EXPLANATORY MEMORANDUM TO

THE FINANCIAL SERVICES ACT 2012 (MUTUAL SOCIETIES) ORDER 2018

2018 No. 323

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This order transfers to the Financial Conduct Authority ("FCA") the registration functions of the Registrar of Credit Unions for Northern Ireland. The bodies over which the registration functions are exercised are Northern Ireland credit unions and co-operative and community benefit societies (collectively known as "mutuals").

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland.

4. Legislative Context

4.1 This Order amends primary and secondary legislation to transfer the registration functions of the Registrar of Credit Unions for Northern Ireland to the FCA.

4.2 The Order is made under the powers set out in sections 50(1), (2) and (4), 51, 52, 115(2) and 118 of the Financial Services Act 2012. Section 50 of the Financial Services Act 2012 provides that the Treasury may, by order, amend the legislation relating to mutual societies (listed in section 50(2)) for the purpose of transferring a function of the Registrar of Credit Unions in Northern Ireland to the FCA (section 50(4)). Section 51 provides that an order made under section 50 may make further provision, such as amending enactments relating to transferred functions in connection with their exercise by the FCA. Section 52 provides that the Treasury may, by order, provide for provisions of the Financial Services and Markets Act 2000 to apply to the functions being transferred to the FCA. This instrument exercises these powers.

4.3 The Order will come into force on 6 April 2018.

5. Extent and Territorial Application

5.1 This instrument extends to the whole of the United Kingdom. The extent of Schedules 2-4 depends on the extent of the enactment which is amended by that provision. Schedule 1 and regulations 6, 9, 10 and 11 of Schedule 4 extend to the whole of the United Kingdom. Schedules 2 and 3, and regulations 3, 4, 7 and 8 of Schedule 4 extend to Northern Ireland. Regulations 1 and 2 of Schedule 4 extend to England, Wales and Scotland. Regulation 5 of Schedule 4 extends to England and Wales.

5.2 The territorial application of a provision of these Regulations depends on the territorial application of the amendment made by that provision. Regulations that extend to Northern Ireland will apply to Northern Ireland where they amend or modify legislation that applies in Northern Ireland, and will otherwise apply to the whole of the UK, to England, Wales and Scotland, or to England and Wales (as set out in paragraph 5.1 above).

6. European Convention on Human Rights

6.1 The Economic Secretary to the Treasury has made the following statement regarding Human Rights:

"In my view the provisions of the Financial Services Act 2012 (Mutual Societies) Order 2018 are compatible with the Convention rights.".

7. Policy background

What is being done and why

7.1 All credit unions (and co-operatives carrying out a regulated activity) in the UK are regulated by the FCA. In the case of credit unions, regulation is undertaken by both the FCA and the Prudential Regulation Authority ("PRA").

7.2 To facilitate their regulatory oversight, all mutuals must undergo a rigorous registration process (this includes all co-operatives regardless of whether they are regulated). For mutuals in Great Britain, this registration function is carried out by the FCA. For mutuals in Northern Ireland, the registration function is carried out by the Registrar of Credit Unions for Northern Ireland (appointed by the devolved Department for the Economy, ("DfE"). The DfE is currently responsible for registering over 300 mutuals, 175 of which are credit unions.

7.3 Given that regulatory and prudential oversight for credit unions is already exercised on a UK wide basis by the FCA, Northern Ireland Ministers and Her Majesty's Treasury consider that there are no tangible benefits from keeping the distinct functions relating to registration with the DfE. Transferring the registration function for mutuals to the FCA will streamline the registration process and will result in greater consistency throughout the mutuals sector, with registration and regulatory oversight lying with a single authority. Mutuals in Northern Ireland should also benefit from the increased expertise of the FCA in the sector.

7.4 This Order transfers the registration function for mutuals in Northern Ireland from the DfE to the FCA. This will mean co-operatives, community benefit societies and credit unions in Northern Ireland are registered (as well as, where appropriate, regulated) by the FCA.

Consolidation

7.5 HM Treasury does not propose to consolidate any legislation in consequence of amendments made to primary and secondary legislation in this Order.

8. Consultation outcome

8.1 This proposal was subject to joint public consultation by the Department for Enterprise, Trade and Investment (DETI) and HM Treasury in 2010 (Proposals for regulatory reform of credit unions in Northern Ireland ("the 2010 consultation") and in 2013 (Proposed Transfer of the function of Registrar of Northern Irish Industrial & Provident Societies from the Department of Enterprise, Trade and Investment to the appropriate UK authority) ("the 2013 Consultation"). The 2010 Consultation ran from 30 March 2010 until 24 May 2010. The 2013 consultations ran from 22 July 2013 until 3 September 2013.

8.2 The 2010 consultation consulted on transferring both the regulation and registration functions of credit unions in Northern Ireland. 20 responses[1] to the consultation were received from individuals, credit unions, representative bodies, financial institutions and advice organisations. Specifically, on the transfer of registration, there were 11 responses with a range of opinions presented. A number of those who considered that Northern Ireland should retain control were concerned that, by transferring responsibility to the FCA, Northern Ireland credit unions would lose some of their influence. Two respondents favoured full integration into the GB regulatory regime to ensure "that all UK credit unions become subject to the same legal framework under the control of one body". Having considered the consultation responses, the Government decided that both the regulatory and registration function should transfer to the FSA (or its successor body, the FCA).

8.3 The 2013 consultation consulted all co-operatives and community benefit societies in Northern Ireland on the proposal to transfer the registration function to the FCA, seeking their views. There was a total of 8 respondents. One respondent had no objections to the transfer. The other responses accepted the rationale for the transfer, particularly for credit unions, but expressed concerns related to the costs that could result from a change in the fee structure and the lack of local knowledge and accessibility. However, in the absence of this transfer, it is likely that DfE would have needed to move to a full cost recovery system akin to that of the FCA (currently the DfE function is subsidised) which would have resulted in higher costs for the sector.

9. Guidance

9.1 The FCA and DfE intend to issue information to co-operative and community benefit societies in Northern Ireland on the legislative change and what this will mean for societies. The FCA additionally intend to communicate with societies explaining the relationship between them and the FCA. Separately, DfE will produce a document, addressing 'Frequently Asked Questions', which explain the reason for the transfer and what the new rules will mean for them.

9.2 The FCA intend to consider their guidance for co-operative and community benefit societies in light of this transfer.

10. Impact

10.1 The impact on business, charities or voluntary bodies is minimal. The registration fee structure differs between the FCA and DfE. DfE currently operates on a fee per transaction basis whereas the FCA charges societies an annual fee, based on their size.

[1] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/190199/condoc_regulatory_reform_credit_unions_northern_ireland.pdf

Those societies who do not make any transactions will see their costs increase, as they will now be paying a recurrent fee. Analysis undertaken by DfE indicates that this will cost the sector approximately £40,000 per year, with the average annual fee being £279. Credit unions in Northern Ireland are already regulated by the FCA and pay a fee. There are no plans to increase the fees for credit unions. However, this is a much smaller increase in fees than DfE estimate would have been imposed if DfE had moved to a full cost recovery structure.

10.2 There will be a small, short-term impact on public sector resources as officials from DfE will work with FCA officials to ensure the smooth transfer of the registration function.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses (mutual societies in Northern Ireland of all sizes), but does not of itself impose any additional regulatory requirements on them. Small businesses to which this legislation applies are already required to register with DfE. The effect of this legislation is simply to transfer that registration requirement to the FCA. It would not be in the interests of small businesses affected by this legislation to continue to be registered by DfE, when all other Northern Ireland mutual societies are to be registered by the FCA.

11.2 No specific action is proposed to minimise regulatory burdens on small businesses. The FCA will issue information to all societies affected by this change. Further, the FCA fee structure takes into account the size of the society, therefore if there are any increases in costs for societies, these will be mitigated for the smallest societies. Other than the new fee structure, small societies should not be disproportionately affected by this change.

12. Monitoring & review

12.1 The Economic Secretary to the Treasury has made the following statement regarding the appropriateness of a legislative provision for review of this instrument:

"It is not appropriate to make legislative provision for review of The Financial Services Act 2012 (Mutual Societies) Order 2018. This Order transfers an existing registration requirement from one body (DfE), to another (the FCA) and the power under which it is made does not provide for the reversal of this transfer. It is further considered that a statutory review of this Order would be disproportionate to the economic impact of the registration function transfer on NI mutuals."

13. Contact

13.1 Kat Lyness at HM Treasury Telephone: 020 7270 2467 or email: katharine.lyness@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.