

SCHEDULE 4

Regulation 3(4)

AMENDMENTS OF SCHEDULE 3 TO THE ACT

1. Schedule 3 to the Act (EEA passport rights) is amended as follows.
2. In paragraph 1(d) for “investment services directive” substitute “markets in financial instruments directive”.
3. Paragraph 4 is repealed.
4. In paragraph 5(a)—
 - (a) for “Article 1.2 of the investment services directive” substitute “Article 4.1.1 of the markets in financial instruments directive”;
 - (b) for “Article 3” substitute “Article 5”.
5. After paragraph 10A(1) insert—

“UK investment firm

- 10B.** “UK investment firm” means a UK firm—
 - (a) which is an investment firm, and
 - (b) whose EEA right derives from the markets in financial instruments directive.”.
6. After paragraph 11 insert—

“Tied agent

- 11A.** “Tied agent” has the meaning given in Article 4.1.25 of the markets in financial instruments directive.”.
7. In paragraph 12, after sub-paragraph (2), insert—

“(3) If an EEA firm falling within paragraph 5(a) is seeking to use a tied agent established in the United Kingdom in connection with the exercise of an EEA right deriving from the markets in financial instruments directive, this Part of this Schedule applies as if the firm were seeking to establish a branch in the United Kingdom.

 - (4) But if—
 - (a) an EEA firm already qualifies for authorisation by virtue of sub-paragraph (1); and
 - (b) the EEA right which it is exercising derives from the markets in financial instruments directive,sub-paragraph (3) does not require the firm to satisfy the establishment conditions in respect of its use of the tied agent in question. ”.
8. In paragraph 13—
 - (a) in sub-paragraph (1)—
 - (i) at the end of paragraph (b) omit “and”;
 - (ii) after paragraph (b) insert—

“(ba) in the case of a firm falling within paragraph 5(a), the Authority has given the firm notice for the purposes of this paragraph or two months

(1) Paragraph 10A was inserted by [S.I. 2003/1473](#).

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have elapsed beginning with the date when the home state regulator gave the consent notice; and”;

(iii) in paragraph (c), at the beginning, insert “in the case of a firm falling within paragraph 5(b), (c), (d) or (f),”;

(b) in sub-paragraph (2), in paragraph (b), at the beginning insert “except if the firm falls within paragraph 5(a),”.

9. In paragraph 14—

(a) in sub-paragraph (1), after paragraph (b), insert—

“(ba) if the firm falls within paragraph 5(b) and is seeking to provide services in exercise of the right under Article 31.5 of the markets in financial instruments directive, the Authority has received notice (“a regulator’s notice”) from the firm’s home state regulator stating that the firm intends to exercise that right in the United Kingdom;”;

(b) after sub-paragraph (2) insert—

“(2A) Sub-paragraph (2)(b) does not apply in the case of a firm falling within paragraph 5(a).”.

10. In paragraph 19—

(a) in sub-paragraph (3) for “The” substitute “Subject to sub-paragraph (5B), the”;

(b) after sub-paragraph (5A)(2) insert—

“(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.”;

(c) in sub-paragraph (6)(3) for “the investment services directive or the UCITS directive” substitute “the UCITS directive or, in the case of a credit institution authorised under the banking consolidation directive, the markets in financial instruments directive”;

(d) after sub-paragraph (7A)(4) insert—

“(7B) If the firm is a UK investment firm and the first condition is satisfied, the Authority 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 Authority has reason to doubt the adequacy of the firm’s resources or its administrative structure.”.

11. In paragraph 20—

(a) in sub-paragraph (2) for “The” substitute “Subject to sub-paragraph (2A), the”;

(b) after sub-paragraph (2) insert—

“(2A) 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.

(2B) In sub-paragraph (2A) “ancillary services” has the meaning given in Article 4.1.3 of the markets in financial instruments directive.”;

(2) Paragraph 19(5A) was inserted by [S.I. 2003/1473](#).
(3) Paragraph 19(6) was amended by [S.I. 2003/2066](#).
(4) Paragraph 19(7A) was inserted by [S.I. 2003/1473](#).

- (c) in sub-paragraph (3)(5) for “investment services directive” substitute “markets in financial instruments directive”;
- (d) in sub-paragraph (4B)(6), after “insurance directives” insert “or from the markets in financial instruments directive”;
- (e) after sub-paragraph (4B) insert—
“(4BA) If the firm’s EEA right derives from the markets in financial instruments directive, the Authority must comply as soon as reasonably practicable with a request for information under the second sub-paragraph of Article 31.6 of that directive from the host state regulator.”.

12. After paragraph 20 insert—

“Tied agents

20A.—(1) If a UK investment firm is seeking to use a tied agent established in an EEA State (other than the United Kingdom) in connection with the exercise of an EEA right deriving from the markets in financial instruments directive, this Part of this Schedule applies as if the firm were seeking to establish a branch in that State.

(2) But if—

- (a) a UK investment firm has already established a branch in an EEA State other than the United Kingdom in accordance with paragraph 19; and
- (b) the EEA right which it is exercising derives from the markets in financial instruments directive,

paragraph 19 does not apply in respect of its use of the tied agent in question.”.

(5) Paragraph 20(3) was amended by [S.I. 2003/2066](#).

(6) Paragraph 20(4B) was inserted by [S.I. 2001/1376](#).