

Status: Point in time view as at 31/12/2020.

Changes to legislation: There are currently no known outstanding effects for the Financial Services (Banking Reform) Act 2013, Cross Heading: Provision that may be made by a scheme. (See end of Document for details)

SCHEDULES

SCHEDULE 7

FINANCIAL MARKET INFRASTRUCTURE TRANSFER SCHEMES

Provision that may be made by a scheme

- 5 (1) An FMI transfer scheme may contain provision—
- (a) for the creation, in favour of the old company or the new company, of an interest or right in or in relation to property transferred in accordance with the scheme;
 - (b) for giving effect to a transfer to the new company by the creation, in favour of that company, of an interest or right in or in relation to property retained by the old company;
 - (c) for the creation of new rights and liabilities (including rights of indemnity and duties to indemnify) as between the old company and the new company;
 - (d) in connection with any provision made under this sub-paragraph, provision making incidental provision as to the interests, rights and liabilities of other persons with respect to the property, rights and liabilities to which the scheme relates.
- (2) The property, rights and liabilities of the old company that may be transferred in accordance with an FMI transfer scheme include—
- (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the old company;
 - (b) property acquired, and rights and liabilities arising, in the period after the making of the scheme but before it takes effect;
 - (c) rights and liabilities arising after it takes effect in respect of matters occurring before it takes effect;
 - (d) property situated anywhere in the United Kingdom or elsewhere;
 - (e) rights and liabilities under the law of a part of the United Kingdom or of a place outside the United Kingdom [^{F1}(including under legislation of the European Union)];
 - (f) rights and liabilities under an enactment^{F2}... or subordinate legislation.
- (3) The transfers to which effect may be given by an FMI transfer scheme include transfers of interests and rights that are to take effect in accordance with the scheme as if there were—
- (a) no such requirement to obtain a person's consent or concurrence,
 - (b) no such liability in respect of a contravention of any other requirement, and
 - (c) no such interference with any interest or right,
- as there would be, in the case of a transaction apart from this Act, by reason of a provision falling within sub-paragraph (4).

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- (4) A provision falls within this sub-paragraph to the extent that it has effect (whether under an enactment or agreement or otherwise) in relation to the terms on which the old company is entitled, or subject, to anything to which the transfer relates.
- (5) Sub-paragraph (6) applies where (apart from that sub-paragraph) a person would be entitled, in consequence of anything done or likely to be done by or under this Act in connection with an FMI transfer scheme—
- (a) to terminate, modify, acquire or claim an interest or right, or
 - (b) to treat an interest or right as modified or terminated.
- (6) That entitlement—
- (a) is not enforceable in relation to that interest or right until after the transfer of the interest or right by the scheme, and
 - (b) is then enforceable in relation to the interest or right only in so far as the scheme contains provision for the interest or right to be transferred subject to whatever confers that entitlement.
- (7) Sub-paragraphs (3) to (6) have effect where shares in a subsidiary of the old company are transferred—
- (a) as if the reference in sub-paragraph (4) to the terms on which the old company is entitled or subject to anything to which the transfer relates included a reference to the terms on which the subsidiary is entitled or subject to anything immediately before the transfer takes effect, and
 - (b) in relation to an interest or right of the subsidiary, as if the references in sub-paragraph (6) to the transfer of the interest or right included a reference to the transfer of the shares.
- (8) Sub-paragraphs (3) and (4) apply to the creation of an interest or right by an FMI transfer scheme as they apply to the transfer of an interest or right.

Textual Amendments

- F1** Words in Sch. 7 para. 5(2)(e) inserted (31.12.2020) by [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 2 para. 4(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F2** Words in Sch. 7 para. 5(2)(f) omitted (31.12.2020) by virtue of [The Bank Recovery and Resolution and Miscellaneous Provisions \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1394\)](#), reg. 1(2), **Sch. 2 para. 4(b)**; 2020 c. 1, Sch. 5 para. 1(1)

Commencement Information

- I1** Sch. 7 para. 5 in force at 13.7.2018 for E.W. by [S.I. 2018/848](#), **art. 2(c)**

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