



# Building Societies Act 1986

## 1986 CHAPTER 53

### 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.

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- (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 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;

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“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.

VALID FROM 01/12/1997

### **[<sup>F1</sup>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—
  - (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;

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“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 <sup>M1</sup>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 <sup>M2</sup>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

**F1** S. 83A inserted (1.12.1997) by 1997 c. 32, s. 35; S.I. 1997/2668, art. 2, Sch. Pt. I(g)

#### Marginal Citations

**M1** 1985 c.6.

**M2** 1985 c.6.

## 84 Investigation of complaints: supplementary provisions.

- (1) A building society, as a member of a recognised scheme, shall discharge any obligations and is entitled to enforce any rights imposed or conferred by the scheme or any determination of the adjudicator under the scheme, but nothing in section 83, this section or a scheme requires or authorises a building society to do anything which is outside its powers or otherwise contrary to any provision of this Act or any instrument under it.
- (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 associated body 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 associated body 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 associated body 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 associated body, the adjudicator shall, at the request of the society

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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 <sup>M3</sup>Supreme Court Act 1981 or section 39 of the <sup>M4</sup>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 section 83(5) 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.
- (10) If a building society fails to comply with section 83(3) or (5) 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 associated body'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.

#### Marginal Citations

M3 1981 c. 54.

M4 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 a depositor with the society.

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- (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.

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**Modifications etc. (not altering text)**

**C1** S. 85 excluded (*temp.*) by S.I. 1986/2168, art. 3(1)(4)

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