



Technical Notice (7) Getting ready for the end of the Transition Period

27 October 2020

Financial Services

On 31 December 2020, the Transition Period (sometimes also referred to as the “Implementation Period”) under the EU-UK Withdrawal Agreement will come to an end. The end of the Transition Period will bring an end to the current status quo whereby Gibraltar, its citizens and its business, have enjoyed EU rights. Therefore, subject to the outcome of ongoing negotiations concerning the UK and Gibraltar’s future relationship with the EU, the end of the Transition Period will bring about important changes which Gibraltar, as a whole, will need to be ready for.

Purpose.

The purpose of this Notice is to explain what the effect of those changes are on (i) financial services provided by Gibraltar licensed firms in the UK and the EU; and on (ii) financial services provided by EU licensed firms in Gibraltar.

If there is no agreement with respect to the UK and Gibraltar’s future relationship with the EU by 31 December 2020

Arrangements between Gibraltar and the UK.

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.

- *UK Legislation.*



In 2019 the UK made 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 after 31 December 2020. These Statutory Instruments will ensure that existing regulatory treatments in relation to Gibraltar continue to function effectively in UK law after 31 December 2020.

These arrangements will apply in the intervening period post-31 December 2020 until, in the longer term, the UK gives effect to its commitment to preserve UK market access for Gibraltar financial services firms on a permanent basis going forwards. In this respect, it should be underlined that, as part of its work on a post-EU withdrawal Financial Services Act, the UK Government has recently consulted on a new Gibraltar Authorisation Regime (“GAR”) which will provide for continued access arrangements for Gibraltar licensed firms providing financial services in the UK market in future. On the 21 October 2020, the UK Government published its Financial Services Bill which contains a part dedicated to the GAR.

With respect to the position in Gibraltar, Gibraltar legislation will also preserve reciprocal market access arrangements between Gibraltar and the UK therefore providing for the continued access to the Gibraltar market for UK licensed firms after 31 December 2020. The draft Financial Services (Passport Rights and Transitional Provisions) (EU Exit) Regulations 2020 (the “Regulations”) will retain reciprocal passporting rights for Gibraltar and UK firms in respect of financial services which are currently subject to regulation under EU Single Market directives.

The Government will be supplementing the Regulations with further legislation to support the retained existing market access arrangements between Gibraltar and the UK; preserve the main elements of EU Single Market directives which apply between Gibraltar and the UK (e.g. Solvency II, MiFID II, and IDD); ensure that UK deposits remain protected after 31 December 2020; and capture market abuse related issues.

- *Further work.*



HMGoG, working closely with the GFSC, is continuing to review domestic financial services legislation to ensure that there are no technical statutory deficiencies after 31 December 2020.

In terms of the principles guiding this work, HMGoG has taken a policy decision that the same laws and rules that are currently in place in Gibraltar will continue to apply immediately after 31 December 2020. This would provide continuity and certainty.

Needless to say, financial services activity which takes place from Gibraltar will continue to be underpinned by a robust legislative framework and supervised by a world-class regulator, namely, the GFSC.

Arrangements between Gibraltar and the EU.

In the absence of an agreement to the contrary, Gibraltar and UK licensed financial services firms will become third-country firms as regards the implementation and application of EU law in the EU Member States. The immediate effect of this will be the loss of EU passporting rights for those firms providing services in the EU on the basis of current UK or Gibraltar licences.

With respect to EEA firms providing services in Gibraltar after 31 December 2020, it should be noted that Gibraltar's financial services legislation already provides a regulatory framework for third-country operators providing services into Gibraltar. After 31 December 2020, EEA firms operating in Gibraltar 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. This framework can be relied upon to ensure this important cooperation can continue when Gibraltar is no longer subject to the EU obligation of reciprocal cooperation.



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

- *Temporary Permissions Regime.*

As in the United Kingdom, HMGoG will be introducing a Temporary Permissions Regime (“TPR”). To address the loss of EU passporting rights for EEA authorised firms operating in Gibraltar, the TPR will allow for such firms to have continued access to the Gibraltar market for a limited time-period. For those firms wishing to maintain their Gibraltar business on a permanent basis, the TPR will provide sufficient time for firms to apply for full authorisation from the GFSC.

Active consideration is being given to permit EEA insurers to continue to write business in Gibraltar (without needing a full authorisation from the GFSC) where this would enhance competition and increase choice for consumers.

Split of responsibilities.

Many functions currently carried out at EU level would cease to be carried out by EU bodies. EU competences will be re-assigned to HMGoG and to the GFSC in a manner which will provide firms, funds and their customers with confidence after 31 December 2020. These changes will be evident in the regulations which will be coming into effect after 31 December 2020.

If there is an agreement with respect to the UK and Gibraltar’s future relationship with the EU by 31 December 2020.

Negotiations with respect to the UK and Gibraltar’s future relationship with the EU are ongoing. It is not yet clear whether an agreement, in the eventuality that an agreement is struck, would provide for specific provisions relating to financial services including national treatment for cross-border financial services suppliers, market access, the



transfer of financial information or regulatory cooperation. It is also unclear at this stage whether any agreement may be supported by reciprocal “equivalence” decisions. HMGoG will publish further guidance once more definite advice can be provided.

In any event, and irrespective of whether or not agreements are found, the arrangements between the UK and Gibraltar with respect to market access in financial services are impervious to any future relationship with the EU.

Further information

This Notice is meant for guidance only.

Firms and individuals potentially affected by any information contained in this Notice should consider whether they need to take independent professional advice.

Further information can be sought from brexit@gibraltar.gov.gi.