



Building Societies Act 1986

1986 CHAPTER 53

PART I

THE BUILDING SOCIETIES COMMISSION

1 The Building Societies Commission.

- (1) For the purposes of this Act there shall be established a body of Commissioners to be called the Building Societies Commission (in this Act referred to as “the Commission”).
- (2) The Commission shall consist of not less than four and not more than ten members to be appointed by the Treasury and the Treasury shall appoint one member (to be known as the First Commissioner) to be the chairman, and another member to be the deputy chairman, of the Commission.
- (3) Any appointment under subsection (2) above may be on either a full-time or a part-time basis.
- (4) The general functions of the Commission shall be—
 - (a) to promote the protection by each building society of the investments of its shareholders and depositors;
 - (b) to promote the financial stability of building societies generally;
 - [^{F1}(c) to secure that the principal purpose of building societies remains that of making loans which are secured on residential property and are funded substantially by their members;]
 - (d) to administer the system of regulation of building societies provided for by or under this Act; and
 - (e) to advise and make recommendations to the Treasury or other government departments on any matter relating to building societies;

and the Commission shall have the other functions conferred on it by or under the subsequent provisions of this Act.

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- (5) The Commission shall have power to do anything which is calculated to facilitate the discharge of its functions, or is incidental or conducive to their discharge.
- (6) The functions of the Commission, and of its officers and employees, shall be performed on behalf of the Crown.
- (7) Schedule 1 to this Act has effect with respect to the Commission.

Textual Amendments

- F1** S. 1(4)(c) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 1**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(i)**

2 Financial provision for Commission.

- (1) There shall be charged on building societies such a general charge towards the expenses of the Commission and such fees in respect of the exercise of its functions as are authorised under this section.
- (2) The Treasury may, by regulations, make provision for—
 - (a) a general charge to be levied, with respect to each accounting year of the Commission, on every authorised building society to be paid at such rate computed by reference to such criteria, at such time and in such manner as may be prescribed; and
 - (b) fees of such amounts as may be prescribed to be paid by building societies in respect of the exercise of the Commission’s functions in relation to them.
- (3) The provision to be made from time to time under subsection (2) above, by way of the general charge and fees, shall be such as to produce an annual revenue of the Commission sufficient to meet its expenses properly chargeable to revenue account, taking one year with another.
- (4) Regulations under subsection (2) above may include—
 - (a) provision for any fees payable by societies to be reduced or for payment of any fees to be waived by the Commission in circumstances determined by or under the regulations; and
 - (b) such incidental, supplementary and transitional provision as appears to the Treasury to be necessary or expedient.
- (5) The power to make regulations under subsection (2) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) The amounts received by the Commission under this section shall be applied as an appropriation in aid of money provided by Parliament for the expenses of the Commission under this Act, and in so far as not so applied, shall be paid into the Consolidated Fund.
- (7) In this section—

“authorised”, in relation to an accounting year of the Commission, means authorised at any time during that year; and

“prescribed” means prescribed in regulations under subsection (2) above.

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Subordinate Legislation Made

P1 S.2(2) and S.116(2) power exercised by S.I. 1991/277.

3 Accounts of Commission and audit.

- (1) The Commission shall keep proper accounts and proper accounting records and shall prepare in respect of each accounting year a statement of accounts in such form as the Treasury may direct.
- (2) The statement of the accounts required by subsection (1) above may be combined with the statement of the accounts of the Chief Registrar which he is required to prepare as regards his functions.
- (3) The Commission shall send to the Treasury and to the Comptroller and Auditor General, before the end of the period of seven months after the end of each accounting year, a copy of the statement of accounts for that year.
- (4) The Comptroller and Auditor General shall examine, certify and report on every statement of accounts received by him from the Commission and shall lay a copy of the statement and of his report thereon before each House of Parliament.
- (5) In this Part “accounting year”, in relation to the Commission, means the period of twelve months ending with 31st March in any year, except that the Commission’s first accounting year shall end on 31st March 1987.

4 Annual and other reports.

- (1) It shall be the duty of the Commission to lay before the Treasury and before Parliament as soon as possible after the end of each accounting year a report on the discharge of its functions during that year.
- ^{F2}(2)
- (3) The Commission may lay before Parliament from time to time such other reports relating to the discharge of its functions, whether in relation to building societies generally or a particular building society, as it thinks fit.

Textual Amendments

F2 S. 4(2) repealed (1.5.1999) by 1997 c. 32, ss. 43, 46(2), Sch. 7 para. 2, Sch. 9; S.I. 1997/2668, art. 2(6), Sch. Pt. III; S.I. 1998/2835, art. 2

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PART II

CONSTITUTION OF BUILDING SOCIETIES

Establishment

5 Establishment, constitution and powers.

[^{F3}(1) A society may be established under this Act if (and only if) it complies with the following requirements, namely—

- (a) its purpose or principal purpose is that of making loans which are secured on residential property and are funded substantially by its members; and
- (b) its principal office is in the United Kingdom.]

(2) A society is established under this Act on compliance by the persons establishing it with the scheduled requirements and is incorporated under this Act as from the date of registration by the central office.

(3) A society incorporated under this Act is referred to in this Act as a “building society”.

(4) A society incorporated under the repealed enactments whose principal office, as registered with the central office immediately before the commencement of this section, was in the United Kingdom, shall be deemed to be registered (and accordingly as incorporated) under this Act.

[^{F4}(4A) If, after its establishment, a building society fails to comply with the requirements imposed by subsection (1)(a) or (b) above—

- (a) the powers conferred on the Commission by section 36 or 37 shall become exercisable in relation to the society; but
- (b) the failure shall not affect the validity of any transaction or other act.]

[^{F5}(5) Subject to the provisions of this Act, a building society shall have the powers conferred on it by its memorandum.]

(8) Schedule 2 to this Act has effect as respects the constitution, powers, and regulation of building societies and in that Schedule—

- (a) Part I makes provision with respect to the constitution, memorandum, rules and certain incidents of membership;

[^{F6}(b) Part II makes provision with respect to the capacity of a society and the powers of its directors to bind it; and]

- (c) Part III makes provision with respect to meetings, postal ballots and resolutions;

[^{F7}and in this section “scheduled”, with reference to requirements for establishment, means contained in that Schedule]

(9) Any obligation imposed by this Act or the rules of a building society to give or send notices or other documents to members is subject to paragraph 14 of that Schedule.

[^{F8}(10) In this Act “residential property” means land at least 40 per cent of which—

- (a) is normally used as, or in connection with, one or more dwellings; or
- (b) has been, is being or is to be developed or adapted for such use;

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and for the purposes of this subsection, the area of any land which comprises a building or other structure containing two or more storeys shall be taken to be the aggregate of the floor areas of each of those storeys.]

Textual Amendments

- F3** S. 5(1) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)-(5) of S.I. 1997/2668) by 1997 c. 32, ss. 1(1), 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(a)
- F4** S. 5(4A) inserted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)-(5) of S.I. 1997/2668) by 1997 c. 32, ss. 1(2), 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(a)
- F5** S. 5(5) substituted for s. 5(5)-(7) (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)-(5) of S.I. 1997/2668) by 1997 c. 32, ss. 1(3), 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(a)
- F6** S. 5(8)(b) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 3(1)(a), 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(c)
- F7** Words in s. 5(8) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 3(1)(b), 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(c)
- F8** S. 5(10) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)-(5) of S.I. 1997/2668) by 1997 c. 32, ss. 1(4), 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(a)

Modifications etc. (not altering text)

- C1** S. 5(8)(c) excluded (*temp.*) by S.I. 1986/2168, art. 3(1)(2)

[^{F9}Making loans]

Textual Amendments

- F9** S. 6 and cross-heading substituted for s. 6 (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 4, 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(d)

[^{F10}6 The lending limit.

- (1) A building society shall secure that the difference between—
- the value of X on any quarter day; and
 - the value of Y on that day or the value of Y on the immediately preceding quarter day, whichever is the greater,
- does not exceed 25 per cent of that value of X.
- (2) For the purposes of subsection (1) above—
- X = the difference between the total assets of the society and any subsidiary undertakings of the society as shown in the society's accounts and the aggregate of—
- the liquid assets of the society and any such undertakings as shown in those accounts in pursuance of regulations under section 73(7);
 - the fixed assets of the society and any such undertakings as so shown; and

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- (c) where any such undertakings are insurance companies within the meaning of the ^{M1}Insurance Companies Act 1982, such of their assets as shown in those accounts as represent long term insurance funds; and

Y = the principal of, and interest accrued on, loans which are owed to the society or any subsidiary undertaking of the society and are fully secured on residential property;

and for the purposes of this subsection the total assets of a society and any subsidiary undertakings of the society shall be taken to be increased by the amount of any provision made for bad or doubtful debts of the society or any such undertaking.

- (3) Any loans owed to the society or any subsidiary undertaking of the society shall be disregarded for the purposes of the definition of “Y” in subsection (2) above to the extent that they are not included in the total assets of the society and any such undertakings as shown in the society’s accounts.
- (4) Any reference in subsection (2) or (3) above to anything being shown in a society’s accounts shall be construed—
- (a) in relation to a quarter day on which a financial year of the society ends, as a reference to its being shown in the accounts prepared by the society for that year;
 - (b) in relation to any other quarter day, as a reference to its being shown in the accounts which would have been prepared by the society for the year ending on that day if that year were a financial year of the society.
- (5) If a building society fails to comply with the requirement imposed by subsection (1) above—
- (a) the powers conferred on the Commission by section 36 shall become exercisable in relation to the society; but
 - (b) the failure shall not affect the validity of any transaction or other act.
- (6) The Treasury may by order substitute for the percentage specified in subsection (1) above such greater percentage (not greater than 40 per cent) as appears to them to be appropriate; and an order under this subsection may make such supplementary, transitional and saving provision as appears to the Treasury to be necessary or expedient.
- (7) The Commission may, with the consent of the Treasury, by order—
- (a) modify subsections (2) and (3) above in their application to assets of subsidiary undertakings;
 - (b) apply those subsections to corresponding assets of associated undertakings; or
 - (c) modify those subsections in their application to such assets.
- (8) An order under subsection (7) above may make—
- (a) different provision for different circumstances;
 - (b) provision for particular assets of undertakings to be disregarded; and
 - (c) such supplementary, transitional and saving provision as appears to the Commission to be necessary or expedient.
- (9) The power to make an order under subsection (6) or (7) above is exercisable by statutory instrument.
- (10) No order shall be made under subsection (6) above unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.

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- (11) A statutory instrument containing an order under subsection (7) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (12) In this section “long term insurance funds”, in relation to an insurance company within the meaning of the ^{M2}Insurance Companies Act 1982, means funds maintained by it—
- (a) under section 28(1)(b) of that Act (assets attributable to long term business); or
 - (b) where it is incorporated in a country or territory outside the United Kingdom, under the corresponding provisions of the law of that country or territory.
- (13) Where a loan is owed to a lending syndicate of which a building society or connected undertaking of a building society is a member, so much of the loan as is referable to the society’s or undertaking’s participation in the syndicate shall be treated for the purposes of this section and sections 6A and 6B as a loan owed to the society or undertaking.
- (14) In this section and section 7—
- “accounts”—
- (a) in relation to a building society without subsidiary undertakings, means individual accounts under subsection (1) of section 72;
 - (b) in relation to such a society with such undertakings, means group accounts under subsection (2) of that section;
- “quarter day”, in relation to a building society, means a day on which a financial year of the society ends, or a day which is three months, six months or nine months after such a day;
- and references to any value on a quarter day are references to that value at the close of business on that day.
- (15) If an agreement between the Commission and a building society so provides, the definition of “quarter day” in subsection (14) above shall have effect in relation to the society as if for any reference to a number of months there were substituted a reference to a number of days specified in the agreement.]

Textual Amendments

F10 S. 6 and cross-heading substituted for s. 6 (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 4, 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(d)

Marginal Citations

M1 1982 c.50.

M2 1982 c.50.

[^{F11}6A Loans secured on land.

- (1) For the purposes of this Act a loan is secured on land if it is secured by—
- (a) a mortgage of a legal estate in land in England and Wales or Northern Ireland;
 - (b) a heritable security over land in Scotland; or
 - (c) a qualifying security over land in an EEA country or territory other than the United Kingdom.
- (2) For the purposes of this Act a loan is also secured on land if—

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- (a) it is secured by a mortgage of an equitable interest in land in England and Wales or Northern Ireland;
 - (b) the equitable interest is an equitable interest in land of a description, and is created in circumstances, prescribed in an order made by the Commission with the consent of the Treasury; and
 - (c) any conditions prescribed in the order are complied with;
- and an order under this subsection may apply in relation to securities held by or on behalf of building societies or connected undertakings of a description specified in the order, or securities held by or on behalf of all such societies or undertakings other than those of a description so specified.
- (3) For the purposes of this Act—
- (a) a loan shall be treated as secured by a mortgage of a legal estate in registered land in England and Wales or Northern Ireland notwithstanding that the loan is made before the mortgagor is registered as proprietor of the estate; and
 - (b) a loan shall be treated as secured by a heritable security over land in Scotland notwithstanding that the loan is made before title to that land has been transferred to the debtor in the heritable security.
- (4) The Commission may, with the consent of the Treasury, by order provide for any provisions of this Act to have effect in relation to loans secured on land outside the European Economic Area with such modifications as appear to the Commission to be appropriate.
- (5) An order under subsection (2) or (4) above may make such incidental, supplementary and transitional provision as appears to the Commission to be necessary or expedient.
- (6) The power to make an order under subsection (2) or (4) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In this section and section 6B—
- “EEA country or territory” means a country or territory in the European Economic Area;
 - “qualifying security”, in relation to land in an EEA country or territory other than the United Kingdom and a loan, means a security over the land which—
 - (a) acknowledges, and requires repayment of, the loan; and
 - (b) secures repayment of the loan on the land;

and for the purposes of this section and that section, the Channel Islands, the Isle of Man and Gibraltar shall be treated as included in the European Economic Area.
- (8) In this Act “land”, in the expression “loan secured on land”, means—
- (a) land in an EEA country or territory; and
 - (b) in so far as land in any other country or territory is, under any provision of this Act, land on which loans may be secured, land in that other country or territory.]

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Textual Amendments

F11 S. 6A inserted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 5, 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(e)

[^{F12}6B Loans fully secured on land.

- (1) For the purposes of this Act a loan which is owed to a building society or a subsidiary undertaking of a building society and is secured on residential property or other land is fully secured on the land if—
 - (a) the principal of, and interest accrued on, the loan does not exceed the value of the requisite security; and
 - (b) no, or no more than one, mortgage of the land which has priority over the society's or undertaking's mortgage is outstanding in favour of an outside person.
- (2) Where a mortgage of the residential property or other land which has priority over the society's or undertaking's mortgage is outstanding, the principal of the loan secured or, in the case of a loan by instalments, intended to be secured by that mortgage shall be deducted from the value of the requisite security for the purposes of subsection (1) (a) above.
- (3) Where the loan is secured on residential property or other land in the United Kingdom, any outstanding charge over the land which—
 - (a) in the case of land in England and Wales, is registered in the appropriate local land charges register;
 - (b) in the case of land in Scotland, is recorded in the Register of Sasines, or registered in the Land Register, under section 108 of the ^{M3}Civic Government (Scotland) Act 1982 or Schedule 9 to the ^{M4}Housing (Scotland) Act 1987;
 - (c) in the case of land in Northern Ireland, is registered in the statutory charges register under section 87 of, and Schedule 11 to, the ^{M5}Land Registration Act (Northern Ireland) 1970,shall be disregarded for the purposes of subsections (1)(b) and (2) above.
- (4) Where, on the occasion on which a building society or a subsidiary undertaking of a building society makes or acquires a loan which is secured on land, the society or undertaking is satisfied that the loan is—
 - (a) a loan which is fully secured on residential property;
 - (b) a loan which is not so secured but is fully secured on land; or
 - (c) a loan which is not fully secured on land,the loan shall be treated as such a loan for the purposes of this Act until such time (if any) as subsection (7) below applies.
- (5) Subsection (4) above shall have effect in relation to a loan which the society or undertaking makes by two or more payments on different dates as if—
 - (a) the reference to the occasion on which the society or undertaking makes the loan were a reference to the occasion on which it makes the first of the payments;
 - (b) other references to the loan were references to it in its intended maximum amount; and

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- (c) the value of any security for the loan were its expected maximum value.
- (6) Where a building society or a subsidiary undertaking of a building society makes or acquires a loan which is secured on land, the society or undertaking shall be deemed to be satisfied as mentioned in paragraph (c) of subsection (4) above until such time (if any) as it is satisfied as mentioned in paragraph (a) or (b) of that subsection.
- (7) Where at any time, in the case of a loan treated as falling within paragraph (a), (b) or (c) of subsection (4) above, the society or undertaking—
- (a) is satisfied—
 - (i) on a revaluation that the value of the requisite security has changed;
 - (ii) on notice given to it by the borrower that there has been a change in the use of the land;
 - (iii) that so much of the mortgage debt as represents the principal of the loan has changed;
 - (iv) that the principal of the loan secured by a prior mortgage has changed or has been repaid; or
 - (v) that the relative priority of the mortgage of the land on which the loan is secured has changed;
 - (b) is also satisfied that the change or repayment is such that, if it were to make a loan equal to the mortgage debt at that time, the loan would instead be a loan falling within another of those paragraphs; and
 - (c) in a case falling within paragraph (a)(i) above, elects that this subsection shall apply,
- the loan shall be treated as such a loan for the purposes of this Act until such time (if any) as this subsection again applies.

- (8) In this section—
- “outside person”, in relation to a building society or a subsidiary undertaking of a building society, means any person other than the following, namely—
- (a) the society;
 - (b) a subsidiary undertaking of the society;
 - (c) a lending syndicate of which the society or such an undertaking is a member; and
 - (d) trustees of a trust under which the society or such an undertaking is a beneficiary;
- “the requisite security”, in relation to a loan secured on residential property or other land, means—
- (a) the security constituted by the legal estate in, or the heritable or qualifying security over, the land; or
 - (b) in a case where an equitable interest in land in England and Wales or Northern Ireland is or is also taken as security, that constituted by that security or, as the case may be, the combined securities;
- “trust” includes arrangements—
- (a) which have effect under the law of a country or territory outside the United Kingdom; and
 - (b) under which persons acting in a fiduciary capacity hold and administer property on behalf of other persons,

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and “beneficiary” and “trustees”, in relation to such arrangements, shall be construed accordingly.

- (9) In the application of subsections (1), (2) and (7) above to residential property or other land in Scotland or an EEA country or territory other than the United Kingdom, references to a mortgage of the land shall be construed as references to a heritable or, as the case may require, qualifying security over the land.]

Textual Amendments

- F12** S. 6B inserted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 6, 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(f)

Modifications etc. (not altering text)

- C2** S. 6B(4)(a) modified (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 46(1), 47(3), Sch. 8 para. 6(1)(a)(b); S.I. 1997/2668, art. 2, Sch. Pt. II(y)(aa)(iii)
- C3** S. 6B(4)(b) modified (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 46(1), 47(3), Sch. 8 para. 6(1)(c); S.I. 1997/2668, art. 2, Sch. Pt. II(y)(aa)(iii)
- C4** S. 6B(4)(c) modified (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 46(1), 47(3), Sch. 8 para. 6(1)(d); S.I. 1997/2668, art. 2, Sch. Pt. II(y)(aa)(iii)

Marginal Citations

- M3** 1982 c.45.
M4 1987 c.26.
M5 1970 c.18 (N.I.).

[^{F13}6C Discharge of mortgages.

Schedule 2A to this Act, which contains supplementary provisions as to the discharge of mortgages, shall have effect.]

Textual Amendments

- F13** S. 6C inserted (1.12.1997) by 1997 c. 32, s. 7(1); S.I. 1997/2668, art. 2, Sch. Pt. I(a)

Raising funds and borrowing

[^{F147} The funding limit.

- (1) A building society shall secure that the difference between—
- the value of X on any quarter day; and
 - the value of Y on that day or the value of Y on the immediately preceding quarter day, whichever is the greater,
- does not exceed 50 per cent of that value of X.
- (2) For the purposes of subsection (1) above—

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X = the aggregate of the following, namely—

- (a) the principal value of, and interest accrued on, shares in the society;
- (b) the principal of, and interest accrued on, sums deposited with the society or any subsidiary undertaking of the society; and
- (c) the principal value of, and interest accrued under, bills of exchange, instruments or agreements creating or acknowledging indebtedness and accepted, made, issued or entered into by the society or any such undertaking; and

Y = the principal value of, and interest accrued on, shares in the society held by individuals otherwise than as bare trustees (or, in Scotland, simple trustees) for bodies corporate or for persons who include bodies corporate.

- (3) The following shall be disregarded for the purposes of subsection (2) above, namely—
 - (a) any sums or amounts which are own funds; and
 - (b) to the extent that they are not included in the total liabilities of the society and any subsidiary undertakings of the society as shown in the society's accounts—
 - (i) any sums deposited with the society or any such undertaking; and
 - (ii) any indebtedness created or acknowledged by bills of exchange, instruments or agreements accepted, made, issued or entered into by the society or any such undertaking.
- (4) The reference in subsection (3) above to anything being shown in a society's accounts shall be construed—
 - (a) in relation to a quarter day on which a financial year of the society ends, as a reference to its being shown in the accounts prepared by the society for that year;
 - (b) in relation to any other quarter day, as a reference to its being shown in the accounts which would have been prepared by the society for the year ending on that day if that year were a financial year of the society.
- (5) If a building society fails to comply with the requirement imposed by subsection (1) above—
 - (a) the powers conferred on the Commission by section 36 shall become exercisable in relation to the society; but
 - (b) the failure shall not affect the validity of any transaction or other act.
- (6) Where an individual declares that he is acquiring any shares in a building society otherwise than as a bare trustee (or, in Scotland, a simple trustee) for a body corporate, or for persons who include a body corporate, he shall, unless the contrary is shown, be conclusively presumed for the purposes of this section to hold the shares otherwise than as such a trustee.
- (7) The Commission may, with the consent of the Treasury, by order—
 - (a) modify subsections (2) and (3) above in their application to liabilities of subsidiary undertakings;
 - (b) apply those subsections to corresponding liabilities of associated undertakings; or
 - (c) modify those subsections in their application to such liabilities.
- (8) An order under subsection (7) above may make—

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- (a) different provision for different circumstances;
 - (b) provision for particular liabilities of undertakings to be disregarded; and
 - (c) such supplementary, transitional and saving provision as appears to the Commission to be necessary or expedient.
- (9) The power to make an order under subsection (7) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

Textual Amendments

F14 S. 7 substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 8, 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(g)

7 Power to raise funds and borrow money and limit on non-retail funds and borrowing. **U.K.**

- (1) Subject to the provisions of this section and sections 8 and 9, a building society may—
- (a) raise funds by the issue of shares to members, or
 - (b) borrow money and accordingly receive deposits from any person,
- to be applied for the purposes of the society.
- (2) The power to raise funds by the issue of shares is a power to issue shares of one or more denominations, either as shares paid up in full or as shares to be paid by periodical or other subscriptions, and with or without accumulating interest; and funds so raised may be repaid when they are no longer required for the purposes of the society.
- [^{F453}(2A) In the case of deferred shares, the power to raise funds by the issue of shares includes the issue of shares at a premium.
- (2B) If a building society issues deferred shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to the society's reserves.]
- (3) Subject to subsection (14) below, the liabilities of a building society in respect of its non-retail funds and deposits shall not exceed at any time the prescribed percentage of the society's total liabilities at that time in respect of shares in or money deposited with the society.
- [^{F454}(4) For the purposes of subsection (3) above, a building society's liabilities in respect of its non-retail funds and deposits are, subject to subsections (5) and (9) below, its liabilities in respect of the principal of and interest payable on or under—
- (a) transferable bearer instruments
 - (aa) transferable non-bearer instruments
 - (b)^{F454}
 - (bb) sums deposited otherwise than in excepting circumstances or in furtherance of a savings scheme with the society by, or by a trustee for, an institution which is—
 - (i) an authorised institution, for the purposes of, or
 - (ii) an overseas institution for the purposes of Part IV of, the Banking Act 1987;

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- (c) shares in the society held by, or by a trustee for, and (to the extent the liabilities do not fall within (a), (aa), or (bb) above) sums deposited with the society by, or by a trustee for—
 - (i) any body corporate, otherwise than in excepting circumstances,
 - (ii) a friendly society registered under the Friendly Societies Act 1974^{F455} . . ., otherwise than in furtherance of a savings scheme,
 - (iii) a trade union (within the meaning of the [F456] Trade Union and Labour Relations (Consolidation) Act 1992).
 - (d) shares in the society (to the extent the liabilities do not fall within (c) above) held by, and (to the extent the liabilities do not fall within (a), (aa), (bb) or (c) above) sums deposited with the society by—
 - (i) a body of persons or trust established for charitable purposes only,
 - (ii) the administrator of an approved retirement benefits scheme,
 - (iii) the manager or trustee of an appropriate personal pension scheme, or
 - (iv) the plan manager of a personal equity plan.]
- (5) If a building society so elects with respect to any financial year its liabilities in respect of shares or deposits falling within paragraphs (c) or (d) (but no other provision) of subsection (4) above shall, subject to subsections (6) and (7) below, not be counted towards the limit in force under subsection (3) above.
- (6) The liabilities of the society to any person shall not, by virtue of an election under subsection (5) above, be disregarded at any time during the financial year to which the election relates if at that time the liabilities to that person exceed the prescribed amount; and in that event all the society's liabilities to that person shall count towards the limit in force under subsection (3) above.
- (7) To be effective for the purposes of subsection (5) above, an election must apply to the society's liabilities in respect of all its shareholders and depositors who fall within subsection (4)(c) and (d) above and notice of it must be given to the Commission before the beginning of the financial year to which it relates.
- (8) A copy of the notice shall also be sent to the central office and the central office shall keep the copy in the public file of the society.
- (9) The Commission may by order made with the consent of the Treasury amend subsection (4) above by adding to or deleting from it any description of property or right or by varying any description of property or right for the time being specified in it and an order under this subsection may—
- (a) define property or rights by reference to any criteria including the description of person who holds the property or rights,
 - (b) make any consequential amendment or repeal in that subsection, subsections (5) to (8) above or subsection (19) below, and
 - (c) make such supplementary, transitional and saving provision as appears to the Commission to be necessary or expedient.
- (10) In determining for the purposes of subsection (3) above the liabilities of a building society with which another body corporate is associated there shall, subject to subsection (13) below, be attributed to the society, in accordance with aggregation rules made by the Commission with the consent of the Treasury under this subsection, the whole or part of the liabilities of whatever description of the associated body, as provided in the rules and subject to any exceptions provided in the rules.

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- (11) The power to make aggregation rules under subsection (10) above includes power to make—
 - (a) different rules for different circumstances,
 - (b) provision for liabilities of societies to be disregarded; and
 - (c) such supplementary, transitional and saving provision as appears to the Commission to be necessary or expedient.
- (12) The power to make aggregation rules under subsection (10) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (13) The Commission may, on the application of a building society, approve rules to be applied for the purposes of subsection (3) above for the attribution to the society of liabilities of bodies associated with the society; and so long as the rules continue to be approved by the Commission they, and not the aggregation rules in force under subsection (10) above, shall apply for the attribution of liabilities for the purposes of subsection (3) above.
- (14) Where money is lent to a building society by another such society in accordance with an authority given by the Commission under section 33 the liabilities in respect of the loan shall be disregarded for the purposes of subsection (3) above.
- (15) The prescribed percentage for the purposes of subsection (3) above is 20 per cent. or such other percentage not exceeding 40 per cent. as is for the time being substituted for it by order of the Commission made with the consent of the Treasury.
- (16) The prescribed amount for the purposes of subsection (6) above is [^{F457}£100,000] or such other amount as is for the time being substituted for it by order of the Commission made with the consent of the Treasury.
- (17) The power to make an order under subsection (9), (15) or (16) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (18) If the liabilities of a building society to which subsection (3) above applies exceed at any time the limit in force under that subsection the powers conferred on the Commission by section 36 shall become exercisable in relation to the society, but exceeding the limit shall not affect the validity of transactions effected in excess of it.

[^{F458}(19) In this section—

“appropriate personal pension scheme” means a personal pension scheme within the meaning of the Social Security Act 1986 in respect of which an appropriate scheme certificate under section 2 thereof (appropriate schemes) is for the time being in force;

“excepting circumstances” means circumstances in which shares or rights of a depositor—

- (i) are held by the holder as nominee on behalf only of an individual, a Scottish partnership, or a combination of individuals, of such partnerships, or of both;
- (ii) are subject to a relevant trust in the income of which no person who is neither an individual nor a Scottish partnership has any interest; or

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(iii) were held by an individual as beneficial owner at the time of his death (or represent investments so held or dividends or interest thereon) and the holder is acting as personal representative of that individual;

“intermediary” means–

(i) as regards the interpretation of a savings scheme in connection with paragraph (bb) of subsection (4), an institution which is within the ambit of that paragraph, or

(ii) as regards the interpretation of a savings scheme in connection with subparagraph (ii) of paragraph (c) of subsection (4), a friendly society which is within the ambit of that subparagraph;

“personal equity plan” means a plan the operation of which is subject to conditions set out in the regulations for time being in force under Schedule 8 to the Finance Act 1986 (personal equity plans);

“relevant trust” means a trust which is neither a trust established for charitable purposes only nor a trust of shares held or sums deposited by—

(i) the administrator of an approved retirement benefits scheme,

(ii) the manager or trustee of an appropriate personal pension scheme, or

(iii) the plan manager of a personal equity plan;

“retirement benefits scheme” means a retirement benefits scheme within the meaning of Chapter II of Part II of the Finance Act 1970 (occupational pension schemes) and “approved” means approved for the time being by the Commissioners of Inland Revenue for the purposes of that chapter;

“savings scheme” means a scheme under which–

(a) shares in or rights of a depositor with the society represent sums of money placed with an intermediary by an individual under a contract under which–

(i) those sums were to be invested by the intermediary in shares of or deposited with the society, and no other society; and

(ii) those sums not to be withdrawn from the society by the intermediary except either–

(aa) on maturity of the contract by reason of the death of the individual, or the effluxion of a period of time specified in the contract, or

(bb) at the written request of the individual or any assignee of that individual’s rights under the contract and within one month of the receipt by the intermediary of such request, or within a maximum of six months of such receipt if under the contract the intermediary has the right to defer for that period the withdrawal of funds placed with the intermediary for investment in or deposit with the society, or

(cc) where the intermediary has the right to deduct an amount from the investment with the society to cover charges specified in the contract and amounts surplus to the requirements of the contract;

(b) the intermediary is obliged to produce, when requested to do so by the society, and on a date nominated by the society,

(i) a statement of the total sums invested or deposited with that society by the intermediary in furtherance of contracts made under the terms of the scheme set out in subparagraphs (i) and (ii) of paragraph (a) above, together with a certificate signed by the auditor of the intermediary confirming that the statement constitutes a true account;

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(ii) any written request mentioned in subparagraph (ii) of paragraph (a) above;

“transferable bearer instrument” means an instrument which embodies a right, transferable by delivery of the instrument, to receive an amount referable to a deposit with the society; and

“transferable non-bearer instrument” means an instrument which embodies a right—

- (i) which may, under the terms of the instrument, be held by any person, or by any person other than a person of a description specified in the instrument,
- (ii) express provision for the transfer of which is included in the instrument, and
- (iii) the transfer of which, under the terms of the instrument, does not require the consent of any person,

to receive an amount referable to a deposit with the society.]

Textual Amendments

- F453** S. 7(2A)(2B) inserted (3.1.1995) by 1994 c. 40, ss. 15, 82(2)(a)
- F454** S. 7(4) amended by S.I. 1990/2363, arts. 3(2), 3(3) and has effect as set out in Part I of the Schedule to that S.I.
- F455** Words in s. 7(4)(c)(ii) repealed (1.1.1994) by Friendly Societies Act 1992 (c. 40), s. 120(2), Sch. 22 Pt. I (with ss. 7(5), 93(4)); S.I. 1993/3226, art. 2, Sch. 2.
- F456** Words in s. 7(4)(c)(iii) substituted (16. 10. 1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), ss. 300(2), 302, Sch. 2 para. 35
- F457** S. 7(16): words substituted (1.9.1995) for the purposes of s. 7(6) by S.I. 1995/1873, art. 2
- F458** S. 7(19) amended by S.I. 1990/2363, art. 3(4) and has effect as set out in Part II of the Schedule to that S.I.

Modifications etc. (not altering text)

- C109** S. 7(3) modified (*temp.*) by S.I. 1986/2168, art. 8(1)
- C110** S. 7(3) excluded by S.I. 1986/2169, art. 7(3)
- C111** S. 7(4) extended (1.1.1993) by S. I. 1992/3218, reg. 82(1), Sch. 10 Pt. I para. 22(a)
- C112** S. 7(4) amended by S.I. 1990/2363, arts. 3(2), 3(3)
- C113** S. 7(7) modified by S.I. 1986/2169, art. 7(1)
- C114** S. 7(19) amended by S.I. 1990/2363, art. 3(4)

[^{F158} Raising funds and borrowing.

- (1) Subject to subsection (2) below, a building society shall not do any of the following things, namely—
- (a) accept a deposit from an individual;
 - (b) raise funds from an individual otherwise than by the issue of shares; and
 - (c) raise funds from a body corporate, or from a bare trustee (or, in Scotland, a simple trustee) for a body corporate or for persons who include a body corporate, otherwise than by the issue of deferred shares.
- (2) Nothing in subsection (1)(a) above shall apply in relation to—

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- (a) the maintenance on behalf of an individual of a current account, or a deposit account which contains in its title the word “client” or the word “trust” or “trustee”;
 - (b) the issue to an individual of a transferable instrument;
 - (c) the acceptance from an individual of a qualifying time deposit or an overseas deposit; or
 - (d) in the case of a building society which has announced publicly that it intends, in accordance with section 97 and the other applicable provisions of this Act, to transfer the whole of its business to a company, anything done by the society during the period of two years beginning with the date of the announcement.
- (3) The Commission may, if it thinks fit, extend or further extend the period mentioned in subsection (2)(d) above if written application is made to it before the expiry of that period or that period as extended; and a direction under this subsection—
- (a) shall be in writing;
 - (b) may be given subject to such limitations or conditions as the Commission may think fit.
- (4) A contravention of subsection (1) above shall not invalidate any transaction or other act.
- (5) The power of a building society to raise funds by the issue of shares is a power—
- (a) to issue shares of one or more denominations, whether in sterling or another currency; and
 - (b) to issue them either as shares paid up in full or as shares to be paid by periodical or other payments, and (in either case) with accumulating or other interest;
- and funds so raised may be repaid when they are no longer required for the purposes of the society.
- (6) In the case of deferred shares, the power of a building society to raise funds by the issue of shares includes the issue of shares at a premium.
- (7) If a building society issues deferred shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to the society’s reserves.
- (8) For the purposes of this section the acceptance of deposits (including the issue of debt securities) shall not constitute the raising of funds.
- (9) In this section, in relation to a building society—
- “overseas deposit” means a deposit which is accepted by a branch or agency of the society in a country or territory outside the United Kingdom and is repayable in such a country or territory;
 - “qualifying time deposit” has the meaning given by section 482(6) of the ^{M6}Income and Corporation Taxes Act 1988;
 - “raise funds” means, subject to subsection (8) above, raise funds by the issue of shares or other securities;
 - “transferable instrument” means an instrument which embodies a transferable right to receive an amount referable to a deposit with the society.
- (10) A right is transferable for the purposes of the definition of “transferable instrument” in subsection (9) above if it is transferable by delivery of the instrument, or it is a right—

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- (a) which may, under the terms of the instrument, be held by any person, or by any person other than a person of a description specified in the instrument;
 - (b) express provision for the transfer of which is included in the instrument; and
 - (c) the transfer of which, under the terms of the instrument, does not require the consent of any person.
- (11) Where an individual declares that he is acquiring any shares in a building society otherwise than as a bare trustee (or, in Scotland, a simple trustee) for a body corporate, or for persons who include a body corporate, he shall, unless the contrary is shown, be conclusively presumed for the purposes of this section to hold the shares otherwise than as such a trustee.
- (12) The Commission may, with the consent of the Treasury, by order vary subsections (2), (9) and (10) above by adding to or deleting from them any provision or by varying any provision contained in them; and an order under this subsection may make such supplementary, transitional and saving provision as appears to the Commission to be necessary or expedient.
- (13) The power to make an order under subsection (12) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

Textual Amendments

F15 S. 8 substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 9, 47(3) (with s. 46(1), Sch. 8 para. 9); S.I. 1997/2668, art. 2, Sch. Pt. II(h)

Marginal Citations

M6 1988 c.1.

9 Initial authorisation to raise funds and borrow money.

- (1) Except to the extent permitted by subsection (3) below, a building society shall not raise money from members or accept deposits of money unless there is in force an authorisation of the Commission granted under this section or treated as granted under this section by any provisions of this Act.
- (2) Authorisation under this section shall, if granted, be granted unconditionally or subject to conditions as provided by subsection (4) or (5) below.
- (3) Authorisation is not required for—
- (a) the acceptance of payments by way of subscription for deferred shares unless the aggregate of the payments exceeds the amount produced by multiplying the prescribed minimum for qualifying capital by the factor of 2 or such other factor as may be substituted for it by order of the Commission made with the consent of the Treasury;
 - (b) the acceptance of payments for amounts due in respect of shares which represent interest on, or the repayment of, advances made to the holders of shares;

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- (c) borrowing from a banking or finance company, or from a director or other officer of the society, if the society has obtained the consent in writing of the Commission; ^{F16}or
- (d) borrowing under section 33.]

^{F17}(3A) The Commission shall not grant authorisation to a society if it appears to the Commission that—

- (a) the society is closely linked with any person; and
- (b) the society's close links with that person, or any matters relating to any non-EEA laws or administrative provisions to which that person is subject, are such as would prevent the effective exercise by the Commission of its supervisory functions in relation to the society;

and in this Act 'non-EEA laws' means laws of a country or territory outside the European Economic Area and "non-EEA administrative provisions" shall be construed accordingly.]

(4) ^{F18}Subject to subsection (3A) above,]the Commission, on an application duly made for authorisation under this section, shall grant unconditional authorisation to the building society if it is satisfied that—

- (a) the society has qualifying capital of an amount which is not less than the prescribed minimum;
- (b) the chairman of the board of directors and any executive directors, the chief executive, the secretary and the managers (if any) are each fit and proper persons to hold their respective offices in the society;
- (c) the board of directors, with the chief executive and secretary, have the capacity and intention to direct the affairs of the society in accordance with the criteria of prudent management and, in so far as those criteria fell to be satisfied before the date of the application, have secured that they were satisfied; ^{F19}. . .
^{F20}(cc) each of the persons who, either alone or with any associate or associates, has a qualifying holding in the society is a fit and proper person to have such a holding; and]
- (d) the investments of shareholders and depositors will be adequately protected without the imposition of conditions.

(5) ^{F18}Subject to subsection (3A) above,]if the Commission, on an application so made, is not satisfied of the matters specified in subsection (4) above in relation to the society, it shall—

- (a) if those matters are or include the matters specified in paragraphs (a) and (b), refuse to grant authorisation;
- (b) in any other case, if it is satisfied that the imposition of conditions would secure the protection of the investments of shareholders and depositors, grant authorisation subject to such conditions to be complied with by the society as the Commission thinks fit to impose to secure that purpose; or
- (c) if not satisfied, refuse to grant authorisation.

(6) The conditions that may be imposed under subsection (5) above on granting authorisation to a society may—

- (a) relate to any activities of the society, whether or not those referred to in subsection (1) above; and
- (b) require the society to take certain steps or to refrain from adopting a particular course of action or to restrict the scope of its business in a particular way.

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- (7) Without prejudice to the generality of subsection (6) above, conditions imposed under subsection (5) above may—
- (a) impose limitations on the issue of shares, acceptance of deposits or the making of advances or other loans;
 - (b) require the society to take steps with regard to the conduct of the business of any [^{F21}connected undertaking]; and
 - (c) require the removal of any director or other officer.
- (8) The provisions of Schedule 3 to this Act regulating—
- (a) the making and determination of applications for authorisation,
 - (b) the furnishing of information or additional information in connection with such applications, and
 - (c) the imposition of conditions of authorisation,
- apply in relation to authorisation under this section.
- (9) Conditions imposed under subsection (5) above—
- (a) may be varied from time to time (and notwithstanding any pending appeal) by agreement between the Commission and the society; and
 - (b) may be revoked at any time by the Commission if it is satisfied that the investments of shareholders and depositors will be adequately protected without the conditions;
- but paragraph (b) above is without prejudice to the power of the Commission, under Part VI, to impose other conditions.
- (10) On granting authorisation to a building society under this section the Commission shall inform the central office of the fact and the central office shall record that fact, and the date on which the authorisation was granted, in the public file of the society.
- (11) If, in contravention of subsection (1) above, a building society raises money from members or accepts deposits of money, then—
- (a) the society shall be liable on conviction on indictment or on summary conviction to a fine not exceeding, on summary conviction, the statutory maximum; and
 - (b) any officer of the society who is also guilty of the offence shall be liable—
 - (i) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both, and
 - (ii) on summary conviction, to a fine not exceeding the statutory maximum;
- but such a contravention does not affect any civil liability arising in respect of the acceptance or of the money accepted.
- (12) Failure by a society to comply with conditions imposed under this section on granting authorisation to the society shall render it liable, if other conditions are not imposed on it under Part VI, to have its authorisation revoked under that Part.
- (13) For the purposes of this section, in relation to a building society—
- “business” includes business the society proposes to carry on;
 - “the prescribed minimum”, in relation to qualifying capital, is [^{F22}ecu 1 million (or an amount of equal value denominated wholly or partly in another

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unit of account)] or such other sum as the Commission may specify by order made with the consent of the Treasury;

“qualifying capital”, in relation to a building society applying for authorisation, means,

- (a) the aggregate of the nominal value of the qualifying deferred shares issued at the date of the application and the amount of the reserves as shown in the last balance sheet of the society less any accumulated deficit as so shown; or
- (b) where there is no balance sheet of the society, the nominal value of the qualifying deferred shares issued at the date of application; ^{F23} . . .

[^{F24}“qualifying deferred shares” means deferred shares which constitute own funds of the society.]

[^{F25}“qualifying holding”, in relation to a building society, means a holding of deferred shares in the society which—

- (a) represents 10 per cent. or more of the qualifying deferred shares in the society;
- (b) entitles the holder to exercise or control the exercise of 10 per cent. or more of the voting power at any general meeting of the society; or
- (c) enables the holder to exercise a significant influence over the management of the society.]

[^{F26}(13A) In determining for the purposes of subsection (4)(b) above whether a person is a fit and proper person to hold any particular office, regard shall be had, in particular—

- (a) to his probity;
- (b) to his competence and soundness of judgement for fulfilling the responsibilities of that office;
- (c) to the diligence with which he is fulfilling or likely to fulfil those responsibilities; and
- (d) to whether the interests of shareholders or depositors of the society are, or are likely to be, in any way threatened by his holding that office.]

(14) Any power of the Commission to make an order under this section is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

- F16** S. 9(3)(d) and word immediately preceding it repealed (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 46(2), 47(3), Sch. 7 para. 3(1), **Sch. 9**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(y)(z)(ii)(cc)(i)**
- F17** S. 9(3A) inserted (18.7.1996) by S.I. 1996/1669, **reg. 6(1)**
- F18** Words in s. 9(4)(5) inserted (18.7.1996) by S.I. 1996/1669, **reg. 6(1)**
- F19** Word in s. 9(4) immediately following paragraph (c) repealed (1. 1. 1993) by S.I. 1992/3218, **reg. 68(1)**
- F20** S. 9(4)(cc) inserted (1. 1. 1993), by S.I. 1992/3218, **reg. 68(1)**
- F21** Words in s. 9(7) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 3(2)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(ii)**
- F22** Words in s. 9(13) substituted (1. 1. 1993) by S. I. 1992/3218, **reg. 68(2)(a)**
- F23** Word in s. 9(13) preceding the definition of “qualifying deferred shares” omitted (1. 1. 1993) by virtue of S.I. 1992/3218, **reg. 68(2)(b)**

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- F24** Definition in s. 9(13) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 3(3)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(ii)**
- F25** Definition in s. 9(13) inserted (1. 1. 1993) by S.I. 1992/3218, **reg. 68(2)(b)**
- F26** S. 9(13A) inserted (1.12.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 3(4)**; S.I. 1997/2668, art. 2, **Sch. Pt. I(j)(i)**

[^{F27}Restrictions on powers]

Textual Amendments

- F27** S. 9A and cross-heading inserted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 10, 47(3); S.I. 1997/2668, art. 2, **Sch. Pt. II(i)**

[^{F28}9A Restrictions on certain transactions.

- (1) Subject to subsections (2) to (4) below, a building society shall not do, and shall secure that each of its subsidiary undertakings does not do, any of the following things, namely—
- act as a market maker in securities, commodities or currencies;
 - trade in commodities or currencies; and
 - enter into any transaction involving derivative investments;
- but a contravention of this subsection shall not invalidate any transaction or other act.
- (2) No transaction entered into by a building society, or a subsidiary undertaking of a building society, shall be taken into account for the purposes of subsection (1)(a) above if—
- it relates only to securities or currencies or both and the amount or value of the consideration given by the society or undertaking does not exceed £100,000; or
 - it is entered into in the society's or undertaking's capacity as the manager of a collective investment scheme.
- (3) No transaction so entered into shall be taken into account for the purposes of subsection (1)(b) above if—
- it relates only to currencies and the amount or value of the consideration given by the society or undertaking does not exceed £100,000; or
 - it is ancillary or incidental to another transaction entered into by the society or undertaking.
- (4) Nothing in subsection (1)(c) above shall apply in relation to any transaction entered into by a building society, or a subsidiary undertaking of a building society, if—
- it is entered into in the society's or undertaking's capacity as the manager of a collective investment scheme;
 - it is entered into for the purpose of limiting the extent to which the society, or a connected undertaking of the society, will be affected by changes in any of the following factors, namely—
 - interest rates;
 - exchange rates;

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- (iii) any index of retail prices;
 - (iv) any index of residential property prices; and
 - (v) any index of the prices of securities; or
 - (c) it involves a derivative investment falling within paragraph (d) of the definition in subsection (9) below and it is entered into for the purpose of limiting the extent to which any person will be affected by changes in any interest or exchange rate applicable to—
 - (i) a loan owed by him to;
 - (ii) shares held by him in; or
 - (iii) a deposit of his with,
 the society, or a connected undertaking of the society.
- (5) Nothing in subsection (1)(c) above shall apply in relation to any transaction entered into by a subsidiary undertaking of a building society, if it is entered into in the undertaking's capacity—
 - (a) as a body authorised under section 3 or 4 of the ^{M7}Insurance Companies Act 1982 (authorised insurance companies) to carry on insurance business of a class specified in Schedule 1 to that Act (classes of long term business); or
 - (b) as an EC company which is authorised under Article 6 of the first long term insurance Directive;
 and in this subsection expressions which are also used in that Act have the same meanings as in that Act.
- (6) A building society shall also do all that is reasonably practicable to secure that neither it nor any of its subsidiary undertakings (either alone or with any or any others of those undertakings)—
 - (a) holds at any time more than 5 per cent of the issued share capital; or
 - (b) is at any time entitled to exercise, or to control the exercise of, more than 5 per cent of the voting power at any general meeting,
 of an undertaking which is, at that time, doing any of the things which the society is prohibited from doing by subsection (1) above, or an undertaking whose subsidiary undertaking is, at that time, doing any of those things.
- (7) The monetary limit in subsection (2) or (3) above refers to the time when the transaction is entered into; and where the amount or value of the consideration there referred to is not in sterling, it shall be converted at the rate of exchange prevailing at that time.
- (8) For the purposes of subsection (2) or (3) above, two or more transactions which form part of a larger transaction or series of transactions shall be treated as a single transaction.
- (9) In this section—
 - “collective investment scheme” has the same meaning as in the ^{M8}Financial Services Act 1986;
 - “commodity” means any produce of agriculture, forestry or fisheries, or any mineral, either in its natural state or having undergone only such processes as are necessary or customary to prepare the produce or mineral for the market;
 - “derivative investment” means any investment of a description falling within one or more of the following paragraphs of Part I of Schedule 1 to the Financial Services Act 1986, namely—

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- (a) paragraph 4 (instruments entitling to shares or securities);
- (b) paragraph 7 (options);
- (c) paragraph 8 (futures); and
- (d) paragraph 9 (contracts for differences etc);

“market maker” means, subject to subsection (10) below, a person who holds himself out as willing at all normal times to buy or sell at a price specified by him securities, commodities or currencies of a particular description;

“securities” means shares, stock, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme and other securities of any description.

- (10) A building society, or subsidiary undertaking of a building society, shall not by reason of holding itself out as willing to issue its own securities be regarded for the purposes of this section as acting as a market maker in such securities.
- (11) The Treasury may by order vary subsections (1) to (10) above by adding to or deleting from them any provision or by varying any provision contained in them.
- (12) The Commission may, with the consent of the Treasury, by order—
 - (a) substitute for the amount specified in subsection (2) or (3) above, or for the percentage specified in subsection (6) above, such other amount or percentage as it thinks appropriate; or
 - (b) vary subsection (4)(b) above by adding to or deleting from it any reference to a factor or by varying any reference to a factor contained in it.
- (13) An order under subsection (11) or (12) above may make—
 - (a) different provision for different cases or purposes; and
 - (b) such supplementary, transitional and saving provision as appears to the Treasury or, as the case may be, the Commission to be necessary or expedient;and the power to make such an order is exercisable by statutory instrument.
- (14) No order shall be made under subsection (11) above unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (15) A statutory instrument containing an order under subsection (12) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

Textual Amendments

F28 S. 9A and cross-heading inserted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 10, 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(i)

Marginal Citations

M7 1982 c.50.
M8 1986 c.60.

[^{F29}9B Restriction on creation of floating charges.

- (1) A building society shall not create a floating charge on the whole or part of its undertaking or property.

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(2) A floating charge created in contravention of this section shall be void.]

Textual Amendments

F29 S. 9B inserted (9.6.1997) by 1997 c. 32, s. 11; S.I. 1997/1427, art. 2

[^{F30}**PART III**

ADVANCES, LOANS AND OTHER ASSETS]

Textual Amendments

F30 Pt. III (ss. 10-23) repealed (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 12(1)(a), 46(2), 47(3), Sch. 9; S.I. 1997/2668, art. 2, Sch. Pts. I(b), II(j)

Class 1 advances and class 2 advances secured on land

[^{F31}**10 Advances secured on land.**

- (1) A building society may make advances to members (in this Act referred to as “advances secured on land”) secured by—
 - (a) a mortgage of a legal estate or, as provided under subsection (6) below, an equitable interest in land in England and Wales or Northern Ireland, or
 - (b) a heritable security over land in Scotland,
 and for that purpose may (in England and Wales or Northern Ireland) hold land with the right of foreclosure.
- (2) Advances secured on land may, in accordance with sections 11 and 12—
 - (a) be fully or partly secured by a mortgage of the legal estate or equitable interest in land in England and Wales or Northern Ireland, or
 - (b) be fully secured by a heritable security over land in Scotland,
 and in this Part “the basic security” means the security constituted by the legal estate in or heritable security over the land or, in a case where an equitable interest in land in England and Wales or Northern Ireland is or is also taken as security by virtue of this section, that constituted by that security or, as the case may be, the combined securities; and a reference to the land which is to secure an advance or on which an advance is secured is a reference to the estate or interest or the heritable security which constitutes or will constitute the basic security.
- (3) The power to make an advance secured on land includes power, subject to the restriction imposed by subsection (4) below, to make, as a separate advance, an advance which is to be applied in or towards payment of the deposit for the purchase of the land (in this Part referred to as “an advance for a deposit for the purchase of land.”)
- (4) The restriction referred to is that an advance for a deposit for the purchase of land must not exceed 10 per cent. of the total amount to be paid for the purchase of the land.

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[The power to make an advance secured on land includes power to make an advance^{F32}(4A) which is secured as mentioned in subsection (1) above by virtue of security granted otherwise than by the borrower (in this Act referred to as “an advance secured on third party land”).]

- (5) An advance shall be treated for the purposes of this Act as secured by a mortgage of a legal estate in registered land in England and Wales or Northern Ireland notwithstanding that the advance is made before the [^{F33}mortgagor] is registered as proprietor of the estate.
- (6) A building society may advance money on the security of an equitable interest in land in England and Wales or Northern Ireland if the equitable interest is an equitable interest in land of a description and is created in circumstances prescribed in an order made by the Commission with the consent of the Treasury under this subsection and any conditions prescribed in the order are complied with.
- (7) Any powers conferred on building societies by an order under subsection (6) above may be conferred on building societies of a description specified in the order or all building societies other than those of a description so specified.
- (8) The power to make an order under subsection (6) above includes power—
 - (a) to prescribe the circumstances in which the power conferred by section 17(10) on building societies of the description specified therein is to be available to them; and
 - (b) to make such incidental, supplementary and transitional provision as the Commission considers necessary or expedient.
- (9) An instrument containing an order under subsection (6) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) The power to make advances secured on land includes power to make them on terms that include provision as respects the capital element in the mortgage debt (with or without similar provision as respects the interest element)—
 - (a) that the amount due to the society may be adjusted from time to time by reference to such public index of prices other than housing prices as is specified in the mortgage;
 - (b) that the amount due to the society may be adjusted from time to time by reference to such public index of housing prices as is specified in the mortgage;
 - (c) that the amount due to the society at any time shall be determined by reference to a share, specified or referred to in the mortgage, in the open market value of the property at that time;

and, in cases where the amount due to the society in respect of capital exceeds the amount advanced, references in this Act to the repayment of an advance include references to payment of the excess.

- (11) Advances secured on land shall be classified for the purposes of the requirements of this Part for the structure of commercial assets into—
 - (a) class 1 advances, and
 - (b) class 2 advances;

and in this Act “advances fully secured on land” means advances which are class 1 or class 2 advances, and any reference to “fully secured” shall be construed accordingly.

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- (12) Nothing in this section or section 11 or 12 is to be taken as precluding a society from taking other security for an advance secured on land than such security as is required for an advance to be a class 1 or class 2 advance under those sections; but the value of the other security shall be disregarded for the purpose of classifying the advance as a class 1 or class 2 advance.]

Textual Amendments

- F31** Pt. III (ss. 10-23) repealed (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 12(1)(a), 46(2), 47(3), **Sch. 9**; S.I. 1997/2668, art. 2, Sch. Pts. I(b), II(j)
- F32** S. 10(4A) inserted (3.1.1995) by 1994 c. 40, ss. 16(2), 82(2)(a)
- F33** Word in s. 10(5) substituted (3.1.1995) by 1994 c. 40, ss. 39, 82(2)(c), **Sch. 11 para. 7(2)**

Modifications etc. (not altering text)

- C5** S. 10 restricted (1. 7. 1992) by S.I. 1992/1547, arts. 5, 6, **Sch. 2**
- C6** S. 10 excluded by S.I. 1987/1498, art. 7, **Sch. 2 para. 1**

[^{F34}11 Class 1 and class 2 advances

- (1) The provisions of this section and section 12 define what is a class 1 advance and what is a class 2 advance for the purpose of the requirements of this Part for the structure of commercial assets and when an advance may, for those purposes, be treated partly as a class 1 advance and partly as a class 2 advance.
- (2) Class 1 advances are advances as to which the society when it makes the advance is satisfied that the advance is an advance secured on land and that—
- (a) the borrower is an individual;
 - (b) [^{F35}where the advance is not an advance secured on third party land,]the land is for the residential use of the borrower or a dependant of his of a prescribed description;
- [where the advance is an advance secured on third party land—
- ^{F36}(ba)
 - (i) the borrower intends that the advance will be used for the purpose of acquiring land for the residential use of himself or a dependant of his of a prescribed description; and
 - (ii) the land on which the advance is secured is for the residential use of the mortgagor or a dependant of his of a prescribed description;]
- (c) the amount advanced will not exceed the value of the basic security (after deducting from that value any [^{F37}outstanding amount secured by a mortgage of the land in favour of the society]); and
 - (d) subject to subsection (5) below, no other mortgage of the land which is to secure the advance is outstanding in favour of a person other than the society;
- and which are not made on terms as respects the capital element of the mortgage debt authorised by section 10(10)(b) or (c).
- (3) Subject to any order made under section 12(1),
- ^{F38}(a) [the requirement in subsection (2)(b) above shall be treated as satisfied if no less than 40 per cent. of the area of the land is used for the residential purposes by the borrower or a dependant of his of a prescribed description;

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- [^{F39}(b) the requirement in subsection (2)(ba)(i) above shall be treated as satisfied if the borrower intends that no less than 40 per cent. of the area of the land will be for the residential use of himself or a dependant of his of a prescribed description; and
- (c) the requirement in subsection (2)(ba)(ii) above shall be treated as satisfied if no less than 40 per cent. of the area of the land is used for residential purposes by the mortgagor or a dependant of his of a prescribed description.]
- (4) Class 2 advances are advances as to which the society when it makes the advance—
- (a) either is not satisfied that the requirements for the time being of subsection (2) above are fulfilled or is satisfied that any of them is not fulfilled, but
- (b) is satisfied that the advance is an advance secured on land, and
- (c) is satisfied, where the amount advanced will exceed the value of the basic security (after deducting from that value any [^{F40}outstanding amount secured by a mortgage of the land]), that the excess will be secured by the taking of security of a prescribed description in addition to the basic security, and
- (d) is satisfied that no, or no more than one, other mortgage of the land which is to secure the advance is outstanding in favour of a person other than the society.
- (5) The requirement in subsection (2)(d) and (4)(d) above shall be treated as satisfied if the advance is made on terms that the other mortgage is redeemed or postponed to the basic security.
- (6) An advance for a deposit for the purchase of land is also a class 1 or class 2 advance according as it is made with a view to the making of a class 1 or class 2 advance secured on the land.
- (7) Advances which would be class 2, and not class 1, advances by reason only that the extent of the residential use of the land is not such as to satisfy the requirement in subsection (2)(b) [^{F41}or (2)(ba)(i) or (ii)] above shall be treated as class 1 advances if and to the extent prescribed by an order under section 12(5).
- (8) For the purposes of the requirements of this Part for the structure of commercial assets—
- (a) class 1 advances constitute class 1 assets, and
- (b) class 2 advances constitute class 2 assets,
- and accordingly the aggregate amount of mortgage debts outstanding in respect of class 2 advances counts in accordance with section 20 towards the limit applicable to class 2 assets under that section.
- (9) For the purposes of subsections (2) and (4) above, where a building society makes an advance by instalments, any reference to the time when the society makes the advance is a reference to the time when it pays the first of the instalments, disregarding for this purpose any instalment which is to be applied towards payment of the deposit in respect of the purchase of the land which is to secure the advance.
- (10) Subject to subsection (11) below, any land to which a building society becomes absolutely entitled by foreclosure or by release or other extinguishment of a right of redemption—
- (a) shall as soon as may be conveniently practicable be sold or converted into money; and

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- (b) shall, until the sale or conversion, constitute a class 1 asset if the advance secured on the land was a class 1 advance and a class 2 asset if it was a class 2 advance.
- (11) Where a building society which has for the time being adopted the powers conferred by section 17 becomes entitled to land as mentioned in subsection (10) above, and the land is land that may be held under that section, then, if the society—
- (a) elects to hold the land under that section, or
- (b) without such an election, retains the land after the expiry of the period of twelve months immediately following the date on which it so becomes entitled to the land.
- the society shall be taken to hold the land under that section.
- (12) An election under subsection (11) above shall be made by resolution of the board of directors and shall be irrevocable.
- (13) If a building society contravenes subsection (10) above the society shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale and so shall any officer who is also guilty of the offence.
- (14) For the purposes of this Act, the mortgage debt at any time, in relation to an advance secured on land, is the total amount outstanding at that time in respect of—
- (a) the principal of the advance;
- (b) interest on the advance; and
- (c) any other sum which the borrower is obliged to pay the society under the terms of the advance.
- (15) The reference in subsection (10) above to land to which a building society becomes absolutely entitled by foreclosure includes a reference to land which a building society has acquired by virtue of a decree of foreclosure under section 28 of the^{M9} Conveyancing and Feudal Reform (Scotland) Act 1970.]

Textual Amendments

- F34** Pt. III (ss. 10-23) repealed (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 12(1)(a), 46(2), 47(3), **Sch. 9**; S.I. 1997/2668, art. 2, Sch. Pts. I(b), II(j)
- F35** Words in s. 11(2)(b) inserted (3.1.1995) by 1994 c. 40, ss. 16(3)(a), 82(2)(a)
- F36** S. 11(2)(ba) inserted (3.1.1995) by 1994 c. 40, ss. 16(3)(b), 82(2)(a)
- F37** Words in s. 11(2)(c) substituted (3.1.1995) by 1994 c. 40, ss. 16(3)(c), 82(2)(a)
- F38** Words in s. 11(3) renumbered as s. 11(3)(a) (3.1.1995) by 1994 c. 40, ss. 16(4), 82(2)(a)
- F39** S. 11(3)(b)(c) inserted (3.1.1995) by 1994 c. 40, ss. 16(4), 82(2)(a)
- F40** Words in s. 11(4)(c) substituted (3.1.1995) by 1994 c. 40, ss. 16(5), 82(2)(a)
- F41** Words in s. 11(7) inserted (3.1.1995) by 1994 c. 40, ss. 39, 82(2)(e), **Sch. 11 para. 7(3)**

Modifications etc. (not altering text)

- C7** S. 11(1)(2)(4)–(7)(9)–(13)(15) excluded by S.I. 1987/1498, art. 7, **Sch. 2 para. 2**
- C8** S. 11(1)–(7), (9)–(13)(15) restricted (1. 7. 1992) by S.I. 1992/1547, arts. 5, 6, **Sch. 2**
- C9** S. 11(2)(b) extended by S.I. 1986/2169, **art. 5(2)**
- C10** S. 11(3) excluded by S.I. 1986/2169, **art. 5(2)** and by S.I. 1987/1498, art. 7, **Sch. 2 para. 2**

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Marginal Citations

M9 1970 c. 35.

[^{F42}12 Class 1 and class 2 advances: supplementary provisions.

- (1) The Commission, by order in a statutory instrument, may as respects class 1 advances—
- (a) specify the circumstances in which land is for a person’s residential use,
 - (b) specify who are to be a person’s dependants, and
 - (c) make such other incidental and supplementary and such transitional provision as the Commission considers necessary or expedient,

for the purposes of section 11(2); and in that subsection “prescribed” means prescribed in an order under this subsection.

- (2) Without prejudice to the generality of subsection (1)(c) above, an order may prescribe evidence on which a building society is to be entitled to be satisfied (in the absence of evidence to the contrary) that the requirements of section 11(2) are fulfilled as respects an advance secured on land.

- (3) The Commission, by order in a statutory instrument, may as respects class 2 advances—
- (a) specify descriptions of security falling within this subsection which, for the purposes of paragraph (c) of section 11(4), may be taken for class 2 advances in addition to the basic security; and
 - (b) make such other incidental or supplementary and such transitional provision as it considers necessary or expedient for the purposes of paragraph (c) or (d) of that subsection;

and in that subsection “prescribed” means prescribed in an order under this subsection.

- (4) The descriptions of additional security which fall within subsection (3)(a) above are guarantees, indemnities or other contractual promises made by virtue of, or by a public body established by or under, any enactment for the time being in force.

- (5) The Commission, by order in a statutory instrument, may, as respects advances to be secured on land which is to any extent to be used for the residential use of borrowers or persons who are dependants of theirs for the purposes of section 11(2)—

- (a) require so much of the amount to be advanced as is determined by or under the order to be treated as a class 1 advance;
- (b) specify the circumstances in which and the conditions subject to which advances are to be so treated; and
- (c) make such incidental, supplementary and transitional provision as the Commission considers necessary or expedient.

[Subsection (5) above shall also apply as respects advances secured on third party land
^{F43}(5A) which is to any extent used for the residential use of mortgagors or persons who are dependants of theirs for the purposes of section 11(2).]

- (6) The Commission shall not make an order under this section, except with the consent of the Treasury.

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- (7) An instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) For the purpose of facilitating the repayment to a building society of a class 1 advance or a class 2 advance, the society may make to the borrower, by way of addition to the advance, a further advance of or towards the cost of a single premium payable in respect of an appropriate policy of life assurance; and a sum added to an advance under this subsection shall be treated as not forming part of the advance for the purpose of determining whether the requirements of section 11(2) or (4) are satisfied with respect to the advance.
- (9) Where an advance secured on land in England and Wales or Northern Ireland is made, then, for the purpose of determining whether the land is subject to a prior mortgage for the purposes of section 11(2)(d) or (4)(d) above, any outstanding charge over the land which is registered—
- (a) in the case of land in England and Wales, in the appropriate local land charges register, and
 - (b) in the case of land in Northern Ireland, in the statutory charges register under section 87 of, and Schedule 11 to, the ^{M10}Land Registration Act (Northern Ireland) 1970,

shall be disregarded.

- (10) If at any time when a class 1 advance or a class 2 advance secured on land is outstanding the building society—
- (a) is satisfied on a revaluation that the value of the basic security has changed,
 - (b) is satisfied that so much of the mortgage debt as represents the principal of the advance has changed,
 - (c) [^{F44} in the case of an advance which is not an advance secured on third party land] is satisfied on notice given to it by the borrower that there has been a change in the use of the land,
 - ^{F45} [in the case of an advance which is an advance secured on third party land—
 - (i) is satisfied on notice given to it by the borrower that there has been a change in the use of the land acquired with the advance, or
 - (ii) is satisfied on notice given to it by the mortgagor that there has been a change in the use of the land on which the advance is secured, or]
 - (d) agrees to a change in the relative priority of the mortgage on which the advance is secured,

and is satisfied that the change is such that, if it were to make an advance equal to the mortgage debt at that time, the advance would instead be a class 2 advance or a class 1 advance, as the case may be, the advance shall be reclassified as from that time.

- (11) Nothing in subsection (10) above requires a building society to revalue its securities from time to time.
- (12) Every building society shall establish and maintain a system to ensure the safe custody of all documents relating to property mortgaged to the society.
- (13) In this section “appropriate policy of life assurance”, with reference to an advance, means a policy of insurance which satisfies the following requirements, that is to say—
- (a) the life assured is that of the person to whom the advance is made or his spouse, his son or his daughter, and

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- (b) it provides, in the event of the death, before the advance has been repaid, of the person on whose life the policy is effected, for payment of a sum not exceeding the amount sufficient to defray the sums which are, at and after the time of the death, payable to the society in respect of the advance and any addition made in respect of the premium.]

Textual Amendments

- F42** Pt. III (ss. 10-23) repealed (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 12(1)(a), 46(2), 47(3), **Sch. 9**; S.I. 1997/2668, art. 2, Sch. Pts. I(b), II(j)
- F43** S. 12(5A) inserted (3.1.1995) by 1994 c. 40, ss. 16(6), 82(2)(a)
- F44** Words in s. 12(10)(c) inserted (3.1.1995) by 1994 c. 40, ss. 16(7)(a), 82(2)(a)
- F45** S. 12(1)(ca) substituted for word in s. 12(1)(c) (3.1.1995) by 1994 c. 40, ss. 16(7)(b), 82(2)(a)

Modifications etc. (not altering text)

- C11** S. 12(1)-(11)(13) excluded by S.I. 1987/1498, art. 7, **Sch. 2 para. 3**
- C12** S. 12(1)-(11)(13) restricted (1. 7. 1992) by S.I. 1992/1547, arts. 5, 6, **Sch. 2**
- C13** S. 12(12) excluded (*temp*) by S.I. 1986/2168, **art. 12(2)(a)**
- C14** S. 12(12) excluded by S.I. 1986/2168, **art. 12(1)(a)**

Marginal Citations

- M10** 1970 c. 18 (N.I.)

[^{F46}13 Security for advances: valuation and supplementary and related provisions.

- (1) It shall be the duty of every director of a building society to satisfy himself that the arrangements made for assessing the adequacy of the security for any advance to be fully secured on land which is to be made by the society are such as may reasonably be expected to ensure that—
- an assessment will be made on the occasion of each advance whether or not any previous assessment was made with a view to further advances or re-advances;
 - each assessment will be made by a person holding office in or employed by the society who is competent to make the assessment and is not disqualified under this section from making it;
 - each person making the assessment will have furnished to him a written report on the value of the land and any factors likely materially to affect its value made by a person who is competent to value, and is not disqualified under this section from making a report on, the land in question;

but the arrangements need not require each report to be made with a view to a particular assessment so long as it is adequate for the purpose of making the assessment.

- (2) In relation to any land which is to secure an advance, the following persons are disqualified from making a report on its value, that is to say—
- the directors and any other officer or employee of the society who makes assessments of the adequacy of securities for advances secured on land or who authorises the making of such advances;
 - where the society has made, or undertaken to make, to any person a payment for introducing to it an applicant for the advance, that person;

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- (c) where the advance is to be made following a disposition of the land, any person having a financial interest in the disposition of the land and any director, other officer or employee of his or of an associated employer; ^{F47} . . .
 - (d) where the advance is to be made following a disposition of the land, any person receiving a commission for introducing the parties to the transaction involving the disposition and any director, other officer or employee of his.
 - [where the advance is to be made in connection with a disposition of other
 - ^{F48}(e) land to the borrower, any person having a financial interest in the disposition of the other land and any director, other officer or employee of his or of an associated employer; and
 - (f) where the advance is to be made in connection with a disposition of other land to the borrower, any person receiving a commission for introducing the parties to the transaction involving the disposition and any director, other officer or employee of his.]
- (3) In relation to any land which is to secure an advance where the advance is to be made following a disposition of the land [^{F49}or in connection with a disposition of other land to the borrower], the following persons are disqualified from making an assessment of the security or authorising the making of the advance, that is to say—
- (a) any person, other than the building society making the advance, having a financial interest in the disposition ^{F50}. . . and any director, other officer or employee of his or of an associated employer; and
 - (b) any person receiving a commission for introducing the parties to the transaction involving the disposition and any director, other officer or employee of his.
- (4) Any person who, being disqualified from doing so—
- (a) makes a report on any land which is to secure an advance,
 - (b) makes an assessment of the adequacy of the security for an advance, or
 - (c) authorises the making of an advance,
- and in the case of a person making a report does so knowing or having reason to believe that the report will be used or is likely to be used for the purposes of the advance, shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (5) For the purposes of this section, any two employers are associated if one is a body corporate of which the other (directly or indirectly) has control or if both are bodies corporate of which a third person directly or indirectly has control; and the expression “associated employer” shall be construed accordingly.
- (6) In this section “commission” includes any gift, bonus or benefit and, for its purposes, a person shall be taken to have a financial interest in the disposition of any land if, but only if, he would, on a disposition of that land, be entitled (whether directly or indirectly, and whether in possession or not) to the whole or part of the proceeds of the disposition.

^{F46}(7)]

Textual Amendments

F46 Pt. III (ss. 10-23) repealed (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 12(1)(a), 46(2), 47(3), **Sch. 9**; S.I. 1997/2668, art. 2, Sch. Pts. 1(b)(o)(i), **II(j)**

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- F47** Word immediately preceding s. 13(2)(d) repealed (3.1.1995) by 1994 c. 40, ss. 81, 82(2)(g), **Sch. 17**
F48 S. 13(2)(e)(f) inserted (3.1.1995) by 1994 c. 40, ss. 39, 82(2)(e), **Sch. 11 para. 7(4)**
F49 Words in s. 13(3) inserted (3.1.1995) by 1994 c. 40, ss. 39, 82(2)(e), **Sch. 11 para. 7(5)(a)**
F50 Words in s. 13(3)(a) repealed (3.1.1995) by 1994 c. 40, ss. 39, 81, 82(2)(e)(g), Sch. 11 para. 7(5)(b), **Sch. 17**

Modifications etc. (not altering text)

- C15** S. 13 modified by S.I. 1986/2169, **art. 6**
C16 S. 13(7) excluded by S.I. 1987/1498, **art. 7, Sch. 2 para. 4**
C17 S. 13(7) restricted (1. 7. 1992) by S.I. 1992/1547, **arts. 5, 6, Sch. 2**

Other advances secured on land

[^{F51}14 **Power to make advances secured on land overseas.**

- (1) The appropriate authority may, with a view to conferring on building societies or building societies of particular descriptions powers to make advances to members secured on land outside the United Kingdom corresponding to the powers to make advances secured on land within the United Kingdom, by order—
- (a) designate countries or territories outside the United Kingdom as countries or territories as respects which advances under this section may be made secured on the land;
 - (b) specify, or provide for the specification by direction of the Commission under the order of, the forms of security on land which may be taken for advances under this section, in any prescribed circumstances and subject to any prescribed conditions;
 - (c) determine, or provide for the determination under the order of, the classification of the advances (and accordingly of the mortgage debts) as class 1 advances or class 2 advances for the purposes of the requirements of this Part for the structure of commercial assets;
 - (d) provide for the application of the provisions of this Part applicable to advances secured on land to advances under this section with such modifications as appear to be appropriate;
 - (e) provide for any other provisions of this Act to have effect in relation to advances under this section with such modifications as appear to be appropriate; and
 - (f) make such incidental, supplemental or transitional provision as appears to be necessary or expedient.
- (2) Any powers conferred on building societies under this section may be conferred on building societies of a specified description or all building societies other than those of a specified description.
- (3) Where, by virtue of an order under subsection (1) above, advances are made by a building society on the security of land outside the United Kingdom, the aggregate amount of mortgage debts outstanding in respect of such of those advances as are class 2 advances under the order shall count in accordance with section 20 towards the limit applicable to class 2 assets under that section.
- (4) Subsection (3) above is subject to any provision contained in the order.
- (5) The “appropriate authority” for making an order under subsection (1) above is—

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- (a) as regards the relevant British overseas territories, the Commission acting with the consent of the Treasury, and
 - (b) as regards other countries or territories, the Treasury.
- (6) An order under this section made as regards any of the relevant British overseas territories may make all or any of the powers conferred thereby exercisable by building societies without the need for adoption, but, in the absence of such a provision any power conferred under this section must, in order to be exercisable by a building society, be adopted by the society.
- (7) The power to make an order under subsection (1) above is exercisable by statutory instrument and, as regards the procedure applicable to such an order,—
- (a) if the instrument designates other countries or territories than any of the relevant British overseas territories, the order shall not be made unless a draft of it has been laid before and approved by resolution of each House of Parliament, and
 - (b) if the instrument designates any relevant British overseas territory and no other country or territory, the instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) In this section—
- “relevant British overseas territories” means the Channel Islands, the Isle of Man and Gibraltar;
 - “security on land” includes any right or power in or over land to secure the payment of a debt and “secured on land” has a corresponding meaning;
 - “specified” means specified in an order under subsection (1) above;
- and any reference to a provision of this Part is a reference to that provision as applied to advances under this section.]

Textual Amendments

F51 Pt. III (ss. 10-23) repealed (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 12(1)(a), 46(2), 47(3), Sch. 9; S.I. 1997/2668, art. 2, Sch. Pts. I(b), II(j)

[^{F52F53}14] Power to participate in secured syndicated lending.

- (1) Subject to subsection (2) below, a building society may participate in syndicated lending—
- (a) as a member of the lending syndicate, or
 - (b) as a person whose rights as a participant arise under an arrangement with a member of the lending syndicate (“a sub-participant”).
- (2) Subsection (1) above only applies if—
- (a) the syndicated lending is appropriately secured, and
 - (b) where the society’s participation is as a sub-participant, the society’s rights as such a participant are appropriately secured.
- (3) The Commission may, with the consent of the Treasury, by order—
- (a) make provision with respect to what constitutes appropriate security for the purposes of subsection (2)(a) or (b) above;

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- (b) make provision with respect to the classification, for the purposes of the requirements of this Part for the structure of commercial assets, of a society's participation under this section in syndicated lending; and
 - (c) provide for the application of the provisions of this Part, with such modifications as appear to the Commission to be appropriate, to a society's participation under this section in syndicated lending.
- (4) The power conferred by subsection (3) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) A building society may only exercise the power conferred by this section if it has adopted it.]

Textual Amendments

F52 S. 14A inserted (3.1.1995) by 1994 c. 40, ss. 17(1), 82(2)(a)

F53 Pt. III (ss. 10-23) repealed (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 12(1)(a), 46(2), 47(3), Sch. 9; S.I. 1997/2668, art. 2, Sch. Pts. I(b), II(j)

Other commercial assets

[^{F54}15 **Loans for mobile homes.**

- (1) Subject to the provisions of this section, a building society may make mobile home loans to individuals, whether or not they are members of the society.
- (2) A mobile home loan is a loan made for the purchase of a mobile home and secured by such security as the Commission may, with the consent of the Treasury, prescribe by order in a statutory instrument.
- (3) No such loan shall be made unless the building society, when it makes the loan, is satisfied that—
- (a) the borrower or a dependant of his of a prescribed description is or will be entitled under an agreement to which the ^{M11}Mobile Homes Act 1983 applies to station the mobile home on land forming part of a protected site;
 - (b) the mobile home is for the residential use of the borrower or a dependent of his of a prescribed description;
 - (c) the amount lent will not exceed the amount likely to be realised on a sale of the mobile home on the open market; and
 - (d) subject to subsection (4) below, no other security prescribed under subsection (2) above which is to secure the loan is outstanding in favour of a person other than the society.
- (4) The requirement in subsection (3)(d) above shall be treated as satisfied if the loan is made on terms that the other loan is redeemed or postponed to it.
- (5) A building society shall not make a mobile home loan to an individual if the principal exceeds—
- (a) the limit for the time being imposed by or under subsection (7) below; or

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- (b) the balance remaining after deducting from that limit the aggregate of any other sums outstanding in respect of loans made under this section or section 16 by the society to that individual [^{F55}and any facility limits agreed for the time being between the society and that individual][^{F56}and also the cost of leasable chattels bailed under any current leasing agreement between the society and that individual];

and if two or more loans under this section or this section and section 16 are made simultaneously by the society to the same individual they shall be treated for the purposes of this subsection as a single loan of an amount equal to the aggregate of the principal of each of those loans.

- (6) Joint borrowers under this section shall be treated, for the purpose of the limit on loans under this section, as a single individual and any sums outstanding in respect of loans made under this section or section 16 by the society to any one of the joint borrowers [^{F57}and also the cost of leasable chattels bailed under any current leasing agreement between the society and any one of the joint borrowers are] to be taken into account in determining the balance available for any further loan to him or to him and any joint borrower with him [^{F58}, and so is any facility limit which is agreed for the time being between the society and any one of the joint borrowers].
- (7) The limit on loans to any one individual under this section is £10,000 or such sum as the Commission may, with the consent of the Treasury, specify by order in a statutory instrument.
- (8) Loans under this section constitute class 3 assets for the purposes of the requirements of this Part for the structure of commercial assets and accordingly the aggregate of the amounts outstanding in respect of—
- (a) the principal of loans under this section,
 - (b) the interest on those loans, and
 - (c) any other sums which borrowers are obliged to pay the society under the terms of those loans,
- counts in accordance with section 20 towards the limits applicable to class 3 assets under that section.
- (9) The power conferred by this section is not available to a building society which does not for the time being have a qualifying asset holding, but the cessation of its availability does not require the disposal of any property or rights.
- (10) The power conferred by this section on a building society, if available to it, must in order to be exercisable, be adopted by the society.
- (11) An instrument containing an order under subsection (2) or (7) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (12) In this section—

[^{F59}“facility limit” has the meaning which it has for the purposes of the Building Societies (Limited Credit Facilities) Order 1987;]

[^{F60}“leasable chattels”, “bailed” and “leasing agreement” have the meanings which they respectively bear in Part III of Schedule 1 to the Building Societies (Commercial Assets and Services) Order 1988 and “cost”, in respect of any leasable chattel bailed by a building society, means the price at which it was acquired by the society;]

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“mobile home” has the same meaning as “caravan” in Part I of the ^{M12}Caravan Sites and Control of Development Act 1960;

“prescribed”, in relation to descriptions of dependants of borrowers, means such as are for the time being prescribed in an order under section 12(1) as respects class 1 advances; and

“protected site” has the same meaning as in the ^{M13}Mobile Homes Act 1983.]

Textual Amendments

- F54** Pt. III (ss. 10-23) repealed (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 12(1)(a), 46(2), 47(3), **Sch. 9**; S.I. 1997/2668, art. 2, Sch. Pts. I(b), **II(j)**
- F55** Words inserted by S.I. 1987/1975, art. 8(1), **Sch. 1 para. 1**
- F56** Words inserted by S.I. 1988/1141, art. 4(1), **Sch. 2 para. 1**
- F57** Words substituted by S.I. 1988/1141, art. 4(1), **Sch. 2 para. 2**
- F58** Words inserted by S.I. 1987/1975, art. 8(1), **Sch. 1 para. 2**
- F59** Definition inserted by S.I. 1987/1975, art. 8(1), **Sch. 1 para. 3**
- F60** Definitions inserted by S.I. 1988/1141, art. 4(1), **Sch. 2 para. 3**

Marginal Citations

- M11** 1983 c. 34
- M12** 1960 c. 62
- M13** 1983 c. 34.

[^{F61}16 Power to lend to individuals otherwise than by class 1 or class 2 advances etc.

- (1) Subject to the provisions of this section, a building society may, with or without security and whether or not at interest, lend money to individuals, whether or not they are members of the society.
- (2) Advances fully secured on land do not constitute loans under this section except that an advance for a deposit for the purchase of land shall, if the purchase is not completed within the period of six months beginning with the date of the advance, be treated after the end of that period as a loan under this section and shall accordingly cease to be a class 1 or class 2 advance.
- (3) Mobile home loans do not constitute loans under this section [^{F62}and neither do bridging loans made under Part IV of Schedule 1 to the Building Societies (Commercial Assets and Services) Order 1988].
- (4) The power to lend money under this section includes power, as regards members of and depositors with the society, to lend on overdraft on such terms as the society thinks fit.
- (5) Subject to subsection (9) below a building society shall not make a loan to an individual under this section if the principal exceeds—
 - (a) the limit for the time being imposed by or under subsection (8) below; or
 - (b) the balance remaining after deducting from that limit the aggregate of any other sums outstanding in respect of loans made under this section by the society to that individual [^{F63}and any facility limits agreed for the time being between the society and that individual][^{F64}and also the cost of leasable

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chattels bailed under any current leasing agreement between the society and that individual];

and if two or more loans under this section or this section and section 15 are made simultaneously by the society to the same individual they shall be treated for the purposes of this subsection as, in the case of loans under this section, a single loan of an amount equal to the aggregate of the principal of each of those loans and, in the case of loans under this section and section 15, as made on different occasions such that loans under section precede those made under that section.

- (6) Subsection (5) above shall have effect (subject to subsection (9) below) in a case where a building society has made a loan under section 15 as if it precluded a building society from making a loan to an individual under this section if the principal exceeds—
- (a) the limit referred to in paragraph (a) of it; or
 - (b) the balance referred to in paragraph (b) of it; or
 - (c) the balance remaining after deducting from the limit imposed by or under subsection (7) of that section the aggregate of any sums outstanding in respect of loans made under that section and under this section by the society to that individual [^{F65}and any facility limits agreed for the time being between the society and that individual]^{F66} and also the cost of leasable chattels bailed under any current leasing agreement between the society and that individual].
- (7) Joint borrowers under this section shall be treated, for the purpose of the limit on loans under this section, as a single individual and any sums outstanding in respect of loans made under this section or section 15 by the society to any one of the joint borrowers [^{F67}and also the cost of leasable chattels bailed under any current leasing agreement between the society and any one of the joint borrowers are] to be taken into account in determining the balance available for any further loan to him or to him and any joint borrower with him [^{F68}, and so is any facility limit which is agreed for the time being between the society and any one of the joint borrowers].
- (8) The limit on loans to any one individual under this section is £5,000 or such other sum as the Commission may, with the consent of the Treasury, specify by order in a statutory instrument.
- (9) The limit on loans to any one individual under this section does not apply to an advance for a deposit for the purchase of land which has come to be treated as a loan under this section and accordingly no account shall be taken of it for the purposes of subsection (5) above.
- (10) An order under subsection (8) above may specify different sums as the limit in relation to individuals in different circumstances.
- (11) Loans under this section constitute class 3 assets for the purposes of the requirements of this Part for the structure of commercial assets and accordingly the aggregate of the amounts outstanding in respect of—
- (a) the principal of loans under this section,
 - (b) the interest on those loans, and
 - (c) any other sums which borrowers are obliged to pay the society under the terms of those loans,

counts in accordance with section 20 towards the limits applicable to class 3 assets under that section.

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- (12) The power conferred by this section is not available to a building society which does not for the time being have a qualifying asset holding, but the cessation of its availability does not require the disposal of any property or rights.
- (13) The powers conferred by this section on a building society, if available to it, must, in order to be exercisable, be adopted by the society.
- (14) An instrument containing an order under subsection (8) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (15) If at any time when a loan under this section which is secured by a mortgage of any land is outstanding, the building society is satisfied—
- (a) on a revaluation, that the value of the security has changed,
 - (b) [^{F69}where the mortgage is granted by the borrower,] on notice given to it by the borrower that there has been a change in the use of the land,
 - [where the mortgage is granted otherwise than by the borrower and the loan
 - ^{F70}(c) has been used to purchase land—
 - (i) on notice given to it by the borrower that there has been a change in the use of the land purchased, or
 - (ii) on notice given to it by the mortgagor that there has been a change in the use of the mortgaged land, or
 - (d) on notice given to it—
 - (i) where the mortgage is granted by the borrower, by him, and
 - (ii) where the mortgage is granted otherwise than by the borrower, by the mortgagor,]

that there has been a change in the relative priority of the mortgage and that the change is such that, if it were to make a loan equal to the mortgage debt at that time and on that security, the loan would be a class 1 advance or, as the case may be, a class 2 advance, then the outstanding loan shall be reclassified as from that time.

- (16) Nothing in subsection (15) above requires a building society to revalue its securities from time to time.

- [In this section—
- ^{F71}(17) “facility limit” has the meaning which it bears in the Building Societies (Limited Credit Facilities) Order 1987; and
- “leasable chattels”, “bailed” and “leasing agreement” have the meanings which they respectively bear in Part III of Schedule 1 to the Building Societies (Commercial Assets and Services) Order 1988 and “cost”, in respect of any leasable chattel bailed by a building society, means the price at which it was acquired by the society.]]

Textual Amendments

- F61** Pt. III (ss. 10-23) repealed (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 12(1)(a), 46(2), 47(3), **Sch. 9**; S.I. 1997/2668, art. 2, Sch. Pts. I(b), **II(j)**
- F62** Words inserted by S.I. 1988/1141, art. 4(2), **Sch. 3 para. 1**
- F63** Words inserted by S.I. 1987/1975, art. 8(2), **Sch. 2 para. 1**
- F64** Words inserted by S.I. 1988/1141, art. 4(2), **Sch. 3 para. 2**
- F65** Words inserted by S.I. 1987/1975, art. 8(2), **Sch. 2 para. 2**

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- F66** Words inserted by S.I. 1988/1141, art. 4(2), **Sch. 3 para. 3**
- F67** Words substituted by S.I. 1988/1141, art. 4(2), **Sch. 3 para. 4**
- F68** Words inserted by S.I. 1987/1975, art. 8(2), **Sch. 2 para. 3**
- F69** Words in s. 16(15)(b) inserted (3.1.1995) by 1994 c. 40, **ss. 16(8)(a), 82(2)(a)**
- F70** S. 16(15)(c)(d) substituted for words in s. 16(15) (3.1.1995) by 1994 c. 40, **ss. 16(8)(b), 82(2)(a)**
- F71** S. 16(17) added by S.I. 1987/1975, art. 8(2), **Sch. 2 para. 4** and substituted by S.I. 1988/1141, art. 4(2), **Sch. 3 para. 5**

[^{F72}17 Power to hold and develop land as commercial asset.

- (1) Subject to subsections (2), (9) and (11) below, a building society may acquire, hold and dispose of land in the United Kingdom for purposes other than those for which it may acquire, hold or dispose of land under section 6 or 10.
- (2) Land may not be acquired or held or disposed of by way of lease under this section except where the land is or is to be used—
 - (a) primarily for residential purposes, or
 - (b) for purposes incidental to the use of adjoining land held or to be held by the society which is or is to be used primarily for residential purposes.
- (3) A building society may develop or participate in developing for use for residential purposes or purposes connected with the residential use of land any land it holds under this section.
- (4) If land acquired under this section ceases to be used for the purposes authorised by subsection (2) above the society shall sell its estate or interest in the land as soon as it is conveniently practicable without undue loss to the society.
- (5) Land held under this section constitutes a class 3 asset for the purposes of the requirements of this Part for the structure of commercial assets and accordingly the aggregate value of all land so held counts in accordance with section 20 towards the limits applicable to class 3 assets under that section.
- (6) Premises held under section 6, by virtue of subsection (5) of that section, shall, in prescribed circumstances, be treated in their entirety (and regardless of their use) as land held under this section for the purposes of the requirements of this Part for the structure of commercial assets and subsection (5) above applies accordingly.
- (7) The Commission, with the consent of the Treasury, may by order made by statutory instrument make such provision for the purposes of subsection (6) above as it thinks fit and in that subsection “prescribed” means prescribed in an order under this subsection.
- (8) An instrument containing an order under subsection (7) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) Except as provided in subsection (10) below, the powers conferred by this section are not available to a building society which does not for the time being have a qualifying asset holding, but the cessation of their availability does not require the disposal of any property or rights.
- (10) A building society which does not for the time being have a qualifying asset holding may acquire, hold and dispose of land which is or is to be used for residential purposes if the purpose of the acquisition and holding of the land is to enable the society to make advances on the security of equitable interests in the land in the circumstances authorised by an order under section 10(6).

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- (11) The powers conferred by this section on a building society, if available to it, must in order to be exercisable, be adopted by the society.]

Textual Amendments

F72 Pt. III (ss. 10-23) repealed (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 12(1)(a), 46(2), 47(3), **Sch. 9**; S.I. 1997/2668, art. 2, Sch. Pts. I(b), **II(j)**

Modifications etc. (not altering text)

C18 S. 17 extended by S.I. 1987/1942, **art. 3**

C19 S. 17(10) excluded by S.I. 1986/2099, **art. 8**

[^{F73}18 Power to invest in subsidiaries and other associated bodies.

- (1) Subject to the following provisions of this section, a building society may—
- (a) acquire and hold shares or corresponding membership rights in bodies corporate and form or take part in forming bodies corporate, and
 - (b) provide bodies corporate in which it holds shares or such rights or to which it is, for the purpose of any power under this section, linked by resolution with any of the following supporting services—
 - (i) loans of money, with or without security and whether or not at interest,
 - (ii) grants of money, whether or not repayable,
 - (iii) guarantees of the discharge of their liabilities, and
 - (iv) the use of services or property, whether or not for payment;

and in this section “invest” means the exercise of any of the powers conferred by paragraph (a) and “support” means the exercise of any of the powers conferred by paragraph (b) above.

- (2) A building society may invest in or support the following bodies corporate (referred to as “qualifying bodies”) but no others, that is to say—
- (a) companies or industrial and provident societies;
 - (b) bodies formed in another member State for the purpose of carrying on in another member State businesses which consist wholly or mainly in lending money on the security of land and do not (where that is not the whole business) include lending on land in the United Kingdom (referred to as “corresponding European bodies”), and
 - (c) bodies corporate (whether or not falling within paragraph (a) or (b) above) designated as suitable for investment and support or for support for the purposes of this section by an order (referred to as “a designation order”) made by the Commission with the consent of the Treasury.
- (3) A designation order may—
- (a) designate a particular body or designate descriptions of bodies corporate,
 - (b) make different provision for different descriptions of building society,
 - (c) determine, or provide for the determination under the order of, the extent to which, the purposes for which, and the conditions subject to which, investment or support is permitted, and

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- (d) make such transitional and consequential provision as the Commission considers necessary or expedient.
- (4) Subject to subsection (5) below, a building society shall not invest in or support a qualifying body so as to enable that body on its own account, in the United Kingdom, to—
- (a) lend money to members of the public on the security of land by loans corresponding to advances secured on land,
 - (b) accept deposits of money otherwise than in such circumstances that their acceptance would not constitute its business a deposit-taking business or in the course of or for the purposes of providing a service for the time being specified in Part I of Schedule 8 to this Act;
- but, subject to that, it may invest in or support a qualifying body so as to enable that body to carry on any activity which it is within the powers of the society to carry on, but, subject to subsection (5) below, no others.
- (5) In the case of a qualifying body designated, or included in a description of bodies designated, by a designation order a building society may also invest in or support it for such purposes as are permitted by or under the designation order.
- (6) Subject to subsection (7) and (8) below, a building society shall not invest in or support a qualifying body whose objects enable it—
- (a) to carry on activities which are outside the powers of the society,
 - (b) to invest in other bodies corporate, or
 - (c) to support other bodies corporate;
- but this does not imply that it is unlawful for the society to complete the performance of any contractual obligations lawfully incurred in providing a supporting service.
- (7) Subsection (6) above shall not operate so as to restrict a building society's powers under this section in relation to a corresponding European body.
- (8) Subsection (6) above shall not prevent a building society from investing in or supporting a qualifying body—
- (a) if that body is, in relation to the society, a designated body and the investment or support is made in accordance with the designation order,
 - (b) if, not being a body whose objects enable it to carry on activities outside the powers of the society, the investment or support is made or given with the consent of the Commission and subject to any conditions specified in the instrument giving the consent, or
 - (c) for a period of three months, pending the alteration of the objects of that body.
- and that subsection shall not prevent a building society from investing in a qualifying body if the shares or corresponding membership rights in that body would, by virtue of an order under section 19, constitute class 3 assets in the hands of the society.]
- (9) For the purposes of any power conferred by this section a body corporate is “linked by resolution” to a building society if the board of directors of the society has passed a resolution making that power exercisable in relation to that body and the resolution is in force.
- (10) No power to invest in or support a corresponding European body is available to a building society which does not for the time being have a qualifying asset holding,

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but the cessation of its availability by virtue of this subsection does not require the disposal of any property or rights.

- (11) The powers conferred by this section on a building society, if available to it, must, in order to be exercisable, be adopted by the society and must be adopted in their entirety without any restriction except a restriction with reference to the description of body corporate in relation to which the powers to invest in or support are to be exercisable.
- (12) A building society whose board of directors has passed a resolution in pursuance of subsection (9) above shall send three copies of a record of the resolution signed by the secretary of the society to the central office and paragraph 4(3), (4) and (5) of Schedule 2 to this Act shall apply as it applies to a record of the alteration of a building society's powers.
- (13) Where the board of directors of a building society passes a resolution rescinding a resolution passed in pursuance of subsection (9) above the society shall send three copies of a record of the rescinding resolution signed by the secretary of the society to the central office and paragraph 4(3), (4) and (5) of Schedule 2 to this Act shall apply as it applies to a record of the alteration of a building society's powers, but subject to subsection (14) below.
- (14) No rescinding resolution shall be registered without the consent of the Commission.
- (15) Where, by virtue of this section, property is held by a building society the property shall constitute class 3 assets for the purposes of the requirements of this Part for the structure of commercial assets and "accordingly the aggregate value of the property shall count in accordance with section 20 towards the limits applicable to class 3 assets under that section.
- (16) The power to make an order under subsection (2)(c) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (17) In this section—
 - “company” means a company within the meaning of the ^{M14}Companies Act 1985 or the ^{M15}Companies (Northern Ireland) Order 1986;
 - “corresponding membership rights”, in relation to a body corporate, means such rights (other than rights arising from the holding of shares) as are attributable to membership of the body;
 - “deposit” and “deposit-taking business” have the same meaning as in [^{F74}the Banking Act 1987];
 - “industrial and provident society” means a society registered under the ^{M16}Industrial and Provident Societies Act 1965 or, in Northern Ireland, the ^{M17}Industrial and Provident Societies Act (Northern Ireland) 1969;
 - “property” includes rights of any description;and in this Act “associated body”, in relation to a building society, means a body as respects which any of the following conditions is satisfied, that is to say—
 - (i) the body is one in which the society holds shares or corresponding membership rights, or
 - (ii) the body is one to which the society is linked by resolution, or
 - (iii) the body is one in which, by virtue of subsection (8)(b) above, shares or corresponding membership rights are held by a body which falls within (i) or (ii) above;

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and “associated” shall be construed accordingly.

Textual Amendments

- F73** Pt. III (ss. 10-23) repealed (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 12(1)(a), 46(2), 47(3), **Sch. 9**; S.I. 1997/2668, art. 2, Sch. Pts. I(b), **II(j)**
- F74** Words substituted by **Banking Act 1987** (c. 22, SIF 10), s. 108(1), **Sch. 6 para. 26(1)**

Modifications etc. (not altering text)

- C20** S. 18 modified (1.7.1992) by S.I. 1992/1547, arts. 5, 6, **Sch. 2**
- C21** S. 18 modified by S.I. 1987/1498, art. 7, **Sch. 2 para. 5**

Marginal Citations

- M14** 1985 c. 6.
- M15** S.I. 1986/1032 (N.I. 6).
- M16** 1965 c. 12.
- M17** 1969 c. 24 (N.I.).

[^{F75}19] **Power for Treasury to add powers to hold other descriptions of class 3 assets.**

- (1) The Treasury may, with a view to extending or altering, or extending to other descriptions of building societies, the forms of property which are to constitute class 3 assets in the hands of building societies or building societies of particular descriptions, by order—
 - (a) specify forms of property which a building society is to have power to acquire, hold and dispose of as assets of that class, subject to any specified conditions or restrictions;
 - (b) without prejudice to paragraph (a) above, specify descriptions of bodies corporate shares or other interests or rights in which a building society is to have power to acquire, hold and dispose of as assets of that class, subject to any specified conditions or restrictions;
 - (c) make any amendments of or repeals in this Act which are consequential on the exercise of its powers under paragraph (a) or (b) above;
 - (d) make such incidental, supplemental or transitional provision as it considers necessary or expedient.
- (2) The powers conferred by subsection (1) above may be exercised so as to apply in relation to property situated or bodies incorporated within the United Kingdom or any other member State or other country or territory and so as to be exercisable for purposes other than the purposes of building societies under the powers conferred on them for the time being by or under this Act.
- (3) Any powers conferred on building societies under this section may be conferred on building societies of a specified description or all building societies other than those of a specified description.
- (4) Any power conferred on a building society under this section, if available to it, must, in order to be exercisable, be adopted by the society.
- (5) Where, by virtue of an order under subsection (1)(a) or (b) above, property is held by a building society the property shall constitute class 3 assets for the purposes of

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the requirements of this Part for the structure of commercial assets and accordingly the aggregate value of the property, as determined in accordance with the order, shall count in accordance with section 20 towards the limits applicable to class 3 assets under that section.

- (6) Subsection (5) above is subject to any provision contained in the order.
- (7) The power to make an order under subsection (1) above is exercisable by statutory instrument but no such order shall be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (8) In this section—
 - “property” includes rights of any description; and
 - “specified” means specified in an order under subsection (1) above.]

Textual Amendments

F75 Pt. III (ss. 10-23) repealed (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 12(1)(a), 46(2), 47(3), **Sch. 9**; S.I. 1997/2668, art. 2, Sch. Pts. I(b), II(j)

Commercial asset structure requirements

[^{F76}20 **Commercial asset structure requirements for building societies.**

- (1) The requirements for the structure of commercial assets applicable to building societies are the following.
- (2) The class 2 assets or, if it has class 3 assets, the aggregate of the class 2 and class 3 assets held by a building society at the end of a financial year shall not exceed whichever is the greater of—
 - (a) 10 per cent. of the total commercial assets held by the society at that time, or
 - (b) an amount corresponding to that percentage of the total commercial assets held by the society at the end of the preceding financial year.
- (3) The class 3 assets (if any) held by a building society at the end of a financial year shall not exceed whichever is the greater of—
 - (a) 5 per cent. of the total commercial assets held by the society at that time, or
 - (b) an amount corresponding to that percentage of the total commercial assets held by the society at the end of the preceding financial year.
- (4) The Treasury may by order made by statutory instrument direct that subsection (2) or (3) above shall have effect during the currency of the order as if such percentage as is specified in the order were substituted for the percentage specified in that subsection, not being a percentage greater than 25 per cent. in the case of subsection (2) and 15 per cent. in the case of subsection (3) above.
- (5) An order under subsection (4) above may—
 - (a) divide class 3 assets into sub-classes for the purposes of the order by reference to the provision of or made under this Part from which they arise;
 - (b) subject to subsection (6) below, prescribe different limits for different sub-classes; and

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- (c) make such transitional provision as appears to the Treasury to be necessary or expedient;

and any reference in this Act to a limit for a class of commercial assets shall, if a limit is in force under subsection (4) above for any sub-class of class 3 assets, be construed as including a reference to the limit for that sub-class.

- (6) No order under subsection (4) above shall prescribe as a limit for a sub-class of class 3 assets a percentage of total commercial assets less than the percentage in force immediately before the making of the order for that sub-class or, if the subclass is created by the order, for class 3 assets generally
- (7) An order under subsection (4) above shall not be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (8) The amount or value of the assets of any class of a building society for the purposes of this section is the amount or value as shown in the latest balance sheet or such other amount or value as the Commission determines to be the correct or, as the case requires, appropriate amount or value; and where the Commission determines an amount or value under this subsection the appropriate alterations shall be noted against the annual accounts of the society kept in the public file of the society.
- (9) In determining for the purposes of this section the asset holding of a building society with which another body corporate is associated there shall, subject to subsection (12) below, be attributed to the society, in accordance with aggregation rules made by the Commission with the consent of the Treasury under this subsection, the whole or part of the assets of whatever description of the associated body, as provided in the rules and subject to any exceptions provided in the rules.
- (10) The power to make aggregation rules under subsection (9) above includes power to make—
- (a) different rules for different circumstances,
 - (b) provision for assets of societies to be disregarded,
 - (c) provision for assets to be attributed to any class of assets of societies, and
 - (d) such supplementary, transitional and saving provisions as appear to the Commission to be necessary or expedient.
- (11) The power to make aggregation rules under subsection (9) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (12) The Commission may, on the application of a building society, approve rules to be applied for the purposes of this section for the attribution to the society of assets of bodies associated with the society; and so long as the rules continue to be approved by the Commission they, and not the aggregation rules in force under subsection (9) above, shall apply for the attribution of assets for the purposes of this section.
- (13) If the commercial assets of any class of a building society exceed the limits in force under this section the powers conferred on the Commission by section 36 shall become exercisable in relation to the society, but exceeding the limit shall not affect the validity of transactions effected in excess of it nor require the disposal of any assets.]

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Textual Amendments

F76 Pt. III (ss. 10-23) repealed (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 12(1)(a), 46(2), 47(3), **Sch. 9**; S.I. 1997/2668, art. 2, Sch. Pts. I(b), II(j)

Modifications etc. (not altering text)

C22 S. 20 modified (*temp.*) by S.I. 1986/2168, art. 8(3)

C23 S. 20 modified by S.I. 1986/2168, art. 4(2)(a)(i)(3)

C24 S. 20 amended (*temp.*) by Building Societies (Limits on Commercial Assets) Order 1988, S.I. 1988/1142, art. 2

C25 S. 20(2)(3) excluded by S.I. 1986/2168, art 5

Liquid assets

[^{F77}21] Liquid assets.

- (1) Subject to the following provisions of this section, a building society shall secure that, of its total assets, it keeps such a proportion of them having such a composition as will at all times enable the society to meet its liabilities as they arise.
- (2) A building society may keep assets of an authorised character beyond those required for the purpose of complying with subsection (1) above.
- (3) Subject to subsections (5) and (6) below, the assets held by a building society under subsection (1) or (2) above—
 - (a) shall not exceed in the aggregate a proportion of its total assets greater than 33 per cent., and
 - (b) shall be composed of assets of an authorised character and no others;but, subject to that, a building society, in deciding on the composition and proportion appropriate for the purpose of complying with subsection (1) above, shall have regard to the range and scale of its business and the composition and character of its assets and liabilities.
- (4) Subsection (3) above, in its application to a building society with which other bodies corporate are associated, is to be read as requiring the society to have regard to the range and scale of the business, and the composition and character of the assets and liabilities, of the society and the associated bodies.
- (5) The Commission may, by order made with the consent of the Treasury, direct that this section shall have effect during the currency of the order as if such percentage as if specified in the order were substituted for the percentage specified in subsection (3) above; but any order under this subsection shall expire (unless previously revoked) at the end of the period of twelve months beginning with the day on which the order came into operation.
- (6) The Commission may, at any time, by notice to a building society, direct that the limit in force under this section shall not, subject to any conditions specified in the notice, apply to the society during such period as the Commission specifies in the notice.
- (7) Regulations to be known as liquid asset regulations shall be made by the Commission, with the consent of the Treasury, for the purposes of this section and such regulations—

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- (a) shall prescribe descriptions of assets as assets of a character which societies may, in any prescribed circumstances and subject to any prescribed conditions, hold under this section for the purpose of meeting their liabilities as they arise,
 - (b) may make different provision for different descriptions of building societies, and
 - (c) may make such supplementary or incidental provision and such transitional provision as appears to the Commission to be necessary or expedient.
- (8) The power to make an order or regulations under subsection (5) or (7) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) If the assets of a building society which are kept in the form directed by subsection (1) above exceed at any time the percentage in force under this section at that time the powers conferred on the Commission by section 36 shall become exercisable in relation to the society, but exceeding the limit shall not affect the validity of transactions effected in excess of it.
- (10) In this section—
- “authorised”, in relation to the character of assets, means authorised by regulations under subsection (7) above for the purpose specified in paragraph (a) of that subsection;
 - “business” includes business the society proposes to carry on; and
 - “prescribed” means prescribed in regulations under subsection (7) above.]

Textual Amendments

F77 Pt. III (ss. 10-23) repealed (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 12(1)(a), 46(2), 47(3), **Sch. 9**; S.I. 1997/2668, art. 2, Sch. Pts. I(b), **II(j)**

Liabilities of associated bodies

^{F78}**22**

Textual Amendments

F78 S. 22 repealed (11.6.1996) by S.I. 1995/3233, **art. 5(1)** (with art. 5(2))

Other powers

[^{F79}**23** **Power to hedge.**

- (1) Subject to subsections (3) and (4) below, a building society may effect contracts of a prescribed description for the purpose of reducing the risk of loss arising from changes in interest rates, currency rates or other factors of a prescribed description which affect its business.

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- (2) The Commission, with the consent of the Treasury, may by order—
 - (a) specify as contracts which building societies have power to effect under this section descriptions of contract whose purpose or one of whose purposes is the reduction of the risk to businesses of loss arising from the factors specified in subsection (1) above or other similar factors, and
 - (b) regulate, or provide for the regulation of, the terms on which, the persons or descriptions of persons with whom, and the circumstances in which, contracts of a description specified under paragraph (a) above, may be effected by building societies.
- (3) Except as provided under subsection (4) below, the powers conferred by this section are not available to a building society which does not for the time being have a qualifying asset holding, but the cessation of their availability does not require the disposal of any property or rights.
- (4) The Commission, with the consent of the Treasury, may by order provide that subsection (3) above shall not have effect, as regards prescribed powers, in relation to prescribed descriptions of building societies.
- (5) The powers conferred by this section on a building society, if available to it, must, in order to be exercisable, be adopted by the society.
- (6) The power to make an order under subsection (2) or (4) above—
 - (a) includes power to make such transitional provision as the Commission considers necessary or expedient, and
 - (b) is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In this section “prescribed” means prescribed in an order under subsection (2) or (4) above, as the case may be.]

Textual Amendments

F79 Pt. III (ss. 10-23) repealed (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 12(1)(a), 46(2), 47(3), **Sch. 9**; S.I. 1997/2668, art. 2, Sch. Pts. I(b), **II(j)**

PART IV

PROTECTION OF INVESTORS

Modifications etc. (not altering text)

C26 Pt. IV (ss. 24-33) modified (1.7.1995) (*temp.* until 31.12.1999) by S.I. 1995/1442, **reg. 54(2)**

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Investor Protection Scheme

24 The Building Societies Investor Protection Board.

- (1) There shall be a body corporate to be known as the Building Societies Investor Protection Board (in this Part referred to as “the Board”) which—
- (a) shall hold, manage and apply in accordance with the protective scheme provisions of this Part a fund to be known as the Building Societies Investor Protection Fund (referred to in those provisions as “the Fund”); and
 - [^{F80}(b) shall, if a participating institution becomes insolvent, levy contributions to the Fund from other participating institutions in accordance with section 26; and.]
 - (c) shall have such other functions as are conferred on the Board by the protective scheme provisions of this Part.
- (2) Schedule 5 to this Act shall have effect with respect to the constitution of the Board and the procedural and other matters there mentioned.
- (3) In this Act “the protective scheme provisions” means [^{F81}sections 25 to 29A].
- [^{F82}(4) In this section and the protective scheme provisions—
- ‘the 1992 Regulations’ means the Banking Coordination (Second Council Directive) Regulations 1992 ^{F83};
- ‘the 1995 Regulations’ means the Credit Institutions (Protection of Depositors) Regulations 1995;
- [^{F84}‘administrator’, in relation to a participating institution, means an administrator of the institution under Part II of the ^{M18}Insolvency Act 1986 or Part III of the ^{M19}Insolvency (Northern Ireland) Order 1989;]]
- ‘ecu’ means—
- (a) the European currency unit as defined in Article 1 of Council Regulation No. 3320/94/EC ^{F85}; or
 - (b) except in section 27(5A), any other unit of account which is defined by reference to the European currency unit as so defined;
- ‘EEA currency’ means the currency of an EEA State or ecus;
- ‘EEA State’ means a State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 ^{F86} as adjusted by the Protocol signed at Brussels on 17th March 1993 ^{F87};
- ‘European authorised institution’ has the same meaning as in the 1992 Regulations;
- ‘home State’ and ‘home State scheme’ have the same meaning as in the 1995 Regulations;
- ‘Irish building society’ means an institution which is incorporated in or formed under the laws of the Republic of Ireland and whose characteristics correspond as nearly as may be to those of a building society;
- ‘participating EEA institution’ means—
- (a) a European authorised institution which, in accordance with Chapter I of Part II of the 1995 Regulations, is participating in the scheme established by the protective scheme provisions; or

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- (b) an institution which was formerly such an institution and continues to have a liability in respect of any investment for which it had a liability when it was such an institution;

'participating institution' means a building society or participating EEA institution.

Textual Amendments

- F80** S. 24(1)(b) substituted (1.7.1995) by S.I. 1995/1442, **reg. 36(1)** (with transitional and transitory provisions in **regs. 53(2), 54(2)**)
- F81** Words in s. 24(3) substituted (1.7.1995) by S.I. 1995/1442, **reg. 36(2)** (with transitional and transitory provisions in **regs. 53(2), 54(2)**)
- F82** S. 24(4) inserted (1.7.1995) by S.I. 1995/1442, **reg. 36(3)** (with transitional and transitory provisions in **regs. 53(2), 54(2)**)
- F83** S.I. 1992/3218: amended by S.I. 1993/3225.
- F84** Definition in s. 24(4) inserted (1.12.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 4**; S.I. 1997/2668, art. 2, **Sch. Pt. I(j)(i)(ii)**
- F85** O.J. L35, 31.12.94, page 1.
- F86** Cm 2073.
- F87** Cm 2183.

Modifications etc. (not altering text)

- C27** Ss. 24-26: power to repeal conferred (9.6.1997) by 1997 c. 32, s. 32(5)(a); S.I. 1997/1427, art. 2(g)

Marginal Citations

- M18** 1986 c.45.
- M19** S.I. 1989/2405 (N.I.19).

25 The Investor Protection Fund.

- (1) The Fund shall consist of—
- contributions levied from [^{F88}participating institutions] under section 26;
 - moneys borrowed by the Board under section 26(14);
 - income credited to the Fund in accordance with subsection (3) below;
 - payments made to the Board under subsection (6) below; and
 - money credited to the Fund in accordance with section 29.
- (2) The moneys constituting the Fund from time to time shall be placed by the Board in an account with the Bank of England.
- (3) So far as possible, the Bank of England shall invest moneys placed with it under subsection (2) above in Treasury bills; and any income from moneys so invested shall be credited to the Fund.

[^{F89}(3A) In subsection (3) above, the reference to Treasury bills includes a reference to bills and other short-term instruments issued by the government of another EEA State and appearing to the Bank of England to correspond as nearly as may be to Treasury bills:]

- The administrative expenses of the Board shall be defrayed out of the Fund.
- There shall be chargeable to the Fund—

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- (a) payments to meet administrative expenses of the Board in accordance with subsection (4) above;
- (b) moneys required for the repayment of the Board's borrowings, and interest thereon, under section 26(14); and
- (c) payments to investors under section 27 and any expenses incurred in connection with the making of such payments;
- (d) payments to contributory societies under section 29(7);

and, in the protective scheme provisions of this Part—

[^{F90}“authorised institution” means an institution authorised under the Banking Act 1987]

“the expenses attributable to the insolvency”, with reference to a [^{F91}participating institution] insolvency, means all the sums chargeable to the Fund under [^{F92}paragraphs (a) to (c)] above in respect of that insolvency except that, in the case of payments to meet administrative expenses of the Board, it means so much only of those expenses as the Board determines shall be attributed to the insolvency; and

“insolvency payments to investors” means the payments under section 27 referred to in paragraph (c) above, and “insolvency payment” has a corresponding meaning; and

^{F93}
...

- (6) The Commission shall, at the request of the Board, make payments to it towards the administrative expenses of the Board.
- (7) In so far as the Board authorises [^{F94}the Bank of England or]any [^{F95}authorised institution] or building society to receive on its behalf any contributions levied by the Board and to make on its behalf any of the insolvency payments to investors out of the sums so received, the sums so received need not be paid into the Fund and payments need not be made out of the Fund but shall be treated as if they were respectively comprised in and charged on the Fund and shall be accounted for accordingly

Textual Amendments

- F88** Words in s. 25(1)(a) substituted (1.7.1995) by S.I. 1995/1442, **reg. 37(1)** (with transitional and transitory provisions in **regs. 53(2), 54(2)**)
- F89** S. 25(3A) inserted (1.7.1995) by S.I. 1995/1442, **reg. 37(2)** (with transitional and transitory provisions in **regs. 53(2), 54(2)**)
- F90** Definition inserted by **Banking Act 1987 (c. 22, SIF 10)**, s. 108(1), **Sch. 6 para. 26(2)**
- F91** Words in s. 25(5) substituted (1.7.1995) by S.I. 1995/1442, **reg. 37(3)** (with transitional and transitory provisions in **regs. 53(2), 54(2)**)
- F92** Words in s. 25(5) substituted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 5(1)**; S.I. 1997/1427, **art. 2(k)(n)(i)**
- F93** Definitions repealed by **Banking Act 1987 (c. 22, SIF 10)**, s. 108, Sch. 6 para. 26(2), **Sch. 7 Pt. I**
- F94** Words in s. 25(7) inserted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 5(2)**; S.I. 1997/1427, **art. 2(k)(n)(i)**
- F95** Words substituted by **Banking Act 1987 (c. 22, SIF 10)**, s. 108(1), **Sch. 6 para. 26(3)**

Modifications etc. (not altering text)

- C28** Ss. 24-26: power to repeal conferred (9.6.1997) by 1997 c. 32, **s. 32(5)(a)**; S.I. 1997/1427, **art. 2(g)**
- C29** S. 25 extended (1.1.1993) by S.I. 1992/3218, **reg. 82(1)**, **Sch. 10 Pt. I para. 22(b)**

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[^{F96}25A Meaning of insolvency etc.

- (1) For the purpose of the protective scheme provisions of this Part, a building society becomes insolvent—
 - (a) on the making by the Commission of a determination that, for reasons which directly relate to the society’s financial circumstances, the society—
 - (i) is unable to repay investments which are due and payable; and
 - (ii) has no current prospect of being able to do so; or
 - (b) on the making by a court in any part of the United Kingdom, or in another EEA State, of a judicial ruling which—
 - (i) directly relates to the society’s financial circumstances; and
 - (ii) has the effect of suspending the ability of investors to make claims against the society,but only if investments made with the society have become due and payable and have not been repaid; and the occurrence of any of those events in those circumstances constitutes a “participating institution insolvency” for the purposes of those provisions.
- (2) For the purposes of the protective scheme provisions of this Part, a participating EEA institution becomes insolvent—
 - (a) on the making by the supervisory authority in the institution’s home State of a declaration that investments held by the institution are no longer available; or
 - (b) on the making by a court in any part of the United Kingdom, or in an EEA State other than the institution’s home State, of a judicial ruling which—
 - (i) directly relates to the institution’s financial circumstances; and
 - (ii) has the effect of suspending the ability of investors to make claims against the institution,but only if, in a case falling within paragraph (b) above, investments made with the [^{F97}institution] have become due and payable and have not been repaid; and the occurrence of any of those events, in those circumstances in a case falling within that paragraph, constitutes a “participating institution insolvency” for the purposes of those provisions.
- (3) For the purposes of the protective scheme provisions of this Part—
 - (a) a participating institution which has become insolvent by virtue of such a determination or declaration as is mentioned in subsection (1)(a) or (2)(a) above ceases to be insolvent on any withdrawal of the determination or declaration; and
 - (b) a participating institution which has become insolvent by virtue of such a judicial ruling as is mentioned in subsection (1)(b) or (2)(b) above ceases to be insolvent on any reversal of the ruling (whether on appeal or otherwise).
- (4) In relation to a building society, it shall be the duty of the Commission—
 - (a) to make such a determination as is mentioned in subsection (1)(a) above within 21 days of its being satisfied as there mentioned; and
 - (b) to withdraw such a determination within 21 days of its ceasing to be so satisfied.
- (5) In this section “investment”—
 - (a) in relation to a building society or Irish building society, means a deposit with or a share in the society;

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- (b) in relation to any other participating institution, means a deposit with the institution.]

Textual Amendments

- F96** S. 25A inserted (1.7.1995) by S.I. 1995/1442, **reg. 38** (with transitional and transitory provisions in regs. 53(2), 54(2))
- F97** Word in s. 25A(2) substituted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 6**; S.I. 1997/1427, **art. 2(k)(n)(i)**

Modifications etc. (not altering text)

- C30** S. 25A(4)(a) modified (1.7.1995) by S.I. 1995/1442, **reg. 53(4)** (with transitory provisions in reg. 54(2))

26 Power to levy contributions and to borrow money in event of insolvency.

^{F98}(1)

[^{F99}(2) If a participating institution becomes insolvent the Board shall levy contributions to the Fund for the purpose of making insolvency payments to investors at such level of investor protection as is provided for by section 27 and meeting the other expenses attributable to the insolvency.

(3) All institutions (other than the insolvent institution) which on the date of the insolvency are—

- (a) authorised building societies; or
- (b) European authorised institutions which, in accordance with Chapter I of Part II of the 1995 Regulations, are participating in the scheme established by the protective scheme provisions,

are liable to contribute to the Fund and are in the protective scheme provisions of this Part referred to as “contributory institutions”.

(4) If a participating institution becomes insolvent—

- (a) the Board shall, subject to subsection (10) below, levy a contribution from each of the contributory institutions; and
- (b) the amount of the contribution due from an institution shall be determined by applying to its share and deposit base a percentage determined by the Board for the purpose of the contributions levied to meet the expenses attributable to the insolvency.

(5) In determining the percentage to be applied under subsection (4) above to the share and deposit bases of contributory institutions, the Board shall have regard to the factors specified in subsection (6) below.

(6) Those factors are—

- (a) the amount available to meet the expenses attributable to the insolvency from the contributions leviable from contributory institutions; and
- (b) the amount of the expenses attributable to the insolvency at the level of investor protection provided for by section 27.]

(7) If it appears to the Board, as respects a [^{F100}participating institution] insolvent, that the contributions it has levied will be insufficient to make the insolvency payments to

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investors at the level of investor protection [^{F101}provided for by] section 27, the Board may levy further contributions under subsection (2) above from the [^{F102}contributory institutions].

- (8) Contributions to the Fund shall be levied on a [^{F103}contributory institution] by the Board by service on [^{F104}the institution] of a notice specifying the amount (or further amount) due, which shall be paid by [^{F104}the institution] not later than twenty-one days after the date on which the notice is served.

[^{F105}(8A) Where—

- (a) a notice under subsection (8) above is served on a contributory institution; and
(b) the amount specified in the notice remains unpaid after the period of twenty-one days mentioned in that subsection,

the Board shall as soon as practicable give written notice of that fact to the Commission.

- (9) In relation to any contribution, the share and deposit base of an authorised building society is such amount as represents the aggregate of so much of the society's liabilities as is referable to sums deposited with the society, or to shares in the society, as shown in the latest balance sheet sent to the Commission in accordance with section 81.

- (9A) In relation to any contribution, the share and deposit base of a participating EEA institution is the difference between—

- (a) such amount as represents the aggregate of so much of the institution's liabilities as is referable to sums deposited with the institution, or (in the case of an Irish building society) to shares in the institution, as shown in the latest balance sheet sent to the supervisory authority in its home State; and
(b) the amount mentioned in subsection (9B) below.

- (9B) The amount referred to in subsection (9A) above is the amount given by the formula—

$$\frac{HS}{UK}$$

where—

PA = so much of the first-mentioned amount as is attributable to desposits which are protected by the institution's home State scheme;

HS = the level of protection (expressed in ecus) afforded by that scheme at the time as at which the balance sheet was drawn up, or the level of protection mentioned below, whichever is the less;

UK = the level of protection (so expressed) afforded by this Part of this Act at that time.]

- (10) No [^{F106}contributory institution] shall be required to pay a contribution if, or to the extent that, the amount of that contribution, together with previous contributions levied under this section for the purposes of any [^{F107}participating institution] insolvency, after allowing for any repayments made to it under section 29, amounts to more than 0.3 per cent. of the [^{F108}institution's] share and deposit base as ascertained for the purposes of the contribution in question.

- (11) Nothing in subsection (10) above—

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- (a) shall entitle [^{F109}an institution] to repayment of any contribution previously made, or
 - (b) shall prevent the Board from proceeding to levy contributions from other [^{F110}contributory institutions] in whose case the limit in that subsection has not been reached.
- (12) The Treasury may, after consultation with the Board, by order made by statutory instrument, amend subsection (10) above so as to substitute for the percentage for the time being specified in that subsection such other percentage as may be specified in the order.
- (13) No order shall be made under subsection (12) above unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (14) If, as respects a [^{F111}participating institution] insolvency, it appears to the Board desirable to do so for the purpose of facilitating the making of insolvency payments to investors, the Board may borrow temporarily for that purpose subject, however, to the limit imposed by subsection (15) below.
- (15) The aggregate of the amounts outstanding in respect of the principal of and interest due on sums borrowed under subsection (14) above shall not at any time exceed the aggregate of the sums leviable at that time from [^{F112}contributory institutions] for the purposes of any insolvency.
- (16) Any sums borrowed by the Board under subsection (14) above in respect of a [^{F113}participating institution] insolvency shall be repaid as soon as practicable after the contributions levied in respect of the insolvency have been paid by the [^{F114}contributory institutions].
- (17) In this section “the level of investor protection”, in relation to insolvency payments to investors, means the proportion applicable for the purpose of calculating the amount of those payments under section 27.

Textual Amendments

- F98** S. 26(1) omitted (1.7.1995) by virtue of S.I. 1995/1442, **reg. 39(1)** (with transitional and transitory provisions in **regs. 53(2), 54(2)**)
- F99** S. 26(2)-(6) substituted (1.7.1995) by S.I. 1995/1442, **reg. 39(2)** (with transitional and transitory provisions in **regs. 53(2), 54(2)**)
- F100** Words in s. 26(7) substituted (1.7.1995) by S.I. 1995/1442, **reg. 39(3)(a)** (with transitional and transitory provisions in **regs. 53(2), 54(2)**)
- F101** Words in s. 26(7) substituted (1.7.1995) by S.I. 1995/1442, **reg. 39(3)(b)** (with transitional and transitory provisions in **regs. 53(2), 54(2)**)
- F102** Words in s. 26(7) substituted (1.7.1995) by S.I. 1995/1442, **reg. 39(3)(c)** (with transitional and transitory provisions in **regs. 53(2), 54(2)**)
- F103** Words in s. 26(8) substituted (1.7.1995) by S.I. 1995/1442, **reg. 39(4)(a)** (with transitional and transitory provisions in **regs. 53(2), 54(2)**)
- F104** Words in s. 26(8) substituted (1.7.1995) by S.I. 1995/1442, **reg. 39(4)(b)** (with transitional and transitory provisions in **regs. 53(2), 54(2)**)
- F105** S. 26(8A)-(9B) substituted for s. 26(9) (1.7.1995) by S.I. 1995/1442, **reg. 39(5)** (with transitional and transitory provisions in **regs. 53(2), 54(2)**)
- F106** Words in s. 26(10) substituted (1.7.1995) by S.I. 1995/1442, **reg. 39(6)(a)** (with transitional and transitory provisions in **regs. 53(2), 54(2)**)

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- F107** Words in s. 26(10) substituted (1.7.1995) by S.I. 1995/1442, **reg. 39(6)(b)** (with transitional and transitory provisions in regs. 53(2), 54(2))
- F108** Words in s. 26(10) substituted (1.7.1995) by S.I. 1995/1442, **reg. 39(6)(c)** (with transitional and transitory provisions in regs. 53(2), 54(2))
- F109** Words in s. 26(11) substituted (1.7.1995) by S.I. 1995/1442, **reg. 39(7)(a)** (with transitional and transitory provisions in regs. 53(2), 54(2))
- F110** Words in s. 26(11) substituted (1.7.1995) by S.I. 1995/1442, **reg. 39(7)(b)** (with transitional and transitory provisions in regs. 53(2), 54(2))
- F111** Words in s. 26(14) substituted (1.7.1995) by S.I. 1995/1442, **reg. 39(8)** (with transitional and transitory provisions in regs. 53(2), 54(2))
- F112** Words in s. 26(15) substituted (1.7.1995) by S.I. 1995/1442, **reg. 39(9)** (with transitional and transitory provisions in regs. 53(2), 54(2))
- F113** Words in s. 26(16) substituted (1.7.1995) by S.I. 1995/1442, **reg. 39(10)(a)** (with transitional and transitory provisions in regs. 53(2), 54(2))
- F114** Words in s. 26(16) substituted (1.7.1995) by S.I. 1995/1442, **reg. 39(10)(b)** (with transitional and transitory provisions in regs. 53(2), 54(2))

Modifications etc. (not altering text)

- C31** Ss. 24-26: power to repeal conferred (9.6.1997) by 1997 c. 32, s. 32(5)(a); S.I. 1997/1427, art. 2(g)

27 Payments to investors.

- [^{F115}(1) Subject to the following provisions of this section, if at any time a participating institution becomes insolvent, the Board—
- (a) shall as soon as practicable pay out of the Fund to persons who have at that time protected investments in the institution which are due and payable amounts equal to 90 per cent of their protected investments; and
 - (b) shall in any event secure that, before the end of the relevant period, it is in a position to make those payments as soon as they fall to be made.
- (2) If at any time a participating institution ceases to be insolvent, subsection (1) above shall cease to apply in relation to that institution.
- (2A) In subsection (1) above “the relevant period” means—
- (a) the period of three months beginning with the time when the institution becomes insolvent; or
 - (b) that period and such additional period or periods, being not more than three and of not more than three months each, as the Commission may in exceptional circumstances allow.]

(3) A person claiming to be entitled to a payment under this section in respect of his protected investment in an [^{F116}insolvent participating institution] shall make his claim in such form, with such evidence proving it, and within such period, as the Board directs and either to the Board or to [^{F117}such institution (whether the Bank of England, an authorised institution or a building society)] authorised by the Board to make the payments on its behalf, as the Board directs.

[^{F118}(3A) The amount of any payment which falls to be made under subsection (1) above in respect of a protected investment made with an office of a building society in another EEA State shall not exceed such amount as the Board may determine is or would be payable, in respect of an equivalent investment or deposit made with an institution authorised in that State, under any corresponding scheme for the protection of investors or depositors which is in force in that State.

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(3B) Where the Board is satisfied that an investor has received or is entitled to receive, under any home State scheme, a payment in respect of a protected investment made with a United Kingdom office of a participating EEA institution, the Board shall deduct an amount equal to that payment from the payment that would otherwise be made to the investor under subsection (1) above.]

[^{F119}(4) The Board may decline to make any payment under subsection (1) to a person who, in the opinion of the Board—

- (a) had any responsibility for, or may have profited directly or indirectly from, the circumstances giving rise to the institution's financial difficulties; or
- (b) is entitled to receive a payment in respect of his protected investment under a scheme established under section 54 of the Financial Services Act 1986 or set up pursuant to the conditions and arrangements referred to in section 43(2) of that Act,

and where any payment as mentioned in paragraph (b) above has been received by a person, the Board shall decline to make a payment under subsection (1) to that person.]

[^{F120}(4A) There shall be deducted from any payment to be made by the Board under subsection (1) above in respect of a protected investment any payment already made in respect of that investment by a liquidator [^{F121}or administrator]]of the institution; and in this subsection, in relation to an institution formed under the law of a country or territory outside the United Kingdom, the reference to a liquidator [^{F121}or administrator]includes a reference to a person whose functions appear to the Board to correspond as nearly as may be to those of a liquidator [^{F121}or administrator].

(5) For the purposes of this section in its application in relation to a participating institution which has become insolvent—

- (a) a person has at any time a protected investment in the institution if he has a deposit with the institution in an EEA currency or, in the case of a building society or Irish building society, a share in the society; and
- (b) his protected investment is the total liability of the institution to him, limited to the maximum mentioned in subsection (5A) below, which is referable to sums deposited with the institution or, in the case of a building society or Irish building society, to shares in the society.

(5A) The maximum is £20,000 or the sterling equivalent of 22,222 ecus immediately before the institution became insolvent, whichever is the greater.

(5B) In calculating a person's protected investment for the purposes of subsection (5) above, the amount to be taken into account as regards any deposit made in another EEA currency shall be its sterling equivalent immediately before the time when the institution became insolvent, or the time when the investment became due and payable, whichever is the later.

(5C) In its application to a participating EEA institutions, subsection (5) above shall have effect as if any reference to a deposit with, or sums deposited with, the institution were a reference to a deposit with or sums deposited with, a United Kingdom office of the institution.

(6) The Treasury, after consultation with the Board, may by order made by statutory instrument—

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- (a) amend [^{F122}subsection (1)] above so as to substitute for the percentage for the time being specified in that subsection [^{F122}such greater percentage] as may be specified in the order; and
 - [^{F123}(b) amend subsection (5A) above so as to substitute for either sum for the time being specified in that subsection such greater sum as may be specified in the order.]
- (7) No order shall be made under subsection (6) above unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.
- [^{F124}(8) In determining whether a person has a protected investment in a participating institution and the amount of it there shall be disregarded—
- (a) any deposit or shares which are own funds within the meaning given by Article 2 of Directive 89/299/EEC^{M20};
 - (b) any deposit made or share acquired by a credit institution on its own behalf and for its own account;
 - (c) any deposit or share which the Board is satisfied was made or acquired in the course of a money-laundering transaction;
 - (d) any deposit by a person mentioned in item 1 or 2 of Annex I to Directive 94/19/EC^{M21} which was made otherwise than as trustee for a person not so mentioned;
 - (e) any deposit, security or liability which falls within item 10 or 12 of that Annex; and
 - (f) in the case of an institution which has ceased to be a European authorised institution which, in accordance with Chapter I of Part II of the 1995 Regulations, is participating in the scheme established by the protective scheme provisions, any deposit made with the institutions after it ceased to be a such an institution.
- (8A) Paragraph (b) of subsection (8) above has effect subject to the provisions of Schedule 6 to this Act; and a transaction in connection with which an offence has been committed under—
- (a) any enactment specified in a regulation 2(3) of the Money Laundering Regulations 1993^{M22}; or
 - (b) any enactment in force in another EEA State, or in a country or territory outside the European Economic Area, which has effect for the purpose of prohibiting money laundering within the meaning of Article 1 of Directive 91/308/EEC^{M23},
- is a money-laundering transaction for the purposes of paragraph (c) of that subsection at any time if, at that time, a person stands convicted of the offence or has been charged with the offence and has not been tried.
- (9) In determining what is a protected investment of an investor, no account shall be taken of any liability unless—
- (a) proof of the debt, or a claim for repayment of the investment, which gives rise to the liability has been lodged with a liquidator [^{F125}or administrator]] of the institution; or
 - (b) the investor has provided the Board with all such written authorities, information and documents as, in the event of a liquidator [^{F125}or administrator] being appointed, the Board will need for the purpose of lodging and pursuing, on the investor's behalf, a proof of the debt, or a claim for the repayment of the investment, which gives rise to the liability.

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- (9A) In subsection (9) above, in relation to an institution incorporated in or formed under the law of an EEA State other than the United Kingdom—
- (a) references to a liquidator [^{F126}or administrator] include references to a person whose functions appear to the Board to correspond as nearly as may be to those of a liquidator [^{F126}or administrator]; and
 - (b) references to the lodging, or the lodging and pursuing, of a proof of the debt, or a claim for the repayment of the deposit, which gives rise to the liability include references to the doing of an act or acts which appear to the Board to correspond as nearly as may be to the lodging, or the lodging and pursuing, of such a proof or claim,
- (10) Unless the Board otherwise directs in any particular case or class of case, in determining the total liability of an insolvent [^{F127}participating institution] to any person for the purposes of subsection (1) above, there shall be deducted the amount of any liability of that person to [^{F128}the institution]—
- (a) in respect of which a right of set-off existed immediately before [^{F128}the institution] became insolvent against any such investment of his as is referred to in that subsection, or
 - (b) in respect of which such a right would then have existed if the investment in question had been repayable on demand and the liability in question had fallen due.
- (11) Payments under this section in respect of a protected investment in an insolvent [^{F129}participating institution] may, if the Board thinks fit, be made by such instalments as it determines for the purposes of that insolvency.
- (12) Schedule 6 to this Act, which contains provisions about investments held by trustees or jointly or on client's account, shall have effect.

Textual Amendments

- F115** S. 27(1)-(2A) substituted for s. 27(1)(2) (1.7.1995) by S.I. 1995/1442, **reg. 40(1)** (with transitional and transitory provisions in **regs. 53(2), 54(2)**)
- F116** Words in s. 27(3) substituted (1.7.1995) by S.I. 1995/1442, **reg. 40(2)** (with transitional and transitory provisions in **regs. 53(2), 54(2)**)
- F117** Words in s. 27(3) substituted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 7(1)**; S.I. 1997/1427, **art. 2(k)(n)(i)**
- F118** S. 27(3A)-(3B) inserted (1.7.1995) by S.I. 1995/1442, **reg. 40(3)** (with transitional and transitory provisions in **regs. 53(2), 54(2)**)
- F119** S. 27(4) substituted (26.9.1998) by S.I. 1998/2169, **art. 3**
- F120** S. 27(4A)-(5C) substituted for s. 27(5) (1.7.1995) by S.I. 1995/1442, **reg. 40(5)** (with transitional and transitory provisions in **regs. 53(2), 54(2)**)
- F121** Words in s. 27(4A) inserted (1.12.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 7(2)**; S.I. 1997/2668, **art. 2, Sch. Pt. I(l)(iii)**
- F122** Words in s. 27(6)(a) substituted (1.7.1995) by S.I. 1995/1442, **reg. 40(6)(a)** (with transitional and transitory provisions in **regs. 53(2), 54(2)**)
- F123** S. 27(6)(b) substituted (1.7.1995) by S.I. 1995/1442, **reg. 40(6)(b)** (with transitional and transitory provisions in **regs. 53(2), 54(2)**)
- F124** S. 27(8)-(9A) substituted for s. 27(8)(9) (1.7.1995) by S.I. 1995/1442, **reg. 40(7)** (with transitional and transitory provisions in **regs. 53(2), 54(2)**)
- F125** Words in s. 27(9) inserted (1.12.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 7(3)**; S.I. 1997/2668, **art. 2, Sch. Pt. I(l)(iii)**

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F126 Words in s. 27(9A)(a) inserted (1.12.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 7(4)**; S.I. 1997/2668, art. 2, **Sch. Pt. I(I)(iii)**

F127 Words in s. 27(10) substituted (1.7.1995) by S.I. 1995/1442, **reg. 40(8)(a)** (with transitional and transitory provisions in regs. 53(2), 54(2))

F128 Words in s. 27(10) substituted (1.7.1995) by S.I. 1995/1442, **reg. 40(8)(b)** (with transitional and transitory provisions in regs. 53(2), 54(2))

F129 Words in s. 27(11) substituted (1.7.1995) by S.I. 1995/1442, **reg. 40(9)** (with transitional and transitory provisions in regs. 53(2), 54(2))

Modifications etc. (not altering text)

C32 Ss. 27, 28: power to repeal conferred (9.6.1997) by 1997 c. 32, s. 32(5)(b)(ii); S.I. 1997/1427, art. 2(g)

Marginal Citations

M20 O.J. L124, 5.5.89, page 16.

M21 O.J. L135, 31.5.94, page 5.

M22 S.I. 1993/1933.

M23 O.J. L166, 28.6.91, page 77.

[^{F130}27A Membership of insolvency committees etc.

- (1) The following provisions of this section have effect notwithstanding that the Board may not yet have made or become liable to make a payment under section 27(1) in relation to a participating institution which has become insolvent.
- (2) The Board shall at all times be entitled to receive any notice or other document required to be sent to a creditor of the institution whose debt has been proved.
- (3) A duly authorised representative of the Board shall be entitled—
 - (a) to attend any meeting of creditors of the institution and to make representations as to any matter for decision at that meeting;
 - (b) to be a member of any committee established under section 301 of the Insolvency Act 1986;
 - (c) to be a commissioner under section 30 of the ^{M24}Bankruptcy (Scotland) Act 1985;
 - (d) to be a member of a committee established for the purposes of Part IV or V of the ^{M25}Insolvency Act 1986 under section 101 of that Act or under section 141 or 142 of that Act;
 - (e) to be a member of any committee established under Article 274 of the ^{M26}Insolvency (Northern Ireland) Order 1989; and
 - (f) to be a member of a committee established for the purposes of Part V or VI of the Insolvency (Northern Ireland) Order 1989 under Article 87 or under Article 120 of that Order.
- (4) Where a representative of the Board exercises his right to be a member of such a committee as is mentioned in paragraph (b), (d), (e) or (f) of subsection (3) above, or to be a commissioner by virtue of paragraph (c) of that subsection—
 - (a) he may not be removed except with the consent of the Board; and
 - (b) his appointment under that subsection shall be disregarded for the purposes of any provision made by or under any enactment which specifies a minimum or maximum number of members of such a committee or commission.]

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Textual Amendments

F130 S. 27A inserted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 8**; S.I. 1997/1427, **art. 2(k)(n)(i)**

Marginal Citations

M24 1985 c.66.

M25 1986 c.45.

M26 S.I. 1989/2405 (N.I.19).

28 Liability of insolvent society in respect of payments by Board.

[^{F131}(1) This section applies where—

- (a) a participating institution becomes insolvent, and
- (b) the Board, by reason of the insolvency, has made, or is under a liability to make, an insolvency payment to an investor in respect of his protected investment.]

(2) Where this section applies [^{F132}in respect of an institution that is being wound up]—

- (a) the [^{F133}institution] shall become liable to the Board, ^{F134}. . ., for an amount equal to the amount of the insolvency payment to the investor;
- (b) the liability of [^{F135}the institution] to the investor, whether referable to deposits or referable to shares of his (in this section referred to as “the liability to the investor”), shall be reduced by an amount equal to the insolvency payment made or to be made to him by the Board; and
- (c) the respective duties of the liquidator of the [^{F136}institution]—
 - (i) to make payments to the Board on account of the liability imposed by paragraph (a) above and to the investor on account of the liability to the investor so far as that liability is referable to deposits of his (after taking account of paragraph (b) above), and
 - (ii) to make payments to the Board on account of the liability imposed by paragraph (a) above and to the investor on account of the liability to the investor so far as that liability is referable to shares of his (after taking account of paragraph (b) above),

shall be varied in accordance with subsection (4) and subsection (5) below; and in those subsections “the liability to the Board” means the liability imposed by paragraph (a) above on [^{F135}the institution].

[^{F137}(2A) The liability imposed by subsection (2)(a) above shall have effect—

- (a) where the liability of the institution to the investor is referable to deposits, as a liability in respect of deposits received immediately before the time when the institution began to be wound up;
- (b) where that liability is referable to shares, as a liability in respect of shares issued immediately before that time.]

(3) Where the [^{F138}institution’s] liability to the investor is referable to both shares and deposits, the amount equal to the insolvency payment to him shall, for the purposes of subsection (2) (b) above, be first applied in reduction of the liability referable to his shares then, if that amount exceeds that liability, in reduction of the liability referable to his deposits.

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- (4) The variation in the liquidator’s duty where the liability to the investor is referable to deposits of his is as follows—
- (a) in the first instance the liquidator shall pay to the Board instead of to the investor any amounts which, apart from this section, would be payable on account of the liability to the investor referable to deposits of his except in so far as that liability relates to a secured deposit; and
 - (b) if at any time the total amount paid to the Board by virtue of paragraph (a) above and in respect of the liability to the Board equals the amount of the insolvency payment referable to deposits of the investor, the liquidator shall thereafter pay to the investor instead of to the Board any amount which, [F139]apart from this paragraph], would be payable to the Board in respect of the liability to the Board.
- (5) The variation in the liquidator’s duty where the liability to the investor is referable to shares of his is as follows—
- (a) in the first instance the liquidator shall pay to the Board instead of to the investor any amounts which, apart from this section, would be payable on account of the liability to the investor referable to shares of his; and
 - (b) if at any time the total amount paid to the Board by virtue of paragraph (a) above and in respect of the liability to the Board equals the amount of the insolvency payment referable to shares of the investor, the liquidator shall thereafter pay to the investor instead of to the Board any amount which, [F139]apart from this paragraph], would be payable to the Board in respect of the liability to the Board.
- [F140](5A) Where this section applies in respect of an institution that is not being wound up—
- (a) the institution shall, at the time when the insolvency payment falls to be made by the Board, become liable to the Board for an amount equal to that payment; and
 - (b) the liability of the institution to the investor shall be reduced by an amount equal to that payment.
- (5B) Where a participating institution is wound up after it has become insolvent subsections (2) to (5) above shall not apply to any insolvency payment to the extent to which the Board has received a payment in respect of it by virtue of subsection (5A)(a) above.]
- [F141](6) Where by virtue of paragraph 3 of Schedule 6 to this Act the insolvency payment is or is to be made by the Board to a person other than the person to whom the institution is liable in respect of the protected investment, any reference in the preceding provisions of this section to the liability to the investor shall be construed as a reference to the liability of the institution to the person to whom that payment would fall to be made by the Board apart from that paragraph.]
- [F142](7)
- [F142](8)
- (9) Rules may be made—
- (a) for England and Wales and for Scotland, under section 411 of the M27 Insolvency Act 1986, and
 - (b) for Northern Ireland, under [F143]Article 359 of the Insolvency (Northern Ireland) Order 1989];

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for the purpose of integrating the procedure provided for in this section [F144 and section 29A(3) to (5)] into the general procedure on winding up.

Textual Amendments

- F131** S. 28(1) substituted (1.7.1995) by S.I. 1995/1442, **reg. 41(1)** (with transitional and transitory provisions in **regs. 53(2), 54(2)**)
- F132** Words in s. 28(2) inserted (1.7.1995) by S.I. 1995/1442, **reg. 41(2)(a)** (with transitional and transitory provisions in **regs. 53(2), 54(2)**)
- F133** Words in s. 28(2) substituted (1.7.1995) by S.I. 1995/1442, **reg. 41(2)(b)** (with transitional and transitory provisions in **regs. 53(2), 54(2)**)
- F134** Words in s. 28(2)(a) ceased to have effect (9.6.1997) and repealed (1.12.1997) by 1997 c. 32, ss. 33(1), 46(2), **Sch. 9**; S.I. 1997/1427, **art. 2(h)**; S.I. 1997/2668, **art. 2(1), Sch. Pt. I**
- F135** Words in s. 28(2) substituted (1.7.1995) by S.I. 1995/1442, **reg. 41(2)(c)** (with transitional and transitory provisions in **regs. 53(2), 54(2)**)
- F136** Words in s. 28(2) substituted (1.7.1995) by S.I. 1995/1442, **reg. 41(2)(e)** (with transitional and transitory provisions in **regs. 53(2), 54(2)**)
- F137** S. 28(2A) inserted (9.6.1997) by 1997 c. 32, s. 33(2); S.I. 1997/1427, **art. 2(h)**
- F138** Word in s. 28(3) substituted (1.7.1995) by S.I. 1995/1442, **reg. 41(3)** (with transitional and transitory provisions in **regs. 53(2), 54(2)**)
- F139** Words in s. 28(4)(b)(5)(b) substituted (9.6.1997) by 1997 c. 32, s. 33(3); S.I. 1997/1427, **art. 2(h)**
- F140** S. 28(5A)(5B) inserted (1.7.1995) by S.I. 1995/1442, **reg. 41(4)** (with transitional and transitory provisions in **regs. 53(2), 54(2)**)
- F141** S. 28(6) substituted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 9**; S.I. 1997/1427, **art. 2(k)(n)(i)**
- F142** S. 28(7)(8) omitted (1.7.1995) by virtue of S.I. 1995/1442, **reg. 41(6)** (with transitional and transitory provisions in **regs. 53(2), 54(2)**)
- F143** Words in s. 28(9)(b) substituted (N.I.) (01.10.1991) by S.I. 1989/2405 (N.I. 19), arts. 2(1), 381, **Sch. 9 Pt. II para. 43(b)**; S.R. 1991/411, **art. 2**
- F144** Words in s. 28(9) inserted (1.7.1995) by S.I. 1995/1442, **reg. 41(7)** (with transitional and transitory provisions in **regs. 53(2), 54(2)**)

Modifications etc. (not altering text)

- C33** Ss. 27, 28: power to repeal conferred (9.6.1997) by 1997 c. 32, s. 32(5)(b)(ii); S.I. 1997/1427, **art. 2(g)**

Marginal Citations

- M27** 1986 c. 45.

29 Repayments in respect of contributions.

- (1) Any moneys received by the Board under section 28 in respect of a [F145 participating institution] insolvency shall not form part of the Fund but, for the remainder of the financial year of the Board in which they are received, shall be retained for the purposes of this section in its application in relation to that insolvency and so far as appears to the Board appropriate, shall be invested in Treasury bills; and any income arising from moneys so invested during the remainder of the year shall be credited to the Fund.
- (2) The Board shall, in connection with each [F146 participating institution] insolvency for the purposes of which it has levied contributions under section 26, prepare a scheme for the making, out of moneys received by the Board under section 28 in respect of

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that insolvency, of repayments to the [F147 contributory institutions] in proportion to the contributions made by each [F148 such institution] in respect of the insolvency.

- (3) As soon as practicable after the end of the financial year of the Board in which any moneys are received by the Board in respect of a [F149 participating institution] insolvency, the Board shall, subject to subsection (4) below, make out of those moneys the payments required by the scheme made under subsection (2) above in connection with that insolvency.
- (4) Where payments are due under subsection (3) above to [F150 participating institutions] from whom contributions are due under section 26 for the purposes of other [F151 participating institution] insolvencies, the Board may appropriate out of the moneys retained by it under subsection (1) above amounts not exceeding the contributions due from [F152 those institutions] and apply them as if they had been paid by [F152 those institutions] as contributions for the purposes of the other [F151 participating institution] insolvencies.
- (5) If the Board makes appropriations under subsection (4) above, then, the amounts so appropriated shall be treated for all purposes as having been paid by the Board to those [F153 institutions] in or towards discharge of its debts to them and paid by the [F153 institutions] to the Board as contributions and corresponding amounts shall be credited to the Fund and debited to the account kept for the purposes of this section.
- (6) If in any financial year of the Board the payments made under subsection (3) above (in that and any previous years) in pursuance of a scheme under subsection (2) above are more than sufficient to provide for repayment in full of all the contributions to which the scheme related, the balance remaining of the moneys received and retained by Board as mentioned in subsection (1) above shall be credited to the Fund.
- (7) The Board, having regard to the factors specified in subsection (8) below, shall, as respects sums representing—
 - (a) any balance credited to the Fund under subsection (6) above and any interest thereon, or
 - (b) any balance of the contributions received in respect of the insolvency remaining after the making of insolvency payments to investors and the meeting of the other expenses attributable to the insolvency and any interest thereon,

either retain them in the Fund or pay so much of them to the [F154 contributory institutions] in proportion to the contributions made by each such [F155 institution] in respect of the insolvency, as the Board may think fit.

- (8) Those factors are—
 - (a) the likely level of future administrative expenses of the Board, and
 - (b) the likelihood of other [F156 participating institutions] becoming insolvent and, if they did, the amount of the expenses likely to be attributable to those insolvencies and the amounts likely to be available from [F157 contributory institutions] to meet those expenses.

Textual Amendments

F145 Words in s. 29(1) substituted (1.7.1995) by S.I. 1995/1442, reg. 42(1) (with transitional and transitory provisions in regs. 53(2), 54(2))

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- F146** Words in s. 29(2) substituted (1.7.1995) by S.I. 1995/1442, **reg. 42(2)(a)** (with transitional and transitory provisions in regs. 53(2), 54(2))
- F147** Words in s. 29(2) substituted (1.7.1995) by S.I. 1995/1442, **reg. 42(2)(b)** (with transitional and transitory provisions in regs. 53(2), 54(2))
- F148** Words in s. 29(2) substituted (1.7.1995) by S.I. 1995/1442, **reg. 42(2)(c)** (with transitional and transitory provisions in regs. 53(2), 54(2))
- F149** Words in s. 29(3) substituted (1.7.1995) by S.I. 1995/1442, **reg. 42(3)** (with transitional and transitory provisions in regs. 53(2), 54(2))
- F150** Words in s. 29(4) substituted (1.7.1995) by S.I. 1995/1442, **reg. 42(4)(a)** (with transitional and transitory provisions in regs. 53(2), 54(2))
- F151** Words in s. 29(4) substituted (1.7.1995) by S.I. 1995/1442, **reg. 42(4)(b)** (with transitional and transitory provisions in regs. 53(2), 54(2))
- F152** Words in s. 29(4) substituted (1.7.1995) by S.I. 1995/1442, **reg. 42(4)(c)** (with transitional and transitory provisions in regs. 53(2), 54(2))
- F153** Words in s. 29(5) substituted (1.7.1995) by S.I. 1995/1442, **reg. 42(5)** (with transitional and transitory provisions in regs. 53(2), 54(2))
- F154** Words in s. 29(7) substituted (1.7.1995) by S.I. 1995/1442, **reg. 42(6)(a)** (with transitional and transitory provisions in regs. 53(2), 54(2))
- F155** Words in s. 29(7) substituted (1.7.1995) by S.I. 1995/1442, **reg. 42(6)(b)** (with transitional and transitory provisions in regs. 53(2), 54(2))
- F156** Words in s. 29(8) substituted (1.7.1995) by S.I. 1995/1442, **reg. 42(7)(a)** (with transitional and transitory provisions in regs. 53(2), 54(2))
- F157** Words in s. 29(8) substituted (1.7.1995) by S.I. 1995/1442, **reg. 42(7)(b)** (with transitional and transitory provisions in regs. 53(2), 54(2))

Modifications etc. (not altering text)

- C34** **Ss. 29-31:** power to repeal conferred (9.6.1997) by 1997 c. 32, **s. 32(5)(a)**; S.I. 1997/1427, **art. 2(g)**

[^{F158}29A Power to obtain information.

- (1) If required to do so by a request in writing made by the Board, the Commission may by notice in writing served on a contributory institution require the institution, within such time and at such place as may be specified in the notice, to furnish the Board with such information and to produce to it such documents, or documents of such a description, as the Board may reasonably require for the purpose of determining the contributions of the institution under this Part of this Act.
- (2) Subsections (6) to (10) of section 52^{M28} shall have effect in relation to any requirement imposed under subsection (1) above on a building society as they have effect in relation to a requirement imposed under that section.
- (3) The Board may by notice in writing served on an insolvent participating institution or, where a person has been appointed as liquidator [^{F159}or administrator]] of such an institution, on that person, require the institution or person, at such time or times and at such place as may be specified in the notice—
 - (a) to furnish the Board with such information; and
 - (b) to produce to the Board such books or papers specified in the notice, as the Board may reasonably require to enable it to carry out its functions under the protective scheme provisions of this Part.
- (4) Where, as a result of a participating institution being wound up, any books or papers have come into the possession of the office-holder mentioned in subsection (5) below,

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he shall permit any person duly authorised by the Board to inspect the books or papers for the purpose of establishing—

- (a) the identity of those of the institution’s investors to whom the Board is liable to make an insolvency payment; and
 - (b) the amount of the protected investment held by each of those investors.
- (5) The office-holder referred to in subsection (4) above is—
- (a) in England and Wales, the Official Receiver;
 - (b) in Scotland, the liquidator; and
 - (c) in Northern Ireland, the Official Receiver for Northern Ireland.

Textual Amendments

F158 S. 29A inserted (1.7.1995) by S.I. 1995/1442, **reg. 43** (with transitional and transitory provisions in regs. 53(2), 54(2))

F159 Words in s. 29A(3) inserted (1.12.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 10**; S.I. 1997/2668, **art. 2(1)**, **Sch. Pt. I(i)(iv)**

Modifications etc. (not altering text)

C35 Ss. 29-31: power to repeal conferred (9.6.1997) by 1997 c. 32, s. 32(5)(a); S.I. 1997/1427, **art. 2(g)**

Marginal Citations

M28 Section 52 was amended by the **Banking Coordination (Second Council Directive) Regulations 1992** (S.I. 1992/3218), **regulation 75**.

30 Tax treatment of contributions and repayments.

In computing for the purposes of the Tax Acts the profits or gains arising from the trade carried on by a contributory building society—

- (a) to the extent that it would not be deductible apart from this paragraph, any sum expended or treated under section 29 as expended by the society in paying a contribution to the Fund may be deducted as an expense; and
- (b) any payment which is made or treated as made to the society by the Board under section 29(3) or (7) shall be treated as a trading receipt.

Modifications etc. (not altering text)

C36 Ss. 29-31: power to repeal conferred (9.6.1997) by 1997 c. 32, s. 32(5)(a); S.I. 1997/1427, **art. 2(g)**

Other provisions

31 Voluntary schemes.

^{F160}(1) In this section “voluntary arrangements” means arrangements entered into by any two or more building societies for the purpose of making funds available to meet losses incurred by persons who have deposited money with, or who have shares in, an insolvent building society which is a party to the arrangements.

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- (2) A building society shall not enter into any voluntary arrangements until the arrangements have been approved by the Commission and authorised by a resolution passed, at a general meeting of the society or on a postal ballot, as a special resolution.
- (3) The Commission shall not approve any voluntary arrangements unless it is satisfied that the arrangements comply with the Deposit Guarantee Schemes Directive (94/19/EC).]
- (4) The maximum payment to any investor that may be provided for by voluntary arrangements is such sum as represents the total liability of the insolvent society to him (of any amount) which is referable to sums deposited with the society or to his shares in the society, after taking into account payments to him under section 27
- (5) No payment under voluntary arrangements shall be made to any person—
 - (a) in respect of any investment which would be disregarded for the purposes of section 27(8), or
 - (b) where the liability of the insolvent society to him is reduced by any set-off for the purposes of section 27(10); or
 - (c) where that person is ineligible for any payment under the protective scheme provisions of this Part by virtue of a decision of the Board under section 27(4).
- (6) Voluntary arrangements may include—
 - (a) arrangements to constitute, and for contributions to be made to, a fund vested in trustees appointed under the arrangements, being a standing fund or a fund established in the event of an insolvency (or a combination of each);
 - (b) arrangements for payments to be made on behalf of the trustees to investors by societies participating in the arrangements;
 - (c) arrangements to protect only specified classes of investor or specified classes of investment;
 - (d) arrangements providing for a level of protection more limited than the maximum allowed by subsection (4) above;
 - (e) arrangements with the Board or any institution making payments to investors on the Board's behalf for the purpose of making payments under the protective scheme provisions of this Part and voluntary arrangements at the same time; or
 - (f) arrangements providing, in circumstances specified in them, for payments to be made by the trustees to the societies making contributions.
- (7) Any payment by a society participating in arrangements which include arrangements falling within subsection (6)(b) above shall be treated for the purposes of this section as a contribution paid by the society to the trustees and as a payment by the trustees to the investors.
- (8) Subject to subsection (9) below, subsections (2) to (6) of section 28 shall, if the voluntary arrangements so provide, apply to payments to investors made by the trustees as they apply to insolvency payments made by the Board.
- (9) In relation to a building society insolvency in respect of which the Board and the trustees have each made payments to investors, the variation in the liquidator's duty effected by subsections (2)(c), (4) and (5) of section 28 shall be modified as follows, that is to say—
 - (a) subsection (4) shall have effect as if it required the liquidator, before paying the investor and after paying the Board to the extent required by that subsection, to pay to the trustees instead of to the investor any amount which,

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apart from this paragraph, would be payable to the trustees on account of the liability to the trustees referable to deposits of the investor; and

- (b) subsection (5) shall have effect with a corresponding modification in respect of any such amount referable to shares of the investor,

and, in this subsection, “the liability to the trustees”, means the liability to the trustees which, by virtue of subsection (8) above, corresponds to the liability to the Board imposed by section 28(2)(a).

- (10) In this section “insolvent” and “insolvency”, in relation to a building society, have the meanings given by [^{F161}section 25A]; and “the trustees”, in relation to voluntary arrangements, means the trustees appointed under them.

Textual Amendments

F160 S. 31(1)-(3) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 11**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(iii)**

F161 Words in s. 31(10) substituted (18.7.1996) by S.I. 1996/1669, reg. 23, **Sch. 5 para. 3**

Modifications etc. (not altering text)

C37 Ss. 29-31: power to repeal conferred (9.6.1997) by 1997 c. 32, s. 32(5)(a); S.I. 1997/1427, art. 2(g)

32 Special provisions as regards investors.

The Provisions of Schedule 7 to this Act relating to shareholders in and depositors with a building society shall have effect.

[^{F162}33 Assistance by building societies to other building societies.

Where it appears to the Commission that a building society is in financial difficulties it may authorise a building society to lend money to that society, and a building society shall have power to do so accordingly.]

Textual Amendments

F162 S. 33 repealed (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 12(1)(b), 46(2), 47(3), **Sch. 9**; S.I. 1997/2668, art. 2, **Sch. Pt. II(j)(y)(cc)(iii)**

[^{F163}PART V

POWERS TO PROVIDE SERVICES]

Textual Amendments

F163 Pt. V (ss. 34-35) repealed (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 12(1)(c), 46(2), 47(3), **Sch. 9**; S.I. 1997/2668, art. 2, **Sch. Pt. II(j)(y)(cc)(iv)**

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[^{F164}34 Powers to provide financial services or services relating to land.

- (1) A building society may provide services of the descriptions for the time being specified in Part I of Schedule 8 to this Act subject to the restrictions (if any) for the time being specified in Part II or III of that Schedule.
- (2) The appropriate authority may by order vary Schedule 8 by adding to or deleting from it any description of service or any provision or by varying any description of service or any provision for the time being specified or contained in it but not so as to confer any power to provide services other than services that appear to the authority making the order to be financial services or services relating to land or to be services similar to any such services.
- (3) Any power conferred on building societies under subsection (2) above may be conferred on building societies of a specified description or all building societies other than those of a specified description.
- (4) Where a provision of Part III of that Schedule states that a power to provide a specified service is available only to a subsidiary or other associated body of a building society the power to provide that service is to be treated as a power of the society for the purposes of section 18 only.
- (5) Any power to provide a specified service, if available to a building society or any subsidiary or other associated body, must, in order to be exercisable, be adopted by the society.
- (6) Subject to any specified restriction, any power to provide a specified service shall be exercisable in relation to members of the building society or other persons.
- (7) Part IV of Schedule 8 has effect for supplementing Parts I, II and III of that Schedule and the power under subsection (2) above to vary that Schedule includes, without prejudice to the generality of that subsection, power to make such provision as appears to the authority making the order to be appropriate by way of a sanction for contravention of any restriction for the time being contained in Part III.
- (8) The “appropriate authority” for the purpose of exercising the powers conferred by this section is the Treasury as regards any variation of Part I of Schedule 8 with or without other provision and the Commission in any other case.
- (9) The power to make an order under subsection (2) above is exercisable by statutory instrument and—
 - (a) in the case of an order varying Part I of Schedule 8 with or without other provision no such order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament, and
 - (b) in the case of any other order, the instrument containing it shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) An order under subsection (2) above may make such incidental and transitional provision as appears to the authority making the order to be necessary or expedient.
- (11) In this section—

“financial services” means any of the following services, that is to say, banking, insurance, investment, trusteeship and executorship;

“services relating to land” means any service relating to the acquisition, management, development or disposal of land; and

“specified” means specified for the time being in Schedule 8 to this Act.]

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Textual Amendments

F164 Pt. V (ss. 34-35) repealed (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 12(1)(a), 46(2), 47(3), **Sch. 9**; S.I. 1997/2668, art. 2, Sch. Pts. I(b), **II(j)(y)(cc)(iv)**

[^{F165F166}3] Prohibition on linking services.

- (1) A building society which, or a subsidiary of which, provides services of any description specified in Part I of Schedule 8 to this Act shall not offer to make a class 1 advance to any person subject to a condition that any services of that description which are or may be required by that person in connection with the making of the advance shall be provided by the society or its subsidiary.
- (2) Where, in connection with a class 1 advance by a building society, several services are made available by a building society or by a building society and one or more of its subsidiaries the society shall not, and shall secure that each of its subsidiaries does not, make the services available on terms other than terms which distinguish the consideration payable for each service so made available; nor shall any of its subsidiaries make the services available on terms other than terms which make that distinction.
- (3) Nothing in subsection (2) above prevents a service from being provided free of charge in particular circumstances.
- (4) If a building society contravenes subsection (1) or (2) above the society shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale and so shall any officer who is also guilty of the offence.
- (5) If a body corporate which is a subsidiary of a building society contravenes subsection (2) above the body corporate shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.]

Textual Amendments

F165 Pt. V (ss. 34-35) repealed (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 12(1)(a), 46(2), 47(3), **Sch. 9**; S.I. 1997/2668, art. 2, Sch. Pts. I(b), **II(j)(y)(cc)(iv)**

F166 S. 35 repealed (*prosp.*) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 125(7), **Sch. 20**

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PART VI

POWERS OF CONTROL OF THE COMMISSION

[^{F167}Powers in relation to principal purpose and nature limits]

Textual Amendments

F167 S. 36 and cross-heading substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 13(1), 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(k)

[^{F168}36 Power to direct restructuring of business etc.

- (1) The provisions of this section have effect where, by reason of a building society's failure to comply with—
 - (a) the requirement imposed by section 5(1)(a) or (b) (purpose or principal purpose and principal office);
 - (b) the requirement imposed by section 6(1) (the lending limit); or
 - (c) the requirement imposed by section 7(1) (the funding limit),
 the powers conferred by this section become exercisable by the Commission in relation to the society (the requirements referred to in paragraphs (a), (b) and (c) above being referred to in this section as “the relevant statutory requirements”).
- (2) The Commission may give the society a direction under subsection (3), (5) or (6) below.
- (3) A direction by the Commission under this subsection is a direction requiring the society, within a specified period, to submit for its approval a plan (in this section referred to as a “restructuring plan”) designed to secure the following purposes, that is to say—
 - (a) that the society will, by the end of a specified period, comply with the relevant statutory requirements as applied at the last day of that period, and
 - (b) that it will not thereafter fail to comply with those requirements.
- (4) For the purpose of applying the relevant statutory requirements as directed by subsection (3)(a) above—
 - (a) in the case of a requirement which operates by reference to a quarter day, the day as at which the requirements are to be applied shall be treated as such a day; and
 - (b) the assets and liabilities of the society shall be determined by reference to a balance sheet prepared by the directors by reference to that day and sent to the Commission within the period of three months beginning with that day;
 and subsection (4) of section 81 shall apply in the event of a default in complying with this provision as it applies in the event of a default in complying with subsection (2) of that section.
- (5) A direction by the Commission under this subsection is a direction requiring the society—

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- (a) within a specified period, to submit to its members for their approval at a meeting the requisite transfer resolutions for a transfer of the business of the society to a company under section 97; and
 - (b) to notify the Commission of the result of the meeting.
- (6) A direction by the Commission under this subsection is a direction requiring the society, at its option, either—
 - (a) within a specified period, to submit for approval a restructuring plan; or
 - (b) within a specified period, to submit to its members for their approval at a meeting the requisite transfer resolutions for a transfer of the business of the society to a company under section 97;and, within a specified period, to notify the Commission of the option it has decided to pursue.
- (7) Where the Commission gives a direction under subsection (3), (5) or (6) above, it may also give a direction under this subsection—
 - (a) imposing limitations on the issue of shares, the acceptance of deposits or the making of loans;
 - (b) requiring the society within a specified period to take certain steps, or to refrain from adopting or pursuing a particular course of action, or to restrict the scope of its business in a particular way;
 - (c) requiring the society within a specified period to take steps with regard to the conduct of the business of any connected undertaking of the society;
 - (d) requiring within a specified period the removal of any director or other officer.
- (8) Where a restructuring plan is submitted by a society to the Commission under subsection (3) or (6) above then—
 - (a) if it appears to the Commission that the plan is reasonably likely to secure its purposes, the Commission shall approve it and direct the society to carry it out;
 - (b) if it appears to it that the plan is, with modifications, likely to secure its purposes and the Commission and the society agree on appropriate modifications within the period of 21 days from the date on which the Commission notifies the society of the modifications it proposes for the society's agreement, the Commission shall approve the plan as modified and direct the society to carry it out;but otherwise it shall reject the plan.
- (9) Where a meeting is held, in pursuance of a direction under subsection (5) or (6) above, for the purpose of voting on the requisite transfer resolutions, then—
 - (a) if the resolutions are agreed to and the confirmation of the transfer by the Commission is obtained, the society shall proceed under section 97 to transfer its business to a successor company;
 - (b) if either resolution is disagreed to, the society shall notify the Commission of that fact as soon as it is practicable to do so.
- (10) In the event of the Commission receiving a notice from a society under subsection (9) (b) above, it may, if it thinks fit, serve on the society a direction requiring it, within a specified period, to submit to the Commission for its approval a restructuring plan; and if the Commission does so, subsection (8) above shall apply as if the plan had been submitted under subsection (3) above.

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- (11) The Commission may, if it thinks fit, extend or further extend any period during which a building society is to take any steps required of it under any of the foregoing provisions of this section and may do so whether or not application is made to it before the expiry of the period in question.
- (12) If a building society which has been directed under subsection (8) above to carry out a restructuring plan fails, within the period allowed to it under the foregoing provisions of this section, to secure the purpose of the plan specified in subsection (3)(a) above, the powers conferred on the Commission by section 36A shall become exercisable in relation to the society.
- (13) If a building society fails, within the period allowed to it under the foregoing provisions of this section—
- (a) where it has been given a direction under subsection (3) or (10) above, to submit a restructuring plan;
 - (b) where it has been given a direction under subsection (5) above, to submit to members the requisite transfer resolutions;
 - (c) where it has been given a direction under subsection (6) above, to either submit a restructuring plan or submit to members the requisite transfer resolutions;
 - (d) where it has been given a direction under subsection (7) above, to comply with any requirement imposed by the direction;
 - (e) where it has been directed under subsection (8) above to carry out a restructuring plan, to secure the purpose of the plan specified in subsection (3) (a) above;
 - (f) to agree to the requisite transfer resolutions submitted to the members in pursuance of subsection (5) or (6) above; or
 - (g) where it has agreed to the requisite transfer resolutions, to proceed under section 97 to transfer its business to the successor company,
- or if the Commission rejects a restructuring plan under subsection (8) above, the powers conferred on the Commission by section 37 shall become exercisable in relation to the society.
- (14) The provisions of Schedule 7A to this Act regulating the giving of directions apply in relation to directions under subsection (3), (5), (6), (7) or (10) above.
- (15) In this section—
- “confirmation”, “the requisite transfer resolutions” and “transfer” have the same meaning as in section 97;
- “quarter day” has the same meaning as in sections 6 and 7.
- (16) Nothing in this section implies that it is improper for the Commission to give to a building society or building societies generally an indication of the action it might or might not take in relation to any proposed activity of theirs.]

Textual Amendments

F168 S. 36 and cross-heading substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 13(1), 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(k)

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[^{F169}36A Power to make prohibition orders.

- (1) Where by virtue of section 36(12) the powers conferred by this section become exercisable in relation to a building society, the Commission may serve on the society a notice of the Commission's intention to issue a prohibition order directed to the society.
- (2) A prohibition order under this section is an order—
 - (a) prohibiting, subject to the saving or transitional provisions of the order, the continuance or, as the case may be, the carrying on of the activity specified in the order after a date so specified, either absolutely or unless conditions so specified are complied with; and
 - (b) requiring, subject to the saving or transitional provisions of the order, the disposal within a period specified in the order of all assets acquired or otherwise in its possession by virtue of the activity.
- (3) A disposal of assets in pursuance of a prohibition order shall vest the assets in the transferee but without prejudice to any claim against the society by a person who had an interest in the assets.
- (4) The saving or transitional provisions which may be included in a prohibition order shall be such as appear to the Commission to be just having regard to—
 - (a) the interests of shareholders of and depositors with the society; and
 - (b) the interests of other persons who will be affected by the order.
- (5) A notice under subsection (1) above of the Commission's intention to issue a prohibition order shall—
 - (a) specify the date on which the order is to be issued, being a date not earlier than the end of the period of 21 days beginning with the date of the notice;
 - (b) specify the terms of the order, including any saving or transitional provisions proposed to be included in it; and
 - (c) inform the society of its right to make representations to the Commission, not less than 7 days before the date specified in the order, as to the provisions to be included in the order.
- (6) After considering any representations made by the society, the Commission may make the prohibition order with such saving and transitional provisions (if any) as it thinks just; and where it does so, the Commission—
 - (a) shall issue the order by causing it to be served on the society; and
 - (b) shall direct the central office to keep a copy of it in the public file of the society.
- (7) A prohibition order so made and issued shall, subject to subsection (11) below, take effect on the date specified in the order.
- (8) A copy of any order issued under subsection (6) above shall also be served on each director and on the chief executive of the society.
- (9) The requirement of subsection (8) above, so far as it relates to directors, is satisfied by serving a copy on each director whose appointment has been officially notified and the non-receipt of a copy by a director or the chief executive does not affect the validity of the order.
- (10) Subject to subsection (11) below, a prohibition order shall remain in force until revoked by the Commission.

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- (11) The Commission may suspend or revoke a prohibition order so far as it relates to an asset the disposal of which appears to it, on the application of the society, to be impracticable.
- (12) If a society contravenes a prohibition order issued against it under this section—
- (a) the power conferred on the Commission by section 37(1) shall become exercisable in relation to the society; and
 - (b) the Commission may exercise that power or certify the contravention in writing to the High Court, or do both of those things;
- but the contravention shall not invalidate any transaction or other act.
- (13) On receiving such a certification, the High Court—
- (a) may inquire into the case; and
 - (b) after hearing any witnesses who may be produced against or on behalf of the society and after hearing any statement which may be offered in defence, may punish the society in like manner as if it had been guilty of contempt of the court.
- (14) Where a contravention of a prohibition order which is so certified is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the society he, as well as the society, may be punished in like manner as if he had been guilty of contempt of the court.
- (15) In the application of this section to a building society whose principal office is in Scotland, references to the High Court shall be read as references to the Court of Session.]

Textual Amendments

F169 S. 36A inserted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 14, 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(I)

[^{F170}37 Powers to petition for winding up etc.

- (1) Where—
- (a) by virtue of section 36(13) the powers conferred by this section become exercisable in relation to a building society;
 - (b) by virtue of section 36A(12) the power conferred by this subsection becomes so exercisable; or
 - (c) the Commission has reason to believe that a building society has ceased to comply with the requirement imposed by section 5(1)(a) (purpose or principal purpose),
- the Commission may present a petition to the High Court for the winding up of the society under the applicable winding up legislation; and the power conferred by this subsection is available to the Commission whether or not it has previously presented a petition.
- (2) Where by virtue of section 36(13) the powers conferred by this section become exercisable in relation to a building society, the Commission may make an application to the High Court for an order giving directions to the society under subsection (3)

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below; and the power conferred by this subsection is available to the Commission whether or not it has previously made an application for such an order.

- (3) An order under this subsection is an order directing the society to comply with a direction under subsection (3), (5), (6), (7) or (10) of section 36 as directed in the order, or to carry out a restructuring plan as so directed.
- (4) Where the High Court makes an order under subsection (3) above, the Commission shall give a copy of it to the central office and the central office shall keep the copy in the public file of the society.
- (5) The High Court shall not make an order winding up the society on an application under subsection (1)(c) above unless it is satisfied that the society has ceased to comply with the requirement imposed by section 5(1)(a).
- (6) In the application of this section to a building society whose principal office is in Scotland, references to the High Court shall be read as references to the Court of Session.]

Textual Amendments

F170 S. 37 substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 15, 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(m)

Power to determine extent of building society powers

[^{F171}38 Power to determine building society's powers.

- (1) The Commission shall have power to determine whether a particular activity of a building society or its subsidiary is or is not within the existing powers of the society and may, if it thinks fit, take such professional advice as it considers it needs to enable it to make the determination.
- (2) A determination may be made under this section in relation to an activity which is proposed to be carried on as well as in relation to one which is being carried on.
- (3) The powers of the Commission in relation to a building society are exercisable—
 - (a) on an application made by the society, requesting the Commission to make the determination,
 - (b) on an application made by the society at the direction of the central office under Part II of Schedule 2 to this Act, or
 - (c) on the Commission's own motion or on an application made by the society at its direction,

as provided in subsection (4), (5), (6) or (8) below.

- (4) A building society may at any time, on complying with the following provisions of this section, make an application to the Commission for a determination under this section whether an activity specified in the application is or is not within its powers if the directors of the society are of the opinion that there is a doubt about the existence or extent of the powers to carry on the activity which requires to be resolved in the interests of the society.

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- (5) A building society which has been directed by the central office under Part II of Schedule 2 to this Act to make an application to the Commission under this section shall, in accordance with the direction, make an application to the Commission for a determination whether the activity specified in the application is or is not within its powers.
- (6) If it appears to the Commission at any time that a building society or its subsidiary is carrying on or is about to carry on an activity which is or may be outside the existing powers of the society, the Commission may, by notice to the society specifying the activity and its opinion, direct it to make an application for a determination under this section whether the activity is or is not within its powers and it shall be the duty of the society to comply with the direction.
- (7) A direction under subsection (6) shall require the application to be made within the period of 21 days beginning with the date on which the notice is given, but the Commission may extend or further extend the period within which the application is to be made.
- (8) If a building society fails, within the time allowed by or under subsection (7) above, to make an application as directed under subsection (6) above, the Commission may, of its own motion, proceed to make a determination under this section as if an application had been made by the society.
- (9) An application by a building society under subsection (4), (5) or (6) above shall be made in writing, signed by the secretary as such an application, and shall comprise—
- (a) a statement of the question for determination, specifying the activity and the powers in question, the nature of the doubt and (except in the case of an application under subsection (6)) the arguments for and against the activity being within those powers, as they appear to the society, and
 - (b) such documents or draft documents and such other information as are necessary to enable the determination to be made.
- (10) The statement of the question for determination may, with the agreement of the Commission, be amended at any time before the determination is made and in that event further documents and other information may be included in the application.
- (11) The Commission may, by notice to the society, require a society making an application under subsection (4), (5) or (6) above to amend the statement of the question for determination or to furnish such further documents or other information or such explanations of the statement, documents or information as appear to it to be necessary to enable the determination of the question to be made; and the Commission may allow or require the explanations to be made orally instead of in writing.
- (12) In this section and sections 39 and 40—
- “activity” includes the exercise, or purported exercise, of any power under this Act, including the holding of any property or rights;
- “existing”, with reference to powers, means existing at the relevant date and, in relation to a building society, “existing powers” denotes the powers it has, or has adopted, under this Act, with any restrictions it has assumed, as at that date but disregarding anything done by the Commission and then in force (otherwise than under section 39 or 40) by virtue of which the society is precluded from exercising, or is subject to restrictions on the exercise of, its powers;
- “the relevant date”, in relation to a building society, means—

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- (a) in a case where the Commission decides to proceed of its own motion, the date when the Commission so decides;
 - (b) in a case where the society makes the application at the direction of the central office, the date specified in the direction; and
 - (c) in any other case, the date on which the society makes the application.
- (13) Nothing in this section or section 39 or 40 implies that it is improper for the Commission to give to a building society or building societies generally an indication of the action it might or might not take in relation to any proposed activity of theirs; and if any determination comes to be made in relation to the activity the proceedings shall not be liable to be set aside by reason of the indication having been given.]

Textual Amendments

F171 Ss. 38-40 repealed (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 12(1)(d), 46(2), **Sch. 9**; S.I. 1997/2668, art. 2, **Sch. Pt. II(j)(y)(cc)(v)**

[^{F172}39 The determination: notification, effect, appeal.

- (1) A determination of the Commission under section 38 shall be in writing and, as soon as practicable after it is made, the Commission shall notify the society of the determination and the reasons for it.
- (2) On receiving notice of the determination the society shall, if it is a determination that the activity in question was outside its powers, forthwith send a copy of it to every person who the society has reason to believe will or may be affected by it other than a person whose only interest is as a shareholder in, or depositor with, the society.
- (3) Subject to subsection (4) below, the Commission shall, within the period of one month beginning with the date of the notice to the society under subsection (1) above, publish the determination in such manner as it thinks appropriate.
- (4) Where the determination is made on an application made by the society under section 38(4), the Commission may, on the application of the society, postpone the publication of the determination for such period as it thinks fit, not exceeding the period of six months beginning with the date of the notice to the society under subsection (1) above, if it appears to the Commission that it is just to do so.
- (5) A determination under section 38 shall bind all persons, whether or not (in the case of an application) they were parties to it and, subject to any appeal under subsection (8) below, shall be final and conclusive for all purposes.
- (6) Where the activity in question was at the relevant date being carried on by the society and the determination is that the activity is outside the powers of the society the directors of the society shall be personally liable, jointly and severally, for any loss or expense to the society consequent on the activity's being outside its powers (including, if a prohibition order under section 40 is made, any loss or expense consequent on the order).
- (7) If it appears to the Commission that proceedings under subsection (6) above have not been, but ought in the interests of the society to be, brought, the Commission may bring such proceedings in the name and on behalf of the society; and if it does so the

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Commission may indemnify the society against the costs or expenses incurred by the society in, or in connection with, proceedings brought by virtue of this subsection.

- (8) Any person affected by a determination under section 38 shall be entitled within the period of six weeks beginning with the date of the notice under subsection (1) above or such further period as the Court may allow, to appeal to the High Court against the determination in accordance with rules of court on the ground that it is erroneous in law and the Commission shall be made respondent on the appeal.
- (9) On any appeal to the High Court under subsection (8) above the High Court may confirm, reverse or vary the determination appealed from.
- (10) In the application of this section to a building society whose principal office is in Scotland, references to the High Court shall be read as references to the Court of Session.
- (11) The Commission may, if it thinks fit, require a building society in whose case it has made a determination under section 38 to pay such fee as the Commission directs.]

Textual Amendments

F172 Ss. 38-40 repealed (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 12(1)(d), 46(2), **Sch. 9**; S.I. 1997/2668, art. 2, **Sch. Pt. II(j)(y)(cc)(v)**

[^{F173} 40 Power to make prohibition orders.

- (1) On or at any time after making a determination under section 38 that a specified activity is outside the powers of a building society, the Commission shall, if it appears to it—
 - (a) that the activity is being carried on by the society, or
 - (b) that the activity has not been but, unless a prohibition order is made under this section, may be carried on by the society.

serve on the society a notice of the Commission's intention to issue a prohibition order directed to the society.

- (2) A prohibition order under this section is an order prohibiting, subject to the saving or transitional provisions of the order, the continuance or, as the case may be, the carrying on of the activity specified in the order, either absolutely or unless conditions specified in the order are complied with, after a date specified in the order and requiring, subject to the saving or transitional provisions of the order, the disposal within a specified period of all assets acquired or otherwise in its possession by virtue of the activity.
- (3) A disposal of assets in pursuance of a prohibition order shall vest the assets in the transferee but without prejudice to any claim against the society by a person who had an interest in the assets.
- (4) The saving or transitional provisions which may be included in a prohibition order shall be such as appear to the Commission to be just having regard to the interests of shareholders of and the depositors with the society and the interests of other persons who will be affected by the order; but the provisions shall not in any respect suspend the operation of the order beyond the period of one year.

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- (5) A prohibition order may include a direction for treating assets of any description as assets of the class specified in the direction for the purposes of the requirements of Part III for the structure of commercial assets.
- (6) A notice under subsection (1) above of the Commission's intention to issue a prohibition order shall—
 - (a) specify the date on which the order is to be issued, being a date not earlier than the end of the period of 21 days beginning with the date of the notice;
 - (b) specify the terms of the order, including any saving or transitional provisions proposed to be included in it;
 - (c) inform the society of its right to make representations to the Commission before the order is issued as to the saving or transitional provisions to be included in the order; and
 - (d) inform the society of its duty under subsection (7) below.
- (7) On receiving a notice under subsection (1) above the society shall forthwith send a copy of it to every other person whom it has reason to believe will or may be affected by the determination under section 38 on which the order will be founded.
- (8) Any person who may be affected by the determination under section 38 on which the order will be founded may, at any time before the order is made, make representations to the Commission as to the inclusion in it of saving or transitional provisions affecting his interests and they may be made orally or in writing.
- (9) After considering any representations made under subsection (8) above the Commission shall make the prohibition order with such saving and transitional provisions (if any) as it thinks just, shall issue the order by causing it to be served on the society and shall direct the central office to keep a copy of it in the public file of the society.
- (10) A prohibition order so made and issued shall, subject to subsection (15) below, take effect on the date specified in the order.
- (11) A copy of any order issued under subsection (9) above shall also be served on each director and on the chief executive of the society.
- (12) The requirement of subsection (11) above, so far as it relates to directors, is satisfied by serving a copy on each director whose appointment has been officially notified and the non-receipt of a copy by a director or the chief executive does not affect the validity of the direction.
- (13) Subject to subsection (14) below, a prohibition order shall remain in force until revoked by the Commission.
- (14) The Commission may suspend or revoke a prohibition order so far as it relates to an asset the disposal of which appears to it, on the application of the society, to be impracticable.
- (15) If, when a prohibition order has been made, an appeal is pending before the High Court under section 39(8) against the determination on which the order is founded the High Court may, on application made to it, order that the operation of the prohibition order be stayed until the determination of the appeal; but it shall not do so unless it is satisfied that it is in the public interest that it be stayed.

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- (16) If a society contravenes a prohibition order issued against it under this section the Commission may certify the contravention in writing to the High Court; and the Court may thereupon inquire into the case and, after hearing any witnesses who may be produced against or on behalf of the society and after hearing any statement which may be offered in defence, may punish the society in like manner as if it had been guilty of contempt of the court.
- (17) In the application of this section to a building society whose principal office is in Scotland, references to the High Court shall be read as references to the Court of Session and references to staying shall be read as references to sisting.]

Textual Amendments

F173 Ss. 38-40 repealed (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 12(1)(d), 46(2), **Sch. 9**; S.I. 1997/2668, art. 2, **Sch. Pt. II(j)(y)(cc)(v)**

Powers in relation to authorisation

41 Power to direct application to renew authorisation.

- (1) If, with respect to a building society for which an authorisation is in force, the Commission has reason to believe that the society's business is or may be being conducted in a way that may not adequately protect the investments of shareholders and depositors then, subject to subsections (2) and (3) below, it may by notice direct the society to make an application under this section to renew its authorisation.
- (2) The power conferred on the Commission by this section is not exercisable more than once during any period of five years during the whole of which the society has held a current authorisation except where, during that period, the society has, under section 94, undertaken to fulfill the engagements of another society.
- (3) A notice under subsection (1) above shall require the society to make the application for renewal within such period as is specified in the notice, being a period not shorter than three nor longer than six months beginning with the date of the notice, but the Commission may, on representations being made to it, extend or further extend the period within which the application is to be made.
- (4) A notice under subsection (1) shall indicate the grounds on which the Commission has decided to give a direction under this section.
- (5) Authorisation, if renewed under this section, shall be granted unconditionally or subject to conditions as provided by subsection (6) or (7) below.
- [^{F174}(5A) The Commission shall not grant renewed authorisation to a society if it appears to the Commission that—
- (a) the society is closely linked with any person; and
 - (b) the society's close links with that person, or any matters relating to any non-EEA laws or administrative provisions to which that person is subject, are such as would prevent the effective exercise by the Commission of its supervisory functions in relation to the society.]

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- (6) Subject to subsection [F175(5A) above and subsection](11) below, the Commission, on an application duly made for renewal of authorisation under this section, shall grant unconditional authorisation to the society if it is satisfied that—
- (a) the society has qualifying capital of an amount which is not less than the prescribed minimum;
 - [F176](b) the society has adequate reserves and other capital resources;]
 - (c) the chairman of the board of directors and any executive directors, the chief executive, the secretary and the managers (if any) are each fit and proper persons to hold their respective offices in the society;
 - (d) the board of directors, with the chief executive and secretary, have the capacity and intention to direct the affairs of the society in accordance with the criteria of prudent management and have secured that those criteria are being satisfied; F177 . . .
 - [F178](dd) each of the persons who, either alone or with any associate or associates, has a qualifying holding in the society is a fit and proper person to have such a holding; and]
 - (e) the investments of shareholders and depositors will be adequately protected without the imposition of conditions.
- (7) If the Commission, on an application so made, is not satisfied of the matters specified in subsection (6) above in relation to the society, it shall, subject to subsection [F175(5A) above and subsection](10) below—
- [F179](a) if those matters include the matter specified in paragraph (a) of that subsection, refuse to grant authorisation; or
 - (b) in any other case—
 - (i) if it is satisfied that the imposition of conditions would secure the protection of the investments of shareholders and depositors, grant authorisation subject to such conditions to be complied with by the society (whether or not they correspond to any conditions in force as respects the current authorisation) as the Commission thinks fit to impose to secure that purpose; or
 - (ii) if not so satisfied, refuse to grant the authorisation;]
- and if it refuses to grant authorisation under this section the authorisation current under section 9 shall expire on the date specified by the Commission in the notice of its refusal except where section 46(4) applies.
- (8) If the Commission refuses to grant authorisation to a building society under this section it shall inform the central office of the fact and the date on which the current authorisation of the society expires; and the central office shall record that date in the public file of the society.
- (9) Subsections (6) and (7) of section 9 apply as respects the imposition of conditions on the renewal of authorisation under this section as they apply as respects the imposition of conditions under that section.
- (10) The provisions of Schedule 3 to this Act regulating—
- (a) the making and determination of applications for authorisation,
 - (b) the furnishing of information or additional information in connection with such applications, and
 - (c) the imposition of conditions of authorisation,

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apply in relation to authorisation under this section.

- (11) The making of an application under this section at the direction of the Commission shall not preclude the Commission, at any time while the application is pending, from imposing conditions on the society’s authorisation under section 42 or revoking the society’s authorisation under section 43; but if it revokes the authorisation the proceedings under this section shall abate.
- (12) An authorisation granted under this section shall be treated for the purposes of this Act as an authorisation granted under section 9 and in particular subsection (9) of that section shall apply as if any conditions had been imposed under subsection (5) of that section.
- [^{F180}(13) Any expression used in this section to which a meaning is given by subsection (13) of section 9 has that meaning in this section; and for the purposes of this section subsection (13A) of that section shall apply as if the reference to subsection (4)(b) of that section were a reference to subsection (6)(c) of this section.]
- ^{F181}(14)
- ^{F181}(15)
- ^{F181}(16)
- [^{F182}(17) In this section “adequate” means adequate having regard to the range and scale of the society’s business; and in this subsection—
- (a) “business” includes business the society proposes to carry on; and
 - (b) the reference to the society’s business includes, where it has connected undertakings, a reference to the business of those undertakings.]

Textual Amendments

- F174** S. 41(5A) inserted (18.7.1996) by S.I. 1996/1669, **reg. 6(2)**
- F175** Words in s. 41(6)(7) inserted (18.7.1996) by S.I. 1996/1669, **reg. 6(2)**
- F176** S. 41(6)(b) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 12(2)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(iv)**
- F177** S. 41(6): word following paragraph (d) omitted (1.1.1993) by virtue of S.I. 1992/3218, **reg. 69**
- F178** S. 41(6)(dd) inserted (1.1.1993) by S.I. 1992/3218, **reg. 69**
- F179** S. 41(7)(a)(b) substituted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 12(3)**; S.I. 1997/1427, **art. 2(k)(n)(ii)**
- F180** S. 41(13) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 12(4)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(iv)**
- F181** S. 41(14)-(16) ceased to have effect (9.6.1997) by virtue of 1997 c. 32, s. 43, **Sch. 7 para. 12(1)**; S.I. 1997/1427, **art. 2(k)(n)(ii)**; and repealed (1.12.1997) by 1997 c. 32, s. 46(2), **Sch. 9**; S.I. 1997/2668, art. 2, **Sch. Pt. I(o)(iii)**
- F182** s. 41(17) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 12(5)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(iv)**

Modifications etc. (not altering text)

- C38** S. 41 continued for 5 years from 25.7.1991 by S.I. 1991/1518, **art. 2** (revoked (25.7.1996) by S.I. 1996/1844, **art. 3**).

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S. 41 continued for 5 years from 25.7.1996 by S.I. 1996/1844, **art. 2**

S. 41 made permanent (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 12(1)**; S.I. 1997/1427, **art. 2(k)(n)(ii)**

C39 S. 41(6)(a) modified (1.1.1993) by S.I. 1992/3218, reg. 83, **Sch. 11 Pt. IV para. 18(2)(a)**

42 Imposition of conditions on current authorisation.

- (1) If, with respect to a building society for which an authorisation is in force, the Commission considers it expedient to do so in order to protect the investments of shareholders or depositors it may, subject to subsection (7) below, impose conditions to be complied with by the society.
- (2) Section 45 has effect for the purpose of any determination whether or not it is expedient to exercise the powers conferred by this section.
- (3) Failure by a society to comply with conditions imposed under this section shall render it liable, if other conditions are not imposed on it under this section, to have its authorisation revoked under section 43(1).
- (4) The conditions that may be imposed by the Commission under this section may—
 - (a) relate to any activities of the society, whether or not those for which authorisation is required; and
 - (b) require the society to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way.
- (5) Without prejudice to the generality of subsection (4) above, conditions imposed under this section may—
 - (a) impose limitations on the issue of shares, the acceptance of deposits or the making of advances or other loans;
 - (b) require the society to take steps with regard to the conduct of the business of any [^{F183}connected undertaking]; ^{F184} . . .
 - (c) require the removal of any director or other officer.
- [^{F185}and
 - (d) require any person who, either alone or with any associate or associates, has a qualifying holding in the society so to reduce that holding that it ceases to be such a holding.]
- (6) The Commission may impose conditions under this section where it proceeded under section 41 or where it proceeded under section 43 with a view to revoking the society's authorisation.
- (7) [^{F186}Subject to section 42A]the Commission shall not impose conditions under this section except in accordance with the provisions of Part III or, where applicable, Part IV of Schedule 3 to this Act; and the other provisions of that Part shall have effect in relation to the imposition of conditions under this section.
- (8) Conditions imposed under this section—
 - (a) may be varied from time to time (and notwithstanding any pending appeal) by agreement between the Commission and the society; and

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- (b) may be revoked at any time by the Commission if it is satisfied that the investments of shareholders and depositors will be adequately protected without the conditions.
- (9) Any expression used in this section to which a meaning is given by section 9(13) has that meaning in this section.

Textual Amendments

F183 Words in s. 42(2)(b) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 13(1)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(v)**

F184 S. 42(5): word immediately before paragraph (c) omitted (1. 1. 1993) by virtue of S.I. 1992/3218, **reg. 70**

F185 S. 42(5)(d) and word preceding it inserted (1. 1. 1993) by S.I. 1992/3218, **reg. 70**

F186 Words in s. 42(7) inserted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 13(2)**; S.I. 1997/1427, **art. 2(b)**

Modifications etc. (not altering text)

C40 S. 42(1) applied (with modifications) (1.7.1995) by S.I. 1995/1442, **reg. 51(1)** (with transitional and transitory provisions in **regs. 53(2), 54(2)**)

[^{F187} 42A Imposition or variation of conditions in urgent cases.

- (1) No notice need be given under Part III or Part IV of Schedule 3 to this Act in respect of the imposition of conditions under section 42 in any case in which the Commission considers that the conditions should be imposed as a matter of urgency.
- (2) Conditions imposed under section 42 may be varied by the Commission without the agreement of the building society concerned in any case in which the Commission considers that the conditions should be varied as a matter of urgency.
- (3) In any such case the Commission may by written notice to the building society concerned impose or vary the conditions.
- (4) Any such notice shall state the reasons for which the Commission has acted and particulars of the rights conferred by subsection (6) below and by section 46.
- (5) If conditions as imposed or varied by a notice under subsection (3) above include a requirement for the removal from office of any person who is an officer of the society, the Commission shall give that person—
 - (a) a copy of that notice; and
 - (b) a statement of his rights under subsection (6) below;
 but the Commission may omit from a copy notice given to a person by virtue of this subsection any matter which does not relate to him.
- (6) A building society to which a notice is given under subsection (3) above of the imposition or variation of conditions, and a person who is given a copy of it by virtue of subsection (5) above, may within the period of 14 days beginning with the day on which the notice was given make representations to the Commission.
- (7) After giving a notice under subsection (3) above imposing or varying conditions and taking into account any representations made in accordance with subsection (6) above the Commission shall decide whether—

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- (a) to confirm or rescind its original decision; or
 - (b) to impose different conditions or to vary the conditions in a different manner.
- (8) The Commission shall within the period of 28 days beginning with the day on which the notice was given under subsection (3) above give the building society concerned written notice of its decision under subsection (7) above and, except where the decision is to rescind the original decision, the notice shall state the reasons for the decision.
- (9) Where the notice under subsection (8) above is of a decision to take the action specified in subsection (7) (b) above the notice under subsection (8) shall have the effect of imposing the conditions specified in the notice, or varying the conditions in the manner so specified, with effect from the date on which the notice is given.]

Textual Amendments

F187 S. 42A inserted (9.6.1997) by 1997 c. 32, s. 16; S.I. 1997/1427, art. 2(b)

[^{F188} 42B Power to direct transfers of engagements or business.

- (1) If, with respect to a building society for which an authorisation is in force, the Commission considers it expedient to do so in order to protect the investments of shareholders or depositors, it may either—
- (a) direct the society, within a specified period, to transfer all its engagements to one or more other building societies under section 94; or
 - (b) direct the society, within a specified period, to transfer its business to an existing company under section 97.
- (2) Failure by a society to comply with a direction given under subsection (1) shall render it liable to have its authorisation revoked under section 43(1).
- (3) Where the Commission—
- (a) gives a building society a direction under subsection (1)(a) above; or
 - (b) does not give a building society such a direction solely because the society is already seeking to transfer all its engagements to one or more other building societies under section 94,
- the Commission may, if it considers it expedient to do so in order to protect the investments of shareholders or depositors, direct that, instead of resolving to transfer its engagements by the two resolutions required by section 94(2) (with or without the additional resolution required by section 94(3)), the society may resolve to do so by a resolution of the board of directors.
- (4) Where the Commission—
- (a) gives a building society a direction under subsection (1)(b) above; or
 - (b) does not give a building society such a direction solely because the society is already seeking to transfer its business to an existing company under section 97,
- the Commission may, if it considers it expedient to do so in order to protect the investments of shareholders or depositors, direct that, instead of approving the transfer and the terms of the transfer by the two resolutions required by section 97(4)(c), the society may approve the transfer and those terms by a resolution of the board of directors.

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- (5) A direction under subsection (3) or (4) above—
 - (a) shall be in writing;
 - (b) may be given subject to such limitations or conditions as the Commission may think fit; and
 - (c) unless renewed by a further direction, shall cease to have effect at the end of the period of 90 days beginning with the day on which it is given.
- (6) Section 45 has effect for the purpose of any determination whether or not it is expedient to exercise the powers conferred by this section.
- (7) In Schedule 8A to this Act—
 - (a) Part I (which contains provisions modifying sections 94 to 96 and Schedule 16 to this Act) shall apply where a direction is given under subsection (3) above; and
 - (b) Part II (which contains provisions modifying sections 97 to 100 and Schedule 17 to this Act) shall apply where a direction is given under subsection (4) above.
- (8) The Commission, with the consent of the Treasury, may make regulations for the purpose of specifying, as prescribed matters—
 - (a) the matters of which statements under paragraph 3 of Schedule 8A to this Act are to give particulars; and
 - (b) the matters of which statements under paragraph 9 of that Schedule are to give particulars.
- (9) The power to make regulations under this section is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

Textual Amendments

F188 S. 42B inserted (9.6.1997) by 1997 c. 32, s. 17(1); S.I. 1997/1427, art. 2(c)

[^{F189}42C Notification and confirmation of transfer directions.

- (1) A direction under section 42B(1) shall be given by notice in writing and may be varied by a further direction; and a direction may be revoked by the Commission by a notice in writing to the building society concerned.
- (2) A direction under section 42B(1), except one varying a previous direction with the agreement of the building society concerned—
 - (a) shall state the reasons for which it is given and give particulars of the society's rights under subsection (3) below and section 46; and
 - (b) shall cease to have effect at the end of the period of 28 days beginning with the day on which it is given unless before the end of that period it is confirmed by a further written notice given by the Commission to the society concerned.
- (3) A building society to which a direction is given which requires confirmation under subsection (2) above may, within the period of 14 days beginning with the day on which the direction is given, make written representations to the Commission; and the Commission shall take any such representations into account in deciding whether to confirm the direction.]

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Textual Amendments

F189 S. 42C inserted (9.6.1997) by 1997 c. 32, s. 18; S.I. 1997/1427, art. 2(c)

43 Revocation of authorisation.

(1) The Commission may, subject to subsection (4) below, revoke a building society's authorisation if—

- (a) it appears to the Commission that at no time during a financial year of the society which began and ended during the currency of the authorisation did the society raise funds or accept deposits of money in pursuance of the authorisation;
- (b) it appears to the Commission that a period of six months has elapsed since the end of a financial year of the society without the society's having sent it to the annual accounts for that year as required by section 81(2);
- (c) the Commission is satisfied that, where the society's authorisation is subject to conditions, a condition has not been complied with by the society;
- ^{F190}(cc) the Commission is satisfied that a direction under section 42B(1) has not been complied with by the society;
- (cd) it appears to the Commission that—
 - (i) a composition or arrangement with creditors has been made in respect of the society;
 - (ii) a receiver or manager of the society's undertaking has been appointed;
 - (iii) possession has been taken, by or on behalf of the holders of any debenture secured by a charge, of any property of the society; or
 - (iv) an administration order has been made in relation to the society under section 8 of the ^{M29}Insolvency Act 1986; or]
- (d) the Commission considers it expedient to do so in order to protect the investments of shareholders or depositors.

^{F191}(1A) The Commission may, subject to subsection (4) below, revoke a building society's authorisation if—

- (a) it appears to the Commission that the society's principal place of business is or may be outside the United Kingdom;
- (b) it appears to the Commission that the society has carried on in the United Kingdom or elsewhere a listed activity (other than the acceptance of deposits or other repayable funds from the public) without having given prior notice to the Commission of its intention to do so;
- ^{F192}(bb) it appears to the Commission that the society has failed to comply with any obligation imposed on it by or under Part IV of this Act;]
- (c) the Commission is informed by The Securities and Investments Board, or a connected UK authority having regulatory functions in relation to the provision of financial services, that the society—
 - (i) has contravened any provision of the Financial Services Act 1986 or any rules or regulations made under it;
 - (ii) in purported compliance with any such provision, has furnished that Board or authority with false, misleading or inaccurate information;
 - (iii) has contravened any prohibition or requirement imposed under that Act; or

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- (iv) has failed to comply with any statement of principle issued under that Act;
 - (d) the Commission is informed by the Director General of Fair Trading that the society, or any of the society's employees, agents or associates (whether past or present), has done any of the things specified in paragraphs (a) to (d) of section 25(2) of the Consumer Credit Act 1974;
 - (e) it appears to the Commission that the society has failed to comply with any obligation imposed on it by the Banking Coordination (Second Council Directive) Regulations 1992 ^[F193] or the Credit Institutions (Protection of Depositors) Regulations 1995]; or
 - (f) the Commission is informed by a supervisory authority in another member State that the society has failed to comply with any obligation imposed on it by or under any rule of law in force in that State for purposes connected with the implementation of the Second Council Directive ^[F194] or Directive 94/19/EC on deposit-guarantee schemes].
- (2) Section 45 has effect for the purposes of any determination whether or not it is expedient to exercise the power conferred by subsection (1)(d) above.
- (3) The Commission shall revoke a building society's authorisation if—
- (a) the society has requested it to revoke its authorisation;
 - (b) the society has requested the central office to cancel its registration;
 - (c) the society has failed, when directed to do so under section 41, to make an application for the renewal of its authorisation within the period allowed under that section;
- ^[F195](cc) it appears to the Commission that—
- (i) the society is closely linked with any person; and
 - (ii) the society's close links with that person, or any matters relating to any non-EEA laws or administrative provisions to which that person is subject, are such as would prevent the effective exercise by the Commission of its supervisory functions in relation to the society;]
 - (d) the society has, under sections 93 or 94 amalgamated with or transferred all its engagements to another building society; or
 - (e) the requisite initial step has been taken to wind up or dissolve the society.
- (4) The Commission shall not revoke a society's authorisation under ^[F196]subsection (1) or (1A)] above except in accordance with the provisions of Part IV of Schedule 3 to this Act; and the other provisions of that Part shall also have effect in relation to revocation under this section or the imposition of conditions under section 42 instead of revocation under this section.
- (5) Where a society's authorisation is revoked under ^[F197]subsection (1), (1A) or (3)] above the provisions of subsections (6), (7) and (8) below shall have effect.
- (6) Subject to subsection (7) below, any obligation to make a payment to the society which, by virtue of section 9(1), the society is prohibited from accepting shall be wholly rescinded.
- ^[F198](7) If, when a society's authorisation is revoked, a member is under an obligation to make payments to the society—
- (a) which represent instalments of the amount due in respect of a share in the society; and

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- (b) which, by virtue of section 9(1), the society is prohibited from accepting, the obligation shall (subject to anything in the rules of the society or any agreement between the society and the member) be suspended in respect of each instalment for the period during which no authorisation is in force.
- (7A) If, in a case falling within subsection (7) above, reauthorisation is granted—
- (a) the first suspended instalment shall be payable on the first payment day after reauthorisation is granted; and
- (b) a subsequent instalment shall be payable on each payment day after that until the amount due in respect of the share is paid in full.]
- (8) It shall be the duty of the society to make reasonable arrangements for using the funds of the society to meet applications by depositors with or holders of shares in the society (being applications made in accordance with the rules of the society) for repayment of the money deposited or subscribed by them.
- (9) Where a society's authorisation is revoked under this section, the Commission shall inform the central office of the fact and the date on which the revocation takes effect and the central office shall record that date in the public file of the society.
- [^{F199}(9A) The rules and prohibitions referred to in subsection (1A)(c) above include the rules of any recognised self-regulating organisation of which the society is a member and any prohibition imposed by virtue of those rules; and in subsection (1A)(d) above 'associate' has the same meaning as in section 25(2) of the Consumer Credit Act 1974.]
- (10) In this section "the requisite initial step", with reference to the winding up or dissolution of a building society, means the following—
- (i) in the case of a winding up by the court, the making of the winding-up order;
- (ii) in the case of a voluntary winding up, the passing of the resolution for voluntary winding up;
- (iii) in the case of dissolution by consent of the members, the execution of the instrument of dissolution.

Textual Amendments

- F190** S. 43(1)(cc)(cd) substituted for word immediately following s. 43(1)(c) (9.6.1997 for certain purposes only and 1.12.1997 otherwise) by 1997 c. 32, s. 43, **Sch. 7 para. 14(1)**; S.I. 1997/1427, **art. 2(c)**; S.I. 1997/2668, **art. 2, Sch. Pt. I(j)(I)(v)**
- F191** S. 43(1A) inserted (1. 1. 1993) by S.I. 1992/3218, **reg. 71(1)**
- F192** S. 43(1A)(bb) inserted (1.7.1995) by S.I. 1995/1442, **reg. 51(2)(a)** (with transitional and transitory provisions in **regs. 53(2), 54(2)**)
- F193** Words in s. 43(1A)(e) inserted (1.7.1995) by S.I. 1995/1442, **reg. 51(2)(b)** (with transitional and transitory provisions in **regs. 53(2), 54(2)**)
- F194** Words in s. 43(1A)(f) inserted (1.7.1995) by S.I. 1995/1442, **reg. 51(2)(c)** (with transitional and transitory provisions in **regs. 53(2), 54(2)**)
- F195** S. 43(3)(cc) inserted (18.7.1996) by S.I. 1996/1669, **reg. 6(3)**
- F196** Words in s. 43(4) substituted (1. 1. 1993) by S.I. 1992/3218, **reg. 71(2)**
- F197** Words in s. 43(5) substituted (1. 1. 1993) by S.I. 1992/3218, **reg. 71(3)**
- F198** S. 43(7)(A) substituted for s. 43(7) (1.12.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 14(2)**; S.I. 1997/2668, **art. 2, Sch. Pt. I(j)(I)(v)**
- F199** S. 43(9A) inserted (1. 1. 1993) by S.I. 1992/3218, **reg. 71(4)**

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Modifications etc. (not altering text)

C41 S. 43(1A)(f) amended (1.1.1996) by S.I. 1995/3275, reg. 57, **Sch. 10 Pt. I para. 5**

C42 S. 43(6)(7) applied by S.I. 1986/2168, **art. 10(1)(c)(i)(5)(c)(i)**

Marginal Citations

M29 1986 c.45.

[^{F200} **43A Revocation: supplementary directions.**

- (1) The Commission may give a building society directions under this section—
 - (a) when giving it notice that the Commission proposes to revoke its authorisation;
 - (b) at any time after such a notice has been given to the society (whether before or after its authorisation is revoked);
 - (c) when giving the society a notice of revocation under subsection (3)(e) of section 43 where the requisite initial step (within the meaning of that section) is the passing of a resolution for voluntary winding up or the execution of an instrument of dissolution; or
 - (d) at any time after the society has requested the Commission to revoke its authorisation or the central office to cancel its registration.
- (2) Directions under this section—
 - (a) shall be such as appear to the Commission to be desirable in the interests of the society's shareholders or depositors, whether for the purpose of safeguarding its assets or otherwise; and
 - (b) may relate to any activities of the society, whether or not those for which an authorisation is required.
- (3) Directions under this section may in particular—
 - (a) impose limitations on the issue of shares, the acceptance of deposits or the making of loans;
 - (b) require the society to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way;
 - (c) require the society to take steps with regard to the conduct of the business of any connected undertaking of the society;
 - (d) require the removal of any director or other officer.
- (4) No direction shall be given by virtue of paragraph (a) or (b) of subsection (1) above, and any direction given by virtue of either of those paragraphs shall cease to have effect, if—
 - (a) the Commission gives the building society notice that it is not proposing to take any further action pursuant to the notice mentioned in that paragraph; or
 - (b) the Commission's decision to revoke the society's authorisation is reversed on appeal.
- (5) No direction shall be given by virtue of paragraph (d) of subsection (1) above, and any direction given by virtue of that paragraph shall cease to have effect, if the society's request to the Commission to revoke its authorisation, or to the central office to cancel its registration, is withdrawn.

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- (6) No direction shall be given to a building society under this section after it has ceased to have any liability in respect of shares or deposits for which it had a liability at a time when it was authorised; and any such direction which is in force with respect to a building society shall cease to have effect when the society ceases to have any such liability.
- (7) A building society which fails to comply with any requirement or contravenes any prohibition imposed on it by a direction under this section shall be guilty of an offence and liable—
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (8) A contravention of a prohibition imposed under this section shall not invalidate any transaction or other act.]

Textual Amendments

F200 S. 43A inserted (9.6.1997) by 1997 c. 32, s. 19; S.I. 1997/1427, art. 2(d)

[^{F201} 43B Notification and confirmation of supplementary directions.

- (1) A direction under section 43A shall be given by notice in writing and may be varied by a further direction; and a direction may be revoked by the Commission by a notice in writing to the building society concerned.
- (2) A direction under that section, except one varying a previous direction with the agreement of the building society concerned—
 - (a) shall state the reasons for which it is given and give particulars of the society's rights under subsection (4) below and section 46; and
 - (b) without prejudice to section 43A(4), (5) and (6), shall cease to have effect at the end of the period of 28 days beginning with the day on which it is given unless before the end of that period it is confirmed by a further written notice given by the Commission to the society concerned.
- (3) Where a direction requires the removal of a person as director or other officer of a building society, the Commission shall give that person a copy of the direction (together with a statement of his rights under subsection (4) below) and, if the direction is confirmed, a copy of the notice mentioned in subsection (2)(b) above.
- (4) A building society to which a direction is given which requires confirmation under subsection (2) above and a person who is given a copy of it under subsection (3) above may, within the period of 14 days beginning with the day on which the direction is given, make written representations to the Commission; and the Commission shall take any such representations into account in deciding whether to confirm the direction.
- (5) The Commission may omit from the copies given to a person under subsection (3) above any matter which does not relate to him.]

Textual Amendments

F201 S. 43B inserted (9.6.1997) by 1997 c. 32, s. 20; S.I. 1997/1427, art. 2(d)

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44 Reauthorisation.

- (1) Where the authorisation of a building society has expired under section 41(7) or been revoked under section 43(1), or (3)(c), the Commission may, on an application duly made for the purpose, grant reauthorisation to the society under this section.
- (2) Reauthorisation is authorisation to raise funds or accept deposits of money to the extent authorisation to do so is required by section 9(1).
- (3) Reauthorisation under this section shall, if granted, be granted unconditionally or subject to conditions as provided by subsection (4) or (5) below.
- [^{F202}(3A) The Commission shall not grant reauthorisation to a society if it appears to the Commission that—
 - (a) the society is closely linked with any person; and
 - (b) the society's close links with that person, or any matters relating to any non-EEA laws or administrative provisions to which that person is subject, are such as would prevent the effective exercise by the Commission of its supervisory functions in relation to the society.]
 - (4) [^{F203}Subject to subsection (3A) above,]the Commission shall grant unconditional reauthorisation to the building society if it is satisfied that—
 - (a) the society has qualifying capital of an amount which is not less than the prescribed minimum;
 - [^{F204}(b) the society has adequate reserves and other capital resources;]
 - (c) the chairman of the board of directors and any executive directors, the chief executive, the secretary and the managers (if any) are each fit and proper persons to hold their respective offices in the society;
 - (d) the board of directors, with the chief executive and secretary, have the capacity and intention to direct the affairs of the society in accordance with the criteria of prudent management and, in so far as those criteria fell to be satisfied before the date of the application, have secured that they are being satisfied; ^{F205} . . .
 - [^{F206}(dd) each of the persons who, either alone or with any associate or associates, has a qualifying holding in the society is a fit and proper person to have such a holding; and]
 - (e) the investments of shareholders and depositors will be adequately protected without the imposition of conditions.
 - (5) [^{F203}Subject to subsection (3A) above,]if the Commission is not satisfied of the matters specified in subsection (4) above in relation to the society it shall—
 - (a) if those matters [^{F207}include either of] the matters specified in paragraphs (a) and (c), refuse to grant authorisation;
 - (b) in any other case, if itsatisfied that the imposition of conditions would secure the protection of the investments of shareholders and depositors, grant reauthorisation subject to such conditions to be compiled with by the society as the Commission thinks fit to impose to secure that purpose; or
 - (c) if not so satisfied, refuse to grant reauthorisation.
 - (6) Subsections (6) and (7) of section 9 apply as respects the imposition of conditions on reauthorisation as they apply as respects the imposition of conditions under that section.
 - (7) The provisions of Schedule 3 to this Act regulating—

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- (a) the making and determination of applications for authorisation,
- (b) the furnishing of information or additional information in connection with such applications, and
- (c) the imposition of conditions of authorisation,

apply in relation to reauthorisation under this section.

- (8) Reauthorisation granted under this section shall be treated for the purposes of this Act as authorisation granted under section 9 and in particular subsection (9) of that section shall apply as if any conditions had been imposed under subsection (5) of that section.
- (9) On granting reauthorisation under this section, the Commission shall inform the central office and the central office shall record that fact, and the date on which the reauthorisation was granted, in the public file of the society.
- [^{F208}(9A) Any expression used in this section to which a meaning is given by subsection (13) of section 9 has that meaning in this section; and for the purposes of this section subsection (13A) of that section shall apply as if the reference to subsection (4)(b) of that section were a reference to subsection (4)(c) of this section.]
- [^{F209}(10) In this section “adequate” means adequate having regard to the range and scale of the society’s business; and in this subsection—
- (a) “business” includes business the society proposes to carry on; and
 - (b) the reference to the society’s business includes, where it has connected undertakings, a reference to the business of those undertakings.]

Textual Amendments

- F202** S. 44(3A) inserted (18.7.1996) by S.I. 1996/1669, **reg. 6(4)**
- F203** Words in s. 44(4)(5) inserted (18.7.1996) by S.I. 1996/1669, **reg. 6(4)**
- F204** S. 44(4)(b) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 15(1)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(vi)**
- F205** Word following s. 44(4)(d) omitted (1. 1. 1993) by virtue of S.I. 1992/3218, **reg. 72(1)**
- F206** S. 44(4)(dd) inserted (1. 1. 1993) by S.I. 1992/3218, **reg. 72(1)**
- F207** Words in s. 44(5)(a) substituted (1.12.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 15(2)**; S.I. 1997/2668, art. 2, **Sch. Pt. I(j)(l)(vi)**
- F208** S. 44(9A) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 15(3)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(vi)**
- F209** S. 44(10) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 15(4)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(vi)**

Modifications etc. (not altering text)

- C43** S. 44 applied by S.I. 1986/2168, **art. 10(1)(c)(i)(5)(c)(i)**
- C44** S. 44(4)(a) modified (1. 1. 1993) by S.I. 1992/3218, **reg. 83, Sch. 11 Pt. IV para. 18(2)(a)**

[[^{F210F211}45] The criteria of prudent management.

- (1) If it appears to the Commission that there has been or is, on the part of a building society or its directors, a failure to satisfy any one or more of the following criteria of prudent management, it shall be entitled to assume for the purposes of its relevant

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prudential powers that the failure is such as to prejudice the security of the investments of shareholders or depositors.

(2) The prudential powers relevant for the purposes of this section are the Commission's powers—

- (a) under section 42, to impose conditions on a society's authorisation,
- (b) under section 42B, to direct a society to transfer all its engagements or its business, and
- (c) under section 43, to revoke a society's authorisation,

by reference to the expedience of the imposition, direction or revocation for the protection of the investments of shareholders or depositors.

(3) For the purposes of this Act, the criteria of prudent management are—

- (1) Compliance with the requirements imposed by sections 5(1), 6(1) and 7(1), and the restrictions on powers imposed by section 9A(1).
- (2) Maintenance of—
 - (a) adequate reserves and other capital resources; and
 - (b) own funds which amount to not less than the sum which, for the purposes of section 9, is the prescribed minimum in relation to qualifying capital.
- (3) Maintenance of adequate assets in liquid form.
- (4) Maintenance of a system for managing and containing risks to the net worth of the business, and risks to its net income, whether arising from fluctuations in interest or exchange rates or from other factors.
- (5) Maintenance of the requisite arrangements—
 - (a) for assessing the adequacy of securities for loans which are to be made or acquired by the society or subsidiary undertakings of the society, and are to be substantially secured on land; and
 - (b) for assessing the willingness and ability of borrowers to repay such loans.
- (6) Maintenance of the requisite accounting records and systems of control of business and of inspection and report.
- (7) Direction and management—
 - (a) by a sufficient number of persons who are fit and proper to be directors or, as the case may be, officers, in their respective positions,
 - (b) conducted by them with prudence and integrity.
- (8) Conduct of the business with adequate professional skills.

(4) Nothing in this section implies that it is improper for a determination for any purpose of the Commission's relevant prudential powers to take account of other factors than the criteria in subsection (3) above.

(5) A failure to satisfy any of the first six criteria in subsection (3) above shall be treated, for the purposes of this section, as a failure on the part of a society's directors prudently to conduct the affairs of the society.

(6) A failure on the part of the society to comply with the conditions to which its authorisation is subject shall be treated, for the purposes of this section, as a failure on the part of the society's directors prudently to conduct the affairs of the society.

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- (7) The following provisions apply for the interpretation of the list of criteria in subsection (3) above in their application to a building society, that is to say—
- “adequate”, except with reference to liquidity, means adequate having regard to the range and scale of the society’s business;
 - “adequate”, with reference to liquidity, means of such proportion and composition as will at all times enable the society to meet its liabilities as they arise and “liquid form”, in relation to assets, shall be construed accordingly;
 - “business” includes business the society proposes to carry on and references to the business of the society include, where it has connected undertakings, references to the business of those undertakings;
 - “requisite”, with reference to the arrangements for assessing the adequacy of securities, means such as may reasonably be expected to ensure—
 - (i) that any person who assesses the adequacy of any security for a loan to be secured on land will have furnished to him a written report on the value of the land; and
 - (ii) that any person who assesses the adequacy of any security, or reports on the value of any land, will be competent to perform that task, and will not be subject to any conflict of interest or potential conflict of interest;
 - “requisite”, with reference to the arrangements for assessing the ability of borrowers to repay loans, means such as may reasonably be expected to ensure that any person who assesses the ability of any borrower to repay a loan—
 - (i) will be competent to perform that task; and
 - (ii) will not be subject to any conflict of interest or potential conflict of interest;
 - “requisite”, with reference to accounting records and systems of control, means such as are required by section 71;
 - “sufficient”, with reference to the number of directors and officers, means sufficient having regard to the range and scale of the society’s business.
- (8) In determining for the purposes of the seventh criterion in subsection (3) above whether a person is a fit and proper person to hold any particular position, regard shall be had, in particular—
- (a) to his probity;
 - (b) to his competence and soundness of judgement for fulfilling the responsibilities of that position;
 - (c) to the diligence with which he is fulfilling or likely to fulfil those responsibilities; and
 - (d) to whether the interests of shareholders or depositors of the society are, or are likely to be, in any way threatened by his holding that position.
- (9) The Treasury may by order vary subsections (3) to (8) above by adding to or deleting from them any provision or by varying any provision contained in them; and an order under this subsection may make—
- (a) different provisions for different descriptions of building societies; and
 - (b) such incidental, supplementary and transitional provision as appears to the Treasury to be necessary or expedient.
- (10) The power to make an order under subsection (9) above is exercisable by statutory instrument; but no order shall be made under that subsection unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.

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- (11) Nothing in this section shall give rise to any claim against a building society or its directors, or afford a defence to any claim made by a building society.]]

Textual Amendments

F210 Ss. 43-45A shall cease to have effect (17.8.2001 for specified purposes and otherwise *prosp.*) by virtue of S.I. 2001/2617, arts. 2, 8, 13(1) Sch. 3 Pt. II para. 147 (with art. 13(3), Sch. 5) and repealed (*prosp.*) by S.I. 2001/2617, arts. 2(b), 13(2), Sch. 4 (with art. 13(2), Sch. 5)

F211 S. 45 substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 21, 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(n)

[^{F459} 45 The criteria of prudent management. U.K.]

- (1) If it appears to the Commission that there has been or is, on the part of a building society or its directors, a failure to satisfy any one or more of the following criteria of prudent management, it shall be entitled to assume for the purposes of its relevant prudential powers that the failure is such as to prejudice the security of the investments of shareholders or depositors.

- (2) The prudential powers relevant for the purposes of this section are the Commission's powers—

- (a) under section 42, to impose conditions on a society's authorisation,
- (b) under section 42B, to direct a society to transfer all its engagements or its business, and
- (c) under section 43, to revoke a society's authorisation,

by reference to the expedience of the imposition, direction or revocation for the protection of the investments of shareholders or depositors.

- (3) For the purposes of this Act, the criteria of prudent management are—

- (1) Compliance with the requirements imposed by sections 5(1), 6(1) and 7(1), and the restrictions on powers imposed by section 9A(1).
- (2) Maintenance of—
 - (a) adequate reserves and other capital resources; and
 - (b) own funds which amount to not less than the sum which, for the purposes of section 9, is the prescribed minimum in relation to qualifying capital.
- (3) Maintenance of adequate assets in liquid form.
- (4) Maintenance of a system for managing and containing risks to the net worth of the business, and risks to its net income, whether arising from fluctuations in interest or exchange rates or from other factors.
- (5) Maintenance of the requisite arrangements—
 - (a) for assessing the adequacy of securities for loans which are to be made or acquired by the society or subsidiary undertakings of the society, and are to be substantially secured on land; and
 - (b) for assessing the willingness and ability of borrowers to repay such loans.
- (6) Maintenance of the requisite accounting records and systems of control of business and of inspection and report.
- (7) Direction and management—

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- (a) by a sufficient number of persons who are fit and proper to be directors or, as the case may be, officers, in their respective positions,
 - (b) conducted by them with prudence and integrity.
- (8) Conduct of the business with adequate professional skills.
- (4) Nothing in this section implies that it is improper for a determination for any purpose of the Commission’s relevant prudential powers to take account of other factors than the criteria in subsection (3) above.
- (5) A failure to satisfy any of the first six criteria in subsection (3) above shall be treated, for the purposes of this section, as a failure on the part of a society’s directors prudently to conduct the affairs of the society.
- (6) A failure on the part of the society to comply with the conditions to which its authorisation is subject shall be treated, for the purposes of this section, as a failure on the part of the society’s directors prudently to conduct the affairs of the society.
- (7) The following provisions apply for the interpretation of the list of criteria in subsection (3) above in their application to a building society, that is to say—
 - “adequate”, except with reference to liquidity, means adequate having regard to the range and scale of the society’s business;
 - “adequate”, with reference to liquidity, means of such proportion and composition as will at all times enable the society to meet its liabilities as they arise and “liquid form”, in relation to assets, shall be construed accordingly;
 - “business” includes business the society proposes to carry on and references to the business of the society include, where it has connected undertakings, references to the business of those undertakings;
 - “requisite”, with reference to the arrangements for assessing the adequacy of securities, means such as may reasonably be expected to ensure—
 - (i) that any person who assesses the adequacy of any security for a loan to be secured on land will have furnished to him a written report on the value of the land; and
 - (ii) that any person who assesses the adequacy of any security, or reports on the value of any land, will be competent to perform that task, and will not be subject to any conflict of interest or potential conflict of interest;
 - “requisite”, with reference to the arrangements for assessing the ability of borrowers to repay loans, means such as may reasonably be expected to ensure that any person who assesses the ability of any borrower to repay a loan—
 - (i) will be competent to perform that task; and
 - (ii) will not be subject to any conflict of interest or potential conflict of interest;
 - “requisite”, with reference to accounting records and systems of control, means such as are required by section 71;
 - “sufficient”, with reference to the number of directors and officers, means sufficient having regard to the range and scale of the society’s business.
- (8) In determining for the purposes of the seventh criterion in subsection (3) above whether a person is a fit and proper person to hold any particular position, regard shall be had, in particular—
 - (a) to his probity;
 - (b) to his competence and soundness of judgement for fulfilling the responsibilities of that position;

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- (c) to the diligence with which he is fulfilling or likely to fulfil those responsibilities; and
 - (d) to whether the interests of shareholders or depositors of the society are, or are likely to be, in any way threatened by his holding that position.
- (9) The Treasury may by order vary subsections (3) to (8) above by adding to or deleting from them any provision or by varying any provision contained in them; and an order under this subsection may make—
- (a) different provisions for different descriptions of building societies; and
 - (b) such incidental, supplementary and transitional provision as appears to the Treasury to be necessary or expedient.
- (10) The power to make an order under subsection (9) above is exercisable by statutory instrument; but no order shall be made under that subsection unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (11) Nothing in this section shall give rise to any claim against a building society or its directors, or afford a defence to any claim made by a building society.]

Textual Amendments

F459 S. 45 substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 21, 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(n)

[^{F212}General functions of Commission]

Textual Amendments

F212 S. 45AA and cross-heading inserted (1.12.1997) by 1997 c. 32, s. 22; S.I. 1997/2668, art. 2, Sch. Pt. I(d)

[^{F213}45A Statements of principles etc. by Commission.

- (1) The Commission shall, as soon as practicable after the coming into force of this section, publish in such manner and in such detail as it thinks appropriate a statement of the principles in accordance with which it is acting or proposing to act—
- (a) in exercising its powers of control; and
 - (b) in interpreting the criteria of prudent management.
- (2) If in the course of a financial year the Commission makes a material change in the principles in accordance with which it is acting or proposing to act as mentioned in subsection (1) above, the Commission shall include in the report made by it for that year under section 4 a statement of the change in such detail as it thinks appropriate.
- (3) The Commission may, at any time, publish in such manner and in such detail as it thinks appropriate, either or both of the following, namely—
- (a) a statement of the principles in accordance with which it is acting or proposing to act as mentioned in subsection (1) above; and
 - (b) a statement containing additional guidance as to the exercise of its powers of control and its interpretation of the criteria of prudent management.

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- (4) In this section “powers of control”, in relation to the Commission, means—
- (a) the powers conferred on it by sections 36, 36A and 37; and
 - (b) its powers to grant or revoke an authorisation, to impose conditions on an authorisation or to direct the making of an application under section 41.]

Textual Amendments

F213 S. 45AA and cross-heading inserted (1.12.1997) by 1997 c. 32, s. 22; S.I. 1997/2668, art. 2, Sch. Pt. I(d)

[45A ^{F214}Exercise of powers on information from supervisory authority.

- (1) This section applies where, in the case of a building society for which an authorisation is in force, the Commission is informed by a supervisory authority in another member State that the society is failing to comply with an obligation imposed by or under any rule of law in force in that State for purposes connected with the implementation of the Second Council Directive.
- (2) The Commission shall as soon as practicable send a copy of the information received by it to every other authority which it knows is a connected UK authority.
- (3) The Commission shall also—
- (a) consider whether to exercise its powers—
 - (i) under section 42, to impose conditions on the society’s authorisation, or
 - (ii) under section 43, to revoke the society’s authorisation; and
 - (b) notify its decision, and any action which it has taken or intends to take, to the supervisory authority and to every other authority which it knows is a connected UK authority.]

Textual Amendments

F214 S. 45A inserted (1. 1. 1993) by S.I. 1992/3218, reg.74

Modifications etc. (not altering text)

C45 S. 45A(1) extended (1.1.1996) by S.I. 1995/3275, reg. 57, Sch. 10 Pt. I para. 6

Appeals

VALID FROM 17/08/2001

[^{F215}46A Notices, hearings and appeals.

- (1) If the Authority proposes—
- (a) to give a direction to a society under section 36(3), (5), (6), (7) or (10), or
 - (b) to give a direction to a society under section 42B(1), other than a direction varying a previous direction with the agreement of the society concerned,
- it must give the society a warning notice.

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- (2) The warning notice must set out the terms of the direction which the Authority proposes to give.
- (3) If the Authority decides—
 - (a) to give a direction to a society under section 36(3), (5), (6), (7) or (10), or
 - (b) to give a direction to a society under section 42B(1), other than a direction varying a previous direction with the agreement of the society concerned, it must give the society a decision notice.
- (4) The decision notice must set out the terms of the direction which the Authority has decided to give.
- (5) A society to whom a decision notice is given under this section may refer the matter to the Financial Services and Markets Tribunal.
- (6) Part XXVI of the Financial Services and Markets Act 2000 (notices) is to be treated as applying in respect of warning notices and decision notices given under this section as it applies in respect of warning notices and decision notices given under that Act, subject to subsection (8) below.
- (7) The provisions of Part IX of the Financial Services and Markets Act 2000 (hearings and appeals) are to be treated as applying in respect of references to the Financial Services and Markets Tribunal made under this section as they apply in respect of references made to that Tribunal under that Act.
- (8) In the application of Part XXVI of that Act in respect of warning notices and decision notices given under this section—
 - (a) section 388(1)(e)(i) (which requires a decision notice to indicate any right given under that Act to refer a decision to the Tribunal) is to be read as if, for the words “this Act”, there were substituted “ the Building Societies Act 1986 ”;
 - (b) section 388(2) (which makes provision for the type of action which may be proposed in a decision notice which was preceded by a warning notice) is to be read as if, for the word “Part”, there were substituted “ section ”;
 - (c) section 390(4) (which provides for the content of a final notice about an order) is to be read as if—
 - (i) for the words “an order” there were substituted “ a direction ”, and
 - (ii) for the words “the order”, in both places where they appear, there were substituted “ the direction ”; and
 - (d) section 392 (application of sections 393 (third party rights) and 394 (access to Authority material)) is to be read—
 - (i) as if paragraph (a) of that section contained a reference to a warning notice given under subsection (1) above, and
 - (ii) as if paragraph (b) of that section contained a reference to a decision notice given under subsection (3) above.]

Textual Amendments

F215 S. 46A substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) for ss. 46-49 by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II para. 148** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

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Modifications etc. (not altering text)

C46 S. 46A(1) extended (1.12.2001) by S.I. 2001/3592, arts. 36(2), 38(1) (with art. 23(2))

C47 S. 46A(8)(d)(i) excluded (1.12.2001) by S.I. 2001/3592, arts. 36(3), 38(2) (with art. 23(2))

[^{F216}**46** **Rights of appeal.**

^{F217}(1) A building society which is aggrieved by a decision of the Commission—

- (a) to refuse to grant authorisation;
- (b) to revoke authorisation;
- (c) to impose or vary conditions or as to the conditions imposed or varied; or
- (d) to give a direction,

may appeal against the decision to a tribunal constituted in accordance with section 47.

(2) Any person in relation to whom the Commission, in deciding to refuse to grant or to revoke authorisation, to impose or vary conditions or to give a direction, makes a determination that a person is not a fit and proper person to hold, or as the case may be, to remain in an office in the society or imposes a requirement that he be removed from an office in the society, may appeal against the decision so far as it relates to that determination or requirement.

(3) The revocation of a society's authorisation, or a direction under section 36(3), (5), (6), (7) or (10), shall not have effect until—

- (a) the end of the period within which an appeal can be brought against the Commission's decision to revoke the authorisation or give the direction; and
- (b) if such an appeal is brought, until it is determined or withdrawn.

(4) Subsection (3) above applies in relation to the expiry of a society's authorisation on a refusal to grant authorisation under section 41 as it applies to the revocation of a society's authorisation.

(5) Subject to subsection (3) above and any order of the tribunal made under section 47(5), an appeal under subsection (1)(c) or (d) or (2) above shall not affect the operation, pending the determination of the appeal, of any condition or direction which is the subject of the appeal; and no determination of an appeal by any person under subsection (2) above shall affect the revocation or direction for the purposes of which the Commission made its determination or requirement in relation to that person.

(6) In this section and section 47—

“conditions” means conditions to be complied with by a building society and imposed on the grant of authorisation under section 9, on the renewal of authorisation under section 41, on reauthorisation under section 44, or under section 42, or imposed or varied under section 42A;

“direction” means a direction under section 36(3), (5), (6), (7) or (10), section 42B(1) or section 43A;

“grant” includes renew;

“revoke” means revoke under section 43(1).]

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Textual Amendments

- F216** S. 46 substituted (9.6.1997 for certain purposes only and 1.12.1997 in so far as not already in force in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 23, 47(3); S.I. 1997/1427, art. 2(e); S.I. 1997/2668, art. 2, Sch. Pt. II(o)
- F217** S. 46A substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) for ss. 46-49 by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. II para. 148 (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2(1)

Modifications etc. (not altering text)

- C48** S. 46(1)(2) extended (1.12.2001) by S.I. 2001/3592, art. 126(2)(c) (with art. 23(2))
- C49** S. 46(1)(2) extended (1.12.2001) by S.I. 2001/3592, art. 126(2)(c) (with art. 23(2))
- C50** S. 46(5)(6) applied (with modifications) by S.I. 2001/3592, art. 127 (with art. 23(2))
- C51** S. 46(5)(6) applied (with modifications) by S.I. 2001/3592, art. 127 (with art. 23(2))

^{F218}47 Determination of appeals.

- (1) Where an appeal is brought under section 46, a tribunal to determine the appeal shall be constituted in accordance with subsection (2) below.
- (2) The tribunal shall consist of—
 - (a) a chairman appointed by the Lord Chancellor or the Lord Advocate, and
 - (b) two other members appointed by the Chancellor of the Exchequer.
- (3) The chairman shall be
 - [^{F219}(a) a person who has a 7 year general qualification, within the meaning of section 71 of the Courts and Legal Services Act 1990;
 - (b) an advocate or solicitor in Scotland of at least 7 years' standing; or
 - (c) a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least 7 years' standing;]

; and the other two members shall be persons appearing to the Chancellor of the Exchequer to have respectively experience of accountancy and experience of the business of building societies or of other financial institutions.
- [^{F220}(3A) A person shall not be appointed after the day on which he attains the age of 70 to be the chairman of a tribunal under this section.]
- (4) On any appeal against any decision of the Commission the question for the determination of the tribunal shall be whether, for the reasons adduced by the appellant, the decision was unlawful or not justified by the evidence on which it was based.
- [^{F221}(5) The tribunal may, on the application of the building society concerned, order that the operation of—
 - (a) any condition or variation of a condition; or
 - (b) any direction under section 36(3), (5), (6), (7) or (10), section 42B(1) or section 43A,

which is the subject of an appeal by the society be suspended pending the determination of the appeal.
- (6) The tribunal may confirm or reverse the decision which is the subject of the appeal but shall not have power to vary it except by directing the Commission—

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- (a) in the case of an appeal against a decision to refuse to grant authorisation, to determine the conditions to which the grant of authorisation is to be subject;
 - (b) in the case of an appeal against a decision to revoke authorisation, to determine the conditions or different conditions subject to which the authorisation is to continue in force, as the case may be;
 - (c) in the case of an appeal against the imposition of conditions or as to the conditions imposed by the decision, to determine different conditions subject to which the authorisation is to be granted or is to continue, as the case may be;
 - (d) in the case of an appeal against the variation of conditions or as to the variation imposed by the decision, to determine different variations of the conditions subject to which the authorisation is to continue;
 - (e) in the case of an appeal against the giving of a direction under section 36(3), to give a direction under section 36(5) or (6);
 - (f) in the case of an appeal against the giving of a direction under section 36(5), to give a direction under section 36(3) or (6);
 - (g) in the case of an appeal against the giving of a direction under section 36(7), section 42B(1) or section 43A, to give a direction imposing different requirements.
- (7) Where by virtue of subsection (6) above the tribunal directs the Commission to determine conditions or different conditions or to determine different variations of conditions—
- (a) the Commission shall by notice to the society concerned impose such conditions, or such variations of conditions, to be complied with by the society as it considers expedient in order to protect the investments of shareholders or depositors;
 - (b) Part III of Schedule 3 to this Act shall apply subject to the modifications made by paragraph 9 of that Schedule; and
 - (c) the society concerned may appeal to the tribunal against any of those conditions or variations;
- and on any such appeal the tribunal may confirm or reverse the Commission's decision with respect to the conditions or variations which are the subject of the appeal or may direct the Commission to determine different conditions or variations.
- (7A) Where by virtue of subsection (6) above the tribunal directs the Commission to give a different direction under section 36—
- (a) the Commission shall by notice to the society concerned give such direction as it considers expedient in order to ensure compliance with the relevant statutory requirements within the meaning of that section;
 - (b) paragraphs 2 and 3 of Schedule 7A to this Act shall apply subject to the modifications made by paragraph 4 of that Schedule; and
 - (c) the society concerned may appeal to the tribunal against that direction;
- and on any such appeal the tribunal may confirm or reverse the Commission's decision with respect to the direction which is the subject of the appeal or may direct the Commission to give a different direction.
- (7B) Where by virtue of subsection (6) above the tribunal directs the Commission to give a different direction under section 43A—
- (a) the Commission shall by notice to the society concerned give such direction as it considers desirable in the interests of shareholders or depositors; and
 - (b) the society concerned may appeal to the tribunal against that direction;

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and on any such appeal the tribunal may confirm or reverse the Commission's decision with respect to the direction which is the subject of the appeal or may direct the Commission to give a different direction.

- (8) Where by virtue of subsection (7), (7A) or (7B) above the tribunal, on an appeal against any conditions or variations of conditions or any direction, directs the Commission—
- (a) to determine different conditions or variations; or
 - (b) to give a different direction,
- the other provisions of that subsection shall apply as they apply where the tribunal gives such a direction by virtue of subsection (6) above.]
- (9) Where the tribunal reverses a decision of the Commission to refuse to grant authorisation, it shall direct the Commission to grant it; and where the tribunal reverses a decision of the Commission to make the grant of authorisation subject to conditions, it shall direct the Commission to grant it unconditionally.
- (10) Notice of a tribunal's determination, together with a statement of its reasons, shall be given to the appellant and to the Commission; and unless the tribunal has directed the Commission to determine [^{F222}conditions, variations or directions] or, in any other case, the tribunal directs otherwise, the determination shall come into operation when the notice is given to the appellant.
- (11) The Treasury may out of money provided by Parliament pay to the persons appointed as members of a tribunal under this section such fees and allowances in respect of expenses as the Treasury may determine and any other expenses incurred for the purposes of this section.

Textual Amendments

- F218** S. 46A substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) for ss. 46-49 by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. II para. 148 (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2(1)
- F219** Words substituted by Courts and Legal Services Act 1990 (c. 41, SIF 37), s. 71(2), Sch. 10 para. 68
- F220** S. 47(3A) inserted (31.3.1995) by 1993 c. 8, ss. 26(10), 31(2), Sch. 6 para. 64 (subject to s. 27 and Sch. 7 as mentioned in the said s. 26(10)); S.I. 1995/631, art. 2
- F221** S. 47(5)-(8) substituted (9.6.1997 for certain purposes only and 1.12.1997 in so far as not already in force in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 24(1), 47(3); S.I. 1997/1427, art. 2(e); S.I. 1997/2668, art. 2, Sch. Pt. II(p)
- F222** Words in s. 47(10) substituted (9.6.1997 for certain purposes only and 1.12.1997 in so far as not already in force in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 24(2), 47(3); S.I. 1997/1427, art. 2(e); S.I. 1997/2668, art. 2, Sch. Pt. II(p)

Modifications etc. (not altering text)

- C52** S. 47(1)(2) applied (with modifications) by S.I. 2001/3592, art. 127 (with art. 23(2))
- C53** S. 47: Certain functions transferred and made exercisable(1.7.1999) (S) by S.I. 1999/1750, art. 2, Sch. 1
- C54** S. 47: functions transferred (19.5.1999)(S) by S.I.1999/678, art. 2(1)
- C55** S. 47 amended (1. 1. 1993) by S.I. 1992/3218, regs. 22(6), 23(7), Sch. 6 para. 9(2), Sch. 7 para.5(2)
- C56** S. 47 restricted (31.3.1995) by 1993 c. 8, ss. 26(8)(e), 31(2) (with Sch. 7 paras. 2(2), 3(2), 4); S.I. 1995/631, art. 2
- C57** S. 47(3)(3A) applied (with modifications) by S.I. 2001/3592, art. 127 (with art. 23(2))

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C58 S. 47(5)(11) applied (with modifications) by S.I. 2001/3592, **art. 127** (with **art. 23(2)**)

^{F223}**48** **Costs, procedure and evidence.**

- (1) A tribunal may give such directions as it thinks fit for the payment of costs or expenses by any party to the appeal.
- (2) On an appeal under section 46(2) the building society in relation to which the determination was made, or upon which the requirement was imposed, shall be entitled to be heard.
- (3) The Treasury may, ^{F224} . . . , make regulations with respect to appeals under section 46; and those regulations may in particular make provision—
 - (a) as to the period within which and the manner in which such appeals are to be brought;
 - (b) as to the manner in which such appeals are to be conducted, including provision for any hearing to be held in private;
 - (c) for requiring any person, on tender of the necessary expenses of his attendance, to attend and give evidence or produce documents in his custody or under his control and for authorising the administration of oaths to witnesses;
 - (d) for granting to any person such discovery or inspection of documents or right to further particulars as might be granted by a county court in England and Wales or Northern Ireland or, in Scotland, for granting to any person such recovery or inspection of documents as might be granted by the sheriff;
 - (e) for enabling an appellant to withdraw an appeal or the Commission to withdraw its opposition to an appeal and for the consequences of any such withdrawal;
 - (f) for taxing or otherwise settling any costs or expenses directed to be paid by the tribunal and for the enforcement of any such direction;
 - (g) for enabling any functions in relation to an appeal to be discharged by the chairman of the tribunal; and
 - (h) as to any other matter connected with such appeals.
- (4) A person who, having been required in accordance with regulations under this section to attend and give evidence, fails without reasonable excuse to attend or give evidence shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) A person who intentionally alters, suppresses, conceals, destroys or refuses to produce any document which he has been required to produce in accordance with regulations under this section, or which he is liable to be so required to produce, shall be liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (6) The power to make regulations under this section is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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Textual Amendments

- F223** S. 46A substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) for ss. 46-49 by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II para. 148** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F224** Words in s. 48(3) repealed (1. 10. 1992) by **Tribunals and Inquiries Act 1992 (c. 53)**, ss. 18(2), 19(2), **Sch.4 Pt. I**

Modifications etc. (not altering text)

- C59** S. 48 applied (with modifications) by S.I. 2001/3592, **art. 127** (with art. 23(2))
- C60** S. 48(3) restricted (1. 10. 1992) by **Tribunals and Inquiries Act 1992 (c. 53)**, ss. **8(2)(a)**, 19(2)

^{F225}**49 Further appeals on points of law.**

- (1) An appeal shall lie to the High Court at the instance of the building society or other person concerned or of the Commission on any question of law arising from any decision of a tribunal under section 47; and if the court is of the opinion that the decision was erroneous in law, it shall remit the matter to the tribunal for re-hearing and determination by it.
- (2) In the application of this section to a building society whose principal office is in Scotland, references to the High Court shall be construed as references to the Court of Session.
- (3) No appeal to the Court of Appeal or to the Court of Appeal in Northern Ireland shall be brought from a decision under subsection (1) above except with the leave of that court or of the court or judge from whose decision the appeal is brought.
- (4) An appeal shall lie, with the leave of the Court of Session or the House of Lords, from any decision of the Court of Session under this section, and such leave may be given on such terms as to costs, expenses or otherwise as the Court of Session or the House of Lords may determine.

Textual Amendments

- F225** S. 46A substituted (17.8.2001 for specified purposes and otherwise 1.12.20001) for ss. 46-49 by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II para. 148** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

Modifications etc. (not altering text)

- C61** S. 49 applied (with modifications) by S.I. 2001/3592, **art. 127** (with art. 23(2))

Advertising etc.

50 Powers to control advertising.

- (1) If, with respect to any building society for which an authorisation is in force, the Commission considers it expedient to do so in the interests of persons who may invest by way of shares in or deposits with the society, the Commission may give the society a direction under this section.
- (2) A direction given to a building society under this section may do all or any of the following—

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- (a) prohibit the issue by the society of advertisements of all descriptions;
- (b) prohibit the issue by the society of advertisements of any specified description;
- (c) require the society to modify advertisements of a specified description in a specified manner;
- (d) prohibit the issue by the society of any advertisements which are, or are substantially, repetitions of a specified advertisement;
- (e) require the society to take all practicable steps to withdraw any specified advertisement, or any specified description of advertisement, which is on display in any place;

and a direction under this section shall be in writing.

- (3) Not less than seven days before giving a direction under this section the Commission shall give the society and, subject to subsection (9) below, every director and the chief executive of the society notice that it proposes to give the direction and stating the grounds for the proposed direction.
- (4) In any case where—
 - (a) the Commission has given a society notice under subsection (3) above, and
 - (b) within the period of seven days beginning with the date on which the notice was given, representations (whether made in writing or orally) are made to the Commission by the society,the Commission shall take those representations into account in deciding whether or not to proceed to give the direction.
- (5) On giving a direction under this section the Commission shall give the society and, subject to subsection (9) below, every director and the chief executive of the society, notice of the direction, stating also the grounds for giving it.
- (6) The Commission may not give a direction under this section on grounds other than those stated, or grounds included in those stated, in the notice under subsection (3) above.
- (7) A direction under this section—
 - (a) may be revoked or varied by a further direction under this section; and
 - (b) shall be revoked by notice to the society.
- (8) If a building society fails to comply with a direction under this section, then—
 - (a) the society shall be liable on conviction on indictment or on summary conviction to a fine not exceeding, on summary conviction, the statutory maximum; and
 - (b) any officer of the society who is also guilty of the offence shall be liable—
 - (i) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both; and
 - (ii) on summary conviction, to a fine not exceeding the statutory maximum.
- (9) Where any provision of this section requires notice of a direction under it to be given to every director of a building society that requirement is satisfied by giving notice to each director whose appointment has been officially notified and the non-receipt of a notice of the direction by a director or the chief executive does not affect the validity of the direction.

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(10) In this section—

“advertisement” includes every form of advertisement, [^{F226}whether—

- (a) documentary,
 - (b) by way of sound broadcasting or television or by inclusion in any programme service (within the meaning of the Broadcasting Act 1990) other than a sound or television broadcasting service, or
 - (c) by any pictorial means not falling within paragraph (a) or (b) above;
- and references] to the issue of advertisements shall be construed accordingly; and

“specified” means specified in a direction under this section.

Textual Amendments

F226 Words substituted by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), s. 203(1), [Sch. 20 para. 44](#)

Modifications etc. (not altering text)

C62 [S. 50\(7\)\(8\)](#) applied by [S.I. 1986/2168](#), [art. 10\(2\)\(b\)](#)

[^{F227}51 Powers to avoid apparent association with other bodies.

(1) If, as regards a building society and another body corporate which is not an associated body by virtue of section 18, it appears to the Commission that persons who might invest in or otherwise deal with that other body may be misled into believing that there is such a business relationship between the society and that body as indicates that the society has assumed an obligation to discharge that body’s liabilities in any event, the Commission may give the society a direction under subsection (2) below.

(2) A direction under this subsection is a direction requiring the society—

- (a) if they are available to it, to assume and make exercisable, or to make exercisable, as regards a body specified in the direction, the powers conferred by section 18; or
- (b) to take such steps as are agreed with the Commission for the purpose of removing the appearance of a business relationship with the specified body which indicates the assumption of an obligation of the description referred to in subsection (1) above;

and, within a specified period, to notify the Commission of the course it has decided to take.

(3) The steps that a building society may be required to take for the purpose of complying with a direction under subsection (2) above may relate to the conduct of its business or to its business relationship (if any) with the other body and, in particular, may require the removal of any person from any office in the society or that body.

(4) A direction under subsection (2) above shall—

- (a) specify the matters which appear to the Commission to be capable of giving rise to such a belief as is mentioned in subsection (1) above;
- (b) specify the period within which the society must comply with the direction;
- (c) require the society, if it decides to comply with the direction by taking steps to secure the purpose mentioned in subsection (2)(b) above, to notify the Commission of the steps it proposes to take.

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- (5) Where a building society, in pursuance of subsection (2)(b) above notifies the Commission of steps which it proposes to take to secure the purpose mentioned in that paragraph then—
- (a) if it appears to the Commission that the steps proposed are reasonably likely to secure that purpose, the Commission shall approve them and direct the society to carry them out;
 - (b) if it appears to the Commission that the steps proposed are, with modifications, likely to secure that purpose and the Commission and the society agree on appropriate modifications within the period of 21 days from the date on which the Commission notifies the society of the modifications it proposes for their agreement, the Commission shall approve the steps as modified and direct the society to carry them out;
- but otherwise the Commission shall reject the society’s proposals.
- (6) If the Commission rejects a society’s proposals under subsection (5) above the Commission shall direct the society, within a specified period, to take the steps specified in the direction.
- (7) Any direction under subsection (2), (5) or (6) above shall be given by the Commission by notice served on the society.
- (8) The Commission may, if it thinks fit, extend, or further extend, any period during which a building society is to take any steps required of it under any of the foregoing provisions of this section and may do so whether or not application is made to it before the expiry of the period in question.
- (9) If a building society fails, within the period allowed to it under the foregoing provisions of this section, to comply with a direction under subsection (2) or (6) above, the Commission may serve on the society an aggregation notice to take effect on such date as is specified in the notice.
- (10) An aggregation notice under subsection (9) above is a notice directing that, from the date specified in the notice until the notice is withdrawn by the Commission, the assets and liabilities of the body specified in the notice will be aggregated with those of the society for the purposes of the provisions of this Act requiring aggregation of assets or liabilities; and where such a notice is served, and whilst it remains in force, the assets and liabilities of the body specified in the notice shall for the purposes of those provisions be aggregated with those of the society in accordance with the aggregation rules in force under sections 7(10), 8(3) and 20(9).
- (11) A copy of any aggregation notice served on a building society under subsection (9) above shall, whilst in force, be kept in the public file of the society.
- (12) In this section—
- “business relationship” includes the use of business names and the holding by one individual of offices in more than one body;
 - “specified” means specified in a direction under any provision of this section;
- and “the provisions of this Act requiring aggregation of assets or liabilities” are sections 7, 8 and 20.]

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Textual Amendments

F227 S. 51 repealed (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 46(2), 47(3), Sch. 7 para. 16, **Sch. 9**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(y)(z)(vii)(cc)(vi)**

Information

52 Powers to obtain information and documents etc.

- (1) This section applies to information, documents or other material, or explanations of matters, which relate to the business of a building society or its plans for future development and, in relation to the obtaining under this section of information or explanations or the production under this section of documents or other material to which it applies “the purposes of its supervisory functions” means the purposes of the discharge by the Commission of
 - ^{F228}(a) any of its functions under Part I, section 9, ^{F229}Part IV,]] the foregoing sections of this Part, Part X and sections 107 and 108; and
 - (b) any of its functions under the Banking Coordination (Second Council Directive) Regulations 1992.
- (2) Where a building society has ^{F230}connected undertakings] this section also applies to information, documents or other material, or explanations of matters, which relate to, or also relate to, the business, or the plans for future development, of every such ^{F231}connected undertaking].
- ^{F232}(3) Where the Commission has grounds under section 51(1) for giving a direction to a building society under subsection (2) of that section in relation to another body corporate this section also applies to information, documents or other material, or explanations of matters, which relate to the business of that other body.]
- (4) This section does not authorise any requirement in relation to information, documents or other material to be imposed on a ^{F233}connected undertaking of] a building society unless ^{F234}that undertaking] carries on business in the United Kingdom; but a requirement may be imposed under this section on a building society in relation to information, documents or other material in the possession or control of a ^{F235}connected undertaking] outside the United Kingdom.
- (5) Subject to subsection (4) above, the Commission may by notice to a building society, ^{F236}or connected undertaking]—
 - (a) require ^{F237}the society or undertaking] to which it is addressed to furnish to it, within a specified period or at a specified time or times, such specified information as the Commission considers it needs for the purposes of its supervisory functions;
 - (b) require ^{F237}the society or undertaking] to which it is addressed to produce to it, at a specified time and place, such specified documents or other material as the Commission considers it needs for the purposes of its supervisory functions;
 - (c) require ^{F237}the society or undertaking] to which it is addressed to provide to it, within specified period, such explanations of specified matters as the Commission considers it needs for the purposes of its supervisory functions;

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- (d) require [^{F237}the society or undertaking] to which it is addressed to furnish to it a report by an [^{F238}approved accountant or other person with relevant professional skill] on, or on specified aspects of, information or documents or other material furnished or produced to the Commission.
- [^{F239}(5A) Subject to subsection (4) above, the Commission may authorise a member, servant or agent of the Commission, on producing evidence of his authority, to require a building society or connected undertaking—
- (a) to furnish to him forthwith such specified information as the Commission considers it needs for the purposes of its supervisory functions;
 - (b) to produce to him forthwith such documents or other material as the Commission considers it needs for those purposes;
 - (c) to provide to him forthwith such explanations of specified matters as the Commission considers it needs for those purposes.
- (6) Where by virtue of subsection (5)(a) to (c) above the Commission has power, or by virtue of subsection (5A) above an authorised person has power, to require the furnishing of any information, the production of any document or material or the provision of any explanation, by a building society or connected undertaking, the Commission or authorised person shall have the like power as regards any person who—
- (a) is or has been an officer or employee or agent of the society or undertaking; or
 - (b) in the case of documents or material, appears to the Commission or authorised person to have the document or material in his possession or under his control.]

(7) Where any person from whom production of a document or material is required under subsection (6) above claims a lien on the document or material, the production of it shall be without prejudice to the lien.

(8) Nothing in the foregoing provisions of this section shall compel the production by a barrister, solicitor or advocate of a document or material containing a privileged communication made by him or to him in that capacity or the furnishing of information contained in a privileged communication so made.

[^{F240}(9) Where, by virtue of subsection (5), (5A) or (6) above, the Commission or an authorised person requires the production by a building society or connected undertaking or any other person of documents or material, the Commission or authorised person may—

 - (a) if the documents or material are produced, take copies of or extracts from them and require the person who produced them, or any other person who is a present or past director or officer of, or is or was at any time employed by, the building society or connected undertaking concerned, to provide an explanation of the documents or material; and
 - (b) if the documents or material are not produced, require the person who was required to produce the documents or material to state, to the best of his knowledge and belief, where the documents or material are.]

(10) Any person who, when required to do so under this section, fails without reasonable excuse to furnish any information or accountant's report, to produce any documents or material, or to provide any explanation or make any statement, shall be liable on summary conviction—

 - (a) to a fine not exceeding level 5 on the standard scale; and

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- (b) in the case of a continuing offence, to an additional fine not exceeding £200 for every day during which the offence continues.
- (11) Any building society which furnishes any information, provides any explanation or makes any statement which is false or misleading in a material particular shall be liable, on conviction on indictment or on summary conviction, to a fine which, on summary conviction, shall not exceed the statutory maximum.
- (12) Any person who knowingly or recklessly furnishes any information, provides any explanation or makes any statement which is false or misleading in a material particular shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both; and
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

[^{F241}(13) In this section—

“agent”, in relation to a building society or connected undertaking, includes its bankers, accountants, solicitors and auditors;

“approved”, in relation to an accountant or other person with relevant professional skill, means approved by the Commission;

“specified” means specified in a notice or requirement under this section.]

Textual Amendments

- F228** S. 52(1)(a)(b) substituted (1. 1. 1993) for certain words by S. I. 1992/3218, **reg. 75**
- F229** Words in s. 52(1)(a) substituted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 17(1)**; S.I. 1997/1427, **art. 2(k)(n)(i)**
- F230** Words in s. 52(2) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 17(2)(a)**; S.I. 1997/2668, **art. 2, Sch. Pt. II(w)(z)(viii)**
- F231** Words in s. 52(2) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 17(2)(b)**; S.I. 1997/2668, **art. 2, Sch. Pt. II(w)(z)(viii)**
- F232** S. 52(3) repealed (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 46(2), 47(3), **Sch. 7 para. 17(3)**, **Sch. 9**; S.I. 1997/2668, **art. 2, Sch. Pt. II(w)(z)(viii)(cc)(vii)**
- F233** Words in s. 52(4) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 17(4)(a)**; S.I. 1997/2668, **art. 2, Sch. Pt. II(w)(z)(viii)**
- F234** Words in s. 52(4) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 17(4)(b)**; S.I. 1997/2668, **art. 2, Sch. Pt. II(w)(z)(viii)**
- F235** Words in s. 52(4) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 17(4)(c)**; S.I. 1997/2668, **art. 2, Sch. Pt. II(w)(z)(viii)**
- F236** Words in s. 52(5) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 17(5)(a)**; S.I. 1997/2668, **art. 2, Sch. Pt. II(w)(z)(viii)**
- F237** Words in s. 52(5) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 17(5)(b)**; S.I. 1997/2668, **art. 2, Sch. Pt. II(w)(z)(viii)**
- F238** Words in s. 52(5)(d) substituted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 17(5)(c)**; S.I. 1997/1427, **art. 2(k)(n)(iii)**

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- F239** S. 52(5A)(6) substituted for s. 52(6) (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 17(6)**; S.I. 1997/1427, **art. 2(k)(n)(iii)**
- F240** S. 52(9) substituted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 17(7)**; S.I. 1997/1427, **art. 2(k)(n)(iii)**
- F241** S. 52(13) substituted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 17(8)**; S.I. 1997/1427, **art. 2(k)(n)(iii)**

[^{F242}52A Right of entry to obtain information and documents.

- (1) Any member, servant or agent of the Commission may, on producing if required evidence of his authority, enter any premises occupied by a person on whom a notice has been served under section 52 for the purpose of—
 - (a) obtaining there the information, documents or other material or explanations required by that notice; and
 - (b) facilitating the exercise by the Commission of the powers conferred by subsection (5) of that section.
- (2) Subject to subsection (3) below, any member, servant or agent of the Commission may, on producing if required evidence of his authority, enter any premises occupied by any person on whom a notice could be served under section 52 for the purpose of obtaining there such information, documents or other material or explanations as—
 - (a) are specified in the authority; and
 - (b) are information, documents or other material or explanations that could have been required by such a notice.
- (3) The Commission shall not authorise any person to act under subsection (2) above unless it has reasonable cause to believe that if a notice under section 52 were served it would not be complied with or that any documents or other material to which it would relate would be removed, tampered with or destroyed.
- (4) Any person who intentionally obstructs a person exercising rights conferred by this section shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or both.]

Textual Amendments

- F242** S. 52A inserted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 18**; S.I. 1997/1427, **art. 2(k)(n)(iii)**

53 Confidentiality of certain information obtained by Commission.

- (1) Subject to the provisions of this section and section 54, no information obtained by or furnished to the Commission under or for the purposes of this Act and relating to the business of the building society or other body or its or their plans for future development or to any person who is or has been or has been appointed or, in the case of a director, nominated or proposed as, an officer of a building society or other body may be disclosed (otherwise than to an officer or employee of the recipient authority) except—
 - (a) with the consent of the body to which, or person to whom, the information relates and (if different) of the person who furnishes it to the Commission; or
 - (b) to the extent that it is information which is at the time of the disclosure, or has previously been, available to the public from other sources; or

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- (c) in the form of a summary or collection of information so framed as not to enable information relating to any particular body or person to be ascertained from it; or
 - (d) to the extent that it is information which is provided for the purpose, under any provision of this Act, of its being made (in whatever manner) available to the public.
- (2) Nothing in subsection (1) above prohibits the disclosure of information—
- (a) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings, whether under this Act or otherwise;
 - [^{F243}(b) with a view to the institution of, or otherwise for the purposes of—
 - (i) any civil proceedings by or at the relation of or against the Commission or by the Investor Protection Board arising out of the discharge of their respective functions under this Act; or
 - (ii) any civil proceedings in which the Commission will have or has a right to be heard;]
 - (c) in order to enable [^{F244}or assist]the Commission to discharge any of its functions under this Act or any Community obligation;
 - (d) in order to enable [^{F244}or assist]the central office to discharge any of its functions under this Act;
 - (e) in order to enable [^{F244}or assist]any person appointed investigator under section 55 or inspector under section 56 to discharge his duties under that section;
 - (f) in order to enable [^{F244}or assist]the auditors of the society to discharge their duties to the Commission;
 - [^{F245}(g)
- [^{F246}(2A) As regards the disclosure of information with a view to the institution of, or otherwise for the purposes of, any proceedings in respect of the society under the Bankruptcy (Scotland) Act 1985 ^{M30}or the Insolvency Act 1986 ^{M31}, the disclosures permitted by subsection (2)(b) above do not include the disclosure of information relating to a person who (not being a director or other officer of the society) is or has been, to the knowledge of the Commission, involved in an attempt to secure the survival of the society as a going concern.]
- (3) If, in order to enable [^{F247}or assist]the Commission properly to discharge any of its functions under this Act or any such obligation, the Commission considers it necessary to seek advice from any qualified person on any matter of law, accountancy, valuation of property or other matter requiring the exercise of professional skill, nothing in subsection (1) above prohibits the disclosure to that person of such information as may appear to the Commission to be necessary to ensure that he is properly informed with respect to the matters on which his advice is sought.
- (4) Nothing in subsection (1) above prohibits the disclosure of information—
- (a) to the Treasury in circumstances where, in the opinion of the Commission, it is desirable or expedient that the information should be disclosed—
 - (i) in the interests of shareholders or depositors or in the public interest; or
 - (ii) with a view to the exercise by the Treasury of any of its functions under this Act[^{F248}and (in either case) the disclosure would, in its opinion, be in accordance with article 12(7) of the First Council Directive]

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; or

- (b) to the Investor Protection Board in order to enable the Board to discharge any of its functions under the protective scheme provisions of Part IV.

- (5) Nothing in subsection (1) above prohibits the disclosure of information to the [^{F249}Financial Services Authority] in circumstances where, in the opinion of the Commission, it is desirable or expedient that the information should be disclosed with a view to facilitating the discharge—

- (a) by the Commission, of any of its functions under this Act; or

- [^{F250}(b) by the Authority of any of its functions under the Banking Act 1987 or as a supervisor of money market institutions;]

nor does subsection (1) above prohibit further disclosure of the information by the [^{F251}Authority] with the consent of the Commission and within the limits permitted by [^{F252}Part V of that Act other than section 84(5)] so far as it relates to disclosure in the public interest.

- [^{F253}(5A) Nothing in subsection (1) above prohibits the disclosure of information to the Bank of England where, in the opinion of the Commission, it is desirable or expedient that the information should be disclosed with a view to facilitating the discharge—

- (a) by the Commission of any of its functions under this Act; or

- (b) by the Bank of any of its functions;

nor does subsection (1) above prohibit further disclosure of the information by the Bank of England with the consent of the Commission.]

- (6) Nothing in subsection (1) above prohibits the disclosure of information, with the consent of the Treasury, to the Secretary of State or the Department of Economic Development in circumstances where, in the opinion of the Commission,

- [^{F254}(a) it is desirable or expedient that the information should be disclosed in the interests of shareholders or depositors or, in the case of information for the Secretary of State, in the public interest; and

- (b) disclosure is in accordance with article 12(7) of the First Council Directive.]

- (7) Nothing in subsection (1) above prohibits the disclosure of information to the Secretary of State or the Department of Economic Development in circumstances where, in the opinion of the Commission, it is desirable or expedient that the information should be disclosed with a view to facilitating the discharge—

- (a) by the Commission, of any of its functions under this Act, or

- [^{F255}(b) by the Secretary of State, of any functions of his under the Insurance Companies Act 1982, Part XIV of the Companies Act 1985, Part XIII of the Insolvency Act 1986, the Financial Services Act 1986 or Part II, III or VII of the Companies Act 1989;]

- (c) by the Department, of any of its functions under Articles 424, 425(2), 435, 437, 439(1) or 440(2) or (3) of the ^{M32}Companies (Northern Ireland) Order 1986 (appointment of investigators and requirement to produce documents) [^{F256}Part XII of the Insolvency (Northern Ireland) Order 1989,][^{F257}Part III of the Companies (Northern Ireland) Order 1990 or Part II or V of the Companies (No. 2) (Northern Ireland) Order 1990;]

nor does subsection (1) above prohibit further disclosure of the information by the Secretary of State or the Department with the consent of the Commission [^{F258}if the disclosure is made with a view to facilitating the discharge of any of the functions mentioned in paragraph (b) or, as the case may be, paragraph (c) above.]

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- (8) Subject to subsection (9) below, nothing in subsection (1) above prohibits the disclosure of information to a prescribed regulatory authority in circumstances where, in the opinion of the Commission, it is desirable or expedient that the information should be disclosed—
- (a) in the public interest, or
 - (b) in the interests of shareholders or depositors, or
 - (c) with a view to facilitating the discharge—
 - (i) by the Commission, of any of its functions under this Act, or
 - (ii) by the regulatory authority, of any prescribed functions of the authority;

nor does subsection (1) above prohibit further disclosure of the information by a prescribed regulatory authority in prescribed circumstances, subject to prescribed conditions and with the consent of the Commission [^{F259}if the disclosure is made with a view to facilitating the discharge of any prescribed functions of the authority].

- (9) The Commission, with the consent of the Treasury, may, by order designate public and other authorities as prescribed regulatory authorities for the purposes of subsection (8) above and an order under this subsection—
- (a) shall specify [^{F260}the supervisory functions] of prescribed regulatory authorities which are prescribed functions for those purposes;
 - (b) may restrict the circumstances in which information may, by virtue of that subsection, be disclosed or further disclosed, whether by excluding any of paragraphs (a), (b) or (c) of that subsection or otherwise; and
 - (c) may impose conditions subject to which the information may be disclosed or further disclosed;

and in that subsection “prescribed” means prescribed by an order under this subsection.

- (10) The power to make an order under subsection (9) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (11) Nothing in subsection (1) above prohibits the disclosure to an overseas regulatory authority of information which relates to a building society which, or a building society’s [^{F261}connected undertaking] which,—
- (a) carries on or proposes to carry on any business in that country or territory, or
 - (b) has or proposes to acquire an interest in a body corporate which carries on or proposes to carry on in that country or territory any business corresponding to any business of a building society, or
 - (c) appears to the Commission to be associated with a body incorporated under the law of that country or territory or whose principal place is, or is proposed to be, in that country or territory,

if it appears to the Commission that the disclosure of the information would assist that authority in the discharge of its functions or would assist the Commission in the discharge of any of its functions under this Act.

- [^{F262}(11A) Subsection (11) above does not apply in relation to disclosures to an overseas regulatory authority which is not a supervisory authority in another member State unless the Commission is satisfied that the authority is subject to restrictions on further disclosures at least equivalent to those imposed by this section and section 54.]

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(12) Subsection (11) above applies in relation to the disclosure of information which relates to any person who is or has been or has been appointed or, in the case of a director, nominated or proposed as an officer of a building society or other body in the case of which that subsection authorises the disclosure of information which relates to it as it applies to the disclosure of information which relates to the society or other body.

[^{F263}(12A) Nothing in subsection (1) above prohibits the disclosure of information to the persons specified in the first column of the following Table if, in the opinion of the Commission, it is desirable or expedient that the information should be disclosed with a view to facilitating the discharge—

- (a) by the Commission, of any of its functions under this Act; or
- (b) by that person of the functions specified in relation to him in the second column of that Table.

TABLE

<i>Person</i>	<i>Function</i>
1 An inspector appointed under Part XIV of the Companies Act 1985 or Part XV of the Companies (Northern Ireland) Order 1986 or, so far as relating to offences involving securities of a company, section 177 of the Financial Services Act 1986.	Functions under that Part or, so far as so relating, that section.
2 A person authorised to exercise powers under section 84 of the Companies Act 1989.	Functions under that section, so far as relating to the breach of any law relating to companies.
3 A recognised clearing house (within the meaning of the Financial Services Act 1986).	Functions in its capacity as a clearing house recognised under the Financial Services Act 1986 so far as they are exercisable in relation to defaults or potential defaults by market participants.
4 A person approved under the Uncertificated Securities Regulations 1995 as an operator of a relevant system (within the meaning of those Regulations).	Functions as a person so approved so far as they are exercisable in relation to defaults or potential defaults by market participants.
5 A recognised supervisory body (within the meaning of Part II of the Companies Act 1989 or Part III of the Companies (Northern Ireland) Order 1990).	Functions in its capacity as such a body under that Part, or functions in relation to disciplinary proceedings against auditors.
6 A recognised professional body (within the meaning of section 391 of the Insolvency Act 1986 or Article 350 of the Insolvency (Northern Ireland) Order 1989).	Functions in its capacity as such a body under that Act or Order or functions in relation to disciplinary proceedings against insolvency practitioners (within the meaning of that Act or Order).
7 A supervisory authority in another EEA State.	Functions in its capacity as a supervisor of systems for the transfer of funds

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between credit institutions and their
customers."]

(13) Any person who discloses information in contravention of subsection (1) above shall be liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both; and
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

[^{F264}(13A) Information which is disclosed to a person with a view to [^{F265}enabling, facilitating or assisting] the discharge of any functions shall not be used otherwise than with a view to [^{F265}enabling, facilitating or assisting] the discharge of those functions.

(13B) Any person who uses information in contravention of subsection (13A) above shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both.]

(14) In this section—

“authority” includes any body (corporate or unincorporate) which is charged with the regulation of the carrying on of any description of financial business or the practice of any profession to which the carrying on of such business is incidental;

[^{F266}‘EEA State’ means a State other than the United Kingdom which is a contracting party to the agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993;]

“overseas regulatory authority” means any government department or public or other authority in a country or territory outside the United Kingdom which is charged under the law of that country or territory with the regulation of the carrying on there of any business within the powers conferred on building societies or their [^{F267}subsidiary undertakings] by or under this Act; and

“regulation”, in relation to any public or other authority, means regulation in the public interest or for the protection of private interests.

[^{F268}(15) [^{F269}Subject to subsection (15A) below,]any reference in this section to [^{F265}enabling, facilitating or assisting] the discharge of any functions is a reference to [^{F265}enabling, facilitating or assisting] the discharge of those functions in relation to—

- (a) a financial market; ^{F270} . . .
- (b) persons carrying on the business of banking or insurance, Consumer Credit Act businesses or the business of providing other financial services; [^{F271}or
- (c) persons involved in the operation of occupational pension schemes (within the meaning of the Pension Schemes Act 1993 or, in Northern Ireland, the Pension Schemes (Northern Ireland) Act 1993)]

and in this subsection ‘Consumer Credit Act business’ has the same meaning as in the Banking Coordination (Second Council Directive) Regulations 1992.

[Subsection (15) above shall not apply to disclosures made by virtue of ^{F272}(15A) subsection (12A) above, or to disclosures made with a view to facilitating the discharge of any of the following functions, namely—

- (a) functions of the Secretary of State under Part XIV of the Companies Act 1985, Part XIII of the Insolvency Act 1986 or Part II of the Companies Act 1989 or, so far as relating to the breach of any law relating to companies, under section 83 of the Companies Act 1989; or

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- (b) functions of the Department of Economic Development in Northern Ireland under Part XV of the Companies (Northern Ireland) Order 1986, Part XII of the Insolvency (Northern Ireland) Order 1989 or Part III of the Companies (Northern Ireland) Order 1990.]

- (16) Any reference in this section or section 54 to the Commission's functions under this Act includes a reference to its functions under those Regulations.]

Textual Amendments

- F243** Words in s. 53(2)(b) substituted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 19(1)(a)**; S.I. 1997/1427, **art. 2(k)(n)(iii)**
- F244** Words in s. 53(2) inserted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 19(1)(b)**; S.I. 1997/1427, **art. 2(k)(n)(iii)**
- F245** S. 53(2)(g) omitted (1. 1. 1993) by virtue of S.I. 1992/3218, **reg. 76(1)**
- F246** S. 53(2A) inserted (1. 1. 1993) by S.I. 1992/3218, **reg. 76(2)**
- F247** Words in s. 53(3) inserted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 19(2)**; S.I. 1997/1427, **art. 2(k)(n)(iii)**
- F248** Words in s. 53(4)(a) inserted (1. 1. 1993) by S.I. 1992/3218, **reg. 76(3)**
- F249** Words in s. 53(5) substituted (1.6.1998) by 1998 c. 11, s. 23, **Sch. 5 Pt. IV Ch. II para. 64(2)(a)**; S.I. 1998/1120, **art. 2**
- F250** S. 53(5)(b) substituted (1.6.1998) by 1998 c. 11, s. 23, **Sch. 5 Pt. IV Ch. II para. 64(2)(b)**; S.I. 1998/1120, **art. 2**
- F251** Word in s. 53(5) substituted (1.6.1998) by 1998 c. 11, s. 23, **Sch. 5 Pt. IV Ch. II para. 64(2)(c)**; S.I. 1998/1120, **art. 2**
- F252** Words substituted by **Banking Act 1987** (c. 22, SIF 10), s. 108(1), **Sch. 6 para. 26(4)**
- F253** S. 53(5A) inserted (1.6.1998) by 1998 c. 11, s. 23, **Sch. 5 Pt. IV Ch. II para. 64(3)**; S.I. 1998/1120, **art. 2**
- F254** S. 53(6)(a)(b) substituted (1. 1. 1993) for certain words by S.I. 1992/3218, **reg. 76(5)**
- F255** S. 53(7)(b) substituted (18.7.1996) by S.I. 1996/1669, **reg. 7(2)(a)**
- F256** Words in s. 53(7)(c) inserted (18.7.1996) by S.I. 1996/1669, **reg. 7(2)(b)**
- F257** Words in s. 53(7)(c) added (N.I.) (11.3.1991 but 01.10.1991 to the extent that S.I. 1990/1504, **art. 24** refers to Part V of the Companies (No. 2) (N.I.) Order 1990) by S.I. 1990/1504, **art. 24**; S.R. 1991/26, **art. 2(2)(b)**; S.R. 1991/438, **art. 2(a)**
- F258** Words in s. 53(7) inserted (1. 1. 1993) by S.I. 1992/3218, **reg. 76(6)**
- F259** Words in s. 53(8) inserted (1. 1. 1993) by S.I. 1992/3218, **reg. 76(7)**
- F260** Words in s. 53(9)(a) substituted (1. 1. 1993) by S.I. 1992/3218, **reg. 76(8)**
- F261** Words in s. 53(11) substituted (1.12.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 19(3)**; S.I. 1997/2668, **art. 2, Sch. 2 Pt. II(w)(z)(ix)**
- F262** S. 53(11A) inserted (1. 1. 1993) by S.I. 1992/3218, **reg. 76(9)**
- F263** S. 53(12A) inserted (18.7.1996) by S.I. 1996/1669, **reg. 7(3)**
- F264** S. 53(13A)(13B) inserted (1.1.1993) by S.I. 1992/3218, **reg. 76(10)**
- F265** Words in s. 53(13A)(15) substituted (18.7.1996) by S.I. 1996/1669, **reg. 23, Sch. 5 para. 4**
- F266** Definition in s. 53(14) inserted (18.7.1996) by S.I. 1996/1669, **reg. 7(4)**
- F267** Words in s. 53(14) substituted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 19(4)**; S.I. 1997/1427, **art. 2(k)(n)(iii)**
- F268** S. 53(15)(16) inserted (1.1.1993) by S.I. 1992/3218, **reg. 76(11)**
- F269** Words in s. 53(15) inserted (18.7.1996) by S.I. 1996/1669, **reg. 7(5)**
- F270** Word after s. 53(15)(a) repealed (6.4.1997) by 1995 c. 26, ss. 122, 177, **Sch. 3 para. 16, Sch. 7 Pt. I** (with s. 121(5)); S.I. 1997/664, **art. 2, Sch. Pt. II**
- F271** S. 53(15)(c) and word preceding it added (6.4.1997) by 1995 c. 26, s. 122, **Sch. 3 para. 16** (with s. 121(5)); S.I. 1997/664, **art. 2, Sch. Pt. II**
- F272** S. 53(15A) inserted (18.7.1996) by S.I. 1996/1669, **reg. 7(6)**

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Modifications etc. (not altering text)

C63 S. 53 modified by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. **88(3)(b)(5)(6)**

Marginal Citations

M30 1985 c. 66

M31 1986 c. 45

M32 S.I. 1986/1032 (N.I. 6).

54 Information disclosed to Commission from other sources.

- (1) If and in so far as it appears to the Secretary of State that the disclosure of any information will enable the Commission better to discharge its functions under this Act (but not otherwise),—
 - (a) information obtained by the Secretary of State under section 447 or 448 of the ^{M33}Companies Act 1985 (inspection of companies' books and papers) may be disclosed to the Commission or further disclosed, notwithstanding the provision as to security of information contained in section 449 or that Act; and
 - (b) where the information is contained in a report made by inspectors appointed under section 431, 432, 442 or 446 of the Companies Act 1985 (investigation of affairs or ownership of companies and certain other bodies corporate) the Secretary of State may furnish a copy of the report to the Commission.
- (2) If and in so far as it appears to the Department of Economic Development that the disclosure of any information will enable the Commission better to discharge its functions under this Act (but not otherwise),—
 - (a) information obtained by the Department under Article 440 or 441 or the ^{M34}Companies (Northern Ireland) Order 1986 (inspection of companies' books and papers) may be disclosed or further disclosed to the Commission, notwithstanding the provision as to security of information contained in Article 442 of that Order; and
 - (b) where the information is contained in a report made by inspectors under Article 424, 425, 435 or 439 of the ^{M35}Companies (Northern Ireland) Order 1986 (investigation of affairs or ownership of companies and certain other bodies corporate) the Department may furnish a copy of the report to the Commission.
- (3) Subsection (1) of section 53 does not apply to information which has been disclosed to the Commission by virtue of subsection (1) or (2) above, but—
 - (a) except as provided by paragraph (b) below, nothing in this Act authorises any further disclosure of that information in contravention of section 449 of the ^{M36}Companies Act 1985 or, as the case may require, Article 442 of the Companies (Northern Ireland) Order 1986; and
 - (b) with respect to that information the references in subsections (3), (4), (5), (6), (8) and (11) of section 53 to subsection (1) of that section shall be construed as including a reference to the said section 449 or, as the case may require, Article 422, but, in the case of subsections (5), (6) and (8), so far only as they relate to the discharge of the Commission's functions or the interests of shareholders and depositors.

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- [^{F273}(3A) If information is disclosed by the [^{F274}Financial Services Authority, other than in its capacity as a designated agency within the meaning of the ^{M37}Financial Services Act 1986,] to the Commission for the purpose of enabling [^{F275}or assisting]it better to discharge its functions under this Act—
- (a) subsection (1) of section 53 applies to that information as it applies to information obtained or furnished under or for the purposes of this Act; but
 - (b) the references in subsections (2) to (11) of that section to the disclosure of information do not extend to the disclosure of that information unless—
 - (i) the [^{F276}Financial Services Authority] consents to the disclosure; and
 - (ii) the disclosure is for the purpose of enabling [^{F275}or assisting]the Commission better to discharge its functions under this Act.
- (3B) If information is disclosed to the Commission by the relevant supervisory authority in another member State, or is obtained by the Commission, or by a person acting on its behalf, in another member State—
- (a) subsection (1) of section 53 applies to that information as it applies to information obtained or furnished under or for the purposes of this Act; but
 - (b) the references in subsections (2) to (11) of that section to the disclosure of information do not extend to the disclosure of that information unless—
 - (i) in the case of information disclosed to the Commission by the relevant supervisory authority in another member State, that authority consents to its disclosure; or
 - (ii) in the case of information obtained by the Commission, or by a person acting on its behalf, in another member State, the relevant supervisory authority in that State consents to its disclosure.
- [^{F277}(3C) Before the Commission discloses information to any person under subsection (3B) (b)(i) above, it shall notify the relevant supervisory authority which disclosed the information to the Commission of the name and responsibilities of that person.]
- (4) ^{F278}
- (5) ^{F278}
- (6) If information is disclosed to the Commission by an overseas regulatory authority [^{F279}which is not the relevant supervisory authority in another member State]—
- (a) subsection (1) of section 53 applies to that information as it applies to information obtained or furnished under or for the purposes of this Act; but
 - (b) the references in subsections (4) to (11) of that section to the disclosure of information do not extend to the disclosure of that information.

Textual Amendments

- F273** S. 54(3A)(3B) inserted (1. 1. 1993) by S.I. 1992/3218, **reg. 77(1)**
- F274** Words in s. 54(3A) substituted (1.6.1998) by 1998 c. 11, s. 23, **Sch. 5 Pt. IV Ch. II para. 64(4)(a)**; S.I. 1998/1120, **art. 2**
- F275** Words in s. 54(3A) inserted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 20**; S.I. 1997/1427, **art. 2(k)(n)(iii)**
- F276** Words in s. 54(3A) substituted (1.6.1998) by 1998 c. 11, s. 23, **Sch. 5 Pt. IV Ch. II para. 64(4)(b)**; S.I. 1998/1120, **art. 2**
- F277** S. 54(3C) inserted (18.7.1996) by S.I. 1996/1669, **reg. 7(7)**
- F278** S. 54(4)(5) repealed by **Banking Act 1987 (c. 22, SIF 10)**, s. 108, Sch. 6 para. 26(5), **Sch. 7 Pt. I**

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F279 Words in s. 54(6) inserted (1.1.1993) by S.I. 1992/3218, reg. 77(2)

Modifications etc. (not altering text)

C64 S.54 modified by Companies Act 1989 (c. 40, SIF 27), s. 88(3)(b)(5)(6)

Marginal Citations

M33 1985 c. 6.

M34 S.I. 1986/1032. (N.I.6)

M35 S.I. 1986/1032 (N.I.6).

M36 1985 c. 6.

M37 1986 c. 60.

Inspections, etc

55 Investigations on behalf of Commission.

- (1) If it appears to the Commission desirable to do so for the purposes of its supervisory functions in relation to a building society, the Commission may appoint one or more competent persons to investigate and report to it on the state and conduct of the business of the society concerned, or any particular aspect of that business.
- (2) If a person appointed under subsection (1) above thinks it necessary for the purposes of his investigation, he may also investigate the business of any body corporate which is or has at any relevant time been [^{F280}a connected undertaking of the building society under investigation]
- (3) It shall be the duty of every officer, employee and agent of a building society or other body which is under investigation—
 - (a) to produce to the persons appointed under subsection (1) above all records, books and papers relating to the body concerned which are in his custody or power; and
 - (b) to attend before those persons when required to do so; and
 - (c) otherwise to give to those persons all assistance in connection with the investigation which he is reasonably able to give.
- (4) Any officer, employee or agent of a building society or other body who—
 - (a) without reasonable excuse fails to produce any records, books or papers which it is his duty to produce under subsection (3) above, or
 - (b) without reasonable excuse fails to attend before the person appointed under subsection (1) above when required to do so, or
 - (c) without reasonable excuse fails to answer any question which is put to him by persons so appointed with respect to any building society or other body corporate which is under investigation,

shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) Any officer, employee or agent of a building society or other body who knowingly or recklessly furnishes to any person appointed under subsection (1) above any information which is false or misleading in a material particular, shall be liable—
 - (a) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or both; and

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- (b) on summary conviction to a fine not exceeding the statutory maximum.
- (6) In this section—
- (a) “agent”, in relation to a building society or other body whose business is under investigation, includes its bankers, its accountants and solicitors and any persons, where they are not officers of the other body concerned, who are employed as its auditors;
 - (b) “the purposes of its supervisory functions”, in relation to the Commission, has the same meaning as in section 52; and
 - (c) any reference to an officer, employee or agent of a building society or other body includes a reference to a person who has been but no longer is an officer, employee or agent of that society or other body.

Textual Amendments

F280 Words in s. 55(2) substituted for s. 55(2)(a)(b) (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), Sch. 7 para. 21; S.I. 1997/2668, art. 2, Sch. Pt. II(w)(z)(x)

Modifications etc. (not altering text)

C65 S. 55 extended (*prosp.*) by 2000 c. 39, ss. 2, 16(1)(2), Sch. 2 para. 13(1)

C66 S. 55(6)(a) amended (E.W.) (01.01.1992) by S.I. 1991/2684, arts. 2(1), 4, Sch. 1

56 Inspections and special meetings: general.

- (1) In the circumstances mentioned in subsection (2) below, the Commission—
- (a) may appoint one or more competent inspectors to investigate and report on the affairs of a building society, or
 - (b) may call a special meeting of a building society to consider its affairs, or
 - (c) may (either on the same or on different occasions) both appoint an inspector or inspectors and call a special meeting for those purposes;

and, in the circumstances mentioned in subsection (3) below, the investigation or consideration may extend to the affairs of any body corporate which is or at any relevant time has been a [^{F281}connected undertaking of] the building society.

- (2) The powers conferred by subsection (1) above may be exercised either—
- (a) on the application of the requisite number of members of the society, or
 - (b) where no such application is made but the Commission is of opinion that an investigation should be held into the affairs of the society, or that the affairs of the society call for consideration by a meeting of its members.
- (3) The powers conferred by subsection (1) above may be exercised in relation also to a [^{F282}connected undertaking of] a building society either—
- (a) where the application referred to in subsection (2)(a) above so requests, or
 - (b) where the application contains no such request but the Commission is of the opinion that it is necessary for the purposes of the investigation into or consideration of the affairs of the building society that the affairs of the [^{F283}connected undertaking] should also be investigated or considered.
- (4) Where the inspectors are of the opinion mentioned in subsection (3)(b) above in relation to a [^{F282}connected undertaking of] a building society they may, with

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the consent of the Commission, extend their investigation to the affairs of the [F283connected undertaking] and make their report accordingly.

- (5) For the purposes of subsections (1) to (3) above the requisite number of members—
 - (a) in the case of a building society having more than 1,000 members, is 100, and
 - (b) in the case of any other building society, is one-tenth of the whole number of members of the society.
- (6) The following provisions shall have effect where an application is made as mentioned in subsection (2)(a) above, that is to say—
 - (a) the application shall be supported by such evidence as the Commission may require for the purpose of showing that the applicants have good reason for requiring an investigation by inspectors or consideration by a special meeting, as the case may be, and that the applicants are not actuated by malicious, frivolous, vexatious or scandalous motives in their application;
 - (b) such notice of the application shall be given to the building society and, in a case where the investigation is to extend to its affairs also, to the society's [F284connected undertaking], as the Commission may direct;
 - (c) the Commission shall require the applicants to give security for payment of the costs of the investigation or meeting before the inspector is appointed or the meeting is called subject, in the case of the costs of an investigation, to an amount not exceeding the corresponding Companies Act limit; and
 - (d) as regards the expenses of or incidental to the investigation or meeting—
 - (i) in the case of an investigation (in whichever way instituted), the expenses shall be defrayed in the first instance by the Commission but without prejudice to its rights to contribution under section 57(10);
 - (ii) in the case of a meeting, the expenses shall be defrayed by the applicants, or out of the funds of the society, or by the members or officers or former members or officers of the society, in such proportions as the Commission may direct.
- (7) Before exercising its powers under subsection (1) above in a case falling within subsection (2)(b) above, the Commission shall inform the building society of the action which it proposes to take and the grounds for that action, and the society shall, within 14 days of receiving the information, be entitled to give the Commission an explanatory statement in writing by way of a reply.
- (8) Where the Commission proposes to exercise its powers under subsection (1) above in a case falling within subsection (3)(b) above, subsection (7) above shall apply in relation to the [F284connected undertaking] as it applies in relation to the society.
- (9) Inspectors appointed under this section shall, in addition to having the powers which are necessary for or incidental to the discharge of their functions under this section, have the powers specified in section 57.
- (10) Where a special meeting is " called under this section—
 - (a) the Commission may direct at what time and place the meeting is to be held, and what matters are to be discussed and determined at the meeting, and may give such other directions as it thinks fit with respect to the calling, holding and conduct of the meeting;
 - (b) the Commission may appoint a person to be chairman at the meeting or, in default of such an appointment, the meeting may appoint its own chairman;

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- (c) the meeting shall have all the powers of a meeting called according to the rules of the building society;

and the provisions of this subsection and any direction given under it shall have effect notwithstanding anything in the rules of the building society.

- (11) In this section “the corresponding Companies Act limit”, in relation to security for the payment of the costs of an investigation, is £5,000 or such other sum as is specified for the time being in an order under section 431(4) of the ^{M38}Companies Act 1985 for the purposes of that section.

Textual Amendments

F281 Words in s. 56(1) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 22(1)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xi)**

F282 Words in s. 56(3)(4) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 22(2)(a)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xi)**

F283 Words in s. 56(3)(4) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 22(2)(b)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xi)**

F284 Words in s. 56(6)(8) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 22(3)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xi)**

Marginal Citations

M38 1985 c. 6.

57 Inspections: supplementary provisions.

- (1) In this section—

“the body under investigation” means the building society whose affairs or, as the case may be, the building society whose affairs, and each [^{F285}connected undertaking of] the building society whose affairs, are the subject of the investigation;

“the inspectors” means the persons appointed by the Commission under section 56 to conduct the investigation;

“the investigation” means the investigation under section 56 which the inspectors have been appointed to hold;

and references to officers or to agents include past, as well as present, officers or agents (as the case may be) and “agents”, in relation to a building society or any [^{F285}connected undertaking of] a building society, includes its bankers, its accountants and solicitors and its auditors.

- (2) When the inspectors have been appointed it is the duty of all officers and agents of the body under investigation—
- (a) to produce to the inspectors all documents and material of or relating to the body under investigation which are in their custody or power;
- (b) to attend before the inspectors when required to do so, and

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- (c) otherwise to give the inspectors all assistance in connection with the investigation which they are reasonably able to give.
- (3) If the inspectors consider that a person other than an officer or agent of the body under investigation is or may be in possession of information concerning its affairs, they may require that person to produce to them any documents or material in his custody or power relating to the body under investigation, to attend before them and otherwise to give them all assistance in connection with the investigation which he is reasonably able to give; and it is that person's duty to comply with the requirement.
- (4) The inspectors may examine on oath the officers and agents of the body under investigation, and any such person as is mentioned in subsection (3) above, in relation to the affairs of the body under investigation, and may administer an oath accordingly.
- (5) An answer given by a person to a question put to him under the foregoing provisions of this section may be used in evidence against him.
- (6) If an officer or agent of the body under investigation or any such person as is mentioned in subsection (3) above—
- (a) refuses to produce any document or material which it is his duty under this section to produce, or
 - (b) refuses to attend before the inspectors when required to do so, or
 - (c) refuses to answer any question put to him by the inspectors with respect to the affairs of the body under investigation,
- the inspectors may certify the refusal in writing to the High Court; and the court may thereupon inquire into the case and, after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, may punish the offender in like manner as if he had been guilty of contempt of the court.
- (7) The inspectors may, and if so directed by the Commission shall, make interim reports to the Commission, but they may at any time in the course of the investigation, without making an interim report, inform the Commission of matters coming to their knowledge as a result of the investigation tending to show that an offence has been committed.
- (8) The Commission may, if it thinks fit—
- (a) send a copy of any report made by the inspectors to the body whose affairs are or were the subject of the investigation;
 - (b) furnish a copy of any such report on request and on payment of the prescribed fee to—
 - (i) any member of the body whose affairs are or were the subject of the investigation;
 - (ii) the auditors of that body;
 - (iii) any person whose conduct is referred to in the report;
 - (iv) any other person whose financial interests appear to the Commission to be affected by matters dealt with in the report, whether as creditor or otherwise; and
 - (c) cause the report to be printed and published.
- (9) A copy of a report of inspectors appointed under section 56 to hold an investigation under that section, certified by the Commission to be a true copy, is admissible in any legal proceedings as evidence of the opinion of the inspectors in relation to any

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matter contained in the report; and a document purporting to be such a certificate shall be received in evidence and be deemed to be such a certificate, unless the contrary is proved.

- (10) The Commission shall be entitled to be repaid the expenses of the investigation defrayed by it under section 56(6)(d) as provided in the following paragraphs, that is to say—
- (a) by the applicants for the investigation, to such extent (if any) as the Commission may direct;
 - (c) by any person convicted of an offence in proceedings instituted as a result of the investigation, to such extent (if any) as the court by or before which he was convicted may order;

and a person liable under any one of paragraphs (a) to (c) above is entitled to contribution from any other person liable under the same paragraph, according to the amount of their respective liabilities under it.

- (11) In the application of this section to a building society whose principal office is in Scotland, any reference to the High Court shall be read as a reference to the Court of Session.

Textual Amendments

F285 Words in s. 57(1) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 23**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xii)**

Modifications etc. (not altering text)

C67 S. 57(1) amended (E.W.) (01.01.1992) by S.I. 1991/2684, arts. 2(1), 4, **Sch. 1**

PART VII

MANAGEMENT OF BUILDING SOCIETIES

Directors and other officers

58 Directors: number.

- (1) Every building society shall have at least two directors.
- (2) One of the directors shall be appointed to be chairman of the board of directors.

59 Chief executive and secretary.

- (1) Every building society shall have a chief executive, that is to say, a person who is employed by the society and who either alone or jointly with one or more other persons, is or will be responsible under the immediate authority of the directors for the conduct of the business of the society.
- (2) Every building society shall have a secretary.

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- (3) The offices of chief executive and secretary of a building society may be held by the same person.
- (4) The chief executive and the secretary of a building society shall be appointed by the directors of the society.
- (5) The directors of a building society shall, as regards the appointment of the secretary or the chief executive of the society, take all reasonable steps to secure that the person appointed is a person who has the requisite knowledge and experience to discharge the functions of his office.
- (6) Where a person becomes or ceases to be the chief executive of a building society, the society shall within one month give notice of that fact to the central office, stating the person's full name and address and the date on which he became, or ceased to be, chief executive; and the central office shall record the person's name and the date on which he began to hold, or, as the case may be, ceased to hold office, in the public file of the society.
- (7) Anything required or authorised to be done by or to the secretary or chief executive of a building society may, if the office is vacant or there is for any other reason no secretary or chief executive capable of acting, be done by or to any assistant or deputy secretary or assistant or deputy chief executive, as the case may be, or, if there is no assistant or deputy capable of acting, by or to any officer of the society authorised generally or specially for that purpose by the directors.

60 Directors: elections and retirements.

- (1) Except in so far as they may be co-opted by virtue of subsection (13) below, the directors of a building society must be elected to office, either—
 - [^{F286}(a) on a poll taken at the annual general meeting of the society, or]
 - (b) by postal ballot of the members conducted during that part of the financial year of the society which precedes the date on which the annual general meeting is held,

as the rules provide.
- [^{F287}(1A) Where directors of a building society are to be elected to office on a poll taken at the annual general meeting of the society, a form for the appointment of a proxy shall be sent to each person entitled to notice of the meeting.]
- (2) The persons entitled to vote in an election of directors of a building society are those members of the society who, on the voting date, are entitled to vote on an ordinary resolution of the society.
- [^{F288}(3) Where, in the case of an election of directors of a building society, there are more candidates than vacancies to be filled by the election, a person entitled to vote in the election—
 - (a) shall have one vote in respect of every vacancy, but
 - (b) cannot be required to cast all or any of his votes.
- (3A) Where, in the case of an election of directors of a building society, there are not more candidates than vacancies to be filled by the election—
 - (a) a person entitled to vote in the election shall have one vote in respect of every candidate, but cannot be required to cast all or any of his votes;

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- (b) each vote shall be capable of being cast either for or against the candidate concerned; and
 - (c) a candidate shall be elected if, and only if, more votes are cast for him than against him.]
- (4) Subject to subsections (6), (7) and (9) below and to paragraph 5(3) of Schedule 2 to this Act, [^{F289}any natural person] is eligible to be elected a director of a building society.
- (5) The rules of a building society may require its directors to retire at a prescribed age without eligibility for re-election or reappointment; and, if the age so prescribed is no greater than the age which is the normal retirement age for the purposes of this section, subsection (7) below shall have no application to the directors of the society.
- (6) If the rules of a building society make the provision authorised by subsection (5) above, a person who has attained the age so prescribed shall not be eligible to be elected as a director of the society.
- (7) Except in a case where the operation of this subsection is excluded by subsection (5) above, if a person has attained the normal retirement age for directors, he shall not be eligible to be elected a director of a building society unless—
 - (a) he has been approved as eligible for election by resolution of the board of directors, and
 - (b) his age and the reasons for the board’s approval of his eligibility have been notified to every person entitled to vote at the election.
- (8) In this section “the normal retirement age”, in relation to the directors of a building society, means 70 years or such lesser age as the rules of the society prescribe as the normal retirement age for its directors; and “the compulsory retirement age”, for a society whose rules make the provision authorised by subsection (5) above, means the age so prescribed in its rules.
- (9) The rules of a building society may impose, as a condition of a person’s eligibility to be or to remain a director of the society, a requirement that he shall hold beneficially shares in the society not less in value than the amount prescribed by the rules, but the minimum holding to be required shall not exceed £1,000 or such other amount as may be substituted for it by order of the Commission under this subsection.
- (10) The rules of a building society may impose, as conditions of the validity of a person’s nomination for election as a director, requirements as to—
 - (a) the minimum number of members who must join in nominating him,
 - [^{F290}(b) their qualifications as respects length of membership and the value of their shares or the amount of their mortgage debt;]
 - (c) the depositing of money with the society in connection with his candidature, but no other requirements; and rules made by virtue of this subsection must comply with section 61.
- [^{F291}(10A) A nomination of a candidate for election as a director of a building society—
 - (a) may be made at any time; but
 - (b) if made after the closing date for the nomination of candidates for the next election of directors, shall be carried forward (unless the candidate otherwise requires) as a nomination for the next election of directors after that;

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and in this subsection and section 61 “the closing date for the nomination of candidates”, in relation to an election of directors, means the last day of the last financial year to end before the voting date.]

- (11) A director of a building society shall retire from office—
- (a) in any case not provided for by paragraph (b) below, subsection (12) below or rules under section 61(10), at the third annual general meeting of the society following the date of his election, and
 - (b) in a case where he had attained the normal retirement age at his election, at the next annual general meeting following that date;

subject (in either case) to any provision for his earlier retirement on the grounds of ceasing to hold the requisite shares in the society contained in the rules of the society.

- (12) A director of a building society attaining the normal retirement age or, as the case may be, the compulsory retirement age shall, subject to any provision of the rules for earlier retirement, retire from office at the next annual general meeting of the society.
- (13) If the rules of a building society so provide, the directors for the time being may appoint as additional directors or to fill any vacancy on the board of directors any person who—
- (a) has not attained—
 - (i) the normal retirement age, or
 - (ii) the compulsory retirement age (where that age is less than the normal retirement age), and
 - (b) appears to them to be fit and proper to be a director.

not being a person who, having been nominated for election as a director at any election held within the preceding twelve months, was not elected as a director.

- (14) A person who is co-opted under subsection (13) above shall cease to hold office at the end of the permitted period unless he is elected as a director of the society in accordance with this section within that period.
- (15) A person who holds office as, or is to his knowledge nominated for election or proposed for appointment under subsection (13) above as, a director of a building society shall, not later than 28 days before he attains the normal retirement age or, as the case may be, the compulsory retirement age for directors of the society, give the society notice of the date on which he will attain that age; and if he fails to do so he shall be liable on summary conviction—
- (a) to a fine not exceeding level 3 on the standard scale; and
 - (b) in the case of a continuing offence, to an additional fine not exceeding £40 for every week during which the offence continues.

- (16) The power of the Commission to make an order under subsection (9) above—
- (a) includes power to make such transitional provision as it considers necessary or expedient, and
 - (b) shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

- (17) In this section—
- [^{F292} “ordinary resolution” means a resolution which will be effective without being passed as a special resolution or borrowing members’ resolution;]

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“permitted period”, in relation to a co-opted director, has the meaning given by section 61(12); and

“the voting date” means—

- (a) in the case of an election at a meeting, the date of the meeting, except where paragraph (c) below applies;
- (b) in the case of an election conducted by postal ballot, the date which the society specifies as the final date for the receipt of completed ballot papers;
- (c) in a case where a member appoints a proxy to vote at the meeting for him, the date which the society specifies as the final date for receipt of instruments appointing proxies to vote at the election;

and, for the purposes of this Act, the date of a person’s election to office as a director of a building society, in a case where the rules provide for election by postal ballot, is the date of the meeting at which the declaration of the result of the ballot is made.

Textual Amendments

- F286** S. 60(1)(a) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 27(1), 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(s)
- F287** S. 60(1A) inserted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 27(2), 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(s)
- F288** S. 60(3)(3A) substituted for s. 60(3) (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 27(3), 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(s)
- F289** Words in s. 60(4) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 27(4), 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(s)
- F290** S. 60(10)(b) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 27(5), 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(s)
- F291** S. 60(10A) inserted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 27(6), 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(s)
- F292** Definition in s. 60(17) repealed (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 27(7), 46(2), 47(3), Sch. 9; S.I. 1997/2668, art. 2, Sch. Pt. II(s)(cc)(viii)

Modifications etc. (not altering text)

- C68** Ss. 60(1)(2)(3)(9)(10), 61 excluded (*temp.*) by S.I. 1986/2168, art. 3(1)(3)

61 Directors: supplementary provisions as to elections, etc.

[^{F293}(1) Rules made under section 60(10)(a), in order to comply with this section, must not require—

- (a) in the case of a society whose total commercial assets do not exceed £100 million, more than 10 members;
- (b) in the case of a society whose total commercial assets exceed £100 million but do not exceed £250 million, more than 20 members;

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- (c) in the case of a society whose total commercial assets exceed £250 million but do not exceed £1,000 million, more than 30 members;
- (d) in the case of a society whose total commercial assets exceed £1,000 million but do not exceed £5,000 million, more than 40 members; and
- (e) in the case of a society whose total commercial assets exceed £5,000 million, more than 50 members,

to join in nominating a person for election as a director.

- (2) Rules under section 60(10)(b), in order to comply with this section, must not require a nominating member—
 - (a) to have been a member for more than two years before the date of the nomination; or
 - (b) if he claims eligibility as a shareholding member, to hold, or to have held at any time during that period, shares in the society to a value greater than £100; or
 - (c) if he claims eligibility as a borrowing member, to owe to the society, or to have owed to the society at any time during that period, a mortgage debt of an amount greater than £100.]
- (3) Rules made under section 60(10)(c), in order to comply with this section—
 - (a) must not require more than £250 to be deposited with the society;
 - (b) must not require the money to be deposited before the date which, under the rules, is the closing date for the nomination of candidates for the election; and
 - (c) must provide for the return of the deposit to the candidate in the event of his securing—
 - (i) not less than 5 per cent. of the total number of votes cast for all the candidates in the election; or
 - (ii) not less than 20 per cent. of the number of votes cast for the candidate who is elected with the smallest number of votes.

[^{F294}(3A) In subsection (1) above “total commercial assets”, in relation to a building society, means the difference between the total assets of the society as shown in the relevant accounts and the aggregate of—

- (a) the liquid assets of the society as shown in those accounts in pursuance of regulations under section 73(7); and
- (b) the fixed assets of the society as so shown;

and in this subsection “the relevant accounts” means the accounts which, immediately before the closing date for the nomination of candidates, were the accounts last prepared by the society under section 72.

- (4) The Commission may, by order, substitute—
 - (a) for any amount or number specified in subsection (1) above;
 - (b) for any amount specified in subsection (2) above; or
 - (c) for any amount or percentage specified in subsection (3) above,
 such other amount, number or percentage as it thinks appropriate; and the Commission may, with the consent of the Treasury, by order vary subsection (3A) above by adding to or deleting from it any provision or by varying any provision contained in it.]
- (5) The power to make orders under subsection (4) above—
 - (a) includes power to make such transitional provision as the Commission considers necessary or expedient, and

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- (b) is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) If a building society, in a case where the board of directors has approved as eligible for election a person who has attained the normal retirement age, fails to notify every person entitled to vote at the election as required by section 60(7), the society shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale and so shall any officer who is also guilty of the offence; but no such failure shall invalidate the election.
- (7) ^{F295}If, before the closing date for the nomination of candidates, a duly nominated candidate for election as a director of a building society furnishes the society with an election address, or a revised election address, of not more than 500 words], then, subject to subsection (8) below—
- (a) it shall be the duty of the society to send a copy of the address ^{F296}or, as the case may require, the revised address]to each member of the society who is entitled to vote in the election;
 - (b) each member's copy shall be sent in the same manner and, so far as practicable, at the same time as the notice of the meeting at which the election is to be conducted or the ballot papers are sent out, as the case may be, or as soon as is practicable thereafter; and
 - (c) if the building society fails to comply with the requirements of this subsection the society shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale and so shall any officer who is also liable for the offence;
- but no such failure shall invalidate the election.
- (8) Subsection (7) above does not require a building society to send copies of an address ^{F297}or a revised address]to members of the society in any case where—
- (a) publicity for the address ^{F298}or revised address]would be likely to diminish substantially the confidence in the society of investing members of the public, or
 - (b) the rights conferred by that subsection are being abused to seek needless publicity for defamatory matter or for frivolous or vexatious purposes;
- and that subsection shall not be taken to confer any rights on members, or to impose any duties on a building society, in respect of an address ^{F297}or a revised address]which does not relate directly to the affairs of the society.
- (9) The Commission shall hear and determine any dispute arising under subsection (8)(a) above, whether on the application of the society or of any other person who claims to be aggrieved.
- (10) The rules of a building society, if they provide for the retirement by rotation of its directors, may provide that a person elected to fill a vacant seat on the board must retire at the annual general meeting at which, in accordance with the rules for retirement by rotation, the seat is to fall vacant.
- (11) Subsection (10) above applies to any vacancy arising when an elected director ceases to hold office for any reason before the annual general meeting at which (disregarding his age) the seat is due to fall vacant under section 60(11)(a).
- (12) For the purposes of section 60(17) "the permitted period", with reference to the tenure of office of co-opted directors, is the period beginning with the date of the co-opted

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director's appointment and ending with whichever of the following first occurs, that is to say—

- (i) in the case of a building society which elects its directors at its annual general meeting, the conclusion of the next such meeting following his appointment;
- (ii) in the case of a building society which elects its directors by postal ballot, the declaration at its annual general meeting of the result of the next such ballot conducted after his appointment;
- (iii) the expiration of the period of sixteen months beginning with the date of his appointment;

but a general meeting or postal ballot shall be disregarded for the purposes of this paragraph if the closing date for the nomination of candidates falls before the date of the co-opted director's appointment.

- (13) Where a person becomes or ceases to be a director of a building society, the society shall within one month give notice of that fact to the central office, stating the person's full name and address and the date on which he became, or ceased to be, a director; and the central office shall record the person's name and the date on which he began to hold, or, as the case may be, ceased to hold office, in the public file of the society.
- (14) If a building society fails to comply with subsection (13) above the society shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale and so shall any officer who is also guilty of the offence.

Textual Amendments

- F293** S. 61(1)(2) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 28(1), 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(t)
- F294** S. 61(3A)(4) substituted for s. 61(4) (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 28(2), 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(t)
- F295** Words in s. 61(7) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 28(3)(a), 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(t)
- F296** Words in s. 61(7)(a) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 28(3)(b), 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(t)
- F297** Words in s. 61(8) inserted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 28(4)(a), 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(t)
- F298** Words in s. 61(8) inserted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 28(4)(b), 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(t)

Modifications etc. (not altering text)

- C69** Ss. 60(1)(2)(3)(9)(10), 61 excluded (*temp.*) by S.I. 1986/2168, art. 3(1)(3)

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Dealings with directors

62 Prohibition of tax-free payments to directors.

- (1) A building society shall not pay a director remuneration (whether as director or otherwise) free of income tax, or otherwise calculated by reference to or varying with the amount of his income tax, or to or with any rate of income tax.
- (2) Any rule of a building society and any provision of any contract, or in any resolution of a building society, for payment to a director of remuneration falling within subsection (1) above has effect as if it provided for payment, as a gross sum subject to income tax, of the net sum for which the rule, contract or resolution actually provides.

Modifications etc. (not altering text)

C70 S. 62 modified (13.1.1993 for certain purposes only and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 27, **Sch. 11 Pt. II para. 9(1)(a)(2)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.1**; S.I. 1993/2213, art. 2, **Sch.5**.

63 Directors to disclose interests in contracts and other transactions.

- (1) It is the duty of a director of a building society who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the society to declare the nature of his interest to the board of directors of the society in accordance with this section.
- (2) In the case of a proposed contract, the declaration shall be made—
 - (a) at the meeting of the directors at which the question of entering into the contract is first taken into consideration; or
 - (b) if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he became so interested.
- (3) Where the director becomes interested in a contract after it is made, the declaration shall be made at the first meeting of the directors held after he becomes interested in the contract.
- (4) For the purposes of this section, a general notice given to the directors of a building society by a director to the effect that—
 - (a) he is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm, or
 - (b) he is to be regarded as interested in any contract which may, after the date of the notice, be made with a specified person who is connected with him,is a sufficient declaration of interest in relation to any contract made after that date with that company, firm or person.
- (5) A director need not make a declaration or give a notice under this section by attending in person at a meeting of the directors if he takes reasonable steps to secure that the declaration or notice is brought up and read at the meeting.
- (6) The foregoing provisions of this section apply in relation to any transaction or arrangement as they apply in relation to a contract and, for the purposes of this section,

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a transaction or arrangement of a kind described in section 65 made by a society for a director of the society or a person connected with a director of the society is to be treated (if it would not otherwise be so treated, and whether or not it is prohibited by that section) as a transaction or arrangement in which that director is interested.

- (7) A director who fails to comply with this section shall be guilty of an offence and liable—
- (a) on conviction on indictment, to a fine; or
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

Modifications etc. (not altering text)

C71 S. 63 modified (13.1.1993 for certain purposes only and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 27, **Sch. 11 Pt. II para. 9(1)(b)(2)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.1**; S.I. 1993/2213, art. 2, **Sch.5**.

64 Substantial property transactions involving directors and connected persons.

- (1) A building society shall not enter into an arrangement—
- (a) whereby a director of the society, or a person connected with a director of the society, acquires or is to acquire one or more non-cash assets of the requisite value from the society; or
 - (b) whereby the society acquires or is to acquire one or more non-cash assets of the requisite value from a director of the society or a person connected with a director of the society,

unless the arrangement is first approved by a resolution of the society passed at a general meeting.

- (2) For this purpose a non-cash asset is of the requisite value if at the time the arrangement in question is entered into its value is—
- (a) except in a case falling within paragraph (b) below, not less than [^{F299}£100,000]; and
 - (b) where the last balance sheet of the society showed reserves amounting to less than £500,000, not less than the higher of £1,000 or the amount which represents 10 per cent. of the reserves so shown.
- (3) The Commission may, by order made with the consent of the Treasury, amend subsection (2) above so as to substitute for any of the amounts for the time being specified in paragraphs (a) and (b) of that subsection such other amount as it thinks appropriate.
- (4) The power to make an order under subsection (3) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) In this section “non-cash asset” means any property or interest in property other than cash and a reference to the acquisition of a non-cash asset includes the creation or extinction of an estate or interest in, or a right over, any property and also the discharge of any person’s liability, other than a liability for a liquidated sum.

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- (6) An arrangement entered into by a building society in contravention of this section, and any transaction entered into in pursuance of the arrangement (whether by the society or any other person) is voidable at the instance of the society unless—
- (a) restitution of any money or other asset which is the subject matter of the arrangement or transaction is no longer possible or the society has been indemnified in pursuance of subsection (7)(b) below for the loss or damage suffered by it, or
 - (b) any rights acquired in good faith, for value and without actual notice of the contravention by any person who is not a party to the arrangement or transaction would be affected by its avoidance, or
 - (c) the arrangement is affirmed by the society at a general meeting held not later than the next annual general meeting after the entry into the arrangement.
- (7) Where an arrangement or transaction is entered into with a building society by a director of the society or a person connected with him in contravention of this section then, without prejudice to any other liability but subject to subsections (8) and (9) below, that director and the person so connected, and any other director of the society who authorised the arrangement of any transaction entered into in pursuance of such an arrangement, is liable—
- (a) to account to the society for any gain which he has made directly or indirectly by the arrangement or transaction, and
 - (b) (jointly and severally with any other person liable under this subsection) to indemnify the society for any loss or damage resulting from the arrangement or transaction.
- (8) Where an arrangement or transaction is entered into by a building society and a person connected with a director of the society in contravention of this section, that director is not liable under subsection (7) above if he shows that he took all reasonable steps to secure the society's compliance with this section.
- (9) In any case, a person so connected and any such other director as is mentioned in subsection (7) above is not so liable if he shows that, at the time the arrangement was entered into, he did not know the circumstances constituting the contravention.

Textual Amendments

F299 Words in s. 64(2)(a) substituted (1.9.1995) by S.I. 1995/1872, art. 2

Modifications etc. (not altering text)

C72 S. 64 modified (13.1.1993 for certain purposes only and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 27, Sch. 11 Pt. II para. 9(1)(c)(2) (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, Sch. 1; S.I. 1993/2213, art. 2, Sch. 5.

65 Restriction on loans, etc. to directors and persons connected with them.

- (1) Subject to the following provisions of this section, a building society shall not—
- (a) make [^{F300}a loan] to a director or a person connected with a director of the society; or
 - (b) dispose of property by way of lease or hire to a director or a person connected with a director of the society; or

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- (c) make a payment on behalf of a director or a person connected with a director of the society in connection with the provision of ^{F301}any service of a kind which is provided by building societies for individuals in the ordinary course of business]; or
 - (d) enter into a guarantee or provide any security which is incidental to or connected with any such loan, disposal of property or payment; or
 - (e) take part in any arrangement whereby—
 - (i) another person enters into a transaction which, if it had been entered into by the society, would have contravened any of paragraphs (a) to (d) above; and
 - (ii) that other person, in pursuance of the arrangement, has obtained or is to obtain any benefit from the society or a subsidiary of the society.
- (2) Subsection (1)(a) above does not apply to—
- (a) any loan of an amount which, when aggregated with any other relevant loans, does not exceed ^{F302}£5,000];
 - (b) any loan made in the ordinary course of the society’s business and of an amount not greater and made on other terms not more favourable than it is reasonable to expect the society to have offered to a person of the same financial standing but unconnected with the society; or
 - (c) any loan, the amount of which, when aggregated with any other relevant loans, does not exceed ^{F302}£100,000], made for or towards the purchase or improvement of a dwelling-house used or to be used as the director’s only or main residence if he is an executive director and loans of that description and on similar terms are ordinarily made by the society to its employees.
- (3) Subsection (1)(b) above does not apply to—
- (a) any lease or hiring of property the value of which, when aggregated with the value of any other relevant leases or hirings, does not exceed ^{F302}£10,000]; or
 - (b) any lease or hiring made in the ordinary course of the society’s business and on terms not more favourable than it is reasonable to expect the society to have offered to a person unconnected with the society.
- (4) Subsection (1)(c) above does not apply to—
- (a) any payment amounting, when aggregated with any other relevant payment, to no more than ^{F302}£5,000] in respect of which the person on whose behalf it is made is under an obligation to reimburse the society within a period not exceeding two months beginning with the date of the paymentX; or
 - (b) any payment of an amount not greater and on other terms not more favourable than it is reasonable to expect the society to have offered to a person of the same financial standing but unconnected with the society.
- (5) Subject to compliance with the requirements of subsection (6) below, subsection (1) above does not preclude a building society from doing anything to provide a director with funds to meet expenditure incurred or to be incurred by him for the purposes of the society or for the purpose of enabling him properly to perform his duties as a director of the society nor does it preclude the society from doing anything to enable a director to avoid incurring such expenditure.
- (6) The following are the requirements referred to in subsection (5) above—
- (a) the things must either be done with the prior approval of the society given at a general meeting at which the requisite matters are disclosed or be done on

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- condition that, if the approval of the society is not so given at the next annual general meeting, the loan is to be repaid, or any other liability arising under the transaction is to be discharged, within six months from the conclusion of that meeting; and
- (b) the amount provided, when aggregated with any other relevant provision of funds, does not exceed [^{F302}£20,000].
- (7) The following are the requisite matters which must be disclosed for the purposes of subsection (6) above—
- (a) the purpose of the expenditure incurred or to be incurred, or which would otherwise be incurred, by the director;
- (b) the amount of the funds to be provided by the society; and
- (c) the extent of the society's liability under any transaction which is or is connected with the thing in question.
- (8) The Commission may by order in a statutory instrument made with the consent of the Treasury substitute for any sum specified in this section a larger sum specified in the order.
- (9) An order under subsection (8) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) In this section—
- “authorising provision” and “authorised”, in relation to a transaction of a description falling within paragraph (a), (b) or (c) of subsection (1) above, mean respectively any provision of subsection (2), (3) or (4) or constituted by subsection (5) above and any transaction or thing done to which that paragraph does not apply or which is not precluded from being done by virtue of that provision;
- “outstanding”, in relation to loans, means outstanding in respect of principal and interest and, in relation to the provision of funds subject to a condition for repayment or discharge of any other liability, means unpaid or undischarged to any extent;
- “provision of funds” includes anything else which, by virtue of subsection (5) above, a society is not precluded from doing by subsection (1) above; [^{F303}and]
- “relevant”, in relation to a transaction of a description falling within paragraph (a), (b) or (c) of subsection (1) above, means an outstanding or, in the case of a lease or hiring, current transaction of that description (whether entered into by, or by arrangement with, the society) not being one authorised by any other authorising provision.
- [^{F304}“subsidiary” has the meaning given by section 736 of the ^{M39}Companies Act 1985.]
- (11) Section 70 has effect for the interpretation, in the subsequent provisions of this Part, of references to transactions or arrangements contravening this section and to such transactions or arrangements being made “for” a person.

Textual Amendments

F300 Words in s. 65(1)(a) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 24(1)(a)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xiii)**

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- F301** Words in s. 65(1)(c) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 24(1)(b)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xiii)**
- F302** Words in s. 65 substituted (1.9.1995) by S.I. 1995/1872, art. 3, **Sch.**
- F303** Word in s. 65(10) repealed (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 46(2), 47(3), **Sch. 7 para. 24(2)(a)**, **Sch. 9**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xiii)(cc)(ix)**
- F304** Definition in s. 65(10) inserted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 24(2)(b)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xiii)**

Modifications etc. (not altering text)

- C73** S. 65 modified (13.1.1993 for certain purposes only and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 27, **Sch. 11 Pt. II para. 9(1)(d)(3)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch. 1**; S.I. 1993/2213, art. 2, **Sch. 5**.

Marginal Citations

- M39** 1985 c.6.

66 Sanctions for breach of s. 65.

- (1) If a building society enters into a transaction or arrangement contravening section 65, the transaction or arrangement is voidable at the instance of the society unless—
 - (a) restitution of any money or any other assets which is the subject matter of the arrangement or transaction is no longer possible, or the society has been indemnified in pursuance of subsection (2)(b) below for the loss or damage suffered by it, or
 - (b) any rights acquired in good faith, for value and without actual notice of the contravention by a person other than the person for whom the transaction or arrangement was made would be affected by its avoidance.
- (2) Where a transaction or arrangement contravening section 65 is made by a building society for a director of the society or a person connected with a director of the society then, without prejudice to any other liability but subject to subsections (3) and (4) below, that director and the person so connected and any other director of the society who authorised the transaction or arrangement (whether or not it has been avoided in pursuance of subsection (1) above) is liable—
 - (a) to account to the society for any gain which he has made directly or indirectly by the transaction or arrangement; and
 - (b) (jointly and severally with any other person liable under this subsection) to indemnify the society for any loss or damage resulting from the transaction or arrangement.
- (3) Where a transaction or arrangement contravening section 65 is entered into by a building society and a person connected with a director of the society, that director is not liable under subsection (2) above if he shows that he took all reasonable steps to secure the society's compliance with that section.
- (4) In any case, a person so connected and any such other director as is mentioned in subsection (2) above is not so liable if he shows that, at the time the transaction or arrangement was entered into, he did not know the circumstances constituting the contravention.

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Changes to legislation: Building Societies Act 1986 is up to date with all changes known to be in force on or before 15 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (5) A director of a building society who authorises or permits the society to enter into a transaction or arrangement knowing or having reasonable cause to believe that the society was thereby contravening section 65 is guilty of an offence.
- (6) A building society which enters into a transaction or arrangement contravening section 65 for one of its directors is guilty of an offence unless it shows that, at the time the transaction or arrangement was entered into, it did not know the circumstances constituting the contravention.
- (7) A person who procures a building society to enter into a transaction or arrangement knowing or having reasonable cause to believe that the society was thereby contravening section 65 is guilty of an offence.
- (8) A person other than a building society who commits an offence under this section shall be liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both; or
 - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or both.
- (9) A building society which commits an offence under this section shall be liable on conviction on indictment or on summary conviction to a fine which, on summary conviction, shall not exceed the statutory maximum.

Modifications etc. (not altering text)

C74 S. 66 modified (13.1.1993 for certain purposes only and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 27, **Sch. 11 Pt. II para.9(1)(e)(2)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.1**; S.I. 1993/2213, art. 2, **Sch.5**.

[^{F305}66A Transactions with directors and persons connected with them.

- (1) This section applies where a building society enters into a transaction the parties to which include—
 - (a) a director of the society; or
 - (b) a person connected with such a director,and the board of directors, in connection with the transaction, exceed any limitation on their powers by reason of anything included in the society's constitution, that is to say, its memorandum and rules.
- (2) The transaction is voidable at the instance of the society.
- (3) Whether or not it is avoided, any such party to the transaction as is mentioned in subsection (1)(a) or (b) above, and any director of the society who authorised the transaction, is liable—
 - (a) to account to the society for any gain which he has made directly or indirectly by the transaction, and
 - (b) to indemnify the society for any loss or damage resulting from the transaction.
- (4) Nothing in the above provisions shall be construed as excluding the operation of any other enactment or rule of law by virtue of which the transaction may be called in question or any liability to the society may arise.

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- (5) The transaction ceases to be voidable if—
- (a) restitution of any money or other asset which was the subject-matter of the transaction is no longer possible, or
 - (b) the society is indemnified for any loss or damage resulting from the transaction, or
 - (c) rights acquired bona fide for value and without actual notice of the directors' exceeding their powers by a person who is not party to the transaction would be affected by the avoidance, or
 - (d) the transaction is ratified by the society in general meeting, by ordinary or special resolution or otherwise as the case may require.
- (6) A person other than a director of the society is not liable under subsection (3) above if he shows that at the time the transaction was entered into he did not know that the directors were exceeding their powers.
- (7) This section does not affect the operation of sub-paragraph (1) of paragraph 17 of Schedule 2 in relation to any party to the transaction not within subsection (1)(a) or (b) above.

But where a transaction is voidable by virtue of this section and valid by virtue of that sub-paragraph in favour of such a person, the court may, on the application of that person or of the society, make such order affirming, severing or setting aside the transaction, on such terms, as appear to the court to be just.

- (8) In this section “transaction” includes any act; and the reference in subsection (1) above to limitations under the society’s constitution includes limitations deriving—
- (a) from a resolution of the society passed at a general or special meeting or on a postal ballot; or
 - (b) from any agreement between the members of the society.]

Textual Amendments

F305 S. 66A inserted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 38, 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(v)

67 Directors, etc, not to accept commissions in connection with loans.

- (1) This section applies to any person who holds office in or is employed by a building society as director, secretary, chief executive, manager, solicitor, surveyor or valuer or in connection with the assessment of the adequacy of securities for [^{F306}loans] secured on land.
- (2) No person to whom this section applies shall (in addition to the remuneration prescribed or authorised by the rules or any resolution of the society) accept from any other person any commission for or in connection with any loan made by the society.
- (3) If a person to whom this section applies accepts a commission in contravention of subsection (2) above—
 - (a) both he and, subject to subsection (4) below, the person who paid it shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale; and

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- (b) if, having been convicted of an offence under paragraph (a) above, the person accepting the commission fails to pay over to the society the amount or value of the commission, as and when directed to do so by the court which convicted him, he shall be guilty of an offence under this paragraph and liable on summary conviction to imprisonment for a term not exceeding six months.
- (4) No offence under paragraph (a) of subsection (3) above is committed by the person who paid the commission unless he did so knowing the circumstances that constituted the offence under that paragraph on the part of the person who accepted it from him.
- (5) Where—
- (a) a charge upon a policy of life assurance is given as additional security for [F307 a loan] made by a building society, or
 - (b) a building society makes [F307 an additional loan] to enable payment to be made of a premium on a policy of insurance, or
 - (c) any policy of insurance is taken out so as to comply with the terms on which [F307 a loan] is made by a building society, whether by way of insuring the property given as security for [F307 the loan] or otherwise,
- and the policy is effected through the building society, or the society nominates or selects a person by whom the policy is to be issued, it shall be unlawful for any person to whom this section applies, in connection with the effecting of the policy, to receive any commission from a person by or through whom the policy is issued.
- (6) A person who pays, and a person who accepts, any commission which subsection (5) above makes it unlawful to receive shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (7) In this section—
- “charge upon a policy of life assurance”, in relation to [F308 a loan] secured on land in Scotland, means an assignation in security in respect of such a policy;
 - “commission” includes any gift, bonus or benefit;
 - “solicitor”, in relation to England and Wales, includes licensed conveyancer.

Textual Amendments

F306 Words in s. 67(1) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 25(1)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xiv)**

F307 Words in s. 67(5) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 25(2)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xiv)**

F308 Words in s. 67(7) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 25(3)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xiv)**

Modifications etc. (not altering text)

C75 S. 67(1)(7) amended (E.W.) (1.1.1992) by S.I. 1991/2684, **arts. 2(1)**, 4 Sch. 1

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68 Records of loans, etc. for directors falling within s. 65.

- (1) A building society shall maintain a register containing a copy of every subsisting transaction or arrangement (other than an excepted transaction or arrangement) falling within section 65(1) made for a director or a person connected with a director of the society during the current financial year or any of the preceding ten financial years.
- (2) In the case of a transaction or arrangement which is not in writing, there shall be kept in the register a written memorandum setting out its terms.
- (3) A building society shall make available for inspection by members—
 - (a) at its principal office during the period of 15 days expiring with the date of its annual general meeting, and
 - (b) at the annual general meeting,

a statement containing the requisite particulars of the transactions and arrangements falling within section 65(1) which were included in the register under subsection (1) above at any time during the last complete financial year preceding the meeting.
- (4) The requisite particulars are those specified in Schedule 9 to this Act.
- (5) Two copies of the statement required to be so made available to members shall be sent by the society to the Commission on the date on which the statement is required to be first made available to members and the central office shall keep one of them in the public file of the society.
- (6) A copy of the statement required to be so made available shall also be sent, on demand and on payment of [^{F309}such fee (not exceeding £5) as the society may from time to time determine], to any member of the society.
- (7) There are excepted from the obligations imposed by this section on a building society with respect to a financial year all transactions or arrangements made or subsisting during that year for a person who was at any time during that year a director of the society or was connected with a director of the society if the aggregate of the values of each transaction or arrangement made for that person, less the amount (if any) by which the value of those transactions or arrangements has been reduced, did not exceed £1,000 at any time during that year
- (8) There are also excepted from the obligations imposed by this section on a building society with respect to a financial year all transactions or arrangements falling within paragraphs (b), (d) or (e) of section 65(1) made during that year for a person who was at any time during that year a director of the society or was connected with a director of the society if the aggregate of the values of each such transaction or arrangement so made for that director or any person connected with him, less the amount (if any) by which the value of those transactions or arrangements has been reduced, did not exceed £5,000 at any time during that year.
- (9) The Commission may, by order made with the consent of the Treasury, amend subsection (7) or (8) above so as to substitute for the amount for the time being specified in that subsection such other amount as it thinks appropriate.
- (10) The power to make an order under subsection (9) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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- (11) If a building society fails to comply with any provision of this section (or Schedule 9) the society shall be liable on conviction on indictment or on summary conviction to a fine not exceeding, on summary conviction, the statutory maximum, and so shall any officer who is also guilty of the offence.

Textual Amendments

F309 Words in s. 68(6) substituted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 26**; S.I. 1997/1427, **art. 2(k)(n)(iv)**

Modifications etc. (not altering text)

C76 S. 68 modified (13.1.1993 for certain purposes only and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 27, **Sch. 11 Pt. II para. 9(1)(f)(2)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch. 1**; S.I. 1993/2213, art. 2, **Sch. 5**.

Disclosure and record of related businesses

69 Disclosure and record of income of related businesses.

- (1) Where, at any time during a financial year of a building society, a person both is a director or other officer of a building society and is, or is a director of or partner in, a business associate of the society, this section shall apply, as respects that year, to that person in relation to the business of the business associate.
- (2) A person is a “business associate” of a building society in any financial year of the society if that person—
- (a) carries on a business which consists of or includes the provision of relevant services,
 - (b) provides relevant services during that year to, or to other persons in connection with [^{F310}loans] secured on land made by, the society and
 - [^{F311}(c) is not a connected undertaking of the society;]
- and “associated” has a corresponding meaning.
- (3) The following are relevant services—
- (a) conveyancing services provided by a solicitor;
 - (b) surveying and valuing land or other property;
 - (c) accountancy services;
 - (d) arranging for the provision of insurance against loss of or damage to property or on human life;
 - (e) any other services designated as relevant services.
- (4) Where a business associate of a building society provides the society with services which are relevant services by virtue of subsection (3) above, any administrative services provided to the society by the business associate are also relevant services.
- (5) The Commission may by order in a statutory instrument—
- (a) designate as relevant services services of any description specified in the order which are normally provided to building societies; and
 - (b) make such incidental, supplementary or transitional provision as it considers necessary or expedient;

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and in subsection (3)(e) above “designated” means designated by an order under this subsection.

- (6) Where this section applies, as respects a financial year of a building society, to a person as a director or other officer of the society in relation to the business of a business associate, that person shall furnish the society with the requisite particulars of that business.
- (7) The requisite particulars of the business of a business associate of a building society are—
- (a) except where an election under paragraph (b) below is in force, those specified in Part I of Schedule 10 to this Act;
 - (b) if a building society elects to adopt Part II of that Schedule for its directors [^{F312}and other officers] as respects a financial year, those specified in Part II of that Schedule; and
 - (c) as regards relevant services designated by an order under subsection (5) above, such particulars as are specified in the order;

and Part III of the Schedule has effect to supplement Parts I and II and includes a definition of “the volume of the business” for the purposes of this section.

- (8) An election by a building society to adopt Part II of Schedule 10 as regards the requisite particulars to be furnished by its directors [^{F312}and other officers] must be made in writing to the Commission before the beginning of the financial year as respects which it is made and the requisite particulars must be furnished in writing within the period of six weeks beginning with the end of the financial year for which they are required.
- (9) For the purpose of enabling him to furnish the requisite particulars of the business of a business associate of a building society the person who is under the obligation to furnish them to the society may require any person who is a member of or partner in, or holds any office or employment with, the business associate to furnish him with such information relating to its business as he may reasonably require for that purpose.
- (10) Any person who, without reasonable excuse—
- (a) fails to furnish the particulars required by subsection (6) above or furnishes particulars which are false or misleading in a material particular or, in the case of particulars under Part II to Schedule 10, are not a justified estimate, or
 - (b) fails to furnish any information lawfully required of him under subsection (9) above or furnishes information which is false or misleading in a material particular,

shall be liable on conviction on indictment or on summary conviction to a fine not exceeding, on summary conviction, the statutory maximum.

- (11) Subject to subsection (12) below, a building society shall maintain at its principal office a register containing the particulars furnished to it under subsection (6) above as respects the last financial year and each of the ten financial years preceding that year.
- (12) No particulars of the business of a business associate of a building society need be kept in the register provided for by subsection (11) above as respects any financial year of the society in which the volume of the business of which the requisite particulars are required did not exceed £5,000 or such other sum as may be substituted for it by order of the Commission in a statutory instrument under this subsection.
- (13) A building society shall make available for inspection by members—

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- (a) at its principal office during the period of 15 days expiring with the date of its annual general meeting, and
- (b) at the annual general meeting,

a statement containing the particulars required to be kept in the register under subsection (11) above as respects the last financial year.

- (14) Two copies of the statement required to be so made available to members shall be sent by the society to the Commission on the date on which the statement is required to be first made available to members and the central office shall keep one of them in the public file of the society.
- (15) A copy of the statement required to be so made available shall also be sent, on demand and on payment of [^{F313}such fee (not exceeding £5) as the society may from time to time determine], to any member of the society.
- (16) The power to make an order under subsection (5) or (12) above shall not be exercised except with the consent of the Treasury and any statutory instrument containing such an order shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (17) In this section—
- “administrative services” means services necessary or incidental to the conduct of the society’s business;
 - “conveyancing services” in relation to—
 - (a) land in England and Wales or Northern Ireland, has the same meaning as it has in paragraph 1(3) of Schedule 21 to this Act with the modification, in relation to land in Northern Ireland, that “disposition” does not include any disposition in the case of such a lease as is expected, by section 4 of the ^{M40}Landlord and Tenant Law Amendment Act (Ireland) 1860, from the requirements of that section, and
 - (b) heritable property in Scotland, includes drafting all writs relating to such property and negotiating and concluding missives for its purchase, sale, transfer, lease and sublease; and
- “solicitor”, in relation to England and Wales, includes licensed conveyancer, that is to say, a person who holds a licence under Part II of the ^{M41}Administration of Justice Act 1985.

Textual Amendments

- F310** Word in s. 69(2)(b) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 27(1)(a)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xv)**
- F311** S. 69(2)(c) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 27(1)(b)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xv)**
- F312** Words in s. 69(7)(b)(8) inserted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 27(2)**; S.I. 1997/1427, **art. 2(k)(n)(v)**
- F313** Words in s. 69(15) substituted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 27(3)**; S.I. 1997/1427, **art. 2(k)(n)(v)**

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Modifications etc. (not altering text)

- C77** S. 69 modified by S.I. 1987/1498, art. 7, **Sch. 2 para. 6**
- C78** S. 69 modified (13.1.1993 for certain purposes only and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 27, **Sch. 11 Pt. II para. 9(1)(g)(2)(4)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch. 1**; S.I. 1993/2213, art. 2, **Sch. 5**.
- C79** S. 69 modified (1. 7. 1992) by S.I. 1992/1547, arts. 5, 6, **Sch. 2**
- C80** S. 69(3)(a)(17) amended (E.W.) (01.01.1992) by S.I. 1991/2684, arts. 2(1), 4, **Sch. 1**
- C81** S. 69(6) excluded by S.I. 1986/2169, **art. 9(1)**
- C82** S. 69(8) modified by S.I. 1986/2169, **art. 9(2)**

Marginal Citations

- M40** 1860 c. 154.
- M41** 1985 c. 61.

Interpretation

70 Interpretation of this Part.

- (1) The following provisions apply for the interpretation of this Part.
- (2) A person is “connected with” a director of a building society if, but only if, he (not being himself a director of it) is—
 - (a) that director’s spouse, child or step-child; or
 - (b) a body corporate with which the director is associated; or
 - (c) a person acting in his capacity as trustee of any trust the beneficiaries of which include—
 - (i) the director, his spouse or any children or step-children of his, or
 - (ii) a body corporate with which he is associated, or of a trust whose terms confer a power on the trustees that may be exercised for the benefit of the director, his spouse, or any children or step-children of his or any such body corporate; or
 - (d) a person acting in his capacity as partner of that director or of any person who, by virtue of paragraph (a), (b) or (c) of this subsection, is connected with that director;
 - (e) a Scottish firm in which—
 - (i) that director is a partner,
 - (ii) a partner is a person who, by virtue of paragraph (a), (b) or (c) above, is connected with that director, or
 - (iii) a partner is a Scottish firm in which that director is a partner or in which there is a partner who, by virtue of paragraph (a), (b) or (c) above, is connected with that director.
- (3) In subsection (2)—
 - (a) a reference to a child or step-child of any person includes an illegitimate child of his [^{F314}but does not include any person who has attained the age of 18], and
 - (b) paragraph (c) does not apply to a person acting in his capacity as trustee under an employees’ share scheme or a pension scheme.

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- (4) A director is “associated” with a body corporate if he, his spouse, his child or step-child or a person acting in his capacity as trustee of any trust the beneficiaries of which include the director, his spouse, child or step-child between them, either—
- (a) own at least one-fifth of that body’s equity share capital (within the meaning of the ^{M42}Companies Act 1985), or
 - (b) are entitled to exercise or control the exercise of more than one-fifth of the voting power of that body at any general meeting.
- (5) As regards transactions or arrangements falling within section 65, a “transaction contravening section 65” means a transaction to which subsection (1)(a), (b), (c) or (d) of that section applies and an “arrangement contravening section 65” means an arrangement to which subsection (1)(e) of that section applies and such a transaction or arrangement is made “for” a person if—
- (a) in the case of a loan, disposal or payment within paragraph (a), (b) or (c), it is made, in the case of paragraph (a) or (b), to him or, in the case of paragraph (c) on his behalf;
 - (b) in the case of a guarantee or security within paragraph (d), it is made as an incident of or in connection with a loan or disposal to him or a payment on his behalf; and
 - (c) in the case of an arrangement within paragraph (e), the transaction to which the arrangement relates was made for him.

Textual Amendments

F314 Words in s. 70(3)(a) inserted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 28**; S.I. 1997/1427, **art. 2(k)(n)(vi)**

Modifications etc. (not altering text)

C83 S. 70 modified (13.1.1993 for certain purposes only and 1.1.1994 for all remaining purposes) by **Friendly Societies Act 1992 (c. 40)**, s. 27, **Sch. 11 Pt. II para. 9(1)(h)(2)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch. 1**; S.I. 1993/2213, art. 2, **Sch. 5**.

Marginal Citations

M42 1985 c. 6.

PART VIII

ACCOUNTS AND AUDIT

Modifications etc. (not altering text)

C84 Pt. VIII (ss. 71–82) excluded by S.I. 1986/2168, **art. 12(1)(a)**

C85 Pt. VIII (ss. 71–82) modified (*temp.* until 1.1.1993) by S.I. 1990/1392, **art. 6(3)**

Status: Point in time view as at 01/05/1999. This version of this Act contains provisions that are not valid for this point in time.

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Accounting records and systems of business control, etc.

71 Accounting records and systems of business control, etc.

- (1) Every building society shall—
- (a) cause accounting records to be kept, and
 - (b) establish and maintain systems of control of its business and records and of inspection and report,

in accordance with this section.

- (2) The accounting records of a society must be such as to—
- (a) explain its transactions;
 - (b) disclose, with reasonable accuracy and promptness, the state of the business of the society at any time;
 - (c) enable the directors properly to discharge the duties imposed on them by or under this Act and their functions of direction of the affairs of the society; and
 - (d) enable the society properly to discharge the duties imposed on it by or under this Act;

and must be kept in an orderly manner.

- (3) The accounting records shall in particular contain—
- (a) entries from day to day of all sums received and paid by the society and the matters in respect of which they are received or paid;
 - (b) entries from day to day of every transaction entered into by the society which will or there is reasonable ground for expecting may give rise to liabilities or assets of the society other than insignificant assets or liabilities in respect of the management of the society; and
 - (c) a record of the assets and liabilities of the society and in particular of assets and liabilities of any class specifically regulated by or under [F315 section 6 or 7].

- (4) The system of control which is to be established and maintained by a society is a system for the control of the conduct of its business in accordance with this Act and the decisions of the board of directors and for the control of the accounting and other records of its business.

- (5) The system of inspection and report which is to be established and maintained by a society is a system of inspection on behalf of and report to the board of directors on the operation of the system of control of the society's business and records required by subsection (1)(b) above.

- (6) The systems of control and of inspection and report must be such as to—
- (a) enable the directors properly to discharge the duties imposed on them by or under this Act and their functions of direction of the affairs of the society; and
 - (b) enable the society properly to discharge the duties imposed on it by or under this Act;

and no such system of control shall be treated as established or maintained unless there is kept available to the board a detailed [F316 record] of the system as in operation for the time being.

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(7) Without prejudice to the generality of subsection (6) above the systems of control and of inspection and report must be such as to secure that the society’s business is so conducted and its records so kept that—

(a) the information necessary to enable the directors and the society to discharge their duties and functions is sufficiently accurate, and is available with sufficient regularity or at need and with sufficient promptness, for those purposes; and

(b) the information regularly obtained by or furnished to the Commission under or for the purposes of this Act is sufficiently accurate for the purpose for which it is obtained or furnished and is regularly furnished;

and in this subsection, in its application in relation to the Commission, “regularly” includes that regularity requested by or agreed with the Commission.

(8) The accounting records shall be kept at the society’s principal office or at such other place or places as the directors think fit, and shall at all times be open to inspection by the directors.

(9) Accounting records shall be preserved for six years from the date on which they were made.

(10) Where a building society has [^{F317}connected undertakings], the society shall also secure that such accounting records are kept and such systems of control and of inspection and report are established and maintained by the society and the [^{F317}connected undertakings] as will enable the society to comply with the requirements of this section in relation to the business of the society and those [^{F317}connected undertakings].

[^{F318}(10A) The Commission may, for the purpose of implementing the Council Directive on the supervision of credit institutions on a consolidated basis (No. 92/30/EEC) ^{F319}, direct that subsection (10) above shall have effect in relation to any building society specified in the direction as if any associated body of the society so specified were linked to it by resolution.]

(11) The directors and chief executive of every building society shall, within the period of three months beginning with the end of each financial year, make and send to the Commission a statement of their opinion whether the requirements of this section have been complied with in respect of that year; and the statement shall be signed by the chairman on behalf of the board of directors and by the chief executive.

Textual Amendments

F315 Words in s. 71(3)(c) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 29(1)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xvi)**

F316 Word in s. 71(6) substituted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 29(2)**; S.I. 1997/1427, art. 2(k)(n)(vii)

F317 Words in s. 71(10) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 29(3)(a)-(c)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xvi)**

F318 S. 71(10A) repealed (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 46(2), 47(3), Sch. 7 para. 29(4), **Sch. 9**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xvi)(cc)(x)**

F319 OJ No. L110, 28.4.92, p.52.

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Modifications etc. (not altering text)
C86 S. 71 modified (*temp.*) by S.I. 1986/2168, art. 12(2)(d)
C87 S. 71(1)–(10) excluded (*temp.*) by S.I. 1986/2168, art. 12(2)(a)
C88 S. 71(11) modified (*temp.*) by S.I. 1986/2168, art. 12(2)(d)

Accounts

72 Duty of directors to prepare annual accounts.

- (1) Subject to subsection (4) below, the directors of every building society shall prepare with respect to each financial year of the society—
 - (a) an income and expenditure account showing the income and expenditure for that year, ^{F320}and]
 - (b) a balance sheet showing the state of its affairs as at the end of that year, ^{F321} . . .
 - ^{F321}(c)
- (2) ^{F322} . . . , if, at the end of its financial year, a building society has [^{F323}subsidiary undertakings] , the directors shall also prepare, with respect to that year, group accounts dealing respectively with the income and expenditure, [^{F324}and the state of the affairs], of the society and the [^{F323}subsidiary undertakings].
- (3) The directors of a building society which has [^{F323}subsidiary undertakings] shall secure that, except where in their opinion there are good reasons against it, the financial year of each of its [^{F323}subsidiary undertakings] coincides with the society’s own financial year.
- ^{F325}(4)
- ^{F326}(5)
- ^{F326}(6)
- (7) The Commission may by regulations made with the consent of the Treasury—
 - (a) add to the classes of documents to be comprised in a society’s accounts to be prepared for each financial year under subsection (1) or (2) above;
 - (b) make provision as to the matters to be included in any document so added;
 - (c) modify the requirements of this Part as to the matters to be stated in any document comprised in the society’s accounts; and
 - (d) reduce the classes of documents to be comprised in a society’s accounts.
- (8) Regulations under subsection (7) above may make different provision for different descriptions of society, and may include incidental and supplementary provisions.
- (9) The power to make regulations under subsection (7) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) The accounts prepared with respect to a society’s financial year under this section (whether as individual accounts or group accounts), with the notes to them, are referred to in this Part as “the annual accounts”.

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Textual Amendments

- F320** Word in s. 72(1)(a) inserted (23.3.1999) by S.I. 1999/248, reg. 3, **Sch. para. 2(1)**
- F321** S. 72(1)(c) and the word “and” immediately preceding omitted (23.3.1999) by virtue of S.I. 1999/248, reg. 3, **Sch. para. 2(1)**
- F322** Words in s. 72(2) omitted by virtue of S.I. 1991/1729, **art. 4(1)**.
- F323** Words in ss. 71-82 (Pt. VIII) substituted by S.I. 1991/1729, **art. 3**.
- F324** Words in s. 72(2) substituted (23.3.1999) by S.I. 1999/248, reg. 3, **Sch. para. 2(2)**
- F325** S. 72(4) repealed (23.3.1999) by S.I. 1999/248, reg. 3, **Sch. para. 2(3)**
- F326** S. 72(5)(6) omitted by virtue of S.I. 1991/1729, **art. 4(2)**.

73 Contents and form of annual accounts.

- (1) The annual accounts of a building society shall conform to the requirements of this section and regulations made under it.
- (2) Every income and expenditure account shall give a true and fair view of the income and expenditure of the society for the financial year.
- (3) Every balance sheet shall give a true and fair view of the state of the affairs of the society as at the end of the financial year.
- ^{F327}(4)
- (5) Subsections [^{F328}(2) and (3)] above, in their application to the group accounts of a society, are to be read as referring to the society and (so far as it concerns the members of the society) the [^{F329}subsidiary undertakings] dealt with in the group accounts.
- (6) The annual accounts shall also contain, whether in the form of notes or otherwise, such supplementary information as is prescribed.
- (7) The Commission shall, by regulations made with the consent of the Treasury, make provision with respect to the contents and the form of the annual accounts.
- (8) Without prejudice to the generality of subsections (6) and (7) above, the regulations may—
 - (a) prescribe accounting principles and rules;
 - (b) require corresponding information for a preceding financial year;
 - (c) require the accounts of societies to deal also with [^{F330}their associated undertakings];
 - (d) make different provision for different descriptions of society;
 - (e) require the accounts to give particulars of the emoluments, pensions, compensation for loss of office and financial interests of directors, other officers and employees of prescribed descriptions of the society;and may permit group accounts to be prepared in other than consolidated form.
- (9) Where compliance with regulations under this section would not secure compliance with the requirements of subsection [^{F331}(2) or (3)] above the directors shall take such steps with regard to the contents or form of the accounts, in addition to or, if additions do not suffice, in derogation of the provisions of the regulations, as they think necessary to secure compliance with those subsections and record, in the notes to the accounts, what they have done, the reasons for it and its effects.

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- (10) The power to make regulations under this section is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (11) It is the duty of every director, other officer and employee of a building society as respects whom prescribed particulars are by virtue of subsection (8)(e) above required to be given in the accounts to give notice of such matters as may be necessary to enable the society to give those particulars in the accounts.
- (12) In this section “prescribed” means prescribed in regulations under it.

Textual Amendments

F327 S. 73(4) repealed (23.3.1999) by S.I. 1999/248, reg. 3, **Sch. para. 3(1)**

F328 Words in s. 73(5) substituted (23.3.1999) by S.I. 1999/248, reg. 3, **Sch. para. 3(2)**

F329 Words in ss. 71-82 (Pt. VIII) substituted by S.I. 1991/1729, **art. 3**

F330 Words in s. 73(8)(c) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 30**; S.I. 1997/2668, **art. 2, Sch. Pt. II(w)(z)(xvii)**

F331 Words in s. 73(9) substituted (23.3.1999) by S.I. 1999/248, reg. 3, **Sch. para. 3(3)**

74 Duty of directors to prepare annual business statement.

- (1) The directors of every building society shall, by reference to the annual accounts and other records and information at their disposal, prepare with respect to each financial year of the society a statement (referred to in this Act as “the annual business statement”) relating to prescribed aspects of the business of the society during the year.
- (2) Where the society has [^{F332}connected undertakings] the annual business statement shall deal also with prescribed aspects of the business of the [^{F332}connected undertakings] during the year to which it relates.
- (3) The annual business statement shall contain such information relating to such aspects of the business of the society and shall be in such form as the Commission prescribes by regulations made with the consent of the Treasury; and in this section “prescribed” means prescribed by regulations under this subsection.
- (4) Without prejudice to the generality of subsections (1) to (3) above the regulations may require the annual business statements of building societies to include prescribed information about directors and past directors and persons connected with them and other officers and past officers and persons connected with them and their financial interests.
- (5) The information comprising the annual business statement shall give a true representation of the matters in respect of which it is given.
- (6) To such extent as may be prescribed matters contained in the society’s annual business statement shall not be the subject of report by the auditors under section 78.
- (7) The power to make regulations under subsection (3) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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- (8) It is the duty of every director or other officer of a building society to give notice to the society of such matters relating to himself or his financial interests as may be necessary for the purposes of compliance with the preceding provisions of this section.
- (9) Any person who fails to comply with subsection (8) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (10) Any director who fails to comply with subsection (1) above shall be liable on conviction on indictment or on summary conviction to a fine not exceeding, on summary conviction, the statutory maximum.

Textual Amendments

F332 Words in s. 74(2) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 31**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xviii)**

75 Directors' report.

- (1) The directors of a building society shall prepare for submission to the annual general meeting a report on the business of the society containing—
 - (a) a fair review of the development of its business during the financial year and of its position at the end of it, and
 - (b) such information relating to such aspects of the business of the society or the society and any [^{F335}connected undertakings] as may be prescribed by regulations made by the Commission with the consent of the Treasury, and
 - [^{F334}(c) a statement as to the matters mentioned in subsection (1A) below.]
- [^{F335}(1A) The said matters are—
 - (a) whether the society has acquired or established, or allowed a subsidiary undertaking to acquire or establish, a business to which subsection (3) and subsection (4) or, as the case may be, subsection (5) of section 92A applied;
 - (b) if the society has acquired or established, or allowed such an undertaking to acquire or establish, such a business, what the business is and whether the society complied with the requirements of subsection (1) of that section; and
 - (c) if the society did not comply with those requirements, why the society nevertheless proceeded, or allowed the undertaking to proceed, with the acquisition or establishment.]
- (2) Where the society has [^{F336}connected undertakings] the report shall, in addition to containing the information prescribed in relation to them under subsection (1)(b) above, review the development of the business of the society and its [^{F337}connected undertakings] during the year and their position at the end of it.
- (3) The power to make regulations under subsection (1) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) If a directors' report does not contain [^{F338}the review, information and statement required by subsection (1) above and, where applicable, the review required by subsection (2) above], each director shall be liable on conviction on indictment or on

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summary conviction to a fine not exceeding, on summary conviction, the statutory maximum.

Textual Amendments

- F333** Words in s. 75(1)(b) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 32(1)(a)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xix)**
- F334** S. 75(1)(c) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 32(1)(b)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xix)**
- F335** S. 75(1A) inserted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 32(2)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xix)**
- F336** Words in s. 75(2) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 32(3)(a)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xix)**
- F337** Words in s. 75(2) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 32(3)(b)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xix)**
- F338** Words in s. 75(4) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 32(4)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xix)**

76 Summary financial statement for members and depositors.

- (1) The directors of a building society shall, with respect to each financial year, prepare for members and depositors a summary financial statement for that year, that is to say, a statement derived from the annual accounts, annual business statement and director's report, giving a summary account of the society's financial development during and financial position at the end of the year.
- (2) Where the society has [^{F339}connected undertakings] the statement shall (so far as they are dealt with in the group accounts) give an account of the financial development and position of the society and its [^{F340}connected undertakings].
- (3) The Commission may, by regulations made with the consent of the Treasury, make provision with respect to—
 - (a) the form of the summary financial statement, and
 - (b) the information which must be included in it.
- (4) Every summary financial statement shall also include in the prescribed form statements to the effect that—
 - (a) it is only a summary of information in the accounts, business statement and directors' report;
 - (b) in so far as it summarises the information in the accounts, those accounts have been audited;
 - (c) the accounts, business statement and director's report will be available to members and depositors free of charge on demand at every office of the society after a specified date.

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- (5) Every summary financial statement shall include a statement of the auditors' opinion as to its consistency with the accounts, business statement and directors' report and its conformity with the requirements of this section and regulations made under it.
- (6) The power to make regulations under subsection (3) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) The summary financial statement shall be signed by two directors on behalf of the board of directors and by the chief executive of the society.
- (8) A copy of the summary financial statement and, where this subsection extends under section 78(6) to the auditors' report also, of the auditors' report shall be sent by the society, not later than 21 days before the date of the annual general meeting at which the accounts and reports are to be considered, to—
 - (a) every member of the society who is entitled to receive notice of the meeting,
 - (b) the Commission, and
 - (c) the central office.
- (9) A copy of the summary financial statement and, where this subsection extends under section 78(6) to the auditors' report also, of the auditors' report shall be given or sent by the society free of charge, at any time during the period ending with the publication of the next summary financial statement, to—
 - ^[F341](a) any individual who for the first time subscribes for shares in the society, on his first subscribing for the shares, and]
 - (b) any member of the society who was not sent a copy under subsection (8)(a) above, within seven days of his making a demand for a copy.
- (10) If default is made by a building society in complying with subsection (8) above, the society shall be liable on summary conviction—
 - (a) to a fine not exceeding level 5 on the standard scale; and
 - (b) in the case of a continuing offence, to an additional fine not exceeding £200 for every day during which the offence continues,and so shall any officer who is also guilty of the offence.
- (11) If default is made by a building society in complying with subsection (9) above, the society shall be liable on summary conviction—
 - (a) to a fine not exceeding level 3 on the standard scale; and
 - (b) in the case of a continuing offence, to an additional fine not exceeding £40 for every day during which the offence continues,and so shall any officer who is also guilty of the offence.
- (12) The central office shall keep the copy of the summary financial statement received by it under subsection (8) above in the public file of the society.

Textual Amendments

F339 Words in s. 76(2) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 33(1)(a)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xx)**

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- F340** Words in s. 76(2) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 33(1)(b)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xx)**
- F341** S. 76(9)(a) substituted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 33(2)**; S.I. 1997/1427, **art. 2(k)(n)(viii)**

Auditors and audit of accounts

77 Auditors: appointment, tenure, qualifications, etc.

- (1) Every building society shall at each annual general meeting appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting.
- (2) Schedule 11 to this Act has effect as regards—
 - (a) the appointment of auditors;
 - (b) their qualifications and grounds of disqualification, and
 - (c) the resignation and removal of auditors.

78 Auditors' report.

- (1) The auditors of a building society shall make a report to the members on the annual accounts which are to be laid before the society at the annual general meeting during their tenure of office.
- (2) The auditors' report shall ^{F342} . . . be open to inspection by any member [^{F343} at the annual general meeting of the building society].
- (3) The auditors shall, in their report under subsection (1) above, also make a report to the members on—
 - (a) the annual business statement, and
 - (b) the directors' report,
 in so far as subsection (7) below requires them to do so.
- (4) The auditors' report shall state whether the annual accounts have been prepared so as to conform to the requirements of this Part and the regulations made under it and whether, in the opinion of the auditors, they give a true and fair view—
 - (a) in the case of the income and expenditure account, of the income and expenditure of the society for the financial year, [^{F344} and]
 - (b) in the case of the balance sheet, of the state of the affairs of the society as at the end of the financial year, ^{F345} . . .
 - (c) in the case of the statement of the source and application of funds, of the manner in which the business of the society has been financed and in which its financial resources have been used during the year.
- (5) Subsection (4) above, in its application to the group accounts of a society, is to be read as referring to the society and (so far as it concerns the members of the society) the [^{F346} subsidiary undertakings] dealt with in the group accounts.
- (6) If the auditors' report includes a qualification of their opinion that the annual accounts give a true and fair view of the matters specified in subsection (4) above, subsections (8) and (9) of section 76 extend also to the auditors' report.

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- (7) The auditors' report, in so far as it deals with the documents specified in subsection (3) above, shall state whether they have been prepared so as to conform to the requirements of sections 74 and 75 respectively and the regulations thereunder and whether, in the opinion of the auditors—
- (a) the information given in the annual business statement gives a true representation of the matters in respect of which it is given, and
 - (b) the information given in the directors' report is consistent with the accounting records and the annual accounts for the year.
- (8) The auditors' report on the annual business statement shall not deal with any matters which, by virtue of section 74(6), are not to be the subject of report under this section.
- (9) The auditors of a building society shall, as regards the statement of particulars of transactions falling within section 65 which the society is to make available for "inspection by members under section 68(3), examine the statement before it is made available to members and make a report to the members on it; and the report shall be annexed to the statement before it is so made available.
- (10) The auditors' report under subsection (9) above shall state whether in their opinion the statement contains the particulars required by section 68; and where their opinion is that it does not, they shall include in their report, so far as they are reasonably able to do so, a statement giving the requisite particulars.

Textual Amendments

F342 Words in s. 78(2) repealed (11.1.1996) by [S.I. 1995/3233, art. 6\(a\)](#)

F343 Words in s. 78(2) inserted (11.1.1996) by [S.I. 1995/3233, art. 6\(b\)](#)

F344 Word in s. 78(4)(a) inserted (23.3.1999) by [S.I. 1999/248, reg. 3, Sch. para. 4](#)

F345 [S. 78\(4\)\(c\)](#) and the word "and" immediately preceding omitted (23.3.1999) by virtue of [S.I. 1999/248, reg. 3, Sch. para. 4](#)

F346 Words in [ss. 71-82](#) (Pt. VIII) substituted (1.1.1993) by [S.I. 1991/1729, art. 3](#)

Modifications etc. (not altering text)

C89 [S. 78](#) restricted (1. 1. 1993) by [S.I. 1992/359, reg. 9\(4\)](#) (with [reg. 2\(2\)](#))

79 Auditors' duties and powers.

- (1) It is the duty of the auditors of a building society in preparing their report to the members under section 78, to carry out such investigations as will enable them to form an opinion as to the following matters—
- (a) whether proper accounting records have been kept under section 71,
 - (b) whether the society has maintained satisfactory systems of control of its business and records and of inspection and report under that section, and
 - (c) whether the annual accounts are in agreement with the accounting records.
- (2) If the auditors are of the opinion that the annual accounts are not in agreement with the accounting records they shall state that fact in their report.
- (3) Every auditor of a building society has—
- (a) a right of access at all times to the accounting and other records of the society and all other documents relating to its business, and

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- (b) a right to require from the officers of the society such information and explanations as he thinks necessary for the performance of the duties of the auditors.
- (4) Where a building society has a [^{F347}connected undertaking], then—
- (a) if the [^{F347}connected undertaking] is a body corporate incorporated in any part of the United Kingdom, it is the duty of the [^{F347}connected undertaking] and its auditors to give to the society's auditors such information and explanation, and such access to documents, as those auditors may reasonably require for the purposes of their duties as auditors of the society;
- (b) in any other case, it is the duty of the society, if required by its auditors to do so, to take all such steps as are reasonably open to it to obtain from the [^{F347}connected undertaking] such information and explanation and such access as are mentioned above.
- [^{F348}(5) Subsection (4) above applied as regards any body associated with the society which is not a [^{F349}subsidiary undertaking]] as it applies as regards a [^{F349}subsidiary undertaking] of the society.
- (6) If the auditors fail to obtain all the information and explanations and the access to documents which, to the best of their knowledge and belief, are necessary for the purposes of their audit, they shall state that fact in their report.
- (7) The auditors of a building society have the right—
- (a) to attend any general meeting of the society, and to receive all notices of and other communications relating to any general meeting which any member of the society is entitled to receive, and
- (b) to be heard at any meeting which they attend on any part of the business of the meeting which concerns them as auditors.
- (8) If a building society or other body corporate fails to comply with subsection (4) above, the society or other body shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale and so shall any officer of the society or, as the case may be, of the other body who is also guilty of the offence; and if an auditor fails without reasonable excuse to comply with paragraph (a) of that subsection he shall be liable, on summary conviction, to such a fine.
- (9) If a person who is an officer of a building society or of a body which is a [^{F350}connected undertaking of] the society knowingly or recklessly makes to the auditors of that or another society or body a statement which—
- (a) conveys or purports to convey any information or explanation which the auditors require, or are entitled to require, as auditors of the society or other body, as the case may be, and
- (b) is false or misleading in a material particular,
- that person shall be liable—
- (i) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both; and
- (ii) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or both.

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Textual Amendments

- F347** Words in s. 79(4) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 34(1)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xxi)**
- F348** S. 79(5) repealed (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 46(2), 47(3), **Sch. 7 para. 34(2)**, **Sch. 9**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(y)(z)(xxi)(cc)(xi)**
- F349** Words in ss. 71-82 (Pt. VIII) substituted by S.I. 1991/1729, **art. 3**.
- F350** Words in s. 79(9) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 34(3)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xxi)**

Modifications etc. (not altering text)

- C90** S. 79(1)(2) modified (*temp.*) by S.I. 1986/2168, **art. 12(2)(e)**

Procedure on completion of accounts

80 Signing of balance sheet: documents to be annexed.

- (1) Every balance sheet of a building society shall be signed by two directors on behalf of the board of directors and by the chief executive of the society.
- (2) The income and expenditure account, ^{F351} . . . and the annual business statement shall be annexed to the balance sheet, and so shall any group accounts; and the auditor's report shall be attached to it.
- (3) The income and expenditure account, ^{F352} . . . and the annual business statement shall be approved by the board of directors before the balance sheet is signed on their behalf, and so shall any group accounts; and the date of their approval of those documents shall be endorsed on the balance sheet.
- (4) The directors' report shall be attached to the balance sheet.
- (5) If a balance sheet has not been signed as required by subsection (1) above, and a copy of it is issued, circulated or published, the building society shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale and so shall any officer who is also guilty of the offence.
- (6) If any copy of a balance sheet is issued, circulated or published—
 - (a) without having annexed to it a copy of the income and expenditure account, or
 - ^{F353}(b)
 - (c) without having annexed to it a copy of the annual business statement, or
 - (d) without having attached to it a copy of the auditors' report, or
 - (e) without having attached to it a copy of the directors' report,

the building society shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale and so shall any officer who is also guilty of the offence.

Textual Amendments

- F351** Words in s. 80(2) omitted (23.3.1999) by virtue of S.I. 1999/248, reg. 3, **Sch. para. 5(1)**

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F352 Words in s. 80(3) omitted (23.3.1999) by virtue of S.I. 1999/248, reg. 3, Sch. para. 5(2)

F353 S. 80(6)(b) omitted (23.3.1999) by virtue of S.I. 1999/248, reg. 3, Sch. para. 5(3)

81 Laying and furnishing accounts, etc., to members, Commission and central office.

- (1) The directors of every building society shall lay before the society at the annual general meeting the annual accounts for the last financial year.
- (2) The directors of every building society shall send a copy of the annual accounts for the last financial year to the Commission and to the central office not later than 14 days before the annual general meeting at which the accounts are to be considered.
- (3) Every building society shall, as from the date by which at the latest its directors are required to send them to the Commission, make copies of the annual accounts available free of charge to members of and depositors with the society at every office of the society and, free of charge, shall send copies of those documents to any member or depositor who demands it.
- (4) If default is made in complying with subsection (1) or (2) above, every person who was a director at any time during the relevant period shall be liable on summary conviction—
 - (a) to a fine not exceeding level 5 on the standard scale; and
 - (b) in the case of a continuing offence, to an additional fine not exceeding £200 for every day during which the offence continues.
- (5) If, on demand made of it under subsection (3) above, a building society fails, in accordance with that subsection, to make available or, as the case may be, within seven days of the demand, to send, to a person a copy of the annual accounts the society shall be liable on summary conviction—
 - (a) to a fine not exceeding level 3 on the standard scale; and
 - (b) in the case of a continuing offence, to an additional fine not exceeding £40 for every day during which the offence continues,

and so shall any officer who is also guilty of the offence.
- (6) In subsection (4) above “the relevant period” means the period beginning at the end of the last financial year and ending with the date which falls 14 days before the annual general meeting following the end of that year.
- (7) The central office shall keep the copy of the annual accounts of a building society received by it under subsection (2) above in the public file of the society.
- (8) In this section any reference to the annual accounts includes a reference to the documents annexed or attached to them under section 80.

82 Auditors’ duties to Commission and related rights.

- (1) The auditors of a building society shall, with respect to each financial year of the society, make to the Commission in accordance with subsection (5) below a report on the conduct of the business of the society during that year in the respects specified in subsection (2) below.
- (2) The auditor’s report shall deal with—

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- (a) the accounting records kept by the society under section 71, [^{F354}and]
 - (b) the systems of control of its business and records and of inspection and report maintained under that section, [^{F355}and
 - (c) the system of safe custody of documents maintained under section 12(12)]
- (3) The report shall state the auditors' opinion as respects the matters specified in subsection (2) above as follows, that is to say—
- (a) as regards the accounting records of the society, whether or not they comply with the requirements of section 71 and, if not, specifying each requirement not complied with and the respects in which it was not complied with;
 - (b) as regards the system of control of its business and records, whether or not the system complies with the requirements of section 71 and, if not, specifying each requirement not complied with and the respects in which it was not complied with;
 - (c) as regards the system of inspection and report, whether or not the system complies with the requirements of section 71 and, if not, specifying each requirement not complied with and the respects in which it was not complied with;
 - [^{F356}(d) as regards the system of safe custody of documents, whether or not the system complies with the requirement of section 12(12) and, if not, specifying the respects in which it was not complied with]
- (4) Where the society had, at any time during the year to which the report relates, [^{F357}connected undertakings], the auditors' report shall deal also with and contain corresponding statements of their opinion as to compliance with the requirements of section 71 in its application to building societies having [^{F357}connected undertakings].
- (5) The auditors of a building society shall send their report under this section to the society and, subject to subsection (6) below, shall do so within the period of 72 days beginning with the end of the financial year to which it relates, and the society shall, within the period of 90 days so beginning, send the report to the Commission together with such comments as the board of directors think fit to make.
- (6) A building society may allow its auditors a longer period in which to send their report than that specified in subsection (5) above, but not so as to prevent the society from complying with the duty imposed on it by that subsection as regards the Commission.
- (7) If the board of directors of a building society make any comments to the Commission under subsection (5) above they shall cause a copy of the comments to be sent to the auditors before they send them to the Commission with the report under that subsection.
- (8) [^{F358}The following, namely—
- (a) the auditors of a building society;
 - (b) an accountant appointed by a building society to make a report under section 52(5)(d) above; and
 - (c) the auditors of a body with which a building society is closely linked by control where either—
 - (i) they are also the auditors of the society; or
 - (ii) one of them is an accountant appointed by the society to make a report under section 52(5)(d) above,]

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if they are satisfied that it is expedient to do so in order to protect the investments of shareholders or depositors or if they are requested to do so by the Commission on its being so satisfied, shall be entitled, notwithstanding any obligation of confidence incumbent on them and whether or not to do so would be contrary to the interests of the society, to furnish information to the Commission relating to the conduct of the society's business or the business of any of its [^{F359}connected undertakings].

- (9) The Treasury may by order impose on [^{F360}such persons as are mentioned in paragraph (a), (b) or (c) of subsection (8) above] an obligation to furnish to the Commission, in such circumstances as may be prescribed in the order, relevant information available to them of such descriptions as may be prescribed in the order; and it shall be the duty of [^{F361}any such person] to furnish information to which the obligation extends notwithstanding any obligation of confidence incumbent on him.
- (10) The power to make an order under subsection (9) above is exercisable by statutory instrument but no such instrument shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (11) In subsection (9) above “relevant information” means information relating to the conduct of the business of building societies or their [^{F362}subsidiary undertakings] or associated bodies.

Textual Amendments

- F354** Word after s. 82(2)(a) inserted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 35(1)(a)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xxii)**
- F355** S. 82(2)(c) and word immediately preceding it repealed (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 46(2), 47(3), **Sch. 7 para. 35(1)(b)**, **Sch. 9**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(y)(z)(xxii)(cc)(xii)**
- F356** S. 82(3)(d) repealed (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 46(2), 47(3), **Sch. 7 para. 35(2)**, **Sch. 9**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xxii)(cc)(xii)**
- F357** Words in s. 82(4) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 35(3)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xxii)(cc)(xii)**
- F358** Words in s. 82(8) substituted (18.7.1996) by S.I. 1996/1669, **reg. 8(1)**
- F359** Words in s. 82(8) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 35(4)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xxii)**
- F360** Words in s. 82(9) substituted (18.7.1996) by S.I. 1996/1669, **reg. 8(2)(a)**
- F361** Words in s. 82(9) substituted (18.7.1996) by S.I. 1996/1669, **reg. 8(2)(b)**
- F362** Words in s. 82(11) substituted by S.I. 1991/1729, **art. 3**

Modifications etc. (not altering text)

- C91** S. 82(1)–(4) modified (*temp.*) by S.I. 1986/2168, **art. 12(2)(f)**

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PART IX

COMPLAINTS AND DISPUTES

83 Schemes for investigation of complaints.

- (1) An individual shall, by virtue of and in accordance with schemes under this section, have the right, as against a building society, to have any complaint of his about action taken by the society in relation to a prescribed matter of complaint which affects him in prescribed respects investigated under the scheme.
- (2) An individual shall also, by virtue of and in accordance with schemes under this section, have the right, as against any body which is associated with a building society, to have any complaint of his about action taken by that body in relation to a prescribed matter of complaint which affects him in prescribed respects investigated under the scheme.
- (3) Every authorised building society shall be a member (and it may be the sole member) of one or more recognised schemes which or which between them confer the rights required to be conferred by subsection (1) above in relation to every matter (within its powers) which is for the time being a prescribed matter of complaint.
- (4) The obligation imposed by subsection (3) above, in so far as it relates to a prescribed matter of complaint arising out of the exercise of adoptable powers, is to be construed as requiring a society to be a member of a recognised scheme conferring rights in relation to that matter not later than the date at which the alteration of the society's powers takes effect.
- (5) Every authorised building society shall secure that each of the bodies associated with it is a member of one or more recognised schemes which or which between them confer the rights required to be conferred by subsection (2) above in relation to every matter (within the powers of that body) which is for the time being a prescribed matter of complaint.
- (6) Schedule 12 to this Act has effect for the purposes of this section and, in that Schedule—
 - (a) Part I prescribes the matters for which provision must be made by a scheme if it is to be a scheme which qualifies for recognition for the purposes of this section;
 - (b) Part II prescribes the matters action in relation to any of which must be subject to investigation under a scheme if it is to qualify for recognition for the purpose of investigations in relation to that matter; and
 - (c) Part III contains other requirements to which a scheme must conform if it is to be so recognised.
- (7) The Commission, with the consent of the Treasury, may by order vary Part II or Part III of Schedule 12 by adding to or deleting from it any provision or by varying any provision for the time being contained in it; and an order under this subsection may make such transitional provision as appears to the Commission to be necessary or expedient.
- (8) The Commission shall have the function, in accordance with Schedule 13, of granting recognition of schemes and of withdrawing any recognition it has granted; but

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recognition does not extend to, and is not required for, provisions in a scheme which are not required to be made in pursuance of Schedule 12 to this Act.

- (9) The Commission shall have power to do anything which is calculated to facilitate the discharge of its functions under subsection (8) above, or is incidental or conducive to their discharge, but this does not extend to expenditure for the purpose of operating a scheme.
- (10) For the purpose of complying with the duty imposed on it by subsection (3) above, a building society may—
- (a) make, or join with other building societies or other bodies in making, a scheme or schemes to be submitted to the Commission for approval by it as a recognised scheme; or
 - (b) accede as a member to any scheme, whether a scheme it has made or joined in making or a scheme made by other building societies or other bodies, which is for the time being a recognised scheme.
- (11) A building society may also make or join in making, or accede to, schemes which are not required for the purposes of this section.
- (12) The central office shall have the function, in accordance with Schedule 13, of recording accessions to schemes and of confirming any withdrawal from a scheme.
- (13) A building society may withdraw from membership of a scheme but, if the scheme is a recognised scheme, its withdrawal is not effective except in accordance with the applicable provisions of Schedule 13.
- (14) The power to make an order under subsection (7) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (15) In this section, section 84, Schedule 12 and Schedule 13—
- “accede”, in relation to a scheme, means assume the obligations and rights of membership and “accession” has a corresponding meaning;
- “action” includes any failure to act, and so as regards “exercise” in relation to any power; and “action”, in relation to a society, includes action on its behalf by any body associated with it;
- “prescribed”, in relation to matters of complaint, means prescribed for the time being in Part II of Schedule 12 and, in relation to the respects in which a complainant is affected by any action, means prescribed for the time being in Part III of that Schedule as grounds for making action subject to investigation under the scheme; and
- “recognition” means recognition of a scheme by the Commission for the purposes of this section.

^{F363}**83A Persons entitled to have complaints investigated.**

- (1) This section applies to any individual.
- (2) This section applies to any partnership, club or other unincorporated body if the amount of the body’s turnover for its last financial year does not exceed £1 million.
- (3) This section applies to any body corporate if—

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- (a) where it is not a member of a group, the amount of its turnover for its last financial year; or
 - (b) where it is such a member, the amount of the group’s turnover for its last financial year,
- does not exceed £1 million.
- (4) The Commission may, with the consent of the Treasury, by order substitute for the amount specified in subsection (2) or (3) above such other amount as it thinks appropriate.
- (5) The power to make an order under subsection (4) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) The amount of a body’s or group’s turnover for a financial year—
- (a) shall be the amount shown as such in its accounts for that year; or
 - (b) where it has not prepared accounts for that year, shall be determined in such manner as may be provided by the scheme in accordance with which the complaint is made.
- (7) Where the amount of a body’s or group’s turnover for a financial year is expressed otherwise than in sterling, it shall be converted into sterling at the rate of exchange prevailing at the end of that year.
- (8) For a period which is a body’s or group’s financial year but is not in fact a year the amount specified in subsection (2) or, as the case may be, subsection (3) above shall be proportionately adjusted.
- (9) In this section—
- “body corporate” does not include a Scottish firm;
 - “group” means a parent undertaking and its subsidiary undertakings;
 - “last financial year”, in relation to a body or group, means its last financial year to end before the complaint is made;
 - “parent undertaking” shall be construed in accordance with the relevant provisions;
 - “the relevant provisions” means the provisions of section 258 of the ^{M43}Companies Act 1985, read in conjunction with sections 259 and 260 of, and Schedule 10A to, that Act.
- (10) Any person who, if he were an undertaking within the meaning given by section 259(1) of the ^{M44}Companies Act 1985, would be a parent undertaking shall be treated as if he were such an undertaking for purposes of—
- (a) the definition of “group” in subsection (9) above; and
 - (b) the relevant provisions as they apply for the purposes of the definition of “subsidiary undertaking” in section 119(1).]

Textual Amendments

F363 S. 83A inserted (1.12.1997) by 1997 c. 32, s. 35; S.I. 1997/2668, art. 2, Sch. Pt. I(g)

Marginal Citations

M43 1985 c.6.

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M44 1985 c.6.

84 Investigation of complaints: supplementary provisions.

- ^{F364}(1)
- (2) Determinations of complaints under recognised schemes shall be made by reference to what is, in the adjudicator's opinion, fair in all the circumstances of the case and any direction given to a building society or [^{F365}connected undertaking] by an adjudicator may (if the complainant accepts the determination) require it or the complainant not to exercise or require the performance of any of the contractual or other obligations or rights subsisting between them.
- (3) Subject to subsections (4) and (5) below, a determination of the adjudicator under a recognised scheme which is, by virtue of the complainant's acceptance of it, binding on the building society or [^{F365}connected undertaking] shall be final and conclusive and shall not be questioned in any court of law.
- (4) Subsection (3) above does not apply where a society or [^{F365}connected undertaking] is authorised by the scheme to relieve itself of its obligation to take the steps it is directed to take or pay the compensation awarded by the society's undertaking an obligation to give the requisite publicity for the reasons for not doing so and the society undertakes that obligation.
- (5) Where a determination of the adjudicator under a recognised scheme is binding on the building society or [^{F365}connected undertaking], the adjudicator shall, at the request of the society or associated body, state a case for the opinion of the High Court on any question of law and the High Court may direct the adjudicator to reconsider the complaint.
- (6) A decision of the High Court under subsection (5) above shall be treated as a judgment of the High Court within the meaning of section 16 of the ^{M45}Supreme Court Act 1981 or section 39 of the ^{M46}Judicature (Northern Ireland) Act 1978 (which relate to the jurisdiction of the Court of Appeal to hear and determine appeals from any judgment of the High Court) but no appeal shall lie from the decision of the High Court on any case under subsection (5) above without the leave of the High Court or of the Court of Appeal.
- (7) In the application of this section to Scotland—
- (a) for the references in subsection (5) to the High Court there shall be substituted references to the Court of Session; and
 - (b) subsection (6) shall be omitted.
- (8) if a building society fails to comply with section 83(3) the society shall be liable on summary conviction—
- (a) to a fine not exceeding level 4 on the standard scale; and
 - (b) in the case of a continuing offence, to an additional fine not exceeding £100 for every day during which the offence continuesX;
- and so shall any director of the society who is also guilty of the offence.
- (9) If a building society fails, without reasonable excuse, to comply with [^{F366}section 83(4)] the society shall be liable on summary conviction—
- (a) to a fine not exceeding level 4 on the standard scale; and

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- (b) in the case of a continuing offence, to an additional fine not exceeding £100 for every day during which the offence continuesX;

and so shall any director of the society who is also guilty of the offence.

(10) If a building society fails to comply with [^{F367}section 83(3) or (4)] the Commission may make an application to the High Court for an order directing the society to comply within a specified period with that subsection and the High Court may, if it thinks fit, make an order accordingly.

(11) In subsection (4) above the reference to an obligation to give the requisite publicity for a building society's or [^{F368}connected undertaking's] reasons is a reference to such an obligation undertaken in pursuance of a provision of the scheme authorised by paragraph 6(2) or (3) of Part III of Schedule 12.

Textual Amendments

F364 S. 84(1) repealed (1.12.1997) by 1997 c. 32, ss. 43, 46(2), Sch. 7 para. 36(1), **Sch. 9**; S.I. 1997/2668, art. 2, **Sch. Pt. I(j)(k)(l)(vii)(o)(iv)**

F365 Words in s. 84(2)-(5) substituted (1.12.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 36(2)**; S.I. 1997/2668, art. 2, **Sch. Pt. I(j)(l)(vii)**

F366 Words in s. 84(9) substituted (1.12.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 36(3)**; S.I. 1997/2668, art. 2, **Sch. Pt. I(j)(l)(vii)**

F367 Words in s. 84(10) substituted (1.12.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 36(4)**; S.I. 1997/2668, art. 2, **Sch. Pt. I(j)(l)(vii)**

F368 Words in s. 84(11) substituted (1.12.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 36(5)**; S.I. 1997/2668, art. 2, **Sch. Pt. I(j)(l)(vii)**

Marginal Citations

M45 1981 c. 54.

M46 1978 c. 23

85 Settlement of disputes.

(1) Schedule 14 to this Act shall have effect for the settlement of certain disputes between a building society and a member, or representative of a member, of the society or, as provided by Part II of the Schedule, between a building society and [^{F369}one or more members of the society or a complainant].

(2) Nothing in that Schedule affects the jurisdiction of any court to hear and determine disputes arising out of any mortgage or any contract other than the rules of a society.

Textual Amendments

F369 Words in s. 85(1) substituted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 37**; S.I. 1997/1427, art. 2(k)(n)(ix)

Modifications etc. (not altering text)

C92 S. 85 excluded (*temp.*) by S.I. 1986/2168, art. 3(1)(4)

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PART X

DISSOLUTION, WINDING UP, MERGERS AND TRANSFER OF BUSINESS

Dissolution and winding up

86 Modes of dissolution and winding up.

- (1) A building society—
 - (a) may be dissolved by consent of the members, or
 - (b) may be wound up voluntarily or by the court,

in accordance with this Part; and a building society may not, except where it is dissolved by virtue of section 93(5), 94(10) or 97(9), be dissolved or wound up in any other manner.
- (2) A building society which is in the course of dissolution by consent, or is being wound up voluntarily, may be wound up by the court.

87 Dissolution by consent.

- (1) A building society may be dissolved by an instrument of dissolution, with the consent (testified by their signature of that instrument) of three-quarters of the members of the society, holding not less than two-thirds of the number of shares in the society.
- (2) An instrument of dissolution under this section shall set out—
 - (a) the liabilities and assets of the society in detail;
 - (b) the number of members, and the amount standing to their credit in the accounting records of the society;
 - (c) the claims of depositors and other creditors, and the provision to be made for their payment;
 - (d) the intended appropriation or division of the funds and property of the society;
 - (e) the names of one or more persons to be appointed as trustees for the purposes of the dissolution, and their remuneration.
- (3) An instrument of dissolution made with consent given and testified as mentioned in subsection (1) above may be altered with the like consent, testified in the like manner.
- (4) The provisions of this Act shall continue to apply in relation to a building society as if the trustees appointed under the instrument of dissolution were the board of directors of the society.
- (5) The trustees, within 15 days of the necessary consent being given and testified (in accordance with subsection (1) above) to—
 - (a) an instrument of dissolution, or
 - (b) any alteration to such an instrument,

shall give notice to the central office of the fact and, except in the case of an alteration to an instrument, of the date of commencement of the dissolution, enclosing a copy of the instrument or altered instrument, as the case may be; and if the trustees fail to comply with this subsection they shall each be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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- (6) An instrument of dissolution under this section, or an alteration to such an instrument, shall be binding on all members of the society as from the date on which the copy of the instrument or altered instrument, as the case may be, is placed in the public file of the society under subsection (10) below.
- (7) The trustees shall, within 28 days from the termination of the dissolution, give notice to the central office of the fact and the date of the termination, enclosing an account and balance sheet signed and certified by them as correct, and showing the assets and liabilities of the society at the commencement of the dissolution, and the way in which those assets and liabilities have been applied and discharged; and, if they fail to do so they shall each be liable on summary conviction—
 - (a) to a fine not exceeding level 2 on the standard scale, and
 - (b) in the case of a continuing offence, to an additional fine not exceeding £10 for every day during which the offence continues.
- (8) Except with the consent of the Commission, no instrument of dissolution, or alteration of such an instrument, shall be of any effect if the purpose of the proposed dissolution or alteration is to effect or facilitate the transfer of the society's engagements to any other society [^{F370}or the transfer of its business to a company].
- (9) Any provision in a resolution or document that members of a building society proposed to be dissolved shall accept investments in a company or another society (whether in shares, deposits or any other form) in or towards satisfaction of their rights in the dissolution shall be conclusive evidence of such a purpose as is mentioned in subsection (8) above.
- (10) The central office shall keep in the public file of the society any notice or other document received by it under subsection (5) or (7) above and shall record in that file the date on which the notice or document is placed in it.

Textual Amendments

F370 Words in s. 87(8) substituted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 38**; S.I. 1997/1427, **art. 2(k)(n)(x)**

88 Voluntary winding up.

- (1) A building society may be wound up voluntarily under the applicable winding up legislation if it resolves by special resolution that it be wound up voluntarily.
- (2) A copy of any special resolution passed for the voluntary winding up of a building society shall be sent by the society to the central office within 15 days after it is passed; and the central office shall keep the copy in the public file of the society.
- (3) A copy of any such resolution shall be annexed to every copy of the memorandum or of the rules issued after the passing of the resolution.
- (4) If a building society fails to comply with subsection (2) or (3) above the society shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale and so shall any officer who is also guilty of the offence.
- (5) For the purposes of this section, a liquidator of the society shall be treated as an officer of it.

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89 Winding up by court: grounds and petitioners.

- (1) A building society may be wound up under the applicable winding up legislation by the court on any of the following grounds in addition to the grounds referred to or specified in section 37(1), that is to say, if—
 - (a) the society has by special resolution resolved that it be wound up by the court;
 - (b) the number of members is reduced below ten;
 - (c) the number of directors is reduced below two;
 - (d) being a society registered as a building society under this Act or the repealed enactments, the society has not been granted authorisation under section 9 or been authorised under any corresponding enactment and more than three years has expired since it was so registered;
 - (e) the society has had its authorisation revoked under section 43 and has not been reauthorised thereafter;
 - (f) the society exists for an illegal purpose;
 - (g) the society is unable to pay its debts; or
 - (h) the court is of the opinion that it is just and equitable that the society should be wound up.
- (2) Except as provided by subsection (3) below, section 37 or the applicable winding up legislation, a petition for the winding up of a building society may be presented by—
 - (a) the Commission,
 - (b) the building society or its directors,
 - (c) any creditor or creditors (including any contingent or any prospective creditor), or
 - (d) any contributory or contributories,
 or by all or any of those parties, together or separately.
- (3) A contributory may not present a petition unless either—
 - (a) the number of members is reduced below ten, or
 - (b) the share in respect of which he is a contributory has been held by him, or has devolved to him on the death of a former holder and between them been held, for at least six months before the commencement of the winding up.
- (4) For the purposes of this section, in relation to a building society,
 - (a) the reference to authorisation under an enactment corresponding to section 9 is a reference to authorisation granted or deemed to have been granted under—
 - (i) in Great Britain, regulation 5 of the ^{M47}Building Societies (Authorisation) Regulations 1981, and
 - (ii) in Northern Ireland, regulation 5 of the ^{M48}Building Societies (Authorisation) Regulations (Northern Ireland) 1982, and
 - ^{F371}(b) the reference to its existing for an illegal purpose includes a reference to its existing after it has ceased to comply with the requirement imposed by section 5(1)(a) (purpose or principal purpose).]
- (5) In this section, “contributory” has the same meaning as in paragraph 9(2) or, as the case may be, paragraph 37(2) of Schedule 15 to this Act.

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Textual Amendments

F371 S. 89(4)(b) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 39**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xxiii)**

Marginal Citations

M47 S.I. 1981/1488.

M48 S.I. 1982/155. (N.I.)

90 Application of winding up legislation to building societies.

- (1) In this section “the companies winding up legislation” means the enactments applicable in relation to England and Wales, Scotland or Northern Ireland which are specified in paragraph 1 of Schedule 15 to this Act (including any enactment which creates an offence by any person arising out of acts or omissions occurring before the commencement of the winding up).
- (2) In its application to the winding up of a building society, by virtue of section 88(1) or 89(1), the companies winding up legislation shall have effect with the modifications effected by Parts I to III of Schedule 15 to this Act; and the supplementary provisions of Part IV of that Schedule shall also have effect in relation to such a winding up.
- (3) In sections 37, 88, 89 and 103, “the applicable winding up legislation” means the companies winding up legislation as so modified.

Modifications etc. (not altering text)

C93 S. 90(3) excluded by S.I. 1986/2168, art. 11

[^{F372}90A Application of other companies insolvency legislation to building societies.

For the purpose of—

- (a) enabling voluntary arrangements to be approved in relation to building societies,
- (b) enabling administration orders to be made in relation to building societies, and
- (c) making provision with respect to persons appointed in England and Wales or Northern Ireland as receivers and managers of building societies’ property,

the enactments specified in paragraph 1(2) of Schedule 15A to this Act shall apply in relation to building societies with the modifications specified in that Schedule.]

Textual Amendments

F372 S. 90A inserted (1.12.1997) by 1997 c. 32, s. 39(1); S.I. 1997/2668, art. 2, **Sch. Pt. I(i)**

91 Power of court to declare dissolution of building society void.

- (1) Where a building society has been dissolved under section 87 or following a winding up, the High Court or, in relation to a society whose principal office was in Scotland,

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the Court of Session, may, at any time within 12 years after the date on which the society was dissolved, make an order under this section declaring the dissolution to have been void.

- (2) An order under this section may be made, on such terms as the court thinks fit, on an application by the trustees under section 87 or the liquidator, as the case may be, or by any other person appearing to the Court to be interested.
- (3) When an order under this section is made, such proceedings may be taken as might have been taken if the society has not been dissolved.
- (4) The person on whose application the order is made shall, within seven days of its being so made, or such further time as the Court may allow, furnish the central office with a copy of the order; and the central office shall keep the copy in the public file of the society.
- (5) If a person fails to comply with subsection (4) above, he shall be liable on summary conviction—
 - (a) to a fine not exceeding level 3 on the standard scale, and
 - (b) in the case of a continuing offence, to an additional fine not exceeding £40 for every day during which the offence continues.

[^{F373}92 Supplementary.

Where at any time a building society is being wound up or dissolved by consent, a borrowing member shall not be liable to pay any amount other than one which, at that time, is payable under the mortgage or other security by which his indebtedness to the society in respect of the loan is secured.]

Textual Amendments

F373 S. 92 substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 40**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xxiv)**

[^{F374}New business]

Textual Amendments

F374 S. 92A and cross-heading preceding it inserted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 29, 47(3); S.I. 1997/2668, art. 2, **Sch. Pt. II(u)**

[^{F375}92A Acquisition or establishment of a business.

- (1) A building society—
 - (a) in order to acquire, or allow a subsidiary undertaking to acquire, a business to which subsections (3) and (4) below apply; or
 - (b) in order to establish, or allow such an undertaking to establish, a business to which subsections (3) and (5) below apply,

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must resolve so to do by an ordinary resolution; but a failure to comply with this subsection shall not invalidate any transaction or other act.

(2) In order to be effective for the purposes of subsection (1) above, an ordinary resolution of a building society must be passed by a majority of the members of the society entitled to vote on such a resolution and voting either—

- (a) in person or by proxy on a poll on the resolution at a meeting of the society; or
- (b) in a postal ballot on the resolution;

and in a case falling within paragraph (a) above, a form for the appointment of a proxy shall be sent to each person entitled to notice of the meeting.

(3) This subsection applies to a business which is proposed to be acquired or established if, in the opinion of the board of directors of the society—

- (a) the greater part of the income of the business is or will be derived from activities having no connection with loans secured on residential property;
- (b) the greater part of the resources of the business are or will be devoted to such activities; or
- (c) the greater part of the business consists or will consist of such activities.

(4) This subsection applies to a business which is proposed to be acquired if X is not less than 15 per cent of Y where—

X = the amount or value of the consideration to be given for the shares, voting rights or assets proposed to be acquired;

Y = the amount of the society's own funds as at the relevant date.

(5) This subsection applies to a business which is proposed to be established if X is not less than 15 per cent of Y where—

X = the aggregate of the following as estimated by the society, namely—

- (a) the cost of acquiring, developing, adapting or repairing any premises required for the purposes of the business;
- (b) the initial cost of acquiring any plant or equipment, or any intellectual property, so required;
- (c) the initial cost of employing or training staff so required;
- (d) the cost of obtaining any professional advice required in connection with the establishment of the business;
- (e) any other non-recurring items of expenditure to be incurred in that connection; and
- (f) in the case of a business proposed to be established by a subsidiary undertaking, the amount of any capital to be provided by the society which will not be used for defraying items of expenditure falling within the foregoing paragraphs;

Y = the amount of the society's own funds as at the relevant date.

(6) Where a business is proposed to be acquired or established by a syndicate whose members include a building society or subsidiary undertaking—

- (a) subsection (1) above shall have effect as if the business were proposed to be acquired or (as the case may be) established by the society; and

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- (b) whichever of subsections (4) and (5) above is applicable shall have effect as if X were only so much of X as is referable to participation in the syndicate by the society or undertaking.
- (7) For the purposes of subsections (1)(a) and (4) above, two or more proposed acquisitions by a building society or subsidiary undertaking which will form part of a larger acquisition or series of acquisitions shall be treated as a single acquisition.
- (8) Nothing in this section shall apply in relation to a building society in so far as it undertakes, in accordance with section 94 and Schedule 16 to this Act, to fulfil engagements transferred to it in accordance with that section and that Schedule.
- (9) In this section—
- “initial”, in relation to any cost, means incurred, or likely in the directors’ opinion to be incurred, not later than 12 months after the establishment of the business;
- “intellectual property” includes—
- (a) any patent, know-how, trade mark, service mark, registered design, copyright or design right; and
- (b) any licence under or in respect of any such right;
- “the relevant date”, in relation to a building society, means—
- (a) the date of the end of its last financial year or, failing that, the date of its establishment; or
- (b) where it has been involved in a transfer of engagements, the date of that transfer,
- whichever is the later.
- (10) The Commission may, with the consent of the Treasury, by order substitute for the percentage specified in subsection (4) or (5) above such other percentage as appears to it to be appropriate; and an order under this subsection may make such supplementary, transitional and saving provision as appears to the Commission to be necessary or expedient.
- (11) The Commission may, with the consent of the Treasury, by order vary subsections (5) and (9) above by adding to or deleting from them any provision or by varying any provision contained in them; and an order under this subsection may make—
- (a) different provisions for different cases or purposes; and
- (b) such supplementary, transitional and saving provision as appears to the Commission to be necessary or expedient.
- (12) The power to make an order under subsection (10) or (11) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

Textual Amendments

F375 S. 92A and cross-heading preceding it inserted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 29, 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(u)

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Mergers

93 Amalgamations.

- (1) Any two or more buildings societies desiring to amalgamate may do so by establishing a building society as their successor in accordance with this section and Schedule 16 to this Act
- (2) In order to establish a building society as their successor the societies desiring to amalgamate must—
 - ^{F376}(a) agree the purpose or principal purpose of their successor to be that of making loans which are secured on residential property and are funded substantially by its members, and agree upon the extent of its powers, in a memorandum which complies with the requirements of Schedule 2 to this Act;]
 - (b) agree upon the rules for the regulation of their successor which comply with the requirements of that Schedule;
 - ^{F377}(c) each approve the terms of the amalgamation by two resolutions which also approve the memorandum and the rules of their successor and of which—
 - (i) one is passed as a shareholding members' resolution, and
 - (ii) the other is passed as a borrowing members' resolution,in accordance with the applicable provisions of that Schedule;]
 - (d) make a joint application to the Commission for confirmation of the amalgamation and send to the central office four copies of the rules and of the memorandum, each copy signed by the secretary of each of the societies.
- (3) If the Commission confirms the amalgamation under section 95, the central office, if it is satisfied, as regards the proposed successor, of the matters relating to its rules, its purpose and powers and its name as to which it must, under paragraph 1 of Schedule 2 to this Act, be satisfied before it registers a society, shall—
 - (a) register the successor society,
 - (b) issue to it a certificate of incorporation, specifying a date ("the specified date") as from which the incorporation takes effect,
 - (c) retain and register one copy of the memorandum and of the rules,
 - (d) return another copy to the secretary of the successor, together with a certificate of registration, and
 - (e) keep another copy, together with a copy of the certificate of incorporation and of the certificate of registration of the memorandum and the rules, in the public file of the successor society.
- (4) On the specified date all the property, rights and liabilities of each of the societies whose amalgamation was confirmed by the Commission (whether or not capable of being transferred or assigned) shall by virtue of this subsection be transferred to and vested in the society so incorporated as their successor.
- (5) On the specified date, each of the societies to which the successor succeeds shall be dissolved by virtue of this subsection; but the transfer effected by subsection (4) above shall be deemed to have been effected immediately before the dissolution.
- (6) If, on the specified date, the societies whose amalgamation was confirmed by the Commission are all authorised, their successor shall be treated as authorised for the purposes of this Act, whether or not the requirements of section 9(4) would be fulfilled in its case, as from that date.

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- (7) The central office shall record in the public file of the successor the fact that, by virtue of subsection (6) above, the society is to be treated as authorised for the purposes of this Act.

Textual Amendments

F376 S. 93(2)(a) substituted (1.12.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 41(a)**; S.I. 1997/2668, art. 2, **Sch. Pt. I(j)(l)(viii)**

F377 S. 93(2)(c) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 41(b)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xxv)**

Modifications etc. (not altering text)

C94 Ss. 93–96 excluded by S.I. 1986/2168, **art. 9(2)(b)(3)**

94 Transfer of engagements.

- (1) A building society may, in accordance with this section and Schedule 16 to this Act, transfer its engagements to any extent to another building society which, in accordance with this section and that Schedule, undertakes to fulfil the engagements.
- (2) A building society, in order to transfer its engagements, must resolve to do so by two resolutions, of which one is passed as a [^{F378}shareholding members' resolution] and the other as a borrowing members' resolution in accordance with the applicable provisions of Schedule 2.
- (3) A building society, in order to transfer some but not all of its engagements to its members in respect of shares held by them (with or without other engagements) must, in addition to resolving to transfer the engagements by the two resolutions required by subsection (2) above, resolve to do so by an affected shareholders' resolution.
- (4) For the purposes of this section in its application to a transfer by a society of engagements in respect of some shares in the society, an "affected shareholders' resolution" is a resolution passed by a majority of the holders of those shares who, under the rules of the society, would be entitled to vote on a [^{F378}shareholding members' resolution], disregarding for this purpose any shares of theirs in respect of which the society's engagements are not to be transferred.
- (5) A building society, in order to undertake to fulfil the engagements of another society, must resolve to do so—
 - (a) by two resolutions, of which one is passed as a [^{F378}shareholding members' resolution] and the other as a borrowing members' resolution in accordance with the applicable provisions of Schedule 2; or
 - (b) by a resolution of the board of directors, if the Commission consents to that mode of proceeding.
- (6) The extent of the transfer, as so resolved by the society making and the society taking the transfer, shall be recorded in an instrument of transfer of engagements.
- (7) A transfer of engagements between building societies shall be of no effect unless—
 - (a) the transfer is confirmed by the Commission under section 95; and

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- (b) a registration certificate is issued in respect of the transfer under subsection (8) below.
- (8) Where the Commission confirms a transfer of engagements between building societies, the central office shall—
- (a) register a copy of the instrument of transfer of engagements; and
 - (b) issue a registration certificate to the building society taking the transfer;
- and, on such date as is specified in the certificate, the property, rights and liabilities of the society transferring its engagements (whether or not capable of being transferred or assigned) shall, by virtue of this subsection, be transferred to and vested in the society taking the transfer to the extent provided in the instrument of transfer of engagements.
- (9) The central office shall keep a copy of the instrument and of the registration certificate issued under subsection (8) above in the public file of the building society taking the transfer.
- (10) Where all its engagements have been transferred, the society shall, by virtue of this subsection, be dissolved on the date specified in the registration certificate; but the transfer effected by subsection (8) above shall be deemed to have been effected immediately before the dissolution.

Textual Amendments

F378 Words in s. 94(2)(4)(5) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 42**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xxvi)**

Modifications etc. (not altering text)

C95 Ss. 93–96 excluded by S.I. 1986/2168, **art. 9(2)(b)(3)**

95 Mergers; provisions supplementing ss. 93 and 94.

- (1) Part I of Schedule 16 to this Act shall have effect for imposing on building societies proposing to amalgamate or to transfer or undertake engagements requirements to issue statements to their members relating to the proposed amalgamation or transfer.
- (2) Part II of Schedule 16 to this Act shall have effect for imposing requirements for notification by a building society, to its members and to the central office, of the receipt by the society of proposals for a transfer of engagements or an amalgamation.
- (3) Where application is made to the Commission for confirmation of an amalgamation or transfer of engagements it shall, except as provided in [^{F379}subsections (4) to (6)] below, confirm the amalgamation or transfer; and Part III of Schedule 16 to this Act shall have effect with respect to the procedure on an application for such confirmation.
- (4) Subject to subsection (5) below, the Commission shall not confirm an amalgamation or transfer of engagements if it considers that—
- (a) some information material to the members' decision about the amalgamation or transfer was not made available to all the members eligible to vote; or
 - (b) the vote on any resolution approving the amalgamation or transfer does not represent the views of the members eligible to vote; or

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- (c) some relevant requirement of this Act or the rules of any of the societies participating in the amalgamation or transfer was not fulfilled or not fulfilled as regards that society.
- (5) The Commission shall not be precluded from confirming an amalgamation or transfer of engagements by virtue only of the non-fulfilment of some relevant requirement of this Act or the rules of a society if it appears to the Commission that it could not have been material to the members’ decision about the amalgamation or transfer and the Commission gives a direction that the failure is to be disregarded for the purposes of this section.
- (6) Where the Commission would be precluded from confirming an amalgamation or transfer of engagements by reason of any of the defects specified in paragraphs (a), (b) and (c) of subsection (4) above, it may direct any building society concerned—
- (a) to take such steps to remedy the defect or defects, including the calling of a further meeting, as it specifies in the direction; and
 - (b) to furnish the Commission with evidence satisfying it that it has done so;
- and, if the Commission is satisfied that the steps have been taken and the defect or defects has or have been substantially remedied; the Commission shall confirm the amalgamation or transfer; but, if it is not so satisfied, it shall refuse its confirmation.
- ^{F380}(7)
- ^{F380}(8)
- ^{F380}(9)
- (10) A failure to comply with a relevant requirement of this Act or any rules of a society shall not invalidate an amalgamation or transfer of engagements; but, if a society fails without reasonable excuse to comply with such a requirement the society shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale and so shall any officer who is also guilty of the offence.
- (11) In this section “relevant requirement”, with reference to this Act or the rules of a society, means a requirement of section 93 or 94 or this section or of Schedule 16 to this Act or of any rules prescribing the procedure to be followed by the society in approving or effecting an amalgamation or transfer of engagements.

Textual Amendments

F379 Words in s. 95(3) substituted (1.12.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 43(1)**; S.I. 1997/2668, art. 2, **Sch. Pt. I(j)(l)(ix)**

F380 S. 95(7)-(9) repealed (1.12.1997) by 1997 c. 32, ss. 43, 46(3), Sch. 7 para. 43(2), **Sch. 9**; S.I. 1997/2668, art. 2, **Sch. Pt. I(j)(l)(ix)(o)(v)**

Modifications etc. (not altering text)

C96 Ss. 93–96 excluded by S.I. 1986/2168, **art. 9(2)(b)(3)**

96 Mergers: compensation for loss of office and bonuses to members.

- (1) The terms of an amalgamation of or transfer of engagements between building societies may include provision for compensation to be paid by a society to or in respect of any director or other officer of that or any other society for loss of office

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or diminution of emoluments attributable to the amalgamation or transfer, but the provision must be authorised as follows that is to say—

- (a) except in so far as paragraph (b) below applies, the provision for such compensation to be paid by a society must be approved by the society by a resolution passed as a special resolution, not being [^{F381}one of the two resolutions] required by section 93(2)(c) or 94(2) for the approval of the other terms of the amalgamation or transfer;
 - (b) if regulations are made under subsection (2) below authorising payments of such compensation within prescribed limits and the provision for such compensation includes only payments of amounts not exceeding the prescribed limits, the passing of [^{F382}the two resolutions] approving the terms of the amalgamation or transfer is sufficient authority for their payment.
- (2) The Commission, with the consent of the Treasury, may by regulations authorise payments by building societies of compensation to directors or other officers for loss of office or diminution of emoluments attributable to amalgamations of, or transfers of engagements between, societies subject to limits specified in or determinable under the regulations and the regulations may make different provision for different classes of person.
- (3) Nothing in subsection (1) or (2) above prevents a director or other officer from receiving payments from societies which, in the aggregate, exceed any limit applicable to him under subsection (2) above if the excess payment is included in provision approved as required by subsection (1)(a) above; but if any payment is received which has not been authorised under paragraph (a) or (b) of that subsection it shall be repaid.
- (4) The terms of an amalgamation of, or transfer of engagements between, building societies may include provision for part of the funds of one or more of the participating societies to be distributed in consideration of the amalgamation or transfer among any of the members of the participating societies, but the provision must be authorised as follows, that is to say—
 - (a) subject to paragraph (b) below, the provision for such a distribution by a society shall not exceed the limits prescribed by regulations under subsection (5) below and the distribution must be approved by [^{F383}each of the two resolutions] giving the approval of the society to the terms of the amalgamation or transfer;
 - (b) if the provision for such a distribution by a society exceeds the prescribed limits, it must be approved by [^{F383}each of the two resolutions] of that society and each of the other societies participating in the amalgamation or transfer by which each approved the terms of the amalgamation or transfer.
- (5) The Commission, with the consent of the Treasury, shall by regulations authorise distributions of funds to members by building societies participating in amalgamations or transfers of engagements subject to limits specified in or determinable under the regulations and the regulations may make different provision for different circumstances.
- (6) Where the terms of a transfer of engagements include provision for a distribution of the funds of the society transferring or the society undertaking the engagements and the society undertaking the engagements applies to the Commission for its consent to the society's approving the transfer by a resolution of the board of directors instead of [^{F384}the two resolutions required by section 94(5)(a)], the Commission shall not give its consent unless it is satisfied that the distribution proposed to be made by each society will not exceed the prescribed limits.

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- (7) The power to make regulations under subsection (2) or (5) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) In this section—
- “compensation” includes the provision of benefits in kind;
 - “distribution of funds” with reference to bonuses paid to members, includes distribution by means of a special rate of interest available to members for a limited period;
 - “loss of office” includes, in relation to a director or other officer of a building society holding office in [^{F385}any other body] by virtue of his position in that society, the loss of that office;
 - “prescribed” with reference to limits on compensation or on distributions of assets, means prescribed by regulations under subsection (2) or (5) above, as the case may be.

Textual Amendments

- F381** Words in s. 96(1)(a) substituted (1.12.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 44(1)(a)**; S.I. 1997/2668, art. 2, **Sch. Pt. I(j)(1)(x)**
- F382** Words in s. 96(1)(b) substituted (1.12.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 44(1)(b)**; S.I. 1997/2668, art. 2, **Sch. Pt. I(j)(1)(x)**
- F383** Words in s. 96(4) substituted (1.12.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 44(2)**; S.I. 1997/2668, art. 2, **Sch. Pt. I(j)(1)(x)**
- F384** Words in s. 96(6) substituted (1.12.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 44(3)**; S.I. 1997/2668, art. 2, **Sch. Pt. I(j)(1)(x)**
- F385** Words in s. 96(8) substituted (1.12.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 44(4)**; S.I. 1997/2668, art. 2, **Sch. Pt. I(j)(1)(x)**

Modifications etc. (not altering text)

- C97** Ss. 93–96 excluded by S.I. 1986/2168, **art. 9(2)(b)(3)**
- C98** S. 96(2)(5): Functions of Building Societies Commission transferred (1.12.2001) to the Treasury by S. I. 2001/2617, arts. 1(2)(b), 4(1), **Sch. 1 Part III**

Transfer of business to commercial company

97 Transfer of business to commercial company.

- (1) A building society may, in accordance with this section and the other applicable provisions of this Act, transfer the whole of its business to a company (its “successor”).
- (2) The applicable provisions of this Act other than this section are section 98, section 99, [^{F386}section 99A,]section 100, section 101, section 102 [^{F387}sections 102B, 102C and 102D], paragraph 30 of Schedule 2 and Schedule 17.
- (3) The successor may be a company formed by the society wholly or partly" for the purpose of assuming and conducting the society’s business in its place or an existing company which is to assume and conduct the society’s business in its place; [^{F388}and for the purposes of the transfer the society may, notwithstanding anything in section 18, form, or acquire and hold shares in, a company whose objects extend to the carrying on of activities which the building society has no power to carry on.]

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- (4) In order to transfer its business to its successor a building society must—
 - (a) in the case of a specially formed company, secure that it is formed having articles of association with the requisite protective provisions;
 - (b) agree conditionally with its successor in a transfer agreement on the terms of the transfer which, in so far as they are regulated terms, comply with section 99, section 100 and transfer regulations;
 - (c) approve the transfer and the terms of the transfer by the requisite transfer resolutions, that is to say, resolutions passed by the members of the society in accordance with paragraph 30 of Schedule 2 to this Act; and
 - (d) obtain the confirmation of the Commission of the transfer and its terms.
- (5) In so far as the transfer agreement made between the society and its successor provides for rights to be conferred on members or officers of the society, whether or not in pursuance of regulated terms, the members or officers shall, in relation to those provisions, be treated as if they had been parties to the agreement and the rights shall be enforceable accordingly.
 - (6) If the Commission confirms the transfer under section 98 then, on the vesting date, all the property, rights and liabilities of the society making the transfer (whether or not capable of being transferred or assigned), except any shares in its successor, shall by virtue of this subsection and in accordance with transfer regulations be transferred to and vested in the successor.
- (7) Where a building society continues to hold shares in its successor after the vesting date, the consideration (if any) for the disposal of the shares together with any other property, rights or liabilities of the society acquired or incurred after that date shall, by virtue of this subsection, be transferred to and vested in its successor on the date specified for its dissolution under subsection (10) below.
- (8) A building society which has obtained confirmation of the transfer of its business shall send to the central office notice of the date which is to be the vesting date and shall do so not later than seven days before that date; and the central office shall record the date and, if a later date is notified under subsection (10) below, that date, in the public file of the society.
- (9) Except where notice is given under subsection (10) below, a building society which, under this section, transfers its business to its successor shall, by virtue of this subsection, be dissolved on the vesting date; but the transfer effected by subsection (6) above shall be deemed to have been effected immediately before the dissolution.
- (10) A building society may, for the purpose of facilitating the disposal of shares in its successor, include in the notice of the vesting date under subsection (8) above notice of a later date for the dissolution of the society; and if it does so, the society shall by virtue of this subsection be dissolved on that date instead of the vesting date, but the transfer effected by subsection (7) above shall be deemed to have been effected immediately before the dissolution.
- (11) As from the vesting date, a society which has given notice under subsection (10) above shall cease to transact any business except such as is necessary for the purpose of securing the disposal of the society's holding of shares in its successor.
- (12) In this section, and the other applicable provisions of this Act—
 - “company” means a company within the meaning of the ^{M49}Companies Act 1985 or the ^{M50}Companies (Northern Ireland) Order 1986 which is a public

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company limited by shares; and a company is a “specially formed” company if it is formed by a building society (and by no others than its nominees) for the purpose of assuming and conducting its business in its place and is an “existing” company if it is a company carrying on business as a going concern on the date of the transfer agreement;

“confirmation”, in relation to a transfer, means the confirmation of the Commission required by subsection (4)(d) above;

“regulated terms” means any terms of a transfer agreement which are regulated terms under section 99, section 100 or section 102;

“the requisite protective provisions” means the provisions required to be made by section 101(2);

[^{F389}“the requisite shareholders’ resolution’ has the meaning given by paragraph 30(1) of Schedule 2;]

“the requisite transfer resolutions” has the meaning given by subsection (4) (c) above;

“successor”, in relation to a building society, has the meaning given by subsection (1) above;

“transfer agreement” means the agreement required by subsection (4)(b) above and, in relation to it, “conditionally” means conditional on the approval of the transfer by the requisite transfer resolutions and on confirmation of the transfer;

“transfer of business” means the transfer of the business of a building society to its successor under this section and “transfer” has a corresponding meaning;

“transfer regulations” means regulations under section 102; and

“the vesting date” means the date specified in or determined under the transfer agreement as the vesting date for the purposes of subsection (6) above.

[^{F390}(13) References in this section, and the other applicable provisions of this Act, to a company include references to a body corporate which—

- (a) is incorporated in an EEA State other than the United Kingdom; and
- (b) has power under its constitution to offer its shares or debentures to the public;

and in this subsection “EEA State” means a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993.]

Textual Amendments

F386 Words in s. 97(2) inserted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 45(1)**; S.I. 1997/1427, **art. 2(f)**

F387 Words in s. 97(2) inserted (21.3.1997 with application as mentioned in s. 2(2) of the amending Act) by 1997 c. 41, **s. 1(2)**

F388 Words in s. 97(3) repealed (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 46(2), 47(3), **Sch. 7 para. 45(2)**, **Sch. 9**; S.I. 1997/2668, **art. 2**, **Sch. Pt. II(w)(y)(z)(xxvii)(cc)(xiii)**

F389 Definition in s. 97(12) inserted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 45(3)**; S.I. 1997/2668, **art. 2**, **Sch. Pt. II(w)(z)(xxvii)**

F390 S. 97(13) inserted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 45(4)**; S.I. 1997/1427, **art. 2(k)(n)(xi)**

Marginal Citations

M49 1985 c. 6.

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M50 S.I. 1986/1032 (N.I.6)

98 Transfers of business: supplementary provisions.

- (1) Part I of Schedule 17 to this Act shall have effect for imposing on a building society proposing to transfer its business to a company an obligation to issue statements [^{F391}or summaries] to its members relating to the proposed transfer.
- [^{F392}(1A) Part IA of that Schedule shall have effect for imposing requirements for notification by a building society, to its members and to the central office, of the receipt by the society of a proposal for the transfer of the whole of its business to a company.]
- (2) Where application is made to the Commission for confirmation of a transfer of business to a company it shall, except as provided in subsections (3) to (5) below, confirm the transfer; and Part II of that Schedule shall have effect with respect to the procedure on an application for such confirmation.
- ^{F393}(3) Subject to subsection (4) below, the Commission shall not confirm a transfer of business if it considers that—
 - (a) some information material to the members' decision about the transfer was not made available to all the members eligible to vote; or
 - (b) the vote on any resolution approving the transfer does not represent the views of the members eligible to vote; or
 - (c) there is a substantial risk that the successor will not become or, as the case may be, remain [^{F394}an authorised institution for the purposes of the Banking Act 1987]; or
 - (d) some relevant requirement of this Act or the rules of the society was not fulfilled.
- (4) The Commission shall not be precluded from confirming a transfer of business by virtue only of the non-fulfilment of some relevant requirement of this Act or the rules of the society if it appears to the Commission that it could not have been material to the members' decision about the transfer and the Commission gives a direction that the failure is to be disregarded for the purposes of this section.
- (5) Where the Commission would be precluded from confirming a transfer of business by reason of any of the defects specified in paragraphs (a), (b), (c) and (d) of subsection (3) above, it may direct the society making the transfer—
 - (a) to take such steps to remedy the defect or defects as it specifies in the direction; and
 - (b) to furnish the Commission with evidence satisfying it that it has been done so; and, if the Commission is satisfied that the steps have been taken and the defect or defects has or have been substantially remedied, the Commission shall confirm the transfer; but, if it is not so satisfied, it shall refuse its confirmation.
- (6) The steps that a society may be required under subsection (5)(a) above to include the calling of a further meeting, securing the variation of the transfer agreement or securing the alteration of the approved protective provisions of the articles of association of its successor.
- (7) A failure to comply with a relevant requirement of this Act or the rules of a building society shall not invalidate a transfer of the business of the society; but, if a society fails without reasonable excuse to comply with such a requirement, the society shall

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be liable on summary conviction to a fine not exceeding level 4 on the standard scale and so shall any officer who is also guilty of the offence.

- (8) In this section “relevant requirement”, with reference to this Act or the rules of a society, means a requirement of the applicable provisions of this Act or of any rules prescribing the procedure to be followed by the society in approving the transfer and its terms.

Textual Amendments

- F391** Words in s. 98(1) inserted (1.12.1997) by 1997 c. 32, s. 30(1); S.I. 1997/2668, art. 2, Sch. Pt. I(e)
F392 S. 98(1A) inserted (1.12.1997) by 1997 c. 32, s. 30(2); S.I. 1997/2668, art. 2, Sch. Pt. I(e)
F393 S. 98(3) extended (1. 1. 1993) by S.I. 1992/3218, reg. 82(1), Sch. 10 para.22(c)
F394 Words substituted by Banking Act 1987 (c. 22, SIF 10), s. 108(1), Sch. 6 para. 26(6)

99 Regulated terms: compensation for loss of office, etc.

- (1) Subject to subsections (2) and (3) below, the terms of a transfer of business by a building society to the company which is to be its successor may include provision for compensation to be paid by the society or the company to or in respect of any director or other officer of the society for loss of office or diminution of emoluments attributable to the transfer.
- (2) Any such provision must be authorised so far as the society is concerned as follows, that is to say—
- (a) except in so far as paragraph (b) below applies, the provision must be approved by a resolution passed as a special resolution, not being one of the requisite transfer resolutions;
 - (b) if regulations are made under subsection (3) below authorising payments of such compensation within prescribed limits and the provision for such compensation includes only payments of amounts not exceeding the prescribed limits, the passing of the requisite transfer resolutions is sufficient authority for their payment.
- (3) The Commission, with the consent of the Treasury, may by regulations authorise payments of compensation to directors or other officers attributable to transfers of business under section 97 subject to limits specified in or determinable under the regulations and the regulations may make different provision for different classes of person.
- (4) Nothing in subsection (2) or (3) above prevents a director or other officer from receiving payments which, in the aggregate, exceed any limit applicable to him under either of those subsections if the excess payment is included in provision approved as required by subsection (2)(a) above; but if any payment is received which has not been authorised under paragraph (a) or (b) of that subsection it shall be repaid.
- (5) The power to make regulations under subsection (3) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) In this section—
- “compensation” includes the provision of benefits in kind;

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“loss of office” includes, in relation to a director or other officer of a building society holding office in a subsidiary of that society or in an associated body by virtue of his position in that society, the loss of that office; and

“prescribed”, with reference to limits on compensation, means prescribed by regulations under subsection (3) above;

and any terms of a transfer of business to which subsection (2) or regulations under subsection (3) above apply are regulated terms for the purposes of section 97.

[^{F395}**99A Transfers of business: increased remuneration etc.**

- (1) Subject to subsection (2) below, the terms of a transfer of business by a building society to the company which is to be its successor may include provision for any director or other officer of the society to receive increased emoluments in consequence of the transfer, whether by way of increased remuneration or the grant of share options or otherwise.
- (2) An ordinary resolution approving any such provision must be put before a meeting of the society.]

Textual Amendments

F395 S. 99A inserted (9.6.1997) by 1997 c. 32, s. 31; S.I. 1997/1427, art. 2(f)

100 Regulated terms etc: distributions and share rights.

- (1) Subject to subsections (2) to (10) below, the terms of a transfer of business by a building society to the company which is to be its successor may include provision for part of the funds of the society or its successor to be distributed among, or other rights in relation to shares in the successor conferred on, members of the society in consideration of the transfer.
- (2) The terms of a transfer of a society’s business must—
 - (a) require its successor to assume as from the vesting date a liability to every qualifying member of the society as in respect of a deposit made with the successor corresponding in amount to the value of the qualifying shares held by him in the society; and
 - (b) confer a right, subject to subsection (7) below, to a distribution of funds, whether of the society or its successor, by way of bonus on every qualifying member of the society equal to the relevant proportion of the value of the qualifying shares held by him in the society; ^{F396} . . .
 - ^{F396}(c)
- (3) For the purposes of the liabilities assumed under subsection (2)(a) above by the society’s successor, a member is a qualifying member if he held shares in the society on the day immediately preceding the vesting date and his qualifying shares are those held by him on that day.
- (4) For the purposes of the rights conferred under subsection (2)(b) above on members of the society, a member is a qualifying member is he held shares in the society on the qualifying day and was not eligible to vote on the ^{F397} requisite shareholders’

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resolution], his qualifying shares are those held by him on that day and the relevant proportion is the portion which (as shown in the latest balance sheet of the society) the society’s reserves bear to its total liability to its members in respect of shares.

F398 (5)

F398 (6)

- (7) The Commission may, where it confirms a transfer of a society’s business to an existing company, as it thinks fit having regard to what is equitable between the members of the society, direct that no bonus distribution of funds in pursuance of subsection (2) (b) above shall be made or that the amount distributed shall be such lesser amount as it provides for in the direction; and where the Commission gives a direction under this subsection no liability to make such a distribution shall arise or, as the case may be, that liability shall be discharged by payment of the lesser amount.
- (8) Where, in connection with any transfer, rights are to be conferred on members of the society to acquire shares in priority to others subscribers, the right shall be restricted to those of its members who held shares in the society throughout the period of two years which expired with the qualifying day; and it is unlawful for any right in relation to shares to be conferred in contravention of this subsection.
- (9) Where the successor is an existing company, any distribution of funds to members of the society, except for the distribution required by subsection (2)(b) above, shall only be made to those members who held shares in the society throughout the period of two years which expired with the qualifying day; and it is unlawful for any distribution to be made in contravention of the provisions of this subsection.
- (10) The following restrictions apply to any distribution of funds, or any conferring of rights in relation to shares, in connection with the transfer of its business from the society to its successor where the successor is a company specially formed by the society, that is to say—
 - (a) no distribution shall be made except that required by subsection (2)(b) above; and
 - (b) where negotiable instruments acknowledging rights to shares are issued by the successor within the period of two years beginning with the vesting date, no such instruments shall be issued to former members of the society unless they are also issued, and on the same terms, to all other members of the company;
 and it is unlawful for any distribution of funds to be made in contravention of the provisions of this subsection.
- (11) Where the successor is a specially formed company, the terms of the transfer must include provision to secure that the society ceases to hold any shares in the successor by the date on which the society is to dissolve.
- (12) Any terms of a transfer of business to which subsection (2), (8), (9), (10) or (11) above apply are regulated terms for the purposes of section 97.
- (13) In subsections (4), (5), (8) and (9) above, “qualifying day” means the day specified in the transfer agreement as the qualifying day for the purposes of this subsection.

Textual Amendments

F396 S. 100(2)(c) and word preceding it repealed (21.3.1997) by 1997 c. 32, ss. 40(a), 46(2), Sch. 9

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F397 Words in s. 100(4) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 47**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xxviii)**

F398 S. 100(5)(6) repealed (21.3.1997) by 1997 c. 32, ss. 40(b), 46(2), **Sch. 9**

Modifications etc. (not altering text)

C99 S. 100 modified (21.3.1997) by 1997 c. 32, s. 46(1), **Sch. 8 para. 9(1)**

[^{F399}101 Protective provisions for specially formed successors.

- (1) No company specially formed by a building society to be its successor shall, at any time during the protective period—
 - (a) offer for sale or invite subscription for any shares in the company or allot or agree to allot any such shares with a view to their being offered for sale, or
 - (b) allot or agree to allot any share in the company, or
 - (c) register a transfer of shares in the company,if the effect of the offer, the invitation, the allotment or the registration of the transfer would be that more shares than the permitted proportion would be held by any one person (other than the society), or by any two or more persons who are parties to a concert party agreement which relates to shares in the company.
- (2) The articles of association of the company shall include provision such as will secure that the company does not offer, invite subscription for, allot or register transfers of, shares in contravention of subsection (1) above and no alteration in those provisions may be made by the company during the protective period.
- (3) Any provision (including any altered provision) of the company's articles of association which is to any extent inconsistent with subsection (1) above shall, to that extent, be void; and any allotment or registration of a transfer of shares in contravention of that subsection shall be void.
- (4) This section shall cease to apply to a company if—
 - (a) a financial institution becomes a subsidiary undertaking of the company, or the company or such an undertaking acquires the whole, or substantially the whole, of the business of such an institution;
 - (b) a special resolution to that effect is passed by the requisite majority of the members of the company; or
 - (c) the [^{F400}Authority] by notice to the company gives a direction to that effect; and the [^{F400}Authority] shall not give such a direction unless it considers it desirable to do so in the interests of the depositors and potential depositors of the company.
- (5) If this section ceases to apply to a company, any provision included by virtue of subsection (2) above in its articles of association shall cease to have effect.
- (6) In this section—
 - [^{F401}“the Authority” means the Financial Services Authority]
 - “concert party agreement” means an agreement to which section 204 of the ^{M51}Companies Act 1985 or Article 212 of the ^{M52}Companies (Northern Ireland) Order 1986 applies;
 - “EEA country or territory” has the same meaning as in sections 6A and 6B;
 - “financial institution” means any of the following, namely—

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- (a) a building society authorised under this Act;
- (b) an institution authorised under section 3 or 4 of the ^{M53}Insurance Companies Act 1982 to carry on business of a class specified in Schedule 1 or 2 to that Act;
- (c) a person authorised under Chapter III of Part I of the ^{M54}Financial Services Act 1986 or included in the list maintained by the [^{F402}Authority] under section 43 of that Act;
- (d) an institution authorised under section 9 of the ^{M55}Banking Act 1987;
- (e) a friendly society authorised under section 32(9) of the ^{M56}Friendly Societies Act 1992;
- (f) any body formed in or incorporated under the law of an EEA country or territory outside the United Kingdom and carrying on in the United Kingdom business of a kind which, if it were formed in or incorporated under the law of any part of the United Kingdom, it would be precluded from carrying on there without being authorised as mentioned in the preceding paragraphs;

“the permitted proportion”, in relation to shares in the company, is 15 per cent. of the company’s issued share capital;

“the protective period” is the period beginning with the date of the company’s incorporation and ending five years after the vesting date or, if this section ceases to apply to the company, ending on the date on which it so ceases;

“the requisite majority” means a majority of the members having the right to attend and vote at a general meeting of the company, being a majority together holding not less than 75 per cent in nominal value of the shares giving that right;

“transfer”, in relation to shares, does not include a transfer to a person to whom the right to any shares has been transmitted by operation of law;

and any expression used in this section and in the ^{M57}Companies Act 1985 or, as regards Northern Ireland, the ^{M58}Companies (Northern Ireland) Order 1986 has the same meaning in this section as in that Act or that Order.

- (7) For the purposes of this section—
- (a) shares held by a person in a fiduciary capacity shall be treated as not held by him;
 - (b) shares held by a person as nominee for another shall be treated as held by the other; and
 - (c) shares shall be regarded as held as nominee for another if any voting rights attaching to them are exercisable only on his instructions or with his consent or concurrence.
- (8) Any reference in this section to shares includes a reference—
- (a) to any warrant or other instrument entitling the holder to subscribe for shares; and
 - (b) to any certificate or other instrument issued by or on behalf of the company and conferring a right to acquire shares otherwise than by subscription;
- and for the purposes of subsection (1) above any shares to which any such instrument relates shall be deemed to be held by the holder of the instrument.]

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Textual Amendments

- F399** S. 101 substituted (21.3.1997) by 1997 c. 32, s. 41 (with s. 46(1), Sch. 8 para. 10)
- F400** Word in s. 101(4) substituted (1.6.1998) by 1998 c. 11, s. 23, Sch. 5 Pt. I Ch. III para. 38(2); S.I. 1998/1120, art. 2
- F401** Definition in s. 101(6) substituted (1.6.1998) by 1998 c. 11, s. 23, Sch. 5 Pt. I Ch. III para. 38(3)(a); S.I. 1998/1120, art. 2
- F402** Words in s. 101(6)(c) substituted (1.6.1998) by 1998 c. 11, s. 23, Sch. 5 Pt. I Ch. III para. 38(3)(b); S.I. 1998/1120, art. 2

Modifications etc. (not altering text)

- C100** S. 101(4) modified (22.3.2001) by 2001 c. i, s. 14 (with s. 13)
- C101** S. 101(4): functions transferred (1.6.1998) by 1998 c. 11, s. 21(a)(iii); S.I. 1998/1120, art. 2

Marginal Citations

- M51** 1985 c.6.
- M52** S.I. 1986/1032 (N.I.6).
- M53** 1982 c.50.
- M54** 1986 c.60.
- M55** 1987 c.22.
- M56** 1992 c.40.
- M57** 1985 c.6.
- M58** S.I. 1986/1032 (N.I.6).

102 Transfer regulations.

- (1) The Commission with the consent of the Treasury, may, by transfer regulations under this section, make provision regulating transfers of business under section 97.
- (2) Transfer regulations may, in particular—
 - (a) make provision for and in connection with the transition from regulation by and under this Act to regulation by and under the Companies Act 1985 or, as regards Northern Ireland, the Companies (Northern Ireland) Order 1986 and the [^{F403}Banking Act 1987];
 - (b) make provision for the treatment, in the hands of companies taking such transfers, of the property, rights and liabilities transferred and for the modification of any enactment in its application to property, rights and liabilities so transferred;
 - (c) make provision for the purposes of and incidental to section 100 [^{F404}and sections 101, 102B, 102C and 102D].
- (3) The power to make transfer regulations is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Any terms of a transfer of business to which transfer regulations apply are regulated terms for the purposes of section 97.

Textual Amendments

- F403** Words substituted by Banking Act 1987 (c. 22, SIF 10), s. 108(1), Sch. 6 para. 26(7)

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F404 Words in s. 102(2)(c) substituted (21.3.1997 with application as mentioned in s. 2(2) of the amending Act) by 1997 c. 41, s. 1(3)

[^{F405}102A] Rights of second-named joint shareholders.

- (1) This section applies where the terms of a transfer of business by a building society to the company which is to be its successor include such provision as is mentioned in section 100(1).
- (2) If—
 - (a) a person (“A”) held shares in the society throughout the requisite period;
 - (b) any shares in the society held by A were jointly held for any period (“the joint ownership period”) constituting the whole or part of the requisite period;
 - (c) A was the second-named holder of the jointly held shares for the whole or part of the joint ownership period; and
 - (d) no person who has priority over A for the purposes of this section held shares in the society throughout the requisite period,

the jointly held shares shall be treated for the purposes of subsections (8) and (9) of section 100 as having been held by A alone.
- (3) The following persons shall have priority over A for the purposes of this section, namely—
 - (a) where A was not the first-named holder of the jointly held shares for any part of the joint ownership period—
 - (i) any person who was the first-named holder of those shares for the whole or part of that period; and
 - (ii) where A was the second-named holder of those shares for part only of that period, any person who was the second-named holder of those shares for a later part of that period; and
 - (b) where A was the first-named holder of the jointly held shares for part of the joint ownership period, any person who was the first-named holder of those shares for a later part of that period.
- (4) If a person dies during the requisite period at a time when he is named in the records of the society as a joint holder of any shares jointly held, this section shall have effect in relation to any later time as if he had never been so named.
- (5) In this section—

“the first-named holder”, in relation to any shares jointly held, means that one of the joint holders who is named first in the records of the society, that is to say, the person by whom alone, apart from this section, those shares would, by virtue of paragraph 7(5) of Schedule 2, be treated as held for the purposes of section 100;

“qualifying day” has the same meaning as in subsections (8) and (9) of section 100;

“the requisite period” means the period beginning two years before the end of the qualifying day and ending immediately before the vesting date;

“the second-named holder”, in relation to any shares jointly held, means that one of the joint holders who is named second in the records of the society;

“the vesting date” has the same meaning as in section 100.]

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Textual Amendments

F405 S. 102A inserted (1.5.1995 with application as mentioned in s. 2(2) of the amending Act) by 1995 c. 5, s. 1(1)

[^{F406}102B] Protection of interests of beneficiaries in the case of trustee account holders.

- (1) This section shall have effect (notwithstanding anything to the contrary in the rules of the society) where the terms of the transfer of the business of a building society to its successor include provision for a distribution to be made to its members, and where more than one distribution is provided for, shall have effect in relation to each of them.
- (2) In this section “distribution” in relation to a society means—
 - (a) a distribution among members of the society of part of the funds of the society or its successor, other than a distribution within section 100(2)(b), or
 - (b) the conferring of rights in relation to shares in the successor on members of the society,in consideration of the transfer.
- (3) Subject to the following provisions of this section and section 102C, a trustee account holder shall be treated by the society and its successor as not being disentitled from sharing in the distribution—
 - (a) as such trustee account holder, and
 - (b) also in relation to another account which he may hold as a trustee account holder or in relation to another account which he may hold otherwise than as a trustee account holder,by reason only of his holding more than one account; and the terms of the transfer of business in question shall comply with this subsection.
- (4) A trustee account holder shall not be entitled to share in a distribution as such trustee account holder by virtue of any provision of this section if—
 - (a) the society has notified that account holder that he must make, in relation to any account as respects which he is a trustee account holder, a statutory declaration under the ^{M59}Statutory Declarations Act 1835 complying with subsection (5); but
 - (b) the trustee account holder does not give the society that declaration before such date as may be specified in the society’s notice to him.
- (5) A statutory declaration complies with this subsection if the person making it declares in it—
 - (a) that he is a trustee account holder in respect of an account identified in the declaration,
 - (b) the name and address of each beneficiary for whom he holds the account,
 - (c) the reason why it is not reasonably practicable for any beneficiary to act in relation to that account himself, and
 - (d) in a case where section 102D(8) applies, the names and addresses of all the trustee account holders of the account during the period referred to in that subsection.
- (6) In any case, where in response to a notice under subsection (4) (and within the time specified in that notice), a person gives a society a statutory declaration complying or

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purporting to comply with subsection (5) that he is a trustee account holder as respects any account he holds with that society then, subject to section 102C, the society and its successor—

- (a) shall treat him as such an account holder in respect of that account, and
- (b) shall not be liable to any other person in respect of any distribution to him (whether or not the society makes any enquiry into his eligibility before making the distribution).]

Textual Amendments

F406 Ss. 102B-102D inserted (21.3.1997 with application as mentioned in s. 2(2) of the amending Act) by 1997 c. 41, s. 1(1)

Marginal Citations

M59 1835 c. 62.

[^{F407} 102C Consequences of false declaration.

- (1) Where it is shown, in relation to a person who has made a statutory declaration to a society purporting to comply with section 102B(5), that, at the time the declaration is made, he is not a trustee account holder in relation to the account in question, then—
 - (a) a distribution shall not be made to him in pursuance of section 102B if it is so shown before the distribution is made;
 - (b) if a distribution is made to him, he shall be liable—
 - (i) to repay to the society’s successor any funds, and to surrender to it any shares or rights to any shares, which he may have received as the holder of that account,
 - (ii) if any shares or rights to any shares are not surrendered, to pay the successor an amount equal to the relevant value of those shares or rights.
- (2) Where subsection (1)(b) applies in relation to a person, he shall also be liable to pay to the successor interest (at the rate applicable to judgment debts or, as respects Scotland, to decrees of the Court of Session)—
 - (a) on any funds which he is liable to repay to the successor under sub-paragraph (i) of subsection (1)(b),
 - (b) on the relevant value of any shares or rights which are surrendered under that sub-paragraph, and
 - (c) on any amount payable under subsection (1)(b)(ii),
 as from the day on which he received the funds, shares or rights until subsection (1) (b) is complied with in relation thereto.
- (3) In subsections (1) and (2) “relevant value”, in relation to any shares or rights to any shares, means the market value of those shares on the first day on which they are quoted on the Stock Exchange Daily Official List, and section 272 of the ^{M60}Taxation of Chargeable Gains Act 1992 shall apply for the purposes of this subsection.
- (4) Where the successor receives any payment in circumstances where subsection (1)(b) applies, the amount of the payment shall be treated as settlement of a debt due to the successor and accordingly not as an amount due to members of the society.

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(5) In section 146(1) of the ^{M61}Companies Act 1985 (treatment of shares held by or for a public company) the following paragraph shall be inserted after paragraph (a)—

“(aa) where shares in the company are surrendered to the company in pursuance of section 102C(1)(b) of the ^{M62}Building Societies Act 1986;”.

(6) In Article 156(1) of the ^{M63}Companies (Northern Ireland) Order 1986 (treatment of shares held by or for a public company) the following sub-paragraph shall be inserted after sub-paragraph (a)—

“(aa) where shares in the company are surrendered to the company in pursuance of section 102C(1)(b) of the ^{M64}Building Societies Act 1986;”.]

Textual Amendments

F407 Ss. 102B-102D inserted (21.3.1997 with application as mentioned in s. 2(2) of the amending Act) by 1997 c. 41, s. 1(1)

Marginal Citations

M60 1992 c. 12.

M61 1985 c. 6.

M62 1986 c. 53.

M63 S.I. 1986/1032 (N.I. 6).

M64 1986 c. 53.

[^{F408}102I] Provisions supplementary to sections 102B and 102C.

- (1) This section has effect for the purposes of sections 102B and 102C.
- (2) “Trustee account holder”, in relation to any society, is a person who is the holder of an account as respects which all the conditions in subsection (4) are satisfied and which he holds in trust for another person, but subject to subsection (5).
- (3) Any reference in this section or in sections 102B and 102C to the holder of an account (however expressed) includes a reference to a person to whom the society has advanced a loan secured on land.
- (4) The conditions referred to in subsection (2) are—
 - (a) that he is a member of the society by virtue of holding that account;
 - (b) that the account holder—
 - (i) is the sole account holder or the representative joint holder (within the meaning of paragraph 7 of Schedule 2 to this Act), or
 - (ii) in the case of a borrowing member, is not a joint borrower or is the representative joint borrower (within the meaning of paragraph 8 of that Schedule);
 - (c) that it is not reasonably practicable for any one or more of the persons for whom he holds the account, by reason of ill-health or old age or any physical or mental incapacity or disability, to act in relation to the account himself.
- (5) Where a person holds more than one account in trust for any other person or persons and the beneficiary or any of the beneficiaries in respect of two or more of those accounts (“the duplicate accounts”) are the same, then—

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- (a) the account holder shall not be a trustee account holder in respect of any of those duplicate accounts except the one which was first opened, and
 - (b) accordingly, section 102B(3) and (4) shall apply only in relation to that first opened duplicate account.
- (6) “Beneficiary”, in relation to any account or any trustee account holder, is the person or any of the persons for whose benefit the account is held or for whose benefit the trustee account holder holds the account (as the case may be).
- (7) Any beneficiary of any account who is a child shall be disregarded for the purposes of subsection (4) above unless he suffers ill-health or any physical or mental incapacity or disability which if suffered by an adult would prevent it being reasonably practicable for such an adult to act in relation to the account himself.
- (8) In any case where—
- (a) the identity of the trustee account holder changes during any period which is relevant to the distribution in question, and
 - (b) the account is not closed but continues to be held for the benefit of the same beneficiaries (disregarding any who have died),
- the trustee account holders during that period shall be treated for the purpose of section 102B and the distribution as one person.
- (9) Any reference to a person holding an account in trust for any other person includes a reference—
- (a) to any person holding an account for another person in pursuance of any order, direction or authority made or given under Part VII of the ^{M65}Mental Health Act 1983 or under Part VIII of the ^{M66}Mental Health (Northern Ireland) Order 1986;
 - (b) to an attorney holding an account for another person under an enduring power registered under the ^{M67}Enduring Powers of Attorney Act 1985 or the ^{M68}Enduring Powers of Attorney (Northern Ireland) Order 1987; and
 - (c) in relation to Scotland—
 - (i) to a curator bonis and a judicial factor holding an account for another person; and
 - (ii) to a person holding an account for another person under a faculty and commission or power of attorney which continues to have effect by virtue of section 71 of the ^{M69}Law Reform (Miscellaneous Provisions) (Scotland) Act 1990;
- and references to a beneficiary shall be construed accordingly.
- (10) Where rights to acquire shares are to be conferred on one or more members of the society by reference to more than one account, in accordance with the provisions of section 102B, those rights shall not, without more, be taken, for the purposes of section 100(8), to confer rights to acquire the shares in priority to other subscribers.
- (11) The Commission may with the consent of the Treasury make regulations prescribing—
- (a) the time within which the notice required by section 102B(4)(a) must be given, and
 - (b) the minimum time which may be specified in the notice for the purposes of section 102B(4)(b),

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but, if such regulations are not made, any such notice must be given in such time, and must specify such time, as will give the trustee account holder a reasonable opportunity to make the declaration and give it to the society in compliance with the notice.

- (12) Regulations under subsection (11) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

Textual Amendments

F408 Ss. 102B-102D inserted (21.3.1997 with application as mentioned in s. 2(2) of the amending Act) by 1997 c. 41, s. 1(1)

Modifications etc. (not altering text)

C102 S. 102D(11): Functions of Building Societies Commission transferred (1.12.2001) to the Treasury by S.I. 2001/2617, arts. 1(2)(b), 4(1), Sch. 1 Pt. III

Marginal Citations

M65 1983 c. 20.

M66 S.I. 1986/595 (N.I. 4).

M67 1985 c. 29.

M68 S.I. 1987/1627 (N.I. 16).

M69 1990 c. 40.

Cancellation of registration

103 Cancellation of registration.

- (1) Where the central office is satisfied, with respect to a building society—
- that the society has been dissolved by virtue of section 93(5), 94(10), 97(9) or 97(10), or
 - that the society has been wound up under the applicable winding up legislation and dissolved,

the central office shall cancel the registration of the society.

- (2) Where the central office is satisfied, with respect to a building society—
- that a certificate of incorporation has been obtained for the society by fraud or mistake and that the society is not an authorised society, or
 - that the society has ceased to exist,

the central office may cancel the registration of the society.

- (3) Without prejudice to subsection (2) above, the central office may, if it thinks fit, cancel the registration of a building society at the request of the society, evidenced in such manner as the central office may direct.

- (4) Before cancelling the registration of a building society under subsection (2) above, the central office shall give to the society not less than two months' previous notice, specifying briefly the grounds of the proposed cancellation.

- (5) Where the registration of a building society is cancelled under subsection (2) above, the society may appeal to—

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- (a) the High Court, where the principal office of the society is situated in England and Wales or in Northern Ireland, or
- (b) the Court of Session, where that office is situated in Scotland.

and on any such appeal the High Court or the Court of Session, as the case may be, if it thinks it just to do so, may set aside the cancellation.

- (6) Where the registration of a building society is cancelled under subsection (2) or (3) above, then, subject to the right of appeal conferred by subsection (5) above, the society, so far as it continues to exist, shall cease to be a society incorporated under this Act (and accordingly shall cease to be a building society within the meaning of this Act).
- (7) Subsection (6) above shall have effect in relation to a building society without prejudice to any liability actually incurred by the society; and any such liability may be enforced against the society as if the cancellation had not taken place.
- (8) Any cancellation of the registration of a building society under this section shall be effected in writing signed by the central office.
- (9) As soon as practicable after the cancellation of the registration of a society under this section the central office shall cause notice thereof to be published in the London Gazette, the Edinburgh Gazette or the Belfast Gazette according to the situation of the society's principal office, and if it thinks fit, in one or more newspapers.

Modifications etc. (not altering text)

C103 S. 103(5)(6)(7) applied by S.I. 1986/2168, art. 10(3)(b)

PART XI

MISCELLANEOUS AND SUPPLEMENTARY AND CONVEYANCING SERVICES

Miscellaneous and supplementary

104 Power to amend, etc. to assimilate to company law.

- (1) If, on any modification of the statutory provisions in force in Great Britain or Northern Ireland relating to companies, it appears to the Treasury to be expedient to modify the relevant provisions of this Act for the purpose of assimilating the law relating to companies and the law relating to building societies, the Treasury may, by order, make such modifications of the relevant provisions of this Act as they think appropriate for that purpose.
- (2) The “relevant provisions of this Act” are the following provisions as for the time being in force, that is to say—
 - (a) so much of Part VI as relates to investigations or inspections;
 - (b) the provisions of Part VII (management);
 - (c) the provisions of Part VIII (accounts and audit);^{F409} . . .
 - (d) so much of Part X as relates to winding up [^{F410}or insolvency][^{F411}; and
 - (e) section 110 (provisions exempting officers and auditors from liability).].

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- (3) The power conferred by subsection (1) above includes power to modify the relevant provisions of this Act so as to—
- (a) confer power to make orders, regulations, rules or other subordinate legislation;
 - (b) create criminal offences; or
 - (c) provide for the charging of fees but not any charge in the nature of taxation.
- (4) An order under this section may—
- (a) make consequential amendments of or appeals in other provisions of this Act; or
 - (b) make such transitional or saving provisions as appear to the Treasury to be necessary or expedient.
- (5) The power to make an order under this section is exercisable by statutory instrument but no such order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (6) In this section—
- “modification” includes any additions and, as regards modifications of the statutory provisions relating to companies, any modification whether effected by any future Act or by an instrument made after the passing of this Act under an Act whenever passed; and
- “statutory provisions” includes the provisions of any instrument made under this Act.

Subordinate Legislation Made

- P2** [S. 104](#): power exercised by [S.I. 1991/1729](#)
[S. 104](#): power exercised (4.12.1991) by [S.I. 1991/2738](#)

Textual Amendments

- F409** Word in [s. 104\(2\)](#) omitted (1.10.1991) by virtue of [Companies Act 1989 \(c. 40, SIF 27\)](#), [s. 211\(1\)](#); [S.I. 1991/1996](#), [art. 2\(1\)\(b\)](#)
- F410** Words in [s. 104\(2\)](#) inserted (1.12.1997) by [1997 c. 32, s. 43](#), [Sch. 7 para. 48](#); [S.I. 1997/2668](#), [art. 2](#), [Sch. Pt. I\(j\)\(l\)\(xii\)](#)
- F411** Word in [s. 104\(2\)](#) and [s. 104\(2\)\(e\)](#) added (1.10.1991) by [Companies Act 1989 \(c. 40, SIF 27\)](#), [s. 211\(1\)](#); [S.I. 1991/1996](#), [art. 2\(1\)\(b\)](#)

^{F412}**104A Registration of charges: application of company law.**

- (1) For the purpose of securing the registration of charges created by building societies, the Secretary of State may, by order made with the concurrence of the Treasury and after consultation with the Commission, provide that such of the provisions of—
- (a) Part XII of the ^{M70}Companies Act 1985 (registration of charges); and
 - (b) Part XIII of the ^{M71}Companies (Northern Ireland) Order 1986,
- as may be specified in the order shall apply in relation to building societies, and charges created by building societies, with such modifications as may be so specified.
- (2) An order under this section may make different provision for different cases or different areas and may contain such incidental, supplemental and transitional provisions as may appear to the Secretary of State to be necessary or expedient.

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- (3) The power to make an order under this section is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

Textual Amendments

F412 S. 104A inserted (9.6.1997) by 1997 c. 32, s. 42; S.I. 1997/1427, art. 2(j)

Marginal Citations

M70 1985 c.6.

M71 S.I. 1986/1032 (N.I.6).

[^{F413}105 Limited power to anticipate future statutory instrument powers.

- (1) This section has effect as regards any power conferred under any provision of this Act on building societies or building societies of any description by—
- (a) an instrument a draft of which has to be approved by a resolution of each House of Parliament before it can be made, or
 - (b) an instrument which is subject to annulment in pursuance of a resolution of either House of Parliament and which defers its operation until a future date;

and in this section “the anticipation date” is, in the case of an instrument falling within paragraph (a), the date on which either House approves the draft and, in the case of an instrument falling within paragraph (b), the date on which it was laid before Parliament.

- (2) Every building society or, as the case may be, every building society of the description to which the instrument applies, has, as from the anticipation date, power, for the purposes of the power conferred by the instrument, to do such things, subject to subsection (3) below, as are reasonably necessary to enable it—
- (a) to decide whether or not, and to what extent, to exercise (and in the case of an adoptable power to adopt) the power, and
 - (b) if it decides to exercise the power, to exercise it as from the date when it becomes exercisable by the society.
- (3) Subsection (2)(b) above does not authorise a society—
- (a) to make contracts, other than conditional contracts, for the acquisition of land, the acquisition of a business or the acquisition of shares in any company if that company offers the public any service or facility within the power,
 - (b) to issue invitations to members of the society or the public to apply for any power to be exercised for their benefit, or
 - (c) to retain shares in a company which offers the public any service or facility within the power;

and, in this subsection, “conditional”, in relation to contracts with respect to the exercise of a power, means conditional on the power’s becoming exercisable by the society.

- (4) The power conferred by this paragraph, and activities carried on under it, for the purposes of an adoptable power are not to be treated as included in, or in activities comprised in, that adoptable power for the purposes of paragraph 16 of Schedule 2 to this Act.]

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Textual Amendments

F413 S. 105 repealed (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 46(2), 47(3), Sch. 7 para. 49, **Sch. 9**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xxix)(cc)(xiv)**

106 Public file of the society.

- (1) The central office shall prepare and maintain a file relating to each building society (to be known as the public file) and the file shall—
 - (a) contain the documents or, as the case may be, the copies of the documents and the records of the matters directed by or under any provision of this Act to be kept in the public file of the society; and
 - (b) be available for inspection on reasonable notice by members of the public on payment of the prescribed fee.
- (2) Any member of the public shall be entitled, on payment of the prescribed fee, to be furnished with a copy of all or any of the documents or records kept in the public file of a building society.

107 Restriction of use of certain names and descriptions.

- (1) Subject to subsections (2) to (9) below, no person carrying on in the United Kingdom a business of any description shall, unless that person is a building society, use any name or in any other way so describe himself or hold himself out so as to indicate, or reasonably be understood to indicate—
 - (a) that he is a building society,
 - (b) that he, or his business, is connected with one or more building societies, or
 - (c) that he, or his business, is connected with building societies generally.
- (2) Subsection (1) does not prohibit the use by an institution carrying on the business of taking deposits and making loans secured on land which has its principal place of business in a country or territory outside the United Kingdom, of the name under which the institution carries on business in that country or territory if—
 - (a) the name is used in immediate conjunction with a description distinguishing the institution from a building society, being a description which has been approved for the purposes of this subsection by the Commission and the approval has not been revoked under subsection (7) below, and
 - (b) where the name appears in writing, that description is sufficiently prominent to secure that a person who reads the name will also read the description.
- (3) For a description to distinguish an institution from a building society for the purposes of subsection (2) above it must distinguish it by reference to all or any of the following matters,—
 - (a) the situation of its principal place of business,
 - (b) its legal status or constitution, and
 - (c) the law (if any) which authorises it to take deposits in the United Kingdom,as the Commission determines in its case, but need not indicate any other distinction.

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(4) Subsection (1) above does not prohibit a person from carrying on a business under a name which indicates a connection between—

- (a) that person, or his business, and one or more building societies, or
- (b) that person, or his business, and building societies generally,

if the name has been approved for the purposes of this subsection by the Commission and the approval has not been revoked under subsection (7) below.

(5) No name shall be approved for the purposes of subsection (4) above unless the Commission, having regard to—

- (a) the true connection (if any) in fact existing between the person using, or proposing to use, the name and the particular society or societies in question or with building societies generally, as the case may be, and
- (b) in the cases referred to in subsection (4)(a) above, the respective natures of the business of that person and the society or societies in question,

is satisfied that the connection indicated by the name is not misleading; and, in so far as the name indicates investment or other financial support on the part of a building society the Commission shall not approve the use of the name unless it is satisfied that the name indicates no more investment or support than is the case and than is, in the opinion of the Commission, within the financial capacity of the building society to provide.

(6) An application for approval under subsection (2) or (4) above shall be made to the Commission in such form as it directs and accompanied by such information or evidence as it requires generally or in the particular case.

(7) The Commission may revoke any approval under subsection (2) or (4) above of a distinguishing description or a name, as the case may be, if it is of the opinion—

- (a) in the case of a distinguishing description, that, by reason of any change in the matters by reference to which the distinction is made, the description does not or does not any longer distinguish the institution as required by subsection (2) above, or
- (b) in the case of a name.
 - (i) that the name has proved to be misleading to the public,
 - (ii) that the approval has been obtained by fraud or mistake, or
 - (iii) that there has been a change in the facts to which the Commission had regard in giving its approval,

but it shall not do so without first giving the person to whom the approval was given an opportunity of making representations with respect to the proposed revocation of that approval.

(8) Subsection (1) above does not prohibit a person from using a description (other than his name) which, or from holding himself out in a way that, indicates a connection between himself or his business and one or more building societies if and to the extent he has been authorised to do so in writing by the society or societies in question.

(9) Subsection (1) above does not prohibit a person from using a description (other than his name) which, or from holding himself out in a way that, indicates a connection between himself or his business and building societies generally where the connection indicated is not misleading.

(10) Where on an application for—

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- (a) the first registration of a company, or the registration of a company by a new name, by the registrar under the ^{M72}Companies Act 1985 or the ^{M73}Companies (Northern Ireland) Order 1986, or
- (b) approval by the Secretary of State of words or expressions for inclusion in a business name under section 2 of the ^{M74}Business Names Act 1985, or
- (c) approval by the Department of Economic Development of words or descriptions for inclusion in a business name under Article 4 of the ^{M75}Business Names (Northern Ireland) Order 1986,

it appears to the registrar, the Secretary of State or the Department, as the case may be, that the use of the name or the words or description by the person seeking to register with it would contravene subsection (1) above, the registration shall not be made or the approval given.

(11) A person who contravenes subsection (1) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale; and where the contravention involves a public display or exhibition of the offending name, description or other matter, there shall be a fresh contravention of the subsection on each day during which that person causes or permits the display or exhibition to continue for which that person shall be liable on summary conviction to a fine not exceeding £200.

(12) In this section—

“deposit” means a deposit within the meaning of the [^{F414}Banking Act 1987]; and

“institution” has the same meaning as in that Act.

Textual Amendments

F414 Words substituted by [Banking Act 1987 \(c. 22, SIF 10\)](#), s. 108(1), [Sch. 6 para. 26\(7\)](#)

Marginal Citations

M72 1985 c. 6.

M73 S.I.1986/1032 (N.I.6).

M74 1985 c. 7.

M75 S.I.1986/1033 (N.I.7).

^{F415}**108**

Textual Amendments

F415 S. 108 repealed (1.12.1997) by [1997 c. 32, ss. 43, 46\(2\)](#), [Sch. 7 para. 50](#), [Sch. 9](#); [S.I. 1997/2668](#), art. 2, [Sch. Pt. I\(j\)\(k\)\(l\)\(xiii\)\(o\)\(vi\)](#)

109 Exemption from stamp duty.

[^{F416}(1)] The following instruments shall be exempted from all such stamp duties (if any) as apart from this section would be chargeable on them, that is to say—

- (a) any copy of the rules of a building society;
- (b) any transfer of a share in a building society;

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- (c) any bond or other security to be given to, or on account of, a building society or by an officer of a building society;
- (d) any instrument appointing an agent of a building society or revoking such an appointment; and
- (e) any other instrument whatsoever which is required or authorised to be given, issued, signed, made or produced in pursuance of this Act or of the rules of a building society.

[^{F417}(2) No transfer effected by subsection (6) or (7) of section 97 shall give rise to any liability to stamp duty]

Textual Amendments

F416 S. 109 renumbered as s. 109(1) by Finance Act 1988 (c. 39, SIF 63:1), s. 145, Sch. 12 para. 8

F417 S. 109(2) inserted by Finance Act 1988 (c. 39, SIF 63:1), s. 145, Sch. 12 para. 8

110 Officers and auditors not to be exempted from liability

(1) Subject to subsection (3) below, any provision to which this section applies, whether contained in the rules of a building society or in any contract with a building society or otherwise, shall be void.

(2) This section applies to any provision for—

- (a) exempting any director, other officer or person employed as auditor of a building society from any liability which, by virtue of any rule of law, would otherwise attach to him in respect of the negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the society, or
- (b) indemnifying any such person against any such liability.

[^{F418}(3) Subsection (1) above shall not prevent a building society from

- (a) purchasing and maintaining for a person insurance against any such liability, or
- (b) indemnifying a person against any liability incurred by him in defending any proceedings (whether civil or criminal) in which judgment is given in his favour or he is acquitted.]

(4) Section 727 of the ^{M76}Companies Act 1985 or, as the case may be, Article 675 of the ^{M77}Companies (Northern Ireland) Order 1986 (which empower the court to grant relief in certain cases of negligence, default, breach of duty or breach of trust) shall apply in relation to officers and auditors of a building society as it applies in relation to officers and auditors a company.

Textual Amendments

F418 S. 110(3) substituted (1.1.1992) by S.I. 1991/2738, art.2

Marginal Citations

M76 1985 c. 6.

M77 S.I. 1986/1032 (N.I.6).

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111 Time limit for commencing proceedings.

- (1) Notwithstanding any limitation on the time for the taking of proceedings contained in any Act, summary proceedings for any offence under this Act may, subject to subsection (2) below, be commenced by the Commission at any time within the period of one year beginning with the date of which evidence sufficient in the opinion of the Commission to justify a prosecution for the offence, comes to its knowledge.
- (2) Nothing in subsection (1) above shall authorise the commencement of proceedings for any offence at a time more than three years after the date on which the offence was committed.
- (3) For the purposes of subsection (1) of this section a certificate, purporting to be signed by or on behalf of the Commission, as to the date on which such evidence as is mentioned in that subsection came to its knowledge, shall be conclusive evidence of that date.
- (4) In the application of this section to Scotland, in subsection (1) the words “by the Commission” shall be omitted and in this section references to the Commission shall be read as references to the Lord Advocate.
- (5) In the application of this section to Scotland, [F419section 136(3) of the Criminal Procedure (Scotland) Act 1995] shall apply for the purposes of this section as it applies for the purposes of that section.

Textual Amendments

F419 Words in s. 111(5) substituted (S.) (1.4.1996) by 1995 c. 40, ss. 5, 7(2), Sch. 4 para. 65

112 Offences: liability of officers and defence of due diligence.

- (1) Where an offence under any provision of this Act committed by a building society is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the society he, as well as the society, shall be guilty of that offence and liable to be proceeded against and punished in accordance with that provision.
- (2) Where an offence under any of the following provisions of this Act, that is to say, section 9(11), [F420section 43A(7),]section 48(5), section 52(11) or paragraph 3 of Schedule 3 is committed by a building society every director and the chief executive of the society shall also be guilty of that offence and liable to be proceeded against and punished accordingly.
- (3) Where an offence under any provision of this Act committed by a body corporate other than a building society is proved to have been committed with the consent or connivance, or to be attributable to any neglect on the part of, any officer of the body corporate he, as well as the body corporate, shall be guilty of that offence and liable to be proceeded against and punished accordingly.
- (4) In any proceedings for an offence under this Act, it shall be a defence for a person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control

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Textual Amendments

F420 Words in s. 112(2) inserted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 51**; S.I. 1997/1427, **art. 2(k)**

113 Evidence.

- (1) Any document purporting to have been signed by a registrar on behalf of the central office and to be a certificate of incorporation or registration or other document relating to a building society shall be received in evidence and shall, in the absence of any evidence to the contrary, be deemed to have been signed by a registrar on behalf of the central office.
- (2) Any printed document purporting to be a copy of the rules or memorandum of a building society, and certified by the secretary or other officer of the society to be a true copy of its rules or memorandum as registered, shall be received in evidence and shall, in the absence of any evidence to the contrary, be deemed to be a true copy of its rules or memorandum.

114 Records.

- (1) Subject to any other provision of this Act or regulations under it, any record to be kept by a building society may be kept in any manner.
- (2) Where any such record is not kept by making entries in a bound book, but by some other means, adequate precautions shall be taken for guarding against falsification and facilitating its discovery.
- (3) The power in subsection (1) above includes power to keep the record by recording matters otherwise than in legible form so long as the recording is capable of being reproduced in a legible form; and any duty imposed by or under this Act to allow inspection of, or to furnish a copy of, the record or any part of it is to be treated as a duty to allow inspection of, or to furnish, a reproduction of the recording or of the relevant part of it in a legible form.
- (4) The Commission may, by regulations made with the consent of the Treasury, make such provision in addition to subsection (3) above as it considers appropriate in connection with such records as are kept otherwise than in legible form; and the regulations may make modifications of this Act so far as it relates to the records of building societies.
- (5) If default is made in complying with this section the building society shall be liable on summary conviction—
 - (a) to a fine not exceeding level 4 on the standard scale, and
 - (b) in the case of a continuing offence, to an additional fine not exceeding £100 for every day during which the offence continues,and so shall any officer who is also guilty of the offence.

115 Service of notices.

- (1) This section has effect in relation to any notice, directions or other document required or authorised by or under any provision of this Act or by the rules of a building society to be served on any person other than the Commission and the central office but

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subject, in the case of notices or other documents to be given or sent to members of a building society, to any provision of its rules.

[^{F421}(1A) This section also has effect in relation to any notice or other document required or authorised by or under any provision of the Banking Coordination (Second Council Directive) Regulations 1992 to be served on any person by the Commission.]

- (2) Any such document may be served on the person in question—
 - (a) by delivering it to him;
 - (b) by leaving it at his proper address; or
 - (c) by sending it by post to him at that address.
- (3) Any such document may—
 - (a) in the case of a building society, be served on the secretary of the society;
 - (b) in the case of a body corporate (other than a building society), be served on the secretary or clerk of that body;
 - (c) in the case of a partnership, be served on any partner;
 - (d) in the case of an unincorporated association other than a partnership, be served on any member of its governing body.
- (4) For the purposes of this section and section 7 of the ^{M78}Interpretation Act 1978 (service of documents) in its application to this section, the proper address of any person is—
 - (a) in the case of a building society or its secretary, the address of its principal office;
 - (b) in the case of a member of a building society, his registered address;
 - (c) in the case of a director or the chief executive of a building society, his officially notified address;
 - (d) in the case of a body corporate (other than a building society) its secretary or clerk, the address of its registered or principal office in the United Kingdom;
 - (e) in the case of an unincorporated association (other than a partnership) or a member of its governing body, its principal office in the United Kingdom;

and, in any other case, his last-known address (whether of his residence or of a place where he carries on business or is employed).

Textual Amendments

F421 S. 115(1A) inserted (1. 1. 1993) by 1992/3218, reg.79

Marginal Citations

M78 1978 c. 30.

116 Form of documents and power to prescribe fees.

- (1) The Chief Registrar may, by directions under this subsection, make provision with respect to the form of, and the particulars to be included in, any document to be issued or sent by, or to be sent to, the central office under this Act.
- (2) The Treasury may, by regulations under this subsection, make provision for the fees to be paid to the Chief Registrar for the inspection, or the furnishing of copies, of any documents in the custody of the central office, or in respect of the exercise by the central office of any of its functions, under this Act.

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- (3) The power to make regulations under this section is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Any amounts received by the Chief Registrar under subsection (2) above shall be applied as an appropriation in aid of money provided by Parliament for the expenses of the Chief Registrar under this Act, and in so far as not so applied, shall be paid by the Chief Registrar into the Consolidated Fund.

Subordinate Legislation Made

P3 [S.2\(2\)](#) and [S.116\(2\)](#) power exercised by [S.I. 1991/277](#).

117 Financial year of building societies.

- (1) Subject to the provisions of this section and Schedule 20, the financial year of building societies shall be the period of twelve months ending with 31st December.
- (2) The initial financial year of a building society shall be such period as expires with the end of the calendar year in which it is established and the final financial year of a building society shall be such shorter period than twelve months as expires with the date as at which the society makes up its final accounts.
- (3) A building society whose financial year does not, by virtue of the saving provisions of Schedule 20, end with 31st December may alter its financial year by making up its accounts for one period of more than 6 months, and not more than 18 months, ending with 31st December; and in relation to a building society exercising the power conferred by this subsection, references in this Act to a financial year of the society include references to that period.

[^{F422}118 Qualifying asset holding for certain powers.

- (1) This section has effect for determining for the purposes of this Act whether, in any financial year, a building society has a “qualifying asset holding”.
- (2) A building society has a qualifying asset holding in any financial year, if, and only if, the aggregate value of its total commercial assets, as shown in its annual accounts for the previous year, is not less than £100 million or such other amount as may be substituted for it under subsection (3) below.
- (3) The Commission, with the consent of the Treasury, may by order made by statutory instrument substitute for the amount for the time being specified in subsection (2) above such other amount as the Commission considers appropriate.
- (4) An order under subsection (3) above may contain such transitional provisions as the Commission considers necessary or expedient.
- (5) An instrument containing an order under subsection (3) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

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Textual Amendments

F422 S. 118 repealed (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 46(2), 47(3), Sch. 7 para. 52, **Sch. 9**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(y)(z)(xxx)(cc)(xv)**

[118A ^{F423} Associates.

(1) In this Act 'associate', in relation to a person holding deferred shares in, or entitled to exercise or control the exercise of voting power in relation to, a building society, means—

- (a) the wife or husband or son or daughter of that person;
- (b) the trustees of any settlement under which that person has a life interest in possession or, in Scotland, a life interest;
- (c) any company of which that person is a director;
- (d) any person who is an employee or partner of that person;
- (e) if that person is a company—
 - (i) any director of that company;
 - (ii) any subsidiary undertaking of that company; and
 - (iii) any director or employee of any such subsidiary undertaking; and
- (f) if that person has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of deferred shares in that society or under which they undertake to act together in exercising their voting power in relation to it, that other person.

(2) For the purposes of this section—

'son' includes stepson and 'daughter' includes stepdaughter;

'settlement' includes any disposition or arrangement under which property is held in trust.]

Textual Amendments

F423 S. 118A inserted (1. 1. 1993) by S.I. 1992/3218, **reg.80**

119 Interpretation.

(1) In this Act, except where the context otherwise requires—

[^{F424}“adopt” and “adopted”, in relation to powers, and “adoptable powers” have the meaning given by paragraph 1 of Schedule 2 of this Act;]

[^{F424}“advance secured on land” and “advance fully secured on land” have the meanings given by section 10(1) and (11) and references to class 1 or class 2 advances are to be construed in accordance with sections 11 and 12;]

[^{F425F424}“advance secured on third party land” has the meaning given by section 10(4A);]

“the annual accounts” has the meaning given by section 72(10);

“the annual business statement” has the meaning given by section 74(1);

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“the applicable winding up legislation” and “the companies winding up legislation” have the meanings given by section 90;

[^{F426}“associated undertaking” shall be construed in accordance with paragraph 20 of Schedule 4A to the ^{M79}Companies Act 1985 read—

- (a) in conjunction with sections 259 and 260 of, and paragraphs 5 to 11 of Schedule 10A to, that Act; and
- (b) as if the reference to an undertaking included in the consolidation were a reference to an undertaking which would be so included if consolidated accounts were being prepared at the material time;]

“authorisation” means authorisation under section 9 or, on renewal, under section 41 or reauthorisation under section 44 or authorisation by virtue of section 93(6) or paragraph 6(1) of Schedule 20 to this Act and “authorised” in relation to any time, means having an authorisation current at that time;

[^{F427}“borrowing members’ resolution” has the meaning given by paragraph 29(1) of Schedule 2 to this Act and, subject to paragraph 29(2), “borrowing member” has the meaning given by paragraph 5 of that Schedule;]

“building society” means a building society incorporated (or deemed to be incorporated) under this Act;

“the central office” means the central office of the registry of friendly societies except in relation to Scotland in relation to which it means the assistant registrar of friendly societies for Scotland;

“the Chief Registrar” means the Chief Registrar of Friendly Societies;

“the Commission” means the Building Societies Commission established by section 1;

[^{F428}“connected undertaking” means a subsidiary undertaking or an associated undertaking;]

[^{F429}“the court”, in relation to a building society, means the court which has jurisdiction under the applicable winding up legislation to wind up the society;]

“the criteria of prudent management” means the criteria set out in section 45(3);

[^{F430}“currency” includes ecus;]

“deferred shares” means shares of a class defined by order of the Commission, with the consent of the Treasury, in a statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament;

[^{F431}“deposit” includes—

- (a) a loan; and
- (b) a subordinated deposit, that is to say, a deposit which, on a winding up, would fall to be repaid only after repayment in full had been made to the holders of shares in the society other than deferred shares,

and cognate expressions shall be construed accordingly;]

“dispose”, in relation to any property, includes the granting of any interest in or right over it;

“executive”, in relation to a director, means a person who holds office as a director and also as chief executive, secretary or manager;

“financial year” is to be construed in accordance with section 117;

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“heritable security” means a security capable of being constituted over any land by disposition or assignment of that interest in security of any debt and of being recorded in the Register of Sasines or, as the case may be, in the Land Register of Scotland and includes a security constituted by a standard security and any other charge enforceable in the same manner as a standard security;

[^{F432}“interest”, in relation to shares, includes dividends;]

“Investor Protection Board” means the Board established by section 24;

[^{F433}“land”, in the expression “loan secured on land”, has the meaning given by section 6A(8);

“loan secured on land” and “loan fully secured on land” shall be construed in accordance with sections 6A and 6B respectively;]

“manager”, in relation to a building society, means a person (other than the chief executive) employed by the society who, under the immediate authority of a director or the chief executive of the society exercises managerial functions or is responsible for maintaining accounts or other records of the society;

[^{F434}“member” shall be construed in accordance with paragraph 5 of Schedule 2 to this Act;]

“memorandum” has the meaning given by paragraph 1 of Schedule 2 to the Act;

[^{F424}“mobile home loan” means a loan under section 15;]

“mortgage” includes charge;

[^{F435}“mortgage debt”, in relation to a loan secured on land and any time, means the total amount outstanding at that time in respect of—

- (a) the principal of the loan;
- (b) interest on the loan; and
- (c) any other sum which the borrower is obliged to pay the society under the terms of the loan;]

[^{F436}“non-EEA laws” has the meaning given by section 9(3A) and “non-EEA administrative provisions” shall be construed accordingly;]

“notice” means written notice and “notice to” a person means notice given to that person, and “notify” shall be construed accordingly;

“officer”, in relation to a building society, means any director, chief executive, secretary or manager of the society; and, in relation to any offence, “officer” also includes any person who purports to act as an officer of the society; and in relation to any other body corporate means the corresponding officers of that body;

“officially notified”, in relation to the appointment or address of a director or the chief executive of a building society, means respectively notified to, and the last address notified to, the central office under section 61(13) or 59(6), as the case may be;

[^{F437}“ordinary resolution” means a resolution which will be effective without being passed as a special resolution, shareholding members’ resolution or borrowing members’ resolution;]

“prescribed”, in relation to fees, means prescribed under section 2 or 116 according as the fees are payable to the Commission or, in the case of functions of the central office, to the Chief Registrar;

“the public file”, in relation to a building society, means the file relating to the society which the central office is required to maintain under section 106;

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[^{F424}“qualifying asset holding”, in relation to a building society, shall be construed in accordance with section 118;]

“registered address”, in relation to a member of a building society, has the meaning given by paragraph 13 of Schedule 2 to this Act;

“the repealed enactments” means the ^{M80}Building Societies Act 1962 or the ^{M81}Building Societies Act 1874 or, in relation to Northern Ireland, the ^{M82}Building Societies Act (Northern Ireland) 1967;

[^{F438}“residential property” has the meaning given by section 5(10);]

[^{F439}“share”, in relation to a building society, shall be construed in accordance with section 8;]

“shareholder and depositor” includes a potential shareholder or depositor;

[^{F440}“shareholding member” has the meaning given by paragraph 5 of Schedule 2 to this Act;

“shareholding members” resolution’ has the meaning given by paragraph 27A of that Schedule;]

“special resolution” has the meaning given by paragraph 27 of Schedule 2 to this Act;

[^{F424}“subsidiary” [^{F441}has the meaning given by section 736 of] the ^{M83}Companies Act 1985;]

[^{F442}“Subsidiary undertaking” shall be construed in accordance with the provisions of section 258 of the Companies Act 1985, read in conjunction with sections 259 and 260 of, and Schedule 10A to, that Act;]

“summary financial statement” has the meaning given by section 76(1);

[^{F424}“total commercial assets”, in relation to a building society, means the aggregate of its class 1 assets, its class 2 assets and its class 3 assets.]

- (2) In relation to [^{F443}loans] secured on land in Scotland, “mortgage” means a heritable security, “mortgagor” and “mortgagee” mean respectively the debtor and creditor in a heritable security and connected expressions shall be construed accordingly.

[^{F444}(2A) In this Act the following expressions, namely—

another member State;

connected UK authority;

ecu [^{F445}(except in Part IV)];

the First Council Directive;

listed activity;

own funds;

recognised self-regulating organisation;

relevant supervisory authority;

the Second Council Directive;

supervisory authority,

have the same meanings as in the Banking Coordination (Second Council Directive) Regulations 1992.

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- [^{F446}(2B) Any reference in this Act to the First Council Directive or the Second Council Directive is a reference to that Directive as amended by the Prudential Supervision Directive (within the meaning of the Financial Institutions (Prudential Supervision) Regulations 1996).
- (2C) Any reference in this Act—
- (a) to an undertaking being closely linked with any person, or being closely linked with any person by control; or
 - (b) to an undertaking's close links with any person,
- shall be construed in accordance with regulation 2 of those Regulations.]
- (3) For the purposes of any provision of this Act referring to the value of a person's shareholding in a building society—
- (a) the value of a person's shares shall be taken as the amount standing to his credit in respect of payments made ^{F447} . . . on the shares and interest credited ^{F447} . . . by way of capitalisation; and
 - (b) shares held by a person to whom, as the holder of the share, the society has made [^{F448}a loan], shall be disregarded.
- [^{F449}(3A) Any reference in this Act (however expressed) to loans being owed to a building society or a subsidiary undertaking of a building society is a reference to their being so owed either at law or in equity.]
- [^{F450}(4) Subject to sections 9A(7) and 83A(7), the value in sterling of—
- (a) any transaction effected by or with a building society or connected undertaking in another currency, or
 - (b) any assets or liabilities of a building society or connected undertaking denominated in another currency,
- shall be determined for any purpose of this Act in accordance with directions given by the Commission under this subsection.]
- (5) The foregoing provisions of this Act shall be construed and have effect as if section 124 and Schedule 21 were contained in another Act and references in those provisions to this Act shall be construed accordingly.

Textual Amendments

- F424** Definitions in s. 119(1) repealed (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 46(2), 47(3), Sch. 7 para. 53(1)(a), **Sch. 9**; S.I. 1997/2668, art. 2, Sch. Pts. I(j)(k)(l)(xiv), **II(w)(y)(z)(xxxi)(cc)(xvi)**
- F425** Words in s. 119(1) inserted (3.1.1995) by 1994 c. 40, ss. 39, 82(2)(e), **Sch. 11 para. 7(6)**
- F426** Definition in s. 119(1) substituted for definitions (9.6.1997 for certain purposes only, 1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 53(1)(b)**; S.I. 1997/1427, **art. 2(k)(n)(xii)**; S.I. 1997/2668, art. 2, Sch. Pts. I(j)(l)(xiv), **II(w)(z)(xxxi)**
- F427** Definition in s. 119(1) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 53(1)(c)**; S.I. 1997/2668, art. 2, Sch. Pts. I(j)(l)(xiv), **II(w)(z)(xxxi)**
- F428** Definition in s. 119(1) inserted (9.6.1997 for certain purposes only, 1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 53(1)(d)**; S.I. 1997/1427, **art. 2(k)(n)(xii)**; S.I. 1997/2668, art. 2, Sch. Pts. I(j)(l)(xiv), **II(w)(z)(xxxi)**

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- F429** Definition in s. 119(1) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 53(1)(e)**; S.I. 1997/2668, art. 2, Sch. Pts. I(j)(l)(xiv), **II(w)(z)(xxxi)**
- F430** Definition in s. 119(1) inserted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 53(1)(f)**; S.I. 1997/2668, art. 2, Sch. Pts. I(j)(l)(xiv), **II(w)(z)(xxxi)**
- F431** Definition in s. 119(1) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 53(1)(g)**; S.I. 1997/2668, art. 2, Sch. Pts. I(j)(l)(xiv), **II(w)(z)(xxxi)**
- F432** Definition in s. 119(1) inserted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 53(1)(h)**; S.I. 1997/2668, art. 2, Sch. Pts. I(j)(l)(xiv), **II(w)(z)(xxxi)**
- F433** Definitions in s. 119(1) inserted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 53(1)(i)**; S.I. 1997/2668, art. 2, Sch. Pts. I(j)(l)(xiv), **II(w)(z)(xxxi)**
- F434** Definition in s. 119(1) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 53(1)(j)**; S.I. 1997/2668, art. 2, Sch. Pts. I(j)(l)(xiv), **II(w)(z)(xxxi)**
- F435** Definition in s. 119(1) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 53(1)(k)**; S.I. 1997/2668, art. 2, Sch. Pts. I(j)(l)(xiv), **II(w)(z)(xxxi)**
- F436** Definitions in s. 119(1) inserted (18.7.1996) by S.I. 1996/1669, **reg. 6(5)**
- F437** Definition in s. 119(1) inserted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 53(1)(l)**; S.I. 1997/2668, art. 2, Sch. Pts. I(j)(l)(xiv), **II(w)(z)(xxxi)**
- F438** Definition in s. 119(1) inserted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 53(1)(m)**; S.I. 1997/2668, art. 2, Sch. Pts. I(j)(l)(xiv), **II(w)(z)(xxxi)**
- F439** Definition in s. 119(1) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 53(1)(n)**; S.I. 1997/2668, art. 2, Sch. Pts. I(j)(l)(xiv), **II(w)(z)(xxxi)**
- F440** Definitions in s. 119(1) inserted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 53(1)(o)**; S.I. 1997/2668, art. 2, Sch. Pts. I(j)(l)(xiv), **II(w)(z)(xxxi)**
- F441** Words substituted by virtue of Companies Act 1989 (c. 40, SIF 27), s. 145(4), **Sch. 18 para. 45**
- F442** Definition in s. 119(1) added (1.1.1993) by S.I. 1991/1729, **art. 5**
- F443** Word in s. 119(2) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 53(2)**; S.I. 1997/2668, art. 2, Sch. Pts. I(j)(l)(xiv), **II(w)(z)(xxxi)**
- F444** S. 119(2A) inserted (1. 1. 1993) by S.I. 1992/3218, **reg. 81**
- F445** Words in s. 119(2A) inserted (1.7.1995) by S.I. 1995/1442, **reg. 52(1)** (with transitory provisions in reg. 54(2))
- F446** S. 119(2B)(2C) inserted (18.7.1996) by S.I. 1996/1669, reg. 23, **Sch. 5 para. 5**
- F447** Words in s. 119(3)(a) ceased to have effect (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 53(3)(a)**; and repealed (1.12.1997) by 1997 c. 32, s. 46(2), **Sch. 9**; S.I. 1997/1427, **art. 2(k)(n)(xiii)**; S.I. 1997/2668, art. 2, **Sch. Pt. I(j)(k)(l)(xiv)(o)(vii)**
- F448** Words in s. 119(3)(b) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 53(3)(b)**; S.I. 1997/2668, art. 2, Sch. Pts. I(j)(l)(xiv), **II(w)(z)(xxxi)**
- F449** S. 119(3A) inserted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 53(4)**; S.I. 1997/2668, art. 2, Sch. Pts. I(j)(l)(xiv), **II(w)(z)(xxxi)**

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F450 S. 119(4) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 53(5)**; S.I. 1997/2668, art. 2, Sch. Pts. I(j)(l)(xiv), **II(w)(z)(xxxi)**

Modifications etc. (not altering text)

C104 Definition of “total commercial assets” modified by S.I. 1986/2168, **art. 4(2)(a)(ii)(3)**

Marginal Citations

M79 1986 c.6.

M80 1962 c. 37.

M81 1874 c. 42.

M82 1967 c. 31 (N.I.).

M83 1985 c. 6.

120 Amendments, repeals, revocations and transitional and saving provisions.

- (1) The enactment specified in Schedule 18 to this Act shall have effect with the amendments made by that Schedule.
- (2) Subject to the saving provisions of Schedule 20, and of any order under section 121, the enactments specified in Schedule 19 to this Act are hereby repealed or revoked to the extent specified in the third column of that Schedule.
- (3) Where any enactment amended or repealed or revoked by subsection (1) or (2) above extends to any part of the United Kingdom, the amendment or repeal or revocation extends to that part.
- (4) The transitional and saving provisions of Schedule 20 to this Act shall have effect.

Modifications etc. (not altering text)

C105 S. 120(2) excluded by S.I. 1986/2168, **art. 2(2)**

121 Power to make transitional and saving provisions.

- (1) The Treasury may, by order made by statutory instrument, make such provision as appears to them to be necessary or expedient for the purposes of the transition to the provisions of this Act from the existing enactments applicable in England and Wales, Scotland or Northern Ireland to building societies.
- (2) An order under this section may—
 - (a) modify any of the existing enactments or provisions of this Act, in particular in their application to proceedings pending before the Chief Registrar or the Commission;
 - (b) create criminal offences or otherwise provide for the enforcement of obligations imposed by or under the order;
 - (c) provide for the charging of fees but not of any charge in the nature of taxation.
- (3) An order under this section which contains any provision authorised by subsection (2) (b) or (c) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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- (4) In this section “the existing enactments” means the enactments in force at the passing of this Act, including any enactment amended by Schedule 18 to this Act.

Modifications etc. (not altering text)

C106 S. 121 amended by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), s. 844, [Sch. 30 para. 16](#)

122 Northern Ireland

- (1) With the exception of [^{F451}section 15,] section 124 and Schedule 21 and subject to section 120(3), this Act extends to Northern Ireland.
- (2) Subject to any Order made by virtue of subsection (1)(a) of section 3 of the ^{M84}Northern Ireland Constitution Act 1973 building societies shall not be a transferred matter for the purposes of that Act but shall for the purposes of subsection (2) of that section be treated as specified in Schedule 3 to that Act.

Textual Amendments

F451 Words in s. 122(1) repealed (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by [1997 c. 32, ss. 43, 46\(2\), 47\(3\), Sch. 7 para. 54, Sch. 9; S.I. 1997/2668, art. 2, Sch. Pt. II\(w\)\(y\)\(z\)\(xxxii\)\(cc\)\(xvii\)](#)

Marginal Citations

M84 1973 c. 36.

123 Expenses.

There shall be paid out of money provided by Parliament—

- (a) any expenses incurred by the Commission which are attributable to the provisions of this Act, and
- (b) any expenses incurred by the Chief Registrar which are attributable to any functions of his or of the central office under this Act.

Provision of conveyancing services by recognised institutions and practitioners

PROSPECTIVE

^{F452}**124 Recognition of building societies, other institutions and individuals as suitable to provide conveyancing services.**

.....

Textual Amendments

F452 S. 124 repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\), Sch. 1 Pt. 17 Group 2](#)

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General

125 Short title.

This Act may be cited as the Building Societies Act 1986.

126 Commencement.

- (1) This Act shall come into operation as follows.
- (2) Part I (and Schedule 1) shall come into operation at the end of the period of two months beginning with the day on which this Act is passed.
- (3) The remaining provisions of this Act, except sections 121, 124, 125, this section, in Schedule 20, paragraph 7 (and section 120(4) so far as it relates to that paragraph) and Schedule 21, shall come into operation on such day as the Treasury may appoint by order made by statutory instrument and different days may be appointed for different provisions or different purposes.
- (4) Section 124 and Schedule 21 shall come into operation on such day as the Lord Chancellor may appoint by order made by statutory instrument.
- (5) Any reference to the commencement of or the commencement date for a provision of this Act is a reference to the date appointed under this section for that provision to come into operation.

Modifications etc. (not altering text)

C107 Power of appointment conferred by s. 126(3) partly exercised: [S.I. 1986/1560](#), 1989/1083

C108 Power of appointment conferred by s. 126(4) not yet exercised

Status:

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Changes to legislation:

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