
Status: Point in time view as at 31/12/2020.

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STATUTORY INSTRUMENTS

2018 No. 1149

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

[^{F1}PART 8

Transitional provision: miscellaneous

Textual Amendments

F1 Pt. 8 inserted (1.3.2019) by [The Financial Services Contracts \(Transitional and Saving Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/405\)](#), regs. 1(2), 4

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—

“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.”

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(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.”]

[^{F2}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 [^{F3}IP completion day] —

(a) a credit institution,

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- (b) an insurance intermediary,
- (c) an investment firm, [^{F4}or]
- (d) a mortgage intermediary,
- ^{F5}(e)
- ^{F5}(f)

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

- ^{F6} ...
- ^{F6} ...
- ^{F6} ...
- ^{F6} ...
- ^{F6} ...

“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 [^{F7}IP completion 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;

- ^{F6} ...
- ^{F6} ...

“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 [^{F7}IP completion 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 [^{F8}IP completion day], authorised (within the meaning of Article 5 of that Directive) by its home state regulator;

- ^{F6} ...

“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 [^{F7}IP completion day], admitted (in accordance with Article 29.1 of that Directive) by its home state regulator;

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F6
...
F6 ...

(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.”

Textual Amendments

- F2** Regs. 70, 71 inserted (1.3.2019) by [The Financial Services Contracts \(Transitional and Saving Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/405\)](#), regs. 1(2), **5(1)**
- F3** Words in reg. 70(2)(b) substituted (30.12.2020) by [The Financial Services and Economic and Monetary Policy \(Consequential Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1301\)](#), regs. 1, 3, **Sch. para. 2(b)(i)**
- F4** Word in reg. 70(2)(b) inserted (31.1.2020) by [The Financial Services \(Miscellaneous\) \(Amendment\) \(EU Exit\) \(No. 2\) Regulations 2019 \(S.I. 2019/1010\)](#), regs. 1(3), **5(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F5** Words in reg. 70(2)(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), **5(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F6** Words in reg. 70(2)(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), **5(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F7** Words in reg. 70(2)(b) substituted (30.12.2020) by [The Financial Services and Economic and Monetary Policy \(Consequential Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1301\)](#), regs. 1, 3, **Sch. para. 2(b)(ii)**
- F8** Words in reg. 70(2)(b) substituted (30.12.2020) by [The Financial Services and Economic and Monetary Policy \(Consequential Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1301\)](#), regs. 1, 2

Commencement Information

- I1** Reg. 70 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see [reg. 1\(3\)](#)

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,
- ^{F9}(b)
- ^{F9}(c)

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)—

^{F10}
...
^{F10}
...

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

F10 ...
F10 ...
F10 ...]

Textual Amendments

- F2** Regs. 70, 71 inserted (1.3.2019) by [The Financial Services Contracts \(Transitional and Saving Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/405\)](#), regs. 1(2), **5(1)**
- F9** Reg. 71(1)(b)(c) 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), **6(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F10** Words in reg. 71(2) 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), **6(b)**; 2020 c. 1, Sch. 5 para. 1(1)

Commencement Information

- I2** Reg. 71 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see reg. 1(3)

[^{F11} **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.

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<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)
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.”]

Textual Amendments

F11 Reg. 72 inserted (1.3.2019) by The Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019 (S.I. 2019/405), regs. 1(2), 6

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