

**EXPLANATORY MEMORANDUM TO**  
**THE FINANCIAL SERVICES AND MARKETS ACT 2000 (AMENDMENTS**  
**TO PART 7) REGULATIONS 2008**  
**2008 No. 1468**

**THE FINANCIAL SERVICES AND MARKETS ACT 2000 (AMENDMENT OF**  
**SECTION 323) REGULATIONS 2008**  
**2008 No. 1469**

**THE FINANCIAL SERVICES AND MARKETS ACT 2000 (CONTROL OF**  
**BUSINESS TRANSFERS)(REQUIREMENTS ON**  
**APPLICANTS)(AMENDMENT) REGULATIONS 2008**  
**2008 No. 1467**

1. This explanatory memorandum has been prepared by Her Majesty's Treasury and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

2.1 The statutory instruments described in this memorandum are to make the following changes and clarifications:-

- to enable certain former underwriting names of the Lloyd's insurance market who are presently unable to take part, to participate in a transfer of their portfolio of contracts to another insurer;
- to make clarifications to section 112 of the Financial Services and Markets Act 2000 (FSMA) to make Part 7 of that Act work more effectively; and
- to make small amendments to the procedure in relation to transfers under Part 7 of FSMA including the requirement to notify reinsurers of the transferor under an insurance business transfer scheme.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

4. **Legislative Background**

4.1 The first instrument referred to above makes a number of amendments to clarify the effect of a transfer under Part 7 of FSMA. The issue arises from the wording of section 112(2)(a) which has caused some uncertainty. The reason for the uncertainty is that there is an argument that section 112(2)(a) deals with transfers where the restriction in question only concerns a

restriction of the corporate capacity of the transferor. There has been some judicial consideration of the wording, which held that the wording was not so restricted, also enabling the transfer of property which, for example, might be subject to the consent of a third person. However, the judicial consideration has all been at the level of first instance courts, such as, in the case of *WASA International* [2003] 1 BCLC 668 and the earlier case of *Cater Allen* [2002] EWHC 3147 (Ch).

4.2 The first instrument therefore puts it beyond doubt that section 112(2)(a) has the wider scope intended.

4.3 The second instrument referred to above makes amendments to Section 323 of FSMA to enable certain former underwriting members of the Lloyd's insurance market to take part in a transfer of their insurance portfolio. At present the drafting of section 323 relies on the general definition of former underwriting member in section 324. The amendment does not make a general change to that definition but rather amends section 323 to cover all former underwriting names, rather than just those who ceased to be a member of Lloyd's on or after 24<sup>th</sup> December 1996. A fourth instrument to apply changes to the S.I. which applies Part 7 to Lloyd's will follow after this instrument comes into force.

4.4 The amendment to the third instrument above requires that a notice must be sent to a reinsurer (or his broker or agent where there are a number of reinsurers) of the proposed transferor following the making of the application and before the court may sanction the transfer.

## **5. Territorial Extent and Application**

5.1 These instruments apply to all of the United Kingdom.

## **6. European Convention on Human Rights**

The Economic Secretary to the Treasury has made the following statement regarding Human Rights:

In my view the provisions of the Financial Services and Markets Act 2000 (Amendments to Part 7) Regulations 2008 and the Financial Services and Markets Act 2000 (Amendment of section 323) Regulations 2008 are compatible with the Convention rights.

The provisions of the Financial Services and Markets Act 2000 (Control of Business Transfers)(Requirements on Applicants)(Amendment) Order 2008 are subject to the negative resolution procedure and do not amend primary legislation, therefore no statement is required in relation to it.

## **7. Policy background**

7.1 Part 7 of FSMA provides a regime for authorising transfers of UK insurance and reinsurance business from one company to another within the EEA through a process of Court approval. (Part 7 also extends to banking transfers, but the amendments being made in these statutory instruments are

being pursued primarily in the context of insurance business.) Transfers aid the effective and efficient management of insurance companies, for example, through restructuring. Various classes of person in addition to the transferor and transferee may be affected by transfers, including insurance and reinsurance policyholders, reinsurance companies, and other counterparties in relation to infrastructure assets such as IT and policy administration. The Court may approve transfers only if it considers in all the circumstances of the case that it is appropriate to sanction the scheme.

7.2 In order to help facilitate transfers, the Court has a wide-ranging discretion under Part 7 to order the transfer of property and liabilities relating to a proposed transfer scheme. Concerns have been expressed, however, that there is a degree of uncertainty in some respects as to the full extent of the Court's powers (see paragraph 4.1 above). Amendments are being made to make clear, for the avoidance of doubt, that the Court is to be taken as always having had the power to transfer contracts which include provisions prohibiting their transfer or contracts in relation to which there is a query as to their transferability in the absence of consent of a counterparty. The amendments also clarify that specified entitlements arising from something done under Part 7 will only be enforceable after the Court order has been made, and only insofar as the order makes provision for them. This might be relevant, for example, where a counterparty to an insurer has a right to terminate an agreement with the insurer which is exercisable as a result of the insurer stating its intention to pursue a business transfer. These provisions are designed to ensure that the Court can deal with the wide range of circumstances that come before it and that transfers which the Court feels are otherwise justified, taking all factors into account, are not thwarted by minority interests and termination clauses.

7.3 These issues most often arise in connection with reinsurance contracts taken out on the risks being transferred (though they are not restricted to such contracts). Reinsurers, alongside insurance and reinsurance policyholders, are amongst those most likely to be affected by transfers, and a further amendment is made to put them on the same footing as policyholders in terms of the right to be directly notified of transfers under which they may be affected. This strengthens the arrangements for ensuring they know about proposed schemes and are able to exercise existing rights under Part 7 to make representations to the Court.

7.4 The amendment made by the second instrument relates to transfers of business at Lloyd's. The Treasury has specific powers to apply Part 7 to such transfers, but, because of the current definition of former underwriting members at Lloyd's in Part 7, it is limited to the business of current members or those who resigned on or after 24 December 1996. This distinction was made so those earlier former members are not regulated under FSMA in the same way as insurance undertakings and current members of Lloyds – the distinction is not relevant, in policy terms, to the application of Part 7 to insurance business written at Lloyd's. The Treasury believes that the date of a former member's resignation should not be a factor in determining whether a transfer of that member's business is possible, and amendments are made to correct this anomaly.

Consultation

7.5 The Treasury published its consultation document entitled “Consultation on amendments relating to Part 7 of FSMA 2000 (“Control of Business Transfers”)” on 3<sup>rd</sup> November 2006. The consultation period closed 12 weeks later on 26<sup>th</sup> January 2007. Copies of the document were sent direct to key stakeholders and letters referring to the consultation were sent to Names and former Names. Around 120 consultation responses were received, from a variety of bodies and individuals, including insurance and reinsurance companies, policyholders, legal practitioners, trade bodies, the Financial Services Authority, and former members of Lloyd’s. Many respondents focussed their comments either on the clarificatory amendments or those relating to certain former underwriting members of Lloyd’s. Some of the responses contained detailed drafting comments.

7.6 Against a background of general support in principle for clarifying the powers of court in section 112, technical issues were raised on the proposed amendments. Some respondents raised concerns about the impact on reinsurers of transfers (though the clarifications, being just that, do not in fact alter the position). The Treasury has revised the instruments and deals with the points made in its document responding to the consultation, referred to in paragraph 7.8 below.

7.7 In relation to the amendments concerning former names at Lloyd’s a great majority favoured making such amendments. Some concerns were raised about the effect on policyholders of a proposed transfer by Equitas, the run-off reinsurer of pre-1993 non-life business at Lloyd’s, that would become possible after the amendments are made. These are concerns that are properly for the court to consider if and when application is made for such a transfer. The Treasury does not consider they should change the policy intention to make the amendments.

7.8 A summary of responses, including the Treasury’s response to the comments received, and revised instruments, was published on the Treasury’s website on 9 April, more than a month prior to the instruments being laid before Parliament. Direct notification of publication of the summary was sent to those consultees who had raised substantive comments, together with the offer of discussions to address concerns if desired. A link to the summary is below (see second link under ‘Media links’):

[http://www.hm-treasury.gov.uk/consultations\\_and\\_legislation/fsma/part7fsma/consult\\_part7fsma\\_index.cfm](http://www.hm-treasury.gov.uk/consultations_and_legislation/fsma/part7fsma/consult_part7fsma_index.cfm)

7.9 The Treasury has fully considered all responses, including two received after the publication of the summary, and has responded direct in certain cases where particular concerns were expressed. The first of the two post-summary responses set out concerns about the interests of reinsurance policyholders in transfers. These are not affected by the amendments and the Treasury has written to the respondent to explain the position. The second response raised concerns about the impact for asbestos liabilities of the proposed Equitas transfer, referred to in paragraph 7.7 above. As for other concerns raised by certain policyholders at Lloyd’s the Treasury considers

these would be matters for the court to consider, if and when application for the transfer is made.

7.10 In summary, certain technical changes to the proposed amendments were made following the original consultation, but the policy remains the same, to facilitate the use of Part 7 and to ensure that all insurance business written at Lloyd's can enjoy the benefit of Part 7 transfers.

## **8. Impact**

8.1 A Regulatory Impact Assessment is attached to this memorandum.

8.2 There is no significant impact on the public sector.

## **9. Contact**

David Beardsworth at Her Majesty's Treasury Tel: 020-7270 4427 or e-mail: david.beardsworth@hm-treasury.x.gsi.gov.uk can answer any queries regarding the instrument.

<b>Department HM Treasury</b>	<b>Impact Assessment of amendments relating to Part 7 of the Financial Services and Markets Act 2000 ("FSMA")</b>
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<b>Stage Implementation</b>	<b>Version 2</b>	<b>Related Publications</b> - Consultation on amendments relating to Part 7 of FSMA 2000 (Control of Business Transfers) - Summary of consultation responses
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Available to view or download at: [http://www.hm-treasury.gov.uk/consultations\\_and\\_legislation/fsma/part7fsma/consult\\_part7fsma\\_index.cfm](http://www.hm-treasury.gov.uk/consultations_and_legislation/fsma/part7fsma/consult_part7fsma_index.cfm)

**Contact name for enquiries: David Beardsworth**

**Telephone number: 0207 270 4427**

**What is the problem under consideration? Why is government intervention necessary?**

Concerns have been expressed by practitioners that the extent of the powers of the court to order the transfer of property under Part 7 of FSMA, in connection with insurance business transfer schemes, needs clarification. Also, an (unintended) effect of the current definition of "former underwriting member" at Lloyd's is to exclude certain former members from being able to transfer their business under Part 7. Government action is required as legislative change is needed.

**What are the policy objectives and the intended effects?**

The policy objectives are to aid the effective operation of the transfer provisions in Part 7 by clarifying, for the avoidance of doubt, that the court is to be taken as always having had the power to transfer property relating to a proposed transfer scheme and override specified entitlements such as termination rights triggered by moves to undertake a transfer. In relation to Lloyd's, they are to bring all former underwriting members within the scope of Part 7, so all business, whenever written, is capable of transfer.

**What policy options have been considered? Please justify any preferred option.**

1. Do nothing
  2. Make legislative amendments in relation to clarification of the court's powers and amending the definition of former underwriting members
  3. As for 2 above, plus an amendment to provide for direct notification of reinsurers who are affected under proposed transfers.
- Part 7 promotes economic activity and insurance company efficiencies, eg through restructuring. Option 3 is preferred to ensure it operates as effectively as possible, and to recognise that reinsurers stand alongside policyholders (including reinsurance policyholders) as those most liable to be affected under transfers, by strengthening notification arrangements for them so they can exercise existing rights under Part 7 to make representations to the court.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? 06/2011**

**Ministerial Sign-off** For final proposal/implementation stage Assessments:

***I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.***

Signed by the responsible Minister:

Date: 6 June 2008



## SUMMARY: ANALYSIS & EVIDENCE

Policy Option	Description
<p><b>ANNUAL COSTS</b></p> <p>One off (Transition) <span style="border: 1px solid black; padding: 2px;">£ -</span> Yrs <span style="border: 1px solid black; padding: 2px;">-</span></p> <p><b>Average Annual Cost</b> <i>(excluding one-off)</i></p> <p style="border: 1px solid black; padding: 2px; display: inline-block;">£ 254</p>	<p>Description and scale of <b>key monetised costs</b> by 'main affected groups'</p> <p>Requirement to notify reinsurers affected under proposed transfers.</p> <p style="text-align: right; border: 1px solid black; padding: 2px; display: inline-block;">£. 2,795</p>
<p>Other <b>key non-monetised costs</b> by 'main affected groups'</p>	
<p><b>ANNUAL BENEFITS</b></p> <p>One off <span style="border: 1px solid black; padding: 2px;">£ -</span> Yrs <span style="border: 1px solid black; padding: 2px;"></span></p> <p><b>Average Annual Benefit</b> <i>(excluding one-off)</i></p> <p style="border: 1px solid black; padding: 2px; display: inline-block;">£ 16,515</p>	<p>Description and scale of <b>key monetised benefits</b> by 'main affected groups'</p> <p>Benefits arising to transferors and transferees from increased clarity of the provisions, to reduce the legal costs of conducting transfers and/or reduced litigation costs arising out of post-transfer challenges to the court's jurisdiction.</p> <p style="text-align: right; border: 1px solid black; padding: 2px; display: inline-block;">£ £ 181,672</p>
<p>Other <b>key non-monetised benefits</b> by 'main affected groups'</p> <p>Promotion of viable and sustainable insurance and banking concerns.</p>	
<p><b>Key Assumption/Sensitivities/Risks</b> Key assumptions: discount rate of 3.5%. Period assumed to be 10 years.</p>	
<p>Price Base Year 2007</p>	<p>Time Period Years 10</p>
<p><b>Net Benefit Range (NPV)</b> £ -</p>	
<p><b>NET BENEFIT (NPV Best estimate)</b> £ 178,877</p>	

What is the geographic coverage of the policy/option?	UK wide			
On what date will the policy be implemented?	June/July 2008			
Which organisation(s) will enforce the policy?	Courts, FSA			
What is the total annual cost of enforcement for these organisations?	0			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ -			
What is the value of changes in greenhouse gas emissions?	£ N/A			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Med	Large
Are any of these organisations exempt?	No	No	No	No
<p><b>Impact on Admin Burdens Baseline</b> (2005 Prices)</p> <p>Increase of <span style="border: 1px solid black; padding: 2px;">£</span> Decrease of <span style="border: 1px solid black; padding: 2px;">£ £139.269.65</span> <b>Net Impact</b></p>			<p>£ (Increase - Decrease) £2579</p>	

Key:

Annual Cost: Constant Prices

(Net) Present Value

## 1. PROPOSAL

1.2 Part 7 FSMA sets out a process of court approval for transfers of insurance business. Other than for several tightly defined exclusions, transfers of UK insurance business (including reinsurance business) within the European Economic Area must be conducted under Part 7.

1.3 (Part 7 also applies to banking business transfers, though it is not a requirement for such transfers. These proposals are being pursued primarily for the purposes of insurance business transfers.)

1.4 An insurer may wish to embark on a transfer of business for commercial reasons, for reasons of economies of scale or because there is a chance that the business may be at risk of insolvency but for such reorganisation.

1.5 The key aspects of these proposals aim to:

- put beyond all doubt that property and liabilities (for example, certain reinsurance contracts) which would not otherwise be transferable or assignable can be transferred by order of the court under Part 7;
- require applicants seeking a court order for a transfer of insurance business to notify all reinsurers, whose reinsurance contracts will also be transferred, of the proposed transfer of insurance business;
- extend the eligibility for participation in a transfer scheme to certain former members of Lloyd's who are currently excluded from the scope of these provisions.

1.6 Given that the uncertainties in question arise from legislative provisions in FSMA, the most appropriate way in which they can be addressed is through legislative amendment. HM Treasury therefore considers that Government intervention is required.

### **Reinsurance contracts related to insurance business**

1.7 Part 7 does not make express provision for any accompanying transfer of reinsurance and other contracts (and the benefits offered by them) alongside a Part 7 transfer of the insurance liabilities to which they relate.

1.8 Whilst there seems to be no doubt that reinsurance (and other related contracts) are included within the scope of the existing provisions, the current drafting is such that concerns exist as to the transferability of those contracts, for example, without the express consent of the reinsurer in question, or in the event that a contractual term exists that purports to prohibit such a transfer in one way or another.

1.9 As a consequence, it is possible that a court considering an application for a transfer scheme might interpret its powers as being limited in respect of ordering the transfer of a contract, which would not otherwise, for one reason or another, be able to be transferred.

1.10 Some concerns have been raised that this perceived lack of clarity may deter some insurers from embarking on such a scheme for fear of a lack of legal certainty on the issue. A concern arising purely from a lack of clarity in the relevant legislation should not be a factor in an insurer's decision in this regard. Hence, clarification is necessary to ensure that an insurer is able to make an application for a transfer based purely on commercial grounds (subject of course to meeting the conditions set out in Part 7 and satisfying the court), not a fear of potential legislative barriers which could jeopardise the foundations of a transfer scheme. Increased clarity will also aid the effective operation of the provisions.



1.11 In the event of a transfer going ahead or simply being considered by an insurer in liaison with its legal advisers, legal costs would be higher if the legislation were to remain as it currently is. Legal uncertainty amongst parties involved in a transfer might lead to more legal advice being sought than would be necessary if Part 7 provisions were clarified. It has been estimated that approximately 10% of the current cost of a typical Part 7 insurance transfer could be saved as a result of these proposals. Although one consultee felt that this was an over estimate, but that significant savings could instead be available from the resulting greater certainty to avoid possible future litigation.

1.12 Furthermore, if, as sometimes happens, a reinsurer declines to pay out on a reinsurance contract (particularly those that are older or those in respect of which losses have already been incurred), there may be a prolonged period when the reinsured insurer has to pay out of its own money and then take a decision regarding whether or not to pursue the reinsurer for the debt, either in part or full. This process may also involve additional legal costs. Any potential uncertainty about the enforceability of amounts due (as a result of unclear legislation, for example), only serves to strengthen the hand of an indebted reinsurer and make it more likely that a reluctant payer may choose to dispute its liability. Thus increased legal costs might be a direct result of legal uncertainty.

### **Notification of reinsurers**

1.13 Those who allege they would be adversely affected by transfers have the right, under Part 7, to make representations to the court. This is an important safeguard. To help ensure they are in a position to exercise those rights, publication and notification requirements are in place for insurance business transfer schemes. The court may not determine a transfer application if the requirements have not been met, though it has the power to disapply them. At present, insurance and reinsurance policyholders receive direct notification of transfers which impact on them, but no other classes of person. Reflecting that reinsurers stand alongside policyholders as being amongst those most likely to be affected by a transfer of insurance or reinsurance business, it is proposed to extend direct notification to them.

### **Definition of “former underwriting member”**

1.14 The FSMA definition of former underwriting members (“Names”) of Lloyd’s excludes from its scope those members who resigned prior to 24 December 1996. This cut-off point is necessary for the purposes of ensuring that those Names who resigned prior to this date are not regulated under FSMA. However, in respect of Part 7 provisions for the transfer of insurance business, there is no good reason to maintain this distinction. Hence, in respect of these provisions only, it is proposed that the drafting be amended to extend these possibilities to all former members, regardless of when they resigned.

1.15 A risk could materialise in the event of the legislation remaining unamended, with regards to Equitas, the run-off reinsurer of 1992 and prior years non-life business at Lloyd’s. This is because Equitas does not have open to it at present the same number of possible options for a restructuring of its business as other insurers. If the business of certain former Names were not able to be transferred because of legislative restrictions, Equitas would only be able to consider a transfer of its own reinsurance business, rather than also having the option of exploring the possibility of a transfer of the entire chain of business.

1.16 Equitas announced in 2006 that it may propose a transfer to a member of the Berkshire Hathaway group. These amendments, though, would not require that to happen, they would merely allow such a transfer to deal with all liabilities of all former names. The issue as to whether such a transfer should go ahead would be for the commercial parties involved and for the court to consider in giving or withholding its approval to such a scheme.

## **2. COSTS AND BENEFITS**

2.1 The benefits and costs outlined in this assessment are those that are relevant in the event that an insurer embarks on a transfer of business. Of course, this is an entirely optional course of action. As such, any benefits and/ or costs will only be incurred by virtue of an active decision on the part of an

insurer to embark on this course of action and it is reasonable to assume that such a decision would be made in full awareness of those benefits and costs.

### **3. WHO WILL BE AFFECTED**

3.1 These proposals potentially affect all bodies and individuals operating in the insurance market, as any of these has the ability to undertake a transfer of insurance business. All bodies and individuals operating in the reinsurance market also have the potential to be affected by these proposals in the event that any insurance liabilities they are reinsuring become the subject of an insurance transfer scheme. They may also undertake transfers themselves.

### **4. EQUITY AND FAIRNESS**

4.1 The Government considers that the measures introduced will not have a disproportionate impact on the groups identified.

### **5. IMPACT ON SMALL FIRMS**

5.1 The Government's view is that there will not be a disproportionate impact on small business. The Treasury spoke to the Small Business Service at the pre-consultation stage and outlined these proposals to them. It was agreed that embarking on a transfer of insurance business is entirely a voluntary decision and, as such, any impact on a small firm (as indeed with a larger one) would only be pursuant to such a decision on the part of that firm to go down this route at all. In any case, the benefits and costs of these proposals would apply equally to small firms as to larger ones.

### **6. IMPACT ON COMPETITION**

6.1 As previously explained, the decision to embark on a transfer of insurance business is entirely a voluntary one and could take place anywhere within the insurance market, and involving any number of associated parties (eg. policyholders and reinsurers, as well as the insurer). The improved clarity of the transfer provisions should aid the efficient conduct of transfers and promote efficient and sustainable insurance companies.

### **7. EQUALITY ASSESSMENTS**

7.1 The proposals have no impact on race, disability or gender equality.

### **8. HUMAN RIGHTS**

8.1 In relation to these amendments the Economic Secretary to the Treasury has made the following statement regarding Human Rights:

In my view the provisions of the Financial Services and Markets Act 2000 (Amendments to Part 7) Regulations 2008 and the Financial Services and Markets Act 2000 (Amendment of section 323) Regulations 2008 are compatible with the Convention rights.

## Specific Impact Tests - Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	Results in Evidence Base? (Y/N)	Results annexed? (Y/N)
Competition Assessment	Y	N
Small Firms Impact Test	Y	N
Legal Aid	N/A	N/A
Sustainable Development	N/A	N/A
Carbon Assessment	N/A	N/A
Other Environment	N/A	N/A
Health Impact Assessment	N/A	N/A
Race Equality	Y	N
Disability Equality	Y	N
Gender Equality	Y	N
Human Rights	Y	N
Rural Proofing	N/A	N/A

## Annexes

### PRESENT VALUE CALCULATIONS

#### BENEFITS

	YEAR	DISCOUNT FACTOR	BENEFIT
T <sub>0</sub>	2008	3.5%	£ 19,500

T <sub>1</sub>	2009	3.5%	£ 18,840.9
T <sub>2</sub>	2010	3.5%	£ 18,203.3
T <sub>3</sub>	2011	3.5%	£ 17,587.1
T <sub>4</sub>	2012	3.5%	£ 16,992.3
T <sub>5</sub>	2013	3.5%	£ 16,419
T <sub>6</sub>	2014	3.5%	£ 15,863.3
T <sub>7</sub>	2015	3.5%	£ 15,327
T <sub>8</sub>	2016	3.5%	£ 14,808.3
T <sub>9</sub>	2017	3.5%	£ 14,307.2
T <sub>10</sub>	2018	3.5%	£ 13,823.6
		Total:	£ 181,672

**TOTAL BENEFIT (PRESENT VALUE) = £ 181, 672**

**AVERAGE ANNUAL BENEFIT = £ 16,515**

### **COSTS**

	<b>YEAR</b>	<b>DISCOUNT FACTOR</b>	<b>COSTS</b>
T <sub>0</sub>	2008	3.5%	£ 300
T <sub>1</sub>	2009	3.5%	£ 289.9
T <sub>2</sub>	2010	3.5%	£ 280
T <sub>3</sub>	2011	3.5%	£ 270.6
T <sub>4</sub>	2012	3.5%	£ 261.4
T <sub>5</sub>	2013	3.5%	£ 252.6
T <sub>6</sub>	2014	3.5%	£ 244
T <sub>7</sub>	2015	3.5%	£ 235.8
T <sub>8</sub>	2016	3.5%	£ 227.8
T <sub>9</sub>	2017	3.5%	£ 220.1
T <sub>10</sub>	2018	3.5%	£ 212.7
			£ 2,794.9

**TOTAL COSTS (PRESENT VALUE) = £ 2,795**

**AVERAGE ANNUAL COST = £254**

### **KEY ASSUMPTIONS AND FACTS**

#### **Insurance business transfers**

- There are about 20 transfers of insurance business approved by the courts under Part 7 FSMA each year.
- The legal costs of transfers are estimated to be in the ranges of £80,000 to £100,000 for a straightforward intra-group transfer, and £100,000 to £500,000 for transfers to third parties, depending on complexity
- 50% of transfers are intra-group.
- 50% of transfers are to third parties.
- Savings of approximately 10% of legal costs are assumed, through greater clarity and certainty in the process of conducting transfers, and reduced litigation costs post-transfer, eg through fewer challenges to the court's jurisdiction.
- 50% of transfers of involve re-insurers.

## **COST/BENEFIT COMPARISONS**

There are no benefits to failing to implement these amendments. Some potential transferors may be dissuaded through lack of legal certainty. Certain ex-Names will be unable ever to transfer their business under Part 7.

### **Costs and benefits of the proposal are:**

#### Benefits.

Benefits of the legislation option arise through reduced legal costs, due to greater clarity and certainty in the process of conducting transfers, and reduced litigation costs post-transfer. These benefits occur to two groups, Intra-group and third parties.

Intra-group benefits = £ 90,000 x 0.5 x 0.1 = £ 4,500

Third party benefits = £ 300,000 x 0.5 x 0.1 = £15,000  
£19,500

#### Costs

Administrative costs arise because of the requirement to notify reinsurers of insurance business transfer schemes. It is assumed that such costs would only be incurred in 50% of cases, and would take a member of the administrative staff a total of two hours.

Administrative cost = £15 x 2 x 10 = £ 300