

Draft Order laid before Parliament under 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, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2016 No.

FINANCIAL SERVICES AND MARKETS

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

Made - - - - - *******

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(a), section 118 of the Financial Services Act 2012(b) and sections 142(3) and 145 of the Financial Services (Banking Reform) Act 2013(c).

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(d).

(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.

Floating charges: application of companies winding up legislation

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

(a) 2009 c. 1.

(b) 2012 c. 21.

(c) 2013 c. 33.

(d) 1986 c. 53.

(e) 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.

“**16.**—(1) Section 122(a) (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(b) (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(c) (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(d) or 251 of the Insolvency Act 1986(e) or in Article 5(1) or 59A of the Insolvency (Northern Ireland) Order 1989(f),”;
- (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(g) substitute—

“**5A.** In this Schedule—

“deposit” and “relevant deposit” have the meaning given by paragraph 1A of Schedule 15(h); and

“scheme manager” has the same meaning as in the Financial Services and Markets Act 2000(i).”.

(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”;
- (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

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- (a) 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.
 - (b) Section 90A was inserted by the Building Societies Act 1997, section 39(1).
 - (c) 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.
 - (d) Section 72A was inserted by the Enterprise Act 2002 (c. 40), section 250(1).
 - (e) 1986 c. 45.
 - (f) 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).
 - (g) Paragraph 5A was inserted by S.I. 2001/2617.
 - (h) Paragraph 1A was inserted by S.I. 2014/3486.
 - (i) 2000 c. 8.

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(a) (exceptions to prohibition) were omitted.”.

(4) In Part 3 (modified application of Parts 2, 3 and 4 of the Insolvency (Northern Ireland) Order 1989(b)) 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.

50. Articles 52 to 59 of the Order (administrative receivers) are omitted.

51. Article 59A of the Order (floating charge holder not to appoint administrative receiver), as applied to a building society, has effect as if—

- (a) in paragraph (1) the word “qualifying” were omitted; and
- (b) paragraphs (2), (3)(a), (4) and (5) were omitted.

52. Articles 59B to 59J of the Order (exceptions to prohibition) are omitted.”.

Amendment of the Building Societies (Financial Assistance) Order 2010

5.—(1) The Building Societies (Financial Assistance) Order 2010(c) is amended as follows.

(a) 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.
(b) S.I. 1989/2405 (N.I. 19).
(c) S.I. 2010/1188, as amended by S.I. 2013/496 and 2015/428 (C. 25).

(2) In article 10 (application of other companies insolvency legislation to building societies) for paragraphs (a) and (b) substitute “for “or receivers,”(a) in paragraph (c) there were substituted “receivers or administrative receivers””.

(3) In article 11 (application of other companies insolvency legislation to building societies)—

(a) for paragraph (2) substitute—

“(2) In paragraph 1(2)(a), for “, II, III,”(b) substitute “and II, Chapters I, II and III of Part III, Parts”.

(2A) In paragraph 1(2)(b), for “Parts III, IV” substitute “Part III, Part IV (except Articles 59A to 59J)”.”;

(b) for paragraph (6) substitute—

“(6) For paragraph 27A(c) substitute—

“**27A.** In Chapters I and II of Part III of the Act, as applied to a building society, the following provisions have effect as if a reference to the creditors or unsecured creditors of the society included a reference to the holders of shares in the society—

- (a) subsection (1) of section 46 of the Act (information to be given by administrative receiver);
- (b) subsection (2) of section 47 of the Act (statement of affairs to be submitted);
- (c) subsection (2)(a) and (b) of section 48 of the Act (report by administrative receiver);
- (d) subsection (1) of section 65 of the Act (information to be given by receiver);
- (e) subsection (2) of section 66 of the Act (building society’s statement of affairs); and
- (f) subsection (2)(a) and (b) of section 67 of the Act (report by receiver).

27AA. Subsection (1) of section 48 of the Act, 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.

27AB. Sections 49 and 68 of the Act (committee of creditors), as applied to a building society, have effect as if the reference to the society’s unsecured creditors included a reference to the holders of shares in the society.”.

(6A) Until the coming into force of paragraph 12(3)(b) of Schedule 9 to the Small Business, Enterprise and Employment Act 2015(d) (“the 2015 Act”), paragraph 27AA (treated as substituted by paragraph (6) above) is to be read as also providing that subsection (2) of section 48 of the Insolvency Act 1986, as applied to a building society, has effect as if the reference to a meeting of the society’s unsecured creditors included a reference to a meeting of holders of shares in the society.

(6B) Until the coming into force of paragraph 13 of Schedule 9 to the 2015 Act(e), paragraph 27AB (treated as substituted by paragraph (6) above) is to be read as providing that section 49 of the Insolvency Act 1986, as applied to a building society, has effect as if the reference to a meeting of creditors included a reference to a meeting of holders of shares in the society.

(a) These words are inserted in paragraph (c) of section 90A of the Building Societies Act 1986 by article 3(b) of this Order.

(b) These numerals are substituted in paragraph 1(2)(a) of Schedule 15A by article 4(2)(a) of this Order.

(c) Paragraph 27A is substituted by article 4(3)(b) of this Order.

(d) 2015 c. 26. Paragraph 12(3)(b) of Schedule 9 amends section 48(2) of the Insolvency Act 1986.

(e) Paragraph 13 of Schedule 9 amends section 49(1) of the Insolvency Act 1986.

(6C) Until the coming into force of paragraph 15 of Schedule 9 to the 2015 Act(a), paragraph 27AB (treated as substituted by paragraph (6) above) is to be read as providing that section 68 of the Insolvency Act 1986, as applied to a building society, has effect as if the reference to a meeting of creditors included a reference to a meeting of holders of shares in the society.

(6D) Until the coming into force of paragraph 14(3)(b) of Schedule 9 to the 2015 Act(b), paragraph 27D(c) has effect as if the existing provision became sub-paragraph (1) and after that sub-paragraph there were inserted—

“(2) Subsection (2) of that section, as so applied, has effect as if the reference to a meeting of the society’s unsecured creditors included a reference to a meeting of the holders of shares in the society.”.

(6E) Omit paragraph 27F(d).”;

(c) for paragraph (9) substitute—

“(9) For paragraph 50(e) substitute—

“50. In Part 4 of the Order, as applied to a building society, the following provisions have effect as if a reference to the creditors or unsecured creditors of the society included a reference to the holders of shares in the society—

- (a) paragraph (1) of Article 56 of the Order (information to be given by administrative receiver);
- (b) paragraph (2) of Article 57 of the Order (statement of affairs to be submitted); and
- (c) paragraph (2)(a) and (b) of Article 58 of the Order (report by administrative receiver).

50A. Article 58 of the Order, as applied to a building society, has effect as if—

- (a) in paragraph (1)—
 - (i) the reference to the Financial Conduct Authority included a reference to the scheme manager; and
 - (ii) in sub-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; and
- (b) in paragraph (2) the reference to a meeting of the society’s unsecured creditors included a reference to a meeting of holders of shares in the society.

50AA. Article 59 of the Order (committee of creditors), as applied to a building society, has effect as if the reference to a meeting of creditors included a reference to a meeting of holders of shares in the society.”.

(10) Omit paragraphs 51 and 52(f).”.

Amendment of the Scotland Act 1998

6. In Schedule 8 to the Scotland Act 1998(g) (modifications of enactments), in paragraph 23 (amendments of the Insolvency Act 1986), in sub-paragraphs (2A) and (4A)(h) for “Financial Services Authority” substitute “Financial Conduct Authority”.

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- (a) Paragraph 15 of Schedule 9 amends section 68(1) of the Insolvency Act 1986.
 - (b) Paragraph 14(3)(b) of Schedule 9 amends section 67(2) of the Insolvency Act 1986.
 - (c) Paragraph 27D is substituted by article 4(3)(b) of this Order.
 - (d) Paragraph 27F is substituted by article 4(3)(b) of this Order.
 - (e) Paragraph 50 is substituted by article 4(4) of this Order.
 - (f) Paragraphs 51 and 52 are substituted by article 4(4) of this Order.
 - (g) 1998 c. 46.
 - (h) Sub-paragraphs (2A) and (4A) were substituted by S.I. 2001/3649.

Amendment of the Financial Services (Banking Reform) Act 2013 (Commencement (No. 8) and Consequential Provisions) Order 2015

7. The Financial Services (Banking Reform) Act 2013 (Commencement (No. 8) and Consequential Provisions) Order 2015(a) is amended as follows—

(a) in Schedule 1—

(i) in paragraph 3 omit paragraph (b) (and the “and” before it); and

(ii) in paragraph 4 omit paragraph (c) (and the “and” before it); and

(b) in Schedule 2, in paragraph 9(a) omit “, (6)(a)”.

Name

Name

Date

Two of the Lords Commissioners of Her Majesty’s Treasury

(a) S.I. 2015/428 (C. 25).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends certain enactments in consequence of the repeal of section 9B (restriction on creation of floating charges)^(a) of the Building Societies Act 1986 (c. 53) (“the Act”). The repeal was made by paragraph 4 of Schedule 9 to the Financial Services (Banking Reform) Act 2013 (c. 33) (building societies: ability to create floating charges), which was commenced by the Financial Services (Banking Reform) Act 2013 (Commencement (No. 8) and Consequential Provisions) Order 2015 (S.I. 2015/428 (C. 25)) (“the Commencement Order”). The repeal allows building societies to create floating charges.

Articles 2 to 4 amend section 90A of, and Schedules 15 and 15A to, the Act, which concern the application to building societies of winding up and other companies insolvency legislation. Most of the amendments are made in consequence of enabling the appointment of a receiver, but not an administrative receiver, of a building society’s property which is subject to a floating charge.

Article 5 amends the Building Societies (Financial Assistance) Order 2010 (S.I. 2010/1188) (“the 2010 Order”), mainly in consequence of certain amendments of Schedule 15A to the Act (in article 4 of this Order) which supersede provision made by the 2010 Order.

Article 5(3)(b) and (c) includes substituted provision for the modification of section 48 of the Insolvency Act 1986 (c. 45) and Article 58 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)). These modifications ensure that provision on reports by an administrative receiver are applied compatibly with the treatment (by virtue of the Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486)) of certain depositors as preferential creditors and of others as ordinary creditors of a building society.

Article 6 amends the Scotland Act 1998 (c. 46) in consequence of the renaming of the Financial Services Authority by the Financial Services Act 2012 (c. 21).

Article 7 amends the Commencement Order, which applied legislation governing floating charges in Scotland (with modifications) in consequence of the repeal of section 9B of the Act. The amendments take account of the application by this Order of Chapter 2 of Part 3 of the Insolvency Act 1986 (receivers (Scotland)).

An impact assessment of the effect of this Order and of the Commencement Order on the costs of business and the voluntary sector has been prepared and is available on HM Treasury’s website (www.gov.uk/treasury) or from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is annexed to the Explanatory Memorandum for this Order.

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^(a) Section 9B was inserted by the Building Societies Act 1997, section 11.

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