

---

STATUTORY INSTRUMENTS

---

**2015 No. 575**

**FINANCIAL SERVICES AND MARKETS**

**The Solvency 2 Regulations 2015**

*Made - - - - 6th March 2015*

*Laid before Parliament 9th March 2015*

*Coming into force in accordance with regulation 1*

The Treasury are a government department designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to financial services.

The Treasury, in exercise of the powers conferred upon them by section 2(2) of the European Communities Act 1972, make the following Regulations:

**PART 1**

**Citation, commencement and interpretation**

**Citation and commencement**

- 1.—(1) These Regulations may be cited as the Solvency 2 Regulations 2015.
- (2) Except where paragraph (3) applies, these Regulations come into force on 1st January 2016.
- (3) Regulations 1, 2, 38 to 58 and paragraph 15 of Schedule 1 come into force on 31st March 2015.
- (4) Before 1st January 2016, references to “the Solvency 2 Directive” in any amendment of FSMA that comes into force in accordance with paragraph (3) are to be read as if the amendments made by paragraphs 16(b) and 17(3) of Schedule 1 were already in force.

**Interpretation**

- 2.—(1) In these Regulations—

---

(1) [S.I. 2012/1759](#).

(2) [1972 c.68](#); section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 ([c. 51](#)) and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 ([c. 7](#)). By virtue of the amendment of section 1(2) made by section 1 of the European Economic Act 1993 ([c. 51](#)) regulations may be made under section 2(2) to implement obligations of the United Kingdom created by or arising under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073, OJ No L1, 3.11.1994, p.3) and the Protocol adjusting that Agreement signed at Brussels on 17th March 1993 (Cm 2183, OJ No L1, 3.1.1994, p.572).

“capital add-on” means the amount by which the solvency capital requirement of an insurance undertaking or reinsurance undertaking, or a group, is increased by the PRA;

“EEA solvency 2 parent” means a parent undertaking with its head office in an EEA State which is—

- (a) an insurance undertaking or reinsurance undertaking which is a participating undertaking in at least one insurance undertaking, reinsurance undertaking or third-country insurance undertaking;
- (b) an insurance holding company; or
- (c) a mixed financial holding company;

“EIOPA” means the European Insurance and Occupational Pensions Authority established under the EIOPA Regulation;

“EIOPA Regulation” means Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24th November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority)(3);

“Financial Conglomerates Directive” means [Directive 2002/87/EC](#) of the European Parliament and of the Council of 16th December 2002 on the supplementary supervision of credit institutions, insurance undertakings, and investment firms in a financial conglomerate(4);

“FSMA” means the Financial Services and Markets Act 2000(5);

“home EEA State” means—

- (a) for non-life insurance, the EEA State in which the head office of the insurance undertaking covering the risk is situated;
- (b) for life insurance, the EEA State in which the head office of the insurance undertaking covering the commitment is situated;
- (c) for reinsurance, the EEA State in which the head office of the reinsurance undertaking is situated;

“method 1” and “method 2” have the same meaning as in Articles 220 to 234 of the Solvency 2 Directive;

“non-EEA solvency 2 parent” means a parent undertaking which is—

- (a) a third-country insurance undertaking; or
- (b) an insurance holding company or mixed financial holding company with its head office outside the EEA;

“regulated entity” has the meaning given by Article 2(4) of the Financial Conglomerates Directive;

“Solvency 2 Directive” means [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)(6);

“third country” means a country which is not an EEA State;

“third-country insurance undertaking” has the meaning given by Article 13(3) of the Solvency 2 Directive;

(3) OJ no L331, 15.12.2010, p. 48.

(4) OJ no L035, 11.02.2003, p.1.

(5) [2000 c.8](#).

(6) OJ no L335, 17.12.2009, p.1, as amended by Directive 2011/89/EU (OJ no L326, 8.12.2011, p. 113), Directive 2012/23/EU (OJ no L249, 14.9.2013, p. 1), Directive 2013/23/EU (OJ no L158, 10.6.2013, p. 362), Directive 2013/58/EU (OJ no L341, 18.12.2013, p. 1) and Directive 2014/51/EU (OJ no L153, 22.5.2014, p. 1).

“UK solvency 2 parent” means a parent undertaking with its head office in the United Kingdom which is—

- (a) an insurance undertaking or reinsurance undertaking which is a participating undertaking in at least one insurance undertaking, reinsurance undertaking or third-country insurance undertaking;
- (b) an insurance holding company; or
- (c) a mixed financial holding company;

“ultimate EEA solvency 2 parent” means an EEA solvency 2 parent which has no parent undertaking which is an EEA solvency 2 parent or a non-EEA solvency 2 parent;

“ultimate non-EEA solvency 2 parent” means a non-EEA solvency 2 parent which has no parent undertaking which is an EEA solvency 2 parent or non-EEA solvency 2 parent;

“ultimate UK solvency 2 parent” means a UK solvency 2 parent which has no parent undertaking which is an EEA solvency 2 parent or non-EEA solvency 2 parent.

- (2) Except as provided by paragraph (1) or regulation 38(2)—
  - (a) any expression used in these Regulations which is defined in section 417 (definitions) or 424 (insurance) of, or Part 1 of Schedule 3 to, FSMA has the meaning given by that section or Part(7);
  - (b) any other expression used in these Regulations which is used in the Solvency 2 Directive has the meaning which it is given in that Directive(8).

## PART 2

### Supervision

#### Exercise of PRA and FCA functions

3.—(1) The PRA and FCA must in the exercise of their functions as supervisory authorities under the Solvency 2 Directive—

- (a) take into account, in an appropriate way, a European Economic Area dimension;
- (b) duly consider the potential impact of their decisions on the stability of the financial systems of other EEA States, in particular during emergency situations, taking into account the information available at the relevant time; and
- (c) in times of exceptional movements in the financial markets, take into account the potential pro-cyclical effects of their actions.

#### Review of capital add-ons

4. Where the PRA imposes a capital add-on, it must review the capital add-on at least once a year.

#### Passporting: notification of home state regulator

5.—(1) This regulation applies to an insurance undertaking or reinsurance undertaking which—

- (a) is established in an EEA State other than the United Kingdom; and
- (b) either—

---

(7) “FCA”, “insurance undertaking”, “PRA”, “reinsurance undertaking”, “rule” and “Tribunal” are defined in section 417 and “EEA State” is defined in Part 1 of Schedule 3.

(8) “Branch”, “parent undertaking”, “reinsurance” and “supervisory authority” are defined in Article 13.

- (i) in the case of an insurance undertaking, has insured a risk or entered into a commitment situated in the United Kingdom; or
- (ii) in the case of a reinsurance undertaking, has exercised a right under Part 2 of Schedule 3 to FSMA to provide services in the United Kingdom.

(2) Where the PRA considers that the activities of such an insurance undertaking or reinsurance undertaking might affect the undertaking's financial soundness, the PRA must inform the supervisory authority of the undertaking's home EEA State accordingly.

### **EIOPA: information**

6.—(1) The PRA must provide the following information to EIOPA on an annual basis—

- (a) the average capital add-on per undertaking;
- (b) the distribution of capital add-ons imposed by the PRA measured as a percentage of the solvency capital requirement, shown separately for—
  - (i) all insurance undertakings and reinsurance undertakings;
  - (ii) life insurance undertakings;
  - (iii) non-life insurance undertakings;
  - (iv) insurance undertakings pursuing both life and non-life activities;
  - (v) reinsurance undertakings;
- (c) for each disclosure referred to in sub-paragraphs (a) and (b), the proportion of capital add-ons imposed by or under FSMA in pursuance of Articles 37(1)(a), (b) and (c) of the Solvency 2 Directive;
- (d) the number of insurance undertakings and reinsurance undertakings benefiting from—
  - (i) the limitation on regular supervisory reporting referred to in Article 35(6) of the Solvency 2 Directive;
  - (ii) the exemption from reporting on an item-by-item basis referred to in Article 35(7) of the Solvency 2 Directive;
- (e) for the insurance undertakings or reinsurance undertakings referred to in sub-paragraph (d), the total volume of capital requirements, premiums, technical provisions and assets, measured as a percentage of the total volume of capital requirements, premiums, technical provisions and assets of insurance undertakings and reinsurance undertakings in the United Kingdom;
- (f) the number of groups benefiting from the limitation on regular supervisory reporting or the exemption from reporting on an item-by-item basis referred to in Article 254(2) of the Solvency 2 Directive; and
- (g) for the groups referred to in sub-paragraph (f), the total volume of capital requirements, premiums, technical provisions and assets, measured as a percentage of the total volume of capital requirements, premiums, technical provisions and assets of all groups.

(2) Until the end of 2020, the PRA shall provide the following information to EIOPA on an annual basis—

- (a) the number of insurance undertakings and reinsurance undertakings applying the matching adjustment, the volatility adjustment, the extension of the recovery period in accordance with Article 138(4) of the Solvency 2 Directive and the transitional measures set out in regulations 53 and 54;

- (b) its assessment of the availability of long-term guarantees in insurance products and the behaviour of insurance undertakings and reinsurance undertakings as long-term investors in the United Kingdom market;
  - (c) its assessment of the impact at a national level of the relevant measures on the financial position of insurance undertakings and reinsurance undertakings, anonymised in respect of each undertaking;
  - (d) its assessment of the effect of the relevant measures on the investment behaviour of insurance undertakings and reinsurance undertakings and whether any of the relevant measures provide undue capital relief;
  - (e) its assessment of the effect of any extensions of the recovery period in accordance with Article 138(4) of the Solvency 2 Directive on the efforts of insurance undertakings and reinsurance undertakings to re-establish the required level of eligible own funds covering their solvency capital requirements or to reduce their risk profiles in order to ensure compliance with their solvency capital requirements;
  - (f) its assessment of whether the insurance undertakings and reinsurance undertakings that apply the transitional measures set out in regulations 53 and 54 comply with the phasing-in plans referred to in Article 308e of the Solvency 2 Directive; and
  - (g) its assessment of the prospects of those undertakings reducing their use of those transitional measures in the future, taking into account the United Kingdom’s regulatory environment.
- (3) In this regulation—
- (a) a requirement to provide information about undertakings applies only in relation to undertakings that are PRA-authorized persons.
  - (b) “the relevant measures” means the matching adjustment, the volatility adjustment, the symmetric adjustment mechanism to the equity capital charge and the transitional measures set out in regulations 53 and 54.

#### **EIOPA and EBA: notifications**

- 7.—(1) The PRA must notify EIOPA when it authorises or cancels the authorisation of an insurance undertaking, reinsurance undertaking or third-country insurance undertaking.
- (2) Each notification under paragraph (1) must include the name of the undertaking.
- (3) Where the PRA exercises its discretion under paragraph (2) or (4) of regulation 11, it must inform EBA and EIOPA.

#### **Other EEA States: information**

- 8.—(1) Where a supervisory authority of another EEA State requests relevant information from the PRA, the PRA must send the information in aggregate form to the supervisory authority within a reasonable period of time.
- (2) In this regulation “relevant information” means information which—
- (a) is relevant to the EEA State; and
  - (b) has been provided to the PRA under rules implementing Article 159 of the Solvency 2 Directive.

#### **Non-compliance with the minimum capital requirement: provision of information to other supervisory authorities**

9. Where—

- (a) the PRA imposes an assets requirement under section 55M of FSMA on an insurance undertaking or reinsurance undertaking which is exercising an EEA right; and
- (b) the assets requirement is imposed because the undertaking is not compliant with the minimum capital requirement,

the PRA must inform the host state regulator.

## PART 3

### Groups

#### CHAPTER 1

##### Cases of application and scope

#### **Risk concentration and intra-group transactions**

**10.** Where the PRA is the group supervisor of a group, the PRA may decide not to supervise risk concentration or intra-group transactions within the group at a level specified in the first column of Table 1 where all the conditions specified in relation to that level in the second column of Table 1 are satisfied.

**Table 1**

<i>Levels at which supervision need not be exercised</i>	<i>Conditions to be satisfied</i>
The participating undertaking, insurance holding company and mixed financial holding company.	<p>The group contains an insurance undertaking or reinsurance undertaking and either—</p> <ul style="list-style-type: none"> <li>(a) the parent undertaking of the insurance undertaking or reinsurance undertaking is an insurance holding company or a mixed financial holding company which has its head office in an EEA State; or</li> <li>(b) the insurance undertaking or reinsurance undertaking is a participating undertaking in at least one insurance undertaking, reinsurance undertaking, third-country insurance undertaking or third-country reinsurance undertaking;</li> </ul> <p>The participating undertaking, insurance holding company or mixed financial holding company referred to above is, or is a related undertaking of, a regulated entity or mixed financial holding company subject to supplementary supervision in accordance with Article 5(2) of the Financial Conglomerates Directive.</p>

<i>Levels at which supervision need not be exercised</i>	<i>Conditions to be satisfied</i>
	The PRA has consulted the other supervisory authorities concerned in supervising the group.
The ultimate EEA solvency 2 parent.	The parent undertaking of an ultimate EEA solvency 2 parent is subject to supplementary supervision in accordance with Article 5(2) of the Financial Conglomerates Directive.

### **Equivalent provisions**

**11.**—(1) This regulation applies where the PRA is the group supervisor of a group which includes a mixed financial holding company.

(2) Where the mixed financial holding company is subject to equivalent provision under rules and directly applicable regulations implementing the Solvency 2 Directive and the Financial Conglomerates Directive, the PRA may apply only the rules and directly applicable regulations implementing the Financial Conglomerates Directive to the mixed financial holding company.

(3) Before exercising its discretion under paragraph (2), the PRA must consult the other supervisory authorities concerned in supervising the group.

(4) Where the mixed financial holding company is subject to equivalent provisions under rules and directly applicable regulations implementing the following two sets of legislation—

- (a) the Solvency 2 Directive; and
- (b) the capital requirements directive and the capital requirements regulation,

the PRA may apply only the rules and directly applicable regulations implementing the set of legislation relating to the most significant sector, as determined in accordance with rules implementing Article 3(2) of the Financial Conglomerates Directive.

(5) Before exercising its discretion under paragraph (4), the PRA must obtain the agreement of the consolidating supervisor under the capital requirements directive.

### **Exclusion of undertaking from group supervision**

**12.**—(1) This regulation applies where the PRA is the group supervisor of a group and the PRA is considering whether to exclude an undertaking from group supervision.

(2) The PRA must consult the other supervisory authorities concerned in the supervision of the group before deciding to exclude the undertaking from group supervision where—

- (a) that undertaking is of negligible interest with respect to the objectives of group supervision; or
- (b) inclusion of that undertaking would be inappropriate or misleading with respect to the objectives of group supervision.

## CHAPTER 2

### Levels

### **Supervision of parents and subgroups at national level: substantive powers**

**13.**—(1) The PRA may supervise an ultimate UK solvency 2 parent at group level in the United Kingdom where—

- (a) the ultimate EEA solvency 2 parent has its head office in an EEA State other than the United Kingdom;
  - (b) the ultimate EEA solvency 2 parent has not obtained permission in accordance with national laws implementing Articles 237 or 243 of the Solvency 2 Directive for the UK solvency 2 parent to be subject to rules implementing Articles 238 and 239 of the Solvency 2 Directive; and
  - (c) the PRA is not the group supervisor.
- (2) Where—
- (a) the PRA is supervising an ultimate UK solvency 2 parent in accordance with paragraph (1); and
  - (b) the ultimate UK solvency 2 parent and an ultimate parent undertaking in an EEA State other than the United Kingdom are related undertakings,

the PRA may conclude an agreement with the supervisory authority of that EEA State to carry out group supervision at subgroup level in both the United Kingdom and the other EEA State.

- (3) Where the PRA has concluded an agreement in accordance with paragraph (2)—
  - (a) the PRA may only carry out group supervision at the level specified in the agreement; and
  - (b) the PRA must explain the agreement to the group supervisor and the ultimate EEA solvency 2 parent undertaking.
- (4) Where the PRA is the group supervisor of a group and supervisory authorities in other EEA States conclude an agreement to carry out group supervision at subgroup level in those EEA States, the PRA must inform the college of supervisors.

### **Supervision of parents and subgroups at national level: procedure**

14.—(1) The PRA must follow the procedure set out in this regulation when supervising an ultimate UK solvency 2 parent under regulation 13(1) or concluding an agreement with another supervisor under regulation 13(2).

(2) Before deciding to exercise supervision or conclude such an agreement, the PRA must consult the group supervisor and the ultimate EEA solvency 2 parent.

(3) If the PRA decides to exercise supervision or conclude such an agreement, the PRA must explain its decision to both the group supervisor and the ultimate EEA solvency 2 parent.

(4) The PRA must recognise and apply any permission granted pursuant to national laws implementing Article 231 or 233(5) of the Solvency 2 Directive to the ultimate EEA solvency 2 parent to calculate the group solvency capital requirement for insurance undertakings and reinsurance undertakings in the group on the basis of an internal model.

## CHAPTER 3

### Group Solvency

### **Supervision of group solvency and frequency of calculation**

- 15.—(1) Where the PRA is the group supervisor of a group, the PRA must—
- (a) ensure that the calculations referred to in rules implementing Articles 218(2) and (3) of the Solvency 2 Directive are carried out at least annually;
  - (b) conduct supervisory reviews to determine whether insurance undertakings or reinsurance undertakings in the group are complying with rules implementing Articles 218(2) and (3) of the Solvency 2 Directive;



- (c) inform the other supervisory authorities in the college of supervisors as soon as a participating undertaking in the group informs the PRA that it is no longer in compliance with the solvency capital requirement, or that there is a risk of non-compliance in the next three months;
- (d) where the group is not headed by an insurance undertaking or reinsurance undertaking, consult the undertakings in the group and the other supervisory authorities concerned in the supervision of the group before identifying an undertaking other than an insurance holding company or a mixed financial holding company to supply relevant data for, and the results of, the calculations referred to in rules implementing Articles 218(2) and (3) of the Solvency 2 Directive.

(2) Where the PRA is not the group supervisor of a group, the PRA must nevertheless analyse the situation of the group where the group supervisor informs the PRA that a participating undertaking in the group is no longer in compliance with the solvency capital requirement, or that there is a risk of non-compliance in the next three months.

### **Choice of method**

16.—(1) Where the PRA is the group supervisor of a group, the PRA must consult the group and the other supervisory authorities concerned in the supervision of the group before requiring the group to use method 2, or a combination of method 1 and method 2, for the calculation of solvency at a group level.

(2) Where the PRA is not the group supervisor, the PRA must apply the method chosen by the group supervisor for the ultimate EEA solvency 2 parent in relation to—

- (a) group supervision at a national level in accordance with regulation 13(1); and
- (b) supervision at subgroup level in accordance with regulation 13(2).

### **Inclusion of proportional share**

17.—(1) In this regulation, “proportional share” means the proportional share held by a participating undertaking in its related undertakings.

(2) The PRA must determine the proportional share which must be taken into account in the calculation of group solvency where—

- (a) the PRA is the group supervisor of a group; and
- (b) any of the following applies—
  - (i) there are no capital ties between any of the undertakings in a group;
  - (ii) a supervisory authority has determined that the direct or indirect holding of voting rights or capital in an undertaking qualifies as a participation because the holding means that a significant influence is effectively exercised over that undertaking;
  - (iii) a supervisory authority has determined that an undertaking is a parent undertaking because the undertaking effectively exercises a dominant influence over the other undertaking.

(3) Before determining the proportional share, the PRA must consult the undertakings in the group and the other supervisory authorities concerned in the supervision of the group.

### **Related undertakings: calculation of group solvency**

18.—(1) This regulation applies where—

- (a) the PRA is the group supervisor of a group;

- (b) the group contains at least three insurance undertakings, reinsurance undertakings, insurance holding companies or mixed financial holding companies (“A”, “B” and “C”);
  - (c) A and B are related undertakings;
  - (d) A and C are related undertakings; and
  - (e) either B or C has its head office in an EEA State other than the United Kingdom.
- (2) Except where paragraph (3) applies, the PRA must permit the group, in the calculation of group solvency, to take into account national laws which—
- (a) are adopted by that EEA State to implement the solvency capital requirement and the requirements relating to the own funds eligible to satisfy the solvency capital requirement; and
  - (b) apply to B or C (as the case may be).
- (3) This paragraph applies where—
- (a) there is a significant change to the national laws referred to in paragraph (2); and
  - (b) it is not in the interests of the group’s policyholders to take into account the national laws referred to in paragraph (2).

### **Participating undertakings: calculation of group solvency**

19.—(1) This regulation applies where—

- (a) the PRA is the group supervisor of a group;
- (b) the group contains an insurance undertaking or reinsurance undertaking which is a participating undertaking in a third-country insurance undertaking or third-country reinsurance undertaking; and
- (c) the third country in which the third-country insurance undertaking or third country reinsurance undertaking has its head office makes it subject to authorisation and imposes on it a solvency regime at least equivalent to that specified in Chapter 6 of Title 1 of the Solvency 2 Directive.

(2) The PRA must permit the group to take into account national laws adopted by the third country in respect of the group’s solvency capital requirement and the own funds eligible to satisfy the solvency capital requirement in the calculation of the group’s solvency unless—

- (a) there has been a significant change to those national laws; and
- (b) it is not in the interests of the group’s policyholders to do so.

(3) Where no delegated act has been adopted pursuant to paragraph (4) or (5) of article 227 of the Solvency 2 Directive, the PRA may, and on the request of the participating authority must, verify whether a solvency regime in the third country is at least equivalent to Chapter 6 of Title 1 to the Solvency 2 Directive.

(4) The PRA must—

- (a) consult the other supervisory authorities concerned in the supervision of the group before taking a decision under paragraph (3);
- (b) take the decision in accordance with the criteria set out in any directly applicable regulation made under paragraph (3) of Article 227; and
- (c) ensure that its decision does not contradict any previous decision on the equivalence of the third country, except where it is necessary to take into account significant changes to the supervisory regime laid down in Chapter 6 of Title 1 to the Solvency 2 Directive or to the solvency regime of the third country.

### **Internal models and capital add-ons**

**20.**—(1) Where group solvency is determined in accordance with method 1, the PRA must pay particular attention to the cases referred to in Article 37(1) of the Solvency 2 Directive for the imposition of a capital add-on when it determines whether the consolidated group solvency capital requirement appropriately reflects the risk profile of the group, in particular where—

- (a) a specific risk existing at group level would not be sufficiently covered by the standard formula or the internal model used because it is difficult to quantify; or
- (b) a capital add-on to the solvency capital requirement of the related insurance undertaking or reinsurance undertakings is imposed by the supervisory authorities concerned in accordance with Article 37 or 231(7) of the Solvency 2 Directive.

(2) Where group solvency is determined in accordance with method 2, the PRA must, when it determines whether the aggregated group solvency capital requirement appropriately reflects the risk profile of the group, pay particular attention to any specific risks existing at group level which would not be sufficiently covered because they are difficult to quantify.

(3) Where the PRA is a member of the college of supervisors and the PRA considers that the risk profile of an insurance undertaking or reinsurance undertaking belonging to a group deviates significantly from the assumptions underlying the internal model approved at group level, the PRA may—

- (a) impose a capital add-on to the solvency capital requirement of the insurance undertaking or reinsurance undertaking;
  - (b) in exceptional circumstances where a capital add-on would not be appropriate, require the insurance undertaking or reinsurance undertaking to calculate its solvency capital requirement on the basis of the standard formula; or
  - (c) where the PRA has exercised its discretion under sub-paragraph (b) to require an insurance undertaking or reinsurance undertaking to calculate its solvency capital requirement on the basis of the standard formula, impose a capital add-on to the solvency capital requirement.
- (4) Where the PRA—

- (a) imposes a capital add-on on an insurance undertaking or reinsurance undertaking; or
- (b) requires the insurance undertaking or reinsurance undertaking concerned to calculate its solvency capital requirement on the basis of the standard formula,

the PRA must explain its decision to the relevant insurance undertaking or reinsurance undertaking and the other members of the college of supervisors.

(5) Where the PRA is a member of a college of supervisors responsible for supervising a group, the PRA must adopt and apply the following decisions by the group supervisor on the basis of an internal model—

- (a) the calculation of the group solvency capital requirement;
- (b) the calculation of the solvency capital requirement of an insurance undertaking and reinsurance undertaking in the group;
- (c) the calculation of the aggregated group solvency capital requirement.

(6) Where the PRA has imposed a capital add-on, it must review the capital add-on at least once a year.

### **Subsidiaries: solvency capital requirement**

**21.**—(1) This regulation applies where—

- (a) a parent undertaking has permission to apply the national laws implementing Articles 238 and 239 of the Solvency 2 Directive to a subsidiary undertaking; and

- (b) the PRA is a member of the college of supervisors for that subsidiary undertaking.
- (2) Where the PRA is responsible for authorising the subsidiary under Part 4A of FSMA, the PRA may propose to the college of supervisors that any of the following requirements (“a relevant requirement”) be imposed on the subsidiary undertaking—
- (a) a capital add-on;
  - (b) a requirement that the subsidiary calculates its solvency capital requirement on the basis of the standard formula; or
  - (c) a requirement that the subsidiary replace a subset of the parameters used in the calculation of the standard formula calculation with a subset of parameters specific to the subsidiary when calculating its life, non-life and health underwriting risk modules referred to in Article 104(1) of the Solvency 2 Directive.
- (3) The PRA may only impose a requirement referred to in paragraph (2)(b) in exceptional circumstance where a capital add-on would be inappropriate.
- (4) The PRA may only impose a requirement referred to in paragraph (2)(c)—
- (a) in exceptional circumstances;
  - (b) where the PRA considers that the subsidiary undertaking’s risk profile deviates significantly from the assumptions underlying the standard formula; and
  - (c) where the subsidiary undertaking does not properly address the PRA’s concerns.
- (5) Where the PRA proposes the imposition of a relevant requirement, the PRA must—
- (a) discuss the proposed requirement with the college of supervisors; and
  - (b) communicate the grounds for the requirement to both the subsidiary and the college of supervisors.
- (6) Before imposing a relevant requirement, the PRA must do everything within its power to reach an agreement within the college of supervisors on a proposal for a relevant requirement or on other possible measures.
- (7) The PRA may refer a proposal to impose a relevant requirement to EIOPA where—
- (a) the PRA—
    - (i) is the group supervisor; or
    - (ii) proposed the imposition of the relevant requirement;
  - (b) the college of supervisors has not reached agreement on the proposal; and
  - (c) the referral is made within the period of one month starting on the day on which the proposal was communicated to the college (either by the PRA under paragraph (2) or by another supervisory authority).
- (8) Where the PRA proposes the imposition of a relevant requirement—
- (a) if the college of supervisors has reached agreement on the proposal, the PRA must take its decision in accordance with the agreement;
  - (b) if the proposal has been referred to EIOPA, the PRA must take its decision in accordance with EIOPA’s decision;
  - (c) in all other cases, the PRA must decide whether to impose the relevant requirement and provide full reasons for its decision to the subsidiary undertaking and college of supervisors.
- (9) The PRA must recognise and apply a decision made by another supervisory authority in accordance with Article 238 of the Solvency 2 Directive to apply a relevant requirement to a subsidiary.

### **Subsidiaries: non-compliance with the solvency and minimum capital requirements**

22.—(1) This regulation applies where the PRA has approved an application made in accordance with regulation 52.

(2) Where the PRA authorised the subsidiary under Part 4A of FSMA, the PRA must notify the following matters to the college of supervisors without delay—

- (a) where the subsidiary is not in compliance with the subsidiary's solvency capital requirement, the recovery plan submitted by the subsidiary in accordance with rules implementing Article 138 of the Solvency 2 Directive;
- (b) any deteriorating financial conditions and the proposed measures to be taken; and
- (c) where the subsidiary is not in compliance with the subsidiary's minimum capital requirement—
  - (i) the short-term finance scheme submitted by the subsidiary in accordance with rules implementing Article 139 of the Solvency 2 Directive; and
  - (ii) any measures taken by the PRA by or under FSMA to enforce the minimum capital requirement at the level of the subsidiary.

(3) Where the PRA notifies the college of supervisors of deteriorating financial conditions in accordance with paragraph (2)(b), the PRA must discuss the measures it proposes to take within the college of supervisors unless the situation is an emergency.

(4) Where the PRA notifies the college of supervisors of a recovery plan referred to in paragraph (2)(a) or the proposed measures referred to paragraph (2)(b), the PRA—

- (a) must do everything in its power to reach agreement within the college on the recovery plan or proposed measures; and
- (b) may refer the recovery plan or proposed measures to EIOPA where—
  - (i) the PRA—
    - (aa) is the group supervisor; or
    - (bb) notified the recovery plan or proposed measure to the college of supervisors;
  - (ii) the college has not reached agreement on the recovery plan or proposed measures;
  - (iii) in the case of proposed measures, an emergency situation does not exist; and
  - (iv) the referral is made within whichever of the following periods applies—
    - (aa) four months starting on the day on which the recovery plan was notified to the college; or
    - (bb) one month starting on the day on which the recovery plan was notified to the college.

(5) Where the PRA notifies the college of supervisors in accordance with paragraph (2)—

- (a) if the college of supervisors has reached agreement on the notification, the PRA must take its decision in accordance with the agreement;
- (b) if the notification has been referred to EIOPA, the PRA must take its decision in accordance with EIOPA's decision;
- (c) in all other cases, the PRA must decide the matter and provide full reasons for its decision to the subsidiary and to the college of supervisors.

(6) In the case of a recovery plan referred to in paragraph (2)(a) or proposed measures referred to in paragraph (2)(b), the PRA must take due account of the views and reservations of the other supervisory authorities when deciding on a matter in accordance with paragraph (5)(c).

## **Subsidiaries: revocation of approval for applying Articles 238 and 239 of the Solvency 2 Directive**

**23.**—(1) This regulation applies where the PRA—

- (a) approves an application made by a parent undertaking in accordance with regulation 52 for Articles 238 And 239 of the Solvency 2 Directive to be applied to a subsidiary undertaking of the parent undertaking; and
- (b) is the group supervisor of the group to which the parent undertaking and subsidiary undertaking belong.

(2) Where the PRA decides, after consulting the college of supervisors, that the subsidiary undertaking should not be included in group supervision, the PRA must inform the parent undertaking and its supervisory authority immediately.

(3) The PRA must verify the following matters on its own initiative at least annually or at the request of a supervisory authority—

- (a) that the risk management processes and internal control mechanisms of the parent undertaking cover the subsidiary;
- (b) that the parent undertaking is managing the subsidiary undertaking prudently;
- (c) that the agreement referred to in the third sub-paragraph of Article 246(4) of the Solvency 2 Directive is still current; and
- (d) that the agreement referred to in the first sub-paragraph of Article 256(2) of the Solvency 2 Directive is still current.

(4) Where the PRA considers, after consulting the college of supervisors, that a plan proposed by the subsidiary undertaking to restore compliance with the matters referred to in sub-paragraphs (a) to (d) of paragraph (3) is insufficient or has not been implemented within the agreed period of time, the PRA must conclude that the parent undertaking no longer complies with those matters and inform the supervisory authority concerned.

## **CHAPTER 4**

### **Risk concentration and intra-group transactions**

#### **Supervision of risk concentration and intra-group transactions**

**24.**—(1) Where the PRA is the group supervisor of a group, the PRA must—

- (a) identify the type of risks and intra-group transactions which insurance undertakings and reinsurance undertakings in the group must report to the PRA in all circumstances, taking into account the specific group and risk management structure of the group;
- (b) impose appropriate thresholds based on solvency capital requirements, or technical provisions, in order to identify which significant risk concentrations and significant intra-group transactions should be reported;
- (c) identify the insurance undertaking or reinsurance undertaking in the group responsible for submitting the information required under rules implementing Articles 244 and 245 of the Solvency 2 Directive where the group is not headed by an insurance undertaking or a reinsurance undertaking;
- (d) review the risk concentrations of the group and intra-group transactions at group level, and in particular monitor the possible risk of contagion within the group, the risk of a conflict of interests and the level or volume of risks.

(2) The PRA must consult the group and the other supervisory authorities concerned in the supervision of the group whilst carrying out the activities referred to in sub-paragraphs (a) to (c) of paragraph 24.

(3) Where the PRA is not the group supervisor and the PRA is consulted by the group supervisor in relation to the supervision of risk concentration at group level or the reporting of intra-group transactions, the PRA must take into account the specific group and risk management structure of the group when giving its opinion about the type of risks to be reported.

## CHAPTER 5

### Risk management and internal control

#### Supervision of system of governance

25. Where the PRA is the group supervisor of a group, the PRA must—
- (a) review the systems and reporting procedures implemented by the group in accordance with rules implementing paragraphs 1 and 2 of Article 246 of the Solvency 2 Directive;
  - (b) review the own-risk and solvency assessment conducted at group level by the group in accordance with rules implementing paragraph 4 of Article 246 of the Solvency 2 Directive; and
  - (c) consult the members of the college of supervisors and duly take into account their views and reservations before agreeing to a request from a participating insurance undertaking, reinsurance undertaking, insurance holding company or mixed financial holding company to undertake its own-risk and solvency assessment at group and subsidiary levels in accordance with rules implementing Article 45 of the Solvency 2 Directive at the same time and produce a single document covering all such assessments.

## CHAPTER 6

### Measures to facilitate group supervision

#### Rule for deciding the group supervisor

- 26.—(1) This regulation—
- (a) states the rule which applies for the purposes of deciding when—
    - (i) the PRA is the group supervisor of a group; and
    - (ii) the PRA must recognise another supervisory authority as the group supervisor of a group; and
  - (b) applies only when regulation 27 (which specifies exceptions to the rule) does not apply.
- (2) Where the PRA is the supervisor of all the insurance undertakings and reinsurance undertakings in a group, the PRA is the group supervisor of the group.
- (3) Where paragraph (2) does not apply and the group is headed by an insurance undertaking or reinsurance undertaking which is authorised by the PRA under Part 4A of FSMA, the PRA is the group supervisor of the group.
- (4) Where paragraph (2) does not apply and the group is not headed by an insurance undertaking or reinsurance undertaking, the PRA is the group supervisor of the group in any of the following circumstances—
- (a) where—
    - (i) an insurance undertaking or reinsurance undertaking has an insurance holding company or mixed financial holding company as a parent; and
    - (ii) the PRA has authorised that insurance undertaking or reinsurance undertaking;
  - (b) where—

- (i) the group contains two or more insurance undertakings or reinsurance undertakings with their head offices in an EEA State;
  - (ii) the undertakings have the same insurance holding company or mixed financial holding company as a parent;
  - (iii) one of those undertakings has been authorised by the PRA; and
  - (iv) the insurance holding company or mixed financial holding company has its head office in the United Kingdom;
- (c) where—
- (i) the group is headed by two or more insurance holding companies or mixed financial holding companies with their head offices in different EEA States;
  - (ii) there is an insurance undertaking or reinsurance undertaking in the group in each of those EEA States; and
  - (iii) the PRA has authorised the insurance undertaking or reinsurance undertaking with the largest balance sheet total;
- (d) where—
- (i) two or more insurance undertakings or reinsurance undertakings with their head offices in an EEA State have the same insurance holding company or mixed financial holding company as a parent;
  - (ii) none of those undertakings has been authorised in the EEA State in which the insurance holding company or mixed financial holding company has its head office; and
  - (iii) the PRA has authorised the insurance undertaking or reinsurance undertaking with the largest balance sheet total;
- (e) where the group is a group without a parent undertaking, or in any circumstances not referred to in sub-paragraphs (a) to (d), the PRA has authorised the insurance undertaking or reinsurance undertaking with the largest balance sheet total.
- (5) Where another supervisory authority has been designated as the group supervisor in accordance with national laws implementing Article 247 of the Solvency 2 Directive, the PRA must recognise that supervisory authority as the group supervisor of the group.

### **Exceptions to the rule for deciding the group supervisor**

#### **27.—(1) Notwithstanding regulation 26—**

- (a) the PRA is the group supervisor of a group if all the supervisory authorities concerned take a joint decision that the PRA should be the group supervisor; and
  - (b) the PRA must recognise a joint decision taken by all the supervisory authorities that a supervisory authority other than the PRA should be the group supervisor of a group.
- (2) The PRA may ask the other supervisory authorities concerned to consider whether—
- (a) the criteria specified in paragraph 2 of Article 247 of the Solvency 2 Directive are appropriate for determining which supervisory authority should be the group supervisor; and
  - (b) a supervisory authority other than the supervisory authority satisfying those criteria should be the group supervisor.
- (3) The PRA may not make a request referred to in paragraph (2) more than once a year.



(4) Where the supervisory authorities are considering (whether at the request of the PRA or another supervisory authority) whether the criteria are appropriate or whether a particular supervisory authority should be group supervisor—

- (a) the PRA must do everything in its power to reach a joint decision on the request within a period of three months commencing on the date of the request;
- (b) the PRA must permit the group concerned to give its opinion on the request;
- (c) the PRA may refer the matter to EIOPA in accordance with Article 19 of the EIOPA Regulation within a period of three months beginning with the date of the request;
- (d) where the matter is referred to EIOPA, the PRA must take a joint decision in accordance with any decision taken by EIOPA;
- (e) where the matter is not referred to EIOPA or EIOPA take no decision on such a referral, the PRA may take a joint decision with the other supervisory authorities that—
  - (i) the criteria referred to in paragraph (2)(a) are inappropriate, taking into account the structure of the group and the relative importance of the activities of insurance undertakings and reinsurance undertakings in the different countries; and
  - (ii) a supervisory authority other than the supervisory authority satisfying the criteria should be the group supervisor; and
- (f) where the joint decision designates the PRA as the group supervisor, the PRA must provide a copy of the decision to the group stating the full reasons for the decision.

#### **Duties of group supervisor and establishment of college of supervisors**

**28.**—(1) Paragraphs (2) to (7) apply where the PRA is the group supervisor of a group, and paragraph (8) applies where the PRA is a member of a college of supervisors for a group but is not the group supervisor.

(2) The PRA must—

- (a) coordinate the gathering and dissemination of relevant or essential information for going-concern and emergency situations, including the dissemination of information which is of importance to the supervisory functions of another supervisory authority;
- (b) conduct supervisory reviews and assessments of the financial situation of the group;
- (c) assess the group's compliance with the rules on solvency, risk concentration and intra-group transactions set out in Articles 218 to 245 of the Solvency 2 Directive;
- (d) assess the group's system of governance in accordance with regulation 25;
- (e) assess whether the members of the administrative, management or supervisory body of the participating undertakings in the group fulfil the requirements set out in rules implementing Articles 42 and 257 of the Solvency 2 Directive;
- (f) plan and coordinate, through regular meetings held at least annually or other appropriate means, supervisory activities in going-concern and emergency situations, in cooperation with the other supervisory authorities concerned and taking into account the nature, scale and complexity of the risks inherent in the business of all the undertakings in the group;
- (g) lead the process for validating an internal model at group level as set out in regulation 49;
- (h) lead the process for permitting the application of the regime referred to in Articles 237 to 240 of the Solvency 2 Directive; and
- (i) carry out the other tasks, measures and decisions assigned to the group supervisor by the Solvency 2 Directive.

(3) In order to facilitate the exercise of the tasks referred to in paragraph (2), the PRA must establish and chair a college of supervisors comprising—

- (a) the PRA;
  - (b) the supervisory authorities of the EEA States in which the head office of every subsidiary undertaking in the group is situated; and
  - (c) EIOPA.
- (4) The PRA—
- (a) must permit the supervisory authorities of significant branches and related undertakings to participate in the college of supervisors, provided that their participation is limited to achieving an efficient exchange of information;
  - (b) must ensure that the processes for cooperation, exchange of information and consultation between the PRA and the other supervisory authorities concerned are effectively applied in accordance with Title 3 of the Solvency 2 Directive, with a view to promoting the convergence of their respective decisions and activities;
  - (c) may agree with the other supervisory authorities concerned that some activities of the college be carried out by a reduced number of supervisory authorities where the effective functioning of the college of supervisors requires it;
  - (d) must conclude co-ordination arrangements with the other supervisory authorities concerned for the establishment and functioning of the college of supervisors.
- (5) The arrangements referred to in paragraph (4)(d) must specify procedures for—
- (a) the decision-making process among the supervisory authorities in accordance with Articles 231, 232 and 247 of the Solvency 2 Directive; and
  - (b) consultation under Articles 218(5) and 248(4) and of the Solvency 2 Directive.
- (6) Where the PRA has received advice from EIOPA in relation to the establishment and functioning of the college of supervisors, it must, after consulting the other supervisory authorities concerned, duly consider such advice before the end of the period of two months beginning with the date the advice was received before taking its final decision.
- (7) Where the PRA makes a decision regarding the establishment and functioning of the college of supervisors, the PRA must—
- (a) ensure the decision contains a statement setting out in full the reasons for the decision and explaining any significant deviation from any advice given by EIOPA; and
  - (b) send a copy of the decision to the other supervisory authorities concerned.
- (8) The PRA must send EIOPA any information on the functioning of the college of supervisors and any difficulties encountered that are relevant for EIOPA's reviews of the operational functioning of colleges of supervisors.

### **Cooperation and exchange of information between supervisory authorities**

- 29.—**(1) Where the PRA is the group supervisor of a group, the PRA must provide the other supervisory authorities concerned and EIOPA with the following information regarding the group—
- (a) information received by the PRA under rules implementing the last sub-paragraph of Article 19, Article 51(1) and Article 254(2) of the Solvency 2 Directive;
  - (b) information regarding the legal, governance and organisational structure of the group.
- (2) Where the PRA is a member of the college of supervisors for a group, the PRA must—
- (a) cooperate closely with the other supervisory authorities concerned, in particular in cases where an insurance undertaking or reinsurance undertaking in the group encounters financial difficulties;

- (b) provide the other supervisory authorities concerned with relevant information so as to allow and facilitate the exercise of their supervisory tasks under the Solvency 2 Directive;
- (c) communicate all relevant information to the other supervisory authorities concerned without delay as soon as such information becomes available or exchange such relevant information on request; and
- (d) call immediately for a meeting of all supervisory authorities concerned where—
  - (i) the PRA becomes aware that an individual insurance undertaking or reinsurance undertaking in the group has breached the solvency capital requirement in a significant way;
  - (ii) the PRA becomes aware that an individual insurance undertaking or reinsurance undertaking in the group has breached the minimum capital requirement;
  - (iii) the PRA becomes aware that the group has breached the solvency capital requirement at group level in a significant way; or
  - (iv) other exceptional circumstances occur.

### **Consultation between supervisory authorities**

**30.**—(1) Except where paragraph (3) applies, the PRA must consult the other members of the college of supervisors before taking a decision which is of importance to the supervisory tasks of another supervisory authority with regard to—

- (a) changes in the shareholder, organisational or management structure of insurance undertakings or reinsurance undertakings in the group, which require the approval or authorisation of the other supervisory authority;
- (b) a decision on the extension of the recovery period under rules implementing Articles 138 (3) and (4) of the Solvency 2 Directive; or
- (c) the imposition of a capital add-on, a limitation on the use of an internal model for calculating the solvency capital requirement, or any other major sanctions or exceptional measures taken by the other supervisory authority.

(2) Where the PRA consults another supervisory authority on a matter referred to in paragraph (1) (b) or (1)(c) and the PRA is not the group supervisor, the PRA must also consult the group supervisor on that matter.

(3) Paragraph (1) does not apply in cases of urgency or where consultation may jeopardise the effectiveness of the PRA's decision, provided the PRA informs the other supervisory authorities concerned without delay.

(4) The PRA must also consult a supervisory authority before taking a decision based on information received from that supervisory authority.

### **Access to information**

**31.**—(1) Before requesting information from an insurance undertaking or reinsurance undertaking in a group, the PRA must satisfy—

- (a) condition 1; and
- (b) if the PRA is the group supervisor of the group to which the undertaking belongs and the information is referred to in rules implementing Article 254(2) of the Solvency 2 Directive, condition 2.

(2) In this regulation—

- (a) condition 1 is that the information has been requested from the insurance undertaking or reinsurance undertaking subject to group supervision and has not been supplied by that undertaking within a reasonable period of time; and
- (b) condition 2 is that the PRA has, if possible, requested the information from all the other supervisory authorities to which the information has been provided and none of those supervisory authorities has provided the information to the PRA.

### **Verification of information**

**32.**—(1) Where the PRA receives a request for verification from another supervisory authority in accordance with Article 255(2) of the Solvency 2 Directive, the PRA must carry out the verification directly, allow an auditor or expert to carry out the verification, or allow the other supervisory authority to carry out verification itself.

(2) Where the PRA is not the group supervisor, the PRA must inform the group supervisor of the action it takes.

### **Group solvency and financial condition report**

**33.** Where the PRA is the group supervisor of a group and the PRA has received a request from—

- (a) an insurance undertaking which is a participating undertaking;
- (b) a reinsurance undertaking which is a participating undertaking;
- (c) an insurance holding company;
- (d) a mixed financial holding company,

to provide a single solvency and financial condition report in accordance with rules implementing Article 256 of the Solvency 2 Directive, the PRA must consult and duly take into account any views and reservations of the other members of the college of supervisors before agreeing to the request.

### **Enforcement measures**

**34.**—(1) In this regulation, a “relevant event” means—

- (a) an insurance undertaking or reinsurance undertaking in a group does not comply with a requirement referred to in—
  - (i) Articles 218 to 246, or 265, of the Solvency 2 Directive; or
  - (ii) a third country supervisory regime which is equivalent to Title 3 of the Solvency 2 Directive;
- (b) the solvency of an insurance undertaking or reinsurance undertaking in a group is jeopardised; or
- (c) an intra-group transaction or risk concentration is a threat to the financial position of an insurance undertaking or reinsurance undertaking in a group.

(2) Where—

- (a) the PRA is the group supervisor of a group;
- (b) the group contains an insurance holding company, a mixed financial holding company or a mixed-activity insurance holding company with its head office in an EEA State other than the United Kingdom; and
- (c) a relevant event occurs in relation to such a company,

the PRA must inform the supervisory authority of that EEA State with a view to enabling the supervisory authority to take any necessary measures in accordance with Article 258(1) of the Solvency 2 Directive.

(3) Where—

- (a) the PRA is the group supervisor of a group;
- (b) a relevant event occurs in relation to an insurance undertaking or reinsurance undertaking in the group; and
- (c) that undertaking has its head office in an EEA State other than the United Kingdom,

the PRA must inform the supervisory authority of the EEA State with a view to enabling the supervisory authority to take the necessary measures in accordance with Article 258(1) of the Solvency 2 Directive.

(4) The PRA must, where appropriate, coordinate any measures it may take with the other supervisory authorities concerned.

## CHAPTER 7

### Third countries

#### **Non-EEA solvency 2 parent undertakings: equivalence**

**35.**—(1) Schedule 3 applies where the parent undertaking of an insurance undertaking or reinsurance undertaking established in the EEA has its head office in a third country.

(2) Where the PRA is required to rely on supervision exercised by a supervisory authority in a third country which has a supervisory regime which is equivalent to Title 3 of the Solvency 2 Directive, regulations 26 to 34 apply in relation to cooperation with those supervisory authorities.

#### **Parent undertaking outside the EEA: absence of equivalence**

**36.**—(1) This regulation applies where—

- (a) a parent undertaking of an insurance undertaking or reinsurance undertaking established in the EEA has its head office in a third country; and
- (b) both of the following conditions are satisfied—
  - (i) the Commission has not adopted a delegated act under Article 260(3) of the solvency 2 directive determining that the prudential regime of the third country is equivalent to Title 3 of the Solvency 2 Directive; and
  - (ii) either—
    - (aa) the Commission has not adopted a delegated act under Article 260(5) of the Solvency 2 Directive determining that the prudential regime of the third country is temporarily equivalent to Title 3 of the Solvency 2 Directive; or
    - (bb) if such a delegated act has been adopted, the group contains an insurance undertaking or reinsurance undertaking in an EEA State with a balance sheet total that exceeds the balance sheet total of the parent undertaking situated in the third country.

(2) The PRA must apply either of the following methods of supervision to the group—

- (a) rules implementing Articles 218 to 235, and 244 to 258, of the Solvency 2 Directive; or
- (b) any other method which—
  - (i) ensures appropriate supervision of the insurance undertakings and reinsurance undertakings in the group; and

- (ii) ensures the objectives of group supervision (as set out in Title 3 of the Solvency 2 Directive) are achieved.
- (3) Where the PRA applies the rules referred to in paragraph (2)(a)—
  - (a) the rules must be applied at the level of the insurance holding company, mixed financial holding company, third-country insurance undertaking or third-country reinsurance undertaking; and
  - (b) for the sole purpose of the group solvency calculation, the parent undertaking must be treated as if it were an insurance undertaking or reinsurance undertaking subject to the conditions as laid down in Subsections 1, 2 and 3 of Section 3 of Chapter 6 of Title 1 of the Solvency 2 Directive as regards—
    - (i) the own funds eligible for the solvency capital requirement; and
    - (ii) either of—
      - (aa) a solvency capital requirement determined in accordance with the principles of Article 226 of the Solvency 2 Directive where the parent undertaking is an insurance holding company; or
      - (bb) a solvency capital requirement determined in accordance with the principles of Article 227 of the Solvency 2 Directive where the parent undertaking is a third-country insurance undertaking or third-country reinsurance undertaking.
- (4) The reference in paragraph (2)(b) to any other method includes—
  - (a) requiring the group to establish an insurance holding company or mixed financial holding company with its head office in the EEA State; and
  - (b) applying the requirements of Title 3 of the Solvency 2 Directive to the insurance undertakings and reinsurance undertakings in the group headed by that insurance holding company or mixed financial holding company.
- (5) Before applying another method under paragraph (2)(b), the PRA must—
  - (a) consult the other supervisory authorities concerned in the supervision of the group; and
  - (b) where the PRA is not acting as the group supervisor, agree the method with the supervisor acting as the group supervisor.
- (6) Where the PRA applies another method under paragraph (2)(b), the PRA must notify the European Commission and the other supervisory authorities concerned.

## CHAPTER 8

### Mixed-activity insurance holding companies

#### **Intra-group transactions**

- 37.—**(1) This regulation applies where—
- (a) the parent undertaking of one or more insurance undertakings or reinsurance undertakings in the group is a mixed-activity insurance holding company; and
  - (b) the PRA supervises one or more of the insurance undertakings or reinsurance undertakings in the group.
- (2) The PRA must exercise general supervision over transactions between—
- (a) the mixed-activity holding company and its related undertakings; and
  - (b) the insurance undertakings or reinsurance undertakings supervised by the PRA.

## PART 4

### Approvals

#### CHAPTER 1

##### Procedure: applications

#### **Meaning of “approval”, “group application”, “protected item” and “branch”**

**38.**—(1) In this Part and in Schedules 4 and 5—

“approval” means an approval granted by the PRA under this Part;

“group application” means an application for permission to calculate any of the following matters in accordance with an internal model—

- (i) the consolidated group solvency capital requirement for a group and the solvency capital requirements for the insurance undertakings and reinsurance undertakings in the group in accordance with method 1(9);
- (ii) the aggregated group solvency capital requirement in relation to group solvency determined in accordance with method 2(10); and

“protected item” has the same meaning as in section 413 of FSMA.

(2) In regulations 40, 50 and 51, “branch” has the meaning given in Article 162 of the Solvency 2 Directive.

#### **Applications: eligibility, process, information and documents**

**39.**—(1) This regulation applies to an application to the PRA for—

- (a) the grant of an approval; or
- (b) a variation of an existing approval.

(2) An insurance undertaking, reinsurance undertaking or third-country insurance undertaking may apply for an approval under regulations 41 to 48, 53 and 54 only if it is authorised under Part 4A of FSMA.

(3) Subject to paragraph (9) an application must—

- (a) be made in such manner as the PRA may direct; and
- (b) contain, or be accompanied by, such other information or documents as the PRA may reasonably require.

(4) At any time after receiving the application and before determining it, the PRA may require the undertaking to provide it with such further information or documents as it may reasonably require.

(5) The PRA may require any information provided under this regulation to be provided in such form and verified in such manner as it may reasonably require.

(6) The PRA may require any documents provided under this regulation to be produced at such place and authenticated in such manner as it may reasonably require.

(7) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.

(8) The powers conferred on the PRA by this regulation—

---

(9) See Article 231 of the Solvency 2 Directive.

(10) See Article 233(5) of the Solvency 2 Directive.

- (a) must be exercised in accordance with any directly applicable regulation made under the Solvency 2 Directive; and
  - (b) may not be used to require the production of a protected item.
- (9) An application under regulation 50 (approval of third-country insurance undertakings in more than one EEA State) is valid only if the following requirements are satisfied—
- (a) the same application is also made to the supervisory authorities in all the EEA States in which the undertaking is authorised or has applied for authorisation;
  - (b) the application states the supervisory authority which is to supervise the solvency of the entire business of the undertaking's branches; and
  - (c) the application gives reasons for the choice of supervisory authority referred to in subparagraph (b).
- (10) Where an application has been made to the PRA under regulation 43 (volatility adjustment), paragraphs (3)(b) and (4) may only be used to require—
- (a) a liquidity plan projecting the incoming and outgoing cash flows in relation to the assets and liabilities subject to the volatility adjustment;
  - (b) where the disapplication of the volatility adjustment would result in the undertaking failing to meet the solvency capital requirement, an analysis of the measures the undertaking could apply to re-establish the level of own funds covering the solvency capital requirement or reduce its risk profile to restore compliance with the solvency capital requirement;
  - (c) the undertaking's written policy on risk management;
  - (d) an assessment of the undertaking's compliance with the capital requirements specified in Sections 4 and 5 of Chapter 6 of Title 1 of the Solvency 2 Directive—
    - (i) when the volatility adjustment is applied; and
    - (ii) when the volatility adjustment is not applied.

**Additional process: applications from groups and applications to more than one supervisory authority**

**40.**—(1) Where the PRA receives an application referred to in the first column of Table 2, the PRA must follow the additional procedural requirements specified in the second column of Table 2.

**Table 2**

<i>Application</i>	<i>Additional procedural requirements</i>
An application by a parent undertaking for permission for a subsidiary undertaking to be subject to national laws implementing Articles 238 and 239 of the Solvency 2 Directive <sup>(11)</sup> .	Schedule 4 applies.
A group application.	Schedule 5 applies.
An application by a third-country insurance undertaking under regulation 50 (approval of third-country insurance undertakings in more than one EEA State).	Where the PRA grants an approval and the application states that the PRA is to be the solvency supervisor, the PRA must notify the supervisory authorities referred to in regulation 50(2) of the date on which the approval is to take effect.

<sup>(11)</sup> Referred to in Articles 236(e) and 237 of the Solvency 2 Directive.



<i>Application</i>	<i>Additional procedural requirements</i>
	<p>Where the PRA grants approval and the application states that another supervisory authority is to be the solvency supervisor, the approval must take effect on the date on which the solvency supervisor is to supervise the solvency of the entire business of the undertaking's branches ("the relevant date") or, if later, the date on which the PRA is notified of the relevant date.</p> <p>"Solvency supervisor" has the meaning given in regulation 50(11).</p>

## CHAPTER 2

### Specific Approvals

#### Verification that the Solvency 2 Directive does not apply

**41.**—(1) An insurance undertaking may apply to the PRA for verification that the conditions specified in Article 4(4) of the Solvency 2 Directive are satisfied.

(2) Where the PRA receives an application under paragraph (1), the PRA may approve the application.

(3) The PRA may revoke an approval granted under paragraph (2) where the conditions specified in Article 4(4) of the Solvency 2 Directive cease to be satisfied.

#### Matching adjustment

**42.**—(1) An insurance undertaking, reinsurance undertaking or third-country insurance undertaking may apply to the PRA for permission to apply a matching adjustment to a risk-free interest rate term structure in order to calculate the best estimate of a portfolio of life insurance or reinsurance obligations.

(2) The PRA must approve an application made under paragraph (1) if the conditions specified in paragraph (4) would be satisfied if approval were granted.

(3) The PRA must revoke an approval granted under paragraph (2) if an undertaking fails to comply with a condition specified in sub-paragraphs (a) to (k) of paragraph (4) in relation to that approval for a period of two months or more.

(4) The conditions referred to in paragraphs (2) and (3) are—

- (a) the undertaking assigns a portfolio of assets, consisting of bonds or other assets with similar cash flow characteristics, to cover the best estimate of the portfolio of insurance or reinsurance obligations;
- (b) the undertaking maintains the assignment referred to in sub-paragraph (a) over the lifetime of the obligations, except for the purpose of maintaining the replication of expected cash flows between assets and liabilities where the cash flows have materially changed;
- (c) the portfolio of insurance or reinsurance obligations to which the matching adjustment is applied and the assigned portfolio of assets are—
  - (i) identified; and
  - (ii) organised and managed separately from the other activities of the undertaking;

- (d) the assigned portfolio of assets referred to in sub-paragraph (c) cannot be used to cover losses arising from the other activities of the undertaking;
- (e) the expected cash flows of the assigned portfolio of assets replicate each of the expected cash flows of the portfolio of insurance or reinsurance obligations in the same currency;
- (f) any mismatch between the expected cash flows referred to in sub-paragraph (e) does not give rise to risks which are material in relation to the risks inherent in the insurance business to which the matching adjustment is applied;
- (g) the contracts underlying the portfolio of insurance or reinsurance obligations do not give rise to future premium payments;
- (h) the only underwriting risks connected to the portfolio of insurance or reinsurance obligations are longevity risk, expense risk, revision risk or mortality risk;
- (i) where the underwriting risk connected to the portfolio of insurance or reinsurance obligations includes mortality risk, the best estimate of the portfolio of insurance or reinsurance obligations does not increase by more than 5% under a mortality risk stress that is calibrated in accordance with rules implementing paragraphs (2) to (5) of Article 101 of the Solvency 2 Directive;
- (j) the contracts underlying the insurance or reinsurance obligations include—
  - (i) no options for the policyholder; or
  - (ii) only a surrender option with a surrender value not exceeding the value of the assets, valued in accordance with rules implementing, and any directly applicable regulation made under, Article 75 of the Solvency 2 Directive, covering the insurance or reinsurance obligations at the time the surrender option is exercised;
- (k) the cash flows of the assigned portfolio of assets are—
  - (i) fixed and cannot be changed by the issuers of the assets or any third parties; or
  - (ii) fixed except for a dependence on inflation, and the assets replicate the cash flows of the portfolio of insurance or reinsurance obligations that depend on inflation;
- (l) the undertaking does not apply a volatility adjustment to the risk free interest rate term structure in accordance with an approval granted under regulation 43;
- (m) the undertaking does not apply a transitional measure to the risk free interest rates in accordance with an approval granted under regulation 53;
- (n) the undertaking has not ceased to apply a matching adjustment to the risk-free interest rate term structure in the 24 months prior to the application.

(5) For the purposes of paragraph (4), the insurance or reinsurance obligations of an insurance or reinsurance contract must not be split into different parts when composing the portfolio of insurance or reinsurance obligations.

(6) For the purposes of sub-paragraph (4)(k)(i), where issuers or third parties have the right to change the cash flows of an asset, that right does not disqualify the asset from admissibility to the assigned portfolio, provided the investor receives sufficient compensation to allow it to obtain the same cash flow by re-investing the compensation in assets of an equivalent or better quality.

(7) In this regulation, “life insurance and reinsurance obligations”—

- (a) includes annuities stemming from non-life insurance or reinsurance contracts;
- (b) in the case of a third-country insurance undertaking which has not been granted an approval under regulation 50, refers only to insurance and reinsurance obligations assumed in the United Kingdom; and
- (c) in the case of a third-country insurance undertaking for which the PRA is the supervisory authority responsible for supervising the solvency of the entire business of

the undertaking's branches pursuant to an approval granted under regulation 50, refers to insurance and reinsurance obligations assumed in relation to the entire business which it pursues within the EEA.

### **Volatility adjustment**

**43.—**(1) An insurance undertaking, reinsurance undertaking or third-country insurance undertaking may apply to the PRA for permission to apply a volatility adjustment to the relevant risk-free interest rate term structure in order to calculate the best estimate referred to in Article 77(2) of the Solvency 2 Directive.

(2) The PRA must approve an application made under paragraph (1) if the proposed application of the volatility adjustment would satisfy all the conditions specified in paragraph (4).

(3) The PRA must revoke an approval granted under paragraph (2) where the application of the volatility adjustment does not satisfy a condition specified in paragraph (4).

(4) The conditions referred to in paragraphs (2) and (3) are—

- (a) the volatility adjustment is applied correctly to the relevant risk-free interest rate term structure in order to calculate the best estimate;
- (b) the undertaking does not breach a relevant requirement as a result or consequence of applying the volatility adjustment;
- (c) the application of the volatility adjustment does not create an incentive for the undertaking to engage in pro-cyclical investment behaviour.

(5) In paragraph (4)(b), a “relevant requirement” is—

- (a) a requirement imposed by or under FSMA in pursuance of the Solvency 2 Directive; or
- (b) a requirement of a directly applicable regulation made under the Solvency 2 Directive.

### **Supervisory approval of ancillary own-funds**

**44.—**(1) An insurance undertaking, reinsurance undertaking or third-country insurance undertaking may apply to the PRA for permission to take the amount of an ancillary own-fund item into account when determining its own funds in accordance with rules implementing Article 90 of the Solvency 2 Directive and any directly applicable regulations made under Article 92.

(2) Where the PRA receives an application under paragraph (1), the PRA must approve—

- (a) a monetary amount for each ancillary own-fund item; or
- (b) a method by which each ancillary own-fund item may be determined for a specified period of time.

(3) Where the PRA grants approval under paragraph (2)—

- (a) the undertaking may apply to vary that approval; and
- (b) the PRA may vary that approval.

(4) The PRA must base its approval or variation of approval on an assessment of—

- (a) the status of the counterparties concerned, in relation to their ability and willingness to pay;
- (b) the recoverability of the funds, taking account of the legal form of the ancillary own-fund item and any conditions which would prevent the item from being successfully paid in or called up; and
- (c) any information on the outcome of past calls which insurance undertakings, reinsurance undertakings and third-country insurance undertakings have made for ancillary own fund items they have paid in or called up, to the extent that such information can be reliably used to assess the expected outcome of future calls.

**Eligible own funds for an intermediate insurance holding company**

**45.**—(1) This regulation applies where the PRA is the group supervisor of a group which includes an intermediate insurance holding company or an intermediate mixed financial holding company.

(2) The intermediate insurance holding company or an intermediate mixed financial holding company may apply to the PRA for permission to include eligible own funds in the calculation of group solvency.

(3) Where the PRA receives an application under paragraph (2), the PRA must approve—

- (a) a monetary amount for each ancillary own-fund item; or
- (b) a method by which each ancillary own-fund item may be determined for a specified period of time.

(4) Where the PRA grants approval under paragraph (3)—

- (a) the undertaking may apply to vary that approval; and
- (b) the PRA may vary that approval.

(5) The PRA must base its approval or variation of approval on an assessment of—

- (a) the status of the counterparties concerned, in relation to their ability and willingness to pay;
- (b) the recoverability of the funds, taking account of the legal form of the ancillary own-fund item and any conditions which would prevent the item from being successfully paid in or called up; and
- (c) any information on the outcome of past calls which intermediate insurance holding companies and intermediate mixed financial holding companies have made for each ancillary own-fund item, to the extent that information can be reliably used to assess the expected outcome of future calls.

**Classification of funds**

**46.**—(1) This regulation applies to an own-fund item which is not included in the list of own-fund items referred to in Article 97(1) of the Solvency 2 Directive.

(2) An insurance undertaking, reinsurance undertaking or third-country insurance undertaking may apply to the PRA for approval of its assessment and classification of an own-fund item referred to in paragraph (1).

(3) The PRA may approve an application made under paragraph (2).

(4) Where the PRA grants approval under paragraph (3)—

- (a) the undertaking may apply to vary the approval;
- (b) the PRA may vary the approval; or
- (c) the PRA may revoke the approval.

(5) The PRA must base its decision to grant, vary or revoke approval on the criteria referred to in Article 94 of the Solvency 2 Directive.

**Basic Solvency Capital Requirement**

**47.**—(1) This regulation applies where an insurance undertaking, reinsurance undertaking or third-country insurance undertaking uses the standard formula to calculate its basic solvency capital requirement.

(2) In order to calculate its life, non-life and health underwriting risk modules, the undertaking may apply to the PRA for approval to use a subset of parameters specific to the undertaking instead of a subset of parameters of the standard formula.

- (3) The PRA may only approve an application made under paragraph (2) when—
  - (a) the parameters the undertaking has applied to use are calibrated on the basis of the internal data of the undertaking concerned, or on the basis of data which are directly relevant to the operations of that undertaking using standardised methods; and
  - (b) the PRA has verified the completeness, accuracy and appropriateness of the data used.
- (4) Where the PRA grants approval under paragraph (3)—
  - (a) the undertaking may apply to vary the approval;
  - (b) the PRA may vary the approval provided sub-paragraphs (a) and (b) of paragraph (3) continue to be satisfied; or
  - (c) the PRA may revoke the approval.

### **Models**

**48.**—(1) An insurance undertaking, reinsurance undertaking or third-country insurance undertaking may apply to the PRA for approval of—

- (a) a full or partial internal model;
  - (b) major changes to an approved internal model; or
  - (c) the policy for changing an approved internal model.
- (2) The PRA may require an undertaking to run its internal model—
- (a) on relevant benchmark portfolios; or
  - (b) using assumptions based on external rather than internal data,

in order to verify the calibration of the internal model and to check that its specification is in line with generally accepted market practice.

- (3) The PRA must approve an application made under paragraph (1) if—
  - (a) the internal model complies with the requirements of rules implementing Article 112 of the Solvency 2 Directive;
  - (b) the internal model complies with the requirements of any directly applicable regulations made under Article 127 of the Solvency 2 Directive;
  - (c) the systems of the undertaking for identifying, measuring, monitoring, managing and reporting risk are adequate; and
  - (d) in the case of a partial internal model, the model fulfils the requirements of rules implementing Article 113 of the Solvency 2 Directive and any directly applicable regulation made under Article 114 of the Solvency 2 Directive.
- (4) The PRA must give a decision on an application made under paragraph (1) within six months of its receipt of the completed application.
- (5) Where the PRA grants approval under paragraph (3), the PRA may—
  - (a) vary the approval;
  - (b) revoke the approval.
- (6) In this regulation “internal model” includes a partial internal model.

### **Group applications**

**49.**—(1) An insurance undertaking or reinsurance undertaking may make a group application to the PRA where the PRA is the group supervisor for the group to which the undertaking belongs.

(2) Where the PRA receives a group application, it may grant the approval in accordance with the procedure specified in Schedule 5.

(3) Where the PRA grants an approval under paragraph (2), the approval may include conditions to which the approval is subject.

(4) The PRA may revoke an approval granted under paragraph (2).

### **Third-country insurance undertakings: approval of supervision in more than one EEA State**

**50.**—(1) A third-country insurance undertaking which is authorised, or has applied for authorisation, under national laws implementing Article 162(1) of the Solvency 2 Directive from more than one EEA State may apply to the PRA for permission to—

- (a) calculate its solvency capital requirement—
  - (i) in relation to the entire business which it pursues within EEA States; and
  - (ii) taking account only of operations effected by its branches established in EEA States;
- (b) lodge the deposit required under Article 162(2)(e) of the Solvency 2 Directive in only one of those EEA States in which it is authorised, or has applied for authorisation; and
- (c) hold the assets required to satisfy the minimum capital requirement in any one of the EEA States in which it pursues its activities.

(2) The PRA may only approve an application made under paragraph (1) if the supervisory authorities of all of the EEA States in which the undertaking is authorised, or has applied for authorisation, agree that the undertaking should benefit from the approval.

(3) On granting the approval, the PRA must require the undertaking to lodge the deposit referred to in paragraph (1)(b) in the EEA State of the solvency supervisor.

(4) Where the PRA is the solvency supervisor it must request any information that is necessary for the supervision of the overall solvency of the undertaking's branches established in EEA States from the other authorising supervisory authorities.

(5) Where another authorising supervisory authority is the solvency supervisor the PRA must take reasonable steps to provide it with any information necessary to supervise the solvency of all of the undertaking's branches in the United Kingdom.

(6) Subject to paragraph (7), the PRA may vary an approval granted under paragraph (2) where all of the authorising supervisory authorities agree that the undertaking should benefit from the proposed variation.

(7) The PRA may not vary an approval granted under paragraph (2) to permit the undertaking to benefit from a permission to take one of the steps in paragraphs (1)(a) to (1)(c) but not the others.

(8) The PRA may revoke an approval granted under paragraph (2) where it considers the approval should be revoked.

(9) The PRA must revoke an approval granted under paragraph (2) where revocation is requested by another authorising supervisory authority.

(10) Before the PRA revokes an approval granted under paragraph (2), the PRA must—

- (a) where the approval is revoked under paragraph (8), ask all the other authorising supervisory authorities to withdraw the advantages referred to in Article 167(1) of the Solvency 2 Directive which have been granted to the undertaking;
- (b) take reasonable steps to ensure that the approval is revoked at the same time as the other authorising supervisory authorities withdraw those advantages from the undertaking.

(11) In this regulation, “solvency supervisor” means the supervisory authority which is specified in the application under paragraph (1) as being responsible for supervising the solvency of the entire business of the undertaking's branches established in EEA States.

(12) In this regulation, “authorising supervisory authority” means a supervisory authority that agreed under paragraph (2) that the undertaking should benefit from the approval.

### **Withdrawal of authorisation for third-country insurance undertakings authorised in more than one EEA State**

**51.**—(1) Where a third-country insurance undertaking has been granted an approval under regulation 50—

- (a) the PRA must notify the supervisory authorities in the other EEA States where that undertaking operates if—
  - (i) the PRA is the supervisory authority responsible for supervising the solvency of the entire business of the undertaking’s branches; and
  - (ii) the PRA cancels the undertaking’s Part 4A permission;
- (b) the PRA must cancel the undertaking’s Part 4A permission if—
  - (i) another supervisory authority is responsible for supervising the solvency of the entire business of the undertaking’s branches;
  - (ii) that supervisory authority notifies the PRA that it has withdrawn the undertaking’s authorisation given under national laws implementing Article 162 of the Solvency 2 Directive; and
  - (iii) the reason given for the withdrawal is the inadequacy of the undertaking’s overall state of solvency as determined by the supervisory authorities referred to in regulation 50(2).

### **Subsidiaries: application of Articles 238 and 239 of the Solvency 2 Directive**

**52.**—(1) Where the PRA is a member of a college of supervisors responsible for supervising a subsidiary undertaking, the parent undertaking may apply to the PRA for permission to apply rules implementing Articles 238 and 239 of the Solvency 2 Directive to the subsidiary undertaking.

(2) The PRA may approve an application referred to in paragraph (1) in accordance with the procedure specified in Schedule 4.

(3) Where the PRA has granted approval in accordance with paragraph (2), it must revoke approval where—

- (a) the subsidiary undertaking is no longer included in group supervision carried out by the group supervisor at the level of the parent undertaking in accordance with Title 3 of the Solvency 2 Directive;
- (b) the risk management processes and internal control mechanisms of the parent undertaking have failed to cover the subsidiary undertaking and the group has failed to rectify the failure within an appropriate period of time;
- (c) the parent undertaking has failed to manage the subsidiary undertaking prudently, and the group has failed to rectify the problem in a reasonable period of time;
- (d) the group supervisor revokes the agreement referred to in the third sub-paragraph of Article 246(4) of the Solvency 2 Directive; or
- (e) the group supervisor revokes the agreement referred to in the first sub-paragraph of Article 256(2) of the Solvency 2 Directive.

### **Transitional measures on risk-free interest rates**

**53.**—(1) An insurance undertaking, reinsurance undertaking or third-country insurance undertaking may apply to the PRA for permission to apply a transitional adjustment to a risk-free interest rate term structure with respect to admissible insurance or reinsurance obligations.

(2) Admissible insurance or reinsurance obligations are insurance or reinsurance obligations that meet all of the following requirements—

- (a) the contracts that give rise to the insurance or reinsurance obligations are concluded before 1st January 2016;
- (b) the technical provisions for the insurance and reinsurance obligations are determined in accordance with rules implementing Article 20 of [Directive 2002/83/EC](#) of the European Parliament and of the Council of 5th November 2002 concerning life assurance<sup>(12)</sup> until 1st January 2016;
- (c) the insurance or reinsurance obligations are not subject to a matching adjustment in accordance with an approval granted under regulation 42.

(3) For the purposes of paragraph (2)(a), the renewal of a contract does not give rise to a new contract.

(4) The PRA must approve an application made under paragraph (1) if the condition specified in paragraph (6) would be satisfied if the approval is granted.

(5) Where the PRA grants approval under paragraph (4)—

- (a) the undertaking may apply to vary the approval;
- (b) the PRA must vary the approval on an application made under sub-paragraph (a) if the condition specified in paragraph (6) would be satisfied in relation to the approval as varied;
- (c) the PRA must revoke the approval if the condition specified in paragraph (6) ceases to be satisfied;
- (d) the PRA must revoke the approval if the condition specified in paragraph (7) is satisfied.

(6) The condition referred to in paragraphs (4), (5)(b) and (5)(c) is that the transitional adjustment is calculated in accordance with rules implementing Article 308c of the Solvency 2 Directive.

(7) The condition referred to in paragraph (5)(d) is that a progress report submitted to the PRA under rules implementing Article 308e of the Solvency 2 Directive shows that it is unrealistic to expect compliance with the solvency capital requirement by 2032.

### **Transitional measures on technical provisions**

**54.**—(1) An insurance undertaking, reinsurance undertaking or third-country insurance undertaking may apply to the PRA for permission to—

- (a) apply a transitional deduction to its technical provisions or to such of its technical provisions as are contained within an homogenous risk group; or
- (b) recalculate the amount of those technical provisions (and any matching adjustment or volatility adjustment to those technical provisions) at periods of 24 months or less.

(2) The PRA must approve an application made under paragraph (1)(a) if—

- (a) conditions 1 and 2 are satisfied; and
- (b) condition 3 is satisfied or would be satisfied if the amount of the approved deduction were limited.

(3) The PRA must approve an application made under paragraph (1)(b) if condition 4 is satisfied.

---

(12) OJ No L345, 19.12.02, p 1.



(4) The PRA may also grant the approval referred to in paragraph (1)(b) other than on an application under that paragraph if condition 4 is satisfied.

(5) Where the PRA approves an application under paragraph (2), the PRA may—

- (a) make the approval subject to a condition limiting the amount of the approved deduction; or
- (b) at any time after granting approval, vary the approval so that—

- (i) the approval is subject to a condition limiting the amount of the approved deduction; or

or

- (ii) if the approval is already subject to a condition imposed under sub-paragraph (a) or (b)(i), amend the condition to change the limit.

(6) A limit specified in a condition imposed under paragraph (5) must be no larger than is necessary to ensure that condition 3 is satisfied.

(7) Where the PRA grants approval under paragraph (2), (3) or (4) the undertaking may apply to vary the approval.

(8) Paragraphs (2) to (6) apply to an application to vary an approval under paragraph (7) as they would apply to an application for the approval as varied.

(9) The PRA must revoke an approval granted under paragraph (2) if—

- (a) condition 1 or 2 is not satisfied;
- (b) condition 3 cannot be satisfied by imposing a condition limiting the amount of the approved deduction; or
- (c) condition 5 is satisfied.

(10) In this regulation—

- (a) “GENPRU 1.2.26R” means the rule known as GENPRU 1.2.26R (requirement to have adequate financial resources) in the PRA’s General Prudential Sourcebook as at 31st December 2015, treated as having been made by the PRA on 7th March 2013 under the Financial Services Act 2012 (Transitional Provisions) (Rules and Miscellaneous Provisions) Order 2013(13);

- (b) “INSPRU 7” means the rules and guidance known as INSPRU 7 (individual capital assessment) in the PRA’s Prudential Sourcebook for Insurers as at 31st December 2015, made or treated as having been made by the PRA on 7th March 2013 under FSMA and the Financial Services Act 2012 (Transitional Provisions) (Rules and Miscellaneous Provisions) Order 2013; and

- (c) conditions specified in the first column of Table 3 have the meaning given in the second column of Table 3.

**Table 3**

Condition	Meaning
1	<p>The transitional deduction satisfies the following condition for all <math>T_N</math>—</p> $0 \leq T_N \leq (X_N - Y_N) \left(1 - \frac{N}{16}\right) \quad (N = 0, 1, 2 \dots 16)$ <p>where—</p> <p><math>T_N</math> is the amount of the transitional deduction in the year <math>N</math>, so that <math>T_0</math> is the transitional deduction in 2016, <math>T_1</math> is the transitional deduction in 2017, <math>T_2</math> is the</p>

Condition	Meaning
	<p>transitional deduction in 2018 and continuing until <math>T_{16}</math> which is the transitional deduction in 2032.</p> <p><math>X_N</math> is the amount of the technical provisions to which the approval or application for approval relates, calculated for the year <math>N</math>, less the amount recoverable (if any) from reinsurance contracts and special purpose vehicles. The technical provisions for the year <math>N</math> must be calculated in accordance with rules implementing Article 76 of the Solvency 2 Directive, applied as at the last date (“the relevant date”) before the year <math>N</math> at which technical provisions may be recalculated in accordance with an approval granted under paragraph (1)(b) or, if no such approval has been granted, as at 1st January 2016. Where a matching adjustment or volatility adjustment was applied to those technical provisions on 1<sup>st</sup> January 2016 in accordance with an approval granted under regulation 42 or 43 (as the case may be), the calculation must take into account the matching adjustment or volatility adjustment, recalculated for the relevant date in accordance with an approval granted under paragraph (1)(b) (if any).</p> <p><math>Y_N</math> is the amount of the technical provisions to which the approval or application for approval relates, calculated for the year <math>N</math>, less the amount recoverable (if any) from reinsurance contracts. The technical provisions for the year <math>N</math> must be calculated in accordance with INSPRU 7, applied as at the last date before the year <math>N</math> at which technical provisions may be recalculated in accordance with an approval granted under paragraph (1)(b) or, if no such approval has been granted, as at 31st December 2015.</p> <p><math>N</math> represents the years from 2016 to 2032. <math>N</math> takes integer values from 0 to 16, so that 2016 is year 0, 2017 is year 1, 2018 is year 2, and continuing until 2032 which is year 16.</p>
2	A transitional deduction is not applied in any year after 2032.
3	The transitional deduction does not result in the financial resources which the undertaking is required to maintain in accordance with requirements imposed by or under FSMA in pursuance of the Solvency 2 Directive being less than the financial resources which the undertaking would be required to maintain in accordance with GENPRU 1.2.26R if GENPRU 1.2.26R still applied to the undertaking.
4	The risk profile of the undertaking has changed materially.
5	A progress report submitted to the PRA under rules implementing Article 308e of the Solvency 2 Directive shows that it is unrealistic to expect compliance with the solvency capital requirement by 2032.

### CHAPTER 3

#### Procedure: decisions, appeals and notices

##### Decisions: written notices

**55.**—(1) On determining an application for the grant of an approval, the PRA must give the undertaking a written notice stating—

- (a) its decision;
- (b) the conditions (if any) to which the approval is subject;
- (c) the reasons on which the decision is based; and
- (d) if the approval is granted, the date on which the approval takes effect.

(2) Where the PRA varies or revokes an approval, it must give the undertaking concerned a written notice stating—

- (a) that the approval is varied or revoked;
- (b) the reasons on which the decision to vary or revoke the approval is based;
- (c) if the approval is varied, the conditions (if any) to which the approval is subject; and
- (d) the date on which the variation or revocation takes effect.

(3) Where the PRA gives a direction under regulation 58(2), it must give the undertaking concerned a written notice stating—

- (a) the direction;
- (b) the reasons on which the decision to give the direction is based; and
- (c) the date on which the direction takes effect.

(4) Where the PRA varies or revokes a direction under regulation 58(3), it must give the undertaking concerned a written notice stating—

- (a) that the direction is varied or revoked;
- (b) the reasons on which the decision to vary or revoke the direction is based; and
- (c) the date on which the variation or revocation takes effect.

(5) The date on which an approval takes effect under paragraph (1)(d) must not be before 1st January 2016.

## Appeals

**56.**—(1) An undertaking may refer the matter to the Tribunal where it is aggrieved at—

- (a) the determination by the PRA of an application for the—
  - (i) grant of an approval to an undertaking; or
  - (ii) variation of an approval granted to an undertaking;
- (b) in respect of an approval that was granted to that undertaking, the exercise by the PRA of a power to—
  - (i) vary the approval; or
  - (ii) revoke the approval.

(2) Part 9 of FSMA (hearings and appeals) applies to a reference to the Tribunal under this regulation as it applies to a reference to the Tribunal under FSMA.

## Publication of written notices

**57.**—(1) Subject to paragraph (2), the PRA must publish a relevant notice in the way appearing to the PRA to be best calculated for bringing it to the attention of—

- (a) persons likely to be affected by it; and
- (b) persons who are, in the opinion of the PRA, likely to make an application for a similar approval.

(2) Paragraph (1) does not apply—

- (a) if the relevant notice relates to an application for an approval which has been refused;
- (b) if the PRA is satisfied that it is inappropriate or unnecessary to publish the relevant notice; or

- (c) to the extent that such publication would be incompatible with an obligation imposed on the PRA by a directly applicable regulation made under the Solvency 2 Directive.
- (3) In deciding whether it is satisfied of the matters mentioned in paragraph (2)(b), the PRA must consider whether publication of the relevant notice—
- (a) would prejudice, to an unreasonable degree, the commercial interests of the undertaking concerned or any other member of the undertaking’s immediate group;
  - (b) without mentioning the identity of the undertaking concerned might avoid any adverse consequence of publication.
- (4) In this regulation, “relevant notice” means a written notice—
- (a) given under regulation 55 in relation to a decision or direction of the PRA; or
  - (b) stating that an event referred to in paragraph (5) has occurred in relation to such a decision.
- (5) The events mentioned in paragraph (4)(b) are—
- (a) the decision has been referred to the Tribunal;
  - (b) the decision has been suspended by the Tribunal;
  - (c) any suspension of the decision has been revoked by the Tribunal;
  - (d) the reference has been dismissed by the Tribunal.

## CHAPTER 4

### Rule waivers

#### **Modification or waiver of rules**

- 58.**—(1) In this regulation, “rule” means a rule made by the PRA under Part 9A of FSMA.
- (2) Where the PRA approves an application from an insurance undertaking, reinsurance undertaking or third-country insurance undertaking under regulation 42, 43, 53 or 54, the PRA must direct that any rule to which the undertaking is subject—
- (a) is not to apply to that undertaking; or
  - (b) is to apply to that undertaking with modifications,
- to the extent necessary to give effect to that approval.
- (3) Where the approval referred to in paragraph (2) is varied or revoked, the PRA must vary or revoke the direction referred to in paragraph (2) to the extent necessary to give effect to the variation or revocation of the approval.
- (4) This regulation is without prejudice to the generality of section 138A of FSMA.

## PART 5

### Amendments

#### **Amendments**

- 59.** Schedule 1, which contains amendments to primary legislation, has effect.
- 60.** Schedule 2, which contains amendments to secondary legislation, has effect.

6th March 2015

*David Evennett*  
*John Penrose*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

## SCHEDULE 1

Regulation 59

## Amendments to primary legislation

## PART 1

## Amendments to FSMA

1. FSMA is amended as follows.

2.—(1) Section 55J (variation or cancellation on initiative of regulator) is amended as follows.

(2) After subsection (7), insert—

“(7A) Without prejudice to the generality of subsections (1) and (3), if it appears to the PRA that there has been a serious failure by a PRA-authorized person who is an insurance undertaking or reinsurance undertaking to comply with requirements imposed by or under this Act in pursuance of the Solvency 2 Directive, the PRA may exercise its powers under this section to cancel the undertaking’s Part 4A permission.

(7B) If it appears to the PRA that the conditions in section 55KA are met in relation to a PRA-authorized person who is an insurance undertaking, reinsurance undertaking or third-country insurance undertaking, the PRA must—

- (a) in relation to the undertaking’s Part 4A permission so far as the permission relates to the regulated activity of effecting contracts of insurance as principal (“activity A”), exercise the PRA’s powers under this section by varying the permission—
  - (i) where the permission relates to activity A in relation to both contracts of long-term insurance and contracts of general insurance and the conditions in section 55KA are met only in relation to the business of the undertaking so far as relating to contracts of one of those kinds, so as to remove activity A so far as relating to contracts of that kind from the regulated activities to which the permission relates, and
  - (ii) in any other case, so as to remove activity A from the regulated activities to which the permission relates;
- (b) in relation to the undertaking’s Part 4A permission so far as the permission relates to the regulated activity of carrying out contracts of insurance as principal (“activity B”), exercise the PRA’s powers under this section, if it appears to the PRA to be necessary to do so to protect the interests of the undertaking’s policyholders, by varying the Part 4A permission—
  - (i) where the permission relates to activity B in relation to both contracts of long-term insurance and contracts of general insurance and the conditions in section 55KA are met only in relation to the business of the undertaking so far as relating to contracts of one of those kinds, so as to remove activity B so far as relating to contracts of that kind from the regulated activities to which the permission relates, and
  - (ii) in any other case, so as to remove activity B from the regulated activities to which the permission relates.

(7C) If the effect of a variation required by subsection (7B) is to remove all the regulated activities to which the Part 4A permission relates, the PRA must instead cancel the permission.”

3. After section 55K (investment firms: particular conditions that enable cancellation), insert—

**“Insurance undertakings, reinsurance undertakings and third-country insurance undertakings: particular conditions that enable cancellation**

**55KA.**—(1) The conditions referred to in section 55J(7B) are—

- (a) that the insurance undertaking, reinsurance undertaking or third-country insurance undertaking has failed to comply with the appropriate capital requirement; and
- (b) that any of the following applies—
  - (i) the insurance undertaking, reinsurance undertaking or third-country insurance undertaking has failed to submit a finance scheme in accordance with requirements imposed by or under this Act in pursuance of Article 139(2) of the Solvency 2 Directive, or of that provision with Article 74(7) of that directive;
  - (ii) the insurance undertaking, reinsurance undertaking or third-country insurance undertaking has submitted to the PRA a finance scheme that is manifestly inadequate; or
  - (iii) after the PRA has approved a finance scheme submitted to it, the undertaking has failed to comply with the finance scheme within a period of three months beginning with the date when the undertaking first became aware that it had failed to comply with the appropriate capital requirement to which the scheme relates.

(2) In subsection (1) “the appropriate capital requirement” means—

- (a) except in a case within paragraph (b) or (c), the minimum capital requirement;
- (b) in the case of an insurance undertaking or reinsurance undertaking whose Part 4A permission relates to both contracts of long-term insurance and to contracts of general insurance, requirements imposed by or under this Act in pursuance of Article 74(2) of the Solvency 2 Directive;
- (c) in the case of a third-country insurance undertaking whose Part 4A permission relates both to contracts of long-term insurance and to contracts of general insurance, requirements imposed by or under this Act in pursuance of Articles 74(2) and 166 of the Solvency 2 Directive.”.

4. After section 55P (prohibitions and restrictions), insert—

**“Assets requirements imposed on insurance undertakings or reinsurance undertakings**

**55PA.**—(1) If either of the following cases arises in relation to an insurance undertaking, reinsurance undertaking or third-country insurance undertaking, the PRA must inform the supervisory authority of each host EEA State of that undertaking.

(2) The first case is where the PRA intends to impose an assets requirement on the undertaking because the undertaking has not complied with rules implementing Section 2 of Chapter 6 of Title 1 of the Solvency 2 Directive.

(3) The second case is where—

- (a) the undertaking has notified the PRA that—
  - (i) the undertaking does not comply with the solvency capital requirement, or
  - (ii) there is a risk that at some time within the next 3 months the undertaking may not comply with the solvency capital requirement, and

*Status: This is the original version (as it was originally made).*

- (b) because the PRA is of the opinion that the financial situation of the undertaking will deteriorate after the PRA has received the notification, the PRA imposes an assets requirement on the undertaking.

(4) In this section—

- (a) “assets requirement” has the same meaning as in section 55P(4); and
- (b) “host EEA State” means—
  - (i) in relation to an insurance undertaking or reinsurance undertaking, an EEA State which is a “host Member State” for the purposes of the Solvency 2 Directive (which is to be determined in accordance with Article 13(9) of that directive);
  - (ii) in relation to a third-country insurance undertaking, an EEA State other than the United Kingdom from which the undertaking has received authorisation in accordance with Article 162 of the Solvency 2 Directive.”.

5. In section 105 (insurance business transfer schemes), in subsection (3), in paragraph (aa) of Case 2 (14), omit “(within the meaning of Article 2.1(c) of the reinsurance directive)”.

6.—(1) Section 116 (effect of insurance business transfers authorised in other EEA States) is amended as follows.

(2) In subsection (2)(15)—

(a) for paragraphs (a) and (b) substitute—

- “(a) an undertaking authorised in an EEA State other than the United Kingdom under Article 162 of the Solvency 2 Directive;
- (b) an undertaking whose head office is not in an EEA State and which is authorised under the law of an EEA State other than the United Kingdom to carry out reinsurance activities in its territory (as mentioned in Article 174 of the Solvency 2 Directive).”;

(b) omit paragraph (c).

(3) For subsections (5)(16) and (6)(17) substitute—

“(5) “Authorised transfer” means—

- (a) in subsection (1), a transfer authorised by the supervisory authorities of the home State of the EEA firm in accordance with Article 39 of the Solvency 2 Directive;
- (b) in subsection (2), a transfer authorised in an EEA State other than the United Kingdom in accordance with—
  - (i) Article 164 of the Solvency 2 Directive; or
  - (ii) the provisions in the law of that EEA State which provide for the authorisation of transfers of all or part of a portfolio of contracts of an undertaking authorised to carry out reinsurance activities in its territory (as mentioned in Article 174 of the Solvency 2 Directive).

(6) “UK policy”, in relation to an authorised transfer, means a policy evidencing a contract of insurance or reinsurance to which the applicable law is the law of a part of the United Kingdom.”.

(4) After subsection (7) insert—

---

(14) Section 105(3)(Case 2)(aa) was inserted by [S.I. 2007/3253](#).

(15) Section 116(2) was substituted by [S.I. 2007/3253](#).

(16) Section 116(5) was amended by [S.I. 2004/3379](#) and [S.I. 2007/3253](#).

(17) Section 166(6) was amended by [S.I. 2007/3253](#).



“(7A) In this section the “home State” is the EEA State which is the “home Member State” for the purposes of the Solvency 2 Directive (which is to be determined in accordance with Article 13(8) of that directive).”

7. In section 165(7) (regulators’ power to require information: authorised persons etc), after paragraph (d), insert—

“(e) by either regulator, to impose requirements on a person who provides any service to an insurance undertaking, reinsurance undertaking or third-country insurance undertaking.”

8.—(1) Section 167 (appointment of persons to carry out general investigations) is amended as follows.

(2) In subsection (2)—

- (a) at the end of paragraph (a) omit “or”;
- (b) at the end of paragraph (b) insert “; or;” and
- (c) after paragraph (b) insert—

“(c) where A is an insurance undertaking, reinsurance undertaking or third-country insurance undertaking, a person who provides services to A.”

(3) After subsection (3), insert—

“(3A) If a person appointed under subsection (1) decides under subsection (2)(c) to investigate a person located in an EEA State other than the United Kingdom the person appointed must inform the supervisory authority of that EEA State prior to conducting an on-site inspection.”

9. In section 190(4) (requests for further information), for paragraph (b)(18) substitute—

- “(b) is not subject to supervision under—
- (i) the UCITS directive;
  - (ii) the Solvency 2 Directive;
  - (iii) the markets in financial instruments directive; or
  - (iv) the capital requirements directive.”

10. In section 194 (general grounds on which power of intervention is exercisable), after subsection (1A)(19), insert—

“(1AA) Where an incoming firm is an EEA firm falling within paragraph 5(d) or (da) of Schedule 3, the appropriate regulator must not exercise its power of intervention under subsection (1)(c) in respect of that firm if doing so would, for the purposes of the Solvency 2 Directive, constitute financial supervision of that firm.”

11.—(1) Section 198 (power to apply to court for injunction in respect of certain overseas insurance companies) is amended as follows.

(2) For subsection (1) substitute—

“(1) This section applies if the appropriate regulator has received a request made in respect of an incoming EEA firm in accordance with Article 140 of the Solvency 2 Directive.”

---

(18) Section 190(4)(b) was amended by [S.I. 2013/3115](#).

(19) Subsection (1A) was inserted by sections 3(1) and 5(a) of the Financial Services Act [2012 \(c. 21\)](#).

*Status: This is the original version (as it was originally made).*

(3) In subsection (3A), for “competent authority for the purposes of the provision referred to in subsection (1)(a), (b) or (c)” substitute “supervisory authority for the purposes of Article 140 of the Solvency 2 Directive”.

12. In section 316 (direction by a regulator), in subsection (4)(b)(i), for “any of the insurance directives” substitute “the Solvency 2 Directive”.

13. In section 367(3) (winding up petitions), before paragraph (a), insert—

“(za) in the case of an insurance undertaking or reinsurance undertaking, the PRA has cancelled the body’s Part 4A permission pursuant to section 55J(7C);”.

14. In section 405(5) (directions), omit paragraphs (c) and (d).

15. In section 417 (definitions), in subsection (1), insert at the appropriate place in each case—

““insurance undertaking” has the meaning given in Article 13(1) of the Solvency 2 Directive;”

““minimum capital requirement” means—

(a) in relation to an insurance undertaking or reinsurance undertaking, requirements imposed by or under this Act in pursuance of Section 5 of Chapter 6 of Title 1 of the Solvency 2 Directive;

(b) in relation to a third-country insurance undertaking, requirements imposed by or under this Act in pursuance of those provisions and Article 166 of the Solvency 2 Directive.”

““reinsurance undertaking” has the meaning given in Article 13(4) of the Solvency 2 Directive;”

““solvency capital requirement” means—

(a) in relation to an insurance undertaking or reinsurance undertaking, requirements imposed by or under this Act in pursuance of Section 4 of Chapter 6 of Title 1 of the Solvency 2 Directive;

(b) in relation to a third-country insurance undertaking, requirements imposed by or under this Act in pursuance of those provisions and Article 166 of the Solvency 2 Directive.”

““third-country insurance undertaking” means an undertaking that has received authorisation under Article 162 of the Solvency 2 Directive from the PRA or the FCA;”.

16. In section 425(1)(a) (expressions relating to authorisation elsewhere in the single market)—

(a) omit ““life assurance consolidation directive””, ““first non-life insurance directive””, “insurance directives” and “reinsurance directive”, and

(b) after ““single market directives”” insert ““, Solvency 2 Directive””.

17.—(1) Schedule 3 (EEA passport rights) is amended as follows.

(2) In paragraph 1—

(a) for paragraph (c) substitute—

“(c) the Solvency 2 Directive;”;

(b) omit paragraph (ca).

(3) For paragraph 3 substitute—

*“The Solvency 2 Directive*

3. “The Solvency 2 Directive” means [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).”.

- (4) Omit paragraph 3A.
- (5) In paragraph 5, for paragraphs (d) and (da) substitute—
- “(d) an undertaking pursuing the activity of direct insurance (within the meaning of Article 2 of the Solvency 2 Directive) which has received authorisation under Article 14 of that directive from its home state regulator;
  - (da) an undertaking pursuing the activity of reinsurance (within the meaning of Article 2 of the Solvency 2 Directive) as a reinsurance undertaking which has received authorisation under Article 14 of that directive from its home state regulator;”.
- (6) In paragraph 15, for sub-paragraph (6) substitute—
- “(6) The permission is to be treated as being on terms equivalent to those appearing in the authorisation granted to the firm under Article 14 of the Solvency 2 Directive by its home state regulator (“its home authorisation”).”.
- (7) In paragraph 19—
- (a) in sub-paragraphs (5)(b)(i), (7) and (9), for “any of the insurance directives” substitute “the Solvency 2 Directive”;
  - (b) in sub-paragraph (5ZA), for “a UK firm having an EEA right which is subject to the conditions of the reinsurance directive” substitute “a UK firm which falls within the second sub-paragraph of Article 2(1) of the Solvency 2 Directive”;
  - (c) in sub-paragraph (7)(b) for “those directives” substitute “that directive”.
- (8) In paragraph 20—
- (a) in sub-paragraph (1) for “(4F)”, substitute “(4I)”;
  - (b) in sub-paragraphs (3A) and (4B) for “any of the insurance directives” substitute “the Solvency 2 Directive”;
  - (c) in sub-paragraph (4D), for “a UK firm having an EEA right which is subject to the conditions of the reinsurance directive” substitute “a UK firm which falls within the second sub-paragraph of Article 2(1) of the Solvency 2 Directive”;
  - (d) after sub-paragraph (4F) insert—
    - “(4G) This paragraph does not apply to a UK firm exercising an EEA right to enter into a Community co-insurance contract if it is not the leading insurance undertaking.
    - (4H) In this paragraph “Community co-insurance contract” means a contract of insurance which—
      - (a) covers one or more risks that are within any of classes 3 to 16 of Annex I of the Solvency 2 Directive;
      - (b) covers a large risk situated within the EEA which is not covered in whole or in part by another contract of insurance;
      - (c) provides that the risk to which it relates is covered by an overall premium and for the same period by two or more insurance undertakings each for its own part as a co-insurer, at least one of which enters into the contract from a head office or branch established in an EEA State other than that of the leading insurance undertaking; and
      - (d) provides that one of the co-insurers is the leading insurance undertaking.
- (4I) In this paragraph—
- (a) “leading insurance undertaking” means the insurance undertaking which under the Community co-insurance contract is specified as such and assumes fully the leader’s role including in particular—

*Status: This is the original version (as it was originally made).*

- (i) being treated as covering the whole risk; and
- (ii) determining the terms and conditions of insurance and rating;
- (b) “large risk” has the meaning given in Article 13(27) of the Solvency 2 Directive but as if the risks referred to in point (c) of the first sub-paragraph of Article 13(27) included risks insured by professional associations, joint ventures, or temporary groupings.”.

**18.**—(1) Schedule 12 (transfer schemes: certificates) is amended as follows.

(2) In paragraph 1—

(a) after sub-paragraph (1)(b) insert—

“(ba) if sub-paragraph (2A) applies, a certificate under paragraph 3A.”;

(b) in sub-paragraph (2) for “Article 4 of the life assurance consolidation directive or Article 6 of the first non-life insurance directive” substitute “Article 14 of the Solvency 2 Directive”;

(c) after sub-paragraph (2) insert—

“(2A) This sub-paragraph applies if—

(a) the transferor concerned is a UK authorised person which has received authorisation under Article 14 of the Solvency 2 Directive from the appropriate regulator; and

(b) as regards any policy which is included in the proposed transfer and which evidences a contract of insurance (other than reinsurance), the contract was concluded in an EEA State other than the United Kingdom.”;

(d) in sub-paragraph (3)(a) for “Article 4 or Article 51 of the life assurance consolidation directive” substitute “Article 162 of the Solvency 2 Directive”;

(e) in sub-paragraph (4)(a) for “Article 6 or Article 23 of the first non-life insurance directive” substitute “Article 162 of the Solvency 2 Directive”;

(f) in sub-paragraph (5), for paragraphs (a) and (b) substitute—

“(a) the transferor concerned has received authorisation under Article 162 of the Solvency 2 Directive from the appropriate regulator; and

(b) the proposed transfer is to a branch or agency, in an EEA State other than the United Kingdom, authorised under that Article.”.

(3) In paragraph 2—

(a) for sub-paragraph (6)(aa) substitute—

“(aa) if the transferee is a non-EEA branch, the supervisory authority of the EEA State in which the transferee is situated or, where appropriate, the supervisory authority of an EEA State which supervises the state of solvency of the entire business of the transferee’s agencies and branches within the EEA in accordance with Article 167 of the Solvency 2 Directive;”;

(b) for sub-paragraph (7A), substitute—

“(7A) “Supervisory authority” has the same meaning as in the Solvency 2 Directive.”;

(c) for sub-paragraph (9), substitute—

“(9) “Non-EEA branch” means a branch or agency which has received authorisation under Article 162 of the Solvency 2 Directive.”.

(4) In the heading to paragraph 3, for “consent” substitute “consultation”.

(5) After paragraph 3 insert—

*“Certificates as to consent*

**3A.** A certificate under this paragraph is one given by the appropriate regulator and certifying that in respect of each contract concluded in an EEA State other than the United Kingdom the authority responsible for supervising persons who effect or carry out contracts of insurance in the EEA State in which that contract was concluded has been notified of the proposed scheme and that—

- (a) the authority has consented to the proposed scheme; or
- (b) the authority has not responded but the period of three months beginning with the notification has elapsed.”.

(6) For paragraph 5A(4) substitute—

“(4) “Relevant authority” means the supervisory authority (within the meaning of the Solvency 2 Directive) of the EEA State in which the transferee is set up.”.

(7) In paragraph 10—

(a) for sub-paragraph (3) substitute—

“(3) The transferor is a company authorised in an EEA State other than the United Kingdom under Article 162 of the Solvency 2 Directive and the transferee is a UK authorised person which has received authorisation under Article 14 of the Solvency 2 Directive.”;

(b) for sub-paragraph (4) substitute—

“(4) The transferor is a Swiss general insurer and the transferee is a UK authorised person which has received authorisation under Article 14 of the Solvency 2 Directive.”.

## PART 2

### Amendments to other primary legislation

#### **Friendly Societies Act 1992**

**19.**—(1) The Friendly Societies Act 1992(20) is amended as follows.

(2) In section 52(2)(c)(i) (applications to court) for “the general insurance or the life assurance consolidation Directive” substitute “the Solvency 2 Directive”.

(3) In subsection (1) of section 119 (general interpretation)—

(a) omit the following definitions—

- (i) “the life assurance consolidation Directive”;
- (ii) “the first general insurance Directive”;
- (iii) “the general insurance Directives”;
- (iv) “the second general insurance Directive”;
- (v) “the third general insurance Directive”;

(b) insert at the appropriate place—

““the Solvency 2 Directive” means [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II);”.

(4) Omit subsections (1A), (1D) and (3) of section 119.

---

(20) [1992 c. 40](#).

*Status: This is the original version (as it was originally made).*

- (5) In Schedule 15 (amalgamations, transfers of engagements and conversion: supplementary)—
- (a) in paragraph 15(1)(c)(vi) for “Article 25 or 26 of the first general insurance Directive” substitute “Article 166 or 167 of the Solvency 2 Directive”;
  - (b) in paragraph 15A(1)(c)(v) for “Article 55 or 56 of the life assurance consolidation Directive” substitute “Article 166 or 167 of the Solvency 2 Directive”.

### **Finance Act 1997**

**20.**—(1) Section 96 (demutualisation of insurance companies) of the Finance Act 1997(**21**) is amended as follows.

(2) In subsection (7)(b) for the words from “for the purposes of—” to the end of the paragraph substitute “for the purposes of Article 39 of the Solvency 2 Directive.”.

(3) In subsection (8)—

(a) omit the following definitions—

- (i) “the life assurance consolidation directive”;
- (ii) “the third non-life insurance directive”;

(b) insert at the appropriate place—

““the Solvency 2 Directive” means [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II);”.

### **Terrorism Act 2000**

**21.**—(1) The Terrorism Act 2000(**22**) is amended as follows.

(2) In Schedule 3A (regulated sector and supervisory authorities)—

(a) in paragraph 1(1)(c) for “the Life Assurance Consolidation Directive” substitute “the Solvency 2 Directive”;

(b) in paragraph 3(1)—

(i) omit the following definition—

“the Life Assurance Consolidation Directive”;

(ii) insert at the appropriate place—

““the Solvency 2 Directive” means [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).”.

(3) In paragraph 6(1)(i) of Schedule 6 (financial information) for “Article 4 or 51 of [Directive 2002/83/EC](#) of the European Parliament and of the Council of 5th November 2002 concerning life assurance” substitute “Article 14 or 162 of [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)”.

### **Capital Allowances Act 2001**

**22.** In section 560(5)(e) (transfer of insurance company business) of the Capital Allowances Act 2001(**23**), for “Article 14 of the Council Directive of 5 November 2002 concerning life assurance

(21) 1997 c. 16.

(22) 2000 c. 11.

(23) 2001 c. 2.

(2002/83/EC)” substitute “Article 39 of [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)”.

### **Proceeds of Crime Act 2002**

- 23.**—(1) Schedule 9 to the Proceeds of Crime Act 2002<sup>(24)</sup> is amended as follows.
- (2) In paragraph 1(1)(c) for “the Life Assurance Directive” substitute “the Solvency 2 Directive”.
- (3) In paragraph 3(1)—
- (a) omit the definition of “the Life Assurance Consolidation Directive”;
- (b) insert at the appropriate place—
- ““the Solvency 2 Directive” means [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II);”.

### **Finance Act 2003**

- 24.**—(1) Section 63 (demutualisation of insurance company) of the Finance Act 2003<sup>(25)</sup> is amended as follows.
- (2) For paragraph (b) of subsection (2) substitute—
- “(b) it is a transfer of business of a general insurance company carried on through a permanent establishment in the United Kingdom and takes place in accordance with authorisation granted outside the United Kingdom for the purposes of the Solvency 2 Directive, and the requirements of subsection (3) and (4) are met in relation to the shares of a company (“the issuing company”) which is either the acquiring company or a company of which the acquiring company is a wholly-owned subsidiary.”.
- (3) In subsection (7) omit the following definitions—
- (a) “the life assurance Directive”;
- (b) “the 3rd non-life insurance Directive”.
- (4) In subsection (7) insert at the end—
- ““the Solvency 2 Directive” means [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).”.

### **Companies Act 2006**

**25.** In section 843(8) (realised profits and losses of long-term insurance business) of the Companies Act 2006<sup>(26)</sup>, for “Article 2.1(p) of [Directive 2005/68/EC](#) of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives [73/239/EEC](#), [92/49/EEC](#) as well as Directives [98/78/EC](#) and [2002/83/EC](#)” substitute “Article 13(26) of [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)”.

---

<sup>(24)</sup> 2002 c. 29.

<sup>(25)</sup> 2003 c. 14.

<sup>(26)</sup> 2006 c. 46.

**Corporation Tax Act 2009**

26.—(1) The Corporation Tax Act 2009(27) is amended as follows.

(2) In section 337(3A) (transfers of loans on insurance business transfers), for “Article 14 of the Council Directive of 5 November 2002 concerning life assurance (2002/83/EC)” substitute “Article 39 of [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)”.

(3) In section 636(3) (modifications of Chapter 5), for “Article 14 of the Council Directive of 5 November 2002 concerning life assurance (2002/83/EC)” substitute “Article 39 of [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)”.

## SCHEDULE 2

Regulation 60

## Amendments to secondary legislation

**Insolvency (Scotland) Rules 1986**

1. In rule 4.84(8) (application for confirmation) of the Insolvency (Scotland) Rules 1986(28) for “Articles 9 and 27 of [Directive 2001/17/EC](#) of the European Parliament and of the Council of 19th March 2001 on the reorganisation and winding up of insurance undertakings” substitute “Articles 274 and 293 of [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)”.

**Companies (1986 Order) (Insurance Companies Accounts) Regulations (Northern Ireland) 1994**

2.—(1) The Companies (1986 Order) (Insurance Companies Accounts) Regulations (Northern Ireland) 1994(29) are amended as follows.

(2) In paragraph (2)(a) of regulation 6 (exempted companies) for “Council [Directive 73/239/EEC](#) by Article 3 of that Directive” substitute “Article 7 of [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)”.

**Mineworkers’ Pension Scheme (Modification) Regulations 1994**

3.—(1) The Mineworkers’ Pension Scheme (Modification) Regulations 1994(30) are amended as follows.

(2) In clause 41(2) (the scheme: interpretation) of the part headed “The Scheme” of the Mineworkers’ Pension Scheme in the Schedule, in the definition of “Recognised Insurance Company” for “Article 4 or Article 51 of [Directive 2002/83/EC](#) of the European Parliament and of the Council of 5th November 2002 concerning life assurance” substitute “Article 14 or 162 of [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)”.

---

(27) 2009 c. 4.

(28) S.I. 1986/1915, amended by S.I. 2003/2109; there are other amending instruments but none is relevant.

(29) S.I. 1994/428.

(30) S.I. 1994/2577; relevant amending instruments are S.I. 2004/3379 and 2011/1043.



### **Industry-Wide Mineworkers' Pension Scheme Regulations 1994**

4.—(1) The Industry-Wide Mineworkers' Pension Scheme Regulations 1994<sup>(31)</sup> are amended as follows.

(2) In clause 41 (trust deed: interpretation) of the part headed “The Trust Deed” of the Industry-Wide Mineworkers' Pension Scheme in the Schedule, in the definition of “Recognised Insurance Company” for “Article 4 or Article 51 of [Directive 2002/83/EC](#) of the European Parliament and of the Council of 5th November 2002 concerning life assurance” substitute “Article 14 or 162 of [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)”.

### **Insurance Companies (Overseas Life Assurance Business) (Compliance) Regulations 1995**

5.—(1) The Insurance Companies (Overseas Life Assurance Business) (Compliance) Regulations 2004<sup>(32)</sup> are amended as follows.

(2) In regulation 2 (interpretation), in paragraph (1)—

- (a) omit the definition of “the Consolidated Life Assurance Directive”;
- (b) insert at the appropriate place—

““the Solvency 2 Directive” means [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II);”.

(3) In the following regulations for “Article 14 or 53(2) of the Consolidated Life Assurance Directive” substitute “Article 39 or 167 of the Solvency 2 Directive”—

- (a) 5(1B)(a) (business other than reinsurance business effected by a company resident in the United Kingdom outside the United Kingdom);
- (b) 7(1B)(a) (business other than reinsurance business effected either by a company resident in the United Kingdom otherwise than outside the United Kingdom or by an overseas life insurance company—policies or contracts made on or after 1st January 1996);
- (c) 7A(2A)(a) (business other than reinsurance business effected either by a company resident in the United Kingdom otherwise than outside the United Kingdom or by an overseas life insurance company—policy holder not within regulation 7);
- (d) 8(1B)(a) (certain business other than reinsurance business where the company comes into possession of additional information);
- (e) 13(1B)(a) (business other than reinsurance business effected by a company resident in the United Kingdom outside the United Kingdom);
- (f) 14(1B)(a) (business other than reinsurance business effected either by a company resident in the United Kingdom otherwise than outside the United Kingdom or by an overseas life insurance company);
- (g) 14A(2A)(a) (business other than reinsurance business effected either by a company resident in the United Kingdom otherwise than outside the United Kingdom or by an overseas life insurance company—policy holder not within regulation 7).

### **Occupational Pension Schemes (Scheme Administration) Regulations 1996**

6.—(1) The Occupational Pension Schemes (Scheme Administration) Regulations 1996<sup>(33)</sup> are amended as follows.

---

<sup>(31)</sup> [S.I. 1994/2974](#); relevant amending instruments are [S.I. 2011/1043](#) and [2004/3379](#).

<sup>(32)</sup> [S.I. 1995/3237](#), amended by [S.I. 2004/3273](#); there are other amending instruments but none is relevant.

<sup>(33)</sup> [S.I. 1996/1715](#), amended by [S.I. 2006/778](#); there are other amending instruments but none is relevant.

- (2) In regulation 1(2) (interpretation)—
- (a) omit the definition of “the Life Directive”;
  - (b) insert at the appropriate place—
    - ““the Solvency 2 Directive” means [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II);”;
  - (c) in the definition of “insurance policy” for “Article 2 of the Life Directive, but excluding a contract of a kind referred to in Article 2(2)(c) or (d) of that Directive” substitute “Article 2(3) of the Solvency 2 Directive, but excluding a contract of a kind referred to in Article 2(3)(b)(iii) or (iv) of that Directive”;
  - (d) in the definition of “qualifying insurance policy” for “Annex I to the Life Directive” substitute “Annex II of the Solvency 2 Directive”.

### **Occupational Pension Schemes (Scheme Administration) Regulations (Northern Ireland) 1997**

7.—(1) The Occupational Pension Schemes (Scheme Administration) Regulations (Northern Ireland) 1997(34) are amended as follows.

- (2) In regulation 1 (interpretation), in paragraph (2)—
- (a) omit the definition of “the Life Directive”;
  - (b) insert at the appropriate place—
    - ““the Solvency 2 Directive” means [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II);”;
  - (c) in the definition of “insurance policy” for “Article 2 of the Life Directive, but excluding a contract of a kind referred to in Article 2(2)(c) or (d) of that Directive” substitute “Article 2(3) of the Solvency 2 Directive, but excluding a contract of a kind referred to in Article 2(3)(b)(iii) or (iv) of that Directive”;
  - (d) in the definition of “qualifying insurance policy” for “Annex I to the Life Directive” substitute “Annex II to the Solvency 2 Directive”.

### **Individual Savings Account Regulations 1998**

8.—(1) The Individual Savings Account Regulations 1998(35) are amended as follows.

(2) In paragraph (1) of regulation 2 (interpretation) in the definition of “assurance undertaking” for “an assurance undertaking within the meaning of Article 2 of the Council Directive of 5th November 2002 concerning life assurance (No 2002/83)” substitute “a direct life insurance undertaking within the meaning of Article 2 of [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)”.

### **Competition Act 1998 (Small Agreements and Conduct of Minor Significance) Regulations 2000**

9. In paragraph 1 (interpretation) of the Schedule to the Competition Act 1998 (Small Agreements and Conduct of Minor Significance) Regulations 2000(36) in the definition of

(34) [S.I. 1997/94](#); relevant amending instruments are [S.I. 2005/421](#) and [2006/141](#).

(35) [S.I. 1998/1870](#), amended by [S.I. 2004/2996](#); there are other amending instruments but none is relevant.

(36) [S.I. 2000/262](#); relevant amending instruments are [S.I. 2004/3379](#) and [2007/3253](#).

“insurance undertaking” for the words from “the Annex to Council Directive (EEC) 73/239” to the end of the definition substitute “Article 2 of or Annex 1 to, or a reinsurance undertaking carrying on the business of reinsurance under Directive 2009/138/EC of the European Parliament and Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II);”.

### **Competition Act 1998 (Determination of Turnover for Penalties) Order 2000**

**10.** In paragraph 1 (interpretation) of Schedule 1 (applicable turnover) to the Competition Act 1998 (Determination of Turnover for Penalties) Order 2000<sup>(37)</sup> in the definition of “insurance undertaking” for the words from “the Annex to Council Directive (EEC) 73/239” to the end of the definition substitute “Article 2 of or Annex 1 to, or a reinsurance undertaking carrying on the business of reinsurance under Directive 2009/138/EC of the European Parliament and Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II);”.

### **Financial Services and Markets Act 2000 (Regulated Activities) Order 2001**

**11.**—(1) The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001<sup>(38)</sup> is amended as follows.

- (2) In article 3(1) (interpretation), in the definition of “contract of insurance”—
  - (a) in paragraph (e) for “article 1(2)(e) of the first life insurance directive (collective insurance etc.)” substitute “Article 2(3)(b)(v) of the Solvency 2 Directive”;
  - (b) in paragraph (f) for “article 1(3) of the first life insurance directive (social insurance)” substitute “Article 2(3)(c) of the Solvency 2 Directive”.
- (3) In article 11(2) (community co-insurers) for “the Council Directive of 30 May 1978 on the co-ordination of laws, regulations and administrative provisions relating to Community co-insurance (No 78/473/EEC)” substitute “Article 190 of the Solvency 2 Directive”.
- (4) In paragraph (2) of article 72A (information society services)—
  - (a) omit sub-paragraphs (a) and (b);
  - (b) insert at the end of paragraph (2) “the insurance falls within the scope of the Solvency 2 Directive.”.
- (5) In Schedule 1 (contracts of insurance)—
  - (a) in paragraph VIII (collective insurance etc) for “article 1(2)(e) of the first life insurance directive” substitute “Article 2(3)(b)(v) of the Solvency 2 Directive”;
  - (b) in paragraph IX (social insurance) for “article 1(3) of the first life insurance directive” substitute “Article 2(3)(c) of the Solvency 2 Directive”.

### **The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001**

**12.**—(1) The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001<sup>(39)</sup> are amended as follows.

- (2) In regulation 2 (interpretation)—
  - (a) at the appropriate place insert—

<sup>(37)</sup> S.I. 2000/309; relevant amending instruments are S.I. 2004/3379 and 2007/3253.

<sup>(38)</sup> S.I. 2001/544; relevant amending instruments are S.I. 2002/1776 and 2004/3379

<sup>(39)</sup> S.I. 2001/2188; relevant amending instruments are S.I. 2013/1773, 2013/3115 and 2014/3348.

*Status: This is the original version (as it was originally made).*

- ““competent authority” includes a supervisory authority within the meaning of Article 13(10) of the Solvency 2 Directive;”;
- (b) for sub-paragraphs (c), (d) and (e) of the definition of “single market restrictions” substitute—
- ““(c) articles 64, 65, 66, 67, 68, 69, and 70 of the Solvency 2 Directive;”.
- (3) In regulation 9(2) (disclosure by regulators or regulator workers to certain other persons)—
- (a) for sub-paragraph (c) substitute—
- ““(c) article 66 of the Solvency 2 Directive;”;
- (b) omit sub-paragraphs (d) and (f).

### **Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001**

**13.**—(1) The Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001<sup>(40)</sup> are amended as follows.

(2) In regulation 1(2) (interpretation) in sub-paragraph (b) of the definition of “health insurance risks” for “the first sub-paragraph of Article 54(2) of the third non-life insurance directive” substitute “Article 206(2) of the Solvency 2 Directive”.

- (3) In paragraph (e) of regulation 2(5) (establishment of a branch: contents of consent notice)—
- (a) omit from “has” to the end;
- (b) after “firm” insert “covers the Solvency Capital Requirement calculated in accordance with Article 100 of the Solvency 2 Directive and the minimum capital requirement calculated in accordance with Article 129 of that directive.”.
- (4) In paragraph (3) of regulation 3 (provision of services: contents of a regulator’s notice)—
- (i) in sub-paragraph (a) for “Article 6 of the first non-life insurance directive or Article 6 of the first life insurance directive” substitute “Article 14 of the Solvency 2 Directive”;
- (ii) in sub-paragraph (e)—
- (aa) omit from “has” to the end;
- (bb) after “firm” insert “covers the Solvency Capital Requirement calculated in accordance with Article 100 of the Solvency 2 Directive and the minimum capital requirement calculated in accordance with Article 129 of that directive.”.

(5) In regulations 13(1), 15(1) and 16(1) for “any of the insurance directives” substitute “the Solvency 2 Directive”.

(6) In regulation 19(2)(a) for “Article 2.1a of the reinsurance directive” substitute “Article 13(7) of the Solvency 2 Directive”.

### **Financial Services and Markets Act 2000 (Law Applicable to Contracts of Insurance) Regulations 2001**

**14.** In regulation 6 of the Financial Services and Markets Act 2000 (Law Applicable to Contracts of Insurance) Regulations 2001<sup>(41)</sup> (choice of law) for “Council [Directive 78/473/EEC](#) on the coordination of laws, regulations and administrative provisions relating to Community co-insurance” substitute “the Solvency 2 Directive”.

<sup>(40)</sup> [S.I. 2001/2511](#); relevant amending instruments are [S.I. 2004/1862](#), [2007/3253](#) and [2013/642](#)

<sup>(41)</sup> [S.I. 2001/2635](#), to which there are amendments not relevant to these Regulations.

### **The Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001 (Article 39)**

15. In regulation 2 of the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001<sup>(42)</sup> (meaning of the commitment) for “Article 2 of the life assurance consolidation directive” substitute “Article 2(3) of the Solvency 2 Directive”.

### **Enterprise Act 2002 (Merger Fees and Determination of Turnover) Order 2003**

16.—(1) The Enterprise Act 2002 (Merger Fees and Determination of Turnover) Order 2003<sup>(43)</sup> is amended as follows.

(2) In paragraph 1 (interpretation) of Schedule 1 (applicable turnover) in the definition of “insurance undertaking” for the words from “the Annex to Council Directive (EEC) 73/239” to the end of the definition substitute “Article 2(3) or Annex I of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II);”.

### **Insurers (Reorganisation and Winding Up) Regulations 2004**

17.—(1) The Insurers (Reorganisation and Winding Up) Regulations 2004<sup>(44)</sup> are amended as follows.

(2) In regulation 2(1) (interpretation)—

(a) omit the following definitions—

(i) “the first non-life insurance directive”;

(ii) “life insurance directive”;

(iii) “the reorganisation and winding-up directive”;

(iv) “the third non-life insurance directive”;

(b) insert at the appropriate place—

““the Solvency 2 Directive” means Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II);”;

(c) in the definition of “branch” for “Article 1(b) of the life insurance directive or the third non-life insurance directive” substitute “Article 268(1)(b) of the Solvency 2 Directive”;

(d) in the definition of “directive reorganisation measure” for “Article 2(c) of the reorganisation and winding-up directive” substitute “Article 268(1)(c) of the Solvency 2 Directive”;

(e) in the definition of “directive winding up proceedings” for “Article 2(d) of the reorganisation and winding-up directive” substitute “Article 268(1)(d) of the Solvency 2 Directive”;

(f) for the definition of “EEA insurer” substitute—

““EEA insurer” means an insurance undertaking, other than a UK insurer, pursuing the activity of direct insurance (within the meaning of the Solvency 2 Directive) which has received authorisation under Article 14 or Article 162 of the Solvency 2 Directive from its home state regulator;”;

<sup>(42)</sup> S.I. 2001/3625, amended by S.I. 2004/3379; there are other amending instruments but none is relevant.

<sup>(43)</sup> S.I. 2003/1370, to which there are amendments not relevant to these Regulations.

<sup>(44)</sup> S.I. 2004/353, to which there are amendments not relevant to these Regulations.

*Status: This is the original version (as it was originally made).*

- (g) for the definition of “EEA regulator” substitute—
  - ““EEA regulator” means a supervisory authority (within the meaning of Article 13(10) of the Solvency 2 Directive) of an EEA State;”;
- (h) for the definition of “home state regulator” substitute—
  - ““home state regulator”, in relation to an EEA insurer, means the EEA regulator—
    - (a) in the EEA State in which its head office is located; or
    - (b) if it is a branch of a third-country insurance undertaking (within the meaning of Article 13(3) of the Solvency 2 Directive), the EEA State in which the branch was granted authorisation in accordance with Articles 145 to 149 of the Solvency 2 Directive;”.
- (3) In regulation 5(6) (schemes of arrangement: EEA insurers)—
  - (a) in paragraph (a) for “Article 2(i) of the reorganisation and winding up directive” substitute “Article 268(1)(e) of the Solvency 2 Directive”;
  - (b) in paragraph (b) for “Article 2(j) of the reorganisation and winding up directive” substitute “Article 268(1)(f) of the Solvency 2 Directive”;
  - (c) in paragraph (c) for “Article 2(g) of the reorganisation and winding up directive” substitute “Article 268(1)(a) of the Solvency 2 Directive”.
- (4) In regulation 6(6) (reorganisation measures and winding up proceedings in respect of EEA insurers effective in the United Kingdom) in the definition of “relevant EEA State” for “Article 4 of the life insurance directive or Article 6 of the first non-life insurance directive” substitute “Article 14 or Article 162 of the Solvency 2 Directive”.
- (5) In regulation 17 (interpretation of Part 4)—
  - (a) in the definition of “composite insurer” for “article 18(2) of the life insurance directive” substitute “Article 73(2) of the Solvency 2 Directive”;
  - (b) in the definition of “general business assets” for “Article 18(3) of the life insurance directive” substitute “Article 73(5) of the Solvency 2 Directive”;
  - (c) in the definition of “long term business assets” for “Article 18(3) of the first life insurance directive” substitute “Article 73(5) of the Solvency 2 Directive”.
- (6) In regulation 50 (disclosure of confidential information: third country insurers)—
  - (a) in paragraph (2) for “Article 30 of the reorganisation and winding up directive” substitute “Article 296 of the Solvency 2 Directive”;
  - (b) in paragraph (7) in the definition of “EEA administrator” and “EEA liquidator” for “the reorganisation and winding up directive” substitute “Title IV of the Solvency 2 Directive”.

#### **Child Trust Funds Regulations 2004**

**18.**—(1) The Child Trust Funds Regulations 2004<sup>(45)</sup> are amended as follows.

(2) In paragraph (1)(b) of regulation 2 (interpretation) in the definition of “assurance undertaking” for “has the meaning in Article 2 of the Council Directive of 5th November 2002 concerning life assurance (2002/83/EC)” substitute “means a direct life insurance undertaking within the meaning of Article 2 of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)”.

---

<sup>(45)</sup> S.I. 2004/1450.

## **Financial Conglomerates and Other Financial Groups Regulations 2004**

**19.**—(1) The Financial Conglomerates and Other Financial Groups Regulations 2004(46) are amended as follows.

(2) In paragraph (2) of regulation 1 (interpretation) in sub-paragraph (b) of the definition of “regulated entity” for the words from “Article 4 of [Directive 2002/83/EC](#)” to the end of the sub-paragraph substitute “Article 13(1) of [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) or a third-country insurance undertaking (within the meaning of Article 13(3) of that Directive);”.

(3) In paragraph (1)(c) of regulation 15 (extension of power to vary Part 4A permissions) for the words from “Article 8(2) or Annex I.1.B. of [Directive 98/78/EC](#) to the end of the sub-paragraph substitute “Articles 221, 245, 246 or 258(1) of [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).”.

## **Pension Protection Fund (Entry Rules) Regulations (Northern Ireland) 2005**

**20.**—(1) The Pension Protection Fund (Entry Rules) Regulations (Northern Ireland) 2005(47) are amended as follows.

(2) In regulation 1(2) (interpretation)—

(a) omit the following definitions—

(i) “the first non-life insurance directive”;

(ii) “the life insurance directive”;

(iii) “the third non-life insurance directive”;

(b) insert at the appropriate place—

““the Solvency 2 Directive” means [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II);”;

(c) in the definition of “EEA insurer” for the words from “(within the meaning of Article 2 of the life insurance directive” to the end of the definition substitute “(as referred to in Article 2 of the Solvency 2 Directive) which has received authorisation under Article 14 of the Solvency 2 Directive from its home state regulator;”;

(d) in the definition of “EEA regulator” for the words from “means a competent authority” to the end of the definition substitute “means a supervisory authority (within the meaning of Article 13(10) of the Solvency 2 directive) of an EEA State;”.

## **Occupational Pension Schemes (Investment) Regulations (Northern Ireland) 2005**

**21.**—(1) The Occupational Pension Schemes (Investment) Regulations (Northern Ireland) 2005(48) are amended as follows.

(2) In regulation 1(2) (interpretation)—

(a) omit the definition of “the Life Directive”;

(b) insert at the appropriate place—

---

(46) [S.I. 2004/1862](#); relevant amending instruments are [S.I. 2006/3221](#), [2007/126](#), [2010/2628](#), [2011/1613](#), [2013/3115](#), [2013/472](#) and [2013/3115](#).

(47) [S.R. \(NI\) 2005 No 126](#), amended by [S.R. \(NI\) 2009 No 126](#); there are other amending instruments but none is relevant.

(48) [S.R. \(NI\) 2005 No 569](#), to which there are amendments not relevant to these Regulations.

*Status: This is the original version (as it was originally made).*

“the Solvency 2 Directive” means [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II);”;

- (c) in the definition of “insurance policy” for “Article 2 of the Life Directive, but excluding a contract of a kind referred to in Article 2(2)(c) or (d) of that Directive” substitute “Article 2(3) of the Solvency 2 Directive, but excluding a contract of a kind referred to in Article 2(3)(b)(iii) or (iv) of that Directive”;
- (d) in paragraph (b) of the definition of “qualifying insurance policy”—
  - (i) for “competent authorities” substitute “supervisory authorities”;
  - (ii) for “assurance” substitute “life insurance”;
  - (iii) for “Annex I to the Life Directive” substitute “Annex II to the Solvency 2 Directive”.

### **Pension Protection Fund (Entry Rules) Regulations 2005**

**22.**—(1) The Pension Protection Fund (Entry Rules) Regulations 2005(**49**) are amended as follows.

- (2) In regulation 1(3) (interpretation)—
  - (a) omit the following definitions—
    - (i) “the first non-life insurance directive”;
    - (ii) “the life insurance directive”;
    - (iii) “the third non-life insurance directive”;
  - (b) insert at the appropriate place—
 

“the Solvency 2 Directive” means [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II);”;
  - (c) in the definition of “EEA insurer” for the words from “(within the meaning of Article 2” to the end of the definition substitute “(within the meaning of Article 2 of the Solvency 2 Directive) which has received authorisation under Article 14 of the Solvency 2 Directive from its home state regulator;”;
  - (d) in the definition of “EEA regulator” for the words from “means a competent authority” to the end of the definition substitute “means a supervisory authority (within the meaning of Article 13(10) of the Solvency 2 Directive) of an EEA state”.

### **Insurers (Reorganisation and Winding Up) (Lloyd’s) Regulations 2005**

**23.**—(1) The Insurers (Reorganisation and Winding Up) (Lloyd’s) Regulations 2005(**50**) are amended as follows.

- (2) In regulation 2 (interpretation) in the definition of “the association of underwriters known as Lloyd’s” for the words from “the First Council Directive of 24 July 1973” to the end of the definition substitute “[Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II);”.

(49) [S.I. 2005/590](#) amended by [S.I. 2009/451](#); there are other amending instruments but none is relevant.

(50) [S.I. 2005/1998](#), to which there are amendments not relevant to these Regulations.



### **Occupational Pension Schemes (Investment) Regulations 2005**

**24.**—(1) The Occupational Pension Schemes (Investment) Regulations 2005(**51**) are amended as follows.

(2) In regulation 1(2) (interpretation)—

(a) omit the definition of the “the Life Directive”;

(b) insert at the appropriate place—

““the Solvency 2 Directive” means [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II);”;

(c) in the definition of “insurance policy” for “article 2 of the Life Directive, but excluding a contract of a kind referred to in article 2(2)(c) and (d) of that Directive” substitute “Article 2(3) of the Solvency 2 Directive, but excluding a contract of a kind referred to in Article 2(3)(b)(iii) or (iv) of that Directive”;

(d) in paragraph (b) of the definition of “qualifying insurance policy”—

(i) for “competent authorities” substitute “supervisory authorities”;

(ii) for “assurance” substitute “life insurance”;

(iii) for “Annex I to the Life Directive” substitute “Annex II to the Solvency 2 Directive”.

### **Money Laundering Regulations 2007**

**25.**—(1) The Money Laundering Regulations 2007(**52**) are amended as follows.

(2) In regulation 2 (interpretation)—

(a) omit the definition of “the life assurance consolidation directive”;

(b) insert at the appropriate place—

““the Solvency 2 Directive” means [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II);”;

(c) in regulation 3(3)(b) (application of the Regulations)—

(i) for “the life assurance consolidation directive” substitute “the Solvency 2 Directive”;

(ii) for “activities covered by that directive” insert “any activities or operations referred to in Article 2(3) of that Directive”.

### **Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008**

**26.**—(1) The Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008(**53**) are amended as follows.

(2) In paragraph 52(3) (long term provision) of Schedule 3 (insurance companies: companies act individual accounts) for “[Directive 2002/83/EC](#) of the European Parliament and of the Council of 5th November 2002 concerning life assurance” substitute “[Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)”.

---

(51) [S.I. 2005/3378](#); relevant amending instruments are [S.I. 2006/778](#) and [2013/472](#).

(52) [S.I. 2007/2157](#), to which there are amendments not relevant to these Regulations.

(53) [S.I. 2008/410](#), to which there are amendments not relevant to these Regulations.

**Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008**

**27.**—(1) The Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008<sup>(54)</sup> are amended as follows.

(2) In regulation 2(4) (interpretation)—

(a) in paragraph (a) for “Council [Directive 73/239/EEC](#) by Article 3 of that Directive” substitute “[Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) by Article 7, 9(1), 9(2) or 10(1) of that Directive, or”;

(b) omit paragraph (b).

**Payment Services Regulations 2009**

**28.**—(1) The Payment Services Regulations 2009<sup>(55)</sup> are amended as follows.

(2) In regulation 19(15) (safeguarding requirements) in the definition of “authorised insurer” for “Article 6 of the First Council [Directive 73/239/EEC](#) of 24th July 1973 on the business of direct insurance other than life insurance” substitute “Article 14 of [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) to carry out non-life insurance activities as referred to in Article 2(2) of that Directive”.

**Mutual Societies (Transfers) Order 2009**

**29.**—(1) The Mutual Societies (Transfers) Order 2009<sup>(56)</sup> is amended as follows.

(2) In article 19 (EEA mutual society)—

(a) in paragraph (3)—

(i) for sub-paragraph (a) substitute—

“(a) a direct life or non-life undertaking as referred to in Article 2 of [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) which is authorised under Article 14 of that Directive; or”;

(ii) in sub-paragraph (b)(ii) for “under either of the directives mentioned in sub-paragraph (a)” substitute “under the Directive mentioned in sub-paragraph (a) as a direct life or non-life undertaking within the meaning of Article 2 of that Directive”;

(b) omit paragraph (4).

**Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009**

**30.** In article 2 of the Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009 (interpretation) <sup>(57)</sup>—

(a) for sub-paragraphs (d) and (e) of the definition of “relevant UK authorised person” substitute—

“(d) an insurance undertaking which includes for the purposes of this Order a managing agent; or

<sup>(54)</sup> [S.I. 2008/565](#), to which there are amendments not relevant to these Regulations.

<sup>(55)</sup> [S.I. 2009/209](#), to which there are amendments not relevant to these Regulations.

<sup>(56)</sup> [S.I. 2009/509](#), to which there are amendments not relevant to these Regulations.

<sup>(57)</sup> [S.I. 2009/774](#), to which there are amendments not relevant to these Regulations.

- (e) a reinsurance undertaking.”;
- (b) at the appropriate place insert—
  - ““managing agent” has the meaning given in article 3 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;”.

### **Financial Services and Markets Act 2000 (Law Applicable to Contracts of Insurance) Regulations 2009**

**31.**—(1) The Financial Services and Markets Act 2000 (Law Applicable to Contracts of Insurance) Regulations 2009(**58**) are amended as follows.

- (2) In regulation 5 (community co-insurers)—
  - (a) for “Council [Directive 78/473/EEC](#) on the coordination of laws, regulations and administrative provisions relating to Community insurance” substitute “Article 190 of the Solvency 2 Directive”;
  - (b) for “that Directive” substitute “that Article”.

### **Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations (Northern Ireland) 2010**

**32.**—(1) The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations (Northern Ireland) 2010(**59**) are amended as follows.

- (2) For regulation 35(2)(d) (further conditions applicable to automatic enrolment schemes) substitute—
  - “(d) Article 13(10) of [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II);”.

### **Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010**

**33.**—(1) The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010(**60**) are amended as follows.

- (2) For regulation 35(2)(d) (further conditions applicable to automatic enrolment schemes) substitute—
  - “(d) Article 13(10) of [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II);”.

### **Electronic Money Regulations 2011**

**34.**—(1) The Electronic Money Regulations 2011(**61**) are amended as follows.

- (2) In regulation 22(3) (safeguarding option 2) in the definition of “authorised insurer” for “Article 6 of the First Council [Directive 73/239/EEC](#) of 24th July 1973 on the business of direct insurance other than life insurance” substitute “Article 14 of [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) to carry out non-life insurance activities within the meaning of Article 2(2) of that Directive”.

---

(58) [S.I. 2009/3075](#).

(59) [S.R. \(NI\) 2010 No 122](#), to which there are amendments not relevant to these Regulations.

(60) [S.I. 2010/772](#), to which there are amendments not relevant to these Regulations.

(61) [S.I. 2011/99](#), to which there are amendments not relevant to these Regulations.

**Bank of England Act 1998 (Macro-prudential Measures) Order 2013**

**35.**—(1) The Bank of England Act 1998 (Macro-prudential Measures) Order 2013(**62**) is amended as follows.

(2) In article 1(2) (interpretation)—

(a) omit the following definitions—

- (i) “first non-life directive”;
- (ii) “life assurance consolidation directive”;
- (iii) “reinsurance directive”;

(b) insert at the appropriate place—

““solvency 2 directive” means [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II);”;

- (c) in the definition of “insurance undertaking” for “the first non-life directive or the life assurance consolidation directive” substitute “the solvency 2 directive”;
- (d) in the definition of “reinsurance undertaking” for “Article 3 of the reinsurance directive” substitute “Article 14 of the solvency 2 directive to pursue reinsurance activities within the meaning of Article 13(7) of that directive”;
- (e) in the definition of “third country insurance undertaking” for “in accordance with the first non-life directive or the life assurance consolidation directive” substitute “as an insurance undertaking in accordance with Article 14 of the solvency 2 directive”;
- (f) in the definition of “third country reinsurance undertaking” for “in accordance with the reinsurance directive” substitute “as a reinsurance undertaking in accordance with Article 14 of the solvency 2 directive”.

**Enterprise Act 2002 (Mergers) (Interim Measures: Financial Penalties) (Determination of Control and Turnover) Order 2014**

**36.**—(1) The Enterprise Act 2002 (Mergers) (Interim Measures: Financial Penalties) (Determination of Control and Turnover) Order 2014(**63**) is amended as follows.

(2) In paragraph 1 of the Schedule (turnover of an enterprise: interpretation) in the definition of “insurance undertaking”—

(a) in paragraph (a) for “the Annex to Council Directive ([EEC](#)) [73/239](#) of 24th July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance” substitute “Annex I to [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)”;

(b) in paragraph (b)—

- (i) omit “direct”;
- (ii) for “Article 2 of [Directive 2002/83/EC](#) of the European Parliament and of the Council of 5th November 2002 concerning life assurance” substitute “Article 2(3) of [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)”;

(62) [S.I. 2013/644](#), to which there are amendments not relevant to these Regulations.

(63) [S.I. 2014/533](#).

- (c) in paragraph (c) for “[Directive 2005/68/EC](#) of the European Parliament and of the Council of 16th November 2005 on reinsurance” substitute “[Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)”.

### SCHEDULE 3

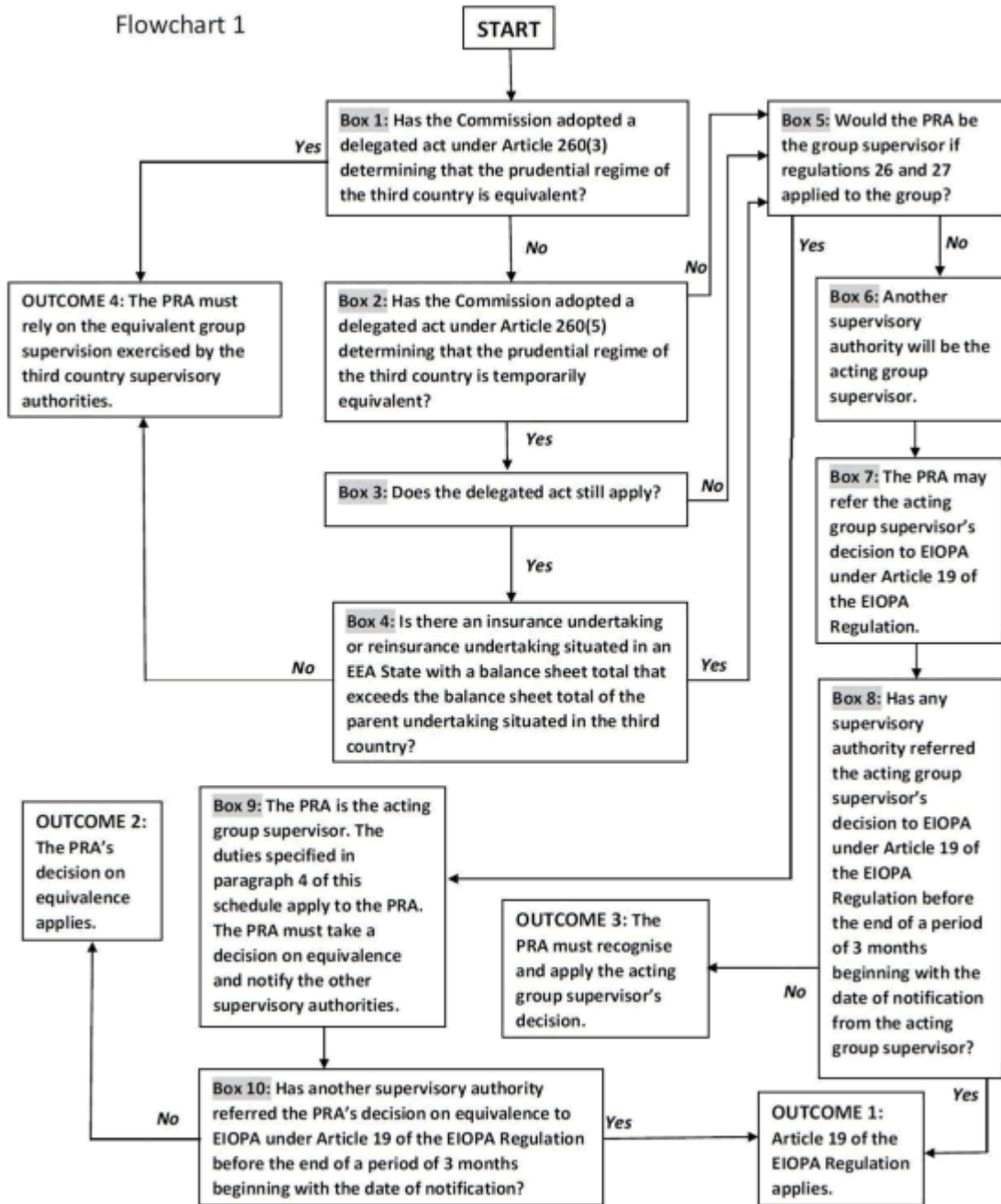
Regulation 35

#### Parent undertakings outside the EEA: equivalence

1. This Schedule specifies the procedure for verifying whether the insurance undertaking or reinsurance undertaking referred to in regulation 35(1) is subject to supervision which is equivalent to that set out in Title 3 of the Solvency 2 Directive.
2. The PRA must follow the procedure set out in Flowchart 1 in order to determine whether—
  - (a) Article 19 of the EIOPA Regulation applies;
  - (b) the PRA must make the decision on equivalence;
  - (c) another supervisory authority will make the decision on equivalence; or
  - (d) the PRA must rely on equivalent group supervision exercised by the third country supervisory authorities.
3. Flowchart 1 also imposes duties and confers powers on the PRA for the purposes of making and giving effect to that determination.
4. Where reference is made to this paragraph in Flowchart 1, the PRA must—
  - (a) verify equivalence—
    - (i) at the level of the ultimate non-EEA solvency 2 parent where—
      - (aa) the Commission has adopted a delegated act under Article 260(3) of the Solvency 2 Directive; and
      - (bb) the parent undertaking is a subsidiary of an insurance holding company or a mixed financial holding company which has its head office in a third country, or of a third country insurance undertaking or third country reinsurance undertaking; or
    - (ii) in all other cases, either at the level of the ultimate non-EEA solvency 2 parent or at a lower level;
  - (b) where sub-paragraph (a)(ii) applies, explain its decision to the group to which the insurance undertaking or reinsurance undertaking belongs;
  - (c) consult the other supervisory authorities making up the college before making a decision on equivalence;
  - (d) ensure that its decision on equivalence does not contradict any previous decision taken in relation to the third country, except where it is necessary to do so in order to take into account significant changes to the supervisory regime in Title 3 of the Solvency 2 Directive or the third country; and
  - (e) take its decision on equivalence in accordance with the criteria set out in any delegated act made by the European Commission under Article 260(2) of the Solvency 2 Directive.
5. In this schedule, “acting group supervisor” means the supervisory authority acting as the group supervisor for the purposes of determining whether the insurance undertaking or reinsurance undertaking is subject to supervision which is equivalent to that set out in Title 3 of the Solvency 2 Directive.

Status: This is the original version (as it was originally made).

Flowchart 1



## SCHEDULE 4

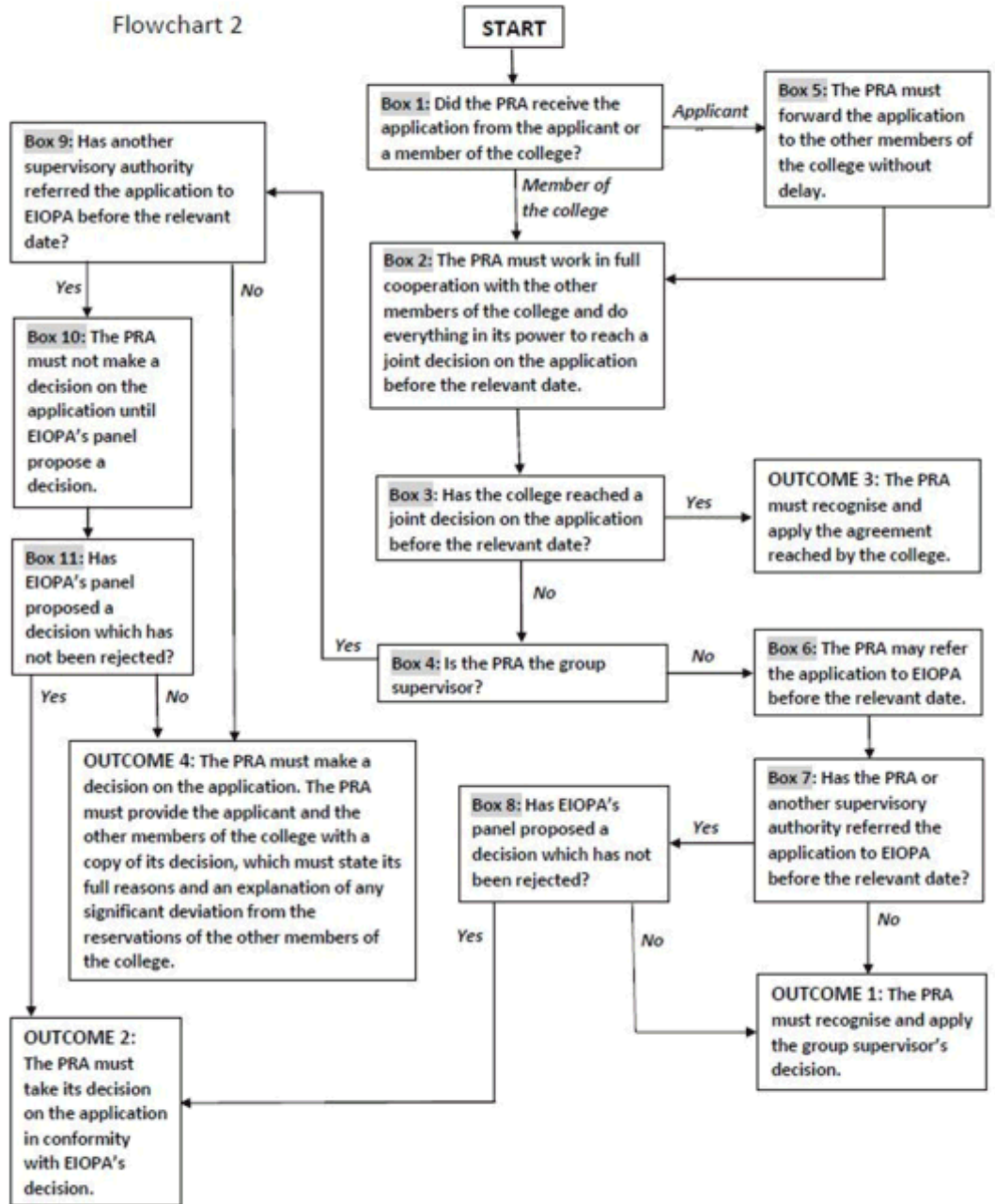
Regulation 40

### Procedure for an application for a subsidiary to be subject to national law implementing Articles 238 and 239 of the Solvency 2 Directive

1. When the PRA receives an application referred to in the first row of Table 2, the PRA must follow the procedure set out in Flowchart 2 for the purposes of determining whether—
  - (a) the PRA must recognise and apply the group supervisor’s decision on the application;
  - (b) the PRA must take its decision on the application in conformity with a decision made by EIOPA;
  - (c) the PRA must recognise and apply an agreement reached by the college of supervisors; or
  - (d) the PRA (as group supervisor) must take the decision on the application.
2. Flowchart 2 also imposes duties and confers powers on the PRA for the purposes of making and giving effect to that determination.
3. In Flowchart 2—
  - (a) “college” means the college of supervisory authorities;
  - (b) “relevant date” means the date falling immediately after the period of three months beginning with the date on which the complete application was received by the supervisory authority to which the application was made; and
  - (c) a reference to the panel’s proposal being rejected is a reference to a proposal by EIOPA’s panel being rejected in accordance with Articles 41(2) and (3), and 44(1), of the EIOPA Regulation.

Status: This is the original version (as it was originally made).

Flowchart 2





## SCHEDULE 5

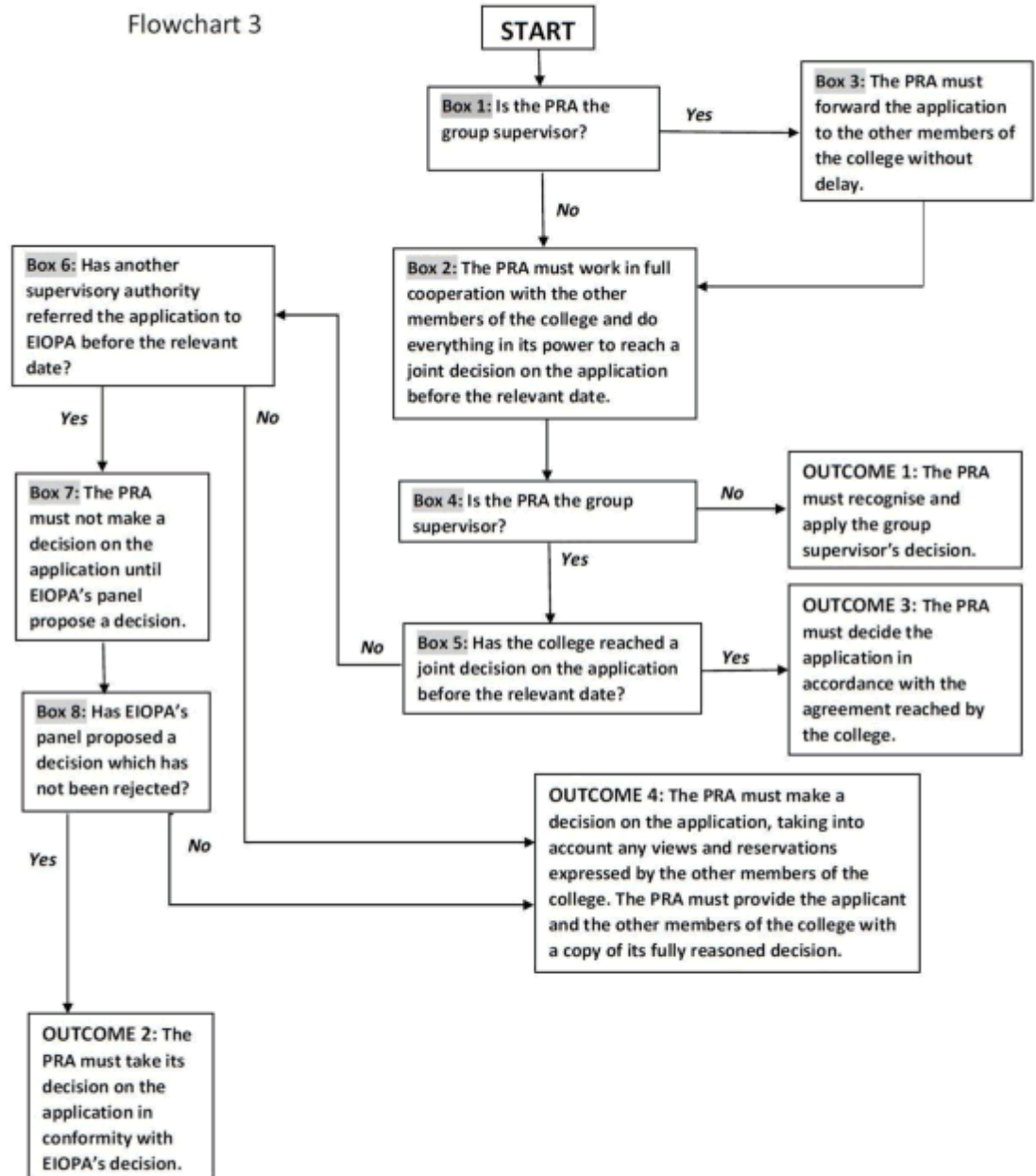
Regulation 40

### Procedure for group applications

1. When the PRA receives a group application, the PRA must follow the procedure set out in Flowchart 3 for the purposes of determining whether—
  - (a) the PRA must recognise and apply the group supervisor’s decision on the application;
  - (b) the PRA must take its decision on the application in conformity with a decision made by EIOPA;
  - (c) the PRA must recognise and apply an agreement reached by the college of supervisors; or
  - (d) the PRA (as group supervisor) must take the decision on the application.
2. Flowchart 3 also imposes duties and confers powers on the PRA for the purposes of making and giving effect to that determination.
3. In Flowchart 3—
  - (a) “college” means the college of supervisory authorities;
  - (b) “relevant date” means the date falling immediately after the period of six months beginning with the date on which the complete application was received by the supervisory authority to which the application was made; and
  - (c) a reference to the panel’s proposal being rejected is a reference to a proposal by EIOPA’s panel being rejected in accordance with Articles 41(2) and (3), and 44(1), of the EIOPA Regulation.

Status: This is the original version (as it was originally made).

Flowchart 3



---

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

The Regulations implement in part [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of insurance and reinsurance (Solvency II) (OJ L335, 17.12.2009, p.1) (the “Solvency 2 Directive”). The remainder of the Solvency 2 Directive is implemented by the Financial Services and Markets Act [2000 \(c. 8\)](#) (“FSMA”), rules and individually binding requirement imposed by the Prudential Regulation Authority (“PRA”) and the Financial Conduct Authority (“FCA”) under FSMA and a directly applicable regulation made by the European Commission.

The Solvency 2 Directive establishes the prudential regime for insurers and reinsurers operating in the European Union. These Regulations and FSMA establish the regulatory system and the rules and binding requirements imposed by the PRA and FCA directly regulate insurers and reinsurers. As a result, these Regulations are intended to be read with FSMA, the rules and individual requirements imposed by the PRA and FCA and the directly applicable regulation made by the European Commission. A detailed breakdown of how each provision of the Solvency 2 Directive is transposed into UK law is set out in the transposition note referred to below.

Part 1 makes provision for citation, commencement and interpretation. The definitions set out in sections 417 (definitions) and 424 (insurance) of, and Part 1 of Schedule 3 to, FSMA apply for the purposes of these Regulations. Subject to that, expressions used in these Regulations bear the same meaning as they do in the Solvency 2 Directive.

Part 2 makes provision for the manner in which the PRA must carry out supervision of insurance undertakings and reinsurance undertakings.

Part 3 and Schedule 3 make provision for the regulation of groups of insurance undertakings or reinsurance undertakings, which frequently involves cooperation and coordination with regulators outside the United Kingdom. The provisions are arranged in the same order as the provisions they implement in Title 3 of the Solvency 2 Directive (supervision of insurance and reinsurance undertakings in a group) and the headings of the chapters are the same as the corresponding sections and chapters in Title 3. However, introductory provision about group supervision can be found in chapter 6 (measures to facilitate group supervision), in particular at regulations [26](#) to [28](#).

Part 4 and Schedules 4 and 5 confer powers on the PRA to grant insurers and reinsurers approval for particular matters, such as the application of a matching adjustment or a volatility adjustment to a risk-free interest rate term structure. Chapter 1 makes provision for the application procedure, Chapter 2 sets out all the specific approvals, Chapter 3 makes provision for decision making and appeals and Chapter 4 imposes a duty on the PRA to modify its rules on the grant of certain approvals.

Part 5 and Schedules 1 and 2 contain amendments to primary and secondary legislation (including FSMA).

A transposition note setting out how the Solvency 2 Directive is transposed into UK law is available from <http://www.legislation.gov.uk> and from Her Majesty’s Treasury, 1 Horse Guards Road, London SW1A 2HQ.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from Her Majesty’s Treasury, 1 Horse Guards Road, London SW1A 2HQ and is annexed to the Explanatory Memorandum which is available alongside the instrument at <http://www.legislation.gov.uk>.

**Status:** *This is the original version (as it was originally made).*