

SCHEDULES

SCHEDULE 4

EEA PASSPORT RIGHTS AND TREATY RIGHTS

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.”
- (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

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- (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-authorised person, or
 - (b) a member of a group which includes a PRA-authorised 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.
- (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

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- (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—

“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”.