



# Building Societies Act 1986

## 1986 CHAPTER 53

### PART X

#### DISSOLUTION, WINDING UP, MERGERS AND TRANSFER OF BUSINESS

##### *Transfer of business to commercial company*

#### **97 Transfer of business to commercial company**

- (1) A building society may, in accordance with this section and the other applicable provisions of this Act, transfer the whole of its business to a company (its "successor").
- (2) The applicable provisions of this Act other than this section are section 98, section 99, section 100, section 101, section 102, 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; 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 Commission of the transfer and its terms.

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- (5) In so far as the transfer agreement made between the society and its successor provides for rights to be conferred on members or officers of the society, whether or not in pursuance of regulated terms, the members or officers shall, in relation to those provisions, be treated as if they had been parties to the agreement and the rights shall be enforceable accordingly.
- (6) If the Commission 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 send to the central office 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 central office shall record the date and, if a later date is notified under subsection (10) below, that date, in the public file of the society.
- (9) Except where notice is given under subsection (10) below, a building society which, under this section, transfers its business to its successor shall, by virtue of this subsection, be dissolved on the vesting date ; but the transfer effected by subsection (6) above shall be deemed to have been effected immediately before the dissolution.
- (10) A building society may, for the purpose of facilitating the disposal of shares in its successor, include in the notice of the vesting date under subsection (8) above notice of a later date for the dissolution of the society; and if it does so, the society shall by virtue of this subsection be dissolved on that date instead of the vesting date, but the transfer effected by subsection (7) above shall be deemed to have been effected immediately before the dissolution.
- (11) As from the vesting date, a society which has given notice under subsection (10) above shall cease to transact any business except such as is necessary for the purpose of securing the disposal of the society's holding of shares in its successor.

- (12) In this section, and the other applicable provisions of this Act—

" company " means a company within the meaning of the Companies Act 1985 or the Companies (Northern Ireland) Order 1986 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 Commission required by subsection (4)(d) above;

" regulated terms " means any terms of a transfer agreement which are regulated terms under section 99, section 100 or section 102;

" the requisite protective provisions " means the provisions required to be made by section 101(2);

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" 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.

## **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 to its members relating to the proposed transfer.
- (2) Where application is made to the Commission for confirmation of a transfer of business to a company it shall, except as provided in subsections (3) to (5) below, confirm the transfer ; and Part II of that Schedule shall have effect with respect to the procedure on an application for such confirmation.
- (3) Subject to subsection (4) below, the Commission 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 be come or, as the case may be, remain a recognised bank or licensed institution for the purposes of the Banking Act 1979: or
  - (d) some relevant requirement of this Act or the rules of the society was not fulfilled.
- (4) The Commission 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 Commission that it could not have been material to the members' decision about the transfer and the Commission gives a direction that the failure is to be disregarded for the purposes of this section.
- (5) Where the Commission 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 Commission with evidence satisfying it that it has done so ;

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and, if the Commission is satisfied that the steps have been taken and the defect or defects has or have been substantially remedied, the Commission 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 take 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.

## **99 Regulated terms: compensation for loss of office, etc.**

- (1) Subject to subsections (2) and (3) below, the terms of a transfer of business by a building society to the company which is to be its successor may include provision for compensation to be paid by the society or the company to or in respect of any director or other officer of the society for loss of office or diminution of emoluments attributable to the transfer.
- (2) Any such provision must be authorised so far as the society is concerned as follows, that is to say—
  - (a) except in so far as paragraph (b) below applies, the provision must be approved by a resolution passed as a special resolution, not being one of the requisite transfer resolutions;
  - (b) if regulations are made under subsection (3) below authorising payments of such compensation within prescribed limits and the provision for such compensation includes only payments of amounts not exceeding the prescribed limits, the passing of the requisite transfer resolutions is sufficient authority for their payment.
- (3) The Commission, with the consent of the 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 a subsidiary of that society or in an associated 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.

## **100 Regulated terms: 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; and

(c) in a case where the successor is a specially formed company, confer a right on every qualifying member of the society to a priority liquidation distribution by its successor calculated in the prescribed manner so as to represent the extent of his deposit under paragraph (a) above and secured on the property or undertaking of the successor.

(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 requisite transfer resolution, his qualifying shares are those held by him on that day and the relevant proportion is the proportion 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.

(5) For the purposes of the rights conferred under subsection (2)(c) above on former members of the society, a member is a qualifying member if he held shares in the society on the qualifying day, was eligible to vote on the requisite resolution and is a depositor with its successor.

(6) For the purposes of subsection (2)(c) above.—

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- (a) a right to a liquidation distribution by a society's successor is a right to a distribution of its assets in the event of its being wound up;
  - (b) the right shall confer priority in the distribution of the assets over all other creditors and members of the company other than those creditors the debts to whom are preferential debts for the purposes of the Insolvency Act 1986 or Article 570 of the Companies (Northern Ireland) Order 1986 ; and
  - (c) " prescribed " means prescribed by transfer regulations.
- (7) The Commission 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 Commission 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.
- (8) Where, in connection with any transfer, rights are to be conferred on members of the society to acquire shares in priority to other subscribers, the right shall be restricted to those of its 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 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.

## **101 Protective provisions for specially formed successors**

- (1) No company specially formed by a building society to be its successor shall, at any time during the protective period—
  - (a) offer to the public, or allot or agree to allot with a view to their being offered for sale to the public, any shares in or debentures of the company, or
  - (b) allot or agree to allot any share in or debenture of the company, or
  - (c) register a transfer of shares in or debentures of the company,if the effect of the offer, the allotment or the registration of the transfer would be that more shares or debentures than the permitted proportion would be held by, or by nominees for, any one person (other than the society).
- (2) The articles of association of the company shall include provision such as will secure that the company does not offer the public, allot or register transfers of, shares or debentures 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 or debentures in contravention of that subsection shall be void.
- (4) The Bank of England, if it considers it desirable in the interests of the depositors and potential depositors of a successor to do so, may direct by notice to the successor that this section shall cease to apply to the successor.
- (5) In subsections (1) to (3) above—

"the permitted proportion", in relation to shares in or debentures of the company, is 15 per cent, of, in the case of shares, the company's issued share capital and, in the case of debentures, the total indebtedness of the company on its debentures, as the case may be;

" the protective period " is the period beginning with the date of the company's incorporation and ending five years after the vesting date ; and

"transfer", in relation to shares or debentures, does not include a transfer to a person to whom the right to any shares or debentures has been transmitted by operation of law; and any expression used in those subsections and in the Companies Act 1985 or, as regards Northern Ireland, the Companies (Northern Ireland) Order 1986 has the same meaning in those subsections as in that Act or that Order.

## **102 Transfer regulations**

- (1) The Commission, with the consent of the 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 the Companies Act 1985 or, as regards Northern Ireland, the Companies (Northern Ireland) Order 1986 and the Banking Act 1979;
  - (b) make provision for the treatment, in the hands of companies taking such transfers, of the property, rights and liabilities transferred and for the

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- 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 and section 101.
- (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.