

SCHEDULES

SCHEDULE 14

Section 72.

AUDITORS: APPOINTMENT, TENURE, QUALIFICATIONS AND REMUNERATION

Appointment

- 1 (1) The first auditors of a friendly society or registered branch may be appointed by the committee of management of the society or branch at any time before the first general meeting of the society or branch following the end of its initial financial year; and auditors so appointed shall hold office until the conclusion of that meeting.
- (2) If the committee of management fails to exercise its powers under sub-paragraph (1) above, those powers may be exercised by the society or branch in general meeting.
- 2 The committee of management, or the society or branch in general meeting, may fill any casual vacancy in the office of auditor; but while any such vacancy continues, the surviving or continuing auditor or auditors (if any) may act.
- 3 (1) If at any annual general meeting of a friendly society or registered branch no auditors are appointed or re-appointed, the Commission may appoint a person to fill the vacancy; and the society or branch shall, within one week of the power of the Commission becoming exercisable, give it notice of that fact.
- (2) If a society or branch fails to give the notice required by sub-paragraph (1) above, the society or branch shall be guilty of an offence and 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 one-tenth of that level for every day during which the offence continues.

Eligibility for appointment

- 4 (1) Subject to paragraph 7 below, a person is eligible for appointment as the auditor of a friendly society or registered branch only if he—
- (a) is a member of a recognised supervisory body; and
 - (b) is not ineligible for the appointment under the rules of that body.
- (2) An individual or a firm may be appointed as auditor of a friendly society or registered branch.
- (3) In this Schedule—
- “firm” means a body corporate or a partnership; and
 - “recognised supervisory body” means a body which is a recognised supervisory body for the purposes of Part II of the Companies Act 1989 or Part III of the Companies (Northern Ireland) Order 1990.
- 5 (1) A person is ineligible for appointment as an auditor of a friendly society or a registered branch of the society under this Schedule if he is—

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- (a) an officer or employee of the friendly society or any registered branch of the society;
- (b) a partner or employee of such a person or a partnership of which such a person is a partner,

or, in the case of an incorporated friendly society, if he is ineligible by virtue of section 27(1)(a) or (b) of the Companies Act 1989 or Article 20(1) of the Companies (Northern Ireland) Order 1990 for appointment as company auditor of a subsidiary of the society or of a body jointly controlled by the society and some other person.

- (2) For this purpose an auditor of a friendly society or branch shall not be regarded as an officer or employee of the society or branch.
- (3) A person is also ineligible for appointment as auditor of a friendly society or branch if there exists between him or any associate of his and the society or branch or, if it is an incorporated friendly society, any of its subsidiaries, a connection of any such description as may be specified by regulations made by the Commission.
- (4) In this paragraph “associate” has the meaning given by section 52 of the Companies Act 1989 or Article 54 of the Companies (Northern Ireland) Order 1990.

Appointment of partnerships

- 6 (1) The following provisions apply to the appointment as auditor under this Schedule of a partnership constituted under the law of England and Wales or Northern Ireland, or under the law of any other country or territory in which a partnership is not a legal person.
- (2) The appointment is (unless a contrary intention appears) an appointment of the partnership as such and not of the partners.
- (3) Where the partnership ceases, the appointment shall be treated as extending to—
 - (a) any partnership which succeeds to the practice of that partnership and is eligible for the appointment; and
 - (b) any person who succeeds to that practice having previously carried it on in partnership and is eligible for the appointment.
- (4) For this purpose a partnership shall be regarded as succeeding to the practice of another partnership only if the members of the successor partnership are substantially the same as those of the former partnership; and a partnership or other person shall be regarded as succeeding to the practice of a partnership only if it or he succeeds to the whole or substantially the whole of the business of the former partnership.
- (5) Where the partnership ceases and no person succeeds to the appointment under sub-paragraph (3) above, the appointment may with the consent of the recognised supervisory body be treated as extending to a partnership or other person eligible for the appointment who succeeds to the business of the former partnership or to such part of it as is agreed by the body shall be treated as comprising the appointment.

Cases in which auditor need not be a member of a recognised supervisory body

- 7 (1) A person who is not a member of a recognised supervisory body may be an auditor of a registered friendly society if—
 - (a) its receipts and payments in respect of the preceding financial year did not, in the aggregate, exceed £5,000; and

- (b) the number of its members at the end of that year did not exceed 500; and
 - (c) the value of its assets at the end of that year did not, in the aggregate, exceed £5,000; and
 - (d) it is not a collecting society.
- (2) A person who is not a member of a recognised supervisory body may be an auditor of a registered branch if—
- (a) the conditions mentioned in sub-paragraph (1)(a), (b) and (c) above are satisfied; and
 - (b) it is not a branch of a collecting society.
- (3) A person who is not a member of a recognised supervisory body may also be an auditor of a registered branch if—
- (a) the conditions mentioned in sub-paragraph (1)(a) and (b) and sub-paragraph (2)(b) above are satisfied; and
 - (b) at the end of the preceding financial year at least 75 per cent of its assets had been transferred to the society of which it is a branch or to another registered branch of that society for the purpose of being invested, in accordance with the 1974 Act, by that society or other branch, and the value of its assets not so transferred did not, in the aggregate, exceed £5,000; and
 - (c) an auditor of the society or branch to which the assets were transferred must be a member of a recognised supervisory body.
- (4) Regulations made by the Commission, with the consent of the Treasury, may—
- (a) substitute for any sum or number for the time being specified in sub-paragraph (1) above, or for any sum or percentage for the time being specified in sub-paragraph (3) above, such sum, number or percentage as may be specified in the regulations; and
 - (b) prescribe what receipts and payments of a body shall be taken into account for the purposes of those sub-paragraphs.
- (5) A registered friendly society or registered branch which, by virtue of this paragraph, may appoint a person who is not a member of a recognised supervisory body as an auditor in respect of any financial year is in this Schedule referred to as an exempt society or, as the case may be, an exempt branch, in respect of that financial year.
- (6) Subject to any direction given by the Commission under sub-paragraph (7) below, a society or branch which in respect of any financial year is an exempt society or, as the case may be, an exempt branch shall in respect of that year appoint—
- (a) one or more qualified auditors; or
 - (b) two or more persons who are not qualified auditors,
- to audit its annual accounts for that year.
- (7) The Commission may give a direction in the case of any particular society or branch which is an exempt society or branch in respect of any financial year that sub-paragraph (4) above shall apply to it in respect of that year as if it were not an exempt society or branch.

Effect of ineligibility

- 8 (1) No person shall act as an auditor under this Act if he is ineligible for appointment to the office.

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- (2) If during his term of office an auditor appointed under this Schedule become ineligible for appointment to the office, he shall thereupon vacate office and shall forthwith give notice in writing to the society concerned that he has vacated it by reason of ineligibility.
- (3) A person who acts as auditor under this Act in contravention of sub-paragraph (1) above, or fails to give notice of vacating his office as required by sub-paragraph (2) above, is guilty of an offence and liable—
 - (a) on conviction on indictment, to a fine; and
 - (b) on summary conviction, to a fine not exceeding the statutory maximum and, in the case of a continuing offence, to an additional fine not exceeding one-tenth of the statutory maximum for every day during which the offence continues.
- (4) In proceedings against a person for an offence under this paragraph it is a defence for him to show that he did not know and had no reason to believe that he was, or had become, ineligible for appointment.

Power of Commission to require second audit

- 9 (1) Where a person appointed auditor under this Schedule was, for any part of the period during which the audit was conducted, ineligible for appointment to that office, the Commission may direct the friendly society or registered branch concerned to retain a person eligible for appointment as auditor under this Schedule—
 - (a) to audit the relevant accounts again; or
 - (b) to review the first audit and to report (giving his reasons) whether a second audit is needed;
 and the society or branch shall comply with such a direction within 21 days of its being given.
- (2) If a second audit is recommended, the society or branch shall forthwith take such steps as are necessary to comply with the recommendation.
- (3) Where a direction is given under this paragraph, the Commission shall send a copy of the direction to the central office; and the society or branch shall within 21 days of receiving any report under sub-paragraph (1)(b) above send a copy of it to the central office.
- (4) Any statutory or other provisions applying in relation to the first audit shall apply, so far as practicable, in relation to a second audit under this paragraph.
- (5) If a society or branch fails to comply with the requirements of this paragraph, it is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale; and in the case of a continuing offence to an additional fine not exceeding one-tenth of that level for every day during which the offence continues.
- (6) A direction under this paragraph is, on the application of the Commission, enforceable by injunction or, in Scotland, by an order under section 45 of the Court of Session Act 1988.
- (7) If a person accepts an appointment, or continues to act, as an auditor under this Act at a time when he knows he is ineligible, the society concerned may recover from him any costs incurred by it in complying with the requirements of this paragraph.

Removal of auditors

- 10 (1) A friendly society or registered branch may by ordinary resolution in general meeting remove an auditor before the expiration of his term of office, notwithstanding anything in any agreement between it and him.
- (2) Where such a resolution is passed, the society or branch shall within 14 days give notice of that fact to the central office.
- (3) If a friendly society or branch fails to give the notice required by sub-paragraph (2) above, it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale and in the case of a continuing offence to an additional fine not exceeding one-tenth of that level for every day during which the offence continues.
- (4) Nothing in this paragraph is to be taken as depriving a person removed under it of compensation or damages that may be payable to him in respect of the termination of his appointment as auditor or of any appointment terminating with that as auditor.
- (5) An auditor of a friendly society or registered branch who has been removed has, notwithstanding his removal, the rights conferred by section 75 above in relation to any general meeting of the society or branch at which—
- his term of office would otherwise have expired; or
 - it is proposed to fill the vacancy caused by his removal.

Rights of auditors who are removed or not re-appointed

- 11 (1) Special notice is required for a resolution at a general meeting of a friendly society or registered branch—
- removing an auditor before the expiration of his term of office; or
 - appointing as auditor a person other than a retiring auditor.
- (2) On receipt of notice of such an intended resolution the friendly society or branch shall forthwith send a copy of it to the person proposed to be removed or, as the case may be, to the person proposed to be appointed and to the retiring auditor.
- (3) The auditor proposed to be removed or (as the case may be) the retiring auditor may make with respect to the intended resolution representations in writing to the society or branch (not exceeding a reasonable length) and request their notification to members of the society.
- (4) The society or branch shall (unless the representations are received by it too late for it to do so)—
- in any notice of the resolution given to members of the society or branch, state the fact of the representations having been made;
 - include in or with any such notice a copy of the representations; and
 - make copies of them available to members at the meeting at which the resolution is to be moved.
- (5) If notice of any such representations is not given as required by sub-paragraph (4) above because received too late or because of the default of the society or branch, the auditor may (without prejudice to his right to be heard orally) require that the representations be read out at the meeting.

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- (6) The steps required by sub-paragraphs (4) or (5) above need not be taken if, on the application of the society or branch or of any other person claiming to be aggrieved, the court is satisfied that the rights conferred by this paragraph are being abused to secure needless publicity for defamatory matter; and the court may order the costs of the society or branch on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

Resignation of auditors

- 12 (1) An auditor of a friendly society or registered branch may resign his office by depositing a notice in writing to that effect at the society's registered office.
- (2) The notice is not effective unless it is accompanied by the statement required by paragraph 14 below.
- (3) An effective notice of resignation operates to bring the auditor's term of office to an end as of the date on which the notice is deposited or on such later date as may be specified in it.
- (4) The society or branch shall within 14 days of the deposit of a notice of resignation send a copy of the notice to the central office.
- (5) If default is made in complying with sub-paragraph (4) above, the society or branch is guilty of an offence and liable—
- (a) on conviction on indictment, to a fine; and
 - (b) on summary conviction, to a fine not exceeding the statutory maximum and in the case of a continuing offence, to an additional fine not exceeding one-tenth of the statutory maximum for every day during which the offence continues.

Rights of resigning auditors

- 13 (1) This paragraph applies where an auditor's notice of resignation is accompanied by a statement of circumstances which he considers should be brought to the attention of members or creditors of the society or branch.
- (2) He may deposit with the notice a signed requisition calling on the committee of management of the society or branch forthwith duly to convene an extraordinary general meeting of the society or branch for the purpose of receiving and considering such explanation of the circumstances connected with his resignation as he may wish to place before the meeting.
- (3) The society or branch shall, at the request of the auditor (unless the statement is received too late to comply)—
- (a) in any notice of the meeting convened on his requisition or of any general meeting at which his term of office would otherwise have expired or at which it is proposed to fill the vacancy caused by his resignation, state the fact that the statement has been made;
 - (b) include in or with that notice a copy of a statement in writing by him (not exceeding a reasonable length) of the circumstances connected with his resignation; and
 - (c) make copies of the statement available to members at any such meeting.

- (4) If the committee of management does not within 21 days from the date of the deposit of a requisition under this paragraph proceed duly to convene a meeting for a day not more than 28 days after the date on which the notice convening the meeting is given, every member of the committee who failed to take all reasonable steps to secure that a meeting was convened as mentioned above is guilty of an offence and liable—
 - (a) on conviction on indictment, to a fine; and
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (5) If notice of the statement mentioned above is not given as required because received too late or because of the default of the society or branch, the auditor may (without prejudice to his right to be heard orally) require that the statement be read out at the meeting in question.
- (6) The steps required by sub-paragraphs (3) and (5) above need not be taken if, on the application of the society or branch or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this paragraph are being abused to secure needless publicity for defamatory matter; and the court may order the costs of the society or branch on such an application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.
- (7) An auditor who has resigned has, notwithstanding his resignation, the rights conferred by section 75 above in relation to any such general meeting of the society or branch as is mentioned in sub-paragraph (3) above; and in such a case, the references in that section to matters concerning the auditors as auditors shall be construed as references to matters concerning him as a former auditor.

Statement by person ceasing to hold office

- 14
- (1) Where an auditor of a friendly society or registered branch ceases for any reason to hold office, he shall deposit at the registered office of the society or branch concerned—
 - (a) a statement of any circumstances connected with his ceasing to hold office which he considers should be brought to the attention of the members or creditors of the society or branch; or
 - (b) if he considers that there are no such circumstances, a statement that there are none.
 - (2) In a case falling within sub-paragraph (1)(a) above it shall also be the duty of the auditor, unless he receives notice of an application under sub-paragraph (4) below before the end of the period of 21 days beginning with the day on which he deposited the statement, to send the central office a copy within a further 7 days.
 - (3) In the case of resignation, the statement shall be deposited along with the notice of resignation; in the case of failure to seek re-appointment, the statement shall be deposited not less than 14 days before the end of the time allowed for next appointing auditors; in any other case, the statement shall be deposited not later than the end of the period of 14 days beginning with the date on which he ceases to hold office.
 - (4) If the statement is of circumstances which the auditor considers should be brought to the attention of the members or creditors of the society or branch, the society shall within 14 days of the deposit of the statement either—
 - (a) send a copy of it to every member who is, when the statement is deposited, entitled to vote at a meeting of the society or branch; or

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- (b) apply to the court.
- (5) The society or branch shall if it applies to the court notify the auditor of the application.
- (6) If the court is satisfied that the auditor is using the statement to secure needless publicity for defamatory matter—
 - (a) it shall direct that copies of the statement need not be sent out; and
 - (b) it may further order the costs of the society or branch on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application;
 and the society or branch shall within 14 days of the court’s decision send to the persons mentioned in sub-paragraph (4)(a) above a statement setting out the effect of the order.
- (7) If the court is not so satisfied, the society or branch shall within 14 days of the court’s decision—
 - (a) send copies of the statement to the persons mentioned in sub-paragraph (4)(a) above; and
 - (b) notify the auditor of the court’s decision;
 and the auditor shall within 7 days of receiving such notice send a copy of the statement to the central office.

Offences of failing to comply with paragraph 14

- 15 (1) If a person ceasing to hold office as auditor fails to comply with paragraph 14 above, he is guilty of an offence and liable—
 - (a) on conviction on indictment, to a fine; and
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (2) If a society or branch makes default in complying with paragraph 14 above, it is guilty of an offence and liable—
 - (a) on conviction on indictment, to a fine, and
 - (b) on summary conviction, to a fine not exceeding the statutory maximum and in the case of a continuing offence, to an additional fine not exceeding one-tenth of the statutory maximum for every day during which the offence continues.

Remuneration of auditors

- 16 (1) The remuneration of auditors appointed by a friendly society or registered branch in general meeting shall be fixed by the society or branch in general meeting or in such manner as the society or branch in general meeting may determine.
- (2) The remuneration of auditors appointed by the committee of management or the Commission shall be fixed by the committee of management or the Commission as the case may be.
- (3) There shall be stated in a note to the annual accounts of the society or branch the amount of the remuneration of the auditors in their capacity as such.
- (4) For the purposes of this paragraph “remuneration” includes sums paid in respect of expenses.

- (5) This paragraph applies in relation to benefits in kind as to payments in cash, and in relation to any such benefit references to its amount are to its estimated money value.
- (6) The nature of any such benefit shall also be disclosed.

Remuneration of auditors or their associates for non-audit work

- 17 (1) The Commission may make provision by regulations for securing the disclosure of the amount of any remuneration received or receivable by auditors appointed under this Schedule or their associates in respect of services other than those of auditors in their capacity as such.
- (2) The regulations may—
- (a) provide that “remuneration” includes sums paid in respect of expenses;
 - (b) apply in relation to benefits in kind as to payments in cash, and in relation to any such benefit require disclosure of its nature and its estimated money value;
 - (c) define “associate” in relation to an auditor; and
 - (d) require the disclosure of remuneration in respect of services rendered to subsidiaries.
- (3) The regulations may require the auditors to disclose the relevant information in their report or require the relevant information to be disclosed in a note to the accounts of the society or branch and require the auditors to supply the committee of management of the society or branch with such information as is necessary to enable that disclosure to be made.