STATUTORY INSTRUMENTS

2016 No. 679

FINANCIAL SERVICES AND MARKETS

The Building Societies (Floating Charges and Other Provisions) Order 2016

Made - - - - 27th June 2016
Coming into force in accordance with article 1(1) and (2)

The Treasury make the following Order in exercise of the powers conferred on them by section 251(1), (2), (3), (5) and (8) and section 259(1) of the Banking Act 2009(**1**), section 118 of the Financial Services Act 2012(**2**) and sections 142(3) and 145 of the Financial Services (Banking Reform) Act 2013(**3**).

A draft of this Order has been laid before Parliament and approved by a resolution of each House of Parliament in accordance with section 251(6) of the Banking Act 2009, section 116(1) of the Financial Services Act 2012 and section 143(3) of the Financial Services (Banking Reform) Act 2013.

Citation, commencement, interpretation and application

1.—(1) This Order may be cited as the Building Societies (Floating Charges and Other Provisions) Order 2016, and subject to paragraph (2) comes into force on the day after the day on which it is made.

(2) Articles 5 and 7 come into force immediately after articles 2, 3 and 4.

(3) In this Order "the Act" means the Building Societies Act 1986(**4**).

(4) The amendments made by articles 2 to 5 and 7 apply in relation to a floating charge created by a building society on or after the day on which this Order comes into force.

(**1**) 2009 c. 1.
(**2**) 2012 c. 21.
(**3**) 2013 c. 33.
(**4**) 1986 c. 53.

Floating charges: application of companies winding up legislation

2. In Schedule 15 to the Act(**5**) (application of companies winding up legislation to building societies) for paragraph 16 substitute—

"**16.**—(1) Section 122(**6**) (circumstances in which company may be wound up by the court) of the Act does not apply in relation to a building society whose principal office is situated in England and Wales.

(2) Section 122 has effect in relation to a building society whose principal office is situated in Scotland as if subsection (1) were omitted.".

Floating charges: application of other companies insolvency legislation

3. In section 90A of the Act(**7**) (application of other companies insolvency legislation to building societies), in paragraph (c)—

(a) after "England and Wales" insert ", Scotland"; and

(b) after "receivers and managers" insert ", or receivers,".

4.—(1) Schedule 15A to the Act(**8**) (application of other companies insolvency legislation to building societies) is amended as follows.

(2) In Part 1 (general mode of application)—

(a) in paragraph 1(2)(a) for "and II, Chapter I of Part III, Parts" substitute ", II, III,";

(b) in paragraph 2(2)(b) after "receiver" insert ", other than a reference in section 29(2), 72A(**9**) or 251 of the Insolvency Act 1986(**10**) or in Article 5(1) or 59A of the Insolvency (Northern Ireland) Order 1989(**11**),";

(c) in paragraph 3 at the end insert—

"(3) Any reference in any of the enactments, as so applied, to the register shall have effect as a reference to the public file."; and

(d) for paragraph 5A(**12**) substitute—

"**5A.** In this Schedule—

"deposit" and "relevant deposit" have the meaning given by paragraph 1A of Schedule 15(**13**); and

"scheme manager" has the same meaning as in the Financial Services and Markets Act 2000(**14**).".

(3) In Part 2 (modified application of Parts 1 and 2 and Chapter 1 of Part 3 of the Insolvency Act 1986)—

(a) in the heading for "Parts I and II and Chapter I of Part III" substitute "Parts I to III";

(**5**) Schedule 15 was amended by the Companies Act 1989 (c. 40), sections 211(2) and 212 and Schedule 24; the Building Societies Act 1997 (c. 32), Schedule 7, paragraph 65; and by S.I. 2001/2617, 2001/3649, 2009/2941 and 2013/496. There are other amendments, but they are not relevant.

(**6**) That is, section 122 of the Insolvency Act 1986 (c. 45). Part 2 of Schedule 15, which includes paragraph 16, applies provisions of that Act with modifications to building societies whose principal office is in England and Wales or Scotland.

(**7**) Section 90A was inserted by the Building Societies Act 1997, section 39(1).

(**8**) Schedule 15A was inserted by the Building Societies Act 1997, section 39(2) and Schedule 6; and was amended by S.I. 2001/3649, 2009/2941 and 2013/496. There are other amendments, but they are not relevant.

(**9**) Section 72A was inserted by the Enterprise Act 2002 (c. 40), section 250(1).

(**10**) 1986 c. 45.

(**11**) S.I. 1989/2405 (N.I. 19). Article 59A, together with Articles 59B to 59J, was inserted by S.I. 2005/1455 (N.I. 10).

(**12**) Paragraph 5A was inserted by S.I. 2001/2617.

(**13**) Paragraph 1A was inserted by S.I. 2014/3486.

(**14**) 2000 c. 8.

(b) for paragraph 27 substitute—

"**27.** Subsection (3) of section 40 of the Act (payment of debts out of assets subject to floating charge), as applied to a building society, has effect as if the reference to general creditors included a reference to shareholding members of the society in respect of deposits which are not relevant deposits.

27A. Sections 42 to 49 of the Act (administrative receivers) are omitted.

27B. Subsection (1) of section 51 of the Act (power to appoint receiver), as applied to a building society, has effect as if for the words "an incorporated company (whether a company registered under the Companies Act 2006 or not)" there were substituted "a building society".

27C. Subsection (3) of section 59 of the Act (priority of debts), as applied to a building society, has effect as if the reference to ordinary creditors included a reference to shareholding members of the society in respect of deposits which are not relevant deposits.

27D. Subsection (1) of section 67 of the Act (report by receiver), as applied to a building society, has effect as if—

(a) the reference to the Financial Conduct Authority included a reference to the scheme manager; and

(b) in paragraph (d) the reference to other creditors included a reference to shareholding members of the society in respect of deposits which are not relevant deposits.

27E. Subsection (1) of section 70 of the Act (interpretation for Chapter 2), as applied to a building society, has effect as if—

(a) in the definition of "company" for the words "an incorporated company (whether or not a company registered under the Companies Act 2006)" there were substituted "a building society"; and

(b) the definition of "the register" were omitted.

27F. Chapter 4 of Part 3 of the Act (prohibition of appointment of administrative receiver), as applied to a building society, has effect as if—

(a) in section 72A (floating charge holder not to appoint administrative receiver)—

(i) in subsections (1) and (2) the word "qualifying" and in subsection (3) the definition of "holder of a qualifying floating charge in respect of a company's property" were omitted; and

(ii) subsections (4)(a), (5) and (6) were omitted; and

(b) sections 72B to 72H(**15**) (exceptions to prohibition) were omitted.".

(4) In Part 3 (modified application of Parts 2, 3 and 4 of the Insolvency (Northern Ireland) Order 1989(**16**)) for paragraph 49 substitute—

"**49.** Paragraph (3) of Article 50 of the Order (payment of debts out of assets subject to floating charge), as applied to a building society, has effect as if the reference to general creditors included a reference to shareholding members of the society in respect of deposits which are not relevant deposits.

(**15**) Sections 72B to 72H, except sections 72DA and 72GA, were inserted by the Enterprise Act 2002, section 250(1); sections 72DA and 72GA were inserted by S.I. 2003/1832.
(**16**) S.I. 1989/2405 (N.I. 19).