

2008 No. 1468

FINANCIAL SERVICES AND MARKETS

**The Financial Services and Markets Act 2000 (Amendments to
Part 7) Regulations 2008**

<i>Made</i> - - - -	<i>9th June 2008</i>
<i>Laid before Parliament</i>	<i>9th June 2008</i>
<i>Coming into force</i> - -	<i>30th June 2008</i>

The Treasury, in exercise of the powers conferred on them by sections 117(b) and 428(3) of the Financial Services and Markets Act 2000(a) make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Financial Services and Markets Act 2000 (Amendments to Part 7) Regulations 2008 and come into force on 30th June 2008.

Amendments to Part 7 of the Financial Services and Markets Act 2000

2.—(1) After subsection (2) of section 112 of the Financial Services and Markets Act 2000 (effect of order sanctioning business transfer scheme) insert—

“(2A) Subsection (2)(a) is to be taken to include power to make provision in an order—

- (a) for the transfer of property or liabilities which would not otherwise be capable of being transferred or assigned;
- (b) for a transfer of property or liabilities to take effect as if there were—
 - (i) no such requirement to obtain a person’s consent or concurrence, and
 - (ii) no such contravention, liability or interference with any interest or right, as there would otherwise be (in the case of a transfer apart from this section) by reason of any provision falling within subsection (2B).

(2B) A provision falls within this subsection to the extent that it has effect (whether under an enactment or agreement or otherwise) in relation to the terms on which the authorised person concerned is entitled to the property or subject to the liabilities in question.

(2C) Nothing in subsection (2A) or (2B) is to be read as limiting the scope of subsection (1).”

(2) In subsection (9) of that section after “subsection (2),” insert “(2A),”.

(3) After section 112 insert—

“112A Rights to terminate etc.

(1) Subsection (2) applies where (apart from that subsection) a person would be entitled, in consequence of anything done or likely to be done by or under this Part in connection with an insurance business transfer scheme or a banking business transfer scheme—

- (a) to terminate, modify, acquire or claim an interest or right; or
- (b) to treat an interest or right as terminated or modified.

(2) The entitlement—

- (a) is not enforceable in relation to that interest or right until after an order has been made under section 112(1) in relation to the scheme; and
- (b) is then enforceable in relation to that interest or right only insofar as the order contains provision to that effect.

(3) Nothing in subsection (1) or (2) is to be read as limiting the scope of section 112(1).”.

Dave Watts

Frank Roy

9th June 2008

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend Part 7 of the Financial Services and Markets Act 2000 (“the Act”) which deals with schemes for the transfer of insurance and banking business.

Section 112 of the Act is amended by the insertion of new subsections (2A) to (2C) and a consequential amendment of subsection (9).

Subsections (2A) and (2B) make clear for the avoidance of doubt that the power of the court to make an order under section 112 is to be taken as always having included the power to transfer, for example, contracts which include provisions prohibiting their transfer or contracts in relation to which there is a query as to their transferability in the absence of consent of a counterparty or contracts where there is a contravention, liability or interference with a right or interest which arises as a result of the transfer.

New section 112A is inserted. The new section makes clear, again for the avoidance of doubt, that the specified entitlements arising as a result of something done or likely to be done by or under Part 7 of the Act will only be enforceable after the order under section 112(1) has been made and only insofar as the court makes provision to that effect in that order. These circumstances might be relevant, for example, in relation to the transfer of reinsurance contracts, if such transfer were sanctioned by the court, which are connected to insurance contracts being transferred under an insurance business transfer scheme. Section 112A(1) could be relevant, for example, where a counterparty of a bank or insurer has a right to terminate an agreement with the bank or insurer which is exercisable as a result of the bank or insurer stating its intention to pursue a banking or insurance business transfer scheme.

A full regulatory impact assessment has been produced for this instrument and is available from the Financial Stability and Risk Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is on the HM Treasury’s web-site at www.hm-treasury.gov.uk.

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