

EXPLANATORY MEMORANDUM TO

THE FINANCIAL SERVICES AND MARKETS ACT 2000 (CONTROL OF TRANSFERS OF BUSINESS DONE AT LLOYD'S) (AMENDMENT) ORDER 2008

2008 No. 1725

1. 1.1 This explanatory memorandum has been prepared by Her Majesty's Treasury and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 The statutory instrument described in this memorandum completes changes necessary to enable certain former underwriting names of the Lloyd's insurance market, who are presently unable to take part, to participate in a transfer of their portfolio of contracts to another insurer. The Financial Services and Markets Act 2000 (Amendments of section 323) Regulations 2008, (S.I. 2008/1469) ("2008 Regulations") amended section 323 of the Financial Services and Markets Act 2000 ("FSMA") permitting this instrument to extend the scope of those former names able to participate in a Part 7 insurance business transfer scheme.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 This instrument amends the Financial Services and Markets Act 2000 (Control of Transfers of Business Done at Lloyd's) Order 2001, (S.I. 2001/3626) ("2001 Order") which applies the provisions of Part 7 of FSMA to transfers of insurance business at Lloyd's. Most importantly, the instrument expands the scope of those Lloyd's participants who can use the Part 7 procedure to be the same as the amendment made previously to section 323 of FSMA by the 2008 Regulations. In addition, it amends condition (b) set out in article 4 of the 2001 Order to allow the Council of Lloyd's to certify that a person has authority to act in relation to a transfer. It adds a reference to new section 114A of FSMA added to Part 7 by the Reinsurance Directive Regulations 2007 (S.I. 2007/3253). It corrects a typographical error and finally it makes clear that a transfer can include business written on different insurance syndicates and for different insurance years of account.

5. Territorial Extent and Application

5.1 These instruments apply to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The provisions of the Financial Services and Markets Act 2000 (Control of Transfers of Business Done at Lloyd's)(Amendment) Order 2008 are subject to the negative resolution procedure and do not amend primary legislation, therefore no statement is required in relation to them.

7. Policy background

7.1 Part 7 of FSMA provides a regime for authorising transfers of UK insurance and reinsurance business from one company to another within the EEA through a process of Court approval. (Part 7 also extends to banking transfers, but the amendments being made in this instrument apply only to Lloyds insurance business transfers.) Transfers aid the effective and efficient management of insurance portfolios, for example, through restructuring.

7.2 The amendments made by this instrument relate to transfers of business at Lloyd's. The Treasury has specific powers to apply Part 7 to such transfers, but, because of the current definition of former underwriting members at Lloyd's in Part 7, it is limited to the business of current members or those who resigned on or after 24 December 1996. This distinction was made so those earlier former members are not regulated under FSMA in the same way as insurance undertakings and current members of Lloyds – the distinction is not relevant, in policy terms, to the application of Part 7 to insurance business written at Lloyd's. The Treasury believes that the date of a former member's resignation should not be a factor in determining whether a transfer of that member's business is possible, and amendments are made to correct this anomaly.

Consultation

7.3 This instrument was one of four covered in the Treasury's consultation document entitled "Consultation on amendments relating to Part 7 of FSMA 2000 ("Control of Business Transfers")", published on 3rd November 2006. (The other three were made and laid on 9 June 2008 and came into force on 30 June.) The consultation period closed 12 weeks later on 26th January 2007. Copies of the document were sent direct to key stakeholders and letters referring to the consultation were sent to Names and former Names. Around 120 consultation responses were received, from a variety of bodies and individuals, including insurance and reinsurance companies, policyholders, legal practitioners, trade bodies, the Financial Services Authority, and former members of Lloyd's.

7.4 With regard to the amendments concerning former names at Lloyd's, a great majority of those who commented on these provisions favoured making such amendments. Some concerns were raised about the effect on policyholders of a proposed transfer by Equitas, the run-off reinsurer of pre-1993 non-life business at Lloyd's, that

would become possible after the amendments are made. These are concerns that are properly for the court to consider if and when application is made for such a transfer. The Treasury does not consider they should change the policy intention to make the amendments.

7.5 A summary of responses, including the Treasury's response to the comments received, and revised instruments, was published on the Treasury's website on 9 April 2008, more than a month prior to the instruments mentioned in paragraph 7.3 being laid before Parliament. Direct notification of publication of the summary was sent to those consultees who had raised substantive comments, together with the offer of discussions to address concerns if desired. A link to the summary is below (see second link under 'Media links'):

http://www.hm-treasury.gov.uk/consultations_and_legislation/fsma/part7fsma/consult_part7fsma_index.cfm

7.6 The Treasury fully considered all responses, including two received after the publication of the summary, and has responded direct in certain cases where particular concerns were expressed. One of the post-summary responses was not relevant to this instrument. The other raised concerns about the impact for asbestos liabilities of the proposed Equitas transfer, referred to in paragraph 7.4 above. As for other concerns raised by certain policyholders at Lloyd's the Treasury considers these would be matters for the court in its consideration of whether to sanction a scheme, if and when application for the transfer is made.

8. Impact

8.1 A Regulatory Impact Assessment was issued with the previous three instruments that formed part of the consultation proposals and has been published on the Treasury's website at:

http://www.hm-treasury.gov.uk/consultations_and_legislation/fsma/part7fsma/consult_part7fsma_index.cfm

8.2 There is no significant impact on the public sector.

9. Contact

David Beardsworth at Her Majesty's Treasury Tel: 020-7270 4427 or e-mail: david.beardsworth@hm-treasury.x.gsi.gov.uk can answer any queries regarding the instrument.