

1982 No. 155

**BUILDING SOCIETIES****The Building Societies (Authorisation) Regulations  
(Northern Ireland) 1982***Made* . . . . . 20th May 1982*Coming into operation* . . . . . 6th July 1982**ARRANGEMENT OF REGULATIONS AND SCHEDULES***Regulation*

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The Department of Commerce, being a Department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to the authorisation of the carrying on of the business of a building society and the regulation of such business and its conduct and in relation to anything supplemental or incidental thereto, in exercise of the powers conferred by that section and of every other power enabling it in that behalf, hereby makes the following regulations:

*Citation and commencement*

1. These regulations may be cited as the Building Societies (Authorisation) Regulations (Northern Ireland) 1982 and shall come into operation on 6th July 1982.

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(a) The European Communities (Designation) (No. 2) Order 1981, S.I. 1981/833

(b) 1972 c. 68

*Interpretation*

2.—(1) The Interpretation Act (Northern Ireland) 1954(a) shall apply to these regulations as it applies to a Measure of the Northern Ireland Assembly.

(2) In these regulations—

“the Act of 1967” means the Building Societies Act (Northern Ireland) 1967(b);

“appointed day” means the day on which these regulations come into operation;

“authorisation”, “authorised” and “authorised building society” have the meanings given by regulation 5;

“banking or finance company” means any body corporate or partnership whose ordinary business includes the business of banking and any other body corporate whose ordinary business includes the business of lending money;

“building society” has the meaning given by section 1(4) of the Act of 1967;

“deferred shares”, “assets” and “reserves” have the meaning given by Schedule 1;

“the Department” means the Department of Commerce;

“the Registrar” has the meaning given by section 128 of the Act of 1967.

*Restrictions on building societies' borrowing and acceptance of subscriptions for shares*

3.—(1) Subject to regulation 4 a building society shall not—

(a) accept the deposit of, or otherwise borrow, any money, or

(b) accept any payment representing the whole or any part of the amount due by way of subscription for a share in the building society

unless it is authorised to do so in accordance with regulation 5.

(2) A contravention of this regulation shall not affect any civil liability arising in respect of the acceptance or of the funds accepted.

*Exceptions to the restrictions in regulation 3*

4. Regulation 3 shall not apply to—

(a) the acceptance of payments by way of subscription for deferred shares;

(b) the acceptance of payments, representing the whole or any part of the amount due by way of subscription for a share in the building society, which fell due before the restrictions referred to in regulation 3 applied to the building society;

(c) the acceptance of payments for amounts due in respect of a share which represent interest on, or the repayment of, an advance made to the holder of the share;

(d) borrowing from a banking or finance company, or from a director or other officer of the building society, if the building society has obtained the consent in writing of the Department;

(e) borrowing under section 44 of the Act of 1967 (assistance by one building society to another).

*Authorised building societies*

5.—(1) Authorisation may be granted by the Department on an application made in that behalf by a building society.

(2) A building society shall be deemed to be authorised on the appointed day if—

(a) 1954 c. 33 (N.I.)

(b) 1967 c. 31 (N.I.)

- (a) it was formed, whether by incorporation or union, before the appointed day; and
  - (b) in the case of a building society which was incorporated after 1st October 1964, it has before the appointed day obtained a certificate under section 13(1) of the Act of 1967; and
  - (c) it is not on the appointed day subject—
    - (i) to an order made under section 48 of the Act of 1967 (power to suspend borrowing and subscription for shares); or
    - (ii) to a direction made under section 55(5) of the Act of 1967 (special power in relation to small building societies); or
  - (d) on the appointed day the building society is not in the course of being wound up or dissolved.
- (3) A building society formed on or after the appointed day on the union of two or more building societies shall be deemed to be authorised, if all those building societies are authorised at the time when the union takes effect.
- (4) The expressions “authorisation”, “authorised” and “authorised building society” in these regulations shall be construed accordingly.

#### *Procedure on application for authorisation*

6.—(1) An application for authorisation shall be made in such manner as the Department may specify and shall be accompanied by such information as it may reasonably require, either generally or in any particular case, in order to reach a decision on the application.

(2) If required to do so by notice in writing from the Department, given at any time before a decision on an application made under paragraph (1) has been reached, the applicant building society shall send to the Department such additional information as it may reasonably require in order to reach a decision.

(3) If, on an application made under paragraph (1), the Department proposes to refuse to grant authorisation, it shall serve a notice on the applicant building society stating—

- (a) that it proposes to refuse to grant authorisation; and
- (b) the reasons for the proposed refusal; and
- (c) that the applicant building society may make representations with respect to the proposed refusal within such period being a period of not less than twenty-eight days as may be specified in the notice, and that, if the building society so requests, the Department will afford to it an opportunity of being heard by it within that period.

(4) Before reaching a decision to refuse an application made under paragraph (1), the Department shall consider any representations which have been made in accordance with paragraph (3)(c).

(5) If, on an application made under paragraph (1), the Department grants authorisation, it shall issue to the applicant building society a certificate in Form AI of Schedule 2.

(6) If, on an application made under paragraph (1), the Department refuses to grant authorisation, it shall give notice in writing to the applicant building society of the refusal and of the reasons for it and, subject to paragraph (7), this notice shall be given before the expiry of the period of six months beginning on the date on which the application was received by the Department.

(7) In any case where, under paragraph (2), the Department requires additional information with respect to an application, the latest time for the giving of a notice under paragraph (6) with respect to that application shall be the expiry of whichever of the following periods first expires, namely—

- (a) a period of six months beginning on the date on which the additional information was received by the Department; or
- (b) a period of twelve months beginning on the date on which the application was received by the Department.

*Conditions for the grant of authorisation*

7. On an application made by a building society for authorisation under regulation 6, the Department shall not grant authorisation unless it is satisfied—

- (a) that the building society fulfils the conditions, as to deferred shares or reserves, specified in Schedule 1; and
- (b) that the business of the building society is effectively directed by individuals who—
  - (i) are at least two in number; and
  - (ii) are of sufficiently good repute and sufficient experience to perform their duties.

*Grounds for revocation of authorisation*

8.—(1) The Department may revoke the authorisation of a building society if it appears to the Department that—

- (a) any of the information furnished in connection with the application made by the building society under regulation 6 was false or misleading in any material particular; or
  - (b) a period of twelve months has elapsed since the date when the building society was authorised or deemed to be authorised and the building society has not accepted any funds (other than payments for deferred shares) during that period; or
  - (c) the building society has not accepted any funds (other than payments for deferred shares) during a period exceeding six months; or
  - (d) subject to paragraph (3), the building society does not fulfil any one or more of the conditions mentioned in sub-paragraph (a) or (b) of regulation 7; or
  - (e) the building society can no longer be relied upon to fulfil its obligations to its creditors, depositors or members.
- (2) The Department shall revoke the authorisation of a building society if—
- (a) the Registrar has made an order under section 48 of the Act of 1967 applying sub-section (2) of that section to the building society; or
  - (b) the Registrar has given to the building society a direction under section 55(5) of the Act of 1967; or
  - (c) the registration of the building society has been cancelled or suspended in accordance with the provisions of section 114 or 115 of the Act of 1967; or
  - (d) the building society has transferred its engagements to, or united with, another building society; or
  - (e) the building society has given the Department notice in writing that it wishes to renounce authorisation; or
  - (f) proceedings have been commenced for the winding up or dissolution of the building society.

(3) In the case of a building society which is deemed to be authorised by virtue of regulation 5(2), the Department shall not within a period of 18 months after the appointed day revoke the authorisation of the building society under paragraph (1)(d) on the ground that it does not comply with regulation 7.

#### *Procedure on revocation of authorisation*

9.—(1) If the Department proposes to revoke the authorisation of a building society on any ground mentioned in regulation 8(1), it shall serve a notice on the building society, and on every director of the building society, stating—

- (a) that it proposes to revoke the building society's authorisation; and
- (b) the reasons for the proposed revocation; and
- (c) that the building society may make representations with respect to the proposed revocation within such period of not less than fourteen days as may be specified in the notice, and that, if the building society so requests, the Department will afford to it an opportunity of being heard by it within that period.

(2) Before reaching a decision to revoke the authorisation of a building society on any ground mentioned in regulation 8(1) the Department shall consider any representations which have been made in accordance with paragraph 1(c).

(3) On revoking the authorisation of a building society, the Department shall serve on the building society, and on every director of the building society, a notice in Form AJ of Schedule 2, together with a notice of the reasons for the revocation; and where the ground for revocation is a ground mentioned in regulation 8(1), the Department shall not have power to revoke the building society's authorisation unless all such reasons are those, or among those, stated in the notice mentioned in paragraph (1).

(4) A notice under this regulation may be served on a director of a building society by sending it by post to his address, or latest address, as notified to the Department or the Registrar by the building society or the director; and failure to serve a notice under this regulation on a director shall not affect the validity of a revocation of authorisation.

#### *Appeals*

10.—(1) An appeal shall lie to the Court at the instance of the building society concerned on any question of law arising from any decision of the Department to refuse to grant authorisation or to revoke authorisation; and if the Court is of the opinion that the decision appealed against was erroneous in point of law, it shall remit the matter to the Department with the opinion of the Court for re-determination by it.

(2) In paragraph (1) "the Court" means the High Court.

(3) No appeal to the Court of Appeal shall be brought from a decision of the High Court under paragraph (1), except with the leave of the High Court or of the Court of Appeal.

#### *Effect of lack of authorisation on obligations of a building society and of its investors, etc.*

11.—(1) Subject to paragraph (2), any obligation to make a payment to a building society which, by virtue of regulation 3, the building society is prohibited from accepting, shall be wholly rescinded.

(2) If—

- (a) on the appointed day; or

(b) at the time when the authorisation of the building society is revoked, a member is under an obligation to make payments to a building society which represent instalments of the amount due by way of subscription for a share in the building society and which by virtue of regulation 3 the building society is prohibited from accepting, the obligation shall (subject to anything in the rules of the building society or any agreement between the building society and the member) be suspended in respect of each instalment for the period when the building society is not authorised; and accordingly, if the building society is subsequently granted authorisation, the sum due shall again become payable by instalments.

(3) Where the authorisation of a building society has been revoked, it shall be the duty of the building society to make reasonable arrangements for using the funds of the building society to meet applications by depositors or holders of shares in the building society (being applications duly made in accordance with the rules of the building society) for repayment of the money deposited or subscribed by them.

(4) If it appears to the Department that, when a building society's authorisation has been revoked, the building society has been applying an undue proportion of the funds of the building society in making advances, in preference to meeting such applications as are mentioned in paragraph (3), it may, after giving notice to the building society and affording it an opportunity of making representations, present a petition for the winding up of the building society under the Companies Act (Northern Ireland) 1960(a).

*Power to obtain information and confidentiality of information*

12.—(1) If the Department decides that, for the purpose of considering whether to grant or revoke the authorisation of a building society, or of monitoring its continued entitlement to be authorised, it requires information, on a periodic basis or otherwise, which any person is likely to be able to furnish, the Department may serve on that person a notice requiring him—

- (a) to furnish to the Department, within such period or at such time or times specified in the notice, such information as is so specified;
- (b) to produce such documents or other material as are specified in the notice at a time and place so specified and to permit a person nominated by the Department for the purpose to take copies of such documents or other material at that time and place;

provided that such a notice may not require any person to produce a privileged communication, nor to furnish information contained in such a communication, made by or to a barrister or solicitor in that capacity.

(2) Where any person claims a lien on any documents or other material which he is required to produce under paragraph (1), the production shall be without prejudice to the lien.

(3) No information obtained by virtue of this regulation, or by virtue of regulation 6(1) or (2), shall be disclosed except—

- (a) for the purpose of any criminal proceedings or any investigation with a view to such proceedings; or
- (b) for the purpose of facilitating the performance by the Registrar of his functions under the Act of 1967 or the Department's functions under these regulations, or for the purpose of any proceedings under the Act of 1967 or under these regulations; or
- (c) for the purpose of enabling the Department to decide whether to grant or revoke the authorisation of a building society; or

- (d) for the purpose of enabling the Department to fulfil a Community obligation; or
- (e) with the consent of the person to whom the information relates; or
- (f) to the extent that it is information which is at the time of disclosure, or has previously been, available to the public from other sources.

#### *Penalties*

13.—(1) If a building society contravenes any of the restrictions imposed by regulation 3, then—

- (a) the building society shall be guilty of an offence and liable on conviction on indictment or on summary conviction to a fine which, on summary conviction, shall not exceed £1,000; and
- (b) every officer of the building society who is in default shall be guilty of an offence and liable—
  - (i) on summary conviction to a fine not exceeding £1,000; or
  - (ii) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or both.

(2) Any person who—

- (a) in connection with an application for authorisation under regulation 6; or
- (b) in purporting to furnish information required by a notice served on him under regulation 12(1);

furnishes any information which he knows to be false or misleading in a material particular or recklessly furnishes information which is false or misleading in a material particular, shall be guilty of an offence.

(3) Any person who discloses information in contravention of regulation 12(3) shall be guilty of an offence.

(4) A person guilty of an offence under paragraph (2) or (3) shall be liable—

- (a) on summary conviction to a fine not exceeding £1,000; or
- (b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or both.

(5) Any person who, without reasonable excuse, fails to comply with a notice served on him under regulation 12(1) shall be liable on summary conviction to a fine not exceeding £400.

#### *Power to issue deferred shares*

14. Every building society shall have power, notwithstanding anything in its rules, to issue deferred shares.

#### *Certificates of authorisation and notices of revocation*

15. Schedule 2 shall have effect as to certificates of authorisation and notices of revocation of authorisation.

#### *Amendments of the Act of 1967*

16. The Act of 1967 shall have effect subject to the amendments specified in Schedule 3.

Sealed with the Official Seal of the Department of Commerce for Northern Ireland on 20th May 1982.

(L.S.)

W. T. McCrory

Assistant Secretary

## SCHEDULE 1

Regulation 7(a)

## PART I

## CONDITIONS AS TO DEFERRED SHARES OR RESERVES

1. The conditions referred to in regulation 7(a) are—

- (a) in the case of a building society which after incorporation has not yet made its first annual return to the registrar under section 88 of the Act of 1967, that not less than ten of the members of the building society have been issued in equal amounts with, and have paid in cash for, deferred shares to the total value of not less than £50,000; or
- (b) in any other case, that the building society's annual return for its last financial year shows that at the end of that financial year the building society had reserves, or deferred shares, or a combination of reserves and deferred shares, of not less than whichever is the greater of—
  - (i) £50,000; or
  - (ii) 2½ per cent. of its assets not exceeding £100 million, and 2 per cent. of its assets exceeding £100 million but not exceeding £500 million, and 1½ per cent. of its assets exceeding £500 million but not exceeding £1,000 million, and 1¾ per cent. of its assets exceeding £1,000 million.

## PART II

## MEANING OF DEFERRED SHARES, RESERVES AND ASSETS

2.—(1) For the purposes of these regulations, the expression “deferred shares” means shares issued by a building society on the following terms:—

- (a) that no interest may be paid on the shares in any financial year until interest has been paid on all other classes of shares; and that in such case the entitlement to interest shall be no more favourable than that attaching to any other class of shares; and
- (b) that the shares carry no right to participate in the profits of the building society in any financial year, until the holders of all other classes of shares have so participated; and that in such case the entitlement to participate in profits shall be no more favourable than that attaching to any other class of shares; and
- (c) that, if share capital is to be used in order to contribute to the losses of the building society, the share capital representing these shares shall be used in full before recourse is had to other share capital; and
- (d) that, on the winding up or dissolution of the building society, the shares may not be repaid until all other classes of shares have been repaid in full; and
- (e) that the building society shall not give effect to or recognise any transfer of the shares by the person to whom they were issued; provided that this sub-paragraph shall not prevent the building society from giving effect to any transmission of the shares by operation of law; and
- (f) that, except on the winding up or dissolution of the building society, or its termination by other means, the shares may not be repaid at any time if, following such repayments, the reserves of the building society, together with any remaining deferred shares, would amount to less than the sum mentioned in paragraph 1(b).

(2. In sub-paragraph (1)(c), (d) and (f)—

- (a) any reference to shares includes a reference to unpaid interest on those shares; and
- (b) in relation to such interest, any reference to repayment includes a reference to payment.

3. For the purpose of these regulations—

“reserves” means the amount of the reserves, together with the amount of any provision against depreciation of or losses on investments, less the aggregate of—

- (a) the amount of any reserve set aside for a particular purpose,



- (b) any amount by which the book value of the building society's investments exceeds their market value, and
- (c) any amount recommended by the building society's directors for distribution as interest, dividend or bonus, in respect of the financial year or any part thereof covered by the annual return and not charged as expenditure for that year.

“assets” means the amount of the assets less the aggregate of—

- (a) any amount by which the book value of the building society's investments exceeds their market value, and
- (b) the amount of any reserve set aside for a particular purpose.

## SCHEDULE 2

Regulation 15

PROVISION AS TO CERTIFICATES OF AUTHORISATION AND NOTICES OF REVOCATION OF  
AUTHORISATION

1. On the appointed day the Department shall issue certificates of authorisation to building societies which are deemed to be authorised in accordance with regulation 5(2).
2. Certificates of authorisation and notices of revocation of authorisation (as currently in force for any building society) and notices of the reasons for revocation shall be among the documents open to public inspection at the Office of the Registrar at the fee applicable to the inspection of other documents.
3. The Department shall, on issuing a certificate of authorisation, other than one issued under paragraph 1, or on serving notice of revocation of authorisation, publish notice to this effect in the London, Edinburgh and Belfast Gazettes; and it may, if it thinks fit, publish notice to this effect in such other ways as appear to it expedient for informing the public.
4. The forms of certificates of authorisation and of notices of revocation of authorisation shall respectively be as in Forms AI and AJ.

## FORM AI

THE BUILDING SOCIETIES (AUTHORISATION)  
(NORTHERN IRELAND) REGULATIONS 1982*Certificate of authorisation pursuant to regulations 5 and 6 of the said regulations*I hereby certify that ..... Building Society  
Register No. ....

is an authorised building society within the meaning of the above-mentioned regulations.

Date

Department of Commerce

## FORM AJ

THE BUILDING SOCIETIES (AUTHORISATION)  
(NORTHERN IRELAND) REGULATIONS 1982*Notice of revocation of authorisation pursuant to regulations 8 and 9 of the said regulations*The authorisation of the ..... Building Society  
Register No. ....

is hereby revoked.

Date

Department of Commerce

*Note*

As from the date of this notice, and subject to the limited exceptions mentioned in regulation 4 of the above-mentioned regulations, the building society must not—

- (a) accept the deposit of, or otherwise borrow, any money, or
- (b) accept any payment representing the whole or any part of the amount due by way of subscription for a share in the building society.

## SCHEDULE 3

Regulation 16

## AMENDMENTS OF THE ACT OF 1967

Subject to paragraph 7, the Act of 1967 shall be amended as follows—

1. Subsection (3) of section 4;  
section 13;  
subsections (4) and (5) of section 56; and  
Schedule 1  
shall cease to have effect.
2. In subsection (1) of section 39 (borrowing powers of a building society) after “Act” there shall be inserted “and the Building Societies (Authorisation) Regulations (Northern Ireland) 1982”.
3. In section 55 (special power in relation to small societies)—
  - (a) in subsection (1) for “one hundred thousand pounds” there shall be substituted “one million pounds”;
  - (b) in subsection (3)—
    - (i) in paragraph (a) for “shares in the society on terms which comply with the requirements of Schedule 1” there shall be substituted “deferred shares within the meaning of the Building Societies (Authorisation) Regulations (Northern Ireland) 1982”; and
    - (ii) in paragraphs (b) and (c), for “five thousand pounds”, in both places where they occur, there shall be substituted “fifty thousand pounds”.
4. In subsection (3) of section 56 (supplementary provisions as to small building societies), for “one hundred thousand pounds” there shall be substituted “one million pounds”.
5. The following paragraph shall be inserted after paragraph (a) of section 63(1) (right of member to obtain particulars from register)—

“(a) when a building society is not authorised in accordance with the Building Societies (Authorisation) Regulations (Northern Ireland) 1982, or”.
6. In section 119 (annual report of registrar) after “this Act” there shall be inserted “and of proceedings by the Department under the Building Societies (Authorisation) Regulations (Northern Ireland) 1982”.
7. Where on the appointed day a building society has “relevant shares” within the meaning of Schedule 1 to the Act of 1967, the provisions of that Schedule shall continue to apply to that building society until the end of “the relevant period”, as defined by that Schedule, except that the reference in paragraph 6 of that Schedule to “one hundred thousand pounds” shall have effect, on and after the appointed day, as if it were a reference to one million pounds.

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**EXPLANATORY NOTE**

*(This note is not part of the Regulations.)*

These regulations give effect, for building societies, to the provisions of the EC First Council Directive of 12th December 1977 on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (77/780/EEC). In accordance with the requirements of the Directive, the regulations introduce a scheme of authorisation for building societies. They make certain consequential amendments of the Building Societies Act (Northern Ireland) 1967.