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SCHEDULES

SCHEDULE 4

Section 27

REGULATION OF CLAIMS MANAGEMENT SERVICES: TRANSFER SCHEMES

PART 1

APPLICATION AND INTERPRETATION

- 1 This Schedule applies if the Treasury make an order under section 22(1B) of the Financial Services and Markets Act 2000 which has the effect that an activity—
- (a) becomes a regulated activity for the purposes of that Act, and
 - (b) ceases to be a regulated service under Part 2 of the Compensation Act 2006 (see section 4(2)(e) of that Act).
- 2 In this Schedule—
- “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);
 - “the FCA” means the Financial Conduct Authority;
 - “the FOS” means the body corporate which administers the ombudsman scheme provided for in Part 16 of the Financial Services and Markets Act 2000 (see section 225 of that Act);
 - “the OLC” means the Office for Legal Complaints established by section 114 of the Legal Services Act 2007;
 - “the Regulator” means the person designated under section 5(1) of the Compensation Act 2006 or, if no person is so designated, the Secretary of State.

PART 2

TRANSFER OF PROPERTY AND STAFF FROM THE REGULATOR TO THE FCA

Power of Secretary of State to make transfer schemes

- 3 The Secretary of State may, with the consent of the FCA, make one or more schemes for the transfer of property, rights and liabilities of the Regulator to the FCA.

Transfer of property, rights and liabilities

- 4 The following provisions of this Part of this Schedule apply in relation to schemes under paragraph 3 (“transfer schemes”).
- 5 The property, rights and liabilities which are the subject of a transfer scheme are transferred in accordance with the provisions of the scheme on such day as the scheme may specify.

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- 6 The property, rights and liabilities that may be the subject of a transfer scheme include—
- (a) any that would not otherwise be capable of being transferred or assigned,
 - (b) rights and liabilities under a contract of employment, and
 - (c) amounts in respect of fees paid under the Compensation (Claims Management Services) Regulations 2006 (S.I. 2006/3322).
- 7 For the purpose of paragraph 6(b)—
- (a) an individual who holds employment in the civil service of the State is to be treated as employed by virtue of a contract of employment, and
 - (b) the terms on which the individual holds that employment are to be regarded as constituting the terms of that contract.

Contents of a transfer scheme

- 8 (1) A transfer scheme may—
- (a) provide for anything done before the transfer by or in relation to the Regulator in connection with any property, rights or liabilities transferred by the scheme to be treated as having been done by or in relation to the FCA;
 - (b) contain provision for the payment by the FCA of compensation to the Regulator for costs incurred (before or after the transfer) in connection with the transfer or the exercise of functions in relation to the regulation of claims management services;
 - (c) contain provision for the payment of compensation by the FCA to any person whose interests are adversely affected by the transfer scheme;
 - (d) make provision that is the same as or similar to provision made by the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), if those Regulations do not apply to the transfer.
- (2) An obligation of the FCA to make a compensation payment or to meet a liability transferred under provision in a transfer scheme is to be treated for the purposes of paragraph 23 of Schedule 1ZA to the Financial Services and Markets Act 2000 (fees) as a qualifying function conferred on the FCA under that Act.

Supplementary

- 9 A transfer scheme may—
- (a) contain supplementary, incidental and consequential provision;
 - (b) make transitory or transitional provision or savings;
 - (c) make different provision for different purposes;
 - (d) make provision subject to exceptions.

Modification of a transfer scheme

- 10 Subject to paragraph 11, the Secretary of State may, with the consent of the FCA, modify a transfer scheme.
- 11 A modification relating to a transfer that has taken effect may be made only with the agreement of the person (or persons) affected by the modification.
- 12 A modification takes effect from such date as the Secretary of State may specify, and that date may be the date when the original scheme came into effect.

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PART 3

TRANSFER OF PROPERTY AND STAFF FROM THE OLC TO THE FOS

Power of OLC to make transfer schemes

- 13 The OLC may make one or more schemes for the transfer of property, rights and liabilities of the OLC to the FOS.
- 14 A scheme made under paragraph 13 is not to be capable of coming into force unless it is approved by the Treasury and the Lord Chancellor.
- 15 The OLC may not submit a scheme to the Treasury or the Lord Chancellor for approval under paragraph 14 without the consent of the FOS and the FCA.

Power of Lord Chancellor to make transfer schemes

- 16 Paragraph 17 applies if the OLC fails to make a scheme under paragraph 13 in circumstances where the Lord Chancellor considers that it is necessary for such a scheme to be made.
- 17 The Lord Chancellor may, with the approval of the Treasury, the OLC, the FOS and the FCA, make a scheme for the transfer of property, rights and liabilities of the OLC to the FOS.

Provision of information and assistance by OLC

- 18 The OLC must provide the Treasury and the Lord Chancellor with all such information and other assistance as either of them may reasonably require for the purposes of, or otherwise in connection with, the exercise of their powers under this Part of this Schedule.
- 19 Paragraph 18 is subject to any express restriction on disclosure imposed by the data protection legislation (ignoring any restriction which allows disclosure if authorised by an enactment).

Transfer of property, rights and liabilities

- 20 The following provisions of this Part of this Schedule apply in relation to schemes under paragraph 13 or 17 (“transfer schemes”).
- 21 The property, rights and liabilities which are the subject of a transfer scheme are transferred in accordance with the provisions of the scheme on such day as the scheme may specify.
- 22 The property, rights and liabilities that may be the subject of a transfer scheme include—
- (a) any that would not otherwise be capable of being transferred or assigned, and
 - (b) rights and liabilities under a contract of employment.

Contents of a transfer scheme

- 23 (1) A transfer scheme may—

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- (a) provide for anything done before the transfer by or in relation to the OLC in connection with any property, rights or liabilities transferred by the scheme to be treated as having been done by or in relation to the FOS;
 - (b) contain provision for the payment by the FOS of compensation to the OLC or the Regulator for costs incurred (before or after the transfer) in connection with the transfer or the exercise of functions in relation to claims management services;
 - (c) contain provision for the payment of compensation by the FOS to any person whose interests are adversely affected by the transfer scheme;
 - (d) make provision that is the same as or similar to provision made by the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), if those Regulations do not apply to the transfer.
- (2) An obligation of the FOS to make a compensation payment or to meet a liability transferred under provision in a transfer scheme is to be treated for the purposes of section 234 of the Financial Services and Markets Act 2000 (industry funding) as a cost of its operation in relation to the compulsory jurisdiction.

Supplementary

- 24 A transfer scheme may—
- (a) contain supplementary, incidental and consequential provision;
 - (b) make transitory or transitional provision or savings;
 - (c) make different provision for different purposes;
 - (d) make provision subject to exceptions.

Modification of a transfer scheme

- 25 Subject to paragraphs 26 to 28, the OLC may modify a transfer scheme.
- 26 A modification relating to a transfer that has taken effect may be made only with the agreement of the person (or persons) affected by the modification.
- 27 A modification is not to be capable of coming into effect unless it is approved by the Treasury and the Lord Chancellor.
- 28 The OLC may not submit a scheme to the Treasury or the Lord Chancellor for approval under paragraph 27 without the consent of the FOS and the FCA.
- 29 A modification takes effect from such date as the OLC may specify, and that date may be the date when the original scheme came into effect.