



# Building Societies Act 1986

## 1986 CHAPTER 53

### PART IV

#### PROTECTION OF INVESTORS

##### *Investor Protection Scheme*

#### **24 The Building Societies Investor Protection Board**

- (1) There shall be a body corporate to be known as the Building Societies Investor Protection Board (in this Part referred to as " the Board ") which—
  - (a) shall hold, manage and apply in accordance with the protective scheme provisions of this Part a fund to be known as the Building Societies Investor Protection Fund (referred to in those provisions as " the Fund "); and
  - (b) shall, if it so determines under section 26 in relation to a building society which has become insolvent, levy contributions to the Fund from authorised building societies in accordance with that section; and
  - (c) shall have such other functions as are conferred on the Board by the protective scheme provisions of this Part.
- (2) Schedule 5 to this Act shall have effect with respect to the constitution of the Board and the procedural and other matters there mentioned.
- (3) In this Act " the protective scheme provisions" means sections 25 to 29.

#### **25 The Investor Protection Fund**

- (1) The Fund shall consist of—
  - (a) contributions levied from building societies under section 26;
  - (b) moneys borrowed by the Board under section 26(14);
  - (c) income credited to the Fund in accordance with subsection (3) below;
  - (d) payments made to the Board under subsection (6) below; and
  - (e) money credited to the Fund in accordance with section 29

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- (2) The moneys constituting the Fund from time to time shall be placed by the Board in an account with the Bank of England.
- (3) So far as possible, the Bank of England shall invest moneys placed with it under subsection (2) above in Treasury bills; and any income from moneys so invested shall be credited to the Fund.
- (4) The administrative expenses of the Board shall be defrayed out of the Fund.
- (5) There shall be chargeable to the Fund—
  - (a) payments to meet administrative expenses of the Board in accordance with subsection (4) above;
  - (b) moneys required for the repayment of the Board's borrowings, and interest thereon, under section 26(14); and
  - (c) payments to investors under section 27 and any expenses incurred in connection with the making of such payments ;
  - (d) payments to contributory societies under section 29(7);
 and, in the protective scheme provisions of this Part—
  - " the expenses attributable to the insolvency", with reference to a building society insolvency, means all the sums chargeable to the Fund under paragraphs (a) to (d) above in respect of that insolvency except that, in the case of payments to meet administrative expenses of the Board, it means so much only of those expenses as the Board determines shall be attributed to the insolvency ; and
  - " insolvency payments to investors " means the payments under section 27 referred to in paragraph (c) above, and " insolvency payment " has a corresponding meaning ; and
  - " recognised bank " and " licensed institution " have the same meaning as in the Banking Act 1979.
- (6) The Commission shall, at the request of the Board, make payments to it towards the administrative expenses of the Board.
- (7) In so far as the Board authorises any recognised bank, licensed institution or building society to receive on its behalf any contributions levied by the Board and to make on its behalf any of the insolvency payments to investors out of the sums so received, the sums so received need not be paid into the Fund and the payments need not be made out of the Fund but shall be treated as if they were respectively comprised in and charged on the Fund and shall be accounted for accordingly.

## **26 Power to levy contributions and to borrow money in event of insolvency**

- (1) For the purposes of the protective scheme provisions of this Part a building society becomes insolvent—
  - (a) on the making of a winding-up order against it,
  - (b) on the passing of a resolution for a creditors' voluntary winding up, or
  - (c) on the holding of a creditors' meeting summoned under section 95 of the Insolvency Act 1986 or Article 541 of the Companies (Northern Ireland) Order 1986 (effect of insolvency on members' voluntary winding up);
 and the occurrence of any of those events constitutes a " building society insolvency " for the purposes of those provisions.

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- (2) If a building society becomes insolvent the Board may levy contributions to the Fund for the purposes of making insolvency payments to investors at such level of investor protection as the Board determines under section 27 and meeting the other expenses attributable to the insolvency.
- (3) All building societies (other than the insolvent building society) authorised on the date of the insolvency are liable to contribute to the Fund and are in the protective scheme provisions of this Part referred to as " contributory societies ".
- (4) If, on a building society becoming insolvent, the Board determines to levy contributions under subsection (2) above then, subject to subsection (10) below, it shall levy a contribution from each of the contributory societies and the amount of the contribution due from a society shall be determined by applying to its share and deposit base a percentage determined by the Board for the purpose of the contributions levied to meet the expenses attributable to the insolvency.
- (5) The Board, in determining for the purposes of a building society insolvency—
  - (a) whether or not to levy contributions and, if so,
  - (b) the percentage to be applied under subsection (4) above to the share and deposit bases of the contributory societies, and
  - (c) the level of investor protection to be given by the insolvency payments to investors,shall have regard to the factors specified in subsection (6) below.
- (6) Those factors are—
  - (a) the amount available to meet the expenses attributable to the insolvency from the contributions leviable from contributory societies, and
  - (b) the amount of the expenses attributable to the insolvency at any level of investor protection.
- (7) If it appears to the Board, as respects a building society insolvency, that the contributions it has levied will be insufficient to make the insolvency payments to investors at the level of investor protection determined by the Board under section 27, the Board may levy further contributions under subsection (2) above from the contributory societies.
- (8) Contributions to the Fund shall be levied on a contributory society by the Board by service on the society of a notice specifying the amount (or further amount) due, which shall be paid by the society not later than twenty-one days after the date on which the notice is served.
- (9) In relation to any contribution, the share and deposit base of a contributory society is such amount as represents the aggregate of so much of the society's liabilities as is referable to sums deposited with the society or to shares in the society as shown in the latest balance sheet sent to the Commission in accordance with section 81.
- (10) No contributory society shall be required to pay a contribution if, or to the extent that, the amount of that contribution, together with previous contributions levied under this section for the purposes of any building society insolvency, after allowing for any repayments made to it under section 29, amounts to more than 0.3 per cent, of the society's share and deposit base as ascertained for the purposes of the contribution in question.
- (11) Nothing in subsection (10) above—

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- (a) shall entitle a society to repayment of any contribution previously made, or
  - (b) shall prevent the Board from proceeding to levy contributions from other contributory societies in whose case the limit in that subsection has not been reached.
- (12) The Treasury may, after consultation with the Board, by order made by statutory instrument, amend subsection (10) above so as to substitute for the percentage for the time being specified in that subsection such other percentage as may be specified in the order.
- (13) No order shall be made under subsection (12) above unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (14) If, as respects a building society insolvency, it appears to the Board desirable to do so for the purpose of facilitating the making of insolvency payments to investors, the Board may borrow temporarily for that purpose subject, however, to the limit imposed by subsection (15) below.
- (15) The aggregate of the amounts outstanding in respect of the principal of and interest due on sums borrowed under subsection (14) above shall not at any time exceed the aggregate of the sums leviable at that time from contributory societies for the purposes of any insolvency.
- (16) Any sums borrowed by the Board under subsection (14) above in respect of a building society insolvency shall be repaid as soon as practicable after the contributions levied in respect of the insolvency have been paid by the contributory societies.
- (17) In this section " the level of investor protection ", in relation to insolvency payments to investors, means the proportion applicable for the purpose of calculating the amount of those payments under section 27.

## **27 Payments to investors**

- (1) Subject to the provisions of this section, if a building society becomes insolvent and the Board determines under section 26 to levy contributions for the purpose of making payments to investors under this section the Board shall as soon as practicable pay out of the Fund to persons who have at the date of the determination protected investments in the building society amounts equal to the proportion of their protected investments applicable under subsection (2) below for the purpose of calculating the amount of those payments.
- (2) The proportion applicable for that purpose is 90 per cent, or such lesser proportion as the Board determines to apply instead of it where it considers it expedient to do so having regard to the factors specified in section 26(6).
- (3) A person claiming to be entitled to a payment under this section in respect of his protected investment in an insolvent building society shall make his claim in such form, with such evidence proving it, and within such period, as the Board directs and either to the Board or to such other recognised bank, licensed institution or building society authorised by the Board to make the payments on its behalf, as the Board directs.
- (4) The Board may decline to make any payment under subsection (1) above to a person who, in the opinion of the Board, had any responsibility for, or may have profited

directly or indirectly from, the circumstances giving rise to the society's financial difficulties.

- (5) For the purposes of this section in its application in relation to a building society which has become insolvent—
  - (a) a person has at any time a protected investment in the society if he has a deposit with, or a share in, the society; and
  - (b) his protected investment is the total liability of the society to him, limited to a maximum of £10,000, which is referable to sums deposited with the society or to his shares in the society.
- (6) The Treasury, after consultation with the Board, may by order made by statutory instrument—
  - (a) amend subsection (2) above so as to substitute for the percentage for the time being specified in that subsection such other percentage as may be specified in the order; and
  - (b) amend subsection (5)(b) above so as to substitute for the sum for the time being specified in that paragraph such other sum as may be specified in the order.
- (7) No order shall be made under subsection (6) above unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.
- (8) In determining whether a person has a protected investment in a building society and the amount of it there shall be disregarded—
  - (a) any shares of his which are deferred shares,
  - (b) any deposit which, on a winding up, would fall to be repaid only after repayment in full had been made to the holders of shares in the society other than deferred shares; and
  - (c) any deposit which is evidenced by a certificate of deposit or other negotiable instrument.
- (9) In determining what is the protected investment of an investor, no account shall be taken of any liability unless proof of the debt or claim which gives rise to it has been lodged with the liquidator of the society.
- (10) Unless the Board otherwise directs in any particular case or class of case, in determining the total liability of an insolvent building society to any person for the purposes of subsection (1) above, there shall be deducted the amount of any liability of that person to the society—
  - (a) in respect of which a right of set-off existed immediately before the society became insolvent against any such investment of his as is referred to in that subsection, or
  - (b) in respect of which such a right would then have existed if the investment in question had been repayable on demand and the liability in question had fallen due.
- (11) Payments under this section in respect of a protected investment in an insolvent building society may, if the Board thinks fit, be made by such instalments as it determines for the purposes of that insolvency.
- (12) Schedule 6 to this Act, which contains provisions about investments held by trustees or jointly or on clients' account, shall have effect.

**28 Liability of insolvent society in respect of payments by Board**

- (1) This section applies where—
- (a) a building society has become insolvent,
  - (b) the Board has determined under section 26 to levy contributions for the purpose of making insolvency payments to investors in the society, and
  - (c) the Board, by virtue of the determination, has made, or is under a liability to make, an insolvency payment to an investor in respect of his protected investment.
- (2) Where this section applies—
- (a) the insolvent society shall become liable to the Board, as in respect of a contractual debt incurred immediately before the society became insolvent, for an amount equal to the amount of the insolvency payment to the investor;
  - (b) the liability of the society to the investor, whether referable to deposits or referable to shares of his (in this section referred to as "the liability to the investor"), shall be reduced by an amount equal to the insolvency payment made or to be made to him by the Board; and
  - (c) the respective duties of the liquidator of the insolvent building society—
    - (i) to make payments to the Board on account of the liability imposed by paragraph (a) above and to the investor on account of the liability to the investor so far as that liability is referable to deposits of his (after taking account of paragraph (b) above), and
    - (ii) to make payments to the Board on account of the liability imposed by paragraph (a) above and to the investor on account of the liability to the investor so far as that liability is referable to shares of his (after taking account of paragraph (b) above),shall be varied in accordance with subsection (4) and subsection (5) below; and in those subsections "the liability to the Board" means the liability imposed by paragraph (a) above on the society.
- (3) Where the society's liability to the investor is referable to both shares and deposits, the amount equal to the insolvency payment to him shall, for the purposes of subsection (2) (b) above, be first applied in reduction of the liability referable to his shares then, if that amount exceeds that liability, in reduction of the liability referable to his deposits.
- (4) The variation in the liquidator's duty where the liability to the investor is referable to deposits of his is as follows—
- (a) in the first instance the liquidator shall pay to the Board instead of to the investor any amounts which, apart from this section, would be payable on account of the liability to the investor referable to deposits of his except in so far as that liability relates to a secured deposit; and
  - (b) if at any time the total amount paid to the Board by virtue of paragraph (a) above and in respect of the liability to the Board equals the amount of the insolvency payment referable to deposits of the investor, the liquidator shall thereafter pay to the investor instead of to the Board any amount which, apart from this section, would be payable to the Board in respect of the liability to the Board.
- (5) The variation in the liquidator's duty where the liability to the investor is referable to shares of his is as follows—

- (a) in the first instance the liquidator shall pay to the Board instead of to the investor any amounts which, apart from this section, would be payable on account of the liability to the investor referable to shares of his ; and
  - (b) if at any time the total amount paid to the Board by virtue of paragraph (a) above and in respect of the liability to the Board equals the amount of the insolvency payment referable to shares of the investor, the liquidator shall thereafter pay to the investor instead of to the Board any amount which, apart from this section, would be payable to the Board in respect of the liability to the Board.
- (6) In the case of a protected investment which, for the purposes of Schedule 6 to this Act, is held on trust for a person absolutely entitled to it against the trustees or, as the case may be, for two or more persons so entitled jointly, any reference in the preceding provisions of this section to the liability to the investor shall be construed as a reference to the liability of the insolvent society to the trustees.
- (7) The Board may by notice served on the liquidator of an insolvent building society require him, at such time or times and at such place as may be specified in the notice,—
- (a) to furnish to the Board such information, and
  - (b) to produce to the Board such books or papers specified in the notice,
- as the Board may reasonably require to enable it to carry out its functions under the protective scheme provisions of this Part.
- (8) Where, as a result of a building society having become insolvent, any books or papers have come into the possession of—
- (a) in England and Wales, the Official Receiver,
  - (b) in Scotland, the liquidator, or
  - (c) in Northern Ireland, the Official Assignee for company liquidations,
- he shall permit any person duly authorised by the Board to inspect the books or papers for the purpose of establishing—
- (i) the identity of those of the society's investors to whom the Board is liable to make an insolvency payment; and
  - (ii) the amount of the protected investment held by each of those investors.
- (9) Rules may be made—
- (a) for England and Wales and for Scotland, under section 411 of the Insolvency Act 1986, and
  - (b) for Northern Ireland, under Article 613 of the Companies (Northern Ireland) Order 1986 ;
- for the purpose of integrating the procedure provided for in this section into the general procedure on winding up.

## **29 Repayments in respect of contributions**

- (1) Any moneys received by the Board under section 28 in respect of a building society insolvency shall not form part of the Fund but, for the remainder of the financial year of the Board in which they are received, shall be retained for the purposes of this section in its application in relation to that insolvency and, so far as appears to the Board appropriate, shall be invested in Treasury bills; and any income arising from moneys so invested during the remainder of the year shall be credited to the Fund.

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- (2) The Board shall, in connection with each building society insolvency for the purposes of which it has levied contributions under section 26, prepare a scheme for the making, out of moneys received by the Board under section 28 in respect of that insolvency, of repayments to the contributory societies in proportion to the contributions made by each such society in respect of the insolvency.
- (3) As soon as practicable after the end of the financial year of the Board in which any moneys are received by the Board in respect of a building society insolvency, the Board shall, subject to subsection (4) below, make out of those moneys the payments required by the scheme made under subsection (2) above in connection with that insolvency.
- (4) Where payments are due under subsection (3) above to building societies from whom contributions are due under section 26 for the purposes of other building society insolvencies, the Board may appropriate out of the moneys retained by it under subsection (1) above amounts not exceeding the contributions due from those societies and apply them as if they had been paid by those societies as contributions for the purposes of the other building society insolvencies.
- (5) If the Board makes appropriations under subsection (4) above, then, the amounts so appropriated shall be treated for all purposes as having been paid by the Board to those societies in or towards discharge of its debts to them and paid by the societies to the Board as contributions and corresponding amounts shall be credited to the Fund and debited to the account kept for the purposes of this section.
- (6) If in any financial year of the Board the payments made under subsection (3) above (in that and any previous years) in pursuance of a scheme under subsection (2) above are more than sufficient to provide for repayment in full of all the contributions to which the scheme related, the balance remaining of the moneys received and retained by the Board as mentioned in subsection (1) above shall be credited to the Fund.
- (7) The Board, having regard to the factors specified in subsection (8) below, shall, as respects sums representing—
  - (a) any balance credited to the Fund under subsection (6) above and any interest thereon, or
  - (b) any balance of the contributions received in respect of the insolvency remaining after the making of insolvency payments to investors and the meeting of the other expenses attributable to the insolvency and any interest thereon,either retain them in the Fund or pay so much of them to the contributory societies in proportion to the contributions made by each such society in respect of the insolvency, as the Board may think fit.
- (8) Those factors are—
  - (a) the likely level of future administrative expenses of the Board, and
  - (b) the likelihood of other building societies becoming in solvent and, if they did, the amount of the expenses likely to be attributable to those insolvencies and the amounts likely to be available from contributory societies to meet those expenses.

### **30 Tax treatment of contributions and repayments**

In computing for the purposes of the Tax Acts the profits or gains arising from the trade carried on by a contributory building society—



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- (a) to the extent that it would not be deductible apart from this paragraph, any sum expended or treated under section 29 as expended by the society in paying a contribution to the Fund may be deducted as an expense ; and
- (b) any payment which is made or treated as made to the society by the Board under section 29(3) or (7) shall be treated as a trading receipt.