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STATUTORY INSTRUMENTS

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**2018 No. 1149**

**The EEA Passport Rights (Amendment, etc., and  
Transitional Provisions) (EU Exit) Regulations 2018**

**PART 4**

Transitional provision: miscellaneous

**Persons to whom the modifications in regulations 23 to 25 apply**

**22.**—(1) The modifications specified in regulations 23 to 25 apply—

- (a) before exit day, in respect of a person who is authorised to carry on a regulated activity in the United Kingdom by virtue of section 31(1)(b) or (c) of the 2000 Act;
  - (b) on and after exit day, in respect of a person to whom regulation 8 or 11 applies.
- (2) Paragraph (1)(a) only applies in respect of a person if—
- (a) an application for permission, or for the variation of a permission, under Part 4A of the 2000 Act—
    - (i) is made by the person on or after the day on which this regulation comes into force, or
    - (ii) is made by the person before the day on which this regulation comes into force and has not, immediately before that day, been determined by a regulator in accordance with section 55V of that Act, and
  - (b) the application is in respect of carrying on a regulated activity, on or after exit day, that the person is authorised to carry on by virtue of section 31(1)(b) or (c) of that Act.

**Performance of regulated activities - modifications of Part 5 of the Financial Services and Markets Act 2000**

**23.**—(1) Part 5 of the Financial Services and Markets Act 2000 (performance of regulated activities) is modified as follows.

(2) That Part has effect as if, after section 59 (approval for particular arrangements), there were inserted—

**“59ZZA Deemed approval for particular arrangements**

(1) The appropriate regulator may by notice given to an authorised person treat as approved under section 59 a person who is the subject of an application under section 60.

(2) The period during which a person may be so treated begins at such time on or after exit day as the notice may specify and ends—

- (a) after three years beginning with the day on which exit day occurs, or
- (b) if earlier—

- (i) if the application is granted, with the day before the day stated in the written notice (given in accordance with section 62(1)) or decision notice (given in accordance with section 62(3)) as that from which approval has effect;
  - (ii) if the application is refused, with the day before the day stated in the decision notice (given in accordance with section 62(3)) as that on which the person is to cease to be treated as approved.
- (3) The period in subsection (2) is subject to—
- (a) the withdrawal of an approval under section 63;
  - (b) the expiry of an approval under section 66(3)(ac).
- (4) Reference in an enactment to an approval given by the appropriate regulator under section 59 (however expressed) is to be read, unless the contrary intention appears, as including an approval a person is treated as having by virtue of this section.”
- (3) Section 61 (controlled functions: determination of applications) has effect as if, for subsection (3A)(a), there were substituted—
- “(a) in any case where the application under section 60 is made by a person applying for permission, or for the variation of a permission, under Part 4A, means the period within which the application must be determined under section 55V(1) or (2), and”.
- (4) Section 62 (applications for approval: procedure and right to refer to Tribunal) has effect as if—
- (a) after subsection (1), there were inserted—
    - “(1A) The notice must state the day from which the approval has effect.”
  - (b) after subsection (3), there were inserted—
    - “(3A) The notice must state—
      - (a) where the decision is to refuse the application, the day on which the person who is the subject of an application is to cease to be treated as approved in accordance with section 59ZZA;
      - (b) where the decision is to grant the application subject to conditions or for a limited period (or both), the day from which the approval has effect.”
- (5) Section 63 (withdrawal of approval) has effect as if, after subsection (4), there were inserted—
- “(4A) If a regulator decides to withdraw an approval that a person is treated as having by virtue of section 59ZZA, the decision notice must state the day on which that approval is to cease to have effect.
- (4B) For the purposes of subsection (4A), the day stated must be a day that falls before the end of the period of three years beginning with the day on which exit day occurs.”

### **Financial Services Compensation Scheme - modifications of Part 15 of the Financial Services and Markets Act 2000**

24.—(1) Part 15 of the Financial Services and Markets Act 2000 (Financial Services Compensation Scheme) is modified as follows.

- (2) Section 213 (the compensation scheme) has effect as if—
  - (a) after subsection (4), there were inserted—
    - “(4A) The compensation scheme may not provide for the scheme manager to have the power to impose levies on a person who is not to be regarded as a relevant person by virtue of subsection (9A).”;
  - (b) after subsection (9), there were inserted—

“(9A) But a person to whom subsection (9B) applies and who, at that time—

- (a) has not established a branch in the United Kingdom, and
- (b) is treated as if—
  - (i) the person has permission to carry on a regulated activity by virtue of regulation 8 of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018, or
  - (ii) the person’s permission to carry on a regulated activity were varied in accordance with regulation 11 of those Regulations,

is not to be regarded as a relevant person in relation to a regulated activity which the person has permission to carry on by virtue of regulation 8 or 11 of those Regulations.

(9B) This subsection applies to a person who is, immediately before exit day—

- (a) a credit institution,
- (b) an insurance intermediary,
- (c) an investment firm,
- (d) a mortgage intermediary,
- (e) a management company, or
- (f) an AIFM in relation to all activities authorised by its home state regulator other than—
  - (i) any services specified by Annex I to the alternative investment fund managers directive in respect of an authorised unit trust scheme, an authorised contractual scheme or an authorised open-ended investment company, or
  - (ii) any activities undertaken as an authorised manager of an ELTIF, as permitted by the ELTIF Regulation.

(9C) For the purposes of subsection (9B)—

“AIFM” means an AIFM as defined in Article 4.1(b) of the alternative investment fund managers directive which—

- (a) is, immediately before exit day, authorised in accordance with Article 6.1 of that directive by its home state regulator to provide services specified by Annex I to that directive, and
- (b) provides those services, or services specified by Article 6.4 of that directive (discretionary portfolio management and non-core services), in the United Kingdom;

“an authorised contractual scheme” has the meaning given by section 237(3);

“an authorised open-ended investment company” has the meaning given by section 237(3);

“an authorised unit trust scheme” has the meaning given by section 237(3);

“collective portfolio management services” means those services set out in Annex II to the UCITS directive which a management company is providing to a UCITS in the United Kingdom;

“credit institution” means a credit institution as defined in Article 4.1(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26th June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 which is, immediately before exit day, authorised (within the meaning of Article 8 of [Directive 2013/36/EU](#) of the European

Parliament and of the Council of 26th June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending [Directive 2002/87/EC](#) and repealing Directives [2006/48/EC](#) and [2006/49/EC](#) by its home state regulator;

“ELTIF” means a UK AIF that is, immediately before exit day, authorised by the FCA as a European long-term investment fund under Article 6 of the ELTIF Regulation;

“ELTIF Regulation” means Regulation (EU) No 2015/760 of the European Parliament and of the Council of 29th April 2015 on European Long-term Investment Funds;

“insurance intermediary” means an insurance intermediary or an ancillary insurance intermediary as defined in Article 2.1(3) and (4) of [Directive 2016/97/EC](#) of the European Parliament and of the Council of 20th January 2016 on insurance distribution (recast) which is, immediately before exit day, registered (under Article 3 of that Directive) by its home state regulator;

“investment firm” means an investment firm as defined in Article 4.1(1) of [Directive 2014/65/EU](#) of the European Parliament and of the Council of 15th May 2014 on markets in financial instruments and amending [Directive 2002/92/EC](#) and [Directive 2011/61/EU](#) which is, immediately before exit, authorised (within the meaning of Article 5 of that Directive) by its home state regulator;

“management company” means a management company as defined in Article 2.1(b) of the UCITS directive which—

- (a) is, immediately before exit day, authorised (within the meaning of Article 6 of that Directive) by its home state regulator to provide services of the kind specified by Article 6.3 of the UCITS directive (management of portfolios of investments) except collective portfolio management services, and
- (b) is providing those services in the United Kingdom;

“mortgage intermediary” means—

- (a) a credit intermediary as defined in Article 4(5) of [Directive 2014/17/EU](#) of the European Parliament and of the Council of 4th February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives [2008/48/EC](#) and [2013/36/EU](#) and Regulation (EU) No 1093/2010, or
- (b) a person providing advisory services as defined in Article 4(21) of that Directive,

which is, immediately before exit day, admitted (in accordance with Article 29.1 of that Directive) by its home state regulator;

“UCITS” means an undertaking for collective investment in transferable securities which is, immediately before exit day, authorised in accordance with Article 5 of the UCITS directive;

“UK AIF” has the meaning given in regulation 2 of the Alternative Investment Fund Managers Regulations 2013.”

(3) Section 224 (scheme manager’s power to inspect documents held by Official Receiver, etc.) has effect as if, after subsection (3), there were inserted—

“(3A) But a person who is not to be regarded as a relevant person for the purposes of section 213, by virtue of subsection (9A) of that section, is not to be regarded as a relevant person for the purposes of this section.”

**Insurance and reinsurance - modification of Part 4 of the Solvency 2 Regulations 2015**

**25.**—(1) The Solvency 2 Regulations 2015(1) (approvals) are modified as follows.

(2) Regulation 48 (models) has effect as if, in paragraph (4), for the words from “six months” to the end there were substituted “three years beginning with the day on which exit day occurs.”

(3) Part 4 has effect as if, after Chapter 2, there were inserted—

“CHAPTER 2A

Deemed approval

**54A.**—(1) A person to whom regulation 8 or 11 of the EEA Passport Rights (Amendment etc., and Transitional Provisions) Regulations 2018 applies is to be treated as if the PRA has granted to the person an approval, determined in accordance with paragraphs (2) and (3), with respect to the person carrying on business in the UK through a branch.

(2) In respect of a person—

(a) who, immediately before exit day, is approved by a supervisory authority of an EEA State—

(i) in respect of the matter mentioned in the first column of the following table and

(ii) under the provision of the Solvency 2 Directive mentioned in the corresponding entry in the second column of the table, and

(b) whose approval is applicable to the person’s permanent presence in the UK,

the approval a person is treated as having is the approval mentioned in the corresponding entry in the third column of the table.

<i>Solvency 2 approval</i>	<i>Approval granted by supervisory authority of an EEA State</i>	<i>Deemed approval granted by the PRA</i>
Matching adjustment to the relevant risk-free interest rate term structure	Article 77b of the Solvency 2 Directive	Regulation 42
Volatility adjustment to the relevant risk-free interest rate term structure	Article 77d of the Solvency 2 Directive	Regulation 43
Ancillary own funds	Article 90 of the Solvency 2 Directive	Regulation 44
Classification of own funds	Article 95 of the Solvency 2 Directive	Regulation 46
Full and partial internal model	Article 112 and 113 of the Solvency 2 Directive	Regulation 48(1)(a)
Group internal model to calculate the solvency capital requirement of an insurance or reinsurance undertaking	Article 231 or 233(5) of the Solvency 2 Directive	Regulation 48(1)(a)
Policy for changing a full and partial internal model	Article 115 of the Solvency 2 Directive	Regulation 48(1)(c)

<i>Solvency 2 approval</i>	<i>Approval granted by supervisory authority of an EEA State</i>	<i>Deemed approval granted by the PRA</i>
Transitional measure on risk-free interest rates	Article 308c of the Solvency 2 Directive	Regulation 53
Transitional measure on technical provisions	Article 308d of the Solvency 2 Directive	Regulation 54
Design of the basic solvency capital requirement	Article 104(7) of the Solvency 2 Directive	Regulation 47

(3) In respect of a person—

- (a) who, immediately before exit day, is applying a volatility adjustment to the relevant risk-free interest rate term structure in order to calculate the best estimate referred to in Article 77(2) of the Solvency 2 Directive on a date specified by the PRA, and
- (b) whose approval by a supervisory authority of an EEA State is not required,

the approval a person is treated as having is an approval under regulation 43.”

(4) Regulation 55 (decisions: written notices) has effect as if, after paragraph (2), there were inserted—

“(2A) If the PRA revokes an approval, the written notice must, where applicable, state the day on which regulation 54A ceases to apply.

(2B) For the purposes of paragraph (2A), the day stated must be a day that falls before the end of the period of three years beginning with the day on which exit day occurs.”

#### **Persons who cease to be authorised to carry on a regulated activity before exit day**

**26.**—(1) The modifications specified in paragraphs (2) and (3) apply in respect of a person to whom, before exit day, regulation 22(1)(a) ceases to apply.

(2) Section 61 of the 2000 Act (determination of applications) has effect as if, for subsection (3A)(a), there were substituted—

“(a) in any case where the application under section 60 is made by a person applying for permission, or for the variation of a permission, under Part 4A, means the period within which the application must be determined under section 55V(1) or (2), and”.

(3) Regulation 48 of the Solvency 2 Regulations 2015 (models) has effect as if, in paragraph (4), for the words from “its receipt” to the end there were substituted “the day on which regulation 22(1)(a) ceased to apply in respect of the applicant.”