
STATUTORY INSTRUMENTS

1997 No. 2781

The Transfer of Functions (Insurance) Order 1997

Citation and commencement

- 1.—(1) This Order may be cited as the Transfer of Functions (Insurance) Order 1997.
(2) This Order shall come into force on 5th January 1998.

Transfer of functions to the Treasury

- 2.—(1) Subject to the following provisions of this Order, the functions of the Secretary of State—
- (a) under the Policyholders Protection Act 1975(1);
 - (b) under the Insurance Brokers (Registration) Act 1977(2);
 - (c) under the Insurance Companies Act 1982(3);
 - (d) under the Reinsurance (Acts of Terrorism) Act 1993(4);
 - (e) under paragraph 13(2) of Schedule 15 to the Friendly Societies Act 1992(5) (power to certify that a person possesses the margin of solvency required by Part II of the Insurance Companies Act 1982); and
 - (f) under, or by virtue of, the Policyholders Protection Act 1997(6),
- are hereby transferred to the Treasury.
- (2) The functions of the Secretary of State mentioned in paragraph 6, 7, 8(a), 10, 18, 19, 23 or 26 of Schedule 1 to the Transfer of Functions (Financial Services) Order 1992(7) (certain functions under the Financial Services Act 1986(8) retained by the Secretary of State) are hereby transferred to the Treasury.
- (3) The functions mentioned in paragraph 1, 2, 4 or 6 of Schedule 2 to that Order (functions under the Financial Services Act 1986), which, by virtue of article 4 of that Order, are exercisable by the Secretary of State jointly with the Treasury, are hereby transferred to the Treasury.
- (4) The functions exercisable by the Board of Trade and the Secretary of State concurrently under—
- (a) sections 35 and 39 of the Lloyd's Act 1871(9),
 - (b) the Restriction of Advertisement (War Risks Insurance) Act 1939(10),

(1) 1975 c. 75.

(2) 1977 c. 46.

(3) 1982 c. 50.

(4) 1993 c. 18.

(5) 1992 c. 40.

(6) 1997 c. 18.

(7) S.I.1992/1315.

(8) 1986 c. 60.

(9) 34 Vict. c.xxi; the functions of the Board of Trade under ss. 35 and 39 were transferred to the Secretary of State so as to be exercisable concurrently with the Board by the Secretary of State for Trade and Industry Order 1970

(10) 2 & 3 Geo 6 c. 120; the functions of the Board of Trade under this Act were transferred to the Secretary of State so as to be exercisable concurrently with the Board by the Secretary of State for Trade and Industry Order 1970

(c) the Insurance Companies Act 1958(11), and
 (d) section 91 of the Companies Act 1967(12),
 are hereby transferred to the Treasury.

Functions retained by the Secretary of State

3. The functions of the Secretary of State under sections 47(4) and 65(2) of the Insurance Companies Act 1982(13) (Secretary of State's powers to prescribe fees for inspecting certain documents deposited with or served on the registrar of companies) are not transferred to the Treasury.

Functions to be exercisable by the Secretary of State and the Treasury concurrently

4.—(1) The following functions of the Secretary of State under the Insurance Companies Act 1982 shall be exercisable concurrently with the Treasury—

- (a) the functions under section 44(14) (power to obtain information and require production of documents), so far as those functions are exercisable by virtue of any of the following provisions of that Act—
 - (i) section 37(15) (other than subsection (2)(d) to (f) or subsection (5) of that section),
 - (ii) section 83A(16) or 84(2), or
 - (iii) paragraph 13 or 14 of Schedule 2F(17);
- (b) the functions under section 44A(18) (entry and search of premises);
- (c) the functions under section 47(1) (power to rescind or vary requirements), so far as they are exercisable in relation to a requirement imposed by the Secretary of State under section 44;
- (d) the functions under section 54(1) to (4) (winding up on petition of Secretary of State);
- (e) the functions under section 56(6) (continuation of long term business of insurance companies in liquidation);
- (f) the functions under section 93 (restriction on institution of prosecutions);
- (g) the functions under section 94 (restriction on summary proceedings);
- (h) the functions under Schedule 2B(19) (restriction on disclosure of information).

(2) The functions of the Secretary of State under section 438(1) of the Companies Act 1985(20) and article 431(1) of the Companies (Northern Ireland) Order 1986(21) shall, so far as they are exercisable by virtue of section 48(1) or (2) of the Insurance Companies Act 1982(22), be exercisable concurrently with the Treasury.

(3) The functions of the Secretary of State under paragraph 28 of Schedule 7 to the Finance Act 1994(23) (power to disclose information to Commissioners of Customs and Excise in connection

(11) 6 & 7 Eliz. 2 c. 72; the functions of the Board of Trade under this Act were transferred to the Secretary of State so as to be exercisable concurrently with the Board by the Secretary of State for Trade and Industry Order 1970

(12) 1967 c. 81; the functions of the Board of Trade under s. 91 were transferred to the Secretary of State so as to be exercisable concurrently with the Board by the Secretary of State for Trade and Industry Order 1970 (S.I. 1970/1537), art. 2(1).

(13) 1982 c. 50.

(14) Section 44 was amended by the Companies Act 1989 (c. 40), s. 77 and the Insurance Companies (Third Insurance Directives) Regulations 1994 (S.I. 1994/1696), reg. 24.

(15) s. 37 was amended by S.I. 1994/1696, reg. 19 and the Insurance Companies (Switzerland) Regulations 1993

(16) s. 83A was inserted by the Insurance Companies (Amendment) Regulations 1992 (S.I. 1992/2890), reg. 8 and

(17) Sched. 2F was inserted by S.I. 1994/1696, reg. 45(2), Sched. 6.

(18) s. 44A was inserted by the Companies Act 1989 (c. 40), s. 77(1), (3).

(19) Sched. 2B was inserted by S.I. 1994/1696, reg. 26(2), Sched. 2.

(20) 1985 c. 6; s. 438(1) was amended by the Companies Act 1989 (c. 40), s. 58.

(21) S.I. 1986/1032 (N.I.6); art. 431(1) was amended by the Companies (No. 2) (Northern Ireland) Order 1990

(22) 1982 c. 50.

(23) 1994 c. 9.

with performance of their duties in relation to tax) shall be exercisable concurrently with the Treasury.

Transfers of property, etc.

5.—(1) Subject to paragraph (2), all property, rights and liabilities to which the Secretary of State for Trade and Industry is entitled or subject at the coming into force of this Order in connection with any function transferred by article 2 of this Order are hereby transferred to the Treasury.

(2) Paragraph (1) does not have effect in relation to rights and liabilities under contracts of employment.

Designation for purposes of European Communities Act 1972

6. For the purposes of section 2(2) of the European Communities Act 1972⁽²⁴⁾, the Treasury is hereby designated (in place of the Secretary of State) in relation to—

- (a) compulsory insurance in respect of, and other means of providing for, civil liability in relation to motor vehicles and trailers;
- (b) transfers of insurance contracts other than contracts of life insurance from one insurance undertaking to another;
- (c) authorisation of the carrying on of insurance business and the regulation of such business and its conduct;
- (d) matters relating to the specification of insurers who may effect insurance required under or by virtue of any enactment; and
- (e) 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.

Supplementary

7.—(1) This Order shall not affect the validity of anything done (or having effect as if done) by or in relation to the Secretary of State, the Secretary of State for Trade and Industry or the Board of Trade before the coming into force of this Order.

(2) Anything which—

- (a) has been, or has effect as if, done by or in relation to the Secretary of State, the Secretary of State for Trade and Industry or the Board of Trade for the purpose of or in connection with anything transferred by this Order, and
- (b) is in force at the coming into force of this Order,

shall, so far as necessary for continuing its effect after the coming into force of this Order, have effect as if done by or in relation to the Treasury.

(3) Anything (including any legal proceedings) which, at the coming into force of this Order, is in the process of being done by or in relation to the Secretary of State, the Secretary of State for Trade and Industry or the Board of Trade may, so far as it relates to anything transferred by this Order, be continued by or in relation to the Treasury.

(24) 1972 c. 68.

Consequential amendments etc.

8.—(1) The enactments mentioned in the Schedule to this Order shall have effect with the amendments specified in that Schedule.

(2) Subject to the amendments made by the Schedule to this Order, any enactment or instrument passed or made before the coming into force of this Order shall be construed—

(a) so far as may be necessary for the purpose of or in consequence of article 2(1), (2) or (4) or 5 of this Order as if—

- (i) any reference to the Secretary of State, to the Secretary of State for Trade and Industry or to the Department of Trade and Industry (including any reference which is to be construed as such a reference) were a reference to the Treasury, and
- (ii) any reference to an officer of the Secretary of State for Trade and Industry (including any reference which is to be construed as such a reference) were a reference to an officer of the Treasury;

(b) so far as necessary for the purpose of or in consequence of article 2(3) or 5, as if—

- (i) any reference to the Treasury acting jointly with the Secretary of State, the Secretary of State for Trade and Industry or her department (including any reference which is to be construed as such a reference) were a reference to the Treasury, and
- (ii) any reference to an officer of the Treasury acting jointly with an officer of the Secretary of State for Trade and Industry (including any reference which is to be construed as such a reference) were a reference to an officer of the Treasury; and

(c) so far as necessary for the purpose of or in consequence of article 4, as if—

- (i) any reference to the Secretary of State, to the Secretary of State for Trade and Industry or to her department (including any reference which is to be construed as such a reference) were a reference to the Secretary of State or the Treasury, to the Secretary of State for Trade and Industry or the Treasury or, as the case may be, to her department or the Treasury, and
- (ii) any reference to an officer of the Secretary of State for Trade and Industry (including any reference which is to be construed as such a reference) were a reference to such an officer or an officer of the Treasury.

(3) The references in paragraph (2)(a) above to the Secretary of State or the Secretary of State for Trade and Industry shall, so far as that paragraph applies in relation to article 2(4) of this Order, be construed as including references to the Board of Trade.

(4) In paragraph (2) above “instrument”, without prejudice to the generality of that expression, includes in particular judgments, decrees, orders, rules, regulations, schemes, bye-laws, awards, contracts and other agreements, memoranda and articles of association, warrants, certificates and other documents.

N. H. Nicholls
Clerk of the Privy Council