



Building Societies Act 1997

1997 CHAPTER 32

PART IV

PROTECTION OF INVESTORS AND INVESTIGATION OF COMPLAINTS

32 Amalgamation of building society and banking protection schemes

- (1) The Treasury, after consultation with the Commission, the Bank, the Building Societies Investor Protection Board and the Deposit Protection Board, may by order—
 - (a) amalgamate those Boards into a single board to be known as the Deposit Protection Board; and
 - (b) amalgamate the Deposit Protection Fund and the Building Societies Investor Protection Fund into a single fund to be known as the Deposit Protection Fund.
- (2) An order under this section shall make, in relation to the amalgamated board and the amalgamated fund, provisions corresponding to those of sections 50 to 57 and 63 to 66 of and Schedule 4 to the 1987 Act but—
 - (a) with the modifications mentioned in subsection (3) below; and
 - (b) with or without the modifications mentioned in subsection (4) below.
- (3) The modifications referred to in subsection (2)(a) above are modifications—
 - (a) providing for the chairman of the Commission to be an ex officio member of the amalgamated board and to be consulted by the Governor of the Bank on the appointment of ordinary members of that board;
 - (b) enabling officers or employees of the Commission to be appointed as ordinary members of that board;
 - (c) providing for building societies, and for institutions which, but for the order, would be or would be entitled to become participating EEA institutions within the meaning of section 24 of the 1986 Act, to be or to be entitled to become participating institutions within the meaning of the corresponding provisions;
 - (d) providing for authorised building societies, and for institutions which, but for the order, would be or would be liable to become contributory institutions within the meaning of the protective scheme provisions of Part IV of the

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- 1986 Act, to be or to be liable to become contributory institutions within the meaning of the corresponding provisions; and
- (e) providing for the deposit base of any such society or institution as is mentioned in paragraph (d) above to include an amount determined by the amalgamated board as representing the average value, over the period mentioned in section 52(4) of the 1987 Act, of shareholdings in the society or institution.
- (4) The modifications referred to in subsection (2)(b) above are modifications—
- (a) increasing the number of ordinary members of the joint board that may be appointed; and
- (b) providing for contributions to be levied on contributory institutions of different descriptions at different rates and at different times.
- (5) An order under this section—
- (a) shall repeal sections 50 to 57 and 63 to 66 of and Schedule 4 to the 1987 Act, and sections 24, 25, 26 and 29 to 31 of and Schedule 5 to the 1986 Act;
- (b) shall provide for—
- (i) any reference in sections 58 to 62 of the 1987 Act to the Deposit Protection Board or to the Deposit Protection Fund; and
- (ii) any reference in section 27 or 28 of, or Schedule 6 to, the 1986 Act to the Building Societies Investor Protection Board or to the Building Societies Investor Protection Fund,
- to have effect as a reference to the amalgamated board or to the amalgamated fund, as the case may require; and
- (c) may make such other consequential amendments of those Acts and of other enactments and instruments, and such incidental, supplemental and transitional provisions, as may appear to the Treasury to be necessary or expedient.
- (6) The power to make an order under this section shall be exercisable by statutory instrument; but no such order shall be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (7) In this section—
- “the 1987 Act” means the Banking Act 1987;
- “the Bank” means the Bank of England.

33 Liability of insolvent society in respect of payments made by Board

- (1) In subsection (2) of section 28 of the 1986 Act (liability of insolvent society in respect of payments made by Board), in paragraph (a) the words “as in respect of a contractual debt incurred immediately before the institution began to be wound up” shall cease to have effect.
- (2) After that subsection there shall be inserted the following subsection—
- “(2A) The liability imposed by subsection (2)(a) above shall have effect—
- (a) where the liability of the institution to the investor is referable to deposits, as a liability in respect of deposits received immediately before the time when the institution began to be wound up;
- (b) where that liability is referable to shares, as a liability in respect of shares issued immediately before that time.”

- (3) In subsections (4)(b) and (5)(b) of that section, for the words “apart from this section” there shall be substituted the words “apart from this paragraph”.

34 Recognised schemes for investigation of complaints

- (1) For section 83 of the 1986 Act there shall be substituted the following section—

“83 Recognised schemes for investigation of complaints

- (1) A person to whom section 83A applies shall, by virtue of and in accordance with a scheme under this section, have the right, as against a building society, to have investigated under the scheme any complaint of his about action—
- (a) which has been taken by the society in relation to a relevant service provided by it; and
 - (b) which affects him in prescribed respects.
- (2) A person to whom section 83A applies shall also, by virtue of and in accordance with a scheme under this section, have the right, as against any connected undertaking of a building society, to have investigated under the scheme any complaint of his about action—
- (a) which has been taken by the undertaking in relation to a relevant service provided by it; and
 - (b) which affects him in prescribed respects.
- (3) Every authorised building society shall be a member (or 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 relevant service provided by the society.
- (4) Every authorised building society shall secure that each of its connected undertakings is a member (or the sole 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 relevant service provided by the undertaking.
- (5) 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; and
 - (b) Part III contains other requirements to which a scheme must conform if it is to be so recognised.
- (6) The Commission, with the consent of the Treasury, may by order vary Part I or Part III of Schedule 12 by adding to or deleting from it any provision or by varying any provision contained in it; and an order under this subsection may make such incidental, supplementary and transitional provision as appears to the Commission to be necessary or expedient.
- (7) The Commission shall have the function, in accordance with Schedule 13 to this Act, of granting recognition of schemes and of withdrawing any recognition it has granted; but recognition does not extend to, and is not

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required for, provisions in a scheme which are not required to be made in pursuance of Schedule 12.

- (8) The Commission shall have power to do anything which is calculated to facilitate the discharge of its functions under subsection (7) above, or is incidental or conducive to their discharge, but this does not extend to expenditure for the purpose of operating a scheme.
- (9) 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.
- (10) A building society's withdrawal from membership of a recognised scheme shall not be effective except in accordance with the applicable provisions of Schedule 13.
- (11) The power to make an order under subsection (6) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (12) In this section, section 84 and Schedules 12 and 13—

“accede”, in relation to a scheme, means assume the obligations and rights of membership and “accession” has a corresponding meaning;

“action” includes any failure to act, and so as regards “exercise” in relation to any power; and “action”, in relation to a society, includes action on its behalf by any person;

“prescribed”, in relation to the respects in which a complainant is affected by any action, means prescribed for the time being in Part III of Schedule 12 as grounds for making action subject to investigation under the scheme;

“recognition” means recognition of a scheme by the Commission for the purposes of this section;

“relevant service” means a service of a kind which is provided by building societies for individuals in the ordinary course of business.”

- (2) For paragraph 1 (grounds of complaint) of Part III of Schedule 12 to the 1986 Act there shall be substituted the following paragraph—

“1 (1) The grounds for making action by a building society or connected undertaking subject to investigation under the scheme must be that the action constitutes—

- (a) in the case of a building society, a breach of the society's obligations under this Act, its rules or any contract, or
- (b) in the case of a connected undertaking, a breach of the undertaking's obligations under its rules (if any) or any contract, or
- (c) unfair treatment, or
- (d) maladministration, or
- (e) a decision to which sub-paragraph (2) below applies, or action consequential on such a decision,

in relation to the complainant and has caused him pecuniary loss or expense or inconvenience.

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- (2) This sub-paragraph applies to any decision in connection with the provision of a relevant service which is made otherwise than in the legitimate exercise of commercial judgment.”
- (3) In paragraph 2 (permissible exclusions from investigation) of that Part of that Schedule—
- (a) in paragraph (d), after the word “scheme” there shall be inserted the words “, or in furnishing evidence in support of the complaint”; and
- (b) after the second Note there shall be inserted the following Note—
- “*Note:*
- Delay in furnishing evidence in support of the complaint is not “undue delay” unless at least six months have elapsed since the adjudicator acknowledged receipt of the complaint.”

35 Persons entitled to have complaints investigated

After section 83 of the 1986 Act there shall be inserted the following section—

“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.

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- (8) For a period which is a body's or group's financial year but is not in fact a year the amount specified in subsection (2) or, as the case may be, subsection (3) above shall be proportionately adjusted.
- (9) In this section—
- “body corporate” does not include a Scottish firm;
 - “group” means a parent undertaking and its subsidiary undertakings;
 - “last financial year”, in relation to a body or group, means its last financial year to end before the complaint is made;
 - “parent undertaking” shall be construed in accordance with the relevant provisions;
 - “the relevant provisions” means the provisions of section 258 of the 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 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).”