

Draft Regulations laid before Parliament under paragraphs 1(1) and (2) and 12(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2019 No. 0000

EXITING THE EUROPEAN UNION

FINANCIAL SERVICES AND MARKETS

The Financial Service Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019

Made - - - - 2019

Coming into force in accordance with regulation 1(2)

CONTENTS

PART 1

General provision

1. Citation and commencement

PART 2

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

CHAPTER 1

Persons other than those to whom regulation 8 or 11 applies

2. Transitional and saving provision: limited permission to carry on a regulated activity
3. Transitional and saving provision: exemption from the general prohibition

CHAPTER 2

Transitional provision: miscellaneous

4. Persons approved to perform controlled functions
5. Financial Services Compensation Scheme
6. Insurance

CHAPTER 3

Power to amend time limits in Parts 6 and 7 of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018

7. Power to amend time limits

PART 3

Amendment of the Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018

8. Provision for a contractual run-off regime
9. Miscellaneous amendment

PART 4

Amendment of the Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018

10. Temporary registration for run-off period

The Treasury make the following Regulations in exercise of the powers conferred by section 8(1) of, paragraph 1 of Schedule 4 to, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(a).

In accordance with paragraphs 1(1) and (2) and 12(1) of Schedule 7 to that Act, a draft of this instrument has been laid before, and approved by a resolution of, each House of Parliament.

PART 1

General provision

Citation and commencement

1.—(1) These Regulations may be cited as the Financial Service Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019.

(2) These Regulations come into force on the day after the day on which they are made.

PART 2

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

CHAPTER 1

Persons other than those to whom regulation 8 or 11 applies

Transitional and saving provision: limited permission to carry on a regulated activity

2. After Part 5 of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018(b) (power to amend time limits), insert—

“PART 6

Transitional and saving provision: limited permission to carry on a regulated activity

(a) 2018 c. 16.
(b) S.I. 2018/1149.

CHAPTER 1

Temporary limited permission to carry on a regulated activity

Deemed permission under Part 4A of the Financial Services and Markets Act 2000

28.—(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 specified (by reference to regulations 30 to 32) in regulation 33.

(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 28

29.—(1) Regulation 28 applies to a person who—

- (a) is authorised, under the law of the person's home state, to carry on an activity which is regulated by the person's home state regulator, and
- (b) satisfies the conditions in regulation 30, 31 or 32.

(2) If a person satisfies the conditions in regulation 31, a regulator may direct that, nevertheless, regulation 28 does not apply to the person.

(3) Regulation 28 applies to a person for the period determined in accordance with regulation 41.

Conditions to be satisfied for regulation 28 to apply: persons who cease to be authorised on exit day

30.—(1) The conditions are that the person is one—

- (a) who, immediately before exit day—
 - (i) 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
 - (ii) is carrying on such an activity in the United Kingdom through an establishment in the United Kingdom,
- (b) who, immediately before exit day, is not authorised to carry on a regulated activity by virtue of section 31(1)(a) of the 2000 Act,
- (c) who, on exit day, is not authorised to carry on a regulated activity by virtue of section 31(1)(a) of the 2000 Act, and
- (c) to whom, on exit day, regulation 8 does not apply.

(2) In this regulation—

- (a) reference to carrying on a regulated activity at a particular time includes where the performance of a pre-existing contract requires, or may require, a regulated activity to be carried on at another time;
- (b) reference to authorisation to carry on a regulated activity by virtue of section 31(1)(a) of the 2000 Act does not include such an authorisation by virtue of regulation 28.

Conditions to be satisfied for regulation 28 to apply: persons to whom regulation 8 ceases to apply

31.—(1) The conditions are that the person is one—

- (a) to whom regulation 8 ceases to apply, in accordance with regulation 17,
- (b) who, immediately before that regulation ceases to apply, is carrying on a regulated activity in the United Kingdom, and
- (c) who, on that regulation ceasing to apply, is not authorised to carry on a regulated activity by virtue of section 31(1)(a) of the 2000 Act.

(2) In this regulation, reference to authorisation to carry on a regulated activity by virtue of section 31(1)(a) of the 2000 Act does not include such an authorisation by virtue of regulation 28.

Conditions to be satisfied for regulation 28 to apply: persons to whom regulation 47 ceases to apply

32.—(1) The conditions are that the person is one—

- (a) to whom regulation 47 ceases to apply, in accordance with regulation 55,
- (b) who, on that regulation ceasing to apply, is not authorised to carry on a regulated activity by virtue of section 31(1)(a) of the 2000 Act, and
- (c) who is the subject of a direction under regulation 56(1)(b).

(2) In this regulation, reference to authorisation to carry on a regulated activity by virtue of section 31(1)(a) of the 2000 Act does not include such an authorisation by virtue of regulation 28.

Regulated activities to which regulation 28 applies

33.—(1) A regulated activity a person is permitted to carry on by virtue of regulation 28 is one—

- (a) which is necessary for the performance of a pre-existing contract,
- (b) which is carried on for the purposes of performing such a contract, and
- (c) to which paragraph (2) applies.

(2) This paragraph applies to a regulated activity—

- (a) in the case of a person who satisfies the conditions in regulation 30, which the person is, immediately before exit day, authorised to carry on in the United Kingdom by virtue of section 31(1)(b) or (c) of the 2000 Act;
- (b) in the case of a person who satisfies the conditions in regulation 31, which the person is, immediately before the day on which regulation 8 ceases to apply, permitted to carry on in the United Kingdom by virtue of that regulation;
- (c) in the case of a person who satisfies the conditions in regulation 32, in respect of which the person is, immediately before regulation 47 ceases to apply, an exempt person by virtue of that regulation.

(3) For the purposes of paragraph (1), the performance of a pre-existing contract includes the performance of an obligation under the contract which is contingent or conditional.

- (4) The person is also permitted to carry on a regulated activity which is necessary—
- (a) for the purposes of reducing the financial risk of—
 - (i) a party to a pre-existing contract, or
 - (ii) a third-party affected by the performance of a pre-existing contract;
 - (b) in order to transfer the property, rights or liabilities under a pre-existing contract to a person authorised to carry on a regulated activity by virtue of section 31(1)(a) of the 2000 Act (other than by virtue of these Regulations);
 - (c) in order to comply with a requirement imposed by or under an enactment.
- (5) A person is only permitted to carry on a regulated activity in so far as is necessary for the purposes specified in paragraph (1) or (3).
- (6) This regulation is subject to the power of a regulator to vary or cancel a permission under Part 4A of the 2000 Act.

CHAPTER 2

Temporary limited variation to carry on additional regulated activity

Deemed variation under Part 4A of the Financial Services and Markets Act 2000

34.—(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 specified (by reference to regulations 36 to 39) in regulation 40.

(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 34

35.—(1) Regulation 34 applies to a person who—

- (a) is authorised, under the law of the person's home state, to carry on an activity which is regulated by the person's home state regulator, and
- (b) satisfies the conditions in regulation 36, 37, 38 or 39.

(2) If a person satisfies the conditions in regulation 37, 38 or 39, a regulator may direct that, nevertheless, regulation 34 does not apply to the person.

(3) Regulation 34 applies to a person for the period determined in accordance with regulation 41.

Conditions to be satisfied for regulation 34 to apply: persons who cease to be authorised on exit day

36.—(1) The conditions are that the person is one—

- (a) who, immediately before exit day—
 - (i) 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
 - (ii) is carrying on such an activity in the United Kingdom, whether through an establishment in the United Kingdom or otherwise,
 - (b) who, immediately before exit day, is also authorised to carry on a regulated activity by virtue of section 31(1)(a) of the 2000 Act,
 - (c) to whom, on exit day, regulation 11 does not apply, and
 - (d) who, on exit day, is not authorised to carry on a regulated activity by virtue of section 31(1)(a) of the 2000 Act, in respect of the regulated activities which, immediately before that day, the person is carrying on by virtue of section 31(1)(b) or (c) of the 2000 Act.
- (2) In this regulation—
- (a) reference to carrying on a regulated activity at a particular time includes where the performance of a pre-existing contract requires, or may require, a regulated activity to be carried on at another time;
 - (b) reference to authorisation to carry on a regulated activity by virtue of section 31(1)(a) of the 2000 Act does not include such an authorisation by virtue of regulation 34.

Conditions to be satisfied for regulation 34 to apply: persons to whom regulation 8 ceases to apply

- 37.**—(1) The conditions are that the person is one—
- (a) to whom regulation 8 ceases to apply, in accordance with regulation 17,
 - (b) who, on that regulation ceasing to apply, is not authorised to carry on a regulated activity by virtue of section 31(1)(a) of the 2000 Act that the person is, immediately before that regulation ceases to apply, permitted to carry on by virtue of that regulation,
 - (c) who, immediately before that regulation ceases to apply, is carrying on a regulated activity in the United Kingdom which is not, immediately after that regulation ceases to apply, a regulated activity the person is authorised to carry on by virtue of section 31(1)(a) of the 2000 Act, and
 - (d) who, on that regulation ceasing to apply, is authorised to carry on a regulated activity by virtue of section 31(1)(a) of the 2000 Act.
- (2) In this regulation, reference to authorisation to carry on a regulated activity by virtue of section 31(1)(a) of the 2000 Act does not include such an authorisation by virtue of regulation 34.

Conditions to be satisfied for regulation 34 to apply: persons to whom regulation 11 ceases to apply

- 38.**—(1) The conditions are that the person is one—
- (a) to whom regulation 11 ceases to apply, in accordance with regulation 17,
 - (b) who, on that regulation ceasing to apply, is not authorised to carry on a regulated activity by virtue of section 31(1)(a) of the 2000 Act that the person is, immediately before that regulation ceases to apply, permitted to carry on by virtue of that regulation, and
 - (c) who, immediately before that regulation ceases to apply, is carrying on a regulated activity in the United Kingdom which is not, on that regulation ceasing to apply, a regulated activity the person is authorised to carry on by virtue of section 31(1)(a) of the 2000 Act.

(2) In this regulation, reference to authorisation to carry on a regulated activity by virtue of section 31(1)(a) of the 2000 Act does not include such an authorisation by virtue of regulation 34.

Conditions to be satisfied for regulation 34 to apply: persons to whom regulation 28 ceases to apply

39.—(1) The conditions are that the person is one—

- (a) to whom regulation 28 ceases to apply, in accordance with regulation 41(3),
- (b) who, immediately before that regulation ceases to apply, is carrying on a regulated activity in the United Kingdom which is not, immediately after that regulation ceases to apply, a regulated activity the person is authorised to carry on by virtue of section 31(1)(a) of the 2000 Act, and
- (c) who, on that regulation ceasing to apply, is not authorised to carry on a regulated activity by virtue of section 31(1)(a) of the 2000 Act that the person is, immediately before that regulation ceases to apply, permitted to carry on by virtue of that regulation.

(2) In this regulation, reference to authorisation to carry on a regulated activity by virtue of section 31(1)(a) of the 2000 Act does not include such an authorisation by virtue of regulation 34.

Regulated activities to which regulation 34 applies

40.—(1) A regulated activity included in those which a person is permitted to carry on by virtue of regulation 34 is one—

- (a) which is necessary for the performance of a pre-existing contract,
- (b) which is carried on for the purposes of performing such a contract,
- (b) which is not a regulated activity the person is authorised to carry on by virtue of section 31(1)(a) of the 2000 Act, and
- (c) to which paragraph (2) applies.

(2) This paragraph applies to a regulated activity—

- (a) in the case of a person who satisfies the conditions in regulation 36, which the person is, immediately before exit day, authorised to carry on in the United Kingdom by virtue of section 31(1)(b) or (c) of the 2000 Act;
- (b) in the case of a person who satisfies the conditions in regulation 37, which the person is, immediately before the day on which regulation 8 ceases to apply, permitted to carry on in the United Kingdom by virtue of that regulation;
- (c) in the case of a person who satisfies the conditions in regulation 38, which the person is, immediately before the day on which regulation 11 ceases to apply, permitted to carry on in the United Kingdom by virtue of that regulation;
- (d) in the case of a person who satisfies the conditions in regulation 39, which the person is, immediately before the day on which regulation 28 ceases to apply, permitted to carry on in the United Kingdom by virtue of that regulation.

(3) For the purposes of paragraph (1), the performance of a pre-existing contract includes the performance of an obligation under the contract which is contingent or conditional.

(4) The person is also permitted to carry on a regulated activity which is necessary—

- (a) for the purposes of reducing the financial risk of—
 - (i) a party to a pre-existing contract, or
 - (ii) a third-party affected by the performance of a pre-existing contract;

- (b) in order to transfer the property, rights or liabilities under a pre-existing contract to a person authorised to carry on a regulated activity by virtue of section 31(1)(a) of the 2000 Act (other than by virtue of these Regulations);
 - (c) in order to comply with a requirement imposed by or under an enactment.
- (5) A person is only permitted to carry on a regulated activity in so far as is necessary for the purposes specified in paragraph (1) or (3).
- (6) This regulation is subject to the power of a regulator to vary or cancel a permission under Part 4A of the 2000 Act.

CHAPTER 3

Temporary limited permission and variation: duration

Period during which regulation 28 or 34 is to apply

41.—(1) For the purposes of regulations 29(3) and 35(3), the period is one that begins with the relevant day and ends—

- (a) in so far as a regulated activity a person is permitted to carry on by virtue of regulation 28 or 34 is carried on for—
 - (i) the purpose of performing a contract of insurance, after fifteen years, or
 - (ii) any other purpose, after five years,beginning with the earlier of the day on which regulation 28, 34 or 47, as applicable, first applies to the person, or
- (b) if earlier—
 - (i) for the purposes of regulation 29(3), with a day determined in accordance with paragraph (3) or (7);
 - (ii) for the purposes of regulation 35(3), with a day determined in accordance with paragraph (5), (7) or (9);
 - (iii) for the purposes of regulations 29(3) and 35(3), with the day before the day on which the person ceases to be authorised, under the law of the person's home state, to carry on an activity which is regulated by the person's home state regulator.

(2) Paragraph (3) applies where a regulator makes a determination under section 55V to grant an application by a person to whom regulation 28 applies, for a permission or cancellation of a permission under Part 4A of the 2000 Act.

(3) Where this paragraph applies, the day referred to in paragraph (1)(b)(i) 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 or cancellation has effect.

(4) Paragraph (5) applies where a regulator makes a determination under section 55V to grant an application by a person to whom regulation 34 applies—

- (a) for a variation of a permission under Part 4A of the 2000 Act and, 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 34, or
- (b) for a cancellation of such a permission.

(5) Where this paragraph applies, the day referred to in paragraph (1)(b)(ii) 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.

(6) Paragraph (7) applies where a regulator exercises its power to cancel the Part 4A permission of a person to whom regulation 28 or 34 applies under section 55J of the 2000 Act.

(7) Where this paragraph applies, the day referred to in paragraph (1)(b) is the day on which the person is given a decision notice (issued in accordance with section 55Z(3) of the 2000 Act).

(8) Paragraph (9) applies where—

- (a) a regulator exercises its power to vary the Part 4A permission of a person to whom regulation 34 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 34.

(9) Where this paragraph applies, the day referred to in paragraph (1)(b)(ii) 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.

(10) 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 4

Modifications of the Financial Services and Markets Act 2000

Modifications of Part 2 of the Financial Services and Markets Act 2000

42. In respect of a person to whom regulation 28 or 34 applies, section 21 of the 2000 Act (restrictions on financial promotion) has effect as if—

- (a) in subsection (2), paragraph (b), were omitted;
- (b) after that subsection there were inserted—

“(2A) Subsection (2)(a) only applies to a person in so far as the communication is necessary for the performance of a pre-existing contract (within the meaning of regulation 46 of EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018).”

Modifications of Part 4A of the Financial Services and Markets Act 2000

43.—(1) In respect of a person to whom regulation 28 or 34 applies, Part 4A of the 2000 Act (permission to carry on regulated activities)(a) 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 28 or 34 of the 2018 Regulations,”.

(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 28 or 34 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—

(a) Part 4A is inserted by section 11(2) of the Financial Services Act 2012 (c. 21).

“(9) Where a person makes an application to vary the permission that the person is treated as having by virtue of regulation 28 or 34 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) Part 4A has effect as if, after section 55J (variation or cancellation on initiative of regulator), there were inserted—

“Additional power of cancellation: persons to whom regulation 28 or 34 of the 2018 Regulations applies

55JA.—(1) A regulator may, taking into account the matters specified in subsection (2), cancel the permission of a person—

- (a) to whom regulation 28 or 34 of the 2018 Regulations applies, and
- (b) who is carrying a regulated activity in the United Kingdom other than through an establishment in the United Kingdom,

and direct that regulation 47 of the 2018 Regulations is to apply to the person.

(2) The matters are—

- (a) the person’s conduct,
- (b) the practicality of supervision by a regulator,
- (c) the size of the person’s undertaking, and
- (d) the nature or extent of the regulated activity the person carries on.”

(6) 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), the notice must state the day on which regulation 28 or 34 of the 2018 Regulations ceases to apply.

(4) For the purposes of subsection (3), the day stated must be a day that falls before the end of—

- (a) in so far as a regulated activity a person is permitted to carry on by virtue of regulation 28 or 34 of the 2018 Regulations is carried on for the purpose of performing a contract of insurance, fifteen years,
- (b) in so far as a regulated activity a person is permitted to carry on by virtue of regulation 28 or 34 of those Regulations is carried on for any other purpose, five years,

beginning with the earlier of the day on which regulation 28, 34 or 47 of those Regulations, as applicable, first applies to the person.”

(7) 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;”.

CHAPTER 5

Savings

Requirements imposed by a domestic regulator

44.—(1) Paragraphs (2) to (4) apply in respect of a person to whom regulation 28 or 34 applies by virtue of the conditions in regulation 30 or 36.

(2) A requirement imposed by a regulator in accordance with section 196 of the 2000 Act (power of intervention) and which has effect immediately before the relevant day continues to have effect on and after the relevant day 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.
- (3) If it appears that, immediately before the relevant day, the circumstances set out in section 194(1)(a) or (b) of the 2000 Act are satisfied in respect of the person—
- (a) the FCA may exercise its power under section 55L(3) of that Act, and
 - (b) the PRA may exercise its power under section 55M(3) of that Act.
- (4) Paragraph (2) is without prejudice to section 55L(2) or 55M(2) of the 2000 Act.
- (5) Paragraph (6) applies in respect of a person to whom regulation 28 or 34 applies by virtue of the conditions in regulation 31, 37, 38 or 39.
- (6) A requirement imposed, or which has effect as if it were imposed, by a 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,
- and which has effect immediately before the relevant day, continues to have effect on and after the relevant day as if it were imposed by the regulator under that section.

Requirements imposed by a home state regulator

- 45.**—(1) This regulation applies in respect of a person to whom regulation 28 or 34 applies by virtue of the conditions in regulation 30 or 36.
- (2) 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 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.
- (3) The requirement only has effect in so far as it could have been imposed by a regulator under those sections.

CHAPTER 6

Interpretation of Part 6

Interpretation

- 46.** For the purpose of this Part—
- “contract of insurance” has the same meaning as in article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
- “establishment” means a branch;
- “home state regulator” has the meaning given by regulation 21;
- “pre-existing contract” means a contract entered into before—
- (a) in the case of a person who satisfies the conditions in regulation 32 or 39, the earlier of—
 - (i) the day on which regulation 47 first applies to the person, or
 - (ii) where applicable, the day on which regulation 28 or 34 first applies to the person;
 - (b) in any other case, the relevant day;
- “regulated activity” has the same meaning as in section 22 of the 2000 Act;
- “regulator” means the Financial Conduct Authority or the Prudential Regulation Authority;

“relevant day” means—

- (a) in the case of a person who satisfies the conditions in regulation 30 or 36, exit day;
- (b) in the case of a person who satisfies the conditions in regulation 31 or 37, the day on which regulation 8 ceases to apply;
- (c) in the case of a person who satisfies the conditions in regulation 32, the earlier of—
 - (i) the day on which regulation 47 first applies to the person, or
 - (ii) where applicable, the day on which regulation 28 or 34 first applies to the person;
- (d) in the case of a person who satisfies the conditions in regulation 38, the day on which regulation 11 ceases to apply;
- (e) in the case of a person to whom regulation 39 applies, the earlier of—
 - (i) the day on which regulation 28 or 34 first applies to the person, or
 - (ii) where applicable, the day on which regulation 47 first applies to the person.”

Transitional and saving provision: exemption from the general prohibition

3. After Part 6 of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018(a) (transitional and saving provision: limited permission to carry on a regulated activity), insert—

“PART 7

Transitional and saving provision: exemption from the general prohibition

CHAPTER 1

Exemption from the general prohibition

Exemption from the general prohibition under Part 2 of the Financial Services and Markets Act 2000

47.—(1) A person to whom this regulation applies is an exempt person for the purposes of section 19(1)(b) of the 2000 Act (the general prohibition).

(2) The exemption has effect only in respect of a regulated activity specified (by reference to regulations 49 to 51) in regulation 52.

Application of regulation 47

48.—(1) Regulation 47 applies to a person who—

- (a) is authorised, under the law of the person’s home state, to carry on an activity which is regulated by the person’s home state regulator, and
- (b) satisfies the conditions in regulation 49, 50 or 51.

(2) Regulation 47 applies to such a person for the period determined in accordance with regulation 66.

Conditions to be satisfied for regulation 47 to apply: persons who cease to be authorised on exit day

49. The conditions are that the person is one—

(a) Inserted by regulation 2.

- (a) who, immediately before exit day—
 - (i) 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
 - (ii) is carrying on such an activity in the United Kingdom other than through an establishment in the United Kingdom,
- (b) who, on exit day, is not authorised to carry on a regulated activity by virtue of section 31(1)(a) of the 2000 Act, and
- (c) to whom regulation 8 does not apply.

(2) In this regulation, reference to carrying on a regulated activity at a particular time includes where the performance of a pre-existing contract requires, or may require, a regulated activity to be carried on at another time.

Conditions to be satisfied for regulation 47 to apply: persons to whom regulation 28 ceases to apply

- 50.** The conditions are that the person is one—
- (a) to whom regulation 28 ceases to apply, in accordance with regulation 41(7),
 - (b) who, on regulation 28 ceasing to apply, is not authorised by virtue of section 31(1)(a) of the 2000 Act to carry on a regulated activity to which, immediately before regulation 28 ceases to apply, the person is permitted to carry on by virtue of that regulation,
 - (c) who, immediately before regulation 28 ceases to apply, is carrying on such an activity in the United Kingdom other than through an establishment in the United Kingdom, and
 - (d) who is the subject of a direction under section 55JA of the 2000 Act (inserted by regulation 43 in respect of persons to whom regulation 28 or 24 applies).

Conditions to be satisfied for regulation 47 to apply: persons to whom regulation 34 ceases to apply

- 51.** The conditions are that the person is one—
- (a) to whom regulation 34 ceases to apply, in accordance with regulation 41(5), (7) or (9),
 - (b) who, on regulation 34 ceasing to apply, is not authorised by virtue of section 31(1)(a) of the 2000 Act to carry on a regulated activity which, immediately before regulation 34 ceases to apply, the person is permitted to carry on by virtue of that regulation,
 - (c) who, immediately before regulation 34 ceases to apply, is carrying on such an activity in the United Kingdom other than through an establishment in the United Kingdom, and
 - (d) who is the subject of a direction under section 55JA of the 2000 Act (inserted by regulation 43 in respect of persons to whom regulation 28 or 24 applies).

Regulated activities to which regulation 47 has effect

52.—(1) A regulated activity in respect of which the exemption in regulation 47 has effect is one—

- (a) which is necessary for the performance of a pre-existing contract,
- (b) which is carried on for the purposes of performing such a contract, and
- (c) which is not a regulated activity the person is authorised to carry on by virtue of section 31(1)(a) of the 2000 Act,
- (d) which is an activity which, if carried on in the person's home state—

- (i) would need authorisation by the person’s home state regulator, and
 - (ii) is authorised by the person’s home state regulator, and
 - (e) to which paragraph (2) applies.
- (2) This paragraph applies to a regulated activity—
- (a) in the case of a person who satisfies the conditions in regulation 49, which the person is, immediately before exit day, authorised to carry on in the United Kingdom by virtue of section 31(1)(b) or (c) of the 2000 Act;
 - (b) in the case of a person who satisfies the conditions in regulation 50, which the person is, immediately before the day on which regulation 28 ceases to apply, permitted to carry on in the United Kingdom by virtue of that regulation;
 - (c) in the case of a person who satisfies the conditions in regulation 51, which the person is, immediately before the day on which regulation 34 ceases to apply, permitted to carry on in the United Kingdom by virtue of that regulation.
- (3) For the purposes of paragraph (1), the performance of a pre-existing contract includes the performance of an obligation under the contract which is contingent or conditional.
- (4) The person is also exempt in respect of a regulated activity which is necessary—
- (a) for the purposes of reducing the financial risk of—
 - (i) a party to a pre-existing contract, or
 - (ii) a third-party affected by the performance of a pre-existing contract;
 - (b) in order to transfer the property, rights or liabilities under a pre-existing contract to a person authorised to carry on a regulated activity by virtue of section 31(1)(a) of the 2000 Act (other than by virtue of these Regulations);
 - (c) in order to comply with a requirement imposed by or under an enactment.
- (5) A person is only exempt in respect of a regulated activity in so far as is necessary for the purposes specified in paragraph (1) or (3).

CHAPTER 2

Exemption from the general prohibition: procedure, etc.

Notification by a person to whom regulation 47 applies

- 53.**—(1) A person—
- (a) to whom regulation 47 applies, and
 - (b) who satisfies the conditions in regulation 49,
- must, as soon as reasonably practicable following the relevant day, notify the FCA that the person is carrying on a regulated activity in the United Kingdom.
- (2) For the purposes of paragraph (1), the notification must—
- (a) be made in such manner, and
 - (b) contain, or be accompanied by, such information,
- as the FCA may direct.

Information to be supplied by a person to whom regulation 47 applies

- 54.**—(1) A person to whom regulation 47 applies must notify the relevant regulator if—
- (a) an authorisation by a home state regulator is varied, or is to be varied;
 - (b) an authorisation by a home state regulator is to be cancelled;
 - (c) the person becomes the subject of a criminal investigation or criminal proceedings;
 - (d) the person is one in relation to whom an insolvency event occurs.

(2) A notification under paragraph (1) must be made as soon as reasonably practicable following the day on which it comes to the person’s attention that an event referred to in that paragraph has occurred.

(3) 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.

(4) In this regulation, “insolvency event” means—

- (a) in respect of persons to whom Directive 2001/24/EC of the European Parliament and of the Council of 4th April 2001 on the reorganisation and winding up of credit institutions, the commencement of winding-up proceedings (within the meaning of Article 2 of that Directive);
- (b) in respect of persons to whom Directive 2009/138/EC of the European Parliament and of the Council of 25th November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance applies, the commencement of winding-up proceedings (within the meaning of Article 268 of that Directive);
- (c) in respect of other persons, the commencement of insolvency proceedings (within the meaning of Article 2 of Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings).

(5) In this regulation, 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 regulation 47 has effect consist of or include a PRA-regulated activity (within the meaning of section 22A of the 2000 Act);
- (b) the FCA, in any other case.

CHAPTER 3

Exemption from the general prohibition: regulation

Variation and cancellation of an exemption under regulation 47

55.—(1) In respect of a person to whom regulation 47 applies, a regulator may—

- (a) remove a regulated activity from those in respect of which the exemption has effect,
- (b) cancel the exemption and direct that regulation 28 is to apply to the person, or
- (c) cancel the exemption.

(2) A regulator may only exercise the power in paragraph (1)(a) or (c), if it considers that the exercise of the power is necessary—

- (a) for the prevention, detection, investigation or prosecution of a criminal offence;
- (b) for the protection of consumers;
- (c) in order for the regulator to advance its objectives under Part 1A of the 2000 Act.

(3) In exercising the power in paragraph (1)(b), the regulator must take into account—

- (a) the person’s conduct,
- (b) the practicality of supervision by a regulator,
- (c) the size of the person’s undertaking, and
- (d) the nature or extent of the regulated activity the person carries on.

(4) Before exercising the power in paragraph (1)—

- (a) the PRA must consult the FCA;

- (b) the FCA must consult the PRA if, were the person to be an authorised person (within the meaning of section 31 of the 2000 Act), the person to whom regulation 47 applies would be carrying on one or more PRA-regulated activities (within the meaning of section 22A of the 2000 Act).

Variation and cancellation: procedure

56.—(1) In an urgent case, if a regulator decides to exercise the power under regulation 55(1), it must give a decision notice to the person to whom the decision relates.

(2) A decision notice under paragraph (1) must state when the decision takes effect (which may be immediately upon receipt).

(3) In any other case—

- (a) if a regulator proposes to exercise the power under regulation 55(1), it must give the person a warning notice;
- (b) if a regulator decides to exercise the power under regulation 55(1), it must give the person a decision notice.

(4) Part 26 of the 2000 Act (notices) applies to a notice under paragraph (3) as it applies to a notice given under that Act.

(5) For the purposes of this regulation, an urgent case is one in which the regulator reasonably considers it necessary for the decision to take effect as stated in the decision notice.

Variation and cancellation: appeal

57.—(1) A person in respect of whom the power under regulation 55(1) is exercised may refer the decision to exercise the power to the Upper Tribunal.

(5) Part 9 of the 2000 Act (hearings and appeals) applies to a reference to the Upper Tribunal under paragraph (1) as it applies to a reference under that Act.

Restriction on financial promotion

58. In respect of a person to whom regulation 47 applies, section 21 of the 2000 Act (restrictions on financial promotion) has effect as if—

- (a) in subsection (2), paragraph (b), were omitted;
- (b) after that subsection there were inserted—

“(2A) Subsection (2)(a) only applies to a person in so far as the communication is necessary for the performance of a pre-existing contract (within the meaning of regulation 68 of EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018).”

Product intervention rules

59.—(1) Product intervention rules (within the meaning of section 137D of the 2000 Act) apply to a person to whom regulation 47 applies as they apply to an authorised person.

(2) A prohibition or restriction under Article 42 of Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments applies to a person to whom regulation 47 applies as it applies to a person to whom that Regulation applies.

(3) A prohibition or restriction under Article 17 of Regulation (EU) No. 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products applies to a person to whom regulation 47 applies as it applies to a person to whom that Regulation applies.

Information gathering

60. The following provisions of the 2000 Act apply in respect of a person to whom regulation 47 applies, as they apply in respect of an authorised person (within the meaning of section 31 of that Act)—

- (a) section 165 (regulators' power to require information: authorised persons etc.);
- (b) section 166 (reports by skilled persons);
- (c) section 175 (information and documents: supplemental provisions);
- (d) section 177 (offences).

Publication of information provided under regulation 54 or 55

61.—(1) A regulator may, if it considers it is appropriate to do so, publish information provided under regulation 53 or 54.

(2) Publication under this regulation is to be in such manner as the regulator considers appropriate.

Public censure

62.—(1) If a regulator considers that—

- (a) a person has not notified the FCA in accordance with regulation 53 or 54, or
- (c) a person to whom regulation 47 applies has acted in a manner which the regulator considers contrary to the advancement of its objectives under Part 1A of the 2000 Act,

the regulator may publish a statement to that effect.

(2) If a regulator proposes to publish a statement under paragraph (1), it must give the person a warning notice.

(3) The warning notice about a proposal to publish a statement must set out the terms of the statement.

(4) If, having considered any representations made in response to a warning notice, the regulator decides to publish a statement under paragraph (1) (whether or not in the terms proposed), it must without delay give the person a decision notice.

(5) The decision notice must set out the terms of the statement.

(6) Section 393 of the 2000 Act (third party rights) applies in respect of the giving of notices under this regulation as it applies in respect of the giving of notices under that Act.

CHAPTER 4

Exemption from the general prohibition: fees

Power to charge fees

63.—(1) A regulator may make rules providing for the payment to it of fees in connection with the discharge of a function under this Part.

(2) Rules under paragraph (1) may not provide for the payment of a fee greater than an amount equal to the expenses incurred, or expected to be incurred, in the discharge of the function.

(3) Sections 138F to 138O of the 2000 Act (procedural provisions) apply to rules made by a regulator under paragraph (1) as they apply to rules made by a regulator under that Act.

CHAPTER 5

Exemption from the general prohibition: regulator functions

Disapplication of supervision, etc., requirements

64. Section 1L(2) and (3) of the 2000 Act (supervision, monitoring and enforcement) does not apply in respect of a person to whom regulation 47 applies.

Exemption from liability in damages

65. A function of a regulator under this Part, not being a function under the 2000 Act which the regulator is treated as having by virtue of this Part, is to be treated—

- (a) where the regulator is the FCA, as if it were a function of the FCA for the purposes of paragraph 25 of Schedule 1ZA of the 2000 Act (exemption from liability in damages);
- (b) where the regulator is the PRA, as if it were a function of the PRA for the purposes of paragraph 33 of Schedule 1ZB of that Act (exemption from liability in damages).

CHAPTER 6

Exemption from the general prohibition: duration

Period during which regulation 47 is to apply

66. For the purposes of regulation 48(2), the period is one that begins with the relevant day and ends—

- (a) in so far as a regulated activity in respect of which the exemption in regulation 47 has effect is carried on for—
 - (i) the purpose of performing a contract of insurance, after fifteen years, or
 - (ii) any other purpose, after five years,beginning with the earlier of the day on which regulation 28, 34 or 47, as applicable, first applies to the person, or
- (b) if earlier, with the day—
 - (i) on which a person to whom regulation 47 applies is given a decision notice in respect of a decision under regulation 55(1)(b) or (c);
 - (ii) before the day on which the person ceases to be authorised, under the law of the person's home state, to carry on an activity which is regulated by the person's home state regulator.

CHAPTER 7

General provision

Directions

67. 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 of Part 7

68. For the purposes of this Part—

“contract of insurance” has the same meaning as in article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

“establishment” means a branch;

“the FCA” means the Financial Conduct Authority;

“home state regulator” has the meaning given by regulation 21;

“the PRA” means the Prudential Regulation Authority;

“pre-existing contract”—

(a) in the case of a person who satisfies the conditions in regulation 49, means a contract entered into before exit day;

(b) in the case of a person who satisfies the conditions in regulation 50 or 51, has the same meaning, in respect of the person, as in Part 6;

“regulated activity” has the same meaning as in section 22 of the 2000 Act;

“regulator” means the FCA or the PRA;

“relevant day” means—

(a) in the case of a person who satisfies the conditions in regulation 49, exit day;

(b) in the case of a person who satisfies the conditions in regulation 50, the earlier of—

(i) the day on which regulation 28 first applies to the person, or

(ii) where applicable, the day on which regulation 47 first applies to the person;

(c) in the case of a person who satisfies the conditions in regulation 51, the earlier of—

(i) the day on which regulation 34 first applies to the person, or

(ii) where applicable, the day on which regulation 47 first applies to the person.”

CHAPTER 2

Transitional provision: miscellaneous

Persons approved to perform controlled functions

4. After Part 7 of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018^(a) (transitional and saving provision: exemption from the general prohibition), insert—

“PART 8

Transitional provision: miscellaneous

Performance of regulated activities

69.—(1) In respect of a person to whom regulation 28 or 34 applies, Part 5 of the Financial Services and Markets Act 2000 (performance of regulated activities) is modified as follows.

(2) That Part has effect as if, after section 59 (approval for particular arrangements), there were inserted—

(a) Inserted by regulation 3.

“59ZZA Deemed approval for particular arrangements

(1) The appropriate regulator may by notice given to an authorised person treat as approved under section 59 a person who is the subject of an application under section 60.

(2) The period during which a person may be so treated begins on such day as the notice may specify and ends—

- (a) after twelve months, or
- (b) if earlier—
 - (i) if the application is granted, with the day before the day stated in the written notice (given in accordance with section 62(1)) or decision notice (given in accordance with section 62(3)) as that from which approval has effect;
 - (ii) if the application is refused, with the day before the day stated in the decision notice (given in accordance with section 62(3)) as that on which the person is to cease to be treated as approved.

(3) The period in subsection (2) is subject to—

- (a) the withdrawal of an approval under section 63;
- (b) the expiry of an approval under section 66(3)(ac).

(4) Reference in an enactment to an approval given by the appropriate regulator under section 59 (however expressed) is to be read, unless the contrary intention appears, as including an approval a person is treated as having by virtue of this section.”

(3) Section 61 (controlled functions: determination of applications) has effect as if, for subsection (3A), there were substituted—

“(3A) The “period for consideration” means the period of twelve months beginning with the date on which the regulator receives the application under section 60.”

(4) Section 62 (applications for approval: procedure and right to refer to Tribunal) has effect as if—

- (a) after subsection (1), there were inserted—

“(1A) The notice must state the day from which the approval has effect.”

- (b) after subsection (3), there were inserted—

“(3A) The notice must state—

- (a) where the decision is to refuse the application, the day on which the person who is the subject of an application is to cease to be treated as approved in accordance with section 59ZZA;
- (b) where the decision is to grant the application subject to conditions or for a limited period (or both), the day from which the approval has effect.”

(5) Section 63 (withdrawal of approval) has effect as if, after subsection (4), there were inserted—

“(4A) If a regulator decides to withdraw an approval that a person is treated as having by virtue of section 59ZZA, the decision notice must state the day on which that approval is to cease to have effect.

(4B) For the purposes of subsection (4A), the day stated must be a day that falls before the end of the period of twelve months after the day on which that approval first has effect.””

Financial Services Compensation Scheme

5.—(1) After regulation 69 of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018(a) (performance of regulated activities), insert—

“Financial Services Compensation Scheme: a person to whom regulation 28 or 34 applies

70.—(1) In respect of a person to whom regulation 28 or 34 applies, Part 15 of the Financial Services and Markets Act 2000 (Financial Services Compensation Scheme) is modified as follows.

(2) Section 213 (the compensation scheme) has effect as if—

(a) after subsection (4), there were inserted—

“(4A) The compensation scheme may not provide for the scheme manager to have the power to impose levies on a person who is not to be regarded as a relevant person by virtue of subsection (9A).”;

(b) after subsection (9), there were inserted—

“(9A) But a person to whom subsection (9B) applies and who, at that time—

(a) has not established a branch in the United Kingdom, and

(b) is treated as if—

(i) the person has permission to carry on a regulated activity by virtue of regulation 28 of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018, or

(ii) the person’s permission to carry on a regulated activity were varied in accordance with regulation 34 of those Regulations,

is not to be regarded as a relevant person in relation to a regulated activity which the person has permission to carry on by virtue of regulation 28 or 34 of those Regulations.

(9B) This subsection applies to a person who is, immediately before exit day—

(a) a credit institution,

(b) an insurance intermediary,

(c) an investment firm,

(d) a mortgage intermediary,

(e) a management company, or

(f) an AIFM in relation to all activities authorised by its home state regulator other than—

(i) any services specified by Annex I to the alternative investment fund managers directive in respect of an authorised unit trust scheme, an authorised contractual scheme or an authorised open-ended investment company, or

(ii) any activities undertaken as an authorised manager of an ELTIF, as permitted by the ELTIF Regulation.

(9C) For the purposes of subsection (9B)—

“AIFM” means an AIFM as defined in Article 4.1(b) of the alternative investment fund managers directive which—

(a) Inserted by regulation 4.

- (a) is, immediately before exit day, authorised in accordance with Article 6.1 of that directive by its home state regulator to provide services specified by Annex I to that directive, and
- (b) provides those services, or services specified by Article 6.4 of that directive (discretionary portfolio management and non-core services), in the United Kingdom;

“an authorised contractual scheme” has the meaning given by section 237(3);

“an authorised open-ended investment company” has the meaning given by section 237(3);

“an authorised unit trust scheme” has the meaning given by section 237(3);

“collective portfolio management services” means those services set out in Annex II to the UCITS directive which a management company is providing to a UCITS in the United Kingdom;

“credit institution” means a credit institution as defined in Article 4.1(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26th June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 which is, immediately before exit day, authorised (within the meaning of Article 8 of Directive 2013/36/EU of the European Parliament and of the Council of 26th June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC) by its home state regulator;

“ELTIF” means a UK AIF that is, immediately before exit day, authorised by the FCA as a European long-term investment fund under Article 6 of the ELTIF Regulation;

“ELTIF Regulation” means Regulation (EU) No 2015/760 of the European Parliament and of the Council of 29th April 2015 on European Long-term Investment Funds;

“insurance intermediary” means an insurance intermediary or an ancillary insurance intermediary as defined in Article 2.1(3) and (4) of Directive 2016/97/EC of the European Parliament and of the Council of 20th January 2016 on insurance distribution (recast) which is, immediately before exit day, registered (under Article 3 of that Directive) by its home state regulator;

“investment firm” means an investment firm as defined in Article 4.1(1) of Directive 2014/65/EU of the European Parliament and of the Council of 15th May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU which is, immediately before exit, authorised (within the meaning of Article 5 of that Directive) by its home state regulator;

“management company” means a management company as defined in Article 2.1(b) of the UCITS directive which—

- (a) is, immediately before exit day, authorised (within the meaning of Article 6 of that Directive) by its home state regulator to provide services of the kind specified by Article 6.3 of the UCITS directive (management of portfolios of investments) except collective portfolio management services, and
- (b) is providing those services in the United Kingdom;

“mortgage intermediary” means—

- (a) a credit intermediary as defined in Article 4(5) of Directive 2014/17/EU of the European Parliament and of the Council of 4th February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010, or

(b) a person providing advisory services as defined in Article 4(21) of that Directive,

which is, immediately before exit day, admitted (in accordance with Article 29.1 of that Directive) by its home state regulator;

“UCITS” means an undertaking for collective investment in transferable securities which is, immediately before exit day, authorised in accordance with Article 5 of the UCITS directive;

“UK AIF” has the meaning given in regulation 2 of the Alternative Investment Fund Managers Regulations 2013.”

(3) Section 224 (scheme manager’s power to inspect documents held by Official Receiver, etc.) has effect as if, after subsection (3), there were inserted—

“(3A) But a person who is not to be regarded as a relevant person for the purposes of section 213, by virtue of subsection (9A) of that section, is not to be regarded as a relevant person for the purposes of this section.”

Financial Services Compensation Scheme: a person to whom regulation 47 applies

71.—(1) A person to whom regulation 47 applies and who is—

- (a) carrying out a contract of insurance,
- (b) an AIFM, or
- (c) the manager of a UCITS,

shall be treated as if the person were an authorised person for the purposes of section 213 (the compensation scheme) of the 2000 Act.

(2) For the purposes of paragraph (1)—

“AIFM” means an AIFM as defined in Article 4.1(b) of the alternative investment fund managers directive which—

- (a) is, immediately before exit day, authorised in accordance with Article 6.1 of that directive by its home state regulator to provide services specified by Annex 1 to that directive, and
- (b) provides those services, or services specified by Article 6.4 of that directive (discretionary portfolio management and non-core services), in the United Kingdom;

“alternative investment fund managers directive” means Directive 2011/61/EU of the European Parliament and of the Council of 8th June 2011 on Alternative Investment Fund Managers;

“contract of insurance” has the same meaning as in article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

“home state regulator” has the meaning given by regulation 21;

“UCITS” means an undertaking for collective investment in transferable securities which is, immediately before exit day, authorised in accordance with Article 5 of the UCITS directive;

“UCITS directive” means Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities.”

(2) In consequence of paragraph (1), in regulation 1 of those Regulations (citation, commencement and interpretation), in paragraph (3), for “and 24” substitute “, 24, 70 and 71”.

Insurance

6. After regulation 71 of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018(a) (Financial Services Compensation Scheme), insert—

“Insurance and reinsurance - modification of Part 4 of the Solvency 2 Regulations 2015

72.—(1) In respect of a person to whom regulation 28 or 34 applies, Part 4 of the Solvency 2 Regulations 2015 (approvals) is modified as follows.

(2) That Part has effect as if, after Chapter 2, there were inserted—

“CHAPTER 2A

Deemed approval

54A.—(1) A person to whom regulation 28 or 34 of the EEA Passport Rights (Amendment etc., and Transitional Provisions) Regulations 2018 (“the 2018 Regulations”) applies is to be treated as if the PRA has granted to the person an approval, determined in accordance with paragraphs (2) and (3), with respect to the person carrying on business in the UK through a branch.

(2) In respect of a person—

(a) who, immediately before the day on which regulation 28 or 34 of the 2018 Regulations first applies to the person, is approved by a supervisory authority of an EEA State—

(i) in respect of the matter mentioned in the first column of the following table and

(ii) under the provision of the Solvency 2 Directive mentioned in the corresponding entry in the second column of the table, and

(b) whose approval is applicable to the person’s permanent presence in the UK, the approval a person is treated as having is the approval mentioned in the corresponding entry in the third column of the table.

<i>Solvency 2 approval</i>	<i>Approval granted by supervisory authority of an EEA State</i>	<i>Deemed approval granted by the PRA</i>
Matching adjustment to the relevant risk-free interest rate term structure	Article 77b of the Solvency 2 Directive	Regulation 42
Volatility adjustment to the relevant risk-free interest rate term structure	Article 77d of the Solvency 2 Directive	Regulation 43
Ancillary own funds	Article 90 of the Solvency 2 Directive	Regulation 44
Classification of own funds	Article 95 of the Solvency 2 Directive	Regulation 46
Full and partial internal model	Article 112 and 113 of the Solvency 2 Directive	Regulation 48(1)(a)

(a) Inserted by regulation **Error! Reference source not found.**

Group internal model to calculate the solvency capital requirement of an insurance or reinsurance undertaking	Article 231 or 233(5) of the Solvency 2 Directive	Regulation 48(1)(a)
Policy for changing a full and partial internal model	Article 115 of the Solvency 2 Directive	Regulation 48(1)(c)
Transitional measure on risk-free interest rates	Article 308c of the Solvency 2 Directive	Regulation 53
Transitional measure on technical provisions	Article 308d of the Solvency 2 Directive	Regulation 54
Design of the basic solvency capital requirement	Article 104(7) of the Solvency 2 Directive	Regulation 47

(3) In respect of a person—

(a) who, immediately before the day on which regulation 28 or 34 of the 2018 Regulations first applies to the person, is applying a volatility adjustment to the relevant risk-free interest rate term structure in order to calculate the best estimate referred to in Article 77(2) of the Solvency 2 Directive on a date specified by the PRA, and

(b) whose approval by a supervisory authority of an EEA State is not required, the approval a person is treated as having is an approval under regulation 43.”

(3) Regulation 55 (decisions: written notices) has effect as if, after paragraph (2), there were inserted—

“(2A) If the PRA revokes an approval, the written notice must, where applicable, state the day on which regulation 54A ceases to apply.””

CHAPTER 3

Power to amend time limits in Parts 6 and 7 of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018

Power to amend time limits

7.—(1) After Part 8 of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 (transitional provision: miscellaneous)(a), insert—

“PART 9

Power to amend the duration of transitional and saving provision under Parts 6 and 7

Power to amend the duration of transitional and saving provision

73.—(1) The Treasury may by regulations made by statutory instrument amend—

(a) regulation 41(1)(a)(i) or (ii) to extend the period during which regulation 28 or 34 is to apply, or

(a) Inserted by regulations 4 to 6.

- (b) regulation 67(a)(i) or (ii) to extend the period during which regulation 47 is to apply,

if the Treasury considers it necessary to do so.

(2) The Treasury may only make regulations under paragraph (1) if, no later than six months before the end of the period to be extended, the Financial Conduct Authority and the Prudential Regulation Authority have submitted to the Treasury a joint assessment as to the effect of extending, and not extending, the period on—

- (a) persons (in general) to whom regulation 28, 34 or 47 applies,
- (b) the UK financial system (within the meaning of section 11 of the 2000 Act), and
- (c) the ability of the Financial Conduct Authority and Prudential Regulation Authority to discharge their functions in a way that advances their objectives under Part 1A of the 2000 Act.

(3) Regulations under paragraph (1) may not extend the period for the time being by more than 5 years.

(3) The power to make regulations under paragraph (1) may be exercised—

- (a) so as to make different provision for different cases or purposes;
- (b) in relation to all or only some of the cases or purposes for which it may be exercised.

(4) A statutory instrument which contains regulations under paragraph (1) is subject to annulment in pursuance of a resolution of either House of Parliament.”

(2) In consequence of paragraph (1), in the heading to regulation 27 of those Regulations, after “under” insert “Parts 3 and 4 of”.

PART 3

Amendment of the Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018

Provision for a contractual run-off regime

8. After regulation 19 of the Central Counterparties (Amendment etc., and Transitional Provision) (EU Exit) Regulations 2018(a) insert—

“Eligibility for run-off regime

19A.—(1) This regulation applies to a central counterparty established in a third country where it—

- (a) meets the conditions in regulation 17(1)(a); and
- (b) is not taken to be recognised pursuant to Article 25 of the EMIR Regulation in accordance with regulation 13 or 17.

(2) This regulation also applies to a central counterparty established in a third country which ceases to be taken to be recognised pursuant to Article 25 of the EMIR Regulation in accordance with regulation 17 where—

- (a) the conditions in regulation 19(2), 19(4), 19(5)(a) or 19(6) apply, or
- (b) the condition in regulation 19(5)(b) applies and the Bank determines that the central counterparty should not be recognised pursuant to Article 25 of the EMIR Regulation.

(a) S.I. 2018/1184.

(3) Where this regulation applies, a central counterparty is to be taken to be recognised pursuant to Article 25 of the EMIR Regulation for the relevant period and in respect of the relevant services, activities and classes of financial instruments.

(4) Article 25.5 of the EMIR Regulation does not apply to a central counterparty which is taken to be recognised pursuant to Article 25 of the EMIR Regulation by virtue of this regulation.

Relevant period for the purposes of regulation 19A

19B.—(1) In relation to a central counterparty within regulation 19A(1), the relevant period for the purposes of regulation 19A(3) is the period of one year beginning with exit day.

(2) In relation to a central counterparty within regulation 19A(2), the relevant period for the purposes of regulation 19A(3) is a period determined by the Bank of England in a particular case being a period of no more than one year beginning with the day on which the central counterparty ceases to be taken to be recognised pursuant to Article 25 of the EMIR regulation in accordance with regulation 17.

(3) Where paragraph (2) applies, the Bank may direct that the central counterparty be subject to such transitional arrangements as it considers necessary or expedient.

Relevant services, activities and financial instruments for the purposes of regulation 19A

19C.—(1) In relation to a central counterparty within regulation 19A(1), the relevant services, activities and classes of financial instruments referred to in regulation 19A(3) are those which meet the conditions in regulation 17(5).

(2) In relation to a central counterparty within regulation 19A(2), the relevant services, activities and classes of financial instruments referred to in regulation 19A(3) are those in respect of which the central counterparty was taken to be recognised pursuant to Article 25 of the EMIR Regulation in accordance with regulation 17 immediately before the central counterparty ceased to be taken to be recognised in accordance with that regulation.

Cessation of eligibility for the run-off regime

19D.—(1) A central counterparty is to cease to be taken to be recognised pursuant to Article 25 of the EMIR regulation in accordance with regulation 19A(3) where the conditions in paragraph (2) or (3) are met.

(2) The first condition is that the central counterparty is recognised by the Bank of England pursuant to Article 25 of the EMIR Regulation.

(3) The second condition is that Bank of England determines that a central counterparty to which regulation 19A applies shall cease to be taken to be recognised pursuant to Article 25 of the EMIR Regulation in accordance with regulation 19A(3) where the Bank considers that there would otherwise be an adverse effect on the financial stability of the United Kingdom.

(4) Where paragraph (3) applies, the Bank—

- (a) must specify the date on which regulation 19A is to cease to apply to the central counterparty (not being a date which occurs after the end of the relevant period); and
- (b) may direct that the cessation is to have effect subject to such transitional arrangements as it considers necessary or expedient.”

Miscellaneous amendment

9. For regulation 7 (definitions) substitute—

“Definitions

7. In Article 2, after point (31) insert—

“(32) ‘third country’ means a country other than the United Kingdom;

(33) ‘working day’ means any day other than—

(a) Saturday or Sunday,

(b) Christmas Day or Good Friday, or

(c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom;

(34) ‘FCA’ means the Financial Conduct Authority;

(35) ‘PRA’ means the Prudential Regulation Authority.””

PART 4

Amendment of the Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018

Temporary registration for run-off period

10. In Part 3 of the Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018(a) (transitional and saving provision), after Chapter 2 (temporary registration) insert—

“CHAPTER 2A

Temporary registration for run-off period

Temporary deemed registration under the European Markets Infrastructure Regulation for run-off period

13A.—(1) A person to whom this regulation applies is to be treated as if the person is registered as a trade repository under Chapter 1 of Title 6 of the European Markets Infrastructure Regulation.

(2) Reference in an enactment to a person registered as a trade repository under that Chapter, however expressed, is to be read, unless the contrary intention appears, as including a person treated as being so registered by virtue of this regulation.

Application of regulation 13A

13B. Regulation 13A applies to a person—

(a) who satisfies the condition in regulation 13C;

(b) for the period determined in accordance with regulation 13D.

Condition to be satisfied for regulation 13A to apply

13C. The condition is that the FCA has determined that regulation 9 should cease to apply to a person in accordance with regulation 13, or that the FCA has withdrawn registration of the trade repository in accordance with Article 71 of the European Market Infrastructure Regulation.

(a) S.I. 2018/[xxxx].

Period during which regulation 13A is to apply

13D. For the purposes of regulation 13B(b), the period is a period of one year beginning with exit day or such shorter period as the FCA may determine in a particular case.

Transitional arrangements during the run-off period

13E.—(1) The FCA may make such transitional arrangements imposing requirements in respect of the registration of a person to whom regulation 13A applies as it considers necessary or expedient.

(2) A requirement may, in particular, be imposed—

- (a) so as to require the person concerned to take specified action, including to make arrangements for the transfer of data stored by the person to a person to whom regulation 9 applies or a person which is registered as a trade repository under Chapter 1 of Title 6 of the European Markets Infrastructure Regulation, or
- (b) so as to require the person concerned to refrain from taking specified action.

(3) A requirement may be imposed by reference to the person's relationship with—

- (a) the person's group, or
- (b) other members of the person's group.

Notification of a decision to impose requirements under regulation 13E

13F.—(1) This regulation applies to an exercise of the FCA's power to impose a requirement in respect of the registration of a person ('P') in accordance with regulation 13E.

(2) The imposition of the requirement takes effect—

- (a) immediately, if the notice given under paragraph (4) states that that is the case,
- (b) on such date as may be specified in the notice, or
- (c) if no date is specified in the notice, when the matter to which the notice relates is no longer subject to review.

(3) The imposition of a requirement may be expressed to take effect immediately (or on a specified date) only if the FCA, having regard to the ground on which it is exercising its power, reasonably considers that it is necessary for the imposition of the requirement to take effect immediately (or on that date).

(4) If the FCA proposes to impose, or imposes a requirement, it must give P written notice.

(5) The notice must—

- (a) give details of the requirement,
- (b) state the FCA's reasons for imposition of the requirement,
- (c) inform P that P may make representations to the FCA within such period as may be specified in the notice, whether or not P has referred the matter to the Upper Tribunal ("the Tribunal"),
- (d) inform P of when the imposition of the requirement takes effect, and
- (e) inform P of P's right to refer the matter to the Tribunal.

(6) The FCA may extend the period allowed under the notice for making representations.

(7) If, having considered any representations made by P, the FCA decides—

- (a) to impose the requirement, in the way proposed, or
- (b) if the requirement has been imposed, not to rescind the imposition of the requirement,

it must give P written notice.

- (8) If, having considered any representations made by P, the FCA decides—
- (a) not to impose the requirement in the way proposed,
 - (b) to impose a different requirement, or
 - (c) to rescind a requirement which has effect,

it must give P written notice.

(9) A notice under paragraph (7) must inform P of P’s right to refer the matter to the Tribunal.

(10) A notice under paragraph (8)(b) must comply with paragraph (5).

(11) If a notice informs P of P’s right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

Right to refer to the Tribunal

13G. P (within the meaning of regulation 13F) may refer to the Tribunal the FCA’s decision to impose a requirement under regulation 13E.

Application of Part 9 of the Financial Services and Markets Act 2000

13H.—(1) Part 9 of the Financial Services and Markets Act 2000 (‘the Act’) (hearings and appeals) applies in respect of a reference to the Tribunal under regulation 13G as it applies in respect of a reference to the Tribunal under the Act but with the following modifications.

(2) In section 133 (proceedings before Tribunal: general provisions)—

- (a) in subsection (1)—
 - (i) omit “(whether made under this or any other Act)”;
 - (ii) in paragraph (a), omit “or the PRA”;
 - (iii) omit paragraphs (b) and (c);
- (b) omit subsection (1A);
- (c) in subsection (2), omit “, (b) or (c)”;
- (d) omit subsection (5);
- (e) in subsection (6), omit “In any other case,”;
- (f) omit subsection (7A).

(3) Omit section 133A (proceedings before the Tribunal: decision and supervisory notices, etc).

(4) In section 133B (offences), in subsection (1)—

- (a) in paragraph (a), omit “or the PRA”;
- (b) omit paragraphs (b) and (c).”

Name

Name

Date

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend EU Exit regulations to provide further transitional provision in respect of the performance of contracts entered into before exit day. The paragraphs of section 8(2) of the European Union (Withdrawal) Act 2018 (c. 16) which are relevant to each Part of these Regulations are those which are relevant to the Regulations amended (as cited in each).

Part 1 of these Regulations makes general provision as to citation and commencement;

Part 2 of these Regulations amends the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 (S.I. 2018/1149) (“the 2018 Regulations”):

- in Chapter 1:
 - new Part 6 of the 2018 Regulations provides a regime by which a person to whom:
 - (a) regulation 8 or 11 of those Regulations does not apply on exit day, and who carries on a regulated activity through a branch in the United Kingdom, or
 - (b) regulation 8 or 11 of those Regulations ceases to apply,may continue to perform a regulated activity in the United Kingdom while contracts relating to those activities are run down;
 - new Part 7 of the 2018 Regulations provides a regime by which a person to whom regulation 8 or 11 of those Regulations does not apply on exit day, and who does not carry on a regulated activity through a branch in the United Kingdom, may continue to perform a regulated activity in the United Kingdom while those activities are run down;
- Chapter 2 provides miscellaneous transitional provision in respect of other areas of financial services legislation which have a bearing on the provision made by Chapter 1;
- Chapter 3 provides a power for the Treasury to amend certain time limits set by the provision made by Chapter 1;

Part 3 of these Regulations amends the Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 (S.I. 2018/1184) to provide for a run-off regime for central counterparties that do not enter the temporary recognition regime or who cease to be part of that regime where they have not gained permanent recognition;

Part 4 of these Regulations amends the Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018 (S.I. 2018/[xxxx]) to provide for a run-off regime for trade repositories that cease to be part of the temporary registration regime where they have not gained permanent registration.

An impact assessment of the effect that this instrument, and certain other instruments made by HM Treasury under the European Union (Withdrawal) Act 2018, will have on the costs of business, the voluntary sector and the public sector is available from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is published alongside this instrument at www.legislation.gov.uk.