

STATUTORY INSTRUMENTS

2015 No. 575

The Solvency 2 Regulations 2015

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 ^{F1}the United Kingdom law which implemented the Solvency 2 Directive]—

^{F2}(a)

^{F2}(b)

(c) in times of exceptional movements in the financial markets take into account the potential pro-cyclical effects of their actions.

- | | |
|-----------|---|
| F1 | Words in reg. 3(1) substituted (31.12.2020) by The Solvency 2 and Insurance (Amendment, etc.) (EU Exit) Regulations 2019 (S.I. 2019/407), regs. 1(2), 8(2)(a) (as amended by S.I. 2020/1385, regs. 1(2), 54(2)) |
| F2 | Reg. 3(1)(a)(b) omitted (31.12.2020) by virtue of The Solvency 2 and Insurance (Amendment, etc.) (EU Exit) Regulations 2019 (S.I. 2019/407), regs. 1(2), 8(2)(b) (as amended by S.I. 2020/1385, regs. 1(2), 54(2)) |

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.

^{F3}Non-compliance with solvency capital requirement and exceptional adverse situations

4A.—(1) The PRA may extend the period of six months in which an insurance undertaking or reinsurance undertaking must take the measures necessary to achieve the re-establishment of the level of eligible own funds covering the solvency capital requirement or the reduction of its risk profile to ensure compliance with the solvency capital requirement by up to—

(a) three months, or

(b) in the event of a declaration by the Prudential Regulation Committee of the Bank of England under paragraph (2) and considering all relevant factors including the average duration of the technical provisions, seven years.

(2) The Prudential Regulation Committee of the Bank of England must declare the existence of exceptional adverse situations in the conditions set out in paragraph (3).

(3) Exceptional adverse situations exist where the financial situation of insurance or reinsurance undertakings representing a significant share of the market or of the affected lines of business are seriously or adversely affected by one or more of the following conditions—

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- (a) a fall in financial markets which is unforeseen, sharp and steep;
 - (b) a persistent low interest rate environment;
 - (c) a high-impact catastrophic event.
- (4) The Prudential Regulation Committee of the Bank of England must assess on a regular basis whether the conditions referred to in paragraph (3) still apply.
- (5) The Prudential Regulation Committee of the Bank of England must declare when an exceptional adverse situation has ceased to exist.
- (6) An extension granted under paragraph (1)(b) must be withdrawn where the insurance undertaking or reinsurance undertaking submits to the PRA a progress report that shows that there was no significant progress in achieving the re-establishment of the level of eligible own funds covering the solvency capital requirement or the reduction of the risk profile to ensure compliance with the solvency capital requirement between the date of the observation of non-compliance of the solvency capital requirement and the date of the submission of the progress report.]

F3 Regs. 4A-4D inserted (31.12.2020) by [The Solvency 2 and Insurance \(Amendment, etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/407\)](#), regs. 1(2), **8(3)** (as amended by [S.I. 2020/1385](#), regs. 1(2)(4), **54(2)(3)**, [S.I. 2019/1390](#), regs. 1(4), 11(2) and [S.I. 2019/960](#), regs. 1(3), **10(3)** (as amended by [S.I. 2020/1301](#), regs. 1, 3, **Sch. para. 40(e)(i)(f)**); 2020 c. 1, **Sch. 5 para. 1(1)**)

[^{F3}Duty to publish technical information

4B.—(1) For the relevant quarter and every quarter thereafter, by the 8th working day of the month that follows the end of the quarter, the PRA must publish on its website the following information for each relevant currency—

- (a) the relevant risk-free interest rate term structure used to calculate the best estimate, without any matching adjustment or volatility adjustment,
- (b) for each relevant duration, credit quality and asset class, a fundamental spread for the calculation of the matching adjustment to the relevant risk-free interest rate term structure used to calculate the best estimate for a portfolio of life insurance or reinsurance obligations, and
- (c) for each relevant national insurance market, a volatility adjustment to the relevant risk-free interest rate term structure used to calculate the best estimate.

(1A) For the purposes of paragraph (1), the “relevant quarter” is the first quarter which ends after this regulation comes into force.

(2) Paragraph 17(9)(b) of Schedule 6A to the Bank of England Act 1998 does not prohibit the making of a rule that imposes an obligation on PRA-authorised persons by reference to information published by the PRA under this regulation.

(3) The volatility adjustment referred to in paragraph (1) must, for each relevant currency—

- (a) be based on the spread between the interest rate that could be earned from the assets included in the reference portfolio for that currency and the rates of the relevant basic risk-free interest rate term structure for that currency, and
- (b) correspond to 65% of the risk-corrected currency spread.

(4) The reference portfolio for a currency is one that is representative of the assets which are denominated in that currency and which insurance and reinsurance undertakings are invested in to cover the best estimate for insurance and reinsurance obligations denominated in that currency.

(5) The risk-corrected currency spread must be calculated as the difference between the spread referred to in paragraph (3)(a) and the portion of the spread that is attributable to a realistic assessment of expected losses or unexpected credit or other risk of the assets.

(6) For each relevant country, the volatility adjustment to the risk-free interest rates referred to in paragraph 3(b) for the currency of that country must, before application of the 65% factor, be increased by the difference between the risk-corrected country spread and twice the risk-corrected currency spread, whenever that difference is positive and the risk-corrected country spread is higher than 85 basis points.

(7) For the purposes of paragraph (6), the risk-corrected country spread must be—

- (a) calculated in the same way as the risk-corrected currency spread for the currency of that country, but based on a reference portfolio that is representative for the assets which insurance and reinsurance undertakings are invested in, to cover the best estimate for insurance and reinsurance obligations of products sold in the insurance market of that country, and
- (b) denominated in the currency of that country.]

F3 Regs. 4A-4D inserted (31.12.2020) by [The Solvency 2 and Insurance \(Amendment, etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/407\)](#), regs. 1(2), **8(3)** (as amended by [S.I. 2020/1385](#), regs. 1(2)(4), **54(2)(3)**, [S.I. 2019/1390](#), regs. 1(4), 11(2) and [S.I. 2019/960](#), regs. 1(3), **10(3)** (as amended by [S.I. 2020/1301](#), regs. 1, 3, **Sch. para. 40(e)(i)(f))**); 2020 c. 1, **Sch. 5 para. 1(1)**)

[^{F4}Powers in relation to Gibraltar undertakings

4C.—(1) If this regulation applies, the PRA may impose any requirement in relation to a Gibraltarian insurance undertaking or a Gibraltarian reinsurance undertaking (the Gibraltarian undertaking) which it could impose if—

- (a) the undertaking's permission was a Part 4A permission (as defined by section 55A(5) of FSMA); and
- (b) the PRA was entitled to exercise its power under section 55M(3) of FSMA.

(2) This regulation applies if—

- (a) the Gibraltarian undertaking is contravening, or is at material risk of contravening, in respect of its activities in the United Kingdom, any requirement applying to that undertaking in or under these Regulations, the Solvency 2 Regulation, or UK law which implemented the Solvency 2 directive (“a relevant requirement”);
- (b) the undertaking has, in purported compliance with any relevant requirement imposed on it, knowingly or recklessly given the PRA information which is false or misleading in a material particular; or
- (c) subject to paragraph (3), it is desirable to impose the requirement in order to advance any of the PRA's objectives.

(3) The PRA may not impose a requirement in reliance on paragraph (2)(c) if doing so would, before IP completion day, have been considered to constitute financial supervision of the undertaking unless the conditions in paragraph (4) are satisfied.

(4) The conditions in this paragraph are satisfied if—

- (a) the requirement to be imposed is necessary and appropriate to protect against the risk of disruption to the continuity of financial services that could, in the opinion of the PRA, threaten financial stability in the United Kingdom;

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- (b) the FSC has not, in the opinion of the PRA, taken measures to ensure the contravention or risk of contravention is remedied; and
- (c) no reorganisation measures have been commenced by the FSC or other authorities in Gibraltar in relation to the undertaking.

(5) For the purposes of this regulation, “reorganisation measures” means any measures by the FSC or other Gibraltar authorities which are intended to preserve or restore the financial situation of the Gibraltar insurance or reinsurance undertaking concerned (“the relevant undertaking”) and which affect pre-existing rights of parties other than the relevant undertaking itself, including but not limited to measures involving the possibility of a suspension of payments, suspension or enforcement measures or reduction of claims.

(6) Nothing in this regulation affects the powers of the FSC or any other Gibraltar authority.

F4 Regs. 4A-4D inserted (31.12.2020) by [The Solvency 2 and Insurance \(Amendment, etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/407\)](#), regs. 1(2), **8(3)** (as amended by [S.I. 2020/1385](#), regs. 1(2)(4), **54(2)(3)**), as amended by [The Financial Services \(Miscellaneous\) \(Amendment\) \(EU Exit\) \(No. 3\) Regulations 2019 \(S.I. 2019/1390\)](#), regs. 1(4), **11(2)** and as amended by [S.I. 2019/960](#), regs. 1(3), **10(3)** (as amended by [S.I. 2020/1301](#), regs. 1, 3, **Sch. para. 40(e)(i)(f))**); 2020 c. 1, **Sch. 5 para. 1(1)**)

Procedure on the exercise of powers under regulation 4C

4D.—(1) A requirement takes effect—

- (a) immediately, if the notice given under paragraph (3) states that that is the case;
- (b) on such date as may be specified in the notice; or
- (c) if no date is specified in the notice, when the matter to which it relates is no longer open to review.

(2) A requirement may be expressed to take effect immediately (or on a specified date) only if the PRA, having regard to the ground on which it is exercising the power under regulation 4C, considers that it is necessary for the requirement to take effect immediately (or on that date).

(3) If the PRA proposes to impose a requirement under regulation 4C on a Gibraltar insurance or reinsurance undertaking, or imposes such a requirement with immediate effect, it must give the undertaking written notice.

(4) The notice must—

- (a) give details of the requirement;
- (b) inform the undertaking of when the requirement takes effect;
- (c) state the PRA's reasons for imposing the requirement and for its determination as to when the requirement takes effect;
- (d) inform the undertaking that it may make representations to the PRA within such period as may be specified in the notice (whether or not it has referred the matter to the Upper Tribunal); and
- (e) inform it of its right to refer the matter to the Upper Tribunal.

(5) The PRA may extend the period allowed under the notice for making representations.

(6) If, having considered any representations made by the undertaking, the PRA decides—

- (a) to impose the requirement proposed, or
- (b) if it has been imposed, not to rescind the requirement,

it must give the undertaking written notice.

(7) If, having considered any representations made by the undertaking, the PRA decides—

- (a) not to impose the requirement proposed,
- (b) to impose a different requirement from that proposed, or
- (c) to rescind a requirement which has effect,

it must give it written notice.

(8) A notice given under paragraph (6) must inform the undertaking of its right to refer the matter to the Upper Tribunal.

(9) A notice under paragraph (7)(b) must comply with paragraph (4).

(10) If a notice informs a person of the person's right to refer a matter to the Upper Tribunal, it must give an indication of the procedure on such a reference.]

F4 Regs. 4A-4D inserted (31.12.2020) by [The Solvency 2 and Insurance \(Amendment, etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/407\)](#), regs. 1(2), **8(3)** (as amended by S.I. 2020/1385, regs. 1(2)(4), **54(2)(3)**), as amended by [The Financial Services \(Miscellaneous\) \(Amendment\) \(EU Exit\) \(No. 3\) Regulations 2019 \(S.I. 2019/1390\)](#), regs. 1(4), **11(2)** and as amended by S.I. 2019/960, regs. 1(3), **10(3)** (as amended by S.I. 2020/1301, regs. 1, 3, **Sch. para. 40(e)(i)(f))**); 2020 c. 1, **Sch. 5 para. 1(1)**)

Passporting: notification of home state regulator

F5 5.

F5 [Reg. 5](#) omitted (31.12.2020) by virtue of [The Solvency 2 and Insurance \(Amendment, etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/407\)](#), regs. 1(2), **8(4)** (as amended by S.I. 2020/1385, regs. 1(2), 54(2))

EIOPA: information

F6 6.

F6 [Reg. 6](#) omitted (31.12.2020) by virtue of [The Solvency 2 and Insurance \(Amendment, etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/407\)](#), regs. 1(2), **8(4)** (as amended by S.I. 2020/1385, regs. 1(2), 54(2))

EIOPA and EBA: notifications

F7 7.

F7 [Reg. 7](#) omitted (31.12.2020) by virtue of [The Solvency 2 and Insurance \(Amendment, etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/407\)](#), regs. 1(2), **8(4)** (as amended by S.I. 2020/1385, regs. 1(2), 54(2))

Other EEA States: information

F8 8.

F8 [Reg. 8](#) omitted (31.12.2020) by virtue of [The Solvency 2 and Insurance \(Amendment, etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/407\)](#), regs. 1(2), **8(4)** (as amended by S.I. 2020/1385, regs. 1(2), 54(2))

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

^{F9}9.

F9 Reg. 9 omitted (31.12.2020) by virtue of [The Solvency 2 and Insurance \(Amendment, etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/407\)](#), regs. 1(2), **8(4)** (as amended by S.I. 2020/1385, regs. 1(2), 54(2))

[^{F10}**9A.** This Part applies to the following types of groups—

- (a) insurance or reinsurance undertakings—
 - (i) which are a participating undertaking in at least one insurance undertaking, reinsurance undertaking, Gibraltarian insurance undertaking, Gibraltarian reinsurance undertaking, third-country insurance undertaking or third-country reinsurance undertaking; or
 - (ii) the parent undertaking of which is a Gibraltarian insurance undertaking or a Gibraltarian reinsurance undertaking;
- (b) insurance or reinsurance undertakings, the parent undertaking of which is an insurance holding company or a mixed financial holding company which has its head office in the United Kingdom or Gibraltar,
- (c) insurance or reinsurance undertakings, the parent undertaking of which is an insurance holding company or a mixed financial holding company which has its head office in a third country or a third-country insurance or reinsurance undertaking, and
- (d) insurance or reinsurance undertakings, the parent undertaking of which is a mixed-activity insurance holding company.

F10 Regs. 9A, 9B inserted (31.12.2020) by [The Solvency 2 and Insurance \(Amendment, etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/407\)](#), regs. 1(2), **9(2)** (as amended by S.I. 2020/1385, regs. 1(2), **54(2)** and S.I. 2019/680, regs. 1(3), **10(4)(a)(b)** (with reg. 11))

9B. Where the participating insurance or reinsurance undertaking, or participating Gibraltarian insurance or reinsurance undertaking or the insurance holding company or the mixed financial holding company referred to in regulation 9A(a) and (b) is a subsidiary undertaking of—

- (a) another insurance or reinsurance undertaking,
- (aa) another Gibraltar insurance or reinsurance undertaking;
- (b) another insurance holding company, or
- (c) another mixed financial holding company,

which has its head office in the United Kingdom or Gibraltar, the United Kingdom law which implemented Articles 218 to 258 of the Solvency 2 Directive apply only at the level of the ultimate UK solvency 2 parent which has its head office in the United Kingdom or in Gibraltar.]

F10 Regs. 9A, 9B inserted (31.12.2020) by [The Solvency 2 and Insurance \(Amendment, etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/407\)](#), regs. 1(2), **9(2)** (as amended by S.I. 2020/1385, regs. 1(2), **54(2)** and S.I. 2019/680, regs. 1(3), **10(4)(a)(b)** (with reg. 11))

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Changes and effects yet to be applied to :

- Regulations revoked by [2023 c. 29 Sch. 1 Pt. 2](#)