
STATUTORY INSTRUMENTS

2019 No. 405

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

PART 2

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

CHAPTER 2

Transitional provision: miscellaneous

Financial Services Compensation Scheme

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

(1) Inserted by regulation 4.

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) 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”.