

FINANCIAL SERVICES AND MARKETS ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 4: Treaty Rights

795. This Schedule gives effect in UK law to the rights of establishment and to provide services of persons established in the other EEA States. These relate to rights which go beyond those which are covered by the single market directives in banking, investment services and insurance (see Schedule 3).
796. These rights allow persons who are authorised under the law of one member State to carry on an activity in the other member States so long as the relevant law of the home State provides equivalent protection to that of the host State and meets any EU minimum requirements applicable in that area of law. These rights are given precise effect for many financial services firms through the single market directives, and the member State laws giving national effect to them. However, as explained in relation to Schedule 3, the directives do not cover the full range of financial services or financial service providers. It is necessary, therefore, to provide an equivalent mechanism to permit persons from other EU member States to exercise their Treaty rights in the absence of formal directive passporting arrangements. The provisions in this Schedule, in conjunction with section 31, provide for that mechanism.
797. The Schedule does not seek to define the extent of Treaty rights, which are in any event the subject of extensive and developing case law in the EU, but sets the conditions that must be met for authorisation by this route in terms of the general principles described above. It requires home State confirmation of a firm's home State authorisation and provides for the Treasury to take the decision as to whether the particular laws of a particular member State provide the equivalent protection required.
798. The firm is also required to give notice of their intention to exercise their Treaty rights and to provide such information as the Authority may require. Failure to give proper notice is a criminal offence, unless all reasonable precautions have been taken to avoid the commission of the offence. It is also an offence knowingly or recklessly to provide false or misleading information.