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DRAFT STATUTORY INSTRUMENTS

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**2018 No.**

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

**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<sup>(1)</sup> (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,”.

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<sup>(1)</sup> Part 4A is inserted by section 11(2) of the Financial Services Act 2012 (c. 21).

(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 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<sup>(2)</sup>.

(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<sup>(3)</sup>);
- (b) the FCA, in any other case.

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<sup>(2)</sup> Section 22 is amended by section 7(1) of the Financial Services Act 2012 (c. 21) and by S.I. 2018/135.

<sup>(3)</sup> Section 22A is inserted by section 9 of the Financial Services Act 2012 (c. 21).