

Life after Passporting: the insurance sector

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The EU's single passport regime enabled UK-authorized insurers, reinsurers and insurance brokers to carry on business in any EEA member state, and conversely allowed EEA-authorized (re)insurers and brokers to carry on business in the UK. Now the transition period has ended, passporting from the UK into the EEA or vice versa is no longer possible. What does this mean for (re)insurers and brokers?

This note is a summary of the key implications of the ending of the passporting regime between the UK and the EEA. However, the underlying law is not always clear or straightforward, so what follows is necessarily a simplification.

For **UK-based (re)insurers and brokers**, the key points to have in mind are:

- Administering and paying claims on EEA risks after 31 December 2020 on policies written by a UK insurer before that date may no longer be lawful in the relevant member state, subject to any transitional measures implemented by that state.
- Precisely what constitutes carrying on business in a particular member state depends on the law of that state. However, as a general rule, carrying on business in relation to EEA policyholders and EEA risks is likely to require authorisation in the relevant member state, irrespective of where the insurer or distributor itself is carrying on its activities. Local legal advice may be required in order to clarify the position.
- As a general rule, it is the location of the risk when the policy is taken out that is key. For example, if a UK-resident policyholder takes out a life insurance policy and then moves to an EEA member state, the life insurer would not generally then be regarded as providing cross-border services in that member state. The same approach should apply to non-life insurance contracts that do not relate to buildings, buildings and contents, or vehicles, according to EIOPA. However, the French regulator, the Autorité de Contrôle Prudentiel et de Résolution, has indicated that under French law, if the location of the risk changes to France after a policy is entered into, the insurer would need to be authorised in France if it is to continue to provide cover under the policy.
- It is also possible for a UK firm to have a branch authorised in a member state to enable it to carry on cross-border business in that member state (but without acquiring passporting rights into other EEA member states); this might be restricted by the local regulator to the run-off of pre-31 December 2020 business. Any EEA-located branch cannot be a mere post-box; it must have substance in the relevant member state, reflecting the nature, scale and complexity of the business.
- When considering any post-Brexit operating model, it is also important to consider article 16 of the Insurance Distribution Directive (IDD), which requires EEA (re)insurers and intermediaries to use only EEA-authorized brokers. The scope and interpretation of this restriction is debated, but may require the involvement of an EEA broker, sitting between an EEA (re)insurer and a UK broker.

For **EEA-authorized (re)insurers and intermediaries**, the key points are:

- It may be possible to carry on business as before in the UK, if the firm successfully applied to the UK's Temporary Permissions Regime (TPR) before 31 December 2020, to the same extent that it previously carried on activities in the UK under passporting (together with any UK top-up permissions).
- The TPR is, as the name indicates, temporary, and the plan is that all firms within the TPR will become PRA or FCA authorised within three years, or will have to run off their UK activities. Firms in the TPR will be allocated a "landing slot" in which they must submit their application to the relevant UK regulator if they wish to continue to carry on business in the UK after the TPR ends. They should start preparing that application sooner rather than later and plan any changes to the structure of their UK operations to meet the requirements of the UK regulators.
- Being in the TPR applies to the legal entity in question, so an EEA (re)insurer or distributor with a UK branch which is in the TPR can continue to carry on activities in the UK within the scope of its deemed permissions under the TPR from anywhere in the EEA, not just the UK branch.
- Firms operating within the TPR need to update their status disclosure and be mindful of the new UK rules that they are subject to, such as Fundamental Rule 7 (PRA) and Principal 11 (FCA): "A firm must deal with its regulators in an open and cooperative way, and must disclose to the PRA/FCA appropriately anything relating to the firm of which the PRA/FCA would reasonably expect notice".
- Gibraltar-based firms can continue to operate in the UK as before, and do not need to use the TPR.
- Firms not in the TPR, or in the TPR but which do not end up being UK-authorized, can take advantage of the Financial Services Contracts Regime (FSCR), which allows for existing contractual obligations to be run off for a period of 15

years.

- It is possible, in principle, to write non-admitted insurance in the UK, since the UK regulatory regime looks primarily at where the regulated activity in question takes place, rather than where the risk or policyholder is located. However, all activities other than purely administrative ones must take place outside the UK, which makes non-admitted business impractical in some classes. In addition, where the cover is required to meet a legal or regulatory requirement, it will generally have to be provided by a UK-authorized insurer.
- There are now restrictions on promoting or advising on the products of EEA-authorized long-term insurers which are not in the TPR, subject to the FCA's temporary transition provisions which will last until 31 March 2022.
- It is worth bearing in mind when considering any model that the activities of any person in the UK with authority to commit an EEA (re)insurer could bring that (re)insurer within the UK regulatory regime.

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