

Chapter 2

Interpreting the Handbook

2.3

General saving of the Handbook for Gibraltar

Continued application of the Handbook with respect to Gibraltar

2.3.1

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- (1) The *FCA Handbook* shall, after *IP completion day*, be construed, unless the contrary intention appears, as conferring rights and imposing obligations in relation to or in connection with Gibraltar corresponding to those that existed immediately before *IP completion day*.
- (2) Accordingly, any provision of these *rules* which immediately before *IP completion day* applied in relation to or in connection with Gibraltar shall, with any necessary modifications to give effect to that corresponding right or obligation, continue to apply after *IP completion day*; and any provision which did not so apply shall continue not to apply, unless provision indicating the contrary intention is made.
- (3) In ■ GEN 2.3, a reference to “Gibraltar” includes, but is not limited to, rights or obligations conferred or imposed in relation to or in connection with *Gibraltar-based firms*, public institutions established, *persons* resident and *body corporates* incorporated in Gibraltar, and activities of *firms* in Gibraltar.
- (4) A *Gibraltar-based firm* with *permission for funeral plan provision activity* or *funeral plan distribution* must comply with the relevant *Handbook* provisions relating to *regulated funeral plan activity*.

Extent of guidance applying in relation to or in connection with Gibraltar

2.3.2

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- (1) *Guidance* which, immediately before *IP completion day*, was *guidance* on or in connection with a *rule* to which, on and after *IP completion day*, ■ GEN 2.3.1R applies, shall, with any necessary modifications, continue to apply on and after *IP completion day* in relation to or in connection with Gibraltar to the same extent as the *rule*, unless provision indicating the contrary intention is made.
- (2) *Guidance* which, immediately before *IP completion day*, was *guidance* on or in connection with an enactment other than a *rule*, shall continue to apply on and after *IP completion day* in relation to or in connection with Gibraltar to the same extent as the enactment continues to apply in relation to or in connection with Gibraltar.

2.3.3

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Purpose of GEN 2.3.1R and GEN 2.3.2R

- (1) The purpose of ■ GEN 2.3.1R and ■ GEN 2.3.2R is to ensure that the *rules* and *guidance* that apply in relation to or in connection with Gibraltar before *IP completion day* continue to apply in the same way after *IP completion day*, notwithstanding amendments made to the *FCA Handbook* as a result of the *UK's* withdrawal from the *EU*.
- (2) Accordingly, any amendment to or deletion of a *rule* or *guidance* made to address a matter arising from the *UK's* withdrawal from the *EU* is to be disregarded to the extent it changed the application of a *rule* or *guidance* in relation to or in connection with Gibraltar.
- (3) As such, any *rule* or *guidance* that applied before *IP completion day* in relation to or in connection with a Gibraltar-based firm, a *person* resident in Gibraltar, a *body corporate* incorporated in Gibraltar, or the activities of a *firm* in Gibraltar will so apply after *IP completion day* with any necessary modifications, taking into account any other amendments made on *IP completion day*.
- (4) However, the approach in ■ GEN 2.3.1R is a general one, and as such that approach does not apply where a *rule* or *guidance* states explicitly that a different provision applies in relation to or in connection with Gibraltar or where a different position is explicitly stated in relation to a *rule* or *guidance*.
- (5) In ■ GEN 2.3.1R, the contrary intention should be construed in the light of regulations made under the *EUWA*. ■ GEN 2.3.1R is not intended to apply where the application of a *rule* or *guidance* in the *FCA Handbook* in relation to or in connection with Gibraltar would be contrary to the intention of regulations made under the *EUWA* or would have a result that is incompatible or inconsistent with the legislative scheme with which the *rule* or *guidance* is connected.
- (6) The *rules* and *guidance* are saved subject to any necessary modification to give effect to a right or obligation that corresponds to the right or obligation that existed before *IP completion day*. So, for example, where the removal of a reference to a matter in relation to Gibraltar could make it impracticable for a Gibraltar-based firm exercising market access rights by virtue of the *Gibraltar Order* to continue to comply with a *rule*, the *rule* should be construed as applying, to the extent necessary, as if it continued to refer to a matter in relation to Gibraltar.
- (7) An example of such a matter may be a *rule* which on and after *IP completion day* (as a result of an amendment made under the *EUWA*) refers only to the membership of a *UK* professional body. Where this is the case, a Gibraltar-based *firm* may treat the *rule* as if it continues to refer to a Gibraltar-based professional body, if that is necessary to correspond with the obligation that had effect in relation to the Gibraltar-based firm before *IP completion day*.
- (8) None of ■ GEN 2.3.1R or ■ GEN 2.3.2R prevents changes being made to *rules* and *guidance* that apply in relation to or in connection with Gibraltar after *IP completion day*.

2.3.4

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Further guidance on GEN 2.3.1R and GEN 2.3.2R as they apply in relation to Gibraltar-based firms exercising market access rights by virtue of the Gibraltar Order

- (1) Where GEN 2.3.1R and GEN 2.3.2R apply in relation to a Gibraltar-based firm exercising market access rights by virtue of the *Gibraltar Order* and which carries on *regulated activities* outside of the scope of its entitlement, such as by virtue of a *Part 4A permission* (i.e. it has a top-up permission), *rules* and *guidance* will continue to apply to such a firm in respect of those activities by virtue of that *permission*.
- (2) Where GEN 2.3.1R and GEN 2.3.2R apply in relation to a Gibraltar-based firm exercising market access rights by virtue of the *Gibraltar Order*, in determining which *rules* and *guidance* could apply to them in the *UK*, such firms may, as a starting point, find it helpful to refer to the table in SUP 13A Annex 1G (Rules that applied to incoming EEA firms) as it applied immediately before *IP completion day*. However, the table will not apply in its entirety to each such firm, if, for example, a *firm* has a *Part 4A permission* for other activities.

2.3.5

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Exception for fee rates

Provisions in *FEES* that immediately before *IP completion day* applied in relation to or in connection with Gibraltar shall continue to apply after *IP completion day*. The exceptions to this provision are the fee rates set out in *FEES* which may change each *fee year*.