

SCHEDULE 2

Article 4(3)

APPLICATION OF FINANCIAL SERVICES AND MARKETS ACT 2000 TO TRANSFERRED FUNCTIONS

Interpretation

1. In this Schedule—

- (a) “mutuals expenditure” means expenditure of the Authority incurred—
 - (i) in carrying out relevant functions, or for any purpose incidental to the carrying out of relevant functions, or
 - (ii) in repaying the principal of, or paying any interest on, any money which it has borrowed and which has been used for the purpose of meeting expenses incurred in relation to its assumption of relevant functions,
- (b) “the mutuals legislation” means the Friendly Societies Act 1974(1), the Building Societies Act 1986(2), the Friendly Societies Act 1992(3), and the enactments relating to industrial and provident societies and credit unions referred to in section 338(1),
- (c) “relevant functions” means functions transferred to the Authority by virtue of article 4(2) (and includes, in relation to any time before commencement, such functions as they are to be transferred with effect from commencement), and
- (d) any reference to a section or Schedule is a reference to that section or Schedule in the 2000 Act.

General

2. For the purposes of section 1(3) and Schedule 1(4) (which make general provision in relation to the Authority and its functions), relevant functions are to be treated as functions conferred on the Authority under a provision of the 2000 Act.

3. If the Authority maintains arrangements designed to enable it to determine whether persons are complying with requirements imposed on them by or under the mutuals legislation, paragraph 6(2) of Schedule 1 (which permits functions to be performed by a body or person other than the Authority) applies to those arrangements as it applies to arrangements of the kind mentioned in paragraph 6(1) of that Schedule, but does not affect the Authority’s responsibility for relevant functions or for any other matter under the mutuals legislation.

4. The Authority’s determination of the general policy and principles by reference to which it performs relevant functions is not to be treated as a general function of the Authority by virtue of subsection (4)(d) of section 2 (functions of the Authority to which the Authority’s general duties apply).

5. Section 8 (which requires the Authority to make arrangements for consulting consumers and practitioners on its general policies and practices) does not apply in relation to the Authority’s general policies and practices with respect to the exercise of relevant functions.

6. In the application of section 12 (which makes provision for reviews of the economy, efficiency and effectiveness with which the Authority has used its resources in discharging its functions) to relevant functions, section 12(3) is to be read as if, for the words from “pursuing” to the end there were substituted “exercising its functions”.

(1) 1974 c. 46.

(2) 1986 c. 53.

(3) 1992 c. 40.

(4) See the definition of “functions” in paragraph 1(1) of that Schedule.

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7. For the purposes of section 159(1)(5) (interpretation of Chapter III of Part X), relevant functions are not to be treated as functions under the 2000 Act.

8. For the purposes of section 415 (jurisdiction in civil proceedings), relevant functions are to be treated as functions of the Authority under the 2000 Act.

Rules relating to fees

9. Paragraphs 10 and 11 apply where the Authority—

- (a) makes (or proposes to make) rules under paragraph 17(1) of Schedule 1 which require the payment to the Authority of fees which relate in whole or in part to mutuals expenditure, or
- (b) designates any provisions in accordance with article 4 of the Financial Services and Markets Act 2000 (Transitional Provisions and Savings) (Rules) Order 2001(6) with a view to their having effect after commencement as such rules.

10. In the application of paragraph 17(1) of Schedule 1 to the rules, the reference to fees and charges provided for by any other provision of the 2000 Act includes a reference to fees and charges provided for by any provision of the mutuals legislation.

11. To the extent that the fees relate to mutuals expenditure—

- (a) the making of the rules is not to be treated as a general function of the Authority by virtue of subsection (4)(a) of section 2 (functions of the Authority to which the Authority’s general duties apply),
- (b) section 155(2)(c) (requirement to include in consultation a statement that rules are compatible with general duties) (or, in any case covered by paragraph 9(b) above, article 4(2)(f) of the Order referred to in that paragraph) does not apply in relation to the rules, and
- (c) the rules are not to be treated as regulating provisions for the purposes of section 159(1) (interpretation of Chapter III of Part X).

Guidance

12. For the purposes of sections 157(3) and 158(5) (guidance to regulated persons generally), guidance given to building societies, friendly societies and industrial and provident societies generally or to a class of such societies is to be treated as if given to regulated persons generally or to a class of regulated persons, whether or not those societies would otherwise be “regulated persons” within the meaning of those sections.

13. Paragraph 14 applies where guidance is given by the Authority under section 157 on the operation of a rule of the kind mentioned in paragraph 9 above (whether made as mentioned in sub-paragraph (a) of that paragraph, or designated as mentioned in sub-paragraph (b) of that paragraph).

14. To the extent that the fees required to be paid by the rule relate to mutuals expenditure—

- (a) the giving of the guidance is not to be treated as a general function of the Authority by virtue of subsection (4)(c) of section 2 (functions of the Authority to which the Authority’s general duties apply),
- (b) section 155(2)(c) (requirement to include in consultation a statement that rules are compatible with general duties) does not apply in relation to the guidance, and
- (c) the guidance is not to be treated as a regulating provision for the purposes of section 159(1) (interpretation of Chapter III of Part X).

(5) See the definitions of “practices” and “regulating provisions”.

(6) S.I.2001/1534.

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15. Paragraphs 16 and 17 apply where general guidance is given by the Authority under section 157 with respect to any matter relating to relevant functions, or with respect to any provision of or made under the mutuals legislation, unless paragraph 14 above applies.

16. The giving of the guidance is not to be treated as a general function of the Authority by virtue of subsection (4)(c) of section 2 (functions of the Authority to which the Authority's general duties apply).

17. The guidance is not to be treated as a regulating provision for the purposes of section 159(1) (interpretation of Chapter III of Part X).