
STATUTORY INSTRUMENTS

2017 No. 1212

The Risk Transformation Regulations 2017

PART 2

Authorisation and supervision of insurance risk transformation

Amendment of FSMA

4.—(1) FSMA is amended as follows.

(2) In Schedule 6 (threshold conditions)(1)—

(a) in Part 1D (Part 4A permission: conditions for which the PRA is responsible in relation to insurers etc), in paragraph 4A (introduction), after sub-paragraph (4), insert—

“(5) If the person concerned (“C”) carries on, or is seeking to carry on, regulated activities which consist of or include a PRA-regulated activity relating to an assumption of risk falling within article 13A of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, the threshold conditions which are relevant to the discharge by the PRA of its functions in relation to C are the conditions set out in paragraphs 4B to 4F, subject to sub-paragraph (6).

(6) Paragraphs 4B to 4F have effect in relation to persons of the kind specified by sub-paragraph (5) as if—

- (a) the persons are special purpose vehicles within the meaning given by Article 13(26) of the Solvency 2 Directive(2);
- (b) the persons are not reinsurance undertakings within the meaning given by Article 13(4) of the Solvency 2 Directive;
- (c) references to contracts of insurance are references to contracts for the assumption of risk; and
- (d) references to C’s policyholders are references to undertakings from whom C assumes a risk.”;

(b) in Part 1E (Part 4A permission: conditions for which the PRA is responsible in relation to other PRA-authorized persons), in paragraph 5A (introduction)—

- (i) at the end of sub-paragraph (b), omit “or”;
- (ii) at the end of sub-paragraph (c), insert “or”; and
- (iii) after sub-paragraph (c), insert—

“(d) an assumption of risk falling within article 13A of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001,”.

(1) Parts 1D and 1E of Schedule 6 were inserted by [S.I. 2013/555](#).

(2) “Solvency 2 Directive” is defined by section 425 of, and paragraph 3 of Schedule 3 to, FSMA. It refers to [Directive 2009/138/EC](#) on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).

Amendment of the Regulated Activities Order

5.—(1) The Regulated Activities Order is amended as follows.

(2) After article 12A (information society services and managers of UCITS and AIFs)(3) insert—

“Transformer vehicles: insurance risk transformation

12B. A transformer vehicle(4) does not carry on an activity of a kind specified by article 10 by assuming a risk from an undertaking, provided the assumption of the risk is a specified kind of activity falling within article 13A (transformer vehicles: insurance risk transformation).”(5).

(3) After article 13 (application of sections 327 and 332 of FSMA) insert—

“CHAPTER 3A**Insurance risk transformation****Transformer vehicles: insurance risk transformation**

13A. It is a specified kind of activity for a transformer vehicle to assume a risk from an undertaking where—

(a) the undertaking assumes a risk under a contract of insurance (“the underlying risk”); and

(b) the assumption of risk by the transformer vehicle has the legal or economic effect of transferring some or all of the underlying risk to the transformer vehicle.”.

(4) After article 19 (risk-management)(6) insert—

“Transformer vehicles: insurance risk transformation

19A. A transformer vehicle does not carry on an activity of a kind specified by article 14 by assuming a risk from an undertaking, provided the assumption of the risk is a specified kind of activity falling within article 13A (transformer vehicles: insurance risk transformation).”.

Amendment of the Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013

6. In the Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013(7) in article 2 (regulated activities which are PRA-regulated activities), after paragraph (c) insert—

“(ca) the activity carried out by a transformer vehicle when it assumes a risk from an undertaking, as specified by article 13A of the Regulated Activities Order;”.

Limitation on transformer vehicles’ activities

7.—(1) When the PRA gives permission under Part 4A of FSMA for a transformer vehicle to carry on regulated activities, the PRA must exercise its discretion under section 55F(4)(a) of FSMA to incorporate in the description of those regulated activities a limitation on the scope of the regulated activities which the transformer vehicle may carry on.

(3) Article 21A was inserted by [S.I. 2002/1776](#).

(4) “Transformer vehicle” is defined in section 284A(1) of FSMA.

(5) A transformer vehicle carrying on the activity specified in article 13A of the Regulated Activities Order is not a reinsurance undertaking for the purposes of the Solvency 2 Directive and does not require authorisation in accordance with Article 14 of that Directive.

(6) Article 19 was amended by [S.I. 2006/3384](#).

(7) [S.I. 2013/556](#). Article 2 has been amended by [S.I. 2013/1773](#), [S.I. 2014/2879](#), [S.I. 2014/3329](#), [S.I. 2014/3348](#), [S.I. 2015/1882](#), [S.I. 2016/680](#), [S.I. 2016/715](#), [S.I. 2016/936](#) and [S.I. 2016/1023](#),

(2) The limitation on the scope of the regulated activities referred to in paragraph (1) must be determined by reference to some or all of the activities described in the application for Part 4A permission made by or on behalf of the transformer vehicle.

(3) Where—

- (a) the PRA proposes to exercise its discretion under section 55F(4)(a) of FSMA pursuant to the duty imposed on the PRA by paragraph (1); and
- (b) the person applying for Part 4A permission consents to the proposed exercise of that discretion,

the PRA need not give a warning notice relating to the proposed exercise of that discretion pursuant to section 55X(1)(a) of FSMA.

(4) Where—

- (a) the PRA decides to exercise its discretion under section 55F(4)(a) of FSMA pursuant to the duty imposed on the PRA by paragraph (1); and
- (b) the person applying for Part 4A permission consents to the exercise of that discretion,

the PRA need not give a decision notice relating to the exercise of that discretion pursuant to section 55X(4)(a) of FSMA.

(5) After the PRA has given permission under Part 4A of FSMA for a transformer vehicle to carry on regulated activities, the PRA may exercise its discretion under section 55I(1)(c) or 55J(3)(a) of FSMA to vary the limitation referred to in paragraph (1), provided the PRA maintains a limitation on the scope of the regulated activities which the transformer vehicle may carry on.

(6) A variation to the limitation referred to in paragraph (5) must ensure that the limitation is determined by reference to some or all of the activities which the transformer vehicle carries on or proposes to carry on.

Disapplication of Part 12 of FSMA

8. Part 12 of FSMA (control over authorised persons)**(8)** does not apply in relation to a person who decides to acquire or increase control, or reduce or cease control, over a transformer vehicle carrying on the activity specified in article 13A of the Regulated Activities Order.

Transformer vehicles which are not Solvency 2 special purpose vehicles

9.—(1) In this regulation—

- (a) “non-Solvency 2 transformer vehicle” means a transformer vehicle which is authorised under Part 4A of FSMA in relation to the activity specified in article 13A of the Regulated Activities Order, but which is not a special purpose vehicle; and
- (b) “special purpose vehicle” has the meaning given by Article 13(26) of the Solvency 2 Directive.

(2) The PRA must make rules under Part 9A of FSMA (rules and guidance)**(9)** which impose requirements on non-Solvency 2 transformer vehicles which are equivalent to the requirements imposed by directly applicable regulations made under paragraphs (2) and (2a) of Article 211 of the Solvency 2 Directive**(10)** on special purpose vehicles authorised for the purposes of that Article.

(8) Part 12 has been amended by [S.I. 2009/534](#), [S.I. 2011/1613](#), sections 6 and 26 of the Financial Services Act 2012, [S.I. 2013/3115](#), [S.I. 2014/3329](#), [S.I. 2015/575](#), [S.I. 2015/1755](#), section 16 of and schedule 2 to Bank of England and Financial Services Act 2016 and [S.I. 2016/1239](#).

(9) Part 9A was inserted by section 24 of the Financial Services Act 2012. There are amendments to Part 9A which are not relevant to these Regulations.

(10) Article 211 has been amended by [Directive 2014/51/EU](#) (OJ no L153, 22.5.2014, p. 1).

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