

**EXPLANATORY MEMORANDUM TO
THE FINANCIAL SERVICES AND MARKETS ACT 2000 (GIBRALTAR)
(AMENDMENT) ORDER 2006**

2006 No.1805

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”). The effect of this instrument is to allow Gibraltar investment services firms registered with the Gibraltar Financial Services Commission to conduct investment services business in the UK, and operate branches in the UK, without obtaining permission from the Financial Services Authority under Part IV of the Financial Services and Markets Act 2000 (“FSMA”).

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

3.1 None.

4. **Legislative Background**

4.1 The Investment Services Directive (93/22/EEC) (“ISD”) harmonised the initial authorisation and operating conditions for EU investment firms. In particular, it introduced minimum levels of protection for investors and clients relying on investment firms to perform services on their behalf, thereby creating the conditions under which those firms might provide services in other Member States on the basis of authorisation and supervision undertaken by the competent authority in its country of authorisation.

4.2 Section 31(1)(b) of, and Schedule 3 to, FSMA authorises firms which are authorised under the single market directives (which include the ISD) 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.

4.3 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 ISD).

4.3 This instrument amends article 2 of the Gibraltar Order to give investment services firms regulated under the ISD, 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

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Gibraltar has implemented the ISD through the Financial Services Ordinance 1998 (FSO 98) and has subsequently introduced additional legislation and regulatory reform to further safeguard the interests of investors.

7.2 In reflection of this fact, this Order grants passporting rights for investment services firms based in Gibraltar (authorised under the ISD) that wish to sell their services in the UK. This brings Gibraltar into line with other jurisdictions within the EEA.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 There will be no impact on the public sector.

9. Contact

Sean Byrne at HM Treasury, Tel: 0207 270 5977 or e-mail: sean.byrne@hm-treasury.gov.uk can answer any queries regarding the instrument.