



# Building Societies Act 1997

## 1997 CHAPTER 32

### PART I

#### CONSTITUTION AND POWERS

#### **1 Principal purpose and powers.**

(1) For subsection (1) of section 5 (establishment, constitution and powers) of the <sup>M1</sup>Building Societies Act 1986 (“the 1986 Act”) there shall be substituted the following subsection—

“(1) A society may be established under this Act if (and only if) it complies with the following requirements, namely—

- (a) its purpose or principal purpose is that of making loans which are secured on residential property and are funded substantially by its members; and
- (b) its principal office is in the United Kingdom.”

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

“(4A) If, after its establishment, a building society fails to comply with the requirements imposed by subsection (1)(a) or (b) above—

- (a) the powers conferred on the Commission by section 36 or 37 shall become exercisable in relation to the society; but
- (b) the failure shall not affect the validity of any transaction or other act.”

(3) For subsections (5) to (7) of that section there shall be substituted the following subsection—

“(5) Subject to the provisions of this Act, a building society shall have the powers conferred on it by its memorandum.”

(4) For subsection (10) of that section there shall be substituted the following subsection—

- “(10) In this Act “residential property” means land at least 40 per cent of which—
- (a) is normally used as, or in connection with, one or more dwellings; or

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 Changes to legislation: There are currently no known outstanding effects  
 for the Building Societies Act 1997. (See end of Document for details)*

(b) has been, is being or is to be developed or adapted for such use; and for the purposes of this subsection, the area of any land which comprises a building or other structure containing two or more storeys shall be taken to be the aggregate of the floor areas of each of those storeys.”

#### Commencement Information

**II** S. 1 in force at 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pt. II (subject as mentioned in art. 2(2)-(5) of that S.I.)

#### Marginal Citations

**M1** 1986 c.53.

## 2 Membership and liability of members.

(1) In paragraph 5 of Schedule 2 to the 1986 Act (membership), for sub-paragraphs (1) and (2) there shall be substituted the following sub-paragraphs—

“(1) The rules of a building society shall provide that no person shall be a member of the society unless he is a shareholding member or a borrowing member or both.

(2) In this Act, in relation to a building society—

“borrowing member” means, subject to sub-paragraphs (2A) and (2B) and paragraph 29(2) below, an individual who is indebted to the society—

- (a) in respect of a loan which is fully secured on land; or
- (b) if the rules of the society so provide, in respect of a loan which is (within the meaning of the rules) substantially secured on land;

“shareholding member” means a person who holds a share in the society.

(2A) If the rules of a building society so provide, an individual shall cease to be a borrowing member at any time if at that time the society—

- (a) takes possession of, or exercises its power of sale in relation to, the whole or any part of the land on which the loan is secured; or
- (b) obtains an order for foreclosure absolute or, in Scotland, foreclosure in respect of the whole or any part of that land.

(2B) Unless the rules of a building society so provide, an individual shall not be a borrowing member at any time if at that time the loan is owed to the society in equity rather than at law.”

(2) In sub-paragraph (3) of that paragraph—

- (a) in paragraph (b), after the words “may not” there shall be inserted the words “propose a resolution, ”; and
- (b) in paragraph (c), after the words “may not” there shall be inserted the words “join in requisitioning a special meeting or ”.

(3) For paragraph 6 of that Schedule there shall be substituted the following paragraph—

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- “6 (1) The liability at any time of a shareholding member of a building society shall be limited to the amount which, at that time, has been actually paid, or is in arrear, on his shares in the society.
- (2) The liability at any time of a borrowing member of a building society shall be limited to the amount which, at that time, is payable under the mortgage or other security by which his indebtedness to the society in respect of the loan is secured.”
- (4) For sub-paragraph (2) of paragraph 29 of that Schedule (borrowing members’ resolutions) there shall be substituted the following sub-paragraph—
- “(2) For the purposes of this Part of this Schedule, an individual who is indebted to a building society in respect of a loan fully secured on land is not a borrowing member of the society at any time if at that time the amount of his mortgage debt is less than the prescribed amount.”

#### Commencement Information

- I2** S. 2 in force at 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pt. II (subject as mentioned in art. 2(2)-(5) of that S.I.)

### 3 Capacity etc.

- (1) In subsection (8) of section 5 of the 1986 Act—
- (a) for paragraph (b) there shall be substituted the following paragraph—
- “(b) Part II makes provision with respect to the capacity of a society and the powers of its directors to bind it; and”;
- (b) for the words from “and in this section” to the end there shall be substituted the words “ and in this section “scheduled”, with reference to requirements for establishment, means contained in that Schedule ”.
- (2) For Part II of Schedule 2 to the 1986 Act there shall be substituted the provisions set out in Schedule 1 to this Act (capacity of society and power of directors to bind it).

#### Commencement Information

- I3** S. 3 in force at 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pt. II (subject as mentioned in art. 2(2)-(5) of that S.I.)

### 4 The lending limit.

For section 6 of the 1986 Act there shall be substituted the following section—

*“ Making loans*

#### 6 The lending limit.

- (1) A building society shall secure that the difference between—

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- (a) the value of X on any quarter day; and
  - (b) the value of Y on that day or the value of Y on the immediately preceding quarter day, whichever is the greater,
- does not exceed 25 per cent of that value of X.

(2) For the purposes of subsection (1) above—

X = the difference between the total assets of the society and any subsidiary undertakings of the society as shown in the society's accounts and the aggregate of—

- (a) the liquid assets of the society and any such undertakings as shown in those accounts in pursuance of regulations under section 73(7);
- (b) the fixed assets of the society and any such undertakings as so shown; and
- (c) where any such undertakings are insurance companies within the meaning of the <sup>M2</sup>Insurance Companies Act 1982, such of their assets as shown in those accounts as represent long term insurance funds; and

Y = the principal of, and interest accrued on, loans which are owed to the society or any subsidiary undertaking of the society and are fully secured on residential property;

and for the purposes of this subsection the total assets of a society and any subsidiary undertakings of the society shall be taken to be increased by the amount of any provision made for bad or doubtful debts of the society or any such undertaking.

- (3) Any loans owed to the society or any subsidiary undertaking of the society shall be disregarded for the purposes of the definition of “Y” in subsection (2) above to the extent that they are not included in the total assets of the society and any such undertakings as shown in the society's accounts.
- (4) Any reference in subsection (2) or (3) above to anything being shown in a society's accounts shall be construed—
  - (a) in relation to a quarter day on which a financial year of the society ends, as a reference to its being shown in the accounts prepared by the society for that year;
  - (b) in relation to any other quarter day, as a reference to its being shown in the accounts which would have been prepared by the society for the year ending on that day if that year were a financial year of the society.
- (5) If a building society fails to comply with the requirement imposed by subsection (1) above—
  - (a) the powers conferred on the Commission by section 36 shall become exercisable in relation to the society; but
  - (b) the failure shall not affect the validity of any transaction or other act.
- (6) The Treasury may by order substitute for the percentage specified in subsection (1) above such greater percentage (not greater than 40 per cent) as appears to them to be appropriate; and an order under this subsection may make such supplementary, transitional and saving provision as appears to the Treasury to be necessary or expedient.
- (7) The Commission may, with the consent of the Treasury, by order—

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- (a) modify subsections (2) and (3) above in their application to assets of subsidiary undertakings;
  - (b) apply those subsections to corresponding assets of associated undertakings; or
  - (c) modify those subsections in their application to such assets.
- (8) An order under subsection (7) above may make—
- (a) different provision for different circumstances;
  - (b) provision for particular assets of undertakings to be disregarded; and
  - (c) such supplementary, transitional and saving provision as appears to the Commission to be necessary or expedient.
- (9) The power to make an order under subsection (6) or (7) above is exercisable by statutory instrument.
- (10) No order shall be made under subsection (6) above unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (11) A statutory instrument containing an order under subsection (7) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (12) In this section “long term insurance funds”, in relation to an insurance company within the meaning of the <sup>M3</sup>Insurance Companies Act 1982, means funds maintained by it—
- (a) under section 28(1)(b) of that Act (assets attributable to long term business); or
  - (b) where it is incorporated in a country or territory outside the United Kingdom, under the corresponding provisions of the law of that country or territory.
- (13) Where a loan is owed to a lending syndicate of which a building society or connected undertaking of a building society is a member, so much of the loan as is referable to the society’s or undertaking’s participation in the syndicate shall be treated for the purposes of this section and sections 6A and 6B as a loan owed to the society or undertaking.
- (14) In this section and section 7—
- “accounts”—
- (a) in relation to a building society without subsidiary undertakings, means individual accounts under subsection (1) of section 72;
  - (b) in relation to such a society with such undertakings, means group accounts under subsection (2) of that section;
- “quarter day”, in relation to a building society, means a day on which a financial year of the society ends, or a day which is three months, six months or nine months after such a day;
- and references to any value on a quarter day are references to that value at the close of business on that day.
- (15) If an agreement between the Commission and a building society so provides, the definition of “quarter day” in subsection (14) above shall have effect in relation to the society as if for any reference to a number of months there were substituted a reference to a number of days specified in the agreement.”

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#### Commencement Information

**I4** S. 4 in force at 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pt. II (subject as mentioned in art. 2(2)-(5) of that S.I.)

#### Marginal Citations

**M2** 1982 c.50.

**M3** 1982 c.50.

## 5 Loans secured on land.

After section 6 of the 1986 Act there shall be inserted the following section—

### “6A Loans secured on land.

- (1) For the purposes of this Act a loan is secured on land if it is secured by—
  - (a) a mortgage of a legal estate in land in England and Wales or Northern Ireland;
  - (b) a heritable security over land in Scotland; or
  - (c) a qualifying security over land in an EEA country or territory other than the United Kingdom.
- (2) For the purposes of this Act a loan is also secured on land if—
  - (a) it is secured by a mortgage of an equitable interest in land in England and Wales or Northern Ireland;
  - (b) the equitable interest is an equitable interest in land of a description, and is created in circumstances, prescribed in an order made by the Commission with the consent of the Treasury; and
  - (c) any conditions prescribed in the order are complied with;
 and an order under this subsection may apply in relation to securities held by or on behalf of building societies or connected undertakings of a description specified in the order, or securities held by or on behalf of all such societies or undertakings other than those of a description so specified.
- (3) For the purposes of this Act—
  - (a) a loan shall be treated as secured by a mortgage of a legal estate in registered land in England and Wales or Northern Ireland notwithstanding that the loan is made before the mortgagor is registered as proprietor of the estate; and
  - (b) a loan shall be treated as secured by a heritable security over land in Scotland notwithstanding that the loan is made before title to that land has been transferred to the debtor in the heritable security.
- (4) The Commission may, with the consent of the Treasury, by order provide for any provisions of this Act to have effect in relation to loans secured on land outside the European Economic Area with such modifications as appear to the Commission to be appropriate.
- (5) An order under subsection (2) or (4) above may make such incidental, supplementary and transitional provision as appears to the Commission to be necessary or expedient.

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- (6) The power to make an order under subsection (2) or (4) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In this section and section 6B—
- “EEA country or territory” means a country or territory in the European Economic Area;
- “qualifying security”, in relation to land in an EEA country or territory other than the United Kingdom and a loan, means a security over the land which—
- (a) acknowledges, and requires repayment of, the loan; and
- (b) secures repayment of the loan on the land;
- and for the purposes of this section and that section, the Channel Islands, the Isle of Man and Gibraltar shall be treated as included in the European Economic Area.
- (8) In this Act “land”, in the expression “loan secured on land”, means—
- (a) land in an EEA country or territory; and
- (b) in so far as land in any other country or territory is, under any provision of this Act, land on which loans may be secured, land in that other country or territory.”

#### Commencement Information

**I5** S. 5 in force at 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pt. II (subject as mentioned in art. 2(2)-(5) of that S.I.)

## 6 Loans fully secured on land.

After section 6A of the 1986 Act there shall be inserted the following section—

### “6B Loans fully secured on land.

- (1) For the purposes of this Act a loan which is owed to a building society or a subsidiary undertaking of a building society and is secured on residential property or other land is fully secured on the land if—
- (a) the principal of, and interest accrued on, the loan does not exceed the value of the requisite security; and
- (b) no, or no more than one, mortgage of the land which has priority over the society’s or undertaking’s mortgage is outstanding in favour of an outside person.
- (2) Where a mortgage of the residential property or other land which has priority over the society’s or undertaking’s mortgage is outstanding, the principal of the loan secured or, in the case of a loan by instalments, intended to be secured by that mortgage shall be deducted from the value of the requisite security for the purposes of subsection (1)(a) above.
- (3) Where the loan is secured on residential property or other land in the United Kingdom, any outstanding charge over the land which—

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- (a) in the case of land in England and Wales, is registered in the appropriate local land charges register;
- (b) in the case of land in Scotland, is recorded in the Register of Sasines, or registered in the Land Register, under section 108 of the <sup>M4</sup>Civic Government (Scotland) Act 1982 or Schedule 9 to the <sup>M5</sup>Housing (Scotland) Act 1987;
- (c) in the case of land in Northern Ireland, is registered in the statutory charges register under section 87 of, and Schedule 11 to, the <sup>M6</sup>Land Registration Act (Northern Ireland) 1970,

shall be disregarded for the purposes of subsections (1)(b) and (2) above.

- (4) Where, on the occasion on which a building society or a subsidiary undertaking of a building society makes or acquires a loan which is secured on land, the society or undertaking is satisfied that the loan is—
- (a) a loan which is fully secured on residential property;
  - (b) a loan which is not so secured but is fully secured on land; or
  - (c) a loan which is not fully secured on land,

the loan shall be treated as such a loan for the purposes of this Act until such time (if any) as subsection (7) below applies.

- (5) Subsection (4) above shall have effect in relation to a loan which the society or undertaking makes by two or more payments on different dates as if—
- (a) the reference to the occasion on which the society or undertaking makes the loan were a reference to the occasion on which it makes the first of the payments;
  - (b) other references to the loan were references to it in its intended maximum amount; and
  - (c) the value of any security for the loan were its expected maximum value.

- (6) Where a building society or a subsidiary undertaking of a building society makes or acquires a loan which is secured on land, the society or undertaking shall be deemed to be satisfied as mentioned in paragraph (c) of subsection (4) above until such time (if any) as it is satisfied as mentioned in paragraph (a) or (b) of that subsection.

- (7) Where at any time, in the case of a loan treated as falling within paragraph (a), (b) or (c) of subsection (4) above, the society or undertaking—

- (a) is satisfied—
  - (i) on a revaluation that the value of the requisite security has changed;
  - (ii) on notice given to it by the borrower that there has been a change in the use of the land;
  - (iii) that so much of the mortgage debt as represents the principal of the loan has changed;
  - (iv) that the principal of the loan secured by a prior mortgage has changed or has been repaid; or
  - (v) that the relative priority of the mortgage of the land on which the loan is secured has changed;

- (b) is also satisfied that the change or repayment is such that, if it were to make a loan equal to the mortgage debt at that time, the loan would instead be a loan falling within another of those paragraphs; and



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(c) in a case falling within paragraph (a)(i) above, elects that this subsection shall apply,

the loan shall be treated as such a loan for the purposes of this Act until such time (if any) as this subsection again applies.

(8) In this section—

“outside person”, in relation to a building society or a subsidiary undertaking of a building society, means any person other than the following, namely—

- (a) the society;
- (b) a subsidiary undertaking of the society;
- (c) a lending syndicate of which the society or such an undertaking is a member; and
- (d) trustees of a trust under which the society or such an undertaking is a beneficiary;

“the requisite security”, in relation to a loan secured on residential property or other land, means—

- (a) the security constituted by the legal estate in, or the heritable or qualifying security over, the land; or
- (b) in a case where an equitable interest in land in England and Wales or Northern Ireland is or is also taken as security, that constituted by that security or, as the case may be, the combined securities;

“trust” includes arrangements—

- (a) which have effect under the law of a country or territory outside the United Kingdom; and
- (b) under which persons acting in a fiduciary capacity hold and administer property on behalf of other persons,

and “beneficiary” and “trustees”, in relation to such arrangements, shall be construed accordingly.

(9) In the application of subsections (1), (2) and (7) above to residential property or other land in Scotland or an EEA country or territory other than the United Kingdom, references to a mortgage of the land shall be construed as references to a heritable or, as the case may require, qualifying security over the land.”

#### Commencement Information

**I6** S. 6 in force at 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pt. II (subject as mentioned in art. 2(2)-(5) of that S.I.)

#### Marginal Citations

**M4** 1982 c.45.

**M5** 1987 c.26.

**M6** 1970 c.18 (N.I.).

## 7 Discharge of mortgages.

(1) After section 6B of the 1986 Act there shall be inserted the following section—

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**“6C Discharge of mortgages.**

Schedule 2A to this Act, which contains supplementary provisions as to the discharge of mortgages, shall have effect.”

- (2) After Schedule 2 to the 1986 Act there shall be inserted, as Schedule 2A, the provisions set out in Schedule 2 to this Act (supplementary provisions as to the discharge of mortgages).

**8 The funding limit.**

For section 7 of the 1986 Act there shall be substituted the following section—

**“7 The funding limit.**

- (1) A building society shall secure that the difference between—
- (a) the value of X on any quarter day; and
  - (b) the value of Y on that day or the value of Y on the immediately preceding quarter day, whichever is the greater,
- does not exceed 50 per cent of that value of X.

- (2) For the purposes of subsection (1) above—

X = the aggregate of the following, namely—

- (a) the principal value of, and interest accrued on, shares in the society;
- (b) the principal of, and interest accrued on, sums deposited with the society or any subsidiary undertaking of the society; and
- (c) the principal value of, and interest accrued under, bills of exchange, instruments or agreements creating or acknowledging indebtedness and accepted, made, issued or entered into by the society or any such undertaking; and

Y = the principal value of, and interest accrued on, shares in the society held by individuals otherwise than as bare trustees (or, in Scotland, simple trustees) for bodies corporate or for persons who include bodies corporate.

- (3) The following shall be disregarded for the purposes of subsection (2) above, namely—
- (a) any sums or amounts which are own funds; and
  - (b) to the extent that they are not included in the total liabilities of the society and any subsidiary undertakings of the society as shown in the society’s accounts—
    - (i) any sums deposited with the society or any such undertaking; and
    - (ii) any indebtedness created or acknowledged by bills of exchange, instruments or agreements accepted, made, issued or entered into by the society or any such undertaking.
- (4) The reference in subsection (3) above to anything being shown in a society’s accounts shall be construed—

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- (a) in relation to a quarter day on which a financial year of the society ends, as a reference to its being shown in the accounts prepared by the society for that year;
  - (b) in relation to any other quarter day, as a reference to its being shown in the accounts which would have been prepared by the society for the year ending on that day if that year were a financial year of the society.
- (5) If a building society fails to comply with the requirement imposed by subsection (1) above—
- (a) the powers conferred on the Commission by section 36 shall become exercisable in relation to the society; but
  - (b) the failure shall not affect the validity of any transaction or other act.
- (6) Where an individual declares that he is acquiring any shares in a building society otherwise than as a bare trustee (or, in Scotland, a simple trustee) for a body corporate, or for persons who include a body corporate, he shall, unless the contrary is shown, be conclusively presumed for the purposes of this section to hold the shares otherwise than as such a trustee.
- (7) The Commission may, with the consent of the Treasury, by order—
- (a) modify subsections (2) and (3) above in their application to liabilities of subsidiary undertakings;
  - (b) apply those subsections to corresponding liabilities of associated undertakings; or
  - (c) modify those subsections in their application to such liabilities.
- (8) An order under subsection (7) above may make—
- (a) different provision for different circumstances;
  - (b) provision for particular liabilities of undertakings to be disregarded; and
  - (c) such supplementary, transitional and saving provision as appears to the Commission to be necessary or expedient.
- (9) The power to make an order under subsection (7) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

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**Commencement Information**

**I7** S. 8 in force at 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pt. II (subject as mentioned in art. 2(2)-(5) of that S.I.)

## **9 Raising funds and borrowing.**

For section 8 of the 1986 Act there shall be substituted the following section—

### **“8 Raising funds and borrowing.**

- (1) Subject to subsection (2) below, a building society shall not do any of the following things, namely—
- (a) accept a deposit from an individual;

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- (b) raise funds from an individual otherwise than by the issue of shares; and
  - (c) raise funds from a body corporate, or from a bare trustee (or, in Scotland, a simple trustee) for a body corporate or for persons who include a body corporate, otherwise than by the issue of deferred shares.
- (2) Nothing in subsection (1)(a) above shall apply in relation to—
- (a) the maintenance on behalf of an individual of a current account, or a deposit account which contains in its title the word “client” or the word “trust” or “trustee”;
  - (b) the issue to an individual of a transferable instrument;
  - (c) the acceptance from an individual of a qualifying time deposit or an overseas deposit; or
  - (d) in the case of a building society which has announced publicly that it intends, in accordance with section 97 and the other applicable provisions of this Act, to transfer the whole of its business to a company, anything done by the society during the period of two years beginning with the date of the announcement.
- (3) The Commission may, if it thinks fit, extend or further extend the period mentioned in subsection (2)(d) above if written application is made to it before the expiry of that period or that period as extended; and a direction under this subsection—
- (a) shall be in writing;
  - (b) may be given subject to such limitations or conditions as the Commission may think fit.
- (4) A contravention of subsection (1) above shall not invalidate any transaction or other act.
- (5) The power of a building society to raise funds by the issue of shares is a power—
- (a) to issue shares of one or more denominations, whether in sterling or another currency; and
  - (b) to issue them either as shares paid up in full or as shares to be paid by periodical or other payments, and (in either case) with accumulating or other interest;
- and funds so raised may be repaid when they are no longer required for the purposes of the society.
- (6) In the case of deferred shares, the power of a building society to raise funds by the issue of shares includes the issue of shares at a premium.
- (7) If a building society issues deferred shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to the society’s reserves.
- (8) For the purposes of this section the acceptance of deposits (including the issue of debt securities) shall not constitute the raising of funds.
- (9) In this section, in relation to a building society—

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“overseas deposit” means a deposit which is accepted by a branch or agency of the society in a country or territory outside the United Kingdom and is repayable in such a country or territory;

“qualifying time deposit” has the meaning given by section 482(6) of the <sup>M7</sup>Income and Corporation Taxes Act 1988;

“raise funds” means, subject to subsection (8) above, raise funds by the issue of shares or other securities;

“transferable instrument” means an instrument which embodies a transferable right to receive an amount referable to a deposit with the society.

- (10) A right is transferable for the purposes of the definition of “transferable instrument” in subsection (9) above if it is transferable by delivery of the instrument, or it is a right—
- (a) which may, under the terms of the instrument, be held by any person, or by any person other than a person of a description specified in the instrument;
  - (b) express provision for the transfer of which is included in the instrument; and
  - (c) the transfer of which, under the terms of the instrument, does not require the consent of any person.
- (11) Where an individual declares that he is acquiring any shares in a building society otherwise than as a bare trustee (or, in Scotland, a simple trustee) for a body corporate, or for persons who include a body corporate, he shall, unless the contrary is shown, be conclusively presumed for the purposes of this section to hold the shares otherwise than as such a trustee.
- (12) The Commission may, with the consent of the Treasury, by order vary subsections (2), (9) and (10) above by adding to or deleting from them any provision or by varying any provision contained in them; and an order under this subsection may make such supplementary, transitional and saving provision as appears to the Commission to be necessary or expedient.
- (13) The power to make an order under subsection (12) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

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**Commencement Information**

**I8** S. 9 in force at 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pt. II (subject as mentioned in art. 2(2)-(5) of that S.I.)

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**Marginal Citations**

**M7** 1988 c.1.

**10 Restrictions on certain transactions.**

After section 9 of the 1986 Act there shall be inserted the following section—

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*Status: This version of this Act contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Building Societies Act 1997. (See end of Document for details)*

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*“ Restrictions on powers*

**9A Restrictions on certain transactions.**

- (1) Subject to subsections (2) to (4) below, a building society shall not do, and shall secure that each of its subsidiary undertakings does not do, any of the following things, namely—
- (a) act as a market maker in securities, commodities or currencies;
  - (b) trade in commodities or currencies; and
  - (c) enter into any transaction involving derivative investments;
- but a contravention of this subsection shall not invalidate any transaction or other act.
- (2) No transaction entered into by a building society, or a subsidiary undertaking of a building society, shall be taken into account for the purposes of subsection (1) (a) above if—
- (a) it relates only to securities or currencies or both and the amount or value of the consideration given by the society or undertaking does not exceed £100,000; or
  - (b) it is entered into in the society’s or undertaking’s capacity as the manager of a collective investment scheme.
- (3) No transaction so entered into shall be taken into account for the purposes of subsection (1)(b) above if—
- (a) it relates only to currencies and the amount or value of the consideration given by the society or undertaking does not exceed £100,000; or
  - (b) it is ancillary or incidental to another transaction entered into by the society or undertaking.
- (4) Nothing in subsection (1)(c) above shall apply in relation to any transaction entered into by a building society, or a subsidiary undertaking of a building society, if—
- (a) it is entered into in the society’s or undertaking’s capacity as the manager of a collective investment scheme;
  - (b) it is entered into for the purpose of limiting the extent to which the society, or a connected undertaking of the society, will be affected by changes in any of the following factors, namely—
    - (i) interest rates;
    - (ii) exchange rates;
    - (iii) any index of retail prices;
    - (iv) any index of residential property prices; and
    - (v) any index of the prices of securities; or
  - (c) it involves a derivative investment falling within paragraph (d) of the definition in subsection (9) below and it is entered into for the purpose of limiting the extent to which any person will be affected by changes in any interest or exchange rate applicable to—
    - (i) a loan owed by him to;
    - (ii) shares held by him in; or
    - (iii) a deposit of his with,

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*Status:* This version of this Act contains provisions that are prospective.

*Changes to legislation:* There are currently no known outstanding effects for the Building Societies Act 1997. (See end of Document for details)

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the society, or a connected undertaking of the society.

(5) Nothing in subsection (1)(c) above shall apply in relation to any transaction entered into by a subsidiary undertaking of a building society, if it is entered into in the undertaking's capacity—

- (a) as a body authorised under section 3 or 4 of the <sup>M8</sup>Insurance Companies Act 1982 (authorised insurance companies) to carry on insurance business of a class specified in Schedule 1 to that Act (classes of long term business); or
- (b) as an EC company which is authorised under Article 6 of the first long term insurance Directive;

and in this subsection expressions which are also used in that Act have the same meanings as in that Act.

(6) A building society shall also do all that is reasonably practicable to secure that neither it nor any of its subsidiary undertakings (either alone or with any or any others of those undertakings)—

- (a) holds at any time more than 5 per cent of the issued share capital; or
- (b) is at any time entitled to exercise, or to control the exercise of, more than 5 per cent of the voting power at any general meeting,

of an undertaking which is, at that time, doing any of the things which the society is prohibited from doing by subsection (1) above, or an undertaking whose subsidiary undertaking is, at that time, doing any of those things.

(7) The monetary limit in subsection (2) or (3) above refers to the time when the transaction is entered into; and where the amount or value of the consideration there referred to is not in sterling, it shall be converted at the rate of exchange prevailing at that time.

(8) For the purposes of subsection (2) or (3) above, two or more transactions which form part of a larger transaction or series of transactions shall be treated as a single transaction.

(9) In this section—

“collective investment scheme” has the same meaning as in the <sup>M9</sup>Financial Services Act 1986;

“commodity” means any produce of agriculture, forestry or fisheries, or any mineral, either in its natural state or having undergone only such processes as are necessary or customary to prepare the produce or mineral for the market;

“derivative investment” means any investment of a description falling within one or more of the following paragraphs of Part I of Schedule 1 to the Financial Services Act 1986, namely—

- (a) paragraph 4 (instruments entitling to shares or securities);
- (b) paragraph 7 (options);
- (c) paragraph 8 (futures); and
- (d) paragraph 9 (contracts for differences etc);

“market maker” means, subject to subsection (10) below, a person who holds himself out as willing at all normal times to buy or sell at a price specified by him securities, commodities or currencies of a particular description;

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“securities” means shares, stock, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme and other securities of any description.

- (10) A building society, or subsidiary undertaking of a building society, shall not by reason of holding itself out as willing to issue its own securities be regarded for the purposes of this section as acting as a market maker in such securities.
- (11) The Treasury may by order vary subsections (1) to (10) above by adding to or deleting from them any provision or by varying any provision contained in them.
- (12) The Commission may, with the consent of the Treasury, by order—
- (a) substitute for the amount specified in subsection (2) or (3) above, or for the percentage specified in subsection (6) above, such other amount or percentage as it thinks appropriate; or
  - (b) vary subsection (4)(b) above by adding to or deleting from it any reference to a factor or by varying any reference to a factor contained in it.
- (13) An order under subsection (11) or (12) above may make—
- (a) different provision for different cases or purposes; and
  - (b) such supplementary, transitional and saving provision as appears to the Treasury or, as the case may be, the Commission to be necessary or expedient;
- and the power to make such an order is exercisable by statutory instrument.
- (14) No order shall be made under subsection (11) above unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (15) A statutory instrument containing an order under subsection (12) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

#### Commencement Information

**I9** S. 10 in force at 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pt. II (subject as mentioned in art. 2(2)-(5) of that S.I.)

#### Marginal Citations

**M8** 1982 c.50.

**M9** 1986 c.60.

#### <sup>F1</sup>11 Restriction on creation of floating charges.

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#### Textual Amendments

**F1** S. 11 omitted (26.3.2015) by virtue of Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), Sch. 9 para. 4(3)(b); S.I. 2015/428, art. 2



*Status: This version of this Act contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Building Societies Act 1997. (See end of Document for details)*

## 12 Superseded provisions of 1986 Act.

- (1) The following provisions of the 1986 Act (which are superseded by the foregoing provisions of this Part and this section) shall cease to have effect, namely—
  - (a) Part III (advances, loans and other assets);
  - (b) section 33 (assistance to other building societies);
  - (c) Part V (powers to provide services); and
  - (d) sections 38 to 40 (power to determine extent of building society powers).
- (2) In relation to any time after Schedule 4 to the 1986 Act ceases to have effect by virtue of subsection (1) above, any rule of law requiring a mortgagee to take reasonable care to obtain a proper price or true market value shall have effect as if paragraph 1(1)(a) of that Schedule (duty to take reasonable care to ensure best price that can reasonably be obtained), and corresponding earlier enactments, had not been enacted.
- (3) In so far as a building society is carrying on any activity comprised in the provision of a banking service, it shall be treated for all purposes—
  - (a) as a bank and a banker; and
  - (b) as carrying on the business of banking or a banking undertaking, whether or not it would be so treated apart from this subsection.
- (4) In this section “mortgagee”, as respects Scotland, has the meaning given by section 119(2) of the 1986 Act.

### Commencement Information

**I10** S. 12 partly in force; S. 12 not in force at Royal Assent see s. 47(3); s. 12(1)(a) partly in force and 12(2)(4) wholly in force at 1.12.1997 by S.I. 1997/2668, art. 2 Sch. Pt. I; S. 12 in force at 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pt. II (subject as mentioned in art. 2(2)-(5) of that S.I.)

## PART II

### POWERS OF CONTROL OF COMMISSION

## 13 Power to direct restructuring of business etc.

- (1) For section 36 of the 1986 Act there shall be substituted the following section—

*“ Powers in relation to principal purpose and nature limits*

### **36 Power to direct restructuring of business etc.**

- (1) The provisions of this section have effect where, by reason of a building society’s failure to comply with—
  - (a) the requirement imposed by section 5(1)(a) or (b) (purpose or principal purpose and principal office);
  - (b) the requirement imposed by section 6(1) (the lending limit); or
  - (c) the requirement imposed by section 7(1) (the funding limit),

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*Status: This version of this Act contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Building Societies Act 1997. (See end of Document for details)*

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the powers conferred by this section become exercisable by the Commission in relation to the society (the requirements referred to in paragraphs (a), (b) and (c) above being referred to in this section as “the relevant statutory requirements”).

- (2) The Commission may give the society a direction under subsection (3), (5) or (6) below.
- (3) A direction by the Commission under this subsection is a direction requiring the society, within a specified period, to submit for its approval a plan (in this section referred to as a “restructuring plan”) designed to secure the following purposes, that is to say—
  - (a) that the society will, by the end of a specified period, comply with the relevant statutory requirements as applied at the last day of that period, and
  - (b) that it will not thereafter fail to comply with those requirements.
- (4) For the purpose of applying the relevant statutory requirements as directed by subsection (3)(a) above—
  - (a) in the case of a requirement which operates by reference to a quarter day, the day as at which the requirements are to be applied shall be treated as such a day; and
  - (b) the assets and liabilities of the society shall be determined by reference to a balance sheet prepared by the directors by reference to that day and sent to the Commission within the period of three months beginning with that day;

and subsection (4) of section 81 shall apply in the event of a default in complying with this provision as it applies in the event of a default in complying with subsection (2) of that section.
- (5) A direction by the Commission under this subsection is a direction requiring the society—
  - (a) within a specified period, to submit to its members for their approval at a meeting the requisite transfer resolutions for a transfer of the business of the society to a company under section 97; and
  - (b) to notify the Commission of the result of the meeting.
- (6) A direction by the Commission under this subsection is a direction requiring the society, at its option, either—
  - (a) within a specified period, to submit for approval a restructuring plan; or
  - (b) within a specified period, to submit to its members for their approval at a meeting the requisite transfer resolutions for a transfer of the business of the society to a company under section 97;

and, within a specified period, to notify the Commission of the option it has decided to pursue.
- (7) Where the Commission gives a direction under subsection (3), (5) or (6) above, it may also give a direction under this subsection—
  - (a) imposing limitations on the issue of shares, the acceptance of deposits or the making of loans;

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- (b) requiring the society within a specified period to take certain steps, or to refrain from adopting or pursuing a particular course of action, or to restrict the scope of its business in a particular way;
  - (c) requiring the society within a specified period to take steps with regard to the conduct of the business of any connected undertaking of the society;
  - (d) requiring within a specified period the removal of any director or other officer.
- (8) Where a restructuring plan is submitted by a society to the Commission under subsection (3) or (6) above then—
  - (a) if it appears to the Commission that the plan is reasonably likely to secure its purposes, the Commission shall approve it and direct the society to carry it out;
  - (b) if it appears to it that the plan is, with modifications, likely to secure its purposes and the Commission and the society agree on appropriate modifications within the period of 21 days from the date on which the Commission notifies the society of the modifications it proposes for the society's agreement, the Commission shall approve the plan as modified and direct the society to carry it out;but otherwise it shall reject the plan.
- (9) Where a meeting is held, in pursuance of a direction under subsection (5) or (6) above, for the purpose of voting on the requisite transfer resolutions, then—
  - (a) if the resolutions are agreed to and the confirmation of the transfer by the Commission is obtained, the society shall proceed under section 97 to transfer its business to a successor company;
  - (b) if either resolution is disagreed to, the society shall notify the Commission of that fact as soon as it is practicable to do so.
- (10) In the event of the Commission receiving a notice from a society under subsection (9)(b) above, it may, if it thinks fit, serve on the society a direction requiring it, within a specified period, to submit to the Commission for its approval a restructuring plan; and if the Commission does so, subsection (8) above shall apply as if the plan had been submitted under subsection (3) above.
- (11) The Commission may, if it thinks fit, extend or further extend any period during which a building society is to take any steps required of it under any of the foregoing provisions of this section and may do so whether or not application is made to it before the expiry of the period in question.
- (12) If a building society which has been directed under subsection (8) above to carry out a restructuring plan fails, within the period allowed to it under the foregoing provisions of this section, to secure the purpose of the plan specified in subsection (3)(a) above, the powers conferred on the Commission by section 36A shall become exercisable in relation to the society.
- (13) If a building society fails, within the period allowed to it under the foregoing provisions of this section—
  - (a) where it has been given a direction under subsection (3) or (10) above, to submit a restructuring plan;
  - (b) where it has been given a direction under subsection (5) above, to submit to members the requisite transfer resolutions;

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- (c) where it has been given a direction under subsection (6) above, to either submit a restructuring plan or submit to members the requisite transfer resolutions;
  - (d) where it has been given a direction under subsection (7) above, to comply with any requirement imposed by the direction;
  - (e) where it has been directed under subsection (8) above to carry out a restructuring plan, to secure the purpose of the plan specified in subsection (3)(a) above;
  - (f) to agree to the requisite transfer resolutions submitted to the members in pursuance of subsection (5) or (6) above; or
  - (g) where it has agreed to the requisite transfer resolutions, to proceed under section 97 to transfer its business to the successor company,
- or if the Commission rejects a restructuring plan under subsection (8) above, the powers conferred on the Commission by section 37 shall become exercisable in relation to the society.
- (14) The provisions of Schedule 7A to this Act regulating the giving of directions apply in relation to directions under subsection (3), (5), (6), (7) or (10) above.
- (15) In this section—
- “confirmation”, “the requisite transfer resolutions” and “transfer” have the same meaning as in section 97;
  - “quarter day” has the same meaning as in sections 6 and 7.
- (16) Nothing in this section implies that it is improper for the Commission to give to a building society or building societies generally an indication of the action it might or might not take in relation to any proposed activity of theirs.”
- (2) After Schedule 7 to the 1986 Act there shall be inserted, as Schedule 7A, the provisions set out in Schedule 3 to this Act (supplementary provisions as to directions).

#### **Commencement Information**

**III** S. 13 in force at 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pt. II (subject as mentioned in art. 2(2)-(5) of that S.I.)

## **14 Power to make prohibition orders.**

After section 36 of the 1986 Act there shall be inserted the following section—

### **“36A Power to make prohibition orders.**

- (1) Where by virtue of section 36(12) the powers conferred by this section become exercisable in relation to a building society, the Commission may serve on the society a notice of the Commission’s intention to issue a prohibition order directed to the society.
- (2) A prohibition order under this section is an order—
  - (a) prohibiting, subject to the saving or transitional provisions of the order, the continuance or, as the case may be, the carrying on of the activity specified in the order after a date so specified, either absolutely or unless conditions so specified are complied with; and

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- (b) requiring, subject to the saving or transitional provisions of the order, the disposal within a period specified in the order of all assets acquired or otherwise in its possession by virtue of the activity.
- (3) A disposal of assets in pursuance of a prohibition order shall vest the assets in the transferee but without prejudice to any claim against the society by a person who had an interest in the assets.
- (4) The saving or transitional provisions which may be included in a prohibition order shall be such as appear to the Commission to be just having regard to—
  - (a) the interests of shareholders of and depositors with the society; and
  - (b) the interests of other persons who will be affected by the order.
- (5) A notice under subsection (1) above of the Commission's intention to issue a prohibition order shall—
  - (a) specify the date on which the order is to be issued, being a date not earlier than the end of the period of 21 days beginning with the date of the notice;
  - (b) specify the terms of the order, including any saving or transitional provisions proposed to be included in it; and
  - (c) inform the society of its right to make representations to the Commission, not less than 7 days before the date specified in the order, as to the provisions to be included in the order.
- (6) After considering any representations made by the society, the Commission may make the prohibition order with such saving and transitional provisions (if any) as it thinks just; and where it does so, the Commission—
  - (a) shall issue the order by causing it to be served on the society; and
  - (b) shall direct the central office to keep a copy of it in the public file of the society.
- (7) A prohibition order so made and issued shall, subject to subsection (11) below, take effect on the date specified in the order.
- (8) A copy of any order issued under subsection (6) above shall also be served on each director and on the chief executive of the society.
- (9) The requirement of subsection (8) above, so far as it relates to directors, is satisfied by serving a copy on each director whose appointment has been officially notified and the non-receipt of a copy by a director or the chief executive does not affect the validity of the order.
- (10) Subject to subsection (11) below, a prohibition order shall remain in force until revoked by the Commission.
- (11) The Commission may suspend or revoke a prohibition order so far as it relates to an asset the disposal of which appears to it, on the application of the society, to be impracticable.
- (12) If a society contravenes a prohibition order issued against it under this section—
  - (a) the power conferred on the Commission by section 37(1) shall become exercisable in relation to the society; and
  - (b) the Commission may exercise that power or certify the contravention in writing to the High Court, or do both of those things;

*Status: This version of this Act contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Building Societies Act 1997. (See end of Document for details)*

but the contravention shall not invalidate any transaction or other act.

- (13) On receiving such a certification, the High Court—
- (a) may inquire into the case; and
  - (b) after hearing any witnesses who may be produced against or on behalf of the society and after hearing any statement which may be offered in defence, may punish the society in like manner as if it had been guilty of contempt of the court.
- (14) Where a contravention of a prohibition order which is so certified is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the society he, as well as the society, may be punished in like manner as if he had been guilty of contempt of the court.
- (15) In the application of this section to a building society whose principal office is in Scotland, references to the High Court shall be read as references to the Court of Session.”

**Commencement Information**

**I12** S. 14 in force at 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pt. II (subject as mentioned in art. 2(2)-(5) of that S.I.)

**15 Powers to petition for winding up etc.**

For section 37 of the 1986 Act there shall be substituted the following section—

**“37 Powers to petition for winding up etc.**

- (1) Where—
- (a) by virtue of section 36(13) the powers conferred by this section become exercisable in relation to a building society;
  - (b) by virtue of section 36A(12) the power conferred by this subsection becomes so exercisable; or
  - (c) the Commission has reason to believe that a building society has ceased to comply with the requirement imposed by section 5(1)(a) (purpose or principal purpose),
- the Commission may present a petition to the High Court for the winding up of the society under the applicable winding up legislation; and the power conferred by this subsection is available to the Commission whether or not it has previously presented a petition.
- (2) Where by virtue of section 36(13) the powers conferred by this section become exercisable in relation to a building society, the Commission may make an application to the High Court for an order giving directions to the society under subsection (3) below; and the power conferred by this subsection is available to the Commission whether or not it has previously made an application for such an order.

*Status: This version of this Act contains provisions that are prospective.*  
*Changes to legislation: There are currently no known outstanding effects for the Building Societies Act 1997. (See end of Document for details)*

- (3) An order under this subsection is an order directing the society to comply with a direction under subsection (3), (5), (6), (7) or (10) of section 36 as directed in the order, or to carry out a restructuring plan as so directed.
- (4) Where the High Court makes an order under subsection (3) above, the Commission shall give a copy of it to the central office and the central office shall keep the copy in the public file of the society.
- (5) The High Court shall not make an order winding up the society on an application under subsection (1)(c) above unless it is satisfied that the society has ceased to comply with the requirement imposed by section 5(1)(a).
- (6) In the application of this section to a building society whose principal office is in Scotland, references to the High Court shall be read as references to the Court of Session.”

**Commencement Information**

**I13** S. 15 in force at 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pt. II (subject as mentioned in art. 2(2)-(5) of that S.I.)

**F216** .....

**Textual Amendments**

**F2** S. 16 shall cease to have effect (17.8.2001 for specified purposes and otherwise 1.12.2001) by virtue of S.I. 2001/2617, arts. 2(a), 13(1), Sch. 3 Pt. II para. 213(a) and is repealed (1.12.2001) by S.I. 2001/2617, art. 13(2), Sch. 4; S.I. 2001/3538, art. 2(1)

**17 Power to direct transfers of engagements or business.**

(1) After section 42A of the 1986 Act there shall be inserted the following section—

**“42B Power to direct transfers of engagements or business.**

- (1) If, with respect to a building society for which an authorisation is in force, the Commission considers it expedient to do so in order to protect the investments of shareholders or depositors, it may either—
  - (a) direct the society, within a specified period, to transfer all its engagements to one or more other building societies under section 94; or
  - (b) direct the society, within a specified period, to transfer its business to an existing company under section 97.
- (2) Failure by a society to comply with a direction given under subsection (1) shall render it liable to have its authorisation revoked under section 43(1).
- (3) Where the Commission—
  - (a) gives a building society a direction under subsection (1)(a) above; or

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- (b) does not give a building society such a direction solely because the society is already seeking to transfer all its engagements to one or more other building societies under section 94,  
the Commission may, if it considers it expedient to do so in order to protect the investments of shareholders or depositors, direct that, instead of resolving to transfer its engagements by the two resolutions required by section 94(2) (with or without the additional resolution required by section 94(3)), the society may resolve to do so by a resolution of the board of directors.
- (4) Where the Commission—
- (a) gives a building society a direction under subsection (1)(b) above; or
- (b) does not give a building society such a direction solely because the society is already seeking to transfer its business to an existing company under section 97,  
the Commission may, if it considers it expedient to do so in order to protect the investments of shareholders or depositors, direct that, instead of approving the transfer and the terms of the transfer by the two resolutions required by section 97(4)(c), the society may approve the transfer and those terms by a resolution of the board of directors.
- (5) A direction under subsection (3) or (4) above—
- (a) shall be in writing;
- (b) may be given subject to such limitations or conditions as the Commission may think fit; and
- (c) unless renewed by a further direction, shall cease to have effect at the end of the period of 90 days beginning with the day on which it is given.
- (6) Section 45 has effect for the purpose of any determination whether or not it is expedient to exercise the powers conferred by this section.
- (7) In Schedule 8A to this Act—
- (a) Part I (which contains provisions modifying sections 94 to 96 and Schedule 16 to this Act) shall apply where a direction is given under subsection (3) above; and
- (b) Part II (which contains provisions modifying sections 97 to 100 and Schedule 17 to this Act) shall apply where a direction is given under subsection (4) above.
- (8) The Commission, with the consent of the Treasury, may make regulations for the purpose of specifying, as prescribed matters—
- (a) the matters of which statements under paragraph 3 of Schedule 8A to this Act are to give particulars; and
- (b) the matters of which statements under paragraph 9 of that Schedule are to give particulars.
- (9) The power to make regulations under this section is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”
- (2) Immediately before Schedule 9 to the 1986 Act there shall be inserted, as Schedule 8A, the provisions set out in Schedule 4 to this Act (transfer directions: modifications of Part X).



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*Status: This version of this Act contains provisions that are prospective.*  
*Changes to legislation: There are currently no known outstanding effects for the Building Societies Act 1997. (See end of Document for details)*

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**18 Notification and confirmation of transfer directions.**

After section 42B of the 1986 Act there shall be inserted the following section—

**“42C Notification and confirmation of transfer directions.**

- (1) A direction under section 42B(1) shall be given by notice in writing and may be varied by a further direction; and a direction may be revoked by the Commission by a notice in writing to the building society concerned.
- (2) A direction under section 42B(1), except one varying a previous direction with the agreement of the building society concerned—
  - (a) shall state the reasons for which it is given and give particulars of the society’s rights under subsection (3) below and section 46; and
  - (b) shall cease to have effect at the end of the period of 28 days beginning with the day on which it is given unless before the end of that period it is confirmed by a further written notice given by the Commission to the society concerned.
- (3) A building society to which a direction is given which requires confirmation under subsection (2) above may, within the period of 14 days beginning with the day on which the direction is given, make written representations to the Commission; and the Commission shall take any such representations into account in deciding whether to confirm the direction.”

**F3**<sup>19</sup> .....

**Textual Amendments**

**F3** S. 19 shall cease to have effect (17.8.2001 for specified purposes and otherwise 1.12.2001) by virtue of S.I. 2001/2617, arts. 2(a), 13(1), **Sch. 3 Pt. II para. 213(b)** and is repealed (1.12.2001) by S.I. 2001/2617, art. 13(2), **Sch. 4**; S.I. 2001/3538, **art. 2(1)**

**F4**<sup>20</sup> .....

**Textual Amendments**

**F4** S. 20 shall cease to have effect (17.8.2001 for specified purposes and otherwise 1.12.2001) by virtue of S.I. 2001/2617, arts. 2(a), 13(1), **Sch. 3 Pt. II para. 213(b)** and is repealed (1.12.2001) by S.I. 2001/2617, art. 13(2), **Sch. 4**; S.I. 2001/3538, **art. 2(1)**

**F5**<sup>21</sup> .....

*Status: This version of this Act contains provisions that are prospective.  
Changes to legislation: There are currently no known outstanding effects  
for the Building Societies Act 1997. (See end of Document for details)*

**Textual Amendments**

**F5** S. 21 shall cease to have effect (17.8.2001 for specified purposes and otherwise 1.12.2001) by virtue of S.I. 2001/2617, arts. 2(a), 13(1), **Sch. 3 Pt. II para. 213(b)** and is repealed (1.12.2001) by S.I. 2001/2617, art. 13(2), **Sch. 4**; S.I. 2001/3538, **art. 2(1)**

**F6**<sup>22</sup> .....

**Textual Amendments**

**F6** S. 22 shall cease to have effect (17.8.2001 for specified purposes and otherwise 1.12.2001) by virtue of S.I. 2001/2617, arts. 2(a), 13(1), **Sch. 3 Pt. II para. 213(b)** and is repealed (1.12.2001) by S.I. 2001/2617, art. 13(2), **Sch. 4**; S.I. 2001/3538, **art. 2(1)**

**F7**<sup>23</sup> .....

**Textual Amendments**

**F7** S. 23 shall cease to have effect (17.8.2001 for specified purposes and otherwise 1.12.2001) by virtue of S.I. 2001/2617, arts. 2(a), 13(1), **Sch. 3 Pt. II para. 213(b)** and is repealed (1.12.2001) by S.I. 2001/2617, art. 13(2), **Sch. 4**; S.I. 2001/3538, **art. 2(1)**

**F8**<sup>24</sup> .....

**Textual Amendments**

**F8** S. 24 shall cease to have effect (17.8.2001 for specified purposes and otherwise 1.12.2001) by virtue of S.I. 2001/2617, arts. 2(a), 13(1), **Sch. 3 Pt. II para. 213(b)** and is repealed (1.12.2001) by S.I. 2001/2617, art. 13(2), **Sch. 4**; S.I. 2001/3538, **art. 2(1)**

**PART III**

ACCOUNTABILITY TO MEMBERS

**25 Special meeting on members’ requisition.**

After paragraph 20 of Schedule 2 to the 1986 Act there shall be inserted the following paragraph—

**Special meeting on members’ requisition**

“20A (1) On a members’ requisition, a building society shall—  
(a) duly call a special meeting, and specify the meeting as such in the notice calling it; and

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*Status:* This version of this Act contains provisions that are prospective.

*Changes to legislation:* There are currently no known outstanding effects for the Building Societies Act 1997. (See end of Document for details)

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- (b) if so required by the requisition, send to each member entitled to receive notice of the meeting a copy of a statement of not more than 500 words with respect to the matters to be dealt with at the meeting;
- and where a meeting is so called no business shall be conducted at the meeting other than that stated in the notice calling it or (where applicable) that mentioned in sub-paragraph (8)(b) below.
- (2) A members' requisition is a requisition of not less than the requisite number of members of the society; and that number is 100 or such lesser number as may be specified in the rules of the society.
- (3) The requisition—
- (a) must state the objects of the meeting, be signed by the requisitionists and be deposited at the society's principal office; and
- (b) may consist of several documents in like form each signed by one or more requisitionists and each after the first deposited within three months of the date on which the first was deposited.
- (4) Where the requisition consists of several documents, the date of its deposit shall be taken to be the date on which the document signed by the requisitionist making up the requisite number is deposited at the society's principal office.
- (5) The rules of the society may require a requisitionist—
- (a) to state his full name and address;
- (b) to fulfil one or other of the following conditions, namely—
- (i) to have been a shareholding member for a specified period and to hold, or to have held at any time during that period, shares in the society to such value (not greater than the prescribed amount) as is specified in the rules; and
- (ii) to have been a borrowing member for a specified period and to owe to the society, or to have owed to the society at any time during that period, a mortgage debt of such amount (not greater than the prescribed amount) as is so specified; and
- (c) to identify a share or mortgage account with the society which will evidence the fact that he fulfils one or other of those conditions;
- and in this sub-paragraph "specified period" means such period (not more than two years) before the date of the requisition as is specified in the rules.
- (6) No objection may be made by virtue of such rules to the requisition or, where the requisition consists of several documents, to any of those documents unless it is made within 14 days of the requisition or document being deposited at the society's principal office.
- (7) The rules of the society may also require a sum of money, not exceeding £25 per requisitionist, to be deposited with the requisition; and, where any money is so deposited, it shall be forfeited to the society, or returned to the persons who deposited it, as provided by the rules.

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*Status: This version of this Act contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Building Societies Act 1997. (See end of Document for details)*

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- (8) The rules shall not provide for any deposited money to be forfeited to the society except—
- (a) where a quorum is not present within half an hour after the time appointed for the meeting; or
  - (b) where and to the extent that those eligible to vote at the meeting decide by ordinary resolution that the money should be applied to defray the whole or any part of the expenses of holding the meeting.
- (9) If the rules of a building society so provide, sub-paragraph (1) above does not require the society—
- (a) to call a special meeting if the only or main object of the meeting is to move a resolution in substantially the same terms as any resolution which has been defeated at a meeting or on a postal ballot during the period beginning with the third annual general meeting before the date on which the requisition is deposited at the society's principal office; or
  - (b) to call a special meeting to be held during the period of four months beginning one month after the end of its financial year.
- (10) Sub-paragraph (1)(b) above does not require the society to send copies of a statement to members entitled to receive notice of a meeting in any case where—
- (a) publicity for the statement would be likely to diminish substantially the confidence in the society of investing members of the public; or
  - (b) the rights conferred by sub-paragraph (1)(b) above are being abused to seek needless publicity for defamatory matter or for frivolous or vexatious purposes;
- and that provision shall not be taken to confer any rights on members, or to impose any duties on a building society, in respect of a statement which does not relate directly to the affairs of the society.
- (11) Where sub-paragraph (1)(b) above requires copies of a statement to be sent to members entitled to receive notice of a meeting, the proceedings at the meeting are not invalidated by—
- (a) the accidental omission to send a copy of the statement to a member entitled to receive one, or
  - (b) the non-receipt of such a copy by such a member.
- (12) The Commission shall hear and determine any dispute arising under sub-paragraph (10)(a) above, whether on the application of the society or of any other person who claims to be aggrieved.
- (13) The Commission may, with the consent of the Treasury, by order substitute—
- (a) for the number specified in sub-paragraph (2) above; or
  - (b) for the sum specified in sub-paragraph (7) above,
- such other number or sum as appears to it to be appropriate; and an order under this subsection may make such supplementary, transitional and saving provision as appears to the Commission to be necessary or expedient.

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- (14) The power to make an order under sub-paragraph (13) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

#### Commencement Information

**I14** S. 25 in force at 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pt. II (subject as mentioned in art. 2(2)-(5) of that S.I.)

## 26 Failure to comply with members' requisition.

After paragraph 20A of Schedule 2 to the 1986 Act there shall be inserted the following paragraph—

### Failure to comply with members' requisition

“20B (1) This paragraph applies where a members' requisition is deposited at a building society's principal office and the society is not relieved of the obligation to call a special meeting by paragraph 20A(9)(a) above.

(2) Subject to sub-paragraph (5) below, if the society does not within 28 days from the date of the deposit of the requisition duly call a meeting to be held within 63 days from that date—

- (a) the requisitionists, or any proportion of them exceeding one half, may themselves call a meeting to be held within five months from that date; and
- (b) no business shall be conducted at a meeting so called other than that stated in the notice calling it or (where applicable) that mentioned in paragraph 20A(8)(b) above.

(3) A meeting called under sub-paragraph (2) above by requisitionists shall be called in the same manner, as nearly as may be, as that in which meetings are to be called by the society.

(4) If—

- (a) paragraph 20A(1)(b) above requires the society to send to each member entitled to receive notice of the meeting a copy of a statement of not more than 500 words with respect to the matters to be dealt with at the meeting; and
- (b) subject to sub-paragraph (5) below, that requirement is not complied with within 28 days from the date of the deposit of the requisition,

the requisitionists, or any proportion of them exceeding one half, may themselves send a copy of the statement to each such member.

(5) If the rules of the society make such provision as is mentioned in paragraph 20A(9)(b) above, any days falling within the period there mentioned shall be disregarded in determining any period for the purposes of sub-paragraph (2) or (4)(b) above.

(6) Any reasonable expenses incurred by the requisitionists by reason of the failure of the society to call a meeting, or to comply with such a

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*Changes to legislation: There are currently no known outstanding effects for the Building Societies Act 1997. (See end of Document for details)*

requirement as is mentioned in sub-paragraph (4) above, shall be repaid to the requisitionists by the society.

- (7) Any sum so repaid shall be recoverable by the society from such of the directors of the society as were responsible for the failure (whether by the retention of fees or other remuneration in respect of services or otherwise).”

#### **Commencement Information**

**I15** S. 26 in force at 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pt. II (subject as mentioned in art. 2(2)-(5) of that S.I.)

#### **27 Election of directors: general.**

- (1) In subsection (1) of section 60 of the 1986 Act (directors: elections and retirements), for paragraph (a) there shall be substituted the following paragraph—

“(a) on a poll taken at the annual general meeting of the society, or”.

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

“(1A) Where directors of a building society are to be elected to office on a poll taken at the annual general meeting of the society, a form for the appointment of a proxy shall be sent to each person entitled to notice of the meeting.”

- (3) For subsection (3) of that section there shall be substituted the following subsections—

“(3) Where, in the case of an election of directors of a building society, there are more candidates than vacancies to be filled by the election, a person entitled to vote in the election—

- (a) shall have one vote in respect of every vacancy, but  
 (b) cannot be required to cast all or any of his votes.

(3A) Where, in the case of an election of directors of a building society, there are not more candidates than vacancies to be filled by the election—

- (a) a person entitled to vote in the election shall have one vote in respect of every candidate, but cannot be required to cast all or any of his votes;  
 (b) each vote shall be capable of being cast either for or against the candidate concerned; and  
 (c) a candidate shall be elected if, and only if, more votes are cast for him than against him.”

- (4) In subsection (4) of that section, for the words “any person” there shall be substituted the words “any natural person”.

- (5) In subsection (10) of that section, for paragraph (b) there shall be substituted the following paragraph—

“(b) their qualifications as respects length of membership and the value of their shares or the amount of their mortgage debt;”.

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

“(10A) A nomination of a candidate for election as a director of a building society—  
 (a) may be made at any time; but

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*Changes to legislation: There are currently no known outstanding effects for the Building Societies Act 1997. (See end of Document for details)*

- (b) if made after the closing date for the nomination of candidates for the next election of directors, shall be carried forward (unless the candidate otherwise requires) as a nomination for the next election of directors after that;

and in this subsection and section 61 “the closing date for the nomination of candidates”, in relation to an election of directors, means the last day of the last financial year to end before the voting date.”

- (7) In subsection (17) of that section, the definition of “ordinary resolution” shall cease to have effect.

#### Commencement Information

**116** S. 27 in force at 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pt. II (subject as mentioned in art. 2(2)-(5) of that S.I.)

## 28 Election of directors: supplementary.

- (1) For subsections (1) and (2) of section 61 of the 1986 Act (directors: supplementary provisions as to elections etc.) there shall be substituted the following subsections—

“(1) Rules made under section 60(10)(a), in order to comply with this section, must not require—

- (a) in the case of a society whose total commercial assets do not exceed £100 million, more than 10 members;
- (b) in the case of a society whose total commercial assets exceed £100 million but do not exceed £250 million, more than 20 members;
- (c) in the case of a society whose total commercial assets exceed £250 million but do not exceed £1,000 million, more than 30 members;
- (d) in the case of a society whose total commercial assets exceed £1,000 million but do not exceed £5,000 million, more than 40 members; and
- (e) in the case of a society whose total commercial assets exceed £5,000 million, more than 50 members,

to join in nominating a person for election as a director.

- (2) Rules under section 60(10)(b), in order to comply with this section, must not require a nominating member—

- (a) to have been a member for more than two years before the date of the nomination; or
- (b) if he claims eligibility as a shareholding member, to hold, or to have held at any time during that period, shares in the society to a value greater than £100; or
- (c) if he claims eligibility as a borrowing member, to owe to the society, or to have owed to the society at any time during that period, a mortgage debt of an amount greater than £100.”

- (2) For subsection (4) of that section there shall be substituted the following subsections—

“(3A) In subsection (1) above “total commercial assets”, in relation to a building society, means the difference between the total assets of the society as shown in the relevant accounts and the aggregate of—

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*Changes to legislation: There are currently no known outstanding effects for the Building Societies Act 1997. (See end of Document for details)*

- (a) the liquid assets of the society as shown in those accounts in pursuance of regulations under section 73(7); and
  - (b) the fixed assets of the society as so shown;
- and in this subsection “the relevant accounts” means the accounts which, immediately before the closing date for the nomination of candidates, were the accounts last prepared by the society under section 72.
- (4) The Commission may, by order, substitute—
    - (a) for any amount or number specified in subsection (1) above;
    - (b) for any amount specified in subsection (2) above; or
    - (c) for any amount or percentage specified in subsection (3) above, such other amount, number or percentage as it thinks appropriate; and the Commission may, with the consent of the Treasury, by order vary subsection (3A) above by adding to or deleting from it any provision or by varying any provision contained in it.”
  - (3) In subsection (7) of that section—
    - (a) for the words from “If” to “nominations” there shall be substituted the words “If, before the closing date for the nomination of candidates, a duly nominated candidate for election as a director of a building society furnishes the society with an election address, or a revised election address, of not more than 500 words ”; and
    - (b) in paragraph (a), after the words “the address” there shall be inserted the words “ or, as the case may require, the revised address ”.
  - (4) In subsection (8) of that section—
    - (a) after the words “an address”, in both places where they occur, there shall be inserted the words “ or a revised address ”; and
    - (b) after the words “the address” there shall be inserted the words “ or revised address ”.

**Commencement Information**

**I17** S. 28 in force at 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pt. II (subject as mentioned in art. 2(2)-(5) of that S.I.)

**29 Acquisition or establishment of a business.**

After section 92 of the 1986 Act there shall be inserted the following section—

*“ New business*

**92A Acquisition or establishment of a business.**

- (1) A building society—
  - (a) in order to acquire, or allow a subsidiary undertaking to acquire, a business to which subsections (3) and (4) below apply; or
  - (b) in order to establish, or allow such an undertaking to establish, a business to which subsections (3) and (5) below apply,



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must resolve so to do by an ordinary resolution; but a failure to comply with this subsection shall not invalidate any transaction or other act.

(2) In order to be effective for the purposes of subsection (1) above, an ordinary resolution of a building society must be passed by a majority of the members of the society entitled to vote on such a resolution and voting either—

- (a) in person or by proxy on a poll on the resolution at a meeting of the society; or
- (b) in a postal ballot on the resolution;

and in a case falling within paragraph (a) above, a form for the appointment of a proxy shall be sent to each person entitled to notice of the meeting.

(3) This subsection applies to a business which is proposed to be acquired or established if, in the opinion of the board of directors of the society—

- (a) the greater part of the income of the business is or will be derived from activities having no connection with loans secured on residential property;
- (b) the greater part of the resources of the business are or will be devoted to such activities; or
- (c) the greater part of the business consists or will consist of such activities.

(4) This subsection applies to a business which is proposed to be acquired if X is not less than 15 per cent of Y where—

X = the amount or value of the consideration to be given for the shares, voting rights or assets proposed to be acquired;

Y = the amount of the society's own funds as at the relevant date.

(5) This subsection applies to a business which is proposed to be established if X is not less than 15 per cent of Y where—

X = the aggregate of the following as estimated by the society, namely—

- (a) the cost of acquiring, developing, adapting or repairing any premises required for the purposes of the business;
- (b) the initial cost of acquiring any plant or equipment, or any intellectual property, so required;
- (c) the initial cost of employing or training staff so required;
- (d) the cost of obtaining any professional advice required in connection with the establishment of the business;
- (e) any other non-recurring items of expenditure to be incurred in that connection; and
- (f) in the case of a business proposed to be established by a subsidiary undertaking, the amount of any capital to be provided by the society which will not be used for defraying items of expenditure falling within the foregoing paragraphs;

Y = the amount of the society's own funds as at the relevant date.

(6) Where a business is proposed to be acquired or established by a syndicate whose members include a building society or subsidiary undertaking—

- (a) subsection (1) above shall have effect as if the business were proposed to be acquired or (as the case may be) established by the society; and

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- (b) whichever of subsections (4) and (5) above is applicable shall have effect as if X were only so much of X as is referable to participation in the syndicate by the society or undertaking.
- (7) For the purposes of subsections (1)(a) and (4) above, two or more proposed acquisitions by a building society or subsidiary undertaking which will form part of a larger acquisition or series of acquisitions shall be treated as a single acquisition.
- (8) Nothing in this section shall apply in relation to a building society in so far as it undertakes, in accordance with section 94 and Schedule 16 to this Act, to fulfil engagements transferred to it in accordance with that section and that Schedule.
- (9) In this section—
- “initial”, in relation to any cost, means incurred, or likely in the directors’ opinion to be incurred, not later than 12 months after the establishment of the business;
- “intellectual property” includes—
- (a) any patent, know-how, trade mark, service mark, registered design, copyright or design right; and
- (b) any licence under or in respect of any such right;
- “the relevant date”, in relation to a building society, means—
- (a) the date of the end of its last financial year or, failing that, the date of its establishment; or
- (b) where it has been involved in a transfer of engagements, the date of that transfer,
- whichever is the later.
- (10) The Commission may, with the consent of the Treasury, by order substitute for the percentage specified in subsection (4) or (5) above such other percentage as appears to it to be appropriate; and an order under this subsection may make such supplementary, transitional and saving provision as appears to the Commission to be necessary or expedient.
- (11) The Commission may, with the consent of the Treasury, by order vary subsections (5) and (9) above by adding to or deleting from them any provision or by varying any provision contained in them; and an order under this subsection may make—
- (a) different provisions for different cases or purposes; and
- (b) such supplementary, transitional and saving provision as appears to the Commission to be necessary or expedient.
- (12) The power to make an order under subsection (10) or (11) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

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**Commencement Information**

**I18** S. 29 in force at 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pt. II (subject as mentioned in art. 2(2)-(5) of that S.I.)

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*Status: This version of this Act contains provisions that are prospective.*  
*Changes to legislation: There are currently no known outstanding effects for the Building Societies Act 1997. (See end of Document for details)*

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**30 Information about transfers or proposed transfers of business.**

- (1) In subsection (1) of section 98 of the 1986 Act (transfers of business: supplementary provisions), after the word “statements” there shall be inserted the words “ or summaries ”.
- (2) After that subsection there shall be inserted the following subsection—

“(1A) Part IA of that Schedule 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 a proposal for the transfer of the whole of its business to a company.”
- (3) For Part I of Schedule 17 to the 1986 Act there shall be substituted, as Parts I and IA, the provisions set out in Parts I and II respectively of Schedule 5 to this Act (information about transfers or proposed transfers of business).

**31 Transfers of business: increased remuneration etc.**

After section 99 of the 1986 Act there shall be inserted the following section—

**“99A Transfers of business: increased remuneration etc.**

- (1) Subject to subsection (2) 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 any director or other officer of the society to receive increased emoluments in consequence of the transfer, whether by way of increased remuneration or the grant of share options or otherwise.
- (2) An ordinary resolution approving any such provision must be put before a meeting of the society.”

**PART IV**

**PROTECTION OF INVESTORS AND INVESTIGATION OF COMPLAINTS**

**F<sup>9</sup>32** .....

**Textual Amendments**

**F<sup>9</sup>** S. 32 shall cease to have effect (17.8.2001 for specified purposes and otherwise 1.12.2001) by virtue of S.I. 2001/2617, arts. 2(a), 13(1), **Sch. 3 Pt. II para. 213(c)** and is repealed (1.12.2001) by S.I. 2001/2617, art. 13(2), **Sch. 4; S.I. 2001/3538, art. 2(1)**

**F<sup>10</sup>33** .....

*Status: This version of this Act contains provisions that are prospective.  
Changes to legislation: There are currently no known outstanding effects  
for the Building Societies Act 1997. (See end of Document for details)*

**Textual Amendments**

**F10** S. 33 shall cease to have effect (17.8.2001 for specified purposes and otherwise 1.12.2001) by virtue of S.I. 2001/2617, arts. 2(a), 13(1), **Sch. 3 Pt. II para. 213(c)** and is repealed (1.12.2001) by S.I. 2001/2617, art. 13(2), **Sch. 4; S.I. 2001/3538, art. 2(1)**

<sup>F11</sup>**34** .....

**Textual Amendments**

**F11** S. 34 shall cease to have effect (17.8.2001 for specified purposes and otherwise 1.12.2001) by virtue of S.I. 2001/2617, arts. 2(a), 13(1), **Sch. 3 Pt. II para. 213(c)** and is repealed (1.12.2001) by S.I. 2001/2617, art. 13(2), **Sch. 4; S.I. 2001/3538, art. 2(1)**

<sup>F12</sup>**35** .....

**Textual Amendments**

**F12** S. 35 shall cease to have effect (17.8.2001 for specified purposes and otherwise 1.12.2001) by virtue of S.I. 2001/2617, arts. 2(a), 13(1), **Sch. 3 Pt. II para. 213(c)** and is repealed (1.12.2001) by S.I. 2001/2617, art. 13(2), **Sch. 4; S.I. 2001/3538, art. 2(1)**

**PART V**

MISCELLANEOUS AND SUPPLEMENTAL

*Miscellaneous*

**36 Registered and business names.**

(1) For sub-paragraph (2) of paragraph 9 of Schedule 2 to the 1986 Act (building society not to use any name or title other than registered name) there shall be substituted the following sub-paragraphs—

“(2) Every building society shall paint or affix, and keep painted or affixed, its registered name on the outside of every office or place in which its business is carried on, in a conspicuous position and in letters easily legible.

(2A) Every building society shall state its registered name in legible characters in all of the following documents, namely—

- (a) its business letters;
- (b) its account statements, including those relating to deposit, share, loan or mortgage accounts;
- (c) its passbooks;
- (d) its notices and publications, including all documents sent to members;

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- (e) its invoices and receipts;
- (f) its letters of credit and any instruments creating or acknowledging its indebtedness;
- (g) its contracts, agreements, mortgages and deeds; and
- (h) its bills of exchange, promissory notes, endorsements, cheques and orders for money or goods.”

(2) After sub-paragraph (7) of that paragraph there shall be inserted the following sub-paragraph—

“(8) For the purposes of this paragraph and paragraphs 10 to 10C below “registered name”, in relation to a building society, means the name of the society which is for the time being registered with the central office.”

(3) For paragraph 10 of Schedule 2 to the 1986 Act (offences relating to society name) there shall be substituted the following paragraph—

“10 (1) If a building society does not—

- (a) paint or affix its registered name; or
- (b) keep its registered name painted or affixed,

as required by paragraph 9(2) above, the society shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) A building society which, without reasonable excuse, does not comply with paragraph 9(2A) above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) If an officer of a building society or a person on its behalf issues or authorises the issue of any document mentioned in paragraph 9(2A)(a) to (g) above, in which the society’s registered name is not stated as required by that paragraph, he shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) If an officer of a building society or a person on its behalf signs or authorises to be signed on behalf of the building society any document mentioned in paragraph 9(2A)(h) above in which the society’s registered name is not stated as required by that paragraph—

- (a) he shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale; and
- (b) he shall be further personally liable to the holder of the bill of exchange, promissory note, cheque or order for money or goods for the amount of it (unless it is duly paid by the building society).

(5) 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 3 on the standard scale and so shall any officer who is also guilty of the offence.”

(4) After that paragraph there shall be inserted the following paragraphs—

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*Status: This version of this Act contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Building Societies Act 1997. (See end of Document for details)*

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#### **“10A Restrictions on business names**

- (1) This paragraph and paragraph 10B below apply where a building society carries on business under a name other than the following, namely—
  - (a) its registered name;
  - (b) its registered name with the omission of the words “Building Society”; and
  - (c) its registered name with an addition which merely indicates that the business is carried on in succession to a former building society with which it has merged.
- (2) The society shall not, without the written approval of the Commission, carry on business under a name which—
  - (a) would be likely to give the impression that the business is connected with Her Majesty’s Government or with any local authority, or
  - (b) includes any word or expression for the time being specified in regulations made under sub-paragraph (3) below.
- (3) The Commission may, with the consent of the Treasury, by regulations—
  - (a) specify words or expressions for the use of which as or as part of a business name the approval of the Commission is required by sub-paragraph (2) above, and
  - (b) in relation to any such word or expression, specify a Government department or other body for the purposes of sub-paragraph (4) below.
- (4) Where the society proposes to carry on business under a name which is or includes any such word or expression, and a government department or other body is specified under sub-paragraph (3)(b) above in relation to that word or expression, the society shall—
  - (a) request (in writing) the relevant body to indicate whether (and if so why) it has any objections to the proposal, and
  - (b) submit to the Commission a statement that such a request has been made and a copy of any response received from the relevant body.
- (5) For the purposes of this paragraph “local authority” means—
  - (a) any local authority within the meaning of the <sup>M10</sup>Local Government Act 1972, the Common Council of the City of London or the Council of the Isles of Scilly;
  - (b) any local authority within the meaning of the <sup>M11</sup>Local Government etc. (Scotland) Act 1994;
  - (c) any district council within the meaning of the <sup>M12</sup>Local Government Act (Northern Ireland) 1972.

#### **10B Use of business names: required disclosure**

- (1) Paragraph 9(2A) above shall have effect as if after the words “in legible characters” there were inserted the words “which are reasonably prominent”.
- (2) The society shall in all documents mentioned in paragraph 9(2A) above state in legible characters an address in the United Kingdom at which service of any document relating in any way to the business will be effective.

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- (3) The society shall also in any premises where the business is carried on and to which the members of the society, the customers of the business or suppliers of any goods or services to the business have access, display in a prominent position so that it may easily be read by such persons a notice containing the society's registered name and the address mentioned in sub-paragraph (2) above.
- (4) The society shall secure that the registered name and the address mentioned in sub-paragraph (2) above is immediately given, by written notice, to any person with whom anything is done or discussed in the course of the business and who asks for the registered name or the address.
- (5) The Commission may, with the consent of the Treasury, by regulations require a notice under sub-paragraph (3) or (4) above to be displayed or given in a specified form.

#### 10C Use of business names: supplementary

- (1) A building society which contravenes paragraph 10A(2) above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (2) A building society which, without reasonable excuse, does not comply with paragraph 9(2A) or 10B(2), (3) or (4) above, or any regulations made under paragraph 10B(5) above, shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) Where paragraph 10A above applies any legal proceedings brought by the society to enforce a right arising out of a contract made in the course of the business in respect of which the society was, at the time the contract was made, in breach of paragraph 9(2A) or 10B(2), (3) or (4) above shall be dismissed if the defendant (or, in Scotland, the defender) to the proceedings shows—
  - (a) that he has a claim against the plaintiff (pursuer) arising out of that contract which he has been unable to pursue by reason of the plaintiff's (pursuer's) breach of paragraph 9(2A) or 10B(2), (3) or (4) above, or
  - (b) that he has suffered some financial loss in connection with the contract by reason of the latter's breach of paragraph 9(2A) or 10B(2), (3) or (4) above,unless the court before which the proceedings are brought is satisfied that it is just and equitable to let the proceedings continue.
- (4) Sub-paragraph (3) above is without prejudice to the right of any person to enforce such rights as he may have against another person in any proceedings brought by that person.
- (5) Regulations made under paragraph 10A(3) or 10B(5) above shall be made by statutory instrument subject to annulment by resolution of either House of Parliament.
- (6) Such regulations may contain such transitional provisions and savings as the Commission thinks fit, and may make different provision for different cases or classes of case."

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#### **Marginal Citations**

- M10** 1972 c.70.  
**M11** 1994 c.39.  
**M12** 1972 c.9 (N.I.).

### **37 Access to registers of members.**

- (1) For sub-paragraphs (1) and (2) of paragraph 15 of Schedule 2 to the 1986 Act (right of members to obtain particulars from register) there shall be substituted the following sub-paragraphs—

“(1) At any time when a building society—

- (a) has had its authorisation revoked under section 43; and
- (b) has not been re-authorised under section 44,

a member of the society shall, subject to sub-paragraph (1A) below, 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.

(1A) Sub-paragraph (1) above shall not apply unless the member in question—

- (a) is qualified under the rules of the society to join in a members’ requisition for a special meeting, or to join in nominating a person for election as a director; or
- (b) would be so qualified if any requirements as to length of time a person must have been a shareholding or borrowing member were omitted.

(2) If, at any time not falling within sub-paragraph (1) above, a member of a building society who is qualified under the rules of the society to join in a members’ requisition for a special meeting, or to join in nominating a person for election as a director, makes a written application to the Commission for the right to obtain names and addresses from the register, the Commission—

- (a) if satisfied that the applicant—
  - (i) requires that right for the purpose of communicating with members of the society on a subject relating to its affairs; and
  - (ii) has not, since making the application, voluntarily ceased to be a member of the society; and
- (b) having regard to the interests of the members as a whole and to all the other circumstances; and
- (c) on payment by the applicant of a fee of £25 or such other amount as may be prescribed,

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 that subject.”

- (2) After sub-paragraph (6) of that paragraph there shall be inserted the following sub-paragraphs—



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- “(7) No information obtained under sub-paragraph (1) or (2) above or this sub-paragraph and relating to a member of the society may be disclosed except—
- (a) with the consent of that member; or
  - (b) in the case of information obtained under sub-paragraph (1) or (2) above, for purposes connected with the purpose mentioned in that paragraph.
- (8) Any person who discloses information in contravention of sub-paragraph (7) above shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both; and
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (9) The Treasury may, by regulations, prescribe the amount of any fees payable under sub-paragraph (2) above; and regulations under this sub-paragraph may include—
- (a) provision for any fees so payable to be reduced or for payment of any fees to be waived by the Commission in circumstances determined by or under the regulations; and
  - (b) such incidental, supplementary and transitional provision as appears to the Treasury to be necessary or expedient.
- (10) The power to make regulations under sub-paragraph (9) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (11) The amounts received by the Commission under sub-paragraph (2) above shall be applied as an appropriation in aid of money provided by Parliament for the expenses of the Commission under this Act, and in so far as not so applied, shall be paid into the Consolidated Fund.”

### **38 Transactions with directors and persons connected with them.**

After section 66 of the 1986 Act there shall be inserted the following section—

#### **“66A Transactions with directors and persons connected with them.**

- (1) This section applies where a building society enters into a transaction the parties to which include—
- (a) a director of the society; or
  - (b) a person connected with such a director,
- and the board of directors, in connection with the transaction, exceed any limitation on their powers by reason of anything included in the society’s constitution, that is to say, its memorandum and rules.
- (2) The transaction is voidable at the instance of the society.
- (3) Whether or not it is avoided, any such party to the transaction as is mentioned in subsection (1)(a) or (b) above, and any director of the society who authorised the transaction, is liable—

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- (a) to account to the society for any gain which he has made directly or indirectly by the transaction, and
  - (b) to indemnify the society for any loss or damage resulting from the transaction.
- (4) Nothing in the above provisions shall be construed as excluding the operation of any other enactment or rule of law by virtue of which the transaction may be called in question or any liability to the society may arise.
- (5) The transaction ceases to be voidable if—
- (a) restitution of any money or other asset which was the subject-matter of the transaction is no longer possible, or
  - (b) the society is indemnified for any loss or damage resulting from the transaction, or
  - (c) rights acquired bona fide for value and without actual notice of the directors' exceeding their powers by a person who is not party to the transaction would be affected by the avoidance, or
  - (d) the transaction is ratified by the society in general meeting, by ordinary or special resolution or otherwise as the case may require.
- (6) A person other than a director of the society is not liable under subsection (3) above if he shows that at the time the transaction was entered into he did not know that the directors were exceeding their powers.
- (7) This section does not affect the operation of sub-paragraph (1) of paragraph 17 of Schedule 2 in relation to any party to the transaction not within subsection (1) (a) or (b) above.
- But where a transaction is voidable by virtue of this section and valid by virtue of that sub-paragraph in favour of such a person, the court may, on the application of that person or of the society, make such order affirming, severing or setting aside the transaction, on such terms, as appear to the court to be just.
- (8) In this section “transaction” includes any act; and the reference in subsection (1) above to limitations under the society’s constitution includes limitations deriving—
- (a) from a resolution of the society passed at a general or special meeting or on a postal ballot; or
  - (b) from any agreement between the members of the society.”

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**Commencement Information**

**I19** S. 38 in force at 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pt. II (subject as mentioned in art. 2(2)-(5) of that S.I.)

**39 Application of certain insolvency legislation.**

- (1) After section 90 of the 1986 Act there shall be inserted the following section—

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#### **“90A Application of other companies insolvency legislation to building societies.**

For the purpose of—

- (a) enabling voluntary arrangements to be approved in relation to building societies,
- (b) enabling administration orders to be made in relation to building societies, and
- (c) making provision with respect to persons appointed in England and Wales or Northern Ireland as receivers and managers of building societies’ property,

the enactments specified in paragraph 1(2) of Schedule 15A to this Act shall apply in relation to building societies with the modifications specified in that Schedule.”

- (2) After Schedule 15 to the 1986 Act there shall be inserted, as Schedule 15A, the provisions set out in Schedule 6 to this Act (application of other companies insolvency legislation to building societies).

#### **40 Abolition of priority liquidation distribution rights.**

In section 100 of the 1986 Act (distribution and share rights), the following provisions (which confer rights to priority liquidation distributions) shall cease to have effect, namely—

- (a) in subsection (2), paragraph (c) and the word “and” immediately before that paragraph; and
- (b) subsections (5) and (6).

#### **41 Protective provisions for specially formed successors.**

For section 101 of the 1986 Act there shall be substituted the following section—

##### **“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 for sale or invite subscription for any shares in the company or allot or agree to allot any such shares with a view to their being offered for sale, or
  - (b) allot or agree to allot any share in the company, or
  - (c) register a transfer of shares in the company,
- if the effect of the offer, the invitation, the allotment or the registration of the transfer would be that more shares than the permitted proportion would be held by any one person (other than the society), or by any two or more persons who are parties to a concert party agreement which relates to shares in the company.
- (2) The articles of association of the company shall include provision such as will secure that the company does not offer, invite subscription for, allot or register transfers of, shares 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 in contravention of that subsection shall be void.
- (4) This section shall cease to apply to a company if—
- (a) a financial institution becomes a subsidiary undertaking of the company, or the company or such an undertaking acquires the whole, or substantially the whole, of the business of such an institution;
  - (b) a special resolution to that effect is passed by the requisite majority of the members of the company; or
  - (c) the Bank by notice to the company gives a direction to that effect;
- and the Bank shall not give such a direction unless it considers it desirable to do so in the interests of the depositors and potential depositors of the company.
- (5) If this section ceases to apply to a company, any provision included by virtue of subsection (2) above in its articles of association shall cease to have effect.
- (6) In this section—
- “the Bank” means the Bank of England;
- “concert party agreement” means an agreement to which section 204 of the <sup>M13</sup>Companies Act 1985 or Article 212 of the <sup>M14</sup>Companies (Northern Ireland) Order 1986 applies;
- “EEA country or territory” has the same meaning as in sections 6A and 6B;
- “financial institution” means any of the following, namely—
- (a) a building society authorised under this Act;
  - (b) an institution authorised under section 3 or 4 of the <sup>M15</sup>Insurance Companies Act 1982 to carry on business of a class specified in Schedule 1 or 2 to that Act;
  - (c) a person authorised under Chapter III of Part I of the <sup>M16</sup>Financial Services Act 1986 or included in the list maintained by the Bank under section 43 of that Act;
  - (d) an institution authorised under section 9 of the <sup>M17</sup>Banking Act 1987;
  - (e) a friendly society authorised under section 32(9) of the <sup>M18</sup>Friendly Societies Act 1992;
  - (f) any body formed in or incorporated under the law of an EEA country or territory outside the United Kingdom and carrying on in the United Kingdom business of a kind which, if it were formed in or incorporated under the law of any part of the United Kingdom, it would be precluded from carrying on there without being authorised as mentioned in the preceding paragraphs;
- “the permitted proportion”, in relation to shares in the company, is 15 per cent. of the company's issued share capital;
- “the protective period” is the period beginning with the date of the company's incorporation and ending five years after the vesting date or, if this section ceases to apply to the company, ending on the date on which it so ceases;

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“the requisite majority” means a majority of the members having the right to attend and vote at a general meeting of the company, being a majority together holding not less than 75 per cent in nominal value of the shares giving that right;

“transfer”, in relation to shares, does not include a transfer to a person to whom the right to any shares has been transmitted by operation of law;

and any expression used in this section and in the <sup>M19</sup>Companies Act 1985 or, as regards Northern Ireland, the <sup>M20</sup>Companies (Northern Ireland) Order 1986 has the same meaning in this section as in that Act or that Order.

(7) For the purposes of this section—

- (a) shares held by a person in a fiduciary capacity shall be treated as not held by him;
- (b) shares held by a person as nominee for another shall be treated as held by the other; and
- (c) shares shall be regarded as held as nominee for another if any voting rights attaching to them are exercisable only on his instructions or with his consent or concurrence.

(8) Any reference in this section to shares includes a reference—

- (a) to any warrant or other instrument entitling the holder to subscribe for shares; and
- (b) to any certificate or other instrument issued by or on behalf of the company and conferring a right to acquire shares otherwise than by subscription;

and for the purposes of subsection (1) above any shares to which any such instrument relates shall be deemed to be held by the holder of the instrument.”

#### Marginal Citations

M13 1985 c.6.

M14 S.I. 1986/1032 (N.I.6).

M15 1982 c.50.

M16 1986 c.60.

M17 1987 c.22.

M18 1992 c.40.

M19 1985 c.6.

M20 S.I. 1986/1032 (N.I.6).

## 42 Registration of charges by building societies.

After section 104 of the 1986 Act there shall be inserted the following section—

### “104A Registration of charges: application of company law.

- (1) For the purpose of securing the registration of charges created by building societies, the Secretary of State may, by order made with the concurrence of the Treasury and after consultation with the Commission, provide that such of the provisions of—

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- (a) Part XII of the <sup>M21</sup>Companies Act 1985 (registration of charges); and
  - (b) Part XIII of the <sup>M22</sup>Companies (Northern Ireland) Order 1986,
- as may be specified in the order shall apply in relation to building societies, and charges created by building societies, with such modifications as may be so specified.
- (2) An order under this section may make different provision for different cases or different areas and may contain such incidental, supplemental and transitional provisions as may appear to the Secretary of State to be necessary or expedient.
  - (3) The power to make an order under this section is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

**Marginal Citations**

- M21** 1985 c.6.
- M22** S.I. 1986/1032 (N.I.6).

**43 Other amendments of 1986 Act.**

Schedule 7 to this Act (which contains other amendments of the 1986 Act including some that are minor amendments or amendments consequential on the foregoing provisions of this Act) shall have effect.

**Commencement Information**

- I20** S. 43 partly in force; s. 43 not in force at Royal Assent see s. 47(3); s. 43 in force for certain purposes at 9.6.1997 by S.I. 1997/1427, art. 2; s. 43 in force at 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pts. I, II, III (subject as mentioned in art. 2(2)-(5) of that S.I.)

*Supplemental*

<sup>F13</sup>**44** .....

**Textual Amendments**

- F13** S. 44 shall cease to have effect (17.8.2001 for specified purposes and otherwise 1.12.2001) by virtue of S.I. 2001/2617, arts. 2(a), 13(1), Sch. 3 Pt. II para. 213(d) and is repealed (1.12.2001) by S.I. 2001/2617, art. 13(2), Sch. 4; S.I. 2001/3538, art. 2(1)

**45 Minor and consequential amendments.**

- (1) In section 10 of the <sup>M23</sup>Bankers’ Books Evidence Act 1879 (interpretation of “legal proceeding” etc.), in the definition of “legal proceeding” for the words from “an arbitration” to the end there shall be substituted the following paragraphs—
  - “(a) an arbitration;

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- (b) an application to, or an inquiry or other proceeding before, the Solicitors Disciplinary Tribunal or any body exercising functions in relation to solicitors in Scotland or Northern Ireland corresponding to the functions of that Tribunal; and
- (c) an investigation of a complaint by the adjudicator of a recognised scheme for the purposes of section 83 of the <sup>M24</sup>Building Societies Act 1986.”

<sup>F14</sup>(2) . . . . .

**Textual Amendments**

**F14** S. 45(2) repealed (1.12.2001) by S.I. 2001/3629, art. 109, Sch.

**Commencement Information**

**I21** S. 45(1) partly in force; s. 45 not in force at Royal Assent see s. 47(3); s. 45(1) in force at 9.6.1997 by S.I. 1997/1427, art. 2; S. 45(2) in force at 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pt. II (subject as mentioned in art. 2(2)-(5) of that S.I.)

**Marginal Citations**

**M23** 1879 c.11.

**M24** 1986 c.53.

**46 Transitional provisions, savings and repeals etc.**

- (1) The transitional provisions and savings contained in Schedule 8 to this Act shall have effect; but those provisions and savings are without prejudice to sections 16 and 17 of the <sup>M25</sup>Interpretation Act 1978 (effect of repeals).
- (2) The enactments and instruments specified in Schedule 9 to this Act are hereby repealed or revoked to the extent specified in the third column of that Schedule.

**Commencement Information**

**I22** S. 46 partly in force at Royal Assent see s. 47(3). S. 46 partly in force (21.5.1997) by S.I. 1997/1307, art. 2; s. 46 in force at 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pts. I, II, III (subject as mentioned in art. 2(2)-(5) of that S.I.)

**Marginal Citations**

**M25** 1978 c.30.

PROSPECTIVE

**47 Short title, interpretation, commencement and extent.**

- (1) This Act may be cited as the Building Societies Act 1997.
- (2) In this Act “the 1986 Act” means the Building Societies Act 1986 and expressions which are also used in that Act have the same meanings as in that Act.
- (3) This Act, except—

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- (a) sections 40 and 41 above;
- (b) paragraphs 9 and 10 of Schedule 8 to this Act and section 46(1) above so far as relating to those paragraphs; and
- (c) section 46(2) above and Schedule 9 to this Act so far as relating to the repeals in section 100 of the 1986 Act and the revocations in the <sup>M26</sup>Building Societies (Transfer of Business) Regulations 1988,

shall come into force on such day as the Treasury may by order made by statutory instrument appoint, and different days may be appointed for different purposes or for building societies of different descriptions.

- (4) Where any enactment amended or repealed by this Act extends to any part of the United Kingdom, the amendment or repeal extends to that part.
- (5) Subject to subsection (4) above, this Act extends to Northern Ireland.

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#### **Subordinate Legislation Made**

- P1** S. 47(3) power partly exercised (15.5.1997): 21.5.1997 appointed for specified provisions by [S.I. 1997/1307](#), **art. 2**
- S. 47(3) power partly exercised (5.6.1997): 9.6.1997 appointed for specified provisions by [S.I. 1997/1427](#), **art. 2**
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#### **Marginal Citations**

- M26** [S.I. 1988/1153](#).



**Status:**

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**Changes to legislation:**

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