



HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

Jonathan Reynolds MP  
House of Commons  
London  
SW1A 0AA

16<sup>th</sup> September 2019

*Dear Jonathan,*

DELEGATED LEGISLATION COMMITTEE DEBATE ON 9 SEPTEMBER -  
THE FINANCIAL SERVICES (MISCELLANEOUS) (AMENDMENT) (EU EXIT) (NO. 3)  
REGULATIONS 2019

Thank you for the contribution you made to consideration of the draft Financial Services (Miscellaneous) (Amendment) (EU Exit) (No. 3) Regulations 2019, debated in committee on 9 September 2019. In your remarks, you asked about the amendment these Regulations make to exit provisions on equivalence and how the Temporary Permissions Regime would operate in relation to the provision of payment services. I thought it would be helpful to write to supplement the answers I gave with further detail.

**Equivalence and exemption determinations by power of direction**

As referred to in the debate, Parliament previously approved the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019 (the Equivalence SI), which provides ministers with a temporary direction power to make equivalence and exemption determinations in respect of European Economic Area (EEA) states.

You asked about the proposed amendment to modify the scope of the direction power to enable ministers to exempt the central banks of EEA states from requirements in the Markets in Financial Instruments Regulation (MiFIR). In MiFIR, as it will form part of UK law at exit, members of the European System of Central Banks (ESCB) are already exempt from certain requirements. The central banks of Norway, Iceland and Liechtenstein do not, however, currently benefit from this exemption. This is because adaptations to the EEA Agreement that would grant these central banks the relevant exemption are not yet operative. Once these EEA states have implemented MiFIR, with the EEA Agreement updated accordingly, the exemption for members of the ESCB would then extend to EEA central banks as a matter of retained EU law.

However, it is now clear that the amendments to the EEA Agreement providing this exemption for affected EEA central banks will not be operative before exit day, and therefore will not form part of UK law at exit. To address this, HM Treasury proposes to modify the direction power in the Equivalence SI to allow ministers to exempt the central banks of the affected EEA states. I would like to stress that this is not a substantial extension of the existing direction power, but a limited modification necessary to ensure that those affected EEA central banks can continue to carry on their activities in the UK without disruption at exit.

As I also explained in the debate, the SI also makes minor deficiency corrections to a recent equivalence decision made by the European Commission. After the Equivalence SI was made, the Commission published a new decision determining that Singapore is equivalent for the purposes of the derivatives trading obligation under MiFIR. The SI therefore makes minor deficiency corrections to ensure this decision operates effectively in UK law from exit.

#### EEA banks offering payment services in the UK

During the debate, you also raised a concern about whether EEA banks operating in the UK would be able to continue providing payment services after exit. It is the case that the provision of payment services is not specified as a regulated activity under the Financial Services and Markets Act 2000 (FSMA). However, payment services are regulated under the UK Payments Services Regulations 2017 (PSRs). Credit institutions providing payment services are exempt from authorisation under the PSRs as long as those credit institutions are authorised under Part 4A of FSMA.

This will also be the case for EEA credit institutions which continue to operate in the UK after exit through the Temporary Permissions Regime (TPR). Under the TPR, these firms will be deemed authorised under Part 4A of FSMA. The exemption from authorisation under the PSRs will therefore apply to EEA credit institutions with temporary permissions just as it currently applies to UK authorised credit institutions. The EEA Passport Rights Regulations 2018 will maintain the current level of access for EEA inward passporting firms for up to three years after exit in the event that the UK leaves the EU without a deal.

I appreciate the considered attention given by those present during the committee debate and hope this additional explanation is helpful.

I am copying this letter to Alison Thewliss MP. A copy of this letter will also be deposited in the Library.

*with very best regards*

*John*

JOHN GLEN