Draft Regulations laid before Parliament under section 429(9) of the Financial Services and Markets Act 2000 (c. 8), and sections 4(9), 83(3) and 84(5) of the Financial Services and Markets Act 2023 (c. 29), for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2024 No.

FINANCIAL SERVICES AND MARKETS

The Insurance and Reinsurance Undertakings (Prudential Requirements) (Amendment and Miscellaneous Provisions) Regulations 2024

Made - - - - ***

Coming into force in accordance with regulation 1(2)

The Treasury make the following Regulations in exercise of the powers conferred by sections 349(1)(b) and (2) and 428(3) of the Financial Services and Markets Act 2000(**a**) and sections 4(1) and (2), 83(1) and (2), 84(2) and 86(5) and (6) of the Financial Services and Markets Act 2023(**b**).

In accordance with section 429(9) of the Financial Services and Markets Act 2000 and sections 4(9), 83(3) and 84(5) of the Financial Services and Markets Act 2023, a draft of these Regulations has been laid before, and approved by a resolution of, each House of Parliament.

PART 1

Introductory

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Insurance and Reinsurance Undertakings (Prudential Requirements) (Amendment and Miscellaneous Provisions) Regulations 2024.

(2) These Regulations come into force—

(a) for the purposes of regulation 7C of the Insurance and Reinsurance Undertakings (Prudential Requirements) Regulations 2023 (power of PRA to make rules)(**c**) and regulation 11 (amendments to the Companies Act 2006) on the day after the day on which these Regulations are made; and

(b) for all other purposes on 31st December 2024.

(3) These Regulations extend to England and Wales, Scotland and Northern Ireland.

(**a**) 2000 c. 8.

(**b**) 2023 c. 29. For the meaning of "the affirmative procedure", see section 84(3) of the Financial Services and Markets Act 2023.

(**c**) Inserted by regulation 2(5) of these Regulations (calculation of risk margin).

PART 2

Prudential requirements

Amendments to the Insurance and Reinsurance Undertakings (Prudential Requirements) Regulations 2023

2.—(1) The Insurance and Reinsurance Undertakings (Prudential Requirements) Regulations 2023(**a**) are amended as follows.

(2) Before regulation 1 (citation, commencement and extent) insert—

"PART 1

Introductory".

(3) After regulation 1 insert—

"PART 2

Prudential requirements

CHAPTER 1

Matching adjustment".

(4) In regulation 2 (interpretation)—

(a) for the heading substitute "Interpretation of Chapter 1";

(b) in paragraph (1) for "In these Regulations" substitute "In this Chapter";

(c) in paragraph (2) for "in these Regulations" substitute "in this Chapter".

(5) After regulation 7 (power of PRA to make rules) insert—

"CHAPTER 2

Risk margin

Interpretation of Chapter 2

7A.—(1) In this Chapter—

"insurance undertaking" has the same meaning as in section 417(1) of FSMA 2000(**b**);

"PRA rules" means the rules made by the PRA under FSMA 2000 as they have effect from time to time;

"reinsurance undertaking" has the same meaning as in section 417(1) of FSMA 2000.

(2) Any other term used in this Chapter which is used in PRA rules applicable to insurance and reinsurance undertakings has the same meaning as in those rules.

Calculation of risk margin

7B. Where PRA rules provide for a risk margin to be calculated separately from the best estimate, the risk margin for the whole portfolio of insurance and reinsurance obligations of an insurance or reinsurance undertaking must be calculated in accordance with the following formula—

(**a**) S.I. 2023/1347.

(**b**) 2000 c. 8. The definitions of "insurance undertaking" and "reinsurance undertaking" in section 417(1) were inserted by S.I. 2015/575 and substituted by S.I. 2019/632. They are further substituted by regulation 7 of these Regulations.

$$RM=CoC \times \sum_{t \geq 0} \frac{SCR(t) \times \max(\lambda^t, \lambda_{floor})}{(1+r(t+1))^{t+1}}$$;

where—

(a) "RM" denotes risk margin;

(b) "CoC" denotes the cost-of-capital rate, which equals 4%;

(c) the sum covers all integers including zero;

(d) "SCR(t)" denotes the SCR of the reference undertaking after t years, calculated in accordance with PRA rules;

(e) "λ" denotes the risk tapering factor, and equals—

(i) 0.9 for long-term insurance and reinsurance obligations, and

(ii) 1.0 for general insurance and reinsurance obligations;

(f) "λ^t" denotes the risk tapering factor to the power of t years;

(g) "λ_{floor}" denotes the floor of the risk tapering factor, and equals 0.25;

(h) "r(t+1)" denotes the basic relevant risk-free interest rate for the maturity of t + 1 years, derived from the basic relevant risk-free interest rate term structure.

Power of PRA to make rules

7C. Notwithstanding regulation 7B, the PRA's power to make general rules under section 137G of FSMA 2000(**a**) continues to include power to make rules permitting an insurance or reinsurance undertaking to use simplified methods to calculate risk margin which are proportionate to the nature, scale and complexity of the risk underlying its insurance or reinsurance obligations.".

(6) Before regulation 8 (PRA's functions and powers under FSMA 2000) insert—

"PART 3

Enforcement and review".

(7) In regulation 8—

(a) in paragraph (1) for "and 6 (calculation of fundamental spread)" substitute ", 6 (calculation of fundamental spread) and 7B (risk margin)";

(b) for "5 or 6" in each place substitute "5, 6 or 7B".

PART 3

Savings: Gibraltar groups and undertakings

Saving for Gibraltar groups and undertakings

3.—(1) The relevant legislation applies in relation to a Gibraltar group or a Gibraltar undertaking on and after 31st December 2024, as if it had not been revoked, and paragraph (2) applies.

(2) The relevant legislation is to be read with any modifications necessary to ensure that the relevant legislation continues to apply in relation to a Gibraltar group or a Gibraltar undertaking

(**a**) Section 137G was inserted by section 24 of the Financial Services Act 2012 (c. 21).

on and after 31st December 2024 as it had effect immediately before 31st December 2024 in relation to a Gibraltar group or a Gibraltar undertaking, as if it had not been revoked.

(3) The "relevant legislation" means—

(a) Part 3 of the Solvency 2 Regulations 2015 (groups)(**a**);

(b) regulations 4C and 4D of the Solvency 2 Regulations 2015 (powers and procedure in relation to Gibraltar undertakings)(**b**); and

(c) any other legislation revoked by the Commencement Regulations which is referred to in, applies by virtue of, or modifies the legislation listed in sub-paragraphs (a) and (b).

(4) This regulation ceases to have effect immediately after Schedule 2A to the Financial Services and Markets Act 2000(**c**) comes fully into force.

(5) In this regulation—

"Commencement Regulations" means the Financial Services and Markets Act 2023 (Commencement No. 6) Regulations 2024(**d**);

"Gibraltar group" means a group that—

(a) falls within regulation 9A(a), (b) or (c) of the Solvency 2 Regulations 2015(**e**), and

(b) includes a Gibraltar undertaking falling within regulation 9A(a), (b) or (c) of the Solvency 2 Regulations 2015;

"Gibraltar insurance undertaking" means an undertaking which—

(a) has its head office in Gibraltar, and

(b) is authorised by the Gibraltar Financial Services Commission to effect or carry out contracts of insurance (other than contracts of reinsurance) under paragraph 24 of Schedule 2 to the Financial Services Act 2019 of Gibraltar(**f**);

"Gibraltar reinsurance undertaking" means an undertaking which—

(a) has its head office in Gibraltar, and

(b) is authorised by the Gibraltar Financial Services Commission to effect or carry out contracts of insurance that are limited to reinsurance contracts under paragraph 24 of Schedule 2 to the Financial Services Act 2019 of Gibraltar;

a "Gibraltar undertaking" is either of the following—

(a) a Gibraltar insurance undertaking, or

(b) a Gibraltar reinsurance undertaking;

PART 4

Amendments to the Financial Services and Markets Act 2000

Amendments to FSMA 2000

4. FSMA 2000 is amended as set out in this Part.

(**a**) S.I. 2015/575.
(**b**) Regulations 4C and 4D were inserted by S.I. 2019/680.
(**c**) Schedule 2A was inserted by section 22(5) of, and Schedule 6 to, the Financial Services Act 2021 (c. 22).
(**d**) S.I. 2024/620 (C. 39).
(**e**) Regulation 9A was inserted by S.I. 2019/407 and amended by S.I. 2019/680.
(**f**) Act. No. 2019-26.

Amendment to section 165 (power to require information: authorised persons etc)

5. In section 165 (power to require information: authorised persons etc) in subsection (7)(e)(**a**) for ", reinsurance undertaking or third-country insurance undertaking" substitute "or reinsurance undertaking".

Amendment to section 167 (appointment of persons to carry out general investigations)

6. In section 167 (appointment of persons to carry out general investigations), in subsection (2)(c)(**b**) for ", reinsurance undertaking or third-country insurance undertaking" substitute "or reinsurance undertaking".

Amendments to section 417 (definitions)

7. In section 417(1) (definitions)—

(a) for the definition of "insurance undertaking"(**c**) substitute—

""insurance undertaking" means—

(a) an undertaking which is authorised by or under this Act to carry on the regulated activity of effecting or carrying out contracts of insurance as principal, or

(b) the association of underwriters known as Lloyd's;";

(b) omit the definition of "minimum capital requirement"(**d**);

(c) for the definition of "reinsurance undertaking"(**e**) substitute—

""reinsurance undertaking" means—

(a) an undertaking which is authorised by or under this Act to carry on the regulated activity of effecting or carrying out contracts of insurance that are limited to reinsurance contracts as principal, or

(b) the association of underwriters known as Lloyd's;";

(d) omit the definition of "solvency capital requirement"(**f**);

(e) omit the definition of "third-country insurance undertaking"(**g**).

Amendment to section 425 (expressions relating to authorisation in the single market)

8. In section 425 (expressions relating to authorisation in the single market), in subsection (1)(a) omit "", Solvency 2 Directive""(**h**).

Amendments to Schedule 3 (EEA passport rights)

9. In Schedule 3 (EEA passport rights), in Part 1 (defined terms)(**i**)—

(a) in paragraph 1, omit sub-paragraph (c);

(b) omit paragraph 3;

(c) in paragraph 5, omit sub-paragraphs (d) and (da).

(**a**) Section 165(7)(e) was inserted by S.I. 2015/575.
(**b**) Section 167(2)(c) was inserted by S.I. 2015/575.
(**c**) The definition of "insurance undertaking" was inserted by S.I. 2015/575 and substituted by S.I. 2019/632.
(**d**) The definition of "minimum capital requirement" was inserted by S.I. 2015/575.
(**e**) The definition of "reinsurance undertaking" was inserted by S.I. 2015/575 and substituted by S.I. 2019/632.
(**f**) The definition of "solvency capital requirement" was inserted by S.I. 2015/575.
(**g**) The definition of "third-country insurance undertaking" was inserted by S.I. 2015/575.
(**h**) Relevant amendments were made to section 425(1)(a) by S.I. 2015/575.
(**i**) Relevant amendments to Schedule 3 were made by S.I. 2015/575.

Amendments to Schedule 6 (threshold conditions)

10. In Schedule 6 (threshold conditions), in Part 1D (Part 4A permission: conditions for which the PRA is responsible in relation to insurers etc.), in paragraph 4A—

(a) in sub-paragraph (7)(**a**)—

(i) for "third country insurance or reinsurance undertakings" substitute "overseas insurance undertakings or overseas reinsurance undertakings";

(ii) for "Gibraltarian insurance or reinsurance undertakings" substitute "Gibraltar insurance undertakings or Gibraltar reinsurance undertakings";

(iii) omit from "; and for these purposes" to the end.

(b) after sub-paragraph (7) insert—

"(8) In this paragraph—

"Gibraltar insurance undertaking" means an undertaking which—

(a) has its head office in Gibraltar; and

(b) is authorised by the Gibraltar Financial Services Commission to effect or carry out contracts of insurance (other than contracts of reinsurance) under paragraph 24 of Schedule 2 to the Financial Services Act 2019 of Gibraltar;

"Gibraltar reinsurance undertaking" means an undertaking which—

(a) has its head office in Gibraltar; and

(b) is authorised by the Gibraltar Financial Services Commission to effect or carry out contracts of insurance that are limited to reinsurance contracts under paragraph 24 of Schedule 2 to the Financial Services Act 2019 of Gibraltar;

"overseas insurance undertaking" means a person who—

(a) is established in a country or territory other than—

(i) the United Kingdom, or

(ii) Gibraltar;

(b) is not an authorised person;

(c) is not an authorised person for the purposes of the Financial Services Act 2019 of Gibraltar; and

(d) effects or carries out contracts of insurance as principal;

"overseas reinsurance undertaking" means a person who—

(a) is established in a country or territory other than—

(i) the United Kingdom, or

(ii) Gibraltar;

(b) is not an authorised person;

(c) is not an authorised person for the purposes of the Financial Services Act 2019 of Gibraltar; and

(d) effects or carries out contracts of insurance that are limited to reinsurance contracts as principal.".

(**a**) Paragraph 4A(7) was inserted by S.I. 2019/632.

PART 5

Amendments to primary legislation

Amendments to the Companies Act 2006

11. In section 833A of the Companies Act 2006(**a**) (distributions by insurance companies authorised under the Solvency 2 Directive)—

(a) in subsection (5)(e)(i), for "under regulation 42 of the Solvency 2 Regulations 2015 to apply" substitute "to disapply or modify its rules in accordance with section 138BA of the Financial Services and Markets Act 2000, such that the company may apply";

(b) for subsection (7)(a) and (b) substitute—

"(a) Part 2 of the Insurance and Reinsurance Undertakings (Prudential Requirements) Regulations 2023 (prudential requirements),

(b) rules made by the Prudential Regulation Authority under Part 9A of the Financial Services and Markets Act 2000 in relation to the matching adjustment referred to in subsection (5)(e)(i),

(c) other rules made by the Authority under that Part implementing Articles 75 to 85 and 308b to 308e of the Solvency 2 Directive, and

(d) Articles 7 to 52 and 55 to 61 of Commission Delegated Regulation (EU) 2015/35 supplementing that Directive.";

(c) in subsection (9), in the definition of "best estimate" and other terms, for "in the Solvency 2 Directive and any directly applicable regulations made under it" substitute "in rules made by the Prudential Regulation Authority under Part 9A of the Financial Services and Markets Act 2000, as they have effect from time to time;".

PART 6

Amendments to secondary legislation

Amendments to the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001

12.—(1) The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(**b**) are amended as follows.

(2) In regulation 2 (interpretation), after the definition of "prescribed disciplinary proceedings", insert—

""PRA rules" means the rules made by the PRA under the Act as they have effect from time to time;".

(3) After regulation 10C insert—

"Disclosure of information in order to publish a stress test in relation to insurance undertakings and reinsurance undertakings

10D. The PRA or a person who is employed by the PRA may disclose confidential information if it is necessary to do so in order to publish the outcome of a stress test conducted in respect of an insurance undertaking, which is also a UK Solvency II Firm as defined by the PRA rules, or a reinsurance undertaking, which is also a UK Solvency II firm as defined by the PRA rules.".

(**a**) 2006 c. 46. Section 833A was inserted by S.I. 2016/1194.
(**b**) S.I. 2001/2188. Regulation 10C was inserted by S.I. 2020/1406 and regulation 12C was inserted by S.I. 2003/2174.

(4) After regulation 12C insert—

"Disclosure of information in order to publish a stress test in relation to insurance undertakings and reinsurance undertakings

12D. The PRA or a person who is employed by the PRA may disclose confidential information if it is necessary to do so in order to publish the outcome of a stress test conducted in respect of an insurance undertaking, which is also a UK Solvency II Firm as defined by the PRA rules, or a reinsurance undertaking, which is also a UK Solvency II Firm as defined by the PRA rules.".

Amendment to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

13. In paragraph 1 of Part 1 of Schedule 3 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(**a**) (exemptions from the definition of "investment firm"), omit sub-paragraph (ba).

Amendment to the Financial Services and Markets Act 2000 (Variation of Threshold Conditions) Order 2001

14. In article 3 of the Financial Services and Markets Act 2000 (Variation of Threshold Conditions) Order 2001(**b**) (non-UK insurers), in paragraph (1)(b) omit paragraph (ii).

Amendments to the Bank of England Act 1998 (Macro-prudential Measures) Order 2013

15. In article 1(2) of the Bank of England Act 1998 (Macro-prudential Measures) Order 2013(**c**) (citation, commencement and interpretation)—

(a) in the definition of "financial sector entity"—

(i) omit paragraphs (h) and (j);

(ii) in paragraph (k), for ", reinsurance undertakings, third country insurance undertakings or third country reinsurance undertakings" substitute "or reinsurance undertakings";

(b) omit the definition of "third country insurance undertaking";

(c) omit the definition of "third country reinsurance undertaking".

Amendment to the Financial Services and Markets Act 2000 (Prescribed Financial Institutions) Order 2013

16. In article 1(2) of the Financial Services and Markets Act 2000 (Prescribed Financial Institutions) Order 2013(**d**) (citation, commencement and interpretation), in the definition of "insurance holding company", for "regulation 2(1) of the Solvency 2 Regulations 2015" substitute "the rules made by the PRA under the Act as they have effect from time to time".

name
name
Date Two of the Lords Commissioners of His Majesty's Treasury

(**a**) S.I. 2001/544. Sub-paragraph (ba) was inserted by S.I. 2018/1403. There are other amending instruments but none is relevant.
(**b**) S.I. 2001/2507 amended by S.I. 2019/632. There are other amending instruments but none is relevant.
(**c**) S.I. 2013/644, to which there are amendments not relevant to these Regulations.
(**d**) S.I. 2013/165, to which there are amendments not relevant to these Regulations.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 2 of these Regulations makes provision about the calculation of the risk margin, which is the amount of capital that insurance and reinsurance undertakings are required to hold to ensure that they are able to transfer their liabilities to another insurer if required. Part 2 restates Articles 37 (calculation of the risk margin) and 39 (cost-of-capital rate) of Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 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) ("Regulation 2015/35"). Articles 37 and 39 and other remaining provisions of Regulation 2015/35 are revoked by section 1(1) of, and Schedule 1 to, the Financial Services and Markets Act 2023 (c. 29) and the revocations will be brought into force on 31st December 2024 by the Financial Services and Markets Act 2023 (Commencement No. 6) Regulations 2024 (S.I. 2024/620 (C.39)).

Part 3 makes provision for saving legislation that is due to be revoked that applies to a Gibraltar group or a Gibraltar undertaking. The effect of this provision is that the revoked legislation, together with any modifications, will continue to apply to a Gibraltar group or a Gibraltar undertaking until Schedule 2A to the Financial Services and Markets Act 2000 (c. 8) ("FSMA 2000") comes fully into force.

Part 4 makes amendments to FSMA 2000, including in particular replacing the definitions of "insurance undertaking" and "reinsurance undertaking" in section 417(1). "Insurance undertaking" and "reinsurance undertaking" will include all insurance and reinsurance undertakings authorised as such under FSMA 2000, including overseas undertakings, and Lloyd's.

Part 5 makes amendments to the Companies Act 2006 (c. 46) following the revocation of regulation 42 of the Solvency 2 Regulations 2015 (S.I. 2015/575) by section 1(1) of, and Schedule 1 to, the Financial Services and Markets Act 2023 (c. 29); the revocation was brought into force on 30th June 2024 (see the Financial Services and Markets Act 2023 (Commencement No. 4 and Transitional and Saving Provisions) (Amendment) Regulations 2023 (S.I. 2023/1382)). The Insurance and Reinsurance Undertakings (Prudential Requirements) (Transitional Provisions and Consequential Amendments) Regulations 2024 (S.I. 2024/594) convert matching adjustment approvals granted by the PRA under regulation 42 of those Regulations to matching adjustment permissions under section 138BA of FSMA 2000.

Part 6 makes consequential amendments to secondary legislation. Regulation 12 amends the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (S.I. 2001/2188) to permit the disclosure of confidential information if this is necessary to allow the PRA to publish individual stress tests results for insurance and reinsurance undertakings.

Rules made by the PRA are available on www.prarulebook.co.uk and copies of the rules can be obtained from the PRA, 20 Moorgate, London EC2R 6DA, where they are also available for inspection.

The Financial Services Act 2019 of Gibraltar (Act. No. 2019-26) is published on gibraltarlaws.gov.gi. A hard copy of specified provisions in that Act may be obtained from HM Treasury, 1 Horse Guards Road, SW1A 2HQ.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen. A de minimis impact assessment is available from HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ and is published with the Explanatory Memorandum alongside this instrument on www.legislation.gov.uk.

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