

EXPLANATORY MEMORANDUM TO
THE FINANCIAL SERVICES AND MARKETS ACT 2000 (GIBRALTAR)
(AMENDMENT) ORDER 2012

2012 No. 2017

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

2. Purpose of the instrument

2.1 This Order amends the Financial Services and Markets Act 2000 (Gibraltar) Order 2001 (S.I. 2001/3084) ("the Gibraltar Order"), in order to allow Gibraltar-based entities to exercise certain EU rights in the United Kingdom in relation to collective investments schemes.

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

3.1 None.

4. Legislative Context

4.1 Schedule 3 of the Financial Services and Markets Act 2000 (c. 8) ("FSMA") provides for firms which are authorised under the single market directives 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. One such directive is the Directive of the European Parliament and of the Council 2009/65/EC of 13th July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (OJ No. L 302, 17/11/2009, p. 32) ("the UCITS directive")

4.2 Section 264 of FSMA provides for funds that are authorised pursuant to the UCITS directive in another EEA state to be marketed to investors in the United Kingdom.

4.3 Section 409 of FSMA enables the Treasury to make an order modifying certain legislative provisions, including section 264 of and Schedule 3 to FSMA, so as to provide for Gibraltar entities of a specified description to be treated in specified circumstances as though they were authorised in another EEA state.

5. Territorial Extent and Application

5.1 This instrument applies to the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

- What is being done and why

7.1 The UCITS directive grants a marketing passport for funds authorised under the UCITS framework, allowing them to be marketed in any Member State. It provides a similar right for fund managers authorised under the UCITS framework to establish a branch or provide UCITS-related services in any Member State. However, as the European Union does not recognise Gibraltar as a separate Member State, Gibraltar domiciled managers and fund cannot exercise these rights in the United Kingdom.

7.2 The Government of Gibraltar has implemented the UCITS directive in full. On this basis, the Treasury consider that standards of regulation for UCITS funds and managers in Gibraltar justify allowing a right to passport. This statutory instrument provides for that right, and also provides for the exercise of corresponding rights by UK domiciled funds and managers in Gibraltar.

- Consolidation

7.3 The Treasury does not have plans to consolidate FSMA or the Gibraltar Order at this time. Commercial publishers produce consolidated versions of FSMA and secondary legislation made under it, both in electronic and hard copy versions.

8. Consultation outcome

8.1 The Financial Services Authority and the Gibraltar Financial Services Commission have been consulted and they are content for the United Kingdom to proceed with this instrument.

9. Guidance

9.1 The Treasury is not providing any guidance in relation to this Order.

10. Impact

10.1 No impact on business, charities or voluntary bodies is foreseen.

10.2 No impact on the public sector is foreseen.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 No special action is needed to assist small business because no regulatory burden is imposed by this instrument.

12. Monitoring & review

12.1 The Treasury will be reviewing all of the UK legislation relating to UCITS during the process of implementing amendments to European UCITS legislation in 2013 - 2014.

13. Contact

Jonathan Gee at HM Treasury Tel: 02072706275 or email:
jonathan.gee@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.