

SCHEDULES

SCHEDULE 4

EEA PASSPORT RIGHTS AND TREATY RIGHTS

PART 1

AMENDMENTS OF SCHEDULE 3 TO FSMA 2000: EEA PASSPORT RIGHTS

Introductory

1 Schedule 3 to FSMA 2000 (EEA passport rights) is amended as follows.

Exercise of passport rights by EEA firms

- 2 (1) Paragraph 13 (establishment) is amended as follows.
- (2) In sub-paragraphs (1) and (1A), for “Authority”, in each place, substitute “appropriate UK regulator”.
- (3) After sub-paragraph (1A) insert—
- “(1B) Where the PRA receives a consent notice, it must give a copy to the FCA without delay.
- (1C) Where the FCA receives a consent notice it must in prescribed cases give a copy to the PRA without delay.
- (1D) In a case where the FCA is the appropriate UK regulator, the consent of the PRA is required for any notice by the FCA for the purposes of sub-paragraph (1)(ba) which relates to—
- (a) a PRA-regulated activity,
- (b) a PRA-authorised person, or
- (c) a person whose immediate group includes a PRA-authorised person.
- (1E) If the FCA—
- (a) receives a consent notice, or
- (b) receives under sub-paragraph (1B) a copy of a consent notice, it must prepare for the firm's supervision.
- (1F) If the PRA—
- (a) receives a consent notice, or
- (b) receives under sub-paragraph (1C) a copy of a consent notice which identifies PRA-regulated activities or relates to a PRA-authorised person,

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it must prepare for the firm's supervision.”

- (4) In sub-paragraph (2)—
- (a) for “Authority” substitute “appropriate UK regulator”, and
 - (b) omit paragraph (a).
- (5) In sub-paragraph (3), for “Authority” substitute “appropriate UK regulator”.
- (6) In sub-paragraph (4), after the definition of “applicable provisions” insert—
- ““the appropriate UK regulator” means whichever of the FCA and the PRA is the competent authority for the purposes of the relevant single market directive;”.
- 3 (1) Paragraph 14 (services) is amended as follows.
- (2) In sub-paragraph (1), for “Authority”, in each place, substitute “appropriate UK regulator”.
- (3) After sub-paragraph (1) insert—
- “(1A) Relevant notice” means—
- (a) a regulator's notice, or
 - (b) where none is required by sub-paragraph (1), a notice informing the appropriate UK regulator of the firm's intention to provide services in the United Kingdom.
- (1B) Where the PRA receives a relevant notice, it must give a copy to the FCA without delay.
- (1C) Where the FCA receives a relevant notice, it must in prescribed cases give a copy to the PRA without delay.
- (1D) If the FCA—
- (a) receives a relevant notice, or
 - (b) receives under sub-paragraph (1B) a copy of a relevant notice,
- it must prepare for the firm's supervision.
- (1E) If the PRA—
- (a) receives a relevant notice, or
 - (b) receives under sub-paragraph (1C) a copy of a relevant notice which identifies PRA-regulated activities or relates to a PRA-
authorised person,
- it must, unless the firm falls within paragraph 5(e), prepare for the firm's supervision.”
- (4) For sub-paragraph (2) substitute—
- “(2) If the appropriate UK regulator has received a relevant notice, it must, unless the firm falls within paragraph 5(a) or (e), notify the firm of the applicable provisions (if any).”
- (5) Omit sub-paragraph (2A).
- (6) In sub-paragraph (3)—
- (a) for “(2)(b)” substitute “(2)”, and

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- (b) for the words from “Authority” to the end substitute “appropriate UK regulator received the relevant notice”.
- (7) In sub-paragraph (4), after the definition of “applicable provisions” insert—
““the appropriate UK regulator” means whichever of the FCA and the PRA is the competent authority for the purposes of the relevant single market directive;”.
- 4 (1) Paragraph 15A (application for approval to manage UCITS) is amended as follows.
- (2) For “Authority” or “Authority's”, in each place, substitute “appropriate UK regulator” or “appropriate UK regulator's”.
- (3) After sub-paragraph (6) insert—
“(6A) If—
(a) the FCA is the appropriate UK regulator, and
(b) the firm is, or the firm's immediate group includes, a PRA-
authorised person,
the FCA must give the PRA a copy of the notice under sub-paragraph (4).”
- (4) In sub-paragraph (7), before the definition of “specified” insert—
““the appropriate UK regulator” means whichever of the FCA and the PRA is the competent authority for the purposes of the UCITS directive;”.
- 5 (1) Paragraph 15B (representations and references to the Tribunal) is amended as follows.
- (2) For “Authority”, in both places, substitute “appropriate UK regulator”.
- (3) After sub-paragraph (3) insert—
“(4) In this paragraph “the appropriate UK regulator” has the same meaning as in paragraph 15A.”
- 6 In paragraph 15C (information to home state regulator), in sub-paragraph (1), for “Authority” substitute “appropriate UK regulator, as defined in paragraph 15A(7)”,.
- 7 In paragraph 17 (continuing regulation of EEA firms)—
(a) before paragraph (a) insert—
“(za) require the FCA and the PRA to notify each other about EEA firms qualifying for authorisation;”,
and
(b) in paragraph (c), for “the Authority” substitute “the FCA or the PRA”.
- 8 In paragraph 18 (giving up right to authorisation), in paragraph (b), for “Part IV permission” substitute “Part 4A permission”.

Exercise of passport rights by UK firms

- 9 In Part 3 (exercise of passport rights by UK firms), before the italic heading before paragraph 19 insert—

“Meaning of “the appropriate UK regulator”

18A In this Part of this Schedule “the appropriate UK regulator” means—

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- (a) where the UK firm is a PRA-authorised person, the PRA;
 - (b) in any other case, the FCA.”
- 10 (1) Paragraph 19 (establishment) is amended as follows.
- (2) For “Authority”, in each place, substitute “appropriate UK regulator”.
- (3) After sub-paragraph (7B) insert—
- “(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.”
- 11 (1) Paragraph 20 (services) is amended as follows.
- (2) For “Authority”, in each place, substitute “appropriate UK regulator”.
- (3) After sub-paragraph (3A) insert—
- “(3AA) Where the PRA is the appropriate UK regulator, it must consult the FCA before deciding whether to give a consent notice.
- (3AB) 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.”
- 12 In paragraph 20ZA (information for host state regulator), for “Authority”, in each place, substitute “appropriate UK regulator”.
- 13 In paragraph 20B (notice of intention to market), for “Authority”, in each place, substitute “appropriate UK regulator”.
- 14 In paragraph 22 (continuing regulation of UK firms), in sub-paragraph (3)—
- (a) for “the Authority's consent” substitute “the consent of the FCA or the PRA”, and
 - (b) in paragraph (b), for “the Authority” substitute “the FCA or the PRA”.
- 15 (1) Paragraph 23 (power to impose requirements) is amended as follows.
- (2) For “the Authority”, in each place, substitute “the FCA”.
- (3) In sub-paragraph (1)(a), for “Part IV permission” substitute “Part 4A permission”.
- (4) In sub-paragraphs (2) and (2A), for “section 45” substitute “section 55L or 55M”.
- (5) After sub-paragraph (2A) insert—
- “(2B) This paragraph does not affect any duty of the FCA to consult the PRA before exercising its power under section 55L or 55M.”
- 16 (1) Paragraph 24 (which relates to UK firms exercising rights under the banking consolidation directive) is amended as follows.
- (2) In sub-paragraph (1)(a), for “Part IV permission” substitute “Part 4A permission”.
- (3) In sub-paragraph (2)—

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- (a) for “the Authority”, in the first place, substitute “either regulator”,
- (b) in paragraph (a), for “Part IV permission” substitute “Part 4A permission”,
and
- (c) in paragraph (b), for “the Authority” substitute “that regulator”.

17 After paragraph 24 insert—

“Arrangements between FCA and PRA

- 24A (1) The regulators may make arrangements about—
- (a) how they will consult each other when required to do so by paragraph 19(7C) or (7D) or 20(3AA) or (3AB) or by regulations under paragraph 22;
 - (b) how each of them will act in response to any advice or representations received from the other.
- (2) The arrangements may require one regulator to obtain the consent of the other in specified circumstances before—
- (a) giving a consent notice under paragraph 19 or 20, or
 - (b) exercising specified functions under regulations under paragraph 22.
- (3) The arrangements must be in writing, and must specify—
- (a) the EEA rights to which they relate, and
 - (b) the date on which they come into force.
- (4) Where arrangements are in force under this paragraph, the regulators must exercise functions in accordance with the arrangements.
- (5) The regulators must publish any arrangements under this paragraph in such manner as they think fit.”

18 In paragraph 25 (information to be included in the public record) for “Authority” substitute “FCA”.

19 In paragraph 26 (UK management companies: delegation of functions), for “Authority”, in each place, substitute “appropriate UK regulator”.

20 In paragraph 27 (UK management companies: withdrawal of authorisation), for “Authority”, in each place, substitute “appropriate UK regulator”.

21 In paragraph 28 (management companies: request for information), for “Authority”, in each place, substitute “appropriate UK regulator”.