STATUTORY INSTRUMENTS

2018 No. 323

FINANCIAL SERVICES AND MARKETS

The Financial Services Act 2012 (Mutual Societies) Order 2018

Made - - - -	*6th March 2018*
Coming into force - -	*6th April 2018*

The Treasury make the following Order in exercise of the powers conferred by sections 50(1), (2) and (4), 51, 52, 115(2) and 118 of the Financial Services Act 2012(**1**).

A draft of this Order has been laid before Parliament and approved by a resolution of each House of Parliament in accordance with section 116(1) and (2) of the Financial Services Act 2012.

Citation and commencement

1. This Order may be cited as the Financial Services Act 2012 (Mutual Societies) Order 2018, and comes into force on 6th April 2018, immediately after the coming into force of section 8(2) of the Credit Unions and Co-operative and Community Benefit Societies Act (Northern Ireland) 2016(**2**).

Transfer of functions to the Financial Conduct Authority

2. The following Schedules to this Order have effect—

(a) Schedule 1 (which provides for the application of FSMA 2000(**3**) to the functions transferred to the FCA by Schedules 2 and 3);

(b) Schedules 2 and 3 (which amend legislation relating to mutual societies in Northern Ireland to provide for the functions of the Registrar of Credit Unions for Northern Ireland(**4**) to be transferred to the FCA); and

(c) Schedule 4 (which makes amendments in consequence of Schedules 2 and 3).

Transitional provisions

3.—(1) In this article—

(**1**) 2012 c. 21.
(**2**) 2016 c. 16. Section 8(2) is brought into force on 6 April 2018 by S.R (N.I) 2017 No. 217.
(**3**) For the meaning of "FSMA 2000", "the FCA" and "the PRA" see the Financial Services Act 2012, section 117. "FSMA 2000" means the Financial Services and Markets Act 2000 (c. 8), "the FCA" means the Financial Conduct Authority and "the PRA" means the Prudential Regulation Authority.
(**4**) The Registrar of Credit Unions for Northern Ireland is appointed to perform in Northern Ireland the functions of registrar by Article 2A(1) of The Credit Unions (Northern Ireland) Order 1985 (S.R (N.I) 1985 No. 1205).

"the registrar" means the Registrar of Credit Unions for Northern Ireland or the Assistant Registrar of Credit Unions for Northern Ireland; and

"relevant provision" means a provision of an enactment amended by Schedule 2, 3 or 4 of this Order.

(2) Where a relevant provision, as amended by this Order, requires any document, information or matter to be notified, copied or sent to the FCA, the provision has effect without the amendment if the document, information or matter was notified, copied or sent to the registrar before 6th April 2018.

(3) Any application made or notice given to the registrar under a relevant provision, and any other thing done in relation to the registrar under a relevant provision before 6th April 2018 is to be treated as if it had been made or given to, or done in relation to, the FCA.

(4) Any decision or notification made, or other thing done, by the registrar before 6th April 2018 in exercise of a function which, by virtue of this Order, becomes exercisable on that date by the FCA is to be treated as if it had been made or done by the FCA.

(5) This Order does not affect the validity of anything done (or having effect as if done) by or in relation to the registrar before 6th April 2018.

Andrew Stephenson
Nigel Adams
Two of the Lords Commissioners of Her Majesty's Treasury

6th March 2018

SCHEDULE 1

Article 2(a)

Application of the Financial Services and Markets Act 2000 to transferred functions

Interpretation

1. In this Schedule—

(a) a reference to a numbered section or Schedule is a reference to that section of, or Schedule to, FSMA 2000;

(b) "the legislation relating to mutual societies in Northern Ireland" means—

(i) the Co-operative and Community Benefit Societies Act (Northern Ireland) 1969(**5**); and

(ii) the Credit Unions (Northern Ireland) Order 1985(**6**).

(c) "mutuals expenditure" means expenditure incurred by the FCA—

(i) in carrying out functions which are conferred by the legislation relating to mutual societies in Northern Ireland or are otherwise exercisable by virtue of this Order;

(ii) for any purpose incidental to, or in connection with, the carrying out of such functions (including expenditure incurred before 6th April 2018 in preparation for the assumption of those functions).

General

2.—(1) For the purposes of the provisions specified in sub-paragraph (2) the functions transferred by this Order are to be treated as functions conferred on the FCA under a provision of FSMA 2000.

(2) The provisions are—

(a) section 1A(3) and Schedule 1ZA(**7**) (which make general provision in relation to the FCA and its functions);

(b) section 1S (reviews)(**8**);

(c) section 3D (duty of FCA and PRA to ensure co-ordinated exercise of functions);

(d) section 3E (memorandum of understanding);

(e) sections 3I to 3K (power of PRA to restrain proposed action by FCA);

(f) section 139A(**9**) (power of the FCA to give guidance); and

(g) section 415(**10**) (jurisdiction in civil proceedings).

3. Section 3I (power of PRA to restrain proposed action by FCA), as applied by paragraph 2(2)(e), has effect as if—

(a) in subsection (2)(a) the reference to regulatory powers were a reference to the functions transferred by this Order; and

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(**5**) 1969 c. 24. This citation is given by the Credit Unions and Co-operative and Community Benefit Societies Act (Northern Ireland) 2016 (c. 16), section 8(2), which comes into force on the same date as this Order by virtue of S.R (N.I) 2017 No. 217. The previous citation was the Industrial and Provident Societies Act (Northern Ireland) 1969.

(**6**) S.I 1985/1205 (N.I. 12), as amended by the Friendly Societies Act 1992 (c. 40) and by S.I. 2011/2832 and 2013/496. There are other amendments, but they are not relevant.

(**7**) Sections 1A, 1S, 3D, 3E and 3I to 3K of, and Schedule 1ZA to, FSMA 2000 were inserted by the Financial Services Act 2012, section 6 and Schedule 3. Schedule 1ZA to FSMA 2000 was also amended by the Bank of England and Financial Services Act 2016 (c. 14), the Financial Services (Banking Reform) Act 2013 (c. 33) and the Pension Schemes Act 2015 (c. 8).

(**8**) Section 1S was amended by Schedule 3 to the Pension Schemes Act 2015.

(**9**) Section 139A of FSMA 2000 was inserted by the Financial Services Act 2012, section 24. Sub-section 1A was inserted by paragraph 9 of Schedule 3 to the Pension Schemes Act 2015. Sub-section 4 was amended by SI 2016/680.

(**10**) Section 415 of FSMA 2000 was amended by the Financial Services Act 2012, section 16(14)(j) and Schedule 18, paragraph 24.

(b) subsections (2)(b) and (3) were omitted.

4. The FCA must maintain arrangements designed to enable it to determine whether persons are complying with requirements imposed on them by or under the legislation relating to mutual societies in Northern Ireland.

Rules relating to fees

5.—(1) This paragraph applies where the FCA makes, or proposes to make, rules under paragraph 23 of Schedule 1ZA (the Financial Conduct Authority: fees) which require the payment to the FCA of fees which relate in whole or in part to mutuals expenditure.

(2) Paragraph 23 of Schedule 1ZA, as applied by paragraph 2(2)(a), has effect as if the reference to fees and charges provided for by any other provision of FSMA 2000 included a reference to fees and charges provided for by any provision of the legislation relating to mutual societies in Northern Ireland.

(3) To the extent that the fees relate to mutuals expenditure—

(a) section 138I(2)(d)(**11**) (requirement for draft rules to be accompanied by an explanation of the FCA's reasons for believing that making the proposed rules is compatible with section 1B(1)) does not apply in relation to the rules; and

(b) the rules are not to be treated as a "regulating provision" within the meaning given in section 140A(1) (interpretation of Chapter 4 of Part 9A (competition scrutiny)).

Guidance

6. Sections 139A(3) (power of FCA to give guidance) and 139B(5)(**12**) (notification of FCA guidance to the Treasury) apply to guidance given to co-operative and community benefit societies whose registered offices are in Northern Ireland, whether or not the guidance is also given to co-operative and community benefit societies whose registered offices are in England and Wales or Scotland.

7.—(1) This paragraph applies where the FCA gives guidance under section 139A on the operation of a rule of the kind mentioned in paragraph 5.

(2) To the extent that the fees required to be paid by the rule relate to mutuals expenditure, the guidance is not to be treated as a "regulating provision" within the meaning given in section 140A(1).

8.—(1) This paragraph applies where—

(a) the FCA gives general guidance under section 139A with respect to any matter relating to functions exercisable under, or to any provision of, or made under, the legislation relating to mutual societies in Northern Ireland; and

(b) paragraph 6 does not apply.

(2) The guidance is not to be treated as a "regulating provision" within the meaning given in section 140A(1).

(**11**) Sections 138I and 140A of FSMA 2000 were inserted by the Financial Services Act 2012, section 24.
(**12**) Section 139B was inserted by the Financial Services Act 2012, section 24.

SCHEDULE 2

Article 2(b)

Amendments of the Co-operative and Community Benefit Societies Act (Northern Ireland) 1969

1. The Co-operative and Community Benefit Societies Act (Northern Ireland) 1969 is amended as follows.

2. In the following provisions for "he", wherever it appears, substitute "the registrar"—

(a) section 5 (name of society), subsection (5);

(b) section 15 (cancellation of registration of society), subsections (1)(b) and (4)(b);

(c) section 17 (appeal from refusal, cancellation or suspension of registration of society or rules), subsection (1)(a);

(d) section 29 (charges on assets of registered societies), subsection (5)(**13**);

(e) section 56 (inspection of books by order of registrar), subsections (1) and (2);

(f) section 57 (production of documents and provision of information for certain purposes), subsections (1) and (3); and

(g) section 58 (appointment of inspectors and calling of special meetings), subsection (3).

3. In section 2 (registration of society)—

(a) in subsection (1)(b) for "with two printed copies of the society's rules to the registrar" substitute "to the registrar with two copies of the society's rules or, if the application is made by electronic means, one copy of those rules";

(b) in subsection (2)—

(i) omit "printed";

(ii) at the end insert "(or, if the application is made by electronic means, one copy of those rules)"; and

(c) in subsection (3) for "in the prescribed form" substitute ", bearing the registrar's seal,".

4. In section 7A(**14**) (capacity of society not limited by its rules), in subsection (7) for "him" substitute "it".

5. In section 9 (amendment of registered rules), in subsection (3) for "in the prescribed form" substitute ", bearing the registrar's seal,".

6. In section 14(**15**) (provision of copies of rules), in subsection (1) for "by the registrar" insert "by the Department".

7. In section 15 (cancellation of registration of society)—

(a) in subsection (1)—

(i) for "by writing under his hand" substitute "in writing";

(ii) in paragraph (a) for "his" substitute "the registrar's";

(iii) in paragraph (c)—

(aa) for "with the approval of the Department(**16**)" substitute "if at any time";

(**13**) Section 29 was amended by S.I. 1997/2984 (N.I. 22).
(**14**) Section 7A was inserted by S.I. 2006/314 (N.I. 3).
(**15**) Section 14 was amended by S.R (NI) 1974 No. 317
(**16**) "Department" was substituted for "Ministry" in each place where it appears in the Co-operative and Community Benefit Societies Act (Northern Ireland) 1969, except in section 101 and Schedule 5, by the Credit Unions and Co-operative and Community Benefit Societies Act (Northern Ireland) 2016, section 16(1) and Schedule 1, paragraph 46, which came into force on 23 April 2016. By virtue of paragraph 56 of Schedule 1 to that Act "the Department" is the Department of Enterprise, Trade and Investment, which is renamed "the Department for the Economy" by the Departments Act (Northern Ireland) 2016 (c. 5), section 1(3) and Schedule 1, paragraph 1(3).