

SCHEDULES

SCHEDULE 2

Section 6

TRANSFER ORDERS UNDER SECTION 6

Property, rights and liabilities that may be transferred by or under order

- 1 The property, rights and liabilities that may be transferred by or under an order under section 6 include—
- (a) property, rights and liabilities that would not be capable of being assigned or otherwise transferred by the relevant deposit-taker;
 - (b) property, rights and liabilities acquired or incurred in the period between the making of the order and the transfer date;
 - (c) rights and liabilities arising on or after the transfer date in respect of matters occurring before that date;
 - (d) rights and liabilities under any pension scheme or under any other arrangement for the payment of pensions, allowances and gratuities;
 - (e) property situated outside the United Kingdom and rights and liabilities under the law of a place outside the United Kingdom;
 - (f) rights and liabilities under an enactment or Community instrument.

Provisions relating to property, rights and liabilities transferred

- 2 (1) An order under section 6 may make provision—
- (a) for any transfer of any interests or rights to take effect despite the absence of any required consent or concurrence to or with the transfer;
 - (b) for any transfer of any interests or rights to take effect as if—
 - (i) no associated liability existed in respect of any failure to comply with any other requirement, and
 - (ii) there were no associated interference with the interests or rights;
 - (c) for securing that in any specified circumstances—
 - (i) a person is not entitled to terminate, modify, acquire or claim an interest or right (or to treat an interest or right as terminated or modified) until it is transferred by or under the order, and
 - (ii) the entitlement is subsequently either not enforceable or enforceable only to the specified extent;
 - (d) for rights and liabilities—
 - (i) to be transferred so as to be enforceable by or against both the transferee and the transferor, and
 - (ii) where they are so enforceable, to be enforceable in different or modified respects by or against each of those persons;
 - (e) for interests, rights or liabilities of third parties in relation to anything to which an order under section 6 relates to be modified in the specified manner, including provision—

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- (i) for securing that transactions or events of any specified description do or do not have (directly or indirectly) such consequences as are specified, or are to be treated in the specified manner for any specified purposes;
 - (ii) for persons to be discharged from the further performance of contracts and for dealing with the consequences of persons being so discharged;
 - (f) for the manner in which—
 - (i) any property held in trust by the relevant deposit-taker before the transfer date (whether as sole or joint trustee) is to be held on or after that date, and
 - (ii) any powers, provisions and liabilities relating to any such property are to be exercisable or to have effect on or after that date;
 - (g) for excluding from the transfer specified property, rights and liabilities comprised in the relevant deposit-taker’s business or a specified part of it;
 - (h) for the creation of rights, liabilities or interests in relation to property, rights or liabilities transferred from or retained by the relevant deposit-taker;
 - (i) for dealing with cases where securities of a subsidiary undertaking are transferred by or under the order;
 - (j) for enabling the relevant deposit-taker and the transferee (in accordance with the order) to agree on any modification of the order, so long as the order could originally have been made with that modification in accordance with the relevant provisions of this Act;
 - (k) for apportioning liabilities in respect of any tax or duty (in the United Kingdom or elsewhere) between the relevant deposit-taker and the transferee.
- (2) In sub-paragraph (1)(b) “associated liability” and “associated interference” mean respectively any liability or interference that would otherwise exist by virtue of any provision (of an enactment or agreement or otherwise) having effect in relation to the terms on which the relevant deposit-taker is entitled, or subject, to anything to which the transfer relates.
- (3) In sub-paragraph (1)(e) “third parties” means persons other than the relevant deposit-taker or the transferee under an order under section 6.

Creation of new rights etc.

- 3 An order under section 6 may make provision for the creation of new rights and liabilities as between the relevant deposit-taker and any of its group undertakings.

Rights etc. under pension schemes

- 4 (1) An order under section 6 may make provision—
- (a) as to the consequences of any transfer, by or under such an order, in relation to any pension scheme;
 - (b) in relation to any property, rights and liabilities of any relevant occupational pension scheme.
- (2) Such an order may—
- (a) modify any such rights and liabilities;

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- (b) apportion any such rights and liabilities between different persons;
 - (c) provide for property of, or accrued rights in, any relevant occupational pension scheme to be transferred to another occupational pension scheme without the consent of any person.
- (3) Provision made in pursuance of this paragraph may be made by means of modifications of a relevant occupational pension scheme or otherwise.
- (4) In this paragraph—
- “occupational pension scheme” has the meaning given by section 150(5) of the Finance Act 2004 (c. 12);
 - “relevant occupational pension scheme” means an occupational pension scheme in relation to which—
 - (a) the relevant deposit-taker, or
 - (b) any of its group undertakings,is or has been an employer.

Foreign property etc.

- 5 (1) An order under section 6 may make provision—
- (a) for requiring or authorising the relevant deposit-taker or the transferee to take any specified steps—
 - (i) for securing the vesting in the transferee under the relevant foreign law of foreign property or foreign rights or liabilities, or
 - (ii) pending any such vesting of such property, rights or liabilities, or
 - (iii) otherwise in relation to such property, rights or liabilities;
 - (b) for the payment by a specified person of expenses incurred in connection with such property, rights or liabilities.
- (2) In this paragraph—
- (a) “foreign law” means the law of a place outside the United Kingdom; and
 - (b) “foreign property” and “foreign rights or liabilities” mean respectively property and rights and liabilities as respects which an issue arising in any proceedings would be determined (in accordance with the rules of private international law) by reference to foreign law.

Authorisations and permissions etc.

- 6 (1) An order under section 6 may make provision for securing that, if on the transfer date the transferee satisfies the specified conditions, it is to be treated for the specified period—
- (a) as an authorised person in relation to any specified regulated activities carried on by the relevant deposit-taker before that date, or
 - (b) as an authorised person who has a Part IV permission granted by the Financial Services Authority to carry on any such activities.
- (2) Where an order makes provision in accordance with sub-paragraph (1)(b), it may provide that any decision by the Financial Services Authority of a specified description is to have the effect of varying or cancelling (to any specified extent) the Part IV permission which the transferee is to be treated as having by virtue of that provision.

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- (3) An order under section 6 may make provision—
- (a) for securing that licences, permissions or approvals—
 - (i) relating to anything transferred by or under the order, and
 - (ii) in force or effective immediately before the transfer date,
 are to continue in force or in effect as from that date;
 - (b) for apportioning (by means of making modifications of the instruments concerned or otherwise) responsibility between the relevant deposit-taker and the transferee as regards compliance with requirements of licences, permissions or approvals.
- (4) In this paragraph “authorised person”, “Part IV permission” and “regulated activities” have the same meanings as in FSMA 2000.

Supplementary provisions

- 7 (1) An order under section 6 may make provision—
- (a) for the transferee to be treated for any purpose connected with the transfer as the same person in law as the relevant deposit-taker;
 - (b) for agreements made or other things done by or in relation to any relevant deposit-taker to be treated as made or done by or in relation to the transferee;
 - (c) for references in instruments or documents to the relevant deposit-taker, to any combination of bodies that includes that deposit-taker, or to any officer or employee of that deposit-taker, to have effect with specified modifications;
 - (d) for securing continuity of employment in the case of contracts of employment transferred by or under the order;
 - (e) for anything (including legal proceedings) that relates to anything transferred by or under the order, and is in the process of being done by or in relation to the relevant deposit-taker immediately before it is transferred, to be continued by or in relation to the transferee.
- (2) In sub-paragraph (1)(b), (c) and (e) any reference to the relevant deposit-taker includes a reference to any of its group undertakings.
- (3) An order under section 6 may require the relevant deposit-taker to provide the transferee with such information and other assistance as is specified.
- (4) An order under section 6 may make provision for disputes as to specified matters arising under or by virtue of an order under that section to be determined in the specified manner.

Interpretation

- 8 (1) In this Schedule—
- “the relevant deposit-taker”, in relation to an order under section 6, means the authorised UK deposit-taker in relation to which the order is made;
 - “specified purposes” include the purposes of any specified statutory provision;
 - “the transferee” means the person to whom property, rights or liabilities are transferred by or under an order under section 6;

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“the transfer date” means (subject to sub-paragraph (2)) the date on which such a transfer takes place.

- (2) If provision is made by or under an order under section 6 for any transfer to take place at a particular time on a particular date, then in relation to that transfer—
 - (a) references to the transfer date are to that time on that date; and
 - (b) references to things occurring before or on or after the transfer date are references to things occurring before or at or after that time on that date.
- (3) In this Schedule any reference to anything transferred by or under a particular order under section 6 includes a reference to anything transferred by or under any other order under that section.