

SCHEDULES

SCHEDULE 15

Section 85.

AMALGAMATIONS, TRANSFERS OF ENGAGEMENTS AND CONVERSION: SUPPLEMENTARY

PART I

PROVISION OF INFORMATION TO MEMBERS

Statements relating to amalgamations and transfers

- 1 (1) A friendly society which desires—
- (a) to amalgamate under section 85 above; or
 - (b) to transfer its engagements to any person, or to undertake to fulfil the engagements of another friendly society, under section 86 above;
- shall, subject to sub-paragraph (2) below, send a statement concerning the matters specified in paragraph 2 below to every member entitled (when the statements are sent) to vote on any resolution required by section 85, 86 or 90.
- (2) Sub-paragraph (1) above does not apply, in the case of a friendly society desirous of undertaking to fulfil another society's engagements, where the Commission has consented under section 86(3)(b) or 90(2)(b) above to its proceeding by resolution of the committee of management.
- (3) The statement referred to in sub-paragraph (1) above shall be sent so as to arrive no later than 14 days (or such longer period as the rules may require for notice of any resolution required by section 85, 86 or 90 above) before—
- (a) the meeting at which any such resolution is to be moved; or
 - (b) where proxy voting is permitted, such earlier date as may be specified by the society, under its rules, as the final date for the receipt of instruments appointing proxies to vote at the meeting.
- (4) If it appears to the Commission that it is impractical to include the summary mentioned in paragraph 2(1)(d) below in the statement referred to in sub-paragraph (1) above, the Commission may direct that the summary shall be sent separately from that statement within such period as the Commission may specify in the direction.
- 2 (1) The matters of which a statement required by paragraph 1 above is to give particulars are the following, namely—
- (a) the financial position of the society and that of every other society or person participating in the amalgamation or transfer;
 - (b) any interest of the members of the committee of management of the society in the amalgamation or transfer;
 - (c) the compensation or other consideration (if any) proposed to be paid to or in respect of—

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- (i) the members of the committee of management or other officers of the society; and
 - (ii) the officers of every other society or person participating in the amalgamation or transfer;
 - (d) in the case of a transfer, a summary of any actuary's report which the society is directed to furnish to the Commission under section 88 above; and
 - (e) any other matter which the Commission requires in the case of the particular amalgamation or transfer.
- (2) No statement shall be sent unless its contents, so far as they concern the matters specified in this paragraph, have been approved by the Commission.

Statements relating to conversion of society into company

- 3 (1) A friendly society which desires to convert into a company under section 91 above shall send a statement concerning—
- (a) such matters as may be prescribed in regulations made by the Commission with the consent of the Treasury; and
 - (b) such other matters as may be required by the Commission in the case of the particular conversion;
- to every member entitled (when the statements are sent) to vote on any resolution required by subsection (2) of that section.
- (2) Regulations under sub-paragraph (1) above may include among the prescribed matters any alternatives to a proposed conversion which may be available.
- 4 The statement referred to in paragraph 3 above shall be sent so as to arrive no later than 14 days (or such longer period as the rules may require for notice of any resolution required by section 91 above) before—
- (a) the meeting at which any such resolution is to be moved; or
 - (b) where proxy voting is permitted, such earlier date as may be specified by the society, under its rules, as the final date for the receipt of instruments appointing proxies to vote at the meeting;
- but no such statement may be sent unless its contents, so far as they concern the matters mentioned in that paragraph, have been approved by the Commission.

PART II

CONFIRMATION BY COMMISSION

Applications for confirmation

- 5 (1) An application by a friendly society for confirmation by the Commission—
- (a) of an amalgamation under section 85 above,
 - (b) of a transfer of engagements of a friendly society under section 86 above, or
 - (c) of the conversion of a friendly society into a company under section 91 above,
- shall be made in such manner as may be prescribed, with respect to applications under that section, in regulations made by the Commission with the consent of the Treasury.

- (2) An application for confirmation of an amalgamation shall be made jointly by the friendly societies concerned.
- 6 (1) Where a friendly society applies for confirmation of an amalgamation, transfer or conversion, it shall publish a notice of the application—
- (a) in one or more of the London Gazette, the Edinburgh Gazette or the Belfast Gazette, as the Commission directs, and,
 - (b) if it so directs, in one or more newspapers.
- (2) The notice shall—
- (a) state that any interested party has the right to make representations to the Commission with respect to the application;
 - (b) specify a date determined by the Commission before which any written representations or notice of a person's intention to make oral representation 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.
- (3) Where a friendly society participating in a transfer is required under section 88 above to furnish an actuary's report, the society shall publish a notice in the manner required by sub-paragraph (1) above—
- (a) stating that such a report has been obtained;
 - (b) stating the addresses of the offices of the society at which copies of the report shall be available for inspection for a period of not less than 21 days beginning with the date of the first publication of the notice; and
 - (c) containing such particulars of any other matter relating to the report which the Commission requires in the case of the transfer in question;
- and such a society may include the notice required by this sub-paragraph in the notice required by sub-paragraph (1) above.
- 7 After the date specified in the notice in pursuance of paragraph 6(2)(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 friendly society applying for confirmation and to any persons who have give notice of their intention to make oral representations; and
 - (c) send copies of any written representations received by the Commission to that society;
- and the Commission shall allow that society 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 the society.

Confirmation by Commission: General

- 8 (1) Where an application is duly made for confirmation by the Commission of an amalgamation, transfer of engagements or conversion, the Commission shall confirm the amalgamation, transfer or conversion unless it is precluded from doing so by any of the following provisions of this Schedule.
- (2) If it appears to the Commission, in relation to any amalgamation or transfer of engagements, that there is a substantial risk that the successor society or the person

taking the transfer will not be able lawfully to carry out the engagements to be transferred to it under section 85(4) or 86(5) above, the Commission—

- (a) shall not confirm the amalgamation or transfer; and
- (b) where it has confirmed the amalgamation or transfer, shall, by notice to the central office, withdraw its confirmation;

but it may not withdraw its confirmation on or after the transfer date for the amalgamation or transfer.

- (3) For the purposes of sub-paragraph (2) above, the Commission may have regard to any requirements of the law of a country or territory outside the United Kingdom which appear to the Commission to be relevant.
- 9 (1) Subject to sub-paragraph (3) below, the Commission shall not confirm an amalgamation or transfer if it considers that—
- (a) some information material to the members' decision (including any decision on an affected members' resolution under section 86 above) about the amalgamation or transfer was not made available to all the members eligible to vote;
 - (b) the vote on any resolution approving the amalgamation or transfer does not represent the views of the members eligible to vote; or
 - (c) some relevant requirement of this Act or the rules of any friendly society participating in the amalgamation or transfer was not fulfilled or not fulfilled as regards that society.
- (2) Subject to sub-paragraph (3) below, the Commission shall not confirm the conversion of a society if it considers that—
- (a) some information material to the members' decision about the conversion was not made available to all the members eligible to vote;
 - (b) the vote on any resolution approving the conversion does not represent the views of the members eligible to vote;
 - (c) there is a substantial risk, in the case of conversion into a company which will require to be authorised under Part I of the Insurance Companies Act 1982, that the company will not be so authorised; or
 - (d) some relevant requirement of this Act or the rules of the society was not fulfilled.
- (3) The Commission shall not be precluded from confirming an amalgamation, transfer or conversion by virtue only of the non-fulfilment of some relevant requirement of this Act or the rules of a friendly society if it appears to the Commission that it could not have been material to the members' decision about the amalgamation, transfer or conversion and the Commission gives a direction that the failure is to be disregarded for the purposes of this paragraph.
- 10 (1) Where the Commission would be precluded—
- (a) from confirming an amalgamation or transfer by reason of any of the defects specified in paragraph 9(1) above, or
 - (b) from confirming a conversion by reason of any of the defects specified in paragraph 9(2) above,
- it may give to any friendly society participating in the amalgamation or transfer or, as the case may be, to the society proposing to convert a direction under sub-paragraph (2) below.
- (2) A direction under this sub-paragraph is a direction requiring a friendly society—

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- (a) to take such steps to remedy the defect or defects, including the calling of a further meeting, as are specified in the direction; and
 - (b) to furnish the Commission with evidence that those steps have been taken;
- and if the Commission is satisfied that the steps have been taken and the defect or defects has or have been substantially remedied, the Commission shall confirm the amalgamation, transfer or conversion.

Confirmation of amalgamations

- 11 The Commission shall not confirm an amalgamation unless it is satisfied—
- (a) that the successor society will be able to carry on the business of the amalgamating societies in the United Kingdom without authorisation under section 32 above; or
 - (b) that there is no substantial risk that the successor society will not be granted such authorisation under that section as will permit it to carry on that business in the United Kingdom.

Confirmation of transfers of engagements

- 12 The Commission shall not confirm a transfer unless it is satisfied—
- (a) that all the engagements included in the transfer may be transferred under section 86 above to the transferee;
 - (b) that the transfer is in the interests of the members of each friendly society participating in the transfer; and
 - (c) where the transfer is not of all the engagements of the transferor, that the purposes of each friendly society participating in the transfer will, after the transfer, continue to include the carrying on of one or more activities falling within Schedule 2 to this Act.
- 13 (1) The Commission shall not confirm a transfer in any case where the transferee is required by section 87 above to furnish the Commission with a report unless it is satisfied that the transferee will (after taking the proposed transfer into account)—
- (a) where the report is furnished under section 87(2), possess the margin of solvency required by section 48 above;
 - (b) where the report is furnished under section 87(3), possess an excess of assets over liabilities.
- (2) The Commission shall not confirm a transfer of any engagements the fulfilment of which will constitute the carrying on of insurance business in the United Kingdom in any case where the transferee is a person to whom Part II of the Insurance Companies Act 1982 applies unless the Secretary of State certifies that the transferee will, after taking the proposed transfer into account, possess any margin of solvency required by that Part of that Act.
- 14 The Commission shall not confirm a transfer of any engagements the fulfilment of which will constitute the carrying on in the United Kingdom of insurance business unless it is satisfied—
- (a) that the proposed transferee will be able to fulfil the engagements without authorisation under Part I of the Insurance Companies Act 1982 or section 32 of this Act; or
 - (b) that there is no substantial risk that the proposed transferee will not have such authorisation as will permit it to fulfil them.

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- 15 (1) This paragraph applies to a transfer of engagements (other than contracts of reinsurance) the effecting of which constituted the carrying on of general business.
- (2) The Commission shall not confirm such a transfer if it is to a transferee who is or will be authorised under Part I of the Insurance Companies Act 1982 to carry on in the United Kingdom insurance business and whose head office is situated in another member State, unless the supervisory authorities of that State certify that the transferee will, after taking the proposed transfer into account, possess the margin of solvency required for compliance with the first general insurance Directive.
- (3) The Commission shall not confirm such a transfer in relation to engagements entered into by way of provision of insurance in another member State unless—
- (a) the transferee fulfils or will fulfil the conditions mentioned in Articles 13 to 16 of the second general insurance Directive in the member State where the risk is situated; and
 - (b) the supervisory authorities of that member State agree to the transfer.
- (4) The Commission shall not confirm such a transfer, in relation to engagements which cover risks situated in the United Kingdom, to a transferee who is not or will not be authorised under section 32 above or Part I of the Insurance Companies Act 1982 unless—
- (a) the transferee is an insurance company established in another member State which is or will be entitled in accordance with section 81B of the Insurance Companies Act 1982 to provide insurance in the United Kingdom in respect of those risks through that establishment; and
 - (b) the supervisory authorities of the member State of that establishment agree to the transfer.
- (5) The Commission shall not confirm such a transfer, in relation to engagements which cover risks situated in another member State, to a transferee who is not or will not be authorised under section 32 above or Part I of the Insurance Companies Act 1982 unless—
- (a) the transferee is an insurance company established in another member State and the supervisory authorities of that member State agree to the transfer; and
 - (b) where the risk is not situated in the transferee's member State of establishment—
 - (i) the transferee fulfills the conditions mentioned in Articles 13 to 16 of the second general insurance Directive in the member State where the risk is situated;
 - (ii) the law of that member State provides for the possibility of such a transfer; and
 - (iii) the supervisory authorities of that member State agree to the transfer.
- 16 The Commission shall not confirm a transfer to a friendly society of engagements the fulfilment of which will constitute the carrying on in the United Kingdom of non-insurance business of any description unless it is satisfied that there is no substantial risk that the society will not be authorised under section 32 above to carry on non-insurance business of that description.

Effect of failure to comply with relevant requirements

- 17 A failure to comply with a relevant requirement of this Act or any rules of a friendly society shall not invalidate any amalgamation, transfer of engagements or conversion; but a society which—
- (a) participates in an amalgamation or transfer or converts into a company; and
 - (b) fails without reasonable excuse to comply with such a requirement;
- shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Interpretation

- 18 In this Part of this Schedule—
- (a) expressions which are defined in section 81A or 96A of the Insurance Companies Act 1982 (interpretation of expressions derived from European Directives relating to insurance) have the same meaning as they have for the purposes of that Act;
 - (b) “relevant requirement”, with reference to this Act or the rules of a friendly society means a requirement of this Part of this Act or of any rules prescribing the procedure to be followed by the society in approving or effecting an amalgamation or transfer of engagements or its conversion into a company.