

2001 No. 2511

FINANCIAL SERVICES AND MARKETS

**The Financial Services and Markets Act 2000 (EEA
Passport Rights) Regulations 2001**

Made - - - - - 12th July 2001

Laid before Parliament 13th July 2001

Coming into force in accordance with regulation 1(1)

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The Treasury, in exercise of the powers conferred on them by paragraphs 13(1)(b)(iii), 14(1)(b), 17(a), (b) and (c), 18 and 22 of Schedule 3 to, and sections 417(1)(a) and 426 to 428 of, the Financial Services and Markets Act 2000(b), hereby make the following Regulations:

PART I

General

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001, and come into force on the day on which section 19 of the Act comes into force.

(2) In these Regulations—

“the 2BCD Regulations” means the Banking Coordination (Second Council Directive) Regulations 1992(c);

“the Act” means the Financial Services and Markets Act 2000;

“authorised agent” means, in relation to an EEA firm or UK firm, an agent or employee of the firm who has authority to bind the firm in its relations with third parties, and to represent the firm in its relations with the Authority or the host state regulator (as the case may be) and with the courts in the United Kingdom or the EEA State concerned (as the case may be);

“claims representative”, in relation to a UK firm and an EEA State, means a person who has been designated as the firm’s representative in that EEA State, and has authority—

(a) to act on behalf of the firm and to represent, or to instruct others to represent, the firm in relation to any matters giving rise to claims made against policies issued by the firm, to the extent that they cover motor vehicles risks situated in the EEA State;

(b) to pay sums in settlement of such claims (but not to settle such claims); and

(c) to accept service on behalf of the firm of proceedings in respect of such claims;

“commencement” means the beginning of the day on which section 19 of the Act comes into force;

“contract of insurance”, “contract of general insurance” and “contract of long-term insurance” have the same meaning as in the Regulated Activities Order;

“credit institution” means an EEA firm falling within paragraph 5(b) of Schedule 3;

“EEA activities” means—

(a) in relation to an EEA firm, activities which the firm is seeking to carry on in the United Kingdom in exercise of an EEA right;

(b) in relation to a UK firm, activities which the firm is seeking to carry on in another EEA State in exercise of an EEA right;

“financial institution” means an EEA firm falling within paragraph 5(c) of Schedule 3;

“the Friendly Societies Act” means the Friendly Societies Act 1992(d);

“health insurance risks”, in relation to an EEA State, means risks of a kind mentioned in paragraph 2 of Schedule 1 to the Regulated Activities Order (sickness), where—

(a) contracts of insurance covering those risks serve as a partial or complete alternative to the health cover provided by the statutory social security system in that EEA State; and

(b) the law of that EEA State requires such contracts to be operated on a technical basis similar to life assurance in accordance with all the conditions listed in the first subparagraph of Article 54(2) of the third non-life insurance directive;

“the Insurance Companies Act” means the Insurance Companies Act 1982(e);

“insurance firm” means an EEA firm falling within paragraph 5(d) of Schedule 3;

(a) See definition of “prescribed”.

(b) 2000 c. 8. Schedule 3 was amended by SI 2000/2952, regulation 8, and by SI 2001/1376.

(c) SI 1992/3218, amended by the Bank of England Act 1998 (c. 11), Sch. 5 and Sch. 9, and by SIs 1993/1819, 1993/3225, 1995/1217, 1995/1442, 1995/1537, 1996/1669, 1997/816, 1999/2094, 2000/2952 and 2001/1149.

(d) 1992 c. 40.

(e) 1982 c. 50.

- “investment firm” means an EEA firm falling within paragraph 5(a) of Schedule 3;
- “the ISD Regulations” means the Investment Services Regulations 1995(a);
- “national bureau”, in relation to an EEA State, means a professional organisation—
- (a) which has been constituted in that EEA State in accordance with Recommendation No. 5 adopted on 25th January 1949 by the Road Transport Sub-committee of the Inland Transport Committee of the United Nations Economic Commission for Europe; and
 - (b) which groups together undertakings which in that EEA State are authorised to conduct the business of motor vehicle liability insurance;
- “national guarantee fund”, in relation to an EEA State, means a body—
- (a) which has been set up or authorised in that EEA State in accordance with Article 1(4) of Council Directive 84/5/EEC on the approximation of laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles(b); and
 - (b) which provides compensation for damage to property or personal injuries caused by unidentified vehicles or vehicles for which the insurance obligation provided for in Article 1(1) of that Directive has not been satisfied;
- “the Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(c);
- “relevant motor vehicle risks” means risks of damage arising out of or in connection with the use of motor vehicles on land, including third party risks (but excluding carrier’s liability);
- “requisite details”, in relation to a branch, means—
- (a) particulars of the programme of operations carried on, or to be carried on, from the branch, including a description of the particular EEA activities to be carried on, and of the structural organisation of the branch;
 - (b) the address in the EEA State in which the branch is, or is to be, established from which information about the business may be obtained; and
 - (c) the names of the managers of the business;
- “Schedule 3” means Schedule 3 to the Act.

PART II

EXERCISE OF PASSPORT RIGHTS BY EEA FIRMS

Contents of consent notice and regulator’s notice

Establishment of a branch: contents of consent notice

- 2.—(1)** The following information is prescribed for the purposes of paragraph 13(1)(b)(iii) of Schedule 3 (and is therefore to be included in a consent notice given to the Authority by a firm’s home state regulator pursuant to paragraph 13(1)(a) of Schedule 3).
- (2) In the case of an investment firm, the prescribed information is—
 - (a) a statement that the firm is an investment firm;
 - (b) the requisite details of the branch; and
 - (c) details of any compensation scheme which is intended to protect the branch’s investors.
 - (3) In the case of a credit institution, the prescribed information is—
 - (a) a statement that the firm is a credit institution;
 - (b) the requisite details of the branch;
 - (c) the amount of the firm’s own funds (as defined in Section 1 of Chapter 2 of Title V to the banking consolidation directive); and

(a) S.I. 1995/3275, amended by the Bank of England 1998 (c. 11), s. 25, Sch. 5 and Sch. 9, S.I. 1996/1669 and S.I. 2000/1696.

(b) OJ No. L008, 11.1.1984, p.17. The text is subject to a corrigendum in OJ L043, 15.2.1984, p.27, and the directive was amended by Council Directive 90/232/EEC (OJ L129, 19.5.1990, p.33).

(c) S.I. 2001/544.

- (d) the solvency ratio of the firm (calculated in accordance with the banking consolidation directive).
- (4) In the case of a financial institution, the prescribed information is—
- (a) a statement that—
 - (i) the firm is a financial institution;
 - (ii) the firm is a subsidiary undertaking of a credit institution which is authorised in the EEA State in question and which holds at least 90 per cent of the voting rights in the firm (and for the purpose of this paragraph any two or more credit institutions which are authorised in that EEA State and hold voting rights in the firm are to be treated as a single credit institution, and as being “parent undertakings” of the firm);
 - (iii) the firm carries on in that EEA State the EEA activities in question;
 - (iv) the memorandum and articles of association, or other constituent instrument, of the firm permit it to carry on those activities;
 - (v) the consolidated supervision of the firm’s parent undertaking or, if more than one, any one of them effectively includes supervision of the firm;
 - (vi) the firm’s parent undertaking has guaranteed or, if more than one, they have jointly and severally guaranteed, the firm’s obligations, with the consent of the home state regulator;
 - (vii) the firm’s business is being conducted in a prudent manner;
 - (b) the requisite details of the branch;
 - (c) the amount of the firm’s own funds (as defined in Section 1 of Chapter 2 of Title V to the banking consolidation directive); and
 - (d) the solvency ratio of the firm’s parent undertaking (calculated in accordance with the banking consolidation directive).
- (5) In the case of an insurance firm, the prescribed information is—
- (a) a scheme of operations prepared in accordance with such requirements as may be imposed by the firm’s home state regulator, setting out (amongst other things) the types of business to be carried on and the structural organisation of the branch;
 - (b) the name of the firm’s authorised agent;
 - (c) the address in the United Kingdom from which information about the business may be obtained, and a statement that this is the address for service on the firm’s authorised agent;
 - (d) in the case of a firm which intends to cover relevant motor vehicle risks, a declaration by the firm that it has become a member of the Motor Insurers’ Bureau (being a company limited by guarantee and incorporated under the Companies Act 1929(a) on the 14th June 1946); and
 - (e) a statement by the firm’s home state regulator attesting that the firm has the minimum margin of solvency calculated in accordance with such of the following as are appropriate—
 - (i) Articles 16 and 17 of the first non-life insurance directive, and
 - (ii) Articles 18, 19 and 20 of the first life insurance directive.

Provision of services: contents of regulator’s notice

3.—(1) The following information is prescribed for the purposes of paragraph 14(1)(b) of Schedule 3 (and is therefore to be included in a regulator’s notice given to the Authority by a firm’s home state regulator pursuant to that paragraph).

- (2) In the case of an investment firm, the prescribed information is—
- (a) a statement that the firm is an investment firm; and
 - (b) particulars of the programme of operations to be carried on in the United Kingdom, including a description of the particular EEA activities to be carried on.

(a) 1929 c. 23. Repealed by the Companies Act 1948 (c. 38).

- (3) In the case of an insurance firm, the prescribed information is—
- (a) a statement of the classes of business which the firm is authorised to carry on in accordance with Article 6 of the first non-life insurance directive or Article 6 of the first life insurance directive;
 - (b) the name and address of the firm;
 - (c) the nature of the risks or commitments which the firm proposes to cover in the United Kingdom;
 - (d) in the case of a firm which intends to cover relevant motor vehicle risks—
 - (i) the name and address of the claims representative; and
 - (ii) a declaration by the firm that it has become a member of the Motor Insurers' Bureau; and
 - (e) a statement by the firm's home state regulator attesting that the firm has the minimum margin of solvency calculated in accordance with such of the following as are appropriate—
 - (i) Articles 16 and 17 of the first non-life insurance directive, and
 - (ii) Articles 18, 19 and 20 of the first life insurance directive.

Changes relating to EEA firms

Investment firms, credit institutions and financial institutions: changes to branch details

4.—(1) An investment firm, credit institution or financial institution which has established a branch in the United Kingdom in exercise of an EEA right must not make a change in the requisite details of the branch, unless the relevant requirements have been complied with.

(2) Where the relevant requirements have been complied with, the firm's permission is to be treated as varied accordingly.

(3) For the purposes of this regulation, the "relevant requirements" are those of paragraph (4) or (if the change is occasioned by circumstances beyond the firm's control) paragraph (5).

(4) The requirements of this paragraph are that—

- (a) the firm has given a notice to the Authority and to its home state regulator stating the details of the proposed change;
- (b) the Authority has received from the home state regulator a notice stating those details; and
- (c) either the Authority has informed the firm that it may make the change, or the period of one month beginning with the day on which the firm gave the Authority the notice mentioned in sub-paragraph (a) has elapsed.

(5) The requirements of this paragraph are that the firm has as soon as practicable (whether before or after the change) given a notice to the Authority and to its home state regulator, stating the details of the change.

(6) The Authority must, as soon as practicable after receiving a notice from an investment firm, credit institution or financial institution under this regulation, inform the firm of any consequential changes in the applicable provisions (within the meaning of paragraph 13 of Schedule 3).

Investment firms: changes to services

5.—(1) An investment firm which is providing services in the United Kingdom in exercise of an EEA right must not make a change in any of the matters referred to in regulation 3(2)(b), unless the relevant requirements have been complied with.

(2) Where the relevant requirements have been complied with, the firm's permission is to be treated as varied accordingly.

(3) For the purposes of this regulation, the "relevant requirements" are that—

- (a) the firm has given a notice to the Authority and to its home state regulator stating the details of the proposed change; or

- (b) if the change is occasioned by circumstances beyond the firm's control, it has as soon as practicable (whether before or after the change) given to the Authority and to its home state regulator a notice stating the details of the change.

(4) The Authority must, as soon as practicable after receiving a notice from an investment firm under this regulation, inform the firm of any consequential changes in the applicable provisions (within the meaning of paragraph 14 of Schedule 3).

Insurance firms: changes to branch details

6.—(1) An insurance firm which has established a branch in the United Kingdom in exercise of an EEA right must not make a change in any of the details referred to in regulation 2(5)(a) to (c) with respect to the branch, unless the relevant requirements have been complied with.

(2) Where the relevant requirements have been complied with, the firm's permission is to be treated as varied accordingly.

(3) For the purposes of this regulation, the relevant requirements are those of paragraph (4) or (if the change is occasioned by circumstances beyond the firm's control) paragraph (5).

(4) The requirements of this paragraph are that—

- (a) the firm has given a notice to the Authority and to its home state regulator stating the details of the proposed change;
- (b) the Authority has received from the home state regulator a notice stating that it has approved the proposed change;
- (c) the period of one month beginning with the day on which the firm gave the Authority the notice mentioned in sub-paragraph (a) has elapsed; and
- (d) either—
 - (i) a further period of one month has elapsed; or
 - (ii) the Authority has informed the home state regulator of any consequential changes in the applicable provisions (within the meaning of paragraph 13 of Schedule 3).

(5) The requirements of this paragraph are that the firm has as soon as practicable (whether before or after the change) given a notice to the Authority and to its home state regulator, stating the details of the change.

(6) The Authority must, as soon as practicable—

- (a) acknowledge receipt of the documents sent under paragraph (4) or (5); and
- (b) in the case of a notice under paragraph (5), inform the firm's home state regulator of any consequential changes in the applicable provisions (within the meaning of paragraph 13 of Schedule 3).

Insurance firms: changes to services

7.—(1) An insurance firm which is providing services in the United Kingdom in exercise of an EEA right must not make a change in any of the matters referred to in regulation 3(3)(b), (c) or (d), unless the relevant requirements have been complied with.

(2) Where the relevant requirements have been complied with, the firm's permission is to be treated as varied accordingly.

(3) For the purposes of this regulation, the "relevant requirements" are those of paragraph (4) or (if the change is occasioned by circumstances beyond the firm's control) paragraph (5).

(4) The requirements of this paragraph are that—

- (a) the firm has given a notice to its home state regulator stating the details of the proposed change; and
- (b) the home state regulator has passed to the Authority the information contained in that notice.

(5) The requirements of this paragraph are that the firm has as soon as practicable (whether before or after the change) given to its home state regulator a notice stating the details of the change.

Cancellation of qualification for authorisation

EEA firms ceasing to carry on regulated activities in the United Kingdom

8. Where an EEA firm which is qualified for authorisation under Schedule 3—
- (a) has ceased, or is to cease to carry on regulated activities in the United Kingdom, and
 - (b) gives notice of that fact to the Authority,

the notice is to be treated as a request for cancellation of the firm's qualification for authorisation under Schedule 3 (and hence as a request under section 34(2) of the Act).

Financial institutions giving up right to authorisation

9.—(1) The Authority may, on an application by a financial institution which is qualified for authorisation under Schedule 3, direct that the firm's qualification for authorisation under Schedule 3 is cancelled from such date as may be specified in the direction.

- (2) The Authority must not give such a direction unless—
 - (a) the firm has given notice to its home state regulator; and
 - (b) the Authority has agreed with the home state regulator that the direction should be given.
- (3) The date specified in such a direction—
 - (a) must not be earlier than the date requested in the application; but
 - (b) subject to that, is to be such date as may be agreed between the Authority and the firm's home state regulator.

(4) The Authority must, as soon as practicable, send a copy of the direction to the firm and to the firm's home state regulator.

(5) A firm in respect of which such a direction has been given may (notwithstanding subsection (3) of section 40 of the Act) apply for permission under that section, to take effect not earlier than the date referred to in paragraph (1).

Applications for approval under section 60 by EEA firms

Applications for approval under section 60 by EEA firms

10. In section 60 of the Act (applications for approval for persons to perform controlled functions), "the authorised person concerned" includes an EEA firm with respect to which the Authority has received a consent notice under paragraph 13 of Schedule 3 or a regulator's notice under paragraph 14 of that Schedule, and which will be the authorised person concerned if it qualifies for authorisation under that Schedule.

PART III

EXERCISE OF PASSPORT RIGHTS BY UK FIRMS

Changes relating to UK firms

UK investment firms, credit institutions and financial institutions: changes to branch details

11.—(1) A UK firm which has exercised an EEA right, deriving from the investment services directive or the banking consolidation directive, to establish a branch must not make a change in the requisite details of the branch unless the requirements of paragraph (2) or (if the change is occasioned by circumstances beyond the firm's control) paragraph (3) have been complied with.

- (2) The requirements of this paragraph are that—
 - (a) the firm has given a notice to the Authority and to the host state regulator stating the details of the proposed change;
 - (b) the Authority has given the host state regulator a notice under paragraph (5)(a); and
 - (c) either the host state regulator has informed the firm that it may make the change, or the period of one month beginning with the day on which the firm gave the host state regulator the notice mentioned in sub-paragraph (a) has elapsed.

(3) The requirements of this paragraph are that the firm has as soon as practicable (whether before or after the change) given a notice to the Authority and to the host state regulator, stating the details of the change.

(4) the Authority must, within the period of one month beginning with the day on which it received the notice referred to in paragraph (2)(a), either consent to the change or refuse to consent to the change.

(5) If the Authority consents to the change, it must—

- (a) give a notice to the host state regulator informing it of the details of the proposed change; and
- (b) inform the firm that it has given that notice, stating the date on which it did so.

(6) If the Authority refuses to consent to the change—

- (a) the firm may refer the matter to the Tribunal; and
- (b) the Authority must give notice to the firm of the refusal, stating the reasons for it, and giving an indication of the firm's right to refer the matter to the Tribunal, and the procedure on such a reference.

(7) The Authority may not refuse to consent to the change unless, having regard to the change and to the EEA activities which the firm is seeking to carry on, it doubts the adequacy of the administrative structure or the financial situation of the firm; and in reaching a determination as to the adequacy of the administrative structure, the Authority may have regard to the adequacy of management, systems and controls and the presence of relevant skills needed for the EEA activities to be carried on.

UK investment firms: changes to services

12.—(1) A UK firm which is providing services in exercise of an EEA right, deriving from the investment services directive, must not make a change in the programme of operations, or the EEA activities, to be carried on in exercise of that right, unless the relevant requirements have been complied with.

(2) For the purposes of this regulation, the “relevant requirements” are that—

- (a) the firm has given a notice to the Authority and to the host state regulator stating the details of the proposed change; or
- (b) if the change is occasioned by circumstances beyond the firm's control, it has as soon as practicable (whether before or after the change) given a notice to the Authority and to the host state regulator, stating the details of the change.

UK insurance firms: changes to relevant EEA details of branches

13.—(1) A UK firm which has exercised an EEA right, deriving from any of the insurance directives, to establish a branch must not make a change in the relevant EEA details (as defined in regulation 14), unless the requirements of paragraph (2) or (if the change is occasioned by circumstances beyond the firm's control) paragraph (3) have been complied with.

(2) The requirements of this paragraph are that—

- (a) the firm has given a notice to the Authority and to the host state regulator stating the details of the proposed change;
- (b) the Authority has given the host state regulator a notice under paragraph (5)(a);
- (c) the period of one month beginning with the day on which the firm gave the Authority the notice mentioned in sub-paragraph (a) has elapsed; and
- (d) either—
 - (i) a further period of one month has elapsed; or
 - (ii) the Authority has informed the firm of any consequential changes in the applicable provisions (within the meaning of paragraph 19 of Schedule 3) of which the Authority has been notified by the host state regulator.

(3) The requirements of this paragraph are that the firm has as soon as practicable (whether before or after the change) given a notice to the Authority and to the host state regulator, stating the details of the change.

(4) The Authority must, within one month of receiving the notice referred to in paragraph (2)(a), either consent to the change or refuse to consent to the change.

(5) If the Authority consents to the change, it must—

- (a) give a notice to the host state regulator informing it of the details of the proposed change; and
- (b) inform the firm that it has given that notice, stating the date on which it did so.

(6) If the Authority refuses to consent to the change—

- (a) the firm may refer the matter to the Tribunal; and
- (b) the Authority must give notice to the firm of the refusal, stating the reasons for it, and giving an indication of the firm's right to refer the matter to the Tribunal, and the procedure on such a reference.

(7) The Authority may not refuse to consent to the change unless, having regard to the change, the Authority has reason—

- (a) to doubt the adequacy of the firm's administrative structure or financial situation, or
- (b) to question the reputation, qualifications or experience of the directors or managers of the firm or the authorised agent,

in relation to the business conducted, or to be conducted, through the branch.

Relevant EEA details for the purposes of regulation 13

14.—(1) For the purposes of regulation 13, the relevant EEA details, with respect to a branch, are—

- (a) the address of the branch;
- (b) the name of the UK firm's authorised agent and, in the case of a member of Lloyd's, confirmation that the authorised agent has power to accept service of proceedings on behalf of Lloyd's;
- (c) the classes or parts of classes of business carried on, or to be carried on, and the nature of the risks or commitments covered, or to be covered, in the EEA State concerned;
- (d) details of the structural organisation of the branch;
- (e) the guiding principles as to reinsurance of business carried on, or to be carried on, in the EEA State concerned, including the firm's maximum retention per risk or event after all reinsurance ceded;
- (f) estimates of—
 - (i) the costs of installing administrative services and the organisation for securing business in the EEA State concerned;
 - (ii) the resources available to cover those costs; and
 - (iii) if contracts of a kind falling within paragraph 18 of Schedule 1 to the Regulated Activities Order (assistance) are, or are to be, effected or carried out, the resources available for providing assistance;
- (g) for each of the first three years following the establishment of the branch—
 - (i) estimates of the firm's margin of solvency and the margin of solvency required, and the method of calculation;
 - (ii) if the firm carries on, or intends to carry on, business comprising the effecting or carrying out of contracts of long-term insurance, the details mentioned in paragraph (2) as respects the business carried on, or to be carried on, in the EEA State concerned; and
 - (iii) if the firm carries on, or intends to carry on, business comprising the effecting or carrying out of contracts of general insurance, the details mentioned in paragraph (3) as respects the business carried on, or to be carried on, in the EEA State concerned;
- (h) if the insurer covers, or intends to cover, relevant motor vehicle risks, details of the firm's membership of the national bureau and the national guarantee fund in the EEA State concerned; and

- (i) if the firm covers, or intends to cover, health insurance risks, the technical bases used, or to be used, for calculating premiums in respect of such risks.
- (2) The details referred to in paragraph (1)(g)(ii) are—
 - (a) the following information, on both optimistic and pessimistic bases, for each type of contract or treaty—
 - (i) the number of contracts or treaties expected to be issued;
 - (ii) the total premium income, both gross and net of reinsurance ceded; and
 - (iii) the total sums assured or the total amounts payable each year by way of annuity;
 - (b) detailed estimates, on both optimistic and pessimistic bases, of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessations; and
 - (c) estimates relating to the financial resources intended to cover underwriting liabilities.
- (3) The details referred to in paragraph (1)(g)(iii) are—
 - (a) estimates relating to expenses of management (other than costs of installation), and in particular those relating to current expenses and commissions;
 - (b) estimates relating to premiums or contributions (both gross and net of all reinsurance ceded) and to claims (after all reinsurance recoveries); and
 - (c) estimates relating to the financial resources to cover underwriting liabilities.

UK insurance firms: changes to relevant UK details of branches

15.—(1) A UK firm which has exercised an EEA right, deriving from any of the insurance directives, to establish a branch must not make a change falling within paragraph (2) with respect to the branch, unless—

- (a) the firm has given a notice to the Authority stating the details of the proposed change at least one month before the change is effected; or
- (b) if the change is occasioned by circumstances beyond the firm’s control, the firm has as soon as practicable (whether before or after the change) given a notice to the Authority stating the details of the change.

(2) A change falls within this paragraph if it is a change in any of the information which the UK firm was required to provide to the Authority by or under paragraph 19(2) of Schedule 3, other than a change in the relevant EEA details referred to in regulation 13.

UK insurance firms: changes to services

16.—(1) A UK firm which is providing services in exercise of an EEA right, deriving from any of the insurance directives, must not make a change in the relevant details (as defined in regulation 17), unless the relevant requirements have been complied with.

(2) For the purposes of this regulation, the “relevant requirements” are those of paragraph (3) or (if the change is occasioned by circumstances beyond the firm’s control) paragraph (4).

- (3) The requirements of this paragraph are that—
 - (a) the firm has given a notice to the Authority stating the details of the proposed change; and
 - (b) the Authority has given the host state regulator a notice under paragraph (6)(a).

(4) The requirements of this paragraph are that the firm has as soon as practicable (whether before or after the change) given a notice to the Authority stating the details of the change.

(5) The Authority must, within one month of receiving a notice under paragraph (3)(a), either consent to the change or refuse to consent to the change.

- (6) If the Authority consents to the change, it must—
 - (a) give a notice to the host state regulator informing it of the details of the proposed change; and
 - (b) inform the firm that it has given that notice, stating the date on which it did so.

- (7) If the Authority refuses to consent to the change—
 - (a) the firm may refer the matter to the Tribunal; and

- (b) the Authority must give notice to the firm of the refusal, stating the reasons for it, and giving an indication of the firm's right to refer the matter to the Tribunal, and the procedure on such a reference.

Relevant details for the purposes of regulation 16

17. The relevant details for the purposes of regulation 16 are—
- (a) the EEA State in which the EEA activities are carried on, or are to be carried on;
 - (b) the nature of the risks or commitments covered, or to be covered, in the EEA State concerned;
 - (c) if the firm covers, or intends to cover, relevant motor vehicle risks—
 - (i) the name and address of the claims representative; and
 - (ii) details of the firm's membership of the national bureau and the national guarantee fund in the EEA State concerned; and
 - (d) if the insurer covers, or intends to cover, health insurance risks, the technical bases used, or to be used, for calculating premiums in respect of such risks.

Offences relating to failure to notify changes

18.—(1) If a UK firm which is not an authorised person contravenes the prohibition imposed by regulation 11(1), 12(1), 13(1), 15(1), or 16(1) it is guilty of an offence, punishable—

- (a) on summary conviction, by a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, by a fine.

(2) In proceedings for an offence under 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.

UK firms: scope of outward passport

UK firms: scope of outward passport

19. Where—
- (a) the activities identified in a notice of intention under paragraph 19 or 20 of Schedule 3 include (in accordance with paragraph 19(3) or 20(2) of that Schedule) any activity which is not a regulated activity, and
 - (b) that activity is one which the UK firm in question is able to carry on in the EEA State in question without contravening any provision of the law of the United Kingdom (or any part of the United Kingdom),

the UK firm is to be treated, for the purposes of the exercise of its EEA right, as being authorised to carry on that activity.

PART IV

TRANSITIONAL PROVISIONS

Changes relating to EEA firms: procedures partly completed at commencement

20.—(1) If before commencement—

- (a) an EEA firm which was a European institution within the meaning of the 2BCD Regulations gave a notice under paragraph 4(1)(a) of Schedule 2 to those Regulations (changes to details of branch), and
- (b) not all the other requirements set out in paragraph 4(1) of that Schedule were satisfied,

the notice is to be treated as given under regulation 4(4)(a), and the other requirements set out in regulation 4(4) treated as satisfied to the extent to which the corresponding requirements in paragraph 4(1) of that Schedule had been satisfied.

(2) If before commencement—

- (a) an EEA firm which was a European investment firm within the meaning of the ISD Regulations gave a notice under paragraph 5(1)(a) of Schedule 3 to those Regulations (changes to details of branch), and

(b) not all the other requirements set out in paragraph 5(1) of that Schedule were satisfied, the notice is to be treated as given under regulation 4(4)(a), and the other requirements set out in regulation 4(4) treated as satisfied to the extent to which the corresponding requirements in paragraph 5(1) of that Schedule had been satisfied.

(3) In a case falling within paragraph (1) or (2), regulation 4(6) applies unless the Authority had, before commencement, complied with the duty in regulation 8(3) of the 2BCD Regulations or regulation 8(4) of the ISD Regulations.

(4) If before commencement—

(a) an EEA firm which was an EC company within the meaning of the Insurance Companies Act gave a notice under paragraph 2(2)(a) of Schedule 2F to that Act (changes to details of branch), and

(b) not all the other requirements set out in paragraph 2(2) of that Schedule were satisfied, the notice is to be treated as given under regulation 6(4)(a), and the other requirements set out in regulation 6(4) treated as satisfied to the extent to which the corresponding requirements in paragraph 2(2) of that Schedule had been satisfied.

(5) In a case falling within paragraph (4), regulation 6(6) applies except to the extent that the duty in paragraph 2(4) of Schedule 2F to the Insurance Companies Act had been complied with before commencement.

(6) If before commencement—

(a) an EEA firm which was an EC company within the meaning of the Insurance Companies Act gave a notice under paragraph 9(2)(a) of Schedule 2F to that Act (changes relating to the provision of services), and

(b) the requirement in paragraph 9(2)(b) of that Schedule was not satisfied, the notice is to be treated as given under regulation 7(4)(a).

Changes relating to UK firms: procedures partly completed at commencement

21.—(1) If before commencement a UK firm gave notice under paragraph 5(1)(a) of Schedule 6 to the 2BCD Regulations or paragraph 6(1)(a) of Schedule 6 to the ISD Regulations (changes to details of branch)—

(a) the notice is to be treated as given under regulation 11(2)(a), and

(b) any notice given under paragraph 5(1)(b) of Schedule 6 to the 2BCD Regulations or paragraph 6(1)(b) of Schedule 6 to the ISD Regulations is to be treated as given under regulation 11(2)(b),

unless paragraph (2) applies.

(2) This paragraph applies if, before commencement, either—

(a) all the requirements set out in paragraph 5(1) of Schedule 6 to the 2BCD Regulations or paragraph 6(1) of Schedule 6 to the ISD Regulations had been satisfied, or

(b) in response to the notice a notice of refusal was given to the firm under paragraph 6(5)(b) of Schedule 6 to the 2BCD Regulations or paragraph 7(5)(b) of Schedule 6 to the ISD Regulations, and the refusal was not at commencement capable of being reversed on an appeal, reference to a tribunal or a review as mentioned in paragraph 7(5) of Schedule 6 to the ISD Regulations.

(3) If before commencement a UK firm gave notice under paragraph 2(2)(a) of Schedule 2G to the Insurance Companies Act (b) or Schedule 13B to the Friendly Societies Act (c) (changes to details of branch)—

(a) the notice is to be treated as given to the Authority under regulation 13(2)(a), and

(b) the other requirements set out in regulation 13(2) are to be treated as satisfied to the extent to which the corresponding requirements in paragraph 2(2) of Schedule 2G to the Insurance Companies Act or of Schedule 13B to the Friendly Societies Act had been satisfied,

unless paragraph (4) applies.

(a) Schedule 2F was inserted by S.I. 1994/1696.

(b) Schedule 2G was inserted by S.I. 1994/1696 and amended by S.I. 1997/2781.

(c) Schedule 13B was inserted by S.I. 1994/1984 and amended by S.I. 1997/2849.

- (4) This paragraph applies if, before commencement, either—
- (a) all the requirements set out in paragraph 2(2) of Schedule 2G to the Insurance Companies Act or of Schedule 13B to the Friendly Societies Act had been satisfied, or
 - (b) in response to the notice a notice of refusal was given to the firm under paragraph 2(5)(b) of that Schedule.
- (5) If before commencement a UK firm gave notice under paragraph 6(2)(a) of Schedule 2G to the Insurance Companies Act or of Schedule 13B to the Friendly Societies Act (changes relating to the provision of services)—
- (a) the notice is to be treated as given to the Authority under regulation 16(3)(a) and
 - (b) if a notice was sent under paragraph 6(2)(b) of Schedule 2G to the Insurance Companies Act or of Schedule 13B to the Friendly Societies Act, that notice is to be treated as given under regulation 16(3)(b),
- unless, before commencement, the firm had been notified under paragraph 6(5)(a) or (b) of Schedule 2G to the Insurance Companies Act or of Schedule 13B to the Friendly Societies Act of the decision taken in response to the notice.

12th July 2001

Nick Ainger
Tony McNulty

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about the exercise of “passport” rights in accordance with Schedule 3 to the Financial Services and Markets Act 2000 (“the Act”). Those are rights under the EC single market directives relating to financial services for an undertaking authorised in one EEA State to establish a branch or provide services in another EEA State.

Part I makes provision for citation, commencement and interpretation.

Part II prescribes the information which must be provided in connection with the establishment of a branch, or the provision of services, by an EEA firm in the UK in exercise of its passport rights. It also makes provision about the procedure to be followed, and the information to be provided, in the event of changes affecting an EEA firm’s activities in the UK. It provides for the cancellation of EEA firms’ qualification for authorisation under the Act in certain circumstances.

Part III makes provision about the procedure to be followed, and the information to be provided, when there are changes affecting a UK firm which has exercised its passport rights to establish a branch, or provide services, in another EEA State. Part III also makes provision about the scope of a UK firm’s outward passport in relation to activities which are not regulated activities under the Act: regulation 19 provides that, for the purposes of its passport rights, a UK firm is treated as being authorised to carry on such activities provided UK law does not prevent it from carrying them on in the EEA State in question.

Part IV makes transitional provision relating to cases where the procedures applying to changes in activities carried on pursuant to passport rights had been partly completed at commencement.

S T A T U T O R Y I N S T R U M E N T S

2001 No. 2511**FINANCIAL SERVICES AND MARKETS****The Financial Services and Markets Act 2000 (EEA
Passport Rights) Regulations 2001**

£3.00

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Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.
E1423 8/2001 646691 19585

ISBN 0-11-029837-3



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