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## SCHEDULES

### SCHEDULE 11

#### FRIENDLY SOCIETIES

##### Modifications etc. (not altering text)

- C1** Sch. 11 amended (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40) s. 98, Sch. 18 Pt. II para. 10; S.I. 1993/16, art. 2, Sch.4; S.I. 1993/2213, art. 2(1), Sch.5.

#### PART IV

##### TRANSFER OF REGISTRAR'S FUNCTIONS

- 28 (1) If it appears to the Registrar—
- (a) that a body corporate has been established which is able and willing to discharge all or any of the functions to which this paragraph applies; and
  - (b) that the requirements of Schedule 7 to this Act (as it has effect by virtue of sub-paragraph (3) below) are satisfied in the case of that body,
- he may, with the consent of the Secretary of State and subject to the following provisions of this paragraph and paragraphs 29 and 30 below, make an order transferring all or any of those functions to that body.
- (2) The body to which functions are transferred by the first order made under sub-paragraph (1) above shall be the body known as The Securities and Investments Board Limited if the Secretary of State consents to the making of the order and it appears to the Registrar that that body is able and willing to discharge those functions, that the requirements mentioned in paragraph (b) of that sub-paragraph are satisfied in the case of that body and that he is not precluded from making the order by the following provisions of this paragraph or paragraph 29 or 30 below.
- (3) For the purposes of sub-paragraph (1) above Schedule 7 shall have effect as if—
- (a) for references to a designated agency there were substituted references to a transferee body; and
  - (b) for the reference to complaints in paragraph 4 there were substituted a reference to complaints arising out of the conduct by regulated friendly societies of regulated business.
- (4) An order under sub-paragraph (1) above is in this Act referred to as a transfer order and a body to which functions are transferred by a transfer order is in this Act referred to as a transferee body.

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- (5) Subject to sub-paragraphs (6) and (8) below, this paragraph applies to the functions of the Registrar under section 113(3) of this Act and paragraph 38 below and any functions conferred on him by virtue of paragraphs 2 to 25 [<sup>F1</sup>(except paragraph 22A)] above other than the powers under sections 66 and 68 of this Act and, so far as applicable to assets belonging to a regulated friendly society, the power under section 67 of this Act.
- (6) If the Registrar transfers his functions under Chapter VI of Part I of this Act they shall not be exercisable by the transferee body if the only reasons by virtue of which it appears to the body as mentioned in paragraph 23(2) above relate to the sufficiency of the funds of the society to meet existing claims or of the rates of contribution to cover benefits assured.
- (7) Any function may be transferred by an order under this paragraph either wholly or in part and a function may be transferred in respect of all societies or only in respect of such societies as are specified in the order.
- (8) A transfer order—
- (a) may reserve to the Registrar the function of revoking a recognition order in respect of a self-regulating organisation for friendly societies on the ground that the requirement mentioned in paragraph 4(2) above is not satisfied; and
  - (b) shall not transfer to a transferee body the function of revoking any such recognition order on the ground that the organisation has contravened the provisions of paragraph 9 above.
- (9) No transfer order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

#### Textual Amendments

**F1** Words inserted (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), s. 193(4)

#### Modifications etc. (not altering text)

**C1** Sch. 11 para. 28: power to transfer functions exercised, and certain functions transferred, by S.R. 1987/228, arts. 2, 3

- [<sup>F2</sup>29 (1) The Registrar shall not make a transfer order transferring any legislative functions to a transferee body unless—
- (a) the body has furnished him and the Secretary of State with a copy of the instruments it proposes to issue or make in the exercise of those functions, and
  - (b) they are both satisfied that those instruments will—
    - (i) afford investors an adequate level of protection,
    - (ii) in the case of provisions corresponding to those mentioned in Schedule 8 to this Act, comply with the principles set out in that Schedule, and
    - (iii) take proper account of the supervision of friendly societies by the Registrar under the enactments relating to friendly societies.
- (2) In this paragraph “legislative functions” means the functions of issuing or making statements of principle, rules, regulations or codes of practice.]

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### Textual Amendments

**F2** Sch. 11 para. 29 substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), Sch. 23 para. 37

- 30 (1) The Registrar shall also before making a transfer order transferring any functions to a transferee body require it to furnish him and the Secretary of State with a copy of any guidance intended to have continuing effect which it proposes to issue in writing or other legible form and they may take such guidance into account in determining whether they are satisfied as mentioned in paragraph 29(b) above.
- (2) In this Act references to guidance issued by a transferee body are references to guidance issued or any recommendation made by it which is issued or made to regulated friendly societies or self-regulating organisations for friendly societies generally or to any class of regulated friendly societies or self-regulating organisations for friendly societies, being societies which are or may be subject to [F3statements of principle, rules, regulations or codes of practice issued or made] by it or organisations which are or may be recognised by it in the exercise of its functions under a transfer order.

### Textual Amendments

**F3** Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), Sch. 23 para. 38

- 31 (1) Subject to the provisions of this paragraph, sections 115, 116, 117(3) to (5) and 118 of this Act shall apply in relation to the transfer of functions under paragraph 28 above as they apply in relation to the transfer of functions under section 114 of this Act.
- (2) Subject to sub-paragraphs (5) and (6)(b) below, for references in those provisions to the Secretary of State, a designated agency and a delegation order there shall be substituted respectively references to the Registrar, a transferee body and a transfer order.
- (3) The Registrar may not exercise the powers conferred by subsections (1) and (2) of section 115 except with the consent of the Secretary of State.
- (4) In subsection (3) of section 115 for the reference to Schedule 7 to this Act there shall be substituted a reference to that Schedule as it has effect by virtue of paragraph 28(3) above and in subsection (5) of that section for the reference to section 114(9)(b) of this Act there shall be substituted a reference to paragraph 29(b) above.
- (5) Section 118(3)(b) shall have effect as if the reference to any provision applying to the Secretary of State were a reference to any provision applying to the Secretary of State or the Registrar.
- (6) In Schedule 9 to this Act—
- paragraph 1(2) and (3) shall be omitted;
  - paragraph 4 shall have effect as if the references to the Secretary of State were references to the Secretary of State and the Registrar;
  - paragraph 5 shall have effect [F4as if the reference to section 205A were a reference to paragraph 45(1) and (3) below];

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- (d) paragraph 12(3) shall have effect as if the reference to section 114(9) were a reference to paragraph 29 above.
- (7) The power mentioned in paragraph 2(3) of Schedule 9 to this Act shall not be exercisable on the ground that the company has ceased to be a designated agency or, as the case may be, a transferee body if the company remains a transferee body or, as the case may be, a designated agency.

#### Textual Amendments

**F4** Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), Sch. 23 para. 39

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[<sup>F5</sup>31A(1) Where any functions under this Act are for the time being exercisable by a transferee body the Commission shall, before issuing an authorisation under section 32 of the Friendly Societies Act 1992 to a friendly society which is carrying on or proposes to carry on in the United Kingdom insurance business or non-insurance business which is investment business—

- (a) seek the advice of the transferee body with respect to any matters which are relevant to those functions of the body and relate to the society, its proposed business or persons who are or will be, within the meaning of the Friendly Societies Act 1992, members of the committee of management or other officers of the society; and
- (b) take into account any advice on those matters given to the Commission by the transferee body before the application is decided.

(2) In sub-paragraph (1) above—

- (a) “insurance business” has the meaning given by section 117(1) of the Friendly Societies Act 1992; and
- (b) “non-insurance business” has the meaning given by section 119(1) of that Act.

(3) The Commission may for the purpose of obtaining the advice of a transferee body under sub-paragraph (1) above furnish it with any information obtained by the Commission in connection with the application.]

#### Textual Amendments

**F5** Sch. 11 para. 31A inserted (1.2.1993 for specified purposes and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 98, Sch. 18 Pt. II para.19 (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, Sch.4; S.I. 1993/2213, art. 2(1), Sch.5.

32 A transferee body shall at least once in each year for which the transfer order is in force make a report to the Registrar on the discharge of the functions transferred to it by the order and on such other matters as the order may require and the Registrar shall send a copy of each report received by him under this paragraph to the Secretary of State who shall lay copies of the report before Parliament.

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- 33 (1) This paragraph applies where the function of making or revoking a recognition order in respect of a self-regulating organisation for friendly societies is exercisable by a transferee body.
- (2) Paragraph 3(2) above shall have effect as if the first reference to the Secretary of State included a reference to the Registrar.
- (3) The transferee body shall not regard the requirement mentioned in paragraph 4(2) as satisfied unless the Registrar has certified that he also regards it as satisfied.
- (4) A transferee body shall send the Registrar and the Secretary of State a copy of any notice received by it under paragraph 8(6) above.
- (5) Where the Secretary of State exercises any of the powers conferred by paragraph 10(2) above in relation to an organisation the Registrar shall direct the transferee body to take the appropriate action in relation to that organisation and such a direction shall, on the application of the Registrar, be enforceable by mandamus or, in Scotland, by an order for specific performance under section 91 of the <sup>M1</sup>Court of Session Act 1868.

#### Marginal Citations

**M1** 1868 c. 100.

- [<sup>F6</sup>34 (1) A transferee body to which the Registrar has transferred any legislative functions may exercise those functions without the consent of the Secretary of State.
- (2) In this paragraph “legislative functions” means the functions of issuing or making statements of principle, rules, regulations or codes of practice.]

#### Textual Amendments

**F6** Sch. 11 para. 34 substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), Sch. 23 para. 40

- 35 (1) A transferee body shall not impose any prohibition or requirement under section 65 or 67 of this Act on a regulated friendly society or vary any such prohibition or requirement unless it has given reasonable notice of its intention to do so to the Registrar and informed him—
- (a) of the manner in which and the date on or after which it intends to exercise the power; and
- (b) in the case of a proposal to impose a prohibition or requirement, on which of the grounds specified in paragraph 23(2) above it proposes to act and its reasons for considering that the ground in question exists and that it is necessary to impose the prohibition or requirement.
- (2) A transferee body shall not exercise any power to which sub-paragraph (1) above applies if before the date given in the notice in pursuance of sub-paragraph (1)(a) above the Registrar has served on it a notice in writing directing it not to do so; and the Registrar may serve such a notice if he considers it is desirable for protecting members or potential members of the regulated friendly society against the risk that

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it may be unable to meet its liabilities or to fulfil the reasonable expectations of its members or potential members.

- 36 (1) The Secretary of State shall not consent to the making of an order by the Registrar under paragraph 28 above transferring any functions to a transferee body unless he is satisfied that any [<sup>F7</sup>statements of principle, rules, regulations, codes of practice], guidance and recommendations of which copies are furnished to him under paragraphs 29(a) and 30(1) above do not have, and are not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition or, if they have or are intended or likely to have that effect to any significant extent, that the effect is not greater than is necessary for the protection of investors.
- (2) Section 121(2) and (4) and sections 122 to 128 above shall have effect in relation to transferee bodies and transfer orders as they have effect in relation to designated agencies and designation orders but subject to the following modifications.
- (3) Those provisions shall have effect as if the powers exercisable under section 121(3) were—
- (a) to make an order transferring back to the Registrar all or any of the functions transferred to the transferee body by a transfer order; or
  - (b) to direct the Registrar to direct the transferee body to take specified steps for the purpose of securing that the [<sup>F8</sup>statements of principle, rules, regulations, codes of practice], guidance or practices in question do not have the effect mentioned in sub-paragraph (1) above.
- (4) No order shall be made by virtue of sub-paragraph (3) above unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (5) For the decisions referred to in section 122(1) there shall be substituted a reference to the Secretary of State's decision whether he is precluded by sub-paragraph (1) above from giving his consent to the making of a transfer order.
- (6) Section 128 shall apply as if—
- (a) the powers referred to in subsection (1) of that section included the power conferred by sub-paragraph (3)(b) above; and
  - (b) the references to Chapter XIV of Part I included references to this paragraph.

#### Textual Amendments

**F7** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 para. 41](#)

**F8** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 para. 41](#)

- 37 (1) If a transferee body has reasonable grounds for believing that any regulated friendly society has failed to comply with an obligation to which it is subject by virtue of this Act it shall forthwith give notice of that fact to the Registrar so that he can take it into consideration in deciding whether to exercise in relation to the society any of the powers conferred on him by sections 87 to 89 and 91 of the <sup>M2</sup>Friendly Societies Act 1974 or, as the case may be, sections 77 to 80 of the <sup>M3</sup>Friendly Societies Act (Northern Ireland) 1970 (inspection, winding up, suspension of business and cancellation and suspension of registration).

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- (2) A notice under sub-paragraph (1) above shall contain particulars of the obligation in question and of the transferee body's reasons for considering that the society has failed to satisfy that obligation.
- (3) A transferee body need not give a notice under sub-paragraph (1) above in respect of any matter unless it considers that that matter (either alone or in conjunction with other matters) would justify the withdrawal of authorisation under section 28 of this Act in the case of a person to whom that provision applies.

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**Marginal Citations**

**M2** 1974 c. 46.

**M3** 1970 c. 31 (N.I.).

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