

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.
- Firms should have regard to this guidance while the transitional relief granted under the 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 direction should be followed in the case of any inconsistency with this guidance.
- The transitional direction will come into effect on exit day and will apply until 30 June 2020 unless the PRA decides to change this in future.
- 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.
- This guidance document covers transitional modifications effected by the transitional direction to the onshoring changes introduced by:
 - a. The Solvency 2 and Insurance (Amendment) (EU Exit) Regulations 2019;
 - b. EU Exit Instrument: The Technical Standards (Solvency II Directive & Institutions for Occupational Retirement Provision Directive 2018 (Amendment etc.) (EU Exit) Instrument 2019; and
 - c. 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.
- For further details on the PRA’s general approach to the exercise of the transitional direction, firms should consult:
 - a. the Bank of England’s Policy Statement on the amendments to financial services legislation under the European Union (Withdrawal) Act 2018; and
 - b. general guidance provided with the PRA’s transitional direction.

1. Definitions

- a. Apart from instances where defined terms are used to identify the firms to which an onshored Solvency II requirement applies in the UK (i.e. “insurance undertaking” and “reinsurance undertaking”), in which case the onshoring changes shall apply, the transitional direction shall apply to uses of the following defined terms so that they continue to capture the same entities as before exit – 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 pre-exit prudential treatment to its relationships with such EEA undertakings. The provisions in which such definitions are used shall be interpreted accordingly (e.g. where the pre-exit prudential treatment relies on compliance of such an undertaking with specified requirements, the transitional relief shall preserve the reference to the EU version of the specified requirements for such EEA undertakings).
- d. 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 exit, while the relief is in place, although see 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 that is not the PRA, 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 that is not the PRA.
- 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 that is not the PRA.
- c. If approved by Parliament, the Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019 will remove obligations for the PRA to act as group supervisor in the above cases for a period of two years from exit day.

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 transitional period unless the EEA group supervisor ceases to supervise the group.
- c. If approved by Parliament, the Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019 will remove obligations for the PRA to act as group supervisor in the above case for a period of two years from exit day.

4. Joint decisions

- a. The EU joint decision making framework ends. Pre-exit joint decisions continue to have effect until such time as the PRA or FCA take different decisions. Where joint decision applications were submitted before exit day, 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 exit continue to qualify. Therefore transitional relief is not relevant.
6. **Capital requirements**
 - a. Any preferential treatments afforded to EU assets and exposures continue. 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);
 - 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. The cumulative effect of the run-off period applied by the direction and the separate transitional provision in article 4(1A) of the CRA Regulation is that UK regulated entities may, for a period of one year beginning with exit day, use a credit rating for regulatory purposes if it was issued or endorsed by an EU credit rating agency before exit day and was not withdrawn immediately before exit day. 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 transitional relief is not relevant.
9. **Model permissions**
 - a. Existing solo and group model permissions which were issued by the PRA will continue to have effect.
 - b. Existing model permissions which 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 inserted by the Solvency II EU Exit SI. Transitional relief 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 transitional powers, firms should use technical information under Regulation 4 of the Solvency Regulations as published by the PRA on exit, rather than continuing to use the EU version of that technical information.

11. Reporting and disclosure.

While the transitional relief is in effect, firms should continue to report and disclose data according to the same methodology as used for reporting and disclosure before exit. The PRA has set out expectations for how firms should interpret EU references in reporting and disclosure requirements after exit 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 relief. In particular:

- a. Where the guidance in SS 2/19 expects firms 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, these should be treated as a reference to that legislation or rule as modified by the transitional relief.
- b. Where the guidance in SS 2/19 expects firms to refer to nationalised legislation to interpret a reporting or disclosure definition that is based on a CRR or Solvency II requirement, firms should refer to that nationalised legislation as modified by the transitional relief.

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 transitional relief.

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 relief will apply so as to preserve the pre-exit treatment for the listed governments/authorities.

2015/462 (Special purpose vehicles)

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