

# **Consultation on amendments relating to Part 7 of FSMA 2000 (‘Control of Business Transfers’)**

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November 2006



**HM TREASURY**





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# Consultation on amendments relating to Part 7 of FSMA 2000 (‘Control of Business Transfers’)

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# EXECUTIVE SUMMARY

An insurance business transfer is a process by which an insurer<sup>1</sup> is able to transfer either a part or the entirety of its insurance business to another insurer. There are different circumstances under which an insurer might embark upon such a scheme; for example, as part of a business restructuring. Given the complexities involved in such transfers and the possible impacts on the rights of policyholders, Part 7 of the Financial Services and Markets Act 2000 (“FSMA”)<sup>2</sup> (and related secondary legislation) sets out the process and conditions which must be complied with in order for a Court to sanction, and therefore give effect to, the scheme. (Part 7 relates to transfers of banking business as well, although, for reasons outlined below, these proposals will be examined in the context of insurance business transfer only.) Section 323 of FSMA enables these provisions to apply to members of the Lloyd’s market (by virtue of secondary legislation).

It has been brought to HM Treasury’s attention that there may be a degree of uncertainty in the City, regarding the extent of the Court’s powers under Part 7. Given the significant costs involved in such transfers and the risk that uncertainty may deter such transactions as a result, HM Treasury proposes to make two clarificatory amendments that will:

- put beyond all doubt that accompanying reinsurance and other contracts, related to the main business being transferred, may be transferred as part of an insurance business transfer scheme (see chapter 2); and
- put beyond all doubt that this provision extends to the power of the Court to override certain contractual provisions that purport to modify or annul a contract upon it being transferred, or upon a step being taken towards a transfer (e.g. upon application to the Court for approval of the transfer scheme) (see chapter 2).

HM Treasury also proposes to require that applicants for an insurance business transfer scheme, which will include the transfer of reinsurance contracts, notify the reinsurers in question. This requirement will, as with other notification provisions under Part 7, be subject to waiver by the Court, if it deems it appropriate in the circumstances of a particular application (see chapter 2).

HM Treasury also proposes to remove the restriction on the ability of certain former underwriting members of the Lloyd’s market to transfer their insurance business. This will affect all former underwriting members whose resignation took effect on or before 23 December 1996 (see chapter 3).

These proposals are intended to be implemented through secondary legislation. The proposed statutory instruments are attached at Annexes A, B, C and D. HM Treasury would welcome your views on these proposals and on the draft statutory instruments. A Partial Regulatory Impact Assessment is attached at Annex E. This should be read in conjunction with this consultation document.

<sup>1</sup> Throughout this consultation document, “insurer” shall be understood to include those insurers carrying out mixed insurance and reinsurance business (in addition to those engaging purely in insurance business).

<sup>2</sup> This extensive piece of legislation establishes the UK’s framework for the regulation of financial services and also established the Financial Services Authority as the UK’s independent regulator for the financial services’ sector.



# INTRODUCTION

**1.1** Part 7 of the Financial Services and Markets Act (FSMA) 2000 covers the Control of Business Transfers and applies to both insurance and banking business transfers. In particular, section 104 specifies that no insurance or banking transfer may have effect unless a Court order has been made under the provisions set out in Part 7. However, by virtue of the FSMA 2000 (Commencement No. 7) Order 2001, SI 2001/3538, section 104 was only partially commenced; that is, in respect of insurance transfers only. This means that the legal framework and mechanisms for transfer schemes are only mandatory for insurance transfers, whilst for banking they are optional. This, coupled with the fact that the specific concerns that HM Treasury is seeking to address in this consultation have arisen predominantly in an insurance context, means that discussion of the issues in question in this consultation will focus on insurance transfers only. The amendments will however apply equally to banking transfer schemes carried out under Part 7 and, in the event that section 104 is one day also commenced in relation to banking transfers, they would become mandatory as they already are for insurance transfer schemes. Should the Treasury propose to commence section 104 in relation to banking business transfer schemes, HM Treasury would undertake separate consultation. This is not the subject of this consultation document.

**1.2** An insurance business transfer is a process by which an insurer<sup>1</sup> is able to transfer either a part or the entirety of its insurance business to another insurer. There are a number of different circumstances under which an insurer might embark upon such a scheme; for example, as part of a business restructuring. Part 7 of FSMA, which covers the Control of Business Transfers, contains provisions relating to the type of insurance business which may be transferred and the process by which insurance business may be transferred from one insurer to another<sup>2</sup>. Part 7 defines the criteria for determining which proposed transfers fall within the definition of an “insurance business transfer scheme” and are thereby required to adhere to the conditions set down in this Part.

**1.3** In terms of the process in respect of transfer schemes for insurance business, Part 7 outlines the following:

- the method of applying to the Court for an order to sanction the scheme and the potential terms of that order;
- what is required of the applicants, which may be either or both the insurer that is transferring the business (“the authorised person concerned”) and that receiving it (“the transferee”);
- conditions for sanction (approval) of a scheme by the Court; and
- effect of the Court order, including as regards the rights of policyholders and other parties concerned.

**1.4** Any insurer wishing to undertake a Part 7 transfer must apply to the Court for its approval in order to proceed with the scheme. The Court must be satisfied that:

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<sup>1</sup> Throughout this consultation document, “insurer” shall be understood to include those insurers carrying out mixed insurance and reinsurance business (in addition to those engaging purely in insurance business).

<sup>2</sup> Further guidance is also contained in SUP 18 of the FSA Handbook <http://fsahandbook.info/FSA/html/handbook/SUP/18>

- certain certificates (as referred to in Schedule 12 to FSMA) have been obtained; and
- in all the circumstances of the case, it is appropriate to sanction the transfer.

**1.5** The Court has a wide discretion to order the transfer of property and liabilities. It may also make amendments to, or special provisions for, the benefits offered by those insurance contracts that are subject to the transfer. The rights of policyholders may also be adapted by the Court, to fit with the particular circumstances of the transfer in question.

**1.6** Some 20 or so transfers of business have taken place each year over the last couple of years in the UK. However, HM Treasury is aware of some concerns that the present wording of section 112 may be giving rise to uncertainty as to what it is within the Court's powers to order under Part 7. This uncertainty could potentially deter some insurers from undertaking transfers that, all other things being equal, they might wish to embark upon.

**1.7** As well as proposing amendments to deal with the perceived uncertainty, this consultation covers a number of proposed clarificatory changes aimed also at achieving the more effective operation of the legislation. These are:

- to put beyond all doubt the ability of the Courts to override contractual provisions that might otherwise have the effect of voiding or altering any contract subject to the transfer, be it at the point of the transfer itself or at the point of a step being taken towards it (see paragraphs 2.14 – 2.19); and
- ensure that all affected reinsurers have the right to be notified of the proposed transfer (see paragraphs 2.20 – 2.24);
- to 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 (see chapter 3).

**1.8** Four draft statutory instruments are attached at Annexes A-D.

**Annex A**

This SI deals with clarificatory amendments to Part 7 of FSMA 2000 and relates to the transferability of property and liabilities, which might not otherwise be transferable.

**Annex B**

This SI deals with amendments to related secondary legislation, namely the Financial Services and Markets Act 2000 (Control of Business Transfers)(Requirements on Applicants) Regulations 2001, and relates to the proposed notification requirement of reinsurers.

**Annex C**

This SI deals with amendments to section 323 of FSMA 2000 itself and relates to the proposal to remove restrictions on some former underwriting members of Lloyd's from transferring their business.

**Annex D**

This SI deals with amendments to related secondary legislation, namely the Financial Services and Markets Act 2000 (Control of Transfers of Business Done at Lloyd's) Order 2001 and relates to the proposals to allow all former underwriting members of Lloyd's to transfer their business.

**1.9** This consultation document should be read in conjunction with the Partial Regulatory Impact Assessment (Partial RIA), with which it is published (see chapter 4). The Partial RIA lays out implementation options for the areas highlighted above and

considers qualitative and, where possible, quantitative costs and benefits for these options. A copy of the Partial RIA can be found on HM Treasury's website ([www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)) or requested from HM Treasury's Correspondence and Enquiry Unit (Tel.: 020 7270 4558).

**1.10** HM Treasury invites views on the questions posed in this paper, as listed below. HM Treasury also invites comments more generally on any of the proposals in this consultation, or on the drafting of the proposed statutory instruments.

**The specific consultation questions are:**

**Q.1. Do you agree that Part 7 should be amended to put it beyond all doubt that reinsurance (and other related contracts) are always transferable under a Court order, should the Court deem it appropriate in the circumstances of each case? (See page 12.)**

**Q.2. Do you agree that changes should be made to Part 7 of FSMA to put it beyond all doubt that the Court can, if it deems it appropriate, override contractual provisions that purport to modify or annul related contracts that would otherwise be subject to transfer under an insurance business transfer scheme? (See page 13.)**

**Q.3. Do you agree that changes should be made to Part 7 of the FSMA to put it beyond all doubt that the Court can, if it deems it appropriate, override contractual provisions that purport to modify or annul that contract upon a preparatory step towards a transfer (e.g. such as the application to the Court) being taken? (See page 13.)**

**Q.4. Do you agree that the parties to a transfer scheme should be required to notify all those reinsurers whose reinsurance contracts would be subject to transfer under a Part 7 transfer of insurance business (subject to the Court's power to waive such a requirement at its discretion)? (See page 14.)**

**Q.5. Do you agree that an amendment to FSMA should be made to allow all former Lloyd's Names to participate in a transfer of insurance business? (See page 16.)**

## HOW TO RESPOND

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**1.11** The consultation period will begin on 3 November 2006 and run for 12 weeks until 26 January 2007. Please ensure that your response reaches us by that date. Please send responses to this consultation document to:

Eve Engledow  
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**1.12** When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents, and, where applicable, how the views of members were assembled.

## CONFIDENTIALITY

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**1.13** All written responses will be made public on HM Treasury's website unless the author specifically requests otherwise in writing. In the case of electronic responses, general confidentiality disclaimers that often appear at the bottom of e-mails will be disregarded for the purpose of publishing responses unless an explicit request for confidentiality is made in the body of the response.

**1.14** Even where confidentiality is requested, if a request for disclosure of the consultation response is made in accordance with the Freedom of Information legislation, and the response is not covered by one of the exemptions in that legislation, the Government will have to disclose the response in whole or in part.

**1.15** Further information on the consultation process can be found in Annex E that sets out the Cabinet Office's Code of Practice for Written Consultations.

**1.16** Subject to paragraph 1.13, 1.14 and Annex E, if you wish part (but not all) of your response to remain confidential, please supply two versions – one for publication on the website with the confidential information deleted, and another confidential version for the Financial Stability and Risk Team.

## RELATED CONSULTATIONS

**1.17** HM Revenue and Customs published a consultation document in May 2006 entitled 'Life assurance company taxation – a technical consultative document'.<sup>3</sup> This included a section on the tax issues surrounding transfers of insurance business. This consultation closed on 23 September.

**1.18** HM Treasury will also be consulting in early 2007 on amendments to FSMA necessary to implement the EU Reinsurance Directive (Directive 2005/68/EC). Whilst this consultation document proposes amendments to Part 7 of FSMA, the consultation document on implementation of the Reinsurance Directive will also look at revisions to Part 7, in particular section 105. (Revisions to other parts of FSMA will also be necessary in the Reinsurance Directive consultation, for example, to Schedule 3). The deadline for implementation of the Directive into the UK law is 10 December 2007.

**1.19** You may wish to note however that we expect much of the substance of the Reinsurance Directive to be implemented via FSA Rules. The FSA implementation of the Directive into the UK law is 10 consulted on these proposals between 20 June and 20 August 2006.<sup>4</sup>

<sup>3</sup>

[http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?\\_nfpb=true&\\_pageLabel=pageVAT\\_ShowContent&id=HMCE\\_PROD1\\_025521&propertyType=document](http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageVAT_ShowContent&id=HMCE_PROD1_025521&propertyType=document)

<sup>4</sup> [http://www.fsa.gov.uk/pubs/cp/cp06\\_12.pdf](http://www.fsa.gov.uk/pubs/cp/cp06_12.pdf)



## REINSURANCE AND OTHER CONTRACTS

**2.1** The statutory instruments for these proposals are at Annexes A and B.

**2.2** Some concerns have been raised that section 112 (2) in Part 7 of FSMA ('Effect of order sanctioning business transfer scheme') does not provide sufficient clarity about the extent of the Court's power to order the accompanying transfer of reinsurance contracts relating to insurance liabilities subject to a proposed transfer scheme (and the benefits deriving from those reinsurance contracts).

**2.3** The policy intention is and always has been that Part 7 should allow such transfer. This is on the grounds that it is reasonable that a business taking on all the risks of the original insurer should also expect to be able to gain the benefits attached to those risks in the form of reinsurance contracts, especially since not to do so would absolve the reinsurer of his proper liabilities. The reinsurer has hitherto been paid a premium in return for taking on some of the insurer's risks. There is no reason of principle why the new insurer of those same risks should not be entitled to receive the same degree of cover for them, subsequent to any transfer. Not to allow for such an accompanying transfer of reinsurance contracts would likely alter fundamentally the economics of a transfer of insurance business.

**2.4** HM Treasury understands that the FSA and the Courts have also always taken the view, that it is right for accompanying reinsurance contracts to be eligible for transfer (as the Court sees fit). (This is also reflected in SUP 18.1.6 of the FSA's Handbook.)

**2.5** However, neither section 112(2), nor any other in Part 7 of FSMA specifically refers to how reinsurance contracts are to be dealt with in the context of a transfer of insurance business.

**2.6** Section 112 (2) currently reads:

"An order... may –

(a) transfer property or liabilities whether or not the authorised person concerned [i.e. the insurer transferring its business] otherwise has the capacity to effect the transfer in question;"

**2.7** HM Treasury's view is that this provision extends to reinsurance contracts (as "property") relating to the insurance business being transferred, and thereby making such contracts in principle transferable. That said, HM Treasury recognises that the use of the word "capacity" potentially raises a difficulty. The issue in question with reinsurance contracts is not the capacity of an insurer, but rather the nature of reinsurance contracts, which may not of themselves always be transferable without the express consent of the relevant reinsurer. This is something that might not always prove practicable to obtain in a proposed transfer involving a large number of reinsurers.

**2.8** As a consequence, it is theoretically possible that a Court considering an application for a transfer scheme might interpret its powers as limited in respect of ordering the transfer of a contract, whose transferability may be in question because the reinsurer's consent cannot be obtained.

**2.9** There are cases where a Court has ruled in favour of the accompanying transfer of reinsurance contracts, notably in the case of *WASA International (UK) Insurance Co*

*Ltd and another v WASA International Insurance Co Ltd (a Swedish company).* However, this decision was given in an unopposed case at first instance; in other words, no party objected to the transfer of the reinsurance contracts in this case, nor was the Court's decision ever subsequently challenged at appeal. Neither this case nor any other similar case has been fully argued in Court, as no reinsurer has ever objected to the transfer going ahead and there is no higher Court authority on the issue.

**2.10** The expense of putting a transfer proposal together is significant. Even if slight, the perceived risk of a Court refusing to approve a transfer scheme, as a result of perceived ambiguity in the legislative framework, may possibly deter some insurers, who might (all other factors being equal) wish to consider a transfer.

**2.11** Whilst these concerns have been raised with HM Treasury specifically in relation to reinsurance contracts, it is reasonable to consider that other sorts of contracts might in fact engage similar factors and difficulties as those above (for example, contracts concerning intellectual property rights in computer software), and that in some cases it may be desirable for them to be able to be transferred as well. We have therefore drafted the statutory instrument with this in mind. The wording chosen is deliberately general to avoid having the effect of narrowing the court's powers in relation to property, which might otherwise have fallen outside of the scope of the new amendment.

**2.12** HM Treasury therefore proposes that Part 7 should be amended to put it beyond all doubt, that a Court has the power to order the transfer of property or liabilities whose transferability might be in question because the consent of the reinsurer has not been able to be obtained.

**2.13** It should be noted that HM Treasury does not take the view that any such amendment of itself casts doubt on past transfers of insurance business made under Part 7 of FSMA, which may or may not have included an accompanying transfer of related reinsurance or other types of contracts.

**Q.1. Do you agree that Part 7 should be amended to put it beyond all doubt that reinsurance (and other related contracts) are always transferable under a Court order, should the Court deem it appropriate in the circumstances of each case?**

## **CONTRACTS SUBJECT TO ANNULMENT OR MODIFICATION UPON TRANSFER OR UPON A STEP BEING TAKEN TOWARDS A TRANSFER**

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**2.14** Even with the general clarification proposed above on the inherent transferability of property or liabilities, some contracts may still not prove transferable for another reason; specifically:

- they might include a specific provision against transfer or assignment, which would be triggered by the transfer itself, with that contract thereafter becoming invalid or (from the perspective of the transferee) disadvantageously modified; or
- they might include a term that purports to modify or terminate the contract at an earlier stage, namely, upon any step towards a transfer being taken (for example, upon application to the Court).

**2.15** HM Treasury considers it appropriate for the Courts, where appropriate in the circumstances of cases, to be able to override such contractual restrictions and therefore that its ability in this respect should be put beyond all doubt in legislation. In the case of the Court feeling unable to override a contractual term purporting to prevent transfer of a reinsurance contract, for want of power, the transferee would in effect be deprived of the benefit hitherto provided by that reinsurer in respect of particular insurance risks that the transferee had now taken on. For reasons outlined already, this would have serious disadvantages for the new insurer, and the reinsurer would effectively be freed of its responsibilities in respect of those particular insurance liabilities.

**2.16** HM Treasury proposes that Part 7 be amended to put it beyond all doubt that it is possible for a Court to vary or override a term preventing transfer or assignment of a contract within a transfer scheme (such Court powers exist already in respect of other statutory transfer schemes, such as that under paragraph 2 of Schedule 5 to the Energy Act 2004). This would mean then that a term purporting to terminate a contract should, if the Court so orders, in fact have no effect. This would necessarily have an effect on existing contracts if they at some point in the future become subject to a transfer.

**2.17** The statutory instrument at Annex A is intended to allow for the Court to override both the types of contractual provision outlined in paragraph 2.14.

**2.18** Whilst we believe that contractual provisions of the second type are not in widespread use at the moment, we believe it is nonetheless necessary to deal with this point within this consultation package now. If we were not to do so, there is a chance that a market practice might develop of including a term of this type in reinsurance and other contracts.

**2.19** In the context of these proposals, we would reiterate that these simply aim to define, for the avoidance of all doubt, the nature of the Court's powers. It is then up to the Court to decide, on the merits of each case and taking into account the interests of all parties involved, what any order sanctioning a transfer should include; for example, whether the rights of an insurer outweigh, or are outweighed by, those of a reinsurer in regards to a contractual provision of the types outlined above.

**Q.2. Do you agree that changes should be made to Part 7 of FSMA to put it beyond all doubt that the Court can, if it deems it appropriate, override contractual provisions that purport to modify or annul related contracts that would otherwise be subject to transfer by an insurance business transfer scheme?**

**Q.3. Do you agree that changes should be made to Part 7 of FSMA to put it beyond all doubt that the Court can, if it deems it appropriate, override contractual provisions that purport to modify or annul that contract upon a preparatory step towards a transfer (e.g. such as the application to the Court) being taken?**

## NOTIFICATION OF REINSURERS

**2.20** There may be legitimate grounds on which a reinsurer may wish to object to a transfer to which its contracts would be subject. The right to raise concerns in Court is set out in section 110 (b) of FSMA. It stipulates that anyone who believes they would be

adversely affected by the transfer may be heard by the Court<sup>1</sup>. This would include any reinsurers, whose reinsurance contracts were intended for transfer too.

**2.21** In order to be able to take advantage of this existing right, a reinsurer first needs to be aware that its reinsurance contracts are the subject of a Court application for a transfer. At present, notice of the proposed transfer must be published in the Gazette and (unless the Court directs otherwise) in two national newspapers.<sup>2</sup>

**2.22** HM Treasury proposes that provisions should be made that require that any reinsurers directly affected by the proposed schemes should, regardless of geographical location, be notified directly (again, unless the Court directs otherwise). Consent need not necessarily be obtained but the notification requirement would ensure that the reinsurer was sufficiently alert to the transfer being proposed to enable it to make an informed choice regarding its options. This same notification provision already exists in respect of policyholders.

**2.23** Of course, the Court would still have the right to sanction the transfer, even having taken into account the concerns of the reinsurer. This is in line with all the other details of a transfer in respect of which the Court has the power of discretion.

**2.24** We would not propose that the notification process be extended to other bodies party to a contract with the transferor because this process could prove disproportionately onerous if all types of contracts were included. Reinsurance contracts are in this sense unique because they relate directly to the main insurance business being transferred and, indeed, are arguably simply an extension of that business. Of course, other parties would still have the benefit of the existing notification requirements set out in paragraph 2.21.

**Q.4. Do you agree that the parties to a transfer scheme should be required to notify all those reinsurers whose reinsurance contracts would be subject to transfer under a Part 7 transfer of insurance business (subject to the Court's power to waive this requirement at its discretion)?**

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<sup>1</sup> The FSA has an unconditional right to be heard under section 100(a).

<sup>2</sup> This is required by provisions in the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001 (S.I. 2001 No. 3625).

**3.1** The statutory instruments for this proposal are at Annexes C and D.

**3.2** There is a Lloyd's-related issue within the context of the transfer of insurance business provisions that HM Treasury believes requires attention. This concerns the possibility of transfer of insurance business by certain former members of Lloyd's.

**3.3** Provisions allowing for transfers of insurance business by insurers were originally to be found in the Insurance Companies Act (ICA) 1982, Schedule 2C. The provisions applied to all current and all former members of Lloyd's<sup>1</sup>.

**3.4** These transfer provisions were then incorporated into FSMA. Section 323 of FSMA grants authority to HM Treasury to apply the transfer provisions of FSMA to members of Lloyd's and to "former underwriting members", as defined in FSMA; that is, "**a person ceasing to be an underwriting member of the Society on, or at any time after, 24 December 1996**".

**3.5** The reason for this definition in FSMA is to ensure that Names whose resignation took effect prior to 24 December 1996 are not regulated under FSMA, that is, in the same way and under the same regulatory obligations as other insurance undertakings and current underwriting members of Lloyd's. For example, the FSA can make a direction that certain provisions of FSMA should apply to an existing member under section 316 of FSMA and the FSA can impose appropriate requirements on former underwriting members (i.e. those former members that resigned on or after 24 December 1996) under section 320 of FSMA. Neither of those powers applies to former underwriting members who resigned before 24 December 1996.

**3.6** However, the definition also has the effect, when used as it is section 323 and in relation to Part 7, of making it impossible for any member who ceased underwriting prior to 24 December 1996 to transfer their insurance business.

**3.7** This means that certain Names (and syndicates comprising those Names) would not be eligible to transfer their own insurance business in the event that they wished to do so. HM Treasury considers that there is no good reason why insurance business written by some former Names should be able to be transferred, whilst that of another group could not. The date of a Name's resignation should not be a determining factor.

**3.8** This category of Names outside the scope of the transfer provisions also includes some closed year Equitas<sup>2</sup> reinsured Names. As explained above, insurance business relating to these particular Names would not be able to be transferred.

**3.9** One scenario under which the business of former members could be transferred could be as part of a restructuring of Equitas' business. Equitas, as a pure reinsurer, is already able under Part 7 to transfer its reinsurance business. However, another means of a possible Equitas restructuring could involve a transfer of the whole chain

of its business (i.e. including a transfer of the direct insurance business belonging to the reinsured Names), rather than just transferring its reinsurance

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<sup>1</sup> By virtue of section 85 of the ICA.

<sup>2</sup> Equitas is the run-off reinsurer that was set up in 1996 to take on the 1992 and prior liabilities of Names operating on the Lloyd's insurance market.

business.<sup>3</sup> A transaction of this kind would not currently be possible because of the exclusion of certain of the former Names from the transfer provisions. Any decision on whether or not and/ or how to make use of the proposed provisions is of course a wholly commercial matter for Equitas to consider.

**3.10** HM Treasury therefore proposes that FSMA should be amended to incorporate, for the purposes of the insurance business transfer provisions only, those Names falling outside of the FSMA definition of “former underwriting member” to allow them the same opportunity as those within the scope of the definition to participate in a transfer of insurance business scheme, should they wish to do so. (In other parts of FSMA, the distinction will of course remain necessary).

**Q.5. Do you agree that an amendment to FSMA should be made to allow all former Lloyd's Names to participate in a transfer of insurance business?**

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<sup>3</sup> This particular scenario could in turn manifest itself in a number of different legal models. That said, it is worth noting in this context that Equitas announced on 20 October that it intends to reinsure its liabilities with a subsidiary of the US group Berkshire Hathaway, which may be followed in the future by a transfer of the insurance business of the Names. Equitas' press release on this matter can be found at:

<sup>4</sup>[http://www.lloyds.com/NR/rdonlyres/2AE4391A-37B1-41C7-9C3B-FB20366E827E/0/Equitaspressrelease20\\_10\\_06.pdf](http://www.lloyds.com/NR/rdonlyres/2AE4391A-37B1-41C7-9C3B-FB20366E827E/0/Equitaspressrelease20_10_06.pdf)

## I. TITLE OF PROPOSAL

**4.1** Amendments relating to Part 7 of the Financial Services and Markets Act (FSMA) 2000 in respect of provisions for transfers of business.

## 2. PURPOSE AND INTENDED EFFECT OF THE MEASURE

### i) Objective

**4.2** 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 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.

**4.3** Given that the uncertainties identified in this consultation paper and which are outlined in this Partial RIA arise from legislative provisions in FSMA, the most appropriate way in which this can be addressed is through legislative amendment. HM Treasury therefore considers that Government intervention is required and since secondary legislative powers are sufficient, changes can be brought about by secondary legislation.

### ii) Background

#### Reinsurance contracts related to insurance business

**4.4** 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.

**4.5** 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 we understand concerns exist as to the transferability of those contracts 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.

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

**4.7** 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 may be 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.

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

**4.8** The FSMA definition of former underwriting members of the Society 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 appears to be 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.

### **iii) Risk Assessment**

#### **Transfer of reinsurance contracts related to insurance business**

**4.9** Approximately 20 transfers of insurance business each year have been approved by the Courts in the last couple of years. Anecdotal evidence suggests that this number might be higher if the legislative provisions in respect of reinsurance contracts were spelt out more explicitly. The uncertainty arises specifically from concern over whether or not a Court will always consider it within its power to order a transfer of accompanying reinsurance contracts, should that appear the most appropriate course of action in the context of a particular application.

**4.10** 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. In the event of insolvency, there is also a risk to policyholders of the insurer (albeit this risk in relation to direct insurance is to an extent mitigated by the Financial Services Compensation Scheme).

**4.11** The systemic risk to the insurance industry generally should such an insurer subsequently collapse is small (given that the insurer would have to have a significant share of the insurance market), but nonetheless possible.

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

**4.12** There is no good policy reason why one category of former Names, or syndicates comprising those Names, should not be able to transfer their insurance business if they choose to do so. The distinction between those who are able to is currently based solely on the narrow FSMA definition of “former underwriting member” which is necessary for other purposes within this legislation; for Part 7 transfer provisions however, there is a strong argument in favour of extending this option to all former members for the sake of parity and completeness.

**4.13** A risk could also materialise in the event of the legislation remaining unamended, with regards to Equitas. 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.<sup>1</sup>

**4.14** Given that Equitas is a large run-off reinsurer, for risks located both within and outside of the UK, a systemic risk does currently lie in the fact that this particular door is closed to it at present. Given that this risk stems from a legislative barrier that does not appear to serve any useful purpose, it seems to HM Treasury desirable to address it. This restructuring option is open to other reinsurers so it seems reasonable that it should be to Equitas as well.

### 3. OPTIONS

#### Option 1: Do nothing

**4.15** The current situation of perceived legal uncertainty surrounding the possibility of transferring reinsurance contracts (whose transferability is for some reason in question) would remain. It would also remain impossible for certain categories of former Lloyd's Names to transfer their insurance business.

#### Option 2: Make legislative amendment

**4.16** Make legislative amendment to:

- put beyond all doubt that the transfer of property and liabilities which would not otherwise be transferable or assignable is possible within the powers of the Court;
- amend the use of the definition of "former underwriting member" [of the Society of Lloyd's] within the context of a transfer of insurance business to extend these transfer provisions to all former Names.

**4.17** These amendments could be effected through secondary legislation using the negative resolution procedure.

#### Option 3: Make legislative amendment

**4.18** Make legislative amendment to:

- put beyond all doubt that the transfer of property and liabilities which would not otherwise be transferable or assignable is possible within the powers of the Court;
- 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;
- amend the use of the definition of "former underwriting member" [of the Society of Lloyd's] within the context of a transfer of insurance business to extend these transfer provisions to all former Names.

<sup>1</sup> This particular scenario could in turn manifest itself in a number of different legal models. That said, it is worth noting in this context that Equitas announced on 20 October that it intends to reinsure its liabilities with a subsidiary of the US group Berkshire Hathaway, which may be followed in the future by a transfer of the insurance business of the Names. Equitas' press release on this matter can be found at:

<sup>2</sup>[http://www.lloyds.com/NR/rdonlyres/2AE4391A-37B1-41C7-9C3B-FB20366E827E/0/Equitaspressrelease20\\_10\\_06.pdf](http://www.lloyds.com/NR/rdonlyres/2AE4391A-37B1-41C7-9C3B-FB20366E827E/0/Equitaspressrelease20_10_06.pdf)

**4.19** These amendments could be effected through secondary legislation using the negative resolution procedure.

## 4. BENEFITS AND COSTS

**The benefits and costs outlined here are those that are relevant in the event that an insurer embarks on a transfer of business at all. 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.**

**4.20** These proposals would 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.

### Option I: Benefits

#### Transfer of reinsurance and other contracts related to insurance business

**4.21** We have identified no benefits to this option.

**4.22** The existing situation and perceived legislative uncertainty would remain.

**4.23** This would mean a continuation of potential legal unease and uncertainty amongst some insurers, with the possibility that potentially desirable or economically advantageous insurance transfer schemes might not materialise for fear on the part of insurers of legal challenge regarding, in particular, the transfer of certain related reinsurance contracts. Reinsurers could also potentially be released from their obligations in respect of those insurance risks they are reinsuring.

**4.24** These proposed legislative amendments would be clarificatory and, in any case, largely in line with existing case law (i.e. the ways in which Courts have acted in the past on such matters).

#### Definition of “former underwriting member”

**4.25** We have identified no benefits to this option.

**4.26** One category of former Names would remain unable to transfer their business, should they wish to do so.

### Option I: Costs

#### Transfer of reinsurance and other contracts related to insurance business

##### *Cost savings not materialising*

**4.27** In the event that an insurer wishes to transfer its business for reasons of economies of scale or other financial benefits, but is deterred from doing so by the existing legislative uncertainty, the cost savings it might have expected to make subsequent to a transfer would not materialise. The costs in this respect could in some

cases be substantial but would depend entirely on the size and nature of the transfer being considered.

#### *Legal costs*

**4.28** 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 would inevitably 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.

**4.29** 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.

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

**4.30** If certain former members continue to be denied the possibility of transferring their business, this would mean that they would be unable to take advantage of any cost savings or other financial benefits that could be gained from a transfer in which they might otherwise like to engage.

**4.31** In so far as Equitas is concerned, a transfer including the business of its reinsured Names as part of a restructuring might appear a commercially attractive option. One reason for this could be to achieve economies of scale. If such a transaction were unable to materialise because of this legislative barrier, these economies of scale and potential cost savings might not materialise (of course, precise figures would depend on the circumstances).

### **Option 2: Benefits**

#### **Transfer of reinsurance and other contracts related to insurance business**

**4.32** Legal uncertainty in this respect would be removed, paving the way for insurance schemes to be developed and assessed by insurers more on their merits rather than on a possible lack of legislative clarity. Reinsurers would also be more aware of their own positions regarding their contracts.

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

**4.33** One category of former members, previously excluded from making use of these provisions, purely because of the date on which they resigned from Lloyd’s, would now be put on a par with all other former members, and indeed other insurers, in this respect.

**4.34** Their rights in other respects under FSMA (specifically, that they should not be regulated in the same way under FSMA as other insurers or existing Lloyd’s members) would remain unaffected.

## Option 2: Costs

### Transfer of reinsurance contracts related to insurance business

**4.35** Fees for insurance transfers under Part 7 are increasingly market-driven and fixed, although a typical Part 7 might cost between £80,000 and £100,000 for a straightforward intra-group transfer. For a transfer to a third party, this figure could escalate to a total for both parties of anywhere between £100,000 and £500,000, depending on the complexity of the scheme. It has been estimated that approximately 10% of the legal costs of effecting a transfer could be saved by these proposals.

### Definition of “former underwriting member”

**4.36** Adaptation of the definition in these provisions to include all former Names would enable them to take advantage of transfer provisions. This would include situations in which a transfer of business might prove the most cost effective option for them.

**4.37** It would also offer Equitas another route for restructuring its business if this appears to be a commercially or economically attractive option. Such an option might entail cost savings for Equitas, although this again would depend on the circumstances.

## Option 3: Benefits

### Transfer of reinsurance and other contracts related to insurance business

**4.38** The benefits of Option 2

#### PLUS

A reinsurer would have the right to be informed of any proposed transfer scheme, which involved the accompanying transfer of related reinsurance contracts it has written. This would enable the reinsurer to be sufficiently informed to decide whether he objected to the scheme.

**4.39** This proposed provision would put reinsurers in the same position, as regards notice, as policyholders affected by a transfer. There is also an existing provision that allows anyone who alleges they would be adversely affected by the carrying out of the scheme, to be heard in Court should they wish to be (although the Court has an overriding discretion to consider the overall scheme, rather than its effect on a particular person in giving or withholding its sanction).

### Definition of “former underwriting member”

**4.40** The benefits of Option 2.

## Option 3: Costs

### Transfer of reinsurance contracts related to insurance business

**4.41** Reduced costs of Option 2

#### BUT WITH AN ADDED COST AS FOLLOWS:

The costs that would be incurred by an insurer by having to identify and inform all reinsurers affected by the proposed transfer. In some cases, particularly when dealing with large portfolios, it could prove difficult to identify who all the relevant reinsurers

are and how they can be contacted, and this would result in some additional costs. These could however be off-set against the cost savings on legal fees outlined in option 2, resulting in net cost savings that would still be significant.

**4.42** One could also expect that in cases where it might prove disproportionately onerous for an insurer to contact every reinsurer affected (perhaps because the identities of the reinsurers are not known due to the age of the policies or because the details are not available to the insurer), the Court might be persuaded to use its powers of waiver or variation of this requirement.

#### Definition of “former underwriting member”

**4.43** Reduced costs of Option 2.

#### Costs vs. Benefits

**4.44** HM Treasury considers that Option 1 is not a viable or reasonable route to take, particularly given the relative ease with which such issues could be addressed, by making some amending secondary legislation.

**4.45** Option 2 is an attractive option because both the costs’ and the benefits’ tests are favourably met. Insurers’ costs savings would be the highest under option 2.

**4.46** Option 3 is also an attractive option, possibly even more so than Option 2. Whilst the projected cost savings might not ultimately be quite as high as under Option 2, consultees may consider that the difference is outweighed by the additional benefit to reinsurers under Option 3 of the notification requirement, for the reasons outlined above.

**We are seeking to gauge your views on this costs/ benefits analysis and would welcome any comments on preferences you have for options 1, 2 or 3.**

### 5. SMALL FIRMS’ IMPACT TEST

**4.47** We have spoken to the Small Business Service and outlined these proposals to them. We 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.

**4.48** In any case, we would expect the benefits and costs of these proposals, as outlined above, to apply equally to small firms as to larger ones.

### 6. COMPETITION ASSESSMENT

**4.49** We do not consider the competition assessment to be applicable to these proposals. This is because the decision to embark on a transfer of insurance business is entirely a voluntary one and could take place anywhere within the insurance market, with a small or a large insurer, and involving any number of associated parties (e.g. policyholders and reinsurers, as well as the insurer). Likewise, it could cost a relatively small amount or it could prove extremely expensive.

## 7. ENFORCEMENT AND SANCTIONS

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**4.50** FSA guidance (SUP 18 of the FSA Handbook) already exists on how insurance business transfers should be carried out. The FSA is extensively involved in any proposal for a transfer of business scheme (for example, the application must be accompanied by a report which must be approved by the FSA). This will remain the case.

**4.51** In addition, as is already the case under FSMA 2000, no transfer may take place without the approval of the Court being asked to sanction the scheme. This provides an important safety net for all parties involved as the Court must be satisfied that all the necessary conditions, as outlined in Part 7 and associated secondary legislation, have been satisfied.

## 8. CONSULTATION

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**4.52** HM Treasury has been in contact with HM Revenue and Customs and with the Financial Services Authority regarding these proposals.

**4.53** This Partial RIA should be read in conjunction with the consultation document to which it relates. This consultation period will run from 3 November 2006 until 26 January 2007 and HM Treasury invites comments on the proposals and the draft statutory instruments.

**4.54** A copy of the Partial RIA can be found on HM Treasury's website ([www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)) or requested from HM Treasury's Correspondence and Enquiry Unit (Tel.: 020 7270 4558).

# AMENDMENTS TO THE CONTROL OF BUSINESS TRANSFERS PROVISIONS REGULATIONS 2006

## STATUTORY INSTRUMENTS

**2006 No. XXX**

### **FINANCIAL SERVICES AND MARKETS**

#### **Financial Services and Markets Act 2000 (Amendments to the Control of Business Transfers Provisions) Regulations 2006**

<i>Made</i>	- - - - -	2006
<i>Laid before Parliament</i>		2006
<i>Coming into force</i>	- - -	2006

The Treasury in exercise of the powers conferred on them by sections 117(b), 428(1) and 428(3) of the Financial Services and Markets Act 2000<sup>(1)</sup> make the following Regulations:

#### **Citation and commencement**

1. These Regulations may be cited as the Financial Services and Markets Act 2000 (Amendments to the Control of Business Transfers Provisions) Regulations 2006 and come into force on [xx xxxx] 2006.

#### **Amendment to section 112**

2.—(1) After subsection (2) of section 112 of the Financial Services and Markets Act 2000 (effect of order sanctioning business transfer scheme) insert—

“(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 to take effect as if there were no such contravention, liability or interference with an interest or right as there would otherwise be 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 the authorised person concerned is entitled to the property, or subject to the liabilities, in question.

(2C) Subsection (2D) 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 with an insurance business transfer scheme or a banking business transfer scheme—

<sup>(1)</sup> 2000 c.8.

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

(2D) The entitlement—

- (a) is not enforceable in relation to that interest or right until after the interest or right has been transferred as a result of an order under subsection (1); and
- (b) is then enforceable in relation to that interest or right only insofar as the order contains provision for the interest or right to be transferred subject to whatever confers the entitlement.”

(2) In subsection (9) of that section after “subsection (2),” insert “(2A), (2D),”.

*Name*

Date

Two of the Lords Commissioners of Her Majesty’s Treasury

#### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend Part 7 of the Financial Services and Markets Act 2000 (“the Act”) that deals with schemes for the transfer of insurance and banking business.

Section 112 of the Act is amended by the insertion of new subsections (2A) to (2D).

Subsections (2A) and (2B) make clear for the avoidance of doubt that the power of the court to make an order under section 112 is to be taken as always having included the power to transfer, for example, 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. Subsections (2C) and (2D) make clear, again for the avoidance of doubt, that rights or interests specified in the new subsections arising as a result of something done or likely to be done by or under Part 7 of the Act will only be enforceable, if at all, after the transfer and on the terms provided in the court’s order.

These circumstances might arise, for example, in relation to the transfer of reinsurance contracts, which are connected to insurance contracts being transferred under an insurance business transfer scheme.

A full regulatory impact assessment has been produced for this instrument and is available from the Financial Stability and Risk Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is on the HM Treasury’s website at [www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk).

# CONTROL OF BUSINESS TRANSFERS (REQUIREMENTS ON APPLICANTS) (AMENDMENT) REGULATIONS 2006

## STATUTORY INSTRUMENTS

**2006 No.**

### **FINANCIAL SERVICES AND MARKETS**

The Financial Services and Markets Act 2000 (Control of Business Transfers)(Requirements on Applicants)(Amendment) Regulations 2006

<i>Made</i>	- - - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- - -	***

The Treasury, in exercise of the powers conferred on them by sections 108 and 428(1) of the Financial Services and Markets Act 2000<sup>(1)</sup>, makes the following Regulations:

#### **Citation and commencement**

**3.** These regulations may be cited as the Financial Services and Markets Act 2000 (Control of Business Transfers)(Requirements on Applicants)(Amendment) Regulations 2006 and come into force on [ ] 2006.

#### **Amendment to the 2001 Regulations**

**4.** The Financial Services and Markets Act 2000 (Control of Business Transfers)(Requirements on Applicants) Regulations 2001<sup>(2)</sup> are amended as follows—

- (a) at the end of Regulation 3(2)(a) (iii) omit “and”;
- (b) at the end of Regulation 3(2)(b) add—

“and; (c) sent to every reinsurer of the authorised person concerned any of whose contracts of reinsurance are to be transferred by the scheme”;

- (c) in Regulation 4(2) for “and (b)” substitute “, (b) and (c)”.

*Name*

*Name*

Two of the Lords Commissioners of Her Majesty’s Treasury

Date

<sup>(1)</sup> 2000 c. 8

<sup>(2)</sup> S.I. 2001/3625, amended by S.I. 2004/3379.

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001. The effect of the amendments is to oblige a person applying to court for sanction (approval) of an insurance business transfer under section 107 of the Financial Services and Markets Act 2000 to give notice of the application to a reinsurer any of whose contracts of reinsurance are proposed to be transferred as part of the insurance business transfer scheme.

A full regulatory impact assessment has been produced for this instrument which is available from the Financial Stability and Risk Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. It is also available on the HM Treasury website at [www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk).



# AMENDMENT TO SECTION 323 REGULATIONS 2006

## STATUTORY INSTRUMENTS

2006 No.

## FINANCIAL SERVICES AND MARKETS

### Financial Services and Markets Act 2000 (Amendment of section 323) Regulations 2006

<i>Made</i>	-	-	-	-	2006
<i>Laid before Parliament</i>					2006
<i>Coming into force</i>	-	-			2006

The Treasury are a government department designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to transfers of insurance contracts other than contracts of life assurance from one insurance undertaking to another and matters relating to the transfer of contracts of life assurance from one insurance undertaking to another and to anything supplemental or incidental to those matters. In exercise of the powers conferred on them by section 2(2) of the European Communities Act 1972, the Treasury make the following Regulations:

#### Citation and commencement

5. These Regulations may be cited as the Financial Services and Markets Act 2000 (Amendment of section 323) Regulations 2006 and come into force on [xx xxxx] 2006.

#### Amendment to section 323

6. In section 323 of the Financial Services and Markets Act 2000 (transfer schemes), for the words from “members” (where it first occurs) to the end substitute—

“underwriting members of the Society or by one or more persons who have ceased to be such a member (whether before, on or after 24 December 1996).”

Date *Name*  
Two of the Lords Commissioners of Her Majesty’s Treasury

(1) S.I. 1997/2781.

(2) 1972 c. 68. The enabling powers of section 2(2) of this Act were extended by virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51). Council Directive 73/239/EEC applies in the EEA by virtue of the Annex IX of the EEA Agreement signed at Oporto on 2<sup>nd</sup> May 1992 together with the Protocol adjusting that Agreement signed at Brussels on 17<sup>th</sup> March 1993. Directive 2002/83 of the European Parliament and the Council applies in the EEA by virtue of the EEA Joint Committee Decision No 60/2004 of 26th August 2004 (O.J. L.277, 26.8.2004, p.172).

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend section 323 of the Financial Services and Markets Act 2000 (“the Act”). Section 323 permits the application of Part 7 of the Act in relation to the insurance business of members and former underwriting members of the Society of Lloyd’s.

Section 323 of the Act prior to this amendment used the existing definition of former underwriting member set out in section 324 of the Act. That definition does not apply to former underwriting members who ceased to be underwriting members on or before 23 December 1996. This amendment enables an order under section 323 to apply to all former underwriting members of Lloyd’s.

The regulations are made using the power in section 2(2) of the European Communities Act 1972. This matter arises out of and relates to the European Community obligation on Member States to authorise insurance undertakings to transfer all or part of their portfolio of contracts to an accepting office within the Community under Article 12(2) of Council Directive 1992/49/EEC (known as “the third non-life insurance directive”) and Article 14 European Parliament and Council Directive 2002/83/EC (known as “the consolidated life insurance directive”).

A full regulatory impact assessment has been produced for this instrument and is available from the Financial Stability and Risk Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. It is also on the HM Treasury website at [www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk).



# CONTROL OF TRANSFERS OF BUSINESS DONE AT LLOYD'S (AMENDMENT) ORDER 2006

## STATUTORY INSTRUMENTS

2006 No.

### FINANCIAL SERVICES AND MARKETS

#### The Financial Services and Markets Act 2000 (Control of Transfers of Business Done at Lloyd's) (Amendment) Order 2006

<i>Made</i>	- - - - -	2006
<i>Laid before Parliament</i>		2006
<i>Coming into force</i>	- - -	2006

The Treasury, in exercise of the powers conferred on them by sections 323 and 428(1) and (3) of the Financial Services and Markets Act 2000<sup>(1)</sup>, make the following Order:

#### Citation and commencement and interpretation

7.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Control of Transfers of Business Done at Lloyd's) (Amendment) Order 2006 and comes into force on [ ] 2006.

(2) In this Order, “the Principal Order” means the Financial Services and Markets Act 2000 (Control of Transfers of Business Done at Lloyd's) Order 2001<sup>(2)</sup>.

#### Amendment of the Principal Order

8.—(1) In article 2 of the Principal Order, omit the definition of “former underwriting member”.

(2) In article 3 of the Principal Order for “one or more members of the Society or former underwriting members” substitute—

“one or more underwriting members of the Society or by one or more persons who have ceased to be such a member (whether before, on or after 24 December 1996)”.

(3) In article 5(1)(b) for “paragraph (a)” substitute “paragraph (b)”.

(4) After article 5(2) add—

“(3) A transfer scheme carried out by virtue of this Order may transfer to an establishment of the transferee business written on different syndicates and in different years of account of syndicates.”.

<sup>(1)</sup> 2000 c. 8; section 323 was amended by the Financial Services and Markets Act 2000 (Amendments to the Control of Business Transfer Provisions) Regulations 2006, S.I. 2006/

<sup>(2)</sup> S.I. 2001/3626

*Name*

Date

Two of the Lords Commissioners of Her Majesty's Treasury

#### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order amends the Financial Services and Markets Act 2000 (Control of Transfers of Business Done at Lloyd's) Order 2001 so that the provisions of Part 7 of the Financial Services and Markets Act 2000, that were applied by that Order to some former members of Lloyd's, now apply to all former underwriting members of the Society of Lloyd's. Part 7 permits among other types of transfers, transfers of insurance business. It also makes clear by the amendment in Article 2(4) that a transfer scheme can include the insurance business written on different syndicates and of different years of account of syndicates.

Article 2(3) also corrects an error in a cross-reference in the original Order.

A full regulatory impact assessment has been produced for this instrument which is available from the Financial Stability and Risk Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. It is also available on the HM Treasury website at [www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk).

**E.1** The Cabinet Office has published a Code of Practice for Written Consultations to guide Department's activities in this area, which sets down the following criteria:

- Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy
- Be clear about what the proposals are, who may be affected, what questions are being asked, and the timescale for responses
- Ensure the consultation is clear, concise and widely accessible
- Give feedback regarding the responses received and how the consultation process influenced the policy
- Monitor the department's effectiveness at consultation, including through the use of a designated consultation coordinator
- Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

If you feel that this consultation does not fulfil these criteria, please contact:

Meenakhi Boroohah  
HM Treasury  
1 Horse Guards Road  
London  
SW1A 2HQ  
Telephone: (+44) (0) 207 270 5925  
Email: [meenakhi.boroohah@hm-treasury.x.gsi.gov.uk](mailto:meenakhi.boroohah@hm-treasury.x.gsi.gov.uk)

## CONFIDENTIALITY DISCLOSURES

**E.2** Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily) the Freedom of Information Act 2000 (FOIA), the Data Protection Act (DPA) and the Environmental Information Regulations 2004). If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality will be maintained in all circumstances.

**E.3** An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department. The Department will process your personal data in accordance with the DPA, and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

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**FREEDOM OF INFORMATION CONTACT**

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Any Freedom of Information Act queries should be directed to:

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