
STATUTORY INSTRUMENTS

2001 No. 3639

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Transitional Provisions and Savings) (Business Transfers) Order 2001

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| <i>Made</i> | - - - - | <i>8th November 2001</i> |
| <i>Laid before Parliament</i> | | <i>9th November 2001</i> |
| <i>Coming into force</i> | - - | <i>1st December 2001</i> |

The Treasury, in exercise of the powers conferred on them by sections 426 to 428 of the Financial Services and Markets Act 2000⁽¹⁾, hereby make the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Transitional Provisions and Savings) (Business Transfers) Order 2001 and comes into force on 1st December 2001.

(2) In this Order—

“the Act” means the Financial Services and Markets Act 2000;

“commencement” means 1st December 2001;

“the Insurance Companies Act” means the Insurance Companies Act 1982⁽²⁾;

“Schedule 2C” means Schedule 2C to the Insurance Companies Act⁽³⁾.

Saving of Schedule 2C—general

2.—(1) This Order applies notwithstanding any repeal of the Insurance Companies Act.

(2) Any term used in any provision of Schedule 2C which continues to apply by virtue of this Order (including any provision as modified by this Order) which was defined by any provision of the Insurance Companies Act continues to have the meaning given by that Act.

(3) Each reference in Schedule 2C to a person being, or not being—

(a) a UK company;

(b) a non-EC company;

⁽¹⁾ 2000 c. 8.

⁽²⁾ 1982 c. 50.

⁽³⁾ Inserted by S.I. 1994/1696; amended by S.I. 1994/3132 and S.I. 1997/2781.

- (c) an EC company; or
- (d) a Swiss general insurance company,

is to be treated as a reference to that person having that status immediately before commencement.

(4) Where any provision of Schedule 2C continues to apply by virtue of this Order to a transfer to or from members of Lloyd's, each reference to a UK company (as modified by paragraph (3)) is also to be treated as including a reference to members of Lloyd's.

(5) So far as it relates to things done or to be done on or after commencement, each reference in Schedule 2C to the Treasury is to be treated as a reference to the Authority.

(6) In relation to any transfer to or from members of Lloyd's to which provisions of Schedule 2C continue to apply by virtue of this Order, anything done in connection with the transfer (whether before, on or after commencement) by the person authorised in accordance with section 85(2)(b) of the Insurance Companies Act is to be treated as being done by the members for whom he acted.

(7) In this article, each reference to members of Lloyd's includes a reference to a former underwriting member of Lloyd's (within the meaning of Lloyd's Act 1982(4)) who has ceased to be a member of Lloyd's, whether by resignation or otherwise, in accordance with Lloyd's Act 1982 and any byelaw made under that Act.

Transfers of long term business

3.—(1) In this article, a “relevant petition” means an application by petition which was made before commencement under paragraph 1(1) of Schedule 2C for an order sanctioning a transfer scheme, but which had not been determined before commencement.

(2) Sub-paragraph (2) of paragraph 1 of Schedule 2C continues to apply to any scheme which is the subject of a relevant petition and which involves a compromise or arrangement of the kind specified in that sub-paragraph.

(3) Except in the case of a scheme of the kind specified in paragraph (2), no order may be made under—

- (a) sections 425 to 427 of the Companies Act 1985(5); or
- (b) articles 418 to 420 of the Companies (Northern Ireland) Order 1986(6);

in respect of so much of any compromise or arrangement as involves any transfer scheme which is the subject of a relevant petition.

(4) Sub-paragraphs (1) to (5) of paragraph 2 of Schedule 2C continue to apply to a relevant petition.

(5) Sub-paragraphs (1) to (6) of paragraph 3 of Schedule 2C continue to apply to a relevant petition, subject to the following modifications—

- (a) sub-paragraph (1) applies as if for sub-paragraph (a) there were substituted—
 - “(a) it is satisfied that the transferee company is, or will be immediately after the making of the order—
 - (i) a person who has Part IV permission, within the meaning of the Financial Services and Markets Act 2000, to effect and carry out contracts of long-term insurance of the class or classes to be transferred under the scheme; or
 - (ii) authorised in accordance with Article 6 of the first long-term insurance Directive to carry on in an EEA State other than the United Kingdom long term business of the class or classes to be transferred under the scheme;”;

(4) 1982 c. 14.

(5) 1985 c. 6; amended by the Insolvency Act 1986 (c. 45) Schedule 6, paragraphs 11 and 12.

(6) S.I. 1986/1032 (N.I. 6).

- (b) sub-paragraph (4)(b) applies as if for sub-paragraph (i) there were substituted—
 - “(i) the transferee company has permission to effect and carry out contracts of long-term insurance involving commitments of that kind by virtue of qualifying for authorisation under Schedule 3 to the Financial Services and Markets Act 2000; and”; and
 - (c) sub-paragraph (5) applies as if for sub-paragraphs (a) and (b) and for the words following those sub-paragraphs there were substituted—
 - “(a) a person who has Part IV permission, within the meaning of the Financial Services and Markets Act 2000; or
 - (b) a person who has permission, by virtue of qualifying for authorisation under Schedule 3 to that Act, to effect and carry out contracts of long-term insurance of the class or classes to be transferred under the scheme.”.
- (6) Paragraph 4 of Schedule 2C continues to apply where the court makes an order sanctioning a transfer scheme pursuant to a relevant petition.

Transfers of long-term business—supplementary provisions

4. Any order made under Part I of Schedule 2C sanctioning a transfer scheme, including an order made under that Part by virtue of this Order, is to be treated as an order under section 111(1) of the Act for the purposes of section 112(1) of the Act.

Transfers of general business

5.—(1) In this article, a “relevant application” means an application which was made before commencement under paragraph 6(1) of Schedule 2C for approval of a transfer of rights and obligations, but which had not been determined before commencement.

(2) Sub-paragraph (2) of paragraph 6 of Schedule 2C continues to apply to any notice or other document authorised or required to be given or served under Part II of that Schedule in connection with a relevant application.

(3) Sub-paragraphs (1) to (4) of paragraph 7 of Schedule 2C continue to apply to a relevant application.

(4) Sub-paragraphs (1) to (8) of paragraph 8 of Schedule 2C continue to apply to a relevant application, subject to the following modifications—

- (a) sub-paragraph (1) applies as if for sub-paragraph (a) there were substituted—
 - “(a) it is satisfied that the transferee is, or will be immediately after the approval—
 - (i) a person who has Part IV permission, within the meaning of the Financial Services and Markets Act 2000, to effect and carry out contracts of general insurance of the class or classes to be transferred by the instrument; or
 - (ii) authorised in accordance with Article 6 of the first general insurance Directive to carry on in an EEA State other than the United Kingdom general business of the class or classes to be transferred by the instrument;”;
- (b) sub-paragraph (4)(b) applies as if for sub-paragraph (i) there were substituted—
 - “(i) the transferee has permission to effect and carry out contracts of general insurance covering risks of that kind by virtue of qualifying for authorisation under Schedule 3 to the Financial Services and Markets Act 2000; and”; and
- (c) sub-paragraph (5) applies as if for sub-paragraph (a) there were substituted—

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- “(a) the transferee is, or will be immediately after the approval—
- (i) a person who has Part IV permission, within the meaning of the Financial Services and Markets Act 2000; or
 - (ii) a person who has permission, by virtue of qualifying for authorisation under Schedule 3 to that Act,
- to effect and carry out contracts of general insurance of the class or classes to be transferred by the instrument; and”.

(5) Paragraph 9 of Schedule 2C continues to apply where the Authority approves a relevant application.

Transfers of general business—effect of approval

6. Paragraph 10 of Schedule 2C continues to apply to any instrument giving effect to a transfer approved under Part II of Schedule 2C, including a transfer approved under that Part by virtue of this Order.

Modification of section 104 of the Act

7. Any order made under Part I of Schedule 2C or any approval given under Part II of that Schedule, including any order made or approval given under that Schedule on or after commencement by virtue of this Order, is to be treated as an order under section 111(1) of the Act for the purposes of section 104 of the Act.

8th November 2001

John Heppell
Nick Ainger
Two of the Lords Commissioners of Her
Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes savings and transitional provision for applications under Schedule 2C to the Insurance Companies Act 1982 (“Schedule 2C”) for approval of a transfer of the whole or part of the long term business carried on by an insurance company or approval of the transfer of rights and obligations under contracts of general insurance (including transfers of business to or from members of Lloyd's). In relation to any application that has been made but not determined before 1st December 2001, the relevant provisions of Schedule 2C are saved, subject to the general modifications in article 2 and the specific modifications in articles 3 and 5.

Article 4 provides that an order sanctioning a transfer under Part I of Schedule 2C (transfers of long term business) is to be treated as an order under section 111(1) of the Financial Services and Markets Act 2000 (“the Act”) for the purposes of section 112 of the Act. This enables the court, either when it makes that order or by way of a subsequent order, to make provision in relation to the transfer and allocation of property and other supplementary matters that are necessary to secure that the transfer scheme is fully and effectively carried out.

Any order sanctioning, or approval given in relation to, a transfer under Schedule 2C is to be treated as an order under section 111(1) of the Act for the purposes of section 104 of the Act. This means that an insurance business transfer that is made in accordance with that order or approval will have effect without breaching the prohibition contained in section 104 of the Act.