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STATUTORY INSTRUMENTS

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**2001 No. 2617**

The Financial Services and Markets Act  
2000 (Mutual Societies) Order 2001

PART I

General

**Citation**

1. This Order may be cited as the Financial Services and Markets Act 2000 (Mutual Societies) Order 2001.

**Commencement**

2. This Order comes into force—
- (a) for the purposes of article 8, and for the purposes of article 4(3) and Schedule 2, on 17th August 2001, and
  - (b) for all other purposes, on the day on which section 19 of the 2000 Act (the general prohibition) comes into force.

**Interpretation**

- 3.—(1) In this Order—
- “the 2000 Act” means the Financial Services and Markets Act 2000,
  - “assistant registrar” means an assistant registrar of friendly societies for the central registration area,
  - “the assistant registrar for Scotland” means the assistant registrar of friendly societies for Scotland,
  - “the Board” means the Building Societies Investor Protection Board,
  - “building society” has the same meaning as in the Building Societies Act 1986(1),
  - “the central office” means the central office of the registry of friendly societies,
  - “the central registration area” means the area defined by section 4(1)(a) of the Friendly Societies Act 1974(2) (as it had effect immediately before its repeal by the 2000 Act),
  - “the Chief Registrar” means the Chief Registrar of friendly societies,
  - “commencement” means the beginning of the day on which section 19 of the 2000 Act comes into force,

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(1) 1986 c. 53; see the definition in section 119(1).

(2) 1974 c. 46. Section 4(1) was amended by the Friendly Societies Act 1992 (c. 40), Schedule 16, paragraph 2(1).

“enactment” includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978(3), and

“the last period” means the period beginning with 1st April 2001 and ending at commencement.

(2) In this Order, “transferred function” means any function transferred by article 4 and, in relation to any transferred function, “transferor” means the person from whom the function is transferred and “transferee” means the person to whom it is transferred.

(3) In this Order, unless the context otherwise requires, any reference to an article by number alone is a reference to the article so numbered in this Order.

## PART II

### Transferred functions

#### Transfer of functions

4.—(1) The functions—

- (a) of the Chief Registrar, the assistant registrar for Scotland, the assistant registrars and the central office listed in Part I of Schedule 1 to this Order,
- (b) of the Friendly Societies Commission listed in Part II of Schedule 1 to this Order, and
- (c) of the Building Societies Commission listed in Part III of Schedule 1 to this Order,

are transferred to the Treasury.

(2) All other functions which, immediately before commencement were functions—

- (a) of the Chief Registrar, the assistant registrar for Scotland, the assistant registrars or the central office,
- (b) of the Friendly Societies Commission, or
- (c) of the Building Societies Commission,

are transferred to the Authority, subject to any repeal or amendment made by any provision of this Order or by any other provision of or made under the 2000 Act.

(3) Schedule 2 makes provision about the application of the 2000 Act in relation to functions transferred (or to be transferred) to the Authority by paragraph (2) above.

(4) For the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 1981(4), paragraph (2) above is to be regarded as giving rise to the transfer of an undertaking by virtue of each of sub-paragraphs (a), (b) and (c) of that paragraph, whether or not it would otherwise be so regarded.

#### Consequential and transitional provisions in relation to transferred functions

5.—(1) The transfer of any function by virtue of article 4 does not affect the validity of anything done before commencement—

- (a) by the transferor in the exercise of the transferred function, or
- (b) by any other person in relation to the exercise by the transferor of the transferred function,

and any such thing is to have effect for all purposes as if done by (or, as the case may be, in relation to the exercise of the function by) the transferee.

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(3) [1978 c. 30](#); see the definition in section 21(1).

(4) [S.I.1981/1794](#) as amended by section 33 of the Trade Union Reform and Employment Rights Act 1993 ([c. 19](#)) and by [S.I. 1987/442](#), [1995/2587](#) and [1999/1925](#).

(2) Paragraph (1) also has effect in relation to anything which is in the process of being done at commencement, and any such thing may be carried on and completed by (or, as the case may be, in relation to the exercise of the function by) the transferee.

(3) If, at commencement, a transferor is a party to any legal proceedings in relation to its exercise of any transferred function, the transferee is substituted for the transferor in those proceedings.

(4) If, at commencement, a transferor holds any monies which have been deposited with the transferor as security for any costs in relation to its exercise of any transferred function, the monies are transferred to the transferee at commencement to be held for the same purpose and on the same terms.

(5) This article has effect subject to any transitional provision or saving contained in Schedule 5 to this Order or in any other provision made under the 2000 Act.

### **Requirements to provide documents etc.**

6.—(1) Paragraph (2) applies where, by virtue of any provision of or made under any enactment, a person (“A”) other than a transferor was before commencement required or entitled—

- (a) to provide any account, application, list, notice, plan, report, return, or any other document or material (including a copy of any document or material),
- (b) to give any explanation or provide any other information, or
- (c) to notify, report on, or make representations or a statement on, any matter,

to any transferor, or to any other person (“B”) on behalf of any transferor, in connection with the exercise by the transferor of any function which is transferred by article 4(2) to the Authority, but had not provided that document or material, given that explanation or information, or notified, reported on or made representations on that matter, before commencement.

(2) After commencement A is required or (as the case may be) entitled to provide that document or material, to give that explanation or information, or to notify, report on, or make representations on, that matter, to the Authority (or, as the case may be, to B on behalf of the Authority), but otherwise in the same form and containing the same particulars as would have been required before commencement.

(3) Paragraph (1) has effect no matter how the requirement or entitlement is expressed.

(4) Where the requirement or entitlement mentioned in paragraph (1) was subject to any provision requiring A to comply with the requirement or exercise the entitlement within a specified time (however expressed), that provision continues to apply in relation to the requirement imposed or entitlement given by paragraph (2), and the time period is to be treated as continuing to run without interruption.

(5) Where any person does anything after commencement in compliance with paragraph (2) in relation to which, if that thing had been done before commencement, a fee would have been payable to the transferor, he is required to pay that fee to the Authority, and the fee (insofar as it is not so paid) may be recovered by the Authority as a debt due to it.

(6) This article is without prejudice to the generality of article 5(1) and (2).

(7) This article has effect subject to any transitional provision or saving contained in Schedule 5 to this Order or in any other provision made under the 2000 Act.

### **Consequential modification of non-statutory provisions**

7.—(1) Where a relevant provision is predicated on the continuing exercise of any transferred function by the transferor, any reference in the provision to the transferor has effect, in relation to any time after commencement, as a reference to the transferee.

(2) Paragraph (3) applies where—

- (a) a relevant provision contains a requirement for consent to be given by the Building Societies Commission before the repayment by a building society of any sum owed by it, and
- (b) the requirement was included in the relevant provision so as to comply with the terms of—
  - (i) an order made under section 45(5) of the Building Societies Act 1986 as that section had effect before the coming into force of section 21 of the Building Societies Act 1997<sup>(5)</sup>,
  - (ii) an order made under section 119(1) of the Building Societies Act 1986<sup>(6)</sup>, or
  - (iii) guidance issued by the Building Societies Commission pursuant to section 45AA of that Act<sup>(7)</sup>.

(3) Unless the context otherwise requires, the requirement has effect, in relation to any time after commencement, as a requirement for consent to be given by the Authority.

(4) Paragraph (5) applies where a relevant provision prohibits the payment or crediting of interest on any sum owed by a building society if the board of directors of the society is of the opinion that—

- (a) there has been a failure on the part of the society to satisfy a criterion of prudent management, set out in section 45(3) of the Building Societies Act 1986<sup>(8)</sup> as it had effect at any time before commencement, relating to the maintenance of adequate reserves and other capital resources, or
- (b) there would be such a failure if the interest was paid or credited.

(5) Unless the context otherwise requires, any reference in that provision to that criterion has effect, in relation to any time after commencement, as a reference to the condition set out in paragraph 4(1) of Schedule 6 to the 2000 Act (adequate resources).

(6) “Relevant provision” means a provision which—

- (a) is contained in the rules of a building society, friendly society or industrial and provident society, or in any other contract, deed or document other than an enactment, and
- (b) has effect before, as well as after, commencement,

but for the purposes only of paragraph (1) above also includes a provision in any document which is provided to the Authority after commencement pursuant to article 6(2).

### **Anticipatory exercise of powers**

**8.—(1)** This article applies where by virtue of any amendment made by Schedule 3 to this Order—

- (a) the Authority will, with effect from commencement, have power to make rules, or have power to give directions as to the form of or particulars to be included in any document or as to the manner in which any application is to be made, or
- (b) the Treasury will, with effect from commencement, have power to make any rules, order or regulations.

(2) Where this article applies, the Authority or the Treasury (as the case may be) may exercise the power referred to in paragraph (1) before commencement for the purposes of bringing the rules, directions, order or regulations into effect at commencement.

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<sup>(5)</sup> 1997 c. 32.

<sup>(6)</sup> 1986. c. 53; the definition of “deferred shares”.

<sup>(7)</sup> Inserted by the Building Societies Act 1997 (c. 32), section 22.

<sup>(8)</sup> Amended by S.I. 1992/3218, and subsequently substituted by section 21 of the Building Societies Act 1997 (c. 32).

(3) In exercising any power before commencement by virtue of paragraph (2), the Authority or the Treasury (as the case may be) are to be treated as being subject to the same requirements or conditions, as to the procedure to be followed in exercising the power or otherwise, as would apply in relation to the exercise of that power if this Order were fully in force.

## PART III

### Dissolutions

#### **The Building Societies Commission**

9.—(1) As soon as practicable after commencement, the Building Societies Commission must lay before the Treasury and before Parliament a report on the discharge of its functions during the last period.

(2) Before the end of the period of seven months beginning at commencement, the Building Societies Commission must send to the Treasury and to the Comptroller and Auditor General a statement of accounts in respect of the last period.

(3) The Comptroller and Auditor General must examine, certify and report on the statement of accounts received by him from the Building Societies Commission under paragraph (2), and lay a copy of the statement and of his report before Parliament.

(4) The Building Societies Commission is to cease to exist on the day after the first day on which paragraphs (1) and (3) have both been complied with.

(5) Immediately before the Building Societies Commission ceases to exist by virtue of paragraph (4), all assets, rights and liabilities which at that time are held or enjoyed by the Commission, or to which at that time it is subject, are transferred to the Treasury, except as provided in paragraphs (7) and (9).

(6) Paragraph (7) applies in relation to income received by the Building Societies Commission under section 2 of the Building Societies Act 1986, in respect of the last period or in relation to applications submitted to it during the last period (“relevant income”).

(7) Insofar as relevant income is not applied before commencement in accordance with section 2 of the Building Societies Act 1986 towards expenses of the Commission, it is to be paid to the Authority.

(8) Paragraph (9) applies where, before commencement—

(a) any fee or charge, or any sum in respect of costs or expenses, was payable to the Building Societies Commission, but

(b) that fee, charge or sum, or any part of it, was not so paid (“the unpaid sum”).

(9) Notwithstanding any amendment, repeal or revocation made by this Order or by any other provision of or made under the 2000 Act, the unpaid sum is payable after commencement to the Authority in substitution for the Commission and (insofar as it is not so paid) may be recovered by the Authority as a debt due to it.

(10) The Authority must, so far as practicable, ensure that—

(a) relevant income paid to it in accordance with paragraph (7), and

(b) any sum paid to it or recovered by it in accordance with paragraph (9),

is used only in connection with any functions of the Authority in relation to building societies or, to the extent that it is not so used, is applied for the benefit of building societies.

### **The Friendly Societies Commission**

10.—(1) As soon as practicable after commencement, the Friendly Societies Commission must lay before the Treasury and before Parliament a report on the discharge of its functions during the last period.

(2) Before the end of the period of seven months beginning at commencement, the Friendly Societies Commission must send to the Treasury and to the Comptroller and Auditor General a statement of accounts in respect of the last period.

(3) The Comptroller and Auditor General must examine, certify and report on the statement of accounts received by him from the Friendly Societies Commission under paragraph (2), and lay a copy of the statement and of his report before Parliament.

(4) The Friendly Societies Commission is to cease to exist on the day after the first day on which paragraphs (1) and (3) have both been complied with.

(5) Immediately before the Friendly Societies Commission ceases to exist by virtue of paragraph (4), all assets, rights and liabilities which at that time are held or enjoyed by the Commission, or to which at that time it is subject, are transferred to the Treasury, except as provided in paragraphs (7) and (9).

(6) Paragraph (7) applies in relation to income received by the Friendly Societies Commission under section 2 of the Friendly Societies Act 1992<sup>(9)</sup>, in respect of the last period or in relation to applications submitted to it during the last period (“relevant income”).

(7) Insofar as relevant income is not applied before commencement in accordance with section 2 of the Friendly Societies Act 1992 towards expenses of the Commission, it is to be paid to the Authority.

(8) Paragraph (9) applies where, before commencement—

- (a) any fee or charge, or any sum in respect of costs or expenses, was payable to the Friendly Societies Commission, but
- (b) that fee, charge or sum, or any part of it, was not so paid (“the unpaid sum”).

(9) Notwithstanding any amendment, repeal or revocation made by this Order or by any other provision of or made under the 2000 Act, the unpaid sum is payable after commencement to the Authority in substitution for the Commission and (insofar as it is not so paid) may be recovered by the Authority as a debt due to it.

(10) The Authority must, so far as practicable, ensure that—

- (a) relevant income paid to it in accordance with paragraph (7), and
- (b) any sum paid to it or recovered by it in accordance with paragraph (9),

is used only in connection with any functions of the Authority in relation to friendly societies or, to the extent that it is not so used, is applied for the benefit of friendly societies.

### **The Building Societies Investor Protection Board**

11.—(1) As soon as practicable after commencement, the Board must prepare—

- (a) a report on the discharge of its functions during the last period, and
- (b) a statement of accounts showing the state of affairs and income and expenditure of the Board in respect of the last period.

(2) The statement of accounts must be audited by auditors appointed by the Board and the auditors must report to the Board stating whether in their opinion the provisions of paragraph 6(2)

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(9) 1992 c. 40.

of Schedule 5 to the Building Societies Act 1986 (as it had effect immediately before its repeal by this Order) were complied with in respect of the last period.

(3) As soon as practicable after paragraphs (1) and (2) above have been complied with, the Board must publish, in such manner as it thinks appropriate, the report prepared in accordance with paragraph (1)(a) and the statement of accounts prepared in accordance with paragraph (1)(b).

(4) The Board is to cease to exist on the day after paragraph (3) is complied with.

### **The Chief Registrar, assistant registrar for Scotland, and assistant registrars**

**12.**—(1) As soon as practicable after the Building Societies Commission and the Friendly Societies Commission have ceased to exist by virtue of articles 9 and 10, the Chief Registrar must lay before Parliament a report of his proceedings and those of the assistant registrar for Scotland and the assistant registrars, of the principal matters transacted by him and them, and of the valuations returned to him or them, in relation to the period beginning with 1st October 2001 and ending at commencement.

(2) The report which the Chief Registrar is required to make by virtue of paragraph (1) may be combined with the report which he is required to make pursuant to section 6(1) of the Friendly Societies Act 1974<sup>(10)</sup> in respect of the year ending 30th September 2001.

(3) The office of Chief Registrar, the office of assistant registrar for Scotland, and the offices of assistant registrar are to cease to exist on the day after paragraph (1) is complied with.

(4) Immediately before the offices mentioned in paragraph (3) cease to exist by virtue of that paragraph, all assets, rights and liabilities which at that time attach to those offices (including records maintained or held by, and any other assets, rights and liabilities of, the central office) are transferred to the Treasury.

## **PART IV**

### **Amendments, repeals etc.**

#### **Amendments, repeals, transitional provisions and savings**

**13.**—(1) The enactments specified in Schedule 3 to this Order have effect with the amendments made by that Schedule.

(2) The enactments specified in Schedule 4 to this Order are repealed to the extent specified in that Schedule.

(3) The amendments and repeals made by Schedules 3 and 4 are subject to the transitional provisions and savings contained in Schedule 5 to this Order and to any other transitional provisions or savings made under the 2000 Act.

18th July 2001

*Anne McGuire*  
*Tony McNulty*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

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(10) 1974 c. 46.