

13 November 2020: this guidance document supports the draft transitional directions published as part of CP13/20 and is subject to further updates. The final version will be published close to the end of the transition period.

The Solvency 2 and Insurance (Amendment) (EU Exit) Regulations 2018

Guidance on the PRA's use of the transitional direction

Introduction

- This document provides guidance on the PRA's transitional direction in relation to firms' obligations in the context of the Solvency II Delegated Regulation (Regulation (EU) No 2015/35) and related Binding Technical Standards. The PRA's transitional direction is made under the temporary transitional power (**TTP**) conferred on the regulators by Parliament.
- Firms should have regard to this guidance while the transitional relief granted under the transitional direction is in effect. Firms should note that this guidance is non-binding in nature, that it may be amended from time-to-time and that the transitional direction should be followed in the case of any inconsistency with this guidance.
- The transitional direction will come into effect at the end of the transition period (11pm on 31 December 2020) and will apply until 31 March 2022 unless the PRA decides to change this in future. This document refers to the period when the transitional direction is in effect as the '**TTP period**'.
- Any reference to an EU regulation, including to a Binding Technical Standard, is a reference to the UK version of that regulation, unless otherwise stated. The UK version includes any modifications made by Parliament, HM Treasury or the relevant regulators.
 - a. This guidance document covers transitional modifications effected by the transitional direction to the onshoring changes introduced by: The Solvency 2 and Insurance (Amendment etc.) (EU Exit) Regulations 2019;
 - b. The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019, in relation only to defined terms that are used in the Solvency II Delegated Regulation;
 - c. The Technical Standards (Solvency II Directive & Institutions for Occupational Retirement Provision Directive 2018 (Amendment etc.) (EU Exit) Instrument 2019; and
 - d. subject to consultation, the draft Technical Standards (Solvency II Directive) (EU Exit) (No.2) Instrument 2020.
- For further details on the PRA's general approach to the exercise of the transitional direction, firms should consult:
 - a. the Bank of England Consultation Paper | PRA Consultation Paper CP13/20 on 'the UK Withdrawal from the EU: Changes before the end of the transition period';
 - b. the Bank of England's Policy Statement on the amendments to financial services legislation under the European Union (Withdrawal) Act 2018 (PS5/19); and
 - c. the general guidance provided with the PRA's transitional direction (published on 1 October 2020).¹

1. Definitions

- a. The transitional direction does not operate on defined terms that are used to identify the firms to which an onshored Solvency II requirement applies in the UK (i.e. "insurance undertaking" and "reinsurance undertaking"). However the transitional direction does affect uses of the following defined terms so that they continue to capture the same

¹ Available at: <<https://www.bankofengland.co.uk/-/media/boe/files/eu-withdrawal/guidance-on-pra-transitional-direction.pdf?la=en&hash=7878A650F16780D607EB4272075E364DE2BD5B35>>

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entities during the TTP period as before the end of the transition period– i.e. to include relevant EEA undertakings:

- i. “alternative investment fund manager”;
 - ii. “collective investment undertaking”;
 - iii. “institutions for occupational retirement provision”;
 - iv. “insurance undertaking”;
 - v. “investment firm”;
 - vi. “reinsurance undertaking”;
 - vii. “special purpose vehicle” and
 - viii. “UCITS (Undertakings for the Collective Investment in Transferable Securities) management company”.
- b. Accordingly, references to “third country insurance undertaking” and “third country reinsurance undertaking” shall not include EEA undertakings.
- c. This means that a UK (re)insurer can continue to apply the prudential treatment that applied before the end of the transition period to its relationships with such EEA undertakings during the TTP period. The provisions in which such definitions are used shall be interpreted accordingly (e.g. where the prudential treatment that applied before the end of the transition period relies on compliance of such an undertaking with specified requirements, the transitional direction shall preserve the reference to the EU version of the specified requirements for such EEA undertakings).
- d. During the TTP period, the definitions of “parent undertaking”, “subsidiary undertaking”, “related undertaking”, “regulated undertaking”, “non-regulated undertaking” and “non-regulated undertaking carrying on financial services” continue to capture the same types of relationship as before the end of the transition period, with the exceptions/caveats in 2 and 3 below.

2. Group supervision

- a. Where a UK Solvency II firm is part of a group that has an EEA group supervisor, the PRA will not seek to undertake the tasks of group supervisor unless the PRA decides it is appropriate, or unless or until the group ceases to be supervised by a group supervisor of an EEA state.
- b. If a new UK Solvency II firm becomes authorised and is part of such a group, the PRA would not seek to undertake the tasks of group supervisor unless the PRA decides it is appropriate, or unless or until the group ceases to be supervised by a group supervisor of an EEA state.
- c. If approved by Parliament, the Securities Financing Transactions, Securitisation and Miscellaneous Amendments (EU Exit) Regulations 2020² will remove obligations for the PRA to act as group supervisor in the above cases for a period of two years from the end of the transition period.

² Regulation 54 of the Securities Financing Transactions, Securitisation and Miscellaneous Amendments (EU Exit) Regulations 2020 would update an amendment to the Solvency 2 and Insurance (Amendments etc.) (EU Exit) Regulations 2019 previously made by regulation 41 of the Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019.

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3. Level at which group supervision is exercised

- a. The level of application of Solvency II requirements for UK-headquartered groups is unaffected by onshoring changes: group supervision will only be conducted at the level of the ultimate parent undertaking that has its head office in the UK.
- b. The PRA will not seek to apply group supervision to UK sub-groups of groups with an EEA group supervisor during the TTP period unless the EEA group supervisor ceases to supervise the group.
- c. If approved by Parliament, the Securities Financing Transactions, Securitisation and Miscellaneous Amendments (EU Exit) Regulations 2020 will remove obligations for the PRA to act as group supervisor in the above case for a period of two years from the end of the transition period.

4. Joint decisions

- a. The EU joint decision making framework ends. Joint decisions made before the end of the transition period continue to have effect until such time as the PRA or FCA take different decisions. Where joint decision applications were submitted before the end of the transition period, the joint decision process will cease to apply. Decisions will be taken by the relevant regulators with any necessary co-ordination with EU supervisory authorities.
- b. See section 9 below (“Model permissions”) for guidance on the treatment for internal models that were jointly approved by a college of supervisors.

5. **Own funds.** All instruments, items or minority interests that qualified as own funds before the end of the transition period continue to qualify. Therefore transitional relief is not relevant.

6. Capital requirements

- a. Any preferential treatments afforded to EU assets and exposures continue for the duration of the TTP period. This includes:
 - i. the European Central Bank;
 - ii. Member States' central government and central banks denominated and funded in the domestic currency of that central government and the central bank;
 - iii. qualifying infrastructure assets and infrastructure entities referred to in Article 164a(1)(f)(i) and Article 164b(1) of the Solvency II Delegated Regulation;
 - iv. equities listed in regulated markets in EEA countries referred to in Article 168(2) of the Solvency II Delegated Regulation;
 - v. close-ended and unleveraged alternative investment funds which are established or marketed in the Union referred to in Article 168(6) of the Solvency II Delegated Regulation;
 - vi. European long-term investment funds referred to in Article 168(6) of the Solvency II Delegated Regulation;
 - vii. Type 1 securitisations listed in a regulated market in an EEA country referred to in Article 177 of the Solvency II Delegated Regulation;
 - viii. Exposures to group counterparties based in the Union referred to in Article 184(2)(b)(iv);

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- ix. Exposures to EEA (re)insurance undertakings and special purpose vehicles (relevant under Article 180(4), Article 186(4), and Article 192(2)) and
- x. Risk mitigation contracts with EEA (re)insurance undertakings and special purpose vehicle (relevant under Article 211(2)).

7. Use of credit ratings

- a. This section covers the cumulative effect of the run-off period applied by the transitional direction and the separate transitional provision in Article 4(1A) of the CRA Regulation (1060/2009). UK regulated entities may, for a period of one year beginning with the end of the transition period, use a credit rating for regulatory purposes if it was issued or endorsed by an EU credit rating agency before the end of the transition period and was not withdrawn immediately before the end of the transition period. For further guidance on this exception, firms should refer to the guidance issued by the FCA in Annex A to the FCA Transitional Direction.

8. **Capital Add Ons.** There will be no impact from onshoring changes. Therefore the transitional direction will not be relevant here.

9. Model permissions

- a. Existing solo and group model permissions which were issued by the PRA before the end of the transition period will continue to have effect.
- b. Existing model permissions that were issued by an EEA group supervisor have either been re-papered by the PRA or deemed to have been approved by the PRA under regulation 57B of the Solvency 2 Regulations 2015.³ The transitional direction will not apply to any changes to re-papered models or group models that have deemed approvals or changes to their respective model change policies.

10. **Use of technical information.** As an exception to the general use of the TTP, following the end of the transition period firms should use technical information published by the PRA rather than continuing to technical information published by EU authorities.

11. Reporting and disclosure.

During the TTP period, firms should continue to report and disclose data according to the same methodology that they used for reporting and disclosure before the end of the transition period. The PRA has set out expectations for how firms should interpret EU references in reporting and disclosure requirements after the end of the transition period in Supervisory Statement SS 2/19 “PRA approach to interpreting reporting and disclosure requirements and regulatory transactions forms after the UK’s withdrawal from the EU”. The expectations set out in the SS should be read in light of the transitional direction. In particular:

- a. Where the guidance in SS 2/19 expects a firm to treat references to an EU regulation, directive or technical standard as a reference to a piece of UK legislation or a PRA or FCA rule, and doing so would change how an obligation applies in that firm’s case, the firm should comply with that obligation as it applied before the end of the transition period.
- b. Where the guidance in SS 2/19 expects a firm to refer to nationalised (i.e. onshored) legislation to interpret a reporting or disclosure definition that is based on a CRR or Solvency II requirement, and doing so would change how an obligation applies in that firm’s

³ See regulation 12 of the Solvency 2 and Insurance (Amendments etc.) (EU Exit) Regulations 2019.

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case, the firm should comply with that obligation as it applied before the end of the transition period.

Guidance on specific Binding Technical Standards

- Firms should take into account the below binding technical standards as changes have been made which are subject to the transitional direction.

2015/2011 (Lists of regional governments and local authorities, exposures to whom are to be treated as exposures to the central government in accordance with Directive 2009/138/EC)

- The transitional direction will apply to preserve the treatment that applied before the end of the transition period for the listed governments/authorities.

2015/462 (Special purpose vehicles)

- The transitional direction will apply so that special purpose vehicles can continue to accept risks from EEA insurance and reinsurance undertakings.