Brexit planning: Changes to UK law

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

Temporary UK permissions for EEA firms

What does this SI do?
Over 8,000 financial services firms passport from the EEA into the UK. If there is no agreement on the terms of the UK’s withdrawal from the EU, these firms will lose their passports on exit day (29 March 2019). The latest draft SI proposes a new temporary permissions regime to cover this eventuality.

As well as creating the temporary permissions regime, the draft SI proposes repealing passport rights under UK law. It removes provisions in FSMA and other acts which refer to the passport. The repeal would apply on exit day.

What are the implications?

> **Up to three years temporary permission:** The proposed regime would be open to EEA firms that passport into the UK immediately before exit day. Under the regime, these firms may carry on in the UK the regulated activities that they were entitled to undertake under their UK passport before Brexit. They would then have three years to obtain a formal UK licence.

> **Firms must give notice to benefit from the regime:** Eligible firms must before exit day have either:
  - made their application for a UK licence, or
  - notified the relevant UK regulator that they want to make use of the regime.

> **Time limits for applications to be extended:** Ordinarily, the PRA and FCA must process complete authorisation applications within six months and incomplete ones within twelve months. The draft SI proposes extending these limits so that regulators have up to three years from exit day to process applications from EEA firms. This new time limit also applies to variations of permission.

> **Relevant firms will have Part 4A permission:** Firms under the regime will broadly be subject to the same regulatory framework as firms currently authorised under Part 4A FSMA. The FCA intends to apply rules which do not currently extend to EEA firms (e.g. on matters which are reserved to the firm’s home state). However, the FCA has said that, if firms can demonstrate that they comply with the equivalent home state rules in respect of their UK business, they will be deemed to comply with the FCA’s rules.

> **Deemed approval of Senior Managers:** The regulators may choose not to process Senior Manager or Approved Person applications for firms under the regime.

1 Updated to link to draft SI laid before Parliament September 2018

September 2018

Amended legislation

> Financial Services and Markets Act 2000

> Various consequential amendments to other primary and secondary UK legislation

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If there is not an implementation period and the passporting regime falls away when the UK leaves the EU, the temporary permissions regime will provide a backstop.

FCA, July 2018
Instead, the FCA and PRA may treat individuals as having been granted approval while their firm is in the temporary regime. A final decision on the individuals’ approval may be necessary once the firm exits the regime. The FCA has also said that whilst in the regime branches should continue to apply the individual accountability requirements that apply to EEA branches.

> Extension of Compensation Scheme: Deposit-takers and insurers which have a UK branch under the temporary regime will become FSCS members and subject to the levy that funds the scheme. A consultation on the broader approach to FSCS protection will be published later in the year.

**Commentary**

The temporary permissions regime will be of primary interest to EEA financial services firms. Firms which intend to benefit from the regime should ensure that they have a UK passport on exit day and notify the UK regulators of their intention to benefit from the regime in due course.

The regime does not help UK firms which passport into the EEA. The EEA have not yet offered reciprocal temporary permissions for UK firms with an EEA passport. Therefore, this SI should not directly affect UK firms’ Brexit plans for continuing to service EEA clients from the UK after Brexit.

The repeal of passporting rights is scheduled to apply on exit day. There is no provision to override this repeal in the event of an agreement to extend the passport beyond exit day. For example, this may be required if there is a final agreement on a transition period up to December 2020. We expect that, subject to the outcome of the EU-UK negotiations, a future Withdrawal and Implementation Act would provide for the deferral of the repeal of the passport rights and associated provisions until the end of the transition.

A separate draft SI has been published which would provide temporary recognition of central counterparties. Similar temporary regimes for EEA payment institutions and e-money institutions, and EEA funds that are marketed into the UK, are expected to follow.

Firms are encouraged to continue engaging with the Bank and PRA on their authorisation and recognition processes, including on how to make best use of the additional time provided by the implementation period in their planning.

Bank of England, July 2018
Further resources

For more background on the temporary permissions regime, see our note on the regulators’ approach to preparing for Brexit

This note and lots more relevant information can be found on our:

> Brexit Knowledge Portal
> Linklaters Brexit homepage

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