
STATUTORY INSTRUMENTS

2001 No. 2617

The Financial Services and Markets Act
2000 (Mutual Societies) Order 2001

PART II

Transferred functions

Transfer of functions

4.—(1) The functions—

- (a) of the Chief Registrar, the assistant registrar for Scotland, the assistant registrars and the central office listed in Part I of Schedule 1 to this Order,
- (b) of the Friendly Societies Commission listed in Part II of Schedule 1 to this Order, and
- (c) of the Building Societies Commission listed in Part III of Schedule 1 to this Order,

are transferred to the Treasury.

(2) All other functions which, immediately before commencement were functions—

- (a) of the Chief Registrar, the assistant registrar for Scotland, the assistant registrars or the central office,
- (b) of the Friendly Societies Commission, or
- (c) of the Building Societies Commission,

are transferred to the Authority, subject to any repeal or amendment made by any provision of this Order or by any other provision of or made under the 2000 Act.

(3) Schedule 2 makes provision about the application of the 2000 Act in relation to functions transferred (or to be transferred) to the Authority by paragraph (2) above.

(4) For the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 1981(1), paragraph (2) above is to be regarded as giving rise to the transfer of an undertaking by virtue of each of sub-paragraphs (a), (b) and (c) of that paragraph, whether or not it would otherwise be so regarded.

Consequential and transitional provisions in relation to transferred functions

5.—(1) The transfer of any function by virtue of article 4 does not affect the validity of anything done before commencement—

- (a) by the transferor in the exercise of the transferred function, or
- (b) by any other person in relation to the exercise by the transferor of the transferred function,

and any such thing is to have effect for all purposes as if done by (or, as the case may be, in relation to the exercise of the function by) the transferee.

(1) S.I.1981/1794 as amended by section 33 of the Trade Union Reform and Employment Rights Act 1993 (c. 19) and by S.I. 1987/442, 1995/2587 and 1999/1925.

(2) Paragraph (1) also has effect in relation to anything which is in the process of being done at commencement, and any such thing may be carried on and completed by (or, as the case may be, in relation to the exercise of the function by) the transferee.

(3) If, at commencement, a transferor is a party to any legal proceedings in relation to its exercise of any transferred function, the transferee is substituted for the transferor in those proceedings.

(4) If, at commencement, a transferor holds any monies which have been deposited with the transferor as security for any costs in relation to its exercise of any transferred function, the monies are transferred to the transferee at commencement to be held for the same purpose and on the same terms.

(5) This article has effect subject to any transitional provision or saving contained in Schedule 5 to this Order or in any other provision made under the 2000 Act.

Requirements to provide documents etc.

6.—(1) Paragraph (2) applies where, by virtue of any provision of or made under any enactment, a person (“A”) other than a transferor was before commencement required or entitled—

- (a) to provide any account, application, list, notice, plan, report, return, or any other document or material (including a copy of any document or material),
- (b) to give any explanation or provide any other information, or
- (c) to notify, report on, or make representations or a statement on, any matter,

to any transferor, or to any other person (“B”) on behalf of any transferor, in connection with the exercise by the transferor of any function which is transferred by article 4(2) to the Authority, but had not provided that document or material, given that explanation or information, or notified, reported on or made representations on that matter, before commencement.

(2) After commencement A is required or (as the case may be) entitled to provide that document or material, to give that explanation or information, or to notify, report on, or make representations on, that matter, to the Authority (or, as the case may be, to B on behalf of the Authority), but otherwise in the same form and containing the same particulars as would have been required before commencement.

(3) Paragraph (1) has effect no matter how the requirement or entitlement is expressed.

(4) Where the requirement or entitlement mentioned in paragraph (1) was subject to any provision requiring A to comply with the requirement or exercise the entitlement within a specified time (however expressed), that provision continues to apply in relation to the requirement imposed or entitlement given by paragraph (2), and the time period is to be treated as continuing to run without interruption.

(5) Where any person does anything after commencement in compliance with paragraph (2) in relation to which, if that thing had been done before commencement, a fee would have been payable to the transferor, he is required to pay that fee to the Authority, and the fee (insofar as it is not so paid) may be recovered by the Authority as a debt due to it.

(6) This article is without prejudice to the generality of article 5(1) and (2).

(7) This article has effect subject to any transitional provision or saving contained in Schedule 5 to this Order or in any other provision made under the 2000 Act.

Consequential modification of non-statutory provisions

7.—(1) Where a relevant provision is predicated on the continuing exercise of any transferred function by the transferor, any reference in the provision to the transferor has effect, in relation to any time after commencement, as a reference to the transferee.

(2) Paragraph (3) applies where—

- (a) a relevant provision contains a requirement for consent to be given by the Building Societies Commission before the repayment by a building society of any sum owed by it, and
- (b) the requirement was included in the relevant provision so as to comply with the terms of—
 - (i) an order made under section 45(5) of the Building Societies Act 1986 as that section had effect before the coming into force of section 21 of the Building Societies Act 1997(2),
 - (ii) an order made under section 119(1) of the Building Societies Act 1986(3), or
 - (iii) guidance issued by the Building Societies Commission pursuant to section 45AA of that Act(4).

(3) Unless the context otherwise requires, the requirement has effect, in relation to any time after commencement, as a requirement for consent to be given by the Authority.

(4) Paragraph (5) applies where a relevant provision prohibits the payment or crediting of interest on any sum owed by a building society if the board of directors of the society is of the opinion that—

- (a) there has been a failure on the part of the society to satisfy a criterion of prudent management, set out in section 45(3) of the Building Societies Act 1986(5) as it had effect at any time before commencement, relating to the maintenance of adequate reserves and other capital resources, or
- (b) there would be such a failure if the interest was paid or credited.

(5) Unless the context otherwise requires, any reference in that provision to that criterion has effect, in relation to any time after commencement, as a reference to the condition set out in paragraph 4(1) of Schedule 6 to the 2000 Act (adequate resources).

(6) “Relevant provision” means a provision which—

- (a) is contained in the rules of a building society, friendly society or industrial and provident society, or in any other contract, deed or document other than an enactment, and
- (b) has effect before, as well as after, commencement,

but for the purposes only of paragraph (1) above also includes a provision in any document which is provided to the Authority after commencement pursuant to article 6(2).

Anticipatory exercise of powers

8.—(1) This article applies where by virtue of any amendment made by Schedule 3 to this Order—

- (a) the Authority will, with effect from commencement, have power to make rules, or have power to give directions as to the form of or particulars to be included in any document or as to the manner in which any application is to be made, or
- (b) the Treasury will, with effect from commencement, have power to make any rules, order or regulations.

(2) Where this article applies, the Authority or the Treasury (as the case may be) may exercise the power referred to in paragraph (1) before commencement for the purposes of bringing the rules, directions, order or regulations into effect at commencement.

(2) 1997 c. 32.

(3) 1986. c. 53; the definition of “deferred shares”.

(4) Inserted by the Building Societies Act 1997 (c. 32), section 22.

(5) Amended by S.I. 1992/3218, and subsequently substituted by section 21 of the Building Societies Act 1997 (c. 32).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(3) In exercising any power before commencement by virtue of paragraph (2), the Authority or the Treasury (as the case may be) are to be treated as being subject to the same requirements or conditions, as to the procedure to be followed in exercising the power or otherwise, as would apply in relation to the exercise of that power if this Order were fully in force.