
S T A T U T O R Y I N S T R U M E N T S

1980 No. 956

INSURANCE

**The Insurance (Transfer of General Business)
Regulations 1980**

Laid before Parliament in draft

Made - - - - - 8th July 1980

Coming into Operation 1st September 1980

The Secretary of State, being a Minister designated (a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to the authorisation of the carrying on of insurance business and the regulation of such business and its conduct and in relation to anything supplemental or incidental thereto, in exercise of the powers conferred by that section, hereby makes the following Regulations, a draft of which has been approved by resolution of each House of Parliament:—

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Insurance (Transfer of General Business) Regulations 1980 and shall come into operation on 1st September 1980.

(2) These Regulations extend to Northern Ireland.

Interpretation

2.—(1) In these Regulations—

“affected policy holder”, in relation to an application, means any policy holder—

(a) whose policy is included in the transfer; or

(b) to whom paragraph (2) below applies;

“application” means an application to the Secretary of State for his approval of a transfer;

“the Gazettes” means the London, Edinburgh and Belfast Gazettes;

(a) The European Communities (Designation) (No. 2) Order 1976, S.I. 1976/2141.

(b) 1972 c. 68.

“general business” has the meaning given in section 1(2) of the Insurance Companies Act 1974(a);

“general policy” means any policy evidencing a contract the effecting of which constituted the carrying on of general business of any class;

“policy” and “policy holder” have the meanings given in section 85(1) of the Insurance Companies Act 1974;

“responsible authority”, in relation to a member State other than the United Kingdom, means the authority which is responsible in that State for supervising insurance companies;

“the solvency regulations” means the Insurance Companies (Solvency: General Business) Regulations 1977(b);

“transfer” means any such transfer as is mentioned in paragraph (1) of regulation 3 below and “transferor” and “transferee” shall be construed in accordance with that paragraph.

- (2) This paragraph applies to a policy holder if—
- (a) his policy is with the transferor but is not included in the transfer; and
 - (b) the Secretary of State has certified, after consulting with the transferor, that in his opinion the policy holder’s rights and obligations under the policy will or may be materially affected by the transfer.

Applications for approval of transfers

3.—(1) Where it is proposed to execute an instrument by which an insurer (“the transferor”) is to transfer to another insurer (“the transferee”) all his rights and obligations under such general policies, or general policies of such class or classes, as may be specified in the instrument, the transferor may apply to the Secretary of State for his approval of the transfer.

(2) Every application shall be accompanied by a copy of the proposed instrument and the transferor and the transferee shall give the Secretary of State such further particulars relating to the transfer as he may reasonably require.

Publication of applications

4.—(1) The Secretary of State shall not entertain an application unless he is satisfied that—

- (a) a notice approved by him for the purpose has been published in the Gazettes and, if he thinks fit, in two national newspapers which have been so approved; and
- (b) except in so far as he has otherwise directed, a copy of the notice has been sent to every affected policy holder and every other person who claims an interest in a policy included in the transfer and has given written notice of his claim to the transferor; and
- (c) copies of a statement setting out particulars of the transfer and approved by him for the purpose have been available for inspection at offices in the United Kingdom for a period of not less than thirty days beginning with the date of the first publication of the notice.

(a) 1974 c. 49.

(b) S.I. 1977/1553.

- (2) The said notice shall state—
- (a) that the application has been made;
 - (b) the address of offices in the United Kingdom at which, and the period for which, copies of the statement mentioned in paragraph (1)(c) above will be available as required by that paragraph; and
 - (c) the period, ending not less than sixty days after the date of the first publication of the notice, during which written representations concerning the transfer may be sent to the Secretary of State.
- (3) When the requirements of this regulation have been complied with, the transferor shall give written notice of that fact to the Secretary of State.

Determination of applications

- 5.—(1) The Secretary of State shall not determine an application unless—
- (a) he has first consulted with such (if any) of the responsible authorities in other member States as he considers appropriate; and
 - (b) the period mentioned in paragraph (2)(c) of regulation 4 above has expired; and
 - (c) thirty days have elapsed since he received written notice as mentioned in paragraph (3) of that regulation.
- (2) In determining an application the Secretary of State shall have regard to—
- (a) the interests of affected policy holders;
 - (b) any representations made before the expiration of the period mentioned in regulation 4(2)(c) above; and
 - (c) such other matters as the Secretary of State considers just and appropriate (including, if he thinks fit, any representations made after the expiration of that period).
- (3) The Secretary of State shall not approve a transfer unless he is satisfied that—
- (a) every policy included in the transfer evidences a contract entered into before the date of the application and was, at that date, a United Kingdom policy within the meaning of section 4 of the Policyholders Protection Act 1975(a);
 - (b) the transferor is an insurer who is entitled to carry on in the United Kingdom (or in any part thereof) insurance business of the relevant class or classes and who is not excluded from the application of the solvency regulations by Schedule 1 to those regulations;
 - (c) the transferee is, or immediately after the approval will be, such an insurer and has, and immediately after the transfer will have, the margin of solvency required by those regulations or by the corresponding law of a member State other than the United Kingdom; and
 - (d) the transferee has agreed, subject to the Secretary of State giving his approval, to execute the instrument of transfer.

(a) 1975 c. 75.

Publication of decisions

6. On determining an application, the Secretary of State shall—
- (a) publish in the Gazette (and in any newspaper in which notice of the application was published under regulation 4(1)(a) above) a notice of his decision;
 - (b) send to the transferor and the transferee and every person whose representations were taken into account under regulation 5(2) above a copy of that notice; and
 - (c) in the case of a refusal, send to the transferor and the transferee a statement of the reasons for his decision.

Effect of approved transfers

7.—(1) Subject to paragraph (2) below, an instrument giving effect to a transfer which has been approved by the Secretary of State shall be effectual in law—

- (a) to transfer to the transferee all the transferor's rights and obligations under the policies included in the instrument; and
- (b) if the instrument so provides, to secure the continuation by or against the transferee of any legal proceedings by or against the transferor which relate to those rights or obligations,

notwithstanding the absence of any agreements or consents which would otherwise be necessary for it to be effectual in law for those purposes.

(2) Except in so far as the Secretary of State may otherwise direct, a policy holder whose policy is included in such an instrument shall not be bound by it unless he has been given written notice of its execution by the transferor or the transferee.

Special provisions for transfers to or from Lloyd's

8.—(1) These Regulations shall not apply in relation to a transfer where both the transferor and the transferee are members of Lloyd's.

(2) Where members of Lloyd's are either the transferor or the transferee these Regulations shall apply in relation to the transfer if, and only if,—

- (a) the Committee of Lloyd's have by resolution authorised one person to act for those members in connection with the transfer; and
- (b) a copy of the resolution has been given to the Secretary of State,

and where these Regulations so apply any document made, given or executed or other act done by a person so authorised in connection with the transfer shall have effect for the purposes of these Regulations as if made, given, executed or done by the members of Lloyd's concerned.

(3) Where members of Lloyd's are the transferee these Regulations shall apply, subject to paragraph (2) above, as if the references in regulation 5(3)(c) above to the transferee having the margin of solvency required by the solvency regulations were references to the members of Lloyd's together having the margin of solvency required by those regulations, as applied by regulation 3 of the Lloyd's (General Business) Regulations 1979(a), to be maintained by those members together.

Service of documents

9. Any notice or other document authorised or required to be given or served under these Regulations may, without prejudice to any other method of service, be served by post; and for the purposes of the application to this regulation of section 7 of the Interpretation Act 1978(a) (which relates to service by post) the proper address of any person shall be his last known address.

8th July 1980.

Reginald Eyre,
Parliamentary Under-Secretary of State,
Department of Trade.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations enable an insurer with the approval of the Secretary of State to transfer to another insurer all or some of its portfolio of policies relating to non-life business. The Regulations implement Article 21 of Council Directive 73/239/EEC (O.J. No. L228, 16.8.73, p.3).

The scheme of the Regulations is that the intending transferor applies to the Secretary of State with a copy of the proposed instrument of transfer (regulation 3). Notice of the application is published and an opportunity given for representations about the proposed transfer to be sent to the Secretary of State (regulation 4). The Secretary of State, having considered the representations among other things, publishes his decision (regulations 5 and 6) and, if the transfer is approved, the proposed instrument becomes effectual in law (regulation 7). In the case of Lloyd's, the Regulations will apply to transactions between members and non-members but not to internal transactions among members (regulation 8).

