
DRAFT STATUTORY INSTRUMENTS

2018 No.

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

PART 1

General provision

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018.

(2) These Regulations come into force on the day after the day on which they are made, subject to paragraph (3).

(3) Regulations 2 to 4 and 24 come into force on exit day.

(4) In these Regulations, “the 2000 Act” means the Financial Services and Markets Act 2000⁽¹⁾.

PART 2

Repeal of passport rights, etc., under Part 3 of
the Financial Services and Markets Act 2000

Repeal of passport rights, etc.

2.—(1) Part 3 of the 2000 Act (authorisation and exemption) is amended as follows.

(2) Omit section 31(1)(b) (authorised persons: EEA firms).

(3) Omit section 31(1)(c) (authorised persons: Treaty firms).

(4) Omit section 37 (exercise of EEA rights by UK firms).

(5) In Schedule 3 (EEA passport rights), omit—

(a) Part 2 (exercise of passport rights by EEA firms);

(b) Part 3 (exercise of passport rights by UK firms).

(6) Omit Schedule 4 (Treaty rights).

Consequential amendments

3. The Schedule makes consequential amendments—

(a) in Part 1, to the 2000 Act;

(b) in Parts 2 and 3, to other enactments.

Saving provision: tax

4. For the purposes of an enactment relating to taxation—
- (a) the provision made by these Regulations is to be treated as not having been made, and
 - (b) where, by virtue of these Regulations, a person ceases to be a person of a particular description, the person is to be treated as continuing to be a person of that description.

PART 3

Transitional and saving provision: applications
for permission to carry on a regulated activity

CHAPTER 1

Modifications of Part 4A of the Financial Services and Markets Act 2000

Persons to whom the modifications of Part 4A of the Financial Services and Markets Act 2000 apply

5.—(1) The modifications of Part 4A of the 2000 Act (permission to carry on regulated activities) specified in regulation 6 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.

Modifications of Part 4A of the Financial Services and Markets Act 2000

6.—(1) Part 4A of the 2000 Act(2) (permission to carry on regulated activities) is modified as follows.

- (2) Section 55A (application for permission) has effect as if—
- (a) in subsection (2), after “subsection (2B)” there were inserted “and to a direction of the PRA or the FCA given with the consent of the other”;
 - (b) in subsection (3), after “is in force” there were inserted “, other than a person who is treated as having such a permission by virtue of regulation 8 of the 2018 Regulations.”.
- (3) Section 55H (variation by FCA at request of authorised person) has effect as if, after subsection (7), there were inserted—
- “(8) Where a person makes an application to vary the permission that the person is treated as having by virtue of regulation 8 of the 2018 Regulations, the FCA may, if it

(2) Part 4A is inserted by section 11(2) of the Financial Services Act 2012 (c. 21).

considers it appropriate to do so, treat the application as an application for permission under section 55A.”

(4) Section 55I (variation by PRA at request of authorised person) has effect as if, after subsection (8), there were inserted—

“(9) Where a person makes an application to vary the permission that the person is treated as having by virtue of regulation 8 of the 2018 Regulations, the PRA may, if it considers it appropriate to do so, treat the application as an application for permission under section 55A.”

(5) Section 55J (variation or cancellation on initiative of regulator) has effect as if, after subsection (1) there were inserted—

“(1A) Either regulator may exercise its power under this section in relation to—

- (a) a person to whom regulation 8 of the 2018 Regulations applies, if the person has not made an application for permission under this Part before the end of the period during which, in accordance with section 55U(4)(c), such an application must be made;
- (b) a person to whom regulation 11 of those Regulations applies, if the person has not made an application to vary a permission under this Part before the end of the period during which, in accordance with section 55U(4)(c), such an application must be made.”

(6) Section 55U (applications under Part 4A) has effect as if—

(a) in subsection (4), after paragraph (b), there were inserted—

“and

(c) be made—

- (i) during such period, ending no later than two years beginning with the day on which exit day occurs, as the regulator to which it is to be made may direct, or
- (ii) if the regulator to which it is to be made does not direct such a period, before the end of two years beginning with the day on which exit day occurs.”;

(b) after subsection (4), there were inserted—

“(4A) The power to give a direction under subsection (4)(c) includes the power—

- (a) to give different directions in relation to different persons or categories of person;
- (b) to vary or revoke a previous direction.”

(7) Section 55V (determination of applications) has effect as if—

(a) in subsection (1), for the words from “6 months” to the end there were substituted “three years beginning with the day on which exit day occurs.”;

(b) in subsection (2), for the words from “12 months” to the end there were substituted “three years beginning with the day on which exit day occurs.”;

(c) after subsection (6) there were inserted—

“(6A) For the purposes of subsection (6), in the case of a person to whom regulation 8 or 11 of the 2018 Regulations applies, the date stated must be a date that falls before the end of the period of three years beginning with the day on which exit day occurs.”

(8) Section 55X (determination of applications: warning notices and decision notices) has effect as if, after subsection (4), there were inserted—

“(4A) If a regulator decides to refuse an application under this Part, the decision notice must, where applicable, state the day on which regulation 8 or 11 of the 2018 Regulations ceases to apply.

(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.”

(9) Section 55Z (cancellation of Part 4A permission: procedure) has effect as if, after subsection (2), there were inserted—

“(3) If a regulator gives a decision notice under subsection (2) in circumstances where a person to whom regulation 8 or 11 of the 2018 Regulations applies—

(a) has not made an application in accordance with section 55U(4)—

(i) in the case of a person to whom regulation 8 of those Regulations applies, for permission under this Part, or

(ii) in the case of a person to whom regulation 11 of those Regulations applies, to vary a permission under this Part, or

(b) has made such an application but has withdrawn it without submitting another, the notice must state the day on which regulation 8 or 11 ceases to apply.

(4) For the purposes of subsection (3), 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.”

(10) Section 55Z4 (interpretation of Part 4A) has effect as if, at the appropriate place, there were inserted—

““the 2018 Regulations” means the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018;”.

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

7.—(1) The modification of Part 4A of the 2000 Act specified in paragraph (2) applies in respect of a person to whom, before exit day, regulation 5(1)(a) ceases to apply.

(2) Section 55V (determination of applications) has effect as if, in subsections (1) and (2), for the words from “it received” to the end there were substituted “regulation 5(1)(a) of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 ceased to apply to the applicant.”

CHAPTER 2

Temporary permission to carry on a regulated activity

Deemed permission under Part 4A of the Financial Services and Markets Act 2000

8.—(1) A person to whom this regulation applies shall be treated as if the person has permission to carry on a regulated activity in the United Kingdom under Part 4A of the 2000 Act.

(2) The regulated activity a person is permitted to carry on by virtue of this regulation is one which, immediately before exit day, the person is authorised to carry on in the United Kingdom by virtue of section 31(1)(b) or (c) of the 2000 Act.

(3) Reference in an enactment to a person with permission under Part 4A of the 2000 Act (however expressed) is to be read, unless the contrary intention appears, as including a person treated as having permission to carry on a regulated activity under that Part by virtue of this regulation.

(4) Accordingly, a power of a regulator under the 2000 Act is exercisable in respect of such a person, and a regulated activity the person is permitted to carry on by virtue of this regulation, as

it is in respect of a person with permission under Part 4A of that Act, and a regulated activity the person is permitted to carry on by virtue of Part 4A of that Act.

- (5) Such a power is exercisable in relation to, in particular—
- (a) the variation or cancellation of a permission to carry on a regulated activity, or
 - (b) the imposition of requirements, prohibitions or restrictions on a person who has such a permission.

Application of regulation 8

- 9.—(1) Regulation 8 applies to a person who—
- (a) satisfies the conditions in regulation 10, and
 - (b) has taken one of the steps set out in regulation 14.
- (2) Regulation 8 applies to such a person for the period determined in accordance with regulation 17.

Conditions to be satisfied for regulation 8 to apply

10. The conditions are that, immediately before exit day, the person—
- (a) 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, and
 - (b) is not authorised to carry on a regulated activity by virtue of section 31(1)(a) of that Act.

CHAPTER 3

Temporary variation to carry on additional regulated activity

Deemed variation under Part 4A of the Financial Services and Markets Act 2000

11.—(1) A person to whom this regulation applies shall be treated as if the person's permission to carry on a regulated activity in the United Kingdom under Part 4A of the 2000 Act were varied.

(2) The variation is that the regulated activity the person is permitted to carry on includes one which, immediately before exit day, the person is authorised to carry on in the United Kingdom by virtue of section 31(1)(b) or (c) of the 2000 Act.

(3) Reference in an enactment to a person's permission under Part 4A of the 2000 Act (however expressed) is to be read, unless the contrary intention appears, as including a regulated activity which is included in the person's permission by virtue of this regulation.

(4) Accordingly, a power of a regulator under the 2000 Act is exercisable in respect of such a person, and a regulated activity the person is permitted to carry on by virtue of this regulation, as it is in respect of the person, and a regulated activity the person is, immediately before exit day, permitted to carry on by virtue of Part 4A of that Act.

- (5) Such a power is exercisable in relation to, in particular—
- (a) the variation or cancellation of a permission to carry on a regulated activity, or
 - (b) the imposition of requirements, prohibitions or restrictions on a person who has such a permission.

Application of regulation 11

- 12.—(1) Regulation 11 applies to a person who—
- (a) satisfies the conditions in regulation 13, and

(b) has taken one of the steps set out in regulation 14.

(2) Regulation 11 applies to such a person for the period determined in accordance with regulation 17.

Conditions to be satisfied for regulation 11 to apply

13. The conditions are that, immediately before exit day, the person—

- (a) 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, and
- (b) is also authorised to carry on a regulated activity by virtue of section 31(1)(a) of that Act.

CHAPTER 4

Temporary permission and variation: procedure, etc.

Steps to be taken before exit day: application or notification

14.—(1) For the purposes of regulations 9(1)(b) and 12(1)(b), the steps are that the person has, before exit day—

- (a) made an application—
 - (i) in the case of a person who satisfies the conditions in regulation 10, for permission under Part 4A of that Act, or
 - (ii) in the case of a person who satisfies the conditions in regulation 13, for a variation of such a permission,
 which has, immediately before exit day, not been withdrawn by the person or determined by a regulator in accordance with section 55V of that Act, or
- (b) notified the relevant regulator that the person wishes to be treated in accordance with regulation 8 or 11.

(2) For the purposes of paragraph (1)(b), the notification must—

- (a) be made in such manner, and during such period, and
- (b) contain, or be accompanied by, such information,

as the relevant regulator may direct.

Regulator's response

15.—(1) In the case of an application referred to in regulation 14(1)(a), the relevant regulator must—

- (a) if it considers that—
 - (i) the requirements of section 55U of the 2000 Act (applications under Part 4A: procedure) are satisfied, or
 - (ii) the requirements of that section are satisfied with the exception of those provided by subsection (4), and it would not be practicable for the applicant to comply with the requirements of that subsection before exit day,

confirm in writing to the person making the application that regulation 8 or 11 is to apply;

- (b) if it considers otherwise, confirm in writing to the person making the application that regulation 8 or 11 is not to apply, giving details of the requirements that are not satisfied.

(2) In the case of a notification referred to in regulation 14(1)(b)—

- (a) if the relevant regulator has not made a direction under regulation 14(2), the relevant regulator must confirm in writing to the person submitting the notification that regulation 8 or 11 is to apply;
 - (b) if the relevant regulator has made a direction under regulation 14(2), paragraph (3) applies.
- (3) Where this paragraph applies, the relevant regulator must—
- (a) if it considers that—
 - (i) the notification is made in accordance with the direction, or
 - (ii) the notification is not made in accordance with the direction, and it would not be practicable for the applicant to comply with the direction before exit day,confirm in writing to the person submitting the notification that regulation 8 or 11 is to apply;
 - (b) if it considers otherwise, confirm in writing to the person submitting the notification that regulation 8 or 11 is not to apply, giving details of the direction that has not been complied with.

Further information to be supplied by a person to whom regulation 8 or 11 applies

- 16.—(1) A person to whom regulation 8 or 11 applies must notify the relevant regulator if—
- (a) any information contained in or accompanying a notification submitted in accordance with regulation 14(1)(b) changes, or
 - (b) an authorisation by a home state regulator is cancelled or varied.
- (2) For the purposes of paragraph (1), the notification must—
- (a) be made in such manner, and during such period, and
 - (b) contain, or be accompanied by, such information,
- as the relevant regulator may direct.

CHAPTER 5

Temporary permission and variation: duration

Period during which regulation 8 or 11 is to apply

- 17.—(1) For the purposes of regulations 9(2) and 12(2), the period is one that begins with exit day and ends—
- (a) after three years beginning with the day on which exit day occurs, or
 - (b) if earlier, with a day determined in accordance with paragraph (3), (5) or (7).
- (2) Paragraph (3) applies where a regulator makes a determination under section 55V in respect of an application—
- (a) in the case of a person to whom regulation 8 applies, for a permission or cancellation of a permission under Part 4A of the 2000 Act, or
 - (b) in the case of a person to whom regulation 11 applies, for a variation or cancellation of such a permission.
- (3) Where this paragraph applies—
- (a) if the application is granted, the day referred to in paragraph (1)(b) is the day before the date stated in the written notice (issued in accordance with section 55V(5) of the 2000 Act) as that from which permission, variation or cancellation has effect;

(b) if the application for a permission or variation is refused, the day referred to in paragraph (1)(b) is the day before the day stated in the decision notice (issued in accordance with section 55X(4A) of the 2000 Act) as that on which regulation 8 or 11 ceases to apply.

(4) Paragraph (5) applies where a regulator exercises its power to cancel the Part 4A permission of a person to whom regulation 8 or 11 applies under section 55J of the 2000 Act.

(5) Where this paragraph applies, the day referred to in paragraph (1)(b) is the day before the day stated in the decision notice (issued in accordance with section 55Z(3) of the 2000 Act) as that on which regulation 8 or 11 ceases to apply.

(6) Paragraph (7) applies where—

(a) a regulator exercises its power to vary the Part 4A permission of a person to whom regulation 11 applies under section 55J of the 2000 Act, and

(b) as a result of the variation, there are no longer any regulated activities for which the person is treated as having permission by virtue of regulation 11.

(7) Where this paragraph applies, the day referred to in paragraph (1)(b) is the day before the day stated in the written notice (issued in accordance with section 55Y(4) of the 2000 Act) as that on which a variation takes effect.

(8) For the purposes of this regulation, a reference to an application for permission includes a reference to an application for a variation that is treated as an application for permission by virtue of section 55H(8) or 55I(9) of the 2000 Act.

CHAPTER 6

Savings

Requirements imposed by a domestic regulator

18.—(1) A requirement imposed by a regulator in accordance with section 196 of the 2000 Act (power of intervention) and which has effect immediately before exit day continues to have effect on and after exit day in respect of a person to whom regulation 8 or 11 applies as if it were imposed by the regulator under—

(a) section 55L (imposition of requirements by FCA) of that Act, or

(b) section 55M (imposition of requirements by PRA) of that Act.

(2) In respect of a person to whom regulation 8 or 11 applies—

(a) the FCA may exercise its power under section 55L(3) of the 2000 Act, and

(b) the PRA may exercise its power under section 55M(3) of that Act,

if it appears that, immediately before exit day, the circumstances set out in section 194(1)(a) or (b) of that Act are satisfied in respect of the person.

(3) Paragraph (2) is without prejudice to section 55L(2) or 55M(2) of the 2000 Act.

Requirements imposed by a home state regulator

19.—(1) A requirement imposed by a home state regulator and which has effect immediately before exit day continues to have effect on and after that day in respect of a person to whom regulation 8 or 11 applies as if it were imposed by a regulator under—

(a) section 55L (imposition of requirements by FCA) of the 2000 Act, or

(b) section 55M (imposition of requirements by PRA) of that Act.

(2) The requirement only has effect in so far as it could have been imposed by a regulator under those sections.

CHAPTER 7

General provision

Directions

20. The power to give directions under this Part includes the power—

- (a) to give different directions in relation to different persons or categories of person;
- (b) to vary or revoke a previous direction.

Interpretation

21.—(1) In this Part—

“the FCA” means the Financial Conduct Authority;

“home state regulator” means the competent authority of an EEA state in relation to the person concerned; and “competent authority” is construed in accordance with the EU instrument by virtue of which, immediately before exit day, the person derived authorisation to carry on a regulated activity in the United Kingdom;

“the PRA” means the Prudential Regulation Authority;

“regulated activity” has the same meaning as in section 22 of the 2000 Act⁽³⁾.

(2) A reference to the relevant regulator is, subject to a direction of the PRA or the FCA given with the consent of the other, a reference to—

- (a) the PRA, in a case where the regulated activities to which an application or notification under regulation 14 relates consist of or include a PRA-regulated activity (within the meaning of section 22A of the 2000 Act⁽⁴⁾);
- (b) the FCA, in any other case.

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

⁽³⁾ Section 22 is amended by section 7(1) of the Financial Services Act 2012 (c. 21) and by S.I. 2018/135.

⁽⁴⁾ Section 22A is inserted by section 9 of the Financial Services Act 2012 (c. 21).

- (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(5) (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)
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.”

PART 5

Power to amend time limits

Power to amend time limits imposed by modifications under these Regulations

27.—(1) The Treasury may by regulations made by statutory instrument amend—

- (a) regulation 6(7)(a) and (b) to extend the period during which an application under section 55V of the 2000 Act must be determined,
- (b) regulation 17(1)(a) to extend the period during which regulation 8 or 11 applies, and
- (c) regulation 25(2) to extend the period during which an application under regulation 48 of the Solvency 2 Regulations 2015 must be determined,

if the Treasury considers it necessary to do so.

(2) The Treasury may only make regulations under paragraph (1) if, no later than six months before the end of the period to be extended, the Financial Conduct Authority and the Prudential Regulation Authority have submitted to the Treasury a joint assessment as to the effect of extending, and not extending, the period on—

- (a) persons (in general) to whom regulation 8 or 11 applies,
- (b) the UK financial system (within the meaning of section 11 of the 2000 Act(6)), and
- (c) the ability of the Financial Conduct Authority and Prudential Regulation Authority to discharge their functions in a way that advances their objectives under Part 1A of the 2000 Act(7).

(3) Regulations under paragraph (1) may not extend the period for the time being by more than 12 months.

(4) Regulations under paragraph (1) may make consequential amendments to regulation 6(7)(c), (8) and (9), regulation 23(2) and regulation 25(4).

(5) A statutory instrument which contains regulations under paragraph (1) is subject to annulment in pursuance of a resolution of either House of Parliament.

(6) Section 11 is inserted by section 6(1) of the Financial Services Act 2012 (c. 21).

(7) Part 1A is inserted by section 6(1) of the Financial Services Act 2012 (c. 21).

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument:
The EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 No. 1149

Date

Name
Name
Two of the Lords Commissioners of Her
Majesty's Treasury