EXPLANATORY MEMORANDUM TO

THE SOLVENCY 2 (GROUP SUPERVISION) (AMENDMENT) REGULATIONS 2021

1. Introduction

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

2. Purpose of the instrument

2.1 This instrument is being made to address deficiencies in retained European Union ("EU") law. It will ensure that an equivalence decision which assesses that the insurance group supervision regime in another country (a "third country") is "equivalent" to the regime in the United Kingdom ("UK"), achieves in full the objective of avoiding unnecessary duplication of supervisory work. This instrument provides that, if a third country is equivalent, then the Prudential Regulation Authority (the PRA), where it is group supervisor of an insurance group with a parent in an equivalent third country, can (in certain circumstances) defer to the supervisory authority in the relevant third country. This brings advantages to UK insurance groups with a parent in an equivalent third country, to the PRA and to the third country supervisory authority.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is to the whole United Kingdom.

4.2 The territorial application of this instrument is to the whole United Kingdom.

5. European Convention on Human Rights

5.1 The Economic Secretary to the Treasury (John Glen MP) has made the following statement regarding Human Rights:

"In my view the provisions of The Solvency 2 (Group Supervision) (Amendment) Regulations 2021 are compatible with the Convention rights.".

6. Legislative Context

6.1 This instrument amends regulations 24, 25, 26 and 28 of the Solvency 2 Regulations 2015 (SI 2015/575) which originally transposed the Solvency II Directive (Directive 2009/138/EC) (the "Solvency II Directive") in the UK. It addresses deficiencies arising from the UK's exit from the EU.

7. Policy background

What is being done and why?

7.1 This instrument provides that, if a third country is equivalent for group supervision purposes (determined in accordance with the Solvency 2 Regulations 2015), then the Prudential Regulation Authority (the PRA), where it is group supervisor of an insurance group with a parent in an equivalent third country, can (in certain circumstances) defer to the supervisory authority in the relevant third country. This brings advantages to UK insurance groups with a parent in an equivalent third country, to the PRA and to the third country supervisory authority. The advantages are reduced regulatory compliance cost for the insurance groups, reduced supervisory cost for the PRA and reduced need for coordination between third country supervisory authority and the PRA to ensure consistency of supervisory outcomes when similar compliance materials are reviewed twice.

Explanations

What did any law do before the changes to be made by this instrument?

7.2 In accordance with the Solvency II Directive, group supervision requirements attach at different levels: (a) ultimate parent group level (the so-called "worldwide group"); and (b) ultimate EEA parent group level.

7.3 For the supervision of the worldwide group, national competent authorities (which, prior to EU exit, included the PRA) must rely on the group supervision exercised by supervisory authorities in third countries that are determined equivalent by the EU. For the supervision of the ultimate EEA parent group that is subordinate to the worldwide group, national competent authorities are required to supervise this level. There is no provision in the Solvency II Directive to enable a national competent authority to defer to a group supervisor in an equivalent third country. In theory this would lead to duplication of group supervisory work.

7.4 Recognising the importance of ensuring Solvency II equivalence decisions are given full effect in EEA supervisory practices, the European Insurance and Occupational Pension Authority ("EIOPA") issued guidelines on group solvency (https://www.eiopa.europa.eu/document-library/guidelines/guidelines-group-solvency_en) to allow EEA supervisors to waive partially overlapping EEA group supervision requirements and rely on the group supervision of a third country supervisor where that third country had been determined equivalent. EIOPA guidelines ceased to have effect in the UK following withdrawal from the EU.

7.5 Following the UK's withdrawal from the EU, regulation 15 (supervision of group solvency and frequency of calculation) of the Solvency 2 Regulations 2015 was amended. It now provides that where the PRA is required to rely on supervision exercised by a supervisory authority in an equivalent third country, the PRA may disapply the main group supervision requirement in regulation 15(1) (relating to group solvency calculations) which the PRA is otherwise required to apply.

Why is it being changed?

7.6 It is necessary to give the PRA powers to disapply other requirements which also impose group supervision duties on the PRA in circumstances where reliance can be placed on a third country supervisory authority by virtue of an equivalence determination. In particular, regulation 24, 25, 26 and 28 of the Solvency 2

Regulations 2015 require the PRA to undertake certain group supervision activity and (like the provisions of the Solvency II Directive) there is no provision in the Solvency 2 Regulations (in respect of regulations 24, 25, 26 and 28) to enable the PRA to defer to a group supervisor in an equivalent third country.

7.7 If the PRA does not have the power to disapply all relevant requirements relating to group supervision at the parent level by a supervisory authority in an equivalent third country, then it undermines the benefits of disapplying group supervision requirements under regulation 15. This in turn significantly reduces the benefits of an equivalence determination under the Solvency 2 Regulations.

7.8 Without this instrument, existing "waivers" granted by the PRA (made in accordance with EIOPA guidelines prior to EU exit) would expire on 31 March 2022. This is the date on which transitional relief granted by the PRA ends (pursuant to the temporary transitional power in Part 7 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (SI 2019/632)). From 1 April 2022, the PRA would only be able to disapply group solvency calculation requirements in accordance with regulation 15 of the Solvency 2 Regulations 2015, and it would need to start imposing the other group supervision requirements set out in those Regulations in circumstances where the UK group has a parent that is already subject to group supervision in an equivalent third country.

What will it now do?

7.9 This instrument allows the PRA to continue to disapply, in certain circumstances, all relevant insurance group supervision requirements relating to UK insurance groups whose parents are supervised by supervisory authorities in equivalent third countries. The PRA may only disapply group supervisor requirements if it is satisfied that: compliance by the insurance group with relevant requirements would be unduly burdensome; and the determination would not adversely affect the advancement of any of the PRA's objectives. The PRA may revoke or vary such a determination.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the EU. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 There are currently no plans to consolidate the relevant legislation.

10. Consultation outcome

10.1 HM Treasury has not undertaken a consultation on this instrument as there is a clear policy rationale to rectify deficiencies arising from EU withdrawal that undermine equivalence findings granted by the UK government to third countries post EU withdrawal. HM Treasury has engaged extensively with the PRA during the drafting of this instrument.

11. Guidance

11.1 No further guidance is being published alongside this instrument.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because not many businesses are affected (the PRA can only make a determination in respect of a UK insurance or reinsurance group with a parent in a third country which is determined equivalent if certain conditions are met) and any impact on businesses is indirect.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 Pau Ling Yap at HM Treasury email: Pauling.Yap@hmtreasury.gov.uk can be contacted with any queries regarding the instrument.

15.2 Katie Fisher, Deputy Director for Financial Services Strategy, at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.

15.3 John Glen MP, the Economic Secretary to the Treasury can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

Part 1A

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before IP completion day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising section 8 or part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before IP completion day, and explaining the instrument's effect on retained EU law.

Part 1B

Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees

Part 2

Statements required under the European Union (Withdrawal) 2018 Act or the European Union (Future Relationship) Act 2020

1. Appropriateness statement

1.1 The Economic Secretary to the Treasury, John Glen, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Solvency 2 (Group Supervision) (Amendment) Regulations 2021 does no more than is appropriate".

1.2 This is the case because this instrument will amend the current legislation relating to the prudential regulation of a specific subset of insurers, namely UK insurance groups with parents domiciled in jurisdictions deemed as equivalent for the purpose of insurance group supervision, so that it operates effectively when the transitional relief granted by the PRA (pursuant to the temporary transitional power in Part 7 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (SI 2019/632)) ends on 31 March 2022.

2. Good reasons

2.1 The Economic Secretary to the Treasury, John Glen, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action".

2.2 This is the case because this instrument will enable UK equivalence decisions pursuant to the Solvency 2 Regulations 2015 to achieve in full their objectives and have maximum impact for third countries and affected insurance groups. This instrument also facilitates effective use of supervisory resources by enabling the PRA to decide not to duplicate supervisory work in circumstances where a UK group has a parent that is already subject to group supervision in an equivalent third country.

3. Equalities

3.1 The Economic Secretary to the Treasury, John Glen, has made the following statement(s):

"The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts."

3.2 The Economic Secretary to the Treasury, John Glen, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I, John Glen, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010."

4. Explanations

4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.