



# Friendly Societies Act 1992

## 1992 CHAPTER 40

### PART VIII

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

##### Commencement Information

- II** Pt. VIII (ss. 85-92) wholly in force; Pt. VIII not in force at Royal Assent see s. 126(2); Pt. VIII in force at 13.9.1993 by S.I. 1993/2213, art. 2(1), Sch. 3

##### *Amalgamations*

#### **85 Amalgamation of friendly societies.**

- (1) Any two or more friendly societies may, in accordance with this Part of this Act, amalgamate by establishing an incorporated friendly society as their successor.
- (2) In order to establish a society as their successor, friendly societies proposing to amalgamate must—
  - (a) comply with the applicable requirements of Part I of Schedule 15 to this Act;
  - (b) take the steps required by paragraph 1(2) of Schedule 3 to this Act;
  - (c) each approve the proposed amalgamation and the terms on which it is to take place by special resolution; and
  - (d) obtain the confirmation of the [<sup>F1</sup>appropriate authority] of the amalgamation; and, on obtaining that confirmation, the successor may be registered and incorporated under this Act.
- (3) If the [<sup>F2</sup>FCA or the PRA] confirms the amalgamation and the successor society is registered under this Act, the certificate of incorporation issued by the [<sup>F3</sup>FCA] shall specify a date as the transfer date for that amalgamation.
- (4) On the transfer date—

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- (a) all the property, rights and liabilities of each society participating in the amalgamation shall become by virtue of this subsection the property, rights and liabilities of the successor society; and
- (b) each such society shall be dissolved;

but the transfer from each such society effected by paragraph (a) above shall be deemed to have been effected immediately before the dissolution of that society.

[<sup>F4</sup>[<sup>F5</sup>(4A) If, on the transfer date, each of the societies whose amalgamation was confirmed has permission under Part 4A of the Financial Services and Markets Act 2000, the appropriate regulator (within the meaning of section 55A of that Act) must, with effect from that date, give their successor such permission under that Part as it considers appropriate, subject to such requirements as it considers appropriate, and must notify the successor of the permission by giving the successor a decision notice under that Act.]

(4B) Part XXVI of the Financial Services and Markets Act 2000 applies to a decision notice given under this section as it applies to a decision notice given under [<sup>F6</sup>subsection (5) of section 55V of that Act by virtue of paragraph (a) or (b) of that subsection], except that—

- (a) section 390 (final notices) does not apply, and
- (b) for the purposes of section 391 (publication) the decision notice is to be treated as if it were a final notice rather than a decision notice.

(4C) The giving of permission pursuant to subsection (4A) above is to be treated for the purposes of [<sup>F7</sup>section 55Z1] of the Financial Services and Markets Act 2000 (right to refer matters to the [<sup>F8</sup>Upper Tribunal]) as if it were the determination of an application made by the successor under [<sup>F9</sup>Part 4A] of that Act, and Part IX of that Act (hearings and appeals) applies accordingly (but subject to subsection (4D) below).

(4D) In the application of Part IX of that Act by virtue of subsection (4C) above, [<sup>F10</sup>section 133A(4)] (which [<sup>F11</sup>prevents the action specified in a decision notice from being taken] until after any reference and appeal) is omitted.]

(5) Where a friendly society is dissolved by subsection (4)(b) above, its registration under this Act or the 1974 Act shall be cancelled by the [<sup>F12</sup>FCA].

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

#### Textual Amendments

- F1** Words in s. 85(2)(d) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 9 para. 34(2)** (with Sch. 12)
- F2** Words in s. 85(3) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 9 para. 34(3)(a)** (with Sch. 12)
- F3** Word in s. 85(3) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 9 para. 34(3)(b)** (with Sch. 12)
- F4** S. 85(4A) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 9 para. 34(4)** (with Sch. 12)
- F5** S. 85(4A)-(4D) 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**, Pt. 1 para. 95(b) (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F6** Words in s. 85(4B) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 9 para. 34(5)** (with Sch. 12)

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- F7** Words in s. 85(4C) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 9 para. 34(6)(a)** (with Sch. 12)
- F8** Words in s. 85(4C) substituted (6.4.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(2)(e), **Sch. 2 para. 14(a)** (with Sch. 5)
- F9** Words in s. 85(4C) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 9 para. 34(6)(b)** (with Sch. 12)
- F10** Words in s. 85(4D) substituted (6.4.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(2)(e), **Sch. 2 para. 14(b)** (with Sch. 5)
- F11** Words in s. 85(4D) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 9 para. 34(7)** (with Sch. 12)
- F12** Word in s. 85(5) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 9 para. 34(8)** (with Sch. 12)

### *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—
  - <sup>F13</sup>(a) .....
  - (b) to an industrial and provident society;
  - <sup>F14</sup>(c) to a company registered under the Companies Act 2006;
  - (d) in relation to engagements the fulfilment of which will constitute the carrying on of insurance business, to any other person who is an <sup>F15</sup>insurer;
  - (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 <sup>F16</sup>paragraph (b), (c) or (d) 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>F17</sup>appropriate authority] of the transfer;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>F18</sup>appropriate authority] consents to that mode of proceeding, by resolution of the committee of management.

<sup>F19</sup>(3A) The PRA must consult the FCA before giving its consent under subsection (3)(b).]

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- (4) Where the [<sup>F20</sup>appropriate authority] confirms a transfer of engagements, [<sup>F21</sup>the FCA] 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>F22</sup>FCA] 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>F22</sup>FCA].
- (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 <sup>F23</sup>... 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.
- (11) Schedule 15 to this Act has effect for supplementing this section.
- <sup>F24</sup>(12) In this section “insurer” means—
- (a) a person who has permission under [<sup>F25</sup>Part 4A] of the Financial Services and Markets Act 2000 to effect or carry out contracts of insurance, <sup>F26</sup>...
  - <sup>F27</sup>(b) .....
- (13) Subsection (12) must be read with—
- (a) section 22 of the Financial Services and Markets Act 2000;

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- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.]

#### Textual Amendments

- F13** S. 86(1)(a) repealed (1.12.2001) by S.I. 2001/3649, **arts. 1, 201(2)**
- F14** S. 86(1)(c) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 133(4)** (with art. 10)
- F15** Word in s. 86(1)(d) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 201(3)**
- F16** Words in s. 86(1)(e) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 201(4)**
- F17** Words in s. 86(2)(e) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 9 para. 35(2)** (with Sch. 12)
- F18** Words in s. 86(3)(b) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 9 para. 35(2)** (with Sch. 12)
- F19** S. 86(3A) inserted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 9 para. 35(3)** (with Sch. 12)
- F20** Words in s. 86(4) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 9 para. 35(4)(a)** (with Sch. 12)
- F21** Word in s. 86(4) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 9 para. 35(4)(b)** (with Sch. 12)
- F22** Word in s. 86(6)(7) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 9 para. 35(5)** (with Sch. 12)
- F23** Word in s. 86(9)(b) omitted (12.4.2011) by virtue of The Mutual Societies (Electronic Communications) Order 2011 (S.I. 2011/593), arts. 1(1), **21(2)(a)**
- F24** S. 86(12)(13) inserted (1.12.2001) by S.I. 2001/3649, **arts. 1, 201(5)**
- F25** Words in s. 86(12) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 9 para. 35(6)** (with Sch. 12)
- F26** Word in s. 86(12)(a) omitted (31.12.2020) by virtue of The Friendly Societies (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1039), regs. 1, **8(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F27** S. 86(12)(b) omitted (31.12.2020) by virtue of The Friendly Societies (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1039), regs. 1, **8(b)**; 2020 c. 1, Sch. 5 para. 1(1)

#### Modifications etc. (not altering text)

- C1** S. 86: power to modify conferred (16.1.2009) by Building Societies (Funding) and Mutual Societies (Transfers) Act 2007 (c. 26), **ss. 3, 6(2)**; S.I. 2009/36, art. 2

## 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>F28</sup>(a) the fulfilment of any of the engagements to be transferred will constitute the carrying on of insurance business in the United Kingdom or Gibraltar, and]
  - (b) the transferee will, after taking the proposed transfer into account, be [<sup>F29</sup>required by rules made by the [<sup>F30</sup>appropriate authority under Part 9A] of the Financial Services and Markets Act 2000 to maintain the margin of solvency required by such rules],

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the transferee shall furnish the [<sup>F31</sup>appropriate 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 [<sup>F32</sup>appropriate authority] may direct the transferee to furnish the [<sup>F32</sup>appropriate 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 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

- F28** S. 87(2)(a) substituted (31.12.2020) by [The Friendly Societies \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1039\)](#), regs. 1, **9** (as amended by [S.I. 2019/680](#), regs. 1(3), **7(2)**); 2020 c. 1, Sch. 5 para. 1(1)
- F29** 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)**
- F30** Words in s. 87(2)(b) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), **Sch. 9 para. 36(2)(a)** (with [Sch. 12](#))
- F31** Words in s. 87(2)(b) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), **Sch. 9 para. 36(2)(b)** (with [Sch. 12](#))
- F32** Words in s. 87(3) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), **Sch. 9 para. 36(3)** (with [Sch. 12](#))

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

- (1) This section applies where—
  - <sup>F33</sup>(a) a friendly society (“a transferor society”) proposes to transfer to any person engagements the fulfilment of which will constitute the carrying on of long term business in the United Kingdom or Gibraltar; 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>F34</sup>appropriate authority] may direct a transferor society or a transferee society to furnish the [<sup>F34</sup>appropriate 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.
- (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 [<sup>F34</sup>appropriate 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

- F33** S. 88(1)(a) substituted (31.12.2020) by [The Friendly Societies \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1039\)](#), regs. 1, **10** (as amended by [S.I. 2019/680](#), regs. 1(3), **7(3)**); 2020 c. 1, Sch. 5 para. 1(1)
- F34** Words in s. 88(2)(3) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), **Sch. 9 para. 37** (with Sch. 12)

### Modifications etc. (not altering text)

- C2** S. 88: power to modify conferred (16.1.2009) by [Building Societies \(Funding\) and Mutual Societies \(Transfers\) Act 2007 \(c. 26\)](#), ss. 3, 6(2); [S.I. 2009/36](#), art. 2

## 89 Power of [<sup>F35</sup>appropriate authority] to alter requirements for transfer by friendly society.

- (1) If the [<sup>F36</sup>appropriate 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,

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in relation to a particular proposed transfer or to all transfers made by the society after the making of the direction.

- [<sup>F37</sup>(1A) The PRA must consult the FCA before giving a direction under this section.]
- (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>F36</sup>appropriate 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>F36</sup>appropriate 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>F36</sup>appropriate 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>F36</sup>appropriate authority] may allow; and
  - (d) if the society so requests, the [<sup>F36</sup>appropriate authority] has afforded to it an opportunity of being heard by it within that period.
- (4) If the [<sup>F36</sup>appropriate 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 [<sup>F36</sup>appropriate 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 [<sup>F36</sup>appropriate 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 [<sup>F36</sup>appropriate 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 [<sup>F36</sup>appropriate authority] expedient for informing the public.
- [<sup>F38</sup>(6A) The PRA must send to the FCA a copy of any direction it issues under this section.]
- [<sup>F39</sup>(7) The [<sup>F40</sup>[<sup>F41</sup>FCA] shall keep a copy of any direction given under this section] in the public file of the society concerned.]

#### Textual Amendments

- F35** Words in s. 89 heading substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\), art. 1\(1\), Sch. 9 para. 38\(6\)](#) (with Sch. 12)
- F36** Words in s. 89 substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\), art. 1\(1\), Sch. 9 para. 38\(2\)](#) (with Sch. 12)
- F37** S. 89(1A) inserted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\), art. 1\(1\), Sch. 9 para. 38\(3\)](#) (with Sch. 12)



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- F38** S. 89(6A) inserted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 9 para. 38(4)** (with Sch. 12)
- F39** S. 89(7) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 203(3)**
- F40** Words in s. 89(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 para. 99(b)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F41** Word in s. 89(7) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 9 para. 38(5)** (with Sch. 12)

## 90 Power of <sup>F42</sup>appropriate authority] to effect transfer of engagements.

- (1) Subject to the following provisions of this section the <sup>F43</sup>appropriate 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 <sup>F43</sup>appropriate 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 <sup>F43</sup>appropriate authority] consents to that mode of proceeding, by resolution of the committee of management;
- but the <sup>F43</sup>appropriate 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).

<sup>F44</sup>(2A) The PRA must consult the FCA before giving a direction under this section.]

- (3) The <sup>F45</sup>appropriate 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 <sup>F46</sup>paragraph 11 or] any provision of paragraphs 13 to 17 of Schedule 15 to this Act.
- (4) <sup>F47</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 <sup>F45</sup>appropriate 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, and, if it thinks appropriate, in one or more newspapers.
- (5) A notice published in pursuance of subsection (4)(b) above shall—
- (a) state that any interested party has the right to make representations to the <sup>F45</sup>appropriate authority] with respect to the proposed direction;
  - (b) specify a date determined by the <sup>F45</sup>appropriate authority] before which any written representations or notice of a person’s intention to make oral representations must be received by the <sup>F45</sup>appropriate authority]; and
  - (c) specify a date determined by the <sup>F45</sup>appropriate 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>F45</sup>appropriate authority] shall—

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- (a) determine the time and place at which oral representations may be made;
  - (b) 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
  - (c) send copies of the written representations received by the [<sup>F45</sup>appropriate authority] to the society concerned and the proposed transferee.
- (7) [<sup>F48</sup>Before the [<sup>F45</sup>appropriate authority] decides whether to give the society a decision notice in accordance with section 58A(3),] the [<sup>F45</sup>appropriate 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>F45</sup>appropriate authority] specifies in a notice to it.
- [<sup>F49</sup>(8) If the PRA gives a direction, it must send a copy of the direction to the FCA.
- (8A) The FCA must—
- (a) keep a copy of a direction issued under this section (whether by the FCA or by the PRA);
  - (b) register that copy; and
  - (c) issue a registration certificate to the transferee.
- (8B) The registration certificate must specify a date as the transfer date for the transfer.]
- (9) On the transfer date—
- (a) 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
  - (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 before any such dissolution.
- (10) The [<sup>F50</sup>FCA] shall keep a copy of a direction and of the registration certificate—
- (a) if 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.
- (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>F50</sup>FCA].

#### Textual Amendments

- F42** Words in s. 90 heading substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), [Sch. 9 para. 39\(7\)](#) (with Sch. 12)
- F43** Words in s. 90(1)(2) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), [Sch. 9 para. 39\(2\)](#) (with Sch. 12)
- F44** S. 90(2A) inserted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), [Sch. 9 para. 39\(3\)](#) (with Sch. 12)
- F45** Words in s. 90(3)-(7) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), [Sch. 9 para. 39\(4\)](#) (with Sch. 12)
- F46** 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\(1\)](#)
- F47** 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\(1\)](#)

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- F48** 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)**
- F49** S. 90(8)-(8B) substituted for s. 90(8) (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 9 para. 39(5)** (with Sch. 12)
- F50** Word in s. 90(10)(11) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 9 para. 39(6)** (with Sch. 12)

<sup>F51</sup>**90A** .....

#### Textual Amendments

- F51** S. 90A repealed (1.12.2001) by S.I. 2001/2617, arts. 2, 13(2), **Sch. 4** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

### Conversions

#### 91 Conversion of friendly society into company.

- (1) A friendly society may, in accordance with this Part of this Act, convert itself into a company registered under [<sup>F52</sup>the Companies Act 2006] (“a company”).
- (2) In order to convert itself into a company a friendly society must—
- comply with the applicable requirements of Part I of Schedule 15 to this Act ;
  - approve the proposed conversion, the terms on which it is to take place and the proposed memorandum and articles of association for the company by special resolution; and
  - obtain the confirmation of the [<sup>F53</sup>appropriate authority] of the conversion;
- and, on obtaining that confirmation, the society may apply for registration as a company.

[<sup>F54</sup>(2A) The PRA must consult the FCA before giving a confirmation under this section.]

- (3) The terms on which the conversion of a friendly society into a company is to take place may include provision for part of the funds of the society or the company to be distributed among, or for other rights in relation to shares in the company to be conferred on, members of the society.

[<sup>F55</sup>(4) Where—

- a special resolution of the society contains the particulars required by subsection (1) of section 8 of the Companies Act 2006 to be contained in the memorandum of association of a company, and

(b) a copy of the resolution has been registered by the [<sup>F56</sup>FCA],  
a copy of that resolution under the seal and stamp of the [<sup>F56</sup>FCA] has the same effect as a memorandum of association duly authenticated as required by subsection (2) of that section.]

- (5) On the registration of a friendly society as a company the registration of the society under this Act or the 1974 Act shall be cancelled by the [<sup>F56</sup>FCA].

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- (6) Where a friendly society converts into a company the terms approved by the society and confirmed by the [<sup>F57</sup>appropriate authority] shall, in so far as they provide for the conferral of rights on members or officers of the society, be enforceable as if they had been the subject of an agreement between the society and those members and officers.
- (7) Registration of a friendly society as a company shall not affect any right or claim subsisting against the society or any penalty incurred by the society; and for the purpose of enforcing any such right, claim or penalty, the society may be sued and proceeded against in the same manner as if it had not become registered as a company.
- (8) The [<sup>F58</sup>Treasury], may make regulations providing for the regulation of the conversion of friendly societies into companies; and such regulations may, in particular make provision—
- (a) for and in connection with the transition from regulation by and under this Act or the 1974 Act to regulation by and under any other enactments on a society's ceasing to be registered under that Act; and
  - (b) for the treatment, in the hands of the company into which a friendly society has converted, of the property, rights and liabilities of the society immediately before its conversion and for the modification of any enactment in its application to any such property, rights and liabilities.
- (9) Schedule 15 to this Act has effect for supplementing this section.

#### **Textual Amendments**

- F52** Words in s. 91(1) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), **Sch. 1 para. 133(5)(a)** (with art. 10)
- F53** Words in s. 91(2)(c) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), **Sch. 9 para. 40(2)** (with Sch. 12)
- F54** S. 91(2A) inserted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), **Sch. 9 para. 40(3)** (with Sch. 12)
- F55** S. 91(4) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), **Sch. 1 para. 133(5)(b)** (with art. 10)
- F56** Word in s. 91(4)(5) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), **Sch. 9 para. 40(4)** (with Sch. 12)
- F57** Words in s. 91(6) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), **Sch. 9 para. 40(5)** (with Sch. 12)
- F58** Word in s. 91(8) 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. 102(e)** (with art. 13(3), Sch. 5); [S.I. 2001/3538](#), **art. 2(1)**

#### **Modifications etc. (not altering text)**

- C3** S. 91(8): functions of Friendly Societies Commission transferred (1.12.2001) by [S.I. 2001/2617](#), arts. 2(b), 4(1), **Sch. 1 Pt. II** (with art. 5); [S.I. 2001/3538](#), **art. 2(1)**

### *Supplementary*

#### **92 Compensation for loss of office.**

- (1) Subject to subsection (3) below, the terms of—

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- (a) an amalgamation under section 85 above,
- (b) a transfer of engagements of a friendly society under section 86 above, or
- (c) a conversion under section 91 above,

may include provision for compensation for loss of office or diminution of emoluments attributable to the amalgamation, transfer or conversion to be paid by a participating friendly society to or in respect of any of the persons mentioned in subsection (2) below.

- (2) Those persons are—
  - (a) the officers of the society which is to pay the compensation;
  - (b) in the case of an amalgamation or transfer, the officers of any other participating society;
  - (c) in the case of a transfer, the officers of any other person participating in the transfer; and
  - (d) the appointed actuary (if any) of any society participating in the amalgamation or transfer.
- (3) Any such provision as is mentioned in subsection (1) above must be approved by the society which is to pay the compensation by a special resolution separate from any resolution approving the other terms of the amalgamation, transfer or conversion.
- (4) If compensation which has not been authorised in accordance with subsection (3) above is received by an officer, it shall be repaid.
- (5) In this section—
  - “compensation” includes the provision of benefits in kind;
  - “loss of office” includes, in relation to an officer of an incorporated friendly society holding office by virtue of his position in the society in a subsidiary of the society or body jointly controlled by the society, the loss of that office; and
  - “participating society”, in relation to an amalgamation or transfer, means a friendly society participating in the amalgamation or transfer and, in relation to the conversion of a friendly society, that society.

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**Changes to legislation:**

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