



Building Societies Act 1986

1986 CHAPTER 53

PART X

DISSOLUTION, WINDING UP, MERGERS AND TRANSFER OF BUSINESS

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, [F1section 99A,] section 100, section 101, section 102 [F2sections 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; [F3and 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.]
- (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 [F4appropriate authority] of the transfer and its terms.

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- (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 [^{F5}appropriate authority] 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 [^{F6}send to each of the FCA and, if the society is a PRA-authorized person, the PRA] 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 [^{F7}FCA must] 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 [^{F8}as defined in section 1(1) of the Companies Act 2006] which is a public 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 [^{F9}appropriate authority] 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);

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[^{F10}“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.

^{F11}(13)

Textual Amendments

- F1** 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)**
- F2** 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)**
- F3** 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)**
- F4** Words in s. 97(4)(d) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 41(2)** (with Sch. 12)
- F5** Words in s. 97(6) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 41(3)** (with Sch. 12)
- F6** Words in s. 97(8) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 41(4)(a)** (with Sch. 12)
- F7** Words in s. 97(8) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 41(4)(b)** (with Sch. 12)
- F8** Words in s. 97(12) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 87(5)** (with art. 10)
- F9** Words in s. 97(12) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 41(5)** (with Sch. 12)
- F10** 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)**
- F11** S. 97(13) omitted (31.12.2020) by virtue of The Building Societies Legislation (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1187), regs. 1, 4; 2020 c. 1, Sch. 5 para. 1(1)

Modifications etc. (not altering text)

- C1** Ss. 97-102D: power to modify conferred (16.1.2009) by Building Societies (Funding) and Mutual Societies (Transfers) Act 2007 (c. 26), ss. 3, 6(2); S.I. 2009/36, art. 2
- C2** Ss. 97-102D applied (with modifications) (5.3.2009) by The Mutual Societies (Transfers) Order 2009 (S.I. 2009/509), arts. 1(2), **3-18**

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C3 Ss. 97-102D excluded by 2009 c. 1, s. 84D(6) (as inserted (10.1.2015) by [The Building Societies \(Bail-in\) Order 2014 \(S.I. 2014/3344\)](#), arts. 1, **2(3)**)

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 [^{F12}or summaries] to its members relating to the proposed transfer.

[^{F13}(1A) Part IA of that Schedule shall have effect for imposing requirements for notification by a building society, to its members and to the [^{F14}FCA and, if the society is a PRA-
authorised person, the PRA] , 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 [^{F15}appropriate authority] 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.

(3) Subject to subsection (4) below, the [^{F16}appropriate authority] 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 [^{F17}have—
 - (i) such permission under [^{F18}Part 4A] of the Financial Services and Markets Act 2000, [^{F19} ...
 - [^{F19}(ii)

as will enable it to carry on the business which it will have as a result of the transfer without being taken (by virtue of section 20 of that Act) to have contravened a requirement imposed on it by the [^{F16}appropriate authority] under that Act; or]

- (d) some relevant requirement of this Act or the rules of the society was not fulfilled.

(4) The [^{F20}appropriate authority] 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 [^{F20}appropriate authority] that it could not have been material to the members' decision about the transfer and the [^{F20}appropriate authority] gives a direction that the failure is to be disregarded for the purposes of this section.

(5) Where the [^{F20}appropriate authority] 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 [^{F20}appropriate authority] with evidence satisfying it that it has been done so;

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- and, if the [^{F20}appropriate authority] is satisfied that the steps have been taken and the defect or defects has or have been substantially remedied, the [^{F20}appropriate authority] 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 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.
- [^{F21}(9) The PRA must consult the FCA before confirming a transfer or giving a direction under this section.
- (10) The PRA must—
- (a) notify the FCA it if confirms a transfer; and
 - (b) send the FCA a copy of any direction it gives.]

Textual Amendments

- F12** 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)**
- F13** S. 98(1A) inserted (1.12.1997) by 1997 c. 32, s. 30(2); S.I. 1997/2668, art. 2, **Sch. Pt. I(e)**
- F14** Words in s. 98(1A) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 42(2)** (with Sch. 12)
- F15** Words in s. 98(2) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 42(3)** (with Sch. 12)
- F16** Words in s. 98(3) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 42(4)(a)** (with Sch. 12)
- F17** Words in s. 98(3)(c) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 196(2)**
- F18** Words in s. 98(3) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 42(4)(b)** (with Sch. 12)
- F19** S. 98(3)(c)(ii) and word omitted (31.12.2020) by virtue of The EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 (S.I. 2018/1149), reg. 1(3), **Sch. para. 29(3)** (with reg. 4); 2020 c. 1, Sch. 5 para. 1(1)
- F20** Words in s. 98(4)(5) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 42(5)** (with Sch. 12)
- F21** S. 98(9)(10) inserted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 42(6)** (with Sch. 12)

Modifications etc. (not altering text)

- C1** Ss. 97-102D: power to modify conferred (16.1.2009) by Building Societies (Funding) and Mutual Societies (Transfers) Act 2007 (c. 26), **ss. 3, 6(2)**; S.I. 2009/36, art. 2
- C2** Ss. 97-102D applied (with modifications) (5.3.2009) by The Mutual Societies (Transfers) Order 2009 (S.I. 2009/509), **arts. 1(2), 3-18**

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| C3 | Ss. 97-102D excluded by 2009 c. 1, s. 84D(6) (as inserted (10.1.2015) by The Building Societies (Bail-in) Order 2014 (S.I. 2014/3344) , arts. 1, 2(3)) |
| C4 | S. 98(3) extended (1. 1. 1993) by S.I. 1992/3218 , reg. 82(1), Sch. 10 para.22(c) |

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 [^{F22}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;

“loss of office” includes, in relation to a director or other officer of a building society holding office in [^{F23}any other 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.

Textual Amendments

- F22** Words in s. 99(3) substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) by [S.I. 2001/2617](#), art. 13(1), **Sch. 3 Pt. II**, para. 182 (with art. 13(3), Sch. 5); [S.I. 2001/3538](#), art. 2(a)

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F23 Words in s. 99(6) substituted (1.12.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 46**; S.I. 1997/2668, art. 2, **Sch. Pt. I(j)(l)(xi)**

Modifications etc. (not altering text)

- C1** Ss. 97-102D: power to modify conferred (16.1.2009) by [Building Societies \(Funding\) and Mutual Societies \(Transfers\) Act 2007 \(c. 26\), ss. 3, 6\(2\)](#); S.I. 2009/36, art. 2
- C2** Ss. 97-102D applied (with modifications) (5.3.2009) by [The Mutual Societies \(Transfers\) Order 2009 \(S.I. 2009/509\), arts. 1\(2\), 3-18](#)
- C3** Ss. 97-102D excluded by 2009 c. 1, s. 84D(6) (as inserted (10.1.2015) by [The Building Societies \(Bail-in\) Order 2014 \(S.I. 2014/3344\), arts. 1, 2\(3\)](#))
- C5** S. 99(3): Functions of Building Societies Commission transferred (1.12.2001) to the Treasury by S.I. 2001/2617, art. 4(1), **Sch. 1 Pt. III** (with art. 5); S.I. 2001/3538, **art. 2(a)**

[^{F24}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

F24 S. 99A inserted (9.6.1997) by 1997 c. 32, s. 31; S.I. 1997/1427, **art. 2(f)**

Modifications etc. (not altering text)

- C1** Ss. 97-102D: power to modify conferred (16.1.2009) by [Building Societies \(Funding\) and Mutual Societies \(Transfers\) Act 2007 \(c. 26\), ss. 3, 6\(2\)](#); S.I. 2009/36, art. 2
- C2** Ss. 97-102D applied (with modifications) (5.3.2009) by [The Mutual Societies \(Transfers\) Order 2009 \(S.I. 2009/509\), arts. 1\(2\), 3-18](#)
- C3** Ss. 97-102D excluded by 2009 c. 1, s. 84D(6) (as inserted (10.1.2015) by [The Building Societies \(Bail-in\) Order 2014 \(S.I. 2014/3344\), arts. 1, 2\(3\)](#))

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

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member of the society equal to the relevant proportion of the value of the qualifying shares held by him in the society; ^{F25} . . .

^{F25}(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 [^{F26}requisite shareholders’ 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.

^{F27}(5)

^{F27}(6)

(7) The [^{F28}appropriate authority] 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 [^{F28}appropriate authority] 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.

[^{F29}(8) The terms of a transfer of a society's business may confer a right to acquire shares in the successor on a member of the society only if the member—

- (a) held shares in the society throughout the period of two years ending with the qualifying day, or
- (b) on that day, holds deferred shares in the society that are of a class described in the transfer agreement;

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;

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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

- F25** S. 100(2)(c) and word preceding it repealed (21.3.1997) by 1997 c. 32, ss. 40(a), 46(2), **Sch. 9**
- F26** 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)**
- F27** S. 100(5)(6) repealed (21.3.1997) by 1997 c. 32, ss. 40(b), 46(2), **Sch. 9**
- F28** Words in s. 100(7) substituted (1.4.2013) by **The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496)**, art. 1(1), **Sch. 8 para. 43** (with Sch. 12)
- F29** S. 100(8) substituted (18.2.2014) by **Financial Services (Banking Reform) Act 2013 (c. 33)**, s. 148(2), **Sch. 9 para. 8(2)**

Modifications etc. (not altering text)

- C1** Ss. 97-102D: power to modify conferred (16.1.2009) by **Building Societies (Funding) and Mutual Societies (Transfers) Act 2007 (c. 26)**, ss. 3, 6(2); S.I. 2009/36, art. 2
- C2** Ss. 97-102D applied (with modifications) (5.3.2009) by **The Mutual Societies (Transfers) Order 2009 (S.I. 2009/509)**, arts. 1(2), **3-18**
- C3** Ss. 97-102D excluded by 2009 c. 1, s. 84D(6) (as inserted (10.1.2015) by **The Building Societies (Bail-in) Order 2014 (S.I. 2014/3344)**, arts. 1, **2(3)**)
- C6** S. 100 modified (21.3.1997) by 1997 c. 32, s. 46(1), **Sch. 8 para. 9(1)**

^{F30}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.

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(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 [^{F31}person who is an authorised person within the meaning of section 31 of the Financial Services and Markets Act 2000] 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 [^{F32}a person];
- (b) a special resolution to that effect is passed by the requisite majority of the members of the company; or
- (c) the [^{F33}appropriate authority] by notice to the company gives a direction to that effect;

and the [^{F33}appropriate 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.

[The PRA must consult the FCA before giving a direction under this section.]

^{F34}(4A)

(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—

^{F35}

“concert party agreement” means an agreement to which [^{F36}section 824 of the Companies Act 2006] applies;

“EEA country or territory” has the same meaning as in sections 6A and 6B;

^{F37}

“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 [^{F38}the Companies Acts (as defined in section 2 of the Companies Act 2006)] has the same meaning in this section as in [^{F39}those Acts].

(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

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- (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.]

Textual Amendments

- F30** S. 101 substituted (21.3.1997) by 1997 c. 32, s. 41 (with s. 46(1), Sch. 8 para. 10)
- F31** Words in s. 101(4)(a) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 197(2)(a)
- F32** Words in s. 101(4)(a) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 197(2)(b)
- F33** Words in s. 101(4) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), Sch. 8 para. 44(2) (with Sch. 12)
- F34** S. 101(4A) inserted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), Sch. 8 para. 44(3) (with Sch. 12)
- F35** Definition of “the Authority” in s. 101(6) repealed (1.12.2001) by S.I. 2001/2617, art. 13(2), Sch. 4; S.I. 2001/3538, art. 2(a)
- F36** Words in s. 101(6) substituted (1.10.2007) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 1(3)(a), Sch. 4 para. 48(2) (with art. 12)
- F37** Definition of “financial institution” in s. 101(6) repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 197(3)
- F38** Words in s. 101(6) substituted (1.10.2007) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 1(3)(a), Sch. 4 para. 48(3)(a) (with art. 12)
- F39** Words in s. 101(6) substituted (1.10.2007) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 1(3)(a), Sch. 4 para. 48(3)(b) (with art. 12)

Modifications etc. (not altering text)

- C1** Ss. 97-102D: power to modify conferred (16.1.2009) by Building Societies (Funding) and Mutual Societies (Transfers) Act 2007 (c. 26), ss. 3, 6(2); S.I. 2009/36, art. 2
- C2** Ss. 97-102D applied (with modifications) (5.3.2009) by The Mutual Societies (Transfers) Order 2009 (S.I. 2009/509), arts. 1(2), 3-18
- C3** Ss. 97-102D excluded by 2009 c. 1, s. 84D(6) (as inserted (10.1.2015) by The Building Societies (Bail-in) Order 2014 (S.I. 2014/3344), arts. 1, 2(3))
- C7** S. 101(4) modified (22.3.2001) by 2001 c. i, s. 14 (with s. 13)
- C8** S. 101(4): functions transferred (1.6.1998) by 1998 c. 11, s. 21(a)(iii); S.I. 1998/1120, art. 2

102 Transfer regulations.

- (1) The [^{F40}Treasury] may, by transfer regulations under this section, make provision regulating transfers of business under section 97.
- (2) Transfer regulations may, in particular—

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- (a) make provision for and in connection with the transition from regulation by and under this Act to regulation by and under [^{F41}the Companies Acts]^{F42} . . .
 - (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 [^{F43}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

- F40** Words in s. 102(1) substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) by S.I. 2001/2617, art. 13(1), **Sch. 3 Pt. II**, para. 185(a) (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(a)**
- F41** Words in s. 102(2)(a) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 87(6)** (with art. 10)
- F42** Words in s. 102(2)(a) repealed (1.12.2001) by S.I. 2001/2617, art. 13(2), **Sch. 4** ; S.I. 2001/3538, **art. 2(a)**
- F43** 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)**

Modifications etc. (not altering text)

- C1** Ss. 97-102D: power to modify conferred (16.1.2009) by Building Societies (Funding) and Mutual Societies (Transfers) Act 2007 (c. 26), **ss. 3, 6(2)**; S.I. 2009/36, art. 2
- C2** Ss. 97-102D applied (with modifications) (5.3.2009) by The Mutual Societies (Transfers) Order 2009 (S.I. 2009/509), arts. 1(2), **3-18**
- C3** Ss. 97-102D excluded by 2009 c. 1, s. 84D(6) (as inserted (10.1.2015) by The Building Societies (Bail-in) Order 2014 (S.I. 2014/3344), arts. 1, **2(3)**)
- C9** S. 102(1)(2): Functions of the Building Societies Commission transferred (1.12.2001) to the Treasury by S.I. 2001/2617, art. 4(1), **Sch. 1 Pt. III** (with art. 5); S.I. 2001/3538, **art. 2(a)**

^{F44}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,

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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.]

Textual Amendments

F44 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)

Modifications etc. (not altering text)

C1 Ss. 97-102D: power to modify conferred (16.1.2009) by [Building Societies \(Funding\) and Mutual Societies \(Transfers\) Act 2007 \(c. 26\)](#), ss. 3, 6(2); S.I. 2009/36, art. 2

C2 Ss. 97-102D applied (with modifications) (5.3.2009) by [The Mutual Societies \(Transfers\) Order 2009 \(S.I. 2009/509\)](#), arts. 1(2), 3-18

C3 Ss. 97-102D excluded by 2009 c. 1, s. 84D(6) (as inserted (10.1.2015) by [The Building Societies \(Bail-in\) Order 2014 \(S.I. 2014/3344\)](#), arts. 1, 2(3))

[^{F45}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

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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 ^{M1}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 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).]

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Textual Amendments

F45 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)

C1 Ss. 97-102D: power to modify conferred (16.1.2009) by [Building Societies \(Funding\) and Mutual Societies \(Transfers\) Act 2007 \(c. 26\)](#), ss. 3, 6(2); S.I. 2009/36, art. 2

C2 Ss. 97-102D applied (with modifications) (5.3.2009) by [The Mutual Societies \(Transfers\) Order 2009 \(S.I. 2009/509\)](#), arts. 1(2), 3-18

C3 Ss. 97-102D excluded by 2009 c. 1, s. 84D(6) (as inserted (10.1.2015) by [The Building Societies \(Bail-in\) Order 2014 \(S.I. 2014/3344\)](#), arts. 1, 2(3))

Marginal Citations

M1 1835 c. 62.

[^{F46} 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 ^{M2}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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F47F48(5)
 F47(6)]

Textual Amendments

- F46** 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)
- F47** S. 102C(5)(6) repealed (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), **Sch. 2** (with art. 10)
- F48** S. 102C(5) repealed (1.10.2009) by [Companies Act 2006 \(c. 46\)](#), s. 1300(2), **Sch. 16**; [S.I. 2008/2860](#), art. 4, **Sch. 1 Pt. 1** (with arts. 78Sch. 2) (which transitional provisions in Sch. 2 are amended (1.10.2009) by [S.I. 2009/2476](#), arts. 1(3), 2(3)(4) and by [S.I. 2009/1802](#), arts. 1, 18, Sch.)

Modifications etc. (not altering text)

- C1** Ss. 97-102D: power to modify conferred (16.1.2009) by [Building Societies \(Funding\) and Mutual Societies \(Transfers\) Act 2007 \(c. 26\)](#), ss. 3, 6(2); [S.I. 2009/36](#), art. 2
- C2** Ss. 97-102D applied (with modifications) (5.3.2009) by [The Mutual Societies \(Transfers\) Order 2009 \(S.I. 2009/509\)](#), arts. 1(2), **3-18**
- C3** Ss. 97-102D excluded by 2009 c. 1, s. 84D(6) (as inserted (10.1.2015) by [The Building Societies \(Bail-in\) Order 2014 \(S.I. 2014/3344\)](#), arts. 1, **2(3)**)

Marginal Citations

- M2** 1992 c. 12.

[^{F49}102D 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 [^{F50}the Mental Capacity Act 2005] or under Part VIII of the ^{M3}Mental Health (Northern Ireland) Order 1986;
 - [^{F51}(b) to an attorney holding an account for another person under—
 - (i) an enduring power of attorney or lasting power of attorney registered under the Mental Capacity Act 2005, or
 - (ii) an enduring power registered under the Enduring Powers of Attorney (Northern Ireland) Order 1987;]
 - (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 factory and commission or power of attorney which continues to have effect by virtue of section 71 of the ^{M4}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 [^{F52}Treasury may] 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

- F49** 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)
- F50** Words in s. 102D(9)(a) substituted (1.10.2007) by [Mental Capacity Act 2005 \(c. 9\)](#), s. 68(1), [Sch. 6 para. 32\(a\)](#) (with ss. 27-29, 62); S.I. 2007/1897, art. 2(1)(d)
- F51** S. 102D(9)(b) substituted (1.10.2007) by [Mental Capacity Act 2005 \(c. 9\)](#), s. 68(1), [Sch. 6 para. 32\(b\)](#) (with ss. 27-29, 62); S.I. 2007/1897, art. 2(1)(d)
- F52** Words in s. 102D(11) substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) by S.I. 2001/2617, art. 13(1), [Sch. 3 Pt. II](#), para. 186 (with art. 13(3), Sch. 5); S.I. 2001/3538, [art. 2\(a\)](#)

Modifications etc. (not altering text)

- C1** Ss. 97-102D: power to modify conferred (16.1.2009) by [Building Societies \(Funding\) and Mutual Societies \(Transfers\) Act 2007 \(c. 26\)](#), [ss. 3](#), 6(2); S.I. 2009/36, art. 2
- C2** Ss. 97-102D applied (with modifications) (5.3.2009) by [The Mutual Societies \(Transfers\) Order 2009 \(S.I. 2009/509\)](#), arts. 1(2), [3-18](#)
- C3** Ss. 97-102D excluded by 2009 c. 1, s. 84D(6) (as inserted (10.1.2015) by [The Building Societies \(Bail-in\) Order 2014 \(S.I. 2014/3344\)](#), arts. 1, [2\(3\)](#))
- C10** S. 102D(11): Functions of Building Societies Commission transferred (1.12.2001) to the Treasury by S.I. 2001/2617, art. 4(1), [Sch. 1 Pt. III](#) (with art. 5); S.I. 2001/3538, [art. 2\(a\)](#)

Marginal Citations

- M3** S.I. 1986/595 (N.I. 4).
- M4** 1990 c. 40.

Status:

Point in time view as at 31/12/2020.

Changes to legislation:

Building Societies Act 1986, Cross Heading: Transfer of business to commercial company is up to date with all changes known to be in force on or before 20 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.