

These notes refer to the Lords Amendments to the Building Societies (Funding) and Mutual Societies (Transfers) Bill, as brought from the House of Lords on 15th October 2007 [Bill 159]

BUILDING SOCIETIES (FUNDING) AND MUTUAL SOCIETIES (TRANSFERS) BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

INTRODUCTION

1. These explanatory notes relate to the Lords Amendments to the Building Societies (Funding) and Mutual Societies (Transfers) Bill, as printed for the Commons on 15th October 2007. They have been provided by HM Treasury with the consent of Sir John Butterfill, the Member in charge of the Bill, in order to assist the reader of the Bill and the Lords Amendments and to help inform debate on the Lords Amendments. They do not form part of the Bill and have not been endorsed by Parliament.
2. These notes, like the Lords Amendments themselves, refer to HL Bill 65, the Bill as first printed for the Lords.
3. These notes need to be read in conjunction with the Lords Amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the effect of the Lords Amendments.
4. All the Lords Amendments were in the name of the Minister.

COMMENTARY ON LORDS AMENDMENTS

Lords Amendments 1, 2 and 3

5. Lords Amendments 2 and 3 widen the definition of “mutual society” in clause 3, by inserting a definition of “EEA mutual”. An EEA mutual can be a European Co-operative Society, a co-operative society in any European Economic Area (EEA) state, or any other type of body specified by the Treasury in secondary legislation. This will ensure that any changes made under the Bill to the legislation specified in clause 3(10) governing transfers of mutual societies can apply where the transfer is to a subsidiary of an EEA mutual (which could include a mutual insurer) as well as where the transfer is to a subsidiary of another UK mutual.

6. Lords Amendment 1 ensures that any order made under clause 3 which may have effects peculiar to a particular mutual will not be dealt with under the hybrid instrument procedure in the Lords. As a result of the addition of “EEA mutual” to clause 3 it is possible that an order under clause 3 could, for example, require an EEA mutual society acquiring a UK mutual to give transferring members full membership rights in the EEA mutual. If the EEA mutual has a unique legal form that might raise a question of hybridity. This provision will ensure that the hybrid instrument procedure would not apply, should such a situation arise.

Lords Amendments 4 and 5

7. These amendments introduce the term “relevant company” into clause 3. The effect is that, when the transfer provisions are modified by Treasury order, a transfer of a mutual society’s business under the modified procedures could be to a UK company or to a body corporate incorporated in any other EEA state, provided that company or body corporate is controlled by another mutual society.

Lords Amendment 6

8. This amendment ensures that the Financial Services Authority (FSA) has powers to charge fees for any functions conferred on it under the Bill. It extends the FSA’s existing powers to charge fees under the Financial Services and Markets Act 2000. The extension of clause 3 to EEA mutuals will require certain safeguards to be in place, equivalent to those applicable to domestic mutuals, regarding membership rights in the holding mutual and further demutualization. The FSA, which in most cases must approve transfers of mutual societies’ business, will have to be satisfied that these safeguards are in place. If additional functions are conferred on the FSA in the order implementing the Bill, it may need to charge fees in connection with those functions.

Lords Amendment 7

9. This amendment allows the provisions of the Bill to be extended to the Channel Islands and the Isle of Man, with modifications if appropriate. Some of the

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mutuals legislation which may be modified under the Bill either extends to the Islands or may be so extended. The Islands authorities have been consulted and were content for the amendment to be made.

FINANCIAL EFFECTS OF THE LORDS AMENDMENTS

10. Lords Amendment 6 allows the Financial Services Authority to charge fees in relation to the exercise of functions conferred on it under the Bill. If additional functions are conferred on the FSA, and it exercises its power to charge fees, this could result in costs for some businesses wishing to take advantage of the new procedures. However, any such fees would be paid directly to the FSA and would not exceed the FSA's costs in the transaction in question.