

SCHEDULE 2

Amendments of subordinate legislation

PART 2

Amendments of Payment Services Regulations 2017

73.—(1) Schedule 7 (Gibraltar) is amended as follows.

(2) In the heading before paragraph 1, for “deemed passport rights” substitute “market access rights”.

(3) In paragraph 1—

(a) after sub-paragraph (1) insert—

“(1A) Such a firm is referred to in the following provisions of this Schedule as a Gibraltar-based firm.”;

(b) for sub-paragraphs (2) and (3) substitute—

“(2) A Gibraltar-based firm is to be treated as having an entitlement, corresponding to the passport right deriving from the payment services directive that such a firm had immediately before exit day, to establish a branch or provide services in the United Kingdom.

(2A) Despite their amendment or revocation by the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018, the provisions of these Regulations listed in sub-paragraph (2B) continue to apply, as they had effect immediately before exit day, for the purposes of this paragraph.

(2B) The provisions referred to in sub-paragraph (2A) are as follows—

(a) in regulation 2 (interpretation), in paragraph (1)—

(i) paragraphs (d) and (e) of the definition of “branch”, and

(ii) paragraph (d) and (e) of the definition of “payment service provider”;

(b) in regulation 4 (register of certain payment service providers), paragraph (2);

(c) regulations 29 and 30 (passporting);

(d) regulation 119 and Schedule 5 (credit agreements);

(e) regulation 138 (prohibition on provision of payment services by persons other than payment service providers);

(f) regulation 147 (duty to co-operate and exchange of information);

(g) in regulation 152 (transitional provisions: payment through network operators), paragraphs (4) to (7);

(h) in Schedule 6 (application and modification of legislation), paragraphs 3 and 4.

(3) In those provisions as applying for the purposes of this paragraph—

(a) references to an “EEA authorised payment institution” or “EEA registered account information service provider” are to be read as references to the Gibraltar-based firm,

(b) references to a “home state competent authority” are to be read as references to the Gibraltar Financial Services Commission,

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- (c) references to “passport rights” are to be read as references to the entitlement mentioned in sub-paragraph (2),
 - (d) references to the authorisation of any person as a credit institution, custodian or insurer in accordance with a directive are to be read as references to authorisation in accordance with Gibraltar legislation which implemented the directive,
 - (e) references to a person’s rights or entitlements are to be read as references to the rights or entitlements the person would have, if the person’s rights or entitlements were being determined immediately before exit day.”
- (4) In the heading before paragraph 2, for “deemed passport rights” substitute “market access rights”.
- (5) In paragraph 2—
- (a) in sub-paragraph (1) for “its passport right,” substitute “the passport right that such a firm had immediately before exit day,”;
 - (b) after sub-paragraph (1) insert—

“(1A) Despite their amendment or revocation by the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018, the provisions of these Regulations listed in sub-paragraph (1B) continue to apply, as they had effect immediately before exit day, for the purposes of this paragraph.

(1B) The provisions referred to in sub-paragraph (1A) are as follows—

 - (a) in regulation 4 (register of certain payment service providers), paragraph (1)(a);
 - (b) regulations 27 and 28 (notice of intention);
 - (c) regulation 30 (supervision of firms exercising passport rights);
 - (d) in regulation 32 (additional activities), paragraph (2)(c);
 - (e) in regulation 34 (use of agents), paragraphs (2), (6), (7), (10), (11) and (14);
 - (f) in regulation 147 (duty to co-operate and exchange information), paragraph (1);
 - (g) in regulation 153 (transitional and saving provisions), paragraph (2).”;
 - (c) for sub-paragraph (2) substitute—

“(2) In relation to an authorised payment institution or registered account information service provider which establishes a branch or provides services in Gibraltar, those provisions are to be read as if—

 - (a) references to an “EEA branch” were references to such a branch;
 - (b) references to an “EEA State” were references to Gibraltar;
 - (c) references to a “host state competent authority” were references to the Gibraltar Financial Services Commission; and
 - (d) references to “passport rights” were references to the entitlement mentioned in sub-paragraph (1).”

(6) After paragraph 2 insert—

“References to Gibraltar regulator

2A.—(1) The Treasury may by regulations made by statutory instrument make such amendments of the references in paragraphs 1 and 2 to the Gibraltar Financial Services Commission, or any references previously substituted for those references, as appear to the Treasury to be appropriate in order to take account of any change in the law of Gibraltar.

- (2) A statutory instrument containing regulations under sub-paragraph (1) is subject to annulment in pursuance of a resolution of either House of Parliament.”
- (7) Omit paragraph 3.