Chapter 14

Incoming EEA firms changing details, and cancelling qualification for authorisation
14.1 Application and purpose

Application

This chapter applies to an incoming EEA firm which has established a branch in, or is providing cross border services into, the United Kingdom under one of the Single Market Directives or the auction regulation and, therefore, qualifies for authorisation under Schedule 3 to the Act. The chapter does not apply to an EEA firm that is a Solvency II firm or to Gibraltar firms treated as such Solvency II firms. Solvency II firms and such Gibraltar firms should consult the relevant parts of the PRA Rulebook and the PRA website at: http://www.bankofengland.co.uk/pra/Pages/authorisations/passporting/notifying.aspx as the PRA is the appropriate UK regulator.

14.1A The guidance in SUP 14.2 and SUP 14.3 covers the EEA Passport Rights Regulations. It is not, however, relevant to an EEA firm exercising an EEA right under the auction regulation, except for SUP 14.2.14 R which applies a separate notification requirement. Additionally, where an EEA firm is carrying on MiFID business bidding, that firm is exercising an EEA right under MiFID and so this chapter applies to that activity because it is MiFID business.

14.1B (Cancelling qualification for authorisation), which sets out how to cancel qualification for authorisation under the Act, also applies to:

1. an incoming Treaty firm that qualifies for authorisation under Schedule 4 to the Act; and
2. a UCITS qualifier that is an authorised person under Schedule 5 to the Act; a UCITS qualifier should, however, refer to COLLG 3.1.11 G for full details of applicable rules and guidance.

14.1C (1) Under the Gibraltar Order made under section 409 of the Act, a Gibraltar firm is treated as an EEA firm under Schedule 3 to the Act if it is:
(a) [deleted]
(b) [deleted]
(c) authorised in Gibraltar under the CRD; or
(d) authorised in Gibraltar under the IDD; or
(e) authorised in Gibraltar under the UCITS Directive; or
(f) authorised in Gibraltar under AIFMD.
(g) authorised in Gibraltar under the MCD

(1A) Similarly, an EEA firm which:
(a) has satisfied the Gibraltar establishment conditions and has established a branch in the UK; or
(b) has satisfied the Gibraltar service conditions and is providing cross border services into the UK;

is treated as having satisfied the establishment conditions or service conditions (as appropriate) under Schedule 3 to the Act.

(2) Credit institutions, insurance intermediaries, investment firms, management companies, AIFMs and MCD credit intermediaries are allowed to passport their services into the United Kingdom if they comply with the relevant notification procedures. So, any references in SUP 14 to EEA State or EEA right include references to Gibraltar and the entitlement under the Gibraltar Order where appropriate.

Purpose

This chapter gives guidance on the Act and the EEA Passport Rights Regulations made under the Act, for an incoming EEA firm which has established a branch in, or is providing cross border services into, the United Kingdom and wishes to change the details of the branch or cross border services.

[Note: An EEA bank is required to comply with the requirements set out in the directly applicable regulations adopted under Articles 35, 36 and 39 CRD.]

This chapter also explains how an incoming EEA firm, an incoming Treaty firm or a UCITS qualifier may cancel its qualification for authorisation under the Act.

This chapter does not, however, give guidance on the procedures for the establishment of a branch in, or the providing of cross border services into, the United Kingdom for the first time. So, an incoming EEA firm that wishes to change or supplement the nature of its operations in the United Kingdom from the providing of cross border services to the establishment of a branch (or vice versa) should refer to SUP 13A (Qualifying for authorisation under the Act).

In addition, the chapter does not give guidance on the procedures for making an application for top-up permission, to carry on regulated activities in the United Kingdom which are outside the scope of the Single Market Directives and for which the firm cannot exercise Treaty rights. Incoming EEA firms seeking a top-up permission should refer to SUP 13A.

The FCA and PRA will share with each other relevant information received, as necessary, in order to perform their respective functions.
14.2 Changes to branch details

14.2.1 Where an incoming EEA firm is exercising an EEA right and has established a branch in the United Kingdom, the EEA Passport Rights Regulations govern any changes to the details of that branch. Where an incoming EEA firm has complied with the relevant requirements in the EEA Passport Rights Regulations, then the firm’s permission given under Schedule 3 to the Act is to be treated as varied accordingly. All references to regulations in SUP 14 are to the EEA Passport Rights Regulations.

Firms passporting under the CRD and the UCITS Directive

14.2.2 (1) Where an incoming EEA firm passporting under the CRD or the UCITS Directive has established a branch in the United Kingdom, regulation 4 states that it must not make a change in the requisite details of the branch unless it has complied with the relevant requirements.

(2) The relevant requirements are set out in regulation 4(4) or, where the change arises from circumstances beyond the incoming EEA firm’s control, in regulation 4(5) (see SUP 14.2.8 G).

14.2.3 Where the change arises from circumstances within the control of the incoming EEA firm, the requirements in regulation 4(4) are that:

(1) the incoming EEA firm has given notice to the appropriate UK regulator (see SUP 14.4.1 G) and to its Home State regulator stating the details of the proposed change;

(2) the appropriate UK regulator has received a notice stating those details; and

(3) either:

   (a) the appropriate UK regulator has informed the firm that it may make the change; or

   (b) the period of one month beginning with the date on which the incoming EEA firm gave the appropriate UK regulator the notice mentioned in (1) has elapsed.

14.2.4 Changes to the requisite details may lead to changes to the applicable provisions to which the incoming EEA firm is subject. The appropriate UK regulator will, as soon as practicable after receiving a notice in SUP 14.2.3 G
or SUP 14.2.8 G, inform the incoming EEA firm of any consequential changes in the applicable provisions (regulation 4(6)).

Changes arising from circumstances beyond the control of an incoming EEA firm passporting under the CRD or UCITS Directive

14.2.8 G If the change arises from circumstances beyond the incoming EEA firm’s control, the firm is required by regulation 4(5) (see SUP 14.2.2 G) or regulation 6(5) (see SUP 14.2.5 G (2)) to give a notice to the appropriate UK regulator (see SUP 14.4.1 G) and to its Home State regulator stating the details of the change as soon as reasonably practicable.

14.2.9 G The appropriate UK regulator believes that for a change to arise from circumstances beyond the control of an incoming EEA firm, the circumstances should be outside the control of the firm as a whole and not just its UK branch. For example, the appropriate UK regulator considers that this provision would be unlikely to apply to circumstances in which lack of planning at the incoming EEA firm’s head office resulted in a problem arising in a UK branch which was outside its control. In practice, therefore, use of this provision is likely to be rare.

Firms passporting under MiFID

14.2.10 G Where an EEA MiFID investment firm has established a branch in the UK, regulation 4A states that it must not:

1. make a change in the requisite details of the branch; or
2. use, for the first time, any tied agent established in the United Kingdom; or
3. cease to use tied agents established in the United Kingdom;

unless it has complied with the relevant requirements in regulation 4A(3).

14.2.11 G The relevant requirements in regulation 4A(3) are that:

1. the EEA MiFID investment firm has given notice to its Home State regulator stating the details of the proposed change; and
2. the period of one month beginning with the date on which the EEA MiFID investment firm gave the notice mentioned in (1) has elapsed.

14.2.12 G Changes to the requisite details may lead to changes to the applicable provisions to which the EEA MiFID investment firm is subject. The appropriate UK regulator will, as soon as practicable after receiving a notice in SUP 14.2.11 G inform the EEA MiFID investment firm of any consequential changes in the applicable provisions.

14.2.13 G SUP 14.2.10 G does not apply to a change occasioned by circumstances beyond the incoming EEA firm’s control.
Firms passporting under the auction regulation

14.2.14 R An EEA firm that is exercising an EEA right to provide auction regulation bidding from a branch in the United Kingdom must notify the FSA of any change to the information submitted under SUP 13A.4.5 R by email to emissionstrading@fsa.gov.uk prior to the change or whenever possible thereafter.

Firms passporting under AIFMD

14.2.15 G Where an EEA AIFM has established a branch in the UK, it must not make a material change to:

1. the requisite details of the branch; or
2. the identity of the AIFs that the EEA AIFM intends to manage;

unless it has complied with the relevant requirement in regulation 7A(3).

14.2.16 G The relevant requirement in regulation 7A(3) is that the Home State regulator has informed the FCA that it has approved the proposed change.

Firms passporting under the MCD

14.2.17 G As required by regulation 7B(1), where an incoming EEA firm passporting under the MCD has established a branch in the UK, it must not make a material change to any of the matters referred to in regulation 2(8)(b) to (e) or regulation 3(6)(b) to (e), unless it has complied with the relevant requirements.

14.2.18 G The relevant requirements are set out in regulation 7B(4) or, where the change arises from circumstances beyond the incoming EEA firm’s control, regulation 7B(5).

14.2.19 G The relevant requirements in regulation 7B(4) are that:

1. the incoming EEA firm has given a notice to the FCA and its home state regulator stating the details of the proposed changes; and
2. either:
   a. the FCA has informed the incoming EEA firm that it may make the change; or
   b. a period of one month has elapsed beginning with the day on which the incoming EEA firm gave the notice under (1).

14.2.20 G Where the change arises from circumstances beyond the incoming EEA firm’s control, the incoming EEA firm is required by regulation 7B(5) to give notice to the FCA and to its Home State regulator stating the details of the change, as soon as reasonably practicable.
14.2.21 The FCA believes that, for a change to arise from circumstances beyond the control of an incoming EEA firm, the circumstances should be outside the control of the incoming EEA firm as a whole and not just its UK branch. For example, the FCA considers that this provision would be unlikely to apply to circumstances in which lack of planning at the incoming EEA firm’s head office resulted in a problem arising in a UK branch. In practice, therefore, use of this provision is likely to be rare.

Firms passporting under the IDD

14.2.22 As required by regulation 7C(1), where an incoming EEA firm passporting under the IDD has established a branch in the UK, it must not make a material change to any of the matters referred to regulation 2(9) unless it has complied with the relevant requirements in regulation 7C(4).

14.2.23 The relevant requirements in regulation 7C(4) are that:

1. the incoming EEA firm has given notice to its Home State regulator stating the details of the proposed change; and

2. the period of one month, beginning the day on which the incoming EEA firm gave the notice under (1), has elapsed.
14.3 Changes to cross border services

14.3.1 Where an incoming EEA firm passporting under the MiFID, UCITS Directive, MCD, AIFMD or IDD is exercising an EEA right and is providing cross border services into the United Kingdom, the EEA Passport Rights Regulations govern any changes to the details of those services. Where an incoming EEA firm has complied with the EEA Passport Rights Regulations, then the firm’s permission under Schedule 3 to the Act is to be treated as varied.

Firms passporting under the UCITS Directive

14.3.2 Where an incoming EEA firm passporting under the UCITS Directive is providing cross border services into the United Kingdom, it must not make a change in the details referred to in regulation 5(1A) unless it has complied with the relevant requirements in regulation 5(3).

The relevant requirements in regulation 5(3) are that:

1. the incoming EEA firm has given a notice to the FCA (see SUP 14.4.1 G) and to its Home State regulator stating the details of the proposed change;

2. if the change arises from circumstances beyond the incoming EEA firm’s control, that firm has, as soon as practicable, given to the appropriate UK regulator and to its Home State regulator the notice in (1).

14.3.4 Under regulation 5(4), the FCA is required, as soon as practicable after receiving the notice in SUP 14.3.3 G, to inform the incoming EEA firm of any consequential changes in the applicable provisions.

Firms passporting under MiFID

14.3.4A Where an incoming EEA firm passporting under MiFID is providing cross border services into the United Kingdom, it must not:

1. make a change in the details referred to in regulation 5A(1)(a); or
(2) use, for the first time, any tied agent to provide services in the United Kingdom; or

(3) cease to use tied agents to provide services in the United Kingdom;

unless it has complied with the relevant requirements in regulation 5A(3).

14.3.4B The relevant requirements in regulation 5A(3) are that:

(1) the incoming EEA firm has given notice to its Home State regulator stating the details of the proposed change; and

(2) the period of one month beginning with the day on which the incoming EEA firm gave that notice has elapsed.

14.3.4C Under regulation 5(4), the FCA is required, as soon as practicable after receiving the notice in 14.3.4B, to inform the incoming EEA firm of any consequential changes in the applicable provisions.

14.3.4D 14.3.4A does not apply to a change occasioned by circumstances beyond the incoming EEA firm’s control.

Firms passporting under AIFMD

14.3.8 Where an EEA AIFM is providing cross-border services to manage an AIF in the UK, it must not make a material change to:

(1) the particulars of the programme of operations to be carried out in the UK, including the description of the particular EEA activities; or

(2) the identity of the AIFs that the EEA AIFM intends to manage;

unless it has complied with the relevant requirement in regulation 7A(3).

14.3.9 Where an EEA AIFM is providing cross-border services to market an AIF in the UK, it must not make a material change to:

(1) the documents and information referred to in Annex IV to AIFMD; or

(2) the statement that the EEA AIFM is authorised to manage AIFs with a particular management strategy;

unless it has complied with the relevant requirement in regulation 7A(3).

14.3.10 The relevant requirement in regulation 7A(3) is that the Home State regulator has informed the FCA that it has approved the proposed change.

Firms passporting under the MCD

14.3.11 As required by regulation 7B(1), where an incoming EEA firm is providing cross border services under the MCD in the UK, it must not make a material change to any of the matters referred to in regulation 2(8)(b) to (e) or
regulation 3(6)(b) to (e), unless it has complied with the relevant requirements.

14.3.12 The relevant requirements are set out in regulation 7B(4) or, where the change arises from circumstances beyond the incoming EEA firm’s control, regulation 7B(5).

14.3.13 Where the change arises from circumstances within the control of the incoming EEA firm, the relevant requirements in regulation 7B(4) are that:

(1) the incoming EEA firm has given a notice to the FCA and its Home State regulator stating the details of the proposed changes; and

(2) either:
   (a) the FCA has informed the incoming EEA firm that it may make the change; or
   (b) a period of one month has elapsed beginning with the day on which the incoming EEA firm gave the notice under (1).

14.3.14 Where the change arises from circumstances beyond the incoming EEA firm’s control, the incoming EEA firm is required by regulation 7B(5) to give a notice to the FCA and to its Home State regulator stating the details of the change as soon as reasonably practicable.

Firms passporting under the IDD

14.3.15 As required by regulation 7C(1), where an incoming EEA firm is providing cross border services under the IDD in the UK, it must not make a material change to any of the matters referred to regulation 3(4) unless it has complied with the relevant requirements in regulation 7C(4).

14.3.16 The relevant requirements in regulation 7C(4) are that:

(1) the incoming EEA firm has given notice to its Home State regulator stating the details of the proposed change; and

(2) the period of one month, beginning the day on which the incoming EEA firm gave the notice under (1), has elapsed.
14.4 Notices of proposed changes: form and delivery

14.4.1 (1) Regulation 7 to 9 of the Financial Services and Markets Act 2000 (Services of Notices) Regulations 2001 (SI2001/1420) govern the manner in which notices may be submitted to the regulators under the EEA Passport Rights Regulations. In summary, they should be delivered or posted to the appropriate UK regulator's address (See (2) below) and will be treated as given when received by the appropriate UK regulator. They should not be sent by fax or electronic mail.

(2) [deleted]

14.4.1A The address for FCA notices is: The Passport Notifications Unit, The Financial Conduct Authority, 12 Endeavour Square, London, E20 1JN.
14.5 Variation of a top-up permission to carry on regulated activities outside the scope of the Single Market Directives or the auction regulation

14.5.1 Where an incoming EEA firm has been granted top-up permission by the appropriate UK regulator and wishes to vary that permission, the Act requires it to apply to the appropriate UK regulator for a variation of the top-up permission.

14.5.2 Guidance on the procedures for applying for a variation of a permission granted under Part 4A of the Act, including a top-up permission, is given in SUP 6 (Applications to vary and cancel Part 4A Permission).
### 14.6 Cancelling qualification for authorisation

**Incoming EEA firms**

Section 34 of the Act states that an incoming EEA firm no longer qualifies for authorisation under Schedule 3 to the Act if it ceases to be an incoming EEA firm as a result of:

1. having its EEA authorisation withdrawn by its Home State regulator; or

2. ceasing to have an EEA right in circumstances in which EEA authorisation is not required; this is relevant to a financial institution that is a subsidiary of a credit institution (of the kind mentioned in Article 34 of the CRD) which fulfils the conditions in articles 33 and 34 of that Directive.

In addition, under section 34(2) an incoming EEA firm may ask the appropriate UK regulator to give a direction cancelling its authorisation under Schedule 3 to the Act.

Regulation 8 states that where an incoming EEA firm which qualifies for authorisation under Schedule 3:

1. has ceased, or is to cease, to carry on regulated activities in the United Kingdom; and

2. gives notice of that fact to the appropriate UK regulator;

the notice is treated under regulation 8 as a request for cancellation of the incoming EEA firm’s qualification for authorisation under Schedule 3 to the Act and so as a request under section 34(2) of the Act.

**Auction regulation bidding: notification rule**

An EEA firm that has exercised an EEA right under the auction regulation to establish a branch in the United Kingdom must notify the FCA by email to emissionstrading@fca.org.uk when it ceases to carry on regulated activities through a branch passport in the United Kingdom or whenever possible thereafter.

The sole purpose of the notification in SUP 14.6.3A R is to inform the FCA that it may discontinue its supervision of the UK branch of the incoming EEA
firm's compliance with the applicable provisions. The applicable provisions that apply to that branch are set out in SUP 13A Annex 1 (Application of the Handbook to Incoming EEA Firms).

Section 14.6 : Cancelling qualification for changing details, and cancelling authorisation qualification for authorisation

### Incoming Treaty firms

14.6.9 Section 35 of the Act states that an incoming Treaty firm no longer qualifies for authorisation under Schedule 4 to the Act if its Home State authorisation is withdrawn.

14.6.10 In addition, under section 35(2) an incoming Treaty firm may ask the appropriate UK regulator to give a direction cancelling its authorisation under Schedule 4 to the Act.

### UCITS qualifiers

14.6.11 Section 36 of the Act states that a UCITS qualifier may ask the FCA to give a direction cancelling its authorisation under paragraph 1(1) of Schedule 5 to the Act. UCITS qualifiers should also refer to COLLG 3.1.11 G (Revocation of recognition of overseas schemes (section 279)).
14.7 Cancellation of a top-up permission to carry on regulated activities outside the scope of the Single Market Directives or the auction regulation

14.7.1 Where an incoming EEA firm, an incoming Treaty firm or a UCITS qualifier wishes to cancel its top-up permission, either with or without cancellation of its qualification for authorisation under Schedule 3, 4, or 5 to the Act, it should make an application following the procedures set out in SUP 6 (Applications to vary and cancel Part 4APermission).
14.8 Further guidance

For further guidance on passporting procedures, an incoming EEA firm may contact the FCA or PRA authorisations team, or their usual supervisory contact at the appropriate UK regulator. Incoming Treaty firms and UCITS qualifiers may speak to their supervisory contact at the appropriate UK regulator in the first instance.