

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, SCHEDULE 23. (See end of Document for details)

SCHEDULES

SCHEDULE 23

Section 206(1).

CONSEQUENTIAL AMENDMENTS OF THE FINANCIAL SERVICES ACT 1986

PART I

GENERAL AMENDMENTS

- 1 (1) Section 13 of the Financial Services Act 1986 (power to direct alteration of rules of recognised self-regulating organisation) is amended as follows.
- (2) Omit subsection (1).
- (3) For subsection (2) substitute—
- “**(2)** If at any time it appears to the Secretary of State that—
- (a) a recognised self-regulating organisation is concerned with two or more kinds of investment business, and
- (b) the requirement in paragraph 3(1) of Schedule 2 to this Act is not satisfied in respect of investment business of one or more but not all of those kinds,
- he may, instead of revoking the recognition order or making an application under section 12 above, direct the organisation to alter, or himself alter, its rules so that they preclude a member from carrying on investment business of a kind in respect of which that requirement is not satisfied, unless he is an authorised person otherwise than by virtue of membership of the organisation or is an exempted person in respect of that business.”.
- (4) For subsection (3) substitute—
- “**(3)** A direction under this section is enforceable on the application of the Secretary of State by injunction or, in Scotland, by an order under section 45 of the Court of Session Act 1988.”.
- (5) Omit subsections (4) to (6).

Modifications etc. (not altering text)

C1 Sch. 23 para. 1 restricted by [S.I. 1990/354](#), [art. 6\(2\)\(b\)](#)

- 2 (1) Section 48 of the Financial Services Act 1986 (conduct of business rules) is amended as follows.

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, SCHEDULE 23. (See end of Document for details)

- (2) In subsection (1) omit the words “members of a recognised self-regulating organisation or” and “organisation or”.
- (3) After subsection (10) insert—
- “(11) Section 63A below (application of designated rules) has effect as regards the application of rules under this section to members of recognised self-regulating organisations in respect of investment business in the carrying on of which they are subject to the rules of the organisation.”.
- 3 (1) Section 49 of the ^{M1}Financial Services Act 1986 (financial resources rules) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) The Secretary of State may make rules requiring—
- (a) a person authorised to carry on investment business by virtue of section 25 or 31 above, or
- (b) a member of a recognised self-regulating organisation carrying on investment business in the carrying on of which he is subject to the rules of the organisation,
- to have and maintain in respect of that business such financial resources as are required by the rules.”.
- (3) After subsection (2) insert—
- “(3) Section 63A below (application of designated rules) has effect as regards the application of rules under this section to members of recognised self-regulating organisations in respect of investment business in the carrying on of which they are subject to the rules of the organisation.”.

Marginal Citations

M1 1986 c. 60.

- 4 In section 50 of the Financial Services Act 1986 (power of Secretary of State to modify conduct of business and financial resources rules for particular cases), after subsection (3) insert—
- “(4) The powers conferred by subsection (1) above shall not be exercised in a case where the powers conferred by section 63B below are exercisable (powers of recognised self-regulating organisation in relation to designated rules).”.
- 5 In section 52 of the Financial Services Act 1986 (notification regulations), in subsection (3) (application to member of recognised self-regulating organisation or professional body), for “subject to any of the rules made under section 48 above” substitute “not subject to the rules of that organisation or body”.

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, SCHEDULE 23. (See end of Document for details)

- 6 (1) Section 55 of the Financial Services Act 1986 (clients' money) is amended as follows.
- (2) In subsection (2)(b) and (e) omit the words “a member of a recognised self-regulating organisation or” and “organisation or”.
- (3) In subsection (3) omit the words “organisation or”.
- (4) After subsection (5) insert—
- “(6) Section 63A below (application of designated regulations) has effect as regards the application of regulations under this section to members of recognised self-regulating organisations in respect of investment business in the carrying on of which they are subject to the rules of the organisation.”.

Modifications etc. (not altering text)

C2 Sch. 23 para. 6 restricted by [S.I. 1990/354, art. 6\(4\)](#)

- 7 In section 56 of the Financial Services Act 1986 (unsolicited calls), for subsection (7) substitute—
- “(7) Section 63A below (application of designated regulations) has effect as regards the application of regulations under this section to members of recognised self-regulating organisations in respect of investment business in the carrying on of which they are subject to the rules of the organisation.
- As it applies to such persons in respect of such business the reference in subsection (1) above to conduct permitted by regulations made by the Secretary of State shall be construed—
- (a) where or to the extent that the regulations do not apply, as a reference to conduct permitted by the rules of the organisation; and
- (b) where or to the extent that the regulations do apply but are expressed to have effect subject to the rules of the organisation, as a reference to conduct permitted by the regulations together with the rules of the organisation.
- (7A) In the application of this section to anything done by a person certified by a recognised professional body in carrying on investment business in the carrying on of which he is subject to the rules of the body, the reference in subsection (1) above to conduct permitted by regulations made by the Secretary of State shall be construed as a reference to conduct permitted by the rules of the body.”.
- 8 In section 86 of the ^{M2}Financial Services Act 1986 (collective investment schemes constituted in other member States), in subsection (7) (restriction on application of conduct of business rules), at the end add—
- “This subsection also applies to statements of principle under section 47A and codes of practice under section 63A so far as they relate to matters falling within the rule-making power in section 48.”.

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, SCHEDULE 23. (See end of Document for details)

Marginal Citations

M2 1986 c. 60.

- 9 In section 95 of the Financial Services Act 1986 (collective investment schemes: contraventions), after subsection (2) add—
- “(3) The disciplinary action which may be taken by virtue of section 47A(3) (failure to comply with statement of principle) includes—
- (a) the giving of a direction under section 91(2), and
- (b) the application by the Secretary of State for an order under section 93;
- and subsection (6) of section 47A (duty of the Secretary of State as to exercise of powers) has effect accordingly.”.
- 10 (1) Section 107 of the Financial Services Act 1986 (appointment of auditors) is amended as follows.
- (2) For subsection (1) (power to make rules) substitute—
- “(1) The Secretary of State may make rules requiring—
- (a) a person authorised to carry on investment business by virtue of section 25 or 31 above, or
- (b) a member of a recognised self-regulating organisation carrying on investment business in the carrying on of which he is subject to the rules of the organisation,
- and who, apart from the rules, is not required by or under any enactment to appoint an auditor, to appoint as an auditor a person satisfying such conditions as to qualifications and otherwise as may be specified in or imposed under the rules.”.
- (3) After subsection (3) add—
- “(4) In its application to members of recognised self-regulating organisations, this section has effect subject to section 107A below.”.
- 11 After section 107 of the Financial Services Act 1986 insert—
- “107A Application of audit rules to members of self-regulating organisations.**
- (1) The Secretary of State may in rules under section 107 designate provisions which apply, to such extent as may be specified, to a member of a recognised self-regulating organisation in respect of investment business in the carrying on of which he is subject to the rules of the organisation.
- (2) It may be provided that the designated rules have effect, generally or to such extent as may be specified, subject to the rules of the organisation.

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, SCHEDULE 23. (See end of Document for details)

- (3) A member of a recognised self-regulating organisation who contravenes a rule applying to him by virtue of that section shall be treated as having contravened the rules of the organisation.
 - (4) Except as mentioned above, rules made under section 107 do not apply to members of recognised self-regulating organisations in respect of investment business in the carrying on of which they are subject to the rules of the organisation.
 - (5) A recognised self-regulating organisation may on the application of a member of the organisation—
 - (a) modify a rule designated under this section so as to adapt it to his circumstances or to any particular kind of business carried on by him, or
 - (b) dispense him from compliance with any such rule, generally or in relation to any particular kind of business carried on by him.
 - (6) The powers conferred by subsection (5) shall not be exercised unless it appears to the organisation—
 - (a) that compliance with the rule in question would be unduly burdensome for the applicant having regard to the benefit which compliance would confer on investors, and
 - (b) that the exercise of those powers will not result in any undue risk to investors.
 - (7) The powers conferred by subsection (5) may be exercised unconditionally or subject to conditions; and subsection (3) applies in the case of a contravention of a condition as in the case of contravention of a designated rule.
 - (8) The reference in paragraph 4(1) of Schedule 2 (requirements for recognition of self-regulating organisations) to monitoring and enforcement of compliance with rules includes monitoring and enforcement of compliance with conditions imposed by the organisation under subsection (7).”.
- 12 (1) Section 114 of the ^{M3}Financial Services Act 1986 (power to transfer functions to designated agency) is amended as follows.
- (2) For subsection (9) substitute—
- “(9) The Secretary of State shall not make a delegation order transferring any legislative functions unless—
- (a) the agency has furnished him with a copy of the instruments it proposes to issue or make in the exercise of those functions, and
 - (b) he is satisfied that those instruments will afford investors an adequate level of protection and, in the case of such provisions as are mentioned in Schedule 8 to this Act, comply with the principles set out in that Schedule.
- In this subsection “legislative functions” means the functions of issuing or making statements of principle, rules, regulations or codes of practice.”.

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, SCHEDULE 23. (See end of Document for details)

- (3) In subsection (12) for “rules or regulations made” substitute “statements of principle, rules, regulations or codes of practice issued or made”.

Marginal Citations

M3 1986 c. 60.

- 13 (1) Section 115 of the ^{M4}Financial Services Act 1986 (resumption of transferred functions) is amended as follows.

- (2) For subsection (5) substitute—

“(5) Where the transferred functions consist of or include any legislative functions, an order may be made under subsection (2) above if at any time it appears to the Secretary of State that the instruments issued or made by the agency do not satisfy the requirements of section 114(9)(b) above.”.

- (3) In subsection (7)—

- (a) in the opening words, for “subsection (2)(b) above” substitute “this section”, and
 (b) in paragraph (a) for “functions of making rules or regulations” substitute “functions of issuing or making statements of principle, rules, regulations or codes of practice”.

Marginal Citations

M4 1986 c. 60.

- 14 (1) Section 119 of the Financial Services Act 1986 (competition scrutiny: recognition orders) is amended as follows.

- (2) In subsection (1) (considerations relevant to making of recognition order), for paragraphs (a) and (b) substitute—

- “(a) in the case of a self-regulating organisation, the rules and any guidance of which copies are furnished with the application for the order, together with any statements of principle, rules, regulations or codes of practice to which members of the organisation would be subject by virtue of Chapter V of this Part,
 (b) in the case of an investment exchange, the rules and any guidance of which copies are furnished with the application for the order, together with any arrangements of which particulars are furnished with the application,
 (c) in the case of a clearing house, the rules and any guidance of which copies are furnished with the application for the order,”.

- (3) In subsection (2) (circumstances in which powers are exercisable in relation to recognised body), for paragraphs (a) to (c) substitute—

- “(a) in the case of a self-regulating organisation—
 (i) any rules made or guidance issued by the organisation,

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, SCHEDULE 23. (See end of Document for details)

- (ii) any practices of the organisation, or
 - (iii) any practices of persons who are members of, or otherwise subject to the rules made by, the organisation,
 - together with any statements of principle, rules, regulations or codes of practice to which members of the organisation are subject by virtue of Chapter V of this Part,
 - (b) in the case of a recognised investment exchange—
 - (i) any rules made or guidance issued by the exchange,
 - (ii) any practices of the exchange, or
 - (iii) any practices of persons who are members of, or otherwise subject to the rules made by, the exchange,
 - (c) in the case of a recognised clearing house—
 - (i) any rules made or guidance issued by the clearing house,
 - (ii) any practices of the clearing house, or
 - (iii) any practices of persons who are members of, or otherwise subject to the rules made by, the clearing house,
- or any clearing arrangements made by the clearing house.”.
- (4) In subsection (3) (powers exercisable in relation to recognised body)—
- (a) in paragraph (b) for “the rules” substitute “its rules, or the”, and
 - (b) in paragraph (c) for “the rules” substitute “its rules”.
- (5) In subsection (5) (construction of references to practices)—
- (a) for “paragraph (b)” substitute “paragraph (a)(ii), (b)(ii) and (c)(ii)”, and
 - (b) omit the words from “and the practices referred to in paragraph (c)” to the end.
- (6) After that subsection insert—
- “(6) The practices referred to in paragraph (a)(iii), (b)(iii) and (c)(iii) of subsection (2) above are—
- (a) in relation to a recognised self-regulating organisation, practices in relation to business in respect of which the persons in question are subject to—
 - (i) the rules of the organisation, or
 - (ii) statements of principle, rules, regulations or codes of practice to which its members are subject by virtue of Chapter V of this Part,
- and which are required or contemplated by the rules of the organisation or by those statements, rules, regulations or codes, or by guidance issued by the organisation,
- (b) in relation to a recognised investment exchange or clearing house, practices in relation to business in respect of which the persons in question are subject to the rules of the exchange or clearing house, and which are required or contemplated by its rules or guidance,
- or which are otherwise attributable to the conduct of the organisation, exchange or clearing house as such.”.

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, SCHEDULE 23. (See end of Document for details)

- 15 (1) Section 121 of the ^{M5}Financial Services Act 1986 (competition scrutiny: designated agencies) is amended as follows.
- (2) In subsection (1) for “rules, regulations” substitute “statements of principle, rules, regulations, codes of practice”.
- (3) In subsection (2)(a) and (c) for “rules or regulations made” substitute “statements of principle, rules, regulations or codes of practice issued or made”.
- (4) In subsection (3)(b) for “rules, regulations” substitute “statements of principle, rules, regulations, codes of practice”.
- (5) In subsection (4) for “rules or regulations” (twice) substitute “statements of principle, rules, regulations or codes of practice”.

Marginal Citations

M5 1986 c. 60.

- 16 (1) Section 122 of the Financial Services Act 1986 (reports by Director General of Fair Trading) is amended as follows.
- (2) In subsection (1) for “and regulations” substitute “, statements of principle, regulations and codes of practice”.
- (3) In subsection (2) for “regulations,” substitute “statements of principle, regulations, codes of practice,”.
- (4) In subsection (4)—
- (a) in paragraph (a) for “rules, guidance, arrangements and regulations” substitute “rules, statements of principle, regulations, codes of practice, guidance and arrangements”, and
- (b) in the words following the paragraphs, for “rules, guidance, arrangements, regulations” substitute “rules, statements of principle, regulations, codes of practice, guidance, arrangements”, and for “rules, guidance, arrangements or regulations” substitute “rules, statements of principle, regulations, codes of practice, guidance or arrangements”.
- 17 (1) Section 124 of the ^{M6}Financial Services Act 1986 (matters to be left out of account for certain purposes in connection with competition scrutiny) is amended as follows.
- (2) In subsection (1) (matters to be left out of account in determining whether monopoly situation exists), in paragraph (c) for “rules or regulations made or guidance issued” substitute “statements of principle, rules, regulations, codes of practice or guidance issued or made”.
- (3) In subsection (3) (matters to be excluded from consideration where monopoly situation exists)—
- (a) in paragraph (a), for “rules or regulations made” substitute “statements of principle, rules, regulations or codes of practice issued or made”,
- (b) in paragraph (b), for “rules or regulations” substitute “statements of principle, rules, regulations or codes of practice”, and

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, SCHEDULE 23. (See end of Document for details)

- (c) in the closing words, for “rules, regulations” substitute “statements of principle, rules, regulations, codes of practice”.

Marginal Citations

M6 1986 c. 60.

- 18 For section 205 of the Financial Services Act 1986 (regulations, rules and orders) substitute—

“205 General power to make regulations.

The Secretary of State may make regulations prescribing anything which by this Act is authorised or required to be prescribed.

205A Supplementary provisions with respect to subordinate legislation.

- (1) The following provisions apply to any power of the Secretary of State under this Act—
- (a) to issue statements of principle,
 - (b) to make rules or regulations,
 - (c) to make orders (other than such orders as are excepted by subsection (4) below), or
 - (d) to issue codes of practice.
- (2) Any such power is exercisable by statutory instrument and includes power to make different provision for different cases.
- (3) Except as otherwise provided, a statutory instrument containing statements of principle, rules or regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) The above provisions do not apply to a recognition order, an order declaring a collective investment scheme to be an authorised unit trust scheme or a recognised scheme or to an order revoking any such order.”.

- 19 In section 206(1) of the Financial Services Act 1986 (publication of information and advice)—

- (a) in paragraph (a), for “rules and regulations made” substitute “statements of principle, rules, regulations and codes of practice issued or made”, and
- (b) in paragraph (b) for “rules or regulations” substitute “statements of principle, rules, regulations or codes of practice”.

- 20 In Schedule 2 to the Financial Services Act 1986 (requirements for recognition of self-regulating organisations), in paragraph 4(1) (monitoring and enforcement) for “rules or regulations” substitute “statements of principle, rules, regulations or codes of practice”.

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, SCHEDULE 23. (See end of Document for details)

- 21 In Schedule 3 to the ^{M7}Financial Services Act 1986 (requirements for recognition of professional bodies), in paragraph 4(2) (monitoring and enforcement) for “rules or regulations” substitute “statements of principle, rules, regulations or codes of practice”.

Marginal Citations

M7 1986 c. 60.

- 22 In Schedule 7 to the Financial Services Act 1986 (qualifications of designated agency), in paragraph 2(2) (arrangements for discharge of functions: matters to be decided upon by the governing body) for “rules or regulations must be made” substitute “statements of principle, rules, regulations and codes of practice must be issued or made”.
- 23 (1) Schedule 8 to the Financial Services Act 1986 (principles applicable to designated agency’s rules and regulations) is amended as follows.
- (2) In the heading for “Rules and Regulations” substitute “Legislative Provisions”.
- (3) For paragraph 1, and the cross-heading preceding it, substitute—

Introduction

- “1 (1) In this Schedule “legislative provisions” means the provisions of statements of principle, rules, regulations and codes of practice issued or made under Part I of this Act.
- (2) References in this Schedule to “conduct of business provisions” are to rules made under section 48 of this Act and statements of principle and codes of practice so far as they relate to matters falling within that rule-making power.
- (3) References in this Schedule to provisions made for the purposes of a specified section or Chapter are to rules or regulations made under that section or Chapter and statements of principle and codes of practice so far as they relate to matters falling within that power to make rules or regulations.

Standards

- 1A The conduct of business provisions and the other legislative provisions must promote high standards of integrity and fair dealing in the conduct of investment business.”.
- (4) In paragraphs 2 to 7, 9, 11 and 12 for “conduct of business rules” substitute “conduct of business provisions”.
- (5) In paragraph 7 for “those rules and rules under” substitute “those provisions and provisions made for the purposes of”.
- (6) In paragraph 8 for “Rules made under” substitute “Provisions made for the purposes of”.

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, SCHEDULE 23. (See end of Document for details)

- (7) In paragraph 9 for “regulations made under” substitute “provisions made for the purposes of”.
- (8) In paragraph 10 for “Rules made under” substitute “Provisions made for the purposes of” and for “under those sections” substitute “for the purposes of those sections”.
- (9) In paragraph 12 for “rules and regulations made under” substitute “provisions made for the purposes of”.
- 24 (1) Schedule 9 to the Financial Services Act 1986 (designated agency: exercise of transferred functions) is amended as follows.
- (2) In paragraph 4(1) (copies of instruments to be sent to Secretary of State), for “any rules or regulations made” substitute “any statements of principle, rules, regulations or codes of practice issued or made”.
- (3) For paragraphs 5 and 6 substitute—
- “5 Paragraphs 6 to 9 below have effect instead of section 205A of this Act in relation to statements of principle, rules, regulations and codes of practice issued or made by a designated agency in the exercise of powers transferred to it by a delegation order.
- 6 Any such power is exercisable by instrument in writing and includes power to make different provision for different cases.”.
- (4) In paragraph 8 (instruments to be printed and made available to public)—
- (a) in sub-paragraph (1) for “is made” substitute “is issued or made”, and
- (b) in sub-paragraph (2) for “rule or regulation” (twice) substitute “statement of principle, rule, regulation or code of practice”.
- (5) In paragraph 9 (proof of instruments), for “made by the agency” (twice) substitute “made or issued by the agency”.
- (6) For paragraph 12 (consultation) substitute—
- “12 (1) Where a designated agency proposes, in the exercise of powers transferred to it by a delegation order, to issue or make any statements of principle, rules, regulations or codes of practice, it shall publish the proposed instrument in such manner as appears to it best calculated to bring the proposals to the attention of the public, together with a statement that representations about the proposals (and, in particular, representations as to the cost of complying with the proposed provisions) can be made to the agency within a specified time.
- (2) Before issuing or making the instrument the agency shall have regard to any representations duly made in accordance with that statement.
- (3) The above requirements do not apply—
- (a) where the agency considers that the delay involved in complying with them would be prejudicial to the interests of investors;

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, SCHEDULE 23. (See end of Document for details)

- (b) to the issuing or making of an instrument in the same, or substantially the same, terms as a proposed instrument which was furnished by the agency to the Secretary of State for the purposes of section 114(9) of this Act.”.
- 25 (1) Schedule 10 to the ^{M8}Financial Services Act 1986 (application of investment business provisions to regulated insurance companies) is amended as follows.
- (2) In paragraph 4 (modification of conduct of business rules), after sub-paragraph (2) insert—
- “(2A) Sub-paragraphs (1) and (2) also apply to statements of principle under section 47A and codes of practice under section 63A so far as they relate to matters falling within the rule-making power in section 48.”.
- (3) In paragraph 7 (withdrawal of authorisation) after sub-paragraph (2) insert—
- “(3) The disciplinary action which may be taken by virtue of section 47A(3) of this Act (failure to comply with statement of principle) includes—
- (a) the withdrawal of authorisation under section 11(2)(a) of the Insurance Companies Act 1982, and
- (b) the giving of a direction under section 13(2A) of that Act; and subsection (6) of section 47A (duty of the Secretary of State as to exercise of powers) has effect accordingly.”.

Marginal Citations

M8 1986 c. 60.

PART II

AMENDMENTS RELATING TO FRIENDLY SOCIETIES

- 26 Schedule 11 to the ^{M9}Financial Services Act 1986 (friendly societies) is amended as follows.

Marginal Citations

M9 1986 c. 60.

- 27 In paragraph 3(2) (competition scrutiny: recognition of self-regulating organisation for friendly societies), after “sent to him under this sub-paragraph” insert “, together with any statements of principle, rules, regulations or codes of practice to which members of the organisation would be subject by virtue of this Schedule,”.

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, SCHEDULE 23. (See end of Document for details)

- 28 (1) Paragraph 4 (requirements for recognition of self-regulating organisation for friendly societies) is amended as follows.
- (2) In sub-paragraph (4)—
- (a) in paragraph (a) for “22” substitute “22D”, and
- (b) omit paragraph (b).
- (3) In sub-paragraph (5) for “22” substitute “22D”.
- 29 Omit paragraph 7.

Modifications etc. (not altering text)

C3 Sch. 23 para. 29 restricted by [S.I. 1990/354, art. 6\(2\)\(b\)](#)

- 30 (1) Paragraph 10 (competition scrutiny: circumstances in which powers are exercisable in relation to recognised self-regulating organisation for friendly societies) is amended as follows.
- (2) In sub-paragraph (1), after paragraph (c) insert “together with any statements of principle, rules, regulations or codes of practice to which members of the organisation are subject by virtue of this Schedule.”.
- (3) In sub-paragraph (2)—
- (a) in paragraph (b), for “the rules” substitute “its rules, or the”, and
- (c) in paragraph (c), for “the rules” substitute “its rules”.
- (4) In sub-paragraph (3) (construction of references to practices), omit the words from “and the practices referred to in paragraph (c)” to the end; and after that sub-paragraph insert—
- “(3A) The practices referred to in paragraph (c) of sub-paragraph (1) above are practices in relation to business in respect of which the persons in question are subject to—
- (a) the rules of the organisation, or
- (b) statements of principle, rules, regulations or codes of practice to which its members are subject by virtue of this Schedule,
- and which are required or contemplated by the rules of the organisation or by those statements, rules, regulations or codes, or by guidance issued by the organisation, or which are otherwise attributable to the conduct of the organisation as such.”.
- 31 In paragraph 13, for “Paragraphs 14 to 25” substitute “Paragraphs 13A to 25”.
- 32 Before paragraph 14 and after the heading “*Conduct of investment business*”, insert—

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, SCHEDULE 23. (See end of Document for details)

- “13A(1) The Registrar may issue statements of principle with respect to the conduct expected of regulated friendly societies.
- (2) The conduct expected may include compliance with a code or standard issued by another person, as for the time being in force, and may allow for the exercise of discretion by any person pursuant to any such code or standard.
 - (3) Failure to comply with a statement of principle under this paragraph is a ground for the taking of disciplinary action or the exercise of powers of intervention, but it does not give rise to any right of action by investors or other persons affected or affect the validity of any transaction.
 - (4) The disciplinary action which may be taken by virtue of sub-paragraph (3) is—
 - (a) the making of a public statement under paragraph 21, or
 - (b) the application by the Registrar for an injunction, interdict or other order under paragraph 22(1), or
 - (c) any action under paragraph 26 or 27 of this Schedule;
 and the reference in that sub-paragraph to powers of intervention is to the powers conferred by Chapter VI of Part I of this Act.
 - (5) Where a statement of principle relates to compliance with a code or standard issued by another person, the statement of principle may provide—
 - (a) that failure to comply with the code or standard shall be a ground for the taking of disciplinary action, or the exercise of powers of intervention, only in such cases and to such extent as may be specified; and
 - (b) that no such action shall be taken, or any such power exercised, except at the request of the person by whom the code or standard in question was issued.
 - (6) The Registrar shall exercise his powers in such manner as appears to him appropriate to secure compliance with statements of principle under this paragraph.
- 13B(1) The relevant regulatory authority may on the application of a regulated friendly society—
- (a) modify a statement of principle issued under paragraph 13A so as to adapt it to the circumstances of the society or to any particular kind of business carried on by it, or
 - (b) dispense the society from compliance with any such statement of principle, generally or in relation to any particular kind of business carried on by it.
- (2) The powers conferred by this paragraph shall not be exercised unless it appears to the relevant regulatory authority—
- (a) that compliance with the statement of principle in question would be unduly burdensome for the applicant having regard to the benefit which compliance would confer on investors, and

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, SCHEDULE 23. (See end of Document for details)

- (b) that the exercise of those powers will not result in any undue risk to investors.
 - (3) The powers conferred by this paragraph may be exercised unconditionally or subject to conditions; and paragraph 13A(3) applies in the case of failure to comply with a condition as in the case of failure to comply with a statement of principle.
 - (4) The relevant regulatory authority for the purposes of this paragraph is—
 - (a) in the case of a member society of a recognised self-regulating organisation for friendly societies, in relation to investment business in the carrying on of which it is subject to the rules of the organisation, that organisation;
 - (b) in any other case, or in relation to other investment business, the Registrar.
 - (5) The reference in paragraph 4(1) of Schedule 2 as applied by paragraph 4 above (requirements for recognition of self-regulating organisation for friendly societies) to monitoring and enforcement of compliance with statements of principle includes monitoring and enforcement of compliance with conditions imposed by the organisation under this paragraph.”.
- 33 (1) Paragraph 14 (conduct of business rules) is amended as follows.
- (2) In sub-paragraph (1), omit the words “other than a member society”.
 - (3) After sub-paragraph (2) insert—
 - “(2A) Paragraph 22B below has effect as regards the application of rules under this paragraph to member societies in respect of investment business in the carrying on of which they are subject to the rules of a recognised self-regulating organisation for friendly societies.”.
 - (4) In sub-paragraph (3), omit the word “and” after paragraph (a); and after paragraph (b) insert—
 - “; and
 - (c) for the references in subsection (4) to section 63B and a recognised self-regulating organisation there shall be substituted references to paragraph 13B and a recognised self-regulating organisation for friendly societies.”.
- 34 (1) Paragraph 19 (clients’ money regulations) is amended as follows.
- (2) In sub-paragraph (2) for the words from “(but with the substitution” to the end substitute “(but with the substitution for the reference in paragraph (e) of subsection (2) to the Secretary of State of a reference to the Registrar)”.
 - (3) After that sub-paragraph insert—
 - “(3) Paragraph 22B below has effect as regards the application of regulations under this paragraph to member societies in respect of investment business in the carrying on of which they are subject to the rules of a recognised self-regulating organisation for friendly societies.”.

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, SCHEDULE 23. (See end of Document for details)

Modifications etc. (not altering text)

C4 Sch. 23 para. 34 restricted by S.I. 1990/354, art. 6(4)

35 For paragraph 20 (unsolicited calls) substitute—

- “20 (1) Regulations under section 56(1) of this Act shall not permit anything to be done by a regulated friendly society but that section shall not apply to anything done by such a society in the course of or in consequence of an unsolicited call which, as respects the society, constitutes the carrying on of regulated business, if it is permitted to be done by the society by regulations made by the Registrar with the consent of the Secretary of State.
- (2) Paragraph 22B below has effect as regards the application of regulations under this paragraph to member societies in respect of investment business in the carrying on of which they are subject to the rules of a recognised self-regulating organisation for friendly societies.
- (3) As it applies to such persons in respect of such business, the reference in sub-paragraph (1) above to conduct permitted by regulations made by the Registrar with the consent of the Secretary of State shall be construed—
- (a) where or to the extent that the regulations do not apply, as a reference to conduct permitted by the rules of the organisation; and
 - (b) where or to the extent that the regulations do apply but are expressed to have effect subject to the rules of the organisation, as a reference to conduct permitted by the regulations together with the rules of the organisation.”

36 After paragraph 22 (and after the paragraph inserted by section 193(3)) insert—

- “22B(1) The Registrar may in rules and regulations under—
- (a) paragraph 14 (conduct of business rules),
 - (b) paragraph 19 (clients’ money regulations), or
 - (c) paragraph 20 (regulations as to unsolicited calls),
- designate provisions which apply, to such extent as may be specified, to a member society in respect of investment business in the carrying on of which it is subject to the rules of a recognised self-regulating organisation for friendly societies.
- (2) It may be provided that the designated rules or regulations have effect, generally or to such extent as may be specified, subject to the rules of the organisation.
- (3) A member society which contravenes a rule or regulation applying to it by virtue of this paragraph shall be treated as having contravened the rules of the relevant recognised self-regulating organisation for friendly societies.

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, SCHEDULE 23. (See end of Document for details)

- (4) It may be provided that, to such extent as may be specified, the designated rules or regulations may not be modified or waived (under paragraph 22C below or section 50) in relation to a member society.

Where such provision is made any modification or waiver previously granted shall cease to have effect, subject to any transitional provision or saving contained in the rules or regulations.

- (5) Except as mentioned in sub-paragraph (1), the rules and regulations referred to in that sub-paragraph do not apply to a member society in respect of investment business in the carrying on of which it is subject to the rules of a recognised self-regulating organisation for friendly societies.

22C (1) A recognised self-regulating organisation for friendly societies may on the application of a society which is a member of the organisation—

- (a) modify a rule or regulation designated under paragraph 22B so as to adapt it to the circumstances of the society or to any particular kind of business carried on by it, or
 - (b) dispense the society from compliance with any such rule or regulation, generally or in relation to any particular kind of business carried on by it.
- (2) The powers conferred by this paragraph shall not be exercised unless it appears to the organisation—
- (a) that compliance with the rule or regulation in question would be unduly burdensome for the applicant having regard to the benefit which compliance would confer on investors, and
 - (b) that the exercise of those powers will not result in any undue risk to investors.
- (3) The powers conferred by this paragraph may be exercised unconditionally or subject to conditions; and paragraph 22B(3) applies in the case of a contravention of a condition as in the case of contravention of a designated rule or regulation.
- (4) The reference in paragraph 4(1) of Schedule 2 as applied by paragraph 4 above (requirements for recognition of self-regulating organisation for friendly societies) to monitoring and enforcement of compliance with rules and regulations includes monitoring and enforcement of compliance with conditions imposed by the organisation under this paragraph.

22D (1) The Registrar may issue codes of practice with respect to any matters dealt with by statements of principle issued under paragraph 13A or by rules or regulations made under any provision of this Schedule.

- (2) In determining whether a society has failed to comply with a statement of principle—
- (a) a failure by it to comply with any relevant provision of a code of practice may be relied on as tending to establish failure to comply with the statement of principle, and

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, SCHEDULE 23. (See end of Document for details)

- (b) compliance by it with the relevant provisions of a code of practice may be relied on as tending to negative any such failure.
- (3) A contravention of a code of practice with respect to a matter dealt with by rules or regulations shall not of itself give rise to any liability or invalidate any transaction; but in determining whether a society's conduct amounts to contravention of a rule or regulation—
- (a) contravention by it of any relevant provision of a code of practice may be relied on as tending to establish liability, and
- (b) compliance by it with the relevant provisions of a code of practice may be relied on as tending to negative liability.
- (4) Where by virtue of paragraph 22B (application of designated rules and regulations to member societies) rules or regulations—
- (a) do not apply, to any extent, to a member society of a recognised self-regulating organisation for friendly societies, or
- (b) apply, to any extent, subject to the rules of the organisation, a code of practice with respect to a matter dealt with by the rules or regulations may contain provision limiting its application to a corresponding extent.”.
- 37 For paragraph 29 (transfer of functions of making rules or regulations) substitute—
- “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.”.
- 38 In paragraph 30(2), for “rules or regulations made” substitute “statements of principle, rules, regulations or codes of practice issued or made”.
- 39 In paragraph 31(6)(c), for “as if the reference to section 205(2) were a reference to paragraph 45(1) below” substitute “as if the reference to section 205A were a reference to paragraph 45(1) and (3) below”.

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, SCHEDULE 23. (See end of Document for details)

- 40 For paragraph 34 substitute—
- “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.”.
- 41 In paragraph 36 (competition scrutiny: transferee bodies) in sub-paragraphs (1) and (3)(b) for “rules, regulations” substitute “statements of principle, rules, regulations, codes of practice”.
- 42 In paragraph 38(1) (publication of information and advice)—
- (a) in paragraph (a), for “rules and regulations made” substitute “statements of principle, rules, regulations and codes of practice issued or made”, and
- (b) in paragraph (b) for “rules or regulations” substitute “statements of principle, rules, regulations or codes of practice”.
- 43 In paragraph 45—
- (a) in sub-paragraph (1) for “make regulations, rules or orders” substitute “issue or make statements of principle, rules, regulations, orders or codes of practice”, and
- (b) in sub-paragraph (3) for “regulations, rules or orders” substitute “statements of principle, rules, regulations, orders or codes of practice.”.

Status:

Point in time view as at 01/02/1991.

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