

SCHEDULE 1

Amendments to primary legislation

PART 1

Amendments to FSMA

- 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”;

Status: This is the original version (as it was originally made).

(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—
 - (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.”.