FINANCIAL CONDUCT AUTHORITY

The financial services contracts regime

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The Government has published draft legislation for the financial services contracts regime (FSCR). If the UK leaves the EU without a withdrawal agreement, this will enable firms who do not enter the temporary permissions regime to wind down their UK business in an orderly fashion.

The temporary permissions regime will enable relevant firms and funds which passport into the UK to continue operating in the UK if the UK leaves the EU without a withdrawal agreement, and the passporting regime falls away abruptly when the UK leaves the EU.

Alongside the temporary permissions regime, the Government committed to introduce further legislation, to ensure existing contractual obligations not covered by the temporary permissions regime can continue to be met. The Government has now published draft legislation for the financial services contracts regime (FSCR) which will provide a limited period of time during which EEA passporting firms can continue to service UK contracts entered into prior to exit, in order to wind down their UK business in an orderly fashion.

This legislation will be relevant where EEA firms which passport into the UK to carry on a regulated activity here fail to notify us that they wish to enter the temporary permissions regime or are unsuccessful in securing authorisation at the end of it, but still have regulated business in the UK to run off.

The FSCR is created solely to allow EEA firms to run off existing UK contracts and conduct an orderly exit from the UK market. EEA firms within this regime will not be able to write new UK business. They will be limited to regulated activities which are necessary for the performance of pre-existing contracts. EEA firms which wish to continue doing new business in the UK after exit and those firms wishing to have more flexibility in the regulated activities they are permitted to carry on will need to enter the temporary permissions regime and secure a UK authorisation. In addition, EEA firms managing UK authorised funds will not be able to continue to manage those funds under FSCR after exit day. Those firms should notify the FCA in order to enter the temporary permission regime to benefit from the transitional period. The same applies to trustees or depositaries of such funds.

The FSCR will automatically apply to EEA passporting firms that do not notify us that they wish to enter the temporary permissions regime, but have pre-existing contracts in the UK which would need a permission to service. The FSCR will be time limited depending on the type of regulated activity being performed: it will apply for a maximum of 15 years for insurance contracts and 5 years for all other contracts. The Treasury can extend these periods, if necessary, based on a joint assessment by us and the PRA. Firms in the FSCR will have to keep authorisation in their home state and must notify us if their authorisation is cancelled or varied.

The FSCR will provide two discrete mechanisms:

- Supervised run-off – for EEA firms with UK branches or top-up permissions in the UK, and firms who entered the temporary permissions regime but did not secure a UK authorisation at the end.
- Contractual run-off – for remaining incoming services firms.

We will publish a consultation paper on these early next year.

Read more about how we are preparing for Brexit.