

**Status:** Point in time view as at 01/04/2002. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Financial Services and Markets Act 2000, Part II is up to date with all changes known to be in force on or before 26 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 II

##### EXERCISE OF PASSPORT RIGHTS BY EEA FIRMS

###### *Firms qualifying for authorisation*

- 12 (1) Once an EEA firm which is seeking to establish a branch in the United Kingdom in exercise of an EEA right satisfies the establishment conditions, it qualifies for authorisation.
- (2) Once an EEA firm which is seeking to provide services in the United Kingdom in exercise of an EEA right satisfies the service conditions, it qualifies for authorisation.

##### Commencement Information

- II** Sch. 3 Pt. II para. 12 wholly in force at 1.12.2001; Sch. 3 Pt. II para. 12 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. II para. 12 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. II para. 12 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, **art. 2**, **Sch.**; Sch. 3 Pt. II para. 12 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

###### *Establishment*

- 13 (1) The establishment conditions are that—

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- (a) the Authority has received notice (“a consent notice”) from the firm’s home state regulator that it has given the firm consent to establish a branch in the United Kingdom;
  - (b) the consent notice—
    - (i) is given in accordance with the relevant single market directive;
    - (ii) identifies the activities to which consent relates; and
    - (iii) includes such other information as may be prescribed; and
  - (c) the firm has been informed of the applicable provisions or two months have elapsed beginning with the date when the Authority received the consent notice.
- (2) If the Authority has received a consent notice, it must—
- (a) prepare for the firm’s supervision;
  - (b) notify the firm of the applicable provisions (if any); and
  - (c) if the firm falls within paragraph 5(d), notify its home state regulator of the applicable provisions (if any).
- (3) A notice under sub-paragraph (2)(b) or (c) must be given before the end of the period of two months beginning with the day on which the Authority received the consent notice.
- (4) For the purposes of this paragraph—
- “applicable provisions” means the host state rules with which the firm is required to comply when carrying on a permitted activity through a branch in the United Kingdom;
- “host state rules” means rules—
- (a) made in accordance with the relevant single market directive; and
  - (b) which are the responsibility of the United Kingdom (both as to implementation and as to supervision of compliance) in accordance with that directive; and
- “permitted activity” means an activity identified in the consent notice.

#### Modifications etc. (not altering text)

**C1** Sch. 3 para. 13 extended (1.12.2001) by [S.I. 2001/3592](#), [arts. 1\(2\)](#), [96](#) (with [art. 23\(2\)](#))

#### Commencement Information

**I2** Sch. 3 Pt. II para. 13 wholly in force at 1.12.2001; Sch. 3 Pt. II para. 13 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. II para. 13 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. II para. 13 in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), [art. 2](#), [Sch.](#); Sch. 3 Pt. II para. 13 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

### Services

- 14 (1) The service conditions are that—
- (a) the firm has given its home state regulator notice of its intention to provide services in the United Kingdom (“a notice of intention”);

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- (b) if the firm falls within paragraph 5(a) or (d), the Authority has received notice (“a regulator’s notice”) from the firm’s home state regulator containing such information as may be prescribed; and
  - (c) if the firm falls within paragraph 5(d), its home state regulator has informed it that the regulator’s notice has been sent to the Authority.
- (2) If the Authority has received a regulator’s notice or, where none is required by sub-paragraph (1), has been informed of the firm’s intention to provide services in the United Kingdom, it must—
- (a) prepare for the firm’s supervision; and
  - (b) notify the firm of the applicable provisions (if any).
- (3) A notice under sub-paragraph (2)(b) must be given before the end of the period of two months beginning on the day on which the Authority received the regulator’s notice, or was informed of the firm’s intention.
- (4) For the purposes of this paragraph—
- “applicable provisions” means the host state rules with which the firm is required to comply when carrying on a permitted activity by providing services in the United Kingdom;
  - “host state rules” means rules—
    - (a) made in accordance with the relevant single market directive; and
    - (b) which are the responsibility of the United Kingdom (both as to implementation and as to supervision of compliance) in accordance with that directive; and
  - “permitted activity” means an activity identified in—
    - (a) the regulator’s notice; or
    - (b) where none is required by sub-paragraph (1), the notice of intention.

**Modifications etc. (not altering text)**

**C2** Sch. 3 para. 14(1) extended (1.12.2001) by [S.I. 2001/3592](#), [arts. 1\(2\)](#), 97 (with [art. 23\(2\)](#))

**Commencement Information**

**I3** Sch. 3 Pt. II para. 14 wholly in force at 1.12.2001; Sch. 3 Pt. II para. 14 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. II para. 14 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. II para. 14 in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), [art. 2](#), [Sch.](#); Sch. 3 Pt. II para. 14 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

*Grant of permission*

- 15 (1) On qualifying for authorisation as a result of paragraph 12, a firm has, in respect of each permitted activity which is a regulated activity, permission to carry it on through its United Kingdom branch (if it satisfies the establishment conditions) or by providing services in the United Kingdom (if it satisfies the service conditions).
- (2) The permission is to be treated as being on terms equivalent to those appearing from the consent notice, regulator’s notice or notice of intention.

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- (3) Sections 21, 39(1) and 147(1) of the <sup>M1</sup>Consumer Credit Act 1974 (business requiring a licence under that Act) do not apply in relation to the carrying on of a permitted activity which is Consumer Credit Act business by a firm which qualifies for authorisation as a result of paragraph 12, unless the Director General of Fair Trading has exercised the power conferred on him by section 203 in relation to the firm.
- (4) “Consumer Credit Act business” has the same meaning as in section 203.

#### Commencement Information

- I4** Sch. 3 Pt. II para. 15 wholly in force at 1.12.2001; Sch. 3 Pt. II para. 15 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. II para. 15 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. II para. 15 in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), [art. 2](#), [Sch.](#); Sch. 3 Pt. II para. 15 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

#### Marginal Citations

- M1** 1974 c. 39.

VALID FROM 13/02/2004

#### *Power to restrict permission of management companies*

- 15A (1) Sub-paragraph (2) applies if—
- (a) a firm falling within paragraph 5(f) qualifies for authorisation as a result of paragraph 12(1) (establishment conditions satisfied); but
  - (b) the Authority determines that the way in which the firm intends to invite persons in the United Kingdom to become participants in any collective investment scheme which that firm manages does not comply with the law in force in the United Kingdom.
- (2) The Authority may give a notice to the firm and the firm’s home state regulator of the Authority’s determination under sub-paragraph (1)(b).
- (3) Paragraph 15(1) does not give a firm to which the Authority has given (and not withdrawn) a notice under sub-paragraph (2) permission to carry on through the firm’s United Kingdom branch the regulated activity of dealing in units in the collective investment schemes which the firm manages.
- (4) Any notice given under sub-paragraph (2) must be given before the end of the period of two months beginning with the day on which the Authority received the consent notice.
- (5) Sections 264(4) and 265(1), (2) and (4) apply to a notice given under sub-paragraph (2) as they apply to a notice given by the Authority under section 264(2).
- (6) If a decision notice is given to the firm under section 265(4), by virtue of sub-paragraph (5), the firm may refer the matter to the Tribunal.
- (7) In sub-paragraph (3)—
- (a) “units” has the meaning given by section 237(2); and

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- (b) the reference to “dealing in” units in a collective investment scheme must be read with—
- (i) section 22;
  - (ii) any relevant order under that section; and
  - (iii) Schedule 2.

VALID FROM 01/07/2011

*Representations and references to the Tribunal*

- [<sup>F1</sup> (1) Within a reasonable time after the end of the period for making representations, the Authority must decide, in the light of any representations made to it during that period by a person to whom notice has been given under paragraph 15A(4), whether to withdraw the notice.
- [<sup>F2</sup> 15B (2) If the Authority decides not to withdraw its notice, it must—
- (a) give a decision notice to each person to whom the notice under paragraph 15A(4) was given, and
  - (b) inform the firm's home state regulator and the Commission that authorisation has been refused, and of the grounds for the refusal.
- (3) The management company to whom the decision notice is given may refer the matter to the Tribunal.]

**Textual Amendments**

- F1** Sch. 3 para. 15A and cross-heading inserted (13.2.2004) by [The Collective Investment Schemes \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2066\)](#), **reg. 3(1)(d)**
- F2** Sch. 3 paras. 15A-15C substituted for Sch. 3 para. 15A (1.7.2011) by [The Undertakings for Collective Investment in Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), **reg. 2(33)(d)**

VALID FROM 01/07/2011

*Information to home state regulator*

- 15C (1) Where an EEA firm falling within paragraph 5(f) has applied to manage a UCITS established in the United Kingdom, the Authority must without delay inform the home state regulator of that firm of any problem of which they are aware that may materially affect the ability of the firm—
- (a) to perform its duties properly, or
  - (b) to comply with the home state rules.
- (2) In sub-paragraph (1), “home state rules” means rules—
- (a) made by the EEA State concerned in accordance with the UCITS directive; and
  - (b) which are the responsibility of that EEA State (both as to implementation and as to supervision of compliance) in accordance with that directive.]]

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#### Textual Amendments

- F1** Sch. 3 para. 15A and cross-heading inserted (13.2.2004) by [The Collective Investment Schemes \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2066\)](#), **reg. 3(1)(d)**
- F2** Sch. 3 paras. 15A-15C substituted for Sch. 3 para. 15A (1.7.2011) by [The Undertakings for Collective Investment in Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), **reg. 2(33)(d)**

#### *Effect of carrying on regulated activity when not qualified for authorisation*

- 16 (1) This paragraph applies to an EEA firm which is not qualified for authorisation under paragraph 12.
- (2) Section 26 does not apply to an agreement entered into by the firm.
- (3) Section 27 does not apply to an agreement in relation to which the firm is a third party for the purposes of that section.
- (4) Section 29 does not apply to an agreement in relation to which the firm is the deposit-taker.

#### Commencement Information

- I5** Sch. 3 Pt. II para. 16 wholly in force at 1.12.2001; Sch. 3 Pt. II para. 16 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. II para. 16 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. II para. 16 in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), **art. 2**, [Sch.](#); Sch. 3 Pt. II para. 16 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), **art. 2(1)**

#### *Continuing regulation of EEA firms*

- 17 Regulations may—
- (a) modify any provision of this Act which is an applicable provision (within the meaning of paragraph 13 or 14) in its application to an EEA firm qualifying for authorisation;
- (b) make provision as to any change (or proposed change) of a prescribed kind relating to an EEA firm or to an activity that it carries on in the United Kingdom and as to the procedure to be followed in relation to such cases;
- (c) provide that the Authority may treat an EEA firm's notification that it is to cease to carry on regulated activity in the United Kingdom as a request for cancellation of its qualification for authorisation under this Schedule.

#### Commencement Information

- I6** Sch. 3 Pt. II para. 17 wholly in force at 1.12.2001; Sch. 3 Pt. II para. 17 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. II para. 17 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. II para. 17 in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), **art. 2**, [Sch.](#); Sch. 3 Pt. II para. 17 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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### *Giving up right to authorisation*

- 18 Regulations may provide that in prescribed circumstances an EEA firm falling within paragraph 5(c) may, on following the prescribed procedure—
- (a) have its qualification for authorisation under this Schedule cancelled; and
  - (b) seek to become an authorised person by applying for a Part IV permission.

#### **Commencement Information**

- I7** Sch. 3 Pt. II para. 18 wholly in force at 1.12.2001; Sch. 3 Pt. II para. 18 not in force at Royal Assent see s. 431(2); Sch. 3 Pt. II para. 18 in force for specified purposes at 25.2.2001 by [S.I. 2001/516, art. 2\(b\)\(c\)](#), [Sch. Pts. 2, 3](#); Sch. 3 Pt. I para. 18 in force for specified purposes at 18.6.2001 by [S.I. 2001/1820, art. 2 Sch.](#); Sch. 3 Pt. II para. 18 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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