

**2012 No. 2017**

**FINANCIAL SERVICES AND MARKETS**

**The Financial Services and Markets Act 2000 (Gibraltar)  
(Amendment) Order 2012**

<i>Made</i>	- - - -	<i>27th July 2012</i>
<i>Laid before Parliament</i>		<i>2nd August 2012</i>
<i>Coming into force</i>	- -	<i>24th August 2012</i>

The Treasury make the following Order in exercise of the powers conferred by sections 409(1)(a), (b), (d) and (5) and 428(3) of the Financial Services and Markets Act 2000(a):

**Citation and commencement**

1. This Order may be cited as the Financial Services and Markets Act 2000 (Gibraltar) (Amendment) Order 2012, and comes into force on 24th August 2012.

**Amendment of the Financial Services and Markets Act 2000 (Gibraltar) Order 2001**

2.—(1) The Financial Services and Markets Act 2000 (Gibraltar) Order 2001(b) is amended as follows.

(2) In article 2—

(a) after paragraph (3B)(c), insert—

“(3C) A Gibraltar-based firm falling within paragraph 5(f) of Schedule 3 is to be treated as having an entitlement, corresponding to its EEA right deriving from the UCITS directive, to establish a branch or provide services in the United Kingdom.”;

(b) in paragraph (4)—

(i) for “and (3B)” substitute “, (3B) and (3C)”;

(ii) for “and (e)” substitute “, (e) and (f)”;

(c) in paragraph (5)—

(i) for “or (3B)” on each occasion it occurs substitute “, (3B) or (3C)”;

(ii) for the first “and”, substitute “,”;

(iii) after “the Financial Services and Markets Act 2000 (Compensation Scheme: Electing Participants) Regulations 2001” insert “, and Part 4 of the Undertakings for Collective Investment in Transferable Securities Regulations 2011”;

(d) in paragraph (7)—

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(a) 2000 c. 8.

(b) S.I. 2001/3084, amended by S.I. 2005/1, 2006/1805, 2007/3254; there are other amending instruments but none is relevant.

(c) Paragraph (3B) of article 2 was inserted by S.I. 2007/3254.

- (i) omit “For the avoidance of doubt,”;
  - (ii) for “or (3B)” substitute “, (3B) or (3C)”;
  - (iii) omit from “; but section 199(7)” to the end;
  - (e) after paragraph (7), insert—
    - “(8) For the purposes of paragraph (7)—
      - (a) sections 194A(7) and 199A(7) have effect as if “, ESMA and the Commission” were omitted;
      - (b) sections 195A(11) and 199(10) are disapplied.”.
- (3) After article 3, insert—

**“Collective investment schemes constituted under Gibraltar law**

**3A.** Section 264 of the Act applies in relation to a collective investment scheme which is constituted in Gibraltar as it applies in relation to a collective investment scheme constituted in another EEA State, and references in that section to the home state regulator shall include the authority responsible for such regulation in Gibraltar.”.

- (4) In article 4—
- (a) for paragraph (1) substitute—
    - “(1) Schedule 3 applies in relation to—
      - (a) the establishment by a UK firm of a branch in Gibraltar, or the provision by a UK firm of services in Gibraltar, or
      - (b) the marketing in Gibraltar by a UK firm of units of a UCITS (as defined in Article 1.2 of the UCITS directive) established in the UK,
 as follows.”;
  - (b) in paragraph (2), for “or” substitute “,” and after “services” insert “or market the units referred to in paragraph (1)(b)”.

27th July 2012

*Angela Watkinson*  
*James Duddridge*  
Two of the Lords Commissioners of Her Majesty’s Treasury

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order amends the Financial Services and Markets Act 2000 (Gibraltar) Order 2001 (S.I. 2001/3084) (“the Gibraltar Order”).

Article 2 of the Gibraltar Order is amended to enable management companies, as defined in Article 6 of 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 (“UCITS”) (OJ No. L 302, 17/11/2009, p. 32; “the UCITS directive”), which are based in Gibraltar, to exercise certain rights to establish branches and provide services in the United Kingdom. The rights correspond to the rights of firms authorised in other EEA States under the UCITS directive to establish branches and provide services in the United Kingdom.

Article 2 is also amended to disapply the obligation in Part 13 of the Financial Services and Markets Act 2000 (c. 8) for the Financial Services Authority to notify the European Commission and the European Securities and Markets Authority when it intervenes in the affairs of an incoming EEA firm, when the intervention is in respect of a Gibraltar-based firm that is treated as an EEA firm by virtue of the Gibraltar Order.

Article 2 is further amended to enable a UCITS constituted under Gibraltar law to be treated as an EEA UCITS for purposes of the merger regime set out in Part 4 of the Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613).

Article 3A is inserted to enable collective investment schemes constituted under Gibraltar law to be treated as recognised overseas schemes for the purposes of the Act. Article 4 is amended to provide a corresponding right for UK firms to establish branches and provide services in Gibraltar and to market units of UK-established UCITS in Gibraltar.

A full impact assessment has not been prepared for this instrument as no impact on the costs of business or the voluntary sector is foreseen.

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