

STATUTORY INSTRUMENTS

2018 No. 1149

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

[^{F1}PART 7 U.K.]

Transitional and saving provision: exemption from the general prohibition

Textual Amendments

- F1** Pt. 7 inserted (1.3.2019) by [The Financial Services Contracts \(Transitional and Saving Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/405\)](#), regs. 1(2), 3

CHAPTER 1 U.K.

Exemption from the general prohibition

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

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.

Modifications etc. (not altering text)

- C1** Reg. 47 applied (31.12.2020) by [The Taxes \(Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/689\)](#), regs. 1, 36(2)(3) (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)

Application of regulation 47 U.K.

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, [^{F2}49A,] 50 or 51.

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

Changes to legislation: The EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018, PART 7 is up to date with all changes known to be in force on or before 23 June 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) View outstanding changes

Textual Amendments

- F2** Word in [reg. 48](#) inserted (16.3.2019) by [The Financial Services \(Gibraltar\) \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/589\)](#), regs. 1(2), **11(7)**

Conditions to be satisfied for regulation 47 to apply: persons who cease to be authorised on [^{F3}IP completion day] **U.K.**

49. The conditions are that the person is one—

- (a) who, immediately before [^{F4}IP completion 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 [^{F5}or, subject to paragraph (3), providing a payment service] in the United Kingdom other than through an establishment in the United Kingdom,

[who is not a Gibraltar firm,]

^{F6}(aa)

- (b) who, on [^{F4}IP completion 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.

[^{F7}(3) The reference to providing a payment service in paragraph (a)(ii) applies only to a credit institution which was providing the service in the United Kingdom immediately before [^{F4}IP completion day] in accordance with the exercise of an EEA passport right under Title 5 of [Directive 2013/36/EU](#) as in force immediately before [^{F4}IP completion day].]

Textual Amendments

- F3** Words in [reg. 49](#) heading substituted (31.1.2020 immediately before exit day) by [The Financial Services \(Consequential Amendments\) Regulations 2020 \(S.I. 2020/56\)](#), regs. 1, **6(2)(y)**
- F4** Words in [reg. 49](#) substituted (31.1.2020 immediately before exit day) by [The Financial Services \(Consequential Amendments\) Regulations 2020 \(S.I. 2020/56\)](#), regs. 1, **6(2)(y)**
- F5** Words in [reg. 49\(a\)\(ii\)](#) inserted (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **6(5)(a)**
- F6** [Reg. 49\(aa\)](#) inserted (16.3.2019) by [The Financial Services \(Gibraltar\) \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/589\)](#), regs. 1(2), **11(8)**
- F7** [Reg. 49\(3\)](#) inserted (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **6(5)(b)**

Conditions to be satisfied for regulation 47 to apply: persons to whom regulation 28 ceases to apply **U.K.**

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 **U.K.**

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 **U.K.**

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,
- (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 [F⁸IP completion 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—

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- (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).

Textual Amendments

F8 Words in [reg. 52](#) substituted (31.1.2020 immediately before exit day) by [The Financial Services \(Consequential Amendments\) Regulations 2020 \(S.I. 2020/56\)](#), regs. 1, [6\(2\)\(z\)](#)

CHAPTER 2 **U.K.**

Exemption from the general prohibition: procedure, etc.

Notification by a person to whom regulation 47 applies **U.K.**

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 **U.K.**

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.

[^{F9}Information to be supplied to a party to a contract with a person to whom regulation 47 applies **U.K.**

54A.—(1) A person to whom regulation 47 applies must notify each party to a pre-existing contract with the person that the person is—

- (a) an exempt person for the purposes of section 19(1)(b) of the 2000 Act, and
- (b) not regulated by the FCA or the PRA.

(2) The notification must be made as soon as reasonably practicable following the day on which regulation 47 first applies to the person.

(3) A person to whom regulation 47 applies must notify each party to a pre-existing contract with the person if there is a material change, on or after IP completion day, in respect of—

- (a) the protection afforded to assets held by the person in relation to the performance of the contract,
- (b) the mechanisms for resolving disputes in connection with the contract, or
- (c) the schemes available for compensation in relation to the contract.

(4) The relevant regulator may issue guidance in respect of compliance with an obligation under this regulation.

(5) For the purposes of paragraph (4), reference to the relevant regulator is a reference to—

- (a) the FCA;
- (b) 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), the PRA.]

Textual Amendments

- F9** Reg. 54A inserted (31.12.2020) by [The Financial Services \(Miscellaneous\) \(Amendment\) \(EU Exit\) \(No. 2\) Regulations 2019 \(S.I. 2019/1010\)](#), regs. 1(3), **3** (as amended by [S.I. 2020/1301](#), regs. 1, 3, [Sch. para. 44\(a\)](#)); 2020 c. 1, Sch. 5 para. 1(1)

CHAPTER 3 **U.K.**

Exemption from the general prohibition: regulation

Variation and cancellation of an exemption under regulation 47 **U.K.**

- 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 **U.K.**

- 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 **U.K.**

- 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.

(2) 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 **U.K.**

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—

[^{F10}(a) for subsection (2) there were substituted—

“(2) But subsection (1) does not apply if A is a person to whom regulation 47 of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 applies.”]

(b) after that subsection there were inserted—

“(2A) Subsection (2)^{F11}... 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 the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018).”

Textual Amendments

F10 Reg. 58(a) substituted (31.1.2020) by The Financial Services (Miscellaneous) (Amendment) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1010), regs. 1(3), 4(a); 2020 c. 1, Sch. 5 para. 1(1)

F11 Word in reg. 58(b) omitted (31.1.2020) by virtue of The Financial Services (Miscellaneous) (Amendment) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/1010), regs. 1(3), 4(b); 2020 c. 1, Sch. 5 para. 1(1)

Product intervention rules **U.K.**

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 **U.K.**

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).

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Publication of information provided under regulation 54 or 55 U.K.

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 U.K.

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

- (a) a person has not notified the FCA in accordance with regulation 53 or 54, or
- (b) 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 U.K.

Exemption from the general prohibition: fees

Power to charge fees U.K.

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 U.K.

Exemption from the general prohibition: regulator functions

Disapplication of supervision, etc., requirements U.K.

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 U.K.

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 U.K.

Exemption from the general prohibition: duration

Period during which regulation 47 is to apply U.K.

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 U.K.

General provision

Directions U.K.

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 U.K.

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;

[^{F12}“payment service” has the same meaning as in regulation 2 of the Payment Services Regulations 2017;]

“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 [^{F13}IP completion day];

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- (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, [^{F13}IP completion 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.]

Textual Amendments

- F12** Words in reg. 68 inserted (6.9.2019) by [The Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/1212\)](#), regs. 1(2), **6(6)**
- F13** Words in reg. 68 substituted (31.1.2020 immediately before exit day) by [The Financial Services \(Consequential Amendments\) Regulations 2020 \(S.I. 2020/56\)](#), regs. 1, **6(2)(aa)**

Changes to legislation:

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Changes and effects yet to be applied to :

- Regulations revoked by [2023 c. 29 Sch. 1 Pt. 2](#)