of financial services which are subject to regulation under the single market directives;
- Include the introduction of transitional arrangements enabling EEA firms that currently passport into Gibraltar to continue to do so under a temporary permission for a limited period of time whilst they consider if they want to apply for full authorisation in Gibraltar or cease activities; and



- Include the introduction of a restricted temporary permission for pre-existing contractual obligations, enabling EEA firms to continue carrying out regulated activities in Gibraltar where doing so is necessary to perform ongoing contracts to which they were a party before exit day.

The Government will be supplementing the Regulations with an additional set of regulations. These will include detailed changes to existing legislation in order to:

- Retain existing market access between Gibraltar and the UK;
- Retain the main elements of single market directives to apply between Gibraltar and the UK (e.g. Solvency II, MiFID II, IDD);
- Ensure that UK deposits remain protected after exit day; and
- Capture market abuse related issues.

Financial services contingency preparations

The Government, working closely with the GFSC, is undertaking a thorough review of EU and Gibraltar domestic financial services legislation to identify deficiencies that will arise when Gibraltar leaves the EU and existing EU law is transferred to Gibraltar law.

Wherever practicable, the approach is that the same laws and rules that are currently in place in Gibraltar will continue to apply at the point of exit, providing continuity and certainty as we leave the EU. Some changes will be required to reflect Gibraltar's new position outside the EU.

The Government's approach to fixing deficiencies

Gibraltar's financial sector is overseen by the Government and underpinned by a strong legislative framework with a world-class regulator, the GFSC. This means that the responsibilities of EU bodies could be re-assigned efficiently and effectively, providing firms, funds and their customers with confidence after exit.

Gibraltar's financial services legislation already provides for third country operators providing services into Gibraltar. EU financial services firms operating in Gibraltar broadly would become subject to the same supervisory regime that Gibraltar already applies to other third countries. This existing legislative framework provides powers for extensive cooperation with global regulatory bodies. When Gibraltar is no longer part of the EU, and so the EU obligation of reciprocal cooperation no longer applies, this existing framework could be relied upon to ensure this important cooperation continues.

Temporary Permissions Regime ("TPR")



A key consideration is to provide for continuity and to allow time to prepare for a smooth transition to the new regime. As in the United Kingdom, the Government will be introducing a Temporary Permissions Regime (TPR). To deal with the loss of passporting rights on Gibraltar's exit from the EU without a negotiated agreement, the TPR will allow EEA authorised firms to continue operating in Gibraltar for a time-limited period. For those firms wishing to maintain their Gibraltar business on a permanent basis, the regime will provide sufficient time to apply for full authorisation from the GFSC.

EEA authorised firms will not be able to use the UK-Gibraltar passporting arrangements after exit day. These rights will only be available for firms incorporated and headquartered in Gibraltar and the UK.

Split of responsibilities between the Government and the GFSC

In leaving the EU without a deal, many functions currently carried out at an EU level would cease to apply to Gibraltar and would need to be provided for in Gibraltar's regulatory regime. These changes will be evident in the regulations the Government of Gibraltar will be introducing to address the deficiencies when Gibraltar leaves the EU.

The Implementation Period

It is still unclear whether the Withdrawal Agreement will be ratified and therefore if there will be a transitional period between 29 March 2019 and 31 December 2020. In the event that the Withdrawal Agreement enters into force that transitional period will exist to allow for transition for the UK and Gibraltar arising from withdrawal from the EU.

The transitional period (also known as the "implementation period") will provide time to introduce the new arrangements that will underpin the future relationship between the UK and the EU, and Gibraltar. Any revised arrangements between the UK and the EU will include Gibraltar. During the implementation period, common EU rules will continue to apply in Gibraltar. The UK will continue to implement new EU law that comes into effect and Gibraltar will do the same. This will mean that access by Gibraltar authorised firms to EU markets will continue on current terms until the end of the implementation period.

During the implementation period, EU financial services firms operating in Gibraltar, and Gibraltar financial services firms operating in the EU, will be able to continue to undertake regulated activities, either by means of passporting rights or under other relevant EU frameworks. EU and third country (non-EU) financial market infrastructures that have existing authorisation or recognition under EU legislation will continue to be able to provide services to Gibraltar, enabling access to financial market infrastructures without disruption.

Inbound firms currently permitted to operate in Gibraltar without Gibraltar authorisation or recognition may plan on the assumption that they will not need Gibraltar authorisation or recognition before the end of the implementation period.



The Legislative Reform Programme

Separately from EU exit preparations, the new Financial Services Bill which amends and consolidates our existing legislation, will not be presented to Parliament until after the 29th March 2019 and an opportunity given for the Finance Centre Council and the sector to be consulted.

More information

We will publish more information as required. We aim to give businesses and individuals as much certainty as possible bearing in mind the continued uncertainty as to the final Brexit outcome. This notice is meant for guidance only. You should consider whether you need to take independent professional advice.