

## Brexit Update

Review of access to UK and EEA markets  
*Including self-assessment guide*

19 November 2020



## About Brexit

The UK left the EU on 31<sup>st</sup> January 2020 with a Withdrawal Agreement. It has entered a transition period which is due to operate until 31<sup>st</sup> December 2020. During the transition period, EU law will continue to apply in the UK, however come January 2021, the UK will formally leave the EU.

## Who is impacted?





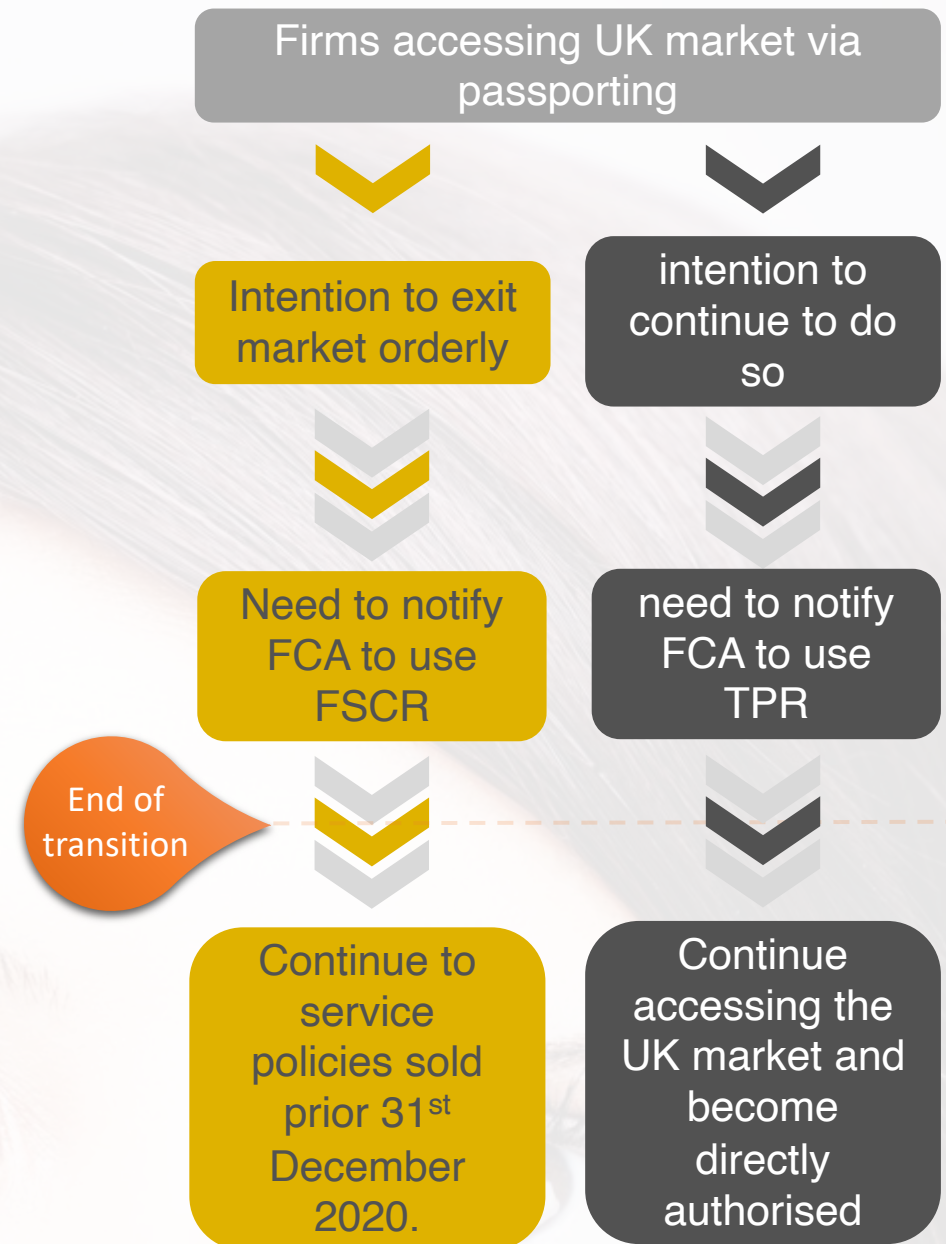
## Temporary Permission Regime (TPR)

The Temporary Permissions Regime (TPR) will enable relevant firms and funds which passport into the UK to continue operating in the UK when the passporting regime falls away at the end of the transition period, until they obtain their direct authorisation.

## Financial Services Contracts Regime (FSCR)

The FSCR will allow, for a limited period of time, EEA passporting firms that do not enter the TPR to continue to service UK contracts entered into prior to the end of the transition period (or prior to when they enter FSCR) in order to conduct an orderly exit from the UK market once the transition period has ended.

In any event, firms should contact the FCA in due course.



### General Overview

The EEA has not implemented similar systems to TPR or FSCR systems, therefore it is important for firms to ensure full preparedness.

Whilst certain products and processes are regulated at the EU directive level, it is crucial for firms to liaise with the local regulatory bodies to ensure ongoing compliance. This is because EU directives (such as IDD) are implemented at a local level, creating both procedural and interpretational differences (eg reporting).

### EIOPA

To provide a certain level of clarity, the European Insurance and Occupational Pension Authority (EIOPA) has issued guidance (available [here](#)). We understand that most regulators aligned their Brexit processes to reflect the guidance, however it is vital for firms to verify their own compliance, as the publication is merely a guidance.

The publication and supporting documents are available [here](#).

*Firms need to ensure their compliance at state level within the EEA, therefore liaise with the local regulators*

It is impossible to remain completely immune to Brexit.

Therefore, we listed the typical risks that are likely to have an impact on all firms.

## Human Resources

- Do you employ EEA nationals?
- Are your HR arrangements prepared for changes (eg visa)?
- Do staff need to travel to the EEA frequently?

## Customer and Risk

- Do you have any risk or policyholder based in the EEA (or migrated there since sale of product)? If so, are you compliant with relevant rules?
- Do you conduct any activity with EEA based customers (reversed solicitation)?

## EEA suppliers

- Do you work with any suppliers from the EEA?
- If so, do you have the right contracts in place?
- Are accounting systems prepared for the import/export of services?



It is impossible to remain completely immune to Brexit.

Therefore, we listed the typical risks that are likely to have an impact on all firms.

## Data Protection

- Are you the (joint) data controller for any EEA activity?
- Are you a data processor for any EEA activity?
- Are you familiar with the UK's data protection regime post December 2020?
- If required, are you able to identify when you need to conduct dual reporting and/or registration (in UK and EEA)?

## Onshoring

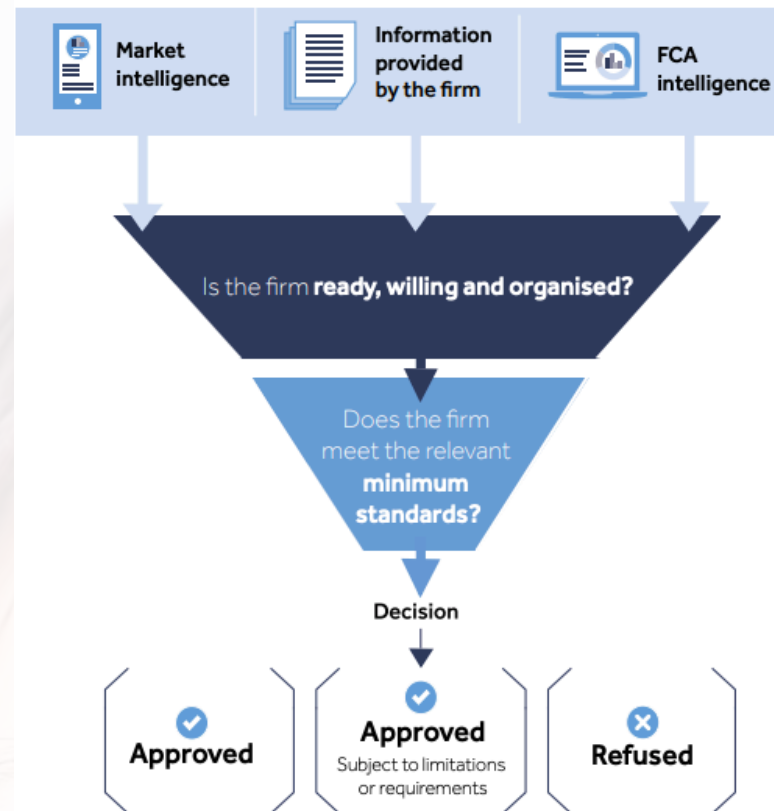
- Are you aware of the FCA's onshoring activity regarding EEA rules?
- If so, have you identified how the new rules may impact you?
- Are you aware that the FCA may make consequential changes to existing rules, changing compliance requirements unrelated to Brexit?

## Risk Management

- Do you have your assessment prudently documented?
- Are you confident interruptions can be managed without consumer detriment?

## General Overview

International Firms can serve UK customers from an entity incorporated outside the UK, or they can do so through a UK-incorporated entity (Branches). In both cases, where an authorisation is sought, the authorisation covers the whole entity, including its UK and overseas offices, and the FCA expect such firms to have an establishment or physical presence in the UK.



An international firm that performs or plans to perform any activity that requires authorisation needs to demonstrate:

- It is **ready, willing and organised**.
- It meets the relevant **minimum standards**.

When assessing the firm against minimum standards we consider it against our **general expectations**, for example, around:

- the nature of the firm's operations
- the firm's personnel and decision-making
- the firm's systems and controls
- the factors relating to the firm's home state

We also consider the extent to which the firm presents and offers adequate mitigation against **the risks of harm** it poses, including the 3 risks described in this CP and any other relevant risks of harm relevant for the firm.

FCA consultation paper [CP 20/20](#)

What 'ready, willing and organised' looks like is detailed in the FCA's Approach to Authorisation document, available [here](#).

## Key FCA expectations of international firms

The FCA assess firms against the relevant minimum standards (eg Threshold conditions) when they apply for authorisation and during on-going supervision activity. The key expectations include:

- *Nature of firms operation* is of one that can be supervised by the FCA (eg access to records)
- *Personnel & decision-making* is compliant with the SM&CR regime, particularly the accountability of SMFs
- *Systems and controls* must include appropriate non-financial resources (eg human resources). Outsourcing arrangements should neither impair the quality of the firms' governance & controls nor the FCA's ability to supervise.
- *Home state jurisdiction* is willing to cooperate with FCA supervision and enforcement activity.

Naturally, the list is non-exhaustive. The main consideration should be how the FCA can effectively supervise the entire firm (in UK and Home State), along with what enforcement powers can the FCA exert in case of failure. Authorisation of international states means that the entire firm is captured by the relevant rules (in the UK and in the Home State).



## Main Considerations when firms apply for authorization - I

The FCA assess firms against the relevant minimum standards (eg Threshold conditions) when they apply for authorisation and during on-going supervision activity.

The key risk assessments include:

- *Retail Harm* - including the the non-payment of redress, FSCS jurisdiction from retail and product manufacturing firms. Firms should consider:
  - Does the local operation have its own management, independent oversight
  - Systems and Controls being sufficiently independent and effective
  - SMFs and key personals are Fit and Proper, (inc. knowledge and competence)
  - Products developed and marketed in other jurisdictions are suitable for the UK
  - Conflict of interest are being managed appropriately

It is important to note that the FCA will consider options of limitation or restrictions on authorisations where controls are not adequate (or even refusal of application).

## Main Considerations when firms apply for authorization – II

- *Client Asset Harm* - including safeguarding of client assets (eg client money), particularly with the *recognition of property rights in other jurisdictions, client interaction with home state insolvency and effectiveness of home state insolvency processes.*
  - Firms will need to satisfy the FCA about the mitigating actions being appropriate. This may include provision of information about how client assets would be treated in the home state during an insolvency process.
  - Naturally, this area is largely driven by the type of UK operation (eg branch, local subsidiary) which would drive the level of client risk and nature of mitigation.
- *Wholesale Harm*
  - Where the size and nature of the firm as well as its interconnectedness with the wider market mean it could pose a significant risk to market integrity in the UK, especially if the firm were to become distressed or fail, the FCA may discuss with the firm ways to maximise their ability to effectively supervise the firm or manage its risk of harm to the UK markets.



## Note section

You may use this section to take notes of key actions or assessments and file it for your record keeping.

## Key Publication

- FCA's Brexit website ([click here](#))
- EIOPA guidance ([click here](#))
- Our Approach to International Firms ([click here](#))



## RR Compliance Associates

E-mail: [contact@rrcompliance.com](mailto:contact@rrcompliance.com)

Phone: 0203 488 4322

How was your update?  
Let us know here.

This update is designed to bring you a high-level overview of the latest regulatory developments. Whilst we strive to tailor it to the relevant markets, each firm is fundamentally different and therefore this document cannot be taken as a professional advice. RR Compliance Associates reserves all rights.