

SCHEDULES

SCHEDULE 4

Section 31(1)(c).

TREATY RIGHTS

Definitions

- 1 In this Schedule—
- “consumers” means persons who are consumers for the purposes of section 138;
 - “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)).

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—
 - (i) afford equivalent protection; or
 - (ii) satisfy the conditions laid down by a Community 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 Authority in writing.
- (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.

Status: This is the original version (as it was originally enacted).

- (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.

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 a Part IV permission which includes permission to carry on a permitted activity, the Authority must give a direction cancelling the permission so far as it relates to that activity.
- (4) The Authority need not give a direction under sub-paragraph (3) if it considers that there are good reasons for not doing so.

Notice to Authority

- 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 the Authority written notice of its intention to do so.
- (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.
- (4) Subsections (1), (3) and (6) of section 51 apply to a notice under sub-paragraph (2) as they apply to an application for a Part IV permission.

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.