

2019 No. 1233

EXITING THE EUROPEAN UNION

FINANCIAL SERVICES AND MARKETS

The Risk Transformation and Solvency 2 (Amendment) (EU Exit) Regulations 2019

Approved by both Houses of Parliament

Made - - - - at 9.00 a.m. on 5th September 2019

Laid before Parliament at 3.00 p.m. on 5th September 2019

Coming into force in accordance with regulation 1

The Treasury make these Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018^(a).

The Treasury are of the opinion that, by reason of urgency, it is necessary to make these Regulations without a draft of the instrument being laid before, and approved by a resolution of, each House of Parliament^(b).

PART 1

General Provision

Citation and commencement

1.—(1) These Regulations may be cited as the Risk Transformation and Solvency 2 (Amendment) (EU Exit) Regulations 2019.

(2) This regulation comes into force on the day after the day on which these Regulations are made.

(3) Regulations 3, 4 and 5 come into force immediately before exit day.

(4) The other provisions of these Regulations come into force on exit day.

^(a) 2018 c.16.

^(b) See paragraph 5(2) of Schedule 7 to the European Union (Withdrawal) Act 2018.

PART 2

Amendment of subordinate legislation

The Risk Transformation Regulations 2017

2.—(1) The Risk Transformation Regulations 2017(a) are amended as follows.

(2) In regulation 2, insert at the end—

“(4) Any reference in these Regulations to any EU regulation, EU decision or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018 (“the 2018 Act”)), is, unless the contrary intention appears, to be treated as a reference to that EU regulation, EU decision or EU tertiary legislation as it forms part of domestic law by virtue of section 3 of the 2018 Act.”.

(3) Omit regulation 9.

(4) In regulation 10—

(a) in paragraph (1)—

(i) for sub-paragraph (a), substitute—

“(a) described in paragraph 3(a) of Schedule 1 to MIFIR;”;

(ii) for sub-paragraph (b), substitute—

“(b) recognised by the Financial Conduct Authority (“FCA”) as an eligible counterparty for the purposes of Section 6 of Chapter 3 of the Conduct of Business sourcebook in the Handbook of Rules and Guidance published by the FCA containing rules made by the FCA under FSMA, as the sourcebook has effect on exit day; or”;

(b) omit paragraph (3);

(c) in paragraph (4)—

(i) in sub-paragraph (a) for “Section C of Annex I to MIFID 2 (Financial instruments)” substitute “Part 1 of Schedule 2 to the Regulated Activities Order”;

(ii) omit sub-paragraphs (b), (c) and (d);

(iii) before sub-paragraph (e), insert—

“(da) “MIFIR” means Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments; and”.

(5) In regulation 37(7), for “falling within the meaning” to the end substitute “which meets the requirements set out in Article 26 of Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for the electronic transactions in the internal market and repealing Directive 1999/93/EC”.

(6) Omit regulation 38.

The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018

3. In regulation 4(8) of the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018(b), in the substituted Schedule 3, after paragraph 1(b), insert—

“(ba) a person which is a third country insurance or reinsurance undertaking (as defined by regulation 2(1) of the Solvency 2 Regulations 2015(c), as those regulations have been amended under the European Union (Withdrawal) Act 2018) where the undertaking is transferring risk to a transformer vehicle, provided that

(a) S.I. 2017/1212.

(b) S.I. 2018/1403.

(c) S.I. 2015/575.

the assumption of risk by that vehicle is a specified kind of activity within Article 13A of this Order;”.

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

4.—(1) The Solvency 2 and Insurance (Amendment, etc.) (EU Exit) Regulations 2019(a) are amended as follows.

(2) In regulation 11—

(a) in paragraph (2)(e), after the new paragraph 58D, insert—

“58E. ‘special purpose vehicle’ means any undertaking, whether incorporated or not, other than an existing insurance or reinsurance undertaking, which—

- (a) assumes risks from insurance or reinsurance undertakings (or third country insurance or reinsurance undertakings); and
- (b) fully funds its exposure to such risks through the proceeds of a debt issuance or any other financing mechanism where the repayment rights of the providers of such debt or financing mechanism are subordinated to the reinsurance obligations of such an undertaking;

58F. in the definition of “aggregate maximum risk exposure” and Chapter XV of Title 1 of this Regulation, reference to an insurance or reinsurance undertaking in connection with—

- (a) the transfer of risk from that undertaking to a special purpose vehicle; or
- (b) the assumption of risk by a special purpose vehicle from the insurance or reinsurance undertaking,

includes a reference to a third country insurance or reinsurance undertaking;”;

(b) in paragraph (2)(f)—

(i) for “58E (as so inserted)” substitute “63”;

(ii) in the new paragraphs 59 to 62 (as so inserted)—

- (aa) for “59” substitute “64”;
- (bb) for “60” substitute “65”;
- (cc) for “61” substitute “66”;
- (dd) for “62” substitute “67”.

(iii) after the new paragraph 67, (as so re-numbered), insert—

“68. ‘external credit assessment institution or ‘ECAI’ and ‘nominated ECAI’, have the meaning given in Article 4(98) and (99), respectively, of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.”;

(c) omit paragraphs (28) and (34)(b).

The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019

5. In regulation 100 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019(b)—

(a) in the opening words, for “4A(6)” substitute “4A”;

(b) in paragraph (a), for “paragraph (a)” substitute “sub-paragraph (6)(a)”;

(c) in paragraph (b), for “paragraph (b)” substitute “sub-paragraph (6)(b)”, and

(a) S.I. 2019/407.

(b) S.I. 2019/632.

(d) after paragraph (b), insert—

“(c) after sub-paragraph (6), insert—

“(7) In paragraph (6)(a), references to undertakings which assume risks from insurance or reinsurance undertakings include references to undertakings which assume risks from third country insurance or reinsurance undertakings and Gibraltarian insurance or reinsurance undertakings; and for these purposes “third country insurance undertakings”, “third country reinsurance undertakings”, “Gibraltarian insurance undertakings” and “Gibraltarian reinsurance undertakings” have the same meaning as in the Solvency 2 Regulations 2015 (S.I. 2015/575), as amended under the European Union (Withdrawal) Act 2018 (see, in particular, regulation 2(1)).”(a).

PART 3

Amendment of retained direct EU legislation

Commission Delegated Regulation (EU) 2015/35

6.—(1) Commission Delegated Regulation (EU) 2015/35 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(b), (as amended by Commission Delegated Regulation (EU) 2019/981(c)), is amended as follows.

(2) In Article 43—

(a) in paragraph 2, for “Article 77e(1) of Directive 2009/138/EC” substitute “regulation 4B of the Solvency 2 Regulations 2015 (S.I. 2015/575)”;

(b) omit paragraphs 3 to 5.

(3) In Article 71(10)(c)(i), for “Article 138(2) of Directive 2009/138/EC” substitute “rule 4.4(2) of the Group Supervision part of the PRA Rulebook and rule 3.1(2) of the Undertakings in Difficulty part of the PRA Rulebook”.

(4) In Article 84(4), omit the second subparagraph (beginning “For the purposes of this paragraph”).

(5) In Article 168a—

(a) in paragraph 1—

(i) in point (c), for “a country which is a member of the EEA” substitute “the United Kingdom”;

(ii) in point (d), omit “the EEA or”;

(iii) in point (e), for “countries which are members of the EEA” substitute “the United Kingdom”;

(b) in paragraph 2, in point (e), (the meaning of *ROCE*), after “capital and reserves as referred to in” insert “the United Kingdom law which implemented”.

(6) In Article 171a(1)(f)—

(a) for “EEA”, in the first place it occurs, substitute “United Kingdom”;

(b) for “countries that are members of the EEA” substitute “the United Kingdom”.

(7) In Article 176a(3)(g)—

(a) Regulation 2(1) of S.I. 2015/575 is substituted as from exit day by S.I. 2019/407, as amended by S.I. 2019/680.

(b) OJ L 12, 17.1.2015, p. 1. Commission Delegated Regulation (EU) 2015/35 was amended by Commission Delegated Regulation (EU) 2019/981 on 8th July 2019.

(c) OJ L 161, 18.6.2019, p.1.

- (a) in point (ii), for “a country which is a member of the EEA” substitute “the United Kingdom”;
 - (b) in point (iii), omit “the EEA or”.
- (8) In Article 176c—
- (a) in paragraph 1(b)(ii), for “in accordance with Article 100 of Directive 2009/138/EC” substitute “to calculate its Solvency Capital Requirement”;
 - (b) in paragraph 3—
 - (i) in point (c), for “a country which is a member of the EEA” substitute “the United Kingdom”;
 - (ii) in point (d), omit “the EEA or”.
- (9) In Article 180—
- (a) in the inserted paragraph 3a, for “Member States” substitute “the United Kingdom’s”;
 - (b) in the inserted paragraph 3b, for “a Member State’s” substitute “the United Kingdom’s”.
- (10) In Article 182—
- (a) in paragraph 8, for “referred to in Article 51 of Directive 2009/138/EC” substitute “report”;
 - (b) in paragraph 9—
 - (i) for “deemed equivalent to that laid down in Directive 2009/138/EC” substitute “determined to be equivalent”;
 - (ii) for “Article 227 of that Directive” substitute “Article 379A of this Regulation”.
- (11) In Article 187—
- (a) in the inserted paragraph 4a, for “Member States” substitute “the United Kingdom’s”;
 - (b) in the inserted paragraph 4b, for “a Member State’s” substitute “the United Kingdom’s”.
- (12) In Article 189(6)(b), for “Article 13(26) of Directive 2009/138/EC” substitute “Article 1(58E) of this Regulation”.

Mike Freer
Rebecca Harris

At 9.00 a.m. on 5th September 2019 Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers contained in section 8 of the European Union (Withdrawal) Act 2018 (c. 16) to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union; and, in particular, the deficiencies under paragraphs (a), (b), (c), (d), (e) and (g) of section 8(2).

Part 2 of the Regulations amends secondary legislation relating to financial services. Part 3 of these Regulations makes amendments to retained direct EU legislation. Regulation 6 makes amendments to Commission Delegated Regulation (EU) 2015/35 (OJ L 12, 17.1.2015, p.1) in consequence of amendments made to that legislation by Commission Delegated Regulation (EU) 2019/981 (OJ L.161, 18.6.2019, p. 1). Regulation 4(2)(b) and (c) of this instrument also makes updating amendments to secondary legislation in consequence of changes made by Commission Delegated Regulation (EU) 2019/981.

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.

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