

**EXPLANATORY MEMORANDUM TO**  
**THE FINANCIAL SERVICES AND MARKETS ACT 2000 (QUALIFYING EU**  
**PROVISIONS) (AMENDMENT) ORDER 2016**

**2016 No. 936**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 This Order amends the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013. The amendments enable the Prudential Regulation Authority to use powers set out in the Financial Services and Markets Act 2000 (“FSMA”) to enforce requirements imposed by directly applicable level 2 EU regulations made under powers conferred on the European Commission by Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of insurance and reinsurance (Solvency II) (“the Solvency 2 Directive”).

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 The Solvency 2 Directive establishes the framework for the prudential supervision of insurance undertakings and reinsurance undertakings in the European Union. It is implemented in the United Kingdom by FSMA, rules made by the Prudential Regulation Authority and the Solvency 2 Regulations 2015 (S.I 2015/575). The Solvency 2 Directive confers on the European Commission the power to make directly applicable regulations supplementing or implementing the Directive. This Order amends the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013 in order to specify these directly applicable level 2 EU regulations as qualifying EU provisions for the purposes of FSMA.

- 4.2 The Solvency 2 Directive has been amended on a number of occasions, in particular by Directive 2014/51/EU (the Omnibus II Directive). Both the Solvency 2 Directive and the delegated act made under it by the European Commission were subject to the following scrutiny:

- (a) EM 11978/08 on the Commission draft Directive of the European Parliament and the Council on the taking up and pursuit of insurance and reinsurance: Solvency II was submitted by HM Treasury on 7th August 2007. It was cleared by the House of Commons European Scrutiny Committee on 23rd

May 2008 as politically important. It was cleared by the House of Lords EU Select Committee on 25th November 2008;

- (b) EM 5523/11 on the Commission proposal for a Directive of the European Parliament and of the Council amending Directives 2003/71/EC and 2009/138/EC in respect of the powers of the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority (Omnibus II) was submitted by HM Treasury on 3rd February 2011. It was cleared by the House of Commons European Scrutiny Committee on 1st March 2011 as politically important. It was cleared by the House of Lords EU Select Committee on 29th March 2011;
- (c) EM 10230/12 on the Commission proposal for a Directive of the European Parliament and of the Council amending Directive 2009/138/EC (Solvency II) as regards the dates for its transposition and the date of its application, and the date of repeal of certain Directives: the first “Quick Fix” Directive was submitted by HM Treasury on 8th June 2012. It was cleared by the House of Commons European Scrutiny Committee on 14th June 2012 as not politically important. It was cleared by the House of Lords EU Select Committee on 12th June 2012;
- (d) EM 14513/13, EM 10230/12 on the Commission proposal for a Directive of the European Parliament and of the Council amending Directive 2009/138/EC (Solvency II) as regards the dates for its transposition and the date of its application, and the date of repeal of certain Directives: the second “Quick Fix” Directive was submitted by HM Treasury on 24th October 2013. It was cleared by the House of Lords EU Select Committee on 29th October 2013. It was cleared by the House of Commons European Scrutiny Committee on 30th October 2013;
- (e) EM 14263/14 on the Commission delegated regulation (EU) no [...] of [xxx] supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of insurance and reinsurance (Solvency II) was submitted by HM Treasury on 10th November 2014. It was cleared by the House of Commons European Scrutiny Committee on 20th November 2014. A follow-up letter was sent by the Economic Secretary to the Treasury to the House of Lords EU Select Committee on 18th November 2014. It was cleared by the House of Lords EU Select Committee on 24th November 2014.

## **5. Extent and Territorial Application**

5.1 The extent of this instrument is all of the United Kingdom.

5.2 The territorial application of the instrument is the United Kingdom

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

### *What is being done and why*

- 7.1 On 23 June, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.
- 7.2 Many details of the operation of the Solvency 2 Directive framework are set out in directly applicable EU regulations made under the Directive rather than in the Directive itself. These include detailed methodologies for the calculation of insurers' capital requirements, precise qualifying criteria for the use of different approaches to such calculations, and details of the reporting required of insurance companies.
- 7.3 While these provisions are directly applicable in the UK, the Prudential Regulation Authority is not currently able to use the full range of its enforcement powers to ensure that firms comply with the requirements. This is because, as with other directly applicable EU financial regulations, the enforcement powers in FSMA only apply if the directly applicable legislation is designated as a 'qualifying EU provision' for the purposes of various provisions of that Act. A lack of enforcement powers in relation to the directly applicable EU regulations would impede the Prudential Regulation Authority's ability to ensure effective regulation of the insurance industry.

### *Consolidation*

- 7.4 The Government does not currently intend to consolidate the legislation amended by this instrument.

## **8. Consultation outcome**

- 8.1 HM Treasury has consulted the Prudential Regulation Authority and Financial Conduct Authority in the preparation of this instrument. Due to the minor and technical nature of the instrument, and its consistency with past practice on other directly applicable EU financial regulations, there has been no formal public consultation.

## **9. Guidance**

- 9.1 Extensive guidance on how to comply with the Solvency 2 Directive is set out on the Prudential Regulation Authority's website, which also includes details of the Prudential Regulation Authority's enforcement policies.

## **10. Impact**

- 10.1 There is no additional impact on business. Insurance companies are already required to comply with the Solvency 2 Directive and the directly applicable EU regulations made under it. Details of the impact of the Solvency 2 Directive are set out in the impact assessment for the transposition of the Directive in the UK. There is also no impact on charities or voluntary bodies.
- 10.2 There is no additional impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

**11. Regulating small business**

11.1 As above, the legislation will not impose any additional burdens on activities that are undertaken by small businesses.

**12. Monitoring & review**

12.1 This instrument does not contain a requirement to conduct a separate review in relation to it. The Economic Secretary to the Treasury, Simon Kirby MP, has made the following statement: “In my view, and having had regard to “Small Business, Enterprise and Employment Act 2015 – Statutory Guidance for Departments”, it is not appropriate to make provision requiring the review of the provisions of the Financial Services and Markets Act 2000 (Qualifying EU Provisions) (Amendment) Order 2016. Such a provision would be disproportionate taking into account the economic impact of this Order.”

**13. Contact**

13.1 Umair Choudhry at the HM Treasury, email: [umair.choudhry@hmtreasury.gsi.gov.uk](mailto:umair.choudhry@hmtreasury.gsi.gov.uk) can answer any queries regarding the instrument.