

**EXPLANATORY MEMORANDUM TO THE
FINANCIAL SERVICES AND MARKETS ACT 2000 (GIBRALTAR)
(AMENDMENT) ORDER 2005**

2005 No. 1

1. This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 This instrument modifies article 2 of the Financial Services and Markets Act 2000 (Gibraltar) Order 2001 (S.I. 2001/3084) (“the Gibraltar Order”). It allows Gibraltar firms which are registered with the Gibraltar Financial Services Commission (FSC), the right to carry on the business of insurance or reinsurance mediation in the UK.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 The Treasury apologises to the Joint Committee on Statutory Instruments for the breach of the 21 day rule.

- 3.2 The Insurance Mediation Directive (European Council and Parliament Directive 2002/92/EC) (“the IMD”) is required to be implemented by 15 January 2005. UK legislation implementing the Directive comes into force on 14 January 2005.

- 3.3 The effect of this Order is to allow Gibraltar insurance intermediary firms to continue to sell general insurance to UK customers and operate branches in the UK once the IMD is implemented, without obtaining permission from the Financial Services Authority under Part IV of the Financial Services and Markets Act 2000 (“FSMA”). If these Gibraltar firms are to avoid the need for authorisation from the Financial Services Authority, the Order needs to come into force no later than 14 January 2005. If the Treasury had complied with the 21 day rule, these Gibraltar firms operating in the UK would have been put to the expense of seeking authorisation from the Financial Services Authority to enable them to continue their operations for the short period before this Order came into force, after which the authorisation would cease to be necessary.

- 3.4 It has not been possible to lay this instrument until now as the Gibraltar Government were only on 24th December 2004 able to provide confirmation to HM Treasury that they would have implemented the IMD in full by 15 January. Until this confirmation was received, it would not have been appropriate to make this Order for the reasons set out in paragraph 7.3 of this Memorandum.

4. Legislative Background

4.1 Schedule 3 to FSMA authorises firms which are authorised under the single market directives (which include the IMD, see paragraph 1(e) of Schedule 3) in an EEA state other than the UK to establish a branch or provide services in the UK in exercise of rights under those directives.

4.2 Section 409 of FSMA enables HM Treasury to make an order to modify Schedule 3 to FSMA so as to provide for Gibraltar firms of a specified description to qualify for authorisation under Schedule 3 in specified circumstances. The Gibraltar Order, made under this power, enables Gibraltar firms to qualify for authorisation in relation to certain of the single market directives (but not the IMD).

4.3 This instrument amends article 2 of the Gibraltar Order to give Gibraltar insurance and reinsurance intermediaries regulated under the IMD as implemented in Gibraltar the right to qualify for authorisation in the UK.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

Not applicable

7. Policy background

7.1 The IMD must be implemented by 15 January 2005 and UK legislation implementing the IMD comes into force on 14 January 2005. From 14 January 2005, insurance and reinsurance intermediaries in the UK will require authorisation from, and be regulated by, the Financial Services Authority. This new regulatory regime is designed to implement the IMD in the UK.

7.2 Without the amendment to the Gibraltar Order made by this instrument, from 14 January 2005 Gibraltar firms with branches in the UK would require authorisation from the FSA to continue their UK business. This would add a significant compliance burden to these firms, who will already be regulated by the Gibraltar FSC in line with the IMD.

7.3 A mechanism exists within FSMA to allow UK to grant the right to authorisation to Gibraltar firms where deemed appropriate. In practice, the assessment as to whether or not such a right to authorisation is granted will rest upon the extent to which the standards of regulation in Gibraltar match those in the UK. In this instance, following discussions with the FSA, HMT officials are of the view that

in implementing the IMD, the Gibraltar FSC will be imposing matching standards of regulation to those in place for other firms operating in the UK.

7.4 The Government of Gibraltar has confirmed that it will have implemented the IMD in full for their firms by 15 January. On this basis, HM Treasury consider that standards of regulation for intermediaries in Gibraltar will match those in the UK sufficiently to allow a right to authorisation to be granted.

7.5 From 15 January 2005 firms operating out of all other EU Member States who have implemented the IMD will gain the right to passport into the UK.

8. Impact

8.1 No Regulatory Impact Assessment has been prepared as there are no impacts foreseen beyond those identified as part of the Regulatory Impact Assessment on the regulation of mortgages and general insurance, published by HM Treasury 12 December 2001.

8.2 There will be no impact on the public sector.

9. Contact

Matt Holmes at HM Treasury (Tel: 0207 270 5780 or e-mail: matt.holmes@hm-treasury.gov.uk) can answer any queries regarding the instrument.