

Financial Mutuals Arrangements Bill

CONTENTS

- 1 Removal of the funding limit for building societies
- 2 Power to amend etc, to alter priorities on dissolution and winding up of building societies
- 3 Transfers between mutuals
- 4 Short title, commencement and extent

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B I L L

TO

Remove existing funding limits in respect of building societies, subject to regulation by the Financial Services Authority; to provide consequential rights to building society members; and to enable specified categories of mutual organisations to transfer engagements to one another or to a company.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Removal of the funding limit for building societies

- (1) In subsection (1)(a) of section 1 (functions of the Financial Services Authority in relation to building societies) of the Building Societies Act 1986 (c. 53) (“the 1986 Act”), for the words “remains that of making loans which are secured on residential property and funded substantially by their members” substitute “is that of making loans which are secured on residential property”. 5
- (2) In subsection (1)(a) of section 5 of the 1986 Act (establishment, constitution and powers) the words “and are funded substantially by its members” shall cease to have effect.
- (3) Section 7 of the 1986 Act (the funding limit) shall cease to have effect. 10

2 Power to amend etc, to alter priorities on dissolution and winding up of building societies

- (1) After section 90A of the 1986 Act (application of other companies insolvency legislation to building societies) insert—
- “90B Power to amend etc, to alter priorities on dissolution and winding up 15**
- (1) The Treasury may by order make such modifications to the relevant provisions of this Act and to the applicable company enactments as appear to them to be expedient to secure that—
- (a) on a dissolution or winding up of a building society, the assets of the society are applied in the following order— 20

- (i) in paying debts of the society which constitute preferential debts under the applicable company enactments (or, where the society is being dissolved by consent, which would have constituted such debts if the society were being wound up); 5
- (ii) in satisfying the society's remaining liabilities to depositors and other creditors (other than liabilities in respect of subordinated deposits) and its liabilities to holders of shares (other than liabilities in respect of deferred shares) *pari passu*; 10
- (iii) in satisfying the society's liabilities in respect of subordinated deposits;
- (iv) in satisfying the society's liabilities in respect of deferred shares; and
- (v) in paying any surplus to the persons entitled to it under the society's rules (as supplemented, in the case of a dissolution by consent, by the instrument of dissolution); and 15
- (b) in relation to the approval of voluntary arrangements, the making of administration orders and the appointment of receivers and managers, the rights of holders of shares in a society are so far as the Treasury thinks practicable assimilated with the rights of the society's depositors and other creditors. 20
- (2) The power conferred by subsection (1) above includes power to modify the relevant provisions of this Act so as to confer power to make orders, regulations, rules or other subordinate legislation. 25
- (3) An order under this section may –
- (a) make consequential amendments of or repeals in other provisions of this Act;
- (b) include provision that it shall take immediate effect in relation to a building society notwithstanding anything to the contrary in the society's rules; or 30
- (c) make such transitional or saving provisions as appear to the Treasury to be necessary or expedient including, in particular, provisions to secure that the order does not prejudice – 35
- (i) the rights of holders of any preferential shares issued by a society before the date on which the order comes into force; or
- (ii) the rights of depositors or other creditors to payment of any deposit made or debt incurred before that date. 40
- (4) A statutory instrument containing an order made under subsection (1) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) In this section –
- (a) the “applicable company enactments” are the following enactments as for the time being in force, that is to say – 45
- (i) the enactments specified in paragraph 1 of Schedule 15 to this Act, as applied to building societies by section 90(2); and

- (ii) the enactments specified in paragraph 1(2) of Schedule 15A to this Act, as applied to building societies by section 90A;
- (b) “modification” includes any additions;
- (c) the “relevant provisions of this Act” are the following provisions as for the time being in force, that is to say –
 - (i) so much of this Part as relates to dissolution by consent, winding up or insolvency;
 - (ii) paragraph 3 of Schedule 2 to this Act (the rules); and
 - (iii) Schedules 15 and 15A to this Act; and
- (d) a “subordinated deposit” is a deposit which, on a winding up, would fall to be repaid only after repayment in full has been made to –
 - (i) the holders of shares in the society (other than deferred shares); and
 - (ii) depositors and other creditors who rank in priority to or *pari passu* with such holders.”

3 Transfers between mutuals

- (1) The Treasury may by regulations make provision for enabling any specified mutual to –
 - (a) transfer its engagements to, or receive a transfer of engagements from, any other type of specified mutual; or
 - (b) otherwise transfer the whole or part of its undertaking to, receive such a transfer from, or engage in any type of reorganisation, restructuring, scheme or arrangement with any other type of specified mutual,
 using the same procedures and complying with the same requirements as would apply if the transfer, reorganisation, restructuring, scheme or arrangement, as the case may be, referred to in paragraph (a) or (b) were being undertaken with, to, from, or in respect of, a specified mutual of the same type.
- (2) The regulations under this section may, in particular, make provision –
 - (a) to deal with any transfer, reorganisation, restructuring, scheme or arrangement referred to in subsection (1) of this section in which one of the parties is a corporate body other than a society of a type specified in subparagraphs (i), (ii) or (iii) of subsection (5)(a) of this section;
 - (b) for the definition of the term “mutual insurer”, for the purpose of the regulations;
 - (c) for the protection of the voting, financial, or other rights of the members of any specified mutual using powers conferred by subsection (1); or
 - (d) to ensure the continuation of the mutual nature of such a specified mutual unless procedures applicable to a transfer of engagements by a specified mutual to a corporate body other than a specified mutual are followed, including but not limited to –
 - (i) conferring power on any body to limit further disposals of businesses or reorganisations during a specified period, or to impose conditions on, or to require consent before, any such disposals or reorganisations; and
 - (ii) conferring power on any body to require such procedures for member decision-making to be followed on any disposal of a business or reorganisation as would apply in the case of a

- transfer of engagements to a corporate body which was not a specified mutual, including power to decide ancillary matters, such as which groups of members should be entitled to participate in any such procedure, the information to be provided to them and the method of voting. 5
- (3) Regulations under this section may –
- (a) modify, exclude or apply (with or without modifications) any enactments or rules of law;
 - (b) contain such incidental, consequential and supplemental provision as the Treasury consider appropriate; 10
 - (c) make different provision for different cases or circumstances; or
 - (d) make transitional provision or savings.
- (4) A statutory instrument containing regulations made under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament. 15
- (5) In this section –
- (a) a “specified mutual” is –
 - (i) a society registered under the Industrial and Provident Societies Acts 1965 to 2003 other than a credit union registered under those Acts by virtue of the Credit Unions Act 1979 (c. 34); 20
 - (ii) a friendly society registered under the Friendly Societies Act 1992 (c. 40);
 - (iii) a building society registered under the 1986 Act;
 - (iv) a mutual insurer as defined in regulations made under this section; or 25
 - (v) a subsidiary of a society referred to in subparagraphs (i) to (iii) or of a mutual insurer within the meaning of paragraph (iv) of this paragraph.
 - (b) a “specified mutual of the same type” is any society or mutual insurer, as the case may be, within the same particular subparagraph of paragraph (a) of this subsection as the specified mutual seeking to transfer or receive engagements, or otherwise transfer the whole or part of its undertaking to, receive such a transfer from, or engage in any type of reorganisation, restructuring, scheme or arrangement as contemplated in subsection (1). 30 35
 - (c) a “subsidiary” is –
 - (i) in the case of an industrial and provident society a subsidiary within the meaning of section 15 of the Friendly and Industrial and Provident Societies Act 1968 (c. 55) (meaning of “subsidiary”); 40
 - (ii) in the case of a friendly society a subsidiary within the meaning of section 13 of the Friendly Societies Act 1992 (control of subsidiaries and other bodies corporate);
 - (iii) in the case of a building society a subsidiary undertaking within the meaning of section 119 of the 1986 Act (interpretation); 45
 - (iv) in the case of a company registered under the Companies Act 2006 (c. 46) a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006, read in conjunction with sections 1161 and 1173 of, and Schedule 7 to, that Act; and

- (v) in the case of any other corporate body, as defined in regulations made under this section.

4 Short title, commencement and extent

- (1) This Act may be cited as the Financial Mutuals Arrangements Act 2007.
- (2) Subject to subsection (3) below, the preceding sections of this Act shall come into force on such day as the Treasury may by order made by statutory instrument appoint, and different days may be appointed for different provisions or different purposes. 5
- (3) Section 2 of this Act shall not be brought into force before the coming into force of section 1. 10
- (4) This Act extends to the whole of the United Kingdom.

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