

## SCHEDULE 1

### 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-*authorised* 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-*authorised* 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

- (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 (1), 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)(2)—

- (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).”; and

- (b) omit paragraph (c).

(3) For subsections (5)(3) and (6)(4) 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—

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(1) Section 105(3)(Case 2)(aa) was inserted by [S.I. 2007/3253](#).  
(2) Section 116(2) was substituted by [S.I. 2007/3253](#).  
(3) Section 116(5) was amended by [S.I. 2004/3379](#) and [S.I. 2007/3253](#).  
(4) Section 166(6) was amended by [S.I. 2007/3253](#).

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“(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)(5) 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)(6), 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.”

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

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

(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—

- (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—

*Status: This is the original version (as it was originally made).*

*“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.”.