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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order is made under sections 3 and 4 of the Building Societies (Funding) and Mutual Societies (Transfers) Act 2007 (c. 26) (“the 2007 Act”).

Part 1 contains introductory provisions about citation, commencement and interpretation.

Part 2 applies to a transfer of the whole of the business of a building society to the subsidiary of another mutual society (within the meaning of the 2007 Act). It applies only where the transfer agreement contains a statement that it so applies (article 3(1)).

Part 2 modifies the application of certain provisions of the Building Societies Act 1986 (c. 53) (“the 1986 Act”) and the Building Societies (Transfer of Business) Regulations 1998 (S.I. 1998 No. 212) (“the 1998 Regulations”) which apply to a transfer of the business of a building society to a company. It also gives effect to section 4 of the 2007 Act in relation to such transfers (article 7).

Article 5 modifies the application of paragraph 30 of Schedule 2 to the 1986 Act so that the transfer needs to be approved by a borrowing members’ resolution and a shareholding members’ resolution, instead of by a borrowing members’ resolution and the “requisite shareholders’ resolution” (the requirements for which are set out in paragraph 30 of that Schedule).

Article 6 modifies the application of section 97 of the 1986 Act so that a specially formed successor company may be formed by the building society itself or by the mutual society of which the company is a subsidiary (“the holding mutual”).

Article 7 gives effect to section 4 of the 2007 Act. A distribution of funds may be made by the building society or by the holding mutual (or both). If a distribution made by the building society exceeds the limit specified in article 7(3), it must be approved by the resolutions approving the transfer. If a distribution made by the holding mutual exceeds the limit specified in article 7(6), it must be approved by the resolution of that mutual approving the transfer, or if the transfer is approved by its board, by a resolution of the members of that mutual. Terms of the transfer agreement relating to distributions are regulated terms for the purposes of the 1986 Act (articles 7(8) and 8).

Article 9 modifies the application of section 98 of the 1986 Act. Section 98(3)(d) provides that the Financial Services Authority shall not confirm a transfer of business if it considers that a relevant requirement of the 1986 Act or of the rules of the society was not fulfilled. The modification adds section 4 of the 2007 Act and article 7 of this Order to the 1986 Act for this purpose.

Article 10 modifies the application of section 100 of the 1986 Act so that it applies only to distributions required by section 100(2)(b) and to rights in relation to shares in the successor.

Article 11 modifies the application of the 1986 Act by inserting a new section. Section 100A requires the terms of the transfer to include a provision making membership of the holding mutual available to members of the building society and to persons who, after the transfer, become customers of the building society’s successor. Membership must be available on terms no less favourable than those enjoyed by existing members of the holding mutual. The requirement does not apply where membership of any parent undertaking of the holding mutual is made available to members of the building society.

Article 12 modifies the application of section 101 of the 1986 Act so that the holding mutual is able to hold more than 15% of the shares in the successor company. It also reduces the protective period during which the restrictions in section 101 apply from five years to three years, and removes

**Status:** This is the original version (as it was originally made).

the provision which allows a company to disapply the section by passing a special resolution. New section 101A applies section 101 to a successor company which is an existing company.

Article 13 modifies the application of sections 102B and 102C, which are concerned with protecting the interests of beneficiaries in the case of trustee account holders, so that those sections apply in relation to any distribution made by the holding mutual as well as to a distribution made by the building society.

Articles 14 to 17 modify the application of the 1998 Regulations. Schedules 1 and 2 to those Regulations list the matters of which a society must provide particulars to its members in a transfer statement or transfer summary. Articles 16 and 17 modify the application of those Schedules so that particulars of some specific matters are not required and particulars of other additional matters are required. The modifications do not limit the existing powers of the Financial Services Authority to require particulars of any other matters to be provided in a particular transfer, including any matters omitted by the modifications (article 18).

Part 3 is of general application. Article 19 provides that a mutual insurer is an EEA mutual society for the purposes of section 3 of the 2007 Act, and defines mutual insurer.

An Impact Assessment has been prepared for this instrument. It is available from the Savings and Investment Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. It is also annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website ([www.opsi.gov.uk](http://www.opsi.gov.uk)). Both documents are available on the Treasury website ([www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)).