

SCHEDULE 1

Modified application of Parts 2 and 3 of the Banking Act 2009 to building societies

PART 2

Modified application of Part 2 of the 2009 Act

6. This Part sets out modifications to Part 2 of the 2009 Act (Bank Insolvency) as it applies in relation to building societies by virtue of section 90C of the 1986 Act.

Introduction

7. Ignore section 91 of the 2009 Act (interpretation: “bank”).

8. Subsections (5) and (6) of section 93 of the 2009 Act (interpretation: other expressions) do not apply in relation to any expression defined in this Schedule.

Building society insolvency order

9. In section 95 of the 2009 Act (application), in subsection (1), ignore paragraph (c).

10. In section 96 of the 2009 Act (grounds for applying)—

(a) in subsection (1), ignore paragraph (b);

(b) ignore subsections (4) and (5).

11. In section 97 of the 2009 Act (grounds for making)—

(a) ignore subsection (2);

(b) in subsection (3), ignore “or (2)”.

12. In section 98 of the 2009 Act (commencement), in subsection (2)(a), for “section 120” substitute “section 90D of the Building Societies Act 1986”.

Process of building society liquidation

13.—(1) In section 103 of the 2009 Act (general powers, duties and effect), in subsection (4) ignore paragraph (h).

(2) In that section, the table (Insolvency Act 1986) applies with the modifications set out in this paragraph.

(3) For the entry for section 154 substitute—

“Section 154	Adjustment of rights of contributories	Any surplus is to be distributed in accordance with the rules of the society.”.
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(4) Ignore the entry for section 187 (transfer of assets to employees).

(5) Ignore the entries for sections 216 (restriction on re-use of names) and 217 (personal liability for debts).

(6) For the entries for sections 218 and 219 substitute—

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“Section 218	Prosecution of officers and members of company	<ul style="list-style-type: none"> (a) the section does not apply in relation to offences committed by members of a building society acting in that capacity. (b) In subsection (3), treat the second reference to the official receiver as a reference to the Secretary of State. (c) Ignore subsections (4), (5) and (6). (d) Where a report is made to the Secretary of State under subsection (3), the Secretary of State may refer the matter to the FSA for further enquiry. (e) On such a reference to it the FSA shall exercise its power under section 55(1) of the Building Societies Act 1986 to appoint one or more competent persons to investigate and report on the matter.
Section 219	Obligations under section 218	<ul style="list-style-type: none"> (a) The section does not apply in relation to offences committed by members of a building society acting in that capacity. (b) Subsection (1) of section 219 does not apply. (c) Subsections (2), (2A) and (2B) of section 219 apply in relation to the powers referred to in the entry above for section 218. (d) In subsections (3) and (4) of section 219 the references to the Secretary of State shall have effect as references to the FSA.”.

(7) For the entry for sections 423 – 425 substitute—

“Sections 423 – 425	Transactions defrauding creditors	<ul style="list-style-type: none"> (a) Sections 423-425 apply only where a building society insolvency order is made. (b) Anything done by the building society in connection with the exercise of a stabilisation power under Part 1 of this Act as applied to building societies by section 84 of this Act is not a transaction at an undervalue for the purposes of section 423.”.
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Termination of process, &c.

14. In section 113 of the 2009 Act (voluntary arrangement)—

- (a) in subsection (1), at the end insert “as applied in relation to building societies by section 90A of, and Schedule 15A to, the Building Societies Act 1986”;
- (b) in subsection (2), ignore paragraph (b)(v);

- (c) in subsection (6) at the end insert “and with the modifications made by Schedule 15A to the Building Societies Act 1986”.

15. In section 114 of the 2009 Act (administration)—

- (a) in subsection (1), for “(under paragraph 38 of Schedule B1 to the Insolvency Act 1986)” substitute “(under section 9 of the Insolvency Act 1986 as applied in relation to building societies by section 90A of, and Schedule 15A to, the Building Societies Act 1986)”;
- (b) in subsection (4), for “the rescue of the bank as a going concern” substitute “the survival of the building society, and the whole or any part of its undertaking, as a going concern”.

16. In section 115 of the 2009 Act (dissolution)—

- (a) in subsection (2), ignore paragraph (b)(v);
- (b) in subsection (4), for “registrar of companies” substitute “FSA”;
- (c) in subsection (7), for “the registrar of companies shall register it” substitute “the FSA shall place it on the public file of the society concerned”;
- (d) In subsection (8), for “the day of the registration of the notice” substitute “the day on which the notice is placed on the public file of the society”.

17. In section 116 of the 2009 Act (dissolution: supplemental), in subsections (1) and (2) the references to the Secretary of State have effect as references to the FSA.

18. Sections 1012 to 1023 and 1034 of the Companies Act 2006 (provisions as to property of dissolved company) apply in relation to the property of a building society dissolved under section 115 of the 2009 Act (as applied by this Schedule) as they apply to the property of a dissolved company.

Other processes

19. Ignore sections 117 (insolvency as alternative order) and 118 (voluntary winding-up) of the 2009 Act.

20.—(1) Ignore section 119 of the 2009 Act (exclusion of other procedures); this paragraph, and section 88(1)(b) of the 1986 Act⁽¹⁾, make equivalent provision.

(2) A petition for the winding-up of a building society shall be dismissed on the making of a building society insolvency order in respect of the building society.

(3) Where a building society is in building society insolvency, no order may be made for the winding-up of the building society.

21. Ignore sections 120 (notice to FSA of preliminary steps) and 121 (disqualification of directors) of the 2009 Act.

Miscellaneous

22. In section 124 of the 2009 Act (transfer of accounts), after subsection (2) insert—

“(2A) The arrangements may—

- (a) cancel shares in the building society;
- (b) confer rights and impose liabilities in place of cancelled shares (whether by way of actual or deemed shares in a transferee building society or by way of other rights and liabilities in relation to a transferee bank).”.

23. Ignore sections 130 (building societies), 131 (credit unions), 132 (partnerships) and 133 (Scottish partnerships) of the 2009 Act.

(1) Section 88 of the 1986 Act is amended by article 4 of this Order.

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