



# Financial Services Act 2012

## 2012 CHAPTER 21

### PART 3

#### MUTUAL SOCIETIES

##### *Transfer of functions*

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

- (1) The Treasury may by order amend the legislation relating to mutual societies for any of the relevant purposes.
- (2) “The legislation relating to mutual societies” means—
  - (a) the Industrial and Provident Societies Act 1965;
  - (b) the Industrial and Provident Societies Act 1967;
  - (c) the Friendly and Industrial and Provident Societies Act 1968;
  - (d) the Industrial and Provident Societies Act (Northern Ireland) 1969;
  - (e) the Friendly Societies Act 1974;
  - (f) the Credit Unions Act 1979;
  - (g) the Credit Unions (Northern Ireland) Order 1985;
  - (h) the Building Societies Act 1986;
  - (i) the Friendly Societies Act 1992.
- (3) The relevant purposes are—
  - (a) providing for any function of the FSA to be exercisable by that body corporate as the FCA;
  - (b) providing for any function of the FSA to be transferred to the PRA;
  - (c) providing for any function of the FSA to be exercisable by that body corporate as the FCA and also to be exercisable concurrently by the PRA;
  - (d) providing for any function which is exercisable by the FCA or the PRA (whether by virtue of a previous order under this section or otherwise) to be transferred to, or to be exercisable concurrently by, the other regulator;

- (e) providing for any function which is exercisable by the FCA and the PRA (whether by virtue of a previous order under this section or otherwise) to be exercisable only by one of them;
  - (f) making provision that appears to the Treasury to be necessary or expedient in consequence of the provisions of this Act.
- (4) In relation to the Industrial and Provident Societies Act (Northern Ireland) 1969 and the Credit Unions (Northern Ireland) Order 1985, the relevant purposes also include—
- (a) providing for any function of a Northern Ireland department or the Registrar of Credit Unions for Northern Ireland to be transferred to the FCA or the PRA, or to both the FCA and PRA to be exercised concurrently;
  - (b) providing for any function of a Northern Ireland department or the Registrar of Credit Unions for Northern Ireland which relates to the determination of disputes to be exercisable instead by a court.

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

- (1) In this section a “transfer order” means an order under section 50 making provision for any of the purposes mentioned in subsection (3)(a) to (e) or (4) of that section.
- (2) The additional powers conferred by section 115(2) on a person making an order under this Act include power for the Treasury, when making a transfer order, to include—
- (a) such consequential provision as the Treasury consider appropriate;
  - (b) provision for the transfer of any property, rights or liabilities held, enjoyed or incurred by any person in connection with transferred functions;
  - (c) provision for the application of the Transfer of Undertakings (Protection of Employment) Regulations 2006 in connection with any transfer of staff;
  - (d) provision for the carrying on and completion by or under the authority of the person to whom the functions are transferred of any proceedings, investigations or other matters commenced, before the order takes effect, by or under the authority of the person from whom the functions are transferred;
  - (e) provision amending any enactment relating to transferred functions in connection with their exercise by, or under the authority of, the person to whom they are transferred;
  - (f) provision requiring either regulator to consult the other, notify the other or obtain the consent of the other in connection with the exercise of transferred functions;
  - (g) provision for the substitution of the person to whom functions are transferred for the person from whom they are transferred, in any instrument, contract or legal proceedings made or begun before the order takes effect.
- (3) For the purposes of subsection (2) a transfer order is to be taken to transfer functions to any person by whom any function becomes exercisable by virtue of the order.
- (4) On or after the making of a transfer order (“the original order”) the Treasury may by order make any incidental, supplemental, consequential or transitional provision or provision by virtue of subsection (2) which they had power to include in the original order.
- (5) The provisions of this section do not limit—
- (a) the powers conferred by section 118 or 119(3), or

- (b) the powers exercisable under Schedule 21 in connection with a transfer order that transfers functions to the PRA or to the FCA and the PRA.

## **52 Power to apply or disapply provision made by or under FSMA 2000**

- (1) The Treasury may by order provide—
  - (a) for any relevant provision that would not otherwise apply in relation to transferred functions to apply in relation to those functions with such modifications as may be specified;
  - (b) for any relevant provision that would otherwise apply in relation to transferred functions not to apply in relation to them or to apply with such modifications as may be specified.
- (2) “Relevant provision” means a provision of, or made under, FSMA 2000.
- (3) “Transferred function” means a function that has been or is being transferred by an order under section 50; and section 51(3) applies for the purpose of this subsection.

## **53 Evidence**

- (1) 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.
- (2) “Transfer order” means—
  - (a) an order under section 50,
  - (b) an order under section 51(4), or
  - (c) an order under Part 21 of FSMA 2000 (mutual societies).

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

- (1) The following provisions of Part 21 of FSMA 2000 are repealed—
  - (a) in section 334 (the Friendly Societies Commission), subsections (1) and (2);
  - (b) section 335 (the Registry of Friendly Societies);
  - (c) section 336 (the Building Societies Commission);
  - (d) section 337 (the Building Societies Investor Protection Board);
  - (e) section 338 (industrial and provident societies and credit unions);
  - (f) section 339 (supplemental provisions).
- (2) The repeals in subsection (1) do not have the effect of revoking any order made under any provision of Part 21 of FSMA 2000 before the commencement of this section.

*Building societies: miscellaneous*

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

- (1) Section 9B of the Building Societies Act 1986 (restriction on creation of floating charges) is amended as follows.
- (2) In subsection (1), at the end insert “unless it complies with the requirements in subsection (1A)”.

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*Status: This is the original version (as it was originally enacted).*

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(3) After that subsection insert—

“(1A) The requirements are that the floating charge—

- (a) is created in favour of a participant in a system, and
- (b) is created for the purpose of securing any rights and obligations that may arise in connection with participation in that system.”

(4) After subsection (2) insert—

“(3) In this section “participant” and “system” have the meaning given by Article 2 of Directive [98/26/EC](#) of the European Parliament and of the Council of 19th May 1998 on settlement finality in payment and securities settlement systems (as amended by Directives [2009/44/EC](#) and [2010/78/EU](#)).”

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

(1) Section 42B of the Building Societies Act 1986 (power to direct transfers of engagements or business) is amended as follows.

(2) In subsection (1)—

(a) before the “or” at the end of paragraph (a) insert—

“(aa) direct the society, within a specified period, to transfer its business under section 97 to an existing or specially formed company that is a subsidiary of another mutual society by a transfer to which provision made by order under section 3 of the 2007 Act (transfers to subsidiaries of other mutuals) applies;”, and

(b) in paragraph (b), for “to an existing company under section 97” substitute “under section 97 to an existing company that is not a subsidiary of another mutual society”.

(3) After subsection (1) insert—

“(1A) In this section—

- (a) “the 2007 Act” means the Building Societies (Funding) and Mutual Societies (Transfers) Act 2007;
- (b) “mutual society” has the same meaning as in section 3 of that Act.”

(4) In subsection (4)—

- (a) in paragraph (a), for “(1)(b)” substitute “(1)(aa) or (b)”, and
- (b) in paragraph (b), after “existing company” insert “, or to a specially formed company that is a subsidiary of another mutual society”.

(5) In Schedule 8A to that Act (directions under section 42B(4)), in paragraph 9(3), for “section 42B(1)(b)” substitute “section 42B(1)(aa) or (b)”.

### *Interpretation*

## **57 Interpretation of Part 3**

(1) In this Part “regulator” means the FCA or the PRA.

- (2) In this Part a reference to a person's functions under an enactment includes a reference to the person's functions under any other enactment as applied by that enactment.