

FCA Consults on Contractual Certainty Post-Brexit

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On January 8, the UK Financial Conduct Authority (FCA) published a consultation paper (CP19/2) on contractual certainty post-Brexit.

In the lead-up to the United Kingdom's exit from the European Union (Brexit) on March 29 (Exit Day), the agreement on the United Kingdom's withdrawal remains to be ratified by the UK Parliament. If ratification fails, this would result in a so-called "no-deal Brexit," meaning that the UK would leave the EU without having agreed on any transitional arrangements, and any firms or fund managers based in the European Economic Area (EEA) passporting their services or products into the UK would lose their permission to do so on Exit Day.

Given the continuing political uncertainty surrounding Brexit, CP19/2 sets out the FCA's proposals to implement the so-called financial services contracts regime (FSCR) so that EEA firms can fulfill their existing contractual obligations in the UK in the event of a no-deal Brexit. The FSCR works alongside the temporary permissions regime (TPR), allowing for the continuity of existing contracts for EEA firms that either do not submit notifications to enter the TPR, or are unsuccessful in securing,

or do not apply for, full UK authorization through the TPR route .

The FSCR will apply automatically to such firms, allowing them, for a limited period, to continue to service UK contracts entered into before Exit Day or before exiting the TPR, provided that they meet the conditions of the FSCR. These conditions are set out in chapter 2 of CP19/2.

The FSCR will be time-limited depending on the type of regulated activity being performed. It will apply for a maximum of five years for all contracts except insurance contracts, for which there is a maximum of 15 years.

Unlike the TPR, the FSCR does not allow EEA firms to take on new business after Exit Day. Similarly, EEA-based managers, depositaries and trustees of UK-authorized funds cannot continue to manage or provide services to these funds after Exit Day under the FSCR. These firms and fund managers will need to make use of the TPR.

Comments can be made on CP19/2 until January 29. The FCA intends to provide feedback and publish final rules shortly before Exit Day.

CP19/2 is available [here](#).

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