

SCHEDULES

SCHEDULE 2

ESTABLISHMENT, INCORPORATION AND CONSTITUTION OF BUILDING SOCIETIES

PART II

UNLAWFUL ANTICIPATION OF POWERS

Undertaking against and declaration of non-anticipation of powers

- 16 (1) Where a building society adopts any adoptable power under paragraph 4 above then—
- (a) it shall, by virtue of this paragraph, assume an obligation, enforceable as provided in paragraph 17 below, not to exercise that power until the date on which the alteration of its powers takes effect, and
 - (b) it shall send to the central office, with the documents required by paragraph 4(2) above, a declaration as respects that power made on behalf of the society which satisfies the requirements of this paragraph.
- (2) The obligation assumed by virtue of this paragraph on the adoption of a power does not extend to the exercise of any power included in the adoptable power which the society has under the law in force at any time before the registration takes effect.
- (3) A declaration, to satisfy the requirements of this paragraph, must be made by the chairman of the board of directors of the society, by one other director and by the chief executive of the society and it must either—
- (a) state that, to the best of the knowledge and belief of the declarants, after due enquiry, the society has not, or has not with the permitted qualification, carried on any activity comprised in the power during the period which began one year before the specified date and expired with the date of the meeting at which the power was adopted, or
 - (b) state that, to the best of the knowledge and belief of the declarants, after due enquiry, the society, with specified exceptions, has not, or has not with the permitted qualification, carried on any activity comprised in the power during the period which began one year before the specified date and expired with the date of the meeting at which the power was adopted.
- (4) The qualification of the statement so required which is permitted is that in so far as the society has, at any time during the said period, carried on any activity comprised in the power to which the statement relates, the society had the power to carry on that activity at that time under the law in force at that time.
- (5) The exceptions to the statement so required must not include activities of the society which constitute significant excesses of its powers during the said period; and a declaration specifying activities as exceptions to the statement so required must also

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state the opinion of the declarants that the activities are believed not to constitute significant excesses of the society's powers during the period to which the declaration relates.

Penalty for breach of undertaking

- 17 If, in breach of the obligation assumed by virtue of paragraph 16 above, a building society exercises any power to which the obligation extends, then—
- (a) 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
 - (b) any officer of the society who is also guilty of the offence shall be liable on summary conviction to a fine not exceeding the statutory maximum.

Penalty for false declaration

- 18 If the statement in a declaration made for the purposes of paragraph 16 above is false, then, any person who made the statement knowing it to be false or reckless as to whether it was true or false 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 imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or both.

Powers of central office

- 19 (1) The central office, on receiving from a building society the declaration required by and the other documents referred to in paragraph 16 above, shall refer to the Commission for its determination the question whether or not the alteration of the society's powers is to be registered.
- (2) On a reference to the Commission of the question whether or not the alteration of a society's powers is to be registered—
- (a) if the declaration contains the statement specified in paragraph 16(3)(a) above and the Commission has no reasonable cause to believe that the society in question has carried on any activity comprised in the power to which the obligation imposed by paragraph 16 above extends at any time during the period which began one year before the specified date and expired on the date on which it considers the reference, the Commission shall direct the central office to register the alteration, and
 - (b) in any other case, the Commission may, as it thinks fit, direct the central office to register, or not to register, the alteration.
- (3) The Commission, in deciding, in a case falling within sub-paragraph (2)(b) above, whether or not to direct the registration of the alteration of a society's powers may have regard to all the circumstances of the case.
- (4) No registration of an alteration shall be effected by the central office under paragraph 4(4) above before the expiry of the period of 21 days beginning with the date on which it receives the declaration required by and the other documents referred to in paragraph 16 above.

- (5) If the central office, in pursuance of a direction of the Commission under sub-paragraph (2) above, refuses registration of the alteration of a society's powers under sub-paragraph (1) above it shall serve on the society a notice—
- (a) recording its refusal,
 - (b) specifying the activity which is believed to constitute a breach of the society's obligation, and
 - (c) directing the society to make an application to the Commission under section 38 for a determination under that section whether the activity was or was not within the powers of the society at the time specified under sub-paragraph (b) above,
- and shall send a copy of the notice to the Commission.
- (6) The central office shall comply with any direction as regards the registration of the alteration of the society's powers given to it by the Commission consequent on the Commission's determination of the society's powers under section 38.
- (7) In this paragraph " the specified date " has the same meaning as in paragraph 4 above.