Summary: Intervention & Options

Department /Agency:	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

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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

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:

Summary: Analysis & Evidence	
Policy Option:	Description:

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
One-off	Yrs	
Approx		
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
One-off	Yrs	
Not quantifiable		
Average Annual Benefit		
£ Not		**Total Benefit** (PV) £ Not quantifiable
Other **key non-monetised benefits** by 'main affected groups' Consolidation in the sector enhancing competition within the wider financial		

Key Assumptions/Sensitivities/Risks

Price Base	Time Period	**Net Benefit Range** (NPV) £	**NET BENEFIT** (NPV Best estimate)

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	No
What is the value of the proposed offsetting measure	£ To be confirmed
What is the value of changes in greenhouse gas	£ N/A
Will the proposal have a significant impact on	No

Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations	No	No	No	No

Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)

Increase	£ N/A	Decreas	£ N/A	**Net**	£ N/A

Key: **Annual costs and benefits** **(Net) Present Value**

Evidence Base (for summary sheets)

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

2.1The 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-	<u>**Authorities**</u>	<u>**Societies**</u>	Benefits accruing, whilst substantial, are

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)	FSA Implementation costs: **£20-£25K** Costs per merger: **£15K-£25K** HM Treasury Policy and Legal **£50K**	Implementation costs- Not available Costs per merger Large: **£1mn-£24 mn** Medium **£0.45mn-£1mn** Small: **£6K - £0.45mn**	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 a result, the mutual sector will be placed on a more stable footing going forward.

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: