Draft Order laid before Parliament under section 3(6) of the Building Societies (Funding) and Mutual Societies (Transfers) Act 2007, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2009 No.

BUILDING SOCIETIES
FRIENDLY SOCIETIES
INDUSTRIAL AND PROVIDENT SOCIETIES

The Mutual Societies (Transfers) Order 2009

*Made - - - - *** 2009*

Coming into force in accordance with article 1(2)

The Treasury, in exercise of the powers conferred by sections 3 and 4 of the Building Societies (Funding) and Mutual Societies (Transfers) Act 2007(**1**), make the following Order:

PART 1

Introductory

Citation and commencement

1.—(1) This Order may be cited as the Mutual Societies (Transfers) Order 2009.

(2) It comes into force on the day after the day on which it is made.

Interpretation

2. In this Order—

"the 1986 Act" means the Building Societies Act 1986(**2**);

"the 1998 Regulations" means the Building Societies (Transfer of Business) Regulations 1998(**3**);

"the 2007 Act" means the Building Societies (Funding) and Mutual Societies (Transfers) Act 2007.

(**1**) 2007 c.26.
(**2**) 1986 c.53.
(**3**) S.I. 1998/212, to which there are amendments not relevant to this Order.

PART 2

Building societies

Application of Part 2

3.—(1) This Part applies to a transfer of the whole of the business of a building society incorporated or deemed to be incorporated under the 1986 Act to the subsidiary of another mutual society where the transfer agreement contains a statement that it so applies.

(2) A transfer to which this Part applies is referred to in this Part as a "relevant transfer".

(3) The transfer provisions of the 1986 Act and the 1998 Regulations apply in relation to a relevant transfer with the modifications made by this Part.

(4) In this article "transfer agreement" has the same meaning as in section 97 of the 1986 Act (transfer of business to commercial company).

Interpretation of the transfer provisions

4.—(1) Section 97(12) of the 1986 Act(**4**) applies in relation to a relevant transfer with the following modifications.

(2) At the appropriate places insert—

""the 2007 Act" means the Building Societies (Funding) and Mutual Societies (Transfers) Act 2007;";

""the 2009 Order" means the Mutual Societies (Transfers) Order 2009;";

""holding mutual" means the mutual society of which the successor is a subsidiary;";

""mutual society" has the same meaning as in section 3 of the 2007 Act;";

""parent undertaking" has the same meaning as in the Companies Acts (see section 1162 of, and Schedule 7 to, the Companies Act 2006(**5**));";

""subsidiary" (except in the term "subsidiary undertaking") has the same meaning as in section 3 of the 2007 Act;".

The transfer resolution

5. Paragraph 30 of Schedule 2 to the 1986 Act (transfer resolutions)(**6**) applies in relation to a relevant transfer with the following modifications—

(a) in sub-paragraph (1)(b), for "("the requisite shareholders' resolution") is passed in accordance with sub-paragraphs (2) to (5) below", substitute "is passed as a shareholding members' resolution";

(b) omit sub-paragraphs (2) to (8).

Formation of the successor company

6. Section 97 of the 1986 Act(**7**) applies in relation to a relevant transfer with the following modifications—

(**4**) Section 97(12) was amended by the Building Societies Act 1997 (c.32), section 43, Schedule 7, paragraph 45(3), and by S.I. 2001/2617.
(**5**) 2006 c.46.
(**6**) Paragraph 30 of Schedule 2 was amended by the Building Societies Act 1997, section 43, Schedule 7, paragraph 57(10), (11) and (12), by S.I. 1997/2714 and by S.I. 2001/2617.
(**7**) Section 97(3) was amended by the Building Societies Act 1997, sections 43 and 46(2), Schedule 7, paragraph 45(2) and Schedule 9. For amendments to section 97(12) see the footnote to article 4.

(a) in subsection (3), after "formed by the society" insert "or by the holding mutual";

(b) in subsection (12), in the definition of "company", after "formed by a building society" insert "or by the holding mutual".

Distribution of funds of building society or holding mutual

7.—(1) Section 4 of the 2007 Act (transfers to subsidiaries: distribution of funds) has effect in relation to a relevant transfer.

(2) The terms of a relevant transfer may include provision for part of the funds of the transferor building society or of the holding mutual (or both) to be distributed to members of the transferor or of the holding mutual (or both) in consideration of the transfer, in accordance with section 4 of the 2007 Act and this article.

(3) The limit referred to in section 4(3) and (4) of the 2007 Act, in relation to a distribution made by a transferor building society, is—

(a) five per cent of the value of that society's total assets, or

(b) if less, the sum calculated in accordance with paragraph (4).

(4) The sum referred to in paragraph (3)(b) is calculated by deducting the value of the transferor society's fixed assets, both tangible and intangible, from the aggregate of that society's general reserves and, if any, revaluation and other reserves.

(5) For the purposes of paragraphs (3) and (4), the value of any assets, liabilities or reserves of a building society is their value as given in the most recent annual accounts of the society sent to the Financial Services Authority in accordance with section 81(2) of the 1986 Act (laying and furnishing accounts, etc, to members and the Authority)(**8**).

(6) The limit referred to in section 4(3) and (4) of the 2007 Act, in relation to a distribution made by the holding mutual, is five per cent of the holding mutual's total assets as shown in the most recent audited accounts of the holding mutual.

(7) The resolution referred to in section 4(3)(a) of the 2007 Act, in the case of the holding mutual, is—

(a) where the transfer is approved by a resolution of the members of the holding mutual, that resolution, or

(b) where the transfer is approved by the board of directors or committee of management of the holding mutual, a resolution of the members of the holding mutual.

(8) Any terms of a transfer of business to which section 4(3) of the 2007 Act and paragraphs (3) to (7) above apply are regulated terms for the purposes of section 97 of the 1986 Act.

(9) In this article—

"annual accounts" has the same meaning as in Part 8 of the 1986 Act (see section 81B of that Act (interpretation of Part 8)(**9**));

"transfer of business" and "regulated terms" have the same meaning as in section 97 of the 1986 Act.

Distribution of funds: regulated term

8. Section 97 of the 1986 Act applies in relation to a relevant transfer with the following modifications—

(**8**) Section 81 was amended by S.I. 2001/2617. There are other amendments but none are relevant.
(**9**) Section 81B was inserted by S.I. 2004/3380. There are amendments but none are relevant.

(a) in subsection (4)(b), after "transfer regulations" insert ", and with section 4 of the 2007 Act and article 7 of the 2009 Order";

(b) in subsection (12), in the definition of "regulated terms", after "section 102" insert "or under article 7 of the 2009 Order".

Confirmation of the transfer

9.—(1) Section 98 of the 1986 Act (transfers of business: supplementary provisions)(**10**) applies in relation to a relevant transfer with the following modifications.

(2) In subsection (3)(d), for "this Act" substitute "an applicable enactment".

(3) In subsection (4), for "this Act" substitute "an applicable enactment".

(4) In subsection (7), for "this Act" substitute "an applicable enactment".

(5) For subsection (8), substitute—

"(8) In this section—

"applicable enactment" means the applicable provisions of this Act (as modified by the 2009 Order), section 4 of the 2007 Act and article 7 of the 2009 Order; and

"relevant requirement", with reference to an applicable enactment or the rules of a society, means a requirement of an applicable enactment or of any rules prescribing the procedure to be followed by the society in approving the transfer and its terms.".

Modified application of section 100 (distributions and share rights)

10.—(1) Section 100 of the 1986 Act (regulated terms etc: distributions and share rights)(**11**) applies in relation to a relevant transfer with the following modifications.

(2) For subsection (1) substitute—

"(1) Subject to subsections (8) and (10) below, the terms of a transfer of business by a building society to the company which is to be its successor may include provision for rights in relation to shares in the successor to be conferred on members of the society in consideration of the transfer.".

(3) Omit subsection (9).

(4) For subsection (10) substitute—

"(10) The following restriction applies to any conferring of rights in relation to shares in connection with the transfer of its business from the society to its successor where the successor is a company specially formed by the society or the holding mutual.

Where negotiable instruments acknowledging rights to shares are issued by the successor within the period of two years beginning with the vesting date, no such instruments shall be issued to former members of the society unless they are also issued, and on the same terms, to all other members of the company.".

Membership of the holding mutual

11.—(1) The transfer provisions apply in relation to a relevant transfer as if after section 100 of the 1986 Act there were inserted—

(**10**) Section 98 was amended by the Building Societies Act 1997, section 30, by S.I. 2001/2617 and by S.I. 2001/3649.
(**11**) There are amendments to section 100 but none are relevant.

"**Regulated terms: membership of the holding mutual**

100A.—(1) The terms of a transfer of business by a building society to the company which is to be its successor must include provision for making membership of the holding mutual available to every qualifying member of the building society and to every person who, after the transfer, becomes a customer of the company.

(2) The membership made available pursuant to that provision must be on terms no less favourable than those enjoyed by existing members of the holding mutual.

(3) Subsection (1) above does not apply where the terms of the transfer of business include provision for making membership of any parent undertaking of the holding mutual available to the persons mentioned in that subsection on terms no less favourable than those enjoyed by existing members of the parent undertaking.

(4) Any terms of a transfer of business to which subsections (1) and (2) above apply are regulated terms for the purposes of section 97.

(5) For the purposes of this section, any member of the building society who, on the day immediately preceding the vesting date, is a shareholding or borrowing member of the society, is a qualifying member.".

(2) Section 97 of the 1986 Act(**12**) applies in relation to a relevant transfer with the following modifications—

(a) in subsection (2), after "section 100," insert "section 100A,";

(b) in subsection (4)(b), after "section 100" insert ", section 100A";

(c) in subsection (12), in the definition of "regulated terms", after "section 100" insert ", section 100A".

Restrictions on further transfer

12.—(1) Section 101 (protective provisions for specially formed successors)(**13**) applies in relation to a relevant transfer with the following modifications—

(a) in subsection (1), after "other than the society" insert "or the holding mutual";

(b) in subsection (4), omit paragraph (b);

(c) in subsection (6)—

(i) in the definition of "the protective period", for "five years" substitute "three years";

(ii) omit the definition of "the requisite majority".

(2) The transfer provisions apply in relation to a relevant transfer as if after section 101 of the 1986 Act there were inserted—

"**Protective provisions where successor is an existing company**

101A.—(1) Section 101 (as modified by the 2009 Order) applies in relation to a successor of a building society which is an existing company as it applies in relation to a successor which is a specially formed company, with the following modification.

(2) In subsection (6), for the definition of "the protective period" substitute—

""the protective period" is the period beginning with the date of any alterations to the company's articles made to comply with subsection (2) above or, if no alterations are

(**12**) Section 97(2) was amended by the Building Societies (Distributions) Act 1997 (c.41), section 1(2). Section 97(4) was amended by S.I. 2001/2617. For amendments to section 97(12) see the footnote to article 4.

(**13**) Section 101 was substituted by the Building Societies Act 1997, section 41, and subsequently amended by S.I. 1998/1120, S.I. 2001/2617, S.I. 2001/3649 and S.I. 2007/2194.