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# SCHEDULES

## SCHEDULE 12

Sections 111(2) and 115.

### TRANSFER SCHEMES: CERTIFICATES

#### PART I

#### INSURANCE BUSINESS TRANSFER SCHEMES

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

**C1** Sch. 12 Pt. I (paras. 1-6) applied (1.12.2001) by S.I. 2001/3626, arts. 1, 3(c)

- 1 (1) For the purposes of section 111(2) the appropriate certificates, in relation to an insurance business transfer scheme, are—
- (a) a certificate under paragraph 2;
  - (b) if sub-paragraph (2) applies, a certificate under paragraph 3;
  - (c) if sub-paragraph (3) applies, a certificate under paragraph 4;
  - (d) if sub-paragraph (4) applies, a certificate under paragraph 5<sup>[F1]</sup>;
  - (e) if sub-paragraph (5) applies, the certificates under paragraph 5A.]
- (2) This sub-paragraph applies if—
- (a) the authorised person concerned is a UK authorised person which has received authorisation under <sup>[F2]</sup>Article 4 of the life assurance consolidation directive or Article 6] or of the first non-life insurance directive from the Authority; and
  - (b) the establishment from which the business is to be transferred under the proposed insurance business transfer scheme is in an EEA State other than the United Kingdom.
- (3) This sub-paragraph applies if—
- (a) the authorised person concerned has received authorisation under <sup>[F3]</sup>Article 4 <sup>[F4]</sup>or Article 51] of the life assurance consolidation directive] from the Authority;
  - (b) the proposed transfer relates to business which consists of the effecting or carrying out of contracts of long-term insurance; and
  - (c) as regards any policy which is included in the proposed transfer and which evidences a contract of insurance (other than reinsurance), an EEA State other than the United Kingdom is the State of the commitment.
- (4) This sub-paragraph applies if—
- (a) the authorised person concerned has received authorisation under Article 6 <sup>[F5]</sup>or Article 23] of the first non-life insurance directive from the Authority;

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- (b) the business to which the proposed insurance business transfer scheme relates is business which consists of the effecting or carrying out of contracts of general insurance; and
- (c) as regards any policy which is included in the proposed transfer and which evidences a contract of insurance (other than reinsurance), the risk is situated in an EEA State other than the United Kingdom.

[<sup>F6</sup>(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.]

#### Textual Amendments

- F1** Sch. 12 para. 1(1)(e) inserted (10.12.2007) by The Reinsurance Directive Regulations 2007 (S.I. 2007/3253), reg. 2(1), **Sch. 1 para. 2(5)(a)**
- F2** Words in Sch. 12 para. 1(2)(a) substituted (11.1.2005) by The Life Assurance Consolidation Directive (Consequential Amendments) Regulations 2004 (S.I. 2004/3379), **reg. 6(7)(a)(i)**
- F3** Words in Sch. 12 para. 1(3)(a) substituted (11.1.2005) by The Life Assurance Consolidation Directive (Consequential Amendments) Regulations 2004 (S.I. 2004/3379), **reg. 6(7)(a)(ii)**
- F4** Words in Sch. 12 para. 1(3)(a) inserted (10.12.2007) by The Reinsurance Directive Regulations 2007 (S.I. 2007/3253), reg. 2(1), **Sch. 1 para. 2(5)(b)**
- F5** Words in Sch. 12 para. 1(4)(a) inserted (10.12.2007) by The Reinsurance Directive Regulations 2007 (S.I. 2007/3253), reg. 2(1), **Sch. 1 para. 2(5)(c)**
- F6** Sch. 12 para. 1(5) inserted (10.12.2007) by The Reinsurance Directive Regulations 2007 (S.I. 2007/3253), reg. 2(1), **Sch. 1 para. 2(5)(d)**

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

- C2** Sch. 12 Pt. I para. 1(2)(a)(3)(a)(4)(a) modified (1.12.2001) by S.I. 2001/3626, **arts. 1, 5(2)**

#### *Certificates as to margin of solvency*

- 2 (1) A certificate under this paragraph is to be given—
  - (a) by the relevant authority; or
  - (b) in a case in which there is no relevant authority, by the Authority.
- (2) A certificate given under sub-paragraph (1)(a) is one certifying that, taking the proposed transfer into account—
  - (a) the transferee possesses, or will possess before the scheme takes effect, the necessary margin of solvency; or
  - (b) there is no necessary margin of solvency applicable to the transferee.
- (3) A certificate under sub-paragraph (1)(b) is one certifying that the Authority has received from the authority which it considers to be the authority responsible for supervising persons who effect or carry out contracts of insurance in the place to which the business is to be transferred that, taking the proposed transfer into account—
  - (a) the transferee possesses or will possess before the scheme takes effect the margin of solvency required under the law applicable in that place; or

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- (b) there is no such margin of solvency applicable to the transferee .
- (4) “Necessary margin of solvency” means the margin of solvency required in relation to the transferee, taking the proposed transfer into account, under the law which it is the responsibility of the relevant authority to apply.
- (5) “Margin of solvency” means the excess of the value of the assets of the transferee over the amount of its liabilities.
- (6) “Relevant authority” means—
- (a) if the transferee is an EEA firm falling within paragraph 5(d) [<sup>F7</sup>or (da)] of Schedule 3, its home state regulator;
  - [<sup>F8</sup>(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;]
  - (b) if the transferee is a Swiss general insurer, the authority responsible in Switzerland for supervising persons who effect or carry out contracts of insurance;
  - (c) if the transferee is an authorised person not falling within [<sup>F9</sup>paragraph (a), (aa)] or (b), the Authority.
- (7) In sub-paragraph (6), any reference to a transferee of a particular description includes a reference to a transferee who will be of that description if the proposed scheme takes effect.
- [<sup>F10</sup>(7A) “Competent authorities” has the same meaning as in the insurance directives.]
- (8) “Swiss general insurer” means a body—
- (a) whose head office is in Switzerland;
  - (b) which has permission to carry on regulated activities consisting of the effecting and carrying out of contracts of general insurance; and
  - (c) whose permission is not restricted to the effecting or carrying out of contracts of reinsurance.
- [<sup>F11</sup>(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.]

#### Textual Amendments

- F7** Words in Sch. 12 para. 2(6)(a) inserted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), reg. 2(1), [Sch. 1 para. 2\(5\)\(e\)\(i\)](#)
- F8** Sch. 12 para. 2(6)(aa) inserted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), reg. 2(1), [Sch. 1 para. 2\(5\)\(e\)\(ii\)](#)
- F9** Words in Sch. 12 para. 2(6)(c) substituted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), reg. 2(1), [Sch. 1 para. 2\(5\)\(e\)\(iii\)](#)
- F10** Sch. 12 para. 2(7A) inserted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), reg. 2(1), [Sch. 1 para. 2\(5\)\(e\)\(iv\)](#)
- F11** Sch. 12 para. 2(9) inserted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), reg. 2(1), [Sch. 1 para. 2\(5\)\(e\)\(v\)](#)

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*Certificates as to consent*

- 3 A certificate under this paragraph is one given by the Authority and certifying that the host State regulator has been notified of the proposed scheme and that—
- (a) that regulator has responded to the notification; or
  - (b) that it has not responded but the period of three months beginning with the notification has elapsed.

*Certificates as to long-term business*

- 4 A certificate under this paragraph is one given by the Authority and certifying that the authority responsible for supervising persons who effect or carry out contracts of insurance in the State of the commitment has been notified of the proposed scheme and that—
- (a) that authority has consented to the proposed scheme; or
  - (b) the period of three months beginning with the notification has elapsed and that authority has not refused its consent.

*Certificates as to general business*

- 5 A certificate under this paragraph is one given by the Authority and certifying that the authority responsible for supervising persons who effect or carry out contracts of insurance in the EEA State in which the risk is situated has been notified of the proposed scheme and that—
- (a) that authority has consented to the proposed scheme; or
  - (b) the period of three months beginning with the notification has elapsed and that authority has not refused its consent.

*<sup>F12</sup>Certificates as to legality and as to consent*

**Textual Amendments**

**F12** Sch. 12 para. 5A and cross-heading inserted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), reg. 2(1), [Sch. 1 para. 2\(5\)\(f\)](#)

- 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.]

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### *Interpretation of Part I*

- 6 (1) “State of the commitment”, in relation to a commitment entered into at any date, means—
- (a) if the policyholder is an individual, the State in which he had his habitual residence at that date;
  - (b) if the policyholder is not an individual, the State in which the establishment of the policyholder to which the commitment relates was situated at that date.
- (2) “Commitment” means a commitment represented by contracts of insurance of a prescribed class.
- (3) References to the EEA State in which a risk is situated are—
- (a) if the insurance relates to a building or to a building and its contents (so far as the contents are covered by the same policy), to the EEA State in which the building is situated;
  - (b) if the insurance relates to a vehicle of any type, to the EEA State of registration;
  - (c) in the case of policies of a duration of four months or less covering travel or holiday risks (whatever the class concerned), to the EEA State in which the policyholder took out the policy;
  - (d) in a case not covered by paragraphs (a) to (c)—
    - (i) if the policyholder is an individual, to the EEA State in which he has his habitual residence at the date when the contract is entered into; and
    - (ii) otherwise, to the EEA State in which the establishment of the policyholder to which the policy relates is situated at that date.
- [<sup>F13</sup>(4) If the insurance relates to a vehicle dispatched from one EEA State to another, in respect of the period of 30 days beginning with the day on which the purchaser accepts delivery a reference to the EEA State in which a risk is situated is a reference to the State of destination (and not, as provided by sub-paragraph (3)(b), to the State of registration).]

#### **Textual Amendments**

**F13** Sch. 12 para. 6(4) added (5.9.2007) by The Financial Services and Markets Act 2000 (Motor Insurance) Regulations 2007 (S.I. 2007/2403), **reg. 2(2)**

#### **Commencement Information**

**II** Sch. 12 Pt I para. 6 wholly in force at 1.12.2001; Sch. 12 Pt. I para. 6 not in force at Royal Assent see s. 431(2); Sch. 12 para. 6(2) in force at 25.2.2001 by S.I. 2001/516, art. 2(b), Sch. Pts. 1, 3; Sch. 12 Pt. I para. 6 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

## **PART II**

### **BANKING BUSINESS TRANSFER SCHEMES**

- 7 (1) For the purposes of section 111(2) the appropriate certificates, in relation to a banking business transfer scheme, are—
- (a) a certificate under paragraph 8; and

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(b) if sub-paragraph (2) applies, a certificate under paragraph 9.

(2) This sub-paragraph applies if the authorised person concerned or the transferee is an EEA firm falling within paragraph 5(b) of Schedule 3.

*Certificates as to financial resources*

8 (1) A certificate under this paragraph is one given by the relevant authority and certifying that, taking the proposed transfer into account, the transferee possesses, or will possess before the scheme takes effect, adequate financial resources.

(2) “Relevant authority” means—

- (a) if the transferee is a person with a Part IV permission or with permission under Schedule 4, the Authority;
- (b) if the transferee is an EEA firm falling within paragraph 5(b) of Schedule 3, its home state regulator;
- (c) if the transferee does not fall within paragraph (a) or (b), the authority responsible for the supervision of the transferee’s business in the place in which the transferee has its head office.

(3) In sub-paragraph (2), any reference to a transferee of a particular description of person includes a reference to a transferee who will be of that description if the proposed banking business transfer scheme takes effect.

*Certificates as to consent of home state regulator*

9 A certificate under this paragraph is one given by the Authority and certifying that the home State regulator of the authorised person concerned or of the transferee has been notified of the proposed scheme and that—

- (a) the home State regulator has responded to the notification; or
- (b) the period of three months beginning with the notification has elapsed.

**[<sup>F14</sup>PART 2A**

RECLAIM FUND BUSINESS TRANSFER SCHEMES

**Textual Amendments**

**F14** Sch. 12 Pt. 2A inserted (12.3.2009) by [Dormant Bank and Building Society Accounts Act 2008 \(c. 31\)](#), ss. 15, 31(1)(2), [Sch. 2 para. 5](#); S.I. 2009/490, [art. 2](#) (with [art. 3](#))

*Certificate as to financial resources*

9A For the purposes of section 111(2) the appropriate certificate, in relation to a reclaim fund business transfer scheme, is a certificate given by the Authority certifying that, taking the proposed transfer into account, the transferee possesses, or will possess before the scheme takes effect, adequate financial resources.]

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### PART III

#### INSURANCE BUSINESS TRANSFERS EFFECTED OUTSIDE THE UNITED KINGDOM

- 10 (1) This paragraph applies to a proposal to execute under provisions corresponding to Part VII in a country or territory other than the United Kingdom an instrument transferring all the rights and obligations of the transferor under general or long-term insurance policies, or under such descriptions of such policies as may be specified in the instrument, to the transferee if any of the conditions in sub-paragraphs (2), (3) or (4) is met in relation to it.
- (2) The transferor is an EEA firm falling within paragraph 5(d) [<sup>F15</sup>or (da)] of Schedule 3 and the transferee is an authorised person whose margin of solvency is supervised by the Authority.
- (3) The transferor is a company authorised in an EEA State other than the United Kingdom under [<sup>F16</sup>Article 51 of the life assurance consolidation directive], or Article 23 of the first non-life insurance directive and the transferee is a UK authorised person which has received authorisation under [<sup>F17</sup>Article 4 of the life assurance consolidation directive or Article 6 of the first non-life insurance directive].
- (4) The transferor is a Swiss general insurer and the transferee is a UK authorised person which has received authorisation under [<sup>F18</sup>Article 4 of the life assurance consolidation directive or Article 6 of the first non-life insurance directive].
- (5) In relation to a proposed transfer to which this paragraph applies, the Authority may, if it is satisfied that the transferee possesses the necessary margin of solvency, issue a certificate to that effect.
- (6) “Necessary margin of solvency” means the margin of solvency which the transferee, taking the proposed transfer into account, is required by the Authority to maintain.
- (7) “Swiss general insurer” has the same meaning as in paragraph 2.
- (8) “General policy” means a policy evidencing a contract which, if it had been effected by the transferee, would have constituted the carrying on of a regulated activity consisting of the effecting of contracts of general insurance.
- (9) “Long-term policy” means a policy evidencing a contract which, if it had been effected by the transferee, would have constituted the carrying on of a regulated activity consisting of the effecting of contracts of long-term insurance.

#### Textual Amendments

- F15** Words in Sch. 12 para. 10(2) inserted (10.12.2007) by [The Reinsurance Directive Regulations 2007 \(S.I. 2007/3253\)](#), reg. 2(1), [Sch. 1 para. 2\(5\)\(g\)](#)
- F16** Words in Sch. 12 para. 10(3) substituted (11.1.2005) by [The Life Assurance Consolidation Directive \(Consequential Amendments\) Regulations 2004 \(S.I. 2004/3379\)](#), [reg. 6\(7\)\(b\)\(i\)](#)
- F17** Words in Sch. 12 para. 10(3) substituted (11.1.2005) by [The Life Assurance Consolidation Directive \(Consequential Amendments\) Regulations 2004 \(S.I. 2004/3379\)](#), [reg. 6\(7\)\(b\)\(ii\)](#)
- F18** Words in Sch. 12 para. 10(4) substituted (11.1.2005) by [The Life Assurance Consolidation Directive \(Consequential Amendments\) Regulations 2004 \(S.I. 2004/3379\)](#), [reg. 6\(7\)\(c\)](#)

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