Friendly Societies Act 1992

1992 CHAPTER 40

PART II

INCORPORATED FRIENDLY SOCIETIES

Dissolution and winding up

19 Modes of dissolution and winding up.

(1) An incorporated friendly society—

(a) may be dissolved by consent of the members; or

(b) may be wound up voluntarily or by the court,

in accordance with this Part of this Act; and an incorporated friendly society may not, except where it is dissolved by virtue of section 85(4), 86(5) or 90(9) below, be dissolved or wound up in any other manner.

(2) An incorporated friendly society which is in the course of dissolution by consent, or is being wound up voluntarily, may be wound up by the court.

20 Dissolution by consent.

(1) An incorporated friendly society may be dissolved by an instrument of dissolution.

(2) An instrument of dissolution shall only have effect if it is approved by special resolution.

(3) An instrument of dissolution shall set out—

(a) the liabilities and assets of the society in detail;

(b) the number of members, and the nature of their interests in the society;

(c) the claims of creditors, and the provision to be made for their payment;

(d) the intended appropriation or division of the funds and property of the society;

(e) the names of one or more persons to be appointed as trustees for the purposes of the dissolution, and their remuneration.

(4) An instrument of dissolution may be altered, but the alteration shall only have effect if it is approved by special resolution.

(5) The provisions of this Act shall continue to apply in relation to an incorporated friendly society as if the trustees appointed under the instrument of dissolution were the committee of management of the society.

(6) The trustees shall—

(a) within 15 days of the passing of a special resolution approving an instrument of dissolution, give notice to the **[**[F1]FCA and, if the society is a PRA-authorised person, the PRA**]** of the fact and the date of commencement of the dissolution, enclosing a copy of the instrument; and

(b) within 15 days of the passing of a special resolution approving an alteration of such an instrument, give notice to the **[**[F1]FCA and, if the society is a PRA-authorised person, the PRA**]** of the fact, enclosing a copy of the altered instrument;

and if the trustees fail to comply with this subsection, they shall each be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) An instrument of dissolution or an alteration to such an instrument shall be binding on all members of the society as from the date on which the copy of the instrument or altered instrument, as the case may be, is placed on the public file of the society under subsection (12) below.

(8) The trustees shall, within 28 days from the termination of the dissolution, give notice to the **[**[F1]FCA and, if the society is a PRA-authorised person, the PRA**]** of the fact and the date of the termination, enclosing an account and balance sheet signed and certified by them as correct, and showing—

(a) the assets and liabilities of the society at the commencement of the dissolution; and

(b) the way in which those assets and liabilities have been applied and discharged.

(9) If the trustees fail to comply with subsection (8) above they shall each be guilty of an offence and liable on summary conviction—

(a) to a fine not exceeding level 2 on the standard scale; and

(b) in the case of a continuing offence, to an additional fine not exceeding one-tenth of that level for every day during which the offence continues.

(10) Except with the consent of the **[**[F2]appropriate authority**]**, no instrument of dissolution or alteration to such an instrument shall be of any effect if the purpose of the proposed dissolution or alteration is to effect or facilitate the transfer of the society's engagements to any other friendly society or to a company.

(11) Any provision in a resolution or document that members of an incorporated friendly society proposed to be dissolved shall accept membership of some other body in or towards satisfaction of their rights in the dissolution shall be conclusive evidence of such purpose as is mentioned in subsection (10) above.

(12) The **[**[F3]FCA**]** shall keep in the public file of the society any notice or other document received by it under subsection (6) or (8) above and shall record in that file the date on which the notice or document is placed in it.

Textual Amendments

F1 Words in s. 20(6)(8) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 9 para. 8(2)** (with Sch. 12)

F2 Words in s. 20(10) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 9 para. 8(3)** (with Sch. 12)

F3 Word in s. 20(12) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 9 para. 8(4)** (with Sch. 12)

21 Voluntary winding up.

(1) An incorporated friendly society may be wound up voluntarily under the applicable winding up legislation if it resolves by special resolution that it be wound up voluntarily.

(2) A copy of any special resolution passed for the voluntary winding up of an incorporated friendly society shall be sent by the society to the **[**[F4]FCA and, if the society is a PRA-authorised person, the PRA**]** within 15 days after it is passed; and the **[**[F5]FCA**]** shall keep the copy in the public file of the society.

(3) A copy of any such resolution shall be annexed to every copy of the memorandum or of the rules issued after the passing of the resolution.

(4) If an incorporated friendly society fails to comply with subsection (2) or (3) above, the society shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) For the purposes of this section, a liquidator of the society shall be treated as an officer of it.

Textual Amendments

F4 Words in s. 21(2) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 9 para. 9(a)** (with Sch. 12)

F5 Word in s. 21(2) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 9 para. 9(b)** (with Sch. 12)

22 Winding up by court: grounds and petitioners.

(1) An incorporated friendly society may be wound up under the applicable winding up legislation by the court on any of the following grounds, that is to say, if—

(a) the society has by special resolution resolved that it be wound up by the court;

(b) the number of members is reduced below 7;

(c) the number of members of the committee of management is reduced below 2;

(d) the society has not commenced business within a year from its incorporation or has suspended its business for a whole year;

(e) the society exists for an illegal purpose;

(f) the society is unable to pay its debts; or

(g) the court is of the opinion that it is just and equitable that the society should be wound up.

(2) Except as provided by subsection **[**[F6](2A), (2B) or (3)**]** or the applicable winding up legislation, a petition for the winding up of an incorporated friendly society may be presented by—

(a) the **[**[F7]FCA**]**;

[[F8](aa) the PRA;**]**

(b) the society or its committee of management;

(c) any creditor or creditors (including any contingent or any prospective creditor); or

(d) any contributory or contributories,

or by all or any of those parties, together or separately.

[[F9](2A) The FCA may only present a petition under subsection (2) in respect of a society which is a PRA-authorised person after consulting the PRA.

(2B) The PRA may only present a petition under subsection (2)—

(a) in respect of a society which is a PRA-authorised person; and

(b) after consulting the FCA.**]**

(3) A contributory may not present a petition unless the number of members is reduced below 7 or he has been a contributory for at least six months before the winding up.

(4) In this section "contributory" has the meaning assigned to it by paragraph 9 of Schedule 10 to this Act.

Textual Amendments

F6 Words in s. 22(2) substituted (1.4.2013) by virtue of The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 9 para. 10(2)** (with Sch. 12)

F7 Word in s. 22(2)(a) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 9 para. 10(3)** (with Sch. 12)

F8 S. 22(2)(aa) inserted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 9 para. 10(4)** (with Sch. 12)

F9 S. 22(2A)(2B) inserted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 9 para. 10(5)** (with Sch. 12)

23 Application of winding up legislation to incorporated friendly societies.

(1) In this section "the companies winding up legislation" means the enactments applicable in relation to England and Wales, Scotland and Northern Ireland which are specified in paragraph 1 of Schedule 10 to this Act (including any enactment which creates an offence by any person arising out of acts or omissions occurring before the commencement of the winding up).

(2) In its application to the winding up of an incorporated friendly society, by virtue of section 21(1) or 22(1) above, the companies winding up legislation shall have effect with the modifications effected by Parts I to III of Schedule 10 to this Act; and the supplementary provisions of Part IV of that Schedule also have effect in relation to such a winding up and in relation to a dissolution by consent.

(3) In section 21 and 22 above "the applicable winding up legislation" means the companies winding up legislation as so modified.

24 Continuation of long term business.

(1) This section has effect in relation to the winding up of an incorporated friendly society which carries on long term business (including any reinsurance business).

(2) The liquidator shall, unless the court otherwise orders, carry on the long term business of the society with a view to its being transferred as a going concern under this Act; and, in carrying on that business, the liquidator may agree to the variation of any contracts of insurance in existence when the winding up order is made but shall not effect any new contracts of insurance.

(3) If the liquidator is satisfied that the interests of the creditors in respect of liabilities of the society attributable to its long term business require the appointment of a special manager of the society's long term business, he may apply to the court, and the court may on such application appoint a special manager of that business to act during such time as the court may direct, with such powers (including any of the powers of a receiver or manager) as may be entrusted to him by the court.

(4) Section 177(5) of the [M1]Insolvency Act 1986 or, as the case may be, Article 151 of the [M2]Insolvency (Northern Ireland) Order 1989 shall apply to a special manager appointed under subsection (3) above as it applies to a special manager appointed under that section or that Article.

(5) The court may, if it thinks fit and subject to such conditions (if any) as it may determine, reduce the amount of the contracts made by the society in the course of carrying on its long term business.

(6) The court may, on the application of the liquidator, a special manager appointed under subsection (3) above or the **[**[F10]FCA or the PRA**]** appoint an independent actuary to investigate the long term business of the society and to report to the liquidator, the special manager or the **[**[F10]FCA or the PRA**]**, as the case may be, on the desirability or otherwise of that business being continued and on any reduction in the contracts made in the course of carrying on that business that may be necessary for its successful continuation.

Textual Amendments

F10 Words in s. 24(6) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 9 para. 11** (with Sch. 12)

Marginal Citations

M1 1986 c. 45.

M2 S.I.1989/2405 (N.I.19).

25 Power of court to declare dissolution void.

(1) Where an incorporated friendly society has been dissolved under section 20 above or following a winding up, the court may, at any time within 12 years after the date on which the society was dissolved, make an order under this section declaring the dissolution to have been void.

(2) An order under this section may be made, on such terms as the court thinks fit, on an application by the trustees under section 20 above or the liquidator, as the case may be, or by any other person appearing to the court to be interested.

(3) When an order under this section is made, such proceedings may be taken as might have been taken if the society had not been dissolved.

(4) The person on whose application the order is made shall, within 7 days of its being so made, or such further time as the court may allow, furnish the **[**[F11]FCA and, if the society is a PRA-authorised person, the PRA**]** with a copy of the order; and the **[**[F12]FCA**]** shall keep the copy in the public file of the society.

(5) If a person fails to comply with subsection (4) above, he shall be guilty of an offence and liable on summary conviction—

(a) to a fine not exceeding level 3 on the standard scale; and

(b) in the case of a continuing offence, to an additional fine not exceeding one-tenth of that level for every day during which the offence continues.

(6) In this section "the court" means—

(a) in relation to a society whose registered office is in England and Wales, the High Court;

(b) in relation to a society whose registered office is in Scotland, the Court of Session; and

(c) in relation to a society whose registered office is in Northern Ireland, the High Court in Northern Ireland.

Textual Amendments

F11 Words in s. 25(4) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 9 para. 12(a)** (with Sch. 12)

F12 Word in s. 25(4) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 9 para. 12(b)** (with Sch. 12)

26 Cancellation of registration.

(1) Where the **[**[F13]FCA**]** is satisfied that an incorporated friendly society has been dissolved under section 20 above or following a winding up, the **[**[F14]it**]** shall cancel the society's registration under this Act.

(2) Where the **[**[F13]FCA**]** is satisfied, with respect to an incorporated friendly society—

(a) that a certificate of incorporation has been obtained for the society by fraud or mistake; or

(b) that the society has ceased to exist,

[[F15]or

(c) in the case of a society to which section 37(2) or (3) below applies, that the principal place of business of the society is outside the United Kingdom,**]**

[[F16]it**]** may cancel the registration of the society.

(3) Without prejudice to subsection (2) above, the **[**[F13]FCA**]** may, if it thinks fit, cancel the registration of an incorporated friendly society at the request of the society, evidenced in such manner as the **[**[F13]FCA**]** may direct.

(4) Before cancelling the registration of an incorporated friendly society under subsection (2) above, the **[**[F13]FCA**]** shall give to the society not less than two months' previous notice, specifying briefly the grounds of the proposed cancellation.

[[F17](4A) The FCA must consult the PRA before cancelling under subsection (1), (2) or (3) the registration of a society which is a PRA-authorised person.**]**

(5) Where the registration of an incorporated friendly society is cancelled under subsection (2) above, the society may appeal—

(a) where the registered office of the society is situated in England and Wales, to the High Court;

(b) where that office is situated in Scotland, to the Court of Session; or

(c) where that office is situated in Northern Ireland, to the High Court in Northern Ireland;

and on any such appeal the court may, if it thinks it just to do so, set aside the cancellation.

(6) Where the registration of a society is cancelled under subsection (2) or (3) above, then, subject to the right of appeal under subsection (5) above, the society, so far as it continues to exist, shall cease to be a society incorporated under this Act.

(7) Subsection (6) above shall not affect any liability actually incurred by an incorporated friendly society; and any such liability may be enforced against the society as if the cancellation had not taken place.

(8) Any cancellation of the registration of an incorporated friendly society under this section shall be effected **[**[F18]by written notice given by the **[**[F13]FCA**]** to the society**]**.

(9) As soon as practicable after the cancellation of the registration of an incorporated friendly society under this section the **[**[F13]FCA**]** shall cause notice thereof to be published in the London Gazette, the Edinburgh Gazette or the Belfast Gazette according to the situation of the society's registered office, and if it thinks fit, in one or more newspapers.

Textual Amendments

F13 Word in s. 26 substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 9 para. 13(2)** (with Sch. 12)

F14 Word in s. 26(1) substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8(1), 13(1), **Sch. 3 Pt. 1 para 64(a)(ii)** (with art. 13(3), Sch. 5); S.I. 2001/3538, 2(1)

F15 S. 26(2)(c) and the word "or" immediately preceding it inserted (18.7.1996) by S.I. 1996/1669, **reg. 14(1)**

F16 Word in s. 26(2) substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8(1), 13(1), **Sch. 3 Pt. 1 para. 64(b)(ii)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

F17 S. 26(4A) inserted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 9 para. 13(3)** (with Sch. 12)

F18 Words in s. 26(8) substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8(1), 13(1), **Sch. 3 Pt. 1 para. 64(d)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

Changes to legislation:
There are currently no known outstanding effects for the Friendly Societies Act 1992, Cross Heading: Dissolution and winding up.