

FINANCIAL SERVICES AND MARKETS ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part Xix: Lloyd's

561. This Part of the Act makes a number of provisions which supplement other parts of the Act to bring the Society of Lloyd's ("the Society") within the general regulatory framework. These provisions are needed to reflect the unique legal status of the Society and its members, and the functions of the Council of Lloyd's ("the Council"), the governing body of the Society, under the Lloyd's Acts 1871-1982, in relation to the Lloyd's community.
562. Lloyd's is regulated for solvency purposes by the Authority in accordance with the arrangements under Part IV of the ICA 1982. The FS Act 1986 provides an exemption for Lloyd's and underwriting agents as respects investment business carried on by them in connection with or for the purposes of insurance business at Lloyd's. For most purposes, regulation of the Society has been undertaken by the Council. The Act gives the Authority considerable discretion as to how it discharges its obligations for the regulation of Lloyd's.
563. The external regulation of the Lloyd's community by the Authority is achieved by a number of different provisions in the Act. By virtue of this Part, the Society - a body corporate - is to be authorised to carry on certain regulated activities. The permission will be defined by the Authority, as if it had been granted under Part IV. Primarily, the permission will cover making arrangements which enable members to carry out contracts of insurance. The activities of managing and members' agents (or "underwriting agents") will become regulated activities for the purposes of the Act, and so underwriting agents will need have relevant permission under Part IV. As authorised persons, the Society and agents will be subject to the full range of the Authority's powers under the Act, including its rules and its powers of investigation and discipline and, ultimately, the power to withdraw authorisation, as is the case with other authorised persons under the general provisions of the Act.
564. Members of Lloyd's will benefit from an exemption from the need to be authorised in relation to contracts of insurance effected or carried out at Lloyd's. They will, nonetheless, be subject to regulatory arrangements as directed by the Authority under powers contained in this Part, and subject to the powers of the Council. As a minimum, the Authority will need to require the members to meet the solvency requirements laid down under the relevant EC directives. A member of Lloyd's would, however, need permission to carry on any other regulated activity, for example advising on investments.

Section 314: Authority's general duty

565. It is not proposed that Lloyd's should be subject to full regulation by the Authority at the outset. Certain regulatory functions will be left with the Council. However, the Authority will at any time be able to take a greater degree of direct responsibility for regulation if it considers it appropriate and this section, therefore, places a duty on the Authority to keep matters under review.

Section 315: The Society: authorisation and permission

566. This section makes the Society an authorised person, without it needing to submit an application. This is needed because, unlike most other current businesses, Lloyd's does not have an authorisation from an existing regulator that can be grandfathered.
567. *Subsection (3)* limits the activities for which the Society will have permission, at the time it becomes authorised, in broad terms to arranging deals in insurance contracts and syndicate participation, and for connected activities. The precise terms of the permission will depend on the activities specified for the purposes of section 22(1). *Subsection (4)* gives the Authority a power, where it considers it appropriate, to limit the scope of the permission, at the time the authorisation comes into force, or at any time thereafter. Lloyd's would apply for an extension of that permission in accordance with Part IV.

Section 316: Direction by Authority

568. This section confers on the Authority power to give directions applying the general prohibition to members of Lloyd's or applying core provisions to members. This power can be used in relation to a member of Lloyd's, or members taken together, though they will not, at least at the outset, be authorised persons. Directions under this section may specify the extent to which the "core provisions" of the Act, as set out in section 317, will apply to them and would impose requirements directly on the members which the Authority will be able monitor and enforce. The Authority could, for example, apply to members general rules requiring persons carrying out contracts of insurance to appoint an actuary to assess the extent of their liabilities. It could also require members to be authorised if it considers that appropriate.

Section 317: The core provisions

569. The core provisions which the Authority may decide to apply to members of Lloyd's under section 316 relate to:
- the performance of regulated activities;
 - rules and guidance;
 - information gathering and investigations;
 - control over authorised persons;
 - compensation scheme;
 - ombudsman scheme;
 - auditors and actuaries;
 - insolvency
 - restitution and injunctions
 - notices.

570. *Subsection (3)* enables the Authority to apply a core provision with modifications. This will enable the practical role played by the Society and underwriting agents in the day to day business affairs of members to be reflected in the regulatory arrangements.

Section 318: Exercise of powers through the Council

571. This section gives the Authority an alternative mechanism to its power of direction under section 316. Instead of, or in addition to, giving a direction to the members of Lloyd's, the Authority can direct the Society or the Council to use their powers - such as the byelaw making powers of the Council under Lloyd's Act 1982 - to impose obligations on members. It would, therefore, be open to the Authority to set solvency requirements for Lloyd's members, perhaps specifying in a direction only the high level requirements required by the EC directives; the Council would then make byelaws specifying the detailed arrangements in accordance with the requirements of the direction. The Council would be responsible for enforcing its byelaws and for demonstrating to the Authority that the relevant requirements had been met. When exercising this power, the Authority may additionally impose requirements on the Council or the Society.
572. *Subsection (5)* also allows the Authority to use this power to direct the Council in respect of managing and members' agents, rather than exercising powers against them directly as authorised persons.
573. *Subsection (6)(a)* makes it clear that if the Authority chooses to give directions in this way, it is not precluded from using its other regulatory powers under the Act.

Section 319: Consultation

574. This section sets out the procedure for giving a direction under sections 316 or 318. The procedures are similar to those that apply to other rule making functions.

Section 320: Former underwriting members

575. This section disapplies the general prohibition from former members of Lloyd's in relation to contracts of insurance effected by them while they were members of the society. It gives the Authority powers to impose requirements on former members of Lloyd's, including members who decide to leave in the future, in relation to the insurance business carried on by them while they were members of Lloyd's until all their insurance liabilities have been discharged. A former member of Lloyd's would need to obtain permission from, and be authorised by, the Authority in order to carry on any other regulated activities under the Act.

Section 321: Requirements imposed under 320

576. This section requires the Authority to follow the specified procedures when exercising the powers set out in section 320. The arrangements are consistent with other notice arrangements under the Act and they give former names on whom requirements are imposed the opportunity to make representations. *Subsection (11)* confers a right on former names to refer a matter to the Tribunal in certain circumstances.

Section 322: Rules applicable to former underwriting members

577. This section, like section 320, confers on the Authority powers to impose requirements on former member of Lloyd's. Whereas section 320 would enable the Authority to impose specific requirements on former members, in much the same way as it would impose restrictions on a Part IV permission in relation to an authorised person, this section allows the Authority to make rules that will apply more generally to former members or classes of former member. The grounds for exercising the power are that the Authority considers it appropriate for the purpose of protecting policyholders. The

procedures under section 319, including for example the consultation arrangements, apply to the exercise of this power.

Section 323: Transfer schemes

578. This section confers on the Treasury a power to apply Part VII to transfers of business consisting of contracts of insurance from members of Lloyd's. This will ensure that appropriate regulatory scrutiny can be given to any proposed business transfers, and that any persons affected by the proposed transfer have the opportunity to make representations to the court.