
STATUTORY INSTRUMENTS

2019 No. 407

**The Solvency 2 and Insurance (Amendment,
etc.) (EU Exit) Regulations 2019**

PART 5

Amendment of subordinate legislation

Groups

9.—(1) Part 3 (groups) is amended as follows.

(2) Before regulation 10 (risk concentration and intra-group transactions) insert—

“**9A.** This Part applies to the following types of groups—

- (a) insurance or reinsurance undertakings, which are a participating undertaking in at least one insurance undertaking, reinsurance undertaking, third-country insurance undertaking or third-country 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,
- (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.

9B. Where the participating 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,
- (b) another insurance holding company, or
- (c) another mixed financial holding company,

which has its head office in the United Kingdom, the United Kingdom law which implemented Articles 218 to 258 of the Solvency 2 Directive apply only at the level of the ultimate parent insurance or reinsurance undertaking, insurance holding company or mixed financial holding company which has its head office in the United Kingdom.”

(3) Regulation 10 is amended as follows—

- (a) for “of a group” substitute “of a type of group referred to in regulation 9A(a) or (b)”;
- (b) in Table 1, in the first row, in the second column—

- (i) in the first paragraph, in sub-paragraph (a), for “an EEA State” substitute “the United Kingdom”;
- (ii) in the second paragraph—
 - (aa) after “supplementary supervision”, insert “by the FCA, where the FCA is the supplementary supervisor, or the PRA”;
 - (bb) before “Article 5(2)”, insert “the United Kingdom law which implemented”;
- (iii) in the third paragraph, for “other supervisory authorities concerned in supervising the group”, substitute “FCA”;
- (c) In Table 1, omit the second row.
- (4) In regulation 11 (equivalent provisions)—
 - (a) for paragraph (2) substitute—

“(2) Where the mixed financial holding company is subject to equivalent provisions under the United Kingdom law which implemented the Solvency 2 Directive and the United Kingdom law which implemented the Financial Conglomerates Directive, the PRA may apply only the relevant provisions of the United Kingdom law which implemented the Financial Conglomerates Directive to the mixed financial holding company.”;
 - (b) in paragraph (3) for “other supervisory authorities concerned in supervising the group”, substitute “FCA, where there is a firm in the group that is authorised and regulated by the FCA”;
 - (c) for paragraph (4) substitute—

“(4) Where the mixed financial holding company is subject to equivalent provisions under the United Kingdom law which implemented the following two sets of legislation—

 - (a) the Solvency 2 Directive, and
 - (b) the capital requirements directive and the capital requirements regulation,

the PRA may apply only the United Kingdom law relating to the most significant sector, as determined in accordance with the United Kingdom law which implemented Article 3(2) of the Financial Conglomerates Directive.”
 - (d) in paragraph (5), for “consolidating supervisor under the capital requirements directive” substitute “FCA, where the FCA is the consolidating supervisor under the capital requirements regulation”.
- (5) Omit regulations 12 (exclusion of undertaking from group supervision), 13 (supervision of parents and subgroups at national level: substantive powers) and 14 (supervision of parents and subgroups at national level: procedure).
- (6) For regulation 15 substitute—

“Supervision of group solvency and frequency of calculation

15.—(1) Subject to paragraph (2), where the PRA is the group supervisor of a type of group referred to in regulation 9A(a) or (b), the PRA must—

- (a) ensure that the calculations referred to in rules 4.1 and 4.2 of the Group Supervision part of the PRA Rulebook are carried out at least annually to ensure that the group has adequate financial resources at the level of the ultimate UK solvency 2 parent,
- (b) conduct supervisory reviews to determine whether the insurance undertakings or reinsurance undertakings in the group are complying with the requirement to ensure that the group has adequate financial resources at the level of the ultimate UK solvency 2 parent, and

- (c) where the group is not headed by an insurance undertaking or reinsurance undertaking that is authorised by the PRA, consult the undertakings in the group before identifying an undertaking other than an insurance holding company or a mixed financial holding company to supply relevant data for, and the results of, the calculations referred to in paragraph (1)(a).
- (2) Subject to paragraph (3), where the PRA is required to rely on supervision exercised by a supervisory authority in a third country which has a prudential group supervision regime which is determined as equivalent in accordance with regulation 35, the PRA may determine that paragraph (1)—
 - (a) does not apply, or
 - (b) applies with only such modifications as may be specified in the determination.
- (3) The PRA may not give a determination under paragraph (2) unless it is satisfied that—
 - (a) compliance by insurance or reinsurance undertakings in the group with rules or requirements imposed by the PRA pursuant to paragraph (1) would be unduly burdensome; and
 - (b) the determination would not adversely affect the advancement of any of the PRA’s objectives.
- (4) The PRA may revoke or vary a determination given under paragraph (2).”
- (7) In regulation 16 (choice of method)—
 - (a) in paragraph (1) omit “and the other supervisory authorities concerned in the supervision of the group”;
 - (b) omit paragraph (2).
- (8) In regulation 17, (inclusion of proportional share)—
 - (a) in paragraph (2)(b)(ii) and (iii), for “a supervisory authority”, substitute “the PRA”;
 - (b) in paragraph (3), omit “and the other supervisory authorities concerned in the supervision of the group”;
 - (c) after paragraph (3), insert—
 - “(4) The PRA may allow for the solvency deficit of the subsidiary undertaking to be considered on a proportional basis where, in the opinion of the PRA, the responsibility of the parent undertaking owning a share of the capital is strictly limited to that share of the capital.”
- (9) Omit regulation 18 (related undertakings: calculation of group solvency).
- (10) In regulation 19 (participating undertakings: calculation of group solvency)—
 - (a) in paragraph (1)(b) for “which is a participating undertaking in” substitute “for which the calculation of the group solvency includes”;
 - (b) in paragraph (1)(c) after “to that specified in” insert “the United Kingdom law which implemented”;
 - (c) after paragraph (2) insert—
 - “(2A) Where the Treasury have made regulations under Article 379A of the Solvency 2 Regulation, or the Commission have adopted a delegated act under Article 227 of the Solvency 2 Directive prior to exit day, determining that the supervisory regime of a third country is provisionally equivalent, that third country is deemed to be equivalent for the purposes of paragraph (2).”;
 - (d) for paragraph (3) substitute—

“(3) Where no regulations have been made by the Treasury pursuant to Article 379A of the Solvency 2 Regulation, and the Commission has not adopted a delegated act under Article 227 of the Solvency 2 directive prior to exit day, the PRA—

- (a) may on its own initiative, or
- (b) must on the request of the insurance or reinsurance undertaking for which the calculation of the group solvency includes a third-country insurance undertaking or third-country reinsurance undertaking,

verify whether a solvency regime in the third country is at least equivalent to the United Kingdom law which implemented Chapter 6 of Title 1, of the Solvency 2 Directive.”;

- (e) in paragraph (4)—
 - (i) omit sub-paragraph (a);
 - (ii) in sub-paragraph (b), for “any directly applicable regulation made under paragraph (3) of article 227”, substitute “Article 379 of the Solvency 2 Regulation”;
 - (iii) in sub-paragraph (c), before “Chapter 6 of Title 1 of the Solvency 2 Directive”, insert “the United Kingdom law which implemented”;
- (f) after paragraph (4) insert—
 - “(5) The PRA must publish and keep up to date on its website a list of all third countries referred to in paragraph (3).”

(11) In regulation 20 (internal models and capital add-ons)—

- (a) in paragraph (1)—
 - (i) omit the words from “the cases” to “in particular”;
 - (ii) in sub-paragraph (b)—
 - (aa) for “supervisory authorities concerned” substitute “PRA”;
 - (bb) omit “in accordance with Article 37 or 231(7) of the Solvency 2 Directive”;
- (b) in paragraph (3) omit “the PRA is a member of the college of supervisors and”;
- (c) in paragraph (4) omit “and the other members of the college of supervisors”;
- (d) omit paragraph (5).

(12) Omit regulations 21 (subsidiaries: solvency capital requirement), 22 (subsidiaries: non-compliance with the solvency and minimum capital requirements) and 23 (subsidiaries: revocation of approval for applying Articles 238 and 239 of the Solvency 2 Directive).

(13) In regulation 24 (supervision of risk concentration and intra-group transactions)—

- (a) in paragraph (1) for “of a group” substitute “of a type of group referred to in regulation 9A(a) or (b)”;
- (b) in paragraph (2) omit “and the other supervisory authorities concerned in the supervision of the group”;
- (c) omit paragraph (3).

(14) In regulation 25 (supervision of system of governance)—

- (a) for “of a group” substitute “of a type of group referred to in regulation 9A(a) or (b)”;
- (b) at the end of sub-paragraph (b) omit “and”;
- (c) omit sub-paragraph (c).

(15) For regulation 26 (rule for deciding the group supervisor) substitute—

“Rule for deciding the group supervisor

26. Where an insurance undertaking or reinsurance undertaking that is authorised by the PRA under Part 4A of FSMA is part of a group, the PRA is the group supervisor and must supervise that group.”

- (16) Omit regulation 27 (exceptions to the rule for deciding the group supervisor).
- (17) In regulation 28 (duties of group supervisor and establishment of college of supervisors)—
 - (a) in the title omit “and establishment of college of supervisors”;
 - (b) in paragraph (1)—
 - (i) for “Paragraphs (2) to (7) apply” substitute “Paragraph (2) applies”;
 - (ii) for “of a group” substitute “of a type of group referred to in regulation 9A(a) or (b)”;
 - (iii) omit “and paragraph (8) applies where the PRA is a member of a college of supervisors for a group but is not the group supervisor”;
 - (c) in paragraph (2)—
 - (i) omit sub-paragraph (a);
 - (ii) in sub-paragraph (c) omit, “set out in Articles 218 to 245 of the Solvency 2 Directive”;
 - (iii) in sub-paragraph (e) for “fulfil the requirements set out in rules implementing Articles 42 and 257 of the Solvency 2 Directive” substitute “are fit and proper to carry out their functions”;
 - (iv) omit sub-paragraph (f);
 - (v) in sub-paragraph (g), for “lead the process for validating”, substitute “determine applications for”;
 - (vi) omit sub-paragraph (h);
 - (vii) in sub-paragraph (i), after “group supervisor by the”, insert “United Kingdom law which implemented the”;
 - (d) omit paragraphs (3) to (8).
- (18) Omit regulations 29 (cooperation and exchange of information between supervisory authorities), 30 (consultation between supervisory authorities), 31 (access to information), 32 (verification of information), 33 (group solvency and financial condition report) and 34 (enforcement measures).
- (19) For regulation 35 (non-EEA solvency 2 parent undertakings: equivalence) substitute—

“Non-UK solvency 2 parent undertakings: equivalence

35.—(1) The PRA must rely on the equivalent group supervision exercised by third country supervisory authorities, where the condition in paragraph (2) is met, or the alternative condition in paragraph (3) is met.

- (2) The condition is that—
 - (a) either of the following determinations have been made—
 - (i) the Treasury have made regulations under regulation 380A(1) of the Solvency 2 Regulation, or the Commission has adopted a delegated act under Article 260(3) of the Solvency 2 Directive prior to exit day, determining that the prudential regime of the third country is equivalent, or
 - (ii) the Treasury have made regulations under regulation 380A(4) of the Solvency 2 Regulation, or the Commission has adopted a delegated act under Article

- 260(5) of the Solvency 2 Directive prior to exit day, determining that the prudential regime of the third country is temporarily equivalent,
- (b) that determination still applies,
 - (c) there is no insurance undertaking or reinsurance undertaking situated in the United Kingdom with a balance sheet total that exceeds the balance sheet total of the parent undertaking situated in the third country, and
 - (d) the PRA has verified that the that the group is subject to supervision by a third-country supervisory authority in accordance with that equivalent or temporarily equivalent regime.
- (3) The alternative condition is that the PRA has verified that the group is subject to supervision by a third country supervisory authority which is equivalent in accordance with paragraph (4).
- (4) Where the conditions referred to in paragraph (2) do not apply, the PRA—
- (a) must take a decision on equivalence at the request of the parent undertaking or the insurance undertaking or reinsurance undertaking; or
 - (b) may take a decision on equivalence on its own initiative,
- in accordance with paragraph (5).
- (5) Where the PRA takes a decision on equivalence, the PRA must—
- (a) verify equivalence at the level of the ultimate non-UK solvency 2 parent,
 - (b) ensure that its decision on equivalence does not contradict any previous decision taken in relation to the third country, except where it is necessary to do so in order to take into account significant changes to the supervisory regime laid down in Part 3 of these Regulations and the PRA Rulebook on Group Supervision or to the supervisory regime in the third country, and
 - (c) take its decision on equivalence in accordance with the criteria set out in Regulation 380 of the Solvency 2 Regulation.
- (6) Paragraph (7) applies where the PRA is required to rely on supervision exercised by a supervisory authority in a third country which, in accordance with paragraph (2) or (3), has a prudential group supervision regime which is determined as equivalent to Part 3 of these Regulations and the PRA Rulebook on Group Supervision (but see paragraph (8)).
- (7) The PRA must consult the other members of the college of supervisors before taking a decision which is of importance to the supervisory tasks of another supervisory authority with regard to—
- (a) changes in the shareholder, organisational or management structure of insurance undertakings or reinsurance undertakings in the group, which require the approval or authorisation of the other supervisory authority,
 - (b) a decision on the extension of the recovery period under rule 3.1(3) of the Undertakings in Difficulty part, and rule 4.4 of the Group Supervision part, of the PRA Rulebook, or
 - (c) the imposition of a capital add-on, a limitation on the use of an internal model for calculating the solvency capital requirement, or any other major sanctions or exceptional measures taken by the other supervisory authority.
- (8) Paragraph (7) does not apply—
- (a) in cases of urgency, or
 - (b) where consultation may jeopardise the effectiveness of a decision of the PRA,
- provided the PRA informs the other supervisory authorities concerned without delay.

- (9) The PRA must also consult a supervisory authority before taking a decision based on information received from that supervisory authority.”
- (20) Omit Schedule 3 (parent undertakings outside the EEA: equivalence).
- (21) For regulation 36 (parent undertaking outside the EEA: absence of equivalence) substitute—

“Parent undertaking outside the United Kingdom: absence of equivalence

- 36.**—(1) This regulation applies where—
- (a) a parent undertaking of an insurance undertaking or reinsurance undertaking established in the United Kingdom has its head office in a third country,
 - (b) one of the conditions in paragraph (2) is satisfied, and
 - (c) one of the conditions in paragraph (3) is satisfied.
- (2) The conditions are—
- (a) the prudential group supervision regime of the third country has not been determined to be equivalent by the Treasury or the PRA, and the Commission has not adopted a delegated act under Article 260(3) of the Solvency 2 Directive prior to exit day, determining that the prudential regime of the third country is equivalent to Title 3 of the Solvency 2 Directive;
 - (b) the prudential group supervision regime has been determined to be equivalent by the Treasury, the PRA or the Commission, but the PRA has not verified that the group is subject to supervision by a third-country supervisory authority in accordance with that equivalent regime.
- (3) The conditions are—
- (a) the prudential group supervision regime of the third country has not been determined to be temporarily equivalent;
 - (b) if the prudential group supervision regime of the third country has been determined to be temporarily equivalent, the group is not subject to that regime or the group contains an insurance undertaking or reinsurance undertaking in the United Kingdom with a balance sheet total that exceeds the balance sheet total of the parent undertaking situated in the third country.
- (4) The PRA must, at the level of the ultimate non-UK solvency 2 parent—
- (a) ensure appropriate supervision of the insurance undertakings and reinsurance undertakings that are authorised by the PRA in the group, and
 - (b) ensure the objectives of group supervision are achieved.
- (5) The PRA may require the group to establish an insurance holding company or mixed financial holding company with its head office in the United Kingdom.”
- (22) After regulation 36 insert—

“Parent undertakings outside the United Kingdom: levels

- 36A.**—(1) Where the parent undertaking of an insurance undertaking or reinsurance undertaking with its head office outside the United Kingdom is itself a subsidiary of—
- (a) an insurance holding company or a mixed financial holding company which has its head office in a third country, or
 - (b) a third-country insurance or reinsurance undertaking,

regulation 35 only applies at the level of the ultimate parent undertaking which is a third-country insurance holding company, a third-country mixed financial holding company, a third-country insurance undertaking or a third- country reinsurance undertaking.

(2) The PRA may, in the absence of equivalent supervision referred to in regulation 35, carry out a new verification of equivalence at a lower level where a parent undertaking of insurance or reinsurance undertakings exists, whether at the level of a third-country insurance holding company, a third country mixed financial holding company, a third-country insurance undertaking or a third-country reinsurance undertaking.

(3) Where paragraph (2) applies, regulation 35 applies with any necessary changes at that lower level.

(4) Where paragraph (2) applies, the PRA must explain its decision to the group to which the insurance undertaking or reinsurance undertaking belongs.”

(23) In regulation 37 (intra-group transactions), after paragraph (2), insert—

“(3) The requirements in regulation 24 apply to the transactions specified in paragraph (2).”