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UK Financial Services Preparing for Brexit



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HSA & Co

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PREPARING YOUR FIRM FOR BREXIT AND THE END OF THE TRANSITION PERIOD

The UK left the EU on 31 January 2020 with a Withdrawal Agreement and entered a transition period which is due to operate until 31 December 2020.

If your firm is registered to provide financial services with the Financial Conduct Authority (FCA) then you will be aware of the guidance provided by the FCA: “Preparing for Brexit”.

The screenshot shows the FCA website header with the logo and navigation menu. The main content area features the title 'Preparing your firm for Brexit: end of the transition period' and a breadcrumb trail: 'Home / Firms / Preparing your firm for Brexit: end of the transition period'. Below the title, it states 'First published: 12/07/2018 | Last updated: 09/10/2020 | See all updates'. The main text begins with 'The UK left the EU on 31 January 2020 with a Withdrawal Agreement and entered a transition period which is due to operate until 31 December 2020. Firms should make sure they have assessed the impact on them and their customers, and have plans in place to ensure they are ready. Here we set out some considerations to help firms consider if or how they will be affected and what action they may need to take.' Below this, there is a section 'On this page:' with a list of links: 'issues for all firms to be aware of', 'considerations for UK firms', 'considerations for EEA firms conducting business in the UK', 'next steps', 'further information', and 'telephone line'.

The FCA states “Firms should make sure they have assessed the impact on them and their customers and have plans in place to ensure they are ready.”

See: <https://www.fca.org.uk/firms/preparing-for-brexit>

On their “Preparing for Brexit” webpage they set out some considerations to help firms consider if or how they will be affected and what action they may need to take:

1. Issues for all firms
2. Passporting
3. Changes to legislation in the UK
4. Temporary transitional power (TTP)
5. Users of credit ratings
6. Data sharing
7. Communicating with customers
8. Considerations for UK firms
9. Considerations for EEA firms conducting business in the UK

The following information has been extracted from the FCA website above.

ISSUES FOR ALL FORMS

How FCA regulated firms are affected at the end of the transition period will depend on a number of factors, including the nature of their business, the location of their customers, and any agreements or decisions about the future UK-EU relationship, for example whether a free trade agreement is reached or equivalence determinations are made.

The FCA expects firms to continue to consider the implications of a range of scenarios, including the possibility that the UK and the EU do not conclude a free trade agreement or make any equivalence determinations before the end of the transition period.

PASSPORTING

Passporting allows firms authorised in an EEA state to conduct business within other EEA states based on their 'home' member state authorisation. Passporting between the UK and EEA states will end at the end of the transition period.

This will affect:

- firms and funds based in the UK that conduct business in the EEA
- firms and funds based in the EEA that carry out certain types of business in the UK

UK-based firms that only do business in the UK may be affected less directly than others or not affected at all. However, firms which carry out business between the UK and the European Economic Area (EEA) – whether through a passport or directly under EU legislation – will be affected. You should have plans in place now to address any risks for your firm.

EEA-based firms can use the Temporary permissions regime (TPR) which will take effect at the end of the transition period. This will allow EEA-based firms passporting into the UK to continue new and existing regulated business within the scope of their current permissions in the UK for a limited period, while they seek full FCA authorisation, if required. It will also allow EEA-domiciled investment funds that market in the UK under a passport to continue temporarily marketing in the UK.

UK CHANGES TO LEGISLATION IN THE UK

The European Union (Withdrawal) Act 2018 will convert into UK law existing EU legislation which has direct effect in the UK at the end of the transition period and preserve existing UK laws which implement EU obligations.

The Government has also been given powers to amend this retained EU legislation so that it works effectively when the UK leaves the EU. It has used this power to make numerous statutory instruments which amend retained EU financial services legislation. The Government's intention is that the same rules and laws will apply after the end of the transition

period as before, as far as possible, but with the necessary amendments to reflect the UK's position outside the EU.

TEMPORARY TRANSITIONAL POWER (TTP)

To help firms adapt to their new requirements, the Treasury has given UK financial regulators the power to make transitional provisions in relation to financial services legislation for a temporary period. This is known as the Temporary Transitional Power (TTP).

The FCA intend to apply the TTP on a broad basis from the end of the transition period until 31 March 2022. This means firms and other regulated persons can continue to comply with their existing requirements for a limited period. However, there are some areas where the TTP will not apply and where firms will need to start preparing now to comply with these obligations from 31 December 2020.

DATA SHARING

Firms need to consider whether they transfer personal data between the UK and the EEA.

The UK Government has legislated so that UK firms will continue to be able to lawfully send personal data from the UK to the EEA and 13 other countries deemed by the EU as ensuring an adequate level of protection of personal data. The EU is aiming to assess the UK data protection regime before the end of the transition period. For now, that means the position for transfers of personal data from the EEA to the UK is not clear.

When contingency planning, you should consider:

- the extent to which your business is reliant on transfers of personal data (for example because of where your data centres are located)
- what risks you may be exposed to if there is no complete central solution to allow transfer of personal data between the EEA and the UK to continue, and what steps you can take to mitigate any risks you may face

COMMUNICATING WITH CUSTOMERS

Firms must pay attention to their customers' information needs and communicate with them in a way which is clear, fair and not misleading per the FCA Handbook rules.

The FCA expects firms to contact customers who may be affected by the end of the transition period. Firms should be able to show they have considered how the end of the transition period, and their plans for it, may affect customers.

The FCA have also published specific information for these sectors:

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- General insurers and intermediaries in the UK - <https://www.fca.org.uk/firms/preparing-for-brexit/uk-general-insurers-intermediaries>
 - Life insurers in the UK about pensions and retirement income - <https://www.fca.org.uk/firms/preparing-for-brexit/uk-life-insurers-pensions-retirement-income>
 - Participants in the wholesale markets operating in the UK (including wholesale banks, wholesale markets and asset managers) - <https://www.fca.org.uk/firms/preparing-for-brexit/uk-participants-wholesale-markets>
 - Retail investments firms in the UK - <https://www.fca.org.uk/firms/preparing-for-brexit/uk-retail-investments>
 - Banking and payment sectors in the UK - <https://www.fca.org.uk/firms/preparing-for-brexit/uk-banking-payment-sectors>

FURTHER INFORMATION

The FCA have agreed Memoranda of Understanding (MoUs) with ESMA and EU regulators covering cooperation and exchange of information. These MoUs will come into effect at the end of the transition period, which is set to expire on 31 December 2020.

You can keep up to date with FCA latest information by signing up to their monthly Regulation Round Up and reading the latest issues:

See: <https://www.fca.org.uk/firms/sign-up-regulation-round-up>

TELEPHONE LINE

If you need help, call FCA dedicated telephone line on 0800 048 4255. The line is open Monday, Tuesday, Wednesday and Friday 9am to 5pm, and Thursday 9.45am to 5pm.

We always recommend that you seek advice from a suitably qualified adviser before taking any action. The information in this document only serves as a guide and no responsibility for loss occasioned by any person acting or refraining from action as a result of this material can be accepted by the authors or the firm.
