

SCHEDULE 4

Regulation 25

CONFIRMATION BY COMMISSION OF TRANSFERS OF ENGAGEMENTS

Application for confirmation

1.—(1) After sub-paragraph (1) of paragraph 6 of Schedule 15 to the 1992 Act (application for confirmation) insert—

“(1A) Where an application for confirmation of a transfer is made by a friendly society to which section 37(2) or (3) above applies and either—

- (a) as regards any policy included in the proposed transfer, a member State other than the United Kingdom is the State in which the risk or commitment is situated; or
- (b) as regards any EFTA policy included in the proposed transfer, an EEA State other than the United Kingdom is the State in which the risk or commitment is situated,

the society shall also, if the Commission so directs publish the notice in two national newspapers in that State.”.

(2) In sub-paragraph (3) of that paragraph, for paragraph (b) substitute—

“(b) stating—

- (i) the addresses of the offices of the society, and
- (ii) where the society is directed in accordance with sub-paragraph (1A) above to publish a notice of the application in two national newspapers in a State other than the United Kingdom, the address of such place in that State as the Commission directs,

at which copies of the report shall be available for inspection for a period of not less than 21 days beginning with the date of the first publication of the notice; and”.

Confirmation: general

2. In paragraph 13 of that Schedule (confirmation: general), after sub-paragraph (2) insert—

“(3) This paragraph and paragraph 14 below do not apply to any transfer of engagements to which paragraph 15 or 15A below applies.”.

Confirmation: general business

3. For paragraph 15 of that Schedule (confirmation: general business) substitute—

“15.—(1) This paragraph applies to any transfer of engagements (other than contracts of reinsurance) where—

- (a) the effecting of the engagements constituted the carrying on of general business;
- (b) the transferor is a friendly society to which section 37(3) above applies; and
- (c) the transferee is—

- (i) a friendly society to which section 37(2) or (3) above applies;
- (ii) a UK company;
- (iii) an EC company;
- (iv) a non-EC company whose head office is in an EFTA State;
- (v) a Swiss general insurance company; or

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- (vi) an insurance company whose margin of solvency is required to be supervised in accordance with Article 25 or 26 of the first general insurance Directive.
- (2) The Commission shall not confirm the transfer unless—
- (a) it is satisfied that the transferee is, or will be immediately after the approval—
 - (i) authorised under section 32 above to carry on, or
 - (ii) authorised under section 3 or 4 of the Insurance Companies Act 1982⁽¹⁾ to carry on, or
 - (iii) 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;
 - (b) it is also satisfied that every policy included in the transfer evidences a contract which was entered into before the date of the application;
 - (c) the relevant authority certifies that the transferee possesses the necessary margin of solvency after taking the proposed transfer into account; and
 - (d) where the establishment from which the policies are to be transferred is situated in a member State other than the United Kingdom, the Commission is satisfied—
 - (i) that the supervisory authority in that member State has been consulted about the proposed transfer; and
 - (ii) either that the authority has responded or that the period of three months beginning with the consultation has elapsed.
- (3) Where, as regards any policy (other than an EFTA policy) which is included in the proposed transfer, the risk is situated in a member State other than the United Kingdom, the Commission shall not confirm the transfer unless it is satisfied—
- (a) that the supervisory authority in that member State has been notified of the proposed transfer;
 - (b) either that the authority has consented to the transfer or that the authority has not refused its consent to the transfer within the period of three months beginning with the notification.
- (4) Where the establishment of the transferee to which the policies are to be transferred is situated in the United Kingdom and, as regards any EFTA policy included in the proposed transfer, an EEA State other than the United Kingdom is the State in which the risk is situated, the Commission shall not confirm the transfer unless it is satisfied that—
- (a) the transferee either fulfils the conditions in Articles 13 to 16 of the second general insurance Directive in that EEA State; and
 - (b) the supervisory authority in that EEA State agrees to the transfer.
- (5) Where the establishment of the transferee to which the policies are to be transferred is situated in an EEA State other than the United Kingdom and, as regards any EFTA policy included in the proposed transfer, an EEA State other than the United Kingdom is the State in which the risk is situated, the Commission shall not confirm the transfer unless—
- (a) where the EEA State in which the establishment is situated is also the State in which the risk is situated, it is satisfied that the supervisory authority in that EEA State agrees to the transfer;

(1) 1982 c. 50.

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- (b) where the United Kingdom is the State in which the risk is situated, it is satisfied that the transferee is not precluded by Schedule 2F to the Insurance Companies Act 1982 from covering the risk; and
 - (c) where an EEA State other than the United Kingdom or the EEA State in which the establishment is situated is the State in which the risk is situated, it is satisfied that—
 - (i) the transferee either fulfils the conditions in Articles 13 to 16 of the second general insurance Directive in the EEA State in which the risk is situated;
 - (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.
- (6) In this paragraph “the relevant authority” means—
- (a) if the transferee is a friendly society to which section 37(2) or (3) above applies, the Commission;
 - (b) if the transferee is a United Kingdom company, the Secretary of State;
 - (c) if the transferee is an EC company, the supervisory authority in its home State;
 - (d) if the transferee is a non-EC company whose head office is in an EFTA State, the supervisory authority in that EFTA State;
 - (e) if the transferee is a Swiss general insurance company, the supervisory authority in Switzerland;
 - (f) if the transferee is an insurance company whose margin of solvency is required to be supervised in accordance with Article 25 or 26 of the first general insurance Directive, the Secretary of State or other supervisory authority responsible for the supervision.”.

Confirmation: long term business

4. For paragraph 15A of that Schedule (confirmation: long term business) substitute—

“**15A.**—(1) This paragraph applies to any transfer of engagements (other than contracts of reinsurance) where—

- (a) the effecting of the engagements constituted the carrying on of long term business;
 - (b) the transferor is a friendly society to which section 37(3) above applies; and
 - (c) the transferee is—
 - (i) a friendly society to which section 37(2) or (3) above applies;
 - (ii) a UK company;
 - (iii) an EC company;
 - (iv) a non-EC company whose head office is in an EFTA State; or
 - (v) an insurance company whose margin of solvency is required to be supervised in accordance with Article 29 or 30 of the first life Directive.
- (2) The Commission shall not confirm the transfer unless—
- (a) it is satisfied that the transferee is, or will be immediately after the making of the confirmation—
 - (i) authorised under section 32 above to carry on, or
 - (ii) authorised under section 3 or 4 of the Insurance Companies Act 1982 to carry on, or

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- (iii) authorised in accordance with Article 6 of the first life Directive to carry on in an EEA State other than the United Kingdom, long term business of the class or classes to be transferred;
 - (b) the relevant authority certifies that the transferee possesses the necessary margin of solvency after taking the proposed transfer into account; and
 - (c) where the establishment from which the policies are to be transferred is situated in a member State other than the United Kingdom, the Commission is satisfied—
 - (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.
- (3) Where, as regards any policy (other than an EFTA policy) which is included in the proposed transfer, a member State other than the United Kingdom, is the State in which the commitment is situated, the Commission shall not confirm the transfer unless it is satisfied—
 - (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.
- (4) Where the establishment of the transferee to which the policies are to be transferred is situated in the United Kingdom and, as regards any EFTA policy included in the proposed transfer, an EEA State other than the United Kingdom is the State in which the commitment is situated, the Commission shall not confirm the transfer unless it is satisfied that—
 - (a) the transferee either fulfils the conditions in Articles 11, 12, 14 and 16 of the second life Directive in that EEA State; and
 - (b) the supervisory authority in that EEA State agrees to the transfer.
- (5) Where the establishment of the transferee to which the policies are to be transferred is situated in an EEA State other than the United Kingdom and, as regards any EFTA policy included in the proposed transfer, an EEA State is the State in which the commitment is situated, the Commission shall not confirm the transfer unless—
 - (a) where the EEA State in which the establishment is situated is also the State in which the commitment is situated, it is satisfied that the supervisory authority in that EEA State agrees to the transfer;
 - (b) where the United Kingdom is the State in which the commitment is situated, it is satisfied that the transferee is not precluded by Schedule 2F to the Insurance Companies Act 1982 from covering the commitment; and
 - (c) where an EEA State other than the United Kingdom or the EEA State in which the establishment is situated is the State in which the risk is situated, it is satisfied that—
 - (i) the transferee fulfils the conditions in Articles 11, 12, 14 and 16 of the second life Directive in the EEA State which is the State in which the commitment is situated;
 - (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.
- (6) In this paragraph “the relevant authority” means—

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- (a) if the transferee is a friendly society to which section 37(2) or (3) above applies, the Commission;
- (b) if the transferee is a UK company, the Secretary of State;
- (c) if the transferee is an EC company, the supervisory authority in its home State;
- (d) if the transferee is a non-EC company whose head office is in an EFTA State, the supervisory authority in that EFTA State;
- (e) if the transferee is an insurance company whose margin of solvency is required to be supervised in accordance with Article 29 or 30 of the first life Directive, the Secretary of State or other supervisory authority responsible for the supervision.”.

Rights of policy holders

5. After paragraph 16 of that Schedule insert—

“Rights of policy holders

16A.—(1) This paragraph applies where the Commission confirms a transfer in accordance with paragraph 15 above and either—

- (a) as regards any policy included in the transfer, a member State other than the United Kingdom is the member State in which the risk is situated; or
- (b) as regards any EFTA policy included in the transfer, and EEA State other than the United Kingdom is the EEA State in which the risk is situated.

(2) The Commission shall direct that—

- (a) notice of its decision, and of 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 in which the risk is situated; and
- (b) the notice shall specify the period during which the policy holder may exercise any right to cancel the policy;

and the instrument 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 in which the risk is situated shall determine—

- (a) whether the policy holder has a right to cancel the policy; and
- (b) the conditions applicable to any such right.”.

6. After paragraph 16A of that Schedule insert—

“16B.—(1) This paragraph applies where the Commission confirms a transfer in accordance with paragraph 15A above and either—

- (a) as regards any policy included in the transfer, a member State other than the United Kingdom is the State in which the commitment is situated; or
- (b) as regards any EFTA policy included in the transfer, an EEA State other than the United Kingdom is the State in which the commitment is situated.

(2) The Commission 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 in which the commitment is situated; and

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- (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 in which the commitment is situated shall determine—
 - (a) whether the policy holder has a right to cancel the policy; and
 - (b) the conditions applicable to any such right.”.

Supplemental

7. For paragraph 18 of that Schedule (interpretation) substitute—

- “**18.**—(1) In this Part of this Schedule expressions used which are defined in the Insurance Companies Act 1982 but are not defined for the purposes of this Part of this Schedule have the same meaning as they have for the purposes of that Act.
- (2) In this Part of this Schedule—
 - “policy” means a contract (other than a contract of reinsurance) the effecting of which by a friendly society to which section 37(2) or (3) above applies constituted the carrying on of insurance business of any class;
 - “policy holder” means a member whose contract with such a society is a contract the effecting of which by the society constituted the carrying on of insurance business (other than reinsurance business) of any class;
 - “relevant requirement”, with reference to this Act or the rules of a friendly society, means a requirement of this Part of this Act or of any rules prescribing the procedure to be followed by the society in approving or effecting an amalgamation or transfer of engagements or its conversion into a company.
 - (3) 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 risk or commitment in an EFTA State and the transferee is a friendly society to which section 37(2) or (3) above applies, a UK or EC company or a non-EC company whose head office is in an EFTA State; or
 - (b) it covers a risk or commitment situated in a member State and the transferee is a non-EC company whose head office is in an EFTA State.”.