

Chapter 14

Incoming EEA firms changing details, and cancelling qualification for authorisation

14.1 Application and purpose

Application

- 14.1.1 **G** 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/pr/Pages/authorisations/passporting/notifying.aspx> as the *PRA* is the *appropriate UK regulator*.
- 14.1.1A **G** 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*.
- 14.1.2 **G** ■ SUP 14.6 (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*.
- 14.1.3 **G**
- (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]
 - (aa) [deleted]
 - (b) authorised in Gibraltar under the *CRD*; or;
 - (c) authorised in Gibraltar under the *IDD*; or
 - (d) authorised in Gibraltar under *MiFID*; 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

14.1.4 G 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*.]

14.1.5 G 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*.

14.1.6 G 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*).

14.1.7 G 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.

14.1.8 G 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 **G** 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 **G**
- (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 **G** 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 **G** 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 **G** 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 **G** 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 **G** 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 **G** 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 **G** 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).

14.3.3 **G** 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).

14.3.3A **G** [deleted]

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

14.3.4D G ■ SUP 14.3.4A G does not apply to a change occasioned by circumstances beyond the *incoming EEA firm's* control.

Firms passporting under AIFMD

14.3.8 G 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 G 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 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

14.3.11 G 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 **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).

14.3.13 **G** 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 **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 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 **G** 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 **G** 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** G (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** G The address for *FCA* notices is: The Passport Notifications Unit, The Financial Conduct Authority, 12 Endeavour Square, London, E20 1JN.
- 14.4.1B** G



**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 **G** 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 **G** *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

- 14.6.1** **G** 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*.
- 14.6.2** **G** 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.
- 14.6.3** **G** 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
- 14.6.3A** **R** 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.
- 14.6.3B** **G** 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).

Incoming Treaty firms

14.6.9 **G** 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 **G** 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 **G** 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

G

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 4A Permission).



14.8 Further guidance

14.8.1

G

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