

## STATUTORY INSTRUMENTS

# 1998 No. 212

## The Building Societies (Transfer of Business) Regulations 1998

### Citation and commencement

1. These Regulations may be cited as the Building Societies (Transfer of Business) Regulations 1998 and shall come into force on 2nd March 1998.

#### Commencement Information

II Reg. 1 in force at 2.3.1998, see [reg. 1](#)

### Interpretation

2. In these Regulations, except where the context requires otherwise—

“the Act” means the Building Societies Act 1986;

“connected undertaking” means a subsidiary undertaking or an associated undertaking;

“date of the transfer notification statement” means the date upon which the [<sup>F1</sup>appropriate authority] approves the contents of the transfer notification statement in accordance with paragraph 9(4) of Part II of Schedule 8A to the Act;

“date of the transfer statement” means the date upon which the [<sup>F2</sup>appropriate authority] approves the contents of the transfer statement in accordance with paragraph 4(3) of Part I of Schedule 17 to the Act;

“group” shall be construed in accordance with [<sup>F3</sup>section 474(1) of the Companies Act 2006];

“member” includes where the context so requires in relation to a society which has so transferred its business a former member of that society;

“merger” means an amalgamation of building societies under section 93 (Amalgamations) of the Act or a transfer to any extent of the engagements of one building society to another under section 94 (Transfer of engagements) of the Act, and “merge” has a corresponding meaning;

“offer” in respect of shares or rights relating to shares, includes any invitation to apply for those shares or rights and “offered” shall be construed accordingly;

“society” means a building society that proposes to transfer, or, as the case may be, has transferred, its business to a successor company under section 97 (Transfer of business to commercial company) of the Act;

“statutory cash bonus” means the distribution of funds by way of bonus required by section 100(2)(b) and (4) of the Act;

“successor company” means a company to which a society proposes to transfer, or, as the case may be, has transferred, its business; and

“transfer notification statement” means the statement required by paragraph 9 of Schedule 8A to the Act;

“vesting date” means the date which is the vesting date for the purpose of the transfer of a society’s business.

#### Textual Amendments

- F1** Words in [reg. 2](#) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), [Sch. 10 para. 4\(2\)\(a\)](#) (with Sch. 12)
- F2** Words in [reg. 2](#) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), [Sch. 10 para. 4\(2\)\(b\)](#) (with Sch. 12)
- F3** Words in [reg. 2](#) substituted (12.5.2011) by [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), arts. 1(2), [8\(2\)](#)

#### Commencement Information

- I2** Reg. 2 in force at 2.3.1998, see [reg. 1](#)

### Transfer Statements

**3.—(1)** Subject to paragraph (2) below, any transfer statement sent to members of a society under paragraph 2 of Schedule 17 (Transfers of Business: Supplementary Provisions) to the Act shall give particulars of the matters specified in Part I of Schedule 1 to these Regulations, particulars of the matters specified in either Part II or Part III of that Schedule according to whether the society proposes to transfer its business to an existing company or a specially formed company, and, if shares or rights in relation to shares are to be offered in connection with the transfer, also particulars of the matters specified in Part IV of that Schedule.

(2) Where, by virtue of paragraph (1) above, particulars are required to be stated of any matter, which is not ascertainable at the time when the statement is made, there shall be substituted for that matter a forecast thereof and the fact that the particulars given in the statement relate to a forecast shall be specified in the statement and so shall particulars of—

- (a) the persons making the forecast,
- (b) the persons (if any) consulted for the purposes of the forecast by its makers, and
- (c) the facts and assumptions on which it is based.

(3) Where, during the 12 months preceding the date of a transfer statement, a written proposal has been made to the society issuing the statement—

- (a) by or on behalf of a company other than the successor company, for the society to transfer its business to that other company, or
- (b) by or on behalf of another building society, for the society to merge with that building society,

paragraph (4) below shall apply to that transfer statement.

(4) Where this paragraph applies to a transfer statement the transfer statement shall, notwithstanding, in the case of a merger proposal, that notice of the proposal is required to be given to members of the society under Part II of Schedule 16 (Mergers: Supplementary Provisions) to the Act, or, in the case of a transfer proposal, that notice of the proposal is required to be given to members of the society under Part IA of Schedule 17 (Transfers of Business: Supplementary Provisions) to the Act, give particulars of the following matters—

- (a) the fact of the proposal and the name of the company or society by or on whose behalf the proposal was made, save where the company or society, by or on whose behalf the proposal was made, has made in writing a request that the proposal be treated as confidential and has not withdrawn that request in writing; and

- (b) the terms of the proposal, save to the extent that the company or society, by or on whose behalf the proposal was made, has made in writing in a request that any such term be treated as confidential and has not withdrawn that request in writing.

**Commencement Information**

**I3** Reg. 3 in force at 2.3.1998, see [reg. 1](#)

**Transfer Summaries**

**4.** Any transfer summary sent to members of a society under paragraph 2 of Schedule 17 (Transfers of Business: Supplementary Provisions) to the Act shall contain—

- (a) the information specified in Schedule 2 to these Regulations in the circumstances described; and
- (b) where, during the 12 months preceding the date of the transfer summary, a written proposal has been made to the society issuing the summary as described in regulation 3(3) above, the information specified in regulation 3(4) above.

**Commencement Information**

**I4** Reg. 4 in force at 2.3.1998, see [reg. 1](#)

**Transfer Notification Statements**

**5.—(1)** Subject to paragraph (2) below, any transfer notification statement sent to members of a society under paragraph 9 of Schedule 8A (Transfer Directions: Modifications of Part X) to the Act shall give particulars of the matters specified in Schedule 3 to these Regulations.

(2) Where, by virtue of paragraph (1) above, particulars are required to be stated of any matter, which is not ascertainable at the time when the statement is made, there shall be substituted for that matter a forecast thereof and the fact that the particulars given in the statement relate to a forecast shall be specified in the statement and so shall particulars of—

- (a) the persons making the forecast,
- (b) the persons (if any) consulted for the purposes of the forecast by its makers, and
- (c) the facts and assumptions on which it is based.

(3) Where, during the 12 months preceding the date of a transfer notification statement, a written proposal has been made to the society issuing the statement—

- (a) by or on behalf of a company other than the successor company, for the society to transfer its business to that other company, or
- (b) by or on behalf of another building society, for the society to merge with that building society,

paragraph (4) below shall apply to that transfer notification statement.

(4) Where this paragraph applies to a transfer notification statement the transfer notification statement shall, notwithstanding, in the case of a merger proposal, that notice of the proposal is required to be given to members of the society under Part II of Schedule 16 (Mergers: Supplementary Provisions) to the Act, or, in the case of a transfer proposal, that notice of the proposal is required to be given to members of the society under Part IA of Schedule 17 (Transfers of Business: Supplementary Provisions) to the Act, give particulars of the following matters—

- (a) the fact of the proposal and the name of the company or society by or on whose behalf the proposal was made, save where the company or society, by or on whose behalf the proposal was made, has made in writing a request that the proposal be treated as confidential and has not withdrawn that request in writing; and
- (b) the terms of the proposal, save to the extent that the company or society, by or on whose behalf the proposal was made, has made in writing a request that any such term be treated as confidential and has not withdrawn that request in writing.

#### Commencement Information

**I5** Reg. 5 in force at 2.3.1998, see [reg. 1](#)

#### Construction of agreements and deeds

6.—(1) Where immediately before the vesting date there subsists an agreement (whether or not in writing) or a deed to which the society is a party, not being an agreement or a deed to which the successor company is also a party, the agreement or deed shall, without prejudice to the generality of paragraph (3) below, have effect on and after the vesting date—

- (a) as if the successor company had been the party thereto in place of the society; and
  - (b) with the modifications set out in paragraph (2) below.
- (2) Those modifications are—
- (a) the substitution, for any reference (whether express or implied and, if express, however worded) to the society, of a reference to the successor company; and
  - (b) the substitution, for any reference in general terms (however worded) to persons employed by or agents of the society, of a reference to persons employed by or agents of the successor company.

(3) Subject to paragraph (4) below, every such agreement or deed shall, on and after the vesting date, be construed as if the successor company were the same person in law as the society and accordingly in construing it any consequences which would have followed from a transfer of the society's business to the successor company shall be disregarded.

(4) Nothing in paragraph (3) above shall cause to be disregarded any provision of an agreement or deed which makes express reference to the transfer of a society's business under section 97 of the Act.

(5) Where on the vesting date the society has any rights or is subject to any liabilities under an agreement or deed as the assignee or successor in title to a party to that agreement or deed, this regulation shall apply to it in the same manner as if the society were a party thereto.

#### Commencement Information

**I6** Reg. 6 in force at 2.3.1998, see [reg. 1](#)

#### Construction of other documents

7.—(1) Any instrument or other document (to the extent that it is not an agreement or deed to which regulation 6 above applies or an enactment) in being immediately before the vesting date which refers, whether specifically, generally or by implication, to the society shall have effect on and after the vesting date with the modifications set out in regulation 6(2)(a) and (b) above and

shall be construed in the manner in which agreements and deeds are required to be construed by regulation 6(3) and (4) above, and without prejudice to the generality of the foregoing—

- (a) testamentary instruments made before the vesting date whether the testator dies before, on or after that date, and
- (b) negotiable instruments and orders for payment of money whether drawn, given, accepted or endorsed before, on or after the vesting date,

shall have effect in accordance with this paragraph and with the modifications so prescribed.

(2) Without prejudice to the generality of regulation 6 and paragraph (1) of this regulation, any instrument or document (not being an enactment) which relates to the use of any land or premises in which any interest was vested in, or which was occupied by, the society immediately before the vesting date and which, in relation to that use, refers to a building society or to activities (however described) of a building society shall, for as long as any interest in the land or premises is vested in, or the land or premises are occupied by, the successor company, have effect as if the reference were respectively to the successor company or to activities of a similar character carried on by the successor company.

(3) For the purposes of this regulation, any register or record preserved by any device for storing and processing information shall, if that register or record is so preserved immediately before the vesting date, be treated as a document in being immediately before that date.

**Commencement Information**

**I7** Reg. 7 in force at 2.3.1998, see [reg. 1](#)

**Rights, powers and remedies**

**8.** Without prejudice to the generality of the provisions of regulations 6 and 7(1) above, the successor company and any other person shall, as from the vesting date, have the same rights, powers and remedies (and in particular the same rights and powers as to the taking or resisting of legal proceedings or the taking or resisting of proceedings by or before any authority, arbiter or arbitrator) for ascertaining, perfecting or enforcing any right, liability or obligation transferred to the successor company by virtue of section 97 of the Act as he would have had if that right, liability or obligation had at all material times been a right, liability or obligation of the successor company.

**Commencement Information**

**I8** Reg. 8 in force at 2.3.1998, see [reg. 1](#)

**Legal proceedings**

**9.** Without prejudice to the generality of the provisions of regulations 6, 7(1) and 8 above, any legal proceedings or proceedings by or before any authority, arbiter or arbitrator pending immediately before the vesting date by or against the society in so far as they relate to any property, right, liability or obligation transferred to the successor company by virtue of section 97 of the Act or to any agreement relating to any such property, right, liability or obligation shall, as from the vesting date, fall to be continued by or against the successor company to the exclusion of the society.

**Commencement Information**

**I9** Reg. 9 in force at 2.3.1998, see [reg. 1](#)

## Revocation

**10.** The Building Societies (Transfer of Business) Regulations 1988(1) and the Building Societies (Transfer of Business) (Amendment) Regulations 1990(2) are hereby revoked.

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### Commencement Information

**I10** Reg. 10 in force at 2.3.1998, see [reg. 1](#)

In witness whereof the common seal of the Building Societies Commission is hereunto affixed, and is authenticated by me, a person authorised under paragraph 14 of Schedule 1 to the Building Societies Act 1986, on the 3rd February 1998.

L.S.

*G.S. Johnson*  
Secretary to the Commission

We consent to these Regulations.

*Graham Allen*  
*Jim Dowd*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

4th February 1998

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(1) S.I. 1988/1153.  
(2) S.I. 1990/1695.

**Changes to legislation:**

There are currently no known outstanding effects for the The Building Societies (Transfer of Business) Regulations 1998.