

SCHEDULE 1

Regulation 2(1)

Amendments to the Act

Amendments to the Act

1. The Act is amended as set out in this Schedule.

Amendments to Part 7 of, and Schedule 12 to, the Act

- 2.—(1) In section 105 (insurance business transfer schemes)—

- (a) in subsection (2)(b) for the words from “qualifying for” to “contracts of insurance” substitute “falling within paragraph 5(d) of Schedule 3 and qualifying for authorisation under that Schedule”;

- (b) in subsection (3) in Case 2 after paragraph (a) insert—

“(aa) the authorised person concerned is not a reinsurance undertaking (within the meaning of Article 2.1(c) of the reinsurance directive);”;

- (c) in subsection (3) in Case 3 in paragraph (b) omit “(other than reinsurance)”;

- (d) in subsection (3) in Case 4—

- (i) for the words from “the business to be transferred” to the end of paragraph (a) (including the word “or” at the end of that paragraph) substitute—

“—

- (a) the business to be transferred under the scheme is the whole of the business of the authorised person concerned;”;

- (ii) for “, in either case, ” substitute “(c)”;

- (e) in subsection (3) after Case 4 insert—

“CASE 5

Where—

- (a) the business of the authorised person concerned consists solely of the effecting or carrying out of contracts of reinsurance;

- (b) the business to be transferred is the whole or part of that business;

- (c) the scheme does not fall within Case 4;

- (d) all of the policyholders who will be affected by the transfer have consented to it; and

- (e) a certificate has been obtained under paragraph 2 of Schedule 12 in relation to the proposed transfer.”;

- (f) in subsection (4) for “3 or 4” substitute “3, 4 or 5”.

- (2) In section 114 (rights of certain policyholders) in subsection (1)(c) after “contract of insurance” insert “(other than a contract of reinsurance)”.

- (3) After section 114 insert—

“114A Notice of transfer of reinsurance contracts

- (1) This section applies in relation to an insurance business transfer scheme if—

- (a) the authorised person concerned is an authorised person other than an EEA firm qualifying for authorisation under Schedule 3;

Status: This is the original version (as it was originally made).

- (b) the court has made an order under section 111 in relation to the scheme; and
 - (c) an EEA State other than the United Kingdom is, as regards any policy included in the transfer which evidences a contract of reinsurance, the State in which the establishment of the policyholder to which the policy relates is situated at the date when the contract was entered into (“the EEA State concerned”).
- (2) The court may direct that notice of the making of the order, or the execution of any instrument, giving effect to the transfer must be published by the transferee in the EEA State concerned.”.
- (4) In section 116 (effect of insurance business transfers authorised in other EEA States)—
- (a) in subsection (1) after “paragraph 5(d)” insert “or (da)”;
 - (b) for subsection (2) substitute—
 - “(2) This section also applies if, as a result of an authorised transfer, any of the following transfers to another body all its rights and obligations under any UK policies—
 - (a) an undertaking authorised in an EEA State other than the United Kingdom under Article 51 of the life assurance consolidation directive;
 - (b) an undertaking authorised in an EEA State other than the United Kingdom under Article 23 of the first non-life insurance directive;
 - (c) an undertaking, whose head office is not within the EEA, 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 49 of the reinsurance directive).”;
 - (c) in subsection (5)—
 - (i) at the end of paragraph (a)(i) omit “or”;
 - (ii) at the end of paragraph (a)(ii) for “and” substitute “or”;
 - (iii) after paragraph (a)(ii) insert “(iii) Article 18 of the reinsurance directive; and”;
 - (iv) at the end of paragraph (b)(i) omit “or”;
 - (v) at the end of paragraph (b)(ii) insert “or (iii) the provisions in the law of that EEA State which provide for the authorisation of transfers of all or part of a portfolio of contracts of an undertaking authorised to carry out reinsurance activities in its territory (as mentioned in Article 49 of the reinsurance directive).”;
 - (d) for subsection (6) substitute—
 - “(6) “UK policy” means—
 - (a) in the case of an authorised transfer within the meaning of paragraph (a)(i) or (ii) or (b)(i) or (ii) of subsection (5), a policy evidencing a contract of insurance (other than a contract of reinsurance) to which the applicable law is the law of a part of the United Kingdom;
 - (b) in the case of an authorised transfer within the meaning of paragraph (a)(iii) or (b)(iii) of that subsection, a policy evidencing a contract of reinsurance to which the applicable law is the law of a part of the United Kingdom.”.
- (5) In Schedule 12 (transfer schemes: certificates)—
- (a) at the end of paragraph 1(1)(d) insert “; (e) if sub-paragraph (5) applies, the certificates under paragraph 5A.”;
 - (b) in paragraph 1(3)(a)(1) after “Article 4” insert “or Article 51”;

(1) Paragraph 1(3)(a) was amended by [S.I. 2004/3379](#).

- (c) in paragraph 1(4)(a) after “Article 6” insert “or Article 23”;
 - (d) after paragraph 1(4) insert—
 - “(5) This sub-paragraph applies if—
 - (a) the authorised person concerned has received authorisation under Article 23 of the first non-life insurance directive or Article 51 of the life assurance consolidation directive from the Authority; and
 - (b) the proposed transfer is to a branch or agency, in an EEA State other than the United Kingdom, authorised under the same Article.”;
 - (e) in paragraph 2—
 - (i) in sub-paragraph (6)(a) after “paragraph 5(d)” insert “or (da)”;
 - (ii) after sub-paragraph (6)(a) insert—
 - “(aa) if the transferee is a non-EEA branch, the competent authorities of the EEA State in which the transferee is situated or, where appropriate, the competent 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 26 of the first non-life insurance directive or Article 56 of the life assurance consolidation directive.”;
 - (iii) in sub-paragraph (6)(c) for “paragraph (a)” substitute “paragraph (a), (aa)”;
 - (iv) after sub-paragraph (7) insert—
 - “(7A) “Competent authorities” has the same meaning as in the insurance directives.”;
 - (v) after sub-paragraph (8) insert—
 - “(9) “Non-EEA branch” means a branch or agency which has received authorisation under Article 23 of the first non-life insurance directive or Article 51 of the life assurance consolidation directive.”;
 - (f) after paragraph 5 insert—

“Certificates as to legality and as to consent

5A.—(1) The certificates under this paragraph are to be given—
 - (a) in the case of the certificate under sub-paragraph (2), by the Authority;
 - (b) in the case of the certificate under sub-paragraph (3), by the relevant authority.(2) A certificate given under this sub-paragraph is one certifying that the relevant authority has been notified of the proposed scheme and that—
 - (a) the relevant authority has consented to the proposed scheme; or
 - (b) the period of three months beginning with the notification has elapsed and that relevant authority has not refused its consent.(3) A certificate given under this sub-paragraph is one certifying that the law of the EEA State in which the transferee is set up permits such a transfer.
 - (4) “Relevant authority” means the competent authorities (within the meaning of the insurance directives) of the EEA State in which the transferee is set up.”;
- (g) in paragraph 10(2) after “paragraph 5(d)” insert “or (da)”.

Status: This is the original version (as it was originally made).

Amendments to section 198 of the Act

3. In section 198 (power to apply to court for injunction in respect of certain overseas insurance companies)—

- (a) at the end of subsection (1)(a) omit “or”;
- (b) at the end of subsection (1)(b)(2) insert—
 - “; or
 - (c) Article 42.4 of the reinsurance directive”.

Amendments to section 199 of the Act

4. In section 199 (additional procedure for EEA firms in certain cases)—

- (a) for subsection (2)(b) substitute—
 - “(b) as respects its contravention, the single market directive in question provides that a procedure of the kind set out in the following provisions of this section (so far as they are relevant in the firm’s case) is to apply.”;
- (b) after subsection (3) insert—
 - “(3A) If the firm falls within paragraph 5(da) of Schedule 3, the Authority must at the same time as it gives notice to the firm under subsection (3) refer its findings to the firm’s home state regulator.
 - (3B) Subsections (4) to (8) apply to an incoming EEA firm other than a firm falling within paragraph 5(da) of Schedule 3.”;
- (c) in subsection (5) after “its power of intervention” insert “before informing the firm’s home state regulator and ”;
- (d) after subsection (8) insert—
 - “(9) In the case of a firm falling within paragraph 5(da) of Schedule 3, the Authority may not exercise its power of intervention before informing the firm’s home state regulator and unless satisfied—
 - (a) that the firm’s home state regulator has failed or refused to take all appropriate measures for the purpose of ensuring that the firm remedies the situation which gave rise to the notice under subsection (3); or
 - (b) that the measures taken by the home state regulator have proved inadequate for that purpose.”.

Amendment to section 425 to the Act

5. In section 425(1)(a)(3) (expressions relating to authorisation elsewhere in the single market) after ““insurance directives”,” insert ““reinsurance directive”,”.

Amendments to Schedule 3 to the Act

6. In Schedule 3 (EEA Passport Rights)—

- (a) after paragraph 1(c)(4) insert “(ca) the reinsurance directive;”;
- (b) after paragraph 3 insert—

“The reinsurance directive

(2) Section 198(1)(b) was amended by [S.I. 2004/3379](#).

(3) Section 425(1)(a) was amended by [S.I. 2003/2066](#); [2004/3379](#) and [2006/2975](#).

(4) Paragraph 1 was amended by [S.I. 2000/2952](#); [2003/1473](#), [2003/2066](#) and [2007/126](#).

3A. “The reinsurance directive” means Directive [2005/68/EC](#) of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives [73/239/EEC](#), [92/49/EEC](#) as well as Directives [98/78/EC](#) and [2002/83/EC](#).”;

(c) after paragraph 5(d) insert—

“(da) an undertaking pursuing the activity of reinsurance (within the meaning of Article 2.1(a) of the reinsurance directive) which has received authorisation under (or is deemed to be authorised in accordance with) Article 3 of the reinsurance directive from its home state regulator.”;

(d) after paragraph 12(4)(5) insert—

“(5) An EEA firm which falls within paragraph 5(da) which establishes a branch in the United Kingdom, or provides services in the United Kingdom, in exercise of an EEA right qualifies for authorisation.

(6) Sub-paragraphs (1) and (2) do not apply to an EEA firm falling within paragraph 5(da).”;

(e) in paragraph 15—

(i) in sub-paragraph (1) for “paragraph 12” substitute “paragraph 12(1), (2) or (3)”;

(ii) after sub-paragraph (4) insert—

“(5) A firm which qualifies for authorisation as a result of paragraph 12(5) has, in respect of each permitted activity which is a regulated activity, permission to carry it on through its United Kingdom branch or by providing services in the United Kingdom.

(6) The permission is to be treated as being on terms equivalent to those appearing in the authorisation granted to the firm under Article 3 of the reinsurance directive by its home state regulator (“its home authorisation”).

(7) For the purposes of sub-paragraph (5), “permitted activity” means an activity which the firm is permitted to carry on under its home authorisation.”;

(f) in paragraph 19(1)(6) for “sub-paragraph (5A)” substitute “sub-paragraphs (5ZA) and (5A)”;

(g) after paragraph 19(5) insert—

“(5ZA) This paragraph does not apply to a UK firm having an EEA right which is subject to the conditions of the reinsurance directive.”;

(h) in paragraph 20(1)(7) at the beginning insert “Subject to sub-paragraph (4D), ”;

(i) after paragraph 20(4C) insert—

“(4D) This paragraph does not apply to a UK firm having an EEA right which is subject to the conditions of the reinsurance directive.”.

(5) Paragraph 12 was amended by [S.I. 2007/1473](#).

(6) Paragraph 19 was amended by [S.I. 2003/1473](#), [2003/2066](#) and [2007/126](#).

(7) Paragraph 20 was amended by [S.I. 2001/1376](#); [2003/1473](#), [2003/2066](#) and [2007/126](#).