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## SCHEDULES

### SCHEDULE 8

Section 22

#### GIBRALTAR: MINOR AND CONSEQUENTIAL AMENDMENTS

##### *Financial Services and Markets Act 2000 (c. 8)*

PROSPECTIVE

1 The Financial Services and Markets Act 2000 is amended as follows.

PROSPECTIVE

2 In section 3A(3)(a) (expressions in which general definition of “regulator” does not apply), at the end insert—  
““Gibraltar regulator”;

PROSPECTIVE

3 In section 33(1)(a) (withdrawal of authorisation), after “permission” insert “ or Schedule 2A permission ”.

PROSPECTIVE

4 In Part 5 (performance of regulated activities), after section 71I insert—

*“Application of this Part to Gibraltar-based persons*

#### **71J Application of this Part to Gibraltar-based persons**

- (1) This section applies to an authorised person that—
  - (a) has a Schedule 2A permission, but
  - (b) does not have a Part 4A permission.
- (2) The person is only required to comply with the provisions listed in subsection (3) if the person has a branch in the United Kingdom.
- (3) Those provisions are—
  - (a) section 59(1) or (2) (approval for particular arrangements), or
  - (b) section 63E(1) (certification of employees).

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(4) In this section, “branch” has the same meaning as in Schedule 2A (see paragraph 3 of that Schedule).”

5 After section 137A insert—

**“137AA The FCA's general rules: Gibraltar**

- (1) The FCA's general rules may not make provision prohibiting a Gibraltar-based person from carrying on, or holding itself out as carrying on, an activity which it has a Schedule 2A permission to carry on in the United Kingdom.
- (2) Subsection (1) does not apply to rules described in section 137C, 137D or 137FD.
- (3) The Treasury may by regulations impose other limitations on what provision applying to Gibraltar-based persons with a Schedule 2A permission to carry on a regulated activity may be made in the FCA's general rules, but may not impose limitations relating to rules described in section 137C, 137D or 137FD.
- (4) Before making regulations under subsection (3), the Treasury must consult the FCA.”

**Commencement Information**

**I1** Sch. 8 para. 5 in force at 1.9.2023 for specified purposes by S.I. 2023/934, reg. 2(b)(i)

6 After section 137G insert—

**“137GA The PRA's general rules: Gibraltar**

- (1) The PRA's general rules may not make provision prohibiting a Gibraltar-based person from carrying on, or holding itself out as carrying on, an activity which it has a Schedule 2A permission to carry on in the United Kingdom.
- (2) The Treasury may by regulations impose other limitations on what provision applying to Gibraltar-based persons with a Schedule 2A permission to carry on a regulated activity may be made in the PRA's general rules.
- (3) Before making regulations under subsection (2), the Treasury must consult the PRA.”

**Commencement Information**

**I2** Sch. 8 para. 6 in force at 1.9.2023 for specified purposes by S.I. 2023/934, reg. 2(b)(ii)

7 In section 213 (the compensation scheme), after subsection (9) insert—

“(10A) But a person is not to be regarded as a relevant person in relation to a regulated activity if, at that time, the person—

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- (a) was a Gibraltar-based person with a Schedule 2A permission to carry on the activity, and
- (b) fell within a prescribed category, either generally or in relation to the activity.

(10B) Regulations prescribing a category of person for the purposes of subsection (10A) may, among other things, make provision by reference to—

- (a) whether the activity is carried on through a branch in the United Kingdom;
- (b) the level of protection provided by the compensation scheme and by any comparable scheme operating in Gibraltar.”

#### Commencement Information

**I3** Sch. 8 para. 7 in force at 1.9.2023 by S.I. 2023/934, reg. 2(b)(iii)

PROSPECTIVE

8 In section 214 (provisions of the compensation scheme: general), before subsection (6) insert—

“(5A) The scheme may make different provision according to whether or not a relevant person is a member of both the compensation scheme and another comparable scheme.”

9 In section 224 (scheme manager's power to inspect documents held by Official Receiver etc), before subsection (4A) insert—

“(4ZA) But a person is not to be regarded as a relevant person in relation to a regulated activity if, at that time, the person—

- (a) was a Gibraltar-based person with a Schedule 2A permission to carry on the activity, and
- (b) fell within a prescribed category, either generally or in relation to the activity.

(4ZB) Regulations prescribing a category of person for the purposes of subsection (4ZA) may, among other things, make provision by reference to—

- (a) whether the activity is carried on through a branch in the United Kingdom;
- (b) the level of protection provided by the compensation scheme and by any comparable scheme operating in Gibraltar.”

#### Commencement Information

**I4** Sch. 8 para. 9 in force at 1.9.2023 by S.I. 2023/934, reg. 2(b)(iv)

PROSPECTIVE

10 After section 367 insert—

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### **“367A Winding-up petitions: Gibraltar-based persons**

- (1) A regulator may not present a petition to the court under section 367 for the winding up of a Gibraltar-based person who has a Schedule 2A permission unless either regulator has been asked to do so by the Gibraltar regulator.
- (2) If a regulator receives a request from the Gibraltar regulator to present a petition to the court under section 367 for the winding up of a Gibraltar-based person who has a Schedule 2A permission, it must—
  - (a) notify the other regulator of the request, and
  - (b) provide the other regulator with such information relating to the request as it thinks fit.
- (3) In this section, “the Gibraltar regulator” has the meaning given in Schedule 2A (see paragraph 2 of that Schedule).”

PROSPECTIVE

- 11 (1) Section 392 (application of sections 393 and 394: warning notices and decision notices) is amended as follows.
- (2) In paragraph (a), after “412B(4) or (8)” insert “ or paragraph 38, 42 or 69 of Schedule 2A or paragraph 11, 16 or 20 of Schedule 2B ”.
  - (3) In paragraph (b), after “412B(5) or (9)” insert “ or paragraph 38, 42 or 69 of Schedule 2A or paragraph 11, 16 or 20 of Schedule 2B ”.

PROSPECTIVE

- 12 (1) Section 395 (the FCA's and PRA's procedures) is amended as follows.
- (2) In subsection (13) (meaning of “supervisory notice”)—
    - (a) for “section” (in the first place it occurs) substitute “ any of the following ”,
    - (b) at the beginning of each of paragraphs (za) to (g), other than paragraphs (bzb), (bzc), (bbzb) and (bba), paragraph (bbb) (inserted by Schedule 2 to this Act) and paragraph (ea) (inserted by Schedule 9 to this Act), insert “ section ”, and
    - (c) at the end insert—
      - “(h) a provision of Schedule 2A listed in subsection (14);
      - (i) paragraph 18(3), (6) or (8)(b) of Schedule 2B.”
  - (3) After subsection (13) insert—
    - “(14) The provisions of Schedule 2A mentioned in subsection (13)(h) are—
      - (a) paragraph 29(3), (6) or (8)(b);
      - (b) paragraph 50(3), (6) or (8)(b);
      - (c) paragraph 60(3) or (6).”

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PROSPECTIVE

- 13 Omit section 409 (Gibraltar).
- 14 In section 417(1) (definitions), at the appropriate places insert—
- ““Gibraltar-based person” has the meaning given in paragraph 1 of Schedule 2A (read with Part 14 of that Schedule);”,
  - ““Schedule 2A permission” has the meaning given in paragraph 12(4) of Schedule 2A;”, and
  - ““Schedule 2B permission” has the meaning given in paragraph 7(6) of Schedule 2B;”.

**Commencement Information**

**I5** Sch. 8 para. 14 in force at 1.9.2023 for specified purposes by S.I. 2023/934, reg. 2(b)(v)

PROSPECTIVE

- 15 In section 418 (carrying on regulated activities in the United Kingdom), after subsection (5B) insert—
- “(5C) The eighth case is where—
    - (a) the person's head office or registered office is in the United Kingdom, and
    - (b) the person is carrying on a restricted activity (as defined in paragraph 3 of Schedule 2B) in Gibraltar.”
- 16 (1) Section 429 (parliamentary control of statutory instruments) is amended as follows.
- (2) In subsection (2) (affirmative procedure)—
- (a) after “90B” insert “, 137AA(3), 137GA(2)”, and
  - (b) after “333T” insert “ or paragraph 5, 6, 58(3)(a), 59(3)(a) or 60(8) of Schedule 2A ”.
- (3) At the end insert—
- “(9) Any provision that may be made in a statutory instrument under this Act subject to annulment in pursuance of a resolution of either House of Parliament may be made in a statutory instrument which includes regulations under Schedule 2A a draft of which has been laid before Parliament and approved by a resolution of each House.”

**Commencement Information**

**I6** Sch. 8 para. 16 in force at 1.9.2023 for specified purposes by S.I. 2023/934, reg. 2(b)(vi)

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PROSPECTIVE

- 17 In paragraph 24 of Schedule 1ZA (services for which the FCA may not charge fees), after paragraph (b) insert “, or  
 (c) a fee to be charged in respect of the discharge of the FCA's functions under paragraph 16 of Schedule 2A or paragraph 10 or 11 of Schedule 2B.”

PROSPECTIVE

- 18 In paragraph 32 of Schedule 1ZB (services for which the PRA may not charge fees), after paragraph (b) insert “, or  
 (c) a fee to be charged in respect of the discharge of any of the PRA's functions under paragraph 16 of Schedule 2A or paragraph 10 or 11 of Schedule 2B.”

PROSPECTIVE

- Financial Services and Markets Act 2000 (Gibraltar) Order 2001 (S.I. 2001/3084)*
- 19 The Financial Services and Markets Act 2000 (Gibraltar) Order 2001 is revoked.

*[<sup>F1</sup>Subsidy Control Act 2022*

**Textual Amendments**

**F1** Sch. 8 para. 20 inserted (4.1.2023) by [Subsidy Control Act 2022 \(c. 23\)](#), ss. 83, 91(2); S.I. 2022/1359, reg. 2

- 20 (1) The Subsidy Control Act 2022 is amended as follows.
- (2) In section 25 (meaning of “deposit taker”) in subsection (1) omit paragraph (b) and the “or” preceding it.
- (3) In section 26 (meaning of “insurance company”) in subsection (1) omit paragraph (b) and the “or” preceding it.
- (4) In section 27 (subsidies for insurers that provide export credit insurance) in subsection (2), in the definition of “insurer”, omit paragraph (b) and the “or” preceding it.]

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**Changes and effects yet to be applied to :**

- specified provision(s) amendment to earlier commencing S.I. 2021/671, reg. 5 by [S.I. 2021/1163 reg. 2](#)