
STATUTORY INSTRUMENTS

2001 No. 2511

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

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

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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.