



Friendly Societies Act 1992

1992 CHAPTER 40

PART VIII

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

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 Commission of the amalgamation;and, on obtaining that confirmation, the successor may be registered and incorporated under this Act.
- (3) If the Commission confirms the amalgamation and the successor society is registered under this Act, the certificate of incorporation issued by the central office shall specify a date as the transfer date for that amalgamation.
- (4) On the transfer date—
 - (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.

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

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—
 - (a) to another friendly society;
 - (b) to an industrial and provident society;
 - (c) to a company within the meaning of the Companies Act 1985 or the Companies (Northern Ireland) Order 1986 incorporated in Great Britain or Northern Ireland;
 - (d) in relation to engagements the fulfilment of which will constitute the carrying on of insurance business, to any other person who is an insurance company (within the meaning of the Insurance Companies Act 1982);
 - (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 paragraph (a), (b) or (c) 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 Commission 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 Commission consents to that mode of proceeding, by resolution of the committee of management.
- (4) Where the Commission confirms a transfer of engagements, the central office 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 central office 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 central office.
- (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 postal 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.

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—
- (a) the fulfilment of any of the engagements to be transferred will constitute the carrying on of insurance business in the United Kingdom, and
 - (b) the transferee will, after taking the proposed transfer into account, be under a duty to maintain the margin of solvency required by section 48 above;
- the transferee shall furnish the Commission 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 Commission may direct the transferee to furnish the Commission 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.

88 Actuary's report on transfer of long term business

- (1) This section applies where—
- (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 insurance business in the United Kingdom; 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 Commission may direct a transferor society or a transferee society to furnish the Commission 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 Commission.
- (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.

89 Power of Commission to alter requirements for transfer by friendly society

(1) If the Commission 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, in relation to a particular proposed transfer or to all transfers made by the society after the making of the direction.

(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 Commission 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 Commission 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 Commission 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 Commission may allow; and

(d) if the society so requests, the Commission has afforded to it an opportunity of being heard by it within that period.

(4) If the Commission 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 Commission 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 Commission 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 Commission 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 Commission expedient for informing the public.

- (7) The Commission shall send a copy of a direction to the central office and the central office shall keep the copy in the public file of the society concerned.

90 Power of Commission to effect transfer of engagements

- (1) Subject to the following provisions of this section the Commission 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 Commission 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 Commission consents to that mode of proceeding, by resolution of the committee of management;

but the Commission 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).

- (3) The Commission 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 any provision of paragraphs 13 to 17 of Schedule 15 to this Act.

- (4) Before giving a direction, the Commission shall—

- (a) serve on the society a notice stating that it proposes to give the direction and specifying the considerations which have led it to conclude that giving the direction would be expedient to protect the interests of the members of the society; and
- (b) 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 Commission with respect to the proposed direction;
- (b) specify a date determined by the Commission before which any written representations or notice of a person’s intention to make oral representations must be received by the Commission; and
- (c) specify a date determined by the Commission 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 Commission shall—

- (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 Commission to the society concerned and the proposed transferee.
- (7) The Commission 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 Commission specifies in a notice to it.
- (8) If the Commission gives a direction it shall furnish a copy to the central office, who shall—
 - (a) register that copy; and
 - (b) issue a registration certificate to the transferee;and the registration certificate shall 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 central office 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 central office.

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 the Companies Act 1985 or the Companies (Northern Ireland) Order 1986 (“a company”).
- (2) In order to convert itself into a company a friendly society must—
 - (a) comply with the applicable requirements of Part I of Schedule 15 to this Act ;
 - (b) 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
 - (c) obtain the confirmation of the Commission of the conversion;and, on obtaining that confirmation, the society may apply for registration as a company.
- (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.

- (4) Where—
- (a) a special resolution of a society contains the particulars required by the Companies Act 1985 or the Companies (Northern Ireland) Order 1986 to be contained in—
 - (i) the memorandum of association of a company; or
 - (ii) the articles of association of a company; and
 - (b) a copy of the resolution has been registered at the central office, a copy of that resolution under the seal and stamp of the central office shall have the same effect as a memorandum of association or, as the case may be, as articles of association, which have been duly signed under the Companies Act 1985 or the Companies (Northern Ireland) Order 1986.
- (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 central office.
- (6) Where a friendly society converts into a company the terms approved by the society and confirmed by the Commission 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 Commission, with the consent of the 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.

Supplementary

92 Compensation for loss of office

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