

# FINANCIAL SERVICES ACT 2012

---

## EXPLANATORY NOTES

### COMMENTARY

#### Part 3 – Mutual Societies

##### ***Section 50: Mutual societies: power to transfer functions***

502. *Section 50* provides for the Treasury to make orders amending the legislation relating to mutual societies which is listed in *subsection (2)*, so that certain functions in relation to mutual societies can be transferred to the FCA and/or the PRA, for example, the registration of building societies under the Building Societies Act 1986. Such orders are subject to the affirmative procedure (see *section 116(2)*). Orders may also provide, in relation to the Industrial and Provident Societies Act (Northern Ireland) 1969 and the Credit Unions (Northern Ireland) Order 1985, for functions of a Northern Ireland department and of the Registrar of Credit Unions to be transferred to the FCA, the PRA, or both, and for functions relating to the determination of disputes to be transferred to a court.

##### ***Section 51: Further provision that may be included in orders under section 50***

503. *Section 51* provides for orders under section 50 to contain incidental, supplemental, consequential and transitional provisions (*subsection (2)*).

##### ***Section 52: power to apply or disapply provision made by or under FSMA 2000***

504. *Section 52* enables the Treasury by order to provide for a provision of or made under FSMA to apply, or to not apply, in relation to functions which have been transferred under an order made under section 50.

##### ***Section 53: Evidence***

505. Orders under *section 50* may include provision transferring property held in connection with the function transferred. *Section 53* provides that a certificate issued by the Treasury that property vested in a person immediately before a transfer order takes effect has been transferred as a result of the order is conclusive evidence of the transfer; such a certificate may be necessary, for example, for registration purposes.

##### ***Section 54: Repeals in Part 21 of FSMA 2000***

506. *Section 54* repeals various provisions in Part 21 of FSMA. These provisions enabled the transfer of functions to the FSA on the implementation of FSMA and are no longer needed. The repeal of an enabling power automatically revokes any subordinate legislation made under it; *subsection (2)* therefore preserves the effect of orders made under the repealed provisions.

## **Building societies: miscellaneous**

### ***Section 55: Building societies: creation of floating charges***

507. Section 9B of the Building Societies Act 1986 prohibits the creation of floating charges on the undertaking or property of a building society. *Section 55* amends section 9B so as to allow the creation of a floating charge in connection with participation in a payment or securities settlement system.

### ***Section 56: Power to direct transfer of building society's business***

508. Section 97 of the Building Societies Act 1986 makes provision in relation to the transfer by a building society of its business to a company. Section 3 of the Building Societies (Funding) and Mutual Societies (Transfers) Act 2007 (the "2007 Act") gives Treasury the power to simplify and modify the procedure for the transfer of the business of a mutual society (including a building society) to a company if that company is the subsidiary of a mutual. *The Mutual Societies (Transfers) Order 2009, S.I. 2009/509* (the "2009 Order"), made on the basis of the powers in section 3 of the 2007 Act, put in place a modified procedure for the transfer of the business of a building society to a company that is the subsidiary of another mutual.
509. Section 42B of the Building Societies Act gives the FSA the power to direct a building society, in certain circumstances, to transfer its business to an existing company (section 42B(1)(b)), and the power to dispense with the requirement to have the transfer approved by members' resolutions and to have it approved instead by a resolution of the board of the society (section 41B(4)).
510. *Section 56* amends section 42B so as to provide, in addition to the powers described above, an additional power to direct a building society to transfer its business to a company that is the subsidiary of a mutual, under the modified procedure established by the 2009 Order.