

*Status: Point in time view as at 26/06/2020.*

*Changes to legislation: Financial Services and Markets Act 2000, SCHEDULE 4 is up to date with all changes known to be in force on or before 06 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 4

Section 31(1)(c).

#### TREATY RIGHTS

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

**C1** Sch. 4 extended (1.12.2001) by [S.I. 2001/2636](#), [arts. 1\(2\)\(b\)](#), 28-32; [S.I. 2001/3538](#), [art. 2\(1\)](#)

##### Definitions

1 <sup>F1</sup>(1) In this Schedule—

<sup>F2</sup> .....

“Treaty firm” means a person—

(a) whose head office is situated in an EEA State (its “home state”) other than the United Kingdom; and

(b) which is recognised under the law of that State as its national; and

“home state regulator”, in relation to a Treaty firm, means the competent authority of the firm’s home state for the purpose of its home state authorisation (as to which see paragraph 3(1)(a)).

<sup>F3</sup>(2) Section 425A (meaning of “consumers”) applies for the purposes of this Schedule.]

##### Textual Amendments

**F1** Sch. 4 para. 1 renumbered (8.4.2010) as Sch. 4 para. 1(1) by virtue of [Financial Services Act 2010 \(c. 28\)](#), [ss. 24\(1\)](#), [26\(1\)\(g\)\(l\)](#), [Sch. 2 para. 35\(2\)](#)

**F2** Sch. 4 para. 1(1): definition of “consumers” omitted (8.4.2010) by virtue of [Financial Services Act 2010 \(c. 28\)](#), [ss. 24\(1\)](#), [26\(1\)\(g\)\(l\)](#), [Sch. 2 para. 35\(3\)](#)

**F3** Sch. 4 para. 1(2) inserted (8.4.2010) by [Financial Services Act 2010 \(c. 28\)](#), [ss. 24\(1\)](#), [26\(1\)\(g\)\(l\)](#), [Sch. 2 para. 35\(4\)](#)

##### Firms qualifying for authorisation

2 Once a Treaty firm which is seeking to carry on a regulated activity satisfies the conditions set out in paragraph 3(1), it qualifies for authorisation.

##### Exercise of Treaty rights

3 (1) The conditions are that—

(a) the firm has received authorisation (“home state authorisation”) under the law of its home state to carry on the regulated activity in question (“the permitted activity”);

(b) the relevant provisions of the law of the firm’s home state—

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- (i) afford equivalent protection; or
  - (ii) satisfy the conditions laid down by [<sup>F4</sup>an EU] instrument for the co-ordination or approximation of laws, regulations or administrative provisions of member States relating to the carrying on of that activity; and
  - (c) the firm has no EEA right to carry on that activity in the manner in which it is seeking to carry it on.
- (2) A firm is not to be regarded as having home state authorisation unless its home state regulator has so informed the [<sup>F5</sup>appropriate UK regulator] in writing.
- [<sup>F6</sup>(2A) In sub-paragraph (2) “the appropriate UK regulator” means—
- (a) where any of the activities to which the notification under that sub-paragraph relates is a PRA-regulated activity, the PRA;
  - (b) in any other case, the FCA.
- (2B) Where the PRA receives a notification under sub-paragraph (2), it must give a copy to the FCA without delay.
- (2C) Where the FCA receives a notification under sub-paragraph (2), it must in prescribed cases give a copy to the PRA without delay.]
- (3) Provisions afford equivalent protection if, in relation to the firm’s carrying on of the permitted activity, they afford consumers protection which is at least equivalent to that afforded by or under this Act in relation to that activity.
- (4) A certificate issued by the Treasury that the provisions of the law of a particular EEA State afford equivalent protection in relation to the activities specified in the certificate is conclusive evidence of that fact.

#### Textual Amendments

- F4** Words in Sch. 4 para. 3(1)(b)(ii) substituted (22.4.2011 with application in accordance with art. 3 of the amending S.I.) by virtue of [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), [art. 6\(1\)\(3\)\(4\)](#)
- F5** Words in [Sch. 4 para. 3\(2\)](#) substituted (27.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 4 para. 23\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), arts. 2, 3, Sch.
- F6** [Sch. 4 para. 3\(2A\)-\(2C\)](#) inserted (27.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 4 para. 23\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), arts. 2, 3, Sch.

#### Commencement Information

- I1** Sch. 4 para. 3 wholly in force at 1.12.2001; Sch. 4 para. 3 not in force at Royal Assent see s. 431(2); Sch. 4 para. 3 force for specified purposes at 3.9.2001 by [S.I. 2001/2632](#), [art. 2\(2\)](#), [Sch. Pt. 2](#); Sch. 4 para. 3 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

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### *[<sup>F7</sup>Notification between UK regulators*

#### **Textual Amendments**

- F7** Sch. 4 para. 3A and crossheading inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 4 para. 24 (with Sch. 20); S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2; S.I. 2013/423, art. 3, Sch.

- 3A Regulations may require the PRA and the FCA to notify each other about Treaty firms qualifying for authorisation.]

#### *Permission*

- 4 (1) On qualifying for authorisation under this Schedule, a Treaty firm has permission to carry on each permitted activity through its United Kingdom branch or by providing services in the United Kingdom.
- (2) The permission is to be treated as being on terms equivalent to those to which the firm's home state authorisation is subject.
- (3) If, on qualifying for authorisation under this Schedule, a firm has [<sup>F8</sup>a Part 4A permission] which includes permission to carry on a permitted activity, the [<sup>F9</sup>appropriate UK regulator] must give a direction cancelling the permission so far as it relates to that activity.
- (4) The [<sup>F10</sup>appropriate UK regulator] need not give a direction under sub-paragraph (3) if it considers that there are good reasons for not doing so.
- [<sup>F11</sup>(5) The appropriate UK regulator" means—
- (a) where the Treaty firm is a PRA-authorised person, the FCA or the PRA;
  - (b) in any other case, the FCA.]

#### **Textual Amendments**

- F8** Words in Sch. 4 para. 4(3) substituted (27.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 4 para. 25(2)(a) (with Sch. 20); S.I. 2013/423, arts. 2, 3, Sch.
- F9** Words in Sch. 4 para. 4(3) substituted (27.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 4 para. 25(2)(b) (with Sch. 20); S.I. 2013/423, arts. 2, 3, Sch.
- F10** Words in Sch. 4 para. 4(4) substituted (27.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 4 para. 25(3) (with Sch. 20); S.I. 2013/423, arts. 2, 3, Sch.
- F11** Sch. 4 para. 4(5) inserted (27.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 4 para. 25(4) (with Sch. 20); S.I. 2013/423, arts. 2, 3, Sch.

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### Notice to [<sup>F12</sup>UK regulator]

#### Textual Amendments

**F12** Words in Sch. 4 para. 5 cross-heading substituted (27.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 4 para. 26(5) (with Sch. 20); S.I. 2013/423, arts. 2, 3, Sch.

- 5 (1) Sub-paragraph (2) applies to a Treaty firm which—
- (a) qualifies for authorisation under this Schedule, but
  - (b) is not carrying on in the United Kingdom the regulated activity, or any of the regulated activities, which it has permission to carry on there.
- (2) At least seven days before it begins to carry on such a regulated activity, the firm must give [<sup>F13</sup>the appropriate UK regulator] written notice of its intention to do so.
- [<sup>F14</sup>(2A) "The appropriate UK regulator" means—
- (a) where any of the activities to which the notice relates is a PRA-regulated activity, the PRA;
  - (b) in any other case, the FCA.
- (2B) Where the PRA receives a notice under sub-paragraph (2), it must give a copy to the FCA without delay.
- (2C) Where the FCA receives a notice under sub-paragraph (2) from—
- (a) a PRA-authorized person, or
  - (b) a person whose immediate group includes a PRA-authorized person,
- it must give a copy to the PRA without delay.]
- (3) If a Treaty firm to which sub-paragraph (2) applies has given notice under that sub-paragraph, it need not give such a notice if it again becomes a firm to which that sub-paragraph applies.
- [<sup>F15</sup>(4) Subsections (1), (4) and (8) of section 55U apply to a notice under sub-paragraph (2) as they apply to an application for a Part 4A permission.]

#### Textual Amendments

**F13** Words in Sch. 4 para. 5(2) substituted (27.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 4 para. 26(2) (with Sch. 20); S.I. 2013/423, arts. 2, 3, Sch.

**F14** Sch. 4 para. 5(2A)-(2C) inserted (27.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 4 para. 26(3) (with Sch. 20); S.I. 2013/423, arts. 2, 3, Sch.

**F15** Sch. 4 para. 5(4) substituted (24.1.2013 for specified purposes, 27.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 4 para. 26(4) (with Sch. 20); S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3; S.I. 2013/423, arts. 2, 3, Sch.

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

**C2** Sch. 4 para. 5(1) amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, arts. 1(2), 3(12); S.I. 2001/3538, art. 2(1)

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#### **Commencement Information**

- I2** Sch. 4 para. 5 wholly in force at 1.12.2001; Sch. 4 para. 5 not in force at Royal Assent see s. 431(2); Sch. 4 para. 5 force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; Sch. 4 para. 5 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

#### *Offences*

- 6 (1) A person who contravenes paragraph 5(2) is guilty of an offence.
- (2) In proceedings against a person for an offence under sub-paragraph (1) it is a defence for him to show that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.
- (3) A person is guilty of an offence if in, or in connection with, a notice given by him under paragraph 5(2) he—
- (a) provides information which he knows to be false or misleading in a material particular; or
  - (b) recklessly provides information which is false or misleading in a material particular.
- (4) A person guilty of an offence under this paragraph is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.

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