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Mr Chancellor of the Exchequer

**Government Amendment 19**

Schedule 9, page 148, line 33, at end insert—

‘() In section 431 of ICTA, at end insert—

“(2ZG) The Treasury may by order amend the definition of “insurance business transfer scheme” given by subsection (2) above where it is expedient to do so in consequence of any amendment of section 105 of the Financial Services and Markets Act 2000.

(2ZH) The power conferred by subsection (2ZG) above includes power to make incidental, supplementary, consequential or transitional provisions and savings (including provision amending any provision of the Corporation Tax Acts relating to insurance companies).”.’

**Government Amendment 20**

Schedule 9, Page 159, line 34, leave out ‘omit “or as a business transfer-out”’ and insert ‘for “as a business transfer out” substitute “by being netted off against incomings in lines 11 to 15 of a revenue account”’.

**Government Amendment 21**

Schedule 9, Page 161, line 32, leave out from ‘made,’ to end of line 35.

**Government Amendment 22**

Schedule 10, Page 162, leave out lines 39 to 41

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**Government Amendment 23**

Schedule 10, Page 163, line 29, at end insert—

‘(7A) In subsection (6) above “the relevant time” means—

- (a) in a case where assets become structural assets held in any of the company’s non-profit funds by virtue of the commencement of this section, the end of the last period of account of the company beginning before 1st January 2007, and
- (b) otherwise, the time when the assets become structural assets held in any of the company’s non-profit funds.’.

**Government Amendment 24**

Schedule 10, Page 163, line 38, leave out ‘subsection (6) above’ and insert ‘this section’.

**Government Amendment 25**

Schedule 10, Page 163, leave out lines 43 to 48.

**Government Amendment 26**

Schedule 10, Page 164, leave out lines 1 to 5 and insert –

‘(11) Regulations made by the Treasury may make provision for computing for the purposes of the Taxation of Chargeable Gains Act 1992 any gain or loss arising on a disposal by an

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insurance company of a structural asset held in a non-profit fund in any case where the condition in subsection (11A) is met.

(11A) The condition in this subsection is met if, in any period of account of the company in which the asset was held by it-

(a) income arising from the asset was (or, had there been any, would have been) referable to any category of long-term business the profits of which fell for that period of account to be computed in accordance with the provisions applicable to Case I of Schedule D, or

(b) the company was charged to tax on the profits of its life assurance business under Case I of Schedule D.’.

### **Government Amendment 27**

Schedule 10, Page 164, line 18, at end insert—

‘( ) Regulations under subsection (3) or (11) above may be made so as to have effect in relation to periods of account current when they are made (as well as periods of account beginning later).’.

### **Government Amendment 28**

Schedule 10, Page 170, line 1, leave out ‘sub-paragraph’ and insert ‘subparagraphs (4A) and’.

### **Government Amendment 29**

Schedule 10, Page 170, line 21, leave out ‘84(2) to (6)’ and insert ‘84(2), (3), (5) and (6)’.

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**Government Amendment 30**

Schedule 27, Page 293, line 17, leave out ‘the words “, or as a business transfer-out,” and’.

**Government Amendment 31**

Schedule 27, Page 295, line 44, leave out ‘84(2) to (6)’ and insert ‘84(2), (3), (5) and (6)’.

**Government Amendment 321**

Schedule 27, Page 296, line 14, leave out ‘17(5)’ and insert ‘17(4A) and (5)’.

**EXPLANATORY NOTE**

**SUMMARY**

1. Government amendments 19, 20 and 21 make changes to Schedule 9 which deals with the tax consequences of transfers of insurance business legislation. The amendments follow from representations received from the insurance industry, from the need to provide flexibility in the commencement of secondary legislation made under the regulatory powers included in the Schedule and to allow for future changes to the Financial Services and Markets Act 2000 (“FISMA”) in relation to transfers of business to be reflected in changes to the tax law at the earliest possible time.
2. Government amendments 22 to 29 refine and clarify the provisions of section 83XA Finance Act (FA) 1989 (inserted by paragraph 2 of Schedule 10), mostly dealing with structural assets.

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3. Government amendments 30, 31 and 32 are consequential adjustments to the repeals schedule

### **DETAILS OF THE AMENDMENTS**

#### **Schedule 9**

4. Amendment 19 adds in to section 431 of the Income and Corporation Taxes Act 1988 (“ICTA”) a power to amend the definition of insurance business transfer scheme in that section, if the relevant section of FISMA is amended. This may happen towards the end of the year as the United Kingdom transposes the EC Reinsurance Directive into UK law. The new regulation making power inserted by amendment 19 allows the tax law to be amended in time to reflect any change, so that the tax neutral treatment of transfers of business can apply to all transfers and the tax treatment of them is certain from the outset.
5. In response to representations from the insurance industry, Government amendment 20 changes section 83(2B) Finance Act 1989 to allow the amount of expenses netted off against incomings included in lines 11 to 15 of the periodical return to the FSA to be taken into account in determining the amount to which section 83(2B) applies. That subsection already takes into account expenses shown as “total expenditure”.
6. Paragraph 16(4) of Schedule 9 currently provides that the regulatory power in that paragraph will have effect only in relation to transfer schemes taking place from the day appointed for the purposes of paragraph 17(2) (part of the commencement rules for the Schedule). However not all of the provisions of Schedule 9 take effect from the appointed day; in particular the amendments to sections 444AA and 444ABD of ICTA take effect from earlier dates.

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7. The Government may wish, after the conclusion of the discussions of the transfers of business legislation which are currently being held with the life insurance industry, to amend the tax law relating to such transfers from an earlier date. Accordingly Government amendment 21 changes paragraph 16(4) to remove the restriction on its application to transfer schemes taking place from the appointed day

#### **Schedule 10**

8. Government amendment 22 removes the existing provisions setting out when the regulatory power included in new section 83XA(3)(b) Finance Act 1989 can be used. Government amendment 27 brings them together with the conditions for when the regulatory powers included in section 83XA(11) by Government amendment 26 can be used.
9. Government amendment 23 clarifies and improves the definition of the “relevant time” i.e. the time when an asset becomes a structural asset for the purposes of Schedule 10. And so as to bring the definition in its appropriate place in the section, Government amendment 25 removes the previous definition of “relevant time”.
10. Government amendment 24 corrects a minor typographical error.
11. Government amendment 26 deals with the consequences for the purposes of the Taxation of Chargeable Gains Act 1992 (TCGA) of the disposal of a structural asset.
12. The original version of section 83XA(6) in the Bill as published provided that when an asset became a structural asset, it was treated for TCGA purposes as being acquired at its historic (original) cost but in the period when the asset

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became a structural asset. While this provision would have been simple to apply, the life insurance industry pointed out, and the Government accepted, that it could act unfairly in certain circumstances. Accordingly Government amendment 25 removes this rule (which had become section 83XA(11) in the post-Committee stage print) and replaces it with a revised approach, replacing subsection (11) and inserting what will become a new subsection (12).

13. As a result of the revised subsection (11), where an asset which has become a structural asset is disposed of, normal TCGA rules, including March 1982 valuations and indexation, will apply.
14. But because the position may be more complicated in particular circumstances, subsection (11) provides that the method of computation of the gain or loss may be as prescribed in regulations if certain conditions are met.
15. The conditions is that all or part of the income arising (or which would arise) from a structural asset has been or would have been referable categories of business which are charged to tax on a trading profits basis, under the provisions of Case I of Schedule D (i.e. categories other than basic life assurance and general annuity business (BLAGAB) and where the company is actually charged to tax under Case I). This is because changes in value of assets referable to non-BLAGAB categories of business have already been taken into account in computing trading profits, making the chargeable gains position much more complex.
16. This is not yet a live issue (because all of the assets currently classed as structural assets will likely qualify for the substantial shareholdings exemption in Schedule 7AC to

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TCGA), but it may become so if and when further asset classes are included within the definition of structural assets.

17. The regulation-making power will not be exercised if discussions of this issue with the life insurance industry conclude that no adjustment is required. Unless the regulatory power is exercised, normal TCGA principles will apply.
18. Government amendment 28 amends the repeals of obsolete portions of paragraph 17 of Schedule 7 to FA 1991 so that sub-paragraph (4A) is repealed as well as sub-paragraph (5).
19. Government amendment 29 amends the repeal of obsolete provisions in Finance Act 1989, because section 84(4) FA 1989 is still needed to give effect to parts of section 434 of the Income and Corporation Taxes Act 1988.

#### **Schedule 27**

20. Government amendments 30, 31 and 32 are simply consequential adjustments to the repeals schedule.