

SCHEDULES

SCHEDULE 23

CONSEQUENTIAL AMENDMENTS OF THE FINANCIAL SERVICES ACT 1986

PART II

AMENDMENTS RELATING TO FRIENDLY SOCIETIES

- 26 Schedule 11 to the Financial Services Act 1986 (friendly societies) is amended as follows.
- 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,”.
- 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.
- 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

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(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—
- “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

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- (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
 - (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.

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- (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.”.
- 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

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rules of the relevant recognised self-regulating organisation for friendly societies.

- (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

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- (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”.
- 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.”.