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Is there light at the end of the tunnel for run-off firms facing contract certainty?

With the deadline for the UK's exit from the EU on 29 March 2019 looming ever closer, the ability of EU firms which passport into the UK to continue to service UK claims after Brexit has been a major concern. A no-deal Brexit under which UK and EU insurers would no longer be authorised to carry out insurance activities in relation to cross-border contracts between the UK and EU 27 including the ability to service run-off portfolios had the potential to cause significant disruption.

The UK government has now issued draft legislation following initial indications in December 2018 that it was willing to legislate so that existing insurance contracts could continue to be serviced by inbound firms after Brexit. This legislation, if approved in time, will provide some much-needed peace of mind for these firms. The proposed approach also seeks to give EU firms a, hopefully, comfortable 15 years to continue paying UK run-off claims as long as they continue to keep authorisation in their home state and notify the UK regulator of any changes to their home state authorisation. This 15-year period may potentially be extended, if needed, to cover very long tail claims, such as asbestos claims, following a joint review by the FCA and PRA.

This draft legislation will come into play where EU firms which passport into the UK fail to notify the UK regulator that they wish to enter the temporary permissions regime. This temporary permissions regime was opened by the FCA on 7 January 2019 to enable EU insurance firms to continue operating in the UK, in the event of a no-deal Brexit, any new and existing regulated business within the scope of their current permissions for a limited period while they apply for full FCA authorisation.

Although this much needed draft legislation goes some way to help the run-off market, it does not necessarily mean that run-off firms can put their Brexit plans on hold. Run-off firms still need to consider carefully their options to ensure they are 'Brexit ready'.

The question then arises as to whether EU firms should wait and see whether this new legislation is enacted in time or enter the temporary permissions regime. Prudence would suggest that EU firms should make use of the temporary permission regime using the FCA's web-based 'connect' system given the deadline to do this, 28 March 2019, is still some way off. Although it could be tempting to take advantage of this impending legislation, it remains in draft and is meant to act as a failsafe plan.