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STATUTORY INSTRUMENTS

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**1992 No. 3218**

**The Banking Coordination (Second  
Council Directive) Regulations 1992**

**PART VIII**

**AMENDMENTS OF BUILDING SOCIETIES ACT**

*Constitution*

**Establishment of building societies**

**67.** At the end of subsection (1) of section 5 of the Building Societies Act<sup>(1)</sup> (establishment, constitution and powers) there shall be inserted the words “and its principal office is in the United Kingdom”.

**Initial authorisation to raise funds and borrow money**

**68.**—(1) In subsection (4) of section 9 of the Building Societies Act (initial authorisation to raise funds and borrow money), the word “and” immediately following paragraph (c) shall be omitted and after that paragraph there shall be inserted the following paragraph—

“(cc) each of the persons who, either alone or with any associate or associates, has a qualifying holding in the society is a fit and proper person to have such a holding; and”.

(2) In subsection (13) of that section—

- (a) in the definition of “the prescribed minimum”, for the words “£100,000” there shall be substituted the words “ecu 1 million (or an amount of equal value denominated wholly or partly in another unit of account)”; and
- (b) the word “and” immediately preceding the definition of “qualifying deferred shares” shall be omitted and after that definition there shall be inserted the following definition—

“‘qualifying holding’, in relation to a building society, means a holding of deferred shares in the society which—

- (a) represents 10 per cent. or more of the qualifying deferred shares in the society;
- (b) entitles the holder to exercise or control the exercise of 10 per cent. or more of the voting power at any general meeting of the society; or
- (c) enables the holder to exercise a significant influence over the management of the society.”

### *Powers of control of Commission*

#### **Power to direct application to renew authorisation**

**69.** In subsection (6) of section 41 of the Building Societies Act(2) (power to direct application to renew authorisation), the word “and” immediately following paragraph (d) shall be omitted and after that paragraph there shall be inserted the following paragraph—

“(dd) each of the persons who, either alone or with any associate or associates, has a qualifying holding in the society is a fit and proper person to have such a holding; and”.

#### **Imposition of conditions on current authorisation**

**70.** In subsection (5) of section 42 of the Building Societies Act (imposition of conditions on current authorisation), the word “and” immediately before paragraph (c) shall be omitted and after that paragraph there shall be inserted the words “and

(d) require any person who, either alone or with any associate or associates, has a qualifying holding in the society so to reduce that holding that it ceases to be such a holding.”

#### **Revocation of authorisation**

**71.—(1)** After subsection (1) of section 43 of the Building Societies Act (revocation of authorisation) there shall be inserted the following subsection—

“(1A) The Commission may, subject to subsection (4) below, revoke a building society’s authorisation if—

- (a) it appears to the Commission that the society’s principal place of business is or may be outside the United Kingdom;
- (b) it appears to the Commission that the society has carried on in the United Kingdom or elsewhere a listed activity (other than the acceptance of deposits or other repayable funds from the public) without having given prior notice to the Commission of its intention to do so;
- (c) the Commission is informed by The Securities and Investments Board, or a connected UK authority having regulatory functions in relation to the provision of financial services, that the society—
  - (i) has contravened any provision of the Financial Services Act 1986 or any rules or regulations made under it;
  - (ii) in purported compliance with any such provision, has furnished that Board or authority with false, misleading or inaccurate information;
  - (iii) has contravened any prohibition or requirement imposed under that Act; or
  - (iv) has failed to comply with any statement of principle issued under that Act;
- (d) the Commission is informed by the Director General of Fair Trading that the society, or any of the society’s employees, agents or associates (whether past or present), has done any of the things specified in paragraphs (a) to (d) of section 25(2) of the Consumer Credit Act 1974;

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(2) 1986 c. 53; section 41 was continued in force by S.I.1991/1518.

- (e) it appears to the Commission that the society has failed to comply with any obligation imposed on it by the Banking Coordination (Second Council Directive) Regulations 1992; or
- (f) the Commission is informed by a supervisory authority in another member State that the society has failed to comply with any obligation imposed on it by or under any rule of law in force in that State for purposes connected with the implementation of the Second Council Directive.”

(2) In subsection (4) of that section, for the words “subsection (1)” there shall be substituted the words “subsection (1) or (1A)”.

(3) In subsection (5) of that section, for the words “subsection (1) or (3)” there shall be substituted the words “subsection (1), (1A) or (3)”.

(4) After subsection (9) of that section there shall be inserted the following subsection—

“(9A) The rules and prohibitions referred to in subsection (1A)(c) above include the rules of any recognised self-regulating organisation of which the society is a member and any prohibition imposed by virtue of those rules; and in subsection (1A)(d) above ‘associate’ has the same meaning as in section 25(2) of the Consumer Credit Act 1974.”

### **Reauthorisation**

**72.**—(1) In subsection (4) of section 44 of the Building Societies Act (reauthorisation), the word “and” immediately following paragraph (d) shall be omitted and after that paragraph there shall be inserted the following paragraph—

“(dd) each of the persons who, either alone or with any associate or associates, has a qualifying holding in the society is a fit and proper person to have such a holding; and”.

(2) After subsection (9) of that section there shall be inserted the following subsection—

“(9A) Any expression used in this section to which a meaning is given by section 9(13) has that meaning in this section.”

### **Criteria for prudent management**

**73.** In subsection (3) of section 45 of the Building Societies Act (criteria for prudent management), for the first criterion there shall be substituted the following criterion—

“1. Maintenance of—

- (a) adequate reserves and other designated capital resources; and
- (b) own funds which amount to not less than the sum which, for the purposes of section 9, is the prescribed minimum in relation to qualifying capital.”

### **Exercise of powers on information from supervisory authority**

**74.** After section 45 of the Building Societies Act there shall be inserted the following section—

“**Exercise of powers on information from supervisory authority.**

**45A.**—(1) This section applies where, in the case of a building society for which an authorisation is in force, the Commission is informed by a supervisory authority in another member State that the society is failing to comply with an obligation imposed by or under any rule of law in force in that State for purposes connected with the implementation of the Second Council Directive.

- (2) The Commission shall as soon as practicable send a copy of the information received by it to every other authority which it knows is a connected UK authority.
- (3) The Commission shall also—
- (a) consider whether to exercise its powers—
    - (i) under section 42, to impose conditions on the society’s authorisation, or
    - (ii) under section 43, to revoke the society’s authorisation; and
  - (b) notify its decision, and any action which it has taken or intends to take, to the supervisory authority and to every other authority which it knows is a connected UK authority.”

### *Information*

#### **Power of Commission to obtain information and documents etc.**

**75.** In subsection (1) of section 52 of the Building Societies Act (powers to obtain information and documents etc.), for the words from “any of its functions” to the end there shall be substituted the following paragraphs—

- “(a) any of its functions under Part I, section 9, the foregoing sections of this Part, Part X and sections 107 and 108; and
- (b) any of its functions under the Banking Coordination (Second Council Directive) Regulations 1992.”

#### **Confidentiality of certain information obtained by Commission**

**76.—**(1) In subsection (2) of section 53 of the Building Societies Act (confidentiality of certain information obtained by Commission), paragraph (g) shall be omitted.

(2) After that subsection there shall be inserted the following subsection—

“(2A) As regards the disclosure of information with a view to the institution of, or otherwise for the purposes of, any proceedings in respect of the society under the Bankruptcy (Scotland) Act 1985<sup>(3)</sup> or the Insolvency Act 1986<sup>(4)</sup>, the disclosures permitted by subsection (2)(b) above do not include the disclosure of information relating to a person who (not being a director or other officer of the society) is or has been, to the knowledge of the Commission, involved in an attempt to secure the survival of the society as a going concern.”

(3) In subsection (4)(a) of that section, after sub-paragraph (ii) there shall be inserted the words “and (in either case) the disclosure would, in its opinion, be in accordance with article 12(7) of the First Council Directive”.

(4) In subsection (5) of that section<sup>(5)</sup>, for paragraph (b) there shall be substituted the following paragraph—

“(b) by the Bank, of any of its functions under the Banking Act 1987 or as a monetary authority or supervisor of money market and gilt market institutions;”.

(5) In subsection (6) of that section, for the words from “it is desirable” to the end there shall be substituted the following paragraphs—

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(3) 1985 c. 66.

(4) 1986 c. 45.

(5) 1986 c. 53; section 53(5) has been amended by paragraph 26(4) of Schedule 6 to the Banking Act 1987 (c. 22).

- “(a) it is desirable or expedient that the information should be disclosed in the interests of shareholders or depositors or, in the case of information for the Secretary of State, in the public interest; and
- (b) disclosure is in accordance with article 12(7) of the First Council Directive.”
- (6) At the end of subsection (7) of that section there shall be inserted the words “if the disclosure is made with a view to facilitating the discharge of any of the functions mentioned in paragraph (b) or, as the case may be, paragraph (c) above”.
- (7) At the end of subsection (8) of that section there shall be inserted the words “if the disclosure is made with a view to facilitating the discharge of any prescribed functions of the authority”.
- (8) In subsection (9)(a) of that section, for the words “the functions” there shall be substituted the words “the supervisory functions”.
- (9) After subsection (11) of that section there shall be inserted the following subsection—
- “(11A) Subsection (11) above does not apply in relation to disclosures to an overseas regulatory authority which is not a supervisory authority in another member State unless the Commission is satisfied that the authority is subject to restrictions on further disclosures at least equivalent to those imposed by this section and section 54.”
- (10) After subsection (13) of that section there shall be inserted the following subsections—
- “(13A) Information which is disclosed to a person with a view to facilitating or assisting the discharge of any functions shall not be used otherwise than with a view to facilitating or assisting the discharge of those functions.
- (13B) Any person who uses information in contravention of subsection (13A) above shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both.”
- (11) After subsection (14) of that section there shall be inserted the following subsections—
- “(15) Any reference in this section to facilitating or assisting the discharge of any functions is a reference to facilitating or assisting the discharge of those functions in relation to—
- (a) a financial market; or
- (b) persons carrying on the business of banking or insurance, Consumer Credit Act businesses or the business of providing other financial services;
- and in this subsection ‘Consumer Credit Act business’ has the same meaning as in the Banking Coordination (Second Council Directive) Regulations 1992.
- (16) Any reference in this section or section 54 to the Commission’s functions under this Act includes a reference to its functions under those Regulations.”

### **Information disclosed to Commission from other sources**

- 77.—(1) After subsection (3) section 54 of the Building Societies Act(6) (information disclosed to Commission from other sources) there shall be inserted the following subsections—
- “(3A) If information is disclosed by the Bank of England to the Commission for the purpose of enabling it better to discharge its functions under this Act—
- (a) subsection (1) of section 53 applies to that information as it applies to information obtained or furnished under or for the purposes of this Act; but

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(6) 1986 c. 53; subsections (4) and (5) of section 54 were omitted by paragraph 26(5) of Schedule 6 to the Banking Act 1987 (c. 22).

- (b) the references in subsections (2) to (11) of that section to the disclosure of information do not extend to the disclosure of that information unless—
- (i) the Bank of England consents to the disclosure; and
  - (ii) the disclosure is for the purpose of enabling the Commission better to discharge its functions under this Act.

(3B) If information is disclosed to the Commission by the relevant supervisory authority in another member State, or is obtained by the Commission, or by a person acting on its behalf, in another member State—

- (a) subsection (1) of section 53 applies to that information as it applies to information obtained or furnished under or for the purposes of this Act; but
- (b) the references in subsections (2) to (11) of that section to the disclosure of information do not extend to the disclosure of that information unless—
  - (i) in the case of information disclosed to the Commission by the relevant supervisory authority in another member State, that authority consents to its disclosure; or
  - (ii) in the case of information obtained by the Commission, or by a person acting on its behalf, in another member State, the relevant supervisory authority in that State consents to its disclosure.”

(2) In subsection (6) of that section, after the words “overseas regulatory authority” there shall be inserted the words “which is not the relevant supervisory authority in another member State”.

#### *Accounts and audit*

#### **Accounting records and systems of business control etc.**

**78.** After subsection (10) of section 71 of the Building Societies Act<sup>(7)</sup> (accounting records and systems of business control etc.) there shall be inserted the following subsection—

“(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)<sup>(8)</sup>, 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.”

#### *Miscellaneous and supplemental*

#### **Service of notices**

**79.** After subsection (1) of section 115 of the Building Societies Act (service of notices) there shall be inserted the following subsection—

“**1A)** This section also has effect in relation to any notice or other document required or authorised by or under any provision of the Banking Coordination (Second Council Directive) Regulations 1992 to be served on any person by the Commission.”

#### **Meaning of “associate”**

**80.** After section 118 of the Building Societies Act there shall be inserted the following section—

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<sup>(7)</sup> 1986 c. 53; section 71 was amended by S.I. 1991/1729.

<sup>(8)</sup> OJ No. L110, 28.4.92, p.52.

**“Associates.**

**118A.**—(1) In this Act 'associate', in relation to a person holding deferred shares in, or entitled to exercise or control the exercise of voting power in relation to, a building society, means—

- (a) the wife or husband or son or daughter of that person;
- (b) the trustees of any settlement under which that person has a life interest in possession or, in Scotland, a life interest;
- (c) any company of which that person is a director;
- (d) any person who is an employee or partner of that person;
- (e) if that person is a company—
  - (i) any director of that company;
  - (ii) any subsidiary undertaking of that company; and
  - (iii) any director or employee of any such subsidiary undertaking; and
- (f) if that person has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of deferred shares in that society or under which they undertake to act together in exercising their voting power in relation to it, that other person.

(2) For the purposes of this section—

'son' includes stepson and "daughter' includes stepdaughter;

'settlement' includes any disposition or arrangement under which property is held in trust.”

**Other interpretation of Building Societies Act**

**81.** After subsection (2) of section 119 of the Building Societies Act (interpretation) there shall be inserted the following subsection—

“(2A) In this Act the following expressions, namely—

- another member State;
- connected UK authority;
- ecu;
- the First Council Directive;
- listed activity;
- own funds;
- recognised self-regulating organisation;
- relevant supervisory authority;
- the Second Council Directive;
- supervisory authority,

have the same meanings as in the Banking Coordination (Second Council Directive) Regulations 1992.”