



Consultation Paper | CP16/21

Insurance business transfers

July 2021





BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY

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Responses are requested by Thursday 28 October 2021.

In light of current measures to help prevent the spread of COVID-19, please address any comments or enquiries by email to: CP16_21@bankofengland.co.uk.

Alternatively, please address any comments or enquiries to:
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1 Overview

1.1 This Consultation Paper (CP) sets out the Prudential Regulation Authority's (PRA) proposed updates to its approach to insurance business transfers, to reflect legislative changes following the UK's withdrawal from the European Union and the completion of the transition period. It also provides additional guidance for independent experts (IEs) and firms on the PRA's expectations.

1.2 The proposals in this CP would result in changes to the Statement of Policy (SoP) 'The Prudential Regulation Authority's approach to insurance business transfers' (Appendix 1).¹

1.3 The CP is relevant to all PRA-authorized insurers, including the Society of Lloyd's and its managing agents. It is also relevant to mutuals and friendly societies.

1.4 The purpose of these proposals is to update the PRA's approach following legislative changes after the completion of the transition period, and to provide a greater degree of clarity on the PRA's expectations of firms and IEs with regard to transfers undertaken under Part VII of the Financial Services and Markets Act 2000 (FSMA), and on its approach transfers undertaken under the Friendly Societies Act 1992 (FS Act 1992).

1.5 The PRA has considered the interaction between its primary and secondary objectives and the 'have regards'. Overall, the PRA considers the proposals should help advance firms' safety and soundness and to secure an appropriate degree of policyholder protection by providing greater clarity to firms and IEs with regard to the PRA's expectations when assessing insurance business transfers, enabling the PRA's review to be more efficient.

1.6 The proposals in this CP relate to the PRA's approach to insurance business transfers and friendly society transfers. By providing a greater degree of clarity and transparency with regard to the PRA's approach and existing practices, the proposals would assist firms and IEs in the preparation of documents and will allow the PRA's assessment of transfers to be more efficient, as risks would be mitigated sooner. Therefore, the PRA considers that the proposals set out in this CP advance its objectives. Costs for firms in implementing the proposals are expected to be minimal in the majority of instances; most proposals are clarifications of existing PRA expectations, to which firms already largely adhere. Where proposals would create additional costs for firms, the PRA considers that the benefits of mitigating risks to its objectives outweigh any additional costs incurred.

Background

1.7 A number of amendments were made to FSMA as a result of the UK's withdrawal from the European Union. These amendments came into effect from Thursday 31 December 2020. Some of these amendments make changes to the statutory role of the PRA under Part 7 of FSMA, and therefore it is appropriate to change the SoP accordingly. The proposals that are not triggered by legislative changes are designed to reinforce and provide additional clarity to the PRA's existing expectations, and in some areas reflect where the PRA's approach has evolved.

Summary of proposals

1.8 The proposals in this CP include:

¹ April 2015: <https://www.bankofengland.co.uk/prudential-regulation/publication/2015/the-pras-approach-to-insurance-business-transfers>.

- (i) updating references in the SoP to the PRA's consultation with European Economic Area (EEA) regulators and transfers from the EEA into the UK to align with amended legislation;
- (ii) providing additional guidance to firms, IEs, and other interested parties on the PRA's specific role and approach to insurance business transfers;
- (iii) the PRA's expectations of transferees in run-off; and
- (iv) providing additional guidance on the PRA's expectations for friendly society transfers.

Implementation

1.9 The PRA proposes that the implementation date for the changes resulting from this CP would be Monday 29 November 2021.

Responses and next steps

1.10 This consultation closes on Thursday 28 October 2021. The PRA invites responses on the proposals set out in this consultation. Please address any comments or enquiries to CP16_21@bankofengland.co.uk.

1.11 References related to the UK's membership of the EU in the SoP covered by this CP have been updated as part of these proposals to reflect the UK's withdrawal from the EU. Unless otherwise stated, any references to EU or EU derived legislation refer to the version of that legislation which forms part of retained EU law.²

² For further information please see <https://www.bankofengland.co.uk/eu-withdrawal/transitioning-to-post-exit-rules-and-standards>.

2 Proposals

2.1 This chapter sets out the PRA's proposals to update the SoP 'The Prudential Regulation Authority's approach to insurance business transfers' in line with the amendments to FSMA. This chapter also outlines the PRA's proposed clarifications to its approach to insurance business transfers.

Consultation with EEA Supervisory Authorities

2.2 Amendments that have been made to FSMA and the FS Act 1992 that have removed the requirements for the PRA to consult with EEA supervisory authorities in circumstances where transferring contracts were concluded in the EEA, or where transferring business was written in EEA freedom of establishment branches. Following such consultations on transfers under Part VII of FSMA, the PRA would issue the court with certain certificates under Schedule 12 of FSMA. Following the changes, these certificates are no longer required under FSMA.³

2.3 Following the FSMA and FS Act 1992 amendments, the PRA proposes to amend paragraphs 2.43, 4.3, 4.10 and 4.26 of the SoP. The PRA also propose to delete paragraphs 2.41–2.42, 2.44–2.47 and 4.25 of the SoP. These proposals reflect that consultation with EEA regulators is no longer required.

Transfers from the EEA to the United Kingdom

2.4 The PRA proposes to amend the SoP to reflect that recognition of inward transfers from the EEA under section 116 of FSMA has been deleted, and that Part VII of FSMA is now only applicable to an EEA transferor if that entity has an authorised UK branch with permission to effect and/or carry out contracts of insurance, and where the transferring business is carried on in the UK.

The PRA's role in insurance business transfers

2.5 The PRA has specific regulatory functions relating to insurance business transfers under Part VII of FSMA, and it also assesses transfers against its statutory objectives. The PRA outlines its role in its reports to the court on proposed schemes.

2.6 The PRA proposes to set out in greater detail the specific role it plays in insurance business transfers in the SoP. This is in order to make clear to firms and interested parties what the PRA's remit and role is in Part VII transfers.

Guidance for firms

2.7 For insurance business transfers conducted under Part VII of FSMA, a scheme report for the court is required to be produced by an IE that has been approved by the PRA (in consultation with the Financial Conduct Authority (FCA)). The individual must be appropriately independent, and possess the necessary skills to produce the report.

2.8 In practice, the PRA also considers whether a nominated IE has the appropriate capacity to produce a scheme report to the required standards. This is in line with the PRA's guidance in Supervisory Statement (SS) 7/14 'Reports by skilled persons', where one of the PRA's considerations is

³ Certificate as to consultation under Paragraph 3, Schedule 12 FSMA; Certificate as to consent under Paragraph 3A, Schedule 12 FSMA; Certificate as to long-term business under Paragraph 4, Schedule 12 FSMA; Certificate as to general business under Paragraph 5, Schedule 12 FSMA; and Certificate as to legality and as to consent under Paragraph 5, Schedule 12 FSMA.

whether the proposed skilled person has sufficient resources to complete the report within the timeframe that the PRA expects.⁴

2.9 Therefore, the PRA proposes to clarify to firms that its assessment of a nominated IE will consider the capacity of the individual and their team to undertake the review in the timelines put forward by the firm(s). The PRA also proposes to provide firms with guidance on what material to provide to the PRA at the preliminary stages of an insurance business transfer.

Guidance for independent experts

2.10 The form of the scheme report prepared by the IE must be approved by the PRA (following consultation with the FCA). The PRA's assessment of whether to approve the form of the scheme report considers whether the report is fit for its intended purpose of assisting the court's assessment of the scheme. As part of the assessment, the PRA will consider if the report covers in sufficient detail areas the PRA considers relevant, and assesses whether the report provides appropriate reasoning to support the IE's conclusions.

2.11 The PRA considers that providing clearer guidance of its expectations of scheme reports would be beneficial to all interested parties within insurance business transfers, and would help reduce the resources expended on this stage of the process.

2.12 The PRA proposes to explain what it is assessing when considering whether to approve the form of the scheme report. The PRA also proposes to provide further information to IEs as to what areas it expects to be covered in scheme reports. In particular, the PRA would expect that IEs consider the likely effects of the scheme at both firm and policyholder level, and that they should, where relevant, consider such effects with consideration to risks that may not be covered by the solvency capital requirement.

Transfers involving transferees in run-off

2.13 The PRA considers that schemes involving transferees in run-off may in certain circumstances pose risks to its statutory objectives. Therefore, the PRA is making two proposals to mitigate this risk.

2.14 The first proposal is that for schemes that trigger particular criteria (where the scheme involves non-life business in run-off with technical provisions of over £100 million, and where the scheme will increase the transferee's technical provisions by 10% or more), the PRA will utilise its powers under s166 of FSMA to assess the operational readiness of the transferee. The PRA proposes to do this in all cases that meet the aforementioned criteria, unless it is able to satisfy itself of the transferee's operational readiness by other means. The PRA considers that this proposal would help mitigate the risk such schemes pose to its objectives.

2.15 The second proposal is that where the transferee is in run-off (or is in the business of acquiring books of business in run-off), it should be able to demonstrate that it has considered both its existing risks and risks it is acquiring over the ultimate time horizon, until the risks taken on are fully run-off. The PRA considers that this proposal would help mitigate the risk such schemes pose to the PRA's primary objectives.

⁴ June 2014: <https://www.bankofengland.co.uk/prudential-regulation/publication/2014/reports-by-skilled-persons-ss>.

Friendly society transfers

2.16 Friendly society transfers are governed by the FS Act 1992. While there are parallels with the process for insurance transfers under Part VII of FSMA, in the case of transfers under the FS Act 1992, the PRA is the appropriate authority with responsibility for confirming friendly society transfers from PRA authorised persons.

2.17 Based on recent experience of processing transfers under the FS Act 1992, the PRA proposes to make clearer how friendly society transfers are distinguished from insurance business transfers under Part VII of FSMA, in order to assist firms and provide greater clarity as to the process. The PRA also proposes to provide additional guidance on the statement that is required to be sent to members under Schedule 15 of the FS Act 1992, and the notice of the application that is published. The PRA would also expect that any application for a friendly society transfer is accompanied by an explanation of how the various confirmation criteria and relevant requirements under the FS Act have been met.

2.18 The PRA would expect that societies respond directly to policyholders that have made representations; this is common practice for insurance business transfers under Part VII of FSMA. The PRA considers that this would help advance its objective of ensuring insurance policyholders are appropriately protected by in turn ensuring firms address material concerns policyholders may have. This proposal could possibly increase compliance costs for firms, and this is addressed further in Chapter 3 of this CP.

2.19 Where there have been material financial developments or policyholder representations following the publishing of any required reports but prior to confirmation, the PRA would in certain instances expect a supplementary report to be produced. This may have specific procedural implications, such as necessitating further communications with members and/or additional advertising. It could also lead to a requirement for a further member vote. This proposal could therefore increase compliance costs for firms, and this is discussed further in Chapter 3 of this CP.

3 The PRA's duty to consult

3.1 In carrying out its policy making functions, the PRA is required to comply with several legal obligations. When not making rules, the PRA has a public law duty to consult widely where it would be fair to do so.

3.2 The PRA fulfils its statutory obligations and public law duties by providing the following in relation to the proposed policy:⁵

- (i) **a cost benefit analysis;**
- (ii) **compatibility with the PRA's objectives:** an explanation of the PRA's reasons for considering that making the proposed policy is compatible with the PRA's duty to act in a way that advances its general objective,⁶ insurance objective,⁷ and secondary competition objective;⁸
- (iii) **FSMA regulatory principles:** an explanation of the ways in which having regard to the regulatory principles has affected the proposed policy;
- (iv) **impact on mutuals:** a statement as to whether the impact of the proposed policy will be significantly different to mutuals than to other persons;⁹
- (v) **HM Treasury recommendation letter:** the Prudential Regulation Committee (PRC) should have regard to aspects of the Government's economic policy as recommended by HM Treasury;¹⁰ and
- (vi) **equality and diversity:** The PRA is also required by the Equality Act 2010 to have due regard to the need to eliminate discrimination and to promote equality of opportunity in carrying out its policies, services and functions.¹¹

Cost benefit analysis

3.3 The proposed changes to the SoP due to the FSMA amendments are a direct result of the UK's withdrawal from the European Union.

3.4 The other proposed changes to the SoP set out in detail the PRA's role in insurance business transfers, the guidance for firms and IEs, and the guidance on transfers involving transferees in run-off and friendly society transfers. The PRA expects that the incremental costs from these proposals would be minimal for the majority of firms and IEs. Most firms and IEs are already following the expectations as proposed in this CP, and where there have been divergences, these are normally resolved through bilateral correspondence. Therefore, it is not expected that these proposals would result in a material increase in costs to firms and IEs.

3.5 The PRA considers that the proposal for it to utilise its powers under s166 of FSMA for certain transfers could incur additional costs for firms involved in transfers that trigger this requirement. However, s166 assessment would be triggered only in circumstances when the PRA has identified that

⁵ The requirements for the PRA to 'have regard' to several further matters when making CRR rules as set out in FSMA and the Financial Services Act are not relevant, because this CP is not proposing to make any rules.

⁶ Section 2B of FSMA.

⁷ Section 2C of FSMA.

⁸ Section 2H(1) of FSMA.

⁹ Section 138K of FSMA.

¹⁰ Section 30B of the Bank of England Act 1998.

¹¹ Section 149.

transfers involving transferees in run-off could pose risks to safety and soundness of firms and/or policyholder protection. The PRA anticipates that this will only be triggered rarely. Of the 43 sanctioned insurance business transfers since 2019, only one would have triggered an s166 assessment.

3.6 The PRA considers that there is a possibility that the proposal for firms undertaking transfers under the FS Act 1992 to respond directly to policyholders who have made representations could result in higher compliance costs. However, the PRA does not consider that the increase in costs would be material, given it is already common practice for insurers to respond directly to representations for insurance business transfers under Part VII of FSMA, and there are usually very small numbers of representations (if any) made on insurance business transfers.

3.7 The PRA considers that the proposal in relation to expecting a supplementary report to be produced on transfers under the FS Act 1992 (where there have been material financial developments or policyholder representations) could result in higher compliance costs. In order to assess a transfer under the FS Act 1992, the PRA (and other relevant stakeholders) need access to the most recent information. Therefore, the PRA considers that the potential additional cost to firms is necessary to ensure it can assess such transfers appropriately.

3.8 The PRA considers the proposals provide a greater degree of clarity and transparency with regard to its approach and existing practices. The PRA expects that these proposals will reduce the number of iterations of reports that IEs need to produce prior to receiving regulatory approval. This could therefore result in savings for firms in terms of responding to repeated regulatory clarification requests. The proposals therefore should assist firms in their preparation of documents, and IEs in the preparation of the scheme report.

Impact on mutuals

3.9 The PRA considers that its proposals to make changes to Chapter 4 of the SoP, which covers transfers under the FS Act 1992, will only impact friendly societies and other firms engaging in such transfers. The existing SoP sets out that the PRA expects that where transfers under Part VII of FSMA involve a mutual, the IE's scheme report comments on the proprietary rights of members. Where such rights are being lost or diluted, the PRA expects the report to state whether members are being compensated and the appropriateness of any compensation. These expectations are unchanged by the proposals in this CP.

Equality and diversity

3.10 The PRA considers that the proposals do not give rise to equality and diversity implications.

PRA objectives and have regards

3.11 Appendix 2 lists the statutory objectives applicable to the PRA's policy development process. Where have regards have not been explicitly considered in this chapter, it is because the PRA has considered them not to be relevant to the proposals.

3.12 The analysis in the rest of this chapter explains how each set of proposals have had regard to the most relevant matters listed in paragraph 3.2, including an explanation of the ways in which having regard to these matters has affected the proposals.

Legislation changes

3.13 Amendments have been made to FSMA that have removed the requirement for the PRA to consult with EEA regulators, as well as removing the automatic recognition of incoming transfers from

the EEA. The PRA proposes to amend the relevant sections of the SoP to reflect the changes to the legislation.

3.14 The PRA considers that its proposals would advance its primary objectives, allow the PRA's resources to be used in the most efficient way, and improve transparency.

PRA objectives

3.15 The proposals to update the SoP are intended to reflect amended legislation following the UK's withdrawal from the EU, and the end of the transition period. The PRA considers that updating the SoP will therefore reduce potential confusion among firms undertaking transfers under Part VII of FSMA, thereby assisting the PRA in advancing its objectives of promoting the safety and soundness of firms, and securing an appropriate degree of protection for policyholders.

3.16 The PRA does not expect the proposals to have any significant impact on competition, as the proposals bring the SoP into line with updated legislation, and do not materially change the PRA's expectations.

Have regards

3.17 **The need to use the PRA's resources in the most efficient and economical way:** the PRA considers that the proposals will reduce queries from firms and IEs as to how the amended legislation affects the PRA's approach. The proposals would therefore reduce the PRA's resource burden.

3.18 **The principle that the PRA should exercise its functions transparently:** the PRA considers that the proposals clarify the areas where the amended legislation has caused changes to the PRA's role within transfers under Part VII of FSMA. This would help firms understand how the amended legislation may affect them, or their transfers.

Guidance to firms and IEs

3.19 The PRA proposes to provide firms, IEs, and any other interested parties with further guidance as to its specific role in insurance business transfers and the factors it assesses when reviewing nominations of IEs or the form of the IEs scheme report.

3.20 The PRA considers that its proposals would advance its primary objective, allow the PRA's resources to be used in the most efficient way, and improve transparency.

PRA objectives

3.21 For insurance business transfers under Part VII of FSMA, the PRA is required to perform certain statutory functions, such as approving the form of the scheme report. In addition to these statutory functions, the PRA assesses all insurance business transfers against its primary objectives of safety and soundness of firms, and ensuring an appropriate degree of protection for policyholders. When assessing this, its concern is whether the firms involved will:

- continue to have appropriate financial resources;
- have appropriate resources to manage and monitor risk;
- be fit and proper to conduct their business prudently; and
- be capable of being effectively supervised.

3.22 The PRA considers that its proposals would provide firms and IEs with a greater degree of clarity, which in turn will strengthen the quality of documents submitted to the PRA. This would help make

the PRA's assessment of transfers more efficient and therefore assist in advancing the PRA's primary objectives.

3.23 The PRA has assessed whether these proposals facilitate effective competition in the markets for services provided by PRA-authorized persons in carrying on their regulated activities. The PRA considers these proposals do not have a significant impact on effective competition, as they clarify but do not materially change the PRA's expectations.

Have regards

3.24 The need to use the PRA's resources in the most efficient and economical way: the PRA considers that the proposals in the CP would provide further guidance and clarity to firms and IEs, which should reduce firm queries and relieve the resource burden on the PRA when assessing and reviewing scheme reports or IE nominations.

3.25 The principle that the PRA should exercise their functions as transparently as possible: the PRA's proposals would ensure a greater degree of transparency and clarity to interested parties in insurance business transfers in order for firms, IEs, and any other interested parties to better understand PRA expectations.

Transfers involving transferees in run-off

3.26 The PRA has identified that transfers involving transferees in run-off may in certain circumstances pose risks to its statutory objectives. The PRA proposes to set some specific expectations for such transfers in relation to information firms would need to demonstrate to the PRA, and noting that in certain cases the PRA would seek to conduct a further review under s166 of FSMA.

3.27 The PRA considers that these proposals advance its primary objectives, allow the PRA's resources to be used in the most efficient way, place proportionate burdens on persons, appropriately recognise differences in the nature of businesses carried on by different persons, and improve transparency.

PRA objectives

3.28 The PRA has identified that transfers involving transferees in run-off may, in certain instances, pose risks to the PRA's primary objectives. The PRA considers that its proposals will help mitigate these risks, and advance the PRA's primary objectives by ensuring the PRA is provided with the information it requires to assess the transfers appropriately, and to continue to effectively supervise its firms.

3.29 The PRA has assessed whether these proposals facilitate effective competition in the markets for services provided by PRA-authorized persons in carrying on their regulated activities. The PRA considers these proposals do not have a significant impact on effective competition.

Have regards

3.30 The need to use the PRA's resources in the most efficient and economical way: the PRA considers that these proposals will ensure that it can identify and mitigate risks posed to its objectives by such transfers at an earlier stage, allowing resources to be used more efficiently.

3.31 The principle that a burden which is imposed on a person should be proportionate to the benefits expected to result from that burden: the PRA considers that it has limited these proposals to the circumstances that create a potential risk to the PRA's statutory objectives. In such circumstances, the benefit of mitigating these risks is greater than the burden imposed on firms.

3.32 The desirability of the PRA exercising its functions in a way that recognises differences in the nature of businesses carried on by different persons: the PRA considers that the thresholds within the proposals ensure that the PRA will take a proportionate approach to firms based on their nature and size.

3.33 The principle that the PRA should exercise its functions as transparently as possible: the PRA considers that the proposals provide guidance to firms as to its internal assessment processes for transfers that fall within the criteria of the proposals, allowing firms to better understand what is expected of them.

Friendly society transfers

3.34 The PRA proposes to provide additional clarity to firms and interested parties as to how friendly society transfers are distinguished from insurance business transfers under Part VII of FSMA, as well as to set out expectations for how firms should deal with representations from policyholders.

PRA objectives

3.35 The PRA is the appropriate authority for confirming friendly society transfers from PRA-authorized persons. The PRA considers that its proposals will provide additional clarity to firms and interested parties as to its approach and expectations for transfers under the FS Act 1992. The PRA considers that the proposals will reduce potential confusion from firms undertaking such transfers, therefore assisting the PRA in advancing its objectives of promoting the safety and soundness of firms and securing an appropriate degree of protection for policyholders.

3.36 The PRA has assessed whether these proposals facilitate effective competition in the markets for services provided by PRA-authorized persons in carrying on their regulated activities. The PRA considers these proposals do not have a significant impact on effective competition, as they clarify, but do not materially change, the PRA's expectations.

Have regards

3.37 The need to use the PRA's resources in the most efficient and economical way: the PRA considers its proposals provide further guidance and clarity to firms, which should reduce firm queries and relieve the resource burden for the PRA when assessing transfers.

3.38 The principle that the PRA should exercise their functions as transparently as possible: the proposals would ensure a greater degree of transparency and clarity to interested parties in friendly society transfers in order for firms, IEs, and any other interested parties to better understand the PRA's expectations.

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1 Draft amendments to SoP 'The Prudential Regulation Authority's approach to insurance business transfers'

In this section, new text is underlined, and deleted text is struck through.

1 Introduction

1.1 The purpose of this statement of policy is to set out the approach and expectations of the Prudential Regulation Authority (PRA) in relation to transfers of insurance business under Part VII of the Financial Services and Markets Act 2000 (FSMA), ~~some~~ insurance business transfers from Switzerland, outside the United Kingdom and friendly society transfer of engagements and amalgamations. It is relevant to insurance firms and friendly societies authorised by the PRA.

1.2 While this statement sets out the PRA's expectations in relation to insurance business transfers, the PRA will consult with the Financial Conduct Authority (FCA) in advance of ~~forming any~~ making certain decisions in respect of a transfer and will seek to avoid introducing, inadvertently, incompatible requirements.¹² The FCA has also set out its own approach to and expectations in respect of insurance business transfers in SUP 18 of the FCA Handbook and FG18/4: The FCA's approach to the review of Part VII insurance business transfers.

1.3 Chapter ~~1 2~~ is aimed at any firm, or one or more underwriting members of the Society of Lloyd's, or one or more persons who have ceased to be such a member, proposing to make an application to transfer the whole or part of its business by an insurance business transfer scheme under section 107 of the FSMA or to accept such a transfer. Chapter ~~1 2~~ is also aimed at the independent expert approved by the PRA to make the scheme report under section 109 of FSMA.

1.4 Chapter ~~2 3~~ is aimed at any firm proposing to accept ~~certain~~ transfers of insurance business from Switzerland taking place outside of the United Kingdom.

1.5 Chapter ~~3 4~~ is aimed at any friendly societies proposing to amalgamate under section 85 of the Friendly Societies Act 1992, to any friendly society proposing to transfer engagements under section 86 of that Act to another person or body of persons and to any person or body of persons (whether or not a friendly society) proposing to accept such a transfer.

1.6 Chapters ~~1 and 2~~ should be read in conjunction with Part VII of FSMA, all relevant secondary legislation¹³ and the high level expectations outlined in 'The PRA's Prudential Regulation Authority's approach to insurance supervision'.¹⁴ Chapter 3 should be read in conjunction with the Friendly Societies Act 1992 and 'The Prudential Regulation Authority's PRA's approach to insurance supervision'.¹⁵

¹² See www.bankofengland.co.uk/about/Documents/mous/moufcapra.pdf. <https://www.bankofengland.co.uk/-/media/boe/files/memoranda-of-understanding/fca-and-bank-prudential-july-2019.pdf>.

¹³ Including but not limited to, the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applications) Regulations 2001 (SI 2001/3625), ~~and~~ the Financial Services and Markets Act 2000 (Control of Transfers of Business Done at Lloyd's) Order 2001 (SI 2001/3626), the amendments to FSMA made by the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (SI 2019/632) and, if relevant, the transitional provision in the Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019 (SI 2019/710).

¹⁴ The PRA's approach to insurance supervision, June 2014; www.bankofengland.co.uk/publications/Documents/prapproach/insuranceappr1406.pdf. The Prudential Regulation Authority's approach to insurance supervision, October 2018; https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/approach/insurance-approach-2018.pdf.

¹⁵ Ibid, footnote 3.

...

2 Transfers of insurance business under Part VII of the Financial Services and Markets Act 2000

Introduction to insurance business transfers

2.1 Insurance business transfers that are subject to Part VII of FSMA¹⁶ ~~and~~ must be approved by the court under section 111 of FSMA. The following pieces of statutory legislation also apply:

...

2.2 An insurance business transfer scheme is defined in section 105 of FSMA and the definition ~~has been extended to~~ includes transfers from underwriting members and former members of Lloyd's. The business transferred may include liabilities and potential liabilities on expired policies, liabilities on current policies and liabilities on contracts to be written in the period until the transfer takes effect. The parties to schemes approved under foreign legislation or involving novations of reinsurance or a captive insurer can apply to the court for an order sanctioning the scheme.

...

2.5 Amalgamations of friendly societies and transfers of engagements from friendly societies to other bodies (whether or not friendly societies) are governed by Part VIII of the Friendly Societies Act 1992 and Schedule 15 to that Act applies.

2.6 ~~Legislation in respect of other transactions, for example, cross border mergers,~~ does not negate the requirements under Part VII of FSMA. It is for the firms participating in such transactions to determine whether or not the proposed transfer gives rise to an insurance business transfer.

The regulators

2.7 Part VII of FSMA prescribes certain statutory functions in relation to insurance business transfer schemes for both the PRA and the FCA. In accordance with FSMA, the PRA and the FCA maintain a Memorandum of Understanding,¹⁷ which describes each regulator's role in relation to the exercise of its functions under FSMA relating to matters of common regulatory interest and how each regulator intends to ensure the co-ordinated exercise of such functions.¹⁸ Under the Memorandum of Understanding, the PRA will lead the process for insurance business transfers and will be responsible for specific regulatory functions connected with Part VII applications, including the provision of certificates under section 111 of FSMA.

2.8 By virtue of section 110 of FSMA, both the PRA and the FCA are entitled to be heard in the proceedings. The Memorandum of Understanding¹⁹ confirms that both the PRA and the FCA may provide the court with oral or written representations setting out their views on the proposed transfer scheme, for example, by way of a report to the court. ~~The PRA will decide in relation to each insurance~~

¹⁶ As amended by the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (SI 2019/632)

¹⁷ www.bankofengland.co.uk/about/Documents/mous/moufcapra.pdf. <https://www.bankofengland.co.uk/-/media/boe/files/memoranda-of-understanding/fca-and-bank-prudential-july-2019.pdf>.

¹⁸ However, note that to the extent that a proposed transfer relates to with-profits policies, the roles and responsibilities set out in the With-Profits, Memorandum of Understanding between the PRA and FCA will also apply: www.bankofengland.co.uk/about/Documents/mous/mouwithprofits.pdf. <https://www.bankofengland.co.uk/-/media/boe/files/memoranda-of-understanding/fca-and-pra-supervision-of-with-profits-policies.pdf>.

¹⁹ www.bankofengland.co.uk/about/Documents/mous/moufcapra.pdf. <https://www.bankofengland.co.uk/-/media/boe/files/memoranda-of-understanding/fca-and-bank-prudential-july-2019.pdf>.

~~business transfer whether it is necessary or appropriate to prepare a report, bearing in mind its objectives and other relevant matters. The PRA's usual practice is to prepare a report for the court.~~

...

2.10 Transfers may have both positive and negative effects on individual policyholders. A procedural key concern for the PRA will be to satisfy itself that each policyholder has adequate information and reasonable time within which to determine whether or not they are adversely affected and, if adversely affected, whether to make representations to the court. When reaching its view, the PRA will act in a way it considers most appropriate to advancing its own statutory objectives and will consult with the FCA.

The PRA's role in transfers of insurance business under Part VII of FSMA

2.10A The PRA has specific regulatory functions connected with insurance business transfer schemes required by FSMA. This role includes approving the independent expert and the form of the scheme report (these functions are described in further detail below). The PRA also assesses insurance business transfer schemes against its statutory objectives. The PRA's approach to assessing schemes is outlined in 2.55–2.73.

...

2.12 When an insurance business transfer scheme is being considered, the scheme promoter(s) should ~~first~~ approach the regulators PRA, and any relevant overseas regulators, at an early stage, ~~but should also consider whether any aspect of their proposals should be discussed with the FCA,~~ in order to enable the relevant regulators to consider the issues that are likely to arise, and to enable a practical timetable for the scheme to be established.

2.13 The initial documentary information on the scheme should be provided to the ~~PRA, who will share it with the FCA regulators,~~ and should include its broad outline and its purpose. The PRA may indicate to the promoter(s) how closely it wishes to monitor the progress of the scheme, including the extent to which it wishes to see draft documentation.

2.13A Where a scheme involves a book of non-life insurance business in run-off, with technical provisions of more than £100 million, and where the scheme will increase the transferee's technical provisions by more than 10%, the PRA intends to exercise its powers under s166 of FSMA in order to assess the operational readiness of the transferee to accept the scheme in most cases, except where it is able to satisfy itself by other means. This assessment would take place prior to the nomination of the independent expert.

2.14 The promoters should ensure that any relevant fees for both the PRA and FCA are paid directly to the FCA before any application will be considered.

2.15 Where a transfer involves a significant restructuring the PRA may levy a Special Project Fee for restructuring in accordance with ~~FEES 3 Annex 9~~ in the PRA Rulebook.

Independent expert

Qualifications

2.16 Under section 109(2) of FSMA a scheme report may only be made by a person:

- (1) appearing to the PRA to have the skills necessary to enable ~~him~~ them to make a proper report; and

(2) nominated or approved for the purpose by the PRA.

2.17 The regulators expect the independent expert making the scheme report to be a neutral person, who:

(1) is independent, that is, any direct or indirect interest or connection ~~he, or his employer~~ they, have or has had in either the transferor or transferee should not be such as to prejudice ~~his~~ their status in the eyes of the court; ~~and~~

(1A) works for an employer that is independent, that is, any direct or indirect interest or connections they have in either the transferor(s) or transferee(s) should not be such as to prejudice the independent expert's status in the eyes of the court;

(2) has relevant knowledge, both practical and theoretical, and experience of the types of insurance business transacted by the transferor and transferee; and

(2A) has the appropriate time and capacity to undertake the work required to make the scheme report to a standard which allows it to be approved by the PRA (after consultation with the FCA).

The principles²⁰ set out in PRA Supervisory Statement SS7/14 also apply to the independent expert.

...

2.19 For a transfer of general insurance business the independent expert should normally be competent at assessing technical provisions and the uncertainties and volatility of the liabilities they represent (such as an actuary). Exceptionally, where issues other than the ability of the transferee to meet the liabilities to be transferred are much more significant in assessing the likely effects of the scheme, this criterion might not be applied. In this case the independent expert would be expected to take advice from an appropriately qualified practitioner about the adequacy of the financial resources of the transferee.

2.20 The independent expert would not normally be expected to be knowledgeable about:

(1) general insurance business if the business being transferred is long-term insurance business only; or

(2) about long-term insurance business if the business being transferred is general insurance business only.

However, where either the transferor or transferee is a composite, they should understand the relevance of the general insurance business to the security of the long-term insurance business policyholders, and vice versa, and may need to seek independent specialist advice. It may also be appropriate for the independent expert to seek independent specialist advice where a scheme contains specialist or niche lines of business (and where they have done so, indicate the extent of the reliance on that advice).

²⁰ ~~PRA Supervisory Statement~~ SS7/14, 'Reports by skilled persons', June 2014: www.bankofengland.co.uk/prudential-regulation/publication/2014/reports-by-skilled-persons-ss. <https://www.bankofengland.co.uk/prudential-regulation/publication/2014/reports-by-skilled-persons-ss>.

...

2.22 The suitability of a person to act as an independent expert depends on the nature of the scheme and the firms concerned. On the basis of the preliminary information supplied by the scheme promoter(s) (and any other knowledge it has of the circumstances and the firms), the regulators will consider what skills are needed to make a proper report on the scheme and what criteria should therefore be applied to the choice of independent expert. ~~The PRA will inform the promoters of the criteria that the regulators decide to apply.~~ The preliminary information provided by the promoter(s) should outline the type and size of transferring business, the proposed transferor(s) and transferee(s), the proposed timelines, the purpose of the transfer, details of any related transactions or wider restructuring plans, and any other relevant information regarding the proposed scheme.

2.23 Under section 107(2) of FSMA, the application to the court may be made by the transferor, the transferee or both. When reasonably practical, the intended applicant should choose their nominee for independent expert, in the light of any criteria advised by the PRA. The intended applicant(s) should then advise the PRA of their choice, unless the PRA wishes them to defer nomination or to make its own nomination. The notification should be accompanied by reasons why the party considers the nominee to be a suitable person to act as independent expert. Relevant details provided should include information about the nominee's experience and qualifications; the proposed terms and conditions of the nominee's appointment, including any remuneration arrangements; ~~and~~ any current or previous professional or commercial arrangements with the transferor, transferee or their associated companies, including the remuneration (direct or indirect) for those arrangements with the nominee and/or with any professional firm or company in which the nominee has or has had any interest; and information regarding their capacity to undertake the work.

...

2.26 The PRA expects firms to co-operate fully with the independent expert and ~~provide him~~ them with access to all relevant information and appropriate staff, in a timely manner.

2.26A The role of the independent expert is enduring, and continues until the scheme has become effective or until the point the independent expert informs the regulators that they formally withdraw from the appointment. Therefore, the independent expert should continue to assess their independence throughout the Part VII process and promptly notify the regulators where they perceive there has been a change. The independent expert should also stay abreast of relevant developments that could affect the scheme or policyholders until the effective date of the scheme.

Scheme report

2.27 Under section 109 of FSMA, a scheme report must accompany an application to the court to approve an insurance business transfer scheme. This report must be made in a form approved by the PRA (following consultation with the FCA). ~~The PRA would generally expect a scheme report to contain at least the information specified in 2.30 below before giving its approval.~~

2.27A The PRA's assessment of whether to approve the form of the scheme report considers if the report is in an appropriate form to be submitted to the court to assist its assessment of the scheme. The PRA expects to take into consideration whether the report:

- (1) covers in sufficient detail all the issues that appear to the PRA to be relevant; and
- (2) incorporates appropriate reasoning.

2.27B The PRA would generally expect a scheme report to contain at least the information specified in 2.30 and 2.32–2.33 below before it would be able to consider approving the form of the report.

...

2.29 There may be matters relating to the scheme or the parties to the transfer that the regulators wish to draw to the attention of the independent expert. The regulators may also wish the report to address particular issues. The independent expert would therefore be expected to contact the regulators at an early stage to establish whether there are such matters or issues. The independent expert should form ~~his~~ their own opinion on such issues, which may differ from the opinion of the regulators.

2.30 The scheme report should comply with the applicable rules on expert evidence and should as a minimum contain the following information:

- (1) who appointed the independent expert and who is bearing the costs of that appointment;
- (2) confirmation that the independent expert has been approved or nominated by the PRA;
- (3) a statement of the independent expert's professional qualifications and (where appropriate) descriptions of the experience that makes them appropriate for the role;
- (4) whether the independent expert, or their ~~his~~ employer, has, or has had, direct or indirect interest in any of the parties which might be thought to influence their ~~his~~ independence, and details of any such interest;
- (5) the scope of the report;
- (6) the purpose of the scheme;
- (7) a summary of the terms of the scheme in so far as they are relevant to the report;
- (8) what documents, reports and other material information the independent expert has considered in preparing the report, whether they have identified any material issues with the information provided and whether any information that they requested has not been provided;
- (8A) any firm-specific information the independent expert considers should be included. Where the applicant(s) consider(s) it inappropriate to disclose such information, then the independent expert should explain this and the reasons why disclosure has not been possible;
- (9) the extent to which the independent expert has relied on:
 - (a) information provided by others; and
 - (b) the judgement of others;
- (10) the people the independent expert has relied on and why, in their opinion, such reliance is reasonable;
- (11) their opinion of the likely effects of the scheme on policyholders (this term is defined to include persons with certain rights and contingent rights under the policies), distinguishing between:
 - (a) transferring policyholders;

- (b) policyholders of the transferor whose contracts will not be transferred; ~~and~~
- (c) policyholders of the transferee; and
- (d) any other relevant policyholder groupings within the above that the independent expert has identified.

(12) their opinion on the likely effects of the scheme on any reinsurer of a transferor, ~~any of~~ whose contracts of reinsurance are to be transferred by the scheme;

(12A) their definition of 'material adverse' effect;

(13) what matters (if any) that the independent expert has not taken into account or evaluated in the report that might, in their opinion, be relevant to policyholders' consideration of the scheme; ~~and~~

(14) for each opinion and conclusion that the independent expert expresses in the report, an outline of their reasons; and

(15) an outline of permutations where a scheme involves multiple transferors or transferees, and analysis of the likely effects of the permutations on policyholders.

...

2.31A The independent expert is ultimately responsible and accountable for the opinions and conclusions expressed in the scheme report, including where reliance has been placed on others. Therefore, where the independent expert has placed reliance on others, they must make clear in the scheme report why they are content to do so.

...

2.33 The independent expert's opinion of the likely effects of the scheme should be assessed at both firm and policyholder level²¹ and should:

- (1) include a comparison of the likely effects if it is or is not implemented;
- (2) state whether ~~they~~ the firm(s) considered alternative arrangements and, if so, what were the arrangements and why were they not proceeded with;
 - (2A) analyse and conclude on how groups of policyholders are affected differently by the scheme, and whether such effects are material in the independent expert's opinion. Where the independent expert considers such effects to be material, they should explain how this affects their overall opinion;
- (3) include ~~their~~ the independent expert's views on:

²¹ Independent experts when forming their assessment of the effects of a scheme at the policyholder level should have regard to whether the scheme may give rise to different prudential impacts for different types of policyholders for example unit-linked policyholders and with-profit policyholders.

(a) the effect of the scheme at firm and policyholder level on the ongoing security of policyholders' contractual rights, including an assessment of the stress and scenario testing carried out by the firm(s) and of the potentially available management actions that have been considered by the board of the firm(s) and the likelihood and potential effects of the insolvency of the insurer transferor(s) and transferee(s). The independent expert should also consider whether it is necessary to conduct their own stress and scenario testing or to request the firm(s) to conduct further stress and scenario testing;

(aa) the transferor's and transferee's respective abilities to measure, monitor, and manage risk and to conduct their business prudently. This includes their ability to take corrective action in the event there is a material deterioration of their balance sheets;

(aaa) the likely effects of the scheme, in relation to the likelihood of future claims being paid, with consideration of not only the regulatory capital regime, but also any other risks not falling within the regime. This would include those likely to emerge after the first year or that are not fully captured by the regulatory capital requirements;

(aaaa) whether the transferee(s)' existing capital model would remain appropriate following the scheme;

(b) the likely effects of the scheme on matters such as investment management, capital management, new business strategy, claims reserving, administration, claims handling, expense levels and valuation bases for both transferor(s) and transferee(s) in relation to ~~how they may affect~~:

(i) the security of policyholders' contractual rights,

(ii) levels of service provided to policyholders, ~~or~~

(iii) for long-term insurance business, the reasonable expectations of policyholders;

(c) the cost and tax effects of the scheme, in relation to how they may affect the security of policyholders' contractual rights, or for long-term insurance business, their reasonable expectations.

(d) the likely effects at firm and policyholder level due to any change in risk profiles and/or exposures resulting from the scheme or related transactions; and

...

2.36 For a scheme involving long-term insurance business, the report should:

...

(4) describe what safeguards are provided by the scheme against a subsequent change of approach to these matters (in 2.36(1)–(3)) that could act to the detriment of existing policyholders of either firm;

...

2.37 Where the transfer forms part of a wider chain of events or corporate restructuring, it may not be appropriate to consider the transfer in isolation and the independent expert should seek sufficient explanations on corporate plans to enable them to understand the wider picture. Likewise, the independent expert will also need information on the operational plans of the transferee and, if only part of the business of the transferor is transferred, of the transferor. These will need to have sufficient detail to allow them to understand in broad terms how the business will be run. The PRA expects the independent expert to comment on how any such plans (including other insurance business transfers involving the parties to the scheme) would impact the likely effects of the scheme at firm and policyholder level.

2.38 A transfer may provide for benefits to be reduced for some or all of the policies being transferred. This might happen if the transferor is in financial difficulties. If there is such a proposal, the independent expert should report on what reductions they consider ought to be made, unless:

- (1) the information required is not available and will not become available in time for ~~his~~their report, for instance it might depend on future events; or
- (2) ~~he is~~they are unable to report on this aspect in the time available.

Under such circumstances, the transfer might be urgent and it might be appropriate for the reduction in benefits to take place after the event, by means of an order under section 112 of FSMA. The PRA considers any such reductions having regard to ~~against~~ its statutory objectives. Section 113 of FSMA allows the court, on the application of the PRA, to appoint an independent actuary to report on any such post-transfer reduction in benefits.

...

2.40 The purpose of the supplementary report is for the independent expert to provide an update on any relevant new information or events that have occurred since the date of the scheme report and to provide an opinion on whether they have affected the transfer. Matters that should be considered include, but are not limited to:

- (1) the most recent audited and unaudited ~~latest~~ available financial information in respect of the transferor and transferee, which the PRA would expect to have been internally validated;
- (2) any recent economic, financial or regulatory developments; and
- (3) any representations made by policyholders or affected persons that raise issues not previously considered in the scheme report.

2.40A In circumstances where there has been a long duration between the directions hearing and the final court hearing, it may be appropriate for the independent expert to produce an updated scheme report rather than a supplementary report. The PRA would assess this report as set out in 2.27A.

Consultation with ~~European Economic Area regulators and/or other foreign regulators~~

2.41 ~~[Deleted] Under the terms of the Memorandum of Understanding, the PRA will lead when carrying out consultation with European Economic Area (EEA) regulators and/or other foreign regulators.~~

2.42 ~~[Deleted]~~ The matters set out in 2.43 to 2.48 below derive from the requirements of the relevant European directives⁽⁴⁷⁾ and the associated agreements between EEA regulators. Schedule 12 of FSMA implements some of these requirements.

2.43

- (1) ~~If the transferee is (or will be) an EEA firm (authorised in its Home State to carry on insurance business under any relevant European directives)⁽⁴⁷⁾ or a Swiss general insurance company, then the PRA has to consult the transferee's Home State regulator, who has three months to respond. It will be necessary for the PRA to obtain from the Swiss Financial Market Supervisory Authority (FINMA) or any successor Swiss regulatory body confirmation that the firm meets Switzerland's the transferee's Home State regulator a certificate confirming that the transferee will meet the Home State's solvency margin requirements (if any) after the transfer.~~

(1A) If the scheme will result in the business being carried on from an establishment of the transferee in Gibraltar, it will be necessary for the PRA to obtain from the Gibraltar Financial Services Commission (or any successor regulator) confirmation that it meets Gibraltar's solvency margin requirements.

- (2) ~~[Deleted] If the transferee is (or will be) an EEA firm (authorised in its Home State to carry on insurance business under any relevant European Directives)⁽⁴⁷⁾ it will be necessary for the PRA to obtain from the transferee's Home State regulator a certificate confirming that the transferee will meet the Home State's solvency margin requirements (if any) after the transfer.~~
- (3) ~~[Deleted] If the transferee is authorised in the United Kingdom, the PRA will need to certify that the transferee will meet its solvency margin requirements after the transfer. If the PRA has serious concerns about the firm, the PRA will not be in a position to reply favourably.~~

2.44 ~~[Deleted]~~ The transferor will need to provide the PRA with the information that the Home State regulator requires from the PRA. This information includes:

- ~~(1) the transfer agreement or a draft, with:~~
- ~~(a) the names and addresses of the transferor and transferee; and~~
 - ~~(b) the classes of insurance business and details of the nature of the risks or commitments to be transferred;~~
- ~~(2) for the business to be transferred (both before and after reinsurance):~~
- ~~(a) the amount of technical provisions;~~
 - ~~(b) the amount of premiums (in the most recent financial period); and~~
 - ~~(c) for general insurance business, the claims incurred (in the most recent financial period)~~
- ~~(3) details of assets to be transferred;~~

- ~~(4) details of any guarantees (including reinsurance arrangements), whether provided by the transferor or a third party, to protect the provisions for the business transferred against deterioration; and~~
- ~~(5) the states of the risks or the states of the commitments of the business being transferred.~~

~~2.45 [Deleted] If the transferee is not (and will not be) authorised and will be neither an EEA firm or a Swiss general insurance company, then the PRA will consult the transferee's insurance supervisor in the place where the business is to be transferred. The PRA will need confirmation from this supervisor that the transferee will meet their solvency margin requirements there (if any) after the transfer.~~

~~2.46 [Deleted] If the transferor is a UK insurer (other than a pure reinsurer) and the business to be transferred includes business carried on from a branch in another EEA State, then the PRA will consult the host state regulator, who has three months to respond. The PRA will need to be given the information that the host state regulator requires from it. This information should identify the parties to the transfer and include the transfer agreement or draft transfer agreement or a summary containing relevant information, and describe arrangements for settling claims if the branch is to be closed.~~

~~2.47 [Deleted] If the transferor is a UK insurer and the business to be transferred includes a long term insurance contract (other than reinsurance) for which the state of the commitment is an EEA State other than the United Kingdom, then the PRA will consult the host state regulator. If the transferor is a UK insurer and the business to be transferred includes a general insurance contract (other than reinsurance) for which the state of the risk is an EEA State other than the United Kingdom, then the PRA must consult the host state regulator. The PRA will need to be given the information that the host state regulator requires from it. This information should identify the parties to the transfer and include the transfer agreement or draft transfer agreement or a summary containing relevant information. It would be helpful (especially for long term insurance business) if a draft of the scheme report was also available. The PRA will also require sufficient information about the business proposed to be transferred to be satisfied that the applicants have undertaken sufficient steps to identify the state of the risk or the state of the commitment, as the case may be. The consent of the host state regulator to the transfer is required, unless they do not respond within three months.~~

~~2.48 [Deleted] Where the transferor is a UK deposit insurer and, following the transfer, it will no longer be carrying on insurance business in the United Kingdom, the PRA will need to collaborate with regulatory bodies in the other EEA States in which it is carrying on business to ensure that effective supervision of the business carried on in the EEA continues. The transferor will be expected to cooperate with the PRA and the other regulatory bodies in this process and demonstrate that it will meet the requirements of its regulators following the transfer.~~

Notice provisions

2.49 Under the Business Transfers Regulations, unless the court directs otherwise, notice of the application must be sent to all policyholders of the parties and reinsurers (or a person acting on its behalf) any of whose contracts of reinsurance are proposed to be transferred as part of the insurance business transfer scheme. It may also be appropriate to give notice to others affected, for example, to anyone with an interest in the policies being transferred who has notified the transferor of their interest. This notice, along with other communications and advertising by or and on behalf of the firm(s), should provide details of how and when any representations by affected parties should be made in order to be considered by the court.

...

2.53 The PRA is entitled to be heard by the court on any application for a transfer. A consideration for the PRA in determining whether to oppose a transfer would be its view on whether adequate steps had been taken to tell policyholders and, as appropriate, other affected persons, about the transfer and whether they had adequate information and time to consider it. The PRA expects policyholders to be notified as soon as possible after the directions hearing and would not normally consider adequate a period of less than six weeks between sending notices to policyholders and the date of the court hearing. Therefore it would be sensible, before requesting from the court a waiver of the publication requirements or the requirement to send statements direct to policyholders, to consult the PRA and FCA on its views about what waivers might be appropriate and what substitute arrangements might be made. The PRA and FCA will take into account the practicality and costs of sending notices to policyholders (especially for firms in financial difficulty), the likely benefits for policyholders of receiving notices and the efficacy of other arrangements proposed for informing policyholders (including additional advertising or, where appropriate, electronic communication).

~~2.54 [Deleted] As the consent (or presumed consent) of the host state is required for a transfer covering contracts for which another EEA State is the state of the risk (for general insurance business) or the state of the commitment (for long-term insurance business), it is advisable to obtain the consent of the regulatory body in the host state to any waiver of publication in that state. The approval of the court will still be required.~~

...

Assessment of scheme and the PRA's report(s) to the court

2.58 The assessment of the scheme is a continuing process, starting when the scheme promoters first approach the regulators about a proposed scheme. Among the considerations that the ~~regulators~~ PRA may consider when reviewing the scheme are:

- (1) the potential risk posed by the transfer to its statutory objectives;
- (2) the purpose of the scheme;
- (3) how the security of policyholders' (who include persons with certain rights and contingent rights under the policies) contractual rights appears to be affected;

(3A) where the transferee is a firm in run-off, that the transferee has considered, and is able to demonstrate to the PRA that it has considered, the total uncertainty and risk over the time horizon of the runoff of a firm's obligations to its policyholders, including obligations relating to business planned to be written or assumed in the twelve months following the relevant reference date ('the ultimate time horizon').²² The analysis should include the business being transferred.

- (4) how the scheme compares with possible alternatives, particularly those that do not require approval (whether by the court or the PRA);

²² In line with PRA Supervisory Statement 26/15 'Solvency II: ORSA and the ultimate time horizon – non-life firms', January 2016, para 1.5: <https://www.bankofengland.co.uk/prudential-regulation/publication/2015/solvency2-orsa-and-the-ultimate-time-horizon-non-life-firms-ss>.

- (5) ~~[Deleted] how policyholders' rights and reasonable expectations appear to be affected;~~
- (6) the compensation offered to policyholders for any loss of rights ~~or expectations~~;
- (7) how any reinsurer of a transferor, ~~any of whose contracts of reinsurance are to be transferred~~ by the scheme may be affected;
- (8) how for other persons (besides policyholders and reinsurers) who have an interest in policies, their rights and the security of those rights appear to be affected;
- (9) the opportunity given to policyholders and other persons affected by the scheme to consider the scheme, that is whether they have been properly notified, whether they have had adequate information and whether they have had adequate time to consider that information;
- (10) the opinion of the independent expert;
- (11) for a transfer that involves underwriting members of the Society of Lloyd's, or persons who have ceased to be such a member, as transferor or transferee, the effect on the Society;
- (12) the views of other regulatory bodies consulted in connection with the proposed transfer; and
- (13) any views expressed by policyholders, reinsurers or any other affected parties.

2.59 The scheme report will be an important factor in the view the PRA forms on a scheme. The court will place considerable reliance on the opinions of the independent expert and the reasons for them. However the PRA will form its own view taking into account other relevant information and having regard to its statutory objectives.

...

2.62 Where a transfer involves underwriting members of the Society of Lloyd's, or persons who have ceased to be such a member, as transferor or transferee, the PRA will consult the Society. Where the business of a syndicate is being transferred, the transfer involves all members or former members participating in the relevant syndicate years.

...

2.66 To enable the PRA to assess the scheme and facilitate the provision to the court of a first report in advance of a directions hearing, near final versions of relevant documents will need to be made available to the PRA as soon as practicable. Scheme promoters should be aware that where documents are produced less than six weeks before the date set for the hearing the PRA will be less likely to be in a position to complete their assessment in advance of the hearing. the PRA expects substantially final documents to be provided to it a minimum of six weeks before the scheme promoters submit documents to court ahead of the date set for the scheduled court hearing, except in exceptional circumstances, and where the PRA has agreed to this beforehand in writing. Where there is a failure to meet the PRA's expectations, the PRA will be less likely to be in a position to complete its assessment in advance of the hearing, which may result in the court hearing having to be postponed. Final versions of any such documents should be provided as soon as they are available.

...

2.68 Matters included at 2.67 (5) above should include sufficient information to enable:

- (1) ~~The PRA to decide which other non-UK regulators must be consulted. This information must be provided to the PRA as soon as it is available;~~
- (2) the PRA (in consultation with the FCA) to decide whether to approve the notices at 2.67(3) above; and
- (3) the regulators to form an opinion on any matters arising in connection with press advertising and notifications, including in relation to any waivers the parties to the proposed transfer intend to seek from the court under article 4 of the Business Transfers Regulations.

...

2.70 To enable the PRA to assess the scheme and to facilitate the provision to the court of any supplementary report(s) in advance of the final hearing, near-final versions of relevant documents will need to be made available to the PRA as soon as practicable. Scheme promoters should be aware that the PRA expects where such documents to be are provided to it a minimum of produced less than six weeks before the planned publication of the supplementary report, date set for that hearing, if this timeline is not met, the PRA will be less likely to be in a position to complete its their assessment in advance of the hearing scheduled hearing date and the hearing may have to be postponed. Final versions of any such documents should be provided as soon as they are available. Where there are policyholder representations or other material issues that arise following the publication of the supplementary report, the PRA would expect updated versions or addendums to the supplementary report closer to the scheduled hearing date.

...

2.72 ~~Provided that any necessary consents have been obtained in respect of confidential information,~~ Where the PRA has made a report it will give a copy of its report to the court and will give a copy of its report as filed with the court to each of the parties to the proposed transfer as soon as practicable after such filing.

2.73 ~~Provided that any necessary consents have been obtained in respect of confidential information,~~ The parties to the proposed transfer should give a copy of any report at 2.72 to the independent expert.

...

2.76 Where the PRA has indicated to the parties to the proposed transfer that it intends to appear at any hearing before the court in relation to a proposed scheme under Part VII of FSMA, ~~a copy~~ electronic copies of documents filed with the court and the court bundle should be provided to it as soon as practicable.

Post-transfer advertising

2.77 ~~[Deleted] Under section 114 of FSMA the court must direct that notice of the transfer be published by the transferee in any EEA State other than the United Kingdom which is the state of the commitment or the state of the risk as regards any policy included in the transfer which evidences a contract of insurance (other than a contract of reinsurance).~~

2.78 [Deleted] Under section 114A of FSMA the court may direct that notice of a transfer be published by the transferee in any EEA state which is the state of the commitment or the state of the risk as regards any policy included in the transfer which evidences a contract of reinsurance.

2.79 [Deleted] Where the court directs that a notice referred to in 2.78 or 10.2 must be published, the PRA would expect the transferee to publish notice in at least one national newspaper in each relevant EEA State. Such publication should include the notification of the transfer to the policyholders in the state of the commitment or the state of the risk. The parties should also be mindful of relevant provisions of the national laws of the relevant state of the commitment or the state of the risk.

3 Insurance business transfers from ~~outside the United Kingdom~~ Switzerland

Introduction

3.1 Under section 115 of FSMA, the PRA has the power to give a certificate confirming that a firm possesses the necessary margin of solvency, to facilitate an insurance business transfer to the firm under ~~overseas Swiss legislation from a firm authorised in another EEA State or~~ from a Swiss general insurance company. This chapter provides guidance on how the PRA would exercise this power and on related matters.

3.2 Unless otherwise expressly stated by the PRA, all the procedural aspects for dealing with insurance business transfers from ~~outside the United Kingdom~~ Switzerland should be discussed by firms with the PRA in the first instance.

3.3 ~~Under a co-operation agreement between EEA regulators, if it has serious concerns about the proposed transferee, the PRA should inform the regulatory body of the transferor within three months of the original request from that regulatory body. The PRA is not obliged to reply, but if it does not, its opinion is taken to be favourable. Although the protocol does not apply to Switzerland, †The PRA is required to co-operate with FINMA. If it has serious concerns about the proposed transferee, the PRA would inform FINMA within three months of the original request from it. would apply similar principles to a proposed transfer from a Swiss general insurance company.~~

3.4 ~~The information that the regulatory body of the transferor is required to supply will normally be sufficient for the PRA to determine whether the transfer is likely to have a material effect on the transferee. PRA will request any relevant information from the Swiss regulatory body that would assist in determining whether the transfer is likely to have a material effect on the transferee.~~

3.5 If the effect of the transfer is not likely to be material and the PRA does not ~~already~~ have serious concerns about the transferee, the PRA can reply favourably.

...

4 Friendly ~~S~~ociety transfers and amalgamations

...

4.2 [Deleted] In general, although the legislation governing transfers of engagements involving friendly societies is the Friendly Societies Act 1992, similar issues arise in these transfers as in insurance business transfers under Part VII of FSMA and so the PRA would expect firms to be subject to a similar process as that followed under FSMA. Accordingly, firms should usually first discuss the procedural aspects for dealing with friendly society transfers and amalgamations with the PRA. The

PRA will consult the FCA as required by the Friendly Societies Act 1992, or as may otherwise appear to be appropriate.

4.2A Firms should first discuss with the PRA the procedural aspects for dealing with friendly society transfers and amalgamations. Friendly society transfers are governed by the Friendly Societies Act 1992 (the FS Act 1992). While there are parallels with the process for insurance business transfers under Part VII of FSMA, the PRA is the 'appropriate authority' under the FS Act 1992 for confirming friendly society transfers from PRA authorised persons. The FS Act 1992 governs transfers of engagements where the transferor is a friendly society, and the transferee falls within the categories of person listed in section 86(1) of FS Act 1992. The FS Act 1992 does not govern insurance business transfers where the transferor is not a friendly society. Such transfers fall within Part VII of FSMA, including where the transferee is a friendly society.

4.2B Under the FS Act 1992, the PRA is required to consult with the FCA prior to confirming a transfer.

4.3 Friendly societies are encouraged to discuss a proposed transfer or amalgamation with the regulators at an early stage to help ensure that a workable timetable is developed. This is particularly important ~~where there are notification requirements for supervisory authorities in EEA States other than the United Kingdom, or for an amalgamation where additional procedures are required such as that described in 4.9.~~

...

4.6 For a transfer of long-term insurance business, the PRA may, under section 88 of the Friendly Societies Act 1992, require a report from an independent actuary on the terms of the proposed transfer and on their opinion of the likely effects of the transfer on members who are long-term insurance policyholders of either the transferor or (if it is a friendly society) the transferee. In addition, the PRA may request that the independent actuary consider the likely effects on any other policyholders or members impacted by the transfer. The PRA will take into account the scale and complexity of the transfer in its decision whether to require such a report. A summary is included in the statement sent to members and the full report is required to be made available to anyone on payment of a reasonable fee. The general principles in ~~5.3–5.11~~ 2.30–2.37 of Chapter ~~42~~ apply to the independent actuary's report.

4.6A Where the reports detailed in paragraphs 4.5 and 4.6 are required, the PRA may in certain instances, where there have been material financial developments or policyholder representations submitted following the reports' publishing but prior to confirmation, expect a supplementary report to be produced. In such instances, the PRA will consider the specific procedural implications of requesting a supplementary report on a case-by-case basis. However, the PRA notes that a further report is likely to necessitate further communications with members and/or additional advertising. Depending on the conclusions reached, it may also lead to the requirement for a further member vote.

...

4.10 For an amalgamation the successor society, and for a transfer the transferee, may need to apply for permission, or to vary its permission, under Part 4A of FSMA. The regulators will need sufficient time before a transfer is confirmed to consider whether any necessary permission or variation should be given. ~~If the transferee is an EEA firm or a Swiss general insurance company, then confirmation will be needed from its Home State regulator that it meets the Home State's solvency margin requirements (see 4.26 (3)).~~

...

4.15 The financial information provided under 4.14 would normally contain comparative statements of balance sheets at the same date, and include main investments, reserves, regulatory capital requirements, capital coverage and funds or technical provisions, with details of the number of members of each participant as at the balance sheet date and the premium income of the relevant fund of each participant during the financial year to which the balance sheet relates. 4.16 to 4.17~~8~~ below give further details of the financial information to be included.

...

4.18 ~~[Deleted] Brief details should be given of the date of the last actuarial valuation and the position revealed (surplus/deficit, necessary margin of solvency and free assets) for each participant.~~

...

4.22 ~~The statement should be clearly separate from other information sent to members. It has to be approved by the PRA and if it is not in a self-contained document, the approved element should appear in a separate section. , after consulting with the FCA, prior to being shared with members, and the statement should be clearly separate from other information sent to members. If it is not in a self-contained document, the approved element should appear in a separate section. The PRA must approve the statement, but the society is responsible for the accuracy of the financial data; therefore, this clarification should be clearly set out in the statement.~~

4.22A The FS Act 1992 prescribes that the statement should be provided to members a minimum of 14 days prior to the vote (or such longer period as required by the rules of the societies that have members who are eligible to vote on the transfer). In order to ensure members have sufficient time to consider the information, the PRA would expect this period to be longer in some circumstances, for example where a society has a very large membership or where a transfer is particularly complex.

4.23 ~~[Deleted] Chapter 1 provides an example of the information for members required by Schedule 15.~~

Confirmation procedures and criteria

4.24 Under the Friendly Societies Act 1992:

- (1) when the members of a transferor society have approved the transfer of its engagements by passing a special resolution and the transferee has approved the transfer (by passing a resolution where the transferee is a friendly society); or
- (2) when two or more societies have approved a proposed amalgamation by passing a special resolution;

it, or they jointly, must then obtain confirmation by the PRA of the transfer. Notice of the application will need to be published in one or more of the London, Edinburgh or Belfast *Gazettes* and other newspapers as directed by the PRA. This notice should include information as to how members can make representations. If the PRA confirms a transfer, then the FCA will register the society's instrument of transfer after receiving an application on the appropriate form by the transferor society and the transferee. If the PRA confirms an amalgamation, the FCA will register the successor society. For transfers, aAll the property, rights and liabilities pass on the date specified on the registration certificate provided by the FCA. For amalgamations, all the property, rights, and liabilities pass on the date specified on the certificate of incorporation provided by the FCA.

~~4.25 [Deleted] For a friendly society subject to any of the relevant European directives,⁽⁴⁾ if the transfer or amalgamation includes policies where the state of the risk or the state of the commitment is an EEA State other than the United Kingdom, consultation with the Host State regulator is required and 6.3 to 6.7 of Chapter 1⁽²⁾ apply (for an amalgamation they apply as if the business of the amalgamating societies is to be transferred to the successor society). Paragraph 6(1) of Schedule 15 to the Friendly Societies Act 1992 requires publication of the application to the PRA for confirmation of an amalgamation or transfer and the PRA may require the notice of the application to be published in two national newspapers in the Host State.~~

4.26 The criteria that the PRA must use in determining whether to confirm a proposed amalgamation or transfer is set out in Schedule 15 to the Friendly Societies Act 1992. These criteria include that:

(1) confirmation must not be given if the PRA considers that:

- (a) there is a substantial risk that the successor society or transferee will be lawfully unable to carry out the engagements to be transferred to it. For the purposes of this condition, the PRA may have regard to the requirements of any country outside of the UK which appear to be relevant;
- (b) information material to the members' decision about the amalgamation or transfer was not made available to all the members eligible to vote;
- (c) the vote on any resolution approving the amalgamation or transfer does not represent the views of the members eligible to vote; or
- (d) some relevant requirement of the Friendly Societies Act 1992 or the rules of any of the participating societies was not fulfilled (but it can modify some requirements and direct that certain failures may be disregarded, see 4.13 above and 4.28 below;

(2) the PRA must be satisfied that:

- (a) the transferee or successor society will have any permissions necessary under Part 4A of FSMA;
- (b) for a transfer, it is in the interests of the members of each friendly society participating in it ~~(see 2.6 above);~~ and
- ~~(c) for a friendly society subject to any of the relevant European directives, where a transfer includes policies where the state of the risk or the state of the commitment is an EEA State other than the United Kingdom, the Host State regulator has been notified of the transfer and has consented or has not refused consent to the transfer~~
- (d) for transfers which fall within scope of paragraph 15 of Schedule 15 to the FS Act, that every policy included in the transfer evidences a contract which was entered into before the date of the application; and

(3) for a transfer, the transferee possesses the necessary margin of solvency after taking the proposed transfer into account or, where it is not required to maintain a necessary margin of solvency, possesses an excess of assets over liabilities. (If the transferee is a Swiss general insurance company, then confirmation will be needed from FINMA that it meets Switzerland's solvency margin requirements.)

4.26A The PRA would expect that an application is accompanied by an explanation of how the various confirmation criteria and relevant requirements under the FS Act 1992 have been met.

...

4.31 The PRA will send copies of all written representations to the society, and will give them an opportunity to comment on the representations. The PRA also expects the society to respond directly in writing in advance of the hearing to those that have made representations. The PRA~~it~~ may consider the written representations and the society's response to them, before the date set for any pre-confirmation hearing to hear oral representations. A synopsis of the written representations (probably in the form of a summary of each of the points made and the numbers of persons making each point) and the society's responses will be made available to those participating in any pre-confirmation hearing. This is intended to inform those making oral representations of the points already being considered by the PRA. In addition to written representations sent to the PRA, it is likely that members will also raise concerns with the society directly. The regulators would expect the society to share summaries of these member communications and its assessment of the issues raised.

4.32 The regulators expect that any documents referred to in the society's comments will be made available by the society for inspection at its registered office, its website and, if reasonably possible, at the venue of the hearing on the date of the hearing. However if a society applies to put documents which it considers to be sensitive to the regulator(s) in confidence, the regulators will balance any disadvantage this might cause interested parties in making representations against the commercial damage that publication of the documents might cause, and may permit the documents or sensitive parts of them not to be available for inspection.

...

4.34 ~~The hearing referred to in 6.3~~ will be at a time and place that will be notified to the participants and will be conducted by the PRA's representatives. The hearing may last longer than one day and may be adjourned. The PRA will try to tell participants when they may expect to make their representations and when the society may be expected to respond.

2 PRA statutory obligations

The statutory obligations applicable to the PRA's policy development process are set out below. This CP explains the policy assessment of relevant considerations.

- Purpose of the policy proposals (FSMA s138J(2)(b)).
- Cost benefit analysis (FSMA s138J(2)(a) and (7)(a)); and an estimate of those costs and benefits (if reasonable) (FSMA s138J(8)).
- Analysis of whether the impact on mutuals is significantly different to the impact on other authorised firms (FSMA s138J(2)(c) and 138K).
- Compatibility with the PRA's primary objectives (FSMA s138J(2)(d)(i), 2B and 2C).
- Compatibility with the PRA's secondary competition objective (FSMA s138J(2)(d)(ii) and 2H(1)).
- Compatibility with the regulatory principles (FSMA s138J(2)(d)(ii), 2H(2) and 3B).
- Have regard to the HMT recommendation letter (BoE Act s30B).
- Have due regard to the public sector equality duty (Equality Act s149).
- Have regard, subject to any other requirement affecting the exercise of the regulatory function, to the principles of good regulation and when determining general policy or principles to the Regulators Code (Legislative and Regulatory Reform Act 2006 s21 & 22)
- Have regard, so far as consistent with the proper exercise of those functions, to the purpose of conserving biodiversity. Conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat (Natural Environment and Rural Communities Act 2006, s40).
- Consultation of the FCA (FSMA s138J(1)(a)).
- *Where the consultation proposals a PRA rule change or amendment to onshored BTS that affects the processing of personal data* - consultation with the Information Commissioner's Office (article 36(4) General Data Protection Regulation).
- *For UK Technical Standards Instruments only:* FSMA s138J(1)(a) is replaced with: consultation of the FCA and/or Bank, where that Regulator has an interest in the technical standards (FSMA s138P(4) and (5)).
- *For UK Technical Standards Instruments only:* notice given to HMT of the consultation on the UKTS ('best efforts' basis).
- *For CRR rules only:* subject to certain exceptions, have regard to:
 - relevant standards recommended by the Basel Committee on Banking Supervision from time to time
 - the likely effect of the rules on the relative standing of the United Kingdom as a place for internationally active credit institutions and investment firms to be based or to carry on activities.

For these purposes, the PRA must consider the United Kingdom's standing in relation to the other countries and territories in which, in its opinion, internationally active credit institutions and investment firms are most likely to choose to be based or carry on activities

- the likely effect of the rules on the ability of CRR firms to continue to provide finance to businesses and consumers in the United Kingdom on a sustainable basis in the medium and long term

- the target in section 1 of the Climate Change Act 2008 (carbon target for 2050)

(s144C (1) & (2) FSMA – exceptions in s144E FSMA).

- *For CRR rules only* – explanation of the ways in which having regard to the matters specified above has affected the proposed rules (s144D FSMA).
- *For CRR rules only* – publication of a summary of the proposed CRR rules.
- *For CRR rules only* – consideration and consultation with the Treasury about the likely effect of the rules on relevant equivalence decisions (s144C (3) & (4) FSMA).