

# Brexit: our approach to non-Handbook guidance where it relates to EU-law or EU-derived law

## The purpose of this guidance

1. This document sets out our approach to existing non-Handbook guidance where it relates to EU law or EU-derived law.
2. It is concerned with non-Handbook guidance issued before exit day<sup>1</sup>.
3. The guidance in this document is relevant to consumers, firms, financial institutions, issuers and other market participants operating, or intending to operate, in the United Kingdom.

## What is non-Handbook guidance?

4. Non-Handbook guidance is guidance published outside of the Handbook.
5. It may include technical notes, case studies and 'Dear CEO' letters. Specific examples of non-Handbook guidance include the 'Payment Services and Electronic Money – Our Approach'<sup>2</sup> guidance and the procedural and technical notes within the UK Listing Authority's knowledge base.<sup>3</sup>

## What is happening to non-Handbook guidance that relates to EU law or EU-derived law after Brexit?

6. We are not, in general, amending existing non-Handbook guidance relating to EU law or EU-derived law.
7. It will continue to be relevant to take this guidance into account in relation to matters that occur before exit day.

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<sup>1</sup> Exit day as defined in the European Union (Withdrawal) Act 2018.

<sup>2</sup> <https://www.fca.org.uk/publication/finalised-guidance/fca-approach-payment-services-electronic-money-2017.pdf>

<sup>3</sup> <https://www.fca.org.uk/markets/ukla/knowledge-base>

8. It will also continue to be relevant, and should be taken into account, in relation to matters arising on or after exit day where the EU or EU-derived provisions to which it relates become or remain UK law.
9. In many cases, such provisions will have been amended to address deficiencies arising from the UK's withdrawal from the EU. Non-Handbook guidance issued before exit day will not, in general, be amended to take these changes into account.
10. Instead, until stated otherwise, we expect such guidance to be interpreted in line with the approach set out below.

## **How to interpret non-Handbook guidance after Brexit where it relates to EU or EU derived law and matters arising after exit day**

11. We expect firms and other market participants to sensibly and purposively interpret pre-exit non-Handbook guidance in light of the provisions of the European Union (Withdrawal) Act 2018 (EUWA) and any changes to the underlying provision as it is preserved or converted into UK law.
12. We expect references to EU or EU-derived law in non-Handbook guidance to be read in a way that takes into account the following:
  - a. the UK is no longer part of the EU
  - b. EU regulations and EU decisions will no longer directly apply but may have been converted into UK law
  - c. passporting of financial services will end
  - d. the purpose of EUWA is to provide a functioning legal system in the UK and, as a general rule, to ensure that the same rules and laws will apply on the day after exit day as on the day before, subject to amendments made to prevent, mitigate or remedy deficiencies.
13. For example, unless the context requires otherwise, where existing non-Handbook guidance refers to:
  - a provision in EU law that has been converted into national law, we expect it to be read as a reference to the post-exit national law provision
  - an EU body or EU process, we expect it to be read as a reference to the UK body to which the relevant functions have been transferred or to the equivalent UK process (if any)
  - all or part of an EU or EU-derived provision that has been deleted, we expect this guidance to be read excluding this aspect (and any consequential statements).
14. Non-Handbook guidance will apply to firms in the temporary permissions regime in accordance with GEN 2.2.35R (Guidance applying while a firm has temporary permission). In most cases it should be clear when non-Handbook guidance remains relevant to a temporary permissions firm.