EXPLANATORY MEMORANDUM TO

THE MUTUAL SOCIETIES (TRANSFERS OF BUSINESS) (TAX) REGULATIONS 2009

2009 No. 2971

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs, on behalf of HM Treasury, and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The instrument makes provision for and in connection with the tax consequences of transfers of business by mutual societies.

3. Matters of special interest to the Select Committee on Statutory Instruments

3.1 The Regulations have retrospective effect as provided for in section 124(5) of Finance Act 2009. However, the Regulations will only have effect for transfers of business that take place on or after 22 April 2009.

4. Legislative Context

4.1 The instrument is being made to:

(i) remove tax barriers to transfers of business by mutual societies, and

(ii) put in place tax rules covering transfers of business provided for in Orders made under the Building Societies (Funding) and Mutual Societies (Transfers) Act 2007.

4.2 This is the first exercise of the power to make regulations provided for in section 124 of Finance Act 2009.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom except in the case of industrial and provident societies where it will not apply to such societies registered under the Industrial and Provident Societies Act (Northern Ireland) 1969.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Building Societies (Funding) and Mutual Societies (Transfers) Act 2007 ("the 2007 Act") gave HM Treasury the power to modify existing regulatory rules for transfers of business by mutual societies to enable them to transfer business to the subsidiary company of another mutual society even if that society was of a different type to the transferor. This power has been exercised to make the Mutual Societies (Transfers) Order 2009 SI 2009/509 which modifies the transfer provisions of the Building Societies Act 1986.

7.2 Prior to 2007, legislation permitting transfers of business by mutual societies only permitted:

- Amalgamations between mutual societies of the same type;
- Transfers of business in whole or in part between mutual societies of the same type; or
- Transfers of the whole of the business of a mutual society to a company.

7.3 In consultations on the implementation of the 2007 Act, industry highlighted a number of tax barriers that would impede otherwise commercially desirable transfers under both the 2007 Act and under pre-existing legislation.

7.4 These regulations accordingly seek to

- remove these tax barriers to facilitate orders made under the 2007 Act;
- ensure tax neutrality for transfers where appropriate; and
- ensure a level playing field where appropriate between the different types of mutual society

8. Consultation outcome

8.1 Drafts of this instrument were circulated to an informal industry working group on 31 July 2009 and on 7 October 2009.

8.2 The drafting of this instrument reflects the comments made by respondents to those informal consultations.

9. Guidance

9.1 Guidance is being published to accompany this Instrument.

10. Impact

10.1 An Impact Assessment has not been produced for this instrument as it has a negligible impact on business, charities or voluntary bodies.

11. Regulating small business

11.1 The legislation applies to small business but the effect on small business is negligible.

12. Monitoring & review

12.1 Operational staff will keep this matter under review to ensure that the changes made by this instrument achieve their aims.

13. Contact

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