

2012 No. xxxx

FINANCIAL SERVICES AND MARKETS

**The Financial Services and Markets Act 2000 (Solvency 2)
Regulations 2012**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Treasury are a government department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to authorisation of the carrying on of insurance business and the regulation of such business and its conduct.

The Treasury, in exercise of the powers conferred upon them by section 2(2) of the European Communities Act 1972, make the following Regulations:

PART 1

Citation and Commencement

Citation and commencement

1. These Regulations may be cited as the Financial Services and Markets Act 2000 (Solvency 2) Regulations 2012 and, except as provided in regulation 2, come into force on [1 January 2013].

2. Regulations 16 to 19 come into force on [1 June 2012].

(a) S.I. 1997/2781, article 6.

(b) 1972 c.68; section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 (c. 7). By virtue of the amendment of section 1(2) made by section 1 of the European Economic Act 1993 (c. 51) regulations may be made under section 2(2) to implement obligations of the United Kingdom created by or arising under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073, OJ No L1, 3.11.1994, p.3) and the Protocol adjusting that Agreement signed at Brussels on 17th March 1993 (Cm 2183, OJ No L1, 3.1.1994, p.572). For the decision of the EEA Joint Committee in relation to Directive 2009/138/EC, see Decision No 078/2001 of 1st July 2011 [OJ reference]

PART 2

Amendments to the Financial Services and Markets Act 2000

Amendment to the Financial Services and Markets Act 2000

3. The Financial Services and Markets Act 2000(a) is amended as follows.

4.—(1) In section 55J, after subsection (7), insert—

“(7A) Without prejudice to the generality of subsections (1) to (3), in relation to an insurance or reinsurance undertaking to which the provisions of the solvency 2 directive apply, the appropriate regulator—

- (a) may exercise its power under this section to cancel the Part 4A permission if it appears to it that the condition in section 55KA(1) is met;
- (b) shall exercise its power under this section to cancel the Part 4A permission as soon as practicable, having regard to policy holders’ interests, if it appears to it that that the authorised person has not complied with the Minimum Capital Requirement and one of the conditions in section 55KA(2) is met.”

(7B) In subsection (7A) “the appropriate regulator” means—

- (a) in the case of a PRA authorised person, the PRA, and
- (b) in any other case, the FCA.”.

(2) After section 55K, insert—

“55KA. Insurance and reinsurance undertakings: particular conditions that enable cancellation

(1) The condition referred to in section 55J(7A)(a) is that the insurance or reinsurance undertaking has failed seriously in its obligations under the rules made for the purpose of implementing the solvency 2 directive to which it is subject;

(2) The conditions referred to in section 55J(7A)(b) are that the undertaking—

- (a) has failed to submit a finance scheme pursuant to rules made for the purpose of implementing Article 139(2) of the solvency 2 directive; or
- (b) has submitted a finance scheme as described in paragraph (a) to the appropriate regulator and—
 - (i) the appropriate regulator considers that the finance scheme is manifestly inadequate; or
 - (ii) the appropriate regulator has approved the finance scheme but the undertaking concerned has failed to comply with it within three months from the date it informed the appropriate regulator that it was not complying with the Minimum Capital Requirement.”.

(3) After section 55P, insert—

“55PA. Assets requirements imposed on insurance or reinsurance undertakings

(1) Where the appropriate regulator—

- (a) intends to impose an assets requirement on an authorised person who is an insurance or reinsurance undertaking because that undertaking has not complied with the appropriate regulator’s rules implementing Chapter VI, Section 2 of the solvency 2 directive; or
- (b) has imposed an assets requirement on an undertaking because it is of the opinion that its financial situation will deteriorate further, and—

(a) 2000 c. 8.

- (i) the undertaking has breached rules made for the purpose of implementing Article 100 of the directive with regard to Solvency Capital Requirement, or
 - (ii) is at risk of non-compliance with those rules within three months,
- it must inform the supervisory authorities of the host Member States.”.
- (2) In this section, “assets requirement” has the same meaning as in section 55P(2).
- (3) In this section “appropriate regulator” has the same meaning as in section 55J(7B).
- (4) In section 105(3)(Case 2)(aa), for “(within the meaning of Article 2.1(c) of the reinsurance directive)” substitute “(within the meaning of Article 13(4) of the solvency 2 directive)”.
- (5) In subsection (2) of section 116, for paragraphs (a),(b) and (c) substitute—
- “(a) an undertaking authorised in an EEA State other than the United Kingdom under Article 162 of the solvency 2 directive;
 - (b) an undertaking whose head office is not in an EEA State and which is authorised under the law of an EEA State other than the United Kingdom to carry out reinsurance activities in its territory (as mentioned in Article 164 of the solvency 2 directive).”.
- (6) For subsection (5) of section 116, substitute—
- “(5) “Authorised transfer” means—
- (a) in subsection (1), a transfer authorised in the home State of the EEA firm in accordance with Article 39 of the solvency 2 directive;
 - (b) in subsection (2), a transfer authorised in an EEA State other than the United Kingdom in accordance with Article 164 of the solvency 2 directive.”
- (7) In section 165(7), after paragraph (d), insert—
- “(e) by either regulator, to impose requirements on a person who provides any service to an authorised person who is subject to rules made for the purpose of implementing the solvency 2 directive.”.
- (8) In section 167(2), after paragraph (a) delete “or” and after paragraph (b) insert—
- “or;
- (c) where A is an insurance undertaking or reinsurance undertaking, a person who provides services to A.”.
- (9) After section 167(3), insert—
- “(3A) If a person appointed under subsection (1) decides to investigate the business of any person under paragraph (2)(c) he must inform the appropriate authority of the Member State of the service provider prior to conducting the on-site inspection.”
- (10) In subsection (4) of section 190, for subsection (b) substitute—
- “(b) is not subject to supervision under—
- (i) the UCITS directive;
 - (ii) the solvency 2 directive;
 - (iii) the markets in financial instruments directive; or
 - (iv) the banking consolidation directive.”.
- (11) In section 198 for subsection (1) substitute—
- “(1) This section applies if the PRA has received a request made in respect of an incoming EEA firm in accordance with Article 37 of the solvency 2 directive.”.
- (12) In section 316, in subsection (4)(b)(i), for “any of the insurance directives” substitute “the solvency 2 directive”.
- (13) In section 367(3) before (a) insert—

“(aa) in the case of a body to which the provisions of the solvency 2 directive apply, a regulator has cancelled its Part 4A permission in pursuance of section 55J(7A)(b);”.

(14) In section 405, subsection (5), omit paragraphs (c) and (d).

(15) In section 417, subsection (1), insert at the appropriate place in each case—

“insurance undertaking” has the meaning given in Article 13 of the solvency 2 directive;

“Minimum Capital Requirement” in relation to an insurance undertaking or reinsurance undertaking has the meaning given in rules made for the purpose of implementing Articles 128 and 129 of the solvency 2 directive and directly applicable Union legislation made under Article 130 of the solvency 2 directive;

“reinsurance undertaking” has the meaning given in Article 13 of the solvency 2 directive;

“Solvency Capital Requirement” in relation to an insurance undertaking or reinsurance undertaking has the meaning given in rules and directly applicable Union legislation made for the purpose of implementing Chapter VI, Section 4 of the solvency 2 directive;”.

(16) In section 425(1)(a)—

“(a) omit ““life assurance consolidation directive””, ““first non-life directive””, “insurance directives” and “reinsurance directive”, and

(b) after ““single markets directive”” insert and ““solvency 2 directive””.

Amendments to Schedule 3 to the Act

5. In Schedule 3—

(1) In paragraph 1, for sub-paragraphs (c) and (ca) substitute—

“(c) The solvency 2 directive;”

(2) For paragraphs 3 and 3A substitute —

“The solvency 2 directive

3. “The solvency 2 directive” means 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) (a) [as amended by Omnibus 2 and FICOD].”.

(3) In paragraph 5, for sub-paragraphs (d) and (da) substitute—

“(d) an undertaking pursuing the activity of direct insurance (within the meaning of Article 2 of the solvency 2 directive) which has received authorisation under Article 14 of that directive from its home state regulator;

(da) an undertaking pursuing the activity of reinsurance (within the meaning of Article 2 of the solvency 2 directive) which has received authorisation under Article 14 from its home state regulator;”.

(4) In paragraph 15, for sub-paragraph (6) substitute:

“(6) The permission is to be treated as being on terms equivalent to those appearing in the authorisation granted to the firm under Article 14 of the solvency 2 directive by its home state regulator (“its home authorisation”).”.

(5) In paragraph 19—

(i) in sub-paragraphs (5)(b)(i), (7) and (9), for “any of the insurance directives” substitute “the solvency 2 directive”.

(ii) in sub-paragraph (5ZA), for “is subject to the conditions of the reinsurance directive” substitute “falls within the second sub-paragraph of Article 2(1) of the solvency 2 directive”.

(a) OJ L335, 17.12.2009, p.1.

- (6) In paragraph 20—
- (i) in sub-paragraphs (3A) and (4B) for “any of the insurance directives” substitute “the solvency 2 directive”.
 - (ii) in sub-paragraph (4D), for “the reinsurance directive” substitute “the solvency 2 directive”.

Amendments to Schedule 12 to the Act

6. In Schedule 12—

(1) In paragraph 1—

- (a) for sub-paragraph (2)(a) substitute—

“(a) the authorised person concerned is a UK authorised person which has received authorisation under Article 14 of the solvency 2 directive from the appropriate regulator;”
- (b) for sub-paragraph (3)(a) substitute—

“(a) the authorised person concerned has received authorisation under Article 14 or 162 of the solvency 2 directive from the appropriate regulator;”
- (c) for sub-paragraph (4)(a) substitute—

“(a) the authorised person concerned has received authorisation under Article 14 or 162 of the solvency 2 directive from the appropriate regulator;”
- (d) for sub-paragraph (5)(a) substitute—

“(a) the authorised person concerned has received authorisation under Article 162 of the solvency 2 directive from the appropriate regulator;” and
- (e) after sub-paragraph (5) add—

(6) In this paragraph “the appropriate regulator” means—

 - (a) in the case of a PRA authorised person, the PRA, and
 - (b) in any other case, the FCA.”

(2) In paragraph 2—

- (i) for sub-paragraph (6)(aa) substitute—

“(aa) if the transferee is a non-EEA branch, the supervisory authorities of the EEA State in which the transferee is situated or, where appropriate, the supervisory authorities of an EEA State which supervises the state of solvency of the entire business of the transferee’s agencies and branches within the EEA in accordance with Article 167 of the solvency 2 directive;”
- (ii) for sub-paragraph (7A), substitute—

“(7A) “Supervisory authorities” has the same meaning as in the solvency 2 directive.”

and
- (iii) for sub-paragraph (9), substitute—

“(9) “Non-EEA branch” means a branch or agency which has received authorisation under Article 162 of the solvency 2 directive.”

(3) For paragraph 3 substitute—

“3.—(1) A certificate under this paragraph is one given by the Authority and certifying that it has consulted the host state regulator, the authorities in the Member State where the portfolio of contracts were concluded (either under the right of establishment or the freedom to provide services) and, in the case of the transferee being a branch, the Member State where the branch is situated, about the proposed scheme and that each authority has consented to the transfer in accordance with sub-paragraph (2).

- (2) Each authority shall be deemed to have consented to the transfer when—

- (a) it agrees the transfer of portfolio; or
 - (b) it does not respond but the period of three months beginning with the date where the authority received a request for consultation has elapsed.
- (3) In this paragraph “host state regulator” means the competent authority (within the meaning of the solvency 2 directive) of an EEA State (other than the United Kingdom) in relation to a UK firm’s exercise of EEA rights there.”.
- (4) In paragraph 5A, for sub-paragraph (4), substitute—
- “(4) “Relevant authority” means the supervisory authorities (within the meaning of the solvency 2 directive) of the EEA State in which the transferee is set up.”.
- (5) In paragraph 10—
- (a) for sub-paragraph (3) substitute—
- “(3) The transferor is a company authorised in an EEA State other than the United Kingdom under Article 162 of the solvency 2 directive and the transferee is a UK authorised person which has received authorisation under Article 14 of the solvency 2 directive.”, and
- (b) for sub-paragraph (4) substitute—
- “(4) The transferor is a Swiss general insurer and the transferee is a UK authorised person which has received authorisation under Article 14 of the solvency 2 directive.”.

Amendment to schedule 21 to the Act

7. After paragraph 2 add—

“Solvency 2 directive and withdrawal of authorisation

3. Section 55J(7A) shall not apply until [31 October 2014] with regards to those insurance and reinsurance undertakings which comply with the Required Solvency Margin referred to in Article 28 of Directive 2002/83/EC, Article 16a of Directive 73/239/EEC or Articles 37, 38 or 39 of Directive 2005/68/EC respectively on [31 October 2013] but do not hold sufficient eligible basic own funds to cover the Minimum Capital Requirement.”.

PART 3

Provisions relating to insurance and reinsurance undertakings

Interpretation

8.—(1) In this Part—

“the Act” means the Financial Services and Markets Act 2000(a);

“the appropriate regulator” means—

- (a) in the case of a PRA authorised person, the PRA, and
- (b) in any other case, the FCA;

“capital add-on” means any increase to the Solvency Capital Requirement of an insurance or reinsurance undertaking, or an insurance group, made by the appropriate regulator pursuant to sections 55L or 55M of the Act;

“the directive” means 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)(b) [as amended by FiCOD/Omnibus 2];

(a) 2000 c.8
 (b) OJ L335, 17.12.2009, p.1.

“EIOPA” means the European Insurance and Occupational Pensions Appropriate regulator established under Regulation (EU) No 1094/2010 of the European Parliament and the Council establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority);

“group supervisor” means the competent authority responsible, under Article 247 of the Directive for the exercise of group supervision in accordance with Title 3 of the Directive;

[“Level 2 measures” [word to be replaced and defined when clear the form in which level 2 measures will appear]]; and

“United Kingdom Solvency 2 firm” has the meaning in regulation 9;

(2) Save as provided by paragraph (1)—

- (a) any expression used in this Part which is used in the directive has the meaning given by that directive; and
- (b) any other expression used in these Regulations which is defined for the purpose of the Act has the meaning given by the Act.

Meaning of United Kingdom Solvency 1 and 2 firm

9.—(1) A United Kingdom Solvency 2 firm is—

- (a) an insurance undertaking and either paragraph (2), (3) or (4) applies; or
- (b) a reinsurance undertaking, and

it has its head office in the United Kingdom.

(2) This paragraph applies where the undertaking is a United Kingdom Solvency 1 firm and has not been verified to be excluded pursuant to regulation 10.

(3) This paragraph applies where the undertaking is not a United Kingdom Solvency 1 firm and—

- (a) it is excluded from the directive pursuant to rules made to implement Articles 4(1) to 4(3) of the directive but it has opted to be authorised pursuant to rules made to implement article 4(5) of the directive; or
- (b) it is not excluded pursuant to rules made to implement Articles 4(1) to 4(3) of the directive.

(4) This paragraph applies where the undertaking is neither a United Kingdom Solvency 1 firm nor a non-United Kingdom Solvency 1 firm and—

- (a) it is excluded pursuant to rules made to implement Articles 4(1) to 4(3) of the directive but it has opted to be authorised pursuant to rules made to implement article 4(5) of the directive; or
- (b) it is not excluded pursuant to rules made to implement Articles 4(1) to 4(3) of the directive.

(5) In this regulation “United Kingdom Solvency 1 firm” means a firm that immediately before the date provided in regulation 1 was an insurance or reinsurance undertaking that fell within the scope of the Solvency 1 Directive.

(6) In this regulation “non United Kingdom Solvency 1 firm” means a firm that immediately before the date provided in regulation 1 was not an insurance or reinsurance undertaking that fell within the scope of the Solvency 1 Directive.

(7) In this regulation “Solvency 1 Directive” means each of—

- (a) First Council Directive 73/239/EEC of 24 July 1972 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance(a);

(a) OJ L238, 16.8.1973, p.3.

- (b) Second Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services(a);
- (c) Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance (third non-life insurance Directive)(b);
- (d) Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance(c);
- (e) Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance(d).

Application of Solvency 2 (Verification that the directive does not apply)

10. Where an undertaking has applied for verification that the directive should cease to apply pursuant to rules made to implement Article 4(4) of the directive, the appropriate regulator shall verify whether an insurance undertaking satisfies those rules.

Financial stability and pro-cyclicality (Articles 28 and 71(1))

11. The appropriate regulator shall in the exercise of its duties under the directive—

- (a) take into account, in an appropriate way, an EEA dimension;
- (b) consider the potential impact of its decisions on the stability of the financial systems in other EEA States, such consideration, in particular in emergency situations, to be based on information available at the relevant time; and
- (c) in times of exceptional movements in the financial markets, take into account the potential pro-cyclical effects of its actions.

The scope of the appropriate regulator’s supervision for passporting firms (Article 30(3))

12. Where the appropriate regulator has reason to consider that the activities of an insurance or reinsurance undertaking might affect its financial soundness and—

- (a) in the case of insurance the United Kingdom is not the home Member State but is either—
 - (i) the Member State in which the risk is situated; or
 - (ii) the Member State of the commitment; or
- (b) in the case of reinsurance, the United Kingdom is the host member state

it shall inform the supervisory authority of the undertaking’s home member state.

Capital add-on (Article 37)

13.—(1) Where the appropriate regulator has imposed a capital add-on pursuant to section 55L or 55M of the Act, it shall review the capital add-on of the insurance or reinsurance undertaking at least once a year.

(2) The capital add-on shall be cancelled when the undertaking has remedied the deficiencies which led to its imposition.

(a) OJ L172, 4.7.1988, p.1.
 (b) OJ L228, 11.8.1992, p.1.
 (c) OJ L345, 19.12.2002, p.1.
 (d) OJ L 323, 9.12.2005, p.1.

Information for and reports by EIOPA (Article 52) [subject to Omnibus 2]

14. The appropriate regulator shall provide the following information to EIOPA on an annual basis:

- (a) the average capital add-on per undertaking and the distribution of capital add-ons imposed by the appropriate regulator during the previous year, measured as a percentage of the Solvency Capital Requirement, shown separately as follows:
 - (i) for all insurance and reinsurance undertakings;
 - (ii) for life insurance undertakings;
 - (iii) for non-life insurance undertakings;
 - (iv) for insurance undertakings pursuing both life and non-life activities;
 - (v) for reinsurance undertakings;
- (b) for each of the disclosures set out in paragraph (a), the proportion of capital add-ons imposed under rules made for the purpose of implementing Article 37(1)(a), (b) and (c) respectively.

Composite firms authorised to carry out life and non life insurance business (Article 74(7))

15. Where an insurance undertaking is authorised to carry out both life and non-life business pursuant to the rules made for the purpose of implementing Articles 73 and 74 of the directive, the appropriate regulator shall ensure that it applies its rules made for the purpose of implementing the directive only to the relevant part of the firm operating the deficient activity, whatever the results in the other activity.

Valuation of assets: supervisory approval of ancillary own funds (Article 90)

16.—(1) Where an insurance or reinsurance undertaking applies for supervisory approval of the amounts of ancillary own-fund items to be taken into account when determining own funds (in accordance with rules made for the purpose of implementing Article 90 of the directive), the appropriate regulator shall approve either of the following:

- (a) A monetary amount for each ancillary own-fund item; or
- (b) A method by which to determine the amount of such ancillary own-fund item, in which case supervisory approval of the amount determined in accordance with that method shall be granted for a specific period of time.

(2) For each ancillary own-fund item, the appropriate regulator shall base its approval on an assessment of the following:

- (a) the status of the counterparties concerned, in relation to their ability and willingness to pay;
- (b) the recoverability of the funds, taking account of the legal form of the item, as well as any conditions which would prevent the item from being successfully paid in or called up; and
- (c) any information on the outcome of past calls which insurance and reinsurance undertakings have made for each ancillary own funds, to the extent that information can be reliably used to assess the expected outcome of future calls.

(3) If the authorised person wishes to challenge the decision in relation to the approval, they may refer the matter to the Tribunal.

Classification of funds (Article 95)

17.—(1) Where own fund items do not appear in the implementing technical standards made pursuant to Article 97 of the directive, the appropriate regulator shall consider the assessment and classification of those items made by insurance and reinsurance undertakings and may approve them accordingly.

(2) If the applicant wishes to challenge the decision in relation to the approval, they may refer the matter to the Tribunal.

Verification of the Basic Solvency Capital Requirement (Article 104)

18.—(1) When granting supervisory approval of the basic Solvency Capital Requirement, the appropriate regulator shall verify the completeness, accuracy and appropriateness of the data used.

(2) If the authorised person wishes to challenge the approval, they may refer the matter to the Tribunal.

Approval of full and partial internal models under Solvency 2 (Articles 112-127)

19.—(1) Where an undertaking has applied for the approval of a full or partial internal model pursuant to rules made for the purpose of implementing Article 112 of the directive and [level 2 measures] made pursuant to Article 114, the appropriate regulator shall approve that model only if it is satisfied that—

- (a) the internal model fulfils the requirements set out in those rules and [level 2 measures]; and
- (b) the systems of the undertaking for identifying, measuring, monitoring, managing and reporting risk are adequate; and
- (c) in the case of a partial model, it fulfils the requirements set out in the rules made for the purpose of implementing Article 113 of the directive.

(2) The appropriate regulator must notify the applicant of its decision on an application for approval before the end of the period of six months beginning with the date on which the complete application is received.

(3) Where an undertaking applies for approval of —

- (a) major changes to the internal model; or
- (b) the policy for changing the internal model;

it shall apply to the appropriate regulator in accordance with paragraph (1).

(4) A decision by the appropriate regulator to refuse to approve an application under paragraphs (1) or (3) shall state the reasons on which it is based.

(5) After having received approval in accordance with this regulation, insurance and reinsurance undertakings shall not revert to calculating the whole or any part of the Solvency Capital Requirement in accordance with the standard formula as set out in the rules and [level 2 measures] made for the purpose of implementing Articles 103-111 of the directive unless paragraph (7) applies, except where the appropriate regulator has approved that it may revert to the standard formula.

(6) If the appropriate regulator refuses the application, the applicant may refer the matter to the Tribunal.

Special purpose vehicles (Article 211)

20.[to be confirmed – await Level 2 measures]

Group Supervision

Cases of application of group supervision (Article 213)

21.—(1) Paragraph 2 applies where—

- (a) supervision is exercised at the level of the group in accordance with the rules made for the purpose of implementing Article 213(2)(a) and (b) of the directive, and

(b) the participating insurance or reinsurance undertaking or the insurance holding company [or the mixed financial holding company] which has its head office in the Union is a related undertaking of a regulated entity [or a mixed financial holding company] which is subject to supplementary supervision in accordance with Article 5(2) of Directive 2002/87/EC; and

(c) the appropriate regulator is the group supervisor.

(2) Subject to paragraph (3), the appropriate regulator may decide not to carry out at the level of the undertaking either or both of the following—

(a) the supervision of risk concentration as provided for in rules made for the purpose of implementing Article 244 of the directive; or

(b) the supervision of intra-group transactions referred to in rules made for the purpose of implementing Article 245 of the directive.

(3) Before taking the decision provided for in paragraph (2), the appropriate regulator shall consult the other supervisory authorities concerned.

Scope of group supervision (Article 214)

22. Where the appropriate regulator is the group supervisor and is of the opinion that an insurance or reinsurance undertaking should not be included in the group supervision because—

(a) the undertaking which should otherwise be included under the rules made for the purpose of implementing Article 214 is of negligible interest with respect to the objectives of group supervision; or

(b) the inclusion of the undertaking would be inappropriate or misleading with respect to the objectives of group supervision

it shall consult the other supervisory authorities concerned before taking a decision.

Group supervision of ultimate parent undertaking at Union level (Article 215)

23. Where—

(a) a participating insurance undertaking;

(b) a reinsurance undertaking; or

(c) an insurance holding company

referred to in rules made for the purpose of implementing points (a) and (b) of Article 213(2) is a subsidiary undertaking of an undertaking which is subject to supplementary supervision in accordance with Article 5(2) of Directive 2002/87/EC(a), the appropriate regulator may, after consulting the other supervisory authorities concerned, decide not to carry out at the level of that ultimate parent undertaking the supervision of risk concentration referred to in rules made for the purpose of implementing Article 244 of the directive, nor the supervision of intra-group transactions referred to in rules made for the purpose of implementing Article 245 of the directive, or both.

Group supervision of ultimate parent undertaking at national level (Article 216)

24.—(1) Where—

(a) a participating insurance or reinsurance undertaking or an insurance holding company has its head office in the EEA States outside the United Kingdom; and

(b) the ultimate parent undertaking in the EEA States of the participating insurance or reinsurance undertaking or insurance holding company has its head office in the United Kingdom; and

(a) [reference this]

- (c) the appropriate regulator considers that the ultimate parent undertaking should be subject to group supervision at national level; and
- (d) the appropriate regulator is not the group supervisor,

the appropriate regulator may decide to subject the ultimate parent undertaking to group supervision at a national level, subject to paragraph (2).

(2) Before the appropriate regulator seeks to exercise its power under section 55L or 55M of the Act to subject the ultimate parent undertaking to group supervision at a national level it shall consult the group supervisor and the ultimate parent undertaking.

(3) Where the appropriate regulator has exercised its power in accordance with paragraph (2) it shall explain its decision to both the group supervisor and the ultimate parent undertaking in the EEA States.

(4) The choice of method of calculation of solvency made by the group supervisor in respect of the ultimate parent undertaking in the EEA States shall be recognised by the appropriate regulator as determinative.

Group Solvency

Frequency of calculation (Article 219)

25.—(1) Where the appropriate regulator is the group supervisor, it shall ensure that the calculation referred to in the rules made for the purpose of implementing Article 218(2) and (3) are carried out at least annually.

(2) Where the group is not headed by an insurance or reinsurance undertaking, the group supervisor shall consult other supervisory authorities concerned and the group itself as to which undertaking in the group should submit the relevant data.

(3) The group supervisor shall identify which undertaking in the group shall submit the data.

Group supervision: choice of method (Article 220)

26.—(1) In this regulation—

- (a) ‘method 1’ is the method set out in rules made for the purpose of implementing Articles 230 – 233 of the directive;
- (b) ‘method 2’ is the method set out in rules made for the purpose of implementing Articles 233 and 234 of the directive.

(2) Where the appropriate regulator is the group supervisor and is considering exercising its power under section 55L or 55M of the Act to require a group to use method 2 for calculating its solvency, or a combination of method 1 and method 2, it shall consult the other supervisory authorities concerned and the group itself, before exercising its power

Inclusion of the proportional share (Article 221)

27.—(1) Where the appropriate regulator is the group supervisor, subject to paragraph (2), it shall determine the proportional share held by the participating undertaking in its related undertakings which shall be taken into account in the following cases—

- (a) where there are no capital ties between some of the undertakings in a group;
- (b) where a supervisory authority has determined that the holding, directly or indirectly, of voting rights or capital in an undertaking qualifies as a participation because, in its opinion, a significant influence is effectively exercised over that undertaking;
- (c) where a supervisory authority has determined that an undertaking is a parent undertaking of another because, in the opinion of that supervisory authority, it effectively exercises a dominant influence over that other undertaking.

(2) Before determining that share, the appropriate regulator shall consult the other supervisory authorities and the group itself.

Exercise of functions under section 148 of the Act for the purpose of applying a decision in relation to the group solvency calculation. (Articles 225 and 227)

28.—(1) The appropriate regulator may exercise the powers conferred by section 138A of the Act (modification or waiver of the rules) where there is a significant change to the third country regime and it appears desirable to do so in order to ensure that the insurance or reinsurance undertaking carries out its calculation in accordance with the rules made for the purpose of implementing the directive.

(2) In such a case the requirements contained in subsections (1) and (6)(b) of section 138A for the appropriate regulator's powers to be exercisable only on the application or with the consent of an authorised person shall not apply.

Eligible own funds of an intermediate insurance holding companies (Article 226)

29.—(1) Paragraph (2) applies where an insurance or reinsurance undertaking holds, through an insurance holding company [or a mixed financial holding company], a participation in—

- (a) a related insurance undertaking;
- (b) a related reinsurance undertaking; or
- (c) a third-country insurance undertaking.

(2) Where an undertaking applies for supervisory approval to take into account, for the purposes of group solvency, own funds of an intermediate holding company (referred to in paragraph 1) which would require prior authorisation pursuant to regulation 16 if they were held by an insurance or reinsurance undertaking, the appropriate regulator shall base its approval on an assessment of those conditions in regulation 16(2).

(3) If the applicant wishes to challenge the decision in relation to the approval, they may refer the matter to the Tribunal.

Related third-country insurance and reinsurance undertakings (Article 227) [subject to Omnibus 2]

30.—(1) Where the appropriate regulator is the group supervisor and —

- (a) a participating undertaking in a third country insurance or reinsurance undertaking so requests; or
- (b) on the appropriate regulator's own initiative

subject to paragraph (2), it shall verify whether the third country has a solvency regime which is at least equivalent to that set out in Title 1, Chapter VI of the directive.

(2) Before making verification, the appropriate regulator shall consult the other supervisory authorities concerned and EIOPA.

The appropriate regulator's power as group supervisor to approve group internal models (Article 231)

31.—(1) This regulation applies where the appropriate regulator is the group supervisor and has received an application for permission to calculate the consolidated group Solvency Capital Requirement and the Solvency Capital Requirement of insurance and reinsurance undertakings in the group on the basis of an internal model.

(2) The application referred to in paragraph (1) must be made by an insurance or reinsurance undertaking in the group to the appropriate regulator in such a manner, and accompanied by such information as required by rules made for the purpose of implementing Article 231 of the directive and level 2 measures.

(3) Following an application made in accordance with paragraph (1), the appropriate regulator shall—

- (a) inform EIOPA and the other supervisory authorities concerned that an application has been received without delay;
- (b) forward the completed application to EIOPA and the other supervisory authorities concerned without delay and initiate discussions with a view to reaching a joint decision on the application;
- (c) provide the other supervisory authorities concerned with a document setting out its proposal within five months from the date of receipt of the complete application by the group supervisor; and
- (d) cooperate with other supervisory authorities to do everything within their power to reach a joint decision on the application within six months from the date of receipt of the complete application by the group supervisor.

(4) The appropriate regulator shall provide the applicant and the other supervisory authorities concerned with a document setting out the fully reasoned joint decision referred to in paragraph 3.

(5) In the absence of a joint decision within six months from the date of receipt of the complete application by the group supervisor, the group supervisor shall make its own decision on the application. In making its decision the group supervisor shall duly take into account any views and reservations of the other supervisory authorities concerned expressed during the applicable period.

(6) The appropriate regulator shall provide the applicant and the other supervisory authorities concerned with a document setting out its reasoned decision referred to in paragraph (5).

Applications forwarded to the appropriate regulator as relevant supervisory authority by group supervisor (Article 231)

32.—(1) This regulation applies where the appropriate regulator is a relevant supervisory authority and has been forwarded a complete application for permission to calculate the consolidated group Solvency Capital Requirement and the Solvency Capital Requirements of insurance and reinsurance undertakings in the group on the basis of internal model by the group supervisor.

(2) The appropriate regulator must work together, in full consultation with the group supervisor and the other supervisory authorities concerned to reach a decision within six months from the date on which the group supervisor received the completed application.

(3) Where the group supervisor has taken a decision regarding the calculation of the group Solvency Capital Requirement and that of insurance and reinsurance undertakings in the group on the basis of an internal model, that decision shall be recognised as determinative and applied by the appropriate regulator.

(4) Where the appropriate regulator imposes a capital add-on in accordance with the rules made by the appropriate regulator to implement Article 231(7) of the directive, the appropriate regulator shall explain any decision to both the insurance or reinsurance undertaking and the group supervisor.

Group capital add-on (Article 232)

33.Where the appropriate authority is the group supervisor, in determining whether the consolidated group Solvency Capital Requirement appropriately reflects the risk profile of the group, it shall pay particular attention to any case where the circumstances which would give rise to the appropriate regulator using its powers under section 55L and 55M of the Act to set a capital add-on at undertaking level, may arise at group level, in particular where:

- (a) a specific risk existing at group level would not be sufficiently covered by the standard formula or the internal model used, because it is difficult to quantify;

- (b) a capital add-on to the Solvency Capital Requirement of the related insurance or reinsurance undertakings is imposed by the supervisory authorities concerned.

Subsidiaries of an insurance or reinsurance undertaking: Solvency Capital Requirement (Articles 237, 238, 239 and 240)

34.—(1) Where—

- (a) an application is made for permission to be subject to the rules made for the purpose of implementing Articles 238 and 239 of the Directive, and
- (b) the appropriate regulator is one of the supervisory authorities concerned;

it shall work together with the other supervisory authorities concerned and shall do everything within its power to reach a joint decision within three months from the date of receipt of the complete application by all the supervisory authorities within the college of supervisors as to whether or not to grant the permission sought and to determine the other terms and conditions, if any, to which the permission should be subject.

(2) [Omnibus 2 changes to Article 237(3,4,5,6)]

(3) [Omnibus 2 changes to Article 238]

(4) [Omnibus 2 changes to Article 239]

(5) Where the appropriate regulator is the group supervisor it shall—

- (a) verify at least annually, on its own initiative, that the conditions referred to in the rules made for the purpose of implementing Articles 236(b),(c) and (d) continue to be complied with; and
- (b) perform such verification upon request from the supervisory authority concerned, where the latter has significant concerns related to the ongoing compliance with those conditions; and
- (c) require the parent undertaking to present a plan to restore compliance within an appropriate time where the verification performed has identified weaknesses; and
- (d) after consulting the college of supervisors, deem the rules made for the purpose of implementing Articles 236(b), (c) and (d) to be no longer complied with where it has determined that the plan referred to in sub-paragraph (c) is inefficient or not implemented within the agreed time frame; and
- (e) immediately inform the supervisory authority concerned where it has made a decision that the rules are no longer complied with under sub-paragraph (d).

Supervision of risk concentration and intra-group transactions (Articles 244 and 245)

35.—(1) With regards to the type of risks or intra-group transactions insurance and reinsurance undertakings in a particular group should be obliged to report, where—

- (a) the appropriate regulator is group supervisor it shall act in accordance with paragraph (2), subparagraphs (a) to (e) below; or
- (b) the appropriate regulator is consulted by the group supervisor as a supervisory authority concerned it shall act in accordance with paragraph (2), subparagraph (b) below.

(2) In accordance with paragraph (1), the appropriate regulator shall—

- (a) consult the other supervisory authorities concerned and the group; and
- (b) take into account the specific group and risk management structure of the group; and
- (c) following consultation as provided for in subparagraph (a), identify the type of risks and intra-group transactions insurance and reinsurance undertakings in a particular group shall report; and
- (d) impose appropriate thresholds based on solvency capital requirements, technical provisions or both; and

- (e) when reviewing the risk concentrations and intra-group transactions, monitor the possible risk of contagion in the group, the risk of a conflict of interests and the level or volume of risks.

Supervision of system of governance (Article 246)

36. Where the appropriate regulator is the group supervisor and has received a request from a participating insurance or reinsurance undertaking to undertake the own risk and solvency assessment at the level of the group and at the level of any subsidiary within the group at the same time and to produce a single document covering all such assessment, before exercising its power under section 55L or 55M of the Act it shall—

- (a) consult the members of the college of supervisors (as provided for in Article 248(3) of the directive; and
- (b) take into account their views or reservations.

The group supervisor (Article 247(2))

37.—(1) Subject to regulation [38]—

- (i) the appropriate regulator shall be group supervisor where it is the supervisory authority where paragraph (2) applies; or
- (ii) where paragraph (2) applies to another supervisory authority, the appropriate regulator shall recognise that supervisor as the group supervisor.

(2) The task of group supervisor shall be exercised—

- (a) by the supervisory authority which is competent for all insurance and reinsurance undertakings in a group;
- (b) where a group is headed by an insurance or reinsurance undertaking, by the supervisory authority which has authorised that undertaking; or
- (c) where the group is not headed by an insurance or reinsurance undertaking, by the supervisory authority—
 - (i) which authorised the insurance or reinsurance undertaking, the parent of which is an insurance holding company;
 - (ii) which authorised the undertaking or undertakings in the same EEA State as the insurance holding company where more than one insurance or reinsurance undertaking with a head office in the EEA States have as their parent the same insurance holding company which has a head office in an EEA State;
 - (iii) which authorised the insurance or reinsurance undertaking with the largest balance sheet total where the group is headed by more than one insurance holding company with a head office in different EEA States and there is an insurance or reinsurance undertaking in each of those EEA States;
 - (iv) which authorised the insurance or reinsurance undertaking with the largest balance sheet total where more than one insurance or reinsurance undertaking with a head office in the EEA States have as their parent the same insurance holding company and none of these undertakings has been authorised in the EEA State in which the insurance holding company has its head office;
 - (v) which authorised the insurance or reinsurance undertaking with the largest balance sheet total where the group is a group without a parent undertaking, or in any circumstance not referred to in sub-paragraphs (i) – (iv),

Derogation from the rules determining the appropriate authority to be group supervisor (subject to O2)

38.—(1) Where the appropriate regulator is a supervisor concerned and considers that a derogation from the criteria set out in regulation 37 which determine which authority should be group supervisor should be considered it shall—

- (a) no more than annually request a discussion with the other supervisory authorities concerned; and
- (b) do everything within its power to reach a joint decision on the choice of group supervisor within three months from the date of request; and
- (c) ensure that the group has an opportunity to state its opinion.

(2) Where the appropriate regulator is a supervisory authority concerned and receives a request for a discussion from another supervisory authority concerned regarding a derogation from the criteria in regulation [37] which determines which authority should be group supervisor, it shall comply with sub-paragraphs (b and (c)) of paragraph (1) above.

Cooperation and exchange of information between supervisory authorities (Article 249* O2)

39.—(1) In this regulation ‘responsible authority’ means an authority responsible for the supervision of an individual insurance or reinsurance undertaking in a group.

(2) Where the appropriate regulator is the group supervisor it shall cooperate closely with the responsible authorities, in particular in cases where an insurance or reinsurance undertaking encounters financial difficulties.

(3) Where the appropriate regulator is one of the responsible authorities it shall cooperate closely with the other responsible authorities in the group and the group supervisor, in particular in cases where an insurance or reinsurance undertaking encounters financial difficulties.

(4) Where the appropriate regulator is the group supervisor or a responsible authority, it shall—

- (a) provide other authorities with such information so as to allow and facilitate the exercise of the supervisory tasks concerned under the directive;
- (b) communicate all relevant information to the other authorities without delay; and
- (c) call immediately for a meeting where—
 - (i) it becomes aware of a significant breach of the Solvency Capital Requirement or a breach of the Minimum Capital Requirement of an individual insurance or reinsurance undertaking;
 - (ii) it becomes aware of a significant breach of the Solvency Capital Requirement at group level calculated on the basis of consolidated data or the aggregated group Solvency Capital Requirement, in accordance with whichever calculation method is used pursuant to the rules made for the purpose of implementing Title III, Chapter II, Section 1, subsection 4; or
 - (iii) other exceptional circumstances are occurring or have occurred.

Consultation between supervisory authorities (Article 250)

40.—(1) Without prejudice to regulation [39] and the rules made for the purpose of implementing Article 248, the appropriate regulator shall, where a decision is of importance for the supervisory tasks of another supervisory authority, prior to taking any decision, consult the other supervisory authorities in the college of supervisors with regard to the following:

- (a) changes to the shareholder structure, organisational or management structure of insurance or reinsurance undertakings in a group, which require the approval or authorisation of supervisory authorities; and
- (b) major sanctions or exceptional measures taken by supervisory authorities, including the imposition of a capital add-on to the Solvency Capital Requirement under section 55L or 55M of the Act and the imposition of any limitation on the use of an internal model for

the calculation of the Solvency Capital Requirement under the rules made for the purpose of implementing Title 1, Chapter VI, Section 4, Subsection 3.

(2) Where sub-paragraph (1)(b) applies and the appropriate regulator is not the group supervisor, the group supervisor shall always be consulted.

(3) Where the appropriate authority is considering a decision on information received from another supervisory authority, it shall consult the other supervisory authorities concerned before taking that decision.

(4) Without prejudice to the rules made for the purpose of implementing Article 248 of the directive, the appropriate regulator may decide not to consult in cases of urgency or where such consultation may jeopardise the effectiveness of its decision.

(5) Where paragraph (4) applies, the appropriate regulator shall, without delay, inform the other supervisory authorities concerned.

Access to information (Article 251)

41. Where the appropriate regulator is the group supervisor and needs information from an undertaking pursuant to rules made for the purpose of implementing Article 254(2) of the directive, but that information has already been given to another supervisory authority, the appropriate regulator shall contact that authority wherever possible to avoid duplication of reporting to the various authorities involved in supervision.

Verification of equivalence (Article 260 * O2)

42.—(1) Where —

- (a) insurance or reinsurance undertakings have a parent undertaking which is—
 - (i) an insurance holding company with a head office outside the EEA; or
 - (ii) a third country insurance or reinsurance undertaking; and
- (b) the appropriate regulator would be the group supervisor if the criteria set out in regulation [37] were to be applied, and
- (c) the Commission has not concluded previously in respect of the equivalence of the third country concerned,

the appropriate regulator shall, subject to paragraphs (3) and (4), verify whether the undertakings are subject to supervision by a third-country supervisory authority, which is equivalent to that provided for by rules made for the purpose of implementing Title III on the supervision at the level of the group of insurance or reinsurance undertakings referred to in the rules made for the purpose of implementing Article 213(2)(a) and (b) of the directive.

(2) The verification shall be carried out at the request of the parent undertaking or of any of the insurance or reinsurance undertakings authorised in the EEA, or on its own initiative.

(3) Before taking a decision, the appropriate regulator shall consult the other supervisory authorities and EIOPA.

(4) Where the parent undertaking referred to in paragraph (1)(a)(i) and (ii) is itself a subsidiary of an insurance holding company having its head office outside the EEA or a third country insurance or reinsurance undertaking, paragraph (5) shall apply.

(5) Where paragraph (4) applies and the appropriate regulator would be the group supervisor if the criteria set out in regulation 37 were to be applied, it shall explain its decision on equivalence to the group.

Intragroup transactions [Article 265]

43.—(1) [to follow]

PART 4

[Amendments to secondary legislation]

[Amendments to secondary legislation to follow]

PART 5

44.—(1) [review clause to follow]

EXPLANATORY NOTE

(This note is not part of the Order)

[Explanatory note to follow]