

The Building Societies (Funding) and Mutual Societies (Transfers) Act 2007: summary of responses to consultation

January 2009



HM TREASURY



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and Mutual Societies (Transfers)
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1

Introduction

1.1 This document summarises the responses to the Treasury consultation¹ on the Building Societies (Funding) and Mutual Societies (Transfers) Act 2007 (“The Act”) and sets out the Government’s implementation proposals and draft implementing Order in relation to sections 3 and 4 of the Act for building societies.

1.2 The Act was introduced as a Private Members Bill by Sir John Butterfill MP and received Royal Assent in October 2007. It gives the Treasury the powers to:

- Amend building society law to enable building societies to borrow a greater proportion (up to 75 per cent) of their funding from the wholesale markets (section 1);
- Amend building society law so that, in the event of a building society insolvency, members’ shares would rank equally with liabilities to creditors (section 2); and
- Make it easier for a building society, friendly society or industrial and provident society to transfer its business to the subsidiary of another mutual society² (sections 3 and 4).

1.3 The Government response to the consultation is as follows:

- **Section 1:** The Government accepts the principle that building societies should have flexibility over their funding strategies. It is, however, not convinced of a need to implement this section in current economic circumstances. The Government will review the case for implementing Section 1 in two years time.
- **Section 2:** Respondents to the Government’s consultation³ “Financial stability and depositor protection; strengthening the framework” were unanimous that the Government should act to make members’ funds rank equally with liabilities to creditors in the event of an insolvency. Respondents to this consultation were also in agreement in principle, but sought assurances that the current position of instruments entered into before the Act was implemented would be retained. Government will therefore **implement section 2 at an appropriate time having regard to implementation of the Banking Bill⁴. The Order implementing section 2 will include transitional provisions to protect liabilities of a limited duration entered into before implementation of the Act, and to protect such instruments with an indeterminate duration for a 12-month period. These liabilities will continue to have priority over liabilities to members during the transitional period.**

¹ The consultation was held from 1 September 2008 to 27 October 2008.

² For these purposes a mutual society is a building society, a friendly society, an industrial and provident society or an EEA mutual society (see section 3(10) and (12) of the Act).

³ From 30 January to 23 April 2008.

⁴ The Bill will be implemented in 2009 and will result in major changes to building societies insolvency legislation

- **Section 3:** The Government will lay implementing Orders to facilitate transfers of business of one mutual society to the subsidiary of another UK or EEA mutual society. The Orders will also enable mutual insurers to participate in such transactions. The first Order, relating to building societies, will be laid before Parliament in early 2009.

1.4 A total of twenty formal responses were received to the consultation. The responses were from a wide cross section of stakeholders ranging from trade associations and other representative bodies⁵ to the general public and individual mutual societies.

1.5 The Building Societies Association made a collective response on behalf of its 59 members in the UK; the Association of Friendly Societies on behalf of its 50 members; and the Association of Mutual Insurers responded on behalf of its 33 members.

1.6 The Government is grateful to all respondents and to those who met with us to discuss and inform the issues raised. Government is encouraged that the majority of respondents are in agreement with the broad thrust of the proposals.

1.7 This document is set out as follows:

- Chapter 2: funding limits;
- Chapter 3: members' rights in the event of an insolvency;
- Chapter 4: transfers of engagements;
- Chapter 5: impact analysis; and
- Chapter 6: draft implementing Order.

1.8 This summary of consultation responses will be sent to the representative bodies of all the societies likely to have an interest in implementation of the Act, key stakeholders and to all respondents. A copy will also be posted on the Treasury public website and printed copies available on request.

Next steps

1.9 Following publication of this summary of responses, the draft Order implementing sections 3 and 4 of the Act for building societies will be laid before Parliament. The Order will be subject to the affirmative resolution procedure so it will need to be approved by a resolution of each House. The Treasury anticipates that, subject to Parliamentary timetable and approval, the Order will be made and come into force in March 2009.

1.10 The Government also intends to implement section 3 of the Act in relation to transfers from industrial & provident societies and will hold further discussions with the sector on the timing.

1.11 The Government is aware that industry has highlighted taxation issues arising from the implementation of sections 3 and 4 of the Act. Government will discuss these issues with industry. HMRC will lead on these discussions on behalf of Government, and will examine the taxation issues involved in implementing the Act with a view to working up solutions where appropriate.

⁵ The Building Societies Association (BSA); The Association of Friendly Societies; Association of Mutual Insurers; Social Enterprise Coalition; Cooperatives UK.

2

Funding Limits

2.1 Section 1 of the Building Societies (Funding) and Mutual Societies (Transfers) Act 2007 gives the Treasury the power to amend building society law to give building societies the flexibility to borrow a greater proportion (up to 75 per cent) of their funding from the wholesale markets. Building societies are currently restricted to borrowing up to 50 per cent from wholesale sources.

2.2 Respondents to the consultation were unanimous that they did not see the case for the limit to be raised in the current circumstances, which have changed significantly since the legislation was introduced in 2006. The general view was that risks associated with current volatility of wholesale funding could have a negative impact on members and in some instances could put consumer confidence in the safety of the building society model at risk.

Funding limit

Q1: Are there any safeguards in addition to those identified, which should be in place before section 1 is implemented?

2.3 There was consensus amongst respondents that the safeguards which the Treasury had suggested in the consultation document, such as implementation of section 2 of the Act prior to section 1, and stricter liquidity and disclosure requirements by the Financial Services Authority (FSA) for building societies wanting to take advantage of the higher funding limit, were sufficient.

The Government Response

2.4 The Government supports the principle that building societies should have greater flexibility over their funding strategies. However it notes the comments raised by respondents and agrees that there is no immediate need for section 1 of the Act to be implemented, indeed there would be risks associated with doing so. The Government will review the implementation of Section 1 in two years time.

3

Rights of building society members on insolvency

3.1 Section 2 of the Act gives the Treasury the power to amend building society law so that in the event of an insolvency members' shares would rank equally with liabilities to creditors.

3.2 Respondents agreed in principle that the Treasury should use its powers under section 2 to make members' funds rank *pari passu* with liabilities to creditors. However, some argued that the recent rise in the Financial Service Compensation Scheme (FSCS) limits from £35,000 to £50,000 had mitigated much of the risk associated with members' subordination, and also that the benefits from implementing section 2 needed to be balanced against the risk that wholesale funders may be more reluctant to lend to building societies.

Distribution of any surplus

Q2 Is a transitional period needed to allow building societies to change their rules in respect of distribution of surplus? If so, how long should it be?

3.3 The Act does not confer any power on the Treasury to determine the entitlement of members to participate in a distribution of any surplus in the event of a winding up once creditors have been paid in full. This is for societies to determine in their rules. If liabilities to members are given equality with liabilities to shareholders, societies may need to change their rules. The consultation therefore considered whether societies should have a transitional period within which to make any amendments to their rules in order to provide clarification to their members.

3.4 Respondents agreed that there should be a transitional period, with a majority suggesting a period of at least 18 months to allow societies to obtain their members' approval of the proposed amendments.

3.5 The consultation also asked whether the Treasury should use its powers in section 2 in relation to dissolutions by consent¹. As it stands, statute does not prescribe the order of distribution of assets for a dissolution by consent as it does for a voluntary winding up. In a dissolution by consent the members of the society decide how the assets of the society should be distributed.

¹ Dissolution by consent is a way of closing a building society and distributing its assets without going through a full winding up procedure.

Dissolution by consent

Q3. Do you agree that the “dissolution by consent” process gives sufficient protection to members, and that the Treasury should not use the power granted by section 2 in relation to dissolutions by consent?

3.6 Respondents agreed that the existing arrangements in building society law had sufficient in-built protection for members, particularly as dissolution by consent was, in practice, unlikely to be used by any building society.

3.7 The consultation also asked for views on the detail of the transitional provisions for wholesale creditors

Transitional Provisions

Q4. Do you agree that all wholesale loans and other time-limited instruments entered into before the commencement of the Order should continue to have priority over all shares for the duration of the contract? Should any instruments be excluded? Are there other instruments for which the lender should be put in the same position?

3.8 Respondents agreed that existing wholesale creditors should have transitional protection. They suggested that all creditors should be entitled to transitional protection in respect of fixed term deposits/loans/instruments for the duration of their term, and that creditors should also be entitled to transitional protection in respect of deposits or loans with an indeterminate duration (e.g. notice accounts) for a reasonable period within which they could decide whether or not to continue under the revised ranking. A period of twelve months was suggested.

3.9 Respondents suggested that no instruments be excluded in principle, and that Government should also consider the position of contingent creditors – e.g. in respect of interest rate swaps and other derivatives, for which similar transitional protection may be needed.

The Government Response

3.10 The Government has also considered the response to the earlier Treasury consultation – “Financial stability and depositor protection; strengthening the framework” which unanimously agreed that Government should take action to equalise treatment of members’ funds with wholesale creditors in an insolvency. The Government acknowledges that some respondents to this consultation expressed concern about the possible impact on the availability of wholesale funding. However, the Government considers that the benefits of increased consumer confidence in the sector outweigh the risks, which it judges to be small.

3.11 On surplus funds, the Government considers that a reasonable period of time should be allowed for societies to amend their rules. The Treasury has taken account of respondents’ views and proposes a 24-month transitional period² from the Order coming into force to give building societies enough time to prepare. Societies have different year-ends, and the Government believes that this extended period should give societies ample opportunity to seek their members’ approval for amendments to their rules at an Annual General Meeting.

² Respondents had suggested 18 months.

3.12 The Government shares respondents' views on dissolution by consent and does not propose to take any further action.

3.13 The Government has considered the consultation responses relating to transitional arrangements for wholesale loans and other time related instruments entered into before the commencement of the Order. It recognises that detailed transitional provisions may be needed to ensure appropriate protection is in place for such instruments.

3.14 As a matter of policy, Government would like to extend transitional protection to all liabilities of a limited duration, including fixed term deposits, whether wholesale or retail. The Government agrees that there should be a reasonable period of protection in relation to instruments with an indeterminate duration, and agrees with respondents' suggestion of a 12-month period. The Government will hold further discussions with key stakeholders to establish whether there are any other classes of instruments, which should be included in the transitional arrangements.

3.15 Government is aware that implementation of the Banking Bill for building societies, and in particular application of the Bank Insolvency Procedure to building societies, will result in major changes to building societies insolvency legislation. It intends to implement section 2 of the 2007 Act at an appropriate time, having regard to implementation of the Banking Bill for building societies, which will take place in 2009 following Royal Assent. Implementation of section 2 will include appropriate transitional provisions, which will be discussed further with key representatives of the building societies sector. Section 2 of the Act will therefore be implemented after Part 2 of the Banking Bill (Bank Insolvency Procedure) is applied to building societies.

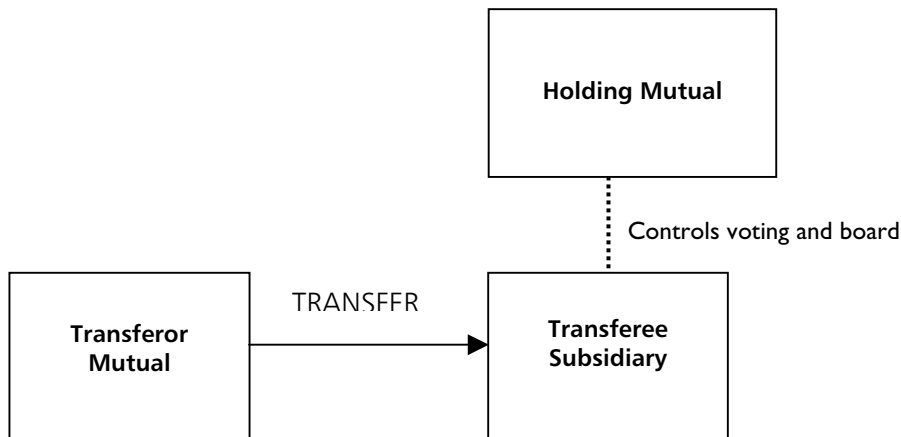
4

Transfer of engagements

4.1 Section 3 of the Act gives the Treasury the power to modify specified legislation to make it easier for a mutual society to transfer its business to the subsidiary of another mutual society. Section 4 gives the Treasury powers in relation to distributions of funds, that is, payment of bonuses to members of the societies participating in the transfer.

4.2 It is the Government’s policy intention to facilitate transfers between mutuals, offering them an alternative route for transferring their business while remaining in the wider mutuals sector. The transferring members will be offered membership in another mutual body. They will therefore be entitled to significant membership rights, which they would not have enjoyed under a traditional demutualisation.

4.3 The diagram below shows how a transfer would work.



4.4 Although respondents were generally in favour of the proposals to implement this section there was an over-riding concern that nothing should be done in implementing the Act that could inadvertently lead to the “back-door” demutualisation of a society.

4.5 In addition, respondents said that transferor societies would need to make clear in their transfer documentation to their members that the business was being transferred into a company, (albeit one which is a subsidiary of a mutual) and not to a mutual society itself.

Scope

4.6 There are already provisions in place for friendly societies to transfer engagements to a company, and the same provisions apply to a transfer to any other body. The Treasury therefore sought views as to whether implementing the provisions of the Act for friendly societies could lead to additional burdens for friendly societies.

4.7 The consultation had also questioned whether the provisions implementing the Act should apply where the transferring mutual and the holding mutual were of the same type, bearing in mind that under current legislation there are already mechanisms in place for mutuals of the same family to transfer engagements to each other.

Scope

- Q5. Are there reasons for implementing the Act in relation to transfers from friendly societies?
- Q6. Should the Act be implemented in relation to transfers where the transferring mutual and the holding mutual are of the same type?

4.8 Some respondents were of the view that it would be beneficial to implement the Act in relation to transfers from friendly societies but added that this should be done in a permissive rather than prescriptive manner, so as not to create additional burdens. Respondents noted that transfer requirements for friendly societies were in some instances less onerous than those for building societies or industrial and provident societies. For example, a friendly society could transfer engagements to a company by a resolution of a majority of three quarters of the members voting but, unlike building societies or IPSs, there is no requirement for a minimum turnout.

4.9 Respondents were divided on whether the Act should be implemented in relation to transfers where the transferring mutual and holding mutual were of the same type. One reason cited in favour of implementation was that in a conventional building society merger, under the present arrangements for the Financial Services Compensation Scheme (FSCS), an investor with savings in both societies could lose an element of protection as the savings would only be protected up to the current limit of £50,000.

4.10 If however the transferring society's business went to a subsidiary of the receiving society, such an investor would retain the full FSCS protection. The view was that permitting the transferring mutual and holding mutual to be of the same type would allow building societies more flexibility in structure whilst ensuring maximum consumer protection.

4.11 Other respondents however did not think the Act should be implemented in relation to transfers where both firms were of the same type. In their view this would not deliver any benefits.

The Government Response

4.12 The Government is not convinced of the case to implement the Act for friendly societies, as same transfer provisions apply already whether the transferee is a company or another mutual society, and parties are free to agree to give transferring members rights in any holding mutual.

4.13 Government intends to implement section 3 of the Act in relation to transfers from industrial & provident societies and will hold further discussions with the sector on the timing.

4.14 The Government also agrees there are advantages to implementing the Act to allow for transfers where the transferor and holding mutual are of the same type. This would facilitate the setting up of mutual groups, where members could be offered a full range of financial (and other) services within the one group. It would also enable the societies to keep their separate brands especially where there is strong brand recognition. This would strengthen the group financially and the returns to members.

4.15 The FSA introduced a temporary rule change in November 2008, which will enable a building society that merges with another building society to keep its separate FSCS compensation limit for pre-merger account holders. In making the change, the FSA noted concerns that building society customers with savings in two merging societies could find that their combined investment in the successor society exceeded the £50,000 maximum deposit protection limit for the FSCS. The FSA plans to consult in 2009 on wider reforms to the FSCS

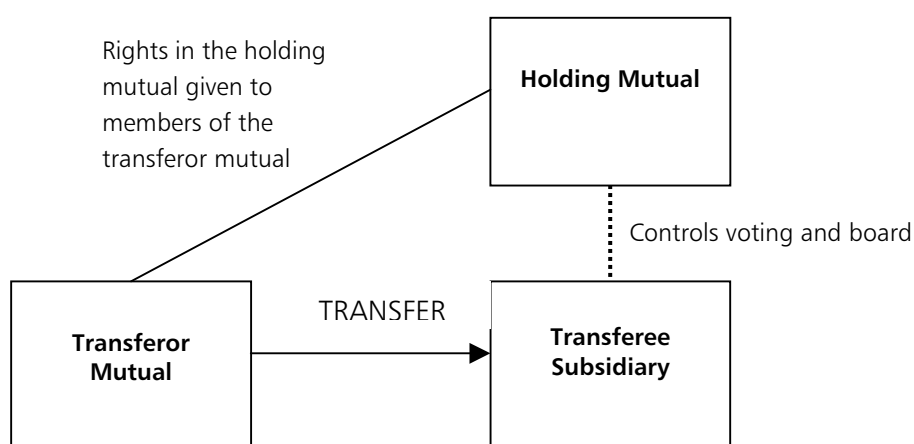
including the rules surrounding whether deposits are covered on a legal entity, a 'brand' or an 'account' basis, and put the appropriate permanent solution in place during 2009.

4.16 This rule change means that risks associated with the FSCS protection issue are somewhat mitigated. However, the Government considers that allowing such transfers is still appropriate for the reasons given above.

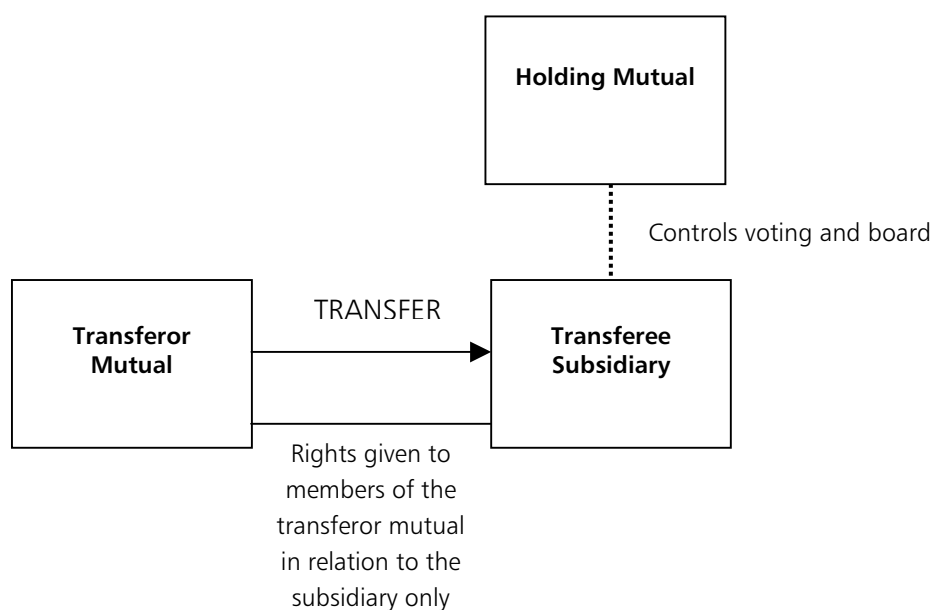
Members' rights

4.17 The diagrams below show the two options that were put forward in the consultation document regarding whether members should be granted rights in the holding mutual (option 1) or in the transferee subsidiary (option 2).

Option 1: Rights in the holding mutual



Option 2: Rights in the transferee subsidiary



4.18 At the time of the consultation, the Government considered that, for practical and legal reasons, it would be preferable to grant members of the transferor mutual rights in the subsidiary company rather than in the holding mutual. In addition the Government considered that a company limited by guarantee rather than a company limited by shares would be the preferred option for the subsidiary company.

Members' rights

Q7. What are your views on option 1 (granting rights in the holding mutual)? How could the difficulties described be overcome?

Q8. What are your views on option 2 (granting rights in the subsidiary company)? Would this model work and would a holding mutual view this as sufficiently attractive to wish to take a transfer? Would it give sufficient protection to members' rights?

Q9. Would a company limited by guarantee or a company limited by shares be more appropriate for option 2?

Q10. Should new customers of the subsidiary be entitled to membership of the holding mutual (in option 1) or the subsidiary (in option 2)?

Q11. Do you agree that it is appropriate to prevent further transfers of the subsidiary for a 5-year period? If not, please give reasons.

4.19 Respondents were sharply divided on this issue. Some suggested that option 1- granting members rights in the holding mutual - was the only viable option. Granting rights in the subsidiary itself, they suggested, would result in the transferring members no longer being members of a mutual.

4.20 Other respondents cited a preference for option 2, granting rights in the transferee subsidiary. They cited the practical and legal difficulties of option 1 where the holding mutual is a building society. Building society membership is, under the Building Societies Act 1986, restricted to shareholding and borrowing members. Creating a third category of members as a result would, they argued, be complex and destabilising.

4.21 Respondents also pointed out that under option 2, if the subsidiary were a company limited by guarantee it could be difficult for the subsidiary to raise Tier 1 capital. Banks and building societies are required by Financial Services Authority rules to hold a certain amount of core capital known as Tier 1 capital. They often raise this capital by issuing shares (or in the case of building societies, permanent interest bearing shares (PIBS)). However, a company limited by guarantee cannot issue shares, so it would have to rely on Tier 1 capital provided by its holding mutual.

4.22 Respondents were also divided on the issue of whether there should be a restriction on further transfers for a 5-year period. The main objection to this was that the period was too long and might act as a disincentive to societies wishing to undertake such transfers. Some thought that this would be impractical and would prefer societies to have the freedom to decide.

The Government Response

4.23 The Government proposes that, to maximise flexibility and to ensure that all societies can participate in transfers under the Act, both options for preserving members' rights should be allowed. Government will therefore introduce Orders to allow for circumstances where the transferring mutuals' members would have rights in the holding mutual (option 1) or rights in the subsidiary (option 2). Government will continue to hold discussions with the sector on implementation of option 2 for building societies and industrial & provident societies.

4.24 The Government is now satisfied that the difficulties in relation to option 1 can be overcome. For example, where the holding mutual is an industrial and provident society, there does not always need to be a direct customer relationship with the holding mutual in order to offer membership of the holding mutual.

4.25 Where the holding mutual is a building society, a special account could be offered by the holding mutual to members of the transferring mutual, so that they could enjoy rights as shareholding members of the holding mutual: this would not require the creation of a third category of members. The requirement is to make membership of the holding mutual *available* to members of the transferring mutual: membership will not be granted automatically. Information must be provided about the membership rights being offered.

4.26 The Government also considers that in the short term option 1 is more straightforward to implement than option 2. The Government will therefore implement Section 3 with Option 1 now, and hold further discussions with interested parties on the implementation of Option 2.

4.27 The main problem with option 2 is that it has limited relevance for deposit-takers, because of the Tier 1 capital issue discussed above. However, it might be more relevant, for example, in a transfer of an industrial and provident society to the subsidiary of a mutual insurer. Many mutual insurers already use the company limited by guarantee model and this could be appropriate where the subsidiary is an insurer.

4.28 The Government has taken on board comments raised in relation to the proposed 5-year restriction on further transfers. The Government wants to retain safeguards against the Act being used for demutualisation but not unduly restrict legitimate business transfers within the broader mutuals sector. Following further consultation with stakeholders the Government now considers on balance that a 3-year restriction on further transfers strikes a good balance.

4.29 This restriction will apply whether the transfer is to a specially formed company or to an existing company and, in addition, a company will not be able to disapply the restriction by passing a special resolution.

Transfer process

Q 12. Do you agree that the transfer resolutions for a transfer under the Act should, for each type of transferring mutual, be the same as the resolutions for transfers between mutuals of that type?

Q 13. Do you agree that transfer information for transfers under the Act should be the minimum? What if any additional information should be provided?

Q14. Do you agree that section 4 (distribution of funds) should be implemented as described for building societies, and not implemented for friendly societies or industrial & provident societies?

Q15. Do you agree that the Treasury should not legislate to extend the scope of EEA mutuals? If not, please say why, what you would like to see as the scope, and how the problems of definition could be overcome.

4.30 The consultation had proposed that resolutions to approve transfers from one mutual to the subsidiary of another mutual should be the same as for transfers between mutuals of the same type. Respondents were of the view that this would simplify arrangements and make transfers easier. In addition they agreed that transfer information under the Act should be kept to a minimum. Respondents were generally in agreement that section 4 on distribution of funds should be implemented as described in the consultation document where the transferring mutual is a building society.

4.31 The Government stated in the consultation that it was minded not to legislate to change the definition of EEA mutual but would rather retain the scope of the definition of EEA mutual as set out in the Act. However, respondents were in favour of any Government measures to extend the scope of EEA mutuals. Mutual insurers in particular emphasised that Government should legislate to extend the scope of the Act to cover insurance mutuals. They suggested that failure to legislate to ensure that UK mutual insurers were within the scope would place them at a competitive disadvantage.

The Government Response

4.32 The Government believes that there should be an appropriate balance between the information that members are entitled to receive in event of a transfer and the burdens that providing too much detailed financial information could place on societies.

4.33 The implementing Order therefore modifies the information requirements where the transferor is a building society. It requires some additional information to be provided, for example on the holding mutual and the membership rights that will be made available in the holding mutual. It also reduces the amount of financial information required to be provided about the society and the transferee company and its group.

4.34 With regards to distribution of funds, where a building society is the transferor, section 4 of the Act will apply as proposed in the consultation document. The provisions on distributions of funds contained in the Act are modelled on the relevant provisions of the BS Act 1986 and the Government proposes to implement section 4 on this basis for building societies. In addition, as stated in the consultation, the Government proposes that the limit¹ above which a resolution of members of both transferring and holding mutuals is required will be set as the same for transfers between building societies.

4.35 On the question of the scope of the Act in relation to EEA mutuals, the Government will extend this to allow mutual insurers to be able to participate in such transactions. The effect is that a “mutual insurer” is an EEA mutual society for the purposes of the Act and so can be a holding mutual in a transfer to which the Order applies. This makes it possible for mutual insurers to benefit from the Act by acquiring other mutuals (initially only building societies) as subsidiaries under the simplified procedures.

4.36 A mutual insurer is defined in the Order as a body corporate which

- Is a cooperative or mutual undertaking;
- Has no share capital;
- Is not wholly owned by another body corporate;
- Is established or operates in accordance with the laws of an EEA State, the Channel Islands or the Isle of Man; and
- Is an insurer (has permission under the relevant EC insurance Directive or would qualify for such permission if it were based in an EEA State).

¹ The limit is set out in the Building Societies (Mergers) Regulation 1987, S.I 1987/2005.

Other issues raised by respondents

Charitable Assignment

4.37 A charitable assignment is an irrevocable arrangement under which members of a building society joining after a certain date are required to assign potential conversion benefits to a charity nominated by the building society. Although this was not discussed in the consultation document some respondents had argued that the implementing Order should seek to disapply charitable assignments in relation to transfers to which the Order applies.

4.38 The Government notes that the Act does not give the Treasury power to alter contractual arrangements pertaining to charitable assignments and this was not proposed during the Act's passage through Parliament. The Government is therefore not minded to interfere with any contractual obligations in place but will leave this to the societies involved to resolve between themselves.

Permanent Interest Bearing Shares (PIBS)

4.39 Permanent Interest Bearing Shares are deferred shares issued by a building society, which meet the requirement for Tier 1 capital. Most PIBS include terms that (i) upon transfer of engagements by a building society to another building society (under section 94 of the BS Act 1986) they convert into PIBS of the successor society and (ii) upon transfer to a company (under section 97 of the BS Act 1986) they convert into undated subordinated bonds of the successor company. By converting into subordinated bonds they would cease to qualify as Tier 1 capital in a transfer to a company or would at best be innovative Tier 1 capital.

4.40 Some respondents to the consultation had considered whether the Treasury could make explicit provision in the implementing Order so as to vary the terms of PIBS in a transfer to which the Order applied, converting them into a different instrument that would retain Tier 1 capital treatment.

4.41 The Treasury is of the view that the powers conferred by the Act are to modify the statutory provisions for transfers of building societies, however there is no express provision allowing the Treasury to override or vary the terms of PIBS. The Treasury does not therefore intend to take any further action on this.

Tax issues

4.42 Tax is outside the scope of the Act. However the Treasury has received representations from respondents on the possible tax implications of transfers under the Act. HMRC will be carrying out a consultation to examine the taxation issues involved in implementing the Act with a view to working up solutions where appropriate.

Next steps

4.43 The Government considers that it would be beneficial to implement section 3 of the Act in relation to transfers from industrial & provident societies and will hold further discussions with the sector on the timing.

5

Impact Assessment

Impact Assessment follows below.

IntroductionSummary: Intervention & Options

Department /Agency:
HM Treasury

Title:
Impact Assessment of Building Societies (Funding) and Mutual Societies (Transfers) Act 2007

Stage: Final

Version:

Date: 12 January 2009

Related Publications: Consultation on Building societies (Funding) and Mutual societies (Transfers) Act 2007- September 2008

Available to view or download at:

<http://www.hm-treasury.gov.uk>

Contact for enquiries: Sammy Amissah

Telephone: 020 7270 5291

What is the problem under consideration? Why is government intervention necessary?

Under current law it is straightforward for a mutual to transfer its engagements to another mutual of the same kind. However, it is more onerous for a mutual to transfer its engagements to a company, even if the company is owned by another mutual.

What are the policy objectives and the intended effects?

- Make it easier for a mutual society to transfer its business to a subsidiary of another UK mutual society or of an EEA mutual- by implementing sections 3 and 4 of the Act

What policy options have been considered? Please justify any preferred option.

(a) No intervention

(b) Partial Implementation to allow a UK mutual society to transfer its business to a subsidiary of another UK mutual or EEA mutual but not including mutual insurers.

(c) Full implementation to allow a UK mutual society to transfer its business to a subsidiary of another UK mutual or of an EEA mutual including mutual insurers

Option C is the preferred option. This would include mutual insurers within the scope of implementation, which could have benefits for the mutuals sector as a whole.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? 3 years

Ministerial Sign-off Partial Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options

Signed by the responsible Minister:



..... Date: 18/01/09

Summary: Analysis & Evidence

Policy Option:	Description:
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups: Authorities (Government and FSA) logistical costs of drafting policy and legal documents as shown (£0.1mn). The Act is an opt-in and mutual societies will only incur costs on implementation in relation to an actual transfer. Ranging from £0.45mn for small society to £24mn for the largest.
	One-off	Yrs	
	Approx. £0.1mn		
	Average Annual Cost (excluding one-off)		
	£ N/A		
Total Cost (PV)			£ Not quantifiable
Other key non-monetised costs by 'main affected groups' N/A			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups. Benefits mainly accrue to societies in the flexibility and choice it will offer in their corporate restructuring and for Government in the wider financial stability of the economy.
	One-off	Yrs	
	Not quantifiable		
	Average Annual Benefit (excluding one-off)		
	£ Not quantifiable		
Total Benefit (PV)			£ Not quantifiable
Other key non-monetised benefits by 'main affected groups' Consolidation in the sector enhancing competition within the wider financial services.			

Key Assumptions/Sensitivities/Risks

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?		EEA			
On what date will the policy be implemented?		April 2009			
Which organisation(s) will enforce the policy?		FSA			
What is the total annual cost of enforcement for these		£ to be confirmed			
Does enforcement comply with Hampton principles?		Yes			
Will implementation go beyond minimum EU requirements?		No			
What is the value of the proposed offsetting measure per year?		£ to be confirmed			
What is the value of changes in greenhouse gas emissions?		£ N/A			
Will the proposal have a significant impact on competition?		No			
Annual cost (£-£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?		No	No	No	No

Impact on Admin Burdens Baseline (2005 Prices)					(Increase - Decrease)
Increase	£ N/A	Decrease	£ N/A	Net	£ N/A

Key: Annual costs and benefits (Net) Present Value

1. PROPOSAL (Section 3 of the Act)

1.1 Current law provides for a mutual to transfer its engagements to another mutual of the same kind. There are also provisions governing a transfer of engagement (or business) of a mutual to a company.

1.2 However, it is more onerous for a mutual to transfer its engagements to a company, even if the company is owned by another mutual. This proposal is to facilitate a transfer of engagements to a company which is a subsidiary of another mutual.

2. OBJECTIVE

2.1 The policy intention is to implement the provisions of the Act and make it easier for a UK mutual society to transfer its business to a subsidiary of another UK mutual or of an EEA mutual.

3. BACKGROUND

3.1 The Building Societies (Funding) and Mutual Societies (Transfers) Act 2007 received Royal Assent on 23 October 2007 and gives the Treasury power to make it easier for a mutual society to transfer its business to subsidiary of another mutual society. The Treasury subsequently sought stakeholders' views on the implementation of this Act, in a consultation that closed on 1 September 2008.

4. OPTIONS APPRAISAL.

(a) No Intervention

(b) Partial Implementation to allow a UK mutual society to transfer its business to a subsidiary of another UK or EEA mutual

(c) Full implementation to allow a UK mutual society to transfer its business to a subsidiary of another UK mutual or of an EEA mutual (including mutual insurers).

Option C is the Government's preferred option.

Option	Costs		Benefits
(a) No intervention	No additional costs.		No benefits to mutual members.
(b) Partial Implementation-UK and EEA mutuals	Same as option c below but excludes mutual insurers.		Same as option c below but excludes mutual insurers.
(c) Full implementation-Proposals implemented to allow UK mutual society to transfer its business to a subsidiary of another UK mutual or of an EEA mutual (including mutual insurers)	<p>Authorities</p> <p><u>FSA</u></p> <p>Implementation costs: £20-£25K</p> <p>Costs per merger: £15K-</p>	<p>Societies</p> <p>Implementation costs- Not available</p> <p>Costs per merger</p> <p>Large: £1mn-</p>	Benefits accruing, whilst substantial, are difficult to quantify. Primary benefits arise by allowing market consolidation beyond like-with-like merger or demutualisation. This in turn will allow mutuals to compete more effectively with other legal forms. As

	<p>£25K</p> <p><u>HM Treasury</u></p> <p>Policy and Legal</p> <p>£50K</p>	<p>£24 mn</p> <p>Medium £0.45mn- £1mn</p> <p>Small: £6K - £0.45mn</p>	<p>a result, the mutual sector will be placed on a more stable footing going forward.</p>
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5. RISKS, UNCERTAINTY AND UNINTENDED CONSEQUENCES

5.1 There are two primary areas where unintended consequences could occur– the need to prevent backdoor demutualisation and legal risk of disturbing contractual arrangements in relation to PIBS (permanent interest bearing shares) and charitable assignments.

5.2 The Treasury has consulted extensively on how to minimise the risk of demutualisation, but recognises that there is always the possibility that in future an innovative transaction structure could be constructed to avoid the safeguards which we have put in place to prevent this.

Charitable assignments

5.3 We do not propose to make any amendments to the existing contractual arrangements in relation to charitable assignments and consider that this is a matter for the parties to deal with, and it would be undesirable for Government to intervene.

Permanent Interest Bearing Shares (PIBS)

5.4 PIBS are financial instruments, deferred shares issued by building societies to meet Tier 1 capital requirements: they are non-redeemable and rank after all other liabilities (including subordinated debt) in insolvency. Most PIBS include a term stating that if a building society transfers its undertaking to a company, the PIBS become subordinated debt of that company. By converting into subordinated bonds they would cease to qualify as Tier 1 capital in a transfer to a company or would at best be innovative Tier 1 capital.

Some respondents to the consultation had considered whether the Treasury could make explicit provision in the implementing Order so as to vary the terms of PIBS in a transfer to which the Order applied, converting them into a different instrument that would retain Tier 1 capital treatment. However, the Treasury considers that it would be outside the scope of the Act for it to interfere with contractual rights.

6. IMPLEMENTATION

6.1 The proposal will be implemented by Orders made under the Building Societies (Funding) and Mutual Societies (Transfers) Act 2007.

7. WHO WILL BE AFFECTED

7.1 The first order under the Act will make it easier for a building society to transfer its business to the subsidiary of another UK mutual or an EEA mutual (including a mutual insurer). Societies can decide whether or not to use the new procedure. A later order will implement the Act for industrial and provident societies.

8. EQUITY AND FAIRNESS

8.1 The Government considers that the changes proposed by this proposal will not bring disproportionate benefits or have disproportionate effects on particular groups.

9. CONSULTATION WITH SMALL BUSINESS

The Government sought respondents' views on the Government's proposals and implementation proposals.

- SMALL FIRMS IMPACT TEST

We do not expect the proposed changes to impose any costs on small firms. Use of the modified transfer procedures is optional.

- COMPETITION ASSESSMENT

We have carried out a simple competition assessment and are of the view that the proposals in the draft Order are not expected to lead to any barriers to entry.

10. CONSULTATION

10.1 HMT held a public consultation on these provisions in September 2008 and has held subsequent discussions with key stakeholders including the FSA, the BSA and a variety of mutuals. HMRC will hold a further consultation on the tax implications of the Act.

11. ENFORCEMENT AND SANCTIONS

11.1 The Financial Services Authority will need to be satisfied that parties to a transfer qualify to use the simplified procedures in the implementing Order.

12. SUMMARY AND RECOMMENDATIONS

12.1 Benefits cannot be quantified but are substantial, since they offer additional ways of ensuring financial stability within the mutual sector. The cost of each transaction will be high, so the process is unlikely to be utilised by small mutuals. However, since use of the mechanism will be a commercial decision by the merging entities and it is inevitable that this will only occur when the parties believe that benefits exceed costs. Because the benefits will far outweigh the costs we recommend that this proposal be adopted.

Costs annex and assumptions

Two categories: initial implementation costs and subsequent process costs incurred each time such a transfer is undertaken. Figures are merely indicative.

Implementation costs (estimated):

	FSA (say £20-25k) being:
Amend current Handbook	40 - 50 staff days (£17.2k to £21.5k)
Train supervisors etc	Regulatory/supervisory 5 man days (£2.15k)

Subsequent costs, each time a building society uses the procedure we estimate:

	FSA (Say £15k to £25k)	Transferee (£67k to £95k plus p&p)
Agreeing details of proposal and ensuring compliance with legislation	Nil	100 - 130 staff days (£43k to £55.9k)

Development of transfer statement	Nil	20 – 30 man days preparation (£8.6k to £12.9k)
Approval of transfer statement	10-15 man days review work (£4.3k to £6.45k)	10 – 15 man days redrafting (£4.3k to £6.45k)
Printing and postage of transfer statement (Say £5 per member)	Nil	Large: £2.5m - £60m Medium: £1.125m - £2.5m Small: £15k - £1.125m
General meeting and vote	Nil	May not need a separate meeting if it can be coordinated to take place alongside AGM.
Confirmation hearing	25 – 40 man days (£10.75k to £17.2k)	25 – 40 man days (£10.75k to £17.2k)

Note:

FSA average mean daily costs £430 (include overhead allocations).

Transferee average mean daily costs taken as similar to FSA.

Split based on Companies Act Balance Sheet definition of company size:

6

Draft Statutory Instrument

Draft Order laid before Parliament under section 3(6) of the Building Societies (Funding) and Mutual Societies (Transfers) Act 2007, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2009 No.

BUILDING SOCIETIES

FRIENDLY SOCIETIES

INDUSTRIAL AND PROVIDENT SOCIETIES

The Mutual Societies (Transfers) Order 2009

Made - - - -

***** 2009**

Coming into force in accordance with article 1(2)

The Treasury, in exercise of the powers conferred by sections 3 and 4 of the Building Societies (Funding) and Mutual Societies (Transfers) Act 2007⁽¹⁾, make the following Order:

PART 1

Introductory

Citation and commencement

- 1.—(1) This Order may be cited as the Mutual Societies (Transfers) Order 2009.
- (2) It comes into force on the day after the day on which it is made.

Interpretation

2. In this Order—

“the 1986 Act” means the Building Societies Act 1986⁽²⁾;

“the 1998 Regulations” means the Building Societies (Transfer of Business) Regulations 1998⁽³⁾;

⁽¹⁾ 2007 c.26.

⁽²⁾ 1986 c.53.

⁽³⁾ S.I. 1998/212, to which there are amendments not relevant to this Order.

“the 2007 Act” means the Building Societies (Funding) and Mutual Societies (Transfers) Act 2007.

PART 2

Building societies

Application of Part 2

3.—(1) This Part applies to a transfer of the whole of the business of a building society incorporated or deemed to be incorporated under the 1986 Act to the subsidiary of another mutual society where the transfer agreement contains a statement that it so applies.

(2) A transfer to which this Part applies is referred to in this Part as a “relevant transfer”.

(3) The transfer provisions of the 1986 Act and the 1998 Regulations apply in relation to a relevant transfer with the modifications made by this Part.

(4) In this article “transfer agreement” has the same meaning as in section 97 of the 1986 Act (transfer of business to commercial company).

Interpretation of the transfer provisions

4.—(1) Section 97(12) of the 1986 Act⁽⁴⁾ applies in relation to a relevant transfer with the following modifications.

(2) At the appropriate places insert—

““the 2007 Act” means the Building Societies (Funding) and Mutual Societies (Transfers) Act 2007;”;

““the 2009 Order” means the Mutual Societies (Transfers) Order 2009;”;

““holding mutual” means the mutual society of which the successor is a subsidiary;”;

““mutual society” has the same meaning as in section 3 of the 2007 Act;”;

““parent undertaking” has the same meaning as in the Companies Acts (see section 1162 of, and Schedule 7 to, the Companies Act 2006⁽⁵⁾);”;

““subsidiary” (except in the term “subsidiary undertaking”) has the same meaning as in section 3 of the 2007 Act;”.

The transfer resolution

5. Paragraph 30 of Schedule 2 to the 1986 Act (transfer resolutions)⁽⁶⁾ applies in relation to a relevant transfer with the following modifications—

(a) in sub-paragraph (1)(b), for “(“the requisite shareholders’ resolution”) is passed in accordance with sub-paragraphs (2) to (5) below”, substitute “is passed as a shareholding members’ resolution”;

(b) omit sub-paragraphs (2) to (8).

Formation of the successor company

6. Section 97 of the 1986 Act⁽⁷⁾ applies in relation to a relevant transfer with the following modifications—

(a) in subsection (3), after “formed by the society” insert “or by the holding mutual”;

(b) in subsection (12), in the definition of “company”, after “formed by a building society” insert “or by the holding mutual”.

⁽⁴⁾ Section 97(12) was amended by the Building Societies Act 1997 (c.32), section 43, Schedule 7, paragraph 45(3), and by S.I. 2001/2617.

⁽⁵⁾ 2006 c.46.

⁽⁶⁾ Paragraph 30 of Schedule 2 was amended by the Building Societies Act 1997, section 43, Schedule 7, paragraph 57(10), (11) and (12), by S.I. 1997/2714 and by S.I. 2001/2617.

⁽⁷⁾ Section 97(3) was amended by the Building Societies Act 1997, sections 43 and 46(2), Schedule 7, paragraph 45(2) and Schedule 9. For amendments to section 97(12) see the footnote to article 4.

Distribution of funds of building society or holding mutual

7.—(1) Section 4 of the 2007 Act (transfers to subsidiaries: distribution of funds) has effect in relation to a relevant transfer.

- (2) The terms of a relevant transfer may include provision for part of the funds of the transferor building society or of the holding mutual (or both) to be distributed to members of the transferor or of the holding mutual (or both) in consideration of the transfer, in accordance with section 4 of the 2007 Act and this article.
- (3) The limit referred to in section 4(3) and (4) of the 2007 Act, in relation to a distribution made by a transferor building society, is—
 - (a) five per cent of the value of that society’s total assets, or
 - (b) if less, the sum calculated in accordance with paragraph (4).
- (4) The sum referred to in paragraph (3)(b) is calculated by deducting the value of the transferor society’s fixed assets, both tangible and intangible, from the aggregate of that society’s general reserves and, if any, revaluation and other reserves.
- (5) For the purposes of paragraphs (3) and (4), the value of any assets, liabilities or reserves of a building society is their value as given in the most recent annual accounts of the society sent to the Financial Services Authority in accordance with section 81(2) of the 1986 Act (laying and furnishing accounts, etc, to members and the Authority)⁽⁸⁾.
- (6) The limit referred to in section 4(3) and (4) of the 2007 Act, in relation to a distribution made by the holding mutual, is five per cent of the holding mutual’s total assets as shown in the most recent audited accounts of the holding mutual.
- (7) The resolution referred to in section 4(3)(a) of the 2007 Act, in the case of the holding mutual, is—
 - (a) where the transfer is approved by a resolution of the members of the holding mutual, that resolution, or
 - (b) where the transfer is approved by the board of directors or committee of management of the holding mutual, a resolution of the members of the holding mutual.
- (8) Any terms of a transfer of business to which section 4(3) of the 2007 Act and paragraphs (3) to (7) above apply are regulated terms for the purposes of section 97 of the 1986 Act.
- (9) In this article—

“annual accounts” has the same meaning as in Part 8 of the 1986 Act (see section 81B of that Act (interpretation of Part 8))⁽⁹⁾;

“transfer of business” and “regulated terms” have the same meaning as in section 97 of the 1986 Act.

Distribution of funds: regulated term

8. Section 97 of the 1986 Act applies in relation to a relevant transfer with the following modifications—
- (a) in subsection (4)(b), after “transfer regulations” insert “, and with section 4 of the 2007 Act and article 7 of the 2009 Order”;
 - (b) in subsection (12), in the definition of “regulated terms”, after “section 102” insert “or under article 7 of the 2009 Order”.

Confirmation of the transfer

9.—(1) Section 98 of the 1986 Act (transfers of business: supplementary provisions)⁽¹⁰⁾ applies in relation to a relevant transfer with the following modifications.

- (2) In subsection (3)(d), for “this Act” substitute “an applicable enactment”.
- (3) In subsection (4), for “this Act” substitute “an applicable enactment”.
- (4) In subsection (7), for “this Act” substitute “an applicable enactment”.
- (5) For subsection (8), substitute—

⁽⁸⁾ Section 81 was amended by S.I. 2001/2617. There are other amendments but none are relevant.

⁽⁹⁾ Section 81B was inserted by S.I. 2004/3380. There are amendments but none are relevant.

⁽¹⁰⁾ Section 98 was amended by the Building Societies Act 1997, section 30, by S.I. 2001/2617 and by S.I. 2001/3649.

“(8) In this section—

“applicable enactment” means the applicable provisions of this Act (as modified by the 2009 Order), section 4 of the 2007 Act and article 7 of the 2009 Order; and

“relevant requirement”, with reference to an applicable enactment or the rules of a society, means a requirement of an applicable enactment or of any rules prescribing the procedure to be followed by the society in approving the transfer and its terms.”.

Modified application of section 100 (distributions and share rights)

10.—(1) Section 100 of the 1986 Act (regulated terms etc: distributions and share rights)⁽¹¹⁾ applies in relation to a relevant transfer with the following modifications.

(2) For subsection (1) substitute—

“(1) Subject to subsections (8) and (10) below, the terms of a transfer of business by a building society to the company which is to be its successor may include provision for rights in relation to shares in the successor to be conferred on members of the society in consideration of the transfer.”.

(3) Omit subsection (9).

(4) For subsection (10) substitute—

“(10) The following restriction applies to any conferring of rights in relation to shares in connection with the transfer of its business from the society to its successor where the successor is a company specially formed by the society or the holding mutual.

Where negotiable instruments acknowledging rights to shares are issued by the successor within the period of two years beginning with the vesting date, no such instruments shall be issued to former members of the society unless they are also issued, and on the same terms, to all other members of the company.”.

Membership of the holding mutual

11.—(1) The transfer provisions apply in relation to a relevant transfer as if after section 100 of the 1986 Act there were inserted—

“Regulated terms: membership of the holding mutual

100A.—(1) The terms of a transfer of business by a building society to the company which is to be its successor must include provision for making membership of the holding mutual available to every qualifying member of the building society and to every person who, after the transfer, becomes a customer of the company.

(2) The membership made available pursuant to that provision must be on terms no less favourable than those enjoyed by existing members of the holding mutual.

(3) Subsection (1) above does not apply where the terms of the transfer of business include provision for making membership of any parent undertaking of the holding mutual available to the persons mentioned in that subsection on terms no less favourable than those enjoyed by existing members of the parent undertaking.

(4) Any terms of a transfer of business to which subsections (1) and (2) above apply are regulated terms for the purposes of section 97.

(5) For the purposes of this section, any member of the building society who, on the day immediately preceding the vesting date, is a shareholding or borrowing member of the society, is a qualifying member.”.

(2) Section 97 of the 1986 Act⁽¹²⁾ applies in relation to a relevant transfer with the following modifications—

(a) in subsection (2), after “section 100,” insert “section 100A,”;

(b) in subsection (4)(b), after “section 100” insert “, section 100A”;

⁽¹¹⁾ There are amendments to section 100 but none are relevant.

⁽¹²⁾ Section 97(2) was amended by the Building Societies (Distributions) Act 1997 (c.41), section 1(2). Section 97(4) was amended by S.I. 2001/2617. For amendments to section 97(12) see the footnote to article 4.

- (c) in subsection (12), in the definition of “regulated terms”, after “section 100” insert “, section 100A”.

Restrictions on further transfer

12.—(1) Section 101 (protective provisions for specially formed successors)⁽¹³⁾ applies in relation to a relevant transfer with the following modifications—

- (a) in subsection (1), after “other than the society” insert “or the holding mutual”;
- (b) in subsection (4), omit paragraph (b);
- (c) in subsection (6)—
 - (i) in the definition of “the protective period”, for “five years” substitute “three years”;
 - (ii) omit the definition of “the requisite majority”.

(2) The transfer provisions apply in relation to a relevant transfer as if after section 101 of the 1986 Act there were inserted—

“Protective provisions where successor is an existing company

101A.—(1) Section 101 (as modified by the 2009 Order) applies in relation to a successor of a building society which is an existing company as it applies in relation to a successor which is a specially formed company, with the following modification.

(2) In subsection (6), for the definition of “the protective period” substitute—

““the protective period” is the period beginning with the date of any alterations to the company’s articles made to comply with subsection (2) above or, if no alterations are made, beginning with the vesting date, and ending three years after the vesting date or, if this section ceases to apply to the company, ending on the date on which it so ceases”.

(3) In section 97—

- (a) in subsection (2), after “section 101,” insert “section 101A,”;
- (b) in subsection (4), for paragraph (a) substitute—

“(a) secure that the successor company’s articles of association include the requisite protective provisions;”;
- (c) in subsection (12), for the definition of “the requisite protective provisions” substitute—

““the requisite protective provisions”, in relation to a specially formed company, means the provisions required to be made by section 101(2), and in relation to an existing company, means the provisions required to be made by section 101(2) as applied by section 101A.”.

Modified application of sections 102B and 102C of the 1986 Act

13.—(1) Section 102B of the 1986 Act (protection of interests of beneficiaries in the case of trustee account holders)⁽¹⁴⁾ applies in relation to a relevant transfer with the following modifications—

- (a) in subsection (2), for paragraph (a) substitute—

“(a) a distribution among members of the society of part of the funds of the society or the holding mutual made in accordance with section 4 of the 2007 Act and article 7 of the 2009 Order, but not a distribution within section 100(2)(b), or”;
- (b) in subsection (3), for “and its successor” substitute “, its successor and the holding mutual”;
- (c) in subsection (6), for “and its successor” substitute “, its successor and the holding mutual”.

(2) Section 102C of the 1986 Act (consequences of false declaration)⁽¹⁵⁾ applies in relation to a relevant transfer with the following modifications—

- (a) in subsection (1)(b)(i), after “the society’s successor” insert “or the holding mutual”;

⁽¹³⁾ Section 101 was substituted by the Building Societies Act 1997, section 41, and subsequently amended by S.I. 1998/1120, S.I. 2001/2617, S.I. 2001/3649 and S.I. 2007/2194.

⁽¹⁴⁾ Section 102B was inserted by the Building Societies (Distributions) Act 1997, section 1.

⁽¹⁵⁾ Section 102C was inserted by the Building Societies (Distributions) Act 1997, section 1.

- (b) in subsection (2), after “the successor”, in each place where it occurs, insert “or the holding mutual”;
- (c) in subsection (4), after “the successor”, in each place where it occurs, insert “or the holding mutual”.

Issue of statement or summary to members

14. Regulation 2 of the 1998 Regulations⁽¹⁶⁾ (interpretation) applies in relation to a relevant transfer with the following modifications—

- (a) in the definition of “group”, before “shall be construed” insert “(except in the term “immediate group”);”;
- (b) after the definition of “group” insert—
 ““immediate group”, in relation to a successor company, means the immediate parent undertaking of that company and any subsidiary undertakings of that immediate parent undertaking, but does not include any parent undertaking of that immediate parent undertaking.”.

15.—(1) Regulation 3 of the 1998 Regulations (transfer statements) applies in relation to a relevant transfer with the following modification.

(2) After paragraph (1) insert—

“(1A) Any such transfer statement shall also give particulars of the matters specified in Part 5 of Schedule 1 to these Regulations.”.

16.—(1) Schedule 1 to the 1998 Regulations (prescribed matters for transfer statements) applies in relation to a relevant transfer with the following modifications.

(2) In Part 1 (matters of which particulars are to be included in the case of any transfer)—

(a) for paragraph 4 substitute—

“4. The financial position of the society and its connected undertakings at the most recent reasonably practicable date and of any material change in that position since that date.”;

(b) in paragraph 9, for “any group” substitute “the immediate group”;

(c) in paragraph 21, at the end insert “and of any change to be made in connection with the transfer in the terms governing outstanding loans made by the society which are secured on land”.

(3) In Part 2 (matters of which particulars are to be included in the case of a transfer to an existing company)—

(a) in paragraph 2, for “any group” substitute “the immediate group”;

(b) for paragraph 3 substitute—

“3. The consolidated financial position of the successor company and the immediate group to which it belongs at the most recent reasonably practicable date and of any material change in that position since that date.”;

(c) in paragraph 4, for “any group” substitute “the immediate group”;

(d) for paragraph 5 substitute—

“5. The last three summary financial statements prepared by the directors of the society.”;

(e) omit paragraph 6;

(f) for paragraph 11 substitute—

“11.—(1) An explanation by the board of the society of the reasons for the transfer and the choice of successor company.

(2) The board’s assessment of—

(a) the advantages and disadvantages of the transfer for members and employees of the society;

(b) any other issues which, in the board’s view, are relevant to the transfer.”;

⁽¹⁶⁾ S.I. 1998/212, to which there are amendments not relevant to this Order.

(g) omit paragraph 12;

(h) at the end insert—

“13. The protective provisions for existing companies applied by section 101A of the Act (inserted by the Mutual Societies (Transfers) Order 2009).”.

(4) In Part 3 (matters of which particulars are to be included in the case of a transfer to a specially formed company)—

(a) after paragraph 1 insert—

“1A. The structure and activities of the immediate group to which the successor company belongs.”;

(b) in paragraph 5, at the end insert “(as modified by the Mutual Societies (Transfers) Order 2009)”.

(5) After Part 4 (matters of which particulars are to be included in a case where shares or rights in relation to shares are to be offered in connection with a transfer) insert—

“PART 5

Matters of which particulars are to be included in a case to which Part 2 of the Mutual Societies (Transfers) Order 2009 applies

1. As a result of the transfer, the members of the society will no longer be members of a building society.

2. The following information in relation to the membership rights that will be made available to members of the building society in accordance with section 100A of the Act (inserted by the Mutual Societies (Transfers) Order 2009)—

(a) the membership rights that will be made available;

(b) the entity in which membership rights will be made available, including its legal form;

(c) the procedure by which members of the building society may become members of that entity.

3. A comparison of the rights members enjoy as members of a building society and the membership rights that will be made available to them referred to in paragraph 2 above.

4. Every person who, after the transfer, becomes a customer of the successor company will be able to obtain similar membership rights to those referred to in paragraph 2.

5. An explanation of the following statutory requirements relating to the business of a building society and that they will not apply in relation to the successor company—

(a) the purpose or principal purpose of a building society (section 5 of the Act);

(b) the lending limit (section 6 of the Act);

(c) the funding limit (section 7 of the Act);

(d) the restrictions in sections 9A and 9B of the Act.

6. That the transfer may be approved by a borrowing members’ resolution and a shareholding members’ resolution and an explanation of the requirements for a resolution to be passed as a shareholding members’ resolution and a borrowing members’ resolution.

7. Part 2 of the Mutual Societies (Transfers) Order 2009 will apply to the transfer.”.

17. Schedule 2 to the 1998 Regulations (specified information for transfer summaries) applies in relation to a relevant transfer with the following modifications—

(a) in paragraph 2, for “paragraphs 1, 2, 3, 5, 6, 10 and 11” substitute “paragraphs 1, 2, 3, 5, 10, 11 and 13”;

(b) in paragraph 3, for “paragraphs 1 and 4” substitute “paragraphs 1, 1A, 4 and 5”;

(c) at the end insert—

“5. Where the proposed transfer of business is one to which Part 2 of the Mutual Societies (Transfers) Order 2009 will apply, information comprising particulars of all the matters described in Part 5 of Schedule 1 to these Regulations.”

Issue of statement or summary to members: powers of Financial Services Authority

18. The modifications to the application of the 1998 Regulations made by articles 14 to 17 are without prejudice to the powers of the Financial Services Authority in paragraph 3 of Schedule 17 to the 1986 Act to require particulars of any other matters to be provided in the case of a particular transfer, including without limitation any matters omitted by those modifications.

PART 3

Supplementary

EEA mutual society

19.—(1) A mutual insurer is an EEA mutual society for the purposes of section 3 of the 2007 Act (transfers to subsidiaries of other mutuals).

(2) A mutual insurer is a body corporate which—

- (a) is a cooperative or mutual undertaking;
- (b) is established or operates in accordance with the laws of an EEA state or any of the Channel Islands or the Isle of Man;
- (c) has no share capital;
- (d) is not a wholly-owned subsidiary within the meaning of section 1159(2) of the Companies Act 2006⁽¹⁷⁾; and
- (e) is an insurer.

(3) In paragraph (2) “insurer” means—

- (a) an undertaking authorised under Article 4 of the life assurance consolidation directive or Article 6 of the first non-life insurance directive, or
- (b) an undertaking which—
 - (i) is incorporated in any of the Channel Islands or the Isle of Man, and
 - (ii) would satisfy the requirements for authorisation under either of the directives mentioned in sub-paragraph (a) if it had its registered office (or if it does not have a registered office, its head office) in an EEA state.

(4) In paragraph (3)—

“the first non-life insurance directive” means First Council Directive 73/239/EEC on the coordination of laws, Regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance⁽¹⁸⁾;

“the life assurance consolidation directive” means Directive 2002/83/EC of the European Parliament and of the Council concerning life assurance⁽¹⁹⁾.

Date

Two of the Lords Commissioners of Her Majesty’s Treasury

Name
Name

⁽¹⁷⁾ 2006 c.46.

⁽¹⁸⁾ O.J. L228, 16.8.1973, p.3. Article 6 of that directive was substituted by article 4 of Council Directive 92/49/EEC (O.J. L228, 11.8.1992, p.1).

⁽¹⁹⁾ O.J. L345, 19.12.2002, p.1.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under sections 3 and 4 of the Building Societies (Funding) and Mutual Societies (Transfers) Act 2007 (c. 26) (“the 2007 Act”).

Part 1 contains introductory provisions about citation, commencement and interpretation.

Part 2 applies to a transfer of the whole of the business of a building society to the subsidiary of another mutual society (within the meaning of the 2007 Act). It applies only where the transfer agreement contains a statement that it so applies (article 3(1)).

Part 2 modifies the application of certain provisions of the Building Societies Act 1986 (c. 53) (“the 1986 Act”) and the Building Societies (Transfer of Business) Regulations 1998 (S.I. 1998 No. 212) (“the 1998 Regulations”) which apply to a transfer of the business of a building society to a company. It also gives effect to section 4 of the 2007 Act in relation to such transfers (article 7).

Article 5 modifies the application of paragraph 30 of Schedule 2 to the 1986 Act so that the transfer needs to be approved by a borrowing members’ resolution and a shareholding members’ resolution, instead of by a borrowing members’ resolution and the “requisite shareholders’ resolution” (the requirements for which are set out in paragraph 30 of that Schedule).

Article 6 modifies the application of section 97 of the 1986 Act so that a specially formed successor company may be formed by the building society itself or by the mutual society of which the company is a subsidiary (“the holding mutual”).

Article 7 gives effect to section 4 of the 2007 Act. A distribution of funds may be made by the building society or by the holding mutual (or both). If a distribution made by the building society exceeds the limit specified in article 7(3), it must be approved by the resolutions approving the transfer. If a distribution made by the holding mutual exceeds the limit specified in article 7(6), it must be approved by the resolution of that mutual approving the transfer, or if the transfer is approved by its board, by a resolution of the members of that mutual. Terms of the transfer agreement relating to distributions are regulated terms for the purposes of the 1986 Act (articles 7(8) and 8).

Article 9 modifies the application of section 98 of the 1986 Act. Section 98(3)(d) provides that the Financial Services Authority shall not confirm a transfer of business if it considers that a relevant requirement of the 1986 Act or of the rules of the society was not fulfilled. The modification adds section 4 of the 2007 Act and article 7 of this Order to the 1986 Act for this purpose.

Article 10 modifies the application of section 100 of the 1986 Act so that it applies only to distributions required by section 100(2)(b) and to rights in relation to shares in the successor.

Article 11 modifies the application of the 1986 Act by inserting a new section. Section 100A requires the terms of the transfer to include a provision making membership of the holding mutual available to members of the building society and to persons who, after the transfer, become customers of the building society’s successor. Membership must be available on terms no less favourable than those enjoyed by existing members of the holding mutual. The requirement does not apply where membership of any parent undertaking of the holding mutual is made available to members of the building society.

Article 12 modifies the application of section 101 of the 1986 Act so that the holding mutual is able to hold more than 15% of the shares in the successor company. It also reduces the protective period during which the restrictions in section 101 apply from five years to three years, and removes the provision which allows a company to disapply the section by passing a special resolution. New section 101A applies section 101 to a successor company which is an existing company.

Article 13 modifies the application of sections 102B and 102C, which are concerned with protecting the interests of beneficiaries in the case of trustee account holders, so that those sections apply in relation to any distribution made by the holding mutual as well as to a distribution made by the building society.

Articles 14 to 17 modify the application of the 1998 Regulations. Schedules 1 and 2 to those Regulations list the matters of which a society must provide particulars to its members in a transfer statement or transfer summary. Articles 16 and 17 modify the application of those Schedules so that particulars of some specific matters are not required and particulars of other additional matters are required. The modifications do not limit the existing powers of the Financial Services Authority to require particulars of any other matters to be provided in a particular transfer, including any matters omitted by the modifications (article 18).

Part 3 is of general application. Article 19 provides that a mutual insurer is an EEA mutual society for the purposes of section 3 of the 2007 Act, and defines mutual insurer.

An Impact Assessment has been prepared for this instrument. It is available from the Savings and Investment Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. It is also annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website (www.opsi.gov.uk). Both documents are available on the Treasury website (www.hm-treasury.gov.uk).

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