

Status: Point in time view as at 30/12/1994.

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SCHEDULES

[^{F1}SCHEDULE 2C]

TRANSFERS OF INSURANCE BUSINESS

Textual Amendments

F1 Sch. 2C inserted (1.7.1994) by S.I. 1994/1696, reg. 28(2), Sch. 3

Modifications etc. (not altering text)

C1 Sch. 2C: Power to contract out functions conferred (18.11.1998) by S.I. 1998/2842, arts. 2, 3, Sch. Pt. I para. 58

PART I

TRANSFERS OF LONG TERM BUSINESS

Sanction of court required

- 1 (1) Where it is proposed to carry out a scheme under which the whole or part of the long term business carried on by an insurance company to which this Part of this Act applies (“the transferor company”) is to be transferred to another body whether incorporated or not (“the transferee company”) and—
- (a) where the transferor company is a UK company, the business proposed to be transferred is business carried on in one or more member States;
 - (b) where that company is not a UK company, the business proposed to be transferred is business carried on in the United Kingdom,
- the transferor company or the transferee company may apply to the court, by petition, for an order sanctioning the scheme.
- (2) If any such scheme involves a compromise or arrangement falling within section 427A(1) of the Companies Act ^{F2} or Article 420A(1) of the Companies (Northern Ireland) Order 1986 ^{F3} (application of provisions about compromises and arrangements to mergers and divisions of public companies), the following provisions, namely—
- (a) sections 425 to 427 of that Act, or
 - (b) Articles 418 to 420 of that Order,
- shall have effect, as regards that compromise or arrangement, as provided by section 427A(1) or Article 420A(1) (as the case may be), but without prejudice to the operation of the provisions of this Part of this Schedule in relation to the scheme.

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(3) No such transfer as is mentioned in sub-paragraph (1) above shall be carried out unless the scheme relating to the transfer has been sanctioned by the court in accordance with this Part of this Schedule; and, except in the case of any such scheme as is mentioned in sub-paragraph (2) above, no order shall be made under any of the provisions specified in paragraph (a) or (b) of that sub-paragraph in respect of so much of any compromise or arrangement as involves any such transfer.

(4) In this Part of this Schedule—

“the court” means the High Court of Justice in England except that it means—

- (a) the Court of Session if the transferor company and the transferee company are both registered or both have their head offices in Scotland;
- (b) the High Court of Justice in Northern Ireland if the transferor company and the transferee company are both registered or both have their head offices in Northern Ireland;
- (c) either the High Court of Justice in England or the Court of Session if either the transferor company or the transferee company is registered or has its head office in Scotland;
- (d) either the High Court of Justice in England or the High Court of Justice in Northern Ireland if either the transferor company or the transferee company is registered or has its head office in Northern Ireland; and
- (e) either the Court of Session or the High Court of Justice in Northern Ireland if the transferor company or the transferee company is registered or has its head office in Scotland and the other such company is registered or has its head office in Northern Ireland;

“direct insurance” means insurance other than reinsurance.

Textual Amendments

F2 Section 427A was inserted by S.I. 1987/1991, **reg 2(a)** and Schedule, Part I and amended by the Companies Act 1989 (c.40), **section 114(2)**.

F3 S.I. 1986/1032 (N.I.6); Article 420A was inserted by S.R. 1987/422, **reg 3** and Schedule, Part I.

Modifications etc. (not altering text)

C2 Sch. 2C para. 1(2) continued (1.12.2001) by S.I. 2001/3639, **art. 3(2)** (with art. 2)

Procedure with respect to applications

- 2 (1) The court shall not determine an application under paragraph 1 above unless the petition is accompanied by a report on the terms of the scheme by an independent actuary and the court is satisfied that the requirements of sub-paragraph (2) below have been complied with.
- (2) The said requirements are—
- (a) that a notice stating that the application has been made and giving the address of the offices at which, and the period for which, copies of the documents mentioned in paragraph (d) below will be available as required by that paragraph has been [^{F4}published in the London, Edinburgh and Belfast Gazettes and, except where the court has otherwise directed—

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- (i) in two national newspapers in the United Kingdom;]
 - (ii) where the transferor company is a UK or non-EC company and, as regards any policy included in the proposed transfer which evidences a contract of direct insurance, a member State other than the United Kingdom is the State of the commitment, in two national newspapers in that member State; and
 - (iii) where, as regards any EFTA policy included in the proposed transfer, an EEA State other than the United Kingdom is the State of the commitment, in two national newspapers in that EEA State;
 - (b) except where the court has otherwise directed, that a statement—
 - (i) setting out the terms of the scheme; and
 - (ii) containing a summary of the report mentioned in sub-paragraph (1) above sufficient to indicate the opinion of the actuary on the likely effects of the scheme on the long term policy holders of the companies concerned, has been sent to each of those policy holders and to every member of those companies;
 - (c) that a copy of the petition, of the report mentioned in sub-paragraph (1) above and of any statement sent out under paragraph (b) above has been served on the Secretary of State and that a period of not less than twenty-one days has elapsed since the date of service;
 - (d) that copies of the petition and of the report mentioned in sub-paragraph (1) above have been open to inspection—
 - (i) at offices in the United Kingdom of the companies concerned;
 - (ii) where the transferor company is a UK or non-EC company and, as regards any policy included in the proposed transfer which evidences a contract of direct insurance, a member State other than the United Kingdom is the State of the commitment, at such place in that member State as the court has directed; and
 - (iii) where, as regards any EFTA policy included in the proposed transfer, an EEA State other than the United Kingdom is the State of the commitment, at such place in that EEA State as the court has directed,
 - for a period of not less than twenty-one days beginning with the date of the first publication of a notice in accordance with paragraph (a) above;
 - (e) in the case of any such scheme as is mentioned in paragraph 1(2) above, that copies of the documents listed in paragraph 6(1) of Schedule 15B to the Companies Act or in paragraph 6(1) of Schedule 15B to the Companies (Northern Ireland) Order 1986 had been served on the Secretary of State by the beginning of the period referred to in paragraph 3(e) of that Schedule.
- (3) Each of the companies concerned shall, on payment of such fee as may be prescribed by rules of court, furnish a copy of the petition and of the report mentioned in sub-paragraph (1) above to any person who asks for one at any time before an order sanctioning the scheme is made on the petition.
- (4) On any petition under paragraph 1 above, the following shall be entitled to be heard, namely—
- (a) the Secretary of State, and
 - (b) any person (including any employee of the transferor company or the transferee company) who alleges that he would be adversely affected by the carrying out of the scheme.

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- (5) A policy which evidences a contract of direct insurance is an “EFTA policy” for the purposes of this Part of this Schedule if—
- (a) it covers a commitment situated in an EFTA State and the transferee company is a UK or EC company or a non-EC company whose head office is in an EFTA State; or
 - (b) it covers a commitment situated in a member State and the transferor company or the transferee company is a non-EC company whose head office is in an EFTA State.
- (6) Where the transferee company is an incorporated friendly society or registered friendly society authorised under Part IV of the Friendly Societies Act 1992 ^{F5}, sub-paragraphs (2)(c) and (e) and (4)(a) above shall have effect as if the reference to the Secretary of State included a reference to the Friendly Societies Commission.

Textual Amendments

- F4** Sch. 2C para. 2(2)(a)(i) and words immediately preceding it substituted (30.12.1994) by [S.I. 1994/3132, reg. 7\(1\)](#)
- F5** 1992 c.40.

Determination of applications

- 3 (1) Where the transferor company is a UK or non-EC company and any policy included in the proposed transfer evidences a contract of direct insurance, the court shall not make an order sanctioning the scheme unless—
- (a) it is satisfied that the transferee company is, or will be immediately after the making of the order—
 - (i) authorised under section 3 or 4 above to carry on, 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;
 - (b) the relevant authority certifies that the transferee company possesses the necessary margin of solvency after taking the proposed transfer into account; and
 - (c) where the transferor company is a UK company and the establishment from which the policies are to be transferred is situated in a member State other than the United Kingdom, the Secretary of State certifies—
 - (i) that the supervisory authority in that member State has been consulted about the proposed scheme; and
 - (ii) either that the authority has responded or that the period of three months beginning with the consultation has elapsed.
- (2) Where sub-paragraph (1) above applies and, as regards any policy (other than an EFTA policy) which is included in the proposed transfer and evidences a contract of direct insurance, a member State other than the United Kingdom is the State of the commitment, the court shall not make an order sanctioning the scheme unless the Secretary of State certifies—

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- (a) that the supervisory authority in that member State has been notified of the proposed scheme; and
 - (b) either that the authority has consented to the scheme or that the authority has not refused its consent to the scheme within the period of three months beginning with the notification.
- (3) Where sub-paragraph (1) above applies, the establishment of the transferee company to which the policies are to be transferred is situated in the United Kingdom and, as regards any ETFA policy included in the proposed transfer, an EEA State other than the United Kingdom is the State of the commitment, the court shall not make an order sanctioning the scheme unless the Secretary of State certifies that—
 - (a) the transferee company fulfils the conditions in Articles 11, 12, 14 and 16 of the second long term insurance Directive in that EEA State; and
 - (b) the supervisory authority in that EEA State agrees to the transfer.
- (4) Where sub-paragraph (1) above applies, the establishment of the transferee company to which the policies are to be transferred is situated in an EEA State other than the United Kingdom and, as regards any ETFA policy included in the proposed transfer, an EEA State is the State of the commitment, the court shall not make an order sanctioning the scheme unless—
 - (a) where the EEA State in which the establishment is situated is also the State of the commitment, the Secretary of State certifies that the supervisory authority in that EEA State agrees to the transfer;
 - [^{F6}(b) where the United Kingdom is the State of the commitment the Secretary of State certifies that—
 - (i) the transferee company is not precluded by Schedule 2F to this Act from covering the commitment; and
 - (ii) the supervisory authority in the EEA State in which the establishment is situated agrees to the transfer;]
 - (c) where an EEA State other than the United Kingdom or the EEA State in which the establishment is situated is the State of the commitment, the Secretary of State certifies that—
 - (i) the transferee company fulfils the conditions in Articles 11, 12, 14 and 16 of the second long term insurance Directive in the EEA State which is the State of the commitment;
 - (ii) the law of that State provides for the possibility of such a transfer; and
 - (iii) the supervisory authority in that State agrees to the transfer.
- (5) Where the transferor company is not a UK or non-EC company or any policy included in the proposed transfer evidences a contract of reinsurance, the court shall not make an order sanctioning the scheme unless it is satisfied that the transferee company is, or will be immediately after the making of the order—
 - (a) authorised under section 3 or 4 above to carry on, or
 - (b) an EC company which is not precluded by Part I of Schedule 2F to this Act from carrying on,long term business of the class or classes to be transferred under the scheme.
- (6) In this paragraph “the relevant authority” means—
 - (a) if the transferee company is a UK company, the Secretary of State;

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- (b) if the transferee company is an EC company, the supervisory authority in its home State;
 - (c) if the transferee company is a non-EC company whose head office is in an EFTA State, the supervisory authority in that EFTA State;
 - (d) if the transferee company does not fall within paragraphs (a) to (c) above, the Secretary of State or other authority which, in accordance with Article 29 or 30 of the first long term insurance Directive, is responsible for supervising the company's margin of solvency.
- (7) Where the transferee company is an incorporated friendly society or registered friendly society authorised under Part IV of the Friendly Societies Act 1992—
- (a) sub-paragraphs (1)(a) and (5)(a) above shall have effect as if the reference to section 3 or 4 above were a reference to that Part of that Act; and
 - (b) sub-paragraph (1)(b) above shall have effect as if the relevant authority for the purposes of this paragraph were the Friendly Societies Commission.

Textual Amendments

F6 Sch. 2C para. 3(4)(b) substituted (30.12.1994) by S.I. 1994/3132, reg. 7(2)

Rights of policy holders

- 4 (1) This paragraph applies where the court makes an order under this Part of this Schedule sanctioning a scheme and either—
- (a) the transferor company is a UK or non-EC company and, as regards any policy included in the transfer which evidences a contract of direct insurance, a member State other than the United Kingdom is the State of the commitment; or
 - (b) as regards any EFTA policy included in the transfer, an EEA State other than the United Kingdom is the State of the commitment.
- (2) The court shall direct that—
- (a) notice of the making of any order, or the execution of any instrument, giving effect to the transfer shall be published in the member State or, as the case may be, the EEA State which is the State of the commitment; and
 - (b) the notice shall specify the period during which the policy holder may exercise any right to cancel the policy;
- and the instrument or order shall not bind the policy holder if either such a notice is not so published or the policy holder exercises any such right during the period so specified.
- (3) The law of the member State or, as the case may be, the EEA State which is the State of the commitment shall determine—
- (a) whether the policy holder has a right to cancel the policy; and
 - (b) the conditions applicable to any such right.

Modifications etc. (not altering text)

C3 Sch. 2C para. 4 continued (1.12.2001) by S.I. 2001/3639, art. 3(6) (with art. 2)

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Supplementary provisions

- 5 (1) Where the court makes an order under this Part of this Schedule sanctioning a scheme the court may, either by that order or by any subsequent order, make provision for all or any of the following matters—
- (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of the transferor company;
 - (b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the scheme are to be allotted or appropriated by that company to or for any person;
 - (c) the continuation by or against the transferee company of any legal proceedings pending by or against the transferor company;
 - (d) the dissolution, without winding up, of the transferor company;
 - (e) such incidental, consequential and supplementary matters as are necessary to secure that the scheme shall be fully and effectively carried out.
- (2) Where any such order provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and in the case of any property, if the order so directs, freed from any mortgage or charge which is by virtue of the scheme to cease to have effect.
- (3) Where the transferor company is a UK or non-EC company, it is immaterial for the purposes of sub-paragraphs (1)(a), (c) and (e) and (2) above that the law applicable to any of the contracts of direct insurance included in the transfer is the law of an EEA State other than the United Kingdom.
- (4) For the purposes of any provision requiring the delivery of an instrument of transfer as a condition for the registration of a transfer of any property, including in particular—
- (a) section 183(1) of the Companies Act and section 56(4) of the Finance Act 1946 ^{F7}; and
 - (b) Article 193(1) and (2) of the Companies (Northern Ireland) Order 1986 and section 27(4) of the Finance (No 2) Act (Northern Ireland) 1946 ^{F8},
- an order which by virtue of this paragraph operates to transfer any property shall be treated as an instrument of transfer.
- (5) Where a scheme is sanctioned by an order of the court under this Part of this Schedule, the transferee company shall, within ten days from the date on which the order is made or such longer period as the Secretary of State may allow, deposit two office copies of the order with the Secretary of State.
- (6) In this paragraph “property” includes property, rights and powers of every description, “liabilities” includes duties and “shares” and “debentures” have the same meaning as in the Companies Act or the Companies (Northern Ireland) Order 1986.

Textual Amendments

F7 1946 c.64.

F8 1946 c.17 (N.I.).

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