
Introduction and context

The UK officially left the EU on 31 January 2020 and is now in a “transition period” until 31 December 2020. During the transition period, ASPSPs and TPPs continue to benefit from “passporting” rights (i.e., they can provide regulated services in other EEA member states).

Open Banking Implementation Entity (“**OBIE**”) has prepared these Q&As to help ASPSPs and TPPs that are active in the open banking ecosystem (“**Participants**”) ensure they have plans in place that are effective on 1 January 2021, following the conclusion of the Implementation Period (“**IP**”) on 31 December 2020.

These Q&As are for high level information purposes only and do not constitute legal advice or guidance. Participants are solely responsible for ensuring they meet all applicable regulatory requirements, including those that change as a result of Brexit.

NB - These Q&As do not cover eIDAS in detail. For information on eIDAS, please see <https://www.openbanking.org.uk/wp-content/uploads/eIDAS-Details-Final.pdf>

Q: I am an OBIE Participant, can I still continue to use Open Banking Certificates following Brexit?

A: Open Banking Certificates can be still be used following Brexit, however, participants should familiarise themselves with adaptations that may need to be made to facilitate such use. OBIE has developed the Directory - EIDAS Migration Playbook, which contains different workflows to demonstrate the scenarios for certificate use following Brexit.

This is available at

<https://openbanking.atlassian.net/wiki/spaces/OTT/pages/1669070855/Directory+-+EIDAS+Migration+Playbook>.

OBIE has also updated its Open Banking Policy Certificates Documents. Open Banking Certificate use is subject to the Open Banking Certificate Policy Documents, which are available at <http://ob.trustis.com/production/policies/>.

Q: I am a non-OBIE Participant, can I use Open Banking Certificates for the purposes of TPP identification?

A: Yes, Open Banking certificates can be used for the purposes of TPP identification. Open Banking Certificates do not verify the regulatory status of a TPP and should not be used for this purpose. The register of the relevant national competent authority or the Open Banking Directory or a suitable alternative directory should be used to obtain this information.

Open Banking Certificate use is subject to the Open Banking Certificate Policy Documents, which are available at <http://ob.trustis.com/production/policies/>.

Q: Given that the UK will no longer be in the EEA, will the OBIE Standard continue to enable compliance with EEA regulations (including PSD2, the SCA-RTS and EBA Guidelines and Opinions)?

A: Yes, OBIE will continue to undertake horizon scanning of both the EEA and UK regulatory landscapes to ensure that the OBIE Standard is able to support compliance in both areas.

Q: I am an EEA ASPSP using the OBIE Directory to check regulatory permissions and validity of eIDAS certificates for EEA TPPs. Will this service still be available?

A: Yes, OBIE will continue to provide permission checks for EEA TPPs operating within the EEA, as well as the associated checks for Qualified Trust Service Providers (“QTSPs”) and eIDAS certificates.

Q: I am an EEA Participant passporting into the UK and I wish to continue to do business in the UK. Will I be affected?

A: Participants that have previously passported from an EEA Member State to the UK may continue to provide their services in the UK provided they take steps to benefit from the FCA’s Temporary Permissions Regime (“TPR”) within the relevant timeframes. Notification to the FCA for TPR reopened on 30 September 2020 and closes on 30 December 2020. EEA Participants that have not yet done so are strongly encouraged to submit their notifications as soon as possible. The TPR regime will allow EEA Participants to continue to do business in the UK as normal for a “limited period”.

Q: I am an EEA Participant passporting into the UK and I want to run off existing contracts in the UK. Will I be affected?

A: EEA Participants that need to fulfil existing obligations in the UK but intend to exit the UK market can wind down their business in the UK under the Financial Services Contracts Regime (FSCR), provided their activities are limited to fulfilling pre-existing contracts. You do not need to apply to the TPR to do this.

Q: I am a UK Participant passporting into another EEA country. Will I be affected?

A: Yes, and OBIE is not aware of any equivalent to the FCA’s Temporary Permissions Regime having been confirmed by any other regulatory authorities, save for Gibraltar (see below). UK Participants that want to continue to do business in any EEA member state after the IP should familiarise themselves with the requirements of the relevant national regulators to

ensure that they have the required permissions. This may require the establishment of an EEA branch or other EEA presence.

There are a number of UK Participants who currently passport into one or more EU member states (including the Republic of Ireland) for whom OBIE carries out specific status checks via the OBIE Directory. These participants are strongly encouraged to ensure they have the required regulatory permissions to continue to operate in the OBIE ecosystem for those jurisdictions after 31 December 2020.

Q: I am an EEA/ UK Participant providing services to Gibraltar. Will I be affected?

A: UK Participants passporting into Gibraltar only (i.e. and not to any other EEA member state) will be unaffected at the end of the IP and can continue to use the OBIE Services as they do today.

EEA Participants that currently passport into Gibraltar can continue to operate for a ‘time-limited period’ under a TPR with the Gibraltar Financial Services Commission (“GFSC”). EEA Participants are encouraged to visit the GFSC website to ensure that they have completed to required forms.

Q: Are there any other open banking related issues I should be considering as a result of Brexit?

A: Participants are encouraged to conduct a thorough impact assessment to identify any important issues that may impact their organisation as a result of Brexit. One area of particular interest relates to GDPR and possible data privacy implications. The Information Commissioner’s Office (“ICO”) has developed a helpful tool on how to keep data flowing from the EEA to the UK. For more information you can visit the ICO website at: <https://ico.org.uk/for-organisations/data-protection-at-the-end-of-the-transition-period/keep-data-flowing-from-the-eea-to-the-uk-interactive-tool/>

The following links provide additional information.

Publication	Link
FCA temporary permissions regime publication	https://www.fca.org.uk/brexit/temporary-permissions-regime
FCA statement on FSCR	https://www.fca.org.uk/news/statements/financial-services-contracts-regime
FCA Brexit publications	https://www.fca.org.uk/brexit

The EBA publication on financial institutions to finalise preparations for the end of the transitional arrangements between the EU and UK	https://eba.europa.eu/eba-calls-financial-institutions-finalise-preparations-end-transitional-arrangements-between-eu-and
FCA Quarterly Publication	https://www.fca.org.uk/publication/consultation/cp2018-quarterly-consultation-paper-no-29.pdf
GFSC: Temporary Permissions Regime and Financial Services Contracts Provisions	https://www.fsc.gi/regulated-firms/brexit-tpr-fsp