

SCHEDULES

SCHEDULE 12

TRANSFER SCHEMES: CERTIFICATES

PART I

INSURANCE BUSINESS TRANSFER SCHEMES

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

Status: This is the original version (as it was originally enacted).

Certificates as to margin of solvency

- 2 (1) A certificate under this paragraph is to be given—
- (a) by the relevant authority; or
 - (b) in a case in which there is no relevant authority, by the Authority.
- (2) A certificate given under sub-paragraph (1)(a) is one certifying that, taking the proposed transfer into account—
- (a) the transferee possesses, or will possess before the scheme takes effect, the necessary margin of solvency; or
 - (b) there is no necessary margin of solvency applicable to the transferee.
- (3) A certificate under sub-paragraph (1)(b) is one certifying that the Authority has received from the authority which it considers to be the authority responsible for supervising persons who effect or carry out contracts of insurance in the place to which the business is to be transferred that, taking the proposed transfer into account—
- (a) the transferee possesses or will possess before the scheme takes effect the margin of solvency required under the law applicable in that place; or
 - (b) there is no such margin of solvency applicable to the transferee .
- (4) “Necessary margin of solvency” means the margin of solvency required in relation to the transferee, taking the proposed transfer into account, under the law which it is the responsibility of the relevant authority to apply.
- (5) “Margin of solvency” means the excess of the value of the assets of the transferee over the amount of its liabilities.
- (6) “Relevant authority” means—
- (a) if the transferee is an EEA firm falling within paragraph 5(d) of Schedule 3, its home state regulator;
 - (b) if the transferee is a Swiss general insurer, the authority responsible in Switzerland for supervising persons who effect or carry out contracts of insurance;
 - (c) if the transferee is an authorised person not falling within paragraph (a) or (b), the Authority.
- (7) In sub-paragraph (6), any reference to a transferee of a particular description includes a reference to a transferee who will be of that description if the proposed scheme takes effect.
- (8) “Swiss general insurer” means a body—
- (a) whose head office is in Switzerland;
 - (b) which has permission to carry on regulated activities consisting of the effecting and carrying out of contracts of general insurance; and
 - (c) whose permission is not restricted to the effecting or carrying out of contracts of reinsurance.

Certificates as to consent

- 3 A certificate under this paragraph is one given by the Authority and certifying that the host State regulator has been notified of the proposed scheme and that—
- (a) that regulator has responded to the notification; or

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

- (b) that it has not responded but the period of three months beginning with the notification has elapsed.

Certificates as to long-term business

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

Certificates as to general business

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

Interpretation of Part I

- 6 (1) “State of the commitment”, in relation to a commitment entered into at any date, means—
 - (a) if the policyholder is an individual, the State in which he had his habitual residence at that date;
 - (b) if the policyholder is not an individual, the State in which the establishment of the policyholder to which the commitment relates was situated at that date.
- (2) “Commitment” means a commitment represented by contracts of insurance of a prescribed class.
- (3) References to the EEA State in which a risk is situated are—
 - (a) if the insurance relates to a building or to a building and its contents (so far as the contents are covered by the same policy), to the EEA State in which the building is situated;
 - (b) if the insurance relates to a vehicle of any type, to the EEA State of registration;
 - (c) in the case of policies of a duration of four months or less covering travel or holiday risks (whatever the class concerned), to the EEA State in which the policyholder took out the policy;
 - (d) in a case not covered by paragraphs (a) to (c)—
 - (i) if the policyholder is an individual, to the EEA State in which he has his habitual residence at the date when the contract is entered into; and
 - (ii) otherwise, to the EEA State in which the establishment of the policyholder to which the policy relates is situated at that date.