

SCHEDULES

SCHEDULE 3

Sections 31(1)(b) and 37.

EEA PASSPORT RIGHTS

PART I

DEFINED TERMS

The single market directives

- 1 “The single market directives” means—
- (a) the first banking co-ordination directive;
 - (b) the second banking co-ordination directive;
 - (c) the insurance directives; and
 - (d) the investment services directive.

The banking co-ordination directives

- 2 (1) “The first banking co-ordination directive” means the Council Directive of 12 December 1977 on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (No. [77/780/EEC](#)).
- (2) “The second banking co-ordination directive” means the Council Directive of 15 December 1989 on the co-ordination of laws, etc, relating to the taking up and pursuit of the business of credit institutions and amending Directive [77/780/EEC](#) (No. [89/646/EEC](#)).

The insurance directives

- 3 (1) “The insurance directives” means the first, second and third non-life insurance directives and the first, second and third life insurance directives.
- (2) “First non-life insurance directive” means the Council Directive of 24 July 1973 on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance (No. [73/239/EEC](#)).
- (3) “Second non-life insurance directive” means the Council Directive of 22 June 1988 on the co-ordination of laws, etc, and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive [73/239/EEC](#) (No. [88/357/EEC](#)).

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- (4) “Third non-life insurance directive” means the Council Directive of 18 June 1992 on the co-ordination of laws, etc, and amending Directives [73/239/EEC](#) and [88/357/EEC](#) (No. [92/49/EEC](#)).
- (5) “First life insurance directive” means the Council Directive of 5 March 1979 on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance (No. [79/267/EEC](#)).
- (6) “Second life insurance directive” means the Council Directive of 8 November 1990 on the co-ordination of laws, etc, and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive [79/267/EEC](#) (No. [90/619/EEC](#)).
- (7) “Third life insurance directive” means the Council Directive of 10 November 1992 on the co-ordination of laws, etc, and amending Directives [79/267/EEC](#) and [90/619/EEC](#) (No. [92/96/EEC](#)).

The investment services directive

- 4 “The investment services directive” means the Council Directive of 10 May 1993 on investment services in the securities field (No. [93/22/EEC](#)).

EEA firm

- 5 “EEA firm” means any of the following if it does not have its head office in the United Kingdom—
- (a) an investment firm (as defined in Article 1.2 of the investment services directive) which is authorised (within the meaning of Article 3) by its home state regulator;
 - (b) a credit institution (as defined in Article 1 of the first banking co-ordination directive) which is authorised (within the meaning of Article 1) by its home state regulator;
 - (c) a financial institution (as defined in Article 1 of the second banking co-ordination directive) which is a subsidiary of the kind mentioned in Article 18.2 and which fulfils the conditions in Article 18; or
 - (d) an undertaking pursuing the activity of direct insurance (within the meaning of Article 1 of the first life insurance directive or of the first non-life insurance directive) which has received authorisation under Article 6 from its home state regulator.

EEA authorisation

- 6 “EEA authorisation” means authorisation granted to an EEA firm by its home state regulator for the purpose of the relevant single market directive.

EEA right

- 7 “EEA right” means the entitlement of a person to establish a branch, or provide services, in an EEA State other than that in which he has his head office—
- (a) in accordance with the Treaty as applied in the EEA; and
 - (b) subject to the conditions of the relevant single market directive.

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EEA State

- 8 “EEA State” means a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on 2 May 1992 as it has effect for the time being.

Home state regulator

- 9 “Home state regulator” means the competent authority (within the meaning of the relevant single market directive) of an EEA State (other than the United Kingdom) in relation to the EEA firm concerned.

UK firm

- 10 “UK firm” means a person whose head office is in the UK and who has an EEA right to carry on activity in an EEA State other than the United Kingdom.

Host state regulator

- 11 “Host state regulator” means the competent authority (within the meaning of the relevant single market directive) of an EEA State (other than the United Kingdom) in relation to a UK firm’s exercise of EEA rights there.

PART II

EXERCISE OF PASSPORT RIGHTS BY EEA FIRMS

Firms qualifying for authorisation

- 12 (1) Once an EEA firm which is seeking to establish a branch in the United Kingdom in exercise of an EEA right satisfies the establishment conditions, it qualifies for authorisation.
- (2) Once an EEA firm which is seeking to provide services in the United Kingdom in exercise of an EEA right satisfies the service conditions, it qualifies for authorisation.

Establishment

- 13 (1) The establishment conditions are that—
- (a) the Authority has received notice (“a consent notice”) from the firm’s home state regulator that it has given the firm consent to establish a branch in the United Kingdom;
 - (b) the consent notice—
 - (i) is given in accordance with the relevant single market directive;
 - (ii) identifies the activities to which consent relates; and
 - (iii) includes such other information as may be prescribed; and
 - (c) the firm has been informed of the applicable provisions or two months have elapsed beginning with the date when the Authority received the consent notice.
- (2) If the Authority has received a consent notice, it must—
- (a) prepare for the firm’s supervision;

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- (b) notify the firm of the applicable provisions (if any); and
 - (c) if the firm falls within paragraph 5(d), notify its home state regulator of the applicable provisions (if any).
- (3) A notice under sub-paragraph (2)(b) or (c) must be given before the end of the period of two months beginning with the day on which the Authority received the consent notice.
- (4) For the purposes of this paragraph—
- “applicable provisions” means the host state rules with which the firm is required to comply when carrying on a permitted activity through a branch in the United Kingdom;
 - “host state rules” means rules—
 - (a) made in accordance with the relevant single market directive; and
 - (b) which are the responsibility of the United Kingdom (both as to implementation and as to supervision of compliance) in accordance with that directive; and
 - “permitted activity” means an activity identified in the consent notice.

Services

- 14 (1) The service conditions are that—
- (a) the firm has given its home state regulator notice of its intention to provide services in the United Kingdom (“a notice of intention”);
 - (b) if the firm falls within paragraph 5(a) or (d), the Authority has received notice (“a regulator’s notice”) from the firm’s home state regulator containing such information as may be prescribed; and
 - (c) if the firm falls within paragraph 5(d), its home state regulator has informed it that the regulator’s notice has been sent to the Authority.
- (2) If the Authority has received a regulator’s notice or, where none is required by sub-paragraph (1), has been informed of the firm’s intention to provide services in the United Kingdom, it must—
- (a) prepare for the firm’s supervision; and
 - (b) notify the firm of the applicable provisions (if any).
- (3) A notice under sub-paragraph (2)(b) must be given before the end of the period of two months beginning on the day on which the Authority received the regulator’s notice, or was informed of the firm’s intention.
- (4) For the purposes of this paragraph—
- “applicable provisions” means the host state rules with which the firm is required to comply when carrying on a permitted activity by providing services in the United Kingdom;
 - “host state rules” means rules—
 - (a) made in accordance with the relevant single market directive; and
 - (b) which are the responsibility of the United Kingdom (both as to implementation and as to supervision of compliance) in accordance with that directive; and
 - “permitted activity” means an activity identified in—
 - (a) the regulator’s notice; or

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(b) where none is required by sub-paragraph (1), the notice of intention.

Grant of permission

- 15 (1) On qualifying for authorisation as a result of paragraph 12, a firm has, in respect of each permitted activity which is a regulated activity, permission to carry it on through its United Kingdom branch (if it satisfies the establishment conditions) or by providing services in the United Kingdom (if it satisfies the service conditions).
- (2) The permission is to be treated as being on terms equivalent to those appearing from the consent notice, regulator’s notice or notice of intention.
- (3) Sections 21, 39(1) and 147(1) of the Consumer Credit Act 1974 (business requiring a licence under that Act) do not apply in relation to the carrying on of a permitted activity which is Consumer Credit Act business by a firm which qualifies for authorisation as a result of paragraph 12, unless the Director General of Fair Trading has exercised the power conferred on him by section 203 in relation to the firm.
- (4) “Consumer Credit Act business” has the same meaning as in section 203.

Effect of carrying on regulated activity when not qualified for authorisation

- 16 (1) This paragraph applies to an EEA firm which is not qualified for authorisation under paragraph 12.
- (2) Section 26 does not apply to an agreement entered into by the firm.
- (3) Section 27 does not apply to an agreement in relation to which the firm is a third party for the purposes of that section.
- (4) Section 29 does not apply to an agreement in relation to which the firm is the deposit-taker.

Continuing regulation of EEA firms

- 17 Regulations may—
- (a) modify any provision of this Act which is an applicable provision (within the meaning of paragraph 13 or 14) in its application to an EEA firm qualifying for authorisation;
 - (b) make provision as to any change (or proposed change) of a prescribed kind relating to an EEA firm or to an activity that it carries on in the United Kingdom and as to the procedure to be followed in relation to such cases;
 - (c) provide that the Authority may treat an EEA firm’s notification that it is to cease to carry on regulated activity in the United Kingdom as a request for cancellation of its qualification for authorisation under this Schedule.

Giving up right to authorisation

- 18 Regulations may provide that in prescribed circumstances an EEA firm falling within paragraph 5(c) may, on following the prescribed procedure—
- (a) have its qualification for authorisation under this Schedule cancelled; and
 - (b) seek to become an authorised person by applying for a Part IV permission.

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PART III

EXERCISE OF PASSPORT RIGHTS BY UK FIRMS

Establishment

- 19 (1) A UK firm may not exercise an EEA right to establish a branch unless three conditions are satisfied.
- (2) The first is that the firm has given the Authority, in the specified way, notice of its intention to establish a branch (“a notice of intention”) which—
- (a) identifies the activities which it seeks to carry on through the branch; and
 - (b) includes such other information as may be specified.
- (3) The activities identified in a notice of intention may include activities which are not regulated activities.
- (4) The second is that the Authority has given notice in specified terms (“a consent notice”) to the host state regulator.
- (5) The third is that—
- (a) the host state regulator has notified the firm (or, where the EEA right in question derives from any of the insurance directives, the Authority) of the applicable provisions; or
 - (b) two months have elapsed beginning with the date on which the Authority gave the consent notice.
- (6) If the firm’s EEA right derives from the investment services directive or the second banking coordination directive and the first condition is satisfied, the Authority must give a consent notice to the host state regulator unless it has reason to doubt the adequacy of the firm’s resources or its administrative structure.
- (7) If the firm’s EEA right derives from any of the insurance directives and the first condition is satisfied, the Authority must give a consent notice unless it has reason—
- (a) to doubt the adequacy of the firm’s resources or its administrative structure, or
 - (b) to question the reputation, qualifications or experience of the directors or managers of the firm or the person proposed as the branch’s authorised agent for the purposes of those directives,
- in relation to the business to be conducted through the proposed branch.
- (8) If the Authority proposes to refuse to give a consent notice it must give the firm concerned a warning notice.
- (9) If the firm’s EEA right derives from any of the insurance directives and the host state regulator has notified it of the applicable provisions, the Authority must inform the firm of those provisions.
- (10) Rules may specify the procedure to be followed by the Authority in exercising its functions under this paragraph.
- (11) If the Authority gives a consent notice it must give written notice that it has done so to the firm concerned.
- (12) If the Authority decides to refuse to give a consent notice—

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- (a) it must, within three months beginning with the date when it received the notice of intention, give the person who gave that notice a decision notice to that effect; and
 - (b) that person may refer the matter to the Tribunal.
- (13) In this paragraph, “applicable provisions” means the host state rules with which the firm will be required to comply when conducting business through the proposed branch in the EEA State concerned.
- (14) In sub-paragraph (13), “host state rules” means rules—
- (a) made in accordance with the relevant single market directive; and
 - (b) which are the responsibility of the EEA State concerned (both as to implementation and as to supervision of compliance) in accordance with that directive.
- (15) “Specified” means specified in rules.

Services

- 20 (1) A UK firm may not exercise an EEA right to provide services unless the firm has given the Authority, in the specified way, notice of its intention to provide services (“a notice of intention”) which—
- (a) identifies the activities which it seeks to carry out by way of provision of services; and
 - (b) includes such other information as may be specified.
- (2) The activities identified in a notice of intention may include activities which are not regulated activities.
- (3) If the firm’s EEA right derives from the investment services directive or a banking co-ordination directive, the Authority must, within one month of receiving a notice of intention, send a copy of it to the host state regulator.
- (4) When the Authority sends the copy under sub-paragraph (3), it must give written notice to the firm concerned.
- (5) If the firm concerned’s EEA right derives from the investment services directive, it must not provide the services to which its notice of intention relates until it has received written notice from the Authority under sub-paragraph (4).
- (6) “Specified” means specified in rules.

Offence relating to exercise of passport rights

- 21 (1) If a UK firm which is not an authorised person contravenes the prohibition imposed by—
- (a) sub-paragraph (1) of paragraph 19, or
 - (b) sub-paragraph (1) or (5) of paragraph 20,
- it is guilty of an offence.
- (2) A firm guilty of an offence under sub-paragraph (1) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
 - (b) on conviction on indictment, to a fine.

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- (3) In proceedings for an offence under sub-paragraph (1), it is a defence for the firm to show that it took all reasonable precautions and exercised all due diligence to avoid committing the offence.

Continuing regulation of UK firms

- 22 (1) Regulations may make such provision as the Treasury consider appropriate in relation to a UK firm's exercise of EEA rights, and may in particular provide for the application (with or without modification) of any provision of, or made under, this Act in relation to an activity of a UK firm.
- (2) Regulations may—
- (a) make provision as to any change (or proposed change) of a prescribed kind relating to a UK firm or to an activity that it carries on and as to the procedure to be followed in relation to such cases;
 - (b) make provision with respect to the consequences of the firm's failure to comply with a provision of the regulations.
- (3) Where a provision of the kind mentioned in sub-paragraph (2) requires the Authority's consent to a change (or proposed change)—
- (a) consent may be refused only on prescribed grounds; and
 - (b) if the Authority decides to refuse consent, the firm concerned may refer the matter to the Tribunal.
- 23 (1) Sub-paragraph (2) applies if a UK firm—
- (a) has a Part IV permission; and
 - (b) is exercising an EEA right to carry on any Consumer Credit Act business in an EEA State other than the United Kingdom.
- (2) The Authority may exercise its power under section 45 in respect of the firm if the Director of Fair Trading has informed the Authority that—
- (a) the firm,
 - (b) any of the firm's employees, agents or associates (whether past or present), or
 - (c) if the firm is a body corporate, a controller of the firm or an associate of such a controller,
- has done any of the things specified in paragraphs (a) to (d) of section 25(2) of the Consumer Credit Act 1974.
- (3) "Associate", "Consumer Credit Act business" and "controller" have the same meaning as in section 203.
- 24 (1) Sub-paragraph (2) applies if a UK firm—
- (a) is not required to have a Part IV permission in relation to the business which it is carrying on; and
 - (b) is exercising the right conferred by Article 18.2 of the second banking co-ordination directive to carry on that business in an EEA State other than the United Kingdom.
- (2) If requested to do so by the host state regulator in the EEA State in which the UK firm's business is being carried on, the Authority may impose any requirement in relation to the firm which it could impose if—
- (a) the firm had a Part IV permission in relation to the business which it is carrying on; and

- (b) the Authority was entitled to exercise its power under that Part to vary that permission.