

Status: Point in time view as at 01/04/2013.

Changes to legislation: Financial Services and Markets Act 2000, Paragraph 19 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 3

EEA PASSPORT RIGHTS

Modifications etc. (not altering text)

- C1** Sch. 3 extended (with modifications) (1.12.2001) by S.I. 2001/2636, arts. 1(2)(b), 25-27; S.I. 2001/3538, art. 2(1)
- Sch. 3 extended (with modifications) (Gibraltar) (5.10.2001 for specified purposes, 1.12.2001 in so far as not already in force) by S.I. 2001/3084, arts. 1(1), 2-4 (as amended (16.6.2014) by The Alternative Investment Fund Managers Order 2014 (S.I. 2014/1292), arts. 1(2), 3 (which amending S.I. is itself amended by S.I. 2014/1313, arts. 1, 2(a)); and as amended (31.12.2020) by S.I. 2019/589, regs. 1(3), 5-9 (with reg. 12) (as amended by S.I. 2020/1274, regs. 1, 2)); S.I. 2001/3538, art. 2(1)
- Sch. 3 modified (1.12.2001) by S.I. 2001/3592, arts. 1(2), 114(3)(b), 128(3)(b) (with art. 23(2))

PART III

EXERCISE OF PASSPORT RIGHTS BY UK FIRMS

Establishment

- 19 (1) [F¹Subject to [F²sub-paragraphs (5ZA) [F³, (5ZB)] and (5A)],] a UK firm may not exercise an EEA right to establish a branch unless three conditions are satisfied.
- (2) The first is that the firm has given the [F⁴appropriate UK regulator], in the specified way, notice of its intention to establish a branch (“a notice of intention”) which—
- (a) identifies the activities which it seeks to carry on through the branch; and
- (b) includes such other information as may be specified.
- (3) [F⁵Subject to sub-paragraph (5B), the] activities identified in a notice of intention may include activities which are not regulated activities.
- [F⁶(4) The second is that—
- (a) the [F⁴appropriate UK regulator] has given notice in specified terms (“a consent notice”) to the host state regulator; and
- (b) where the firm is a management company which wishes to pursue the activity of collective portfolio management referred to in Annex II to the UCITS directive, the [F⁴appropriate UK regulator] has provided to the host state regulator—
- (i) confirmation that the firm has been authorised as a management company pursuant to the provisions of the UCITS directive;
- (ii) a description of the scope of the management company's authorisation; and

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(iii) details of any restriction on the types of UCITS that the management company is authorised to manage.]

[^{F7}(5) The third is—

- (a) if the EEA right in question derives from the insurance mediation directive, that one month has elapsed beginning with the date on which the firm received notice, in accordance with sub-paragraph (11), that the [^{F4}appropriate UK regulator] has given a consent notice;
- (b) in any other case, that either—
 - (i) the host state regulator has notified the firm (or, where the EEA right in question derives from any of the insurance directives, the [^{F4}appropriate UK regulator]) of the applicable provisions; or
 - (ii) two months have elapsed beginning with the date on which the [^{F4}appropriate UK regulator] gave the consent notice.]

[^{F8}(5ZA) This paragraph does not apply to a UK firm having an EEA right which is subject to the conditions of the reinsurance directive.]

[^{F9}(5ZB) This paragraph does not apply to a UK firm having an EEA right which is subject to the conditions of the emission allowance auctioning regulation, in respect of its exercise of that EEA right.]

[^{F10}(5A) If—

- (a) the EEA right in question derives from the insurance mediation directive, and
- (b) the EEA State in which the firm intends to establish a branch has not notified the Commission, in accordance with Article 6(2) of that directive, of its wish to be informed of the intention of any UK firm to establish a branch in its territory,

the second and third conditions do not apply (and so the firm may establish the branch to which its notice of intention relates as soon as the first condition is satisfied).]

[^{F11}(5B) If the firm is a UK investment firm, a notice of intention may not include ancillary services unless such services are to be provided in connection with the carrying on of one or more investment services and activities.

(5C) In sub-paragraph (5B) “ancillary services” has the meaning given in Article 4.1.3 of the markets in financial instruments directive.]

- (6) If the firm’s EEA right derives from [^{F12}the banking consolidation directive, ^{F13}[^{F14} . . . or, in the case of a credit institution authorised under the banking consolidation directive, the markets in financial instruments directive]] and the first condition is satisfied, the [^{F4}appropriate UK regulator] must give a consent notice to the host state regulator unless it has reason to doubt the adequacy of the firm’s resources or its administrative structure.

[^{F15}(6A) If the firm's EEA right derives from the UCITS directive and the first condition is satisfied, the [^{F4}appropriate UK regulator] must give a consent notice and information about the compensation scheme to the host state regulator unless it has reason to doubt the adequacy of the firm's resources or its administrative structure, and must do so within two months beginning with the date on which it received the firm's notice of intention.]

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- (7) If the firm's EEA right derives from any of the insurance directives and the first condition is satisfied, the [^{F4}appropriate UK regulator] must give a consent notice unless it has reason—
- (a) to doubt the adequacy of the firm's resources or its administrative structure, or
 - (b) to question the reputation, qualifications or experience of the directors or managers of the firm or the person proposed as the branch's authorised agent for the purposes of those directives,
- in relation to the business to be conducted through the proposed branch.
- [^{F16}(7A) If—
- (a) the firm's EEA right derives from the insurance mediation directive,
 - (b) the first condition is satisfied, and
 - (c) the second condition applies,
- the [^{F4}appropriate UK regulator] must give a consent notice, and must do so within one month beginning with the date on which it received the firm's notice of intention.]
- [^{F17}(7B) If the firm is a UK investment firm and the first condition is satisfied, the [^{F4}appropriate UK regulator] must give a consent notice to the host state regulator within three months beginning with the date on which it received the firm's notice of intention unless the [^{F4}appropriate UK regulator] has reason to doubt the adequacy of the firm's resources or its administrative structure.]
- [^{F18}(7C) Where the PRA is the appropriate UK regulator, it must consult the FCA before deciding whether to give a consent notice, except where sub-paragraph (7A) applies.
- (7D) Where the FCA is the appropriate UK regulator, it must consult the PRA before deciding whether to give a consent notice in relation to a UK firm whose immediate group includes a PRA-authorised person.]
- (8) If the [^{F4}appropriate UK regulator] proposes to refuse to give a consent notice it must give the firm concerned a warning notice.
- (9) If the firm's EEA right derives from any of the insurance directives and the host state regulator has notified it of the applicable provisions, the [^{F4}appropriate UK regulator] must inform the firm of those provisions.
- (10) Rules may specify the procedure to be followed by the [^{F4}appropriate UK regulator] in exercising its functions under this paragraph.
- (11) If the [^{F4}appropriate UK regulator] gives a consent notice it must give written notice that it has done so to the firm concerned.
- (12) If the [^{F4}appropriate UK regulator] decides to refuse to give a consent notice—
- (a) it must, [^{F19}within the relevant period], give the person who gave that notice a decision notice to that effect; and
 - (b) that person may refer the matter to the Tribunal.
- [^{F20}(12ZA) If the firm's EEA right derives from the UCITS directive, the [^{F4}appropriate UK regulator] must inform [^{F21}ESMA and] the Commission if it decides to refuse to give a consent notice, giving the reasons for that refusal.]

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- [^{F22}(12A) In sub-paragraph (12), “the relevant period” means—
- (a) if the firm’s EEA right derives from the UCITS directive, two months beginning with the date on which the [^{F4}appropriate UK regulator] received the notice of intention;
 - (b) in any other case, three months beginning with that date.]
- (13) In this paragraph, “applicable provisions” means the host state rules with which the firm will be required to comply when conducting business through the proposed branch in the EEA State concerned.
- (14) In sub-paragraph (13), “host state rules” means rules—
- (a) made in accordance with the relevant single market directive; and
 - (b) which are the responsibility of the EEA State concerned (both as to implementation and as to supervision of compliance) in accordance with that directive.
- (15) “Specified” means specified in rules.

Textual Amendments

- F1** Words in Sch. 3 para. 19(1) inserted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#), [reg. 5\(2\)](#)
- F2** Words in Sch. 3 para. 19(1) substituted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), [reg. 2\(1\)](#), [Sch. 1 para. 6\(f\)](#)
- F3** Word in Sch. 3 para. 19(1) inserted (20.7.2012) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2012 \(S.I. 2012/1906\)](#), arts. 1, [4\(10\)\(a\)](#)
- F4** Words in Sch. 3 para. 19 substituted (27.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 4 para. 10\(2\)](#) (with Sch. 20); S.I. 2013/423, arts. 2, 3, Sch.
- F5** Words in Sch. 3 para. 19(3) substituted (1.4.2007 for certain purposes, otherwise 1.11.2007) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), regs. 1(2), 3(4), [Sch. 4 para. 10\(a\)](#)
- F6** Sch. 3 para. 19(4) substituted (1.7.2011) by [The Undertakings for Collective Investment in Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), [reg. 2\(33\)\(e\)](#)
- F7** Sch. 3 para. 19(5) substituted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#), [reg. 5\(3\)](#)
- F8** Sch. 3 para. 19(5ZA) inserted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), [reg. 2\(1\)](#), [Sch. 1 para. 6\(g\)](#)
- F9** Sch. 3 para. 19(5ZB) inserted (20.7.2012) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2012 \(S.I. 2012/1906\)](#), arts. 1, [4\(10\)\(b\)](#)
- F10** Sch. 3 para. 19(5A) inserted (14.1.2005) by [The Insurance Mediation Directive \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/1473\)](#), [reg. 5\(4\)](#)
- F11** Sch. 3 para. 19(5B)(5C) inserted (1.4.2007 for certain purposes, otherwise 1.11.2007) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), regs. 1(2), 3(4), [Sch. 4 para. 10\(b\)](#)
- F12** Words in Sch. 3 para. 19(6) substituted (13.2.2004) by [The Collective Investment Schemes \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2066\)](#), [reg 4\(1\)\(a\)\(i\)](#)
- F13** Words in Sch. 3 para. 19(6) omitted (1.7.2011) by virtue of [The Undertakings for Collective Investment in Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), [reg. 2\(33\)\(f\)](#)
- F14** Words in Sch. 3 para. 19(6) substituted (1.4.2007 for certain purposes, otherwise 1.11.2007) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), regs. 1(2), 3(4), [Sch. 4 para. 10\(c\)](#) (with reg. 8)

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- F15** Sch. 3 para. 19(6A) inserted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(33)(g)**
- F16** Sch. 3 para. 19(7A) inserted (14.1.2005) by The Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003 (S.I. 2003/1473), **reg. 5(5)**
- F17** Sch. 3 para. 19(7B) inserted (1.4.2007 for certain purposes, otherwise 1.11.2007) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(4), **Sch. 4 para. 10(d)** (with reg. 8)
- F18** Sch. 3 para. 19(7C)(7D) inserted (27.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 4 para. 10(3)** (with Sch. 20); S.I. 2013/423, arts. 2, 3, Sch.
- F19** Words in Sch. 3 para. 19(12)(a) substituted (13.2.2004) by The Collective Investment Schemes (Miscellaneous Amendments) Regulations 2003 (S.I. 2003/2066), **reg 4(1)(a)(ii)**
- F20** Sch. 3 para. 19(12ZA) inserted after Sch. 3 para. 19(12) (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(33)(h)**
- F21** Words in Sch. 3 para. 19(12ZA) inserted (16.4.2012) by The Financial Services (Omnibus 1 Directive) Regulations 2012 (S.I. 2012/916), regs. 1, **2(15)**
- F22** Sch. 3 para. 19(12A) inserted (13.2.2004) by The Collective Investment Schemes (Miscellaneous Amendments) Regulations 2003 (S.I. 2003/2066), **reg 4(1)(a)(iii)**

Modifications etc. (not altering text)

- C1** Sch. 3 Pt. III para. 19 applied (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 104(3)(a) (with art. 23(2))
Sch. 3 Pt. III para. 19 modified (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 77(1)-(3)(7); S.I. 2001/3538, **art. 2(1)**
- C2** Sch. 3 Pt. III para. 19(2)(4)(6)(7) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 100 (with art. 23(2))

Commencement Information

- I1** Sch. 3 Pt. III para. 19 wholly in force at 1.12.2001; Sch. 3 Pt. III para. 19 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. III para. 19 in force for certain purposes at 25.2.2001 by S.I. 2001/516, **art. 2(b)(c)**, **Sch. Pts. 2, 3**; Sch. 3 Pt. III para. 19 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, **art. 2**, **Sch.**; Sch. 3 Pt. III para. 19 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, **art. 2(2)**, **Sch. Pt. 2**; Sch. 3 Pt. III para. 19 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

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