

SCHEDULES

SCHEDULE 2

ESTABLISHMENT, INCORPORATION AND CONSTITUTION OF BUILDING SOCIETIES

PART I

GENERAL

Requirements for establishment

- 1 (1) Any ten or more persons may establish a society under this Act by taking the following steps—
- (a) agreeing upon the purpose or principal purpose of the society and upon the extent of its powers in a memorandum the provisions of which comply with the requirements of this Part of this Schedule;
 - (b) agreeing upon rules for the regulation of the society which comply with the requirements of this Part of this Schedule ;
 - (c) sending to the central office four copies of the memorandum and the rules, each copy signed by at least ten of those persons (or, if there are only ten, by all of them) and by the intended secretary.
- (2) Where copies of the memorandum and rules are sent to the central office in accordance with sub-paragraph (1)(c) above, the central office, if satisfied that—
- (a) the provisions of the memorandum are in conformity with this Act and any instruments under it,
 - (b) the rules are in conformity with this Act,
 - (c) the intended name of the society is not, in its opinion, un desirable,
- shall register the society and issue it with a certificate of incorporation.
- (3) On registering a building society under sub-paragraph (2) above, the central office shall—
- (a) retain and register one copy of the memorandum and of the rules,
 - (b) return another copy to the secretary of the society, together with a certificate of registration, and
 - (c) 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 society.
- (4) Subject to Schedule 20 in this Act, in relation to a building society—
- " adoptable powers " means powers which, by any provision of this Act, must, in order to be exercisable, be adopted by the society;
 - " adopt " or " adopted " means adopt or adopted by agreement upon the establishment of the society or subsequently under paragraph 4 below ; and

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" assume " or " assumed " means assume or assumed by agreement upon the establishment of the society or subsequently under paragraph 4 below;

" memorandum " means the memorandum of the purpose and the extent of the powers of the society including the record of any alteration under paragraph 4 below.

The memorandum

- 2 (1) The memorandum of a building society shall specify—
- (a) the name of the society and the address of its principal office;
 - (b) the purpose or principal purpose of the society;
 - (c) the adoptable powers (if any) which the society has adopted, including the restrictions (if any) on their extent which it has assumed ; and
 - (d) the restrictions (if any) which it has assumed on the extent of any of its other powers under this Act
- (2) Subject to sub-paragraph (3) below, in order to comply with sub-paragraph (1)(c) and (d) above the terms of each adoptable power and of each restriction on the extent of any power must be set out in the memorandum.
- (3) For compliance with sub-paragraph (1)(c) above as respects the powers conferred by section 18 or under section 23, it shall be sufficient—
- (a) in the case of section 18, to specify (as the case may be) the fact that the power of investment or support or both the powers of investment and support has or have been adopted in the case of companies, industrial and provident societies, corresponding European bodies and bodies included in designation orders under that section respectively, specifying, in the case of designated bodies, or descriptions of designated bodies, the body or description of body in relation to which the power or powers is or are exercisable ;
 - (b) in the case of section 23, to specify the power in terms of subsection (1) of that section.
- (4) The provisions of the memorandum of a building society, as read with the provisions of this Act as in force for the time being, are binding upon—
- (a) each of the members and officers of the society ; and
 - (b) all persons claiming on account of a member or under the rules ;
- and all such members, officers and persons so claiming and all persons dealing with the society shall be taken to have notice of those provisions.
- (5) Where any adoptable power conferred by virtue of an instrument under a provision of this Act ceases, by reason of the amendment or revocation of the instrument, to be available to building societies or building societies of any description, every society affected by the amendment or revocation shall annex to its memorandum a note of the fact that, as from the operative date of the instrument, it no longer has that power and shall send a copy of the note to the central office which shall keep the copy in the public file of the society.

The rules

- 3 (1) The rules of a building society shall provide for the matters specified in the Table in sub-paragraph (4) below.

- (2) The rules of a building society are binding upon each of the members and officers of the society and on all persons claiming on account of a member or under the rules ; and all such members, officers and persons (but no others) shall be taken to have notice of the rules.
- (3) Nothing in this paragraph shall be taken to authorise any provision to be made which is inconsistent with this Act or an instrument made under it by the Commission or the Treasury or to affect the operation of any provision of this Act making rules void to any specified extent.
- (4) The Table referred to in sub-paragraph (1) above is as follows:—

TABLE OF MATTERS TO BE COVERED BY THE RULES

1. The name of the society and the address of its principal office.
 2. The manner in which the stock or funds of the society is or are to be raised.
 3. The manner in which the terms are to be determined on which shares are to be issued and the manner in which shareholders are to be informed of changes in the terms on which their shares are held.
 4. Whether any preferential or deferred shares are to be issued and, if so, within what limits.
 5. The manner in which advances are to be made and repaid, and the conditions on which a borrower may redeem the amount due from him before the end of the period for which the advance was made.
 6. The manner in which losses are to be ascertained and provided for.
 7. The manner in which membership is to cease.
 8. The manner of remunerating the auditors.
 9. As respects directors—
 - (a) the manner of electing them and whether they may be co-opted;
 - (b) any conditions which must be satisfied with respect to the holding of shares in the society if a person is to become, or is to remain, a director ;
 - (c) the manner of remunerating and, where it is not to be fixed by resolution at the annual general meeting, the maximum amount of the remuneration to be paid to, directors ; and
 - (d) the circumstances in which pensions may be awarded to persons by virtue of their office as director and the method of determining the terms of such pensions.
 10. The powers and duties of the board of directors.
 11. The custody of the mortgage deeds and other securities-belonging to the society.
 12. The form, custody and use of the society's common seal.
- The calling and holding of meetings and, in particular—
- (a) the right of members to requisition meetings ;
 - (b) the right of members to move resolutions at meetings ;
 - (c) the manner in which notice of any resolutions to be moved at meetings is to be given to members ;
 - (d) the procedure to be observed at meetings ;
 - (e) the form of notice for the convening of a meeting and the manner of its service ;

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(f) the voting rights of members, the right to demand a poll and the manner in which a poll is to be taken.

14. The entitlement of members to participate in the distribution of any surplus assets after payments to creditors, on the winding up, or dissolution by consent, of the society.

Requirements for alteration of purpose, powers and rules

- 4 (1) A building society may by special resolution—
- (a) alter its purpose or principal purpose ;
 - (b) alter its powers by the adoption or the rescission of the adoption of any adoptable power or by the assumption, rescission of the assumption or variation of a restriction on a power (whether an adoptable or other power) ;
or
 - (c) alter its rules by the addition, rescission or variation of any rule.
- (2) Where a building society alters its purpose or powers or its rules under this paragraph, it shall send to the central office—
- (a) three copies of a record of the alteration signed by the secretary; and
 - (b) a statutory declaration by the secretary that the alteration was effected by a resolution passed as a special resolution and that the record is a true record of the resolution.
- (3) On altering its purpose or powers or its rules under this paragraph the building society shall determine the date on which it intends the alteration to take effect; and the record of the alteration shall specify that date (in this paragraph referred to as " the specified date ").
- (4) Where copies of a record of an alteration of a building society's purpose, powers or rules are sent to the central office under sub-paragraph (2) above and the central office is satisfied that the alteration is in conformity with this Act and (where applicable) any instruments under it, the central office shall, subject to paragraph 19 below—
- (a) retain and register one of the copies,
 - (b) return another to the secretary of the society together with a certificate of registration of the alteration, and
 - (c) keep another copy, together with a copy of the certificate of registration of the alteration, in the public file of the society.
- (5) An alteration of the purpose or powers or of the rules of a building society under this paragraph shall take effect on the specified date or, if registration of the alteration is not effected under sub-paragraph (4) above until a later date, that later date.
- (6) Any provision in the rules of a building society that the memorandum or rules may be altered without passing a special resolution shall be void.
- (7) If a building society arranges for the publication in consolidated form of its rules or memorandum as altered for the time being, it shall send a copy to the central office and the central office—
- (a) shall keep the copy in the public file of the society, but
 - (b) shall not register the copy.
- (8) If a building society fails to comply with sub-paragraph (2) above, the society shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale and so shall any officer who is also guilty of the offence.

Membership

- 5 (1) The rules of a building society may allow a person to become a member without holding a share in the society.
- (2) Such of the rules as concern the making of advances to members need not be expressed in terms which treat a member to whom an advance is made as being, by reason of the making of the advance, the holder of a share in the society.
- (3) A person who is a minor—
- (a) may, if the rules do not otherwise provide, be admitted as a member of a building society and give all necessary receipts ; but
 - (b) may not vote or hold any office in the society ; and
 - (c) may not nominate, or join in nominating, a person for election as a director of the society.

Liability of members

- 6 (1) The liability of a member of a building society in respect of a share on which no advance has been made shall be limited to the amount actually paid, or in arrear, on the share.
- (2) The liability of a member of a building society in respect of a share on which an advance has been made shall be limited to the amount payable on the share under any mortgage or other security or under the rules of the society.
- (3) The liability of a member of a building society to whom an advance is made under rules made in pursuance of paragraph 5(1) or (2) above shall be no greater than it would be if the rules treated him as being, by reason of the making of the advance, the holder of a share in the society.

Joint shareholders

- 7 (1) Two or more persons may jointly hold shares in a building society and the following provisions of this paragraph shall apply to any shares so held.
- (2) In this paragraph, in relation to any shares jointly held, "representative joint holder" means that one of the joint holders who is named first in the records of the society.
- (3) Except where the rules of the society otherwise provide, any notice or other document may be given or sent by the society to the joint holders by being given or sent to the representative joint holder; but this sub-paragraph shall not prevent any of the joint holders from exercising the rights under this Act of a member of a building society to obtain from the society on demand a copy of the summary financial statement, the annual accounts and the annual business statement.
- (4) For the purpose of determining—
- (a) who is entitled to vote in an election of directors of the society;
 - (b) who is qualified to vote on a resolution of the society, and
 - (c) where it is relevant, the number of votes a person may then give,
- the shares shall be treated as held by the representative joint holder alone ; and accordingly a person who is a member of the society by reason only of being a joint holder of those shares (other than the representative joint holder) shall not be entitled to vote in any such election or qualified to vote on any such resolution.

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- (5) For the purposes of sections 87 and 93 to 102 the shares shall be treated as held by the representative joint holder alone; and accordingly a person who is a member of the society by reason only of being a joint holder of those shares (other than the representative joint holder) shall not be regarded as a member of the society for the purposes of those sections.
- (6) The representative joint holder (but none of the other joint holders) shall have the right to join in making an application under section 56 and any reference in that section to the total membership of a building society shall be construed accordingly.
- (7) In the register to be maintained under paragraph 13 below the entry of that one of the joint holders who is the representative joint holder shall indicate that fact.
- (8) The joint holders shall be entitled to choose the order in which they are named in the records of the society.

Joint borrowers

- 8 (1) Where an advance secured on land is made by a building society to two or more persons jointly the following provisions of this paragraph shall apply to their rights as borrowing members of the society.
- (2) In this paragraph, in relation to any rights of theirs as borrowing members, " representative joint borrower " means that one of the joint borrowers who is named first in the records of the society.
- (3) Except where the rules of the society otherwise provide, any notice or other document may be given or sent by the society to the joint borrowers by being given or sent to the representative joint borrower; but this sub-paragraph shall not prevent any of the joint borrowers from exercising the rights under this Act of a borrowing member of a building society to obtain from the society on demand a copy of the summary financial statement, the annual accounts and the annual business statement.
- (4) For the purpose of determining—
 - (a) who is entitled to vote in any election of directors of the society, and
 - (b) who is qualified to vote on a resolution of the society,
 the rights of the joint borrowers as borrowing members of the society shall be treated as the rights of the representative joint borrower alone; and accordingly a person who is a member of the society by reason only of being a joint borrower (other than the representative joint borrower) shall not be entitled to vote in any such election or qualified to vote on any such resolution.
- (5) For the purposes of sections 87 and 93 to 102 the rights of the joint borrowers as borrowing members of the society shall be treated as the rights of the representative joint borrower alone ; and accordingly a person who is a member of the society by reason only of being a joint borrower (other than the representative joint borrower) shall not be regarded as a borrowing member of the society for the purposes of those sections.
- (6) The representative joint borrower (but none of the other joint borrowers) shall have the right to join in making an application under section 56 and any reference in that section to the total membership of a building society shall be construed accordingly.
- (7) In the register to be maintained under paragraph 13 below the entry of that one of the joint borrowers who is the representative joint borrower shall indicate that fact.

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- (8) The joint borrowers shall be entitled to choose the order in which they are named in the records of the society.

Use and change of name

- 9 (1) The common seal of a building society shall bear the registered name of the society.
- (2) A building society shall not use any name or title other than its registered name.
- (3) A building society may change its name by special resolution.
- (4) Where a society changes its name in accordance with this paragraph notice of the change of name shall be sent to the central office and, unless the central office is of the opinion that the changed name is undesirable, the central office shall register the notice of the change of name and give the society a certificate of registration.
- (5) A change of name shall take effect on the date on which the certificate of registration under sub-paragraph (4) above is issued or on such later date as may be specified in the certificate.
- (6) The central office shall keep a copy of the certificate of registration issued under sub-paragraph (4) above in the public file of the society.
- (7) A change of name shall not affect the rights and obligations of the society or of any of its members or of any other person concerned.

Offences relating to society's name

- 10 (1) If a building society contravenes paragraph 9(2) above, the society shall be liable on summary conviction—
- (a) to a fine not exceeding level 4 on the standard scale ; and
- (b) in the case of a continuing offence, to an additional fine not exceeding £100 for every week during which the offence continues;
- and so shall any officer who is also guilty of the offence.
- (2) If a building society fails to send to the central office a notice which it is required to send to it under paragraph 9(4) above, the society shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale and so shall any officer who is also guilty of the offence.

Change of principal office

- 11 (1) A building society may change its principal office—
- (a) in such manner as its rules direct, or
- (b) if there is no such direction in the rules, then at a general meeting specially called for the purpose in accordance with its rules.
- (2) Notice of any such change and of the date of it shall, within seven days after the change, be sent to the central office and the central office shall keep the notice in the public file of the society.
- (3) It is not necessary to alter the memorandum or rules of a building society by reason only that its principal office is changed.

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- (4) If a building society fails to send to the central office a notice which it is required to send to it under sub-paragraph (2) above, the society shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale and so shall any officer who is also guilty of the offence.

Societies to supply copies of rules etc.

- 12 (1) A building society shall, on demand, give a copy of its statutory documents—
- (a) free of charge, to any member of the society to whom a copy of those documents has not previously been given, and
 - (b) to any other person, upon payment of such fee as the society may require, not exceeding the prescribed amount.
- (2) The reference in sub-paragraph (1) above to a copy of a building society's statutory documents is a reference to—
- (a) a printed copy of the society's rules for the time being, with a copy of the certificate of incorporation of the society annexed to it, and
 - (b) a printed copy of the memorandum of the society for the time being.
- (3) If a building society fails to comply with the requirements of sub-paragraph (1) above, the society shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale and so shall any officer who is also guilty of the offence.
- (4) In sub-paragraph (1) above the "prescribed amount" means £1 or such other amount as the Commission prescribes by order made by statutory instrument

Register of members

- 13 (1) Every building society shall maintain a register of the names and addresses of the members of the society.
- (2) The register shall be kept at the principal office or at such other place or places as the directors think fit.
- (3) If a building society contravenes sub-paragraph (1) above, the society shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale and so shall any officer who is also guilty of the offence.
- (4) For the purposes of this Act "registered address" in relation to a member of a building society, means—
- (a) the address shown in the register maintained under this paragraph, except in a case where paragraph (b) below applies;
 - (b) where the member has requested that communications from the society be sent to some other address, that other address.

Exception to duties to send documents

- 14 (1) A building society is not obliged by any provision of this Act or its rules to send a notice or other document to a member in whose case the society has reason to believe that communications sent to him at his registered address are unlikely to be received by him.

- (2) Where the requirement relates to notice of a meeting or postal ballot of the society, the society must, instead, comply with the advertising requirements of paragraph 35 below.

Right of members to obtain particulars from the register

- 15 (1) At any time when a building society has had its authorisation revoked under section 43 and the society has not been re-authorised under section 44, a member of the society shall have the right to obtain, from the register kept under paragraph 13 above, the names and addresses of members of the society, for the purpose of communicating with them on a subject relating to the affairs of the society.
- (2) If, at any time not falling within sub-paragraph (1) above, a member of a building society makes a written application to the Commission for the right to obtain names and addresses from the register, the Commission, if satisfied that the applicant requires that right for the purpose of communicating with members of the society on a subject relating to its affairs, and having regard to the interests of the members as a whole and to all the other circumstances, may direct that the applicant shall have the right to obtain from the register the names and addresses of the members for the purpose of communicating with them on such a subject.
- (3) Any direction under sub-paragraph (2) above may be given subject to such limitations or conditions as the Commission may think fit.
- (4) Before giving a direction under sub-paragraph (2) above, the Commission shall give particulars of the application to the building society and shall afford the society an opportunity of making representations with respect to the application; and the Commission shall, if the applicant or the society so requests, afford to the applicant and to the society an opportunity of being heard by it.
- (5) A member entitled under this paragraph to obtain the names of members of a building society may apply in writing to the society, describing in the application the subject on which he proposes to communicate with other members of the society; and the society shall give him all necessary information as to the place or places where the register, or part of it, is kept, and reasonable facilities for inspecting the register and taking a copy of any names and addresses in the register.
- (6) A building society shall not be obliged to disclose to a member making an application under this paragraph any particulars contained in the register other than the names of the members and their addresses, and may construct the register in such a way that it is possible to disclose the names and addresses to inspection without disclosing any such other particulars.