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STATUTORY INSTRUMENTS

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**2009 No. 509**

**The Mutual Societies (Transfers) Order 2009**

**PART 2**

**Building societies**

**Application of Part 2**

3.—(1) This Part applies to a transfer of the whole of the business of a building society incorporated or deemed to be incorporated under the 1986 Act to the subsidiary of another mutual society where the transfer agreement contains a statement that it so applies.

(2) A transfer to which this Part applies is referred to in this Part as a “relevant transfer”.

(3) The transfer provisions of the 1986 Act and the 1998 Regulations apply in relation to a relevant transfer with the modifications made by this Part.

(4) In this article “transfer agreement” has the same meaning as in section 97 of the 1986 Act (transfer of business to commercial company).

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**Commencement Information**

**II** Art. 3 in force at 5.3.2009 in accordance with art. 1(2)

**Interpretation of the transfer provisions**

4.—(1) Section 97(12) of the 1986 Act<sup>(1)</sup> applies in relation to a relevant transfer with the following modifications.

(2) At the appropriate places insert—

““the 2007 Act” means the Building Societies (Funding) and Mutual Societies (Transfers) Act 2007;”;

““the 2009 Order” means the Mutual Societies (Transfers) Order 2009;”;

““holding mutual” means the mutual society of which the successor is a subsidiary;”;

““mutual society” has the same meaning as in section 3 of the 2007 Act;”;

““parent undertaking” has the same meaning as in the Companies Acts (see section 1162 of, and Schedule 7 to, the Companies Act 2006<sup>(2)</sup>);”;

““subsidiary” (except in the term “subsidiary undertaking”) has the same meaning as in section 3 of the 2007 Act;”.

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(1) Section 97(12) was amended by the Building Societies Act 1997 (c.32), section 43, Schedule 7, paragraph 45(3), and by S.I. 2001/2617.

(2) 2006 c.46.

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**Commencement Information**

**I2** Art. 4 in force at 5.3.2009 in accordance with art. 1(2)

**The transfer resolution**

5. Paragraph 30 of Schedule 2 to the 1986 Act (transfer resolutions)(**3**) applies in relation to a relevant transfer with the following modifications—

- (a) in sub-paragraph (1)(b), for “(“the requisite shareholders’ resolution”) is passed in accordance with sub-paragraphs (2) to (5) below”, substitute “is passed as a shareholding members’ resolution”;
- (b) omit sub-paragraphs (2) to (8).

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**Commencement Information**

**I3** Art. 5 in force at 5.3.2009 in accordance with art. 1(2)

**Formation of the successor company**

6. Section 97 of the 1986 Act(**4**) applies in relation to a relevant transfer with the following modifications—

- (a) in subsection (3), after “formed by the society” insert “or by the holding mutual”;
- (b) in subsection (12), in the definition of “company”, after “formed by a building society” insert “or by the holding mutual”.

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**Commencement Information**

**I4** Art. 6 in force at 5.3.2009 in accordance with art. 1(2)

**Distribution of funds of building society or holding mutual**

7.—(1) Section 4 of the 2007 Act (transfers to subsidiaries: distribution of funds) has effect in relation to a relevant transfer.

(2) The terms of a relevant transfer may include provision for part of the funds of the transferor building society or of the holding mutual (or both) to be distributed to members of the transferor or of the holding mutual (or both) in consideration of the transfer, in accordance with section 4 of the 2007 Act and this article.

(3) The limit referred to in section 4(3) and (4) of the 2007 Act, in relation to a distribution made by a transferor building society, is—

- (a) five per cent of the value of that society’s total assets, or
- (b) if less, the sum calculated in accordance with paragraph (4).

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(3) Paragraph 30 of Schedule 2 was amended by the Building Societies Act 1997, section 43, Schedule 7, paragraph 57(10), (11) and (12), by [S.I. 1997/2714](#) and by [S.I. 2001/2617](#).

(4) Section 97(3) was amended by the Building Societies Act 1997, sections 43 and 46(2), Schedule 7, paragraph 45(2) and Schedule 9. For amendments to section 97(12) see the footnote to article 4.

(4) The sum referred to in paragraph (3)(b) is calculated by deducting the value of the transferor society's fixed assets, both tangible and intangible, from the aggregate of that society's general reserves and, if any, revaluation and other reserves.

(5) For the purposes of paragraphs (3) and (4), the value of any assets, liabilities or reserves of a building society is their value as given in the most recent annual accounts of the society sent to the FCA, and, if the society is a PRA-authorized person, to the PRA in accordance with section 81(2) of the 1986 Act (laying and furnishing accounts, etc., to members and the FCA and the PRA).]

(6) The limit referred to in section 4(3) and (4) of the 2007 Act, in relation to a distribution made by the holding mutual, is five per cent of the holding mutual's total assets as shown in the most recent audited accounts of the holding mutual.

(7) The resolution referred to in section 4(3)(a) of the 2007 Act, in the case of the holding mutual, is—

- (a) where the transfer is approved by a resolution of the members of the holding mutual, that resolution, or
- (b) where the transfer is approved by the board of directors or committee of management of the holding mutual, a resolution of the members of the holding mutual.

(8) Any terms of a transfer of business to which section 4(3) of the 2007 Act and paragraphs (3) to (7) above apply are regulated terms for the purposes of section 97 of the 1986 Act.

(9) In this article—

“annual accounts” has the same meaning as in Part 8 of the 1986 Act (see section 81B of that Act (interpretation of Part 8)(5));

“transfer of business” and “regulated terms” have the same meaning as in section 97 of the 1986 Act.

**F1** Words in art. 7(5) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), [Sch. 10 para. 7\(2\)](#) (with Sch. 12)

#### Commencement Information

**I5** Art. 7 in force at 5.3.2009 in accordance with art. 1(2)

#### Distribution of funds: regulated term

**8.** Section 97 of the 1986 Act applies in relation to a relevant transfer with the following modifications—

- (a) in subsection (4)(b), after “transfer regulations” insert “, and with section 4 of the 2007 Act and article 7 of the 2009 Order”;
- (b) in subsection (12), in the definition of “regulated terms”, after “section 102” insert “or under article 7 of the 2009 Order”.

#### Commencement Information

**I6** Art. 8 in force at 5.3.2009 in accordance with art. 1(2)

(5) Section 81B was inserted by [S.I. 2004/3380](#). There are amendments but none are relevant.

### Confirmation of the transfer

9.—(1) Section 98 of the 1986 Act (transfers of business: supplementary provisions)(6) applies in relation to a relevant transfer with the following modifications.

(2) In subsection (3)(d), for “this Act” substitute “an applicable enactment”.

(3) In subsection (4), for “this Act” substitute “an applicable enactment”.

(4) In subsection (7), for “this Act” substitute “an applicable enactment”.

(5) For subsection (8), substitute—

“(8) In this section—

“applicable enactment” means the applicable provisions of this Act (as modified by the 2009 Order), section 4 of the 2007 Act and article 7 of the 2009 Order; and

“relevant requirement”, with reference to an applicable enactment or the rules of a society, means a requirement of an applicable enactment or of any rules prescribing the procedure to be followed by the society in approving the transfer and its terms.”.

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#### Commencement Information

**I7** Art. 9 in force at 5.3.2009 in accordance with art. 1(2)

### Modified application of section 100 (distributions and share rights)

10.—(1) Section 100 of the 1986 Act (regulated terms etc: distributions and share rights)(7) applies in relation to a relevant transfer with the following modifications.

(2) For subsection (1) substitute—

“(1) Subject to subsections (8) and (10) below, the terms of a transfer of business by a building society to the company which is to be its successor may include provision for rights in relation to shares in the successor to be conferred on members of the society in consideration of the transfer.”.

(3) Omit subsection (9).

(4) For subsection (10) substitute—

“(10) The following restriction applies to any conferring of rights in relation to shares in connection with the transfer of its business from the society to its successor where the successor is a company specially formed by the society or the holding mutual.

Where negotiable instruments acknowledging rights to shares are issued by the successor within the period of two years beginning with the vesting date, no such instruments shall be issued to former members of the society unless they are also issued, and on the same terms, to all other members of the company.”.

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#### Commencement Information

**I8** Art. 10 in force at 5.3.2009 in accordance with art. 1(2)

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(6) Section 98 was amended by the Building Societies Act 1997, section 30, by S.I. 2001/2617 and by S.I. 2001/3649.

(7) There are amendments to section 100 but none are relevant.

## Membership of the holding mutual

**11.**—(1) The transfer provisions apply in relation to a relevant transfer as if after section 100 of the 1986 Act there were inserted—

### “Regulated terms: membership of the holding mutual

**100A.**—(1) The terms of a transfer of business by a building society to the company which is to be its successor must include provision for making membership of the holding mutual available to every qualifying member of the building society and to every person who, after the transfer, becomes a customer of the company.

(2) The membership made available pursuant to that provision must be on terms no less favourable than those enjoyed by existing members of the holding mutual.

(3) Subsection (1) above does not apply where the terms of the transfer of business include provision for making membership of any parent undertaking of the holding mutual available to the persons mentioned in that subsection on terms no less favourable than those enjoyed by existing members of the parent undertaking.

(4) Any terms of a transfer of business to which subsections (1) and (2) above apply are regulated terms for the purposes of section 97.

(5) For the purposes of this section, any member of the building society who, on the day immediately preceding the vesting date, is a shareholding or borrowing member of the society, is a qualifying member.”.

(2) Section 97 of the 1986 Act<sup>(8)</sup> applies in relation to a relevant transfer with the following modifications—

- (a) in subsection (2), after “section 100,” insert “section 100A,”;
- (b) in subsection (4)(b), after “section 100” insert “, section 100A”;
- (c) in subsection (12), in the definition of “regulated terms”, after “section 100” insert “, section 100A”.

### Commencement Information

**I9** Art. 11 in force at 5.3.2009 in accordance with art. 1(2)

## Restrictions on further transfer

**12.**—(1) Section 101 (protective provisions for specially formed successors)<sup>(9)</sup> applies in relation to a relevant transfer with the following modifications—

- (a) in subsection (1), after “other than the society” insert “or the holding mutual”;
- (b) in subsection (4), omit paragraph (b);
- (c) in subsection (6)—
  - (i) in the definition of “the protective period”, for “five years” substitute “three years”;
  - (ii) omit the definition of “the requisite majority”.

(2) The transfer provisions apply in relation to a relevant transfer as if after section 101 of the 1986 Act there were inserted—

<sup>(8)</sup> Section 97(2) was amended by the Building Societies (Distributions) Act 1997 (c.41), section 1(2). Section 97(4) was amended by S.I. 2001/2617. For amendments to section 97(12) see the footnote to article 4.

<sup>(9)</sup> Section 101 was substituted by the Building Societies Act 1997, section 41, and subsequently amended by S.I. 1998/1120, S.I. 2001/2617, S.I. 2001/3649 and S.I. 2007/2194.

**“Protective provisions where successor is an existing company**

**101A.**—(1) Section 101 (as modified by the 2009 Order) applies in relation to a successor of a building society which is an existing company as it applies in relation to a successor which is a specially formed company, with the following modification.

(2) In subsection (6), for the definition of “the protective period” substitute—

““the protective period” is the period beginning with the date of any alterations to the company’s articles made to comply with subsection (2) above or, if no alterations are made, beginning with the vesting date, and ending three years after the vesting date or, if this section ceases to apply to the company, ending on the date on which it so ceases”.”.

(3) In section 97—

(a) in subsection (2), after “section 101,” insert “section 101A,”;

(b) in subsection (4), for paragraph (a) substitute—

“(a) secure that the successor company’s articles of association include the requisite protective provisions;”;

(c) in subsection (12), for the definition of “the requisite protective provisions” substitute—

““the requisite protective provisions”, in relation to a specially formed company, means the provisions required to be made by section 101(2), and in relation to an existing company, means the provisions required to be made by section 101(2) as applied by section 101A.”.

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**Commencement Information**

**I10** Art. 12 in force at 5.3.2009 in accordance with art. 1(2)

**Modified application of sections 102B and 102C of the 1986 Act**

**13.**—(1) Section 102B of the 1986 Act (protection of interests of beneficiaries in the case of trustee account holders)(**10**) applies in relation to a relevant transfer with the following modifications—

(a) in subsection (2), for paragraph (a) substitute—

“(a) a distribution among members of the society of part of the funds of the society or the holding mutual made in accordance with section 4 of the 2007 Act and article 7 of the 2009 Order, but not a distribution within section 100(2)(b), or”;

(b) in subsection (3), for “and its successor” substitute “, its successor and the holding mutual”;

(c) in subsection (6), for “and its successor” substitute “, its successor and the holding mutual”.

(2) Section 102C of the 1986 Act (consequences of false declaration)(**11**) applies in relation to a relevant transfer with the following modifications—

(a) in subsection (1)(b)(i), after “the society’s successor” insert “or the holding mutual”;

(b) in subsection (2), after “the successor”, in each place where it occurs, insert “or the holding mutual”;

(c) in subsection (4), after “the successor”, in each place where it occurs, insert “or the holding mutual”.

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(10) Section 102B was inserted by the Building Societies (Distributions) Act 1997, section 1.

(11) Section 102C was inserted by the Building Societies (Distributions) Act 1997, section 1.

### Commencement Information

**III** Art. 13 in force at 5.3.2009 in accordance with art. 1(2)

### Issue of statement or summary to members

**14.** Regulation 2 of the 1998 Regulations(12) (interpretation) applies in relation to a relevant transfer with the following modifications—

- (a) in the definition of “group”, before “shall be construed” insert “(except in the term “immediate group”);”;
- (b) after the definition of “group” insert—

““immediate group”, in relation to a successor company, means the immediate parent undertaking of that company and any subsidiary undertakings of that immediate parent undertaking, but does not include any parent undertaking of that immediate parent undertaking.”.

**15.—**(1) Regulation 3 of the 1998 Regulations (transfer statements) applies in relation to a relevant transfer with the following modification.

- (2) After paragraph (1) insert—

“(1A) Any such transfer statement shall also give particulars of the matters specified in Part 5 of Schedule 1 to these Regulations.”.

**16.—**(1) Schedule 1 to the 1998 Regulations (prescribed matters for transfer statements) applies in relation to a relevant transfer with the following modifications.

- (2) In Part 1 (matters of which particulars are to be included in the case of any transfer)—
  - (a) for paragraph 4 substitute—

“**4.** The financial position of the society and its connected undertakings at the most recent reasonably practicable date and of any material change in that position since that date.”;
  - (b) in paragraph 9, for “any group” substitute “the immediate group”;
  - (c) in paragraph 21, at the end insert “and of any change to be made in connection with the transfer in the terms governing outstanding loans made by the society which are secured on land”.
- (3) In Part 2 (matters of which particulars are to be included in the case of a transfer to an existing company)—
  - (a) in paragraph 2, for “any group” substitute “the immediate group”;
  - (b) for paragraph 3 substitute—

“**3.** The consolidated financial position of the successor company and the immediate group to which it belongs at the most recent reasonably practicable date and of any material change in that position since that date.”;
  - (c) in paragraph 4, for “any group” substitute “the immediate group”;
  - (d) for paragraph 5 substitute—

“**5.** The last three summary financial statements prepared by the directors of the society.”;

(12) S.I. 1998/212, to which there are amendments not relevant to this Order.

- (e) omit paragraph 6;
- (f) for paragraph 11 substitute—

“**11.**—(1) An explanation by the board of the society of the reasons for the transfer and the choice of successor company.

(2) The board’s assessment of—

- (a) the advantages and disadvantages of the transfer for members and employees of the society;
- (b) any other issues which, in the board’s view, are relevant to the transfer.”;

- (g) omit paragraph 12;
- (h) at the end insert—

“**13.** The protective provisions for existing companies applied by section 101A of the Act (inserted by the Mutual Societies (Transfers) Order 2009).”.

(4) In Part 3 (matters of which particulars are to be included in the case of a transfer to a specially formed company)—

- (a) after paragraph 1 insert—

“**1A.** The structure and activities of the immediate group to which the successor company belongs.”;

- (b) in paragraph 5, at the end insert “(as modified by the Mutual Societies (Transfers) Order 2009)”.

(5) After Part 4 (matters of which particulars are to be included in a case where shares or rights in relation to shares are to be offered in connection with a transfer) insert—

## “PART 5

### Matters of which particulars are to be included in a case to which Part 2 of the Mutual Societies (Transfers) Order 2009 applies

**1.** As a result of the transfer, the members of the society will no longer be members of a building society.

**2.** The following information in relation to the membership rights that will be made available to members of the building society in accordance with section 100A of the Act (inserted by the Mutual Societies (Transfers) Order 2009)—

- (a) the membership rights that will be made available;
- (b) the entity in which membership rights will be made available, including its legal form;
- (c) the procedure by which members of the building society may become members of that entity.

**3.** A comparison of the rights members enjoy as members of a building society and the membership rights that will be made available to them referred to in paragraph 2 above.

**4.** Every person who, after the transfer, becomes a customer of the successor company will be able to obtain similar membership rights to those referred to in paragraph 2.

**5.** An explanation of the following statutory requirements relating to the business of a building society and that they will not apply in relation to the successor company—



- (a) the purpose or principal purpose of a building society (section 5 of the Act);
- (b) the lending limit (section 6 of the Act);
- (c) the funding limit (section 7 of the Act);
- (d) the restrictions in sections 9A and 9B of the Act.

6. That the transfer may be approved by a borrowing members' resolution and a shareholding members' resolution and an explanation of the requirements for a resolution to be passed as a shareholding members' resolution and a borrowing members' resolution.

7. Part 2 of the Mutual Societies (Transfers) Order 2009 will apply to the transfer.”.

17. Schedule 2 to the 1998 Regulations (specified information for transfer summaries) applies in relation to a relevant transfer with the following modifications—

- (a) in paragraph 2, for “paragraphs 1, 2, 3, 5, 6, 10 and 11” substitute “paragraphs 1, 2, 3, 5, 10, 11 and 13”;
- (b) in paragraph 3, for “paragraphs 1 and 4” substitute “paragraphs 1, 1A, 4 and 5”;
- (c) at the end insert—

“5. Where the proposed transfer of business is one to which Part 2 of the Mutual Societies (Transfers) Order 2009 will apply, information comprising particulars of all the matters described in Part 5 of Schedule 1 to these Regulations.”.

#### Commencement Information

- I12** Art. 14 in force at 5.3.2009 in accordance with art. 1(2)
- I13** Art. 15 in force at 5.3.2009 in accordance with art. 1(2)
- I14** Art. 16 in force at 5.3.2009 in accordance with art. 1(2)
- I15** Art. 17 in force at 5.3.2009 in accordance with art. 1(2)

#### Issue of statement or summary to members: powers of Financial Services Authority

18. The modifications to the application of the 1998 Regulations made by articles 14 to 17 are without prejudice to the powers of the [F2appropriate authority] in paragraph 3 of Schedule 17 to the 1986 Act to require particulars of any other matters to be provided in the case of a particular transfer, including without limitation any matters omitted by those modifications.

- F2** Words in art. 18 substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), Sch. 10 para. 7(3) (with Sch. 12)

#### Commencement Information

- I16** Art. 18 in force at 5.3.2009 in accordance with art. 1(2)

**Changes to legislation:**

There are currently no known outstanding effects for the The Mutual Societies (Transfers) Order 2009, PART 2.