

SCHEDULES

SCHEDULE 4

Section 12

EEA PASSPORT RIGHTS AND TREATY RIGHTS

PART 1

AMENDMENTS OF SCHEDULE 3 TO FSMA 2000: EEA PASSPORT RIGHTS

Introductory

1 Schedule 3 to FSMA 2000 (EEA passport rights) is amended as follows.

Exercise of passport rights by EEA firms

- 2 (1) Paragraph 13 (establishment) is amended as follows.
- (2) In sub-paragraphs (1) and (1A), for “Authority”, in each place, substitute “appropriate UK regulator”.
- (3) After sub-paragraph (1A) insert—
- “(1B) Where the PRA receives a consent notice, it must give a copy to the FCA without delay.
 - (1C) Where the FCA receives a consent notice it must in prescribed cases give a copy to the PRA without delay.
 - (1D) In a case where the FCA is the appropriate UK regulator, the consent of the PRA is required for any notice by the FCA for the purposes of sub-paragraph (1)(ba) which relates to—
 - (a) a PRA-regulated activity,
 - (b) a PRA-authorised person, or
 - (c) a person whose immediate group includes a PRA-authorised person.
 - (1E) If the FCA—
 - (a) receives a consent notice, or
 - (b) receives under sub-paragraph (1B) a copy of a consent notice,it must prepare for the firm's supervision.
 - (1F) If the PRA—
 - (a) receives a consent notice, or
 - (b) receives under sub-paragraph (1C) a copy of a consent notice which identifies PRA-regulated activities or relates to a PRA-authorised person,

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it must prepare for the firm's supervision.”

- (4) In sub-paragraph (2)—
- (a) for “Authority” substitute “appropriate UK regulator”, and
 - (b) omit paragraph (a).
- (5) In sub-paragraph (3), for “Authority” substitute “appropriate UK regulator”.
- (6) In sub-paragraph (4), after the definition of “applicable provisions” insert—
- ““the appropriate UK regulator” means whichever of the FCA and the PRA is the competent authority for the purposes of the relevant single market directive;”.
- 3 (1) Paragraph 14 (services) is amended as follows.
- (2) In sub-paragraph (1), for “Authority”, in each place, substitute “appropriate UK regulator”.
- (3) After sub-paragraph (1) insert—
- “(1A) Relevant notice” means—
- (a) a regulator's notice, or
 - (b) where none is required by sub-paragraph (1), a notice informing the appropriate UK regulator of the firm's intention to provide services in the United Kingdom.
- (1B) Where the PRA receives a relevant notice, it must give a copy to the FCA without delay.
- (1C) Where the FCA receives a relevant notice, it must in prescribed cases give a copy to the PRA without delay.
- (1D) If the FCA—
- (a) receives a relevant notice, or
 - (b) receives under sub-paragraph (1B) a copy of a relevant notice,
- it must prepare for the firm's supervision.
- (1E) If the PRA—
- (a) receives a relevant notice, or
 - (b) receives under sub-paragraph (1C) a copy of a relevant notice which identifies PRA-regulated activities or relates to a PRA-
authorised person,
- it must, unless the firm falls within paragraph 5(e), prepare for the firm's supervision.”
- (4) For sub-paragraph (2) substitute—
- “(2) If the appropriate UK regulator has received a relevant notice, it must, unless the firm falls within paragraph 5(a) or (e), notify the firm of the applicable provisions (if any).”
- (5) Omit sub-paragraph (2A).
- (6) In sub-paragraph (3)—
- (a) for “(2)(b)” substitute “(2)”, and

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- (b) for the words from “Authority” to the end substitute “appropriate UK regulator received the relevant notice”.
- (7) In sub-paragraph (4), after the definition of “applicable provisions” insert—
““the appropriate UK regulator” means whichever of the FCA and the PRA is the competent authority for the purposes of the relevant single market directive;”.
- 4 (1) Paragraph 15A (application for approval to manage UCITS) is amended as follows.
- (2) For “Authority” or “Authority's”, in each place, substitute “appropriate UK regulator” or “appropriate UK regulator's”.
- (3) After sub-paragraph (6) insert—
“(6A) If—
(a) the FCA is the appropriate UK regulator, and
(b) the firm is, or the firm's immediate group includes, a PRA-
authorised person,
the FCA must give the PRA a copy of the notice under sub-paragraph (4).”
- (4) In sub-paragraph (7), before the definition of “specified” insert—
““the appropriate UK regulator” means whichever of the FCA and the PRA is the competent authority for the purposes of the UCITS directive;”.
- 5 (1) Paragraph 15B (representations and references to the Tribunal) is amended as follows.
- (2) For “Authority”, in both places, substitute “appropriate UK regulator”.
- (3) After sub-paragraph (3) insert—
“(4) In this paragraph “the appropriate UK regulator” has the same meaning as in paragraph 15A.”
- 6 In paragraph 15C (information to home state regulator), in sub-paragraph (1), for “Authority” substitute “appropriate UK regulator, as defined in paragraph 15A(7)”,.
- 7 In paragraph 17 (continuing regulation of EEA firms)—
(a) before paragraph (a) insert—
“(za) require the FCA and the PRA to notify each other about EEA firms qualifying for authorisation;”,
and
(b) in paragraph (c), for “the Authority” substitute “the FCA or the PRA”.
- 8 In paragraph 18 (giving up right to authorisation), in paragraph (b), for “Part IV permission” substitute “Part 4A permission”.

Exercise of passport rights by UK firms

- 9 In Part 3 (exercise of passport rights by UK firms), before the italic heading before paragraph 19 insert—

“Meaning of “the appropriate UK regulator”

18A In this Part of this Schedule “the appropriate UK regulator” means—

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- (a) where the UK firm is a PRA-authorised person, the PRA;
 - (b) in any other case, the FCA.”
- 10 (1) Paragraph 19 (establishment) is amended as follows.
- (2) For “Authority”, in each place, substitute “appropriate UK regulator”.
- (3) After sub-paragraph (7B) insert—
- “(7C) Where the PRA is the appropriate UK regulator, it must consult the FCA before deciding whether to give a consent notice, except where sub-paragraph (7A) applies.
- (7D) Where the FCA is the appropriate UK regulator, it must consult the PRA before deciding whether to give a consent notice in relation to a UK firm whose immediate group includes a PRA-authorised person.”
- 11 (1) Paragraph 20 (services) is amended as follows.
- (2) For “Authority”, in each place, substitute “appropriate UK regulator”.
- (3) After sub-paragraph (3A) insert—
- “(3AA) Where the PRA is the appropriate UK regulator, it must consult the FCA before deciding whether to give a consent notice.
- (3AB) Where the FCA is the appropriate UK regulator, it must consult the PRA before deciding whether to give a consent notice in relation to a UK firm whose immediate group includes a PRA-authorised person.”
- 12 In paragraph 20ZA (information for host state regulator), for “Authority”, in each place, substitute “appropriate UK regulator”.
- 13 In paragraph 20B (notice of intention to market), for “Authority”, in each place, substitute “appropriate UK regulator”.
- 14 In paragraph 22 (continuing regulation of UK firms), in sub-paragraph (3)—
- (a) for “the Authority's consent” substitute “the consent of the FCA or the PRA”, and
 - (b) in paragraph (b), for “the Authority” substitute “the FCA or the PRA”.
- 15 (1) Paragraph 23 (power to impose requirements) is amended as follows.
- (2) For “the Authority”, in each place, substitute “the FCA”.
- (3) In sub-paragraph (1)(a), for “Part IV permission” substitute “Part 4A permission”.
- (4) In sub-paragraphs (2) and (2A), for “section 45” substitute “section 55L or 55M”.
- (5) After sub-paragraph (2A) insert—
- “(2B) This paragraph does not affect any duty of the FCA to consult the PRA before exercising its power under section 55L or 55M.”
- 16 (1) Paragraph 24 (which relates to UK firms exercising rights under the banking consolidation directive) is amended as follows.
- (2) In sub-paragraph (1)(a), for “Part IV permission” substitute “Part 4A permission”.
- (3) In sub-paragraph (2)—

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- (a) for “the Authority”, in the first place, substitute “either regulator”,
- (b) in paragraph (a), for “Part IV permission” substitute “Part 4A permission”,
and
- (c) in paragraph (b), for “the Authority” substitute “that regulator”.

17 After paragraph 24 insert—

“Arrangements between FCA and PRA

- 24A (1) The regulators may make arrangements about—
- (a) how they will consult each other when required to do so by paragraph 19(7C) or (7D) or 20(3AA) or (3AB) or by regulations under paragraph 22;
 - (b) how each of them will act in response to any advice or representations received from the other.
- (2) The arrangements may require one regulator to obtain the consent of the other in specified circumstances before—
- (a) giving a consent notice under paragraph 19 or 20, or
 - (b) exercising specified functions under regulations under paragraph 22.
- (3) The arrangements must be in writing, and must specify—
- (a) the EEA rights to which they relate, and
 - (b) the date on which they come into force.
- (4) Where arrangements are in force under this paragraph, the regulators must exercise functions in accordance with the arrangements.
- (5) The regulators must publish any arrangements under this paragraph in such manner as they think fit.”

18 In paragraph 25 (information to be included in the public record) for “Authority” substitute “FCA”.

19 In paragraph 26 (UK management companies: delegation of functions), for “Authority”, in each place, substitute “appropriate UK regulator”.

20 In paragraph 27 (UK management companies: withdrawal of authorisation), for “Authority”, in each place, substitute “appropriate UK regulator”.

21 In paragraph 28 (management companies: request for information), for “Authority”, in each place, substitute “appropriate UK regulator”.

PART 2

AMENDMENTS OF SCHEDULE 4 TO FSMA 2000: TREATY RIGHTS

22 Schedule 4 to FSMA 2000 (Treaty rights) is amended as follows.

23 (1) Paragraph 3 (exercise of Treaty rights) is amended as follows.

(2) In sub-paragraph (2), for “Authority” substitute “appropriate UK regulator”.

(3) After that sub-paragraph insert—

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- “(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.”

24 After paragraph 3 insert—

“Notification between UK regulators

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

25 (1) Paragraph 4 (permission) is amended as follows.

(2) In sub-paragraph (3)—

- (a) for “a Part IV permission” substitute “a Part 4A permission”, and
- (b) for “Authority” substitute “appropriate UK regulator”.

(3) In sub-paragraph (4), for “Authority” substitute “appropriate UK regulator”.

(4) After that sub-paragraph insert—

“(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.”

26 (1) Paragraph 5 (notice to Authority) is amended as follows.

(2) In sub-paragraph (2), for “the Authority” substitute “the appropriate UK regulator”.

(3) After sub-paragraph (2) insert—

“(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-authorised person, or
- (b) a person whose immediate group includes a PRA-authorised person,

it must give a copy to the PRA without delay.”

(4) For sub-paragraph (4) substitute—

“(4) Subsections (1), (4) and (8) of section 55U apply to a notice under subparagraph (2) as they apply to an application for a Part 4A permission.”

(5) In the italic heading immediately before paragraph 5, for “Authority” substitute “UK regulator”.

PART 3

AMENDMENTS OF SECTIONS 34 AND 35 OF FSMA 2000: EEA FIRMS AND TREATY FIRMS

- 27 (1) Section 34 of FSMA 2000 (EEA firms) is amended as follows.
- (2) In subsection (2), for “the Authority” substitute “the appropriate regulator”.
- (3) After that subsection insert—
- “(2A) In subsection (2) “the appropriate regulator” means—
- (a) in the case of a PRA-authorised person, the PRA, and
 - (b) in any other case, the FCA.”
- (4) In subsection (3), for “Part IV permission” substitute “Part 4A permission”.
- 28 (1) Section 35 of FSMA 2000 (Treaty firms) is amended as follows.
- (2) In subsection (2), for “the Authority” substitute “the appropriate regulator”.
- (3) After that subsection insert—
- “(2A) In subsection (2) “the appropriate regulator” means—
- (a) in the case of a PRA-authorised person, the PRA, and
 - (b) in any other case, the FCA.”
- (4) In subsection (3), for “Part IV permission” substitute “Part 4A permission”.

PART 4

AMENDMENTS OF PART 13 OF FSMA 2000: POWERS OF INTERVENTION

- 29 Part 13 of FSMA 2000 (incoming firms: intervention by Authority) is amended as follows.
- 30 In the heading to Part 13, for “Authority” substitute “FCA or PRA”.
- 31 In section 193 (interpretation of Part 13), in subsection (1), in the definition of “power of intervention”, for “the Authority” substitute “the FCA or the PRA”.
- 32 (1) Section 194 (general grounds on which power of intervention is exercisable) is amended as follows.
- (2) In subsection (1)—
- (a) for “Authority”, in each place, substitute “appropriate regulator”,
 - (b) in paragraph (c), for the words from “meet” to the end substitute “advance—
 - (i) in the case of the FCA, one or more of its operational objectives, and
 - (ii) in the case of the PRA, any of its objectives.”

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- (3) After subsection (1A) insert—
- “(1B) The appropriate regulator” means—
- (a) where the incoming firm is a PRA-authorized person, the FCA or the PRA;
- (b) in any other case, the FCA.”
- (4) In subsection (3), for “Authority”, in each place, substitute “FCA”.
- 33 (1) Section 194A (contravention by relevant EEA firm with UK branch of requirement under markets in financial instruments directive) is amended as follows.
- (2) For “the Authority” or “the Authority's”, in each place, substitute “the appropriate regulator” or “the appropriate regulator's”.
- (3) After subsection (8) insert—
- “(9) Subsection (4) is not to be regarded as requiring the PRA to take action in relation to the contravention of a requirement falling within subsection (3) in a case where it is satisfied that the FCA is required to act, and is acting or has acted, under subsection (4)—
- (a) in relation to that requirement, or
- (b) where that requirement is imposed by rules made by the PRA, in relation to an identical requirement imposed by rules made by the FCA.
- (10) “The appropriate regulator” means—
- (a) where the relevant EEA firm is a PRA-authorized person, the FCA or, subject to subsection (9), the PRA;
- (b) in any other case, the FCA.”
- (4) In the heading, for “Authority” substitute “appropriate regulator”.
- 34 (1) Section 195 (exercise of power in support of overseas regulator) is amended as follows.
- (2) In subsection (1), for “Authority” substitute “appropriate regulator”.
- (3) In subsection (2), for “Authority's” substitute “appropriate regulator's”.
- (4) After subsection (2) insert—
- “(2A) The appropriate regulator” means—
- (a) where the incoming firm is a PRA-authorized person, the FCA or the PRA;
- (b) in any other case, the FCA.”
- (5) In subsection (4)—
- (a) in paragraph (a), for “the Authority” substitute “either regulator”, and
- (b) omit paragraph (b).
- (6) In subsections (5) to (8), for “Authority”, in each place, substitute “appropriate regulator”.

- 35 (1) Section 195A (contravention by relevant EEA firm or EEA UCITS of directive requirement: home state regulator primarily responsible for securing compliance) is amended as follows.
- (2) For “the Authority” or “the Authority's”, in each place, substitute “the appropriate regulator” or “the appropriate regulator's”.
- (3) After subsection (11A) insert—
- “(11B) Subsection (4) is not to be regarded as requiring the PRA to notify the home state regulator in relation to the contravention of a requirement falling within subsection (2) or (3) in a case where the PRA is satisfied that the FCA is required to act, and is acting or has acted, under subsection (4) in relation to that requirement.”
- (4) In subsection (12), before the definition of “home state” insert—
- ““the appropriate regulator” means—
- (a) where the relevant EEA firm is a PRA-authorized person, the FCA or, subject to subsection (11B), the PRA;
- (b) in any other case, the FCA;”.
- 36 For section 196 substitute—

“196 The power of intervention

- (1) If a regulator is entitled to exercise its power of intervention in respect of an incoming firm under this Part, it may impose any requirement in relation to the firm which that regulator could impose if—
- (a) the firm's permission was a Part 4A permission; and
- (b) the regulator was entitled to exercise its power under section 55L(3) or 55M(3).
- (2) The FCA must consult the PRA before exercising its powers by virtue of this section in relation to—
- (a) a PRA-authorized person, or
- (b) a member of a group which includes a PRA-authorized person.
- (3) The PRA must consult the FCA before exercising its powers by virtue of this section.”
- 37 (1) Section 197 (procedure on exercise of power of intervention) is amended as follows.
- (2) In subsection (2), for “Authority” substitute “regulator”.
- (3) In subsection (3), for “the Authority” substitute “a regulator”.
- (4) In subsection (4)—
- (a) in paragraph (c), for “Authority's” substitute “regulator's”, and
- (b) in paragraph (d), for “Authority” substitute “regulator”.
- (5) In subsections (5) to (7), for “Authority”, in each place, substitute “regulator”.
- 38 (1) Section 198 (power to apply to court for injunction in respect of certain overseas insurance companies) is amended as follows.

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- (2) In subsections (1) to (3), for “Authority”, in each place, substitute “appropriate regulator”.
- (3) After subsection (3) insert—
- “(3A) The appropriate regulator” means whichever regulator is, at the time when the request is received, the competent authority for the purposes of the provision referred to in subsection (1)(a), (b) or (c).”
- 39 (1) Section 199 (additional procedure for EEA firms in certain cases) is amended as follows.
- (2) In subsection (1), for “the Authority” substitute “a regulator”.
- (3) In subsection (2)(a)(i), for “the Authority” substitute “that regulator”.
- (4) In subsections (3) to (11), for “the Authority” substitute “the regulator”.
- (5) After subsection (11) insert—
- “(12) Subsection (3) is not to be regarded as requiring the PRA to take action in relation to the contravention of a relevant requirement in a case where it is satisfied that the FCA is required to act, and is acting or has acted, under subsection (3)—
- (a) in relation to that requirement, or
- (b) where that requirement is imposed by rules made by the PRA, in relation to an identical requirement imposed by rules made by the FCA.”
- 40 (1) Section 199A (management companies: loss of authorisation) is amended as follows.
- (2) In subsection (2), for “Authority”, in both places, substitute “appropriate regulator”.
- (3) For subsection (4) substitute—
- “(4) In this section—
- “the appropriate regulator” means whichever of the FCA and the PRA is the competent authority for the purposes of the UCITS directive;
- “collective investment scheme” has the same meaning as in Part 17.”
- 41 (1) Section 200 (rescission and variation of requirements) is amended as follows.
- (2) In subsection (1), for “The Authority” substitute “Either regulator”.
- (3) In subsection (2)—
- (a) for “the Authority”, in the first place, substitute “either regulator”, and
- (b) for “the Authority”, in the second place, substitute “the regulator”.
- (4) In subsections (3) and (4), for “Authority” substitute “regulator”.
- (5) In subsection (5)—
- (a) for “the Authority”, in the first place, substitute “either regulator”, and
- (b) in paragraph (a), for “the Authority” substitute “the regulator”.
- 42 For section 201 substitute—

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“201 Effect of certain requirements on other persons

If either regulator, in exercising its power of intervention, imposes on an incoming firm a requirement of the kind mentioned in subsection (4) of section 55P, the requirement has the same effect in relation to the firm as it would have in relation to an authorised person if it had been imposed on the authorised person by the regulator acting under section 55L or 55M.”

- 43 In section 202 (contravention of requirement imposed under Part 13), in subsection (1), for “the Authority” substitute “a regulator”.