



Building Societies Act 1986

1986 CHAPTER 53

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), 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.

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 ;

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- (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.
 - (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 central office 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 central office 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 Commission, 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 or 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 central office 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.

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.

- (2) A copy of any special resolution passed for the voluntary winding up of a building society shall be sent by the society to the central office within 15 days after it is passed; and the central office shall keep the 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.

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;
 - (d) being a society registered as a building society under this Act or the repealed enactments, the society has not been granted authorisation under section 9 or been authorised under any corresponding enactment and more than three years has expired since it was so registered;
 - (e) the society has had its authorisation revoked under section 43 and has not been reauthorised thereafter;
 - (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—
 - (a) the Commission,
 - (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,—
 - (a) the reference to authorisation under an enactment corresponding to section 9 is a reference to authorisation granted or deemed to have been granted under—

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- (i) in Great Britain, regulation 5 of the Building Societies (Authorisation) Regulations 1981, and
 - (ii) in Northern Ireland, regulation 5 of the Building Societies (Authorisation) Regulations (Northern Ireland) 1982, and
 - (b) the reference to its existing for an illegal purpose includes a reference to its existing after its purpose or principal purpose has ceased to be that required by section 5(1) for the establishment of a building society under this Act.
- (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.

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.

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, 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, 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 had 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, furnish the central office with a copy of the order; and the central office shall keep the 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.

92 Supplementary

Where a building society is being wound up or dissolved by consent, a member to whom an advance has been made under a mortgage or other security, or under the rules of the society, shall not be liable to pay any amount except at the time or times and subject to the conditions set out in the mortgage or other security, or in the rules, as the case may be.

Mergers

93 Amalgamations

- (1) Any two or more building 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—
 - (a) agree upon the purpose or principal purpose of their successor and 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;
 - (c) each approve the terms of the amalgamation by two resolutions, of which—
 - (i) one is passed as a special resolution which also approves the memorandum and the rules of their successor, 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 Commission for confirmation of the amalgamation and send to the central office four copies of the rules and of the memorandum, each copy signed by the secretary of each of the societies.
- (3) If the Commission confirms the amalgamation under section 95, the central office, if it 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, shall—
 - (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 Commission (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.

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- (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.
- (6) If, on the specified date, the societies whose amalgamation was confirmed by the Commission are all authorised, their successor shall be treated as authorised for the purposes of this Act, whether or not the requirements of section 9(4) would be fulfilled in its case, as from that date.
- (7) The central office shall record in the public file of the successor the fact that, by virtue of subsection (6) above, the society is to be treated as authorised for the purposes of this Act.

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 special 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 special 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 special 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 Commission 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 Commission under section 95; and
 - (b) a registration certificate is issued in respect of the transfer under subsection (8) below.
- (8) Where the Commission confirms a transfer of engagements between building societies, the central office shall—
 - (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 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 central office 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.

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 central office, of the receipt by the society of proposals for a transfer of engagements or an amalgamation.
- (3) Where application is made to the Commission for confirmation of an amalgamation or transfer of engagements it shall, except as provided in subsections (4) to (9) 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 Commission 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
 - (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 Commission 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 Commission that it could not have been material to the members' decision about the amalgamation or transfer and the Commission gives a direction that the failure is to be disregarded for the purposes of this section.
- (6) Where the Commission 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 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 amalgamation or transfer; but, if it is not so satisfied, it shall refuse its confirmation.

- (7) The Commission shall not confirm an amalgamation of or transfer of engagements between any two building societies one of which does not have a qualifying asset holding and is, for the purposes of this subsection, of disproportionate size in relation to the other unless the Commission is satisfied that, as regards the smaller society, the amalgamation or transfer—
- (a) has the requisite support of its members, or
 - (b) is desirable in order to protect the investments of share holders and depositors.
- (8) For the purposes of subsection (7) above—
- (a) one society is of " disproportionate size " in relation to another if its total assets amount to less than one-eighth of the total assets of the other;
 - (b) " the requisite support", in relation to the members of a society, is constituted by the votes of not less than 20 per cent, of the members qualified to vote on a special resolution of the society cast in favour of the special resolution approving the terms of the amalgamation or transfer of engagements; and
 - (c) " total assets ", in relation to a building society, means its total assets as shown in the latest balance sheet.
- (9) Where more than two building societies propose an amalgamation or transfer of engagements and, by virtue of subsection (7)(a) above the Commission refuses to confirm the amalgamation or transfer because of the failure of the smaller of any two of the societies that are of disproportionate size to secure the requisite support, the Commission shall refuse to confirm the amalgamation or transfer in relation to the other societies participating in the amalgamation or transfer.
- (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.

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 the resolution required by section 93(2)(c) or 94(2) for the approval of the other terms of the amalgamation or transfer;

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- (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 the special resolution approving the terms of the amalgamation or transfer is sufficient authority for their payment.
- (2) The Commission, with the consent of the 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 the special resolution 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 the special resolution of that society 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 Commission, with the consent of the 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 Commission for its consent to the society's approving the transfer by a resolution of the board of directors instead of a special resolution of the society, the Commission 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;

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" 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 a subsidiary of that society or in an associated 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.

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.
- (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

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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);
 - " 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

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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 ;
 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.—
 - (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

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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.

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- (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 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.

Cancellation of registration

103 Cancellation of registration

- (1) Where the central office is satisfied, with respect to a building society—

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- (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,the central office shall cancel the registration of the society.
- (2) Where the central office 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 is not an authorised society, or
 - (b) that the society has ceased to exist,the central office may cancel the registration of the society.
- (3) Without prejudice to subsection (2) above, the central office may, if it thinks fit, cancel the registration of a building society at the request of the society, evidenced in such manner as the central office may direct.
- (4) Before cancelling the registration of a building society under subsection (2) above, the central office shall give to the society not less than two months' previous notice, specifying briefly the grounds of the proposed cancellation.
- (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 central office.
- (9) As soon as practicable after the cancellation of the registration of a society under this section the central office 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.