



# Building Societies Act 1986

## 1986 CHAPTER 53

### [<sup>F1</sup>PART I]

#### FUNCTIONS OF THE [<sup>F2</sup>FINANCIAL CONDUCT AUTHORITY AND THE PRUDENTIAL REGULATION AUTHORITY]

##### Textual Amendments

- F1** Pt. I (s. 1) substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) for Pt. I (ss. 1-4) by S.I. 2001/2617, arts. 2, 13(1), **Sch. 3 Pt. II**, para. 132 (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(a)**
- F2** Word in Pt. I heading substituted (1.4.2013) by **The Financial Services Act 2012 (Mutual Societies) Order 2013** (S.I. 2013/496), art. 1(1), **Sch. 8 para. 2** (with Sch. 12)

### [<sup>F3</sup>1 **Functions of the [<sup>F4</sup>Financial Conduct Authority and the Prudential Regulation Authority] in relation to building societies.**

(1) [<sup>F5</sup>The FCA] has the following functions under this Act in relation to building societies—

- <sup>F6</sup>(a) .....
- (b) to administer the system of regulation of building societies provided for by or under this Act; and
- (c) to advise and make recommendations to the Treasury and other government departments on any matter relating to building societies.

[ The PRA has the following functions under this Act in relation to building societies—

- <sup>F7</sup>(1A) (a) to secure that the principal purpose of building societies remains that of making loans which are secured on residential property and are funded substantially by their members;
- (b) to administer the system of regulation of building societies provided by or under this Act, but only in so far as sections 5, 6, 7 [<sup>F8</sup>and 9A ] confer functions on the PRA; and

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- (c) to advise and make recommendations to the Treasury and other government departments on any matter relating to building societies.]
- (2) The [<sup>F9</sup>FCA and the PRA also have], in relation to such societies, the other functions conferred on [<sup>F10</sup>them respectively] by or under this Act or any other enactment.]

#### Textual Amendments

- F3** Pt. I (s. 1) substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) for Pt. I (ss. 1-4) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II para. 132** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F4** Words in s. 1 heading substituted (1.4.2013) by *The Financial Services Act 2012 (Mutual Societies) Order 2013* (S.I. 2013/496), art. 1(1), **Sch. 8 para. 3(5)** (with Sch. 12)
- F5** Words in s. 1(1) substituted (1.4.2013) by *The Financial Services Act 2012 (Mutual Societies) Order 2013* (S.I. 2013/496), art. 1(1), **Sch. 8 para. 3(2)(a)** (with Sch. 12)
- F6** S. 1(1)(a) omitted (1.4.2013) by virtue of *The Financial Services Act 2012 (Mutual Societies) Order 2013* (S.I. 2013/496), art. 1(1), **Sch. 8 para. 3(2)(b)** (with Sch. 12)
- F7** S. 1(1A) inserted (1.4.2013) by *The Financial Services Act 2012 (Mutual Societies) Order 2013* (S.I. 2013/496), art. 1(1), **Sch. 8 para. 3(3)** (with Sch. 12)
- F8** Words in s. 1(1A)(b) substituted (26.3.2015) by *Financial Services (Banking Reform) Act 2013* (c. 33), s. 148(5), **Sch. 9 para. 4(3)(a)**; S.I. 2015/428, art. 2
- F9** Words in s. 1(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. 3(4)(a)** (with Sch. 12)
- F10** Word in s. 1(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. 3(4)(b)** (with Sch. 12)

## PART II

### CONSTITUTION OF BUILDING SOCIETIES

#### *Establishment*

#### 5 Establishment, constitution and powers.

- [<sup>F12</sup>(1) A society may be established under this Act if (and only if) it complies with the following requirements, namely—
- (a) its purpose or principal purpose is that of making loans which are secured on residential property and are funded substantially by its members; and
  - (b) its principal office is in the United Kingdom.]
- (2) A society is established under this Act on compliance by the persons establishing it with the scheduled requirements and is incorporated under this Act as from the date of registration by the [<sup>F13</sup>FCA].
- (3) A society incorporated under this Act is referred to in this Act as a “building society”.

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- (4) A society incorporated under the repealed enactments whose principal office, as registered with the central office immediately before the commencement of this section, was in the United Kingdom, shall be deemed to be registered (and accordingly as incorporated) under this Act.
- [<sup>F14</sup>(4A) If, after its establishment, a building society fails to comply with the requirements imposed by subsection (1)(a) or (b) above—
- (a) the powers conferred on the [<sup>F15</sup>appropriate authority] by section 36 or 37 shall become exercisable in relation to the society; but
  - (b) the failure shall not affect the validity of any transaction or other act.]
- [<sup>F16</sup>(5) Subject to the provisions of this Act, a building society shall have the powers conferred on it by its memorandum.]
- (8) Schedule 2 to this Act has effect as respects the constitution, powers, and regulation of building societies and in that Schedule—
- (a) Part I makes provision with respect to the constitution, memorandum, rules and certain incidents of membership;
  - [<sup>F17</sup>(b) Part II makes provision with respect to the capacity of a society and the powers of its directors to bind it; and]
  - (c) Part III makes provision with respect to meetings, postal ballots and resolutions;
- [<sup>F18</sup>and in this section “scheduled”, with reference to requirements for establishment, means contained in that Schedule]
- (9) Any obligation imposed by this Act or the rules of a building society to give or send notices or other documents to members is subject to paragraph 14 of that Schedule.
- [<sup>F19</sup>(10) In this Act “residential property” means land at least 40 per cent of which—
- (a) is normally used as, or in connection with, one or more dwellings; or
  - (b) has been, is being or is to be developed or adapted for such use;
- and for the purposes of this subsection, the area of any land which comprises a building or other structure containing two or more storeys shall be taken to be the aggregate of the floor areas of each of those storeys.]

#### Textual Amendments

- F12** S. 5(1) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)-(5) of S.I. 1997/2668) by 1997 c. 32, ss. 1(1), 47(3); S.I. 1997/2668, art. 2, **Sch. Pt. II(a)**
- F13** Word in s. 5(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. 4(2)** (with Sch. 12)
- F14** S. 5(4A) inserted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)-(5) of S.I. 1997/2668) by 1997 c. 32, ss. 1(2), 47(3); S.I. 1997/2668, art. 2, **Sch. Pt. II(a)**
- F15** Word in s. 5(4A) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013](#) (S.I. 2013/496), art. 1(1), **Sch. 8 para. 4(3)** (with Sch. 12)
- F16** S. 5(5) substituted for s. 5(5)-(7) (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)-(5) of S.I. 1997/2668) by 1997 c. 32, ss. 1(3), 47(3); S.I. 1997/2668, art. 2, **Sch. Pt. II(a)**

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- F17** S. 5(8)(b) 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. 3(1)(a)**, 47(3); S.I. 1997/2668, art. 2, **Sch. Pt. II(c)**
- F18** Words in s. 5(8) 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. 3(1)(b)**, 47(3); S.I. 1997/2668, art. 2, **Sch. Pt. II(c)**
- F19** S. 5(10) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)-(5) of S.I. 1997/2668) by 1997 c. 32, **ss. 1(4)**, 47(3); S.I. 1997/2668, art. 2, **Sch. Pt. II(a)**

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

- C1** S. 5 applied (with modifications) (7.4.2010) by **The Building Societies (Financial Assistance) Order 2010** (S.I. 2010/1188), arts. 1(2), **3(1)(2)**
- C2** S. 5(4A) modified (7.4.2010) by **The Building Societies (Financial Assistance) Order 2010** (S.I. 2010/1188), arts. 1(2), **3(4)**, 4(4)
- C3** S. 5(8)(c) excluded (*temp.*) by S.I. 1986/2168, **art. 3(1)(2)**

<sup>F20</sup>**[Making loans]**

**Textual Amendments**

- F20** S. 6 and cross-heading substituted for s. 6 (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. 4**, 47(3); S.I. 1997/2668, art. 2, **Sch. Pt. II(d)**

**6** <sup>F21</sup>**[The lending limit.]**

- (1) A building society shall secure that the difference between—
- (a) the value of X on any quarter day; and
  - (b) the value of Y on that day or the value of Y on the immediately preceding quarter day, whichever is the greater,
- does not exceed 25 per cent of that value of X.

- (2) For the purposes of subsection (1) above—

X = the difference between the total assets of the society and any subsidiary undertakings of the society as shown in the society's accounts and the aggregate of—

- (a) the liquid assets of the society and any such undertakings as shown in those accounts <sup>F22</sup>...;
- (b) the fixed assets of the society and any such undertakings as so shown; and
- (c) where any such undertakings are [<sup>F23</sup>effecting or carrying out contracts of insurance], such of their assets as shown in those accounts as represent long term insurance funds; and

Y = the principal of, and interest accrued on, loans which are owed to the society or any subsidiary undertaking of the society and are fully secured on residential property;

and for the purposes of this subsection the total assets of a society and any subsidiary undertakings of the society shall be taken to be increased by the amount of any provision made for bad or doubtful debts of the society or any such undertaking.



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- (3) Any loans owed to the society or any subsidiary undertaking of the society shall be disregarded for the purposes of the definition of “Y” in subsection (2) above to the extent that they are not included in the total assets of the society and any such undertakings as shown in the society’s accounts.
- (4) Any reference in subsection (2) or (3) above to anything being shown in a society’s accounts shall be construed—
  - (a) in relation to a quarter day on which a financial year of the society ends, as a reference to its being shown in the accounts prepared by the society for that year;
  - (b) in relation to any other quarter day, as a reference to its being shown in the accounts which would have been prepared by the society for the year ending on that day if that year were a financial year of the society.
- (5) If a building society fails to comply with the requirement imposed by subsection (1) above—
  - (a) the powers conferred on the [F24appropriate authority] by section 36 shall become exercisable in relation to the society; but
  - (b) the failure shall not affect the validity of any transaction or other act.
- (6) The Treasury may by order substitute for the percentage specified in subsection (1) above such greater percentage (not greater than 40 per cent) as appears to them to be appropriate; and an order under this subsection may make such supplementary, transitional and saving provision as appears to the Treasury to be necessary or expedient.
- (7) The [F25Treasury may], by order—
  - (a) modify subsections (2) and (3) above in their application to assets of subsidiary undertakings;
  - (b) apply those subsections to corresponding assets of associated undertakings; or
  - (c) modify those subsections in their application to such assets.
- (8) An order under subsection (7) above may make—
  - (a) different provision for different circumstances;
  - (b) provision for particular assets of undertakings to be disregarded; and
  - (c) such supplementary, transitional and saving provision as appears to the [F26Treasury] to be necessary or expedient.
- (9) The power to make an order under subsection (6) or (7) above is exercisable by statutory instrument.
- (10) No order shall be made under subsection (6) above unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (11) A statutory instrument containing an order under subsection (7) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- [F27](12) In this section “long term insurance funds”, in relation to an undertaking effecting or carrying out contracts of insurance, means funds maintained by it—
  - [F28(a) in respect of its business in effecting or carrying out contracts of long term insurance in accordance with rules made by—
    - (i) the FCA under section 137A of the Financial Services and Markets Act 2000, or

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- (ii) the PRA under section 137G of that Act,  
 which require an authorised person who has permission to effect or carry out contracts of insurance to identify assets which belong to that person and which are maintained in respect of a particular aspect of that person’s business; or]
- (b) where it is incorporated in a country or territory outside the United Kingdom, under the corresponding provisions of the law of that country or territory.]
- <sup>F29</sup>[(12A) The definition of X in subsection (2) and subsection (12) must be read with—
- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.]
- (13) Where a loan is owed to a lending syndicate of which a building society or connected undertaking of a building society is a member, so much of the loan as is referable to the society’s or undertaking’s participation in the syndicate shall be treated for the purposes of this section and sections 6A and 6B as a loan owed to the society or undertaking.
- (14) In this section and section 7—
- “accounts”—
- (a) in relation to a building society without subsidiary undertakings, means individual accounts <sup>F30</sup> ...;
- (b) in relation to such a society with such undertakings, means group accounts <sup>F30</sup> ...;
- “quarter day”, in relation to a building society, means a day on which a financial year of the society ends, or a day which is three months, six months or nine months after such a day;
- and references to any value on a quarter day are references to that value at the close of business on that day.
- (15) If an agreement between the [<sup>F31</sup>appropriate authority] and a building society so provides, the definition of “quarter day” in subsection (14) above shall have effect in relation to the society as if for any reference to a number of months there were substituted a reference to a number of days specified in the agreement.
- <sup>F32</sup>(16) In this section, in the case of societies which produce IAS individual accounts or IAS group accounts;
- “fixed assets” means—
- (a) land and buildings;
- (b) plant and machinery;
- (c) equipment, fixtures, fittings and vehicles;
- (d) payments on account and assets in the course of construction; and
- (e) intangible fixed assets.
- “liquid assets” means—
- (a) cash and cash equivalents;
- (b) treasury bills and similar securities;
- (c) loans and advances to credit institutions; and
- (d) debt securities and other fixed income securities.]

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### Textual Amendments

- F21** S. 6 and cross-heading substituted for s. 6 (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. 4, 47(3); S.I. 1997/2668, art. 2, **Sch. Pt. II(d)**
- F22** Words in s. 6(2) omitted (22.12.2004) (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of [The Building Societies Act 1986 \(International Accounting Standards and Other Accounting Amendments\) Order 2004](#) (S.I. 2004/3380), art. 1, **Sch. para. 2(2)**
- F23** S. 6(2): Words in para. (c) of the definition of “X” substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 194(2)**
- F24** Words in s. 6(5)(a) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013](#) (S.I. 2013/496), art. 1(1), **Sch. 8 para. 5(2)** (with Sch. 12)
- F25** Words in s. 6(7) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II para. 134(b)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(a)**
- F26** Word in s. 6(8)(c) substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II para 134(c)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(a)**
- F27** S. 6(12) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 194(3)**
- F28** S. 6(12)(a) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013](#) (S.I. 2013/496), art. 1(1), **Sch. 8 para. 5(3)** (with Sch. 12)
- F29** S. 6(12A) inserted (1.12.2001) by S.I. 2001/3649, **arts. 1, 194(4)**
- F30** Words in s. 6(14) omitted (22.12.2004) (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of [The Building Societies Act 1986 \(International Accounting Standards and Other Accounting Amendments\) Order 2004](#) (S.I. 2004/3380), art. 1, **Sch. para. 2(3)**
- F31** Word in s. 6(15) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013](#) (S.I. 2013/496), art. 1(1), **Sch. 8 para. 5(4)** (with Sch. 12)
- F32** S. 6(16) inserted (22.12.2004) (with effect in accordance with art. 1(2) of the amending S.I.) by [The Building Societies Act 1986 \(International Accounting Standards and Other Accounting Amendments\) Order 2004](#) (S.I. 2004/3380), art. 1, **Sch. para. 2(4)**

### Modifications etc. (not altering text)

- C4** S. 6(1) excluded (7.4.2010) by [The Building Societies \(Financial Assistance\) Order 2010](#) (S.I. 2010/1188), arts. 1(2), **4**
- C5** S. 6(2) modified (1.1.2005) by [The Building Societies Act 1986 \(Modification of the Lending Limit and Funding Limit Calculations\) Order 2004](#) (S.I. 2004/3200), arts. 1(2), **3**
- C6** S. 6(7)(8): Functions of Building Societies Commission transferred (1.12.2001) to the Treasury by S.I. 2001/2617, arts. 2(b), 4(1), **Sch. 1 Pt. III**; S.I. 2001/3538, **art. 2(a)**

### [<sup>F33</sup>6A Loans secured on land.

- (1) For the purposes of this Act a loan is secured on land if it is secured by—
- a mortgage of a legal estate in land in England and Wales or Northern Ireland;
  - a heritable security over land in Scotland; or
  - a qualifying security over land in [<sup>F34</sup>the Isle of Man, the Channel Islands or Gibraltar].

- [ For the purposes of this Act a loan is also secured on land if—
- <sup>F35</sup>(1A) (a) it was secured before IP completion day by a qualifying security over land in an EEA country or territory other than the United Kingdom, and
- (b) it continues to be secured by a qualifying security over that land.]

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- (2) For the purposes of this Act a loan is also secured on land if—
- (a) it is secured by a mortgage of an equitable interest in land in England and Wales or Northern Ireland;
  - (b) the equitable interest is an equitable interest in land of a description, and is created in circumstances, prescribed in an order made by the <sup>F36</sup> . . . Treasury; and
  - (c) any conditions prescribed in the order are complied with;
- and an order under this subsection may apply in relation to securities held by or on behalf of building societies or connected undertakings of a description specified in the order, or securities held by or on behalf of all such societies or undertakings other than those of a description so specified.
- (3) For the purposes of this Act—
- (a) a loan shall be treated as secured by a mortgage of a legal estate in registered land in England and Wales or Northern Ireland notwithstanding that the loan is made before the mortgagor is registered as proprietor of the estate; and
  - (b) a loan shall be treated as secured by a heritable security over land in Scotland notwithstanding that the loan is made before title to that land has been transferred to the debtor in the heritable security.
- (4) The [<sup>F37</sup>Treasury may], by order provide for any provisions of this Act to have effect in relation to loans secured on land outside the [<sup>F38</sup>United Kingdom] with such modifications as appear to [<sup>F39</sup>them] to be appropriate.
- (5) An order under subsection (2) or (4) above may make such incidental, supplementary and transitional provision as appears to the [<sup>F40</sup>Treasury] to be necessary or expedient.
- (6) The power to make an order under subsection (2) or (4) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In this section and section 6B—
- “EEA country or territory” means a country or territory in the European Economic Area;
- “qualifying security”, [<sup>F41</sup> in relation to a loan and land in the Isle of Man, the Channel Islands, Gibraltar or in an EEA country or territory], means a security over the land which—
- (a) acknowledges, and requires repayment of, the loan; and
  - (b) secures repayment of the loan on the land;
- <sup>F42</sup> . . .
- (8) In this Act “land”, in the expression “loan secured on land”, means—
- <sup>F43</sup>(a) land in—
    - (i) the United Kingdom;
    - (ii) the Isle of Man, the Channel Islands, Gibraltar; or
    - (iii) an EEA country or territory; and
  - (b) in so far as land in any other country or territory is, under any provision of this Act, land on which loans may be secured, land in that other country or territory.]

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### Textual Amendments

- F33** S. 6A 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. 5, 47(3)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(e)**
- F34** Words in s. 6A(1)(c) substituted (31.12.2020) by **The Building Societies Legislation (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1187)**, regs. 1, **3(1)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F35** S. 6A(1A) inserted (31.12.2020) by **The Building Societies Legislation (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1187)**, regs. 1, **3(1)(b)** (as amended by S.I. 2020/1301, regs. 1, 3, **Sch. para. 4(a)**); 2020 c. 1, Sch. 5 para. 1(1)
- F36** Words in s. 6A(2)(b) repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), **Sch. 5** and with saving in S.I. 2001/2967, **arts. 1(2), 9(1)(c)**); S.I. 2001/3538, **art. 2(1)**
- F37** Words in s. 6A(4) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II para. 135(b)(i)** (with art. 13(3), **Sch. 5**); S.I. 2001/3538, **art. 2(a)**
- F38** Words in s. 6A(4) substituted (31.12.2020) by **The Building Societies Legislation (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1187)**, regs. 1, **3(1)(c)**; 2020 c. 1, Sch. 5 para. 1(1)
- F39** Word in s. 6(4) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II para. 135(b)(ii)** (with art. 13(3), **Sch. 5**); S.I. 2001/3538, **art. 2(a)**
- F40** Word in s. 6(5) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II para. 135(c)** (with art. 13(3), **Sch. 5**); S.I. 2001/3538, **art. 2(a)**
- F41** Words in s. 6A(7) substituted (31.12.2020) by **The Building Societies Legislation (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1187)**, regs. 1, **3(1)(d)(i)**; 2020 c. 1, Sch. 5 para. 1(1)
- F42** Words in s. 6A(7) omitted (31.12.2020) by virtue of **The Building Societies Legislation (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1187)**, regs. 1, **3(1)(d)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)
- F43** S. 6A(8)(a) substituted (31.12.2020) by **The Building Societies Legislation (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1187)**, regs. 1, **3(1)(e)**; 2020 c. 1, Sch. 5 para. 1(1)

### Modifications etc. (not altering text)

- C7** S. 6A(2)(b)(4)(5): Functions of Building Societies Commission transferred (1.12.2001) by S.I. 2001/2617, arts. 2(b), 4(1), **Sch. 1 Pt. III**; S.I. 2001/3538, **art. 2(a)**

## [<sup>F44</sup>6B Loans fully secured on land.

- (1) For the purposes of this Act a loan which is owed to a building society or a subsidiary undertaking of a building society and is secured on residential property or other land is fully secured on the land if—
  - (a) the principal of, and interest accrued on, the loan does not exceed the value of the requisite security; and
  - (b) no, or no more than one, mortgage of the land which has priority over the society's or undertaking's mortgage is outstanding in favour of an outside person.
- (2) Where a mortgage of the residential property or other land which has priority over the society's or undertaking's mortgage is outstanding, the principal of the loan secured or, in the case of a loan by instalments, intended to be secured by that mortgage shall be deducted from the value of the requisite security for the purposes of subsection (1) (a) above.
- (3) Where the loan is secured on residential property or other land in the United Kingdom, any outstanding charge over the land which—

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- (a) in the case of land in England and Wales, is registered in the appropriate local land charges register;
- (b) in the case of land in Scotland, is recorded in the Register of Sasines, or registered in the Land Register, under section 108 of the <sup>M1</sup>Civic Government (Scotland) Act 1982 or Schedule 9 to the <sup>M2</sup>Housing (Scotland) Act 1987;
- (c) in the case of land in Northern Ireland, is registered in the statutory charges register under section 87 of, and Schedule 11 to, the <sup>M3</sup>Land Registration Act (Northern Ireland) 1970,

shall be disregarded for the purposes of subsections (1)(b) and (2) above.

- (4) Where, on the occasion on which a building society or a subsidiary undertaking of a building society makes or acquires a loan which is secured on land, the society or undertaking is satisfied that the loan is—

- (a) a loan which is fully secured on residential property;
- (b) a loan which is not so secured but is fully secured on land; or
- (c) a loan which is not fully secured on land,

the loan shall be treated as such a loan for the purposes of this Act until such time (if any) as subsection (7) below applies.

- (5) Subsection (4) above shall have effect in relation to a loan which the society or undertaking makes by two or more payments on different dates as if—

- (a) the reference to the occasion on which the society or undertaking makes the loan were a reference to the occasion on which it makes the first of the payments;
- (b) other references to the loan were references to it in its intended maximum amount; and
- (c) the value of any security for the loan were its expected maximum value.

- (6) Where a building society or a subsidiary undertaking of a building society makes or acquires a loan which is secured on land, the society or undertaking shall be deemed to be satisfied as mentioned in paragraph (c) of subsection (4) above until such time (if any) as it is satisfied as mentioned in paragraph (a) or (b) of that subsection.

- (7) Where at any time, in the case of a loan treated as falling within paragraph (a), (b) or (c) of subsection (4) above, the society or undertaking—

- (a) is satisfied—
  - (i) on a revaluation that the value of the requisite security has changed;
  - (ii) on notice given to it by the borrower that there has been a change in the use of the land;
  - (iii) that so much of the mortgage debt as represents the principal of the loan has changed;
  - (iv) that the principal of the loan secured by a prior mortgage has changed or has been repaid; or
  - (v) that the relative priority of the mortgage of the land on which the loan is secured has changed;
- (b) is also satisfied that the change or repayment is such that, if it were to make a loan equal to the mortgage debt at that time, the loan would instead be a loan falling within another of those paragraphs; and
- (c) in a case falling within paragraph (a)(i) above, elects that this subsection shall apply,

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the loan shall be treated as such a loan for the purposes of this Act until such time (if any) as this subsection again applies.

(8) In this section—

“outside person”, in relation to a building society or a subsidiary undertaking of a building society, means any person other than the following, namely—

- (a) the society;
- (b) a subsidiary undertaking of the society;
- (c) a lending syndicate of which the society or such an undertaking is a member; and
- (d) trustees of a trust under which the society or such an undertaking is a beneficiary;

“the requisite security”, in relation to a loan secured on residential property or other land, means—

- (a) the security constituted by the legal estate in, or the heritable or qualifying security over, the land; or
- (b) in a case where an equitable interest in land in England and Wales or Northern Ireland is or is also taken as security, that constituted by that security or, as the case may be, the combined securities;

“trust” includes arrangements—

- (a) which have effect under the law of a country or territory outside the United Kingdom; and
- (b) under which persons acting in a fiduciary capacity hold and administer property on behalf of other persons,

and “beneficiary” and “trustees”, in relation to such arrangements, shall be construed accordingly.

(9) In the application of subsections (1), (2) and (7) above to residential property or other land in Scotland [<sup>F45</sup>, the Isle of Man, the Channel Islands, Gibraltar] or [<sup>F46</sup>another country] or territory other than the United Kingdom, references to a mortgage of the land shall be construed as references to a heritable or, as the case may require, qualifying security over the land.]

#### Textual Amendments

- F44** S. 6B 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. 6, 47(3); S.I. 1997/2668, art. 2, **Sch. Pt. II(f)**
- F45** Words in s. 6B(9) inserted (31.12.2020) by The Building Societies Legislation (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1187), regs. 1, **3(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F46** Words in s. 6B(9) substituted (31.12.2020) by The Building Societies Legislation (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1187), regs. 1, **3(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

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

- C8** S. 6B(4)(a) modified (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. 46(1), 47(3), **Sch. 8 para. 6(1)(a)(b)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(y)(aa)(iii)**
- C9** S. 6B(4)(b) modified (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. 46(1), 47(3), **Sch. 8 para. 6(1)(c)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(y)(aa)(iii)**



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**C10** S. 6B(4)(c) modified (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. 46(1), 47(3), **Sch. 8 para. 6(1)(d)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(y)(aa)(iii)**

**Marginal Citations**

**M1** 1982 c.45.  
**M2** 1987 c.26.  
**M3** 1970 c.18 (N.I.).

[<sup>F47</sup>**6C** **Discharge of mortgages.**

Schedule 2A to this Act, which contains supplementary provisions as to the discharge of mortgages, shall have effect.]

**Textual Amendments**

**F47** S. 6C inserted (1.12.1997) by 1997 c. 32, s. 7(1); S.I. 1997/2668, art. 2, **Sch. Pt. I(a)**

*Raising funds and borrowing*

[<sup>F48</sup>**7** **The funding limit.**

- (1) A building society shall secure that the difference between—
- (a) the value of X on any quarter day; and
  - (b) the value of Y on that day or the value of Y on the immediately preceding quarter day, whichever is the greater,
- does not exceed 50 per cent of that value of X.

- (2) For the purposes of subsection (1) above—

X = the aggregate of the following, namely—

- (a) the principal value of, and interest accrued on, shares in the society;
- (b) the principal of, and interest accrued on, sums deposited with the society or any subsidiary undertaking of the society; and
- (c) the principal value of, and interest accrued under, bills of exchange, instruments or agreements creating or acknowledging indebtedness and accepted, made, issued or entered into by the society or any such undertaking; and

Y = the principal value of, and interest accrued on, shares in the society held by individuals otherwise than as bare trustees (or, in Scotland, simple trustees) for bodies corporate or for persons who include bodies corporate.

- (3) The following shall be disregarded for the purposes of subsection (2) above, namely—

- (a) any sums or amounts which are own funds; <sup>F49</sup>...

[ <sup>F50</sup>(aa) subject to subsection (3A), the principal of, and interest accrued on, sums deposited with the society or any subsidiary undertaking of the society by a small business (see subsection (10));]

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- (b) to the extent that they are not included in the total liabilities of the society and any subsidiary undertakings of the society as shown in the society's accounts—
  - (i) any sums deposited with the society or any such undertaking; and
  - (ii) any indebtedness created or acknowledged by bills of exchange, instruments or agreements accepted, made, issued or entered into by the society or any such undertaking.

[ In respect of any day by reference to which the value of X falls to be calculated for the purposes of subsection (1) in relation to the society, the total amount to be disregarded under subsection (3)(aa) may not exceed 10% of the amount that would, in the absence of subsection (3)(aa), be the value of X on that day.]

- <sup>F51</sup>(3A) (4) The reference in subsection (3) above to anything being shown in a society's accounts shall be construed—
  - (a) in relation to a quarter day on which a financial year of the society ends, as a reference to its being shown in the accounts prepared by the society for that year;
  - (b) in relation to any other quarter day, as a reference to its being shown in the accounts which would have been prepared by the society for the year ending on that day if that year were a financial year of the society.
- (5) If a building society fails to comply with the requirement imposed by subsection (1) above—
  - (a) the powers conferred on the [<sup>F52</sup>appropriate authority] by section 36 shall become exercisable in relation to the society; but
  - (b) the failure shall not affect the validity of any transaction or other act.
- (6) Where an individual declares that he is acquiring any shares in a building society otherwise than as a bare trustee (or, in Scotland, a simple trustee) for a body corporate, or for persons who include a body corporate, he shall, unless the contrary is shown, be conclusively presumed for the purposes of this section to hold the shares otherwise than as such a trustee.

[ Where a person declares that the person is a small business, the person shall, unless <sup>F53</sup>(6ZA) the contrary is shown, be conclusively presumed for the purposes of this section to be a small business.]

- (7) The [<sup>F54</sup>Treasury may], by order—
  - (a) modify subsections (2) and (3) above in their application to liabilities of subsidiary undertakings;
  - (b) apply those subsections to corresponding liabilities of associated undertakings; or
  - (c) modify those subsections in their application to such liabilities.
- (8) An order under subsection (7) above may make—
  - (a) different provision for different circumstances;
  - (b) provision for particular liabilities of undertakings to be disregarded; and
  - (c) such supplementary, transitional and saving provision as appears to the [<sup>F55</sup>Treasury] to be necessary or expedient.

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(9) 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.]

[<sup>F56</sup>(10) In this section “small business” means any person (other than an individual acting as a sole trader) carrying on a business which had a turnover in the relevant financial year of less than £1,000,000.

(11) For the purposes of subsection (10)—

- (a) the “relevant financial year”, in relation to any day by reference to which the value of X falls to be calculated for the purposes of subsection (1) in relation to a building society, means the last financial year ending before that day;
- (b) “turnover”, in relation to a small business, means the amount derived from the provision of goods and services falling within the business's ordinary activities, after deduction of trade discounts, value added tax and any other taxes based on the amounts so derived;
- (c) in respect of any relevant financial year, the reference to £1,000,000 includes the equivalent amount in any other currency, calculated as at the last day of that year.

(12) The Treasury may, by order made by statutory instrument, amend the figure for the time being specified in subsections (10) and (11)(c).

(13) A statutory instrument containing an order under subsection (12) is subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

- F48** S. 7 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. 8, 47(3)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(g)**
- F49** Word in s. 7(3)(a) omitted (18.2.2014) by virtue of Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(2), **Sch. 9 para. 2(2)**
- F50** S. 7(3)(aa) inserted (18.2.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(2), **Sch. 9 para. 2(2)**
- F51** S. 7(3A) inserted (18.2.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(2), **Sch. 9 para. 2(3)**
- F52** Words in s. 7(5)(a) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 6** (with Sch. 12)
- F53** S. 7(6ZA) inserted (18.2.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(2), **Sch. 9 para. 2(4)**
- F54** Words in s. 7(7) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. I para. 136(b)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(a)**
- F55** Word in s. 7(8)(c) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II para. 136(c)** (with art. 13(3), Sch. 4); S.I. 2001/3538, **art. 2(a)**
- F56** S. 7(10)-(13) inserted (18.2.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(2), **Sch. 9 para. 2(5)**

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

- C11** S. 7 applied (with modifications) (7.4.2010) by The Building Societies (Financial Assistance) Order 2010 (S.I. 2010/1188), arts. 1(2), **5**

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- C12** S. 7(2) modified (1.1.2005) by [The Building Societies Act 1986 \(Modification of the Lending Limit and Funding Limit Calculations\) Order 2004 \(S.I. 2004/3200\)](#), arts. 1(2), 4
- C13** S. 7(2)(3) modified (6.4.2007) by [The Building Societies Act 1986 \(Substitution of Specified Amounts and Modification of the Funding Limit Calculation\) Order 2007 \(S.I. 2007/860\)](#), arts. 1, 3
- C14** S. 7(2)(c) extended (24.6.2003) by [The Uncertificated Securities \(Amendment\) \(Eligible Debt Securities\) Regulations 2003 \(S.I. 2003/1633\)](#), reg. 1(1), **Sch. 2 para. 11(a)**
- C15** S. 7(3)(b)(ii) extended (24.6.2003) by [The Uncertificated Securities \(Amendment\) \(Eligible Debt Securities\) Regulations 2003 \(S.I. 2003/1633\)](#), reg. 1(1), **Sch. 2 para. 11(b)**
- C16** S. 7(7)(8): Functions of the Building Societies Commission transferred (1.12.2001) to the Treasury by [S.I. 2001/2617](#), art. 2(b), 4(1), **Sch. 1 Pt. III**; [S.I. 2001/3538](#), **art. 2(a)**

### **[<sup>F578</sup> Raising funds and borrowing.**

- (1) Subject to subsection (2) below, a building society shall not do any of the following things, namely—
- accept a deposit from an individual;
  - raise funds from an individual otherwise than by the issue of shares; and
  - raise funds from a body corporate, or from a bare trustee (or, in Scotland, a simple trustee) for a body corporate or for persons who include a body corporate, otherwise than by the issue of deferred shares.
- (2) Nothing in subsection (1)(a) above shall apply in relation to—
- the maintenance on behalf of an individual of a current account, or a deposit account which contains in its title the word “client” or the word “trust” or “trustee”;
  - the issue to an individual of a transferable instrument;
  - the acceptance from an individual of a qualifying time deposit or an overseas deposit; or
  - in the case of a building society which has announced publicly that it intends, in accordance with section 97 and the other applicable provisions of this Act, to transfer the whole of its business to a company, anything done by the society during the period of two years beginning with the date of the announcement.
- (3) The [<sup>F58</sup>appropriate authority] may, if it thinks fit, extend or further extend the period mentioned in subsection (2)(d) above if written application is made to it before the expiry of that period or that period as extended; and a direction under this subsection—
- shall be in writing;
  - may be given subject to such limitations or conditions as the [<sup>F58</sup>appropriate authority] may think fit.
- (4) A contravention of subsection (1) above shall not invalidate any transaction or other act.
- (5) The power of a building society to raise funds by the issue of shares is a power—
- to issue shares of one or more denominations, whether in sterling or another currency; and
  - to issue them either as shares paid up in full or as shares to be paid by periodical or other payments, and (in either case) with accumulating or other interest;

and funds so raised may be repaid when they are no longer required for the purposes of the society.

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- (6) In the case of deferred shares, the power of a building society to raise funds by the issue of shares includes the issue of shares at a premium.
- (7) If a building society issues deferred shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to the society's reserves.
- (8) For the purposes of this section the acceptance of deposits (including the issue of debt securities) shall not constitute the raising of funds.
- (9) In this section, in relation to a building society—
- “overseas deposit” means a deposit which is accepted by a branch or agency of the society in a country or territory outside the United Kingdom and is repayable in such a country or territory;
- “qualifying time deposit” has the meaning given by section [F59]866(2) and (3) of the Income Tax Act 2007];
- “raise funds” means, subject to subsection (8) above, raise funds by the issue of shares or other securities;
- “transferable instrument” means an instrument which embodies a transferable right to receive an amount referable to a deposit with the society.
- (10) A right is transferable for the purposes of the definition of “transferable instrument” in subsection (9) above if it is transferable by delivery of the instrument, or it is a right—
- (a) which may, under the terms of the instrument, be held by any person, or by any person other than a person of a description specified in the instrument;
- (b) express provision for the transfer of which is included in the instrument; and
- (c) the transfer of which, under the terms of the instrument, does not require the consent of any person.
- (11) Where an individual declares that he is acquiring any shares in a building society otherwise than as a bare trustee (or, in Scotland, a simple trustee) for a body corporate, or for persons who include a body corporate, he shall, unless the contrary is shown, be conclusively presumed for the purposes of this section to hold the shares otherwise than as such a trustee.
- (12) The [F60]Treasury may] by order vary subsections (2), (9) and (10) above by adding to or deleting from them any provision or by varying any provision contained in them; and an order under this subsection may make such supplementary, transitional and saving provision as appears to the [F60]Treasury] to be necessary or expedient.
- (13) The power to make an order under subsection (12) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

- F57** S. 8 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. 9, 47(3)** (with s. 46(1), Sch. 8 para. 9); S.I. 1997/2668, art. 2, **Sch. Pt. II(h)**
- F58** Words in s. 8(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. 7** (with Sch. 12)
- F59** Words in s. 8(9) substituted (6.4.2007) by *Income Tax Act 2007 (c. 3)*, s. 1034(1), **Sch. 1 para. 273** (with Sch. 2)

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**F60** Words in s. 8(12) substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II para. 137(b)(i)(ii)**, (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(a)**

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

**C17** S. 8 extended (24.6.2003) by **The Uncertificated Securities (Amendment) (Eligible Debt Securities) Regulations 2003** (S.I. 2003/1633), reg. 1(1), **Sch. 2 para. 11(c)**

**C18** S. 8(1)(c) excluded (7.4.2010) by **The Building Societies (Financial Assistance) Order 2010** (S.I. 2010/1188), arts. 1(2), **6**

**C19** S. 8(12): Functions of Building Societies Commission transferred (1.12.2001) to the Treasury by S.I. 2001/2617, **arts. 1(2)(b), 4(1)**, Sch. 1 Pt. III; S.I. 2001/3538, **art. 2(a)**

**F61<sup>g</sup>** .....

**Textual Amendments**

**F61** S. 9 repealed (1.12.2001) by 2000 c. 8, ss. 334, 336, 338, 432(3), Sch. 18 Pt. III para. 17, **Sch. 22**; S.I. 2001/3538, **art. 2**

**F62** [*Restrictions on powers*]

**Textual Amendments**

**F62** S. 9A and cross-heading 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. 10, 47(3)**; S.I. 1997/2668, **art. 2, Sch. Pt. II(i)**

**[<sup>F63</sup>9A Restrictions on certain transactions.**

- (1) Subject to subsections (2) to (4) below, a building society shall not do, and shall secure that each of its subsidiary undertakings does not do, any of the following things, namely—
  - (a) act as a market maker in securities, commodities or currencies;
  - (b) trade in commodities or currencies; and
  - (c) enter into any transaction involving derivative investments;but a contravention of this subsection shall not invalidate any transaction or other act.
- (2) No transaction entered into by a building society, or a subsidiary undertaking of a building society, shall be taken into account for the purposes of subsection (1)(a) above if—
  - (a) it relates only to securities or currencies or both and the amount or value of the consideration given by the society or undertaking does not exceed £100,000; or
  - (b) it is entered into in the society's or undertaking's capacity as the manager of a collective investment scheme.
- (3) No transaction so entered into shall be taken into account for the purposes of subsection (1)(b) above if—

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- (a) it relates only to currencies and the amount or value of the consideration given by the society or undertaking does not exceed [<sup>F64</sup>£3 million]; or
  - (b) it is ancillary or incidental to another transaction entered into by the society or undertaking.
- (4) Nothing in subsection (1)(c) above shall apply in relation to any transaction entered into by a building society, or a subsidiary undertaking of a building society, if—
- (a) it is entered into in the society's or undertaking's capacity as the manager of a collective investment scheme;
  - (b) it is entered into for the purpose of limiting the extent to which the society, or a connected undertaking of the society, will be affected by changes in any of the following factors, namely—
    - (i) interest rates;
    - (ii) exchange rates;
    - (iii) any index of retail prices;
    - (iv) any index of residential property prices; <sup>F65</sup> . . .
    - (v) any index of the prices of securities; [<sup>F66</sup>and
    - (vi) the ability or willingness of one or more persons to pay or repay a sum or sums owing at law or in equity to the society or a connected undertaking of the society; <sup>F67</sup> ...]
  - (c) it involves a derivative investment falling within paragraph (d) of the definition in subsection (9) below and it is entered into for the purpose of limiting the extent to which any person will be affected by changes in any interest or exchange rate applicable to—
    - (i) a loan owed by him to;
    - (ii) shares held by him in; or
    - (iii) a deposit of his with,
 the society, or a connected undertaking of the society [<sup>F68</sup>; or]
    - [ <sup>F69</sup>(d) it is entered into in order to comply with an obligation imposed by a recognised clearing house or an EEA central counterparty pursuant to Article 37 of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.]
- (5) Nothing in subsection (1)(c) above shall apply in relation to any transaction entered into by a subsidiary undertaking of a building society, if it is entered into in the undertaking's capacity—
- [ <sup>F70</sup>(a) as a person who has permission under [<sup>F71</sup>Part 4A] of the Financial Services and Markets Act 2000 to effect or carry out contracts of long-term insurance, <sup>F72</sup> ...
  - <sup>F72</sup>(b) .....]
  - <sup>F73</sup> . . .
- (6) A building society shall also do all that is reasonably practicable to secure that neither it nor any of its subsidiary undertakings (either alone or with any or any others of those undertakings)—
- (a) holds at any time more than 5 per cent of the issued share capital; or
  - (b) is at any time entitled to exercise, or to control the exercise of, more than 5 per cent of the voting power at any general meeting,



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of an undertaking which is, at that time, doing any of the things which the society is prohibited from doing by subsection (1) above, or an undertaking whose subsidiary undertaking is, at that time, doing any of those things.

- (7) The monetary limit in subsection (2) or (3) above refers to the time when the transaction is entered into; and where the amount or value of the consideration there referred to is not in sterling, it shall be converted at the rate of exchange prevailing at that time.
- (8) For the purposes of subsection (2) or (3) above, two or more transactions which form part of a larger transaction or series of transactions shall be treated as a single transaction.
- (9) In this section—

“collective investment scheme” has the same meaning as in the [F74Financial Services and Markets Act 2000];

“commodity” means any produce of agriculture, forestry or fisheries, or any mineral, either in its natural state or having undergone only such processes as are necessary or customary to prepare the produce or mineral for the market;

[F75“derivative investment” means an investment of the following kinds—

- (a) instruments giving entitlements to investments;
- (b) options;
- (c) futures;
- (d) contracts for differences;]

[F76“EEA central counterparty” has the meaning given in section 285(1)(c) of the Financial Services and Markets Act 2000;”]

“market maker” means, subject to subsection (10) below, a person who holds himself out as willing at all normal times to buy or sell at a price specified by him securities, commodities or currencies of a particular description;

[F77“recognised clearing house” has the meaning given in section 285(1)(b) of the Financial Services and Markets Act 2000;”]

“securities” means shares, stock, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme and other securities of any description.

[ Subsection (5) and the definition of “derivative investment” in subsection (9) must F78(9A) be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act;]

- (10) A building society, or subsidiary undertaking of a building society, shall not by reason of holding itself out as willing to issue its own securities be regarded for the purposes of this section as acting as a market maker in such securities.
- (11) The Treasury may by order vary subsections (1) to (10) above by adding to or deleting from them any provision or by varying any provision contained in them.
- (12) [F79The Treasury may] by order—

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- (a) substitute for the amount specified in subsection (2) or (3) above, or for the percentage specified in subsection (6) above, such other amount or percentage as they think appropriate; or
  - (b) vary subsection (4)(b) above by adding to or deleting from it any reference to a factor or by varying any reference to a factor contained in it.
- (13) An order under subsection (11) or (12) above may make—
- (a) different provision for different cases or purposes; and
  - (b) such supplementary, transitional and saving provision as appears to the Treasury<sup>F80</sup> . . . to be necessary or expedient;
- and the power to make such an order is exercisable by statutory instrument.
- (14) No order shall be made under subsection (11) above unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (15) A statutory instrument containing an order under subsection (12) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

- F63** S. 9A and cross-heading 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. 10**, 47(3); S.I. 1997/2668, art. 2, **Sch. Pt. II(i)**
- F64** Words in s. 9A(3)(a) substituted (6.4.2018) by [The Building Societies \(Restricted Transactions\) \(Amendment to the Limit on the Trade in Currencies\) Order 2017](#) (S.I. 2017/1307), arts. 1(2), **2**
- F65** Word in s. 9A(4) omitted (1.7.2001) by virtue of S.I. 2001/1826, **art. 2(a)**
- F66** S. 9A(4)(b)(vi) and the word "and" immediately preceding inserted (1.7.2001) by S.I. 2001/1826, **art. 2(b)**
- F67** Word in s. 9A(4)(b)(vi) omitted (6.4.2018) by virtue of [The Building Societies \(Restricted Transactions\) \(Amendment to the Prohibition on Entering into Derivatives Transactions\) Order 2018](#) (S.I. 2018/314), arts. 1(2), **2(a)**
- F68** Word in s. 9A(4)(c) inserted (6.4.2018) by [The Building Societies \(Restricted Transactions\) \(Amendment to the Prohibition on Entering into Derivatives Transactions\) Order 2018](#) (S.I. 2018/314), arts. 1(2), **2(b)**
- F69** S. 9A(4)(d) inserted (6.4.2018) by [The Building Societies \(Restricted Transactions\) \(Amendment to the Prohibition on Entering into Derivatives Transactions\) Order 2018](#) (S.I. 2018/314), arts. 1(2), **2(c)**
- F70** S. 9A(5)(a)(b) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 195(2)(a)
- F71** Words in s. 9A(5)(a) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013](#) (S.I. 2013/496), art. 1(1), **Sch. 8 para. 8** (with Sch. 12)
- F72** S. 9A(5)(b) 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(2)** (with reg. 4); 2020 c. 1, Sch. 5 para. 1(1)
- F73** Words in s. 9A(5) repealed (1.12.2001) by S.I. 2001/3649, arts. 1, **195(2)(b)**
- F74** Words in the definition of "collective investment scheme" in s. 9A(9) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 195(3)(a)
- F75** Definition of "derivative investment" in s. 9A(9) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 195(3)(b)
- F76** Words in s. 9A(9) inserted (6.4.2018) by [The Building Societies \(Restricted Transactions\) \(Amendment to the Prohibition on Entering into Derivatives Transactions\) Order 2018](#) (S.I. 2018/314), arts. 1(2), **3(a)**
- F77** Words in s. 9A(9) inserted (6.4.2018) by [The Building Societies \(Restricted Transactions\) \(Amendment to the Prohibition on Entering into Derivatives Transactions\) Order 2018](#) (S.I. 2018/314), arts. 1(2), **3(b)**

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- F78** S. 9A(9A) inserted (1.12.2001) by S.I. 2001/3649, **arts. 1, 195(4)**
- F79** Words in s. 9A(12) substituted (17.8.2001 for certain purposes and otherwise prosp. ) by S.I. 2001/2617, **arts. 2(a), 8, 13(1), Sch. 3 Pt. II, para. 138 (a)(i)(ii)** (with art. 13(3), Sch. 5)
- F80** Words in s. 9A(13)(b) repealed (1.12.2001) by S.I. 2001/2617, **arts. 2, 13(2), Sch. 4** (with art. 13(3), Sch. 5); S.I.2001/3538, art. 2(a)

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

- C20** S. 9A(12): Functions of Building Societies Commission transferred (1.12.2001) to the Treasury by S.I. 2001/2617, **arts. 2(b), 4(1), Sch. 1 Pt. III; S.I. 2001/3538, art. 2(a)**

**F81 9B Restriction on creation of floating charges.**

.....

**Textual Amendments**

- F81** S. 9B omitted (26.3.2015) by virtue of **Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 9 para. 4(1); S.I. 2015/428, art. 2**

**F82 [PART III**

**ADVANCES, LOANS AND OTHER ASSETS]**

**Textual Amendments**

- F82** Pt. III (ss. 10-23) 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. 12(1)(a), 46(2), 47(3), **Sch. 9; S.I. 1997/2668, art. 2, Sch. Pts. I(b), II(j)**

*Class 1 advances and class 2 advances secured on land*

**[F83 10 Advances secured on land.**

- (1) A building society may make advances to members (in this Act referred to as “advances secured on land”) secured by—
- (a) a mortgage of a legal estate or, as provided under subsection (6) below, an equitable interest in land in England and Wales or Northern Ireland, or
  - (b) a heritable security over land in Scotland,
- and for that purpose may (in England and Wales or Northern Ireland) hold land with the right of foreclosure.
- (2) Advances secured on land may, in accordance with sections 11 and 12—
- (a) be fully or partly secured by a mortgage of the legal estate or equitable interest in land in England and Wales or Northern Ireland, or
  - (b) be fully secured by a heritable security over land in Scotland,

and in this Part “the basic security” means the security constituted by the legal estate in or heritable security over the land or, in a case where an equitable interest in land

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in England and Wales or Northern Ireland is or is also taken as security by virtue of this section, that constituted by that security or, as the case may be, the combined securities; and a reference to the land which is to secure an advance or on which an advance is secured is a reference to the estate or interest or the heritable security which constitutes or will constitute the basic security.

- (3) The power to make an advance secured on land includes power, subject to the restriction imposed by subsection (4) below, to make, as a separate advance, an advance which is to be applied in or towards payment of the deposit for the purchase of the land (in this Part referred to as “an advance for a deposit for the purchase of land.”)
- (4) The restriction referred to is that an advance for a deposit for the purchase of land must not exceed 10 per cent. of the total amount to be paid for the purchase of the land.
- <sup>F84</sup> [The power to make an advance secured on land includes power to make an advance
- (4A) which is secured as mentioned in subsection (1) above by virtue of security granted otherwise than by the borrower (in this Act referred to as “an advance secured on third party land”)]
- (5) An advance shall be treated for the purposes of this Act as secured by a mortgage of a legal estate in registered land in England and Wales or Northern Ireland notwithstanding that the advance is made before the [<sup>F85</sup>mortgagor] is registered as proprietor of the estate.
- (6) A building society may advance money on the security of an equitable interest in land in England and Wales or Northern Ireland if the equitable interest is an equitable interest in land of a description and is created in circumstances prescribed in an order made by the Commission with the consent of the Treasury under this subsection and any conditions prescribed in the order are complied with.
- (7) Any powers conferred on building societies by an order under subsection (6) above may be conferred on building societies of a description specified in the order or all building societies other than those of a description so specified.
- (8) The power to make an order under subsection (6) above includes power—
  - (a) to prescribe the circumstances in which the power conferred by section 17(10) on building societies of the description specified therein is to be available to them; and
  - (b) to make such incidental, supplementary and transitional provision as the Commission considers necessary or expedient.
- (9) An instrument containing an order under subsection (6) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) The power to make advances secured on land includes power to make them on terms that include provision as respects the capital element in the mortgage debt (with or without similar provision as respects the interest element)—
  - (a) that the amount due to the society may be adjusted from time to time by reference to such public index of prices other than housing prices as is specified in the mortgage;
  - (b) that the amount due to the society may be adjusted from time to time by reference to such public index of housing prices as is specified in the mortgage;

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- (c) that the amount due to the society at any time shall be determined by reference to a share, specified or referred to in the mortgage, in the open market value of the property at that time;

and, in cases where the amount due to the society in respect of capital exceeds the amount advanced, references in this Act to the repayment of an advance include references to payment of the excess.

- (11) Advances secured on land shall be classified for the purposes of the requirements of this Part for the structure of commercial assets into—
- (a) class 1 advances, and
  - (b) class 2 advances;

and in this Act “advances fully secured on land” means advances which are class 1 or class 2 advances, and any reference to “fully secured” shall be construed accordingly.

- (12) Nothing in this section or section 11 or 12 is to be taken as precluding a society from taking other security for an advance secured on land than such security as is required for an advance to be a class 1 or class 2 advance under those sections; but the value of the other security shall be disregarded for the purpose of classifying the advance as a class 1 or class 2 advance.]

#### Textual Amendments

- F83** Pt. III (ss. 10-23) 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. 12(1)(a), 46(2), 47(3), **Sch. 9**; S.I. 1997/2668, art. 2, Sch. Pts. I(b), II(j)
- F84** S. 10(4A) inserted (3.1.1995) by 1994 c. 40, ss. 16(2), 82(2)(a)
- F85** Word in s. 10(5) substituted (3.1.1995) by 1994 c. 40, ss. 39, 82(2)(e), **Sch. 11 para. 7(2)**

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

- C21** S. 10 restricted (1. 7. 1992) by S.I. 1992/1547, arts. 5, 6, **Sch. 2**
- C22** S. 10 excluded by S.I. 1987/1498, art. 7, **Sch. 2 para. 1**

### [<sup>F86</sup>11 Class 1 and class 2 advances

- (1) The provisions of this section and section 12 define what is a class 1 advance and what is a class 2 advance for the purpose of the requirements of this Part for the structure of commercial assets and when an advance may, for those purposes, be treated partly as a class 1 advance and partly as a class 2 advance.
- (2) Class 1 advances are advances as to which the society when it makes the advance is satisfied that the advance is an advance secured on land and that—
- (a) the borrower is an individual;
  - (b) [<sup>F87</sup>where the advance is not an advance secured on third party land,]the land is for the residential use of the borrower or a dependant of his of a prescribed description;
- <sup>F88</sup>[ where the advance is an advance secured on third party land—
- (ba) (i) the borrower intends that the advance will be used for the purpose of acquiring land for the residential use of himself or a dependant of his of a prescribed description; and

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- (ii) the land on which the advance is secured is for the residential use of the mortgagor or a dependant of his of a prescribed description;]
  - (c) the amount advanced will not exceed the value of the basic security (after deducting from that value any [<sup>F89</sup>outstanding amount secured by a mortgage of the land in favour of the society]); and
  - (d) subject to subsection (5) below, no other mortgage of the land which is to secure the advance is outstanding in favour of a person other than the society;
- and which are not made on terms as respects the capital element of the mortgage debt authorised by section 10(10)(b) or (c).
- (3) Subject to any order made under section 12(1),
- [<sup>F90</sup>(a) the requirement in subsection (2)(b) above shall be treated as satisfied if no less than 40 per cent. of the area of the land is used for the residential purposes by the borrower or a dependant of his of a prescribed description;
  - [<sup>F91</sup>(b) the requirement in subsection (2)(ba)(i) above shall be treated as satisfied if the borrower intends that no less than 40 per cent. of the area of the land will be for the residential use of himself or a dependant of his of a prescribed description; and
  - (c) the requirement in subsection (2)(ba)(ii) above shall be treated as satisfied if no less than 40 per cent. of the area of the land is used for residential purposes by the mortgagor or a dependant of his of a prescribed description.]
- (4) Class 2 advances are advances as to which the society when it makes the advance—
- (a) either is not satisfied that the requirements for the time being of subsection (2) above are fulfilled or is satisfied that any of them is not fulfilled, but
  - (b) is satisfied that the advance is an advance secured on land, and
  - (c) is satisfied, where the amount advanced will exceed the value of the basic security (after deducting from that value any [<sup>F92</sup>outstanding amount secured by a mortgage of the land]), that the excess will be secured by the taking of security of a prescribed description in addition to the basic security, and
  - (d) is satisfied that no, or no more than one, other mortgage of the land which is to secure the advance is outstanding in favour of a person other than the society.
- (5) The requirement in subsection (2)(d) and (4)(d) above shall be treated as satisfied if the advance is made on terms that the other mortgage is redeemed or postponed to the basic security.
- (6) An advance for a deposit for the purchase of land is also a class 1 or class 2 advance according as it is made with a view to the making of a class 1 or class 2 advance secured on the land.
- (7) Advances which would be class 2, and not class 1, advances by reason only that the extent of the residential use of the land is not such as to satisfy the requirement in subsection (2)(b) [<sup>F93</sup>or (2)(ba)(i) or (ii)] above shall be treated as class 1 advances if and to the extent prescribed by an order under section 12(5).
- (8) For the purposes of the requirements of this Part for the structure of commercial assets—
- (a) class 1 advances constitute class 1 assets, and
  - (b) class 2 advances constitute class 2 assets,

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and accordingly the aggregate amount of mortgage debts outstanding in respect of class 2 advances counts in accordance with section 20 towards the limit applicable to class 2 assets under that section.

- (9) For the purposes of subsections (2) and (4) above, where a building society makes an advance by instalments, any reference to the time when the society makes the advance is a reference to the time when it pays the first of the instalments, disregarding for this purpose any instalment which is to be applied towards payment of the deposit in respect of the purchase of the land which is to secure the advance.
- (10) Subject to subsection (11) below, any land to which a building society becomes absolutely entitled by foreclosure or by release or other extinguishment of a right of redemption—
- (a) shall as soon as may be conveniently practicable be sold or converted into money; and
  - (b) shall, until the sale or conversion, constitute a class 1 asset if the advance secured on the land was a class 1 advance and a class 2 asset if it was a class 2 advance.
- (11) Where a building society which has for the time being adopted the powers conferred by section 17 becomes entitled to land as mentioned in subsection (10) above, and the land is land that may be held under that section, then, if the society—
- (a) elects to hold the land under that section, or
  - (b) without such an election, retains the land after the expiry of the period of twelve months immediately following the date on which it so becomes entitled to the land.
- the society shall be taken to hold the land under that section.
- (12) An election under subsection (11) above shall be made by resolution of the board of directors and shall be irrevocable.
- (13) If a building society contravenes subsection (10) above the society shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale and so shall any officer who is also guilty of the offence.
- (14) For the purposes of this Act, the mortgage debt at any time, in relation to an advance secured on land, is the total amount outstanding at that time in respect of—
- (a) the principal of the advance;
  - (b) interest on the advance; and
  - (c) any other sum which the borrower is obliged to pay the society under the terms of the advance.
- (15) The reference in subsection (10) above to land to which a building society becomes absolutely entitled by foreclosure includes a reference to land which a building society has acquired by virtue of a decree of foreclosure under section 28 of the <sup>M4</sup>Conveyancing and Feudal Reform (Scotland) Act 1970.]

#### Textual Amendments

- F86** Pt. III (ss. 10-23) 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. 12(1)(a), 46(2), 47(3), **Sch. 9**; S.I. 1997/2668, art. 2, **Sch. Pts. I(b), II(j)**



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- F87** Words in s. 11(2)(b) inserted (3.1.1995) by 1994 c. 40, **ss. 16(3)(a)**, 82(2)(a)  
**F88** S. 11(2)(ba) inserted (3.1.1995) by 1994 c. 40, **ss. 16(3)(b)**, 82(2)(a)  
**F89** Words in s. 11(2)(c) substituted (3.1.1995) by 1994 c. 40, **ss. 16(3)(c)**, 82(2)(a)  
**F90** Words in s. 11(3) renumbered as s. 11(3)(a) (3.1.1995) by 1994 c. 40, **ss. 16(4)**, 82(2)(a)  
**F91** S. 11(3)(b)(c) inserted (3.1.1995) by 1994 c. 40, **ss. 16(4)**, 82(2)(a)  
**F92** Words in s. 11(4)(c) substituted (3.1.1995) by 1994 c. 40, **ss. 16(5)**, 82(2)(a)  
**F93** Words in s. 11(7) inserted (3.1.1995) by 1994 c. 40, **ss. 39**, 82(2)(e), **Sch. 11 para. 7(3)**

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

- C23** S. 11(1)(2)(4)–(7)(9)–(13)(15) excluded by **S.I. 1987/1498**, art. 7, **Sch. 2 para. 2**  
**C24** S. 11(1)–(7), (9)–(13)(15) restricted (1. 7. 1992) by **S.I. 1992/1547**, arts. 5, 6, **Sch. 2**  
**C25** S. 11(2)(b) extended by **S.I. 1986/2169**, **art. 5(2)**  
**C26** S. 11(3) excluded by **S.I. 1986/2169**, **art. 5(2)** and by **S.I. 1987/1498**, art. 7, **Sch. 2 para. 2**

#### **Marginal Citations**

- M4** 1970 c. 35.

### **[<sup>F94</sup>12 Class 1 and class 2 advances: supplementary provisions.**

- (1) The Commission, by order in a statutory instrument, may as respects class 1 advances—
- (a) specify the circumstances in which land is for a person’s residential use,
  - (b) specify who are to be a person’s dependants, and
  - (c) make such other incidental and supplementary and such transitional provision as the Commission considers necessary or expedient,
- for the purposes of section 11(2); and in that subsection “prescribed” means prescribed in an order under this subsection.
- (2) Without prejudice to the generality of subsection (1)(c) above, an order may prescribe evidence on which a building society is to be entitled to be satisfied (in the absence of evidence to the contrary) that the requirements of section 11(2) are fulfilled as respects an advance secured on land.
- (3) The Commission, by order in a statutory instrument, may as respects class 2 advances—
- (a) specify descriptions of security falling within this subsection which, for the purposes of paragraph (c) of section 11(4), may be taken for class 2 advances in addition to the basic security; and
  - (b) make such other incidental or supplementary and such transitional provision as it considers necessary or expedient for the purposes of paragraph (c) or (d) of that subsection;
- and in that subsection “prescribed” means prescribed in an order under this subsection.
- (4) The descriptions of additional security which fall within subsection (3)(a) above are guarantees, indemnities or other contractual promises made by virtue of, or by a public body established by or under, any enactment for the time being in force.
- (5) The Commission, by order in a statutory instrument, may, as respects advances to be secured on land which is to any extent to be used for the residential use of borrowers or persons who are dependants of theirs for the purposes of section 11(2)—

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- (a) require so much of the amount to be advanced as is determined by or under the order to be treated as a class 1 advance;
- (b) specify the circumstances in which and the conditions subject to which advances are to be so treated; and
- (c) make such incidental, supplementary and transitional provision as the Commission considers necessary or expedient.

<sup>F95</sup> [ Subsection (5) above shall also apply as respects advances secured on third party land (5A) which is to any extent used for the residential use of mortgagors or persons who are dependants of theirs for the purposes of section 11(2).]

- (6) The Commission shall not make an order under this section, except with the consent of the Treasury.
- (7) An instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) For the purpose of facilitating the repayment to a building society of a class 1 advance or a class 2 advance, the society may make to the borrower, by way of addition to the advance, a further advance of or towards the cost of a single premium payable in respect of an appropriate policy of life assurance; and a sum added to an advance under this subsection shall be treated as not forming part of the advance for the purpose of determining whether the requirements of section 11(2) or (4) are satisfied with respect to the advance.
- (9) Where an advance secured on land in England and Wales or Northern Ireland is made, then, for the purpose of determining whether the land is subject to a prior mortgage for the purposes of section 11(2)(d) or (4)(d) above, any outstanding charge over the land which is registered—
  - (a) in the case of land in England and Wales, in the appropriate local land charges register, and
  - (b) in the case of land in Northern Ireland, in the statutory charges register under section 87 of, and Schedule 11 to, the <sup>M5</sup>Land Registration Act (Northern Ireland) 1970,

shall be disregarded.

- (10) If at any time when a class 1 advance or a class 2 advance secured on land is outstanding the building society—
  - (a) is satisfied on a revaluation that the value of the basic security has changed,
  - (b) is satisfied that so much of the mortgage debt as represents the principal of the advance has changed,
  - (c) [<sup>F96</sup> in the case of an advance which is not an advance secured on third party land] is satisfied on notice given to it by the borrower that there has been a change in the use of the land,
- <sup>F97</sup> [ in the case of an advance which is an advance secured on third party land—
  - (ca) (i) is satisfied on notice given to it by the borrower that there has been a change in the use of the land acquired with the advance, or
  - (ii) is satisfied on notice given to it by the mortgagor that there has been a change in the use of the land on which the advance is secured, or]
  - (d) agrees to a change in the relative priority of the mortgage on which the advance is secured,

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and is satisfied that the change is such that, if it were to make an advance equal to the mortgage debt at that time, the advance would instead be a class 2 advance or a class 1 advance, as the case may be, the advance shall be reclassified as from that time.

- (11) Nothing in subsection (10) above requires a building society to revalue its securities from time to time.
- (12) Every building society shall establish and maintain a system to ensure the safe custody of all documents relating to property mortgaged to the society.
- (13) In this section “appropriate policy of life assurance”, with reference to an advance, means a policy of insurance which satisfies the following requirements, that is to say—
- (a) the life assured is that of the person to whom the advance is made or his spouse, his son or his daughter, and
  - (b) it provides, in the event of the death, before the advance has been repaid, of the person on whose life the policy is effected, for payment of a sum not exceeding the amount sufficient to defray the sums which are, at and after the time of the death, payable to the society in respect of the advance and any addition made in respect of the premium.]

#### Textual Amendments

- F94** Pt. III (ss. 10-23) 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. 12(1)(a), 46(2), 47(3), **Sch. 9**; S.I. 1997/2668, art. 2, Sch. Pts. I(b), II(j)
- F95** S. 12(5A) inserted (3.1.1995) by 1994 c. 40, ss. 16(6), 82(2)(a)
- F96** Words in s. 12(10)(c) inserted (3.1.1995) by 1994 c. 40, ss. 16(7)(a), 82(2)(a)
- F97** S. 12(1)(ca) substituted for word in s. 12(1)(c) (3.1.1995) by 1994 c. 40, ss. 16(7)(b), 82(2)(a)

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

- C27** S. 12(1)–(11)(13) excluded by S.I. 1987/1498, art. 7, **Sch. 2 para. 3**
- C28** S. 12(1)–(11)(13) restricted (1. 7. 1992) by S.I. 1992/1547, arts. 5, 6, **Sch. 2**
- C29** S. 12(12) excluded (*temp*) by S.I. 1986/2168, art. 12(2)(a)
- C30** S. 12(12) excluded by S.I. 1986/2168, art. 12(1)(a)

#### Marginal Citations

- M5** 1970 c. 18 (N.I.)

### [<sup>F98</sup>13 Security for advances: valuation and supplementary and related provisions.

- (1) It shall be the duty of every director of a building society to satisfy himself that the arrangements made for assessing the adequacy of the security for any advance to be fully secured on land which is to be made by the society are such as may reasonably be expected to ensure that—
- (a) an assessment will be made on the occasion of each advance whether or not any previous assessment was made with a view to further advances or re-advances;
  - (b) each assessment will be made by a person holding office in or employed by the society who is competent to make the assessment and is not disqualified under this section from making it;

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- (c) each person making the assessment will have furnished to him a written report on the value of the land and any factors likely materially to affect its value made by a person who is competent to value, and is not disqualified under this section from making a report on, the land in question;

but the arrangements need not require each report to be made with a view to a particular assessment so long as it is adequate for the purpose of making the assessment.

- (2) In relation to any land which is to secure an advance, the following persons are disqualified from making a report on its value, that is to say—

- (a) the directors and any other officer or employee of the society who makes assessments of the adequacy of securities for advances secured on land or who authorises the making of such advances;
- (b) where the society has made, or undertaken to make, to any person a payment for introducing to it an applicant for the advance, that person;
- (c) where the advance is to be made following a disposition of the land, any person having a financial interest in the disposition of the land and any director, other officer or employee of his or of an associated employer;<sup>F99</sup> . . .
- (d) where the advance is to be made following a disposition of the land, any person receiving a commission for introducing the parties to the transaction involving the disposition and any director, other officer or employee of his.
- <sup>F100</sup> (e) where the advance is to be made in connection with a disposition of other land to the borrower, any person having a financial interest in the disposition of the other land and any director, other officer or employee of his or of an associated employer; and
- (f) where the advance is to be made in connection with a disposition of other land to the borrower, any person receiving a commission for introducing the parties to the transaction involving the disposition and any director, other officer or employee of his.]

- (3) In relation to any land which is to secure an advance where the advance is to be made following a disposition of the land [<sup>F101</sup> or in connection with a disposition of other land to the borrower], the following persons are disqualified from making an assessment of the security or authorising the making of the advance, that is to say—

- (a) any person, other than the building society making the advance, having a financial interest in the disposition<sup>F102</sup> . . . and any director, other officer or employee of his or of an associated employer; and
- (b) any person receiving a commission for introducing the parties to the transaction involving the disposition and any director, other officer or employee of his.

- (4) Any person who, being disqualified from doing so—

- (a) makes a report on any land which is to secure an advance,
- (b) makes an assessment of the adequacy of the security for an advance, or
- (c) authorises the making of an advance,

and in the case of a person making a report does so knowing or having reason to believe that the report will be used or is likely to be used for the purposes of the advance, shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

- (5) For the purposes of this section, any two employers are associated if one is a body corporate of which the other (directly or indirectly) has control or if both are bodies

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corporate of which a third person directly or indirectly has control; and the expression “associated employer” shall be construed accordingly.

- (6) In this section “commission” includes any gift, bonus or benefit and, for its purposes, a person shall be taken to have a financial interest in the disposition of any land if, but only if, he would, on a disposition of that land, be entitled (whether directly or indirectly, and whether in possession or not) to the whole or part of the proceeds of the disposition.

<sup>F98</sup>(7) . . . . .]

**Textual Amendments**

- F98** Pt. III (ss. 10-23) 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. 12(1)(a), 46(2), 47(3), **Sch. 9**; S.I. 1997/2668, art. 2, Sch. Pts. I(b)(o)(i), **II(j)**
- F99** Word immediately preceding s. 13(2)(d) repealed (3.1.1995) by 1994 c. 40, ss. 81, 82(2)(g), **Sch. 17**
- F100** S. 13(2)(e)(f) inserted (3.1.1995) by 1994 c. 40, ss. 39, 82(2)(e), **Sch. 11 para. 7(4)**
- F101** Words in s. 13(3) inserted (3.1.1995) by 1994 c. 40, ss. 39, 82(2)(e), **Sch. 11 para. 7(5)(a)**
- F102** Words in s. 13(3)(a) repealed (3.1.1995) by 1994 c. 40, ss. 39, 81, 82(2)(e)(g), Sch. 11 para. 7(5)(b), **Sch. 17**

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

- C31** S. 13 modified by S.I. 1986/2169, **art. 6**
- C32** S. 13(7) excluded by S.I. 1987/1498, art. 7, **Sch. 2 para. 4**
- C33** S. 13(7) restricted (1. 7. 1992) by S.I. 1992/1547, arts. 5, 6, **Sch. 2**

*Other advances secured on land*

**[<sup>F103</sup>14 Power to make advances secured on land overseas.**

- (1) The appropriate authority may, with a view to conferring on building societies or building societies of particular descriptions powers to make advances to members secured on land outside the United Kingdom corresponding to the powers to make advances secured on land within the United Kingdom, by order—
- (a) designate countries or territories outside the United Kingdom as countries or territories as respects which advances under this section may be made secured on the land;
  - (b) specify, or provide for the specification by direction of the Commission under the order of, the forms of security on land which may be taken for advances under this section, in any prescribed circumstances and subject to any prescribed conditions;
  - (c) determine, or provide for the determination under the order of, the classification of the advances (and accordingly of the mortgage debts) as class 1 advances or class 2 advances for the purposes of the requirements of this Part for the structure of commercial assets;
  - (d) provide for the application of the provisions of this Part applicable to advances secured on land to advances under this section with such modifications as appear to be appropriate;

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- (e) provide for any other provisions of this Act to have effect in relation to advances under this section with such modifications as appear to be appropriate; and
  - (f) make such incidental, supplemental or transitional provision as appears to be necessary or expedient.
- (2) Any powers conferred on building societies under this section may be conferred on building societies of a specified description or all building societies other than those of a specified description.
- (3) Where, by virtue of an order under subsection (1) above, advances are made by a building society on the security of land outside the United Kingdom, the aggregate amount of mortgage debts outstanding in respect of such of those advances as are class 2 advances under the order shall count in accordance with section 20 towards the limit applicable to class 2 assets under that section.
- (4) Subsection (3) above is subject to any provision contained in the order.
- (5) The “appropriate authority” for making an order under subsection (1) above is—
  - (a) as regards the relevant British overseas territories, the Commission acting with the consent of the Treasury, and
  - (b) as regards other countries or territories, the Treasury.
- (6) An order under this section made as regards any of the relevant British overseas territories may make all or any of the powers conferred thereby exercisable by building societies without the need for adoption, but, in the absence of such a provision any power conferred under this section must, in order to be exercisable by a building society, be adopted by the society.
- (7) The power to make an order under subsection (1) above is exercisable by statutory instrument and, as regards the procedure applicable to such an order,—
  - (a) if the instrument designates other countries or territories than any of the relevant British overseas territories, the order shall not be made unless a draft of it has been laid before and approved by resolution of each House of Parliament, and
  - (b) if the instrument designates any relevant British overseas territory and no other country or territory, the instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) In this section—
  - “relevant British overseas territories” means the Channel Islands, the Isle of Man and Gibraltar;
  - “security on land” includes any right or power in or over land to secure the payment of a debt and “secured on land” has a corresponding meaning;
  - “specified” means specified in an order under subsection (1) above;and any reference to a provision of this Part is a reference to that provision as applied to advances under this section.]

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#### Textual Amendments

**F103** Pt. III (ss. 10-23) 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. 12(1)(a), 46(2), 47(3), **Sch. 9**; S.I. 1997/2668, art. 2, Sch. Pts. I(b), **II(j)**

#### <sup>F104</sup><sup>F105</sup> **14A Power to participate in secured syndicated lending.**

- (1) Subject to subsection (2) below, a building society may participate in syndicated lending—
  - (a) as a member of the lending syndicate, or
  - (b) as a person whose rights as a participant arise under an arrangement with a member of the lending syndicate (“a sub-participant”).
- (2) Subsection (1) above only applies if—
  - (a) the syndicated lending is appropriately secured, and
  - (b) where the society’s participation is as a sub-participant, the society’s rights as such a participant are appropriately secured.
- (3) The Commission may, with the consent of the Treasury, by order—
  - (a) make provision with respect to what constitutes appropriate security for the purposes of subsection (2)(a) or (b) above;
  - (b) make provision with respect to the classification, for the purposes of the requirements of this Part for the structure of commercial assets, of a society’s participation under this section in syndicated lending; and
  - (c) provide for the application of the provisions of this Part, with such modifications as appear to the Commission to be appropriate, to a society’s participation under this section in syndicated lending.
- (4) The power conferred by subsection (3) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) A building society may only exercise the power conferred by this section if it has adopted it.]

#### Textual Amendments

**F104** Pt. III (ss. 10-23) 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. 12(1)(a), 46(2), 47(3), **Sch. 9**; S.I. 1997/2668, art. 2, Sch. Pts. I(b), **II(j)**

**F105** S. 14A inserted (3.1.1995) by 1994 c. 40, ss. 17(1), 82(2)(a)

#### *Other commercial assets*

#### <sup>F106</sup> **15 Loans for mobile homes.**

- (1) Subject to the provisions of this section, a building society may make mobile home loans to individuals, whether or not they are members of the society.



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- (2) A mobile home loan is a loan made for the purchase of a mobile home and secured by such security as the Commission may, with the consent of the Treasury, prescribe by order in a statutory instrument.
- (3) No such loan shall be made unless the building society, when it makes the loan, is satisfied that—
  - (a) the borrower or a dependant of his of a prescribed description is or will be entitled under an agreement to which the <sup>M6</sup>Mobile Homes Act 1983 applies to station the mobile home on land forming part of a protected site;
  - (b) the mobile home is for the residential use of the borrower or a dependent of his of a prescribed description;
  - (c) the amount lent will not exceed the amount likely to be realised on a sale of the mobile home on the open market; and
  - (d) subject to subsection (4) below, no other security prescribed under subsection (2) above which is to secure the loan is outstanding in favour of a person other than the society.
- (4) The requirement in subsection (3)(d) above shall be treated as satisfied if the loan is made on terms that the other loan is redeemed or postponed to it.
- (5) A building society shall not make a mobile home loan to an individual if the principal exceeds—
  - (a) the limit for the time being imposed by or under subsection (7) below; or
  - (b) the balance remaining after deducting from that limit the aggregate of any other sums outstanding in respect of loans made under this section or section 16 by the society to that individual [<sup>F107</sup>and any facility limits agreed for the time being between the society and that individual][<sup>F108</sup>and also the cost of leasable chattels bailed under any current leasing agreement between the society and that individual];and if two or more loans under this section or this section and section 16 are made simultaneously by the society to the same individual they shall be treated for the purposes of this subsection as a single loan of an amount equal to the aggregate of the principal of each of those loans.
- (6) Joint borrowers under this section shall be treated, for the purpose of the limit on loans under this section, as a single individual and any sums outstanding in respect of loans made under this section or section 16 by the society to any one of the joint borrowers [<sup>F109</sup>and also the cost of leasable chattels bailed under any current leasing agreement between the society and any one of the joint borrowers are] to be taken into account in determining the balance available for any further loan to him or to him and any joint borrower with him [<sup>F110</sup>, and so is any facility limit which is agreed for the time being between the society and any one of the joint borrowers].
- (7) The limit on loans to any one individual under this section is £10,000 or such sum as the Commission may, with the consent of the Treasury, specify by order in a statutory instrument.
- (8) Loans under this section constitute class 3 assets for the purposes of the requirements of this Part for the structure of commercial assets and accordingly the aggregate of the amounts outstanding in respect of—
  - (a) the principal of loans under this section,
  - (b) the interest on those loans, and

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- (c) any other sums which borrowers are obliged to pay the society under the terms of those loans,  
 counts in accordance with section 20 towards the limits applicable to class 3 assets under that section.
- (9) The power conferred by this section is not available to a building society which does not for the time being have a qualifying asset holding, but the cessation of its availability does not require the disposal of any property or rights.
- (10) The power conferred by this section on a building society, if available to it, must in order to be exercisable, be adopted by the society.
- (11) An instrument containing an order under subsection (2) or (7) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (12) In this section—
- [<sup>F111</sup>“facility limit” has the meaning which it has for the purposes of the Building Societies (Limited Credit Facilities) Order 1987;]
- [<sup>F112</sup>“leasable chattels”, “bailed” and “leasing agreement” have the meanings which they respectively bear in Part III of Schedule 1 to the Building Societies (Commercial Assets and Services) Order 1988 and “cost”, in respect of any leasable chattel bailed by a building society, means the price at which it was acquired by the society;]
- “mobile home” has the same meaning as “caravan” in Part I of the <sup>M7</sup>Caravan Sites and Control of Development Act 1960;
- “prescribed”, in relation to descriptions of dependants of borrowers, means such as are for the time being prescribed in an order under section 12(1) as respects class 1 advances; and
- “protected site” has the same meaning as in the <sup>M8</sup>Mobile Homes Act 1983.]

#### Textual Amendments

- F106** Pt. III (ss. 10-23) 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. 12(1)(a), 46(2), 47(3), **Sch. 9**; S.I. 1997/2668, art. 2, Sch. Pts. I(b), **II(j)**
- F107** Words inserted by S.I. 1987/1975, art. 8(1), **Sch. 1 para. 1**
- F108** Words inserted by S.I. 1988/1141, art. 4(1), **Sch. 2 para. 1**
- F109** Words substituted by S.I. 1988/1141, art. 4(1), **Sch. 2 para. 2**
- F110** Words inserted by S.I. 1987/1975, art. 8(1), **Sch. 1 para. 2**
- F111** Definition inserted by S.I. 1987/1975, art. 8(1), **Sch. 1 para. 3**
- F112** Definitions inserted by S.I. 1988/1141, art. 4(1), **Sch. 2 para. 3**

#### Marginal Citations

- M6** 1983 c. 34
- M7** 1960 c. 62
- M8** 1983 c. 34.

#### [<sup>F113</sup>16 Power to lend to individuals otherwise than by class 1 or class 2 advances etc.

- (1) Subject to the provisions of this section, a building society may, with or without security and whether or not at interest, lend money to individuals, whether or not they are members of the society.

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- (2) Advances fully secured on land do not constitute loans under this section except that an advance for a deposit for the purchase of land shall, if the purchase is not completed within the period of six months beginning with the date of the advance, be treated after the end of that period as a loan under this section and shall accordingly cease to be a class 1 or class 2 advance.
- (3) Mobile home loans do not constitute loans under this section [<sup>F114</sup>and neither do bridging loans made under Part IV of Schedule 1 to the Building Societies (Commercial Assets and Services) Order 1988].
- (4) The power to lend money under this section includes power, as regards members of and depositors with the society, to lend on overdraft on such terms as the society thinks fit.
- (5) Subject to subsection (9) below a building society shall not make a loan to an individual under this section if the principal exceeds—
  - (a) the limit for the time being imposed by or under subsection (8) below; or
  - (b) the balance remaining after deducting from that limit the aggregate of any other sums outstanding in respect of loans made under this section by the society to that individual [<sup>F115</sup>and any facility limits agreed for the time being between the society and that individual][<sup>F116</sup>and also the cost of leasable chattels bailed under any current leasing agreement between the society and that individual];

and if two or more loans under this section or this section and section 15 are made simultaneously by the society to the same individual they shall be treated for the purposes of this subsection as, in the case of loans under this section, a single loan of an amount equal to the aggregate of the principal of each of those loans and, in the case of loans under this section and section 15, as made on different occasions such that loans under section precede those made under that section.

- (6) Subsection (5) above shall have effect (subject to subsection (9) below) in a case where a building society has made a loan under section 15 as if it precluded a building society from making a loan to an individual under this section if the principal exceeds—
  - (a) the limit referred to in paragraph (a) of it; or
  - (b) the balance referred to in paragraph (b) of it; or
  - (c) the balance remaining after deducting from the limit imposed by or under subsection (7) of that section the aggregate of any sums outstanding in respect of loans made under that section and under this section by the society to that individual [<sup>F117</sup>and any facility limits agreed for the time being between the society and that individual][<sup>F118</sup>and also the cost of leasable chattels bailed under any current leasing agreement between the society and that individual].
- (7) Joint borrowers under this section shall be treated, for the purpose of the limit on loans under this section, as a single individual and any sums outstanding in respect of loans made under this section or section 15 by the society to any one of the joint borrowers [<sup>F119</sup>and also the cost of leasable chattels bailed under any current leasing agreement between the society and any one of the joint borrowers are] to be taken into account in determining the balance available for any further loan to him or to him and any joint borrower with him [<sup>F120</sup>, and so is any facility limit which is agreed for the time being between the society and any one of the joint borrowers].
- (8) The limit on loans to any one individual under this section is £5,000 or such other sum as the Commission may, with the consent of the Treasury, specify by order in a statutory instrument.

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- (9) The limit on loans to any one individual under this section does not apply to an advance for a deposit for the purchase of land which has come to be treated as a loan under this section and accordingly no account shall be taken of it for the purposes of subsection (5) above.
- (10) An order under subsection (8) above may specify different sums as the limit in relation to individuals in different circumstances.
- (11) Loans under this section constitute class 3 assets for the purposes of the requirements of this Part for the structure of commercial assets and accordingly the aggregate of the amounts outstanding in respect of—
- (a) the principal of loans under this section,
  - (b) the interest on those loans, and
  - (c) any other sums which borrowers are obliged to pay the society under the terms of those loans,
- counts in accordance with section 20 towards the limits applicable to class 3 assets under that section.
- (12) The power conferred by this section is not available to a building society which does not for the time being have a qualifying asset holding, but the cessation of its availability does not require the disposal of any property or rights.
- (13) The powers conferred by this section on a building society, if available to it, must, in order to be exercisable, be adopted by the society.
- (14) An instrument containing an order under subsection (8) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (15) If at any time when a loan under this section which is secured by a mortgage of any land is outstanding, the building society is satisfied—
- (a) on a revaluation, that the value of the security has changed,
  - (b) [<sup>F121</sup>where the mortgage is granted by the borrower,] on notice given to it by the borrower that there has been a change in the use of the land,
  - <sup>F122</sup>[ where the mortgage is granted otherwise than by the borrower and the loan
  - (c) has been used to purchase land—
    - (i) on notice given to it by the borrower that there has been a change in the use of the land purchased, or
    - (ii) on notice given to it by the mortgagor that there has been a change in the use of the mortgaged land, or
  - (d) on notice given to it—
    - (i) where the mortgage is granted by the borrower, by him, and
    - (ii) where the mortgage is granted otherwise than by the borrower, by the mortgagor,]

that there has been a change in the relative priority of the mortgage and that the change is such that, if it were to make a loan equal to the mortgage debt at that time and on that security, the loan would be a class 1 advance or, as the case may be, a class 2 advance, then the outstanding loan shall be reclassified as from that time.

- (16) Nothing in subsection (15) above requires a building society to revalue its securities from time to time.

[ In this section—

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- <sup>F123</sup>(17) “facility limit” has the meaning which it bears in the Building Societies (Limited Credit Facilities) Order 1987; and
- “leasable chattels”, “bailed” and “leasing agreement” have the meanings which they respectively bear in Part III of Schedule 1 to the Building Societies (Commercial Assets and Services) Order 1988 and “cost”, in respect of any leasable chattel bailed by a building society, means the price at which it was acquired by the society.]]

#### Textual Amendments

- F113** Pt. III (ss. 10-23) 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. 12(1)(a), 46(2), 47(3), **Sch. 9**; S.I. 1997/2668, art. 2, Sch. Pts. I(b), **II(j)**
- F114** Words inserted by S.I. 1988/1141, art. 4(2), **Sch. 3 para. 1**
- F115** Words inserted by S.I. 1987/1975, art. 8(2), **Sch. 2 para. 1**
- F116** Words inserted by S.I. 1988/1141, art. 4(2), **Sch. 3 para. 2**
- F117** Words inserted by S.I. 1987/1975, art. 8(2), **Sch. 2 para. 2**
- F118** Words inserted by S.I. 1988/1141, art. 4(2), **Sch. 3 para. 3**
- F119** Words substituted by S.I. 1988/1141, art. 4(2), **Sch. 3 para. 4**
- F120** Words inserted by S.I. 1987/1975, art. 8(2), **Sch. 2 para. 3**
- F121** Words in s. 16(15)(b) inserted (3.1.1995) by 1994 c. 40, **ss. 16(8)(a)**, 82(2)(a)
- F122** S. 16(15)(c)(d) substituted for words in s. 16(15) (3.1.1995) by 1994 c. 40, **ss. 16(8)(b)**, 82(2)(a)
- F123** S. 16(17) added by S.I. 1987/1975, art. 8(2), **Sch. 2 para. 4** and substituted by S.I. 1988/1141, art. 4(2), **Sch. 3 para. 5**

#### [<sup>F124</sup>17 Power to hold and develop land as commercial asset.

- (1) Subject to subsections (2), (9) and (11) below, a building society may acquire, hold and dispose of land in the United Kingdom for purposes other than those for which it may acquire, hold or dispose of land under section 6 or 10.
- (2) Land may not be acquired or held or disposed of by way of lease under this section except where the land is or is to be used—
  - (a) primarily for residential purposes, or
  - (b) for purposes incidental to the use of adjoining land held or to be held by the society which is or is to be used primarily for residential purposes.
- (3) A building society may develop or participate in developing for use for residential purposes or purposes connected with the residential use of land any land it holds under this section.
- (4) If land acquired under this section ceases to be used for the purposes authorised by subsection (2) above the society shall sell its estate or interest in the land as soon as it is conveniently practicable without undue loss to the society.
- (5) Land held under this section constitutes a class 3 asset for the purposes of the requirements of this Part for the structure of commercial assets and accordingly the aggregate value of all land so held counts in accordance with section 20 towards the limits applicable to class 3 assets under that section.
- (6) Premises held under section 6, by virtue of subsection (5) of that section, shall, in prescribed circumstances, be treated in their entirety (and regardless of their use) as

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land held under this section for the purposes of the requirements of this Part for the structure of commercial assets and subsection (5) above applies accordingly.

- (7) The Commission, with the consent of the Treasury, may by order made by statutory instrument make such provision for the purposes of subsection (6) above as it thinks fit and in that subsection “prescribed” means prescribed in an order under this subsection.
- (8) An instrument containing an order under subsection (7) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) Except as provided in subsection (10) below, the powers conferred by this section are not available to a building society which does not for the time being have a qualifying asset holding, but the cessation of their availability does not require the disposal of any property or rights.
- (10) A building society which does not for the time being have a qualifying asset holding may acquire, hold and dispose of land which is or is to be used for residential purposes if the purpose of the acquisition and holding of the land is to enable the society to make advances on the security of equitable interests in the land in the circumstances authorised by an order under section 10(6).
- (11) The powers conferred by this section on a building society, if available to it, must in order to be exercisable, be adopted by the society.]

#### **Textual Amendments**

**F124** Pt. III (ss. 10-23) 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. 12(1)(a), 46(2), 47(3), **Sch. 9**; S.I. 1997/2668, art. 2, Sch. Pts. I(b), II(j)

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

**C34** S. 17 extended by S.I. 1987/1942, **art. 3**

**C35** S. 17(10) excluded by S.I. 1986/2099, **art. 8**

### <sup>F125</sup>**[18 Power to invest in subsidiaries and other associated bodies.**

- (1) Subject to the following provisions of this section, a building society may—
  - (a) acquire and hold shares or corresponding membership rights in bodies corporate and form or take part in forming bodies corporate, and
  - (b) provide bodies corporate in which it holds shares or such rights or to which it is, for the purpose of any power under this section, linked by resolution with any of the following supporting services—
    - (i) loans of money, with or without security and whether or not at interest,
    - (ii) grants of money, whether or not repayable,
    - (iii) guarantees of the discharge of their liabilities, and
    - (iv) the use of services or property, whether or not for payment;

and in this section “invest” means the exercise of any of the powers conferred by paragraph (a) and “support” means the exercise of any of the powers conferred by paragraph (b) above.

- (2) A building society may invest in or support the following bodies corporate (referred to as “qualifying bodies”) but no others, that is to say—

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- (a) companies or industrial and provident societies;
  - (b) bodies formed in another member State for the purpose of carrying on in another member State businesses which consist wholly or mainly in lending money on the security of land and do not (where that is not the whole business) include lending on land in the United Kingdom (referred to as “corresponding European bodies”), and
  - (c) bodies corporate (whether or not falling within paragraph (a) or (b) above) designated as suitable for investment and support or for support for the purposes of this section by an order (referred to as “a designation order”) made by the Commission with the consent of the Treasury.
- (3) A designation order may—
- (a) designate a particular body or designate descriptions of bodies corporate,
  - (b) make different provision for different descriptions of building society,
  - (c) determine, or provide for the determination under the order of, the extent to which, the purposes for which, and the conditions subject to which, investment or support is permitted, and
  - (d) make such transitional and consequential provision as the Commission considers necessary or expedient.
- (4) Subject to subsection (5) below, a building society shall not invest in or support a qualifying body so as to enable that body on its own account, in the United Kingdom, to—
- (a) lend money to members of the public on the security of land by loans corresponding to advances secured on land,
  - (b) accept deposits of money otherwise than in such circumstances that their acceptance would not constitute its business a deposit-taking business or in the course of or for the purposes of providing a service for the time being specified in Part I of Schedule 8 to this Act;
- but, subject to that, it may invest in or support a qualifying body so as to enable that body to carry on any activity which it is within the powers of the society to carry on, but, subject to subsection (5) below, no others.
- (5) In the case of a qualifying body designated, or included in a description of bodies designated, by a designation order a building society may also invest in or support it for such purposes as are permitted by or under the designation order.
- (6) Subject to subsection (7) and (8) below, a building society shall not invest in or support a qualifying body whose objects enable it—
- (a) to carry on activities which are outside the powers of the society,
  - (b) to invest in other bodies corporate, or
  - (c) to support other bodies corporate;
- but this does not imply that it is unlawful for the society to complete the performance of any contractual obligations lawfully incurred in providing a supporting service.
- (7) Subsection (6) above shall not operate so as to restrict a building society’s powers under this section in relation to a corresponding European body.
- (8) Subsection (6) above shall not prevent a building society from investing in or supporting a qualifying body—

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- (a) if that body is, in relation to the society, a designated body and the investment or support is made in accordance with the designation order,
- (b) if, not being a body whose objects enable it to carry on activities outside the powers of the society, the investment or support is made or given with the consent of the Commission and subject to any conditions specified in the instrument giving the consent, or
- (c) for a period of three months, pending the alteration of the objects of that body.

and that subsection shall not prevent a building society from investing in a qualifying body if the shares or corresponding membership rights in that body would, by virtue of an order under section 19, constitute class 3 assets in the hands of the society.]

- (9) For the purposes of any power conferred by this section a body corporate is “linked by resolution” to a building society if the board of directors of the society has passed a resolution making that power exercisable in relation to that body and the resolution is in force.
- (10) No power to invest in or support a corresponding European body is available to a building society which does not for the time being have a qualifying asset holding, but the cessation of its availability by virtue of this subsection does not require the disposal of any property or rights.
- (11) The powers conferred by this section on a building society, if available to it, must, in order to be exercisable, be adopted by the society and must be adopted in their entirety without any restriction except a restriction with reference to the description of body corporate in relation to which the powers to invest in or support are to be exercisable.
- (12) A building society whose board of directors has passed a resolution in pursuance of subsection (9) above shall send three copies of a record of the resolution signed by the secretary of the society to the central office and paragraph 4(3), (4) and (5) of Schedule 2 to this Act shall apply as it applies to a record of the alteration of a building society’s powers.
- (13) Where the board of directors of a building society passes a resolution rescinding a resolution passed in pursuance of subsection (9) above the society shall send three copies of a record of the rescinding resolution signed by the secretary of the society to the central office and paragraph 4(3), (4) and (5) of Schedule 2 to this Act shall apply as it applies to a record of the alteration of a building society’s powers, but subject to subsection (14) below.
- (14) No rescinding resolution shall be registered without the consent of the Commission.
- (15) Where, by virtue of this section, property is held by a building society the property shall constitute class 3 assets for the purposes of the requirements of this Part for the structure of commercial assets and “accordingly the aggregate value of the property shall count in accordance with section 20 towards the limits applicable to class 3 assets under that section.
- (16) The power to make an order under subsection (2)(c) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (17) In this section—

“company” means a company within the meaning of the <sup>M9</sup>Companies Act 1985 or the <sup>M10</sup>Companies (Northern Ireland) Order 1986;



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“corresponding membership rights”, in relation to a body corporate, means such rights (other than rights arising from the holding of shares) as are attributable to membership of the body;

“deposit” and “deposit-taking business” have the same meaning as in <sup>F126</sup>the Banking Act 1987];

“industrial and provident society” means a society registered under the <sup>M11</sup>Industrial and Provident Societies Act 1965 or, in Northern Ireland, the <sup>M12</sup>Industrial and Provident Societies Act (Northern Ireland) 1969;

“property” includes rights of any description;

and in this Act “associated body”, in relation to a building society, means a body as respects which any of the following conditions is satisfied, that is to say—

- (i) the body is one in which the society holds shares or corresponding membership rights, or
- (ii) the body is one to which the society is linked by resolution, or
- (iii) the body is one in which, by virtue of subsection (8)(b) above, shares or corresponding membership rights are held by a body which falls within (i) or (ii) above;

and “associated” shall be construed accordingly.

#### Textual Amendments

**F125** Pt. III (ss. 10-23) 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. 12(1)(a), 46(2), 47(3), **Sch. 9**; S.I. 1997/2668, art. 2, Sch. Pts. I(b), II(j)

**F126** Words substituted by **Banking Act 1987** (c. 22, SIF 10), s. 108(1), **Sch. 6 para. 26(1)**

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

**C36** S. 18 modified by S.I. 1987/1498, art. 7, **Sch. 2 para. 5**

**C37** S. 18 modified (1.7.1992) by S.I. 1992/1547, arts. 5, 6, **Sch. 2**

#### Marginal Citations

**M9** 1985 c. 6.

**M10** S.I. 1986/1032 (N.I. 6).

**M11** 1965 c. 12.

**M12** 1969 c. 24 (N.I.).

#### <sup>F127</sup>19 Power for Treasury to add powers to hold other descriptions of class 3 assets.

(1) The Treasury may, with a view to extending or altering, or extending to other descriptions of building societies, the forms of property which are to constitute class 3 assets in the hands of building societies or building societies of particular descriptions, by order—

- (a) specify forms of property which a building society is to have power to acquire, hold and dispose of as assets of that class, subject to any specified conditions or restrictions;
- (b) without prejudice to paragraph (a) above, specify descriptions of bodies corporate shares or other interests or rights in which a building society is to have power to acquire, hold and dispose of as assets of that class, subject to any specified conditions or restrictions;

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- (c) make any amendments of or repeals in this Act which are consequential on the exercise of its powers under paragraph (a) or (b) above;
  - (d) make such incidental, supplemental or transitional provision as it considers necessary or expedient.
- (2) The powers conferred by subsection (1) above may be exercised so as to apply in relation to property situated or bodies incorporated within the United Kingdom or any other member State or other country or territory and so as to be exercisable for purposes other than the purposes of building societies under the powers conferred on them for the time being by or under this Act.
- (3) Any powers conferred on building societies under this section may be conferred on building societies of a specified description or all building societies other than those of a specified description.
- (4) Any power conferred on a building society under this section, if available to it, must, in order to be exercisable, be adopted by the society.
- (5) Where, by virtue of an order under subsection (1)(a) or (b) above, property is held by a building society the property shall constitute class 3 assets for the purposes of the requirements of this Part for the structure of commercial assets and accordingly the aggregate value of the property, as determined in accordance with the order, shall count in accordance with section 20 towards the limits applicable to class 3 assets under that section.
- (6) Subsection (5) above is subject to any provision contained in the order.
- (7) The power to make an order under subsection (1) above is 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.
- (8) In this section—  
     “property” includes rights of any description; and  
     “specified” means specified in an order under subsection (1) above.]

#### **Textual Amendments**

**F127** Pt. III (ss. 10-23) 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. 12(1)(a), 46(2), 47(3), **Sch. 9**; S.I. 1997/2668, art. 2, Sch. Pts. I(b), **II(j)**

### *Commercial asset structure requirements*

#### **[<sup>F128</sup>20 Commercial asset structure requirements for building societies.**

- (1) The requirements for the structure of commercial assets applicable to building societies are the following.
- (2) The class 2 assets or, if it has class 3 assets, the aggregate of the class 2 and class 3 assets held by a building society at the end of a financial year shall not exceed whichever is the greater of—
- (a) 10 per cent. of the total commercial assets held by the society at that time, or

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- (b) an amount corresponding to that percentage of the total commercial assets held by the society at the end of the preceding financial year.
- (3) The class 3 assets (if any) held by a building society at the end of a financial year shall not exceed whichever is the greater of—
  - (a) 5 per cent. of the total commercial assets held by the society at that time, or
  - (b) an amount corresponding to that percentage of the total commercial assets held by the society at the end of the preceding financial year.
- (4) The Treasury may by order made by statutory instrument direct that subsection (2) or (3) above shall have effect during the currency of the order as if such percentage as is specified in the order were substituted for the percentage specified in that subsection, not being a percentage greater than 25 per cent. in the case of subsection (2) and 15 per cent. in the case of subsection (3) above.
- (5) An order under subsection (4) above may—
  - (a) divide class 3 assets into sub-classes for the purposes of the order by reference to the provision of or made under this Part from which they arise;
  - (b) subject to subsection (6) below, prescribe different limits for different sub-classes; and
  - (c) make such transitional provision as appears to the Treasury to be necessary or expedient;

and any reference in this Act to a limit for a class of commercial assets shall, if a limit is in force under subsection (4) above for any sub-class of class 3 assets, be construed as including a reference to the limit for that sub-class.
- (6) No order under subsection (4) above shall prescribe as a limit for a sub-class of class 3 assets a percentage of total commercial assets less than the percentage in force immediately before the making of the order for that sub-class or, if the subclass is created by the order, for class 3 assets generally
- (7) An order under subsection (4) above shall not be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (8) The amount or value of the assets of any class of a building society for the purposes of this section is the amount or value as shown in the latest balance sheet or such other amount or value as the Commission determines to be the correct or, as the case requires, appropriate amount or value; and where the Commission determines an amount or value under this subsection the appropriate alterations shall be noted against the annual accounts of the society kept in the public file of the society.
- (9) In determining for the purposes of this section the asset holding of a building society with which another body corporate is associated there shall, subject to subsection (12) below, be attributed to the society, in accordance with aggregation rules made by the Commission with the consent of the Treasury under this subsection, the whole or part of the assets of whatever description of the associated body, as provided in the rules and subject to any exceptions provided in the rules.
- (10) The power to make aggregation rules under subsection (9) above includes power to make—
  - (a) different rules for different circumstances,
  - (b) provision for assets of societies to be disregarded,
  - (c) provision for assets to be attributed to any class of assets of societies, and

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- (d) such supplementary, transitional and saving provisions as appear to the Commission to be necessary or expedient.
- (11) The power to make aggregation rules under subsection (9) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (12) The Commission may, on the application of a building society, approve rules to be applied for the purposes of this section for the attribution to the society of assets of bodies associated with the society; and so long as the rules continue to be approved by the Commission they, and not the aggregation rules in force under subsection (9) above, shall apply for the attribution of assets for the purposes of this section.
- (13) If the commercial assets of any class of a building society exceed the limits in force under this section the powers conferred on the Commission by section 36 shall become exercisable in relation to the society, but exceeding the limit shall not affect the validity of transactions effected in excess of it nor require the disposal of any assets.]

#### Textual Amendments

**F128** Pt. III (ss. 10-23) 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. 12(1)(a), 46(2), 47(3), **Sch. 9**; S.I. 1997/2668, art. 2, Sch. Pts. I(b), **II(j)**

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

**C38** S. 20 modified (*temp.*) by S.I. 1986/2168, **art. 8(3)**

**C39** S. 20 modified by S.I. 1986/2168, **art. 4(2)(a)(i)(3)**

**C40** S. 20 amended (*temp.*) by Building Societies (Limits on Commercial Assets) Order 1988, S.I. 1988/1142, **art. 2**

**C41** S. 20(2)(3) excluded by S.I. 1986/2168, **art 5**

### *Liquid assets*

#### [<sup>F129</sup>21 **Liquid assets.**

- (1) Subject to the following provisions of this section, a building society shall secure that, of its total assets, it keeps such a proportion of them having such a composition as will at all times enable the society to meet its liabilities as they arise.
- (2) A building society may keep assets of an authorised character beyond those required for the purpose of complying with subsection (1) above.
- (3) Subject to subsections (5) and (6) below, the assets held by a building society under subsection (1) or (2) above—
- (a) shall not exceed in the aggregate a proportion of its total assets greater than 33 per cent., and
  - (b) shall be composed of assets of an authorised character and no others;

but, subject to that, a building society, in deciding on the composition and proportion appropriate for the purpose of complying with subsection (1) above, shall have regard to the range and scale of its business and the composition and character of its assets and liabilities.

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- (4) Subsection (3) above, in its application to a building society with which other bodies corporate are associated, is to be read as requiring the society to have regard to the range and scale of the business, and the composition and character of the assets and liabilities, of the society and the associated bodies.
- (5) The Commission may, by order made with the consent of the Treasury, direct that this section shall have effect during the currency of the order as if such percentage as if specified in the order were substituted for the percentage specified in subsection (3) above; but any order under this subsection shall expire (unless previously revoked) at the end of the period of twelve months beginning with the day on which the order came into operation.
- (6) The Commission may, at any time, by notice to a building society, direct that the limit in force under this section shall not, subject to any conditions specified in the notice, apply to the society during such period as the Commission specifies in the notice.
- (7) Regulations to be known as liquid asset regulations shall be made by the Commission, with the consent of the Treasury, for the purposes of this section and such regulations—
  - (a) shall prescribe descriptions of assets as assets of a character which societies may, in any prescribed circumstances and subject to any prescribed conditions, hold under this section for the purpose of meeting their liabilities as they arise,
  - (b) may make different provision for different descriptions of building societies, and
  - (c) may make such supplementary or incidental provision and such transitional provision as appears to the Commission to be necessary or expedient.
- (8) The power to make an order or regulations under subsection (5) or (7) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) If the assets of a building society which are kept in the form directed by subsection (1) above exceed at any time the percentage in force under this section at that time the powers conferred on the Commission by section 36 shall become exercisable in relation to the society, but exceeding the limit shall not affect the validity of transactions effected in excess of it.
- (10) In this section—
  - “authorised”, in relation to the character of assets, means authorised by regulations under subsection (7) above for the purpose specified in paragraph (a) of that subsection;
  - “business” includes business the society proposes to carry on; and
  - “prescribed” means prescribed in regulations under subsection (7) above.]

#### Textual Amendments

**F129** Pt. III (ss. 10-23) 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. 12(1)(a), 46(2), 47(3), **Sch. 9**; S.I. 1997/2668, art. 2, **Sch. Pts. I(b), II(j)**

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### *Liabilities of associated bodies*

<sup>F130</sup>22 .....

#### **Textual Amendments**

**F130** S. 22 repealed (11.6.1996) by [S.I. 1995/3233](#), [art. 5\(1\)](#) (with [art. 5\(2\)](#))

### *Other powers*

#### [<sup>F131</sup>23 **Power to hedge.**

- (1) Subject to subsections (3) and (4) below, a building society may effect contracts of a prescribed description for the purpose of reducing the risk of loss arising from changes in interest rates, currency rates or other factors of a prescribed description which affect its business.
- (2) The Commission, with the consent of the Treasury, may by order—
  - (a) specify as contracts which building societies have power to effect under this section descriptions of contract whose purpose or one of whose purposes is the reduction of the risk to businesses of loss arising from the factors specified in subsection (1) above or other similar factors, and
  - (b) regulate, or provide for the regulation of, the terms on which, the persons or descriptions of persons with whom, and the circumstances in which, contracts of a description specified under paragraph (a) above, may be effected by building societies.
- (3) Except as provided under subsection (4) below, the powers conferred by this section are not available to a building society which does not for the time being have a qualifying asset holding, but the cessation of their availability does not require the disposal of any property or rights.
- (4) The Commission, with the consent of the Treasury, may by order provide that subsection (3) above shall not have effect, as regards prescribed powers, in relation to prescribed descriptions of building societies.
- (5) The powers conferred by this section on a building society, if available to it, must, in order to be exercisable, be adopted by the society.
- (6) The power to make an order under subsection (2) or (4) above—
  - (a) includes power to make such transitional provision as the Commission considers necessary or expedient, and
  - (b) is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In this section “prescribed” means prescribed in an order under subsection (2) or (4) above, as the case may be.]

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**Textual Amendments**

**F131** Pt. III (ss. 10-23) 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. 12(1)(a), 46(2), 47(3), **Sch. 9**; S.I. 1997/2668, art. 2, Sch. Pts. I(b), **II(j)**

**PART IV**

**PROTECTION OF INVESTORS**

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

**C42** Pt. IV (ss. 24-33) modified (1.7.1995) (*temp.* until 31.12.1999) by S.I. 1995/1442, **reg. 54(2)**

*Investor Protection Scheme*

<sup>F132</sup>**24** .....

**Textual Amendments**

**F132** Ss. 24-31 repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2) Sch. 4 (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2(1). Ss. 24-31 continued (with modifications) (1.12.2001) by S.I. 2001/2967, arts. 1(2), 9(c), **Sch. 1 Pt. I**; S.I. 2001/3538, art. 2

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

**C43** Ss. 24-31: amendment to earlier affecting provision SI 2001/2967, arts. 1(2), 9(c), Sch. 1 Pt. 1 (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 56(h)(ii)**

<sup>F133</sup>**25** .....

**Textual Amendments**

**F133** Ss. 24-31 repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4**, (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2(1). Ss. 24-31 continued (with modifications) (1.12.2001) by S.I. 2001/2967, arts. 1(2), 9(c), **Sch. 1 Pt. I**; S.I. 2001/3538, art. 2(1)

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

**C44** Ss. 24-31: amendment to earlier affecting provision SI 2001/2967, arts. 1(2), 9(c), Sch. 1 Pt. 1 (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 56(h)(ii)**

<sup>F134</sup>**25A** .....



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#### Textual Amendments

**F134** Ss. 24-31 repealed (1.12.2001) by [S.I. 2001/2617](#), arts. 2(b), 13(2), [Sch. 4](#) (with art. 13(3), [Sch. 5](#)); [S.I. 2001/3538](#), [art. 2\(1\)](#). Ss. 24-31 continued (with modifications) (1.12.2001) by [S.I. 2001/2967](#), arts. 1(2), 9(c), [Sch. 1 Pt. I](#); [S.I. 2001/3538](#), [art. 2\(1\)](#)

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

**C45** [Ss. 24-31](#): amendment to earlier affecting provision [SI 2001/2967](#), arts. 1(2), 9(c), [Sch. 1 Pt. 1](#) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013](#) ([S.I. 2013/472](#)), [Sch. 2 para. 56\(h\)\(ii\)](#)

<sup>F135</sup>**26** .....

#### Textual Amendments

**F135** Ss. 24-31 repealed (1.12.2001) by [S.I. 2001/2617](#), arts. 2(b), 13(2), [Sch. 4](#) (with art. 13(3), [Sch. 5](#)); [S.I. 2001/3538](#), art. 2(1). Ss. 24-31 continued (with modifications) (1.12.2001) by [S.I. 2001/2967](#), arts. 1(2), 9(c), [Sch. 1 Pt. I](#); [S.I. 2001/3538](#), [art. 2\(1\)](#)

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

**C46** [Ss. 24-31](#): amendment to earlier affecting provision [SI 2001/2967](#), arts. 1(2), 9(c), [Sch. 1 Pt. 1](#) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013](#) ([S.I. 2013/472](#)), [Sch. 2 para. 56\(h\)\(ii\)](#)

<sup>F136</sup>**27** .....

#### Textual Amendments

**F136** Ss. 24-31 repealed (1.12.2001) by [S.I. 2001/2617](#), arts. 2(b), 13(2), [Sch. 4](#) (with art. 13(3), [Sch. 5](#)); [S.I. 2001/3538](#), [art. 2\(1\)](#). Ss. 24-31 continued (with modifications) (1.12.2001) by [S.I. 2001/2967](#), arts. 1(2), 9(c), [Sch. 1 Pt. I](#); [S.I. 2001/3538](#), [art. 2\(1\)](#)

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

**C47** [Ss. 24-31](#): amendment to earlier affecting provision [SI 2001/2967](#), arts. 1(2), 9(c), [Sch. 1 Pt. 1](#) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013](#) ([S.I. 2013/472](#)), [Sch. 2 para. 56\(h\)\(ii\)](#)

<sup>F137</sup>**27A** .....

#### Textual Amendments

**F137** Ss. 24-31 repealed (1.12.2001) by [S.I. 2001/2617](#), arts. 2(b), 13(2), [Sch. 4](#) (with art. 13(3), [Sch. 5](#)); [S.I. 2001/3538](#), [art. 2\(1\)](#). Ss. 24-31 continued (with modifications) (1.12.2001) by [S.I. 2001/2967](#), arts. 1(2), 9(c), [Sch. 1 Pt. I](#); [S.I. 2001/3538](#), [art. 2\(1\)](#)



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

**C48** Ss. 24-31: amendment to earlier affecting provision SI 2001/2967, arts. 1(2), 9(c), Sch. 1 Pt. 1 (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 56(h)(ii)**

**F138** **28** .....

**Textual Amendments**

**F138** Ss. 24-31 repealed (1.12.2001) by [S.I. 2001/2617](#), arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), Sch. 5); [S.I. 2001/3538](#), **art. 2(1)**. Ss. 24-31 continued (with modifications) (1.12.2001) by [S.I. 2001/2967](#), arts. 1(2), 9(c), **Sch. 1 Pt. I**; [S.I. 2001/3538](#), **art. 2(1)**

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

**C49** Ss. 24-31: amendment to earlier affecting provision SI 2001/2967, arts. 1(2), 9(c), Sch. 1 Pt. 1 (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 56(h)(ii)**

**F139** **29** .....

**Textual Amendments**

**F139** Ss. 24-31 repealed (1.12.2001) by [S.I. 2001/2617](#), arts. 2(b), 13(2) Sch. 4 (with art. 13(3), Sch. 5); [S.I. 2001/3538](#), **art. 2(1)**. Ss. 24-31 continued (with modifications) (1.12.2001) by [S.I. 2001/2967](#), arts. 1(2), 9(c), **Sch. 1 Pt. I**; [S.I. 2001/3538](#), **art. 2(1)**

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

**C50** Ss. 24-31: amendment to earlier affecting provision SI 2001/2967, arts. 1(2), 9(c), Sch. 1 Pt. 1 (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 56(h)(ii)**

**F140** **29A** .....

**Textual Amendments**

**F140** Ss. 24-31 repealed (1.12.2001) by [S.I. 2001/2617](#), arts. 2(b), 13(2) Sch. 4 (with art. 13(3), Sch. 5); [S.I. 2001/3538](#), **art. 2(1)**. Ss. 24-31 continued (with modifications) (1.12.2001) by [S.I. 2001/2967](#), arts. 1(2), 9(c), **Sch. 1 Pt. I**; [S.I. 2001/3538](#), **art. 2(1)**

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

**C51** Ss. 24-31: amendment to earlier affecting provision SI 2001/2967, arts. 1(2), 9(c), Sch. 1 Pt. 1 (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **Sch. 2 para. 56(h)(ii)**

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<sup>F141</sup>**30** .....

**Textual Amendments**

**F141** Ss. 24-31 repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2) Sch. 4 (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2(1). Ss. 24-31 continued (with modifications) (1.12.2001) by S.I. 2001/2967, arts. 1(2), 9(c), Sch. 1 Pt. I; S.I. 2001/3538, art. 2(1)

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

**C52** Ss. 24-31: amendment to earlier affecting provision SI 2001/2967, arts. 1(2), 9(c), Sch. 1 Pt. 1 (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 56(h)(ii)

*Other provisions*

<sup>F142</sup>**31** .....

**Textual Amendments**

**F142** Ss. 24-31 repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), Sch. 4 (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2(1). Ss. 24-31 continued (with modifications) (1.12.2001) by S.I. 2001/2967, arts. 1(2), 9(c), Sch. 1 Pt. I; S.I. 2001/3538, art. 2(1)

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

**C53** Ss. 24-31: amendment to earlier affecting provision SI 2001/2967, arts. 1(2), 9(c), Sch. 1 Pt. 1 (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 56(h)(ii)

**32 Special provisions as regards investors.**

The Provisions of Schedule 7 to this Act relating to shareholders in and depositors with a building society shall have effect.

[<sup>F143</sup>**33 Assistance by building societies to other building societies.**

Where it appears to the Commission that a building society is in financial difficulties it may authorise a building society to lend money to that society, and a building society shall have power to do so accordingly.]

**Textual Amendments**

**F143** S. 33 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. 12(1)(b), 46(2), 47(3), Sch. 9; S.I. 1997/2668, art. 2, Sch. Pt. II(j)(y)(cc)(iii)

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## [<sup>F144</sup>PART V

### POWERS TO PROVIDE SERVICES]

#### Textual Amendments

**F144** Pt. V (ss. 34-35) 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. 12(1)(c), 46(2), 47(3), **Sch. 9**; S.I. 1997/2668, art. 2, **Sch. Pt. II(j)(y)(cc)(iv)**

#### [<sup>F145</sup>34 Powers to provide financial services or services relating to land.

- (1) A building society may provide services of the descriptions for the time being specified in Part I of Schedule 8 to this Act subject to the restrictions (if any) for the time being specified in Part II or III of that Schedule.
- (2) The appropriate authority may by order vary Schedule 8 by adding to or deleting from it any description of service or any provision or by varying any description of service or any provision for the time being specified or contained in it but not so as to confer any power to provide services other than services that appear to the authority making the order to be financial services or services relating to land or to be services similar to any such services.
- (3) Any power conferred on building societies under subsection (2) above may be conferred on building societies of a specified description or all building societies other than those of a specified description.
- (4) Where a provision of Part III of that Schedule states that a power to provide a specified service is available only to a subsidiary or other associated body of a building society the power to provide that service is to be treated as a power of the society for the purposes of section 18 only.
- (5) Any power to provide a specified service, if available to a building society or any subsidiary or other associated body, must, in order to be exercisable, be adopted by the society.
- (6) Subject to any specified restriction, any power to provide a specified service shall be exercisable in relation to members of the building society or other persons.
- (7) Part IV of Schedule 8 has effect for supplementing Parts I, II and III of that Schedule and the power under subsection (2) above to vary that Schedule includes, without prejudice to the generality of that subsection, power to make such provision as appears to the authority making the order to be appropriate by way of a sanction for contravention of any restriction for the time being contained in Part III.
- (8) The “appropriate authority” for the purpose of exercising the powers conferred by this section is the Treasury as regards any variation of Part I of Schedule 8 with or without other provision and the Commission in any other case.
- (9) The power to make an order under subsection (2) above is exercisable by statutory instrument and—
  - (a) in the case of an order varying Part I of Schedule 8 with or without other provision no such order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament, and

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- (b) in the case of any other order, the instrument containing it shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) An order under subsection (2) above may make such incidental and transitional provision as appears to the authority making the order to be necessary or expedient.
- (11) In this section—
- “financial services” means any of the following services, that is to say, banking, insurance, investment, trusteeship and executorship;
- “services relating to land” means any service relating to the acquisition, management, development or disposal of land; and
- “specified” means specified for the time being in Schedule 8 to this Act.]

#### Textual Amendments

**F145** Pt. V (ss. 34-35) 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. 12(1)(a), 46(2), 47(3), **Sch. 9**; S.I. 1997/2668, art. 2, Sch. Pts. I(b), **II(j)(y)(cc)(iv)**

#### <sup>F146</sup><sup>F147</sup> **33 Prohibition on linking services.**

- (1) A building society which, or a subsidiary of which, provides services of any description specified in Part I of Schedule 8 to this Act shall not offer to make a class 1 advance to any person subject to a condition that any services of that description which are or may be required by that person in connection with the making of the advance shall be provided by the society or its subsidiary.
- (2) Where, in connection with a class 1 advance by a building society, several services are made available by a building society or by a building society and one or more of its subsidiaries the society shall not, and shall secure that each of its subsidiaries does not, make the services available on terms other than terms which distinguish the consideration payable for each service so made available; nor shall any of its subsidiaries make the services available on terms other than terms which make that distinction.
- (3) Nothing in subsection (2) above prevents a service from being provided free of charge in particular circumstances.
- (4) If a building society contravenes subsection (1) or (2) above 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.
- (5) If a body corporate which is a subsidiary of a building society contravenes subsection (2) above the body corporate shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.]

#### Textual Amendments

**F146** S. 35 repealed (*prosp.*) by **Courts and Legal Services Act 1990** (c. 41, SIF 76:1), s. 125(7), **Sch. 20**

**F147** Pt. V (ss. 34-35) 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. 12(1)(a), 46(2), 47(3), **Sch. 9**; S.I. 1997/2668, art. 2, Sch. Pts. I(b), **II(j)(y)(cc)(iv)**

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## PART VI

### POWERS OF CONTROL OF THE <sup>F148</sup>APPROPRIATE AUTHORITY]

#### Textual Amendments

**F148** Words in Pt. 6 heading substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), [Sch. 8 para. 9](#) (with Sch. 12)

### <sup>F149</sup>*[Powers in relation to principal purpose and nature limits]*

#### Textual Amendments

**F149** S. 36 and cross-heading 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. 13\(1\)](#), 47(3); [S.I. 1997/2668](#), art. 2, [Sch. Pt. II\(k\)](#)

### <sup>F150</sup>**36 Power to direct restructuring of business etc.**

- (1) The provisions of this section have effect where, by reason of a building society's failure to comply with—
  - (a) the requirement imposed by section 5(1)(a) or (b) (purpose or principal purpose and principal office);
  - (b) the requirement imposed by section 6(1) (the lending limit); or
  - (c) the requirement imposed by section 7(1) (the funding limit),the powers conferred by this section become exercisable by the <sup>F151</sup>appropriate authority] in relation to the society (the requirements referred to in paragraphs (a), (b) and (c) above being referred to in this section as “the relevant statutory requirements”).
- (2) The <sup>F151</sup>appropriate authority] may give the society a direction under subsection (3), (5) or (6) below.
- (3) A direction by the <sup>F151</sup>appropriate authority] under this subsection is a direction requiring the society, within a specified period, to submit for its approval a plan (in this section referred to as a “restructuring plan”) designed to secure the following purposes, that is to say—
  - (a) that the society will, by the end of a specified period, comply with the relevant statutory requirements as applied at the last day of that period, and
  - (b) that it will not thereafter fail to comply with those requirements.
- (4) For the purpose of applying the relevant statutory requirements as directed by subsection (3)(a) above—
  - (a) in the case of a requirement which operates by reference to a quarter day, the day as at which the requirements are to be applied shall be treated as such a day; and
  - (b) the assets and liabilities of the society shall be determined by reference to a balance sheet prepared by the directors by reference to that day and sent to the <sup>F151</sup>appropriate authority] within the period of three months beginning with that day;

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and subsection (4) of section 81 shall apply in the event of a default in complying with this provision as it applies in the event of a default in complying with subsection (2) of that section.

(5) A direction by the [F151appropriate authority] under this subsection is a direction requiring the society—

- (a) within a specified period, to submit to its members for their approval at a meeting the requisite transfer resolutions for a transfer of the business of the society to a company under section 97; and
- (b) to notify the [F151appropriate authority][F152and, if the appropriate authority is the PRA, the FCA] of the result of the meeting.

(6) A direction by the [F151appropriate authority] under this subsection is a direction requiring the society, at its option, either—

- (a) within a specified period, to submit for approval a restructuring plan; or
- (b) within a specified period, to submit to its members for their approval at a meeting the requisite transfer resolutions for a transfer of the business of the society to a company under section 97;

and, within a specified period, to notify the [F151appropriate authority][F153and, if the appropriate authority is the PRA, the FCA] of the option it has decided to pursue.

(7) Where the [F151appropriate authority] gives a direction under subsection (3), (5) or (6) above, it may also give a direction under this subsection—

- (a) imposing limitations on the issue of shares, the acceptance of deposits or the making of loans;
- (b) requiring the society within a specified period to take certain steps, or to refrain from adopting or pursuing a particular course of action, or to restrict the scope of its business in a particular way;
- (c) requiring the society within a specified period to take steps with regard to the conduct of the business of any connected undertaking of the society;
- (d) requiring within a specified period the removal of any director or other officer.

(8) Where a restructuring plan is submitted by a society to the [F151appropriate authority] under subsection (3) or (6) above then—

- (a) if it appears to the [F151appropriate authority] that the plan is reasonably likely to secure its purposes, the [F151appropriate authority] shall approve it and direct the society to carry it out;
- (b) if it appears to it that the plan is, with modifications, likely to secure its purposes and the [F151appropriate authority] and the society agree on appropriate modifications within the period of 21 days from the date on which the [F151appropriate authority] notifies the society of the modifications it proposes for the society's agreement, the [F151appropriate authority] shall approve the plan as modified and direct the society to carry it out;

but otherwise it shall reject the plan.

(9) Where a meeting is held, in pursuance of a direction under subsection (5) or (6) above, for the purpose of voting on the requisite transfer resolutions, then—

- (a) if the resolutions are agreed to and the confirmation of the transfer by the [F151appropriate authority] is obtained, the society shall proceed under section 97 to transfer its business to a successor company;
- (b) if either resolution is disagreed to, the society shall notify the [F151appropriate authority] of that fact as soon as it is practicable to do so.

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- (10) In the event of the [F151 appropriate authority] receiving a notice from a society under subsection (9)(b) above, it may, if it thinks fit, serve on the society a direction requiring it, within a specified period, to submit to the [F151 appropriate authority] for its approval a restructuring plan; and if the [F151 appropriate authority] does so, subsection (8) above shall apply as if the plan had been submitted under subsection (3) above.
- (11) The [F151 appropriate authority] may, if it thinks fit, extend or further extend any period during which a building society is to take any steps required of it under any of the foregoing provisions of this section and may do so whether or not application is made to it before the expiry of the period in question.
- (12) If a building society which has been directed under subsection (8) above to carry out a restructuring plan fails, within the period allowed to it under the foregoing provisions of this section, to secure the purpose of the plan specified in subsection (3)(a) above, the powers conferred on the [F151 appropriate authority] by section 36A shall become exercisable in relation to the society.
- (13) If a building society fails, within the period allowed to it under the foregoing provisions of this section—
- (a) where it has been given a direction under subsection (3) or (10) above, to submit a restructuring plan;
  - (b) where it has been given a direction under subsection (5) above, to submit to members the requisite transfer resolutions;
  - (c) where it has been given a direction under subsection (6) above, to either submit a restructuring plan or submit to members the requisite transfer resolutions;
  - (d) where it has been given a direction under subsection (7) above, to comply with any requirement imposed by the direction;
  - (e) where it has been directed under subsection (8) above to carry out a restructuring plan, to secure the purpose of the plan specified in subsection (3) (a) above;
  - (f) to agree to the requisite transfer resolutions submitted to the members in pursuance of subsection (5) or (6) above; or
  - (g) where it has agreed to the requisite transfer resolutions, to proceed under section 97 to transfer its business to the successor company,
- or if the [F151 appropriate authority] rejects a restructuring plan under subsection (8) above, the powers conferred on the [F151 appropriate authority] by section 37 shall become exercisable in relation to the society.

<sup>F154</sup>(14) . . . . .

- (15) In this section—
- “confirmation”, “the requisite transfer resolutions” and “transfer” have the same meaning as in section 97;
  - “quarter day” has the same meaning as in sections 6 and 7.

(16) Nothing in this section implies that it is improper for the [F151 appropriate authority] to give to a building society or building societies generally an indication of the action it might or might not take in relation to any proposed activity of theirs.]

[F155(17) The PRA must consult the FCA before issuing a direction under this section.]

*Status: This version of this Act contains provisions that are prospective.*

*Changes to legislation: Building Societies Act 1986 is up to date with all changes known to be in force on or before 19 May 2023. 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. (See end of Document for details) View outstanding changes*

### Textual Amendments

- F150** S. 36 and cross-heading 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. 13(1), 47(3)**; S.I. 1997/2668, **art. 2, Sch. Pt. II(k)**
- F151** Words in s. 36 substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), **art. 1(1), Sch. 8 para. 10(2)** (with Sch. 12)
- F152** Words in s. 36(5)(b) inserted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), **art. 1(1), Sch. 8 para. 10(3)** (with Sch. 12)
- F153** Words in s. 36(6) inserted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), **art. 1(1), Sch. 8 para. 10(4)** (with Sch. 12)
- F154** S. 36(14) repealed (1.12.2001) by S.I. 2001/2617, **arts. 2(b), 13(2), Sch. 4** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F155** S. 36(17) inserted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), **art. 1(1), Sch. 8 para. 10(5)** (with Sch. 12)

### Modifications etc. (not altering text)

- C54** S. 36 restricted (7.4.2010) by [The Building Societies \(Financial Assistance\) Order 2010 \(S.I. 2010/1188\)](#), **arts. 1(2), 3(3), 4(3)**
- C55** S. 36(1) modified (7.4.2010) by [The Building Societies \(Financial Assistance\) Order 2010 \(S.I. 2010/1188\)](#), **arts. 1(2), 3(4), 4(4)**

### <sup>F156</sup>36A Power to make prohibition orders.

- (1) Where by virtue of section 36(12) the powers conferred by this section become exercisable in relation to a building society, the [<sup>F157</sup>[<sup>F158</sup>appropriate authority]] may issue a prohibition order directed to the society.
  - (2) A prohibition order under this section is an order—
    - (a) prohibiting, subject to the saving or transitional provisions of the order, the continuance or, as the case may be, the carrying on of the activity specified in the order after a date so specified, either absolutely or unless conditions so specified are complied with; and
    - (b) requiring, subject to the saving or transitional provisions of the order, the disposal within a period specified in the order of all assets acquired or otherwise in its possession by virtue of the activity.
  - (3) A disposal of assets in pursuance of a prohibition order shall vest the assets in the transferee but without prejudice to any claim against the society by a person who had an interest in the assets.
  - (4) The saving or transitional provisions which may be included in a prohibition order shall be such as appear to the [<sup>F158</sup>appropriate authority]] to be just having regard to—
    - (a) the interests of shareholders of and depositors with the society; and
    - (b) the interests of other persons who will be affected by the order.
- [ If the [<sup>F158</sup>appropriate authority]] proposes to issue a prohibition order under this section <sup>F159</sup>(5) it must give the society a warning notice.
- (5A) If the [<sup>F158</sup>appropriate authority]] decides to issue a prohibition order under this section it must give the society a decision notice, and may issue the order at the same time as or after giving the decision notice.



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- (5B) A warning notice or decision notice about a prohibition order under this section must set out the terms of the order which the [<sup>F158</sup>appropriate authority] proposes (or has decided) to make, including any saving or transitional provisions to be included in it.
- (5C) Part XXVI of the Financial Services and Markets Act 2000 (notices) is to be treated as applying in respect of warning notices and decision notices given under this section as it applies in respect of warning notices and decision notices given under that Act, subject to subsection (5D) below.
- (5D) In the application of Part XXVI of that Act in respect of warning notices and decision notices given under this section—
- section 388(1)(e) is to be omitted,
  - section 388(2) (which makes provision for the type of action to which a decision notice may relate if it was preceded by a warning notice) is to be read as if, for the word “Part”, there were substituted the word “ section ”,
  - section 390 (final notices) is to be omitted, and
  - for the purposes of section 391 (publication) a decision notice given under this section is to be treated as if it were a final notice rather than a decision notice.]

[ The PRA must consult the FCA about the terms of the prohibition order in question  
<sup>F160</sup>(5E) before giving a warning notice or a decision notice under this section.]

<sup>F161</sup>[ If the [<sup>F158</sup>appropriate authority] issues a prohibition order under this section it shall  
(6) serve the order on the society<sup>F162</sup> ....]

- (7) A prohibition order so <sup>F163</sup>. . . issued shall, subject to subsection (11) below, take effect on the date specified in the order.
- (8) A copy of any order issued under subsection (6) above shall also be served on each director and on the chief executive of the society.
- (9) The requirement of subsection (8) above, so far as it relates to directors, is satisfied by serving a copy on each director whose appointment has been officially notified and the non-receipt of a copy by a director or the chief executive does not affect the validity of the order.

[ The PRA must give the FCA a copy of any order issued under this section.  
<sup>F164</sup>(9A)

- (9B) The FCA must keep a copy of any order issued under this section in the public file of the society.]
- (10) Subject to subsection (11) below, a prohibition order shall remain in force until revoked by the [<sup>F158</sup>appropriate authority] .
- (11) The [<sup>F158</sup>appropriate authority] may suspend or revoke a prohibition order so far as it relates to an asset the disposal of which appears to it, on the application of the society, to be impracticable.
- (12) If a society contravenes a prohibition order issued against it under this section—
- the power conferred on the [<sup>F158</sup>appropriate authority] by section 37(1) shall become exercisable in relation to the society; and
  - the [<sup>F158</sup>appropriate authority] may exercise that power or certify the contravention in writing to the High Court, or do both of those things;
- but the contravention shall not invalidate any transaction or other act.

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- (13) On receiving such a certification, the High Court—
- (a) may inquire into the case; and
  - (b) after hearing any witnesses who may be produced against or on behalf of the society and after hearing any statement which may be offered in defence, may punish the society in like manner as if it had been guilty of contempt of the court.
- (14) Where a contravention of a prohibition order which is so certified is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the society he, as well as the society, may be punished in like manner as if he had been guilty of contempt of the court.
- (15) In the application of this section to a building society whose principal office is in Scotland, references to the High Court shall be read as references to the Court of Session.]

#### Textual Amendments

- F156** S. 36A 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. 14, 47(3); S.I. 1997/2668, art. 2, **Sch. Pt. II(1)**
- F157** Words in s. 36A(1) substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II**, para. 142(a) (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F158** Words in s. 36A substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 11(2)** (with Sch. 12)
- F159** S. 36A(5)-(5D) substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) for s. 36A(5) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II**, para. 142(c) (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F160** S. 36A(5E) inserted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 11(3)** (with Sch. 12)
- F161** S. 36A(6) substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II**, para. 142(d) (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F162** Words in s. 36A(6) omitted (1.4.2013) by virtue of The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 11(4)** (with Sch. 12)
- F163** Words in s. 36A(7) repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F164** S. 36A(9A)(9B) inserted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 11(5)** (with Sch. 12)

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

- C56** S. 36A(5) extended (1.12.2001) by S.I. 2001/3592, **art. 37(1)(b)** (with art. 23(2))

### [<sup>F165</sup>37 Powers to petition for winding up etc.

- (1) Where—
- (a) by virtue of section 36(13) the powers conferred by this section become exercisable in relation to a building society;
  - (b) by virtue of section 36A(12) the power conferred by this subsection becomes so exercisable; or

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- (c) the [<sup>F166</sup>appropriate authority] has reason to believe that a building society has ceased to comply with the requirement imposed by section 5(1)(a) (purpose or principal purpose),
- the [<sup>F166</sup>appropriate authority] may present a petition to the High Court for the winding up of the society under the applicable winding up legislation; and the power conferred by this subsection is available to the [<sup>F166</sup>appropriate authority] whether or not it has previously presented a petition.
- (2) Where by virtue of section 36(13) the powers conferred by this section become exercisable in relation to a building society, the [<sup>F166</sup>appropriate authority] may make an application to the High Court for an order giving directions to the society under subsection (3) below; and the power conferred by this subsection is available to the [<sup>F166</sup>appropriate authority] whether or not it has previously made an application for such an order.
- (3) An order under this subsection is an order directing the society to comply with a direction under subsection (3), (5), (6), (7) or (10) of section 36 as directed in the order, or to carry out a restructuring plan as so directed.
- [<sup>F167</sup>(4) Where the High Court makes an order under subsection (3)—
- (a) if the appropriate authority is the PRA, it must give a copy of the order to the FCA; and
- (b) in any case, the FCA must keep a copy of the order in the public file of the society.]
- (5) The High Court shall not make an order winding up the society on an application under subsection (1)(c) above unless it is satisfied that the society has ceased to comply with the requirement imposed by section 5(1)(a).
- (6) In the application of this section to a building society whose principal office is in Scotland, references to the High Court shall be read as references to the Court of Session.]

#### Textual Amendments

- F165** S. 37 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. 15, 47(3)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(m)**
- F166** Word in s. 37(1)(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. 12(2)** (with Sch. 12)
- F167** S. 37(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. 12(3)** (with Sch. 12)

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

- C57** S. 37 restricted (7.4.2010) by [The Building Societies \(Financial Assistance\) Order 2010 \(S.I. 2010/1188\)](#), arts. 1(2), **3(3)**, 4(3)
- C58** S. 37(1) modified (7.4.2010) by [The Building Societies \(Financial Assistance\) Order 2010 \(S.I. 2010/1188\)](#), arts. 1(2), **3(4)**, 4(4)

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### *Power to determine extent of building society powers*

#### **[<sup>F168</sup>38 Power to determine building society's powers.**

- (1) The Commission shall have power to determine whether a particular activity of a building society or its subsidiary is or is not within the existing powers of the society and may, if it thinks fit, take such professional advice as it considers it needs to enable it to make the determination.
- (2) A determination may be made under this section in relation to an activity which is proposed to be carried on as well as in relation to one which is being carried on.
- (3) The powers of the Commission in relation to a building society are exercisable—
  - (a) on an application made by the society, requesting the Commission to make the determination,
  - (b) on an application made by the society at the direction of the central office under Part II of Schedule 2 to this Act, or
  - (c) on the Commission's own motion or on an application made by the society at its direction,

as provided in subsection (4), (5), (6) or (8) below.

- (4) A building society may at any time, on complying with the following provisions of this section, make an application to the Commission for a determination under this section whether an activity specified in the application is or is not within its powers if the directors of the society are of the opinion that there is a doubt about the existence or extent of the powers to carry on the activity which requires to be resolved in the interests of the society.
- (5) A building society which has been directed by the central office under Part II of Schedule 2 to this Act to make an application to the Commission under this section shall, in accordance with the direction, make an application to the Commission for a determination whether the activity specified in the application is or is not within its powers.
- (6) If it appears to the Commission at any time that a building society or its subsidiary is carrying on or is about to carry on an activity which is or may be outside the existing powers of the society, the Commission may, by notice to the society specifying the activity and its opinion, direct it to make an application for a determination under this section whether the activity is or is not within its powers and it shall be the duty of the society to comply with the direction.
- (7) A direction under subsection (6) shall require the application to be made within the period of 21 days beginning with the date on which the notice is given, but the Commission may extend or further extend the period within which the application is to be made.
- (8) If a building society fails, within the time allowed by or under subsection (7) above, to make an application as directed under subsection (6) above, the Commission may, of its own motion, proceed to make a determination under this section as if an application had been made by the society.
- (9) An application by a building society under subsection (4), (5) or (6) above shall be made in writing, signed by the secretary as such an application, and shall comprise—

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- (a) a statement of the question for determination, specifying the activity and the powers in question, the nature of the doubt and (except in the case of an application under subsection (6)) the arguments for and against the activity being within those powers, as they appear to the society, and
  - (b) such documents or draft documents and such other information as are necessary to enable the determination to be made.
- (10) The statement of the question for determination may, with the agreement of the Commission, be amended at any time before the determination is made and in that event further documents and other information may be included in the application.
- (11) The Commission may, by notice to the society, require a society making an application under subsection (4), (5) or (6) above to amend the statement of the question for determination or to furnish such further documents or other information or such explanations of the statement, documents or information as appear to it to be necessary to enable the determination of the question to be made; and the Commission may allow or require the explanations to be made orally instead of in writing.
- (12) In this section and sections 39 and 40—
- “activity” includes the exercise, or purported exercise, of any power under this Act, including the holding of any property or rights;
  - “existing”, with reference to powers, means existing at the relevant date and, in relation to a building society, “existing powers” denotes the powers it has, or has adopted, under this Act, with any restrictions it has assumed, as at that date but disregarding anything done by the Commission and then in force (otherwise than under section 39 or 40) by virtue of which the society is precluded from exercising, or is subject to restrictions on the exercise of, its powers;
  - “the relevant date”, in relation to a building society, means—
- (a) in a case where the Commission decides to proceed of its own motion, the date when the Commission so decides;
  - (b) in a case where the society makes the application at the direction of the central office, the date specified in the direction; and
  - (c) in any other case, the date on which the society makes the application.
- (13) Nothing in this section or section 39 or 40 implies that it is improper for the Commission to give to a building society or building societies generally an indication of the action it might or might not take in relation to any proposed activity of theirs; and if any determination comes to be made in relation to the activity the proceedings shall not be liable to be set aside by reason of the indication having been given.]

#### Textual Amendments

**F168** Ss. 38-40 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. 12(1)(d), 46(2), **Sch. 9**; S.I. 1997/2668, art. 2, **Sch. Pt. II(j)(y)(cc)(v)**

#### [<sup>F169</sup>39 The determination: notification, effect, appeal.

- (1) A determination of the Commission under section 38 shall be in writing and, as soon as practicable after it is made, the Commission shall notify the society of the determination and the reasons for it.

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- (2) On receiving notice of the determination the society shall, if it is a determination that the activity in question was outside its powers, forthwith send a copy of it to every person who the society has reason to believe will or may be affected by it other than a person whose only interest is as a shareholder in, or depositor with, the society.
- (3) Subject to subsection (4) below, the Commission shall, within the period of one month beginning with the date of the notice to the society under subsection (1) above, publish the determination in such manner as it thinks appropriate.
- (4) Where the determination is made on an application made by the society under section 38(4), the Commission may, on the application of the society, postpone the publication of the determination for such period as it thinks fit, not exceeding the period of six months beginning with the date of the notice to the society under subsection (1) above, if it appears to the Commission that it is just to do so.
- (5) A determination under section 38 shall bind all persons, whether or not (in the case of an application) they were parties to it and, subject to any appeal under subsection (8) below, shall be final and conclusive for all purposes.
- (6) Where the activity in question was at the relevant date being carried on by the society and the determination is that the activity is outside the powers of the society the directors of the society shall be personally liable, jointly and severally, for any loss or expense to the society consequent on the activity's being outside its powers (including, if a prohibition order under section 40 is made, any loss or expense consequent on the order).
- (7) If it appears to the Commission that proceedings under subsection (6) above have not been, but ought in the interests of the society to be, brought, the Commission may bring such proceedings in the name and on behalf of the society; and if it does so the Commission may indemnify the society against the costs or expenses incurred by the society in, or in connection with, proceedings brought by virtue of this subsection.
- (8) Any person affected by a determination under section 38 shall be entitled within the period of six weeks beginning with the date of the notice under subsection (1) above or such further period as the Court may allow, to appeal to the High Court against the determination in accordance with rules of court on the ground that it is erroneous in law and the Commission shall be made respondent on the appeal.
- (9) On any appeal to the High Court under subsection (8) above the High Court may confirm, reverse or vary the determination appealed from.
- (10) In the application of this section to a building society whose principal office is in Scotland, references to the High Court shall be read as references to the Court of Session.
- (11) The Commission may, if it thinks fit, require a building society in whose case it has made a determination under section 38 to pay such fee as the Commission directs.]

#### **Textual Amendments**

**F169** Ss. 38-40 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. 12(1)(d), 46(2), **Sch. 9**; S.I. 1997/2668, art. 2, **Sch. Pt. II(j)(y)(cc)(v)**

*Status: This version of this Act contains provisions that are prospective.*

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#### **[<sup>F170</sup>40 Power to make prohibition orders.**

- (1) On or at any time after making a determination under section 38 that a specified activity is outside the powers of a building society, the Commission shall, if it appears to it—
  - (a) that the activity is being carried on by the society, or
  - (b) that the activity has not been but, unless a prohibition order is made under this section, may be carried on by the society.

serve on the society a notice of the Commission's intention to issue a prohibition order directed to the society.

- (2) A prohibition order under this section is an order prohibiting, subject to the saving or transitional provisions of the order, the continuance or, as the case may be, the carrying on of the activity specified in the order, either absolutely or unless conditions specified in the order are complied with, after a date specified in the order and requiring, subject to the saving or transitional provisions of the order, the disposal within a specified period of all assets acquired or otherwise in its possession by virtue of the activity.
- (3) A disposal of assets in pursuance of a prohibition order shall vest the assets in the transferee but without prejudice to any claim against the society by a person who had an interest in the assets.
- (4) The saving or transitional provisions which may be included in a prohibition order shall be such as appear to the Commission to be just having regard to the interests of shareholders of and the depositors with the society and the interests of other persons who will be affected by the order; but the provisions shall not in any respect suspend the operation of the order beyond the period of one year.
- (5) A prohibition order may include a direction for treating assets of any description as assets of the class specified in the direction for the purposes of the requirements of Part III for the structure of commercial assets.
- (6) A notice under subsection (1) above of the Commission's intention to issue a prohibition order shall—
  - (a) specify the date on which the order is to be issued, being a date not earlier than the end of the period of 21 days beginning with the date of the notice;
  - (b) specify the terms of the order, including any saving or transitional provisions proposed to be included in it;
  - (c) inform the society of its right to make representations to the Commission before the order is issued as to the saving or transitional provisions to be included in the order; and
  - (d) inform the society of its duty under subsection (7) below.
- (7) On receiving a notice under subsection (1) above the society shall forthwith send a copy of it to every other person whom it has reason to believe will or may be affected by the determination under section 38 on which the order will be founded.
- (8) Any person who may be affected by the determination under section 38 on which the order will be founded may, at any time before the order is made, make representations to the Commission as to the inclusion in it of saving or transitional provisions affecting his interests and they may be made orally or in writing.
- (9) After considering any representations made under subsection (8) above the Commission shall make the prohibition order with such saving and

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transitional provisions (if any) as it thinks just, shall issue the order by causing it to be served on the society and shall direct the central office to keep a copy of it in the public file of the society.

- (10) A prohibition order so made and issued shall, subject to subsection (15) below, take effect on the date specified in the order.
- (11) A copy of any order issued under subsection (9) above shall also be served on each director and on the chief executive of the society.
- (12) The requirement of subsection (11) above, so far as it relates to directors, is satisfied by serving a copy on each director whose appointment has been officially notified and the non-receipt of a copy by a director or the chief executive does not affect the validity of the direction.
- (13) Subject to subsection (14) below, a prohibition order shall remain in force until revoked by the Commission.
- (14) The Commission may suspend or revoke a prohibition order so far as it relates to an asset the disposal of which appears to it, on the application of the society, to be impracticable.
- (15) If, when a prohibition order has been made, an appeal is pending before the High Court under section 39(8) against the determination on which the order is founded the High Court may, on application made to it, order that the operation of the prohibition order be stayed until the determination of the appeal; but it shall not do so unless it is satisfied that it is in the public interest that it be stayed.
- (16) If a society contravenes a prohibition order issued against it under this section the Commission may certify the contravention in writing to the High Court; and the Court may thereupon inquire into the case and, after hearing any witnesses who may be produced against or on behalf of the society and after hearing any statement which may be offered in defence, may punish the society in like manner as if it had been guilty of contempt of the court.
- (17) In the application of this section to a building society whose principal office is in Scotland, references to the High Court shall be read as references to the Court of Session and references to staying shall be read as references to sisting.]

#### **Textual Amendments**

**F170** Ss. 38-40 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. 12(1)(d), 46(2), **Sch. 9**; S.I. 1997/2668, art. 2, **Sch. Pt. II(j)(y)(cc)(v)**

#### *Powers in relation to authorisation*



*Status: This version of this Act contains provisions that are prospective.*

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**Textual Amendments**

**F171** S. 41 repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4**, (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

**F172** **42** .....

**Textual Amendments**

**F172** S. 42 repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

**F173** **42A** .....

**Textual Amendments**

**F173** S. 42A repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

**F174** **42B Power to direct transfers of engagements or business.**

(1) If, with respect to a building society <sup>F175</sup>which has a permission under <sup>F176</sup>Part 4A] of the Financial Services and Markets Act 2000 to accept deposits, the <sup>F177</sup>appropriate authority]] considers it expedient to do so in order to protect the investments of shareholders or depositors, it may either—

(a) direct the society, within a specified period, to transfer all its engagements to one or more other building societies under section 94;

<sup>F178</sup>(aa) [ direct the society, within a specified period, to transfer its business under section 97 to an existing or specially formed company that is a subsidiary of another mutual society by a transfer to which provision made by order under section 3 of the 2007 Act (transfers to subsidiaries of other mutuals) applies;]or

(b) direct the society, within a specified period, to transfer its business <sup>F179</sup>under section 97 to an existing company that is not a subsidiary of another mutual society] .

[ In this section—

<sup>F180</sup>(1A) (a) “the 2007 Act” means the Building Societies (Funding) and Mutual Societies (Transfers) Act 2007;

(b) “mutual society” has the same meaning as in section 3 of that Act.]

[ If it appears to the <sup>F177</sup>appropriate authority] that a society has failed to comply with a <sup>F181</sup>(2) direction under subsection (1), the <sup>F177</sup>appropriate authority] may exercise its power under <sup>F182</sup>section 55J (variation or cancellation on initiative of regulator), section 55L (imposition of requirements by FCA) or section 55M (imposition of requirements by PRA)] of the Financial Services and Markets Act 2000 in relation to the society <sup>F183</sup>....

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(2A) Subsection (2) does not affect the [F177 appropriate authority]’s ability to exercise that power, in relation to the society, on any other ground.]

(3) Where the [F177 appropriate authority] —

- (a) gives a building society a direction under subsection (1)(a) above; or
- (b) does not give a building society such a direction solely because the society is already seeking to transfer all its engagements to one or more other building societies under section 94,

the [F177 appropriate authority] may, if it considers it expedient to do so in order to protect the investments of shareholders or depositors, direct that, instead of resolving to transfer its engagements by the two resolutions required by section 94(2) (with or without the additional resolution required by section 94(3)), the society may resolve to do so by a resolution of the board of directors.

(4) Where the [F177 appropriate authority] —

- (a) gives a building society a direction under subsection [F184(1)(aa) or (b)] above; or
- (b) does not give a building society such a direction solely because the society is already seeking to transfer its business to an existing company [F185], or to a specially formed company that is a subsidiary of another mutual society,] under section 97,

the [F177 appropriate authority] may, if it considers it expedient to do so in order to protect the investments of shareholders or depositors, direct that, instead of approving the transfer and the terms of the transfer by the two resolutions required by section 97(4)(c), the society may approve the transfer and those terms by a resolution of the board of directors.

(5) A direction under subsection (3) or (4) above—

- (a) shall be in writing;
- (b) may be given subject to such limitations or conditions as the [F177 appropriate authority] may think fit; and
- (c) unless renewed by a further direction, shall cease to have effect at the end of the period of 90 days beginning with the day on which it is given.

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

F186(5A)

F187(6) .....

(7) In Schedule 8A to this Act—

- (a) Part I (which contains provisions modifying sections 94 to 96 and Schedule 16 to this Act) shall apply where a direction is given under subsection (3) above; and
- (b) Part II (which contains provisions modifying sections 97 to 100 and Schedule 17 to this Act) shall apply where a direction is given under subsection (4) above.

(8) The [F188 Treasury] may make regulations for the purpose of specifying, as prescribed matters—

- (a) the matters of which statements under paragraph 3 of Schedule 8A to this Act are to give particulars; and

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- (b) the matters of which statements under paragraph 9 of that Schedule are to give particulars.
- (9) The power to make regulations under this section is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

- F174** S. 42B inserted (9.6.1997) by 1997 c. 32, s. 17(1); S.I. 1997/1427, art. 2(c)
- F175** Words in s. 42B(1) substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. II para. 145(a) (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2(1)
- F176** Words in s. 42B(1) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), Sch. 8 para. 13(3) (with Sch. 12)
- F177** Words in ss. 42B(1)-(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. 13(2) (with Sch. 12)
- F178** S. 42B(1)(aa) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 56(2)(a), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F179** Words in s. 42B(1)(b) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 56(2)(b), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F180** S. 42B(1A) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 56(3), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F181** S. 42B(2)(2A) substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) for s. 42B(2) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. II, para. 145(b) (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2(1)
- F182** Words in s. 42B(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. 13(4)(a) (with Sch. 12)
- F183** Words in s. 42B(2) omitted (1.4.2013) by virtue of The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), Sch. 8 para. 13(4)(b) (with Sch. 12)
- F184** Words in s. 42B(4)(a) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 56(4)(a), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F185** Words in s. 42B(4)(b) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 56(4)(b), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F186** S. 42B(5A) inserted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), Sch. 8 para. 13(5) (with Sch. 12)
- F187** S. 42B(6) repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), Sch. 4 (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2(1)
- F188** Word in s. 42B(8) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. II para. 145(e) (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2(1)

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

- C59** S. 42B(8): Functions of Building Societies Commission transferred (1.12.2001) to the Treasury by S.I. 2001/2617, arts. 2(b), 4(1), Sch. 1 Pt. III; S.I. 2001/3538, art. 2(1)

#### [<sup>F190</sup>42C [<sup>F189</sup>Variation and revocation of transfer directions]

- (1) A direction under section 42B(1) <sup>F191</sup> . . . may be varied by a further direction; and a direction may be revoked by the [<sup>F192</sup>appropriate authority] by a notice in writing to the building society concerned.

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[ If the appropriate authority is the PRA, it must consult the FCA before varying or  
 F193(1A) revoking a direction.]

F194(2) .....

F194(3) .....]

**Textual Amendments**

**F189** Side-note to s. 42C substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) by S.I. 2001/2617, art. 2, 8, 13(1), **Sch. 3 Pt. II para. 146(a)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

**F190** S. 42C inserted (9.6.1997) by 1997 c. 32, s. 18; S.I. 1997/1427, **art. 2(c)**

**F191** Words in s. 42C(1) repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

**F192** Word in s. 42C(1) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 14(2)** (with Sch. 12)

**F193** S. 42C(1A) inserted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 14(3)** (with Sch. 12)

**F194** S. 42C(2)(3) repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

F195 **43** .....

**Textual Amendments**

**F195** Ss. 43-45A repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with art. 13(3) Sch. 5); S.I. 2001/3538, **art. 2(1)**

Ss. 43-45A continued (1.12.2001) by S.I. 2001/2657, **art. 11** (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2), 23(1)**)

Ss. 43-45A continued (with modifications) (1.12.2001) by S.I. 2001/3083, **arts. 1(2), 11**; S.I. 2001/3538, **art. 2(1)**

F196 **43A** .....

**Textual Amendments**

**F196** Ss. 43-45A repealed (1.12.2001) by S.I. 2001/2617, **arts. 2(b), 13(2)** Sch. 4 (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

Ss. 43-45A continued (1.12.2001) by S.I. 2001/2657, **art. 11** (which was revoked (8.10.2001) by S.I. 2001/3083, **art. 23(1)**)

Ss. 43-45A continued (1.12.2001) by S.I. 2001/3083, **arts. 1(2), 11**; S.I. 2001/3538, **art. 2(1)**

F197 **43B** .....

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**Textual Amendments**

- F197** Ss. 43-45A repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- Ss. 43-45A continued (1.12.2001) by S.I. 2001/2657, **art. 11** (which was revoked (8.10.2001) by S.I. 2001/3083, **art. 23(1)**)
- Ss. 43-45A continued (1.12.2001) by S.I. 2001/3083, **arts. 1(2), 11**; S.I. 2001/3538, **art. 2(1)**

**F198** **44** .....

**Textual Amendments**

- F198** Ss. 43-45A repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

**F199** **45** .....

**Textual Amendments**

- F199** Ss. 43-45A repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

*[<sup>F200</sup>General functions of Commission]*

**Textual Amendments**

- F200** S. 45AA and cross-heading inserted (1.12.1997) by 1997 c. 32, **s. 22**; S.I. 1997/2668, art. 2, **Sch. Pt. I(d)**

**F201** **45AA** .....

**Textual Amendments**

- F201** Ss. 43-45A repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

**F202** **45A** .....

**Textual Amendments**

- F202** Ss. 43-45A repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

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### [<sup>F203</sup>Notices, hearings and appeals]

#### Textual Amendments

**F203** S. 46A and cross-heading substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) for ss. 46-49 and cross-heading by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II para. 148** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

#### [<sup>F204</sup>46A Notices, hearings and appeals.

- (1) If the [<sup>F205</sup>appropriate authority] proposes—
  - (a) to give a direction to a society under section 36(3), (5), (6), (7) or (10), or
  - (b) to give a direction to a society under section 42B(1), other than a direction varying a previous direction with the agreement of the society concerned,
 it must give the society a warning notice.
- (2) The warning notice must set out the terms of the direction which the [<sup>F205</sup>appropriate authority] proposes to give.
- (3) If the [<sup>F205</sup>appropriate authority] decides—
  - (a) to give a direction to a society under section 36(3), (5), (6), (7) or (10), or
  - (b) to give a direction to a society under section 42B(1), other than a direction varying a previous direction with the agreement of the society concerned,
 it must give the society a decision notice.
- (4) The decision notice must set out the terms of the direction which the [<sup>F205</sup>appropriate authority] has decided to give.
- (5) A society to whom a decision notice is given under this section may refer the matter to the [<sup>F206</sup>Upper Tribunal].
- (6) Part XXVI of the Financial Services and Markets Act 2000 (notices) is to be treated as applying in respect of warning notices and decision notices given under this section as it applies in respect of warning notices and decision notices given under that Act, subject to subsection (8) below.
- <sup>F207</sup>(7) .....
- (8) In the application of Part XXVI of that Act in respect of warning notices and decision notices given under this section—
  - (a) section 388(1)(e)(i) (which requires a decision notice to indicate any right given under that Act to refer a decision to the Tribunal) is to be read as if, for the words “this Act”, there were substituted “ the Building Societies Act 1986 ”;
  - (b) section 388(2) (which makes provision for the type of action which may be proposed in a decision notice which was preceded by a warning notice) is to be read as if, for the word “Part”, there were substituted “ section ”;
  - (c) section 390(4) (which provides for the content of a final notice about an order) is to be read as if—
    - (i) for the words “an order” there were substituted “ a direction ”, and
    - (ii) for the words “the order”, in both places where they appear, there were substituted “ the direction ”, and

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- (d) section 392 (application of sections 393 (third party rights) and 394 (access to <sup>F205</sup>appropriate authority] material)) is to be read—
- (i) as if paragraph (a) of that section contained a reference to a warning notice given under subsection (1) above, and
  - (ii) as if paragraph (b) of that section contained a reference to a decision notice given under subsection (3) above.]

#### Textual Amendments

- F204** S. 46A substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) for ss. 46-49 by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II para. 148** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F205** Words in s. 46A substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 15** (with Sch. 12)
- F206** Words in s. 46A(5) substituted (6.4.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(2)(e), **Sch. 2 para. 7(a)** (with Sch. 5)
- F207** S. 46A(7) omitted (6.4.2010) by virtue of The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(2)(e), **Sch. 2 para. 7(b)** (with Sch. 5)

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

- C60** S. 46A(1) extended (1.12.2001) by S.I. 2001/3592, **arts. 36(2), 38(1)** (with art. 23(2))
- C61** S. 46A(8)(d)(i) excluded (1.12.2001) by S.I. 2001/3592, **arts. 36(3), 38(2)** (with art. 23(2))

*Advertising etc.*

<sup>F218</sup>**50** .....

#### Textual Amendments

- F218** S. 50 repealed (1.12.2001) by S.I. 2001/2617, arts. 2, 13(2), **Sch. 4** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

#### <sup>F219</sup>**51 Powers to avoid apparent association with other bodies.**

- (1) If, as regards a building society and another body corporate which is not an associated body by virtue of section 18, it appears to the Commission that persons who might invest in or otherwise deal with that other body may be misled into believing that there is such a business relationship between the society and that body as indicates that the society has assumed an obligation to discharge that body's liabilities in any event, the Commission may give the society a direction under subsection (2) below.
- (2) A direction under this subsection is a direction requiring the society—

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- (a) if they are available to it, to assume and make exercisable, or to make exercisable, as regards a body specified in the direction, the powers conferred by section 18; or
- (b) to take such steps as are agreed with the Commission for the purpose of removing the appearance of a business relationship with the specified body which indicates the assumption of an obligation of the description referred to in subsection (1) above;

and, within a specified period, to notify the Commission of the course it has decided to take.

- (3) The steps that a building society may be required to take for the purpose of complying with a direction under subsection (2) above may relate to the conduct of its business or to its business relationship (if any) with the other body and, in particular, may require the removal of any person from any office in the society or that body.
- (4) A direction under subsection (2) above shall—
  - (a) specify the matters which appear to the Commission to be capable of giving rise to such a belief as is mentioned in subsection (1) above;
  - (b) specify the period within which the society must comply with the direction;
  - (c) require the society, if it decides to comply with the direction by taking steps to secure the purpose mentioned in subsection (2)(b) above, to notify the Commission of the steps it proposes to take.
- (5) Where a building society, in pursuance of subsection (2)(b) above notifies the Commission of steps which it proposes to take to secure the purpose mentioned in that paragraph then—
  - (a) if it appears to the Commission that the steps proposed are reasonably likely to secure that purpose, the Commission shall approve them and direct the society to carry them out;
  - (b) if it appears to the Commission that the steps proposed are, with modifications, likely to secure that purpose and the Commission and the society agree on appropriate modifications within the period of 21 days from the date on which the Commission notifies the society of the modifications it proposes for their agreement, the Commission shall approve the steps as modified and direct the society to carry them out;

but otherwise the Commission shall reject the society's proposals.

- (6) If the Commission rejects a society's proposals under subsection (5) above the Commission shall direct the society, within a specified period, to take the steps specified in the direction.
- (7) Any direction under subsection (2), (5) or (6) above shall be given by the Commission by notice served on the society.
- (8) The Commission may, if it thinks fit, extend, or further extend, any period during which a building society is to take any steps required of it under any of the foregoing provisions of this section and may do so whether or not application is made to it before the expiry of the period in question.
- (9) If a building society fails, within the period allowed to it under the foregoing provisions of this section, to comply with a direction under subsection (2) or (6) above, the Commission may serve on the society an aggregation notice to take effect on such date as is specified in the notice.



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- (10) An aggregation notice under subsection (9) above is a notice directing that, from the date specified in the notice until the notice is withdrawn by the Commission, the assets and liabilities of the body specified in the notice will be aggregated with those of the society for the purposes of the provisions of this Act requiring aggregation of assets or liabilities; and where such a notice is served, and whilst it remains in force, the assets and liabilities of the body specified in the notice shall for the purposes of those provisions be aggregated with those of the society in accordance with the aggregation rules in force under sections 7(10), 8(3) and 20(9).
- (11) A copy of any aggregation notice served on a building society under subsection (9) above shall, whilst in force, be kept in the public file of the society.
- (12) In this section—
- “business relationship” includes the use of business names and the holding by one individual of offices in more than one body;
- “specified” means specified in a direction under any provision of this section;
- and “the provisions of this Act requiring aggregation of assets or liabilities” are sections 7, 8 and 20.]

#### Textual Amendments

**F219** S. 51 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. 16, **Sch. 9**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(y)(z)(vii)(cc)(vi)**

### Information

#### 52 Powers to obtain information and documents etc.

- (1) This section applies to information, documents or other material, or explanations of matters, which relate to the business of a building society or its plans for future development and, in relation to the obtaining under this section of information or explanations or the production under this section of documents or other material to which it applies “the purposes of its supervisory functions” means the purposes of the discharge by the [<sup>F220</sup>[<sup>F221</sup>FCA or the PRA of any of their respective functions] under Part I, sections 36, 36A, 37, 42B, 42C and 46A, Part X and section 107.]
- (2) Where a building society has [<sup>F222</sup>connected undertakings] this section also applies to information, documents or other material, or explanations of matters, which relate to, or also relate to, the business, or the plans for future development, of every such [<sup>F223</sup>connected undertaking].
- [<sup>F224</sup>(3) Where the Commission has grounds under section 51(1) for giving a direction to a building society under subsection (2) of that section in relation to another body corporate this section also applies to information, documents or other material, or explanations of matters, which relate to the business of that other body.]
- (4) This section does not authorise any requirement in relation to information, documents or other material to be imposed on a [<sup>F225</sup>connected undertaking of] a building society unless [<sup>F226</sup>that undertaking] carries on business in the United Kingdom;

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but a requirement may be imposed under this section on a building society in relation to information, documents or other material in the possession or control of a [<sup>F227</sup>connected undertaking] outside the United Kingdom.

- (5) Subject to subsection (4) above, the [<sup>F228</sup>FCA and the PRA] may by notice to a building society, [<sup>F229</sup>or connected undertaking]—
- (a) require [<sup>F230</sup>the society or undertaking] to which it is addressed to furnish to it, within a specified period or at a specified time or times, such specified information as the [<sup>F231</sup>it] considers it needs for the purposes of its supervisory functions;
  - (b) require [<sup>F230</sup>the society or undertaking] to which it is addressed to produce to it, at a specified time and place, such specified documents or other material as the [<sup>F231</sup>it] considers it needs for the purposes of its supervisory functions;
  - (c) require [<sup>F230</sup>the society or undertaking] to which it is addressed to provide to it, within specified period, such explanations of specified matters as the [<sup>F231</sup>it] considers it needs for the purposes of its supervisory functions;
  - (d) require [<sup>F230</sup>the society or undertaking] to which it is addressed to furnish to it a report by an [<sup>F232</sup>approved accountant or other person with relevant professional skill] on, or on specified aspects of, information or documents or other material furnished or produced to the [<sup>F231</sup>it] .
- [<sup>F233</sup>(5A) Subject to subsection (4) above, [<sup>F234</sup>any person authorised for the purpose by the [<sup>F235</sup>FCA or the PRA] (“an authorised officer”) may, on producing evidence of his authority,] require a building society or connected undertaking—
- (a) to furnish to him forthwith such specified information as the [<sup>F236</sup>body which authorised the person] considers it needs for the purposes of its supervisory functions;
  - (b) to produce to him forthwith such documents or other material as the [<sup>F236</sup>body which authorised the person] considers it needs for those purposes;
  - (c) to provide to him forthwith such explanations of specified matters as the [<sup>F236</sup>body which authorised the person] considers it needs for those purposes.
- (6) Where by virtue of subsection (5)(a) to (c) above the [<sup>F237</sup>FCA or the PRA has power] , or by virtue of subsection (5A) above an authorised [<sup>F238</sup>officer] has power, to require the furnishing of any information, the production of any document or material or the provision of any explanation, by a building society or connected undertaking, the [<sup>F239</sup>FCA, the PRA or the authorised officer (as the case may be)] shall have the like power as regards any person who—
- (a) is or has been an officer or employee or agent of the society or undertaking; or
  - (b) in the case of documents or material, appears to the [<sup>F239</sup>FCA, the PRA or the authorised officer (as the case may be)] to have the document or material in his possession or under his control.]
- (7) Where any person from whom production of a document or material is required under subsection (6) above claims a lien on the document or material, the production of it shall be without prejudice to the lien.
- (8) Nothing in the foregoing provisions of this section shall compel the production by a [<sup>F240</sup>relevant lawyer] of a document or material containing a privileged communication made by him or to him in that capacity or the furnishing of information contained in a privileged communication so made.

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- [<sup>F241</sup>(9) Where, by virtue of subsection (5), (5A) or (6) above, the [<sup>F242</sup>FCA, the PRA or an authorised officer] requires the production by a building society or connected undertaking or any other person of documents or material, the [<sup>F243</sup>FCA, the PRA or the authorised officer (as the case may be)] may—
- (a) if the documents or material are produced, take copies of or extracts from them and require the person who produced them, or any other person who is a present or past director or officer of, or is or was at any time employed by, the building society or connected undertaking concerned, to provide an explanation of the documents or material; and
  - (b) if the documents or material are not produced, require the person who was required to produce the documents or material to state, to the best of his knowledge and belief, where the documents or material are.]
- (10) Any person who, when required to do so under this section, fails without reasonable excuse to furnish any information or accountant’s report, to produce any documents or material, or to provide any explanation or make any statement, shall be liable on summary conviction—
- (a) to a fine not exceeding level 5 on the standard scale; and
  - (b) in the case of a continuing offence, to an additional fine not exceeding £200 for every day during which the offence continues.
- (11) Any building society which furnishes any information, provides any explanation or makes any statement which is false or misleading in a material particular shall be liable, on conviction on indictment or on summary conviction, to a fine which, on summary conviction, shall not exceed the statutory maximum.
- (12) Any person who knowingly or recklessly furnishes any information, provides any explanation or makes any statement which is false or misleading in a material particular shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both; and
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- [<sup>F244</sup>(13) In this section—
- “agent”, in relation to a building society or connected undertaking, includes its bankers, accountants, solicitors and auditors;
  - “approved”, in relation to an accountant or other person with relevant professional skill, means approved by the [<sup>F245</sup>FCA or the PRA] ;
  - [<sup>F246</sup>“relevant lawyer” means a barrister, advocate, solicitor or other legal representative communications with whom may be the subject of a claim to professional privilege;]
  - “specified” means specified in a notice or requirement under this section.]

#### Textual Amendments

**F220** Words in s. 52(1) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) for s. 52(1)(a) (b) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 para. 150(a)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

**F221** Words in s. 52(1) substituted (1.4.2013) by **The Financial Services Act 2012 (Mutual Societies) Order 2013** (S.I. 2013/496), art. 1(1), **Sch. 8 para. 16(2)** (with Sch. 12)

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- F222** Words in s. 52(2) 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. 17(2)(a)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(viii)**
- F223** Words in s. 52(2) 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. 17(2)(b)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(viii)**
- F224** S. 52(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. 17(3)**, **Sch. 9**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(viii)(cc)(vii)**
- F225** Words in s. 52(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. 17(4)(a)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(viii)**
- F226** Words in s. 52(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. 17(4)(b)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(viii)**
- F227** Words in s. 52(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. 17(4)(c)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(viii)**
- F228** Words in s. 52(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. 16(3)(a)** (with Sch. 12)
- F229** Words in s. 52(5) 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. 17(5)(a)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(viii)**
- F230** Words in s. 52(5) 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. 17(5)(b)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(viii)**
- F231** Word in s. 52(5)(a)-(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. 16(3)(b)** (with Sch. 12)
- F232** Words in s. 52(5)(d) substituted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 17(5)(c)**; S.I. 1997/1427, **art. 2(k)(n)(iii)**
- F233** S. 52(5A)(6) substituted for s. 52(6) (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 17(6)**; S.I. 1997/1427, **art. 2(k)(n)(iii)**
- F234** Words in s. 52(5A) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2(a)(b), 8, 13(1), **Sch. 3 para. 150(c)(i)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F235** Words in s. 52(5A) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 16(4)(a)** (with Sch. 12)
- F236** Words in s. 52(5A)(a)-(c) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 16(4)(b)** (with Sch. 12)
- F237** Words in s. 52(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. 16(5)(a)** (with Sch. 12)
- F238** Word in s. 52(6) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2(a)(b), 8, 13(1), **Sch. 3 para. 150(d)(ii)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F239** Words in s. 52(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. 16(5)(b)** (with Sch. 12)
- F240** Words in s. 52(8) substituted (1.1.2010) by Legal Services Act 2007 (c. 29), s. 211(2), **Sch. 21 para. 70(a)** (with ss. 29, 192, 193); S.I. 2009/3250, art. 2(h)
- F241** S. 52(9) substituted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 17(7)**; S.I. 1997/1427, **art. 2(k)(n)(iii)**
- F242** Words in s. 52(9) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 16(6)(a)** (with Sch. 12)

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- F243** Words in s. 52(9) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), [Sch. 8 para. 16\(6\)\(b\)](#) (with Sch. 12)
- F244** S. 52(13) substituted (9.6.1997) by 1997 c. 32, s. 43, [Sch. 7 para. 17\(8\)](#); S.I. 1997/1427, [art. 2\(k\)\(n\)\(iii\)](#)
- F245** Words in s. 52(13) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), [Sch. 8 para. 16\(7\)](#) (with Sch. 12)
- F246** Words in s. 52(13) inserted (1.1.2010) by [Legal Services Act 2007 \(c. 29\)](#), s. 211(2), [Sch. 21 para. 70\(b\)](#) (with ss. 29, 192, 193); S.I. 2009/3250, art. 2(h)

[<sup>F247</sup>**52B Entry of premises under warrant under section 176 of the Financial Services and Markets Act 2000.**

- (1) A justice of the peace may issue a warrant under section 176 of the Financial Services and Markets Act 2000 if satisfied on information on oath given by or on behalf of the [<sup>F248</sup>FCA or the PRA], an authorised officer within the meaning of section 52(5A) above, or a person appointed as an investigator under section 55(1) below or as an inspector under section 56(1) below, that there are reasonable grounds for believing that the first or second set of conditions below is satisfied.
- (2) The first set of conditions is that—
- (a) there are on the premises specified in the warrant information, documents or other material in relation to which a requirement has been imposed on any person under section 52(5), (5A) or (6) above or section 57(3) below, or which it is the duty of any person to produce under section 55(3) or 57(2) below, and
  - (b) that person has failed (wholly or in part) to comply with the requirement or, having been requested to do so, has failed (wholly or in part) to comply with that duty.
- (3) The second set of conditions is that—
- (a) there are on the premises specified in the warrant information, documents or other material in relation to which a requirement could be imposed on any person under section 52(5), (5A) or (6) above or section 57(3) below, or which any person could be requested to produce in compliance with the duty imposed on them by section 55(3) or 57(2) below, and
  - (b) if such a requirement were imposed, or such a request made,—
    - (i) it would not be complied with, or
    - (ii) any information, documents or other material to which it related would be removed, tampered with or destroyed.]

**Textual Amendments**

- F247** S. 52B substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) for s. 52A by S.I. 2001/2617, [arts. 2\(a\)\(b\), 8, 13\(1\)](#), [Sch. 3 para. 151](#) (with [art. 13\(3\)](#), [Sch. 5](#)); S.I. 2001/3538, [art. 2\(1\)](#)
- F248** Words in s. 52B(1) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), [Sch. 8 para. 17](#) (with Sch. 12)

[<sup>F249</sup>**53A Disclosure of information.**

- (1) For the purposes of sections 348 to 353 of the Financial Services and Markets Act 2000 (restrictions on disclosure of confidential information)—

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- (a) information to which this section applies is to be treated as confidential information; and
  - (b) in relation to such information, each of the following is a primary recipient—
    - [<sup>F250</sup>(i) the FCA;
    - (ia) the PRA;]
    - (ii) any person who is or has been employed by the [<sup>F251</sup>FCA or the PRA] ; and
    - (iii) any person appointed by the [<sup>F251</sup>FCA or the PRA] to carry out functions under this Act.
- (2) This section applies to information which—
- (a) relates to—
    - (i) the business or other affairs of a building society or other body, or its or their plans for future development; or
    - (ii) any person who is or has been, or has been appointed (or, in the case of a director, nominated or proposed as), an officer of a building society or other body;
  - (b) was received by a primary recipient (within the meaning of subsection (1)(b)) for the purposes of, or in the discharge of, any functions of the [<sup>F252</sup>FCA or the PRA] under any provision made by or under this Act; and
  - (c) is not excluded information by virtue of subsection (4).
- (3) It is immaterial for the purposes of subsection (2) whether or not the information was received—
- (a) by virtue of a requirement to provide it imposed by or under this Act;
  - (b) for other purposes as well as purposes mentioned in that subsection.
- (4) Information is excluded information if—
- (a) it has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purposes for which, disclosure is not precluded by section 348 of the Financial Services and Markets Act 2000; or
  - (b) it is in the form of a summary or collection of information so framed that it is not possible to ascertain from it information relating to any particular person.]

#### **Textual Amendments**

- F249** S. 53A substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) for s. 53 by S.I. 2001/2617, arts. 2(a)(b), 8, 13(1), **Sch. 3 para. 152** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F250** S. 53A(1)(b)(i)(ia) substituted for s. 53A(1)(b)(i) (1.4.2013) by *The Financial Services Act 2012 (Mutual Societies) Order 2013* (S.I. 2013/496), art. 1(1), **Sch. 8 para. 18(2)** (with Sch. 12)
- F251** Words in s. 53A(1)(b)(ii)(iii) substituted (1.4.2013) by *The Financial Services Act 2012 (Mutual Societies) Order 2013* (S.I. 2013/496), art. 1(1), **Sch. 8 para. 18(3)** (with Sch. 12)
- F252** Words in s. 53A(2)(b) substituted (1.4.2013) by *The Financial Services Act 2012 (Mutual Societies) Order 2013* (S.I. 2013/496), art. 1(1), **Sch. 8 para. 18(4)** (with Sch. 12)

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

- C76** S. 53A(1) restricted (*temp.* from 3.9.2001 until 30.11.2001) by S.I. 2001/2966, **art. 6**



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## 54 Information disclosed to <sup>F253</sup>FCA or PRA] from other sources.

(1) If and in so far as it appears to the Secretary of State that the disclosure of any information will enable the <sup>F254</sup>FCA or the PRA] better to discharge its functions under this Act (but not otherwise),—

- (a) information obtained by the Secretary of State under section 447 or 448 of the <sup>M13</sup>Companies Act 1985 (inspection of companies' books and papers) may be disclosed to the <sup>F254</sup>FCA or the PRA] or further disclosed, notwithstanding the provision as to security of information contained in section 449 or that Act; and
- (b) where the information is contained in a report made by inspectors appointed under section 431, 432 <sup>F255</sup>or 442] of the Companies Act 1985 (investigation of affairs or ownership of companies and certain other bodies corporate) the Secretary of State may furnish a copy of the report to the <sup>F254</sup>FCA or the PRA] .

- <sup>F256</sup>(2) .....
- <sup>F257</sup>(3) .....
- <sup>F257</sup>(3A) .....
- <sup>F257</sup>(3B) .....
- <sup>F257</sup>(3C) .....
- <sup>F258</sup>(4) .....
- <sup>F258</sup>(5) .....
- <sup>F257</sup>(6) .....

### Textual Amendments

- F253** Words in s. 54 heading substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), **Sch. 8 para. 19(3)** (with Sch. 12)
- F254** Words in s. 54 substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), **Sch. 8 para. 19(2)** (with Sch. 12)
- F255** Words in s. 54(1)(b) 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. 47** (with art. 12, Sch. 4 para. 47(2))
- F256** S. 54(2) omitted (1.10.2009) by virtue of [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), **Sch. 1 para. 87(2)** (with art. 10)
- F257** S. 54(3)-(6) repealed (1.12.2001) by [S.I. 2001/2617](#), arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), Sch. 5); [S.I. 2001/3538](#), **art. 2(1)**
- F258** S. 54(4)(5) repealed by [Banking Act 1987 \(c. 22, SIF 10\)](#), s. 108, Sch. 6 para. 26(5), **Sch. 7 Pt. I** and expressed to be repealed (1.12.2001) by [S.I. 2001/2617](#), arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), Sch. 4); [S.I. 2001/3538](#), **art. 2(a)**

### Modifications etc. (not altering text)

- C77** S.54 modified by [Companies Act 1989 \(c. 40, SIF 27\)](#), **s. 88(3)(b)(5)(6)**

### Marginal Citations

- M13** 1985 c. 6.

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### *Inspections, etc*

## 55 Investigations on behalf of [<sup>F259</sup>FCA or PRA] .

- (1) If it appears to [<sup>F260</sup>the FCA or the PRA] desirable to do so for the purposes of its supervisory functions in relation to a building society, [<sup>F261</sup>it] may appoint one or more competent persons to investigate and report to it on the state and conduct of the business of the society concerned, or any particular aspect of that business.
- (2) If a person appointed under subsection (1) above thinks it necessary for the purposes of his investigation, he may also investigate the business of any body corporate which is or has at any relevant time been [<sup>F262</sup>a connected undertaking of the building society under investigation]
- (3) It shall be the duty of every officer, employee and agent of a building society or other body which is under investigation—
  - (a) to produce to the persons appointed under subsection (1) above all records, books and papers relating to the body concerned which are in his custody or power; and
  - (b) to attend before those persons when required to do so; and
  - (c) otherwise to give to those persons all assistance in connection with the investigation which he is reasonably able to give.
- (4) Any officer, employee or agent of a building society or other body who—
  - (a) without reasonable excuse fails to produce any records, books or papers which it is his duty to produce under subsection (3) above, or
  - (b) without reasonable excuse fails to attend before the person appointed under subsection (1) above when required to do so, or
  - (c) without reasonable excuse fails to answer any question which is put to him by persons so appointed with respect to any building society or other body corporate which is under investigation,

shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) Any officer, employee or agent of a building society or other body who knowingly or recklessly furnishes to any person appointed under subsection (1) above any information which is false or misleading in a material particular, shall be liable—
  - (a) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or both; and
  - (b) on summary conviction to a fine not exceeding the statutory maximum.
- (6) In this section—
  - (a) “agent”, in relation to a building society or other body whose business is under investigation, includes its bankers, its accountants and solicitors and any persons, where they are not officers of the other body concerned, who are employed as its auditors;
  - (b) “the purposes of its supervisory functions”, in relation to the [<sup>F263</sup>FCA or the PRA] , has the same meaning as in section 52; and
  - (c) any reference to an officer, employee or agent of a building society or other body includes a reference to a person who has been but no longer is an officer, employee or agent of that society or other body.



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### Textual Amendments

- F259** Words in s. 55 heading substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), [art. 1\(1\)](#), [Sch. 8 para. 20\(4\)](#) (with Sch. 12)
- F260** Words in s. 55(1) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), [art. 1\(1\)](#), [Sch. 8 para. 20\(2\)\(a\)](#) (with Sch. 12)
- F261** Word in s. 55(1) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), [art. 1\(1\)](#), [Sch. 8 para. 20\(2\)\(b\)](#) (with Sch. 12)
- F262** Words in s. 55(2) substituted for s. 55(2)(a)(b) (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. 21](#); S.I. 1997/2668, [art. 2](#), [Sch. Pt. II\(w\)\(z\)\(x\)](#)
- F263** Words in s. 55(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. 20\(3\)](#) (with Sch. 12)

### Modifications etc. (not altering text)

- C78** S. 55 extended (1.1.2003) by 2000 c. 39, s. 2, [Sch. 2 para. 13\(1\)](#); S.I. 2002/2711, [art. 2](#) (subject to [arts. 3-5](#))  
S. 55 extended (*prosp.*) by S.I. 2002/3152, [arts. 1\(2\)\(3\)](#), 4, [Sch. 2 para. 13\(1\)](#)
- C79** S. 55 extended (NI) (2.2.2004) by [The Insolvency \(Northern Ireland\) Order 2002 \(S.I. 2002/3152\)](#), [art. 1\(3\)](#), [Sch. 2 para. 13\(1\)](#); S.R. 2003/545, [art. 2](#) (subject to S.R. 2003/546, [arts. 2-7](#))
- C80** S. 55(6)(a) amended (E.W.) (1.1.1992) by S.I. 1991/2684, [arts. 2\(1\)](#), 4, [Sch. 1](#)

## 56 Inspections and special meetings: general.

- (1) In the circumstances mentioned in subsection (2) below, the [<sup>F264</sup>FCA and the PRA] —
- may appoint one or more competent inspectors to investigate and report on the affairs of a building society, or
  - may call a special meeting of a building society to consider its affairs, or
  - may (either on the same or on different occasions) both appoint an inspector or inspectors and call a special meeting for those purposes;

and, in the circumstances mentioned in subsection (3) below, the investigation or consideration may extend to the affairs of any body corporate which is or at any relevant time has been a [<sup>F265</sup>connected undertaking of] the building society.

- [<sup>F266</sup>(1A) The FCA must consult the PRA before exercising the power in subsection (1).
- (1B) The PRA must consult the FCA before exercising the power in subsection (1).]
- (2) The powers conferred by subsection (1) above may be exercised either—
- on the application of the requisite number of members of the society, or
  - where no such application is made but the [<sup>F267</sup>FCA or the PRA (as the case may be)] is of opinion that an investigation should be held into the affairs of the society, or that the affairs of the society call for consideration by a meeting of its members.
- (3) The powers conferred by subsection (1) above may be exercised in relation also to a [<sup>F268</sup>connected undertaking of] a building society either—
- where the application referred to in subsection (2)(a) above so requests, or
  - where the application contains no such request but the [<sup>F267</sup>FCA or the PRA (as the case may be)] is of the opinion that it is necessary for the purposes of the investigation into or consideration of the affairs of the building society

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that the affairs of the [F<sup>269</sup>connected undertaking] should also be investigated or considered.

- (4) Where the inspectors are of the opinion mentioned in subsection (3)(b) above in relation to a [F<sup>268</sup>connected undertaking of] a building society they may, with the consent of the [F<sup>270</sup>body exercising its powers under subsection (1)] , extend their investigation to the affairs of the [F<sup>269</sup>connected undertaking] and make their report accordingly.
- (5) For the purposes of subsections (1) to (3) above the requisite number of members—
- (a) in the case of a building society having more than 1,000 members, is 100, and
  - (b) in the case of any other building society, is one-tenth of the whole number of members of the society.
- (6) The following provisions shall have effect where an application is made as mentioned in subsection (2)(a) above, that is to say—
- (a) the application shall be supported by such evidence as the [F<sup>271</sup>body to which the application was made] may require for the purpose of showing that the applicants have good reason for requiring an investigation by inspectors or consideration by a special meeting, as the case may be, and that the applicants are not actuated by malicious, frivolous, vexatious or scandalous motives in their application;
  - (b) such notice of the application shall be given to the building society and, in a case where the investigation is to extend to its affairs also, to the society's [F<sup>272</sup>connected undertaking], as the [F<sup>271</sup>body to which the application was made] may direct;
  - (c) the [F<sup>271</sup>body to which the application was made] shall require the applicants to give security for payment of the costs of the investigation or meeting before the inspector is appointed or the meeting is called subject, in the case of the costs of an investigation, to an amount not exceeding the corresponding Companies Act limit; and
  - (d) as regards the expenses of or incidental to the investigation or meeting—
    - (i) in the case of an investigation (in whichever way instituted), the expenses shall be defrayed in the first instance by the [F<sup>271</sup>body to which the application was made] but without prejudice to its rights to contribution under section 57(10);
    - (ii) in the case of a meeting, the expenses shall be defrayed by the applicants, or out of the funds of the society, or by the members or officers or former members or officers of the society, in such proportions as the [F<sup>271</sup>body to which the application was made] may direct.
- (7) [F<sup>273</sup>Before the FCA or the PRA exercises] its powers under subsection (1) above in a case falling within subsection (2)(b) above, [F<sup>274</sup>it] shall inform the building society of the action which it proposes to take and the grounds for that action, and the society shall, within 14 days of receiving the information, be entitled to give [F<sup>275</sup>the body exercising its powers under subsection (1)] an explanatory statement in writing by way of a reply.
- (8) Where the [F<sup>276</sup>FCA or the PRA] proposes to exercise its powers under subsection (1) above in a case falling within subsection (3)(b) above, subsection (7) above shall apply in relation to the [F<sup>272</sup>connected undertaking] as it applies in relation to the society.

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(9) Inspectors appointed under this section shall, in addition to having the powers which are necessary for or incidental to the discharge of their functions under this section, have the powers specified in section 57.

(10) Where a special meeting is called under this section—

- (a) the [<sup>F277</sup>body exercising its powers under subsection (1)] may direct at what time and place the meeting is to be held, and what matters are to be discussed and determined at the meeting, and may give such other directions as it thinks fit with respect to the calling, holding and conduct of the meeting;
- (b) the [<sup>F277</sup>body exercising its powers under subsection (1)] may appoint a person to be chairman at the meeting or, in default of such an appointment, the meeting may appoint its own chairman;
- (c) the meeting shall have all the powers of a meeting called according to the rules of the building society;

and the provisions of this subsection and any direction given under it shall have effect notwithstanding anything in the rules of the building society.

(11) In this section “the corresponding Companies Act limit”, in relation to security for the payment of the costs of an investigation, is £5,000 or such other sum as is specified for the time being in an order under section 431(4) of the <sup>M14</sup>Companies Act 1985 for the purposes of that section.

#### Textual Amendments

- F264** Words in s. 56(1) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), [Sch. 8 para. 21\(2\)](#) (with Sch. 12)
- F265** Words in s. 56(1) 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. 22\(1\)](#); S.I. 1997/2668, art. 2, [Sch. Pt. II\(w\)\(z\)\(xi\)](#)
- F266** S. 56(1A)(1B) inserted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), [Sch. 8 para. 21\(3\)](#) (with Sch. 12)
- F267** Words in s. 56(2)(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. 21\(4\)](#) (with Sch. 12)
- F268** Words in s. 56(3)(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. 22\(2\)\(a\)](#); S.I. 1997/2668, art. 2, [Sch. Pt. II\(w\)\(z\)\(xi\)](#)
- F269** Words in s. 56(3)(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. 22\(2\)\(b\)](#); S.I. 1997/2668, art. 2, [Sch. Pt. II\(w\)\(z\)\(xi\)](#)
- F270** Words in s. 56(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. 21\(5\)](#) (with Sch. 12)
- F271** Words in s. 56(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. 21\(6\)](#) (with Sch. 12)
- F272** Words in s. 56(6)(8) 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. 22\(3\)](#); S.I. 1997/2668, art. 2, [Sch. Pt. II\(w\)\(z\)\(xi\)](#)
- F273** Words in s. 56(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. 21\(7\)\(a\)](#) (with Sch. 12)
- F274** Word in s. 56(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. 21\(7\)\(b\)\(i\)](#) (with Sch. 12)

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- F275** Words in s. 56(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. 21(7)(b)(ii)** (with Sch. 12)
- F276** Words in s. 56(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. 21(8)** (with Sch. 12)
- F277** Words in s. 56(10) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), **Sch. 8 para. 21(9)** (with Sch. 12)

#### Marginal Citations

**M14** 1985 c. 6.

## 57 Inspections: supplementary provisions.

(1) In this section—

“the body under investigation” means the building society whose affairs or, as the case may be, the building society whose affairs, and each [<sup>F278</sup>connected undertaking of] the building society whose affairs, are the subject of the investigation;

“the inspectors” means the persons appointed <sup>F279</sup>... under section 56 to conduct the investigation;

“the investigation” means the investigation under section 56 which the inspectors have been appointed to hold;

and references to officers or to agents include past, as well as present, officers or agents (as the case may be) and “agents”, in relation to a building society or any [<sup>F278</sup>connected undertaking of] a building society, includes its bankers, its accountants and solicitors and its auditors.

(2) When the inspectors have been appointed it is the duty of all officers and agents of the body under investigation—

- (a) to produce to the inspectors all documents and material of or relating to the body under investigation which are in their custody or power;
- (b) to attend before the inspectors when required to do so, and
- (c) otherwise to give the inspectors all assistance in connection with the investigation which they are reasonably able to give.

(3) If the inspectors consider that a person other than an officer or agent of the body under investigation is or may be in possession of information concerning its affairs, they may require that person to produce to them any documents or material in his custody or power relating to the body under investigation, to attend before them and otherwise to give them all assistance in connection with the investigation which he is reasonably able to give; and it is that person’s duty to comply with the requirement.

(4) The inspectors may examine on oath the officers and agents of the body under investigation, and any such person as is mentioned in subsection (3) above, in relation to the affairs of the body under investigation, and may administer an oath accordingly.

(5) An answer given by a person to a question put to him under the foregoing provisions of this section may be used in evidence against him.

[<sup>F280</sup>(5A) However, in criminal proceedings in which that person is charged with an offence to which this subsection applies—

- (a) no evidence relating to the answer may be adduced, and
- (b) no question relating to it may be asked,

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by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(5B) Subsection (5A) above applies to any offence other than—

- (a) an offence under section 2 or 5 of the Perjury Act 1911 (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath);
- (b) an offence under section 44(1) or (2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made on oath or otherwise than on oath); or
- (c) an offence under Article 7 or 10 of the <sup>M15</sup>Perjury (Northern Ireland) Order 1979 (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath).]

(6) If an officer or agent of the body under investigation or any such person as is mentioned in subsection (3) above—

- (a) refuses to produce any document or material which it is his duty under this section to produce, or
- (b) refuses to attend before the inspectors when required to do so, or
- (c) refuses to answer any question put to him by the inspectors with respect to the affairs of the body under investigation,

the inspectors may certify the refusal in writing to the High Court; and the court may thereupon inquire into the case and, after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, may punish the offender in like manner as if he had been guilty of contempt of the court.

(7) The inspectors may, and if so directed by the [<sup>F281</sup>body which appointed the inspectors] shall, make interim reports to the [<sup>F281</sup>body which appointed the inspectors] , but they may at any time in the course of the investigation, without making an interim report, inform the [<sup>F281</sup>body which appointed the inspectors] of matters coming to their knowledge as a result of the investigation tending to show that an offence has been committed.

(8) The [<sup>F282</sup>body which appointed the inspectors] may, if it thinks fit—

- (a) send a copy of any report made by the inspectors to the body whose affairs are or were the subject of the investigation;
- (b) furnish a copy of any such report on request <sup>F283</sup> . . . to—
  - (i) any member of the body whose affairs are or were the subject of the investigation;
  - (ii) the auditors of that body;
  - (iii) any person whose conduct is referred to in the report;
  - (iv) any other person whose financial interests appear to the [<sup>F282</sup>body which appointed the inspectors] to be affected by matters dealt with in the report, whether as creditor or otherwise; and
- (c) cause the report to be printed and published.

[<sup>F284</sup>(8A) The [<sup>F285</sup>body which appointed the inspectors] may charge a reasonable fee for furnishing to any person a copy of a report under subsection (8)(b) above.]

(9) A copy of a report of inspectors appointed under section 56 to hold an investigation under that section, certified by the [<sup>F286</sup>body which appointed the inspectors] to be a

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true copy, is admissible in any legal proceedings as evidence of the opinion of the inspectors in relation to any matter contained in the report; and a document purporting to be such a certificate shall be received in evidence and be deemed to be such a certificate, unless the contrary is proved.

(10) The [<sup>F287</sup>body which appointed the inspectors] shall be entitled to be repaid the expenses of the investigation defrayed by it under section 56(6)(d) as provided in the following paragraphs, that is to say—

- (a) by the applicants for the investigation, to such extent (if any) as the [<sup>F287</sup>body which appointed the inspectors] may direct;
- (c) by any person convicted of an offence in proceedings instituted as a result of the investigation, to such extent (if any) as the court by or before which he was convicted may order;

and a person liable under any one of paragraphs (a) to (c) above is entitled to contribution from any other person liable under the same paragraph, according to the amount of their respective liabilities under it.

(11) In the application of this section to a building society whose principal office is in Scotland, any reference to the High Court shall be read as a reference to the Court of Session.

#### Textual Amendments

- F278** Words in s. 57(1) 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. 23**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xii)**
- F279** Words in s. 57(1) omitted (1.4.2013) by virtue of The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 22(2)** (with Sch. 12)
- F280** S. 57(5A)(5B) inserted (14.4.2000 (E.W.N.I.) and 1.1.2001 (S.)) by 1999 c. 23, ss. 59, 68(3)(4), **Sch. 3 para. 9** (with Sch. 7 paras. 3(3), 5(2)); S.I. 2000/1034, **art. 2(a)(3)**; S.S.I. 2000/445, **art. 2**
- F281** Words in s. 57(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. 22(3)** (with Sch. 12)
- F282** Words in s. 57(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. 22(3)** (with Sch. 12)
- F283** Words in s. 57(8)(b) repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 8, 13(2), **Sch. 4** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F284** S. 57(8A) inserted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2(a)(b), 8, 13(1), **Sch. 3 para. 155(b)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F285** Words in s. 57(8A) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 22(3)** (with Sch. 12)
- F286** Words in s. 57(9) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 22(3)** (with Sch. 12)
- F287** Words in s. 57(10) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 22(3)** (with Sch. 12)

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

- C81** S. 57(1) amended (E.W.) (1.1.1992) by S.I. 1991/2684, arts. 2(1), 4, **Sch. 1**
- C82** S. 57(5)(5A)(5B) extended (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 para. 13(2)**; S.I. 2002/2711, **art. 2** (subject to arts. 3-5)  
 S. 57(5)(5A)(5B) extended (*prosp.*) by S.I. 2002/3152, arts. 1(2)(3), 4, **Sch. 2 para. 13(2)**
- C83** S. 57(5)-(5B) applied (NI) (2.2.2004) by The Insolvency (Northern Ireland) Order 2002 (S.I. 2002/3152), art. 1(3), **Sch. 2 para. 13(2)**; S.R. 2003/545, art. 2 (subject to S.R. 2003/546, arts. 2-7)

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#### **Marginal Citations**

**M15** S.I. 1979/1714 (N.I. 19).

## **PART VII**

### **MANAGEMENT OF BUILDING SOCIETIES**

#### *Directors and other officers*

#### **58 Directors: number.**

- (1) Every building society shall have at least two directors.
- (2) One of the directors shall be appointed to be chairman of the board of directors.

#### **59 Chief executive and secretary.**

- (1) Every building society shall have a chief executive, that is to say, a person who is employed by the society and who either alone or jointly with one or more other persons, is or will be responsible under the immediate authority of the directors for the conduct of the business of the society.
- (2) Every building society shall have a secretary.
- (3) The offices of chief executive and secretary of a building society may be held by the same person.
- (4) The chief executive and the secretary of a building society shall be appointed by the directors of the society.
- (5) The directors of a building society shall, as regards the appointment of the secretary or the chief executive of the society, take all reasonable steps to secure that the person appointed is a person who has the requisite knowledge and experience to discharge the functions of his office.
- (6) Where a person becomes or ceases to be the chief executive of a building society, the society shall within one month give notice of that fact to the [F<sup>288</sup>FCA], stating the person's full name and address and the date on which he became, or ceased to be, chief executive; and the [F<sup>288</sup>FCA] shall record the person's name and the date on which he began to hold, or, as the case may be, ceased to hold office, in the public file of the society.
- (7) Anything required or authorised to be done by or to the secretary or chief executive of a building society may, if the office is vacant or there is for any other reason no secretary or chief executive capable of acting, be done by or to any assistant or deputy secretary or assistant or deputy chief executive, as the case may be, or, if there is no assistant or deputy capable of acting, by or to any officer of the society authorised generally or specially for that purpose by the directors.



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### Textual Amendments

**F288** Word in s. 59(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. 23](#) (with [Sch. 12](#))

## 60 Directors: elections and retirements.

- (1) Except in so far as they may be co-opted by virtue of subsection (13) below, the directors of a building society must be elected to office, either—
- [<sup>F289</sup>(a) on a poll taken at the annual general meeting of the society, or]
  - (b) by postal [<sup>F290</sup>or electronic] ballot of the members conducted during that part of the financial year of the society which precedes the date on which the annual general meeting is held,
- as the rules provide.
- [<sup>F291</sup>(1A) Where directors of a building society are to be elected to office on a poll taken at the annual general meeting of the society, a form for the appointment of a proxy shall be sent to each person entitled to notice of the meeting.]
- (2) The persons entitled to vote in an election of directors of a building society are those members of the society who, on the voting date, are entitled to vote on an ordinary resolution of the society.
- [<sup>F292</sup>(3) Where, in the case of an election of directors of a building society, there are more candidates than vacancies to be filled by the election, a person entitled to vote in the election—
- (a) shall have one vote in respect of every vacancy, but
  - (b) cannot be required to cast all or any of his votes.
- (3A) Where, in the case of an election of directors of a building society, there are not more candidates than vacancies to be filled by the election—
- (a) a person entitled to vote in the election shall have one vote in respect of every candidate, but cannot be required to cast all or any of his votes;
  - (b) each vote shall be capable of being cast either for or against the candidate concerned; and
  - (c) a candidate shall be elected if, and only if, more votes are cast for him than against him.]

(4) Subject to subsections [<sup>F293</sup>(4A),] (6), (7) and (9) below and to paragraph 5(3) of Schedule 2 to this Act, [<sup>F294</sup>any natural person] is eligible to be elected a director of a building society.

[<sup>F295</sup>(4A) A person in relation to whom there is in force a prohibition order made under section 56(2) of the Financial Services and Markets Act 2000 shall not be eligible to be elected as a director of a building society.]

(5) The rules of a building society may require its directors to retire at a prescribed age without eligibility for re-election or reappointment; and, if the age so prescribed is no greater than the age which is the normal retirement age for the purposes of this section, subsection (7) below shall have no application to the directors of the society.



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- (6) If the rules of a building society make the provision authorised by subsection (5) above, a person who has attained the age so prescribed shall not be eligible to be elected as a director of the society.
- (7) Except in a case where the operation of this subsection is excluded by subsection (5) above, if a person has attained the normal retirement age for directors, he shall not be eligible to be elected a director of a building society unless—
- (a) he has been approved as eligible for election by resolution of the board of directors, and
  - (b) his age and the reasons for the board’s approval of his eligibility have been notified to every person entitled to vote at the election.
- [<sup>F296</sup>(7A) Where the information required to be notified by subsection (7)(b) is sent electronically, it must be sent to an electronic address notified by the person for the purpose.
- (7B) The requirement of subsection (7)(b) to notify information to a person is satisfied by the publication of that information on a web site only if—
- (a) the society and that person have agreed to his accessing information on a web site;
  - (b) the published information is information to which the agreement applies;
  - (c) that person is notified before the voting date <sup>F297</sup> ... of—
    - (i) the publication of the information on a web site,
    - (ii) the address of that web site, and
    - (iii) the place on that web site where the information may be accessed, and how it may be accessed; and
  - (d) the information is published continuously on that web site throughout the period beginning with the giving of that notification and ending with the voting date.
- (7C) Where, in a case in which subsection (7B) is relied on for compliance with a requirement of subsection (7)(b)—
- (a) information is published for a part, but not all, of the period mentioned in subsection (7B)(d), but
  - (b) the failure to publish it throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the society to prevent or avoid,
- the failure shall not invalidate the election of a director.]
- (8) In this section “the normal retirement age”, in relation to the directors of a building society, means 70 years or such lesser age as the rules of the society prescribe as the normal retirement age for its directors; and “the compulsory retirement age”, for a society whose rules make the provision authorised by subsection (5) above, means the age so prescribed in its rules.
- (9) The rules of a building society may impose, as a condition of a person’s eligibility to be or to remain a director of the society, a requirement that he shall hold beneficially shares in the society not less in value than the amount prescribed by the rules, but the minimum holding to be required shall not exceed £1,000 or such other amount as may be substituted for it by order of the [<sup>F298</sup>Treasury] under this subsection.

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(10) The rules of a building society may impose, as conditions of the validity of a person’s nomination for election as a director, requirements as to—

- (a) the minimum number of members who must join in nominating him,
- <sup>F299</sup>[(b) their qualifications as respects length of membership and the value of their shares or the amount of their mortgage debt;]
- (c) the depositing of money with the society in connection with his candidature, but no other requirements; and rules made by virtue of this subsection must comply with section 61.

<sup>F300</sup>[(10A) A nomination of a candidate for election as a director of a building society—

- (a) may be made at any time; but
- (b) if made after the closing date for the nomination of candidates for the next election of directors, shall be carried forward (unless the candidate otherwise requires) as a nomination for the next election of directors after that;

and in this subsection and section 61 “the closing date for the nomination of candidates”, in relation to an election of directors, means the last day of the last financial year to end before the voting date.]

(11) A director of a building society shall retire from office—

- (a) in any case not provided for by paragraph (b) below, subsection (12) below or rules under section 61(10), at the third annual general meeting of the society following the date of his election, and
- (b) in a case where he had attained the normal retirement age at his election, at the next annual general meeting following that date;

subject (in either case) to any provision for his earlier retirement on the grounds of ceasing to hold the requisite shares in the society contained in the rules of the society.

(12) A director of a building society attaining the normal retirement age or, as the case may be, the compulsory retirement age shall, subject to any provision of the rules for earlier retirement, retire from office at the next annual general meeting of the society.

(13) If the rules of a building society so provide, the directors for the time being may appoint as additional directors or to fill any vacancy on the board of directors any person who—

- (a) has not attained—
  - (i) the normal retirement age, or
  - (ii) the compulsory retirement age (where that age is less than the normal retirement age), and
- (b) appears to them to be fit and proper to be a director.

not being a person who, having been nominated for election as a director at any election held within the preceding twelve months, was not elected as a director.

(14) A person who is co-opted under subsection (13) above shall cease to hold office at the end of the permitted period unless he is elected as a director of the society in accordance with this section within that period.

(15) A person who holds office as, or is to his knowledge nominated for election or proposed for appointment under subsection (13) above as, a director of a building society shall, not later than 28 days before he attains the normal retirement age or, as the case may be, the compulsory retirement age for directors of the society, give the

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society notice of the date on which he will attain that age; and if he fails to do so he shall be liable on summary conviction—

- (a) to a fine not exceeding level 3 on the standard scale; and
- (b) in the case of a continuing offence, to an additional fine not exceeding £40 for every week during which the offence continues.

(16) The power of the [<sup>F298</sup>Treasury] to make an order under subsection (9) above—

- (a) includes power to make such transitional provision as [<sup>F301</sup>they consider] necessary or expedient, and
- (b) shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(17) In this section—

[<sup>F302</sup> “ordinary resolution” means a resolution which will be effective without being passed as a special resolution or borrowing members’ resolution;]

“permitted period”, in relation to a co-opted director, has the meaning given by section 61(12); and

“the voting date” means—

- (a) in the case of an election at a meeting, the date of the meeting, except where paragraph (c) below applies;
- (b) in the case of an election conducted by postal ballot [<sup>F303</sup>or by electronic ballot in the case of which not all the voting is electronic (within the meaning of paragraph 33A of Schedule 2)], the date which the society specifies as the final date for the receipt of completed ballot papers;
- (bb) [<sup>F304</sup>in the case of an election conducted by electronic ballot in which all the voting is electronic voting (within the meaning of that paragraph), the date which the society specifies as the final date for registering votes;]
- (c) in a case where a member appoints a proxy to vote at the meeting for him, the date which the society specifies as the final date for receipt of [<sup>F305</sup>appointments of] proxies to vote at the election;

and, for the purposes of this Act, the date of a person’s election to office as a director of a building society, in a case where the rules provide for election [<sup>F306</sup>by postal or electronic ballot], is the date of the meeting at which the declaration of the result of the ballot is made.

### Textual Amendments

**F289** S. 60(1)(a) 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. 27(1), 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(s)

**F290** Words in s. 60(1)(b) inserted (20.3.2003) by The Building Societies Act 1986 (Electronic Communications) Order 2003 (S.I. 2003/404), arts. 1(1), 30(2)(a)

**F291** S. 60(1A) 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. 27(2), 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(s)

**F292** S. 60(3)(3A) substituted for s. 60(3) (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. 27(3), 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(s)

**F293** Word in s. 60(4) inserted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2(a)(b), 8, 13(1), Sch. 3 para. 157(a) (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2(1)

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- F294** Words in s. 60(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. 27(4)**, 47(3); S.I. 1997/2668, art. 2, **Sch. Pt. II(s)**
- F295** S. 60(4A) inserted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2(a)(b), 8, 13(1), **Sch. 3 para. 157(b)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F296** S. 60(7A)-(7C) inserted (20.3.2003) by The Building Societies Act 1986 (Electronic Communications) Order 2003 (S.I. 2003/404), arts. 1(1), 2
- F297** Words in s. 60(7B)(c) omitted (18.2.2014) by virtue of Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(2), **Sch. 9 para. 10**
- F298** Words in s. 60(9)(16) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2(a)(b), 8, 13(1), **Sch. 3 para. 157(c)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F299** S. 60(10)(b) 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. 27(5)**, 47(3); S.I. 1997/2668, art. 2, **Sch. Pt. II(s)**
- F300** S. 60(10A) 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. 27(6)**, 47(3); S.I. 1997/2668, art. 2, **Sch. Pt. II(s)**
- F301** Words in s. 60(16) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2(a)(b), 8, 13(1), **Sch. 3 para. 157(d)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F302** Definition in s. 60(17) 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. 27(7)**, 46(2), 47(3), **Sch. 9**; S.I. 1997/2668, art. 2, **Sch. Pt. II(s)(cc)(viii)**
- F303** Words in s. 60(17) inserted (20.3.2003) by The Building Societies Act 1986 (Electronic Communications) Order 2003 (S.I. 2003/404), arts. 1(1), **30(2)(b)(i)**
- F304** Words in s. 60(17) inserted (20.3.2003) by The Building Societies Act 1986 (Electronic Communications) Order 2003 (S.I. 2003/404), arts. 1(1), **30(2)(b)(ii)**
- F305** Words in s. 60(17) substituted (20.3.2003) by The Building Societies Act 1986 (Electronic Communications) Order 2003 (S.I. 2003/404), arts. 1(1), **29(2)**
- F306** Words in s. 60(17) substituted (20.3.2003) by The Building Societies Act 1986 (Electronic Communications) Order 2003 (S.I. 2003/404), arts. 1(1), **30(2)(c)**

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

- C84** Ss. 60(1)(2)(3)(9)(10), 61 excluded (*temp.*) by S.I. 1986/2168, **art. 3(1)(3)**
- C85** S. 60(9)(16): Functions of the Building Societies Commission transferred (1.12.2001) to the Treasury by S.I. 2001/2617, arts. 2(b), 4(1), **Sch. 1 Pt. III** (with art. 5); S.I. 2001/3538, **art. 2(1)**

**61 Directors: supplementary provisions as to elections, etc.**

[<sup>F307</sup>(1) Rules made under section 60(10)(a), in order to comply with this section, must not require—

- (a) in the case of a society whose total commercial assets do not exceed £100 million, more than [<sup>F308</sup>50] members;
- (b) in the case of a society whose total commercial assets exceed £100 million but do not exceed £250 million, more than [<sup>F308</sup>100] members;
- (c) in the case of a society whose total commercial assets exceed £250 million but do not exceed £1,000 million, more than [<sup>F308</sup>150] members;
- (d) in the case of a society whose total commercial assets exceed £1,000 million but do not exceed £5,000 million, more than [<sup>F308</sup>200] members; and

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- (e) in the case of a society whose total commercial assets exceed £5,000 million, more than [<sup>F308</sup>250] members,  
to join in nominating a person for election as a director.
- (2) Rules under section 60(10)(b), in order to comply with this section, must not require a nominating member—
- (a) to have been a member for more than two years before the date of the nomination; or
  - (b) if he claims eligibility as a shareholding member, to hold, or to have held at any time during that period, shares in the society to a value greater than [<sup>F309</sup>£200]; or
  - (c) if he claims eligibility as a borrowing member, to owe to the society, or to have owed to the society at any time during that period, a mortgage debt of an amount greater than [<sup>F309</sup>£200].]
- (3) Rules made under section 60(10)(c), in order to comply with this section—
- (a) must not require more than [<sup>F310</sup>£500] to be deposited with the society;
  - (b) must not require the money to be deposited before the date which, under the rules, is the closing date for the nomination of candidates for the election; and
  - (c) must provide for the return of the deposit to the candidate in the event of his securing—
    - (i) not less than 5 per cent. of the total number of votes cast for all the candidates in the election; or
    - (ii) not less than 20 per cent. of the number of votes cast for the candidate who is elected with the smallest number of votes.
- [<sup>F311</sup>(3A) In subsection (1) above “total commercial assets”, in relation to a building society, means the difference between the total assets of the society as shown in the relevant accounts and the aggregate of—
- (a) the liquid assets of the society as shown in those accounts in pursuance of regulations [<sup>F312</sup>under section 72C or 72G, or in accordance with [<sup>F313</sup>UK-adopted international accounting standards] as appropriate]; and
  - (b) the fixed assets of the society as so shown;
- and in this subsection “the relevant accounts” means the accounts which, immediately before the closing date for the nomination of candidates, were the accounts last prepared by the society under [<sup>F314</sup>section 72A or 72E and “liquid assets” and “fixed assets”, in the case of societies which produce IAS individual accounts or IAS group accounts, have the same meaning as given in section 6(16)].
- (4) The [<sup>F315</sup>Treasury] may, by order, substitute—
- (a) for any amount or number specified in subsection (1) above;
  - (b) for any amount specified in subsection (2) above; or
  - (c) for any amount or percentage specified in subsection (3) above,
- such other amount, number or percentage as [<sup>F316</sup>they think] appropriate; and the [<sup>F317</sup>Treasury may] by order vary subsection (3A) above by adding to or deleting from it any provision or by varying any provision contained in it.]
- (5) The power to make orders under subsection (4) above—
- (a) includes power to make such transitional provision as the [<sup>F318</sup>Treasury consider] necessary or expedient, and

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- (b) is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) If a building society, in a case where the board of directors has approved as eligible for election a person who has attained the normal retirement age, fails to notify every person entitled to vote at the election as required by section 60(7), 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; but no such failure shall invalidate the election.
- (7) <sup>F319</sup>If, before the closing date for the nomination of candidates, a duly nominated candidate for election as a director of a building society furnishes the society with an election address, or a revised election address, of not more than 500 words], then, subject to subsection (8) below—
- (a) it shall be the duty of the society to send a copy of the address <sup>F320</sup>or, as the case may require, the revised address] to each member of the society who is entitled to vote in the election;
  - (b) each member's copy shall be sent in the same manner and, so far as practicable, at the same time as the notice of the meeting at which the election is to be conducted or <sup>F321</sup>the notice of the postal or electronic ballot is] sent out, as the case may be, or as soon as is practicable thereafter; and
  - (c) if the building society fails to comply with the requirements of this subsection 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 liable for the offence;

but no such failure shall invalidate the election.

<sup>F322</sup>(7A) Subsection (7B) applies where, in a case in which—

- (a) a society gives notice in accordance with paragraph 22A or 22B of Schedule 2 of the meeting at which the election is to be conducted;
- (b) a society gives notice of a postal ballot by which the election is to be conducted by sending it electronically to an electronic address; or
- (c) a society gives notice of an electronic ballot by which the election is to be conducted,

the copy of the election address or revised election address that is required to be sent to a member under subsection (7)(b) is not transmitted or published at the same time as the notice.

- (7B) The requirement of subsection (7)(b) to send a member his copy of the election address or revised election address in the same manner as the notice is satisfied if—
- (a) a copy of the address or revised address is made available to the member in the same way as the notice; or
  - (b) such a copy (without being made available to the member in that way) is sent to the member in a manner set out by the society for the purpose in the notice.
- (7C) Where a copy of an election address or revised election address is sent to a member electronically under subsection (7B), it must be sent to an electronic address notified by the member for the purpose.
- (7D) The requirements of subsection (7)(b) or (7B)(a) are satisfied by the publication of a copy of the election address or revised election address on a web site only if—

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- (a) the notice of the election meeting or of the electronic ballot is a notice given to that member by being published on a web site;
  - (b) an agreement between the society and the member to his accessing information on a web site applies to copies of election addresses or revised election addresses for the meeting or ballot in question;
  - (c) the member is notified<sup>F323</sup> ... of—
    - (i) the publication of a copy of the address or revised address on a web site,
    - (ii) the address of that web site, and
    - (iii) the place on that web site where the copy may be accessed, and how it may be accessed;
  - (d) the notification for the purposes of paragraph (c) above is given no later than the day after the date on which the copy of the election address or revised election address is first capable of being accessed on the notified web site; and
  - (e) that date was the same as the date on which the notice of the election meeting or of the electronic ballot was first capable of being accessed on a web site or (in a case to which subsection (7B) applies) was as soon as practicable after that date;
  - (f) a copy of the election address or revised election address is continuously published on the notified web site throughout the period beginning with the day on which it was first accessible on that site and ending with the voting date (within the meaning of section 60(17)).
- (7E) Where, in a case in which subsection (7D) is relied on for compliance with a requirement under subsection (7)(b) or (7B)(a) above<sup>F324</sup> ...—
- (a) a copy is published for a part, but not all, of the period mentioned in subsection (7D)(f), but
  - (b) the failure to publish it throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the society to prevent or avoid,
- the failure shall not invalidate the election of a director.]
- (8) Subsection (7) above does not require a building society to send copies of an address [<sup>F325</sup>or a revised address] to members of the society in any case where—
- (a) publicity for the address [<sup>F326</sup>or revised address] would be likely to diminish substantially the confidence in the society of investing members of the public, or
  - (b) the rights conferred by that subsection are being abused to seek needless publicity for defamatory matter or for frivolous or vexatious purposes;
- and that subsection shall not be taken to confer any rights on members, or to impose any duties on a building society, in respect of an address [<sup>F325</sup>or a revised address] which does not relate directly to the affairs of the society.
- (9) The [<sup>F327</sup>FCA] shall hear and determine any dispute arising under subsection (8)(a) above, whether on the application of the society or of any other person who claims to be aggrieved.
- (10) The rules of a building society, if they provide for the retirement by rotation of its directors, may provide that a person elected to fill a vacant seat on the board must retire at the annual general meeting at which, in accordance with the rules for retirement by rotation, the seat is to fall vacant.

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- (11) Subsection (10) above applies to any vacancy arising when an elected director ceases to hold office for any reason before the annual general meeting at which (disregarding his age) the seat is due to fall vacant under section 60(11)(a).
- (12) For the purposes of section 60(17) “the permitted period”, with reference to the tenure of office of co-opted directors, is the period beginning with the date of the co-opted director’s appointment and ending with whichever of the following first occurs, that is to say—
- (i) in the case of a building society which elects its directors at its annual general meeting, the conclusion of the next such meeting following his appointment;
  - (ii) in the case of a building society which elects its directors by postal [<sup>F328</sup>or electronic] ballot, the declaration at its annual general meeting of the result of the next such ballot conducted after his appointment;
  - (iii) the expiration of the period of sixteen months beginning with the date of his appointment;
- but a general meeting or postal [<sup>F328</sup>or electronic] ballot shall be disregarded for the purposes of this paragraph if the closing date for the nomination of candidates falls before the date of the co-opted director’s appointment.
- (13) Where a person becomes or ceases to be a director of a building society, the society shall within one month give notice of that fact to the [<sup>F329</sup>FCA] , stating the person’s full name and address and the date on which he became, or ceased to be, a director; and the [<sup>F329</sup>FCA] shall record the person’s name and the date on which he began to hold, or, as the case may be, ceased to hold office, in the public file of the society.
- (14) If a building society fails to comply with subsection (13) above 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.

#### Textual Amendments

- F307** S. 61(1)(2) 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. 28(1), 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(t)
- F308** Words in s. 61(1)(a)-(e) substituted (1.12.1999) by S.I. 1999/3032, art. 2(a)-(e)
- F309** Word in s. 61(2)(b)(c) substituted (6.4.2007) by The Building Societies Act 1986 (Substitution of Specified Amounts and Modification of the Funding Limit Calculation) Order 2007 (S.I. 2007/860), arts. 1, 2(2)(a)
- F310** Word in s. 61(3)(a) substituted (6.4.2007) by The Building Societies Act 1986 (Substitution of Specified Amounts and Modification of the Funding Limit Calculation) Order 2007 (S.I. 2007/860), arts. 1, 2(2)(b)
- F311** S. 61(3A)(4) substituted for s. 61(4) (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. 28(2), 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(t)
- F312** Words in s. 61(3A)(a) substituted (22.12.2004) (with effect in accordance with art. 1(2) of the amending S.I.) by The Building Societies Act 1986 (International Accounting Standards and Other Accounting Amendments) Order 2004 (S.I. 2004/3380), art. 1, Sch. para. 3(1)(a)
- F313** Words in s. 61(3A) substituted (31.12.2020) by The International Accounting Standards and European Public Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/685), reg. 1(2), Sch. 1 para. 28 (with reg. 1(3)(4), Sch. 1 para. 66) (as amended by S.I. 2020/523, regs. 1(2), 22, 25(d)); 2020 c. 1, Sch. 5 para. 1(1)



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- F314** Words in s. 61(3A) substituted (22.12.2004) (with effect in accordance with art. 1(2) of the amending S.I.) by The Building Societies Act 1986 (International Accounting Standards and Other Accounting Amendments) Order 2004 (S.I. 2004/3380), art. 1, **Sch. para. 3(1)(b)**
- F315** Word in s. 61(4) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2(a)(b), 8, 13(1), **Sch. 3 para. 158(a)(i)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F316** Words in s. 61(4) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2(a)(b), 8, 13(1), **Sch. 3 para. 158(a)(ii)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F317** Words in s. 61(4) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2(a)(b), 8, 13(1), **Sch. 3 para. 158(a)(iii)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F318** Words in s. 61(5) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2(a)(b), 8, 13(1), **Sch. 3 para. 158(b)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F319** Words in s. 61(7) 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. 28(3)(a)**, 47(3); S.I. 1997/2668, **art. 2, Sch. Pt. II(t)**
- F320** Words in s. 61(7)(a) 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. 28(3)(b)**, 47(3); S.I. 1997/2668, **art. 2, Sch. Pt. II(t)**
- F321** Words in s. 61(7)(b) substituted (20.3.2003) by The Building Societies Act 1986 (Electronic Communications) Order 2003 (S.I. 2003/404), arts. 1(1), **30(3)(a)**
- F322** S. 61(7A)-(7E) inserted (20.3.2003) by The Building Societies Act 1986 (Electronic Communications) Order 2003 (S.I. 2003/404), arts. 1(1), **3(2)**
- F323** Words in s. 61(7D)(c) omitted (18.2.2014) by virtue of Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(2), **Sch. 9 para. 10**
- F324** Words in s. 61(7E) omitted (12.4.2011) by virtue of The Mutual Societies (Electronic Communications) Order 2011 (S.I. 2011/593), arts. 1(1), **3(1)**
- F325** Words in s. 61(8) 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. 28(4)(a)**, 47(3); S.I. 1997/2668, **art. 2, Sch. Pt. II(t)**
- F326** Words in s. 61(8) 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. 28(4)(b)**, 47(3); S.I. 1997/2668, **art. 2, Sch. Pt. II(t)**
- F327** Word in s. 61(9) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 24** (with Sch. 12)
- F328** Words in s. 61(12) inserted (20.3.2003) by The Building Societies Act 1986 (Electronic Communications) Order 2003 (S.I. 2003/404), arts. 1(1), **30(3)(b)**
- F329** Word in s. 61(13) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 24** (with Sch. 12)

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

- C86** Ss. 60(1)(2)(3)(9)(10), 61 excluded (*temp.*) by S.I. 1986/2168, **art. 3(1)(3)**
- C87** S. 61(4)(5): Functions of the Building Societies Commission transferred (1.12.2001) to the Treasury by S.I. 2001/2617, arts. 2(b), 4(1), **Sch. 1 Pt. III** (with art. 5); S.I. 2001/3538, **art. 2(1)**

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### *Dealings with directors*

#### **62 Prohibition of tax-free payments to directors.**

- (1) A building society shall not pay a director remuneration (whether as director or otherwise) free of income tax, or otherwise calculated by reference to or varying with the amount of his income tax, or to or with any rate of income tax.
- (2) Any rule of a building society and any provision of any contract, or in any resolution of a building society, for payment to a director of remuneration falling within subsection (1) above has effect as if it provided for payment, as a gross sum subject to income tax, of the net sum for which the rule, contract or resolution actually provides.

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

**C88** S. 62 modified (13.1.1993 for certain purposes only and 1.1.1994 for all remaining purposes) by [Friendly Societies Act 1992 \(c. 40\)](#), s. 27, [Sch. 11 Pt. II para. 9\(1\)\(a\)\(2\)](#) (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, [Sch.1](#); S.I. 1993/2213, art. 2, [Sch.5](#).

#### **63 Directors to disclose interests in contracts and other transactions.**

- (1) It is the duty of a director of a building society who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the society to declare the nature of his interest to the board of directors of the society in accordance with this section.
- (2) In the case of a proposed contract, the declaration shall be made—
  - (a) at the meeting of the directors at which the question of entering into the contract is first taken into consideration; or
  - (b) if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he became so interested.
- (3) Where the director becomes interested in a contract after it is made, the declaration shall be made at the first meeting of the directors held after he becomes interested in the contract.
- (4) For the purposes of this section, a general notice given to the directors of a building society by a director to the effect that—
  - (a) he is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm, or
  - (b) he is to be regarded as interested in any contract which may, after the date of the notice, be made with a specified person who is connected with him,

is a sufficient declaration of interest in relation to any contract made after that date with that company, firm or person.
- (5) A director need not make a declaration or give a notice under this section by attending in person at a meeting of the directors if he takes reasonable steps to secure that the declaration or notice is brought up and read at the meeting.
- (6) The foregoing provisions of this section apply in relation to any transaction or arrangement as they apply in relation to a contract and, for the purposes of this section,

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a transaction or arrangement of a kind described in section 65 made by a society for a director of the society or a person connected with a director of the society is to be treated (if it would not otherwise be so treated, and whether or not it is prohibited by that section) as a transaction or arrangement in which that director is interested.

- (7) A director who fails to comply with this section shall be guilty of an offence and liable—
- (a) on conviction on indictment, to a fine; or
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

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

**C89** S. 63 modified (13.1.1993 for certain purposes only and 1.1.1994 for all remaining purposes) by [Friendly Societies Act 1992 \(c. 40\), s. 27, Sch. 11 Pt. II para. 9\(1\)\(b\)\(2\)](#) (with [ss. 7\(5\), 93\(4\)](#)); [S.I. 1993/16, art. 2, Sch.1](#); [S.I. 1993/2213, art. 2, Sch.5](#).

**64 Substantial property transactions involving directors and connected persons.**

- (1) A building society shall not enter into an arrangement—
- (a) whereby a director of the society, or a person connected with a director of the society, acquires or is to acquire one or more non-cash assets of the requisite value from the society; or
  - (b) whereby the society acquires or is to acquire one or more non-cash assets of the requisite value from a director of the society or a person connected with a director of the society,

unless the arrangement is first approved by a resolution of the society passed at a general meeting.

- (2) For this purpose a non-cash asset is of the requisite value if at the time the arrangement in question is entered into its value is—
- (a) except in a case falling within paragraph (b) below, not less than <sup>F330</sup>£200,000; and
  - (b) where the last balance sheet of the society showed reserves amounting to less than <sup>F331</sup>£1,000,000, not less than the higher of <sup>F332</sup>£2,000 or the amount which represents 10 per cent. of the reserves so shown.
- (3) The <sup>F333</sup>Treasury may by order] amend subsection (2) above so as to substitute for any of the amounts for the time being specified in paragraphs (a) and (b) of that subsection such other amount as <sup>F334</sup>they think] appropriate.
- (4) The power to make an order 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.
- (5) In this section “non-cash asset” means any property or interest in property other than cash and a reference to the acquisition of a non-cash asset includes the creation or extinction of an estate or interest in, or a right over, any property and also the discharge of any person’s liability, other than a liability for a liquidated sum.
- (6) An arrangement entered into by a building society in contravention of this section, and any transaction entered into in pursuance of the arrangement (whether by the society or any other person) is voidable at the instance of the society unless—

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- (a) restitution of any money or other asset which is the subject matter of the arrangement or transaction is no longer possible or the society has been indemnified in pursuance of subsection (7)(b) below for the loss or damage suffered by it, or
  - (b) any rights acquired in good faith, for value and without actual notice of the contravention by any person who is not a party to the arrangement or transaction would be affected by its avoidance, or
  - (c) the arrangement is affirmed by the society at a general meeting held not later than the next annual general meeting after the entry into the arrangement.
- (7) Where an arrangement or transaction is entered into with a building society by a director of the society or a person connected with him in contravention of this section then, without prejudice to any other liability but subject to subsections (8) and (9) below, that director and the person so connected, and any other director of the society who authorised the arrangement of any transaction entered into in pursuance of such an arrangement, is liable—
- (a) to account to the society for any gain which he has made directly or indirectly by the arrangement or transaction, and
  - (b) (jointly and severally with any other person liable under this subsection) to indemnify the society for any loss or damage resulting from the arrangement or transaction.
- (8) Where an arrangement or transaction is entered into by a building society and a person connected with a director of the society in contravention of this section, that director is not liable under subsection (7) above if he shows that he took all reasonable steps to secure the society's compliance with this section.
- (9) In any case, a person so connected and any such other director as is mentioned in subsection (7) above is not so liable if he shows that, at the time the arrangement was entered into, he did not know the circumstances constituting the contravention.

#### Textual Amendments

- F330** Sum in s. 64(2)(a) substituted (6.4.2007) by [The Building Societies Act 1986 \(Substitution of Specified Amounts and Modification of the Funding Limit Calculation\) Order 2007 \(S.I. 2007/860\)](#), arts. 1, **2(3)(a)**
- F331** Sum in s. 64(2)(b) substituted (6.4.2007) by [The Building Societies Act 1986 \(Substitution of Specified Amounts and Modification of the Funding Limit Calculation\) Order 2007 \(S.I. 2007/860\)](#), arts. 1, **2(3)(b)(i)**
- F332** Sum in s. 64(2)(b) substituted (6.4.2007) by [The Building Societies Act 1986 \(Substitution of Specified Amounts and Modification of the Funding Limit Calculation\) Order 2007 \(S.I. 2007/860\)](#), arts. 1, **2(3)(b)(ii)**
- F333** Words in s. 64(3) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by [S.I. 2001/2617](#), arts. 2(a)(b), 8, 13(1), **Sch. 3 para. 159(a)** (with art. 13(3), Sch. 5); [S.I. 2001/3538](#), **art. 2(1)**
- F334** Words in s. 64(3) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by [S.I. 2001/2617](#), arts. 2(a)(b), 8, 13(1), **Sch. 3 para. 159(b)** (with art. 13(3), Sch. 5); [S.I. 2001/3538](#), **art. 2(1)**

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

- C90** S. 64 modified (13.1.1993 for certain purposes only and 1.1.1994 for all remaining purposes) by [Friendly Societies Act 1992 \(c. 40\)](#), s. 27, **Sch. 11 Pt. II para. 9(1)(c)(2)** (with ss. 7(5), 93(4)); [S.I. 1993/16](#), art. 2, **Sch. 1**; [S.I. 1993/2213](#), art. 2, **Sch. 5**.

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**C91** S. 64(3): Functions of the Building Societies Commission transferred (1.12.2001) to the Treasury by S.I. 2001/2617, arts. 2(b), 4(1), **Sch. 1 Pt. III** (with art. 5); S.I. 2001/3538, **art. 2(1)**

## **65 Restriction on loans, etc. to directors and persons connected with them.**

- (1) Subject to the following provisions of this section, a building society shall not—
- (a) make [<sup>F335</sup>a loan] to a director or a person connected with a director of the society; or
  - (b) dispose of property by way of lease or hire to a director or a person connected with a director of the society; or
  - (c) make a payment on behalf of a director or a person connected with a director of the society in connection with the provision of [<sup>F336</sup>any service of a kind which is provided by building societies for individuals in the ordinary course of business]; or
  - (d) enter into a guarantee or provide any security which is incidental to or connected with any such loan, disposal of property or payment; or
  - (e) take part in any arrangement whereby—
    - (i) another person enters into a transaction which, if it had been entered into by the society, would have contravened any of paragraphs (a) to (d) above; and
    - (ii) that other person, in pursuance of the arrangement, has obtained or is to obtain any benefit from the society or a subsidiary of the society.
- (2) Subsection (1)(a) above does not apply to—
- (a) any loan of an amount which, when aggregated with any other relevant loans, does not exceed [<sup>F337</sup>£10,000];
  - (b) any loan made in the ordinary course of the society's business and of an amount not greater and made on other terms not more favourable than it is reasonable to expect the society to have offered to a person of the same financial standing but unconnected with the society; or
  - (c) any loan, the amount of which, when aggregated with any other relevant loans, does not exceed [<sup>F338</sup>£200,000], made for or towards the purchase or improvement of a dwelling-house used or to be used as the director's only or main residence if he is an executive director and loans of that description and on similar terms are ordinarily made by the society to its employees.
- (3) Subsection (1)(b) above does not apply to—
- (a) any lease or hiring of property the value of which, when aggregated with the value of any other relevant leases or hirings, does not exceed [<sup>F339</sup>£20,000]; or
  - (b) any lease or hiring made in the ordinary course of the society's business and on terms not more favourable than it is reasonable to expect the society to have offered to a person unconnected with the society.
- (4) Subsection (1)(c) above does not apply to—
- (a) any payment amounting, when aggregated with any other relevant payment, to no more than [<sup>F340</sup>£10,000] in respect of which the person on whose behalf it is made is under an obligation to reimburse the society within a period not exceeding two months beginning with the date of the payment; or
  - (b) any payment of an amount not greater and on other terms not more favourable than it is reasonable to expect the society to have offered to a person of the same financial standing but unconnected with the society.

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- (5) Subject to compliance with the requirements of subsection (6) below, subsection (1) above does not preclude a building society from doing anything to provide a director with funds to meet expenditure incurred or to be incurred by him for the purposes of the society or for the purpose of enabling him properly to perform his duties as a director of the society nor does it preclude the society from doing anything to enable a director to avoid incurring such expenditure.
- (6) The following are the requirements referred to in subsection (5) above—
- (a) the things must either be done with the prior approval of the society given at a general meeting at which the requisite matters are disclosed or be done on condition that, if the approval of the society is not so given at the next annual general meeting, the loan is to be repaid, or any other liability arising under the transaction is to be discharged, within six months from the conclusion of that meeting; and
  - (b) the amount provided, when aggregated with any other relevant provision of funds, does not exceed [<sup>F341</sup>£40,000].
- (7) The following are the requisite matters which must be disclosed for the purposes of subsection (6) above—
- (a) the purpose of the expenditure incurred or to be incurred, or which would otherwise be incurred, by the director;
  - (b) the amount of the funds to be provided by the society; and
  - (c) the extent of the society's liability under any transaction which is or is connected with the thing in question.
- (8) The [<sup>F342</sup>Treasury may by order made by statutory instrument] substitute for any sum specified in this section a larger sum specified in the order.
- (9) An order under subsection (8) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) In this section—
- “authorising provision” and “authorised”, in relation to a transaction of a description falling within paragraph (a), (b) or (c) of subsection (1) above, mean respectively any provision of subsection (2), (3) or (4) or constituted by subsection (5) above and any transaction or thing done to which that paragraph does not apply or which is not precluded from being done by virtue of that provision;
- “outstanding”, in relation to loans, means outstanding in respect of principal and interest and, in relation to the provision of funds subject to a condition for repayment or discharge of any other liability, means unpaid or undischarged to any extent;
- “provision of funds” includes anything else which, by virtue of subsection (5) above, a society is not precluded from doing by subsection (1) above; [<sup>F343</sup>and]
- “relevant”, in relation to a transaction of a description falling within paragraph (a), (b) or (c) of subsection (1) above, means an outstanding or, in the case of a lease or hiring, current transaction of that description (whether entered into by, or by arrangement with, the society) not being one authorised by any other authorising provision.
- [<sup>F344</sup>“subsidiary” has the meaning given by [<sup>F345</sup>section 1159 of the Companies Act 2006].]



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- (11) Section 70 has effect for the interpretation, in the subsequent provisions of this Part, of references to transactions or arrangements contravening this section and to such transactions or arrangements being made “for” a person.

#### Textual Amendments

- F335** Words in s. 65(1)(a) 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. 24(1)(a)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xiii)**
- F336** Words in s. 65(1)(c) 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. 24(1)(b)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xiii)**
- F337** Sum in s. 65(2)(a) substituted (6.4.2007) by [The Building Societies Act 1986 \(Substitution of Specified Amounts and Modification of the Funding Limit Calculation\) Order 2007](#) (S.I. 2007/860), arts. 1, **2(4)(a)**
- F338** Sum in s. 65(2)(c) substituted (6.4.2007) by [The Building Societies Act 1986 \(Substitution of Specified Amounts and Modification of the Funding Limit Calculation\) Order 2007](#) (S.I. 2007/860), arts. 1, **2(4)(b)**
- F339** Sum in s. 65(3)(a) substituted (6.4.2007) by [The Building Societies Act 1986 \(Substitution of Specified Amounts and Modification of the Funding Limit Calculation\) Order 2007](#) (S.I. 2007/860), arts. 1, **2(4)(c)**
- F340** Sum in s. 65(4)(a) substituted (6.4.2007) by [The Building Societies Act 1986 \(Substitution of Specified Amounts and Modification of the Funding Limit Calculation\) Order 2007](#) (S.I. 2007/860), arts. 1, **2(4)(d)**
- F341** Sum in s. 65(6)(b) substituted (6.4.2007) by [The Building Societies Act 1986 \(Substitution of Specified Amounts and Modification of the Funding Limit Calculation\) Order 2007](#) (S.I. 2007/860), arts. 1, **2(4)(e)**
- F342** Words in s. 65(8) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2(a)(b), 8, 13(1), **Sch. 3 para. 160** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F343** Word in s. 65(10) 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. 24(2)(a), **Sch. 9**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xiii)(cc)(ix)**
- F344** Definition in s. 65(10) 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. 24(2)(b)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xiii)**
- F345** Words in s. 65(10) 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(3)** (with art. 10)

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

- C92** S. 65 modified (13.1.1993 for certain purposes, 1.1.1994 for all remaining purposes) by [Friendly Societies Act 1992](#) (c. 40), s. 27, **Sch. 11 Pt. II para. 9(1)(d)(3)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch. 1**; S.I. 1993/2213, art. 2, **Sch. 5**.
- C93** S. 65(8): Functions of the Building Societies Commission transferred (1.12.2001) to the Treasury by S.I. 2001/2617, arts. 2(b), 4(1), **Sch. 1 Pt. III** (with art. 5); S.I. 2001/3538, **art. 2(1)**

## 66 Sanctions for breach of s. 65.

- (1) If a building society enters into a transaction or arrangement contravening section 65, the transaction or arrangement is voidable at the instance of the society unless—

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- (a) restitution of any money or any other assets which is the subject matter of the arrangement or transaction is no longer possible, or the society has been indemnified in pursuance of subsection (2)(b) below for the loss or damage suffered by it, or
  - (b) any rights acquired in good faith, for value and without actual notice of the contravention by a person other than the person for whom the transaction or arrangement was made would be affected by its avoidance.
- (2) Where a transaction or arrangement contravening section 65 is made by a building society for a director of the society or a person connected with a director of the society then, without prejudice to any other liability but subject to subsections (3) and (4) below, that director and the person so connected and any other director of the society who authorised the transaction or arrangement (whether or not it has been avoided in pursuance of subsection (1) above) is liable—
- (a) to account to the society for any gain which he has made directly or indirectly by the transaction or arrangement; and
  - (b) (jointly and severally with any other person liable under this subsection) to indemnify the society for any loss or damage resulting from the transaction or arrangement.
- (3) Where a transaction or arrangement contravening section 65 is entered into by a building society and a person connected with a director of the society, that director is not liable under subsection (2) above if he shows that he took all reasonable steps to secure the society's compliance with that section.
- (4) In any case, a person so connected and any such other director as is mentioned in subsection (2) above is not so liable if he shows that, at the time the transaction or arrangement was entered into, he did not know the circumstances constituting the contravention.
- (5) A director of a building society who authorises or permits the society to enter into a transaction or arrangement knowing or having reasonable cause to believe that the society was thereby contravening section 65 is guilty of an offence.
- (6) A building society which enters into a transaction or arrangement contravening section 65 for one of its directors is guilty of an offence unless it shows that, at the time the transaction or arrangement was entered into, it did not know the circumstances constituting the contravention.
- (7) A person who procures a building society to enter into a transaction or arrangement knowing or having reasonable cause to believe that the society was thereby contravening section 65 is guilty of an offence.
- (8) A person other than a building society who commits an offence under this section shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both; or
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or both.
- (9) A building society which commits an offence under this section shall be liable on conviction on indictment or on summary conviction to a fine which, on summary conviction, shall not exceed the statutory maximum.



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

- C94** S. 66 modified (13.1.1993 for certain purposes only and 1.1.1994 for all remaining purposes) by [Friendly Societies Act 1992 \(c. 40\)](#), s. 27, [Sch. 11 Pt. II para.9\(1\)\(e\)\(2\)](#) (with ss. 7(5), 93(4)); [S.I. 1993/16](#), art. 2, [Sch.1](#); [S.I. 1993/2213](#), art. 2, [Sch.5](#).

[<sup>F346</sup> **66A Transactions with directors and persons connected with them.**

- (1) This section applies where a building society enters into a transaction the parties to which include—
  - (a) a director of the society; or
  - (b) a person connected with such a director,and the board of directors, in connection with the transaction, exceed any limitation on their powers by reason of anything included in the society's constitution, that is to say, its memorandum and rules.
- (2) The transaction is voidable at the instance of the society.
- (3) Whether or not it is avoided, any such party to the transaction as is mentioned in subsection (1)(a) or (b) above, and any director of the society who authorised the transaction, is liable—
  - (a) to account to the society for any gain which he has made directly or indirectly by the transaction, and
  - (b) to indemnify the society for any loss or damage resulting from the transaction.
- (4) Nothing in the above provisions shall be construed as excluding the operation of any other enactment or rule of law by virtue of which the transaction may be called in question or any liability to the society may arise.
- (5) The transaction ceases to be voidable if—
  - (a) restitution of any money or other asset which was the subject-matter of the transaction is no longer possible, or
  - (b) the society is indemnified for any loss or damage resulting from the transaction, or
  - (c) rights acquired bona fide for value and without actual notice of the directors' exceeding their powers by a person who is not party to the transaction would be affected by the avoidance, or
  - (d) the transaction is ratified by the society in general meeting, by ordinary or special resolution or otherwise as the case may require.
- (6) A person other than a director of the society is not liable under subsection (3) above if he shows that at the time the transaction was entered into he did not know that the directors were exceeding their powers.
- (7) This section does not affect the operation of sub-paragraph (1) of paragraph 17 of Schedule 2 in relation to any party to the transaction not within subsection (1)(a) or (b) above.

But where a transaction is voidable by virtue of this section and valid by virtue of that sub-paragraph in favour of such a person, the court may, on the application of that person or of the society, make such order affirming, severing or setting aside the transaction, on such terms, as appear to the court to be just.

*Status: This version of this Act contains provisions that are prospective.*

*Changes to legislation: Building Societies Act 1986 is up to date with all changes known to be in force on or before 19 May 2023. 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. (See end of Document for details) View outstanding changes*

- (8) In this section “transaction” includes any act; and the reference in subsection (1) above to limitations under the society’s constitution includes limitations deriving—
- (a) from a resolution of the society passed at a general or special meeting or on a postal [<sup>F347</sup>or electronic] ballot; or
  - (b) from any agreement between the members of the society.]

#### **Textual Amendments**

- F346** S. 66A 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. 38, 47(3); S.I. 1997/2668, art. 2, **Sch. Pt. II(v)**
- F347** Words in s. 66A(8)(a) inserted (20.3.2003) by **The Building Societies Act 1986 (Electronic Communications) Order 2003 (S.I. 2003/404)**, arts. 1(1), **30(4)**

### **67 Directors, etc, not to accept commissions in connection with loans.**

- (1) This section applies to any person who holds office in or is employed by a building society as director, secretary, chief executive, manager, solicitor, surveyor or valuer or in connection with the assessment of the adequacy of securities for [<sup>F348</sup>loans] secured on land.
- (2) No person to whom this section applies shall (in addition to the remuneration prescribed or authorised by the rules or any resolution of the society) accept from any other person any commission for or in connection with any loan made by the society.
- (3) If a person to whom this section applies accepts a commission in contravention of subsection (2) above—
  - (a) both he and, subject to subsection (4) below, the person who paid it shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale; and
  - (b) if, having been convicted of an offence under paragraph (a) above, the person accepting the commission fails to pay over to the society the amount or value of the commission, as and when directed to do so by the court which convicted him, he shall be guilty of an offence under this paragraph and liable on summary conviction to imprisonment for a term not exceeding six months.
- (4) No offence under paragraph (a) of subsection (3) above is committed by the person who paid the commission unless he did so knowing the circumstances that constituted the offence under that paragraph on the part of the person who accepted it from him.
- (5) Where—
  - (a) a charge upon a policy of life assurance is given as additional security for [<sup>F349</sup>a loan] made by a building society, or
  - (b) a building society makes [<sup>F349</sup>an additional loan] to enable payment to be made of a premium on a policy of insurance, or
  - (c) any policy of insurance is taken out so as to comply with the terms on which [<sup>F349</sup>a loan] is made by a building society, whether by way of insuring the property given as security for [<sup>F349</sup>the loan] or otherwise,

and the policy is effected through the building society, or the society nominates or selects a person by whom the policy is to be issued, it shall be unlawful for any person to whom this section applies, in connection with the effecting of the policy, to receive any commission from a person by or through whom the policy is issued.

*Status:* This version of this Act contains provisions that are prospective.

*Changes to legislation:* Building Societies Act 1986 is up to date with all changes known to be in force on or before 19 May 2023. 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. (See end of Document for details) View outstanding changes

- (6) A person who pays, and a person who accepts, any commission which subsection (5) above makes it unlawful to receive shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (7) In this section—
- “charge upon a policy of life assurance”, in relation to [<sup>F350</sup>a loan] secured on land in Scotland, means an assignation in security in respect of such a policy;
  - “commission” includes any gift, bonus or benefit;
  - “solicitor”, in relation to England and Wales, includes [<sup>F351</sup>any person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes a reserved instrument activity (within the meaning of that Act)].

#### Textual Amendments

- F348** Words in s. 67(1) 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. 25(1)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xiv)**
- F349** Words in s. 67(5) 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. 25(2)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xiv)**
- F350** Words in s. 67(7) 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. 25(3)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xiv)**
- F351** Words in s. 67(7) substituted (1.1.2010) by Legal Services Act 2007 (c. 29), s. 211(2), **Sch. 21 para. 71** (with ss. 29, 192, 193); S.I. 2009/3250, art. 2(h)

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

- C95** S. 67(1)(7) amended (E.W.) (1.1.1992) by S.I. 1991/2684, **arts. 2(1), 4** Sch. 1

## 68 Records of loans, etc. for directors falling within s. 65.

- (1) A building society shall maintain a register containing a copy of every subsisting transaction or arrangement (other than an excepted transaction or arrangement) falling within section 65(1) made for a director or a person connected with a director of the society during the current financial year or any of the preceding ten financial years.
- (2) In the case of a transaction or arrangement which is not in writing, there shall be kept in the register a written memorandum setting out its terms.
- (3) A building society shall make available for inspection by members—
- (a) at its principal office during the period of 15 days expiring with the date of its annual general meeting, and
  - (b) at the annual general meeting,
- a statement containing the requisite particulars of the transactions and arrangements falling within section 65(1) which were included in the register under subsection (1) above at any time during the last complete financial year preceding the meeting.
- (4) The requisite particulars are those specified in Schedule 9 to this Act.

*Status: This version of this Act contains provisions that are prospective.*

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- [<sup>F352</sup>(5) The society must send two copies of the statement required to be made available under subsection (3) to the FCA and, if the society is a PRA-authorized person, one copy to the PRA, on the date on which the statement is required to be first made available to members.
- (5A) The FCA must keep a copy of the statement in the public file of the society.]
- (6) A copy of the statement required to be so made available shall also be sent, on demand and on payment of [<sup>F353</sup>such fee (not exceeding £5) as the society may from time to time determine], to any member of the society.
- [<sup>F354</sup>(6A) Where a copy of a statement is required to be sent to a member under subsection (6)—
- (a) it may be sent to him electronically only if it is sent to an electronic address notified by the member for the purpose; but
  - (b) the requirement to send it shall also be treated as satisfied if the conditions set out in subsection (6B) are satisfied.
- (6B) The conditions of this subsection are satisfied in the case of a copy of a statement if—
- (a) the society and the member have agreed that information that is required to be sent to him may instead be accessed by him on a web site;
  - (b) the agreement applies to the statement in question;
  - (c) the member is notified <sup>F355</sup>... of—
    - (i) the publication of the statement on a web site,
    - (ii) the address of that web site, and
    - (iii) the place on that web site where the statement may be accessed, and how it may be accessed; and
  - (d) a copy of the statement continues to be published on that web site throughout the period of 21 days beginning with the day on which the society notifies the member in accordance with paragraph (c).]

(7) There are excepted from the obligations imposed by this section on a building society with respect to a financial year all transactions or arrangements made or subsisting during that year for a person who was at any time during that year a director of the society or was connected with a director of the society if the aggregate of the values of each transaction or arrangement made for that person, less the amount (if any) by which the value of those transactions or arrangements has been reduced, did not exceed [<sup>F356</sup>£2,000] at any time during that year

(8) There are also excepted from the obligations imposed by this section on a building society with respect to a financial year all transactions or arrangements falling within paragraphs (b), (d) or (e) of section 65(1) made during that year for a person who was at any time during that year a director of the society or was connected with a director of the society if the aggregate of the values of each such transaction or arrangement so made for that director or any person connected with him, less the amount (if any) by which the value of those transactions or arrangements has been reduced, did not exceed [<sup>F357</sup>£10,000] at any time during that year.

(9) The [<sup>F358</sup>Treasury may by order] amend subsection (7) or (8) above so as to substitute for the amount for the time being specified in that subsection such other amount as [<sup>F359</sup>they think] appropriate.

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- (10) The power to make an order under subsection (9) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (11) If a building society fails to comply with any provision of this section (or Schedule 9) the society shall be liable on conviction on indictment or on summary conviction to a fine not exceeding, on summary conviction, the statutory maximum, and so shall any officer who is also guilty of the offence.
- [<sup>F360</sup>(11A) Where, in a case in which subsection (6A)(b) is relied on for compliance with a requirement of subsection (6)—
- (a) a statement is published for a part, but not all, of the period mentioned in subsection (6B)(d), but
  - (b) the failure to publish it throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the society to prevent or avoid,
- no offence is committed under subsection (11) by reason of that failure.]

#### Textual Amendments

- F352** S. 68(5)(5A) substituted for s. 68(5) (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), **Sch. 8 para. 25** (with Sch. 12)
- F353** Words in s. 68(6) substituted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 26**; S.I. 1997/1427, **art. 2(k)(n)(iv)**
- F354** S. 68(6A)(6B) inserted (20.3.2003) by [The Building Societies Act 1986 \(Electronic Communications\) Order 2003 \(S.I. 2003/404\)](#), arts. 1(1), **4(2)**
- F355** Words in s. 68(6B)(c) omitted (18.2.2014) by virtue of [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(2), **Sch. 9 para. 10**
- F356** Word in s. 68(7) substituted (6.4.2007) by [The Building Societies Act 1986 \(Substitution of Specified Amounts and Modification of the Funding Limit Calculation\) Order 2007 \(S.I. 2007/860\)](#), arts. 1, **2(5)(a)**
- F357** Word in s. 68(8) substituted (6.4.2007) by [The Building Societies Act 1986 \(Substitution of Specified Amounts and Modification of the Funding Limit Calculation\) Order 2007 \(S.I. 2007/860\)](#), arts. 1, **2(5)(b)**
- F358** Words in s. 68(9) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2(a)(b), 8, 13(1), **Sch. 3 para. 161(b)(i)**(with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F359** Words in s. 68(9) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2(a)(b), 8, 13(1), **Sch. 3 para. 161(b)(ii)**(with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F360** S. 68(11A) inserted (20.3.2003) by [The Building Societies Act 1986 \(Electronic Communications\) Order 2003 \(S.I. 2003/404\)](#), arts. 1(1), **4(3)**

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

- C96** S. 68 modified (13.1.1993 for certain purposes only and 1.1.1994 for all remaining purposes) by [Friendly Societies Act 1992 \(c. 40\)](#), s. 27, **Sch. 11 Pt. II para. 9(1)(f)(2)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch. 1**; S.I. 1993/2213, art. 2, **Sch. 5**.
- C97** S. 68(9): Functions of the Building Societies Commission transferred (1.12.2001) to the Treasury by S.I. 2001/2617, arts. 2(b), 4(1), **Sch. 1 Pt. III** (with art. 5); S.I. 2001/3538, **art. 2(1)**

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### *Disclosure and record of related businesses*

#### **69 Disclosure and record of income of related businesses.**

- (1) Where, at any time during a financial year of a building society, a person both is a director or other officer of a building society and is, or is a director of or partner in, a business associate of the society, this section shall apply, as respects that year, to that person in relation to the business of the business associate.
- (2) A person is a “business associate” of a building society in any financial year of the society if that person—
  - (a) carries on a business which consists of or includes the provision of relevant services,
  - (b) provides relevant services during that year to, or to other persons in connection with [<sup>F361</sup>loans] secured on land made by, the society and
  - [<sup>F362</sup>(c) is not a connected undertaking of the society;]
 and “associated” has a corresponding meaning.
- (3) The following are relevant services—
  - (a) conveyancing services provided by a solicitor;
  - (b) surveying and valuing land or other property;
  - (c) accountancy services;
  - (d) arranging for the provision of insurance against loss of or damage to property or on human life;
  - (e) any other services designated as relevant services.
- (4) Where a business associate of a building society provides the society with services which are relevant services by virtue of subsection (3) above, any administrative services provided to the society by the business associate are also relevant services.
- (5) The [<sup>F363</sup>Treasury] may by order in a statutory instrument—
  - (a) designate as relevant services services of any description specified in the order which are normally provided to building societies; and
  - (b) make such incidental, supplementary or transitional provision as [<sup>F364</sup>they consider] necessary or expedient;
 and in subsection (3)(e) above “designated” means designated by an order under this subsection.
- (6) Where this section applies, as respects a financial year of a building society, to a person as a director or other officer of the society in relation to the business of a business associate, that person shall furnish the society with the requisite particulars of that business.
- (7) The requisite particulars of the business of a business associate of a building society are—
  - (a) except where an election under paragraph (b) below is in force, those specified in Part I of Schedule 10 to this Act;
  - (b) if a building society elects to adopt Part II of that Schedule for its directors [<sup>F365</sup>and other officers] as respects a financial year, those specified in Part II of that Schedule; and

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- (c) as regards relevant services designated by an order under subsection (5) above, such particulars as are specified in the order;

and Part III of the Schedule has effect to supplement Parts I and II and includes a definition of “the volume of the business” for the purposes of this section.

- (8) An election by a building society to adopt Part II of Schedule 10 as regards the requisite particulars to be furnished by its directors [<sup>F365</sup>and other officers] must be made in writing to the [<sup>F366</sup>FCA] before the beginning of the financial year as respects which it is made and the requisite particulars must be furnished in writing within the period of six weeks beginning with the end of the financial year for which they are required.
- (9) For the purpose of enabling him to furnish the requisite particulars of the business of a business associate of a building society the person who is under the obligation to furnish them to the society may require any person who is a member of or partner in, or holds any office or employment with, the business associate to furnish him with such information relating to its business as he may reasonably require for that purpose.
- (10) Any person who, without reasonable excuse—
- (a) fails to furnish the particulars required by subsection (6) above or furnishes particulars which are false or misleading in a material particular or, in the case of particulars under Part II to Schedule 10, are not a justified estimate, or
  - (b) fails to furnish any information lawfully required of him under subsection (9) above or furnishes information which is false or misleading in a material particular,

shall be liable on conviction on indictment or on summary conviction to a fine not exceeding, on summary conviction, the statutory maximum.

- (11) Subject to subsection (12) below, a building society shall maintain at its principal office a register containing the particulars furnished to it under subsection (6) above as respects the last financial year and each of the ten financial years preceding that year.
- (12) No particulars of the business of a business associate of a building society need be kept in the register provided for by subsection (11) above as respects any financial year of the society in which the volume of the business of which the requisite particulars are required did not exceed [<sup>F367</sup>£10,000] or such other sum as may be substituted for it by order of the [<sup>F368</sup>Treasury] in a statutory instrument under this subsection.
- (13) A building society shall make available for inspection by members—
- (a) at its principal office during the period of 15 days expiring with the date of its annual general meeting, and
  - (b) at the annual general meeting,

a statement containing the particulars required to be kept in the register under subsection (11) above as respects the last financial year.

- [<sup>F369</sup>(14) The society must send two copies of the statement required to be made available under subsection (13) to the FCA and, if the society is a PRA-authorised person, one copy to the PRA, on the date on which the statement is required to be first made available to members.

- (14A) The FCA must keep a copy of the statement in the public file of the society.]

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(15) A copy of the statement required to be so made available shall also be sent, on demand and on payment of [<sup>F370</sup>such fee (not exceeding £5) as the society may from time to time determine], to any member of the society.

[<sup>F371</sup>(15A) Where a copy of a statement is required to be sent to a member under subsection (15)—

- (a) it may be sent to him electronically only if it is sent to an electronic address notified by the member for the purpose; but
- (b) the requirement to send it shall also be treated as satisfied if the conditions set out in subsection (15B) are satisfied.

(15B) The conditions of this subsection are satisfied in the case of a statement if—

- (a) the society and the member have agreed that information that is required to be sent to him may instead be accessed by him on a web site;
- (b) the agreement applies to the statement in question;
- (c) the member is notified <sup>F372</sup>... of—
  - (i) the publication of the statement on a web site,
  - (ii) the address of that web site, and
  - (iii) the place on that web site where the statement may be accessed, and how it may be accessed; and
- (d) a copy of the statement continues to be published on that web site throughout the period of 21 days beginning with the day on which the society notifies the member in accordance with paragraph (c).]

(16) <sup>F373</sup>... any statutory instrument containing [<sup>F374</sup>an order made under subsection (5) or (12) above] shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(17) In this section—

“administrative services” means services necessary or incidental to the conduct of the society’s business;

“conveyancing services” in relation to—

(a) [<sup>F375</sup>land in England and Wales means the preparation of transfers, conveyances, contracts and other documents in connection with, and other services ancillary to, the disposition or acquisition of estates or interests in land; and for the purposes of this paragraph—

(i) “disposition”—

(a) does not include a testamentary disposition or any disposition in the case of such a lease as is referred to in section 54(2) of the Law of Property Act 1925 (short leases); but

(b) subject to that, includes in the case of leases both their grant and their assignment; and

(ii) “acquisition” has a corresponding meaning,

(aa) land in Northern Ireland has the same meaning as in paragraph (a) above with the modification that “disposition” does not include any disposition in the case of such a lease as is excepted, by section 4 of the Landlord and Tenant Law Amendment Act (Ireland) 1860, from the requirements of that section, and]



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(b) heritable property in Scotland, includes drafting all writs relating to such property and negotiating and concluding missives for its purchase, sale, transfer, lease and sublease; and

“solicitor”, in relation to England and Wales, includes [<sup>F376</sup>any person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes a reserved instrument activity (within the meaning of that Act).]

#### Textual Amendments

- F361** Word in s. 69(2)(b) 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. 27(1)(a)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xv)**
- F362** S. 69(2)(c) 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. 27(1)(b)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xv)**
- F363** Words in s. 69(5) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2(a)(b), 8, 13(1), **Sch. 3 para. 162(a)(i)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F364** Words in s. 69(5) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2(a)(b), 8, 13(1), **Sch. 3 para. 162(a)(ii)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F365** Words in s. 69(7)(b)(8) inserted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 27(2)**; S.I. 1997/1427, **art. 2(k)(n)(v)**
- F366** Word in s. 69(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. 26(2)** (with Sch. 12)
- F367** Word in s. 69(12) substituted (6.4.2007) by The Building Societies Act 1986 (Substitution of Specified Amounts and Modification of the Funding Limit Calculation) Order 2007 (S.I. 2007/860), arts. 1, **2(6)**
- F368** Word in s. 69(12) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2(a)(b), 8, 13(1), **Sch. 3 Pt. II para. 162(c)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(a)**
- F369** S. 69(14)(14A) substituted for s. 69(14) (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 26(3)** (with Sch. 12)
- F370** Words in s. 69(15) substituted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 27(3)**; S.I. 1997/1427, **art. 2(k)(n)(v)**
- F371** S. 69(15A)(15B) inserted (20.3.2003) by The Building Societies Act 1986 (Electronic Communications) Order 2003 (S.I. 2003/404), arts. 1(1), **5**
- F372** Words in s. 69(15B)(c) omitted (18.2.2014) by virtue of Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(2), **Sch. 9 para. 10**
- F373** Words in s. 69(16) repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F374** Words in s. 69(16) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2(a)(b), 8, 13(1), **Sch. 3 para. 162(e)(ii)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F375** Words in s. 69(17) substituted (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), **Sch. 2 para. 18**
- F376** Words in s. 69(17) substituted (1.1.2010) by Legal Services Act 2007 (c. 29), s. 211(2), **Sch. 21 para. 72** (with ss. 29, 192, 193); S.I. 2009/3250, art. 2(h)

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

- C98** S. 69 modified by S.I. 1987/1498, art. 7, **Sch. 2 para. 6**

*Status: This version of this Act contains provisions that are prospective.*

**Changes to legislation:** *Building Societies Act 1986 is up to date with all changes known to be in force on or before 19 May 2023. 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. (See end of Document for details) View outstanding changes*

- C99** S. 69 modified (13.1.1993 for certain purposes only and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 27, **Sch. 11 Pt. II para. 9(1)(g)(2)(4)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch. 1**; S.I. 1993/2213, art. 2, **Sch. 5**.
- C100** S. 69 modified (1.7.1992) by S.I. 1992/1547, arts. 5, 6, **Sch. 2**
- C101** S. 69(3)(a)(17) amended (E.W.) (1.1.1992) by S.I. 1991/2684, arts. 2(1), 4, **Sch. 1**
- C102** S. 69(5)(12): Functions of the Building Societies Commission transferred (1.12.2001) to the Treasury by S.I. 2001/2617, arts. 2(b), 4(1), **Sch. 1 Pt. III** (with art. 5); S.I. 2001/3538, **art. 2(1)**
- C103** S. 69(6) excluded by S.I. 1986/2169, **art. 9(1)**
- C104** S. 69(8) modified by S.I. 1986/2169, **art. 9(2)**

### *Interpretation*

#### **70 Interpretation of this Part.**

- (1) The following provisions apply for the interpretation of this Part.
- (2) A person is “connected with” a director of a building society if, but only if, he (not being himself a director of it) is—
  - (a) that director’s spouse [<sup>F377</sup>or civil partner], child or step-child; or
  - (b) a body corporate with which the director is associated; or
  - (c) a person acting in his capacity as trustee of any trust the beneficiaries of which include—
    - (i) the director, his spouse [<sup>F378</sup>or civil partner] or any children or step-children of his, or
    - (ii) a body corporate with which he is associated, or of a trust whose terms confer a power on the trustees that may be exercised for the benefit of the director, his spouse [<sup>F378</sup>or civil partner], or any children or step-children of his or any such body corporate; or
  - (d) a person acting in his capacity as partner of that director or of any person who, by virtue of paragraph (a), (b) or (c) of this subsection, is connected with that director;
  - (e) a Scottish firm in which—
    - (i) that director is a partner,
    - (ii) a partner is a person who, by virtue of paragraph (a), (b) or (c) above, is connected with that director, or
    - (iii) a partner is a Scottish firm in which that director is a partner or in which there is a partner who, by virtue of paragraph (a), (b) or (c) above, is connected with that director.
- (3) In subsection (2)—
  - (a) a reference to a child or step-child of any person includes an illegitimate child of his [<sup>F379</sup>but does not include any person who has attained the age of 18], and
  - (b) paragraph (c) does not apply to a person acting in his capacity as trustee under an employees’ share scheme or a pension scheme.
- (4) A director is “associated” with a body corporate if he, his spouse [<sup>F380</sup>or civil partner], his child or step-child or a person acting in his capacity as trustee of any trust the beneficiaries of which include the director, his spouse [<sup>F380</sup>or civil partner], child or step-child between them, either—

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- (a) own at least one-fifth of that body's equity share capital (within the meaning of <sup>F381</sup>the Companies Acts (see section 548 of the Companies Act 2006)), or
  - (b) are entitled to exercise or control the exercise of more than one-fifth of the voting power of that body at any general meeting.
- (5) As regards transactions or arrangements falling within section 65, a “transaction contravening section 65” means a transaction to which subsection (1)(a), (b), (c) or (d) of that section applies and an “arrangement contravening section 65” means an arrangement to which subsection (1)(e) of that section applies and such a transaction or arrangement is made “for” a person if—
- (a) in the case of a loan, disposal or payment within paragraph (a), (b) or (c), it is made, in the case of paragraph (a) or (b), to him or, in the case of paragraph (c) on his behalf;
  - (b) in the case of a guarantee or security within paragraph (d), it is made as an incident of or in connection with a loan or disposal to him or a payment on his behalf; and
  - (c) in the case of an arrangement within paragraph (e), the transaction to which the arrangement relates was made for him.

#### Textual Amendments

- F377** Words in s. 70(2)(a) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(10\)\(b\)](#), [Sch. 27 para. 123\(a\)](#); [S.I. 2005/3175, art. 2\(2\)](#)
- F378** Words in s. 70(2)(c) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(10\)\(b\)](#), [Sch. 27 para. 123\(a\)](#); [S.I. 2005/3175, art. 2\(2\)](#)
- F379** Words in s. 70(3)(a) inserted (9.6.1997) by [1997 c. 32, s. 43](#), [Sch. 7 para. 28](#); [S.I. 1997/1427, art. 2\(k\)\(n\)\(vi\)](#)
- F380** Words in s. 70(4) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(10\)\(b\)](#), [Sch. 27 para. 123\(b\)](#); [S.I. 2005/3175, art. 2\(2\)](#)
- F381** Words in s. 70(4)(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\(4\)](#) (with [art. 10](#))

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

- C105** S. 70 modified (13.1.1993 for certain purposes only and 1.1.1994 for all remaining purposes) by [Friendly Societies Act 1992 \(c. 40\), s. 27](#), [Sch. 11 Pt. II para. 9\(1\)\(h\)\(2\)](#) (with [ss. 7\(5\), 93\(4\)](#)); [S.I. 1993/16, art. 2](#), [Sch. 1](#); [S.I. 1993/2213, art. 2](#), [Sch. 5](#).

## PART VIII

### ACCOUNTS AND AUDIT

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

- C106** Pt. VIII (ss. 71–82) excluded by [S.I. 1986/2168, art. 12\(1\)\(a\)](#)
- C107** Pt. VIII (ss. 71–82) modified (*temp.* until 1.1.1993) by [S.I. 1990/1392, art. 6\(3\)](#)

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Accounting records <sup>F382</sup> . . .

**Textual Amendments**

**F382** Words in s. 71 cross-heading omitted (17.8.2001 for certain purposes) and repealed (1.12.2001) by S.I. 2001/2617, arts. 2(a)(b), 8, 13(1)(2), Sch. 3 para. 163(a), **Sch. 4** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

**71 Accounting records** <sup>F383</sup> . . .

- (1) Every building society shall—
  - (a) cause accounting records to be kept, <sup>F384</sup> . . .
  - <sup>F384</sup>(b) . . . . .

in accordance with this section.
- (2) The accounting records of a society must be such as to—
  - (a) explain its transactions;
  - (b) disclose, with reasonable accuracy and promptness, the state of the business of the society at any time;
  - (c) enable the directors properly to discharge the duties imposed on them by or under this Act [<sup>F385</sup>(and, where applicable [<sup>F386</sup>section 403(1) of the Companies Act 2006 (group accounts: applicable accounting framework)))] and their functions of direction of the affairs of the society; and
  - (d) enable the society properly to discharge the duties imposed on it by or under this Act [<sup>F385</sup>(and, where applicable [<sup>F387</sup>section 403(1) of the Companies Act 2006 (group accounts: applicable accounting framework)))];

and must be kept in an orderly manner.
- (3) The accounting records shall in particular contain—
  - (a) entries from day to day of all sums received and paid by the society and the matters in respect of which they are received or paid;
  - (b) entries from day to day of every transaction entered into by the society which will or there is reasonable ground for expecting may give rise to liabilities or assets of the society other than insignificant assets or liabilities in respect of the management of the society; and
  - (c) a record of the assets and liabilities of the society and in particular of assets and liabilities of any class specifically regulated by or under [<sup>F388</sup>section 6 or 7].

- <sup>F389</sup>(4) . . . . .
- <sup>F389</sup>(5) . . . . .
- <sup>F389</sup>(6) . . . . .
- <sup>F389</sup>(7) . . . . .

- (8) The accounting records shall be kept at the society’s principal office or at such other place or places as the directors think fit, and shall at all times be open to inspection by the directors.
- (9) Accounting records shall be preserved for six years from the date on which they were made.

*Status:* This version of this Act contains provisions that are prospective.

*Changes to legislation:* Building Societies Act 1986 is up to date with all changes known to be in force on or before 19 May 2023. 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. (See end of Document for details) View outstanding changes

(10) Where a building society has [<sup>F390</sup>connected undertakings], the society shall also secure that such accounting records are kept <sup>F391</sup>. . . by the society and the [<sup>F390</sup>connected undertakings] as will enable the society to comply with the requirements of this section in relation to the business of the society and those [<sup>F390</sup>connected undertakings].

[<sup>F392</sup>(10A) The Commission may, for the purpose of implementing the Council Directive on the supervision of credit institutions on a consolidated basis (No.92/30/EEC), direct that subsection (10) above shall have effect in relation to any building society specified in the direction as if any associated body of the society so specified were linked to it by resolution.]

<sup>F393</sup>(11) . . . . .

#### Textual Amendments

- F383** Words in s. 71 side-note repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), **Sch. 5**); S.I. 2001/3538, **art. 2(1)**
- F384** S. 71(1)(b) and the preceding word “and” repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), **Sch. 5**); S.I. 2001/3538, **art. 2(1)**
- F385** Words in s. 71(2)(c)(d) inserted (22.12.2004) (with effect in accordance with art. 1(2) of the amending S.I.) by **The Building Societies Act 1986 (International Accounting Standards and Other Accounting Amendments) Order 2004** (S.I. 2004/3380), art. 1, **Sch. para. 4**
- F386** Words in s. 71(2)(c) substituted (31.12.2020) by **The International Accounting Standards and European Public Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2019** (S.I. 2019/685), reg. 1(2), **Sch. 1 para. 29** (with reg. 1(3)(4), **Sch. 1 para. 66**) (as amended by S.I. 2020/523, regs. 1(2), 22, **25(d)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F387** Words in s. 71(2)(d) substituted (31.12.2020) by **The International Accounting Standards and European Public Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2019** (S.I. 2019/685), reg. 1(2), **Sch. 1 para. 29** (with reg. 1(3)(4), **Sch. 1 para. 66**) (as amended by S.I. 2020/523, regs. 1(2), 22, **25(d)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F388** Words in s. 71(3)(c) 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. 29(1)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xvi)**
- F389** S. 71(4)-(7) repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), **Sch. 5**); S.I. 2001/3538, **art. 2(1)**
- F390** Words in s. 71(10) 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. 29(3) (a)-(c)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xvi)**
- F391** Words in s. 71(10) repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), **Sch. 5**); S.I. 2001/3538, **art. 2(1)**
- F392** S. 71(10A) 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. 29(4)**, **Sch. 9**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xvi)(cc)(x)**
- F393** S. 71(11) repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), **Sch. 5**); S.I. 2001/3538, **art. 2(a)**

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

- C108** S. 71 modified (*temp.*) by S.I. 1986/2168, **art. 12(2)(d)**
- C109** S. 71(1)–(10) excluded (*temp.*) by S.I. 1986/2168, **art. 12(2)(a)**

*Status: This version of this Act contains provisions that are prospective.*

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## Accounts

### <sup>F394</sup>72 Duty of directors to prepare annual accounts.

.....

#### Textual Amendments

**F394** Ss. 72A-72I substituted for ss. 72, 73 (22.12.2004 with effect in accordance with art. 1(2) of the amending S.I.) by [The Building Societies Act 1986 \(International Accounting Standards and Other Accounting Amendments\) Order 2004 \(S.I. 2004/3380\)](#), arts. 1, 2

### <sup>F394</sup>72A Duty to prepare individual accounts

- (1) The directors of every building society shall prepare accounts for the society for each of its financial years.

Those accounts are referred to in this Part as the society’s “individual accounts”.

- (2) A society’s individual accounts may be prepared—
- in accordance with section 72B (“Building Societies Act individual accounts”), or
  - in accordance with [<sup>F395</sup>UK-adopted international accounting standards] (“IAS individual accounts”).

This subsection is subject to the following provisions of this section and section 72I (consistency of accounts).

- (3) After the first financial year in which the directors of a building society prepare IAS individual accounts (“the first IAS year”), all subsequent individual accounts of the society must be prepared in accordance with [<sup>F396</sup>UK-adopted international accounting standards] unless there is a relevant change of circumstance.
- (4) There is a relevant change of circumstance if, at any time during or after the first IAS year, the society ceases to have any securities admitted to trading on a [<sup>F397</sup>UK] regulated market.
- (5) If, having changed to preparing Building Societies Act individual accounts following a relevant change of circumstance, the directors again prepare IAS individual accounts for the society, subsections (3) and (4) apply again as if the first financial year for which such accounts are again prepared were the first IAS year.

#### Textual Amendments

**F394** Ss. 72A-72I substituted for ss. 72, 73 (22.12.2004 with effect in accordance with art. 1(2) of the amending S.I.) by [The Building Societies Act 1986 \(International Accounting Standards and Other Accounting Amendments\) Order 2004 \(S.I. 2004/3380\)](#), arts. 1, 2

**F395** Words in s. 72A(2) substituted (31.12.2020) by [The International Accounting Standards and European Public Limited-Liability Company \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/685\)](#), reg. 1(2), [Sch. 1 para. 30\(a\)](#) (with reg. 1(3)(4), [Sch. 1 para. 66](#)) (as amended by [S.I. 2020/523](#), regs. 1(2), [22, 25\(d\)](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

**F396** Words in s. 72A(3) substituted (31.12.2020) by [The International Accounting Standards and European Public Limited-Liability Company \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/685\)](#), reg.



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1(2), **Sch. 1 para. 30(b)** (with reg. 1(3)(4), Sch. 1 para. 66) (as amended by S.I. 2020/523, regs. 1(2), 22, **25(d)**); 2020 c. 1, Sch. 5 para. 1(1)

**F397** Word in s. 72A(4) inserted (31.12.2020 with effect in relation to financial years beginning on or after IP completion day) by **The Accounts and Reports (Amendment) (EU Exit) Regulations 2019** (S.I. 2019/145), regs. 1(2)(b), 2, **Sch. 2 para. 20(a)** (with reg. 7(2)) (as amended by S.I. 2020/523, regs. 1(2), 10, 11); 2020 c. 1, Sch. 5 para. 1(1)

## **72B Building Societies Act individual accounts**

- (1) Building Societies Act individual accounts must comprise –
  - (a) a balance sheet as at the last day of the financial year, and
  - (b) an income and expenditure account.
- (2) The balance sheet must give a true and fair view of the state of affairs of the society as at the end of the financial year; and the income and expenditure account must give a true and fair view of the income and expenditure of the society for the financial year.
- (3) Building Societies Act individual accounts must comply with the requirements of regulations made under section 72C as to the form and content of the balance sheet and income and expenditure account and additional information to be provided by way of notes to the accounts or otherwise.
- (4) Where compliance with the provisions of those regulations, and the other provisions of this Act as to the matters to be included in a society's individual accounts or in notes to those accounts, would not be sufficient to give a true and fair view, the necessary additional information must be given in the accounts or in a note to them.
- (5) If in special circumstances compliance with any of those provisions is inconsistent with the requirement to give a true and fair view, the directors must depart from that provision to the extent necessary to give a true and fair view.
- (6) Particulars of any such departure, the reasons for it and its effect must be given in a note to the accounts.
- (7) The Treasury may by regulations–
  - (a) add to the classes of documents to be comprised in a society's Building Societies Act individual accounts under subsection (1);
  - (b) make provision as to the matters to be included in any document so added;
  - (c) modify the requirements of this Part as to the matters to be stated in any document comprised in the society's Building Societies Act individual accounts;
  - (d) reduce the classes of documents to be comprised in a society's Building Societies Act individual accounts.
- (8) Regulations under subsection (7)–
  - (a) may make different provision for different descriptions of society, and
  - (b) may include incidental and supplementary provisions.
- (9) The power to make regulations under subsection (7) is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

*Status: This version of this Act contains provisions that are prospective.*

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#### Textual Amendments

**F394** Ss. 72A-72I substituted for ss. 72, 73 (22.12.2004 with effect in accordance with art. 1(2) of the amending S.I.) by [The Building Societies Act 1986 \(International Accounting Standards and Other Accounting Amendments\) Order 2004 \(S.I. 2004/3380\)](#), arts. 1, 2

### 72C Form and contents of Building Societies Act individual accounts

- (1) The Treasury shall by regulations make provision with respect to the form and contents of Building Societies Act individual accounts.
- (2) The Treasury may by regulations make provision with respect to additional information to be contained in Building Societies Act individual accounts, whether in the form of notes or otherwise.
- (3) Without prejudice to the generality of subsections (1) and (2), the regulations may—
  - (a) prescribe accounting principles and rules;
  - (b) require corresponding information for a preceding financial year;
  - (c) make different provision for different descriptions of society;
- (4) The power to make regulations under this section is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

**F394** Ss. 72A-72I substituted for ss. 72, 73 (22.12.2004 with effect in accordance with art. 1(2) of the amending S.I.) by [The Building Societies Act 1986 \(International Accounting Standards and Other Accounting Amendments\) Order 2004 \(S.I. 2004/3380\)](#), arts. 1, 2

### 72D IAS individual accounts

Where the directors of a building society prepare IAS individual accounts, they must state in the notes to those accounts that the accounts have been prepared in accordance with [<sup>F398</sup>UK-adopted international accounting standards].

#### Textual Amendments

**F394** Ss. 72A-72I substituted for ss. 72, 73 (22.12.2004 with effect in accordance with art. 1(2) of the amending S.I.) by [The Building Societies Act 1986 \(International Accounting Standards and Other Accounting Amendments\) Order 2004 \(S.I. 2004/3380\)](#), arts. 1, 2

**F398** Words in s. 72D substituted (31.12.2020) by [The International Accounting Standards and European Public Limited-Liability Company \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/685\)](#), reg. 1(2), [Sch. 1 para. 31](#) (with reg. 1(3)(4), [Sch. 1 para. 66](#)) (as amended by S.I. 2020/523, regs. 1(2), 22, [25\(d\)](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

### 72E Duty to prepare group accounts

- (1) If at the end of a financial year a building society has subsidiary undertakings, the directors, as well as preparing individual accounts for the year, shall prepare accounts



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for the year for the society and those undertakings taken as a whole. Those accounts are referred to in this Part as the society’s “group accounts”.

- (2) The group accounts of certain societies are required by <sup>F399</sup>section 403(1) of the Companies Act 2006] to be prepared in accordance with <sup>F400</sup>[UK-adopted international accounting standards] (“IAS group accounts”).
- (3) The group accounts of other societies may be prepared–
  - (a) in accordance with section 72F (“Building Societies Act group accounts”), or
  - (b) in accordance with <sup>F401</sup>[UK-adopted international accounting standards] (“IAS group accounts”).

This subsection is subject to the following provisions of this section.

- (4) After the first financial year in which the directors of a building society prepare IAS group accounts (“the first IAS year”), all subsequent group accounts of the society must be prepared in accordance with <sup>F402</sup>[UK-adopted international accounting standards] unless there is a relevant change of circumstance.
- (5) There is a relevant change of circumstance if, at any time during or after the first IAS year, the society ceases to have any securities admitted to trading on a <sup>F403</sup>[UK] regulated market.
- (6) If, having changed to preparing Building Societies Act group accounts following a relevant change of circumstance, the directors again prepare IAS group accounts for the society, subsection (4) and (5) apply again as if the first financial year for which such accounts are again prepared were the first IAS year.

#### Textual Amendments

- F394** Ss. 72A-72I substituted for ss. 72, 73 (22.12.2004 with effect in accordance with art. 1(2) of the amending S.I.) by [The Building Societies Act 1986 \(International Accounting Standards and Other Accounting Amendments\) Order 2004 \(S.I. 2004/3380\)](#), arts. 1, 2
- F399** Words in s. 72E(2) substituted (31.12.2020) by [The International Accounting Standards and European Public Limited-Liability Company \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/685\)](#), reg. 1(2), [Sch. 1 para. 32\(a\)\(i\)](#) (with reg. 1(3)(4), Sch. 1 para. 66) (as amended by S.I. 2020/523, regs. 1(2), 22, [25\(d\)](#)); 2020 c. 1, Sch. 5 para. 1(1)
- F400** Words in s. 72E(2) substituted (31.12.2020) by [The International Accounting Standards and European Public Limited-Liability Company \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/685\)](#), reg. 1(2), [Sch. 1 para. 32\(a\)\(ii\)](#) (with reg. 1(3)(4), Sch. 1 para. 66) (as amended by S.I. 2020/523, regs. 1(2), 22, [25\(d\)](#)); 2020 c. 1, Sch. 5 para. 1(1)
- F401** Words in s. 72E(3) substituted (31.12.2020) by [The International Accounting Standards and European Public Limited-Liability Company \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/685\)](#), reg. 1(2), [Sch. 1 para. 32\(b\)](#) (with reg. 1(3)(4), Sch. 1 para. 66) (as amended by S.I. 2020/523, regs. 1(2), 22, [25\(d\)](#)); 2020 c. 1, Sch. 5 para. 1(1)
- F402** Words in s. 72E(4) substituted (31.12.2020) by [The International Accounting Standards and European Public Limited-Liability Company \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/685\)](#), reg. 1(2), [Sch. 1 para. 32\(c\)](#) (with reg. 1(3)(4), Sch. 1 para. 66) (as amended by S.I. 2020/523, regs. 1(2), 22, [25\(d\)](#)); 2020 c. 1, Sch. 5 para. 1(1)
- F403** Word in s. 72E(5) inserted (31.12.2020 with effect in relation to financial years beginning on or after IP completion day) by [The Accounts and Reports \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/145\)](#), regs. 1(2)(b), 2, [Sch. 2 para. 20\(b\)](#) (with reg. 7(2)) (as amended by S.I. 2020/523, regs. 1(2), 10, [11](#)); 2020 c. 1, Sch. 5 para. 1(1)

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*Changes to legislation: Building Societies Act 1986 is up to date with all changes known to be in force on or before 19 May 2023. 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. (See end of Document for details) View outstanding changes*

## **72F Building Societies Act group accounts**

- (1) Building Societies Act group accounts must comprise–
  - (a) a balance sheet dealing with the state of affairs of the building society and its subsidiary undertakings, and
  - (b) an income and expenditure account showing the income and expenditure for the society and its subsidiary undertakings.
- (2) Building Societies Act group accounts must give a true and fair view of the state of affairs as at the end of the financial year, and the income and expenditure for the financial year of the society and the subsidiary undertakings included in the group accounts as a whole, so far as concerns members of the society.
- (3) Building Societies Act group accounts must comply with the requirements of regulations made under section 72G as to the form and content of the group accounts and additional information to be provided by way of notes to the accounts or otherwise.
- (4) Where compliance with the provisions of those regulations, and the other provisions of this Act as to the matters to be included in a society’s group accounts or in notes to those accounts, would not be sufficient to give a true and fair view, the necessary additional information must be given in the accounts or in a note to them.
- (5) If in special circumstances compliance with any of those provisions is inconsistent with the requirement to give a true and fair view, the directors must depart from that provision to the extent necessary to give a true and fair view.
- (6) Particulars of any such departure, the reasons for it and its effect must be given in a note to the accounts.
- (7) The Treasury may by regulations–
  - (a) add to the classes of documents to be comprised in a society’s Building Societies Act group accounts under subsection (1);
  - (b) make provision as to the matters to be included in any document so added;
  - (c) modify the requirements of this Part as to the matters to be stated in any document comprised in the society’s Building Societies Act group accounts; and
  - (d) reduce the classes of documents to be comprised in a society’s Building Societies Act group accounts.
- (8) Regulations under subsection (7)–
  - (a) may make different provision for different descriptions of society, and
  - (b) may include incidental and supplementary provisions.
- (9) The power to make regulations under subsection (7) is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

### **Textual Amendments**

**F394** Ss. 72A-72I substituted for ss. 72, 73 (22.12.2004 with effect in accordance with art. 1(2) of the amending S.I.) by [The Building Societies Act 1986 \(International Accounting Standards and Other Accounting Amendments\) Order 2004 \(S.I. 2004/3380\)](#), arts. 1, 2

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## 72G Form and contents of Building Societies Act group accounts

- (1) The Treasury shall by regulations make provision with respect to the form and contents of Building Societies Act group accounts.
- (2) The Treasury may by regulations make provision with respect to additional information to be contained in Building Societies Act group accounts, whether in the form of notes or otherwise.
- (3) Without prejudice to the generality of subsections (1) and (2), the regulations may—
  - (a) prescribe accounting principles and rules;
  - (b) require corresponding information for a preceding financial year;
  - (c) make different provision for different descriptions of society;
  - (d) permit group accounts to be prepared in other than consolidated form.
- (4) The power to make regulations under this section is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### Textual Amendments

**F394** Ss. 72A-72I substituted for ss. 72, 73 (22.12.2004 with effect in accordance with art. 1(2) of the amending S.I.) by [The Building Societies Act 1986 \(International Accounting Standards and Other Accounting Amendments\) Order 2004 \(S.I. 2004/3380\)](#), arts. 1, 2

## 72H IAS group accounts

Where the directors of a building society prepare IAS group accounts, they must state in the notes to those accounts that the accounts have been prepared in accordance with [<sup>F404</sup>UK-adopted international accounting standards].

### Textual Amendments

**F394** Ss. 72A-72I substituted for ss. 72, 73 (22.12.2004 with effect in accordance with art. 1(2) of the amending S.I.) by [The Building Societies Act 1986 \(International Accounting Standards and Other Accounting Amendments\) Order 2004 \(S.I. 2004/3380\)](#), arts. 1, 2

**F404** Words in s. 72H substituted (31.12.2020) by [The International Accounting Standards and European Public Limited-Liability Company \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/685\)](#), reg. 1(2), [Sch. 1 para. 33](#) (with reg. 1(3)(4), [Sch. 1 para. 66](#)) (as amended by S.I. 2020/523, regs. 1(2), 22, [25\(d\)](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

## 72I Consistency of accounts

- (1) The directors of a building society that prepares group accounts must secure that the individual accounts of—
  - (a) the building society, and
  - (b) each of its subsidiary undertakings,are all prepared using the same financial reporting framework, except to the extent that in their opinion there are good reasons for not doing so.

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- (2) Subsection (1) only applies to accounts of subsidiary undertakings which are required to be prepared under [<sup>F405</sup>Part 15 of the Companies Act 2006].
- (3) Subsection (1) does not require accounts of undertakings that are charities to be prepared using the same financial reporting framework as accounts of undertakings which are not charities.
- (4) Subsection (1)(a) does not apply where the directors of a building society prepare IAS group accounts and IAS individual accounts.
- (5) The directors of a society which has subsidiary undertakings must secure that, except where in their opinion there are good reasons against it, the financial year of each of its subsidiary undertakings coincides with the society's own financial year.]

#### Textual Amendments

- F394** Ss. 72A-72I substituted for ss. 72, 73 (22.12.2004 with effect in accordance with art. 1(2) of the amending S.I.) by [The Building Societies Act 1986 \(International Accounting Standards and Other Accounting Amendments\) Order 2004 \(S.I. 2004/3380\)](#), arts. 1, 2
- F405** Words in s. 72I(2) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), [Sch. 1 para. 107](#) (with arts. 6, 11, 12)

#### [<sup>F406</sup>72J Disclosures relating to directors, other officers and employees of society required in notes to accounts

- (1) The information specified in Schedule 10A must be given in notes to a building society's annual accounts.
- (2) In that Schedule—
  - Part 1 relates to emoluments and other benefits of directors and others, and to loans and other dealings in favour of directors and connected persons, and
  - Part 2 relates to information about the employees of a society.
- (3) It is the duty of any director of a society, and any person who is or has at any time in the preceding five years been an officer of the society, to give notice to the society of such matters relating to himself as may be necessary for the purposes of Part 1 of Schedule 10A.
- (4) A person who makes default in complying with subsection (3) commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) The Treasury may, by order, modify the provisions of Schedule 10A.
- (6) An order under this section may—
  - (a) make consequential amendments of or repeals in other provisions of this Act;
  - (b) make such transitional or saving provisions as appear to the Treasury to be necessary or expedient;
  - (c) make different provision for different cases.
- (7) The power to make an order under this section is exercisable by statutory instrument but no such order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (8) In this section “modify” includes amend, add to or repeal.

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#### Textual Amendments

**F406** Ss. 72J, 72K inserted (22.12.2004) (with effect in accordance with art. 1(2) of the amending S.I.) by [The Building Societies Act 1986 \(International Accounting Standards and Other Accounting Amendments\) Order 2004 \(S.I. 2004/3380\)](#), art. 1, [Sch. para. 5](#)

### **72K Disclosures about related undertakings required in notes to accounts**

- (1) The information specified in Schedule 10B must be given in notes to a building society's annual accounts.
- (2) In the case of a building society whose directors are not required to prepare consolidated group accounts, the information specified in Part 1 of that Schedule must be given.
- (3) In the case of a building society whose directors are required to prepare consolidated group accounts, the information specified in Part 2 of that Schedule must be given.
- (4) The Treasury may, by order, modify the provisions of Schedule 10B.
- (5) An order under this section may—
  - (a) make consequential amendments of or repeals in other provisions of this Act;
  - (b) make such transitional or saving provisions as appear to the Treasury to be necessary or expedient;
  - (c) make different provision for different cases.
- (6) The power to make an order under this section is exercisable by statutory instrument but no such order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (7) In this section “modify” includes amend, add to or repeal.]

#### Textual Amendments

**F406** Ss. 72J, 72K inserted (22.12.2004) (with effect in accordance with art. 1(2) of the amending S.I.) by [The Building Societies Act 1986 \(International Accounting Standards and Other Accounting Amendments\) Order 2004 \(S.I. 2004/3380\)](#), art. 1, [Sch. para. 5](#)

### **[<sup>F407</sup>72L. Disclosures relating to off-balance-sheet arrangements required in notes to accounts**

- (1) If in any financial year—
  - (a) a building society is or has been party to arrangements that are not reflected in its balance sheet, and
  - (b) at the balance sheet date the risks or benefits arising from those arrangements are material,

the information required by this section must be given in notes to the society's annual accounts.
- (2) The information required is—
  - (a) the nature and business purpose of the arrangements, and

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- (b) the financial impact of the arrangements on the society.
- (3) The information need only be given to the extent necessary for enabling the financial position of the society to be assessed.
- (4) Where a building society is required to prepare consolidated group accounts, this section applies in relation to those accounts as if the undertakings included in the consolidation were a single building society.]

#### Textual Amendments

**F407** S. 72L inserted (29.6.2008) by [The Building Societies Act 1986 \(Accounts, Audit and EEA State Amendments\) Order 2008 \(S.I. 2008/1519\)](#), arts. 1(2), **3**

#### [<sup>F408</sup>**72M** Disclosure of auditor remuneration required in notes to accounts

- (1) The information specified in Schedule 10C must be given in notes to a building society’s annual accounts.
- (2) The Treasury may, by order, modify the provisions of Schedule 10C.
- (3) An order under this section may—
  - (a) make consequential amendments of or repeals in other provisions of this Act;
  - (b) make such transitional or saving provisions as appear to the Treasury to be necessary or expedient;
  - (c) make different provision for different cases.
- (4) The power to make an order under this section is exercisable by statutory instrument but no such order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (5) In this section “modify” includes amend, add to or repeal.]

#### Textual Amendments

**F408** S. 72M inserted (29.6.2008) by [The Building Societies Act 1986 \(Accounts, Audit and EEA State Amendments\) Order 2008 \(S.I. 2008/1519\)](#), arts. 1(2), **4(1)**

#### <sup>F394</sup>**73** Contents and form of annual accounts.

.....

#### Textual Amendments

**F394** Ss. 72A-72I substituted for ss. 72, 73 (22.12.2004 with effect in accordance with art. 1(2) of the amending S.I.) by [The Building Societies Act 1986 \(International Accounting Standards and Other Accounting Amendments\) Order 2004 \(S.I. 2004/3380\)](#), arts. 1, **2**



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## 74 Duty of directors to prepare annual business statement.

- (1) The directors of every building society shall, by reference to the annual accounts and other records and information at their disposal, prepare with respect to each financial year of the society a statement (referred to in this Act as “the annual business statement”) relating to prescribed aspects of the business of the society during the year.
- (2) Where the society has [<sup>F409</sup>connected undertakings] the annual business statement shall deal also with prescribed aspects of the business of the [<sup>F409</sup>connected undertakings] during the year to which it relates.
- (3) The annual business statement shall contain such information relating to such aspects of the business of the society and shall be in such form as the [<sup>F410</sup>Treasury prescribe by regulations]; and in this section “prescribed” means prescribed by regulations under this subsection.
- (4) Without prejudice to the generality of subsections (1) to (3) above the regulations may require the annual business statements of building societies to include prescribed information about directors and past directors and persons connected with them <sup>F411</sup>... and their financial interests.
- (5) The information comprising the annual business statement shall give a true representation of the matters in respect of which it is given.
- (6) To such extent as may be prescribed matters contained in the society’s annual business statement shall not be the subject of report by the [<sup>F412</sup>auditor] under section 78.
- (7) 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.
- (8) It is the duty of every director <sup>F413</sup>... of a building society to give notice to the society of such matters relating to himself or his financial interests as may be necessary for the purposes of compliance with the preceding provisions of this section.
- (9) Any person who fails to comply with subsection (8) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (10) Any director who fails to comply with subsection (1) above shall be liable on conviction on indictment or on summary conviction to a fine not exceeding, on summary conviction, the statutory maximum.

### Textual Amendments

- F409** Words in s. 74(2) 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. 31**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xviii)**
- F410** Words in s. 74(3) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2(a)(b), 8, 13(1), **Sch. 3 para. 166** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F411** Words in s. 74(4) omitted (18.2.2014) by virtue of Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(2), **Sch. 9 para. 5(2)**
- F412** Word in s. 74(6) substituted (29.6.2008) by The Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008 (S.I. 2008/1519), art. 1(2), **Sch. 2 para. 2**
- F413** Words in s. 74(8) omitted (18.2.2014) by virtue of Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(2), **Sch. 9 para. 5(3)**

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

**C110** S. 74(3)(4): Functions of the Building Societies Commission transferred (1.12.2001) to the Treasury by S.I. 2001/2617, arts. 2(b), 4(1), **Sch. 1 Pt. III** (with art. 5); S.I. 2001/3538, **art. 2(1)**

## 75 Directors' report.

(1) The directors of a building society shall prepare for submission to the annual general meeting a report on the business of the society containing—

- [<sup>F414</sup>(a) a fair review of the business of the society and its connected undertakings (if any), complying with section 75A,
- (aa) a description of the principal risks and uncertainties facing the society and its connected undertakings (if any),]
- (b) such information relating to such aspects of the business of the society or the society and any [<sup>F415</sup>connected undertakings] as may be prescribed by regulations made by the <sup>F416</sup> . . . Treasury, and
- <sup>F417</sup>[(c) a statement as to the matters mentioned in subsection (1A) below.]

<sup>F418</sup>[(1A) The said matters are—

- (a) whether the society has acquired or established, or allowed a subsidiary undertaking to acquire or establish, a business to which subsection (3) and subsection (4) or, as the case may be, subsection (5) of section 92A applied;
- (b) if the society has acquired or established, or allowed such an undertaking to acquire or establish, such a business, what the business is and whether the society complied with the requirements of subsection (1) of that section; and
- (c) if the society did not comply with those requirements, why the society nevertheless proceeded, or allowed the undertaking to proceed, with the acquisition or establishment.]

[<sup>F419</sup>(1B) If the building society has subsidiary undertakings, the report may, where appropriate, give greater emphasis to those matters which are significant to the society and its subsidiary undertakings taken as a whole.]

<sup>F420</sup>(2) . . . . .

(3) The power to make regulations under subsection (1) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(4) If a directors' report does not contain [<sup>F421</sup>the review, information and statement required by subsection (1) above and, where applicable, the review required by subsection (2) above], each director shall be liable on conviction on indictment or on summary conviction to a fine not exceeding, on summary conviction, the statutory maximum.

#### Textual Amendments

**F414** S. 75(1)(a)(aa) substituted (22.12.2004) for s. 75(1)(a) (with effect in accordance with art. 1(2) of the amending S.I.) by **The Building Societies Act 1986 (International Accounting Standards and Other Accounting Amendments) Order 2004** (S.I. 2004/3380), arts. 1, **3(2)**

**F415** Words in s. 75(1)(b) 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. 32(1)(a)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xix)**



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- F416** Words in s. 75(1)(b) repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), **Sch. 5**); S.I. 2001/3538, **art. 2(1)**
- F417** S. 75(1)(c) 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. 32(1)(b)**; S.I. 1997/2668, **art. 2, Sch. Pt. II(w)(z)(xix)**
- F418** S. 75(1A) 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. 32(2)**; S.I. 1997/2668, **art. 2, Sch. Pt. II(w)(z)(xix)**
- F419** S. 75(1B) inserted (22.12.2004) (with effect in accordance with art. 1(2) of the amending S.I.) by **The Building Societies Act 1986 (International Accounting Standards and Other Accounting Amendments) Order 2004 (S.I. 2004/3380)**, arts. 1, **3(3)**
- F420** S. 75(2) omitted (22.12.2004) (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of **The Building Societies Act 1986 (International Accounting Standards and Other Accounting Amendments) Order 2004 (S.I. 2004/3380)**, arts. 1, **3(4)**
- F421** Words in s. 75(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. 32(4)**; S.I. 1997/2668, **art. 2, Sch. Pt. II(w)(z)(xix)**

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

- C111** S. 75(1)(b): Functions of the Building Societies Commission transferred (1.12.2001) to the Treasury by S.I. 2001/2617, arts. 2(b), 4(1), **Sch. 1 Pt. III** (with art. 5); S.I. 2001/3538, **art. 2(1)**

#### **[<sup>F422</sup>75A Business review**

- (1) The review required for the purposes of section 75(1) is a balanced and comprehensive analysis of—
  - (a) the development and performance of the business of the building society and its connected undertakings (if any) during the financial year, and
  - (b) the position of the building society and its connected undertakings (if any) at the end of that year,consistent with the size and complexity of the business.
- (2) The review must, to the extent necessary for an understanding of the development, performance or position of the business of the society and its connected undertakings (if any), include—
  - (a) analysis using financial key performance indicators, and
  - (b) where appropriate, analysis using other key performance indicators, including information relating to environmental matters and employee matters.
- (3) The review must, where appropriate, include references to and additional explanations of amounts included in the annual accounts of the society.
- (4) In this section “key performance indicators” means factors by reference to which the development, performance or position of the business of the society and any connected undertakings it has can be measured most effectively.]

#### **Textual Amendments**

- F422** S. 75A inserted (22.12.2004) (with effect in accordance with art. 1(2) of the amending S.I.) by **The Building Societies Act 1986 (International Accounting Standards and Other Accounting Amendments) Order 2004 (S.I. 2004/3380)**, arts. 1, **4**

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## 76 Summary financial statement for members and depositors.

- (1) The directors of a building society shall, with respect to each financial year, prepare for members and depositors a summary financial statement for that year, that is to say, a statement derived from the annual accounts, annual business statement and director's report, giving a summary account of the society's financial development during and financial position at the end of the year.
- (2) Where the society has [<sup>F423</sup>connected undertakings] the statement shall (so far as they are dealt with in the group accounts) give an account of the financial development and position of the society and its [<sup>F424</sup>connected undertakings].
- (3) The [<sup>F425</sup>Treasury may by regulations] make provision with respect to—
  - (a) the form of the summary financial statement, and
  - (b) the information which must be included in it.
- (4) Every summary financial statement shall also include in the prescribed form statements to the effect that—
  - (a) it is only a summary of information in the accounts, business statement and directors' report;
  - (b) in so far as it summarises the information in the accounts, those accounts have been audited;
  - (c) the accounts, business statement and director's report will be available to members and depositors free of charge on demand at every office of the society after a specified date.
- (5) Every summary financial statement shall include a statement of the [<sup>F426</sup>auditor's opinion] as to its consistency with the accounts, business statement and directors' report and its conformity with the requirements of this section and regulations made under it.
- (6) 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.
- (7) The summary financial statement shall be signed by two directors on behalf of the board of directors and by the chief executive of the society.
- [<sup>F427</sup>(8) Not later than 21 days before the date of the annual general meeting at which the accounts and reports are to be considered, the society shall send one copy of the documents to which this subsection applies to every member of the society who is entitled to receive notice of the meeting, and two copies of the documents to which this subsection applies to the [<sup>F428</sup>FCA and, if the society is a PRA-authorized person, one copy to the PRA].
- (8A) The documents to which subsection (8) applies are—
  - (a) the summary financial statement, and
  - (b) where subsection (8) extends under section 78(6) to the [<sup>F429</sup>auditor's report] also, the [<sup>F429</sup>auditor's report].]
- [<sup>F430</sup>(8AA) The society shall also—
  - (a) publish the summary financial statement and (where applicable) the auditor's report on a web site, and
  - (b) ensure that the statement and (where applicable) the report may be accessed on the web site until the publication of the next summary financial statement.]

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[<sup>F431</sup>(8B) Where a copy of the summary financial statement or of the auditor’s report is required to be sent to a member under subsection (8)—

- (a) it may be sent to him electronically only if it is sent to an electronic address notified to the society by the member for the purpose; but
- (b) the requirement to send it shall also be treated as satisfied if the conditions set out in subsection (8C) are satisfied.

(8C) The conditions of this subsection are satisfied in the case of a copy of a summary financial statement or auditor’s report if—

- (a) the society and the member have agreed that information that is required to be sent to him may instead be accessed by him on a web site;
- (b) the agreement applies to the summary financial statement or auditor’s report in question;
- (c) the member is notified <sup>F432</sup>... of—
  - (i) the publication of the summary financial statement and (where applicable) the auditor’s report on a web site,
  - (ii) the address of that web site, and
  - (iii) the place on that web site where the statement and (where applicable) the report may be accessed, and how it may be accessed;
- (d) the notification given for the purposes of paragraph (c) is given not less than 21 days before the date of the annual general meeting at which the accounts and reports are to be considered; and
- (e) a copy of the statement and (where applicable) the report is published on the web site throughout a period beginning at least 21 days before the date of meeting.

(8D) Where, in a case in which subsection (8C) is relied on for compliance with a requirement of subsection (8)—

- (a) a copy of a summary financial statement or auditor’s report is published for a part, but not all, of the period mentioned in subsection (8C)(e), and
- (b) the failure to publish it throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the society or the officer to prevent or avoid,

the failure shall not invalidate the proceedings of the meeting at which the accounts and reports are considered, and no offence is committed under subsection (10) by reason of that failure.]

[<sup>F433</sup>(8E) If, at any time during the period beginning with the publication of the summary financial statement and ending with the publication of the next summary financial statement, an individual for the first time subscribes for shares in the society, the society shall at that time notify the individual of the information in subsection (8C) (c)(i) to (iii).

(8F) In a case where subsection (8E) applies, the society is not required under section 115B (right to hard copy version) to send the individual a version of the summary financial statement or (where applicable) the auditor's report in hard copy form (within the meaning of that section).]

<sup>F434</sup>(9) .....

<sup>F434</sup>(9A) .....

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F<sup>434</sup>(9B) .....

F<sup>434</sup>(9C) .....

F<sup>434</sup>(9D) .....

F<sup>434</sup>(9E) .....

- (10) If default is made by a building society in complying with subsection (8) above, the society shall be liable on summary conviction—
- (a) to a fine not exceeding level 5 on the standard scale; and
  - (b) in the case of a continuing offence, to an additional fine not exceeding £200 for every day during which the offence continues,
- and so shall any officer who is also guilty of the offence.
- (11) If default is made by a building society in complying with [F<sup>435</sup>subsection (8AA) or (8E)] above, the society shall be liable on summary conviction—
- (a) to a fine not exceeding level 3 on the standard scale; and
  - (b) in the case of a continuing offence, to an additional fine not exceeding £40 for every day during which the offence continues,
- and so shall any officer who is also guilty of the offence.
- (12) The [F<sup>436</sup>[F<sup>437</sup>FCA] shall keep one of the copies] of the summary financial statement received by it under subsection (8) above in the public file of the society.

#### Textual Amendments

- F423** Words in s. 76(2) 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. 33(1)(a)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xx)**
- F424** Words in s. 76(2) 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. 33(1)(b)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xx)**
- F425** Words in s. 76(3) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2(a)(b), 8, 13(1), **Sch. 3 para. 168(a)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F426** Words in s. 76(5) substituted (29.6.2008) by The Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008 (S.I. 2008/1519), art. 1(2), **Sch. 2 para. 3(a)**
- F427** S. 76(8)(8A) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) for s. 76(8) by S.I. 2001/2617, arts. 2(a)(b), 8, 13(1), **Sch. 3 para. 168(b)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F428** Words in s. 76(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. 27(2)** (with Sch. 12)
- F429** Words in s. 76(8A)(b) substituted (29.6.2008) by The Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008 (S.I. 2008/1519), art. 1(2), **Sch. 2 para. 3(b)**
- F430** S. 76(8AA) inserted (18.2.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(2), **Sch. 9 para. 6(2)**
- F431** S. 76(8B)-(8D) inserted (20.3.2003) by The Building Societies Act 1986 (Electronic Communications) Order 2003 (S.I. 2003/404), arts. 1(1), **6(2)**
- F432** Words in s. 76(8C)(c) omitted (18.2.2014) by virtue of Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(2), **Sch. 9 para. 10**
- F433** S. 76(8E)(8F) inserted (18.2.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(2), **Sch. 9 para. 6(3)**

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- F434** S. 76(9)-(9E) omitted (18.2.2014) by virtue of [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(2\), Sch. 9 para. 6\(4\)](#)
- F435** Words in s. 76(11) substituted (18.2.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(2\), Sch. 9 para. 6\(5\)](#)
- F436** Words in s. 76(12) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by [S.I. 2001/2617, arts. 2\(a\)\(b\), 8, 13\(1\), Sch. 3 para. 168\(c\)](#) (with [art. 13\(3\), Sch. 5](#)); [S.I. 2001/3538, art. 2\(1\)](#)
- F437** Word in s. 76(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. 27\(3\)](#) (with [Sch. 12](#))

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

- C112** S. 76(3): Functions of the Building Societies Commission transferred (1.12.2001) to the Treasury by [S.I. 2001/2617, arts. 2\(b\), 4\(1\), Sch. 1 Pt. III](#) (with [art. 5](#)); [S.I. 2001/3538, art. 2\(1\)](#)

### *Auditors and audit of accounts*

#### 77 **Auditors: appointment, tenure**<sup>F438</sup> ... , etc.

- (1) Every building society shall at each annual general meeting appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting.
- [<sup>F439</sup>(2) Schedule 11 to this Act has effect as regards the appointment, resignation and removal of auditors.]
- [<sup>F440</sup>(3) Appointment as auditor of a building society is an appointment as a statutory auditor to which the provisions of Part 42 of the Companies Act 2006 apply.]

#### Textual Amendments

- F438** Words in s. 77 heading omitted (6.4.2008) by virtue of [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\), art. 2\(2\), Sch. 1 para. 13\(2\)](#), [Sch. 2](#) (with [arts. 6, 11, 12](#))
- F439** S. 77(2) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\), art. 2\(2\), Sch. 1 para. 13\(3\)](#) (with [arts. 6, 11, 12](#))
- F440** S. 77(3) inserted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\), art. 2\(2\), Sch. 1 para. 13\(4\)](#) (with [arts. 6, 11, 12](#))

#### 78 [<sup>F441</sup>**Auditor's report**].

- (1) The [<sup>F442</sup>auditor] of a building society shall make a [<sup>F443</sup>written ] report to the members on the annual accounts which are to be laid before the society at the annual general meeting during [<sup>F444</sup>his] tenure of office.
- (2) The [<sup>F445</sup>auditor's report] shall <sup>F446</sup>... be open to inspection by any member [<sup>F447</sup>at the annual general meeting of the building society].
- (3) The [<sup>F448</sup>auditor shall, in his] report under subsection (1) above, also make a report to the members on—
- the annual business statement, and
  - the directors' report,
- in so far as subsection (7) below requires [<sup>F449</sup>him] to do so.

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- [<sup>F450</sup>(3A) The auditor's report must include—
- (a) the identity of the building society whose annual accounts are the subject of the audit,
  - (b) a description of the annual accounts that are the subject of the audit (including the period covered by those accounts),
  - (c) a description of the financial reporting framework that has been applied in the preparation of those accounts, and
  - (d) a description of the scope of the audit identifying the auditing standards in accordance with which the audit was conducted.
- [<sup>F451</sup>(4) The report must clearly state the opinion of the auditor as to whether the accounts—
- (a) give a true and fair view—
    - (i) in the case of an individual balance sheet, of the state of affairs of the society as at the end of the financial year,
    - (ii) in the case of an individual income and expenditure account, of the income and expenditure of the society for the financial year, and
    - (iii) in the case of group accounts, of the state of affairs as at the end of the financial year and the income and expenditure for the financial year of the society and the subsidiary undertakings dealt with in the group accounts, so far as concerns members of the society,
  - (b) have been properly prepared in accordance with the relevant financial reporting framework, and
  - (c) have been prepared in accordance with the requirements of this Act (and, where applicable, [<sup>F452</sup>section 403(1) of the Companies Act 2006]).]
- (4A) The auditor's [<sup>F453</sup>report] must—
- (a) be either unqualified or qualified,
  - (b) include a reference to any matters to which the auditor wishes to draw attention by way of emphasis without qualifying the [<sup>F454</sup>report],
  - (c) include a statement on any material uncertainty relating to events or conditions that may cast significant doubt about the building society's ability to continue [<sup>F455</sup>to adopt the going concern basis of accounting], and
  - (d) identify the auditor's place of establishment.]
- (6) If the [<sup>F456</sup>auditor's report] includes a qualification of [<sup>F456</sup>his opinion] that the annual accounts give a true and fair view of the matters specified in subsection [<sup>F457</sup>(4)(a)] above, [<sup>F458</sup>subsection (8) of section 76 extends] also to the [<sup>F456</sup>auditor's report].
- [<sup>F459</sup>(7) The auditor's report, in so far as it deals with the documents specified in subsection (3) above, must—
- (a) state whether, in his opinion, based on the work undertaken in the course of the audit—
    - (i) the documents have been prepared so as to conform to the requirements of, or made under, sections 74 and 75 respectively,
    - (ii) the information given in the annual business statement gives a true representation of the matters in respect of which it is given, and
    - (iii) the information given in the directors' report for the financial year for which the accounts are prepared is consistent with those accounts,

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- (b) state whether, in the light of the knowledge and understanding of the building society and its environment obtained in the course of the audit, the auditor has identified material misstatements in the directors' report, and
  - (c) if applicable, give an indication of the nature of each of the misstatements referred to in paragraph (b).]
- (8) The [<sup>F460</sup>auditor's report] on the annual business statement shall not deal with any matters which, by virtue of section 74(6), are not to be the subject of report under this section.
- (9) The [<sup>F461</sup>auditor] of a building society shall, as regards the statement of particulars of transactions falling within section 65 which the society is to make available for "inspection by members under section 68(3), examine the statement before it is made available to members and make a report to the members on it; and the report shall be annexed to the statement before it is so made available.
- (10) The [<sup>F462</sup>auditor's report] under subsection (9) above shall state whether in [<sup>F463</sup>his opinion] the statement contains the particulars required by section 68; and where [<sup>F463</sup>his opinion] is that it does not, [<sup>F464</sup>he shall include in his] report, so far as [<sup>F465</sup>he is] reasonably able to do so, a statement giving the requisite particulars.
- [<sup>F466</sup>(11) Where more than one person is appointed as an auditor—
- (a) all the persons appointed must jointly make a report under this section and the report must include a statement as to whether all the persons appointed agree—
    - (i) on the matters contained in the report, and
    - (ii) on the statements and indications given under subsection (7); and
  - (b) if all the persons appointed cannot agree on—
    - (i) the matters contained in the report, or
    - (ii) on the statements and indications given under subsection (7),the report must include the opinions of each person appointed and give reasons for the disagreement.]

#### Textual Amendments

- F441** Words in s. 78 heading substituted (29.6.2008) by [The Building Societies Act 1986 \(Accounts, Audit and EEA State Amendments\) Order 2008 \(S.I. 2008/1519\)](#), art. 1(2), **Sch. 2 para. 4(l)**
- F442** Word in s. 78(1) substituted (29.6.2008) by [The Building Societies Act 1986 \(Accounts, Audit and EEA State Amendments\) Order 2008 \(S.I. 2008/1519\)](#), art. 1(2), **Sch. 2 para. 4(a)(i)**
- F443** Word in s. 78(1) inserted (17.6.2016) by [The Statutory Auditors and Third Country Auditors Regulations 2016 \(S.I. 2016/649\)](#), reg. 1(1)(a), **Sch. 4 para. 3(a)** (with reg. 1(6))
- F444** Word in s. 78(1) substituted (29.6.2008) by [The Building Societies Act 1986 \(Accounts, Audit and EEA State Amendments\) Order 2008 \(S.I. 2008/1519\)](#), art. 1(2), **Sch. 2 para. 4(a)(ii)**
- F445** Words in s. 78(2) substituted (29.6.2008) by [The Building Societies Act 1986 \(Accounts, Audit and EEA State Amendments\) Order 2008 \(S.I. 2008/1519\)](#), art. 1(2), **Sch. 2 para. 4(b)**
- F446** Words in s. 78(2) repealed (11.1.1996) by [S.I. 1995/3233](#), **art. 6(a)**
- F447** Words in s. 78(2) inserted (11.1.1996) by [S.I. 1995/3233](#), **art. 6(b)**
- F448** Words in s. 78(3) substituted (29.6.2008) by [The Building Societies Act 1986 \(Accounts, Audit and EEA State Amendments\) Order 2008 \(S.I. 2008/1519\)](#), art. 1(2), **Sch. 2 para. 4(c)(i)**
- F449** Word in s. 78(3) substituted (29.6.2008) by [The Building Societies Act 1986 \(Accounts, Audit and EEA State Amendments\) Order 2008 \(S.I. 2008/1519\)](#), art. 1(2), **Sch. 2 para. 4(c)(ii)**



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- F450** S. 78(3A)-(4A) substituted (17.6.2016) by The Statutory Auditors and Third Country Auditors Regulations 2016 (S.I. 2016/649), reg. 1(1)(a), **Sch. 4 para. 3(b)** (with reg. 1(6))
- F451** S. 78(4) substituted (with effect in accordance with reg. 1(4) of the amending S.I.) by The Statutory Auditors and Third Country Auditors Regulations 2017 (S.I. 2017/516), regs. 1(2), **2(2)(a)**
- F452** Words in s. 78(4)(c) substituted (31.12.2020) by The International Accounting Standards and European Public Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/685), reg. 1(2), **Sch. 1 para. 34** (with reg. 1(3)(4), Sch. 1 para. 66) (as amended by S.I. 2020/523, regs. 1(2), 22, **25(d)**); 2020 c. 1, Sch. 5 para. 1(1)
- F453** Word in s. 78(4A) substituted (with effect in accordance with reg. 1(4) of the amending S.I.) by The Statutory Auditors and Third Country Auditors Regulations 2017 (S.I. 2017/516), regs. 1(2), **2(2)(b)(i)**
- F454** Word in s. 78(4A)(b) substituted (with effect in accordance with reg. 1(4) of the amending S.I.) by The Statutory Auditors and Third Country Auditors Regulations 2017 (S.I. 2017/516), regs. 1(2), **2(2)(b)(ii)**
- F455** Words in s. 78(4A)(c) substituted (with effect in accordance with reg. 1(4) of the amending S.I.) by The Statutory Auditors and Third Country Auditors Regulations 2017 (S.I. 2017/516), regs. 1(2), **2(2)(b)(iii)**
- F456** Words in s. 78(6) substituted (29.6.2008) by The Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008 (S.I. 2008/1519), art. 1(2), **Sch. 2 para. 4(g)**
- F457** Word in s. 78(6) substituted (with effect in accordance with reg. 1(4) of the amending S.I.) by The Statutory Auditors and Third Country Auditors Regulations 2017 (S.I. 2017/516), regs. 1(2), **2(2)(c)**
- F458** Words in s. 78(6) substituted (18.2.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(2), **Sch. 9 para. 7(a)**
- F459** S. 78(7) substituted (17.6.2016) by The Statutory Auditors and Third Country Auditors Regulations 2016 (S.I. 2016/649), reg. 1(1)(a), **Sch. 4 para. 3(d)** (with reg. 1(6))
- F460** Words in s. 78(8) substituted (29.6.2008) by The Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008 (S.I. 2008/1519), art. 1(2), **Sch. 2 para. 4(i)**
- F461** Word in s. 78(9) substituted (29.6.2008) by The Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008 (S.I. 2008/1519), art. 1(2), **Sch. 2 para. 4(j)**
- F462** Words in s. 78(10) substituted (29.6.2008) by The Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008 (S.I. 2008/1519), art. 1(2), **Sch. 2 para. 4(k)(i)**
- F463** Words in s. 78(10) substituted (29.6.2008) by The Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008 (S.I. 2008/1519), art. 1(2), **Sch. 2 para. 4(k)(ii)**
- F464** Words in s. 78(10) substituted (29.6.2008) by The Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008 (S.I. 2008/1519), art. 1(2), **Sch. 2 para. 4(k)(iii)**
- F465** Words in s. 78(10) substituted (29.6.2008) by The Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008 (S.I. 2008/1519), art. 1(2), **Sch. 2 para. 4(k)(iv)**
- F466** S. 78(11) inserted (17.6.2016) by The Statutory Auditors and Third Country Auditors Regulations 2016 (S.I. 2016/649), reg. 1(1)(a), **Sch. 4 para. 3(e)** (with reg. 1(6))

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

- C113** S. 78 restricted (1. 1. 1993) by S.I. 1992/359, **reg. 9(4)** (with reg. 2(2))

#### <sup>F467</sup>78A Signature of auditors' report

- (1) The auditor's report must state the name of the auditor [<sup>F468</sup> (or, where more than one person is appointed as auditor, all of their names) ] and be signed and dated.
- (2) Where the auditor is an individual, the report must be signed by him.

<sup>F469</sup>(2A) .....

- (3) Where the auditor is a firm, the report must be signed by the senior statutory auditor in his own name, for and on behalf of the auditor.



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[<sup>F470</sup>(4) Where more than one person is appointed as auditor, the report must be signed by all those appointed.]

#### Textual Amendments

- F467** Ss. 78A-78D substituted for s. 78A (29.6.2008) by [The Building Societies Act 1986 \(Accounts, Audit and EEA State Amendments\) Order 2008 \(S.I. 2008/1519\)](#), arts. 1(2), **5**
- F468** Words in s. 78A(1) inserted (17.6.2016) by [The Statutory Auditors and Third Country Auditors Regulations 2016 \(S.I. 2016/649\)](#), reg. 1(1)(a), **Sch. 4 para. 4(a)** (with reg. 1(6))
- F469** S. 78A(2A) omitted (with effect in accordance with reg. 1(4) of the amending S.I.) by virtue of [The Statutory Auditors and Third Country Auditors Regulations 2017 \(S.I. 2017/516\)](#), regs. 1(2), **2(3)(a)**
- F470** S. 78A(4) inserted (with effect in accordance with reg. 1(4) of the amending S.I.) by [The Statutory Auditors and Third Country Auditors Regulations 2017 \(S.I. 2017/516\)](#), regs. 1(2), **2(3)(b)**

### 78B. Senior statutory auditor

- (1) The senior statutory auditor means the individual identified by the firm as senior statutory auditor in relation to the audit in accordance with the standards or guidance mentioned in section 504(1) of the Companies Act 2006.
- (2) The person identified as senior statutory auditor must be eligible for appointment as auditor of the building society in question (see Chapter 2 of Part 42 of the Companies Act 2006).
- (3) The senior statutory auditor is not, by reason of being named or identified as senior statutory auditor or by reason of his having signed the auditor's report, subject to any civil liability to which he would not otherwise be subject.

#### Textual Amendments

- F467** Ss. 78A-78D substituted for s. 78A (29.6.2008) by [The Building Societies Act 1986 \(Accounts, Audit and EEA State Amendments\) Order 2008 \(S.I. 2008/1519\)](#), arts. 1(2), **5**

### 78C. Names to be stated in copies of auditor's report filed or published

- (1) The copy of the auditor's report sent <sup>F471</sup>... under section 81, and every copy of the auditor's report that is published by or on behalf of the society, must—
  - (a) state the name of the auditor and (where the auditor is a firm) the name of the person who signed it as senior statutory auditor, or
  - (b) if the conditions in section 78D (circumstances in which names may be omitted) are met, state that a resolution has been passed and notified <sup>F471</sup>... in accordance with that section.
- [<sup>F472</sup>(1A) If more than one [<sup>F473</sup>person] is appointed as auditor, the reference in subsection (1)(a) to the name of the auditor is to be read as a reference to the names of all the auditors.]
- (2) For the purposes of this section a building society is regarded as publishing the report if it publishes, issues or circulates it or otherwise makes it available for public inspection in a manner calculated to invite members of the public generally, or any class of members of the public, to read it.

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- (3) If a copy of the auditor's report is sent to the <sup>F474</sup>FCA] or published without the statement required by this section, an offence is committed by—
- (a) the society, and
  - (b) every officer of the society who is in default.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### Textual Amendments

- F467** Ss. 78A-78D substituted for s. 78A (29.6.2008) by [The Building Societies Act 1986 \(Accounts, Audit and EEA State Amendments\) Order 2008 \(S.I. 2008/1519\)](#), arts. 1(2), **5**
- F471** Words in s. 78C(1) omitted (1.4.2013) by virtue of [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), **Sch. 8 para. 28(2)** (with Sch. 12)
- F472** S. 78C(1A) inserted (17.6.2016) by [The Statutory Auditors and Third Country Auditors Regulations 2016 \(S.I. 2016/649\)](#), reg. 1(1)(a), **Sch. 4 para. 5** (with reg. 1(6))
- F473** Word in s. 78C(1A) substituted (with effect in accordance with reg. 1(4) of the amending S.I.) by [The Statutory Auditors and Third Country Auditors Regulations 2017 \(S.I. 2017/516\)](#), regs. 1(2), **2(4)**
- F474** Word in s. 78C(3) omitted (1.4.2013) by virtue of [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), **Sch. 8 para. 28(3)** (with Sch. 12)

#### 78D. Circumstances in which names may be omitted

- (1) <sup>F475</sup>An ] auditor's name and, where the auditor is a firm, the name of the person who signed the report as senior statutory auditor, may be omitted from—
- (a) the copy of the report sent <sup>F476</sup>... under section 81, and
  - (b) published copies of the report,
- if the following conditions are met.
- (2) The conditions are that the building society—
- (a) considering on reasonable grounds that statement of the name would create or be likely to create a serious risk that the auditor or the senior statutory auditor, or any other person, would be subject to violence or intimidation, has resolved by an ordinary resolution that the name should not be stated, and
  - (b) has given notice of the resolution to the <sup>F477</sup>FCA and, if the society is a PRA-  
authorised person, the PRA] , stating—
    - (i) the name of the society,
    - (ii) the financial year of the society to which the report relates, and
    - (iii) the name of the auditor and (where the auditor is a firm) the name of the person who signed the report as senior statutory auditor.]

#### Textual Amendments

- F467** Ss. 78A-78D substituted for s. 78A (29.6.2008) by [The Building Societies Act 1986 \(Accounts, Audit and EEA State Amendments\) Order 2008 \(S.I. 2008/1519\)](#), arts. 1(2), **5**
- F475** Word in s. 78D(1) substituted (17.6.2016) by [The Statutory Auditors and Third Country Auditors Regulations 2016 \(S.I. 2016/649\)](#), reg. 1(1)(a), **Sch. 4 para. 6** (with reg. 1(6))
- F476** Words in s. 78D(1) omitted (1.4.2013) by virtue of [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), **Sch. 8 para. 29(2)** (with Sch. 12)

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**F477** Words in s. 78D(2)(b) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), [Sch. 8 para. 29\(3\)](#) (with Sch. 12)

**79** [<sup>F478</sup>**Auditor’s duties and powers**] .

(1) It is the duty of the [<sup>F479</sup>auditor] of a building society in preparing [<sup>F480</sup>his] report to the members under section 78, to carry out such investigations as will enable [<sup>F481</sup>him] to form an opinion as to the following matters—

- (a) whether [<sup>F482</sup>adequate] accounting records have been kept under section 71,
- <sup>F483</sup>(b) . . . . .
- (c) whether the annual accounts are in agreement with the accounting records.

[<sup>F484</sup>(2) If the auditor is of the opinion that—

- (a) [<sup>F485</sup>adequate] accounting records have not been kept under section 71, or
  - (b) the annual accounts are not in agreement with the accounting records,
- the auditor must state that fact in his report.]

(3) Every auditor of a building society has—

- (a) a right of access at all times to the accounting and other records of the society and all other documents relating to its business, and
- (b) a right to require from the officers of the society such information and explanations as he thinks necessary for the performance of the duties of the auditors.

(4) Where a building society has a [<sup>F486</sup>connected undertaking], then—

- (a) if the [<sup>F486</sup>connected undertaking] is a body corporate incorporated in any part of the United Kingdom, it is the duty of the [<sup>F486</sup>connected undertaking] and [<sup>F487</sup>its auditor] to give to [<sup>F488</sup>the society’s auditor] such information and explanation, and such access to documents, as [<sup>F489</sup>that auditor] may reasonably require for the purposes of [<sup>F490</sup>his duties as auditor] of the society;
- (b) in any other case, it is the duty of the society, if required by [<sup>F491</sup>its auditor] to do so, to take all such steps as are reasonably open to it to obtain from the [<sup>F486</sup>connected undertaking] such information and explanation and such access as are mentioned above.

[<sup>F492</sup>(5) Subsection (4) above applied as regards any body associated with the society which is not a [<sup>F493</sup>subsidiary undertaking] as it applies as regards a [<sup>F493</sup>subsidiary undertaking] of the society.]

(6) If the [<sup>F494</sup>auditor fails] to obtain all the information and explanations and the access to documents which, to the best of [<sup>F495</sup>his] knowledge and belief, are necessary for the purposes of [<sup>F495</sup>his] audit, [<sup>F496</sup>he] shall state that fact in [<sup>F495</sup>his] report.

[<sup>F497</sup>(6A) Where more than one person is appointed as auditor, the report must include a statement as to whether all the persons appointed agree on any statements given under subsections (2) and (6) and, if they cannot agree on those statements, the report must include the opinions of each person appointed and give reasons for the disagreement.]

(7) The [<sup>F498</sup>auditor] of a building society have the right—

- (a) to attend any general meeting of the society, and to receive all notices of and other communications relating to any general meeting which any member of the society is entitled to receive, and

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- (b) to be heard at any meeting which [<sup>F499</sup>he attends] on any part of the business of the meeting which concerns [<sup>F500</sup>him as auditor].
- (8) If a building society or other body corporate fails to comply with subsection (4) above, the society or other body shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale and so shall any officer of the society or, as the case may be, of the other body who is also guilty of the offence; and if an auditor fails without reasonable excuse to comply with paragraph (a) of that subsection he shall be liable, on summary conviction, to such a fine.
- (9) If a person who is an officer of a building society or of a body which is a [<sup>F501</sup>connected undertaking of] the society knowingly or recklessly makes to the [<sup>F502</sup>auditor] of that or another society or body a statement which—
- (a) conveys or purports to convey any information or explanation which the [<sup>F503</sup>auditor requires, or is entitled to require, as auditor] of the society or other body, as the case may be, and
- (b) is false or misleading in a material particular,
- that person shall be liable—
- (i) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both; and
- (ii) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or both.

#### Textual Amendments

- F478** Words in s. 79 heading substituted (29.6.2008) by The Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008 (S.I. 2008/1519), art. 1(2), **Sch. 2 para. 5(h)**
- F479** Word in s. 79(1) substituted (29.6.2008) by The Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008 (S.I. 2008/1519), art. 1(2), **Sch. 2 para. 5(a)(i)**
- F480** Word in s. 79(1) substituted (29.6.2008) by The Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008 (S.I. 2008/1519), art. 1(2), **Sch. 2 para. 5(a)(ii)**
- F481** Word in s. 79(1) substituted (29.6.2008) by The Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008 (S.I. 2008/1519), art. 1(2), **Sch. 2 para. 5(a)(iii)**
- F482** Word in s. 79(1)(a) substituted (with effect in accordance with reg. 1(4) of the amending S.I.) by The Statutory Auditors and Third Country Auditors Regulations 2017 (S.I. 2017/516), regs. 1(2), **2(5)**
- F483** S. 79(1)(b) repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F484** S. 79(2) substituted (17.6.2016) by The Statutory Auditors and Third Country Auditors Regulations 2016 (S.I. 2016/649), reg. 1(1)(a), **Sch. 4 para. 7(a)** (with reg. 1(6))
- F485** Word in s. 79(2)(a) substituted (with effect in accordance with reg. 1(4) of the amending S.I.) by The Statutory Auditors and Third Country Auditors Regulations 2017 (S.I. 2017/516), regs. 1(2), **2(5)**
- F486** Words in s. 79(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. 34(1)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xxi)**
- F487** Words in s. 79(4)(a) substituted (29.6.2008) by The Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008 (S.I. 2008/1519), art. 1(2), **Sch. 2 para. 5(c)(i)**
- F488** Words in s. 79(4)(a) substituted (29.6.2008) by The Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008 (S.I. 2008/1519), art. 1(2), **Sch. 2 para. 5(c)(ii)**
- F489** Words in s. 79(4)(a) substituted (29.6.2008) by The Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008 (S.I. 2008/1519), art. 1(2), **Sch. 2 para. 5(c)(iii)**
- F490** Words in s. 79(4)(a) substituted (29.6.2008) by The Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008 (S.I. 2008/1519), art. 1(2), **Sch. 2 para. 5(c)(iv)**

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- F491** Words in s. 79(4)(b) substituted (29.6.2008) by The Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008 (S.I. 2008/1519), art. 1(2), **Sch. 2 para. 5(d)**
- F492** S. 79(5) 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. 34(2), **Sch. 9; S.I. 1997/2668, art. 2, Sch. Pt. II(w)(y)(z)(xxi)(cc)(xi)**
- F493** Words in ss. 71-82 (Pt. VIII) substituted by S.I. 1991/1729, **art. 3.**
- F494** Words in s. 79(6) substituted (29.6.2008) by The Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008 (S.I. 2008/1519), art. 1(2), **Sch. 2 para. 5(e)(i)**
- F495** Word in s. 79(6) substituted (29.6.2008) by The Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008 (S.I. 2008/1519), art. 1(2), **Sch. 2 para. 5(e)(ii)**
- F496** Word in s. 79(6) substituted (29.6.2008) by The Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008 (S.I. 2008/1519), art. 1(2), **Sch. 2 para. 5(e)(iii)**
- F497** S. 79(6A) inserted (17.6.2016) by The Statutory Auditors and Third Country Auditors Regulations 2016 (S.I. 2016/649), reg. 1(1)(a), **Sch. 4 para. 7(b)** (with reg. 1(6))
- F498** Words in s. 79(7) substituted (29.6.2008) by The Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008 (S.I. 2008/1519), art. 1(2), **Sch. 2 para. 5(f)(i)**
- F499** Words in s. 79(7)(b) substituted (29.6.2008) by The Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008 (S.I. 2008/1519), art. 1(2), **Sch. 2 para. 5(f)(ii)(aa)**, (ii)
- F500** Words in s. 79(7)(b) substituted (29.6.2008) by The Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008 (S.I. 2008/1519), art. 1(2), **Sch. 2 para. 5(f)(ii)(bb)**, (ii)
- F501** Words in s. 79(9) 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. 34(3); S.I. 1997/2668, art. 2, Sch. Pt. II(w)(z)(xxi)**
- F502** Word in s. 79(9) substituted (29.6.2008) by The Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008 (S.I. 2008/1519), art. 1(2), **Sch. 2 para. 5(g)(i)**
- F503** Words in s. 79(9)(a) substituted (29.6.2008) by The Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008 (S.I. 2008/1519), art. 1(2), **Sch. 2 para. 5(g)(ii)**

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

- C114** S. 79(1)(2) modified (*temp.*) by S.I. 1986/2168, **art. 12(2)(e)**

*Procedure on completion of accounts*

**80 Signing of balance sheet: documents to be annexed.**

- (1) Every balance sheet of a building society shall be signed by two directors on behalf of the board of directors and by the chief executive of the society.
- (2) The income and expenditure account, <sup>F504</sup> . . . and the annual business statement shall be annexed to the balance sheet, and so shall any group accounts; and the auditor's report shall be attached to it.
- (3) The income and expenditure account, <sup>F505</sup> . . . and the annual business statement shall be approved by the board of directors before the balance sheet is signed on their behalf, and so shall any group accounts; and the date of their approval of those documents shall be endorsed on the balance sheet.
- (4) The directors' report shall be attached to the balance sheet.
- (5) If a balance sheet has not been signed as required by subsection (1) above, and a copy of it is issued, circulated or published, the building society shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale and so shall any officer who is also guilty of the offence.



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- (6) If any copy of a balance sheet is issued, circulated or published—
- (a) without having annexed to it a copy of the income and expenditure account, or
  - <sup>F506</sup>(b) .....
  - (c) without having annexed to it a copy of the annual business statement, or
  - (d) without having attached to it a copy of the [<sup>F507</sup>auditor’s report], or
  - (e) without having attached to it a copy of the directors’ report,

the building society shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale and so shall any officer who is also guilty of the offence.

#### Textual Amendments

**F504** Words in s. 80(2) omitted (23.3.1999) by virtue of S.I. 1999/248, reg. 3, Sch. para. 5(1)

**F505** Words in s. 80(3) omitted (23.3.1999) by virtue of S.I. 1999/248, reg. 3, Sch. para. 5(2)

**F506** S. 80(6)(b) omitted (23.3.1999) by virtue of S.I. 1999/248, reg. 3, Sch. para. 5(3)

**F507** Words in s. 80(6)(d) substituted (29.6.2008) by The Building Societies Act 1986 (Accounts, Audit and EEA State Amendments) Order 2008 (S.I. 2008/1519), art. 1(2), Sch. 2 para. 6

#### 81 Laying and furnishing accounts, etc., to [<sup>F508</sup>members [<sup>F509</sup>, the FCA and the PRA]].

- (1) The directors of every building society shall lay before the society at the annual general meeting the annual accounts for the last financial year.
  - (2) The directors of every building society shall send [<sup>F510</sup>two copies] of the annual accounts for the last financial year to the [<sup>F511</sup>FCA, and, if the society is a PRA-  
authorised person, one copy to the PRA,] not later than 14 days before the annual general meeting at which the accounts are to be considered.
  - (3) Every building society shall, as from the date by which at the latest its directors are required to send them to the [<sup>F512</sup>FCA and, if the society is a PRA-  
authorised person, the PRA], make copies of the annual accounts available free of charge to members of and depositors with the society at every office of the society and, free of charge, shall send copies of those documents to any member or depositor who demands it.
- <sup>F513</sup>(3A) Where a copy of the annual accounts is required to be sent to a member or depositor under subsection (3)—
- (a) they may be sent to him electronically only if they are sent to an electronic address notified to the society by that member or depositor for the purpose; but
  - (b) the requirement to send them shall also be treated as satisfied if the conditions set out in subsection (3B) are satisfied.
- (3B) The conditions of this subsection are satisfied in the case of a copy of the annual accounts if—
- (a) the society and the member or depositor have agreed that information that is required to be sent to him may instead be accessed by him on a web site;
  - (b) the agreement applies to the annual accounts in question;
  - (c) within seven days of his demand, the member or depositor is notified <sup>F514</sup>...  
of—
    - (i) the publication of the accounts on a web site,
    - (ii) the address of that web site, and

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- (iii) the place on that web site where the accounts may be accessed, and how they may be accessed; and
- (d) the accounts are published on that web site throughout the period beginning on the date on which the member or depositor is notified in accordance with paragraph (c) and ending with the conclusion of the annual general meeting at which the accounts are to be considered.]
- (4) If default is made in complying with subsection (1) or (2) above, every person who was a director at any time during the relevant period shall be liable on summary conviction—
- (a) to a fine not exceeding level 5 on the standard scale; and
- (b) in the case of a continuing offence, to an additional fine not exceeding £200 for every day during which the offence continues.
- (5) If, on demand made of it under subsection (3) above, a building society fails, in accordance with that subsection, to make available or, as the case may be, within seven days of the demand, to send, to a person a copy of the annual accounts the society shall be liable on summary conviction—
- (a) to a fine not exceeding level 3 on the standard scale; and
- (b) in the case of a continuing offence, to an additional fine not exceeding £40 for every day during which the offence continues,
- and so shall any officer who is also guilty of the offence.
- [<sup>F515</sup>(5A) Where, in a case in which subsection (3A)(b) is relied on for compliance with a requirement under subsection (3)—
- (a) a copy of the annual accounts is published for a part, but not all, of the period mentioned in subsection (3B)(d), but
- (b) the failure to publish it throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the society or the officer to prevent or avoid,
- no offence is committed under subsection (5) by reason of that failure.]
- (6) In subsection (4) above “the relevant period” means the period beginning at the end of the last financial year and ending with the date which falls 14 days before the annual general meeting following the end of that year.
- (7) The [<sup>F516</sup>[<sup>F517</sup>FCA] shall keep one of the copies] of the annual accounts of a building society received by it under subsection (2) above in the public file of the society.
- (8) In this section any reference to the annual accounts includes a reference to the documents annexed or attached to them under section 80.

#### Textual Amendments

**F508** Words in s. 81 side-note substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2(a)(b), 8, 13(1), **Sch. 3 para. 170(a)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

**F509** Words in s. 81 heading substituted (1.4.2013) by **The Financial Services Act 2012 (Mutual Societies) Order 2013** (S.I. 2013/496), art. 1(1), **Sch. 8 para. 30(5)** (with Sch. 12)

**F510** Words in s. 81(2) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2(a)(b), 8, 13(1), **Sch. 3 para. 170(b)(i)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**



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- F511** Words in s. 81(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. 30(2)** (with Sch. 12)
- F512** Words in s. 81(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. 30(3)** (with Sch. 12)
- F513** S. 81(3A)(3B) inserted (20.3.2003) by [The Building Societies Act 1986 \(Electronic Communications\) Order 2003 \(S.I. 2003/404\)](#), arts. 1(1), **7(2)**
- F514** Words in s. 81(3B)(c) omitted (18.2.2014) by virtue of [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(2), **Sch. 9 para. 11**
- F515** S. 81(5A) inserted (20.3.2003) by [The Building Societies Act 1986 \(Electronic Communications\) Order 2003 \(S.I. 2003/404\)](#), arts. 1(1), **7(3)**
- F516** Words in s. 81(7) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by [S.I. 2001/2617](#), arts. 2(a)(b), 8, 13(1), **Sch. 3 para. 170(d)** (with art. 13(3), Sch. 5); [S.I. 2001/3538](#), **art. 2(1)**
- F517** Word in s. 81(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. 30(4)** (with Sch. 12)

## **[<sup>F518</sup>81A Requirements in connection with publication of accounts**

- (1) If a building society publishes any of its statutory accounts, they must be accompanied by the relevant [<sup>F519</sup>auditor’s report] under section 78.
- (2) A building society that is required to prepare group accounts for a financial year must not publish its statutory individual accounts for that year without also publishing with them its statutory group accounts.
- (3) If a building society publishes non-statutory accounts, it must publish with them a statement indicating—
  - (a) that they are not the society’s statutory accounts,
  - (b) whether statutory accounts dealing with any financial year with which the non-statutory accounts purport to deal have been prepared,
  - (c) whether the society’s [<sup>F520</sup>auditor has] made a report under section 78 on the statutory accounts for any financial year, and
  - (d) whether any such [<sup>F521</sup>auditor’s report] —
    - (i) was qualified or unqualified, or included a reference to any matters to which the [<sup>F522</sup>auditor] drew attention by way of emphasis without qualifying the report, or
    - (ii) contained a statement under section 79(6) (failure to obtain necessary information and explanations);
 and it must not publish with any non-statutory accounts any [<sup>F523</sup>auditor’s report] made under section 78.
- (4) For the purposes of this section a building society is regarded as publishing a document if it publishes, issues or circulates it or otherwise makes it available for public inspection in a manner calculated to invite members of the public generally, or any class of members of the public, to read it.
- (5) References in this section to a building society’s statutory accounts are to its annual accounts as required to be laid before the society under section 81; and references to the publication by a society of “non-statutory accounts” are to the publication of—
  - (a) any balance sheet or income and expenditure account relating to, or purporting to deal with, a financial year or part of a financial year of the society, or

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- (b) an account in any form purporting to be a balance sheet or income and expenditure account for the group consisting of the society and its subsidiary undertakings relating to, or purporting to deal with, a financial year or part of a financial year of the society,  
otherwise than as part of the society’s statutory accounts or summary financial statement prepared under section 76.
- (6) A building society which contravenes any provision of this section, and any officer of it who is in default, is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.]

#### Textual Amendments

- F518** S. 81A inserted (22.12.2004) (with effect in accordance with art. 1(2) of the amending S.I.) by [The Building Societies Act 1986 \(International Accounting Standards and Other Accounting Amendments\) Order 2004 \(S.I. 2004/3380\)](#), arts. 1, 7
- F519** Words in s. 81A(1) substituted (29.6.2008) by [The Building Societies Act 1986 \(Accounts, Audit and EEA State Amendments\) Order 2008 \(S.I. 2008/1519\)](#), art. 1(2), [Sch. 2 para. 7\(a\)](#)
- F520** Words in s. 81A(3)(c) substituted (29.6.2008) by [The Building Societies Act 1986 \(Accounts, Audit and EEA State Amendments\) Order 2008 \(S.I. 2008/1519\)](#), art. 1(2), [Sch. 2 para. 7\(b\)\(i\)](#)
- F521** Words in s. 81A(3)(d) substituted (29.6.2008) by [The Building Societies Act 1986 \(Accounts, Audit and EEA State Amendments\) Order 2008 \(S.I. 2008/1519\)](#), art. 1(2), [Sch. 2 para. 7\(b\)\(ii\)\(aa\)](#), (ii)
- F522** Word in s. 81A(3)(d)(i) substituted (29.6.2008) by [The Building Societies Act 1986 \(Accounts, Audit and EEA State Amendments\) Order 2008 \(S.I. 2008/1519\)](#), art. 1(2), [Sch. 2 para. 7\(b\)\(ii\)\(bb\)](#), (ii)
- F523** Words in s. 81A(3)(d) substituted (29.6.2008) by [The Building Societies Act 1986 \(Accounts, Audit and EEA State Amendments\) Order 2008 \(S.I. 2008/1519\)](#), art. 1(2), [Sch. 2 para. 7\(b\)\(ii\)\(cc\)](#), (ii)

#### [<sup>F524</sup>81B Interpretation of Part 8

- (1) In this Part—

“annual accounts”, in relation to a building society, means—

- (a) the individual accounts required by section 72A, and  
(b) any group accounts required by section 72E, together with the notes to those accounts;

<sup>F525</sup>  
...

“income and expenditure account”, in relation to a society which prepares IAS accounts, includes an income statement or other equivalent financial statement required to be prepared by [<sup>F526</sup>UK-adopted international accounting standards];

<sup>F527</sup>  
...

[<sup>F528</sup>“UK-adopted international accounting standards” has the meaning given by section 474(1) of the Companies Act 2006;]

[<sup>F529</sup>“UK regulated market” has the meaning given in Article 2.1.13A of Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15 May 2014 and amending Regulation (EU) No. 648/2012.]

- (2) References in this Part to accounts giving a “true and fair view” are references—

- (a) in the case of Building Societies Act individual accounts, to the requirement under section 72B that such accounts give a true and fair view;

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- (b) in the case of Building Societies Act group accounts, to the requirement under section 72F that such accounts give a true and fair view; and
- (c) in the case of IAS accounts, to the requirement under [<sup>F530</sup>UK-adopted international accounting standards] that such accounts achieve a fair presentation.]

#### Textual Amendments

- F524** S. 81B inserted (22.12.2004) (with effect in accordance with art. 1(2) of the amending S.I.) by The Building Societies Act 1986 (International Accounting Standards and Other Accounting Amendments) Order 2004 (S.I. 2004/3380), art. 1, **Sch. para. 6**
- F525** Words in s. 81B(1) omitted (31.12.2020) by virtue of The International Accounting Standards and European Public Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/685), reg. 1(2), **Sch. 1 para. 35(a)(i)** (with reg. 1(3)(4), Sch. 1 para. 66) (as amended by S.I. 2020/523, regs. 1(2), 22, **25(d)**); 2020 c. 1, Sch. 5 para. 1(1)
- F526** Words in s. 81B(1) substituted (31.12.2020) by The International Accounting Standards and European Public Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/685), reg. 1(2), **Sch. 1 para. 35(a)(ii)** (with reg. 1(3)(4), Sch. 1 para. 66) (as amended by S.I. 2020/523, regs. 1(2), 22, **25(d)**); 2020 c. 1, Sch. 5 para. 1(1)
- F527** Words in s. 81B(1) omitted (31.12.2020) by virtue of The International Accounting Standards and European Public Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/685), reg. 1(2), **Sch. 1 para. 35(a)(iii)** (with reg. 1(3)(4), Sch. 1 para. 66) (as amended by S.I. 2020/523, regs. 1(2), 22, **25(d)**); 2020 c. 1, Sch. 5 para. 1(1)
- F528** Words in s. 81B(1) inserted (31.12.2020) by The International Accounting Standards and European Public Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/685), reg. 1(2), **Sch. 1 para. 35(a)(iv)** (with reg. 1(3)(4), Sch. 1 para. 66) (as amended by S.I. 2020/523, regs. 1(2), 22, **25(d)**); 2020 c. 1, Sch. 5 para. 1(1)
- F529** Words in s. 81B(1) substituted (31.12.2020 with effect in relation to financial years beginning on or after IP completion day) by The Accounts and Reports (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/145), regs. 1(2)(b), 2, **Sch. 2 para. 20(c)** (with reg. 7(2)) (as amended by S.I. 2020/523, regs. 1(2), 10, **11**); 2020 c. 1, Sch. 5 para. 1(1)
- F530** Words in s. 81B(2) substituted (31.12.2020) by The International Accounting Standards and European Public Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/685), reg. 1(2), **Sch. 1 para. 35(b)** (with reg. 1(3)(4), Sch. 1 para. 66) (as amended by S.I. 2020/523, regs. 1(2), 22, **25(d)**); 2020 c. 1, Sch. 5 para. 1(1)

<sup>F531</sup>82 .....

#### Textual Amendments

- F531** S. 82 repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

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## PART IX

### F532 . . . DISPUTES

#### Textual Amendments

**F532** Words in Pt.IX heading repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), Sch. 4 (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2(a)

### F533 83 . . . . .

#### Textual Amendments

**F533** S. 83 repealed (1.12.2001) (with saving in S.I. 2001/2967, arts. 1(2), 9(1) (c)) by S.I. 2001/2617, arts. 2(b), 13(2) Sch. 4, (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2(1)

### F534 83A . . . . .

#### Textual Amendments

**F534** S. 83A repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2) Sch. 4 (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2(1)

### F535 84 . . . . .

#### Textual Amendments

**F535** S. 84 repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2) Sch. 4 (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2(1)

### 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 [F536 one or more members of the society or a complainant].
- (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.

#### Textual Amendments

**F536** Words in s. 85(1) substituted (9.6.1997) by 1997 c. 32, s. 43, Sch. 7 para. 37; S.I. 1997/1427, art. 2(k)(n)(ix)

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

C115 S. 85 excluded (*temp.*) by S.I. 1986/2168, [art. 3\(1\)\(4\)](#)

**PART X**

DISSOLUTION, WINDING UP, MERGERS AND TRANSFER OF BUSINESS

*Dissolution and winding up*

**86 Modes of dissolution and winding up.**

(1) A building society—

- (a) may be dissolved by consent of the members, or
- (b) may be wound up voluntarily or by the court,

in accordance with this Part; and a building society may not, except where it is dissolved by virtue of section 93(5), 94(10) or 97(9), [<sup>F537</sup>or following building society insolvency or building society special administration,] be dissolved or wound up in any other manner.

(2) A building society which is in the course of dissolution by consent, or is being wound up voluntarily, may be wound up by the court.

**Textual Amendments**

**F537** Words in s. 86(1) inserted (29.3.2009) by [The Building Societies \(Insolvency and Special Administration\) Order 2009 \(S.I. 2009/805\)](#), [art. 7](#)

**87 Dissolution by consent.**

(1) A building society may be dissolved by an instrument of dissolution, with the consent (testified by their signature of that instrument) of three-quarters of the members of the society, holding not less than two-thirds of the number of shares in the society.

(2) An instrument of dissolution under this section shall set out—

- (a) the liabilities and assets of the society in detail;
- (b) the number of members, and the amount standing to their credit in the accounting records of the society;
- (c) the claims of depositors and other creditors, and the provision to be made for their payment;
- (d) the intended appropriation or division of the funds and property of the society;
- (e) the names of one or more persons to be appointed as trustees for the purposes of the dissolution, and their remuneration.

(3) An instrument of dissolution made with consent given and testified as mentioned in subsection (1) above may be altered with the like consent, testified in the like manner.

(4) The provisions of this Act shall continue to apply in relation to a building society as if the trustees appointed under the instrument of dissolution were the board of directors of the society.

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- (5) The trustees, within 15 days of the necessary consent being given and testified (in accordance with subsection (1) above) to—
- (a) an instrument of dissolution, or
  - (b) any alteration to such an instrument,
- shall give notice to the [<sup>F538</sup>FCA and, if the society is a PRA-authorized person, the PRA] of the fact and, except in the case of an alteration to an instrument, of the date of commencement of the dissolution, enclosing a copy of the instrument or altered instrument, as the case may be; and if the trustees fail to comply with this subsection they shall each be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) An instrument of dissolution under this section, or an alteration to such an instrument, shall be binding on all members of the society as from the date on which the copy of the instrument or altered instrument, as the case may be, is placed in the public file of the society under subsection (10) below.
- (7) The trustees shall, within 28 days from the termination of the dissolution, give notice to the [<sup>F539</sup>FCA and, if the society is a PRA-authorized person, the PRA] of the fact and the date of the termination, enclosing an account and balance sheet signed and certified by them as correct, and showing the assets and liabilities of the society at the commencement of the dissolution, and the way in which those assets and liabilities have been applied and discharged; and, if they fail to do so they shall each be liable on summary conviction—
- (a) to a fine not exceeding level 2 on the standard scale, and
  - (b) in the case of a continuing offence, to an additional fine not exceeding £10 for every day during which the offence continues.
- (8) Except with the consent of the [<sup>F540</sup>appropriate authority] , no instrument of dissolution, or alteration of such an instrument, shall be of any effect if the purpose of the proposed dissolution or alteration is to effect or facilitate the transfer of the society's engagements to any other society [<sup>F541</sup>or the transfer of its business to a company].
- (9) Any provision in a resolution or document that members of a building society proposed to be dissolved shall accept investments in a company or another society (whether in shares, deposits or any other form) in or towards satisfaction of their rights in the dissolution shall be conclusive evidence of such a purpose as is mentioned in subsection (8) above.
- (10) The [<sup>F542</sup>FCA] shall keep in the public file of the society any notice or other document received by it under subsection (5) or (7) above and shall record in that file the date on which the notice or document is placed in it.

#### Textual Amendments

- F538** Words in s. 87(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. 31\(2\)](#) (with Sch. 12)
- F539** Words in s. 87(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. 31\(3\)](#) (with Sch. 12)
- F540** Words in s. 87(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. 31\(4\)](#) (with Sch. 12)



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- F541** Words in s. 87(8) substituted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 38**; S.I. 1997/1427, **art. 2(k)(n)(x)**
- F542** Word in s. 87(10) substituted (1.4.2013) by **The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496)**, art. 1(1), **Sch. 8 para. 31(5)** (with Sch. 12)

## 88 Voluntary winding up.

- (1) A building society may be wound up voluntarily under the applicable winding up legislation if it resolves by special resolution that it be wound up voluntarily<sup>[F543]</sup>, but a resolution may not be passed if—
- (a) the conditions in section 90D are not satisfied, or
  - (b) the society is in building society insolvency or building society special administration.]

<sup>[F544]</sup>(1A) A resolution under subsection (1) shall have no effect without the prior approval of the court.]

- (2) A copy of any special resolution passed for the voluntary winding up of a building society"shall be sent by the society <sup>[F545]</sup>to the FCA and, if the society is a PRA-  
authorised person, the PRA] within 15 days after it is passed; and the <sup>[F546]</sup>FCA must keep a copy] in the public file of the society.
- (3) A copy of any such resolution shall be annexed to every copy of the memorandum or of the rules issued after the passing of the resolution.
- (4) If a building society fails to comply with subsection (2) or (3) above the society shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale and so shall any officer who is also guilty of the offence.
- (5) For the purposes of this section, a liquidator of the society shall be treated as an officer of it.

### Textual Amendments

- F543** Words in s. 88(1) inserted (29.3.2009) by **The Building Societies (Insolvency and Special Administration) Order 2009 (S.I. 2009/805)**, **art. 4**
- F544** S. 88(1A) inserted (29.3.2009) by **The Building Societies (Insolvency and Special Administration) Order 2009 (S.I. 2009/805)**, **art. 4**
- F545** Words in s. 88(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. 32(a)** (with Sch. 12)
- F546** Words in s. 88(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. 32(b)** (with Sch. 12)

## 89 Winding up by court: grounds and petitioners.

- (1) A building society may be wound up under the applicable winding up legislation by the court on any of the following grounds in addition to the grounds referred to or specified in section 37(1), that is to say, if—
- (a) the society has by special resolution resolved that it be wound up by the court;
  - (b) the number of members is reduced below ten;
  - (c) the number of directors is reduced below two;



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- (d) being a society registered as a building society under this Act or the repealed enactments, the society has not been [<sup>F547</sup>given permission under [<sup>F548</sup>Part 4A] of the Financial Services and Markets Act 2000 to accept deposits] and more than three years has expired since it was so registered;
  - [(e) the society’s permission under [<sup>F548</sup>Part 4A] of the Financial Services and Markets Act 2000 to accept deposits has been cancelled (and no such permission has subsequently been given to it);]
  - (f) the society exists for an illegal purpose;
  - (g) the society is unable to pay its debts; or
  - (h) the court is of the opinion that it is just and equitable that the society should be wound up.
- (2) Except as provided by subsection (3) below, section 37 or the applicable winding up legislation, a petition for the winding up of a building society may be presented by—
- [<sup>F549</sup>(a) the FCA, after consulting the PRA if the society is a PRA-<sup>F549</sup>authorised person,
    - (aa) if the society is a PRA-<sup>F549</sup>authorised person, the PRA, after consulting the FCA,]
    - (b) the building society or its directors,
    - (c) any creditor or creditors (including any contingent or any prospective creditor), or
    - (d) any contributory or contributories,
- or by all or any of those parties, together or separately.
- (3) A contributory may not present a petition unless either—
- (a) the number of members is reduced below ten, or
  - (b) the share in respect of which he is a contributory has been held by him, or has devolved to him on the death of a former holder and between them been held, for at least six months before the commencement of the winding up.
- (4) For the purposes of this section, in relation to a building society,
- <sup>F550</sup>(a) .....
  - [<sup>F551</sup>(b) the reference to its existing for an illegal purpose includes a reference to its existing after it has ceased to comply with the requirement imposed by section 5(1)(a) (purpose or principal purpose).]
- (5) In this section, “contributory” has the same meaning as in paragraph 9(2) or, as the case may be, paragraph 37(2) of Schedule 15 to this Act.

#### Textual Amendments

- F547** S. 89(1)(e) and words in s. 89(1)(d) 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. 175(a)(i)(ii)** (with art. 13(3), Sch. 5) S.I. 2001/3538, **art. 2(a)**
- F548** Words in s. 89(1) substituted (1.4.2013) by **The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), Sch. 8 para. 33(2)** (with Sch. 12)
- F549** S. 89(2)(a)(aa) substituted for s. 89(2)(a) (1.4.2013) by **The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), Sch. 8 para. 33(3)** (with Sch. 12)
- F550** S. 89(4)(a) repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), Sch. 5 and with saving in S.I. 2001/2967, **arts. 1(2), 9(1)(c)**); S.I. 2001/3538, **art. 2(1)**

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**F551** S. 89(4)(b) 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. 39**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xxiii)**

## **[<sup>F552</sup>89A. Building society insolvency as alternative order**

- (1) On a petition for a winding up order or an application for an administration order in respect of a building society the court may, instead, make a building society insolvency order (under section 94 of the Banking Act 2009 as applied by section 90C below).
- (2) A building society insolvency order may be made under subsection (1) only—
  - (a) on the application of the [<sup>F553</sup>appropriate authority] made with the consent of the Bank of England, or
  - (b) on the application of the Bank of England.]

### **Textual Amendments**

**F552** S. 89A inserted (29.3.2009) by **The Building Societies (Insolvency and Special Administration) Order 2009 (S.I. 2009/805), art. 5**

**F553** Words in s. 89A(2)(a) substituted (1.4.2013) by **The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), Sch. 8 para. 34** (with Sch. 12)

## **90 Application of winding up legislation to building societies.**

- (1) In this section “the companies winding up legislation” means the enactments applicable in relation to England and Wales, Scotland or Northern Ireland which are specified in paragraph 1 of Schedule 15 to this Act (including any enactment which creates an offence by any person arising out of acts or omissions occurring before the commencement of the winding up).
- (2) In its application to the winding up of a building society, by virtue of section 88(1) or 89(1), the companies winding up legislation shall have effect with the modifications effected by Parts I to III of Schedule 15 to this Act; and the supplementary provisions of Part IV of that Schedule shall also have effect in relation to such a winding up.
- (3) In sections 37, 88, 89 and 103, “the applicable winding up legislation” means the companies winding up legislation as so modified.

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

**C116** S. 90(3) excluded by **S.I. 1986/2168, art. 11**

## **[<sup>F554</sup>90A Application of other companies insolvency legislation to building societies.**

For the purpose of—

- (a) enabling voluntary arrangements to be approved in relation to building societies,
- (b) enabling administration orders to be made in relation to building societies, and

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- (c) making provision with respect to persons appointed in England and Wales [<sup>F555</sup>, Scotland] or Northern Ireland as receivers and managers [<sup>F556</sup>, or receivers,] of building societies' property,  
the enactments specified in paragraph 1(2) of Schedule 15A to this Act shall apply in relation to building societies with the modifications specified in that Schedule.]

#### Textual Amendments

**F554** S. 90A inserted (1.12.1997) by 1997 c. 32, s. 39(1); S.I. 1997/2668, art. 2, Sch. Pt. 1(i)

**F555** Word in s. 90A(c) inserted (with application in accordance with art. 1(4) of the amending S.I.) by The Building Societies (Floating Charges and Other Provisions) Order 2016 (S.I. 2016/679), arts. 1(1), 3(a)

**F556** Words in s. 90A(c) inserted (with application in accordance with art. 1(4) of the amending S.I.) by The Building Societies (Floating Charges and Other Provisions) Order 2016 (S.I. 2016/679), arts. 1(1), 3(b)

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

**C117** S. 90A applied (with modifications) (7.4.2010) by The Building Societies (Financial Assistance) Order 2010 (S.I. 2010/1188), arts. 1(2), 10 (as amended (with application in accordance with art. 1(4) of the amending S.I.) by The Building Societies (Floating Charges and Other Provisions) Order 2016 (S.I. 2016/679), art. 1(1)(2), 5(2))

#### [<sup>F557</sup>90B Power to alter priorities on dissolution and winding up

- (1) The Treasury may by order make provision for the purpose of ensuring that, on the winding up, or dissolution by consent, of a building society, any assets available for satisfying the society's liabilities to creditors or to shareholders are applied in satisfying those liabilities *pari passu*.
- (2) Liabilities to creditors do not include—
  - (a) liabilities in respect of subordinated deposits;
  - (b) liabilities in respect of preferential debts;
  - (c) any other category of liability which the Treasury specifies in the order for the purposes of this paragraph.
- (3) Liabilities to shareholders do not include liabilities in respect of deferred shares.
- (4) A preferential debt is a debt which constitutes a preferential debt for the purposes of any of the enactments specified in paragraph 1 of Schedule 15 to this Act (or which would constitute such a debt if the society were being wound up).
- (5) An order under this section may—
  - (a) make amendments of this Act;
  - (b) make different provision for different purposes;
  - (c) make such consequential, supplementary, transitional and saving provision as appears to the Treasury to be necessary or expedient.
- (6) The power to make an order under this section is exercisable by statutory instrument but no such order may be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.]

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#### Textual Amendments

**F557** S. 90B inserted (20.11.2014) by [Building Societies \(Funding\) and Mutual Societies \(Transfers\) Act 2007 \(c. 26\)](#), [ss. 2, 6\(2\)](#); S.I. 2014/2796, [art. 2](#)

### [<sup>F558</sup>90C. Application of bank insolvency and administration legislation to building societies

- (1) Parts 2 (Bank Insolvency) and 3 (Bank Administration) of the Banking Act 2009 shall apply in relation to building societies with any modifications specified in an order made under section 130 or 158 of that Act and with the modifications specified in subsection (2) below.
- (2) In the application of Parts 2 and 3 of that Act to building societies—
  - (a) references to “bank” (except in the term “bridge bank” and the terms specified in paragraphs (b) and (c)) have effect as references to “building society”;
  - (b) references to “bank insolvency”, “bank insolvency order”, “bank liquidation” and “bank liquidator” have effect as references to “building society insolvency”, “building society insolvency order”, “building society liquidation” and “building society liquidator”;
  - (c) references to “bank administration”, “bank administration order” and “bank administrator” have effect as references to “building society special administration”, “building society special administration order” and “building society special administrator”.]

#### Textual Amendments

**F558** S. 90C inserted (29.3.2009) by [The Building Societies \(Insolvency and Special Administration\) Order 2009 \(S.I. 2009/805\)](#), [art. 2](#)

### [<sup>F559</sup>90D. Notice to the [<sup>F560</sup>FCA and the PRA] of preliminary steps

- (1) An application for an administration order in respect of a building society may not be determined unless the conditions below are satisfied.
- (2) A petition for a winding up order in respect of a building society may not be determined unless the conditions below are satisfied.
- (3) A resolution for voluntary winding up of a building society may not be passed unless the conditions below are satisfied.
- (4) An administrator of a building society may not be appointed unless the conditions below are satisfied.
- (5) Condition 1 is that the [<sup>F561</sup>FCA][<sup>F562</sup>, the Bank of England] and, if the society is a PRA-authorised person, the PRA have] been notified—
  - (a) by the applicant for an administration order, that the application has been made,
  - (b) by the petitioner for a winding up order, that the petition has been presented,
  - (c) by the building society, that a resolution for voluntary winding up may be passed, or

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- (d) by the person proposing to appoint an administrator, of the proposed appointment.
- (6) Condition 2 is that a copy of the notice complying with Condition 1 has been filed with the court (and made available for public inspection by the court).
- (7) Condition 3 is that—
  - (a) the period of [<sup>F563</sup>7 days] , beginning with the day on which the notice is received, has ended, or
  - [<sup>F564</sup>(b) both—
    - (i) the Bank of England has informed the person who gave the notice that it does not intend to exercise a stabilisation power under Part 1 of the Banking Act 2009 in relation to the building society (and condition 5 has been met, if applicable), and
    - (ii) each of the PRA and the Bank of England has informed the person who gave the notice that it does not intend to apply for a building society insolvency order (under section 95 of the Banking Act 2009 as applied by section 90C).]
- (8) Condition 4 is that no application for a building society insolvency order is pending.
  - [ Condition 5—
  - <sup>F565</sup>(8A) (a) applies only if a resolution instrument has been made under section 12A of the Banking Act 2009 with respect to the building society in the three months ending with the date on which the Bank of England receives the notification under Condition 1, and
  - (b) is that the Bank of England has informed the person who gave the notice that it consents to the insolvency procedure to which the notice relates going ahead.]
- (9) Arranging for the giving of notice in order to satisfy Condition 1 can be a step with a view to minimising the potential loss to a building society’s creditors for the purpose of section 214 of the Insolvency Act 1986 (wrongful trading) or Article 178 (wrongful trading) of the Insolvency (Northern Ireland) Order 1989 as applied in relation to building societies by section 90 of, and Schedule 15 to, this Act.
- (10) Where [<sup>F566</sup>the society is a PRA-authorized person and][<sup>F567</sup>notice has been given under Condition 1] —
  - <sup>F568</sup>(a) .....
  - (b) the [<sup>F569</sup>PRA] shall inform the person who gave the notice, within the period in Condition 3(a), whether it intends to apply for a building society insolvency order, <sup>F570</sup> ...
  - (c) if the Bank of England decides to apply for a building society insolvency order or to exercise a stabilisation power under Part 1 of the Banking Act 2009, the Bank shall inform the person who gave the notice, within the period in Condition 3(a)[<sup>F571</sup>; and
  - (d) if Condition 5 applies, the Bank of England must, within the period in Condition 3(a), inform the person who gave the notice whether or not it consents to the insolvency procedure to which the notice relates going ahead.]
- [ Where the society is not a PRA-authorized person and [<sup>F573</sup>notice has been received
- <sup>F572</sup>(11) under Condition 1]
  - <sup>F574</sup>(a) .....

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- (b) if the Bank of England decides to apply for a building society insolvency order or to exercise a stabilisation power under Part 1 of the Banking Act 2009, the Bank shall inform the person who gave the notice, within the period in Condition 3(a)]<sup>F575</sup>; and
- (c) if Condition 5 applies, the Bank of England must, within the period in Condition 3(a), inform the person who gave the notice whether or not it consents to the insolvency procedure to which the notice relates going ahead.]

[ References in this section to the insolvency procedure to which the notice relates are <sup>F576</sup>(12) to the procedure for the determination, resolution or appointment in question (see subsections (1) to (4)).]

### Textual Amendments

- F559** Ss. 90D, 90E inserted (29.3.2009) by [The Building Societies \(Insolvency and Special Administration\) Order 2009 \(S.I. 2009/805\)](#), [art. 6](#)
- F560** Words in s. 90D heading substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), [art. 1\(1\)](#), [Sch. 8 para. 35\(6\)](#) (with Sch. 12)
- F561** Words in s. 90D(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. 35\(2\)](#) (with Sch. 12)
- F562** Words in s. 90D(5) inserted (10.1.2015) by [The Building Societies \(Bail-in\) Order 2014 \(S.I. 2014/3344\)](#), [arts. 1, 4\(2\)](#)
- F563** Words in s. 90D(7)(a) substituted (10.1.2015) by [The Building Societies \(Bail-in\) Order 2014 \(S.I. 2014/3344\)](#), [arts. 1, 4\(3\)\(a\)](#)
- F564** S. 90D(7)(b) substituted (10.1.2015) by [The Building Societies \(Bail-in\) Order 2014 \(S.I. 2014/3344\)](#), [arts. 1, 4\(3\)\(b\)](#)
- F565** S. 90D(8A) inserted (10.1.2015) by [The Building Societies \(Bail-in\) Order 2014 \(S.I. 2014/3344\)](#), [arts. 1, 4\(4\)](#)
- F566** Words in s. 90D(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. 35\(4\)\(a\)](#) (with Sch. 12)
- F567** Words in s. 90D(10) substituted (10.1.2015) by [The Building Societies \(Bail-in\) Order 2014 \(S.I. 2014/3344\)](#), [arts. 1, 4\(5\)\(a\)](#)
- F568** S. 90D(10)(a) omitted (10.1.2015) by virtue of [The Building Societies \(Bail-in\) Order 2014 \(S.I. 2014/3344\)](#), [arts. 1, 4\(5\)\(b\)](#)
- F569** Word in s. 90D(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. 35\(4\)\(b\)](#) (with Sch. 12)
- F570** Word in s. 90D(10)(b) omitted (10.1.2015) by virtue of [The Building Societies \(Bail-in\) Order 2014 \(S.I. 2014/3344\)](#), [arts. 1, 4\(5\)\(c\)](#)
- F571** S. 90D(10)(d) and word inserted (10.1.2015) by [The Building Societies \(Bail-in\) Order 2014 \(S.I. 2014/3344\)](#), [arts. 1, 4\(5\)\(d\)](#)
- F572** S. 90D(11) inserted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), [art. 1\(1\)](#), [Sch. 8 para. 35\(5\)](#) (with Sch. 12)
- F573** Words in s. 90D(11) substituted (10.1.2015) by [The Building Societies \(Bail-in\) Order 2014 \(S.I. 2014/3344\)](#), [arts. 1, 4\(6\)\(a\)](#)
- F574** S. 90D(11)(a) omitted (10.1.2015) by virtue of [The Building Societies \(Bail-in\) Order 2014 \(S.I. 2014/3344\)](#), [arts. 1, 4\(6\)\(b\)](#)
- F575** S. 90D(11)(c) and word inserted (10.1.2015) by [The Building Societies \(Bail-in\) Order 2014 \(S.I. 2014/3344\)](#), [arts. 1, 4\(6\)\(c\)](#)
- F576** S. 90D(12) inserted (10.1.2015) by [The Building Societies \(Bail-in\) Order 2014 \(S.I. 2014/3344\)](#), [arts. 1, 4\(7\)](#)



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## 90E. Disqualification of directors

(1) In this section “the Disqualification Act” means the Company Directors Disqualification Act 1986.

(2) In the Disqualification Act—

- (a) a reference to liquidation includes a reference to building society insolvency and a reference to building society special administration,
- (b) a reference to winding up includes a reference to making or being subject to a building society insolvency order and a reference to making or being subject to a building society special administration order,
- (c) a reference to becoming insolvent includes a reference to becoming subject to a building society insolvency order and a reference to becoming subject to a building society special administration order, and
- (d) a reference to a liquidator includes a reference to a building society liquidator and a reference to a building society special administrator.

[<sup>F577</sup>(3) For the purposes of the application of section 7A of the Disqualification Act (office-holder’s report on conduct of directors) to a building society which is subject to a building society insolvency order—

- (a) the “office-holder” is the building society liquidator,
- (b) the “insolvency date” means the date on which the building society insolvency order is made, and
- (c) subsections (9) to (11) are omitted.

(4) For the purposes of the application of that section to a building society which is subject to a building society special administration order—

- (a) the “office-holder” is the building society special administrator,
- (b) the “insolvency date” means the date on which the building society special administration order is made, and
- (c) subsections (9) to (11) are omitted.]

(5) In the application of this section to Northern Ireland, references to the Disqualification Act are to the Company Directors Disqualification (Northern Ireland) Order 2002 and [<sup>F578</sup>in subsections (3) and (4)—

- (a) the reference to section 7A of the Disqualification Act is a reference to Article 10A of that Order (office-holder’s report on conduct of directors), and
- (b) the reference to subsections (9) to (11) of that section is a reference to paragraphs (9) to (11) of that Article.]]

### Textual Amendments

**F559** Ss. 90D, 90E inserted (29.3.2009) by [The Building Societies \(Insolvency and Special Administration\) Order 2009 \(S.I. 2009/805\)](#), **art. 6**

**F577** S. 90E(3)(4) substituted (7.4.2017) by [The Deregulation Act 2015, the Small Business, Enterprise and Employment Act 2015 and the Insolvency \(Amendment\) Act \(Northern Ireland\) 2016 \(Consequential Amendments and Transitional Provisions\) Regulations 2017 \(S.I. 2017/400\)](#), regs. 1(2), **2(2)(a)**

**F578** Words in s. 90E(5) substituted (7.4.2017) by [The Deregulation Act 2015, the Small Business, Enterprise and Employment Act 2015 and the Insolvency \(Amendment\) Act \(Northern Ireland\) 2016 \(Consequential Amendments and Transitional Provisions\) Regulations 2017 \(S.I. 2017/400\)](#), regs. 1(2), **2(2)(b)**



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## 91 Power of court to declare dissolution of building society void.

- (1) Where a building society has been dissolved under section 87 or following a winding up, [<sup>F579</sup>building society insolvency or building society special administration,] the High Court or, in relation to a society whose principal office was in Scotland, the Court of Session, may, at any time within 12 years after the date on which the society was dissolved, make an order under this section declaring the dissolution to have been void.
- (2) An order under this section may be made, on such terms as the court thinks fit, on an application by the trustees under section 87 or the liquidator, [<sup>F580</sup>building society liquidator or building society special administrator,] as the case may be, or by any other person appearing to the Court to be interested.
- (3) When an order under this section is made, such proceedings may be taken as might have been taken if the society has not been dissolved.
- (4) The person on whose application the order is made shall, within seven days of its being so made, or such further time as the Court may allow, [<sup>F581</sup>furnish the FCA and, if the society is a PRA-authorised person, the PRA] with a copy of the order; and the [<sup>F582</sup>FCA must keep a copy] in the public file of the society.
- (5) If a person fails to comply with subsection (4) above, he shall be liable on summary conviction—
  - (a) to a fine not exceeding level 3 on the standard scale, and
  - (b) in the case of a continuing offence, to an additional fine not exceeding £40 for every day during which the offence continues.

### Textual Amendments

- F579** Words in s. 91(1) inserted (29.3.2009) by [The Building Societies \(Insolvency and Special Administration\) Order 2009 \(S.I. 2009/805\)](#), **art. 8(a)**
- F580** Words in s. 91(2) inserted (29.3.2009) by [The Building Societies \(Insolvency and Special Administration\) Order 2009 \(S.I. 2009/805\)](#), **art. 8(b)**
- F581** Words in s. 91(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. 36(a)** (with Sch. 12)
- F582** Words in s. 91(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. 36(b)** (with Sch. 12)

## [<sup>F583</sup>92 Supplementary.

Where at any time a building society is being wound up or dissolved by consent, [<sup>F584</sup>or is in building society insolvency or building society special administration,] a borrowing member shall not be liable to pay any amount other than one which, at that time, is payable under the mortgage or other security by which his indebtedness to the society in respect of the loan is secured.]

### Textual Amendments

- F583** S. 92 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. 40**; [S.I. 1997/2668](#), **art. 2**, **Sch. Pt. II(w)(z)(xxiv)**

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**F584** Words in s. 92 inserted (29.3.2009) by [The Building Societies \(Insolvency and Special Administration\) Order 2009 \(S.I. 2009/805\)](#), **art. 9**

[<sup>F585</sup>New business]

#### Textual Amendments

**F585** S. 92A and cross-heading preceding it 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. 29, 47\(3\)](#); [S.I. 1997/2668, art. 2, Sch. Pt. II\(u\)](#)

#### [<sup>F586</sup>92A Acquisition or establishment of a business.

- (1) A building society—
  - (a) in order to acquire, or allow a subsidiary undertaking to acquire, a business to which subsections (3) and (4) below apply; or
  - (b) in order to establish, or allow such an undertaking to establish, a business to which subsections (3) and (5) below apply,must resolve so to do by an ordinary resolution; but a failure to comply with this subsection shall not invalidate any transaction or other act.
- (2) In order to be effective for the purposes of subsection (1) above, an ordinary resolution of a building society must be passed by a majority of the members of the society entitled to vote on such a resolution and voting either—
  - (a) in person or by proxy on a poll on the resolution at a meeting of the society; or
  - (b) in a postal [<sup>F587</sup>or electronic] ballot on the resolution;and in a case falling within paragraph (a) above, a form for the appointment of a proxy shall be sent to each person entitled to notice of the meeting.
- (3) This subsection applies to a business which is proposed to be acquired or established if, in the opinion of the board of directors of the society—
  - (a) the greater part of the income of the business is or will be derived from activities having no connection with loans secured on residential property;
  - (b) the greater part of the resources of the business are or will be devoted to such activities; or
  - (c) the greater part of the business consists or will consist of such activities.
- (4) This subsection applies to a business which is proposed to be acquired if X is not less than 15 per cent of Y where—

X = the amount or value of the consideration to be given for the shares, voting rights or assets proposed to be acquired;

Y = the amount of the society's own funds as at the relevant date.
- (5) This subsection applies to a business which is proposed to be established if X is not less than 15 per cent of Y where—

X = the aggregate of the following as estimated by the society, namely—

  - (a) the cost of acquiring, developing, adapting or repairing any premises required for the purposes of the business;

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- (b) the initial cost of acquiring any plant or equipment, or any intellectual property, so required;
- (c) the initial cost of employing or training staff so required;
- (d) the cost of obtaining any professional advice required in connection with the establishment of the business;
- (e) any other non-recurring items of expenditure to be incurred in that connection; and
- (f) in the case of a business proposed to be established by a subsidiary undertaking, the amount of any capital to be provided by the society which will not be used for defraying items of expenditure falling within the foregoing paragraphs;

Y = the amount of the society's own funds as at the relevant date.

- (6) Where a business is proposed to be acquired or established by a syndicate whose members include a building society or subsidiary undertaking—
  - (a) subsection (1) above shall have effect as if the business were proposed to be acquired or (as the case may be) established by the society; and
  - (b) whichever of subsections (4) and (5) above is applicable shall have effect as if X were only so much of X as is referable to participation in the syndicate by the society or undertaking.
- (7) For the purposes of subsections (1)(a) and (4) above, two or more proposed acquisitions by a building society or subsidiary undertaking which will form part of a larger acquisition or series of acquisitions shall be treated as a single acquisition.
- (8) Nothing in this section shall apply in relation to a building society in so far as it undertakes, in accordance with section 94 and Schedule 16 to this Act, to fulfil engagements transferred to it in accordance with that section and that Schedule.
- (9) In this section—
  - “initial”, in relation to any cost, means incurred, or likely in the directors' opinion to be incurred, not later than 12 months after the establishment of the business;
  - “intellectual property” includes—
    - (a) any patent, know-how, trade mark, service mark, registered design, copyright or design right; and
    - (b) any licence under or in respect of any such right;
  - “the relevant date”, in relation to a building society, means—
    - (a) the date of the end of its last financial year or, failing that, the date of its establishment; or
    - (b) where it has been involved in a transfer of engagements, the date of that transfer,

whichever is the later.
- (10) The [<sup>F588</sup>Treasury may] by order substitute for the percentage specified in subsection (4) or (5) above such other percentage as appears to [<sup>F589</sup>them] to be appropriate; and an order under this subsection may make such supplementary, transitional and saving provision as appears to the [<sup>F590</sup>Treasury] to be necessary or expedient.

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- (11) The [<sup>F591</sup>Treasury may] by order vary subsections (5) and (9) above by adding to or deleting from them any provision or by varying any provision contained in them; and an order under this subsection may make—
- (a) different provisions for different cases or purposes; and
  - (b) such supplementary, transitional and saving provision as appears to the [<sup>F592</sup>Treasury] to be necessary or expedient.
- (12) The power to make an order under subsection (10) or (11) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

- F586** S. 92A and cross-heading preceding it 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. 29, 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(u)
- F587** Words in s. 92A(2)(b) inserted (20.3.2003) by The Building Societies Act 1986 (Electronic Communications) Order 2003 (S.I. 2003/404), arts. 1(1), 30(5)
- F588** Words in s. 92A(10) 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. 176(a)(i) (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2(a)
- F589** Word in s. 92A(10) substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) by S.I. 2001/1149, art. 13(1), Sch. 3 Pt. II para. 176(a)(ii) (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2(a)
- F590** Word in s. 92A(10) substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) by S.I. 2001/1149, art. 13(1), Sch. 3 Pt. II para. 176(a)(iii) (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2(a)
- F591** Words in s. 92A(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. 176(b)(i) (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2(a)
- F592** Word in s. 92A(11)(b) 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. 176(b)(ii) (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2(a)

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

- C118** S. 92A(10)(11): Functions of Building Societies Commission transferred (1.12.2001) to the Treasury by S.I. 2001/2617, arts. 2(b), 4(1), Sch. 1 Pt. III (art. 5)

### Mergers

#### 93 Amalgamations.

- (1) Any two or more buildings societies desiring to amalgamate may do so by establishing a building society as their successor in accordance with this section and Schedule 16 to this Act
- (2) In order to establish a building society as their successor the societies desiring to amalgamate must—
  - [<sup>F593</sup>(a) agree the purpose or principal purpose of their successor to be that of making loans which are secured on residential property and are funded substantially by its members, and agree upon the extent of its powers, in a memorandum which complies with the requirements of Schedule 2 to this Act;]
  - (b) agree upon the rules for the regulation of their successor which comply with the requirements of that Schedule;

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- [<sup>F594</sup>(c) each approve the terms of the amalgamation by two resolutions which also approve the memorandum and the rules of their successor and of which—
- (i) one is passed as a shareholding members' resolution, and
  - (ii) the other is passed as a borrowing members' resolution,
- in accordance with the applicable provisions of that Schedule;]
- (d) make a joint application to the [<sup>F595</sup>appropriate authority] for confirmation of the amalgamation and send to the [<sup>F596</sup>[<sup>F597</sup>FCA and, if the society is a PRA-authorized person, the PRA] three] copies of the rules and of the memorandum, each copy signed by the secretary of each of the societies.
- (3) If the [<sup>F598</sup>appropriate authority] confirms the amalgamation under section 95, [<sup>F599</sup>and][<sup>F600</sup>the FCA] is satisfied, as regards the proposed successor, of the matters relating to its rules, its purpose and powers and its name as to which it must, under paragraph 1 of Schedule 2 to this Act, be satisfied before it registers a society, [<sup>F601</sup>the FCA must] —
- (a) register the successor society,
  - (b) issue to it a certificate of incorporation, specifying a date (“the specified date”) as from which the incorporation takes effect,
  - (c) retain and register one copy of the memorandum and of the rules,
  - (d) return another copy to the secretary of the successor, together with a certificate of registration, and
  - (e) keep another copy, together with a copy of the certificate of incorporation and of the certificate of registration of the memorandum and the rules, in the public file of the successor society.
- (4) On the specified date all the property, rights and liabilities of each of the societies whose amalgamation was confirmed by the [<sup>F602</sup>appropriate authority] (whether or not capable of being transferred or assigned) shall by virtue of this subsection be transferred to and vested in the society so incorporated as their successor.
- (5) On the specified date, each of the societies to which the successor succeeds shall be dissolved by virtue of this subsection; but the transfer effected by subsection (4) above shall be deemed to have been effected immediately before the dissolution.
- [<sup>F603</sup>(6) If, on the specified date, each of the societies whose amalgamation was confirmed by the [<sup>F604</sup>appropriate authority] has permission under [<sup>F605</sup>Part 4A] of the Financial Services and Markets Act 2000 to accept deposits, the [<sup>F604</sup>appropriate authority] shall, with effect from that date, give their successor such permission under that Part as it considers appropriate, and shall notify the successor of the permission by giving the successor a decision notice.
- (6A) Part XXVI of the Financial Services and Markets Act 2000 applies to a decision notice given under this section as it applies to a decision notice given under [<sup>F606</sup>subsection (5) of section 55V of that Act by virtue of paragraph (a) or (b) of that subsection] , except that—
- (a) section 390 (final notices) does not apply, and
  - (b) for the purposes of section 391 (publication) the decision notice is to be treated as if it were a final notice rather than a decision notice.
- (6B) The giving of permission pursuant to subsection (6) above is to be treated for the purposes of [<sup>F607</sup>section 55Z3] of the Financial Services and Markets Act 2000 (right to refer matters to the [<sup>F608</sup>Upper Tribunal]) as if it were the determination of an

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application made by the successor under [F609Part 4A] of that Act, and Part IX of that Act (hearings and appeals) applies accordingly (but subject to subsection (6C) below).

(6C) In the application of Part IX of that Act by virtue of subsection (6B) above, [F610section 133A(4)] (which prevents F611... action specified in a decision notice [F612from being taken] until after any reference and appeal) is omitted.]

F613(7) .....

### Textual Amendments

- F593** S. 93(2)(a) substituted (1.12.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 41(a)**; S.I. 1997/2668, art. 2, **Sch. Pt. I(j)(i)(viii)**
- F594** S. 93(2)(c) 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. 4(4)1(b)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xxv)**
- F595** Words in s. 93(2)(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. 37(2)(a)** (with Sch. 12)
- F596** Words in s. 93(2)(d) 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. 177(a)(ii)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(a)**
- F597** Words in s. 93(2)(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. 37(2)(b)** (with Sch. 12)
- F598** Words in s. 93(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. 37(3)(a)** (with Sch. 12)
- F599** Word in s. 93(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. 177(b)(ii)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(a)**
- F600** Words in s. 93(3) inserted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 37(3)(b)** (with Sch. 12)
- F601** Words in s. 93(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. 37(3)(c)** (with Sch. 12)
- F602** Words in s. 93(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. 37(4)** (with Sch. 12)
- F603** S. 93(6)-(6C) 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. 177(d)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(a)**
- F604** Words in s. 93(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. 37(5)(a)** (with Sch. 12)
- F605** Words in s. 93(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. 37(5)(b)** (with Sch. 12)
- F606** Words in s. 93(6A) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 37(6)** (with Sch. 12)
- F607** Words in s. 93(6B) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 37(7)(a)** (with Sch. 12)
- F608** Words in s. 93(6B) substituted (6.4.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(2)(e), **Sch. 2 para. 8(a)** (with Sch. 5)
- F609** Words in s. 93(6B) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 37(7)(b)** (with Sch. 12)
- F610** Words in s. 93(6C) substituted (6.4.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(2)(e), **Sch. 2 para. 8(b)** (with Sch. 5)
- F611** Words in s. 93(6C) omitted (1.4.2013) by virtue of The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 37(8)(a)** (with Sch. 12)
- F612** Words in s. 93(6C) inserted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 37(8)(b)** (with Sch. 12)

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**F613** S. 93(7) repealed (1.12.2001) (with saving in S.I. 2001/2967, **arts. 1(2), 9(1)(c)**) by S.I. 2001/2617, **arts. 2(b), 13(2)** Sch. 4; S.I. 2001/3538, **art. 2(1)**

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

**C119** Ss. 93–96 excluded by S.I. 1986/2168, **art. 9(2)(b)(3)**

**94 Transfer of engagements.**

- (1) A building society may, in accordance with this section and Schedule 16 to this Act, transfer its engagements to any extent to another building society which, in accordance with this section and that Schedule, undertakes to fulfil the engagements.
- (2) A building society, in order to transfer its engagements, must resolve to do so by two resolutions, of which one is passed as a [<sup>F614</sup>shareholding members’ resolution] and the other as a borrowing members’ resolution in accordance with the applicable provisions of Schedule 2.
- (3) A building society, in order to transfer some but not all of its engagements to its members in respect of shares held by them (with or without other engagements) must, in addition to resolving to transfer the engagements by the two resolutions required by subsection (2) above, resolve to do so by an affected shareholders’ resolution.
- (4) For the purposes of this section in its application to a transfer by a society of engagements in respect of some shares in the society, an “affected shareholders’ resolution” is a resolution passed by a majority of the holders of those shares who, under the rules of the society, would be entitled to vote on a [<sup>F614</sup>shareholding members’ resolution], disregarding for this purpose any shares of theirs in respect of which the society’s engagements are not to be transferred.
- (5) A building society, in order to undertake to fulfil the engagements of another society, must resolve to do so—
  - (a) by two resolutions, of which one is passed as a [<sup>F614</sup>shareholding members’ resolution] and the other as a borrowing members’ resolution in accordance with the applicable provisions of Schedule 2; or
  - (b) by a resolution of the board of directors, if the [<sup>F615</sup>appropriate authority] consents to that mode of proceeding.
- (6) The extent of the transfer, as so resolved by the society making and the society taking the transfer, shall be recorded in an instrument of transfer of engagements.
- (7) A transfer of engagements between building societies shall be of no effect unless—
  - (a) the transfer is confirmed by the [<sup>F616</sup>appropriate authority] under section 95; and
  - (b) a registration certificate is issued in respect of the transfer under subsection (8) below.
- (8) Where the [<sup>F617</sup>appropriate authority] confirms a transfer of engagements between building societies, [<sup>F618</sup>the FCA must] —
  - (a) register a copy of the instrument of transfer of engagements; and
  - (b) issue a registration certificate to the building society taking the transfer;

and, on such date as is specified in the certificate, the property, rights and liabilities of the society transferring its engagements (whether or not capable of being transferred or



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assigned) shall, by virtue of this subsection, be transferred to and vested in the society taking the transfer to the extent provided in the instrument of transfer of engagements.

(9) The [F619FCA] shall keep a copy of the instrument and of the registration certificate issued under subsection (8) above in the public file of the building society taking the transfer.

(10) Where all its engagements have been transferred, the society shall, by virtue of this subsection, be dissolved on the date specified in the registration certificate; but the transfer effected by subsection (8) above shall be deemed to have been effected immediately before the dissolution.

#### Textual Amendments

**F614** Words in s. 94(2)(4)(5) 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. 42**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xxvi)**

**F615** Words in s. 94(5)(b) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 38(2)** (with Sch. 12)

**F616** Words in s. 94(7)(a) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 38(3)** (with Sch. 12)

**F617** Words in s. 94(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. 38(4)(a)** (with Sch. 12)

**F618** Words in s. 94(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. 38(4)(b)** (with Sch. 12)

**F619** Word in s. 94(9) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 38(5)** (with Sch. 12)

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

**C120** Ss. 93–96 excluded by S.I. 1986/2168, art. 9(2)(b)(3)

## 95 Mergers; provisions supplementing ss. 93 and 94.

(1) Part I of Schedule 16 to this Act shall have effect for imposing on building societies proposing to amalgamate or to transfer or undertake engagements requirements to issue statements to their members relating to the proposed amalgamation or transfer.

(2) Part II of Schedule 16 to this Act shall have effect for imposing requirements for notification by a building society, to its members and to the [F620appropriate authority] of the receipt by the society of proposals for a transfer of engagements or an amalgamation.

(3) Where application is made to the [F620appropriate authority] for confirmation of an amalgamation or transfer of engagements it shall, except as provided in [F621subsections (4) to (6)] below, confirm the amalgamation or transfer; and Part III of Schedule 16 to this Act shall have effect with respect to the procedure on an application for such confirmation.

(4) Subject to subsection (5) below, the [F620appropriate authority] shall not confirm an amalgamation or transfer of engagements if it considers that—

- (a) some information material to the members' decision about the amalgamation or transfer was not made available to all the members eligible to vote; or

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- (b) the vote on any resolution approving the amalgamation or transfer does not represent the views of the members eligible to vote; or
  - (c) some relevant requirement of this Act or the rules of any of the societies participating in the amalgamation or transfer was not fulfilled or not fulfilled as regards that society.
- (5) The [F620 appropriate authority] shall not be precluded from confirming an amalgamation or transfer of engagements by virtue only of the non-fulfilment of some relevant requirement of this Act or the rules of a society if it appears to the [F620 appropriate authority] that it could not have been material to the members’ decision about the amalgamation or transfer and the [F620 appropriate authority] gives a direction that the failure is to be disregarded for the purposes of this section.
- (6) Where the [F620 appropriate authority] would be precluded from confirming an amalgamation or transfer of engagements by reason of any of the defects specified in paragraphs (a), (b) and (c) of subsection (4) above, it may direct any building society concerned—
- (a) to take such steps to remedy the defect or defects, including the calling of a further meeting, as it specifies in the direction; and
  - (b) to furnish the [F620 appropriate authority] with evidence satisfying it that it has done so;

and, if the [F620 appropriate authority] is satisfied that the steps have been taken and the defect or defects has or have been substantially remedied; the [F620 appropriate authority] shall confirm the amalgamation or transfer; but, if it is not so satisfied, it shall refuse its confirmation.

[F622(6A) The PRA must consult the FCA before confirming an amalgamation or transfer, or giving a direction, under this section.

(6B) The PRA must—

- (a) notify the FCA if it confirms an amalgamation or transfer; and
- (b) send the FCA a copy of any direction it gives.]

F623(7) .....

F623(8) .....

F623(9) .....

(10) A failure to comply with a relevant requirement of this Act or any rules of a society shall not invalidate an amalgamation or transfer of engagements; 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.

(11) In this section “relevant requirement”, with reference to this Act or the rules of a society, means a requirement of section 93 or 94 or this section or of Schedule 16 to this Act or of any rules prescribing the procedure to be followed by the society in approving or effecting an amalgamation or transfer of engagements.

**Textual Amendments**

**F620** Words in s. 95 substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), [Sch. 8 para. 39\(2\)](#) (with [Sch. 12](#))

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- F621** Words in s. 95(3) substituted (1.12.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 43(1)**; S.I. 1997/2668, art. 2, **Sch. Pt. I(j)(i)(ix)**
- F622** S. 95(6A)(6B) inserted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 39(3)** (with Sch. 12)
- F623** S. 95(7)-(9) repealed (1.12.1997) by 1997 c. 32, ss. 43, 46(3), Sch. 7 para. 43(2), **Sch. 9**; S.I. 1997/2668, art. 2, **Sch. Pt. I(j)(i)(ix)(o)(v)**

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

- C121** Ss. 93–96 excluded by S.I. 1986/2168, **art. 9(2)(b)(3)**

**96 Mergers: compensation for loss of office and bonuses to members.**

- (1) The terms of an amalgamation of or transfer of engagements between building societies may include provision for compensation to be paid by a society to or in respect of any director or other officer of that or any other society for loss of office or diminution of emoluments attributable to the amalgamation or transfer, but the provision must be authorised as follows that is to say—
- (a) except in so far as paragraph (b) below applies, the provision for such compensation to be paid by a society must be approved by the society by a resolution passed as a special resolution, not being [<sup>F624</sup>one of the two resolutions] required by section 93(2)(c) or 94(2) for the approval of the other terms of the amalgamation or transfer;
- (b) if regulations are made under subsection (2) 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 [<sup>F625</sup>the two resolutions] approving the terms of the amalgamation or transfer is sufficient authority for their payment.
- (2) The [<sup>F626</sup>Treasury] may by regulations authorise payments by building societies of compensation to directors or other officers for loss of office or diminution of emoluments attributable to amalgamations of, or transfers of engagements between, societies subject to limits specified in or determinable under the regulations and the regulations may make different provision for different classes of person.
- (3) Nothing in subsection (1) or (2) above prevents a director or other officer from receiving payments from societies which, in the aggregate, exceed any limit applicable to him under subsection (2) above if the excess payment is included in provision approved as required by subsection (1)(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.
- (4) The terms of an amalgamation of, or transfer of engagements between, building societies may include provision for part of the funds of one or more of the participating societies to be distributed in consideration of the amalgamation or transfer among any of the members of the participating societies, but the provision must be authorised as follows, that is to say—
- (a) subject to paragraph (b) below, the provision for such a distribution by a society shall not exceed the limits prescribed by regulations under subsection (5) below and the distribution must be approved by [<sup>F627</sup>each of the two resolutions] giving the approval of the society to the terms of the amalgamation or transfer;
- (b) if the provision for such a distribution by a society exceeds the prescribed limits, it must be approved by [<sup>F627</sup>each of the two resolutions] of that society

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and each of the other societies participating in the amalgamation or transfer by which each approved the terms of the amalgamation or transfer.

- (5) The [<sup>F626</sup>Treasury] shall by regulations authorise distributions of funds to members by building societies participating in amalgamations or transfers of engagements subject to limits specified in or determinable under the regulations and the regulations may make different provision for different circumstances.
- (6) Where the terms of a transfer of engagements include provision for a distribution of the funds of the society transferring or the society undertaking the engagements and the society undertaking the engagements applies to the [<sup>F628</sup>appropriate authority] for its consent to the society's approving the transfer by a resolution of the board of directors instead of [<sup>F629</sup>the two resolutions required by section 94(5)(a)], the [<sup>F628</sup>appropriate authority] shall not give its consent unless it is satisfied that the distribution proposed to be made by each society will not exceed the prescribed limits.
- (7) The power to make regulations under subsection (2) or (5) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) In this section—

“compensation” includes the provision of benefits in kind;

“distribution of funds” with reference to bonuses paid to members, includes distribution by means of a special rate of interest available to members for a limited period;

“loss of office” includes, in relation to a director or other officer of a building society holding office in [<sup>F630</sup>any other body] by virtue of his position in that society, the loss of that office;

“prescribed” with reference to limits on compensation or on distributions of assets, means prescribed by regulations under subsection (2) or (5) above, as the case may be.

#### Textual Amendments

- F624** Words in s. 96(1)(a) substituted (1.12.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 44(1)(a)**; S.I. 1997/2668, art. 2, **Sch. Pt. I(j)(l)(x)**
- F625** Words in s. 96(1)(b) substituted (1.12.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 44(1)(b)**; S.I. 1997/2668, art. 2, **Sch. Pt. I(j)(l)(x)**
- F626** Words in s. 96(2)(5) 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. 180(a) (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(a)**
- F627** Words in s. 96(4) substituted (1.12.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 44(2)**; S.I. 1997/2668, art. 2, **Sch. Pt. I(j)(l)(x)**
- F628** Words in s. 96(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. 40** (with Sch. 12)
- F629** Words in s. 96(6) substituted (1.12.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 44(3)**; S.I. 1997/2668, art. 2, **Sch. Pt. I(j)(l)(x)**
- F630** Words in s. 96(8) substituted (1.12.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 44(4)**; S.I. 1997/2668, art. 2, **Sch. Pt. I(j)(l)(x)**

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

- C122** Ss. 93–96 excluded by S.I. 1986/2168, **art. 9(2)(b)(3)**
- C123** S. 96(2)(5): Functions of Building Societies Commission transferred (1.12.2001) to the Treasury by S.I. 2001/2617, art. 4(1), **Sch. 1 Part III** (with art. 5); S.I. 2001/3538, **art. 2(a)**

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### *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, [<sup>F631</sup>section 99A,] section 100, section 101, section 102 [<sup>F632</sup>sections 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; [<sup>F633</sup>and 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 [<sup>F634</sup>appropriate authority] of the transfer and its terms.
- (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 [<sup>F635</sup>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 [<sup>F636</sup>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 [<sup>F637</sup>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.

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- (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 [<sup>F638</sup>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 [<sup>F639</sup>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);
- [<sup>F640</sup>“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.

<sup>F641</sup>(13) .....



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### Textual Amendments

- F631** 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)**
- F632** 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)**
- F633** 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)**
- F634** 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)
- F635** 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)
- F636** 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)
- F637** 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)
- F638** 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)
- F639** 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)
- F640** 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)**
- F641** 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)

- C124** 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
- C125** 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**
- C126** 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 [<sup>F642</sup>or summaries] to its members relating to the proposed transfer.
- [<sup>F643</sup>(1A) Part IA of that Schedule shall have effect for imposing requirements for notification by a building society, to its members and to the [<sup>F644</sup>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 [<sup>F645</sup>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.



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- (3) Subject to subsection (4) below, the [<sup>F646</sup>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 [<sup>F647</sup>have—
    - (i) such permission under [<sup>F648</sup>Part 4A] of the Financial Services and Markets Act 2000, <sup>F649</sup>...
    - <sup>F649</sup>(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 [<sup>F646</sup>appropriate authority] under that Act; or]
  - (d) some relevant requirement of this Act or the rules of the society was not fulfilled.
- (4) The [<sup>F650</sup>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 [<sup>F650</sup>appropriate authority] that it could not have been material to the members' decision about the transfer and the [<sup>F650</sup>appropriate authority] gives a direction that the failure is to be disregarded for the purposes of this section.
- (5) Where the [<sup>F650</sup>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 [<sup>F650</sup>appropriate authority] with evidence satisfying it that it has been done so;
- and, if the [<sup>F650</sup>appropriate authority] is satisfied that the steps have been taken and the defect or defects has or have been substantially remedied, the [<sup>F650</sup>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.

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[<sup>F651</sup>(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 if it confirms a transfer; and
- (b) send the FCA a copy of any direction it gives.]

#### Textual Amendments

- F642** 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)**
- F643** S. 98(1A) inserted (1.12.1997) by 1997 c. 32, s. 30(2); S.I. 1997/2668, art. 2, **Sch. Pt. I(e)**
- F644** 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)
- F645** 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)
- F646** 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)
- F647** Words in s. 98(3)(c) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 196(2)**
- F648** 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)
- F649** 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)
- F650** 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)
- F651** 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)

- C124** 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
- C125** 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**
- C126** 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)**)
- C127** 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;

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- (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 [<sup>F652</sup>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 [<sup>F653</sup>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

**F652** 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)**

**F653** 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)(i)(xi)**

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

**C124** 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

**C125** 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**

**C126** 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)**)

**C128** 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)**

#### [<sup>F654</sup>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

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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

**F654** S. 99A inserted (9.6.1997) by 1997 c. 32, s. 31; S.I. 1997/1427, art. 2(f)

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

**C124** 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

**C125** 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

**C126** 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 member of the society equal to the relevant proportion of the value of the qualifying shares held by him in the society; <sup>F655</sup> . . .

<sup>F655</sup>(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 if he held shares in the society on the qualifying day and was not eligible to vote on the [<sup>F656</sup> 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.

<sup>F657</sup>(5) . . . . .

<sup>F657</sup>(6) . . . . .

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(7) The [<sup>F658</sup>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 [<sup>F658</sup>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.

[<sup>F659</sup>(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;

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**

**F655** S. 100(2)(c) and word preceding it repealed (21.3.1997) by 1997 c. 32, ss. 40(a), 46(2), **Sch. 9**

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- F656** 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)**
- F657** S. 100(5)(6) repealed (21.3.1997) by 1997 c. 32, ss. 40(b), 46(2), **Sch. 9**
- F658** 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)
- F659** 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)**

- C124** 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
- C125** 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**
- C126** 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)**)
- C129** S. 100 modified (21.3.1997) by 1997 c. 32, s. 46(1), **Sch. 8 para. 9(1)**

**[<sup>F660</sup>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—
- 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
  - allot or agree to allot any share in the company, or
  - 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.
- (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 [<sup>F661</sup>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 [<sup>F662</sup>a person];
  - a special resolution to that effect is passed by the requisite majority of the members of the company; or
  - the [<sup>F663</sup>appropriate authority] by notice to the company gives a direction to that effect;



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and the [<sup>F663</sup>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.

<sup>F664</sup>(4A) [ The PRA must consult the FCA <sup>F664</sup> before giving a direction under this section.]

(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—

<sup>F665</sup>

“concert party agreement” means an agreement to which [<sup>F666</sup>section 824 of the Companies Act 2006] applies;

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

<sup>F667</sup>

“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 [<sup>F668</sup>the Companies Acts (as defined in section 2 of the Companies Act 2006)] has the same meaning in this section as in [<sup>F669</sup>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
- (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

**F660** S. 101 substituted (21.3.1997) by 1997 c. 32, s. 41 (with s. 46(1), Sch. 8 para. 10)

**F661** Words in s. 101(4)(a) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 197(2)(a)



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- F662** Words in s. 101(4)(a) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 197(2)(b)**
- F663** 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)
- F664** 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)
- F665** 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)**
- F666** 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)
- F667** Definition of “financial institution” in s. 101(6) repealed (1.12.2001) by S.I. 2001/3649, **arts. 1, 197(3)**
- F668** 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)
- F669** 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)**

- C124** 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
- C125** 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**
- C126** 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)**)
- C130** S. 101(4) modified (22.3.2001) by 2001 c. i, **s. 14** (with s. 13)
- C131** 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 [<sup>F670</sup>Treasury] may, by transfer regulations under this section, make provision regulating transfers of business under section 97.
- (2) Transfer regulations may, in particular—
  - (a) make provision for and in connection with the transition from regulation by and under this Act to regulation by and under [<sup>F671</sup>the Companies Acts]<sup>F672</sup> . . .
  - (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 [<sup>F673</sup>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.

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### Textual Amendments

- F670** 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)**
- F671** 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)
- F672** 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)**
- F673** 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)

- C124** 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
- C125** 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**
- C126** 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)**)
- C132** 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)**

## <sup>F674</sup>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,
- 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

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- (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

**F674** 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)

**C124** 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

**C125** 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

**C126** 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))

#### [<sup>F675</sup>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 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.

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- (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 <sup>M16</sup>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).]

#### **Textual Amendments**

**F675** 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)**

**C124** 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

**C125** 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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**C126** 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

**M16** 1835 c. 62.

### [<sup>F676</sup>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 <sup>M17</sup>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.

<sup>F677</sup><sup>F678</sup>(5) . . . . .

<sup>F677</sup>(6) . . . . .]

#### Textual Amendments

**F676** 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)

**F677** 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)

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**F678** 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)**

**C124** 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

**C125** 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**

**C126** 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**

**M17** 1992 c. 12.

**[<sup>F679</sup>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—
  - (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



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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 [<sup>F680</sup>the Mental Capacity Act 2005] or under Part VIII of the <sup>M18</sup>Mental Health (Northern Ireland) Order 1986;
  - [<sup>F681</sup>(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 faculty and commission or power of attorney which continues to have effect by virtue of section 71 of the <sup>M19</sup>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 [<sup>F682</sup>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),
- 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

**F679** 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)



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- F680** 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)
- F681** 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)
- F682** 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)**

- C124** 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
- C125** 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](#)
- C126** 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\(3\)](#))
- C133** 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**

- M18** S.I. 1986/595 (N.I. 4).
- M19** 1990 c. 40.

*Cancellation of registration*

**103 Cancellation of registration.**

- (1) Where [<sup>F683</sup>, having consulted the PRA,] the [<sup>F684</sup>FCA] is satisfied, with respect to a building society—
- (a) that the society has been dissolved by virtue of section 93(5), 94(10), 97(9) or 97(10), or
  - (b) that the society has been wound up under the applicable winding up legislation and dissolved, [<sup>F685</sup>or
  - (c) that the society has been dissolved following building society insolvency or building society special administration.]
- the [<sup>F684</sup>FCA] shall cancel the registration of the society.
- (2) Where [<sup>F686</sup>, having consulted the PRA,] the [<sup>F684</sup>FCA] is satisfied, with respect to a building society—
- (a) that a certificate of incorporation has been obtained for the society by fraud or mistake and that the society [<sup>F687</sup>does not have permission under [<sup>F688</sup>Part 4A] of the Financial Services and Markets Act 2000 to accept deposits], or
  - (b) that the society has ceased to exist,
- the [<sup>F684</sup>FCA] may cancel the registration of the society.
- (3) Without prejudice to subsection (2) above, the [<sup>F684</sup>FCA] may, if it thinks fit [<sup>F689</sup>after consulting the PRA], cancel the registration of a building society at the request of the society, evidenced in such manner as the [<sup>F684</sup>FCA] may direct.
- (4) Before cancelling the registration of a building society under subsection (2) above, the [<sup>F684</sup>FCA] shall give to the society not less than two months' previous notice, specifying briefly the grounds of the proposed cancellation.

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- (5) Where the registration of a building society is cancelled under subsection (2) above, the society may appeal to—
- (a) the High Court, where the principal office of the society is situated in England and Wales or in Northern Ireland, or
  - (b) the Court of Session, where that office is situated in Scotland.
- and on any such appeal the High Court or the Court of Session, as the case may be, if it thinks it just to do so, may set aside the cancellation.
- (6) Where the registration of a building society is cancelled under subsection (2) or (3) above, then, subject to the right of appeal conferred by subsection (5) above, the society, so far as it continues to exist, shall cease to be a society incorporated under this Act (and accordingly shall cease to be a building society within the meaning of this Act).
- (7) Subsection (6) above shall have effect in relation to a building society without prejudice to any liability actually incurred by the society; and any such liability may be enforced against the society as if the cancellation had not taken place.
- (8) Any cancellation of the registration of a building society under this section shall be effected in writing signed by the [F684FCA] .
- (9) As soon as practicable after the cancellation of the registration of a society under this section the [F684FCA] shall cause notice thereof to be published in the London Gazette, the Edinburgh Gazette or the Belfast Gazette according to the situation of the society's principal office, and if it thinks fit, in one or more newspapers.

#### Textual Amendments

- F683** Words in s. 103(1) inserted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), **Sch. 8 para. 45(3)** (with Sch. 12)
- F684** Word in s. 103 substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), **Sch. 8 para. 45(2)** (with Sch. 12)
- F685** S. 103(1)(c) and preceding word inserted (29.3.2009) by [The Building Societies \(Insolvency and Special Administration\) Order 2009 \(S.I. 2009/805\)](#), **art. 10**
- F686** Words in s. 103(2) inserted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), **Sch. 8 para. 45(4)(a)** (with Sch. 12)
- F687** Words in s. 103(2)(a) 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. 187(b)** (with art. 13(3), Sch. 5); [S.I. 2001/3538](#), **art. 2(a)**
- F688** Words in s. 103(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. 45(4)(b)** (with Sch. 12)
- F689** Words in s. 103(3) inserted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), **Sch. 8 para. 45(5)** (with Sch. 12)

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

- C134** S. 103 excluded by 2009 c. 1, s. 84D(7) (as inserted (10.1.2015) by [The Building Societies \(Bail-in\) Order 2014 \(S.I. 2014/3344\)](#)), arts. 1, **2(3)**
- C135** S. 103(5)(6)(7) applied by [S.I. 1986/2168](#), **art. 10(3)(b)**

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## PART XI

### MISCELLANEOUS AND SUPPLEMENTARY AND CONVEYANCING SERVICES

#### *Miscellaneous and supplementary*

#### **104 Power to amend, etc. to assimilate to company law.**

- (1) If, on any modification of the statutory provisions in force in Great Britain or Northern Ireland relating to companies, it appears to the Treasury to be expedient to modify the relevant provisions of this Act for the purpose of assimilating the law relating to companies and the law relating to building societies, the Treasury may, by order, make such modifications of the relevant provisions of this Act as they think appropriate for that purpose.
- (2) The “relevant provisions of this Act” are the following provisions as for the time being in force, that is to say—
  - (a) so much of Part VI as relates to investigations or inspections;
  - (b) the provisions of Part VII (management);
  - (c) the provisions of Part VIII (accounts and audit);<sup>F690</sup> . . .
  - (d) so much of Part X as relates to winding up [<sup>F691</sup>or insolvency][<sup>F692</sup>]; and
  - (e) section 110 (provisions exempting officers and auditors from liability).].
- (3) The power conferred by subsection (1) above includes power to modify the relevant provisions of this Act so as to—
  - (a) confer power to make orders, regulations, rules or other subordinate legislation;
  - (b) create criminal offences; or
  - (c) provide for the charging of fees but not any charge in the nature of taxation.
- (4) An order under this section may—
  - (a) make consequential amendments of or appeals in other provisions of this Act; or
  - (b) make such transitional or saving provisions as appear to the Treasury to be necessary or expedient.
- (5) The power to make an order under this section is exercisable by statutory instrument but no such order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (6) In this section—
 

“modification” includes any additions and, as regards modifications of the statutory provisions relating to companies, any modification whether effected by any future Act or by an instrument made after the passing of this Act under an Act whenever passed; and

“statutory provisions” includes the provisions of any instrument made under this Act.

#### **Subordinate Legislation Made**

- P2** S. 104: power exercised by [S.I. 1991/1729](#)  
 S. 104: power exercised (4.12.1991) by [S.I. 1991/2738](#)

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#### Textual Amendments

**F690** Word in s. 104(2) omitted (1.10.1991) by virtue of Companies Act 1989 (c. 40, SIF 27), s. 211(1); S.I. 1991/1996, art. 2(1)(b)

**F691** Words in s. 104(2) inserted (1.12.1997) by 1997 c. 32, s. 43, Sch. 7 para. 48; S.I. 1997/2668, art. 2, Sch. Pt. 1(j)(i)(xii)

**F692** Word in s. 104(2) and s. 104(2)(e) added (1.10.1991) by Companies Act 1989 (c. 40, SIF 27), s. 211(1); S.I. 1991/1996, art. 2(1)(b)

#### [<sup>F693</sup>104A] **Registration of charges: application of company law.**

- (1) For the purpose of securing the registration of charges created by building societies, the Secretary of State may, by order made with the concurrence of the Treasury <sup>F694</sup>..., provide that such of the provisions of [<sup>F695</sup>Part 25 of the Companies Act 2006 (company charges)] as may be specified in the order shall apply in relation to building societies, and charges created by building societies, with such modifications as may be so specified.
- (2) An order under this section may make different provision for different cases or different areas and may contain such incidental, supplemental and transitional provisions as may appear to the Secretary of State to be necessary or expedient.
- (3) The power to make an order under this section is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

**F693** S. 104A inserted (9.6.1997) by 1997 c. 32, s. 42; S.I. 1997/1427, art. 2(j)

**F694** Words in S. 104A(1) repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), Sch. 4 (with S. 13(3), Sch. 5); S.I. 2001/3538, art. 2

**F695** Words in s. 104A(1) substituted for s. 104A(1)(a)(b) (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(7) (with art. 10)

#### [<sup>F696</sup>105] **Limited power to anticipate future statutory instrument powers.**

- (1) This section has effect as regards any power conferred under any provision of this Act on building societies or building societies of any description by—
  - (a) an instrument a draft of which has to be approved by a resolution of each House of Parliament before it can be made, or
  - (b) an instrument which is subject to annulment in pursuance of a resolution of either House of Parliament and which defers its operation until a future date;and in this section “the anticipation date” is, in the case of an instrument falling within paragraph (a), the date on which either House approves the draft and, in the case of an instrument falling within paragraph (b), the date on which it was laid before Parliament.
- (2) Every building society or, as the case may be, every building society of the description to which the instrument applies, has, as from the anticipation date, power, for the purposes of the power conferred by the instrument, to do such things, subject to subsection (3) below, as are reasonably necessary to enable it—

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- (a) to decide whether or not, and to what extent, to exercise (and in the case of an adoptable power to adopt) the power, and
  - (b) if it decides to exercise the power, to exercise it as from the date when it becomes exercisable by the society.
- (3) Subsection (2)(b) above does not authorise a society—
- (a) to make contracts, other than conditional contracts, for the acquisition of land, the acquisition of a business or the acquisition of shares in any company if that company offers the public any service or facility within the power,
  - (b) to issue invitations to members of the society or the public to apply for any power to be exercised for their benefit, or
  - (c) to retain shares in a company which offers the public any service or facility within the power;
- and, in this subsection, “conditional”, in relation to contracts with respect to the exercise of a power, means conditional on the power’s becoming exercisable by the society.
- (4) The power conferred by this paragraph, and activities carried on under it, for the purposes of an adoptable power are not to be treated as included in, or in activities comprised in, that adoptable power for the purposes of paragraph 16 of Schedule 2 to this Act.]

#### Textual Amendments

**F696** S. 105 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. 49, **Sch. 9**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xxix)(cc)(xiv)**

#### 106 Public file of the society.

- (1) The [<sup>F697</sup>FCA] shall prepare and maintain a file relating to each building society (to be known as the public file) and the file shall—
- (a) contain the documents or, as the case may be, the copies of the documents and the records of the matters directed by or under any provision of this Act to be kept in the public file of the society; and
  - (b) be available for inspection on reasonable notice by members of the public [<sup>F698</sup>subject to subsection (3) below].
- (2) Any member of the public shall be entitled, [<sup>F698</sup>subject to subsection (3) below], to be furnished with a copy of all or any of the documents or records kept in the public file of a building society.
- [<sup>F699</sup>(3) The [<sup>F697</sup>FCA] may charge a reasonable fee for making the public file available to any person for inspection under subsection (1)(b) above, or for furnishing any person with a copy of any documents or records under subsection (2) above.]

#### Textual Amendments

**F697** Word in s. 106 substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013](#) (S.I. 2013/496), art. 1(1), **Sch. 8 para. 46** (with Sch. 12)

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- F698** Words in S. 106(1)(b)(2) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II para. 189(b)** (with S. 13(3), Sch. 5); S.I. 2001/3538, **art. 2**
- F699** S. 106(3) inserted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II para. 189(c)** (with S. 13(3), Sch. 5); S.I. 2001/3538, **art. 2**

## 107 Restriction of use of certain names and descriptions.

- (1) Subject to subsections (2) to (9) below, no person carrying on in the United Kingdom a business of any description shall, unless that person is a building society, use any name or in any other way so describe himself or hold himself out so as to indicate, or reasonably be understood to indicate—
- that he is a building society,
  - that he, or his business, is connected with one or more building societies, or
  - that he, or his business, is connected with building societies generally.
- (2) Subsection (1) does not prohibit the use by an institution carrying on the business of taking deposits and making loans secured on land which has its principal place of business in a country or territory outside the United Kingdom, of the name under which the institution carries on business in that country or territory if—
- the name is used in immediate conjunction with a description distinguishing the institution from a building society, being a description which has been approved for the purposes of this subsection by the [F700FCA] and the approval has not been revoked under subsection (7) below, and
  - where the name appears in writing, that description is sufficiently prominent to secure that a person who reads the name will also read the description.
- (3) For a description to distinguish an institution from a building society for the purposes of subsection (2) above it must distinguish it by reference to all or any of the following matters,—
- the situation of its principal place of business,
  - its legal status or constitution, and
  - the law (if any) which authorises it to take deposits in the United Kingdom,
- as the [F700FCA] determines in its case, but need not indicate any other distinction.
- (4) Subsection (1) above does not prohibit a person from carrying on a business under a name which indicates a connection between—
- that person, or his business, and one or more building societies, or
  - that person, or his business, and building societies generally,
- if the name has been approved for the purposes of this subsection by the [F700FCA] and the approval has not been revoked under subsection (7) below.
- (5) No name shall be approved for the purposes of subsection (4) above unless the [F700FCA], having regard to—
- the true connection (if any) in fact existing between the person using, or proposing to use, the name and the particular society or societies in question or with building societies generally, as the case may be, and
  - in the cases referred to in subsection (4)(a) above, the respective natures of the business of that person and the society or societies in question,



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is satisfied that the connection indicated by the name is not misleading; and, in so far as the name indicates investment or other financial support on the part of a building society the [F700FCA] shall not approve the use of the name unless it is satisfied that the name indicates no more investment or support than is the case and than is, in the opinion of the [F700FCA] , within the financial capacity of the building society to provide.

- (6) An application for approval under subsection (2) or (4) above shall be made to the [F700FCA] in such form as it directs and accompanied by such information or evidence as it requires generally or in the particular case.
- (7) The [F700FCA] may revoke any approval under subsection (2) or (4) above of a distinguishing description or a name, as the case may be, if it is of the opinion—
- (a) in the case of a distinguishing description, that, by reason of any change in the matters by reference to which the distinction is made, the description does not or does not any longer distinguish the institution as required by subsection (2) above, or
  - (b) in the case of a name.
    - (i) that the name has proved to be misleading to the public,
    - (ii) that the approval has been obtained by fraud or mistake, or
    - (iii) that there has been a change in the facts to which the [F700FCA] had regard in giving its approval,

but it shall not do so without first giving the person to whom the approval was given an opportunity of making representations with respect to the proposed revocation of that approval.

- (8) Subsection (1) above does not prohibit a person from using a description (other than his name) which, or from holding himself out in a way that, indicates a connection between himself or his business and one or more building societies if and to the extent he has been authorised to do so in writing by the society or societies in question.
- (9) Subsection (1) above does not prohibit a person from using a description (other than his name) which, or from holding himself out in a way that, indicates a connection between himself or his business and building societies generally where the connection indicated is not misleading.
- (10) Where on an application for—
- (a) the first registration of a company, or the registration of a company by a new name, by [F701the registrar of companies under the Companies Act 2006], or
  - [F702(b) approval by the Secretary of State of words or expressions for inclusion in a business name under section 1194 of the Companies Act 2006,]

it appears to the registrar, [F703or the Secretary of State], as the case may be, that the use of the name or the words or [F704expressions] by the person seeking to register with it would contravene subsection (1) above, the registration shall not be made or the approval given.

- (11) A person who contravenes subsection (1) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale; and where the contravention involves a public display or exhibition of the offending name, description or other matter, there shall be a fresh contravention of the subsection on each day during which that person causes or permits the display or exhibition to continue for which that person shall be liable on summary conviction to a fine not exceeding £200.



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[<sup>F705</sup>(12) In this section—

“deposit” must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act;

“institution” means—

- (a) a body corporate wherever incorporated;
- (b) a partnership formed under the law of any part of the United Kingdom;
- (c) <sup>F706</sup> ...]

#### Textual Amendments

**F700** Word in s. 107 substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), [Sch. 8 para. 47](#) (with Sch. 12)

**F701** Words in s. 107(10)(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\(8\)\(a\)](#) (with art. 10)

**F702** S. 107(10)(b) substituted for s. 107(10)(b)(c) (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\(8\)\(b\)](#) (with art. 10)

**F703** Words in s. 107(10) 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\(8\)\(c\)\(i\)](#) (with art. 10)

**F704** Word in s. 107(10) 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\(8\)\(c\)\(ii\)](#) (with art. 10)

**F705** S. 107(12) substituted (1.12.2001) by 2001/3649 arts. 1, 198(2)

**F706** Words in s. 107(12) omitted (31.12.2020) by virtue of [The Building Societies Legislation \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1187\)](#), regs. 1, 5; 2020 c. 1, Sch. 5 para. 1(1)

<sup>F707</sup>108 .....

#### Textual Amendments

**F707** S. 108 repealed (1.12.1997) by 1997 c. 32, ss. 43, 46(2), Sch. 7 para. 50, [Sch. 9](#); S.I. 1997/2668, art. 2, [Sch. Pt. 1\(j\)\(k\)\(l\)\(xiii\)\(o\)\(vi\)](#)

### 109 Exemption from stamp duty.

[<sup>F708</sup>(1)] The following instruments shall be exempted from all such stamp duties (if any) as apart from this section would be chargeable on them, that is to say—

- (a) any copy of the rules of a building society;
- (b) any transfer of a share in a building society;
- (c) any bond or other security to be given to, or on account of, a building society or by an officer of a building society;
- (d) any instrument appointing an agent of a building society or revoking such an appointment; and

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- (e) any other instrument whatsoever which is required or authorised to be given, issued, signed, made or produced in pursuance of this Act or of the rules of a building society.

[<sup>F709</sup>(2) No transfer effected by subsection (6) or (7) of section 97 shall give rise to any liability to stamp duty]

#### Textual Amendments

**F708** S. 109 renumbered as s. 109(1) by [Finance Act 1988 \(c. 39, SIF 63:1\)](#), s. 145, **Sch. 12 para. 8**

**F709** S. 109(2) inserted by [Finance Act 1988 \(c. 39, SIF 63:1\)](#), s. 145, **Sch. 12 para. 8**

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

**C136** S. 109 excluded (1.3.2013) by [The Building Societies \(Core Capital Deferred Shares\) Regulations 2013 \(S.I. 2013/460\)](#), regs. 1(1), **3(1)(a)** (with reg. 1(2))

### [<sup>F710</sup>109A Exemptions from stamp duty land tax

- (1) A land transaction effected by or in consequence of—
- (a) an amalgamation of two or more building societies under section 93; or
  - (b) a transfer of engagements between building societies under section 94,
- is exempt from charge for the purposes of stamp duty land tax.
- (2) Relief under this section must be claimed in a land transaction return or an amendment of such a return.
- (3) In this section—
- “land transaction” has the meaning given by section 43(1) of the Finance Act 2003;
- “land transaction return” has the meaning given by section 76(1) of that Act.]

#### Textual Amendments

**F710** S. 109A inserted (1.12.2003) by [The Stamp Duty Land Tax \(Consequential Amendment of Enactments\) Regulations 2003 \(S.I. 2003/2867\)](#), reg. 1, **Sch. para. 14**

### 110 Officers and auditors not to be exempted from liability

- (1) Subject to subsection (3) below, any provision to which this section applies, whether contained in the rules of a building society or in any contract with a building society or otherwise, shall be void.
- (2) This section applies to any provision for—
- (a) exempting any director, other officer or person employed as auditor of a building society from any liability which, by virtue of any rule of law, would otherwise attach to him in respect of the negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the society, or
  - (b) indemnifying any such person against any such liability.

[<sup>F711</sup>(3) Subsection (1) above shall not prevent a building society from

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- (a) purchasing and maintaining for a person insurance against any such liability, or
  - (b) indemnifying a person against any liability incurred by him in defending any proceedings (whether civil or criminal) in which judgment is given in his favour or he is acquitted.]
- (4) [<sup>F712</sup>Section 1157 of the Companies Act 2006 (power of court] to grant relief in certain cases of negligence, default, breach of duty or breach of trust) shall apply in relation to officers and auditors of a building society as it applies in relation to officers and auditors a company.

#### Textual Amendments

**F711** S. 110(3) substituted (1.1.1992) by [S.I. 1991/2738](#), [art.2](#)

**F712** Words in s. 110(4) 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\(9\)](#) (with [art. 10](#))

### 111 Time limit for commencing proceedings.

- (1) Notwithstanding any limitation on the time for the taking of proceedings contained in any Act, summary proceedings for any offence under this Act [<sup>F713</sup>, other than an offence in relation to which provision is made in subsection (1A).] may, subject to subsection (2) below, be commenced [<sup>F714</sup>by the FCA] at any time within the period of one year beginning with the date of which evidence sufficient [<sup>F715</sup>in its opinion] to justify a prosecution for the offence, comes to its knowledge.
- [<sup>F716</sup>(1A) Notwithstanding any limitation on the time for taking proceedings contained in any Act, summary proceedings for the offences under the provisions listed in subsection (1B), in the circumstances specified in that subsection in relation to those provisions, may be commenced by the PRA, after notifying the FCA, or by the FCA, after notifying the PRA, at any time within the period mentioned in subsection (1C).
- (1B) The provisions and the circumstances are—
- (a) section 52 (powers to obtain information and documents etc.), if—
    - (i) the failure referred to in subsection (10) of that section is a failure to furnish any information or accountant’s report, to produce any documents or material, or to provide any explanation or make any statement to the PRA, or
    - (ii) the information, explanation or statement referred to in subsection (11) or (12) of that section is furnished, provided or made to the PRA;
  - (b) section 55 (investigations), if the person appointed under subsection (1) of that section was appointed by the PRA;
  - (c) section 81 (laying and furnishing accounts), if the default referred to in subsection (4) of that section relates to a failure to send a copy of the accounts to the PRA in accordance with subsection (2) of that section;
  - (d) section 87 (dissolution by consent), if the failure referred to in subsection (5) or (7) of that section relates to a failure to give notice to the PRA;

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- (e) section 88 (voluntary winding up), if the failure referred to in subsection (4) of that section relates to a failure to send a copy of the resolution to the PRA in accordance with subsection (2) of that section;
  - (f) section 91 (power of court to declare dissolution of building society void), if the failure referred to in subsection (5) of that section relates to a failure to send a copy of an order to the PRA in accordance with subsection (4) of that section;
  - (g) section 95 (mergers: provisions supplementing sections 93 and 94), if the application referred to subsection (3) of that section was made, or should have been made, to the PRA;
  - (h) section 98 (transfers of business: supplementary provisions), if the application referred to subsection (2) of that section was made, or should have been made, to the PRA;
  - (i) Schedule 8A, paragraph 3(5) (directions under section 42B(3)), if the PRA has given a direction under section 42B(3);
  - (j) Schedule 8A, paragraph 9(5) (directions under section 42B(4)), if the PRA has given a direction under section 42B(4);
  - (k) Schedule 11, paragraph 3 (auditors: appointment), if the failure referred to in sub-paragraph (2) of that paragraph relates to a failure to give notice to the PRA in accordance with sub-paragraph (1) of that paragraph;
  - (l) Schedule 11, paragraph 6 (auditors: removal), if the failure referred to in sub-paragraph (3) of that paragraph relates to a failure to give notice to the PRA in accordance with sub-paragraph (2) of that paragraph;
  - (m) Schedule 11, paragraph 7 (auditors: resignation), if the default referred to in sub-paragraph (8) of that paragraph relates to a failure to send any notice or statement to the PRA in accordance with sub-paragraph (3) or (7) of that paragraph;
  - (n) Schedule 15, paragraph 21 (application of companies winding up legislation to building societies: winding up by the court), if the failure referred to in sub-paragraph (4) of that paragraph relates to a failure to give notice to the PRA in accordance with sub-paragraph (3) of that paragraph;
  - (o) Schedule 15, paragraph 48 (modified application of Insolvency (Northern Ireland) Order 1989: winding up by the High Court), if the failure referred to in sub-paragraph (4) of that paragraph relates to a failure to give notice to the PRA in accordance with sub-paragraph (3) of that paragraph; and
  - (p) Schedule 16, paragraph 6 (mergers: penalty), if the default referred to in sub-paragraph (1) of that paragraph relates to a failure to send a copy of a statement or notification to the PRA in accordance with paragraph 5(1) of that Schedule.
- (1C) The period is one year beginning with the date on which evidence comes to the knowledge of one or both of the FCA and the PRA, being evidence sufficient in the opinion of the FCA or the PRA (as the case may be) to justify a prosecution.]
- (2) Nothing in subsection (1) [<sup>F717</sup>or (1A)] above shall authorise the commencement of proceedings for any offence at a time more than three years after the date on which the offence was committed.
- (3) For the purposes of subsection (1) [<sup>F718</sup>and subsection (1C)] of this section a certificate, purporting to be signed by or on behalf of the [<sup>F719</sup>FCA or the PRA], as to the date on which such evidence as is mentioned in [<sup>F720</sup>the relevant subsection] came to its knowledge, shall be conclusive evidence of that date.

*Status:* This version of this Act contains provisions that are prospective.

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[<sup>F721</sup>(4) In the application of this section to Scotland—

(a) for subsection (1), substitute—

“(1) Notwithstanding any limitation on the time for the taking of proceedings contained in any Act, summary proceedings for any offence under this Act may, subject to subsection (2), be commenced by the Lord Advocate at any time within the period of one year beginning with the date on which evidence sufficient in the opinion of the Lord Advocate to justify a prosecution for the offence, comes to the knowledge of the Lord Advocate”;

(b) omit subsections (1A), (1B) and (1C); and

(c) for subsection (3), substitute—

“(3) For the purposes of subsection (1) of this section a certificate, purporting to be signed by or on behalf of the Lord Advocate, as to the date on which such evidence as is mentioned in that subsection came to the knowledge of the Lord Advocate, shall be conclusive evidence of that date.”.]

(5) In the application of this section to Scotland, [<sup>F722</sup>section 136(3) of the Criminal Procedure (Scotland) Act 1995] shall apply for the purposes of this section as it applies for the purposes of that section.

#### Textual Amendments

- F713** Words in s. 111(1) inserted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), [Sch. 8 para. 48\(2\)\(a\)](#) (with Sch. 12)
- F714** Words in s. 111(1) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), [Sch. 8 para. 48\(2\)\(b\)](#) (with Sch. 12)
- F715** Words in s. 111(1) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), [Sch. 8 para. 48\(2\)\(c\)](#) (with Sch. 12)
- F716** S. 111(1A)-(1C) inserted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), [Sch. 8 para. 48\(3\)](#) (with Sch. 12)
- F717** Words in s. 111(2) inserted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), [Sch. 8 para. 48\(4\)](#) (with Sch. 12)
- F718** Words in s. 111(3) inserted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), [Sch. 8 para. 48\(5\)\(a\)](#) (with Sch. 12)
- F719** Words in s. 111(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. 48\(5\)\(b\)](#) (with Sch. 12)
- F720** Words in s. 111(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. 48\(5\)\(c\)](#) (with Sch. 12)
- F721** Words in s. 111(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. 48\(6\)](#) (with Sch. 12)
- F722** Words in s. 111(5) substituted (S.) (1.4.1996) by 1995 c. 40, ss. 5, 7(2), [Sch. 4 para. 65](#)

## 112 Offences: liability of officers and defence of due diligence.

(1) Where an offence under any provision of this Act committed by a building society is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the society he, as well as the society, shall be guilty of that offence and liable to be proceeded against and punished in accordance with that provision.

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<sup>F723</sup>(2) .....

- (3) Where an offence under any provision of this Act committed by a body corporate other than a building society is proved to have been committed with the consent or connivance, or to be attributable to any neglect on the part of, any officer of the body corporate he, as well as the body corporate, shall be guilty of that offence and liable to be proceeded against and punished accordingly.
- (4) In any proceedings for an offence under this Act, it shall be a defence for a person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control

#### Textual Amendments

**F723** S. 112(2) repealed (1.12.2001) by [S.I. 2001/2617](#), arts. 2(b), 13(2), [Sch. 4](#) (with art. 13(3), [Sch. 5](#)); [S.I. 2001/3538](#), [art. 2](#)

### 113 Evidence.

- <sup>F724</sup>(1) Any document bearing the seal or stamp of the [<sup>F725</sup>FCA] shall be received in evidence without further proof.
- (1A) Any document purporting to have been signed by a person authorised to do so on behalf of the [<sup>F726</sup>FCA or the PRA] shall, in the absence of any evidence to the contrary, be received in evidence without proof of the signature.
- (1B) In subsections (1) and (1A), “document” means any document issued, received or created by the [<sup>F726</sup>FCA or the PRA] for the purposes of or in connection with this Act.]
- (2) Any printed document purporting to be a copy of the rules or memorandum of a building society, and certified by the secretary or other officer of the society to be a true copy of its rules or memorandum as registered, shall be received in evidence and shall, in the absence of any evidence to the contrary, be deemed to be a true copy of its rules or memorandum.

#### Textual Amendments

**F724** S. 113(1)-(1B) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) for s. 113(1) by [S.I. 2001/2617](#), arts. 2, 8, 13(1), [Sch. 3 Pt. II para. 192](#) (with art. 13(3), [Sch. 5](#)); [S.I. 2001/3538](#), [art. 2](#)

**F725** Word in s. 113(1) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), [Sch. 8 para. 49\(2\)](#) (with [Sch. 12](#))

**F726** Words in s. 113(1A)(1B) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), [Sch. 8 para. 49\(3\)](#) (with [Sch. 12](#))

### 114 Records.

- (1) Subject to any other provision of this Act or regulations under it, any record to be kept by a building society may be kept in any manner.
- (2) Where any such record is not kept by making entries in a bound book, but by some other means, adequate precautions shall be taken for guarding against falsification and facilitating its discovery.

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- (3) The power in subsection (1) above includes power to keep the record by recording matters otherwise than in legible form so long as the recording is capable of being reproduced in a legible form; and any duty imposed by or under this Act to allow inspection of, or to furnish a copy of, the record or any part of it is to be treated as a duty to allow inspection of, or to furnish, a reproduction of the recording or of the relevant part of it in a legible form.
- (4) The [<sup>F727</sup>Treasury may by regulations], make such provision in addition to subsection (3) above as [<sup>F728</sup>they consider] appropriate in connecton with such records as are kept otherwise than in legible form; and the regulations may make modifications of this Act so far as it relates to the records of building societies.
- (5) If default is made in complying with this section the building 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 continues,and so shall any officer who is also guilty of the offence.

#### Textual Amendments

**F727** Words in S. 114(4) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II para. 193(a)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2**

**F728** Words in s. 114(4) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II para. 193(b)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2**

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

**C137** S. 114(4): Functions of Building Societies Commission transferred (1.12.2001) to the Treasury by S.I. 2000/2617 arts. 2(b), 4(1) Sch. 1 Pt. III; S.I. 2001/3538, **art. 2**

## 115 Service of notices.

- (1) This section has effect in relation to any notice, directions or other document required or authorised by or under any provision of this Act or by the rules of a building society to be served on any person other than the [<sup>F729</sup>FCA and the PRA] but subject, in the case of notices or other documents to be given or sent to members of a building society, to any provision of its rules.

<sup>F730</sup>(1A) . . . . .

- (2) Any such document may be served on the person in question—
  - (a) by delivering it to him;
  - (b) by leaving it at his proper address; or
  - (c) by sending it by post to him at that address.

[<sup>F731</sup>(2A) The reference in subsection (2)(a) to delivering a document to a person includes a reference to sending it electronically to an electronic address which that person has notified for the purpose in accordance with express provision made by this Act.]

- (3) Any such document may—
  - (a) in the case of a building society, be served on the secretary of the society;



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- (b) in the case of a body corporate (other than a building society), be served on the secretary or clerk of that body;
  - (c) in the case of a partnership, be served on any partner;
  - (d) in the case of an unincorporated association other than a partnership, be served on any member of its governing body.
- (4) For the purposes of this section and section 7 of the <sup>M20</sup>Interpretation Act 1978 (service of documents) in its application to this section, the proper address of any person is—
- (a) in the case of a building society or its secretary, the address of its principal office;
  - (b) in the case of a member of a building society, his registered address;
  - (c) in the case of a director or the chief executive of a building society, his officially notified address;
  - (d) in the case of a body corporate (other than a building society) its secretary or clerk, the address of its registered or principal office in the United Kingdom;
  - (e) in the case of an unincorporated association (other than a partnership) or a member of its governing body, its principal office in the United Kingdom;

and, in any other case, his last-known address (whether of his residence or of a place where he carries on business or is employed).

#### Textual Amendments

- F729** Words in s. 115(1) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), **Sch. 8 para. 50** (with Sch. 12)
- F730** S. 115(1A) repealed (1.12.2001) by [S.I. 2001/2617](#), arts. 2(b), 13(2), **Sch. 4** (with S. 13(3), Sch. 5); [S.I. 2001/3538](#), art. 2
- F731** S. 115(2A) inserted (20.3.2003) by [The Building Societies Act 1986 \(Electronic Communications\) Order 2003 \(S.I. 2003/404\)](#), arts. 1(1), **8**

#### Marginal Citations

- M20** 1978 c. 30.

### [<sup>F732</sup>115A] Deemed agreement to use of web site

- (1) For the purposes of this Act, a person is to be taken to have agreed with a building society to access a document, information or facility on a web site if—
- (a) the person has been asked individually by the society to agree to access documents, information or facilities generally, or documents, information or facilities of the description in question, on a web site, and
  - (b) the society has not received a response within the period of 28 days beginning with the date on which the society's request was received.

This is subject to subsections (2) to (4).

- (2) A person is not to be taken to have so agreed if the society's request—
- (a) did not state clearly what the effect of a failure to respond would be, or
  - (b) was sent less than 12 months after a previous request made to the person for the purposes of this section in respect of the same or a similar description of document, information or facility.

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- (3) A person who is taken to have made an agreement by virtue of subsection (1) may revoke the agreement.
- (4) Subsection (1) does not apply in relation to the following documents—
  - (a) a statement required to be sent to members by paragraph 1(1) of Schedule 16 (statements in connection with proposed mergers);
  - (b) a merger statement (within the meaning of Part 2 of that Schedule) required to be sent to members by paragraph 3 of that Schedule;
  - (c) a transfer statement or transfer summary (within the meaning of Part 1 of Schedule 17) required to be sent to members by paragraph 4(1) or (2) of that Schedule;
  - (d) a transfer proposal notification (within the meaning of Part 1A of Schedule 17) required to be sent to members by paragraph 5B(1) of that Schedule.

#### Textual Amendments

**F732** Ss. 115A-115C inserted (18.2.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(2), [Sch. 9 para. 9](#)

### 115B Right to hard copy version

- (1) Where a person has received a document or information from a building society otherwise than in hard copy form, the person is entitled to require the society to send the person a version of the document or information in hard copy form.
- (2) The society must send the document or information in hard copy form within 21 days of receipt of the request from the person.
- (3) The society may not make a charge for providing the document or information in that form.
- (4) Subsection (1) does not apply if the recipient of the document or information is the FCA or the PRA.
- (5) A building society that fails to comply with this section is to be treated as having contravened rules made under section 137A of the Financial Services and Markets Act 2000.
- (6) For the purposes of this section a person is treated as receiving a document or information from a building society if—
  - (a) the society is required by this Act to send the document or information to the person, and
  - (b) the requirement to send it is treated as satisfied.
- (7) For the purposes of this section—
  - (a) a document or information is sent or supplied in hard copy form if it is sent or supplied in a paper copy or similar form capable of being read, and
  - (b) a document or information can be read only if it can be read with the naked eye, or (to the extent that it consists of images) it can be seen with the naked eye.

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#### Textual Amendments

**F732** Ss. 115A-115C inserted (18.2.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(2), [Sch. 9 para. 9](#)

### 115C Other agreed forms of communication

- (1) A document or information that is sent or supplied by a building society otherwise than in hard copy form or electronically or by means of a web site is validly sent or supplied if it is sent or supplied in a form or manner that has been agreed by the intended recipient.
- (2) For the purposes of this section “hard copy form” is to be read in accordance with section 115B(7).]

#### Textual Amendments

**F732** Ss. 115A-115C inserted (18.2.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(2), [Sch. 9 para. 9](#)

### [<sup>F733</sup>116 Form of documents.

- (1) The [<sup>F734</sup>FCA and the PRA may each] , by directions under this section, make provision with respect to the form of, and the particulars to be included in, any document to be sent to it under this Act.

[ The PRA and the FCA must each consult the other before issuing a direction under <sup>F735</sup>(1A) this section if the document in question is required to be sent to both of them.]

- (2) The directions have effect subject to any other provision of or made under this Act.]

#### Textual Amendments

**F733** S. 116 substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by [S.I. 2001/2617](#), arts. 2, 8, 13(1), [Sch. 3 Pt. II para. 195](#) (with art. 13(3), Sch. 5); [S.I. 2001/3538](#), [art. 2](#)

**F734** Words in s. 116(1) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), [Sch. 8 para. 51\(2\)](#) (with Sch. 12)

**F735** S. 116(1A) inserted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), [Sch. 8 para. 51\(3\)](#) (with Sch. 12)

### 117 Financial year of building societies.

- [<sup>F736</sup>(1) A building society's financial years (apart from its final financial year) are determined according to its year-end date in each calendar year.

(1A) The year-end date of a building society established before 25th August 1894 is—

- (a) the date up to which, as at 1st January 1987, the accounts of the society were annually made up, or

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- (b) if the society has, at any time before the day on which subsection (1) comes into force (“the relevant day”), altered its financial year in exercise of a power within subsection (1B), 31st December.
- (1B) The powers referred to in subsection (1A)(b) are—
  - (a) the power conferred by section 70(2) of the Building Societies Act 1960,
  - (b) the power conferred by section 128(2) of the Building Societies Act 1962, and
  - (c) the power conferred by subsection (3) of this section (as it had effect immediately before the relevant day).
- (1C) The year-end date of a building society established on or after 25th August 1894 and before the relevant day is 31st December.
- (1D) The year-end date of a building society established on or after the relevant day is the last day of the month in which the anniversary of its establishment falls.
- (1E) The financial year of a building society established before the relevant day is the period of 12 months ending with the year-end date of the society (but see subsection (1G)).
- (1F) In the case of a building society established on or after the relevant day—
  - (a) the initial financial year of the society shall be the period of more than 6 months, but not more than 18 months, beginning with the date of its establishment and ending with its year-end date, and
  - (b) its subsequent financial years are successive periods of 12 months beginning immediately after the end of the previous financial year and ending with its year-end date (but see subsection (1G)).
- (1G) The final financial year of a building society is a period of less than 12 months that begins immediately after the end of the previous financial year and ends with the date as at which the society makes up its final accounts.
- (1H) This section has effect subject to section 117A (alteration of financial year).]

<sup>F737</sup>(2) .....

<sup>F737</sup>(3) .....

**Textual Amendments**

**F736** S. 117(1)-(1H) substituted for s. 117(1) (18.2.2014) by [Financial Services \(Banking Reform\) Act 2013](#) (c. 33), s. 148(2), [Sch. 9 para. 15\(2\)](#) (with [Sch. 9 para. 18](#))

**F737** S. 117(2)(3) omitted (18.2.2014) by virtue of [Financial Services \(Banking Reform\) Act 2013](#) (c. 33), s. 148(2), [Sch. 9 para. 15\(3\)](#) (with [Sch. 9 para. 18](#))

[<sup>F738</sup>**117A Alteration of financial year**

- (1) A building society may by notice given to the FCA specify a new year-end date.
- (2) A notice given under subsection (1) has effect in relation to—
  - (a) the financial year in which the notice is given (“the current financial year”), and
  - (b) subsequent financial years.
- (3) The notice must state whether the current financial year—

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- (a) is to be shortened, so as to come to an end on the first occasion on which the new year-end date falls or fell after the beginning of the current financial year, or
  - (b) is to be extended, so as to come to an end on the second occasion on which that date falls or fell after the beginning of the current financial year.
- (4) A notice extending a building society's financial year is not effective if given less than 5 years after the end of an earlier financial year of the society that was extended under this section.
- (5) A financial year of a building society may not be extended so as to exceed 18 months and a notice under subsection (1) is ineffective if the current financial year as extended in accordance with the notice would exceed that limit.]

#### Textual Amendments

**F738** S. 117A inserted (18.2.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(2), [Sch. 9 para. 16](#) (with [Sch. 9 para. 18](#))

#### [<sup>F739</sup> **118** Qualifying asset holding for certain powers.

- (1) This section has effect for determining for the purposes of this Act whether, in any financial year, a building society has a “qualifying asset holding”.
- (2) A building society has a qualifying asset holding in any financial year, if, and only if, the aggregate value of its total commercial assets, as shown in its annual accounts for the previous year, is not less than £100 million or such other amount as may be substituted for it under subsection (3) below.
- (3) The Commission, with the consent of the Treasury, may by order made by statutory instrument substitute for the amount for the time being specified in subsection (2) above such other amount as the Commission considers appropriate.
- (4) An order under subsection (3) above may contain such transitional provisions as the Commission considers necessary or expedient.
- (5) An instrument containing an order under subsection (3) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

**F739** S. 118 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. 52](#), [Sch. 9](#); [S.I. 1997/2668](#), art. 2, [Sch. Pt. II\(w\)\(y\)\(z\)\(xxx\)\(ce\)\(xv\)](#)

#### <sup>F740</sup> **118A** .....

#### Textual Amendments

**F740** S. 118A repealed (1.12.2001) by [S.I. 2001/2617](#), arts. 2(b), 13(2), [Sch. 4](#) (with [S. 13\(3\)](#), [Sch. 5](#)); [S.I. 2001/3538](#), art. 2

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## 119 Interpretation.

(1) In this Act, except where the context otherwise requires—

[<sup>F741</sup>“adopt” and “adopted”, in relation to powers, and “adoptable powers” have the meaning given by paragraph 1 of Schedule 2 of this Act;]

[<sup>F741</sup>“advance secured on land” and “advance fully secured on land” have the meanings given by section 10(1) and (11) and references to class 1 or class 2 advances are to be construed in accordance with sections 11 and 12;]

<sup>F741</sup>[<sup>F742</sup>“advance secured on third party land” has the meaning given by section 10(4A);]

[<sup>F743</sup>“annual accounts” has the meaning given in section 81B(1)]

“the annual business statement” has the meaning given by section 74(1);

“the applicable winding up legislation” and “the companies winding up legislation” have the meanings given by section 90;

[<sup>F744</sup>“the appropriate authority” means—

(a) in relation to a building society which is a PRA-authorised person, the PRA; and

(b) in relation to a building society which is not a PRA-authorised person, the FCA;]

[<sup>F745</sup>“associated undertaking” has the meaning given by section 119A;]

<sup>F746</sup>.....

<sup>F747</sup>...

[<sup>F748</sup>“ballot” means an electronic ballot or a postal ballot, as the case may be;]

[<sup>F749</sup>“borrowing members’ resolution” has the meaning given by paragraph 29(1) of Schedule 2 to this Act and, subject to paragraph 29(2), “borrowing member” has the meaning given by paragraph 5 of that Schedule;]

“building society” means a building society incorporated (or deemed to be incorporated) under this Act;

[<sup>F750</sup>“building society insolvency”, “building society insolvency order” and “building society liquidator” shall be construed in accordance with Part 2 of the Banking Act 2009 as applied with modifications by section 90C above;

“building society special administration”, “building society special administration order” and “building society special administrator” shall be construed in accordance with Part 3 of the Banking Act 2009 as applied with modifications by section 90C above;]

[<sup>F751</sup>“Building Societies Act accounts” means Building Societies Act individual accounts and, where required, any Building Societies Act group accounts;]

[<sup>F751</sup>“Building Societies Act group accounts” has the meaning given by section 72E(3)(a)]

[<sup>F751</sup>“Building Societies Act individual accounts” has the meaning given by section 72A(2)(a)]

<sup>F752</sup>.....

<sup>F752</sup>.....

<sup>F752</sup>.....

[<sup>F753</sup>“the Companies Acts” has the meaning given by section 2(1) of the Companies Act 2006;]

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[<sup>F754</sup>“connected undertaking” means a subsidiary undertaking or an associated undertaking;]

[<sup>F755</sup>“the court”, in relation to a building society, means the court which has jurisdiction under the applicable winding up legislation to wind up the society;]

<sup>F752</sup>

<sup>F756</sup>

“deferred shares” means shares of a class defined by order of the [<sup>F757</sup>Treasury], in a statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament;

[<sup>F758</sup>“deposit” includes—

- (a) a loan; and
- (b) a subordinated deposit, that is to say, a deposit which, on a winding up, would fall to be repaid only after repayment in full had been made to the holders of shares in the society other than deferred shares,

and cognate expressions shall be construed accordingly;]

“dispose”, in relation to any property, includes the granting of any interest in or right over it;

[<sup>F748</sup>“electronic address” includes any number or address used for the purposes of receiving electronic communications which are sent electronically;]

[<sup>F748</sup>“electronic ballot”, in relation to an election or resolution of a building society, means the electronic ballot taking place, in accordance with paragraph 33A of Schedule 2 to this Act, in the case of the election or resolution;]

[<sup>F748</sup>“electronic communication” means an electronic communication within the meaning of the Electronic Communications Act 2000 the processing of which on receipt is intended to produce writing;]

“executive”, in relation to a director, means a person who holds office as a director and also as chief executive, secretary or manager;

[<sup>F744</sup>“the FCA” means the Financial Conduct Authority;]

“financial year” is to be construed in accordance with section 117;

[<sup>F751</sup>“group accounts” has the meaning given by section 72E(1);]

“heritable security” means a security capable of being constituted over any land by disposition or assignation of that interest in security of any debt and of being recorded in the Register of Sasines or, as the case may be, in the Land Register of Scotland and includes a security constituted by a standard security and any other charge enforceable in the same manner as a standard security;

[<sup>F751</sup>“IAS accounts” means IAS individual accounts or IAS group accounts;]

[<sup>F751</sup>“IAS group accounts” has the meaning given by section 72E(3)(b);]

[<sup>F751</sup>“IAS individual accounts” has the meaning given by section 72A(2)(b);]

[<sup>F751</sup>“individual accounts” has the meaning given by section 72A(1);]

[<sup>F759</sup>“interest”, in relation to shares, includes dividends;]

<sup>F760</sup>

[<sup>F761</sup>“land”, in the expression “loan secured on land”, has the meaning given by section 6A(8);]



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“loan secured on land” and “loan fully secured on land” shall be construed in accordance with sections 6A and 6B respectively;]

“manager”, in relation to a building society, means a person (other than the chief executive) employed by the society who, under the immediate authority of a director or the chief executive of the society exercises managerial functions or is responsible for maintaining accounts or other records of the society;

[<sup>F762</sup>“member” shall be construed in accordance with paragraph 5 of Schedule 2 to this Act;]

“memorandum” has the meaning given by paragraph 1 of Schedule 2 to the Act;

[<sup>F741</sup>“mobile home loan” means a loan under section 15;]

“mortgage” includes charge;

[<sup>F763</sup>“mortgage debt”, in relation to a loan secured on land and any time, means the total amount outstanding at that time in respect of—

- (a) the principal of the loan;
- (b) interest on the loan; and
- (c) any other sum which the borrower is obliged to pay the society under the terms of the loan;]

<sup>F764</sup>

[<sup>F765</sup>“notice” means written notice but includes a notice in an electronic communication to the extent only that this Act provides for the manner in which the notice may be given electronically, and “notice to” and “notify” shall be construed accordingly;]

“officer”, in relation to a building society, means any director, chief executive, secretary or manager of the society; and, in relation to any offence, “officer” also includes any person who purports to act as an officer of the society; and in relation to any other body corporate means the corresponding officers of that body;

“officially notified”, in relation to the appointment or address of a director or the chief executive of a building society, means respectively notified to, and the last address notified to, the [<sup>F766</sup>FCA] under section 61(13) or 59(6), as the case may be;

[<sup>F767</sup>“ordinary resolution” means a resolution which will be effective without being passed as a special resolution, shareholding members’ resolution or borrowing members’ resolution;]

[<sup>F768</sup>“own funds” means own funds as defined in Article 4(1)(118) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council;]

<sup>F769</sup>

[<sup>F748</sup>“postal ballot”, in relation to an election or resolution of a building society, means any postal ballot taking place by virtue of any rules of the society made in accordance with paragraph 33 of Schedule 2 to this Act, in the case of the election or resolution;]

[<sup>F744</sup>“the PRA” means the Prudential Regulation Authority;]

[<sup>F744</sup>“PRA-authorized person” has the meaning in section 2B of the Financial Services and Markets Act 2000;]

“the public file”, in relation to a building society, means the file relating to the society which the [<sup>F770</sup>FCA] is required to maintain under section 106;

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[<sup>F741</sup>“qualifying asset holding”, in relation to a building society, shall be construed in accordance with section 118;]

“registered address”, in relation to a member of a building society, has the meaning given by paragraph 13 of Schedule 2 to this Act;

“the repealed enactments” means the <sup>M21</sup>Building Societies Act 1962 or the <sup>M22</sup>Building Societies Act 1874 or, in relation to Northern Ireland, the <sup>M23</sup>Building Societies Act (Northern Ireland) 1967;

[<sup>F771</sup>“residential property” has the meaning given by section 5(10);]

[<sup>F772</sup>“share”, in relation to a building society, shall be construed in accordance with section 8;]

“shareholder and depositor” includes a potential shareholder or depositor;

[<sup>F773</sup>“shareholding member” has the meaning given by paragraph 5 of Schedule 2 to this Act;

“shareholding members” resolution’ has the meaning given by paragraph 27A of that Schedule;]

“special resolution” has the meaning given by paragraph 27 of Schedule 2 to this Act;

[<sup>F741</sup>“subsidiary” [<sup>F774</sup>has the meaning given by section 736 of] the <sup>M24</sup>Companies Act 1985;]

<sup>F775</sup> .....

“summary financial statement” has the meaning given by section 76(1);

[<sup>F741</sup>“total commercial assets”, in relation to a building society, means the aggregate of its class 1 assets, its class 2 assets and its class 3 assets.]

[<sup>F776</sup>“undertaking” and “subsidiary undertaking” have the same meaning as in the Companies Acts (see sections 1161(1) and 1162 of, and Schedule 7 to, the Companies Act 2006);]

[<sup>F777</sup>(1ZA) In this Act references to the Bank of England do not include the Bank acting in its capacity as the Prudential Regulation Authority.]

[<sup>F778</sup>(1A) Any reference in this Act to the seal of the [<sup>F779</sup>FCA] is a reference to the seal provided for in regulations made under section 109(1)(b) of the Friendly Societies Act 1974 (and not to the [<sup>F780</sup>FCA’s] common seal).]

(2) In relation to [<sup>F781</sup>loans] secured on land in Scotland, “mortgage” means a heritable security, “mortgagor” and “mortgagee” mean respectively the debtor and creditor in a heritable security and connected expressions shall be construed accordingly.

<sup>F782</sup>(2A) .....

<sup>F783</sup>(2B) .....

<sup>F784</sup>(2C) .....

(3) For the purposes of any provision of this Act referring to the value of a person’s shareholding in a building society—

(a) the value of a person’s shares shall be taken as the amount standing to his credit in respect of payments made <sup>F785</sup>... on the shares and interest credited <sup>F785</sup>... by way of capitalisation; and

(b) shares held by a person to whom, as the holder of the share, the society has made [<sup>F786</sup>a loan], shall be disregarded.

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[<sup>F787</sup>(3A) Any reference in this Act (however expressed) to loans being owed to a building society or a subsidiary undertaking of a building society is a reference to their being so owed either at law or in equity.]

[<sup>F788</sup>(4) Subject to [<sup>F789</sup>section 9A(7)], the value in sterling of—  
(a) any transaction effected by or with a building society or connected undertaking in another currency, or  
(b) any assets or liabilities of a building society or connected undertaking denominated in another currency,  
shall be determined for any purpose of this Act in accordance with directions given by the [<sup>F790</sup>appropriate authority] under this subsection.]

<sup>F791</sup>(5) . . . . .

### Textual Amendments

- F741** Definitions in s. 119(1) 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. 53(1)(a), **Sch. 9**; S.I. 1997/2668, art. 2, Sch. Pts. I(j)(k)(l)(xiv), **II(w)(y)(z)(xxxi)(cc)(xvi)**
- F742** Words in s. 119(1) inserted (3.1.1995) by 1994 c. 40, ss. 39, 82(2)(e), **Sch. 11 para. 7(6)**
- F743** Words in s. 119(1) substituted (22.12.2004) (with effect in accordance with art. 1(2) of the amending S.I.) by [The Building Societies Act 1986 \(International Accounting Standards and Other Accounting Amendments\) Order 2004 \(S.I. 2004/3380\)](#), art. 1, **Sch. para. 7**
- F744** Words in s. 119(1) inserted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), **Sch. 8 para. 52(2)(d)** (with Sch. 12)
- F745** Words in s. 119(1) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), **Sch. 1 para. 108(2)** (with arts. 6, 11, 12)
- F746** Definition of “authorisation” in s. 119(1) repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2**
- F747** Words in s. 119(1) omitted (1.4.2013) by virtue of [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), **Sch. 8 para. 52(2)(a)** (with Sch. 12)
- F748** Words in s. 119(1) inserted (20.3.2003) by [The Building Societies Act 1986 \(Electronic Communications\) Order 2003 \(S.I. 2003/404\)](#), arts. 1(1), **9(2)**
- F749** Definition in s. 119(1) 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. 53(1)(c)**; S.I. 1997/2668, art. 2, Sch. Pts. I(j)(l)(xiv), **II(w)(z)(xxxi)**
- F750** Words in s. 119 inserted (29.3.2009) by [The Building Societies \(Insolvency and Special Administration\) Order 2009 \(S.I. 2009/805\)](#), **art. 11**
- F751** Words in s. 119(1) inserted (22.12.2004) (with effect in accordance with art. 1(2) of the amending S.I.) by [The Building Societies Act 1986 \(International Accounting Standards and Other Accounting Amendments\) Order 2004 \(S.I. 2004/3380\)](#), art. 1, **Sch. para. 7**
- F752** Definitions of “the central office”, “the Chief Registrar”, “the Commission” and “the criteria of prudent management” in s. 119(1) repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2**
- F753** Words in s. 119(1) inserted (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(10)** (with art. 10)
- F754** Definition in s. 119(1) inserted (9.6.1997 for certain purposes only, 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. 53(1)(d)**; S.I. 1997/1427, **art. 2(k)(n)(xii)**; S.I. 1997/2668, art. 2, Sch. Pts. I(j)(l)(xiv), **II(w)(z)(xxxi)**

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- F755** Definition in s. 119(1) 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. 53(1)(e)**; S.I. 1997/2668, art. 2, Sch. Pts. I(j)(l)(xiv), **II(w)(z)(xxxi)**
- F756** Words in S. 119(1) repealed (1.12.2001) by S.I. 2001/3649 art. 199(3)
- F757** Words in the definition of “deferred shares” s. 119(1) substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II para. 197(a)(iv)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2**
- F758** Definition in s. 119(1) 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. 53(1)(g)**; S.I. 1997/2668, art. 2, Sch. Pts. I(j)(l)(xiv), **II(w)(z)(xxxi)**
- F759** Definition in s. 119(1) 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. 53(1)(h)**; S.I. 1997/2668, art. 2, Sch. Pts. I(j)(l)(xiv), **II(w)(z)(xxxi)**
- F760** Definition of “Investor Protection Board” in s. 119(1) repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2**
- F761** Definitions in s. 119(1) 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. 53(1)(i)**; S.I. 1997/2668, art. 2, Sch. Pts. I(j)(l)(xiv), **II(w)(z)(xxxi)**
- F762** Definition in s. 119(1) 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. 53(1)(j)**; S.I. 1997/2668, art. 2, Sch. Pts. I(j)(l)(xiv), **II(w)(z)(xxxi)**
- F763** Definition in s. 119(1) 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. 53(1)(k)**; S.I. 1997/2668, art. 2, Sch. Pts. I(j)(l)(xiv), **II(w)(z)(xxxi)**
- F764** Definition of “non-EEA laws” in s. 119(1) repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2**
- F765** Words in s. 119(1) substituted (20.3.2003) by The Building Societies Act 1986 (Electronic Communications) Order 2003 (S.I. 2003/404), arts. 1(1), **9(3)**
- F766** Word in s. 119(1) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 52(2)(b)** (with Sch. 12)
- F767** Definition in s. 119(1) 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. 53(1)(l)**; S.I. 1997/2668, art. 2, Sch. Pts. I(j)(l)(xiv), **II(w)(z)(xxxi)**
- F768** Words in s. 119(1) substituted (1.1.2014) by The Capital Requirements Regulations 2013 (S.I. 2013/3115), reg. 1(2), **Sch. 2 para. 34(a)**
- F769** Definition of “prescribed” in s. 119(1) repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2**
- F770** Word in s. 119(1) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 52(2)(c)** (with Sch. 12)
- F771** Definition in s. 119(1) 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. 53(1)(m)**; S.I. 1997/2668, art. 2, Sch. Pts. I(j)(l)(xiv), **II(w)(z)(xxxi)**
- F772** Definition in s. 119(1) 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. 53(1)(n)**; S.I. 1997/2668, art. 2, Sch. Pts. I(j)(l)(xiv), **II(w)(z)(xxxi)**
- F773** Definitions in s. 119(1) 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. 53(1)(o)**; S.I. 1997/2668, art. 2, Sch. Pts. I(j)(l)(xiv), **II(w)(z)(xxxi)**
- F774** Words substituted by virtue of Companies Act 1989 (c. 40, SIF 27), s. 145(4), **Sch. 18 para. 45**
- F775** Words in s. 119(1) omitted (6.4.2008) by virtue of The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 108(3)** (with arts. 6, 11, 12)
- F776** Words in s. 119(1) inserted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 108(4)** (with arts. 6, 11, 12)

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- F777** S. 119(1ZA) inserted (1.3.2017) by The Bank of England and Financial Services (Consequential Amendments) Regulations 2017 (S.I. 2017/80), reg. 1, **Sch. para. 2**
- F778** S. 119(1A) inserted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II para. 197(b)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2**
- F779** Word in s. 119(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. 52(3)(a)** (with Sch. 12)
- F780** Word in s. 119(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. 52(3)(b)** (with Sch. 12)
- F781** Word in s. 119(2) 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. 53(2)**; S.I. 1997/2668, art. 2, Sch. Pts. I(j)(l)(xiv), **II(w)(z)(xxxi)**
- F782** S. 119(2A)(2C) repealed (1.12.2001) by S.I. 2001/3649 art. 1999(4)
- F783** S. 119(2B) omitted (1.1.2014) by virtue of The Capital Requirements Regulations 2013 (S.I. 2013/3115), reg. 1(2), **Sch. 2 para. 34(b)**
- F784** S. 119(2A)(2C) repealed (1.12.2001) by S.I. 2001/3649 art. 1999(4)
- F785** Words in s. 119(3)(a) ceased to have effect (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 53(3)(a)**; and repealed (1.12.1997) by 1997 c. 32, s. 46(2), **Sch. 9**; S.I. 1997/1427, **art. 2(k)(n)(xiii)**; S.I. 1997/2668, art. 2, **Sch. Pt. I(j)(k)(l)(xiv)(o)(vii)**
- F786** Words in s. 119(3)(b) 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. 53(3)(b)**; S.I. 1997/2668, art. 2, Sch. Pts. I(j)(l)(xiv), **II(w)(z)(xxxi)**
- F787** S. 119(3A) 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. 53(4)**; S.I. 1997/2668, art. 2, Sch. Pts. I(j)(l)(xiv), **II(w)(z)(xxxi)**
- F788** S. 119(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. 53(5)**; S.I. 1997/2668, art. 2, Sch. Pts. I(j)(l)(xiv), **II(w)(z)(xxxi)**
- F789** Words in S. 119(4) substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II para. 197(c)(i)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2**
- F790** Words in s. 119(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. 52(4)** (with Sch. 12)
- F791** S. 119(5) repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), **Sch. 1 Pt. 17** Group 2

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

- C138** S. 119(1): Functions of the Building Societies Commission transferred (1.12.2001) to the Treasury by S.I. 2001/2617, arts. 2(b), 4(1), **Sch. 1 Pt. III**; S.I. 2001/3538, **art. 2**
- C139** Definition of “total commercial assets” modified by S.I. 1986/2168, **art. 4(2)(a)(ii)(3)**

#### Marginal Citations

- M21** 1962 c. 37.  
**M22** 1874 c. 42.  
**M23** 1967 c. 31 (N.I.).  
**M24** 1985 c. 6.

#### [<sup>F792</sup>119A] Meaning of “associated undertaking”

- (1) In this Act “associated undertaking”, in relation to a building society, means an undertaking (other than a subsidiary undertaking of the society)—
- (a) in which the society (or the group of which the society is a member) holds a participating interest, and
  - (b) over whose operating and financial policy the society (or group) exercises a significant influence.

*Status: This version of this Act contains provisions that are prospective.*

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- (2) A “participating interest” means an interest in the shares of the undertaking held on a long term basis for the purpose of securing a contribution to the activities of the society (or group) by the exercise of control or influence arising from or related to that interest.
- (3) For this purpose—
- (a) a holding of 20% or more of the shares of an undertaking is presumed to be a participating interest unless the contrary is shown;
  - (b) an “interest in shares” includes—
    - (i) an interest that is convertible into an interest in shares, and
    - (ii) an option to acquire shares or any such interest,
 and an interest or option falls within sub-paragraph (i) or (ii) notwithstanding that the shares to which it relates are, until the conversion or the exercise of the option, unissued;
  - (c) an interest held on behalf of an undertaking is treated as held by it.
- (4) A holding of 20% or more of the voting rights in an undertaking is presumed to result in the exercise of such influence as is mentioned in subsection (1)(b), unless the contrary is shown.
- (5) For this purpose—
- (a) the voting rights in an undertaking means the rights conferred on shareholders in respect of their shares or, in the case of an undertaking not having a share capital, on members, to vote on all, or substantially all, matters affecting the undertaking; and
  - (b) the provisions of paragraphs 5 to 11 of Schedule 7 to the Companies Act 2006 (rights to be taken into account and attribution of rights) apply in determining whether the society (or the group) holds 20% or more of the voting rights in an undertaking.
- (6) References in this section to the group of which the society is a member at any time are to the undertakings that would fall to be included in the consolidation if consolidated group accounts were to be drawn up by the society at that time.
- (7) An undertaking is not an “associated undertaking” of a building society for the purposes of this Act if, in such accounts, it would fall to be dealt with as a joint venture (that is, an undertaking managed jointly with one or more undertakings not included in the consolidation).]

#### **Textual Amendments**

**F792** S. 119A inserted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), [Sch. 1 para. 109](#) (with arts. 6, 11, 12)

## **120 Amendments, repeals, revocations and transitional and saving provisions.**

- (1) The enactment specified in Schedule 18 to this Act shall have effect with the amendments made by that Schedule.
- (2) Subject to the saving provisions of Schedule 20, and of any order under section 121, the enactments specified in Schedule 19 to this Act are hereby repealed or revoked to the extent specified in the third column of that Schedule.



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- (3) Where any enactment amended or repealed or revoked by subsection (1) or (2) above extends to any part of the United Kingdom, the amendment or repeal or revocation extends to that part.
- (4) The transitional and saving provisions of Schedule 20 to this Act shall have effect.

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

C140 S. 120(2) excluded by S.I. 1986/2168, art. 2(2)

**121 Power to make transitional and saving provisions.**

- (1) The Treasury may, by order made by statutory instrument, make such provision as appears to them to be necessary or expedient for the purposes of the transition to the provisions of this Act from the existing enactments applicable in England and Wales, Scotland or Northern Ireland to building societies.
- (2) An order under this section may—
  - (a) modify any of the existing enactments or provisions of this Act, in particular in their application to proceedings pending before the Chief Registrar or the Commission;
  - (b) create criminal offences or otherwise provide for the enforcement of obligations imposed by or under the order;
  - (c) provide for the charging of fees but not of any charge in the nature of taxation.
- (3) An order under this section which contains any provision authorised by subsection (2) (b) or (c) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) In this section “the existing enactments” means the enactments in force at the passing of this Act, including any enactment amended by Schedule 18 to this Act.

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

C141 S. 121 amended by Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), s. 844, Sch. 30 para. 16

**122 Northern Ireland**

- (1) <sup>F793</sup>... subject to section 120(3), this Act extends to Northern Ireland.
- (2) Subject to any Order made by virtue of subsection (1)(a) of section 3 of the <sup>M25</sup>Northern Ireland Constitution Act 1973 building societies shall not be a transferred matter for the purposes of that Act but shall for the purposes of subsection (2) of that section be treated as specified in Schedule 3 to that Act.

**Textual Amendments**

F793 Words in s. 122(1) repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), Sch. 1 Pt. 17 Group 2



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**Marginal Citations**

M25 1973 c. 36.

<sup>F794</sup>123 .....

**Textual Amendments**

**F794** S. 123 repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2**

*Provision of conveyancing services by recognised institutions and practitioners*

PROSPECTIVE

<sup>F795</sup>**124 Recognition of building societies, other institutions and individuals as suitable to provide conveyancing services.**

.....

**Textual Amendments**

**F795** S. 124 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), **Sch. 1 Pt. 17** Group 2

*General*

**125 Short title.**

This Act may be cited as the Building Societies Act 1986.

**126 Commencement.**

- (1) This Act shall come into operation as follows.
- (2) Part I (and Schedule 1) shall come into operation at the end of the period of two months beginning with the day on which this Act is passed.
- (3) The remaining provisions of this Act, except sections 121, <sup>F796</sup>... 125, this section, in Schedule 20, paragraph 7 (and section 120(4) so far as it relates to that paragraph) <sup>F796</sup>..., shall come into operation on such day as the Treasury may appoint by order made by statutory instrument and different days may be appointed for different provisions or different purposes.

<sup>F797</sup>(4) .....

- (5) Any reference to the commencement of or the commencement date for a provision of this Act is a reference to the date appointed under this section for that provision to come into operation.

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**Textual Amendments**

**F796** Words in s. 126(3) repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\)](#), [Sch. 1 Pt. 17](#)  
Group 2

**F797** S. 126(4) repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\)](#), [Sch. 1 Pt. 17](#) Group 2

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

**C142** Power of appointment conferred by s. 126(3) partly exercised: [S.I. 1986/1560](#), 1989/1083

**C143** Power of appointment conferred by s. 126(4) not yet exercised

**Status:**

This version of this Act contains provisions that are prospective.

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- s. 7(8) words inserted by [2007 c. 26 s. 1\(1\)\(b\)](#)
- s. 35 repealed by [1990 c. 41 Sch. 20](#)
- s. 122(2) repealed (prosp.) by [1998 c. 47 s. 100\(2\)Sch. 15](#)
- s. 124 repealed by [1990 c. 41 Sch. 20](#)
- Sch. 11 para. 5 omitted by [S.I. 2008/948 Sch. 1 para. 14\(b\)](#)
- Sch. 18 para. 18(2) repealed (prosp.) by [1996 c. 52 s. 227Sch. 19 Pt. 14](#)
- Sch. 21 para. 9(f) repealed (EW) (prosp.) by [1996 c. 27 s. 66\(3\)Sch. 10](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 5(11)-(14) inserted by [2007 c. 26 s. 1\(2\)](#)
- s. 5(13)(a) substituted by [S.I. 2013/496 Sch. 8 para. 4\(4\)](#)
- s. 7(6A)-(6C) inserted by [2007 c. 26 s. 1\(1\)\(a\)](#)
- s. 7(8A) inserted by [2007 c. 26 s. 1\(1\)\(c\)](#)
- s. 176ZB excluded by [S.I. 2017/400 reg. 14](#)
- s. 246ZA-246ZC excluded by [S.I. 2017/400 reg. 15](#)
- s. 246ZD excluded by [S.I. 2017/400 reg. 16](#)