

## SCHEDULE

Regulation 36

### Transitional provision: insurance business transfer schemes

#### Interpretation

**1.—(1)** In this Schedule—

“the 2001 Regulations” means the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001(1);

“the 2001 Order” means the Financial Services and Markets Act 2000 (Control of Business Done at Lloyd’s) Order 2001(2);

“the Act” means the Financial Services and Markets Act 2000;

“transitional insurance business transfer scheme” means an insurance business transfer scheme which satisfies both of the following conditions—

- (a) Condition 1 is that, before exit day, the relevant fee has been paid;
- (b) Condition 2 is that a person has, before exit day, been nominated or approved under section 109(2)(b) of the Act (nomination or approval of person to make scheme report by appropriate regulator)(3).

(2) In Condition 1 of the definition of “transitional insurance business transfer scheme” in subparagraph (1) the “relevant fee” means the fee required to be paid by a person applying for an insurance business transfer scheme under Part 7 of the Act under any provision of the Fees Part of the rulebook made by the PRA under the Act in force immediately before exit day.

#### Orders sanctioning transitional insurance business transfer schemes

**2.** An order may only be made under section 111 (sanction of the court for business transfer schemes) of the Act sanctioning a transitional insurance business transfer scheme within the period of two years beginning with exit day.

#### Modification of legislation

**3.** The amendments made by regulations 32, 33, 105 to 107, 183 and 184 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019(4) do not apply in relation to a transitional insurance business transfer scheme.

**4.** In relation to a transitional insurance business transfer scheme—

- (a) the Act is modified in accordance with paragraphs 6 and 7;
- (b) the 2001 Regulations are modified in accordance with paragraph 8;
- (c) the 2001 Order is modified in accordance with paragraph 9.

**5.—(1)** In the following modifications a “relevant person” means a person to whom one of the following regulations of the 2018 Regulations applies—

- (a) regulation 8;
- (b) regulation 11;
- (c) regulation 28;

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(1) S.I. 2001/3625; as amended by S.I. 2007/3255, 2008/1467, 2009/1390, 2011/1265, 2013/472 and 2015/575.

(2) S.I. 2001/3626; as amended by S.I. 2008/1725, 2013/472, 2013/1765.

(3) Section 109 was amended by paragraph 3 of Schedule 6 to the Financial Services Act 2012 (c. 21).

(4) S.I. 2019/632.

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(d) regulation 34.

(2) In sub-paragraph (1) “the 2018 Regulations” means the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018<sup>(5)</sup>.

### **Modifications to the Act: Part 7 and Schedule 12**

6.—(1) Part 7 of the Act (control of business transfers) is modified as follows.

(2) In section 105 (insurance business transfer schemes)—

(a) subsection (1)(b) is to be read as if after “EEA State” there were inserted “or in the United Kingdom”;

(b) subsection (2)<sup>(6)</sup> is to be read as if—

(i) in paragraph (a) for “member States” there were substituted “relevant States (and a “relevant State” is a member State or the United Kingdom)”;

(ii) in paragraph (b) for “an EEA firm falling within paragraph 5(d) of Schedule 3 and qualifying for authorisation under that Schedule” there were substituted “a qualifying relevant person”;

(iii) paragraph (c) for “an EEA firm” there were substituted “a relevant person”;

(c) after subsection (2), the section is to be read as if there were inserted—

“(2A) In subsection (2)(b) “qualifying relevant person” means a relevant person which is an undertaking pursuing the activity of direct insurance (within the meaning of Article 2 of the Solvency 2 Directive<sup>(7)</sup>) which has received authorisation under Article 14 of that directive from its home state regulator.

(2B) In subsection (2A) “home state regulator” means the competent authority of an EEA State in relation to the qualifying relevant person concerned; and “competent authority” is to be construed in accordance with the Solvency 2 Directive.”;

(d) subsection (3)<sup>(8)</sup> is to be read as if—

(i) Case 2 were omitted;

(ii) in Case 3—

(aa) in paragraph (b) for “(none of which is an EEA State)” there were substituted “outside the United Kingdom”;

(bb) in paragraph (b) for “an EEA State”, in the second place it occurs, there were substituted “the United Kingdom”;

(cc) in paragraph (c) for “other than an EEA State” there were substituted “outside the United Kingdom”.

(3) Section 112 (effect of order sanctioning business transfer scheme) subsection (9)<sup>(9)</sup> is to be read as if for “an EEA firm” there were substituted “a relevant person”.

(4) In section 114<sup>(10)</sup> (rights of certain policy holders)—

(a) subsection (1)(a) is to be read as if for “an EEA firm qualifying for authorisation under Schedule 3” there were substituted “a relevant person”;

<sup>(5)</sup> [S.I. 2018/1149](#); as amended by [S.I. 2019/405](#).

<sup>(6)</sup> Subsection (2) was amended by [S.I. 2007/3253](#) and paragraph 2 of Schedule 1 to the Financial Services (Banking Reform) Act 2013 (c.33).

<sup>(7)</sup> OJ L 335, 17.12.2009, p. 1.

<sup>(8)</sup> Subsection (3) was amended by paragraph 2 of Schedule 1 to the Financial Services (Banking Reform) Act 2013 and [S.I. 2015/575](#).

<sup>(9)</sup> Subsection (9) was amended by paragraph 2 of Schedule 1 to the Financial Services (Banking Reform) Act 2013.

<sup>(10)</sup> Subsection (1)(a) was amended by paragraph 2 of Schedule 1 to the Financial Services (Banking Reform) Act 2013; subsection (1)(c) was amended by [S.I. 2007/3253](#).

- (b) subsection (1)(c) is to be read as if “other than the United Kingdom” were omitted.
- (5) In section 114A (notice of transfer of reinsurance contracts)(**11**)—
  - (a) subsection (1)(a) is to be read as if for “an EEA firm qualifying for authorisation under Schedule 3” there were substituted “a relevant person”;
  - (b) subsection (1)(c) is to be read as if “other than the United Kingdom” were omitted.
- 7.—(1) Schedule 12 to the Act (transfer schemes: certificates) is modified as follows.
  - (2) In paragraph 1(**12**) (insurance business transfer schemes)—
    - (a) sub-paragraphs (2)(a), (2A)(a), (3)(a), (4)(a) and (5)(a) are to be read as is for “has received authorisation” there were substituted “had, immediately before exit day, received authorisation”;
    - (b) sub-paragraphs (2)(b), (2A)(b), (3)(c), (4)(c) and (5)(b) are to be read as if “other than the United Kingdom” were omitted.
  - (3) In paragraph 2 (certificates as to margin of solvency)—
    - (a) sub-paragraph (6)(**13**) is to be read as if for paragraph (a) there were substituted—
      - “(a) if the transferee is a person who, immediately before exit day, was an EEA firm falling within paragraph 5(d) or (da) of Schedule 3, its home state regulator;”;
    - (b) sub-paragraph (6)(c) is to be read as if after “Schedule 4”, in both places it occurs, there were inserted “immediately before exit day”;
    - (c) after sub-paragraph (6), the paragraph is to be read as if there were inserted—
      - “(6A) In sub-paragraph (6)(a) “home state regulator” means the competent authority of an EEA State in relation to the person concerned; and “competent authority” is to be construed in accordance with the EU instrument by virtue of which, immediately before exit day, the person derived authorisation to carry on a regulated activity in the United Kingdom.”;
    - (d) sub-paragraph (9) is to be read as if after “agency which” there were inserted “is not a UK authorised person as defined in section 105(8) and”.
  - (4) Paragraph 3(**14**) (certificates as to consultation) is to be read as if the paragraph becomes sub-paragraph (1) and after sub-paragraph (1) there is inserted—
    - “(2) In paragraph (1) “host State regulator” means the host state regulator, as defined in paragraph 11 of Schedule 3, immediately before exit day.”
  - (5) Paragraph 3A(**15**) (certificates as to consent) is to be read as if “other than the United Kingdom” were omitted.

## **Modifications to the 2001 Regulations**

- 8. In regulation 3(**16**) of the 2001 Regulations (transfer of insurance business) paragraph (2)(a)(iii) and (iv) is to be read as if “other than the United Kingdom” was omitted in both places it occurs.

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(11) Section 114A was inserted by [S.I. 2007/3253](#). Subsection (1)(a) was amended by paragraph 2 of Schedule 1 to the Financial Services (Banking Reform) Act 2013.

(12) Sub-paragraphs (2)(a), (3)(a) and (4)(a) were amended by paragraph 2 of Schedule 1 to the Financial Services (Banking Reform) Act 2013 and paragraph 10 of Schedule 6 to the Financial Services Act 2012 ([c.21](#)); sub-paragraph (2A) was inserted by [S.I. 2015/575](#); and sub-paragraph (5)(a) was inserted by [S.I. 2007/3253](#) and substituted by [S.I. 2015/575](#).

(13) Sub-paragraph (6) was amended by [S.I. 207/3253](#).

(14) Paragraph 3 was amended by paragraph 12 of Schedule 6 to the Financial Services Act 2012 and [S.I. 2015/575](#).

(15) Paragraph 3A was inserted by [S.I. 2015/575](#).

(16) Paragraph (2)(a)(iii) and (iv) were amended and inserted, respectively, by [S.I. 2007/3255](#) and paragraph (2)(a)(iv) was amended by [S.I. 2008/1467](#).

**Status:** This is the original version (as it was originally made).

### **Modifications to 2001 Order**

**9.**—(1) The 2001 Order<sup>(17)</sup> is modified as follows.

(2) Articles 3 and 5(2) and (2A) are to be read as if the references to the Act were read as references to the Act as modified by this Schedule.

(3) Article 4(a) is to be read as if after “EEA State” there were inserted “or the United Kingdom”.

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(17) Article 3 was amended by [S.I. 2008/1725](#) and [S.I. 2013/1765](#) and Article 5(2A) was inserted by [S.I. 2013/1765](#).