HM TREASURY

Post-legislative assessment of the Building Societies (Funding) and Mutual Societies (Transfers) Act 2007

Cm 8471

October 2012

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Presented to Parliament by
the Economic Secretary to the
Treasury by Command of Her
Majesty

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1 Memorandum to the Treasury Committee

Introduction

1.1 This memorandum has been prepared by the Treasury for submission to the Treasury Committee and will be published as part of the post-legislative scrutiny process as set out in Command Paper 7320: Post Legislative scrutiny – the Government's approach.

1.2 The Building Societies (Funding) and Mutual Societies (Transfers) Act 2007 ('the Act') received Royal Assent on 23 October 2007.

1.3 The Act extends to England and Wales, Scotland and Northern Ireland.

Summary of the objectives of the Act

1.4 The purposes of the Act are to liberalise the wholesale funding limits on building societies, to place building society members on a par with creditors on a winding up, and to make it easier for mutual societies transfer their business to subsidiaries of other mutual societies.

1.5 The Act aims to increase the proportion of wholesale funding building societies may use. Building societies are required by the Building Societies Act 1986 to raise at least 50 per cent of their funds from shares held by individual members of the society. The Act allows the Treasury to change that requirement, so that societies may raise up to 75 per cent of their funding from wholesale sources.

1.6 The Act also provides for a change in the position on distribution of assets on dissolution or winding up of a building society. Shareholding members of a building society currently rank behind unsecured creditors. The Act aims to change this and reduce the risk to shareholding members in the event of changes to the funding limit by ranking shareholding members of a building society equally with unsecured creditors on dissolution or winding up.

1.7 Third, the Act aims to make it easier for mutual societies to acquire other mutuals and to develop group structures. Prior to this Act, it was permissible to transfer the business of one mutual to another of the same kind, or to a commercial company. However, the provisions permitting the transfer of the business of a mutual to a company do not distinguish between corporate bodies owned by other mutuals and other corporate bodies.

1.8 The Act aims to ensure that mutual societies and other interested parties are consulted before any significant changes are made by providing powers to make the changes which must then be exercised through secondary legislation.

1.9 The Act is divided into six sections:

> Section 1: inserts provisions into sections 5 and 7 of the Building Societies act 1986. It gives the Treasury a power, exercisable by statutory instrument under the draft affirmative procedure, to adjust the funding limit for building societies by increasing the percentage of funds that building societies may raise from wholesale sources from 50 per cent to 75 per cent. It also provides for various safeguards and certainty, including a requirement that members must be given equality with unsecured creditors in dissolution and winding up and that an order increasing the percentage of wholesale

funding may not be revoked. It further gives the Treasury power to alter the extent to which the making of loans is required to be funded by the members of a building society in order that this provision is consistent with any new funding limit.

Section 2: inserts section 90B into the Building Societies Act 1986. This gives the Treasury power to adjust the priorities in the dissolution or winding up of a building society to provide that depositors and unsecured creditors rank equally. The power is exercisable by statutory instrument under the draft affirmative procedure.

Section 3: gives the Treasury a power to modify certain specified provisions in mutuals legislation to facilitate, or in consequence of, the transfer of the whole of a business of a mutual society to a subsidiary of a mutual society.

Section 4: gives the Treasury a further power to authorise distributions of funds arising from a transfer of business between mutuals that exceed prescribed limits.

Section 5: enables the extension of the Act to the Channel Islands and the Isle of Man.

Section 6 provides for commencement and extent.

Implementation

1.10 The Act has been partially implemented. So far, only Sections 3, 4, 5 and 6 have been commenced. Section 6 was commenced on royal assent and sections 3, 4 and 5 by commencement order on 16 January 2009. This followed a consultation on the Act as a whole in 2008, which led to 20 unanimous responses requesting urgent implementation of these sections.

1.11 There have been no amendments or reviews of the Act.

2 Preliminary assessment of the Act

Where the act has been used

2.1 The Mutual Societies Transfers Order 2009 (S.I. 2009/509) came into force on 5 March 2009. It provides for modifications to the relevant mutuals legislation to facilitate the transfer of the business of a building society to subsidiaries of other types of mutual. The Order has been used twice, once to facilitate the merger of Britannia Building Society with the Co-operative Financial Services and second to facilitate the merger of Kent Reliance Building Society with J C Flowers.

Britannia Building Society

2.2 In January 2009, the Boards of The Co-operative Group and Britannia Building Society announced the intention to merge their businesses. The proposed merger was agreed by members of the Britannia Building Society in April 2009.

2.3 The merger led to the creation of the UK's most diversified mutual financial services business, combining banking, insurance and investment expertise, with an extensive high street presence.

2.4 Implementation of the relevant section of the Act facilitated the merger of two mutual societies, with a building society merging with a co-operative, registered as an Industrial and Provident Society. Members of the Britannia Building Society became members of The Co-operative Group on completion of the merger.

2.5 The success of the merger resulted in a strongly capitalised mutual business with the scale to offer its customers and members a full range of financial services products and services that are ethical, mutual and co-operative.

Kent Reliance Building Society

2.6 Kent Reliance was a Building Society with a number of subsidiary loan companies, and in 2011 transferred its business to a new bank, OneSavings plc, of which it then owned 59.9 per cent. At the same time, J C Flowers made a large Capital Investment to the organisation, owning 40.1 per cent.

2.7 The parent company is an Industrial and Provident Society, and as the IPS has the major voting share, it is now a mutually owned bank.

2.8 The new institution is still serving its customers and taking deposits, while remaining majority mutually owned.

3 Conclusion

3.1 The Building Societies (Funding) and Mutual Societies (Transfers) Act 2007 has been used effectively and successfully since its implementation.

3.2 Both institutions that used the provisions of the Act are now running successfully under their new identities.

3.3 The Government therefore considers that the reforms made by the Act have been effective without imposing significant costs.

3.4 The only other section of the Act that the Government is considering implementing is Section 2. On 6 July 2012, HM Treasury published the discussion document *The Future of Building Societies*, which noted the Government's intention to introduce insured depositor preference for bank depositors. It also stated its intention to use the provision in the Act to adjust the creditor hierarchy, before making any further required changes to align the position for building societies with the final position for banks, once this has been finalised.

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