

SOLVENCY UK PROVISIONS DELAYED BY ELECTION

As reported at our popular regulatory seminar recently, one of the less thought about consequences of the snap general election is the effect it has on legislation that has been laid before Parliament but has yet to come into force. This is of particular relevance at the moment given the swathe of Brexit-related revocations of EU-retained law, which will take effect on their given dates irrespective of whether a replacement or transitional provision has been enacted.

For the insurance industry, two statutory instruments (**SI's**) are of particular interest:

- The Insurance and Reinsurance Undertakings (Prudential Requirements) (Transitional Provisions and Consequential Amendments) Regulations 2024 (the **Transitional Provisions**); and
- The Insurance and Reinsurance Undertakings (Prudential Requirements) (Amendment and Miscellaneous Provisions) Regulations 2024 (the **Amendment Provisions**).

The effect of the dissolution of Parliament on these differs depending on the method by which each is to be enacted.

Transitional Provisions

The Transitional Provisions essentially serve one purpose. Firms wishing to use the matching adjustment needed prior approval under Regulation 42 of the Solvency 2 Regulations 2015 (S.I.2015/575). However, Regulation 42 is revoked with effect from 30 June 2024 by the Financial Services and Markets Act 2023 (**FSMA 2023**) and the Financial Services and Markets Act 2023 (Commencement No. 4 and Transitional and Saving Provisions) (Amendment) Regulations 2023 (S.I.2023/1382) (**Commencement Order 4**).

The effect of the Transitional Provisions was to ensure that any approval granted by the Prudential Regulation Authority before 30 June 2024 would continue in force.

However, the Transitional Provisions were made under the "made negative procedure", which is governed by the Statutory Instruments Act 1946 (the **1946 Act**). Under the 1946 Act, an SI made under the made negative procedure will come into force on the date on which it is expressed to come into force, but the SI is vulnerable to being annulled if either the Commons or the Lords so resolves within 40 days of the SI being laid before the relevant House, with the 40 day period being suspended for any day which is not a "praying day", which is to say a day on which Parliament is not sitting.

The Transitional Provisions were laid before each House on 3 May 2024, so originally would have passed through their 40 day period before 30 June. However, the dissolution of Parliament has interrupted that 40 day period and it is now expected that Parliament will resume sitting on 16 July 2024.

The result is that the matching adjustment permissions will survive on 30 June 2024 when Regulation 42 is revoked (which avoids any regulatory gap for firms with a matching adjustment permission), but between 16 and 31 July 2024 it is technically possible that either House may resolve to annul the SI and therefore the matching adjustment permission.

Amendment Provisions

The Amendment Provisions dealt with:

- the calculation of the risk margin (due to be revoked on 31 December 2024 by FSMA 2023 and the Financial Services and Markets Act 2023 (Commencement No. 6) Regulations 2024 (S.I.2024/620) (**Commencement Order 6**));

- certain saving provisions for Gibraltar firms (also needed from 31 December 2024 as a result of Commencement Order 6);
- consequential amendments to the Financial Services and Markets Act 2000; and
- amendments to the Companies Act 2006 and some related secondary legislation as a result of EU law due to be revoked on 30 June 2024 by FSMA 2023 and Commencement Order 4.

Unlike the Transitional Provisions, the Amendment Provisions were made under the "draft affirmative procedure". Under the 1946 Act, regulations made under the draft affirmative procedure cannot come into force until they are approved by both Houses. As this did not happen before Parliament was dissolved, there is now no prospect of these regulations becoming law until at least 16 July 2024.

This is of less urgency than the Transitional Provisions, as for the most part the retained EU law which they are designed to replace is not revoked until 31 December 2024. However, with the consequential changes to the Companies Act not being enacted, we will have a period of inconsistency and in the flush of a new Parliament and potentially a new government, it is important that the need for the Amendment Provisions is not forgotten.

Fortunately, the 1946 Act provides that affirmative draft SIs requiring approval do not need to be laid again before Parliament after a dissolution, so it is to be hoped that the new government, whichever party or parties it may comprise, completes the work programme that HM Treasury has commenced in cleaning up the statute book ahead of the revocation of EU-retained law.

For more information, please contact the author of this alert



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