



# United Kingdom - Brexit for the Insurance Sector

## INSURANCE HORIZONS

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Por George Mortimer

- With effect from the end of the Brexit transition period, EEA-authorized insurers and insurance intermediaries are no longer able to rely on their EEA passporting rights to carry on regulated activities in the UK.
- EEA insurers and intermediaries who have entered the UK's Temporary Permissions Regime will be able to continue to carry on regulated activities in the UK that were previously covered by their passports for up to three years. During that period they will be expected to apply for full UK authorisation.
- EEA insurers and intermediaries that were passporting into the UK at the end of the Brexit transition period will be able to run off contracts entered into before the end of the transition period for up to five years (or fifteen years for insurance contracts) in the UK's Financial Services Contracts Regime.

Following the end of the Brexit transition period (31 December 2020), EEA-authorized insurers and insurance intermediaries can no longer rely on passporting rights to carry out regulated insurance activities in the UK.

As part of the UK's preparations for Brexit, the UK Government established the Temporary Permissions Regime (TPR) and the Financial Services Contracts Regime (FSCR) for firms based in the EEA.

### Temporary Permissions Regime

The TPR allows EEA-based firms that were passporting into the UK at the end of the transition period to continue operating in the UK within the scope of their previous passport permission for a limited period after the end of the transition period. This is subject to firms having notified the Prudential Regulation Authority (PRA) (for insurers) or the Financial Conduct Authority (FCA) (for insurance intermediaries) that they wished to join the TPR, or having made applications for authorisation as third country insurers or intermediaries before the end of the transition period.

Firms which were formerly authorised to carry on regulated activities in the UK through Freedom of Establishment or Freedom of Services passporting and which have entered the TPR will have a temporary UK authorisation allowing them to carry on those activities for a maximum of three years from the end of the transition period. This will include activities necessary to renew existing contracts, and to enter into new business.

Firms that are now in the TPR will be expected to apply for full authorisation in the UK while they are in the TPR. Firms can be removed from the TPR where they fail to apply for authorisation. Applicants will be expected to have a physical place of business in the UK and must demonstrate that they are ready, willing and organised to comply, on a continuing basis, with UK regulatory requirements and standards.

### Financial Services Contracts Regime

For a limited period of time, the FSCR allows formerly passporting EEA-authorized firms to service UK contracts entered

into before the end of the Brexit transition period (or before they entered the FSCR) in order to conduct an orderly exit from the UK market.

The FSCR is relevant to EEA firms that previously passported into the UK if they:

- i. need to carry out regulated activities in order to continue to perform their existing contracts, and did not notify the PRA or FCA that they wished to enter the TPR, or
- ii. are unsuccessful in securing authorisation when leaving the TPR and still have regulated business in the UK to run off.

The FSCR is time-limited for a maximum of 15 years for insurance contracts and for five years for all other contracts (although the UK Treasury can extend these periods, if necessary, based on a joint assessment by the PRA and FCA). A firm's deemed authorisation (or exemption) under FSCR applies only to the extent that necessary for the performance of a pre-existing contract, or in certain limited circumstances for the purposes of winding down their UK business. The PRA and FCA expect firms in the FSCR to run down their UK business promptly.

Firms which were passporting into the UK prior to the end of the Brexit transition period and did not enter the TPR automatically entered the FSCR at the end of the transition period. Those firms which had a freedom of establishment branch in the UK will be in Supervised Run-Off (SRO) and will have a deemed UK authorisation covering the regulated activities they are able to carry on in the FSCR. Those which passported into the UK on a freedom of services basis only will enter Contractual Run-Off (CRO) and will benefit from an exemption from the requirement to be authorised to carry on regulated activities while they are in the FSCR.

## Equivalence for the UK under Solvency II?

The UK-EU Trade and Co-operation Agreement contains a joint declaration stating that the UK and EU will agree by March 2021 a memorandum of understanding (MoU) establishing the framework for structured regulatory co-operation on financial services.

In addition, the UK has granted all 3 equivalence decisions under Solvency II in respect of reinsurance, group solvency calculation, and group supervision. The EU has not yet granted reciprocal equivalence to the UK. At present the EU has given no timescale for doing so, and current indications are that the EU will expect commitments from the UK not to diverge from EU regulation which are unlikely to be granted.

However, if equivalence is granted by the EU, this would have the following effect:

- Reinsurance (Article 172 of the Solvency II Directive): If the UK's rules are deemed equivalent, UK-authorized reinsurers must be treated by EEA supervisors in the same way as EEA reinsurers. Absent an equivalence declaration, EEA supervisors could require UK reinsurers to post collateral to reinsure cedants in their jurisdiction.
- Solvency calculation (Article 227 of the Solvency II Directive): If the UK's rules are deemed equivalent, EEA-authorized insurance groups will be able to use local rules relating to capital (own funds) and capital requirements rather than the Solvency II rules, which will relieve UK insurers from having to recalculate their data in conformity with EU Solvency II requirements (as the UK will continue to supervise insurers in accordance with Solvency II, at least in the short term, equivalence for group solvency purposes may not make much difference for EEA groups with UK subsidiaries).
- Group supervision (Article 260 of the Solvency II Directive): If the UK's rules are deemed equivalent, EEA supervisors will under certain conditions rely on the group supervision exercised by the UK as a third country, which will free groups from being subject to unnecessary burdens arising from dual group supervision.

In the meantime, EU insurers will benefit from the UK's equivalence decisions – UK regulators will treat EEA reinsurers as equivalent to UK reinsurers, and will accept EU supervision as equivalent for group solvency and group supervision purposes.

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