



# Friendly Societies Act 1992

## 1992 CHAPTER 40

### PART VIII

#### AMALGAMATIONS, TRANSFERS OF ENGAGEMENTS AND CONVERSION OF FRIENDLY SOCIETIES INTO COMPANIES

##### *Transfers of engagements*

#### **86 Transfer of engagements by or to friendly society.**

- (1) A friendly society may, in accordance with this Part of this Act, transfer its engagements to any extent to any of the following persons, that is to say—
- (a) to another friendly society;
  - (b) to an industrial and provident society;
  - (c) to a company within the meaning of the <sup>M1</sup>Companies Act 1985 or the <sup>M2</sup>Companies (Northern Ireland) Order 1986 incorporated in Great Britain or Northern Ireland;
  - (d) in relation to engagements the fulfilment of which will constitute the carrying on of insurance business, to any other person who is an insurance company (within the meaning of the <sup>M3</sup>Insurance Companies Act 1982);
  - (e) in relation to engagements the fulfilment of which will not constitute the carrying on of insurance business, to a person (or body of persons) who is not of a description specified in paragraph (a), (b) or (c) above.
- (2) A friendly society, in order to transfer any of its engagements, must—
- (a) comply with the applicable requirements of Part I of Schedule 15 to this Act;
  - (b) resolve to transfer the engagements by special resolution;
  - (c) if the transfer is of some but not all of its engagements, resolve to do so by an affected members' resolution;
  - (d) record the extent of the transfer as so resolved in an instrument of transfer of engagements; and
  - (e) obtain the confirmation of the [<sup>F1</sup>Authority] of the transfer;

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and, on obtaining that confirmation, the instrument of transfer of engagements may be registered under subsection (4) below.

- (3) Where it is proposed to transfer the engagements of one friendly society to another friendly society, the proposed transferee, in order to undertake to fulfil them, must—
  - (a) comply with the applicable requirements of Part I of Schedule 15 to this Act and, if required, with sections 87 and 88 below; and
  - (b) resolve to undertake to fulfil the engagements by special resolution or, if the [<sup>F1</sup>Authority] consents to that mode of proceeding, by resolution of the committee of management.
- (4) Where the [<sup>F2</sup>Authority] confirms a transfer of engagements, [<sup>F3</sup>it] shall, on the application of the society proposing to transfer them and the proposed transferee—
  - (a) register a copy of the instrument of transfer of engagements; and
  - (b) issue a registration certificate to the transferee,
 and a registration certificate shall specify a date as the transfer date for that transfer.
- (5) On the transfer date—
  - (a) the property, rights and liabilities of the society transferring its engagements shall by virtue of this subsection become, to the extent provided in the instrument of transfer of engagements, the property, rights and liabilities of the transferee; and
  - (b) if the transfer is of all the society's engagements, the society shall be dissolved; but the transfer shall be deemed to have been effected immediately before any such dissolution.
- (6) The [<sup>F4</sup>Authority] shall keep a copy of the instrument and of the registration certificate issued under subsection (4) above—
  - (a) where the transferee is a friendly society, in the public file of that society;
  - (b) in any other case, in the public file of the society transferring the engagements.
- (7) Where a friendly society is dissolved by subsection (5)(b) above, its registration under this Act or the 1974 Act shall be cancelled by the [<sup>F4</sup>Authority].
- (8) Where it is proposed that any engagements of a person other than a friendly society should be transferred to a friendly society, the proposed transferee, in order to undertake to fulfil them, must resolve to do so by special resolution.
- (9) For the purposes of this section—
  - (a) an “affected members’ resolution” is a resolution approving a transfer of engagements which is passed by the appropriate majority of those members whose contracts with the society are included in the transfer and who are entitled to vote on the resolution; and
  - (b) the “appropriate majority” means a majority consisting of not less than three quarters of those who vote on the resolution (in person or by proxy) at a meeting of the society or in a postal ballot;
 and sub-paragraphs (1)(b) and (c), (4), (5) and (6) of paragraph 7 of Schedule 12 to this Act shall apply to an affected members’ resolution as they apply to a special resolution.
- (10) Delegate voting may not take place on an affected members’ resolution; and where the rules of a friendly society provide for delegate voting on any matter, they must provide for voting by individual members on such resolutions.

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(11) Schedule 15 to this Act has effect for supplementing this section.

#### Textual Amendments

- F1** Words in s. 86(2)(e)(3)(b) substituted (17.8.2001 for specified purposes and otherwise *prosp.*) by S.I. 2001/2617, arts. 2(a), 8(1), 13(1), Sch. 3 para. 96(a) (with art. 13(3), Sch. 5)
- F2** Word in s. 86(4) substituted (17.8.2001 for specified purposes and otherwise *prosp.*) by S.I. 2001/2617, arts. 2(a), 8(1), 13(1), Sch. 3 para. 96(b)(i) (with art. 13(3), Sch. 5)
- F3** Word in s. 86(4) substituted (17.8.2001 for specified purposes and otherwise *prosp.*) by S.I. 2001/2617, arts. 2(a), 8(1), 13(1), Sch. 3 para. 96(b)(ii) (with art. 13(3), Sch. 5)
- F4** Words in s. 86(6)(7) substituted (17.8.2001 for specified purposes and otherwise *prosp.*) by S.I. 2001/2617, arts. 2(a), 8(1), 13(1), Sch. 3 para. 96(c) (with art. 13(3), Sch. 5)

#### Marginal Citations

- M1** 1985 c.6.  
**M2** S.I. 1986/1032 (N.I.6).  
**M3** 1982 c. 50.

### 87 Actuary's report as to margin of solvency.

- (1) This section applies where a friendly society (“the transferor”) proposes to transfer any of its engagements under section 86 above to another friendly society (“the transferee”).
- (2) Where—
- [<sup>F5</sup>(a) the fulfilment of any of the engagements to be transferred will constitute—
- (i) in the case of a transferor to which subsection (2) or (3) of section 37 above applies, the carrying on of insurance business in one or more [<sup>F6</sup>EEA State], or
- (ii) in the case of a transferor to which neither of those subsections applies, the carrying on of insurance business in the United Kingdom, and]
- (b) the transferee will, after taking the proposed transfer into account, be [<sup>F7</sup>required by rules made by the Authority under section 138 of the Financial Services and Markets Act 2000 to maintain the margin of solvency required by such rules],
- the transferee shall furnish the [<sup>F8</sup>Authority] with a report by the appropriate actuary as to whether it will immediately after the proposed transfer, possess that margin of solvency.
- (3) Where—
- (a) the fulfilment of any of the engagements will constitute the carrying on of long-term business, and
- (b) a report is not required to be furnished under subsection (2) above,
- the [Authority] may direct the transferee to furnish the [<sup>F8</sup>Authority] with a report by the appropriate actuary as to whether it will, immediately after the proposed transfer, possess an excess of assets over liabilities.
- (4) The appropriate actuary has a right of access at all times to the books, accounts and vouchers of the transferor and of the transferee, and is entitled to require from the

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officers of either society such information and explanations as he thinks necessary to enable him to prepare a report under this section.

- (5) If the appropriate actuary fails to obtain all the information and explanations and the access to documents which, to the best of his knowledge and belief, are necessary for the purposes of a report under this section, he shall state that fact in his report.
- (6) An officer of a transferor or of the transferee shall be guilty of an offence if he knowingly or recklessly makes to the appropriate actuary a statement (whether written or oral) which—
- (a) conveys or purports to convey any information or explanations which he requires, or is entitled to require, for the purposes of a report under this section; and
  - (b) is misleading, false or deceptive in a material particular.
- (7) A person guilty of an offence under subsection (6) above is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both; and
  - (b) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both.

#### Textual Amendments

- F5** S. 87(2)(a) substituted (1.9.1994) by S.I. 1994/1984 reg. 26(1)
- F6** Words in s. 87(2)(a)(i) substituted (1.1.1998) by S.I. 1997/2849 reg. 3
- F7** Words in s. 87(2)(b) 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. 97(a) (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2(1)
- F8** Words in s. 87(2)(3) 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. 97(b) (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2(1)

## 88 Actuary's report on transfer of long term business.

- (1) This section applies where—
- [<sup>F9</sup>(a) a friendly society (“a transferor society”) proposes to transfer to any person engagements the fulfilment of which will constitute—
    - (i) in the case of a society to which subsection (2) or (3) of section 37 above applies, the carrying on of long term business in one of more [<sup>F10</sup>EEA State]; or
    - (ii) in the case of a society to which neither of those subsections applies, the carrying on of long term business in the United Kingdom; or]
  - (b) a friendly society (a “transferee society”) proposes to undertake to fulfil any such engagements to be transferred to it from another friendly society.
- (2) The [<sup>F11</sup>Authority] may direct a transferor society or a transferee society to furnish the [<sup>F11</sup>Authority] with a report by an independent actuary on the terms of the proposed transfer and as to his opinion on the likely effects of the transfer on the members of the society who are long term policyholders.

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- (3) A friendly society which is directed to furnish a report under this section shall, on payment of a reasonable fee, furnish a copy of the report to any person who asks for one at any time before the transfer in question is confirmed by the [Authority].
- (4) Subsections (4) to (7) of section 87 above shall apply in relation to an actuary preparing a report under this section as they apply to the appropriate actuary preparing a report under that section.
- (5) In this section—
  - “independent actuary”, in relation to a transfer of engagements, means an actuary who is not the appropriate actuary of a friendly society participating in the transfer;
  - “long term policyholder” means a member whose contract with a friendly society is a contract the effecting of which by the society constituted the carrying on of long term business.

#### Textual Amendments

- F9** S. 88(1)(a) substituted (1.9.1994) by S.I. 1994/1984 reg. 27
- F10** Words in s. 88(1)(a)(i) substituted (1.1.1998) by S.I. 1997/2849 reg. 3
- F11** Words in s. 88 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. 98 (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2(1)

#### 89 Power of [<sup>F12</sup>Authority] to alter requirements for transfer by friendly society.

- (1) If the [<sup>F12</sup>Authority] is satisfied that it is expedient to do so in the interests of the members or potential members of a friendly society, it may give a direction under this section (“a direction”)—
  - (a) modifying the requirements of subsection (2)(b) and (c) of section 86 above; and
  - (b) modifying or disapplying the requirements of Part I of Schedule 15 to this Act, in relation to a particular proposed transfer or to all transfers made by the society after the making of the direction.
- (2) A direction may not modify the requirements of section 86(2) above so as to permit a society to resolve to make a transfer by a resolution passed by less than a majority, or to require more than a three-quarters majority, of those voting on the resolution.
- (3) The [<sup>F12</sup>Authority] shall not give a direction unless—
  - (a) an application has been made to it by not less than 10 per cent. of the members of the society concerned or, in the case of a society with more than 1000 members, by not less than 100 members of the society;
  - (b) not less than one month before giving the direction the [<sup>F12</sup>Authority] has served on the society concerned a notice stating that it proposes to make a direction and specifying the considerations which have led it to conclude that it would be expedient to give it;
  - (c) the [<sup>F12</sup>Authority] has considered any representations made by the society with respect to the notice mentioned in paragraph (b) above within such period (not being less than one month) from the date on which the society was served with the notice as the [<sup>F12</sup>Authority] may allow; and

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- (d) if the society so requests, the [F<sup>12</sup>Authority] has afforded to it an opportunity of being heard by it within that period.
- (4) If the [F<sup>12</sup>Authority] considers it expedient to do so in the interests of the members or potential members of the society concerned, it may vary or revoke a direction by a further direction.
- (5) On giving a direction in relation to a society, the [F<sup>12</sup>Authority] shall serve on the society a copy of the direction, specifying the considerations which have led it to conclude that it is expedient to give the direction; but the [F<sup>12</sup>Authority] may not give a direction unless all the considerations so specified were those, or among those, which were specified in the notice served on the society under subsection (3) above.
- (6) Notice of a direction shall be published by the [F<sup>12</sup>Authority] in one or more of the London Gazette, the Belfast Gazette or the Edinburgh Gazette, as it thinks appropriate, and in such other ways as appear to the [F<sup>12</sup>Authority] expedient for informing the public.
- (7) The [F<sup>13</sup>Authority shall keep a copy of any direction given under this section] in the public file of the society concerned.

#### Textual Amendments

- F12** Words in s. 89 (1)-(6) and the sidenote substituted (17.8.2001 for specified purposes and otherwise *prosp.*) by S.I. 2001/2617, arts. 2(a), 8(1), 13(1), Sch. 3 para. 99(a) (with art. 13(3), **Sch. 5**)
- F13** Words in s. 89(7) substituted (17.8.2001 for specified purposes and otherwise *prosp.*) by S.I. 2001/2617, arts. 2(a), 8(1), 13(1), Sch. 3 para. 99(b) (with art. 13(3), **Sch. 5**)

## 90 Power of [F<sup>14</sup>Authority] to effect transfer of engagements.

- (1) Subject to the following provisions of this section the [F<sup>14</sup>Authority] may give a direction under this section (“a direction”) providing for the transfer of such of the engagements of a friendly society (“the society”) as are specified in the order to a person so specified (“the transferee”).
- (2) The [F<sup>14</sup>Authority] may give a direction if—
- (a) it considers that—
    - (i) the society is unable to manage its affairs satisfactorily in relation to the engagements specified in the order; and
    - (ii) a transfer of those engagements would be expedient to protect the interests of the members of the society; and
  - (b) the proposed transferee has complied with paragraph 1 of Schedule 15 to this Act and has resolved to undertake to fulfil the engagements by special resolution or, if the [F<sup>14</sup>Authority] consents to that mode of proceeding, by resolution of the committee of management;
- but the [F<sup>14</sup>Authority] may direct that paragraph (b) above shall be modified in relation to a particular proposed transfer (but not to permit a society to resolve to undertake to fulfil the engagements by less than a majority or more than a three-quarters majority of those voting).
- (3) The [F<sup>14</sup>Authority] may not give a direction if, were the transfer to be proposed to be made under section 86 above, it would be precluded from confirming it by [F<sup>15</sup>paragraph 11 or] any provision of paragraphs 13 to 17 of Schedule 15 to this Act.

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- (4) <sup>F16</sup>At the same time as giving a warning notice to the society in accordance with section 58A(1) in relation to its proposal to give a direction, the Authority shall publish notice of the proposed direction in one or more of the London Gazette, the Belfast Gazette or the Edinburgh Gazette, as it thinks appropriate.
- (5) A notice published in pursuance of subsection (4)(b) above shall—
- state that any interested party has the right to make representations to the <sup>F17</sup>Authority with respect to the proposed direction;
  - specify a date determined by the <sup>F17</sup>Authority before which any written representations or notice of a person's intention to make oral representations must be received by the <sup>F17</sup>Authority; and
  - specify a date determined by the <sup>F17</sup>Authority as the day on which it intends to hear any oral representations.
- (6) After the date specified in pursuance of subsection (5)(b) above, the <sup>F17</sup>Authority shall—
- determine the time and place at which oral representations may be made;
  - give notice of that determination to the society and the proposed transferee and to any persons who have given notice of their intention to make oral representations; and
  - send copies of the written representations received by the <sup>F17</sup>Authority to the society concerned and the proposed transferee.
- (7) <sup>F18</sup>Before the Authority decides whether to give the society a decision notice in accordance with section 58A(3), the <sup>F17</sup>Authority shall allow the society and the proposed transferee an opportunity to comment on the written representations, whether at a hearing or in writing before the expiration of such period as the <sup>F17</sup>Authority specifies in a notice to it.
- (8) <sup>F19</sup>If the Authority gives a direction it shall keep a copy of that direction and shall—
- register that copy; and
  - issue a registration certificate to the transferee;
- and the registration certificate shall specify a date as the transfer date for the transfer.
- (9) On the transfer date—
- the property, rights and liabilities of the society shall by virtue of this subsection become, to the extent provided in the direction, the property, rights and liabilities of the transferee; and
  - if the transfer is of all the society's engagements, the society shall be dissolved; but the transfer shall be deemed to have been effected before any such dissolution.
- (10) The <sup>F20</sup>Authority shall keep a copy of a direction and of the registration certificate—
- if the transferee is a friendly society, in the public file of that society;
  - in any other case, in the public file of the society transferring the engagements.
- (11) Where a friendly society is dissolved by subsection (9)(b) above, its registration under this Act or the 1974 Act shall be cancelled by the <sup>F20</sup>Authority.

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#### Textual Amendments

- F14** Words in s. 90(1)-(3) and sidenote 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. 100(a)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F15** Words in s. 90(3) inserted (17.8.2001 for specified purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8(1), 13(1), **Sch. 3 para. 100(b)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F16** Words in s. 90(4) substituted for s. 90(4)(a) and words (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. 100(c)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F17** Words in s.90(5)-(7) 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. 100(d)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F18** Words in s. 90(7) inserted (17.8.2001 for specified purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8(1), 13(1), **Sch. 3 para. 100(e)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F19** Words in S. 90(8) substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) by virtue of S.I. 2001/2617, arts. 2, 8(1), 13(1), **Sch. 3 para. 100(f)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)** and also substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 203(4)**
- F20** Words in s. 90(10)(11) 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 para. 100(g)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

#### <sup>[F21]</sup> <sub>F22</sub> **90A Issue of certificates by Commission.**

- (1) Where it is proposed to execute an instrument by which—
- (a) an EC company, or a non-EC company whose head office is in an EFTA State, is to transfer to a friendly society to which section 37(2) or (3) above applies all its rights and obligations under such long term or general policies, or long term or general policies of such descriptions, as may be specified in the instrument; or
  - (b) a Swiss general insurance company is to transfer to such a friendly society all its rights and obligations under such general policies, or general policies of such descriptions, as may be so specified,

the Commission may, if it is satisfied that the transferee possesses (after taking the proposed transfer into account) the margin of solvency required by section 48 above, issue a certificate to that effect.

- (2) In this section—

“EC company”, “non-EC company” and “Swiss general insurance company” have the same meanings as in the Insurance Companies Act 1982;

“general policy” means a policy evidencing a contract (other than a contract of reinsurance) the effecting of which by the transferor constituted the carrying on of general business of any class;

“long term policy” means a policy evidencing a contract (other than a contract of reinsurance) the effecting of which by the transferor constituted the carrying on of long term business of any class.]]

#### Textual Amendments

- F21** S. 90A added (1.9.1994) by S.I. 1994/1984 reg. 28



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**F22** S. 90A shall cease to have effect (17.8.2001 for specified purposes and otherwise *prosp.*) by virtue of S.I. 2001/2617, arts. 2(a), 8(1), 13(1), Sch. 3 para. 101 (with art. 13(3), **Sch. 5**) and is repealed (*prosp.*) by S.I. 2001/2617, arts. 2(b), 13(2), Sch. 4 (with art. 13(3), **Sch. 5**)

**Status:**

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