



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART VII

#### CONTROL OF BUSINESS TRANSFERS

#### [<sup>F1</sup>103A Meaning of “the appropriate regulator”

(1) In this Part “the appropriate regulator” means—

- (a) in relation to [<sup>F2</sup>a ring-fencing transfer scheme or a scheme (other than a ring-fencing transfer scheme)] in respect of which [<sup>F3</sup>the transferor concerned] is a PRA-authorized person, the PRA;
- (b) in any other case, the FCA.

(2) In this Part, “[<sup>F3</sup>the transferor concerned]”—

- (a) in the case of an insurance business transfer scheme, is to be read in accordance with section 105(2);
- (b) in the case of a banking business transfer scheme, is to be read in accordance with section 106(2);
- (c) in the case of a reclaim fund business transfer scheme, means the reclaim fund to whose business the scheme relates.

[<sup>F4</sup>(d) in the case of a ring-fencing transfer scheme, means the body to whose business the scheme relates.]]

#### Textual Amendments

**F1** S. 103A inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 6 para. 2](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.

**F2** Words in s. 103A(1)(a) substituted (1.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 1 para. 3\(2\)](#); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

**F3** Words in Pt. VII substituted (1.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 1 para. 2](#); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

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- F4** S. 103A(2)(d) inserted (1.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 1 para. 3\(3\)](#); [S.I. 2014/377](#), art. 2(1)(a), Sch. Pt. 1

## 104 Control of business transfers.

No insurance business transfer scheme <sup>F5</sup>... is to have effect unless an order has been made in relation to it under section 111(1).

### Textual Amendments

- F5** Words in s. 104 omitted (1.4.2013) by virtue of [Financial Services Act 2012 \(c. 21\)](#), [ss. 22\(1\)](#), 122(3) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.

### Modifications etc. (not altering text)

- C1** S. 104 applied (1.12.2001) by [S.I. 2001/3626](#), [arts. 1](#), 3(a)  
S. 104 modified (1.12.2001) by [S.I. 2001/3639](#), [arts. 1\(1\)](#), 7 (with art. 2)

### Commencement Information

- I1** S. 104 partly in force; s. 104 not in force at Royal Assent see s. 431(2); s. 104 in force for specified purposes at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)\(2\)](#)

## 105 Insurance business transfer schemes.

- (1) A scheme is an insurance business transfer scheme if it—
- satisfies one of the conditions set out in subsection (2);
  - results in the business transferred being carried on from an establishment of the transferee in an EEA State; and
  - is not an excluded scheme.
- (2) The conditions are that—
- the whole or part of the business carried on in one or more member States by a UK authorised person who has permission to effect or carry out contracts of insurance (“<sup>F3</sup>the transferor concerned”) is to be transferred to another body (“the transferee”);
  - the whole or part of the business, so far as it consists of reinsurance, carried on in the United Kingdom through an establishment there by an EEA firm [<sup>F6</sup>falling within paragraph 5(d) of Schedule 3 and qualifying for authorisation under that Schedule] (“<sup>F3</sup>the transferor concerned”) is to be transferred to another body (“the transferee”);
  - the whole or part of the business carried on in the United Kingdom by an authorised person who is neither a UK authorised person nor an EEA firm but who has permission to effect or carry out contracts of insurance (“<sup>F3</sup>the transferor concerned”) is to be transferred to another body (“the transferee”).
- (3) A scheme is an excluded scheme for the purposes of this section if it falls within any of the following cases:

(Case 1) Where [<sup>F3</sup>the transferor concerned] is a friendly society.

(Case 2) Where—

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- (a) [<sup>F3</sup>the transferor concerned] is a UK authorised person;
- [<sup>F7</sup>(aa) [<sup>F3</sup>the transferor concerned] is not a reinsurance undertaking <sup>F8</sup> ...;]
- (b) the business to be transferred under the scheme is business which consists of the effecting or carrying out of contracts of reinsurance in one or more EEA States other than the United Kingdom; and
- (c) the scheme has been approved by a court in an EEA State other than the United Kingdom or by the host state regulator.

(Case 3) Where—

- (a) [<sup>F3</sup>the transferor concerned] is a UK authorised person;
- (b) the business to be transferred under the scheme is carried on in one or more countries or territories (none of which is an EEA State) and does not include policies of insurance <sup>F9</sup> . . . against risks arising in an EEA State; and
- (c) the scheme has been approved by a court in a country or territory other than an EEA State or by the authority responsible for the supervision of that business in a country or territory in which it is carried on.

(Case 4) Where [<sup>F10</sup>—

- (a) the business to be transferred under the scheme is the whole of the business of [<sup>F3</sup>the transferor concerned];
- (b) all the policyholders are controllers of the firm or of firms within the same group as the firm which is the transferee, and,
- [<sup>F11</sup>(c)] all of the policyholders who will be affected by the transfer have consented to it.

[<sup>F12</sup>(CASE 5) Where—

- (a) the business of [<sup>F3</sup>the transferor 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.]
- (4) The parties to a scheme which falls within Case 2, [<sup>F13</sup>3, 4 or 5] may apply to the court for an order sanctioning the scheme as if it were an insurance business transfer scheme.
- [<sup>F14</sup>(5) If the scheme involves a compromise or arrangement falling within Part 27 of the Companies Act 2006 (mergers and divisions of public companies), the provisions of that Part (and Part 26 of that Act) apply accordingly but this does not affect the operation of this Part in relation to the scheme.]
- (8) “UK authorised person” means a body which is an authorised person and which—
- (a) is incorporated in the United Kingdom; or
  - (b) is an unincorporated association formed under the law of any part of the United Kingdom.
- (9) “Establishment” means, in relation to a person, his head office or a branch of his.

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### Textual Amendments

- F3** Words in Pt. VII substituted (1.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 1 para. 2](#); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1
- F6** Words in s. 105(2)(b) substituted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\), reg. 2\(1\), Sch. 1 para. 2\(1\)\(a\)](#)
- F7** S. 105(3) Case 2(aa) inserted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\), reg. 2\(1\), Sch. 1 para. 2\(1\)\(b\)](#)
- F8** Words in s. 105(3) omitted (1.1.2016) by virtue of [The Solvency 2 Regulations 2015 \(S.I. 2015/575\), reg. 1\(2\), Sch. 1 para. 5](#)
- F9** Words in s. 105(3) Case 3(b) omitted (10.12.2007) by virtue of [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\), reg. 2\(1\), Sch. 1 para. 2\(1\)\(c\)](#)
- F10** Words in s. 105(3) Case 4 substituted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\), reg. 2\(1\), Sch. 1 para. 2\(1\)\(d\)\(i\)](#)
- F11** Words in s. 105(3) Case 4 substituted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\), reg. 2\(1\), Sch. 1 para. 2\(1\)\(d\)\(ii\)](#)
- F12** S. 105(3) Case 5 inserted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\), reg. 2\(1\), Sch. 1 para. 2\(1\)\(e\)](#)
- F13** Words in s. 105(4) substituted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\), reg. 2\(1\), Sch. 1 para. 2\(1\)\(f\)](#)
- F14** S. 105(5) substituted (6.4.2008) for s. 105(5)-(7) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\), arts. 2\(2\), 3\(1\), Sch. 1 para. 211\(1\)](#) (with arts. 6, 11, 12)

## 106 Banking business transfer schemes.

- (1) A scheme is a banking business transfer scheme if it—
- satisfies one of the conditions set out in subsection (2);
  - is one under which the whole or part of the business to be transferred includes the accepting of deposits; and
  - is not an excluded scheme [<sup>F15</sup>or a ring-fencing transfer scheme].
- (2) The conditions are that—
- the whole or part of the business carried on by a UK authorised person who has permission to accept deposits (“<sup>F3</sup>the transferor concerned”) is to be transferred to another body (“the transferee”);
  - the whole or part of the business carried on in the United Kingdom by an authorised person who is not a UK authorised person but who has permission to accept deposits (“<sup>F3</sup>the transferor concerned”) is to be transferred to another body which will carry it on in the United Kingdom (“the transferee”).
- (3) A scheme is an excluded scheme for the purposes of this section if—
- <sup>F3</sup>the transferor concerned] is a building society or a credit union; or
  - <sup>F16</sup>(b) the scheme is a compromise or arrangement to which Part 27 of the Companies Act 2006 (mergers and divisions of public companies) applies.]
- (4) For the purposes of subsection (2)(a) it is immaterial whether or not the business to be transferred is carried on in the United Kingdom.
- (5) “UK authorised person” has the same meaning as in section 105.
- (6) “Building society” has the meaning given in the <sup>M1</sup>Building Societies Act 1986.

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- (7) “Credit union” means a credit union within the meaning of—
- (a) the <sup>M2</sup>Credit Unions Act 1979;
  - (b) the <sup>M3</sup>Credit Unions (Northern Ireland) Order 1985.

#### Textual Amendments

- F3** Words in Pt. VII substituted (1.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 1 para. 2](#); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1
- F15** Words in s. 106(1)(c) inserted (1.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 1 para. 4](#); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1
- F16** S. 106(3)(b) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(1), 3(1), [Sch. 1 para. 211\(2\)](#) (with arts. 6, 11, 12)

#### Marginal Citations

- M1** 1986 c. 53.
- M2** 1979 c. 34.
- M3** S.I. 1985/1205 (N.I. 12).

### [<sup>F17</sup>106A Reclaim fund business transfer scheme

- (1) A scheme is a reclaim fund business transfer scheme if, under the scheme, the whole or part of the business carried on by a reclaim fund is to be transferred to one or more other reclaim funds.
- (2) “Reclaim fund” has the meaning given by section 5(1) of the Dormant Bank and Building Society Accounts Act 2008.]

#### Textual Amendments

- F17** S. 106A inserted (12.3.2009) by [Dormant Bank and Building Society Accounts Act 2008 \(c. 31\)](#), ss. 15, 31(1)(2), [Sch. 2 para. 2](#); S.I. 2009/490, [art. 2](#) (with art. 3)

### [<sup>F18</sup>106B Ring-fencing transfer scheme

- (1) A scheme is a ring-fencing transfer scheme if it—
- (a) is one under which the whole or part of the business carried on—
    - (i) by a UK authorised person, or
    - (ii) by a qualifying body,is to be transferred to another body (“the transferee”),
  - (b) is to be made for one or more of the purposes mentioned in subsection (3), and
  - (c) is not an excluded scheme or an insurance business transfer scheme.
- (2) “Qualifying body” means a body which—
- (a) is incorporated in the United Kingdom,
  - (b) is a member of the group of a UK authorised person, and
  - (c) is not itself an authorised person.
- (3) The purposes are—

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- (a) enabling a UK authorised person to carry on core activities as a ring-fenced body in compliance with the ring-fencing provisions;
  - (b) enabling the transferee to carry on core activities as a ring-fenced body in compliance with the ring-fencing provisions;
  - (c) making provision in connection with the implementation of proposals that would involve a body corporate whose group includes the body corporate to whose business the scheme relates becoming a ring-fenced body while one or more other members of its group are not ring-fenced bodies;
  - (d) making provision in connection with the implementation of proposals that would involve a body corporate whose group includes the transferee becoming a ring-fenced body while one or more other members of the transferee's group are not ring-fenced bodies.
- (4) A scheme is an excluded scheme for the purposes of this section if—
- (a) the body to whose business the scheme relates is a building society or credit union, or
  - (b) the scheme is a compromise or arrangement to which Part 27 of the Companies Act 2006 (mergers and divisions of public companies) applies.
- (5) For the purposes of subsection (1)(a) it is immaterial whether or not the business to be transferred is carried on in the United Kingdom.
- (6) “UK authorised person” has the same meaning as in section 105.
- (7) “Building society” and “credit union” have the same meanings as in section 106.
- (8) “The ring-fencing provisions” means ring-fencing rules and the duty imposed as a result of section 142G.]

#### Textual Amendments

**F18** S. 106B inserted (1.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 1 para. 5](#); [S.I. 2014/377](#), art. 2(1)(a), Sch. Pt. 1

### 107 Application for order sanctioning transfer scheme.

- (1) An application may be made to the court for an order sanctioning an insurance business transfer scheme [<sup>F19</sup>, a banking business transfer scheme [<sup>F20</sup>, a reclaim fund business transfer scheme or a ring-fencing transfer scheme]].
- (2) An application may be made by—
- (a) [<sup>F3</sup>the transferor concerned];
  - (b) the transferee; or
  - (c) both.
- [<sup>F21</sup>(2A) An application relating to a ring-fencing transfer scheme may be made only with the consent of the PRA.
- (2B) In deciding whether to give consent, the PRA must have regard to the scheme report prepared under section 109A in relation to the ring-fencing transfer scheme.]
- (3) The application must be made—

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- (a) if [<sup>F3</sup>the transferor concerned] and the transferee are registered or have their head offices in the same jurisdiction, to the court in that jurisdiction;
  - (b) if [<sup>F3</sup>the transferor concerned] and the transferee are registered or have their head offices in different jurisdictions, to the court in either jurisdiction;
  - (c) if the transferee is not registered in the United Kingdom and does not have his head office there, to the court which has jurisdiction in relation to [<sup>F3</sup>the transferor concerned].
- (4) “Court” means—
- (a) the High Court; or
  - (b) in Scotland, the Court of Session.

#### Textual Amendments

- F3** Words in Pt. VII substituted (1.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 1 para. 2](#); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1
- F19** Words in s. 107(1) substituted (12.3.2009) by [Dormant Bank and Building Society Accounts Act 2008 \(c. 31\)](#), ss. 15, 31(1)(2), [Sch. 2 para. 3](#); S.I. 2009/490, [art. 2](#) (with art. 3)
- F20** Words in s. 107(1) substituted (1.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 1 para. 6\(2\)](#); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1
- F21** S. 107(2A)(2B) inserted (1.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 1 para. 6\(3\)](#); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

#### Modifications etc. (not altering text)

- C2** S. 107 applied (1.12.2001) by [S.I. 2001/3626](#), [arts. 1, 3\(a\)](#)

### 108 Requirements on applicants.

- (1) The Treasury may by regulations impose requirements on applicants under section 107.
- (2) The court may not determine an application under that section if the applicant has failed to comply with a prescribed requirement.
- (3) The regulations may, in particular, include provision—
  - (a) as to the persons to whom, and periods within which, notice of an application must be given;
  - (b) enabling the court to waive a requirement of the regulations in prescribed circumstances.

#### Modifications etc. (not altering text)

- C3** S. 108 applied (1.12.2001) by [S.I. 2001/3626](#), [arts. 1, 3\(a\)\(b\)](#)

#### Commencement Information

- I2** S. 108 wholly in force at 1.12.2001; s. 108 not in force at Royal Assent see s. 431(2); s. 108 in force for certain purposes at 25.2.2001 by [S.I. 2001/516](#), [art. 2 Sch. Pt. 2](#); s. 108 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

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## 109 [F<sup>22</sup>Scheme reports: insurance business transfer schemes]

- (1) An application under section 107 in respect of an insurance business transfer scheme must be accompanied by a report on the terms of the scheme (“a scheme report”).
- (2) A scheme report may be made only by a person—
  - (a) appearing to the [F<sup>23</sup>appropriate regulator] to have the skills necessary to enable him to make a proper report; and
  - (b) nominated or approved for the purpose by the [F<sup>23</sup>appropriate regulator].
- (3) A scheme report must be made in a form approved by the [F<sup>23</sup>appropriate regulator].
- [F<sup>24</sup>(4) Where the appropriate regulator is the PRA, it must consult the FCA before—
  - (a) nominating or approving a person under subsection (2)(b), or
  - (b) approving a form under subsection (3).
- (5) Subsection (6) applies where the appropriate regulator is the FCA and either—
  - (a) the transferee is a PRA-authorised person, or
  - (b) [F<sup>3</sup>the transferor concerned] or the transferee has as a member of its immediate group a PRA-authorised person.
- (6) The FCA must consult the PRA before—
  - (a) nominating or approving a person under subsection (2)(b), or
  - (b) approving a form under subsection (3).]

### Textual Amendments

- F3** Words in Pt. VII substituted (1.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 1 para. 2](#); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1
- F22** S. 109 heading substituted (1.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 1 para. 7](#); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1
- F23** Words in s. 109 substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 6 para. 3\(2\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F24** S. 109(4)-(6) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 6 para. 3\(3\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.

### Modifications etc. (not altering text)

- C4** S. 109 applied (1.12.2001) by [S.I. 2001/3626](#), [arts. 1, 3\(a\)](#)

## [F<sup>25</sup>109A Scheme reports: ring-fencing transfer schemes]

- (1) An application under section 106B in respect of a ring-fencing transfer scheme must be accompanied by a report on the terms of the scheme (a “scheme report”).
- (2) A scheme report may be made only by a person—
  - (a) appearing to the PRA to have the skills necessary to enable the person to make a proper report, and
  - (b) nominated or approved for the purpose by the PRA.
- (3) A scheme report must be made in a form approved by the PRA.
- (4) A scheme report must state—



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- (a) whether persons other than the transferor concerned are likely to be adversely affected by the scheme, and
  - (b) if so, whether the adverse effect is likely to be greater than is reasonably necessary in order to achieve whichever of the purposes mentioned in section 106B(3) is relevant.
- (5) The PRA must consult the FCA before—
- (a) nominating or approving a person under subsection (2)(b), or
  - (b) approving a form under subsection (3).]

#### Textual Amendments

**F25** S. 109A inserted (1.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 1 para. 8](#); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

### 110 Right to participate in proceedings.

[<sup>F26</sup>(1)] On an application under section 107 [<sup>F27</sup>relating to an insurance business transfer scheme, a banking business transfer scheme or a reclaim fund business transfer scheme], the following are also entitled to be heard—

- [<sup>F28</sup>(a) the FCA,
  - (aa) in the case of a scheme falling within subsection (2), the PRA, and]
  - (b) any person (including an employee of [<sup>F3</sup>the transferor concerned] or of the transferee) who alleges that he would be adversely affected by the carrying out of the scheme.

[<sup>F29</sup>(2) A scheme falls within this subsection if—

- (a) [<sup>F3</sup>the transferor concerned] or the transferee is a PRA-authorized person, or
- (b) [<sup>F3</sup>the transferor concerned] or the transferee has as a member of its immediate group a PRA-authorized person.]

[<sup>F30</sup>(3) Subsections (4) and (5) apply where an application under section 107 relates to a ring-fencing transfer scheme.

(4) The following are also entitled to be heard—

- (a) the PRA,
- (b) where the transferee is an authorised person, the FCA, and
- (c) any person (“P”) (including an employee of the transferor concerned or of the transferee) who alleges that P would be adversely affected by the carrying out of the scheme.

(5) P is not entitled to be heard by virtue of subsection (4)(c) unless before the hearing P has—

- (a) filed (in Scotland, lodged) with the court a written statement of the representations that P wishes the court to consider, and
- (b) served copies of the statement on the PRA and the transferor concerned.]

#### Textual Amendments

**F3** Words in Pt. VII substituted (1.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 1 para. 2](#); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

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- F26** S. 110 renumbered as s. 110(1) (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 6 para. 4(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F27** Words in s. 110(1) inserted (1.3.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), **Sch. 1 para. 9(2)**; S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1
- F28** S. 110(1)(a)(aa) substituted for s. 110(1)(a) (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 6 para. 4(3)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F29** S. 110(2) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 6 para. 4(4)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F30** S. 110(3)-(5) inserted (1.3.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), **Sch. 1 para. 9(3)**; S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

**Modifications etc. (not altering text)**

- C5** S. 110 applied (1.12.2001) by S.I. 2001/3626, **arts. 1, 3(a)**

**111 Sanction of the court for business transfer schemes.**

- (1) This section sets out the conditions which must be satisfied before the court may make an order under this section sanctioning an insurance business transfer scheme [<sup>F31</sup>a banking business transfer scheme [<sup>F32</sup>, a reclaim fund business transfer scheme or a ring-fencing transfer scheme]].
- (2) The court must be satisfied that—
- (a) [<sup>F33</sup>in the case of an insurance business transfer scheme or a banking business transfer scheme,] the appropriate certificates have been obtained (as to which see Parts I and II of Schedule 12);
- [<sup>F34</sup>(aa) in the case of a reclaim fund business transfer scheme, the appropriate certificate has been obtained (as to which see Part 2A of that Schedule);]
- [<sup>F35</sup>(ab) in the case of a ring-fencing transfer scheme, the appropriate certificates have been obtained (as to which see Part 2B of that Schedule);]
- (b) the transferee has the authorisation required (if any) to enable the business, or part, which is to be transferred to be carried on in the place to which it is to be transferred (or will have it before the scheme takes effect).
- (3) The court must consider that, in all the circumstances of the case, it is appropriate to sanction the scheme.

**Textual Amendments**

- F31** Words in s. 111(1) substituted (12.3.2009) by Dormant Bank and Building Society Accounts Act 2008 (c. 31), ss. 15, 31(1)(2), **Sch. 2 para. 4(2)**; S.I. 2009/490, **art. 2** (with art. 3)
- F32** Words in s. 111(1) substituted (1.3.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), **Sch. 1 para. 10(2)**; S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1
- F33** Words in s. 111(2)(a) inserted (12.3.2009) by Dormant Bank and Building Society Accounts Act 2008 (c. 31), ss. 15, 31(1)(2), **Sch. 2 para. 4(3)(a)**; S.I. 2009/490, **art. 2** (with art. 3)
- F34** S. 111(2)(aa) inserted (12.3.2009) by Dormant Bank and Building Society Accounts Act 2008 (c. 31), ss. 15, 31(1)(2), **Sch. 2 para. 4(3)(b)**; S.I. 2009/490, **art. 2** (with art. 3)
- F35** S. 111(2)(ab) inserted (1.3.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), **Sch. 1 para. 10(3)**; S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

**Modifications etc. (not altering text)**

- C6** S. 111 applied (1.12.2001) by S.I. 2001/3626, **arts. 1, 3(a)**

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### Commencement Information

- I3** S. 111 wholly in force at 1.12.2001; s. 111 not in force at Royal Assent see s. 431(2); s. 111(2) in force for specified purposes at 25.2.2001 by S.I. 2001/516, art. 2(c), Sch. Pt. 3; s. 111 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

## 112 Effect of order sanctioning business transfer scheme.

- (1) If the court makes an order under section 111(1), it may by that or any subsequent order make such provision (if any) as it thinks fit—
- (a) for the transfer to the transferee of the whole or any part of the undertaking concerned and of any property or liabilities of [<sup>F3</sup>the transferor concerned];
  - (b) for the allotment or appropriation by the transferee of any shares, debentures, policies or other similar interests in the transferee which under the scheme are to be allotted or appropriated to or for any other person;
  - (c) for the continuation by (or against) the transferee of any pending legal proceedings by (or against) [<sup>F3</sup>the transferor concerned];
  - (d) with respect to such incidental, consequential and supplementary matters as are, in its opinion, necessary to secure that the scheme is fully and effectively carried out.

- (2) An order under subsection (1)(a) may—

- (a) transfer property or liabilities whether or not [<sup>F3</sup>the transferor concerned] otherwise has the capacity to effect the transfer in question;
- (b) make provision in relation to property which was held by [<sup>F3</sup>the transferor concerned] as trustee;
- (c) make provision as to future or contingent rights or liabilities of [<sup>F3</sup>the transferor concerned], including provision as to the construction of instruments (including wills) under which such rights or liabilities may arise;
- (d) make provision as to the consequences of the transfer in relation to any [<sup>F36</sup>occupational pension scheme (within the meaning of section 150(5) of the Finance Act 2004)] operated by or on behalf of [<sup>F3</sup>the transferor concerned].

- [<sup>F37</sup>(2A) Subsection (2)(a) is to be taken to include power to make provision in an order—

- (a) for the transfer of property or liabilities which would not otherwise be capable of being transferred or assigned;
- (b) for a transfer of property or liabilities to take effect as if there were—
  - (i) no such requirement to obtain a person's consent or concurrence, and
  - (ii) no such contravention, liability or interference with any interest or right,

as there would otherwise be (in the case of a transfer apart from this section) by reason of any provision falling within subsection (2B).

- (2B) A provision falls within this subsection to the extent that it has effect (whether under an enactment or agreement or otherwise) in relation to the terms on which [<sup>F3</sup>the transferor concerned] is entitled to the property or subject to the liabilities in question.

- (2C) Nothing in subsection (2A) or (2B) is to be read as limiting the scope of subsection (1).]

- (3) If an order under subsection (1) makes provision for the transfer of property or liabilities—
- (a) the property is transferred to and vests in, and

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- (b) the liabilities are transferred to and become liabilities of, the transferee as a result of the order.
- (4) But if any property or liability included in the order is governed by the law of any country or territory outside the United Kingdom, the order may require [<sup>F3</sup>the transferor concerned], if the transferee so requires, to take all necessary steps for securing that the transfer to the transferee of the property or liability is fully effective under the law of that country or territory.
- (5) Property transferred as the result of an order under subsection (1) may, if the court so directs, vest in the transferee free from any charge which is (as a result of the scheme) to cease to have effect.
- (6) An order under subsection (1) which makes provision for the transfer of property is to be treated as an instrument of transfer for the purposes of [<sup>F38</sup>section 770(1) of the Companies Act 2006] and any other enactment requiring the delivery of an instrument of transfer for the registration of property.
- (7) <sup>F39</sup> .....
- (8) If the court makes an order under section 111(1) in relation to an insurance business transfer scheme, it may by that or any subsequent order make such provision (if any) as it thinks fit—
- (a) for dealing with the interests of any person who, within such time and in such manner as the court may direct, objects to the scheme;
  - (b) for the dissolution, without winding up, of [<sup>F3</sup>the transferor concerned];
  - (c) for the reduction, on such terms and subject to such conditions (if any) as it thinks fit, of the benefits payable under—
    - (i) any description of policy, or
    - (ii) policies generally,
 entered into by [<sup>F3</sup>the transferor concerned] and transferred as a result of the scheme.
- (9) If, in the case of an insurance business transfer scheme, [<sup>F3</sup>the transferor concerned] is not an EEA firm, it is immaterial for the purposes of subsection (1)(a), (c) or (d) or subsection (2), [<sup>F40</sup>(2A)], (3) or (4) that the law applicable to any of the contracts of insurance included in the transfer is the law of an EEA State other than the United Kingdom.
- (10) The transferee must, if an insurance or banking business transfer scheme [<sup>F41</sup>or ring-fencing transfer scheme] is sanctioned by the court, deposit two office copies of the order made under subsection (1) with the [<sup>F42</sup>appropriate regulator] within 10 days of the making of the order.
- (11) But the [<sup>F43</sup>appropriate regulator] may extend that period.
- (12) “Property” includes property, rights and powers of any description.
- (13) “Liabilities” includes duties.
- (14) “Shares” and “debentures” have the same meaning as in [<sup>F44</sup>the Companies Acts (see sections 540 and 738 of the Companies Act 2006).]
- (15) “Charge” includes a mortgage (or, in Scotland, a security over property).

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#### Textual Amendments

- F3** Words in Pt. VII substituted (1.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 1 para. 2](#); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1
- F36** Words in s. 112(2)(d) substituted (6.4.2006) by [The Taxation of Pension Schemes \(Consequential Amendments\) Order 2006 \(S.I. 2006/745\), art. 17](#)
- F37** S. 112(2A)-(2C) inserted (30.6.2008) by [The Financial Services and Markets Act 2000 \(Amendments to Part 7\) Regulations 2008 \(S.I. 2008/1468\), reg. 2\(1\)](#)
- F38** Words in s. 112(6) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\), arts. 1\(2\), 3\(1\), Sch. 1 para. 211\(3\)\(a\)](#) (with arts. 6, 11, 12)
- F39** S. 112(7) repealed (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\), arts. 1\(2\), 3, Sch. 1 para. 211\(3\)\(b\), Sch. 2](#) (with arts. 6, 11, 12)
- F40** Word in s. 112(9) inserted (30.6.2008) by [The Financial Services and Markets Act 2000 \(Amendments to Part 7\) Regulations 2008 \(S.I. 2008/1468\), reg. 2\(2\)](#)
- F41** Words in s. 112(10) inserted (1.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 1 para. 11](#); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1
- F42** Words in s. 112(10) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 6 para. 5](#) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F43** Words in s. 112(11) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 6 para. 5](#) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F44** S. 112(14): words substituted (6.4.2008) for paras. (a)(b) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\), arts. 1\(2\), 3\(1\), Sch. 1 para. 211\(3\)\(c\)](#) (with arts. 6, 11, 12)

#### Modifications etc. (not altering text)

- C7** S. 112 applied (1.12.2001) by [S.I. 2001/3626, arts. 1, 3\(a\)](#)
- C8** S. 112(1) modified (1.12.2001) by [S.I. 2001/3639, arts. 1\(1\), 4](#) (with art. 2)

#### [<sup>F45</sup>112Z] **Duty of regulator to provide copy of order**

- (1) Where the PRA receives under section 112(10) a copy of an order it must, without delay, give a copy of it to the FCA.
- (2) Where the FCA receives under section 112(10) a copy of an order it must, without delay, give a copy of it to the PRA if the order relates to a scheme in respect of which—
  - (a) the transferee is a PRA-authorized person, or
  - (b) [<sup>F3</sup>the transferor concerned] or the transferee has as a member of its immediate group a PRA-authorized person.]

#### Textual Amendments

- F3** Words in Pt. VII substituted (1.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 1 para. 2](#); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1
- F45** S. 112ZA inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 6 para. 6](#) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

#### [<sup>F46</sup>112A] **Rights to terminate etc.**

- (1) Subsection (2) applies where (apart from that subsection) a person would be entitled, in consequence of anything done or likely to be done by or under this Part in connection

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with an insurance business transfer scheme [<sup>F47</sup>, a banking business transfer scheme or a ring-fencing transfer scheme]—

- (a) to terminate, modify, acquire or claim an interest or right; or
- (b) to treat an interest or right as terminated or modified.

(2) The entitlement—

- (a) is not enforceable in relation to that interest or right until after an order has been made under section 112(1) in relation to the scheme; and
- (b) is then enforceable in relation to that interest or right only insofar as the order contains provision to that effect.

(3) Nothing in subsection (1) or (2) is to be read as limiting the scope of section 112(1).]

#### Textual Amendments

- F46** S. 112A inserted (30.6.2008) by [The Financial Services and Markets Act 2000 \(Amendments to Part 7\) Regulations 2008 \(S.I. 2008/1468\)](#), [reg. 2\(3\)](#)
- F47** Words in s. 112A(1) substituted (1.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 1 para. 12](#); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

### 113 Appointment of actuary in relation to reduction of benefits.

(1) This section applies if an order has been made under section 111(1).

(2) The court making the order may, on the application of [<sup>F48</sup>either regulator], appoint an independent actuary—

- (a) to investigate the business transferred under the scheme; and
- (b) to report to the [<sup>F49</sup>regulator which made the application] on any reduction in the benefits payable under policies entered into by [<sup>F3</sup>the transferor concerned] that, in the opinion of the actuary, ought to be made.

[<sup>F50</sup>(3) An application under subsection (2) may be made by the PRA only if—

- (a) [<sup>F3</sup>the transferor concerned] or the transferee is a PRA-authorized person, or
- (b) [<sup>F3</sup>the transferor concerned] or the transferee has as a member of its immediate group a PRA-authorized person.]

#### Textual Amendments

- F3** Words in Pt. VII substituted (1.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 1 para. 2](#); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1
- F48** Words in s. 113(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 6 para. 7\(2\)\(a\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F49** Words in s. 113(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 6 para. 7\(2\)\(b\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F50** S. 113(3) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 6 para. 7\(3\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.

#### Modifications etc. (not altering text)

- C9** S. 113 applied (1.12.2001) by [S.I. 2001/3626](#), [arts. 1, 3\(a\)](#)

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## 114 Rights of certain policyholders.

- (1) This section applies in relation to an insurance business transfer scheme if—
  - (a) [<sup>F3</sup>the transferor concerned] is an authorised person other than an EEA firm qualifying for authorisation under Schedule 3;
  - (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 insurance [<sup>F51</sup>(other than a contract of reinsurance)], the State of the commitment or the EEA State in which the risk is situated (“the EEA State concerned”).
- (2) The court must 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.
- (3) A notice under subsection (2) must specify such period as the court may direct as the period during which the policyholder may exercise any right which he has to cancel the policy.
- (4) The order or instrument mentioned in subsection (2) does not bind the policyholder if—
  - (a) the notice required under that subsection is not published; or
  - (b) the policyholder cancels the policy during the period specified in the notice given under that subsection.
- (5) The law of the EEA State concerned governs—
  - (a) whether the policyholder has a right to cancel the policy; and
  - (b) the conditions, if any, subject to which any such right may be exercised.
- (6) Paragraph 6 of Schedule 12 applies for the purposes of this section as it applies for the purposes of that Schedule.

### Textual Amendments

- F3** Words in Pt. VII substituted (1.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 1 para. 2](#); [S.I. 2014/377](#), art. 2(1)(a), [Sch. Pt. 1](#)
- F51** Words in s. 114(1)(c) inserted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), reg. 2(1), [Sch. 1 para. 2\(2\)](#)

### Modifications etc. (not altering text)

- C10** S. 114 applied (1.12.2001) by [S.I. 2001/3626](#), [arts. 1, 3\(a\)](#)

## [<sup>F52</sup>114A Notice of transfer of reinsurance contracts

- (1) This section applies in relation to an insurance business transfer scheme if—
  - (a) [<sup>F3</sup>the transferor concerned] is an authorised person other than an EEA firm qualifying for authorisation under Schedule 3;
  - (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”).

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- (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.]

#### Textual Amendments

- F3** Words in Pt. VII substituted (1.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 1 para. 2](#); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1
- F52** S. 114A inserted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), reg. 2(1), [Sch. 1 para. 2\(3\)](#)

### *Business transfers outside the United Kingdom*

#### **115 Certificates for purposes of insurance business transfers overseas.**

Part III of Schedule 12 makes provision about certificates which the [<sup>F53</sup>appropriate regulator] may issue in relation to insurance business transfers taking place outside the United Kingdom.

#### Textual Amendments

- F53** Words in s. 115 substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 6 para. 8](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, [Sch.](#)

#### **116 Effect of insurance business transfers authorised in other EEA States.**

- (1) This section applies if, as a result of an authorised transfer, an EEA firm falling within paragraph 5(d) [<sup>F54</sup>or (da)] of Schedule 3 transfers to another body all its rights and obligations under any UK policies.

[<sup>F55</sup>(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—

- [<sup>F56</sup>(a) an undertaking authorised in an EEA State other than the United Kingdom under Article 162 of the Solvency 2 Directive;
- (b) an undertaking whose head office is not in an EEA State and which is 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 174 of the Solvency 2 Directive).]
- <sup>F57</sup>(c) .....]

- (3) If appropriate notice of the execution of an instrument giving effect to the transfer is published, the instrument has the effect in law—

- (a) of transferring to the transferee all the transferor's rights and obligations under the UK policies to which the instrument applies, and
- (b) if the instrument so provides, of securing the continuation by or against the transferee of any legal proceedings by or against the transferor which relate to those rights and obligations.

- (4) No agreement or consent is required before subsection (3) has the effects mentioned.



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- [<sup>F58</sup>(5) “Authorised transfer” means—
- (a) in subsection (1), a transfer authorised by the supervisory authorities of the home State of the EEA firm in accordance with Article 39 of the Solvency 2 Directive;
  - (b) in subsection (2), a transfer authorised in an EEA State other than the United Kingdom in accordance with—
    - (i) Article 164 of the Solvency 2 Directive; or
    - (ii) 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 174 of the Solvency 2 Directive).
- (6) “UK policy”, in relation to an authorised transfer, means a policy evidencing a contract of insurance or reinsurance to which the applicable law is the law of a part of the United Kingdom.]
- (7) “Appropriate notice” means—
- (a) if the UK policy evidences a contract of insurance in relation to which an EEA State other than the United Kingdom is the State of the commitment, notice given in accordance with the law of that State;
  - (b) if the UK policy evidences a contract of insurance where the risk is situated in an EEA State other than the United Kingdom, notice given in accordance with the law of that EEA State;
  - (c) in any other case, notice given in accordance with the applicable law.
- [<sup>F59</sup>(7A) In this section the “home State” is the EEA State which is the “home Member State” for the purposes of the Solvency 2 Directive (which is to be determined in accordance with Article 13(8) of that directive).]
- (8) Paragraph 6 of Schedule 12 applies for the purposes of this section as it applies for the purposes of that Schedule.

#### Textual Amendments

- F54** Words in s. 116(1) inserted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), reg. 2(1), [Sch. 1 para. 2\(4\)\(a\)](#)
- F55** S. 116(2) substituted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), reg. 2(1), [Sch. 1 para. 2\(4\)\(b\)](#)
- F56** S. 116(2)(a)(b) substituted (1.1.2016) by [The Solvency 2 Regulations 2015 \(S.I. 2015/575\)](#), reg. 1(2), [Sch. 1 para. 6\(2\)\(a\)](#)
- F57** S. 116(2)(c) omitted (1.1.2016) by virtue of [The Solvency 2 Regulations 2015 \(S.I. 2015/575\)](#), reg. 1(2), [Sch. 1 para. 6\(2\)\(b\)](#)
- F58** S. 116(5)(6) substituted (1.1.2016) by [The Solvency 2 Regulations 2015 \(S.I. 2015/575\)](#), reg. 1(2), [Sch. 1 para. 6\(3\)](#)
- F59** S. 116(7A) inserted (1.1.2016) by [The Solvency 2 Regulations 2015 \(S.I. 2015/575\)](#), reg. 1(2), [Sch. 1 para. 6\(4\)](#)

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### *Modifications*

#### **117 Power to modify this Part.**

The Treasury may by regulations—

- (a) provide for prescribed provisions of this Part to have effect in relation to prescribed cases with such modifications as may be prescribed;
- (b) make such amendments to any provision of this Part as they consider appropriate for the more effective operation of that or any other provision of this Part.

**Status:**

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