



# Building Societies Act 1986

## 1986 CHAPTER 53

### PART XI

#### MISCELLANEOUS AND SUPPLEMENTARY AND CONVEYANCING SERVICES

##### *Miscellaneous and supplementary*

#### **104 Power to amend, etc. to assimilate to company law.**

- (1) If, on any modification of the statutory provisions in force in Great Britain or Northern Ireland relating to companies, it appears to the Treasury to be expedient to modify the relevant provisions of this Act for the purpose of assimilating the law relating to companies and the law relating to building societies, the Treasury may, by order, make such modifications of the relevant provisions of this Act as they think appropriate for that purpose.
- (2) The “relevant provisions of this Act” are the following provisions as for the time being in force, that is to say—
  - (a) so much of Part VI as relates to investigations or inspections;
  - (b) the provisions of Part VII (management);
  - (c) the provisions of Part VIII (accounts and audit); [<sup>F1</sup>and]
  - (d) so much of Part X as relates to winding up [<sup>F2</sup>; and
  - (e) section 110 (provisions exempting officers and auditors from liability)].
- (3) The power conferred by subsection (1) above includes power to modify the relevant provisions of this Act so as to—
  - (a) confer power to make orders, regulations, rules or other subordinate legislation;
  - (b) create criminal offences; or
  - (c) provide for the charging of fees but not any charge in the nature of taxation.
- (4) An order under this section may—

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- (a) make consequential amendments of or appeals in other provisions of this Act; or
  - (b) make such transitional or saving provisions as appear to the Treasury to be necessary or expedient.
- (5) The power to make an order under this section is exercisable by statutory instrument but no such order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (6) In this section—
- “modification” includes any additions and, as regards modifications of the statutory provisions relating to companies, any modification whether effected by any future Act or by an instrument made after the passing of this Act under an Act whenever passed; and
  - “statutory provisions” includes the provisions of any instrument made under this Act.

#### Textual Amendments

- F1** Word repealed (prosp.) by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 211(1), 215**
- F2** Words added (prosp.) by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 211(1), 215**

VALID FROM 09/06/1997

#### [<sup>F3</sup>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—
  - (a) Part XII of the <sup>M1</sup>Companies Act 1985 (registration of charges); and
  - (b) Part XIII of the <sup>M2</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.]

#### Textual Amendments

- F3** [S. 104A](#) inserted (9.6.1997) by [1997 c. 32, s. 42](#); [S.I. 1997/1427](#), **art. 2(j)**

#### Marginal Citations

- M1** [1985 c.6.](#)
- M2** [S.I. 1986/1032 \(N.I.6\).](#)

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## **105 Limited power to anticipate future statutory instrument powers.**

- (1) This section has effect as regards any power conferred under any provision of this Act on building societies or building societies of any description by—
- (a) an instrument a draft of which has to be approved by a resolution of each House of Parliament before it can be made, or
  - (b) an instrument which is subject to annulment in pursuance of a resolution of either House of Parliament and which defers its operation until a future date;

and in this section “the anticipation date” is, in the case of an instrument falling within paragraph (a), the date on which either House approves the draft and, in the case of an instrument falling within paragraph (b), the date on which it was laid before Parliament.

- (2) Every building society or, as the case may be, every building society of the description to which the instrument applies, has, as from the anticipation date, power, for the purposes of the power conferred by the instrument, to do such things, subject to subsection (3) below, as are reasonably necessary to enable it—
- (a) to decide whether or not, and to what extent, to exercise (and in the case of an adoptable power to adopt) the power, and
  - (b) if it decides to exercise the power, to exercise it as from the date when it becomes exercisable by the society.
- (3) Subsection (2)(b) above does not authorise a society—
- (a) to make contracts, other than conditional contracts, for the acquisition of land, the acquisition of a business or the acquisition of shares in any company if that company offers the public any service or facility within the power,
  - (b) to issue invitations to members of the society or the public to apply for any power to be exercised for their benefit, or
  - (c) to retain shares in a company which offers the public any service or facility within the power;

and, in this subsection, “conditional”, in relation to contracts with respect to the exercise of a power, means conditional on the power’s becoming exercisable by the society.

- (4) The power conferred by this paragraph, and activities carried on under it, for the purposes of an adoptable power are not to be treated as included in, or in activities comprised in, that adoptable power for the purposes of paragraph 16 of Schedule 2 to this Act.

## **106 Public file of the society.**

- (1) The central office shall prepare and maintain a file relating to each building society (to be known as the public file) and the file shall—
- (a) contain the documents or, as the case may be, the copies of the documents and the records of the matters directed by or under any provision of this Act to be kept in the public file of the society; and
  - (b) be available for inspection on reasonable notice by members of the public on payment of the prescribed fee.

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- (2) Any member of the public shall be entitled, on payment of the prescribed fee, to be furnished with a copy of all or any of the documents or records kept in the public file of a building society.

### **107 Restriction of use of certain names and descriptions.**

- (1) Subject to subsections (2) to (9) below, no person carrying on in the United Kingdom a business of any description shall, unless that person is a building society, use any name or in any other way so describe himself or hold himself out so as to indicate, or reasonably be understood to indicate—
- (a) that he is a building society,
  - (b) that he, or his business, is connected with one or more building societies, or
  - (c) that he, or his business, is connected with building societies generally.
- (2) Subsection (1) does not prohibit the use by an institution carrying on the business of taking deposits and making loans secured on land which has its principal place of business in a country or territory outside the United Kingdom, of the name under which the institution carries on business in that country or territory if—
- (a) the name is used in immediate conjunction with a description distinguishing the institution from a building society, being a description which has been approved for the purposes of this subsection by the Commission and the approval has not been revoked under subsection (7) below, and
  - (b) where the name appears in writing, that description is sufficiently prominent to secure that a person who reads the name will also read the description.
- (3) For a description to distinguish an institution from a building society for the purposes of subsection (2) above it must distinguish it by reference to all or any of the following matters,—
- (a) the situation of its principal place of business,
  - (b) its legal status or constitution, and
  - (c) the law (if any) which authorises it to take deposits in the United Kingdom,
- as the Commission determines in its case, but need not indicate any other distinction.
- (4) Subsection (1) above does not prohibit a person from carrying on a business under a name which indicates a connection between—
- (a) that person, or his business, and one or more building societies, or
  - (b) that person, or his business, and building societies generally,
- if the name has been approved for the purposes of this subsection by the Commission and the approval has not been revoked under subsection (7) below.
- (5) No name shall be approved for the purposes of subsection (4) above unless the Commission, having regard to—
- (a) the true connection (if any) in fact existing between the person using, or proposing to use, the name and the particular society or societies in question or with building societies generally, as the case may be, and
  - (b) in the cases referred to in subsection (4)(a) above, the respective natures of the business of that person and the society or societies in question,

is satisfied that the connection indicated by the name is not misleading; and, in so far as the name indicates investment or other financial support on the part of a building

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society the Commission shall not approve the use of the name unless it is satisfied that the name indicates no more investment or support than is the case and than is, in the opinion of the Commission, within the financial capacity of the building society to provide.

- (6) An application for approval under subsection (2) or (4) above shall be made to the Commission in such form as it directs and accompanied by such information or evidence as it requires generally or in the particular case.
- (7) The Commission may revoke any approval under subsection (2) or (4) above of a distinguishing description or a name, as the case may be, if it is of the opinion—
  - (a) in the case of a distinguishing description, that, by reason of any change in the matters by reference to which the distinction is made, the description does not or does not any longer distinguish the institution as required by subsection (2) above, or
  - (b) in the case of a name.
    - (i) that the name has proved to be misleading to the public,
    - (ii) that the approval has been obtained by fraud or mistake, or
    - (iii) that there has been a change in the facts to which the Commission had regard in giving its approval,

but it shall not do so without first giving the person to whom the approval was given an opportunity of making representations with respect to the proposed revocation of that approval.

- (8) Subsection (1) above does not prohibit a person from using a description (other than his name) which, or from holding himself out in a way that, indicates a connection between himself or his business and one or more building societies if and to the extent he has been authorised to do so in writing by the society or societies in question.
- (9) Subsection (1) above does not prohibit a person from using a description (other than his name) which, or from holding himself out in a way that, indicates a connection between himself or his business and building societies generally where the connection indicated is not misleading.
- (10) Where on an application for—
  - (a) the first registration of a company, or the registration of a company by a new name, by the registrar under the <sup>M3</sup>Companies Act 1985 or the <sup>M4</sup>Companies (Northern Ireland) Order 1986, or
  - (b) approval by the Secretary of State of words or expressions for inclusion in a business name under section 2 of the <sup>M5</sup>Business Names Act 1985, or
  - (c) approval by the Department of Economic Development of words or descriptions for inclusion in a business name under Article 4 of the <sup>M6</sup>Business Names (Northern Ireland) Order 1986,

it appears to the registrar, the Secretary of State or the Department, as the case may be, that the use of the name or the words or description by the person seeking to register with it would contravene subsection (1) above, the registration shall not be made or the approval given.

- (11) A person who contravenes subsection (1) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale; and where the contravention involves a public display or exhibition of the offending name, description or other matter, there shall be a fresh contravention of the subsection on each day during which

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that person causes or permits the display or exhibition to continue for which that person shall be liable on summary conviction to a fine not exceeding £200.

(12) In this section—

“deposit” means a deposit within the meaning of the [<sup>F4</sup>Banking Act 1987];  
and  
“institution” has the same meaning as in that Act.

#### Textual Amendments

**F4** Words substituted by [Banking Act 1987 \(c. 22, SIF 10\)](#), s. 108(1), [Sch. 6 para. 26\(7\)](#)

#### Marginal Citations

**M3** 1985 c. 6.  
**M4** S.I.1986/1032 (N.I.6).  
**M5** 1985 c. 7.  
**M6** S.I.1986/1033 (N.I.7).

### 108 Power to require building society to change misleading name.

- (1) If, in the Commission’s opinion, the name by which a building society is registered is misleading to the public as regards—
- (a) the scope of the society’s activities,
  - (b) the geographical area of its activities, or
  - (c) the description of persons who are or may become members of it,
- the Commission may, by notice served on the society, direct it to change its name.
- (2) A direction must, if not duly made the subject of an application to the court under subsection (3) below, be complied with within a period of six weeks from the date of the direction or such longer period as the Commission may think fit to allow.
- (3) The building society may, within three weeks from the date of the direction, apply to the court to set it aside; and the court may set the direction aside or confirm it and, if it confirms the direction, shall specify a period within which it must be complied with.
- (4) If a building society fails to comply with a direction under this section, it shall be liable on summary conviction—
- (a) to a fine not exceeding level 3 on the standard scale; and
  - (b) in the case of a continuing offence, to an additional fine not exceeding £40 for every day during which the offence continues;
- and so shall any officer who is also guilty of the offence.
- (5) Where the Commission directs a building society under this section to change its name the society may change its name either by resolution of the board of directors or by a special resolution and paragraph 9 of Schedule 2 to this Act shall apply as if the change had been effected under that paragraph (but with the appropriate modifications).

### 109 Exemption from stamp duty.

[<sup>F5</sup>(1)] The following instruments shall be exempted from all such stamp duties (if any) as apart from this section would be chargeable on them, that is to say—

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- (a) any copy of the rules of a building society;
- (b) any transfer of a share in a building society;
- (c) any bond or other security to be given to, or on account of, a building society or by an officer of a building society;
- (d) any instrument appointing an agent of a building society or revoking such an appointment; and
- (e) any other instrument whatsoever which is required or authorised to be given, issued, signed, made or produced in pursuance of this Act or of the rules of a building society.

[<sup>F6</sup>(2) No transfer effected by subsection (6) or (7) of section 97 shall give rise to any liability to stamp duty]

#### Textual Amendments

- F5** S. 109 renumbered as s. 109(1) by Finance Act 1988 (c. 39, SIF 63:1), s. 145, Sch. 12 para. 8  
**F6** S. 109(2) inserted by Finance Act 1988 (c. 39, SIF 63:1), s. 145, Sch. 12 para. 8

## 110 Officers and auditors not to be exempted from liability

- (1) Subject to subsection (3) below, any provision to which this section applies, whether contained in the rules of a building society or in any contract with a building society or otherwise, shall be void.
- (2) This section applies to any provision for—
  - (a) exempting any director, other officer or person employed as auditor of a building society from any liability which, by virtue of any rule of law, would otherwise attach to him in respect of the negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the society, or
  - (b) indemnifying any such person against any such liability.
- (3) Subsection (1) above shall not prevent a building society from indemnifying a person against any liability incurred by him in defending any proceedings (whether criminal or civil) in which judgment is given in his favour or in which he is acquitted.
- (4) Section 727 of the <sup>M7</sup>Companies Act 1985 or, as the case may be, Article 675 of the <sup>M8</sup>Companies (Northern Ireland) Order 1986 (which empower the court to grant relief in certain cases of negligence, default, breach of duty or breach of trust) shall apply in relation to officers and auditors of a building society as it applies in relation to officers and auditors a company.

#### Marginal Citations

- M7** 1985 c. 6.  
**M8** S.I. 1986/1032 (N.I.6).

## 111 Time limit for commencing proceedings.

- (1) Notwithstanding any limitation on the time for the taking of proceedings contained in any Act, summary proceedings for any offence under this Act may, subject to subsection (2) below, be commenced by the Commission at any time within the period

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of one year beginning with the date of which evidence sufficient in the opinion of the Commission to justify a prosecution for the offence, comes to its knowledge.

- (2) Nothing in subsection (1) above shall authorise the commencement of proceedings for any offence at a time more than three years after the date on which the offence was committed.
- (3) For the purposes of subsection (1) of this section a certificate, purporting to be signed by or on behalf of the Commission, as to the date on which such evidence as is mentioned in that subsection came to its knowledge, shall be conclusive evidence of that date.
- (4) In the application of this section to Scotland, in subsection (1) the words “by the Commission” shall be omitted and in this section references to the Commission shall be read as references to the Lord Advocate.
- (5) In the application of this section to Scotland, section 331(3) of the <sup>M9</sup>Criminal Procedure (Scotland) Act 1975 shall apply for the purposes of this section as it applies for the purposes of that section.

#### **Marginal Citations**

**M9** 1975 c. 21.

### **112 Offences: liability of officers and defence of due diligence.**

- (1) Where an offence under any provision of this Act committed by a building society 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, shall be guilty of that offence and liable to be proceeded against and punished in accordance with that provision.
- (2) Where an offence under any of the following provisions of this Act, that is to say, section 9(11), section 48(5), section 52(11) or paragraph 3 of Schedule 3 is committed by a building society every director and the chief executive of the society shall also be guilty of that offence and liable to be proceeded against and punished accordingly.
- (3) Where an offence under any provision of this Act committed by a body corporate other than a building society is proved to have been committed with the consent or connivance, or to be attributable to any neglect on the part of, any officer of the body corporate he, as well as the body corporate, shall be guilty of that offence and liable to be proceeded against and punished accordingly.
- (4) In any proceedings for an offence under this Act, it shall be a defence for a person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control

### **113 Evidence.**

- (1) Any document purporting to have been signed by a registrar on behalf of the central office and to be a certificate of incorporation or registration or other document relating to a building society shall be received in evidence and shall, in the absence of any evidence to the contrary, be deemed to have been signed by a registrar on behalf of the central office.



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- (2) Any printed document purporting to be a copy of the rules or memorandum of a building society, and certified by the secretary or other officer of the society to be a true copy of its rules or memorandum as registered, shall be received in evidence and shall, in the absence of any evidence to the contrary, be deemed to be a true copy of its rules or memorandum.

#### **114 Records.**

- (1) Subject to any other provision of this Act or regulations under it, any record to be kept by a building society may be kept in any manner.
- (2) Where any such record is not kept by making entries in a bound book, but by some other means, adequate precautions shall be taken for guarding against falsification and facilitating its discovery.
- (3) The power in subsection (1) above includes power to keep the record by recording matters otherwise than in legible form so long as the recording is capable of being reproduced in a legible form; and any duty imposed by or under this Act to allow inspection of, or to furnish a copy of, the record or any part of it is to be treated as a duty to allow inspection of, or to furnish, a reproduction of the recording or of the relevant part of it in a legible form.
- (4) The Commission may, by regulations made with the consent of the Treasury, make such provision in addition to subsection (3) above as it considers appropriate in connecton with such records as are kept otherwise than in legible form; and the regulations may make modifications of this Act so far as it relates to the records of building societies.
- (5) If default is made in complying with this section the building society shall be liable on summary conviction—
  - (a) to a fine not exceeding level 4 on the standard scale, and
  - (b) in the case of a continuing offence, to an additional fine not exceeding £100 for every day during which the offence continues,and so shall any officer who is also guilty of the offence.

#### **115 Service of notices.**

- (1) This section has effect in relation to any notice, directions or other document required or authorised by or under any provision of this Act or by the rules of a building society to be served on any person other than the Commission and the central office but subject, in the case of notices or other documents to be given or sent to members of a building society, to any provision of its rules.
- (2) Any such document may be served on the person in question—
  - (a) by delivering it to him;
  - (b) by leaving it at his proper address; or
  - (c) by sending it by post to him at that address.
- (3) Any such document may—
  - (a) in the case of a building society, be served on the secretary of the society;
  - (b) in the case of a body corporate (other than a building society), be served on the secretary or clerk of that body;

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- (c) in the case of a partnership, be served on any partner;
  - (d) in the case of an unincorporated association other than a partnership, be served on any member of its governing body.
- (4) For the purposes of this section and section 7 of the <sup>M10</sup>Interpretation Act 1978 (service of documents) in its application to this section, the proper address of any person is—
- (a) in the case of a building society or its secretary, the address of its principal office;
  - (b) in the case of a member of a building society, his registered address;
  - (c) in the case of a director or the chief executive of a building society, his officially notified address;
  - (d) in the case of a body corporate (other than a building society) its secretary or clerk, the address of its registered or principal office in the United Kingdom;
  - (e) in the case of an unincorporated association (other than a partnership) or a member of its governing body, its principal office in the United Kingdom;

and, in any other case, his last-known address (whether of his residence or of a place where he carries on business or is employed).

#### **Marginal Citations**

**M10** 1978 c. 30.

### **116 Form of documents and power to prescribe fees.**

- (1) The Chief Registrar may, by directions under this subsection, make provision with respect to the form of, and the particulars to be included in, any document to be issued or sent by, or to be sent to, the central office under this Act.
- (2) The Treasury may, by regulations under this subsection, make provision for the fees to be paid to the Chief Registrar for the inspection, or the furnishing of copies, of any documents in the custody of the central office, or in respect of the exercise by the central office of any of its functions, under this Act.
- (3) 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.
- (4) Any amounts received by the Chief Registrar under subsection (2) above shall be applied as an appropriation in aid of money provided by Parliament for the expenses of the Chief Registrar under this Act, and in so far as not so applied, shall be paid by the Chief Registrar into the Consolidated Fund.

### **117 Financial year of building societies.**

- (1) Subject to the provisions of this section and Schedule 20, the financial year of building societies shall be the period of twelve months ending with 31st December.
- (2) The initial financial year of a building society shall be such period as expires with the end of the calendar year in which it is established and the final financial year of a building society shall be such shorter period than twelve months as expires with the date as at which the society makes up its final accounts.

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- (3) A building society whose financial year does not, by virtue of the saving provisions of Schedule 20, end with 31st December may alter its financial year by making up its accounts for one period of more than 6 months, and not more than 18 months, ending with 31st December; and in relation to a building society exercising the power conferred by this subsection, references in this Act to a financial year of the society include references to that period.

## **118 Qualifying asset holding for certain powers.**

- (1) This section has effect for determining for the purposes of this Act whether, in any financial year, a building society has a “qualifying asset holding”.
- (2) A building society has a qualifying asset holding in any financial year, if, and only if, the aggregate value of its total commercial assets, as shown in its annual accounts for the previous year, is not less than £100 million or such other amount as may be substituted for it under subsection (3) below.
- (3) The Commission, with the consent of the Treasury, may by order made by statutory instrument substitute for the amount for the time being specified in subsection (2) above such other amount as the Commission considers appropriate.
- (4) An order under subsection (3) above may contain such transitional provisions as the Commission considers necessary or expedient.
- (5) An instrument containing an order under subsection (3) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

VALID FROM 01/01/1993

### **[118A <sup>F7</sup> Associates.**

- (1) In this Act 'associate', in relation to a person holding deferred shares in, or entitled to exercise or control the exercise of voting power in relation to, a building society, means—
- (a) the wife or husband or son or daughter of that person;
  - (b) the trustees of any settlement under which that person has a life interest in possession or, in Scotland, a life interest;
  - (c) any company of which that person is a director;
  - (d) any person who is an employee or partner of that person;
  - (e) if that person is a company—
    - (i) any director of that company;
    - (ii) any subsidiary undertaking of that company; and
    - (iii) any director or employee of any such subsidiary undertaking; and
  - (f) if that person has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of deferred shares in that society or under which they undertake to act together in exercising their voting power in relation to it, that other person.
- (2) For the purposes of this section—
- 'son' includes stepson and 'daughter' includes stepdaughter;

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'settlement' includes any disposition or arrangement under which property is held in trust.]

#### Textual Amendments

F7 S. 118A inserted (1. 1. 1993) by S.I. 1992/3218, reg.80

## 119 Interpretation.

(1) In this Act, except where the context otherwise requires—

“adopt” and “adopted”, in relation to powers, and “adoptable powers” have the meaning given by paragraph 1 of Schedule 2 of this Act;

“advance secured on land” and “advance fully secured on land” have the meanings given by section 10(1) and (11) and references to class 1 or class 2 advances are to be construed in accordance with sections 11 and 12;

“the annual accounts” has the meaning given by section 72(10);

“the annual business statement” has the meaning given by section 74(1);

“the applicable winding up legislation” and “the companies winding up legislation” have the meanings given by section 90;

“associated body” and, in that context, “associated” and “linked by resolution”, in relation to a building society, have the meanings given by section 18(9) and (17) respectively;

“authorisation” means authorisation under section 9 or, on renewal, under section 41 or reauthorisation under section 44 or authorisation by virtue of section 93(6) or paragraph 6(1) of Schedule 20 to this Act and “authorised” in relation to any time, means having an authorisation current at that time;

“borrowing members’ resolution” and “borrowing member” have the meanings given by paragraph 29 of Schedule 2 to this Act;

“building society” means a building society incorporated (or deemed to be incorporated) under this Act;

“the central office” means the central office of the registry of friendly societies except in relation to Scotland in relation to which it means the assistant registrar of friendly societies for Scotland;

“the Chief Registrar” means the Chief Registrar of Friendly Societies;

“the Commission” means the Building Societies Commission established by section 1;

“the court”, in relation to a building society, except in relation to the winding up of the society, means—

- (a) in the case of a society whose principal office is situated in England and Wales, the county court for the district in which the office is situated;
- (b) in the case of a society whose principal office is situated in Scotland, the sheriff in whose jurisdiction the office is situated;
- (c) in the case of a society whose principal office is situated in Northern Ireland, the county court for the division in which the office is situated;

and, in relation to the winding up of a building society, means the court which has jurisdiction under the applicable winding up legislation to wind up the society;

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“the criteria of prudent management” means the criteria set out in section 45(3);

“deferred shares” means shares of a class defined by order of the Commission, with the consent of the Treasury, in a statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament;

“deposit” includes loan, and cognate expressions shall be construed accordingly;

“dispose”, in relation to any property, includes the granting of any interest in or right over it;

“executive”, in relation to a director, means a person who holds office as a director and also as chief executive, secretary or manager;

“financial year” is to be construed in accordance with section 117;

“heritable security” means a security capable of being constituted over any land by disposition or assignation of that interest in security of any debt and of being recorded in the Register of Sasines or, as the case may be, in the Land Register of Scotland and includes a security constituted by a standard security and any other charge enforceable in the same manner as a standard security;

“Investor Protection Board” means the Board established by section 24;

“manager”, in relation to a building society, means a person (other than the chief executive) employed by the society who, under the immediate authority of a director or the chief executive of the society exercises managerial functions or is responsible for maintaining accounts or other records of the society;

“member”, in relation to a building society, includes any person who for the time being holds a share (whether advanced or not) in the society;

“memorandum” has the meaning given by paragraph 1 of Schedule 2 to the Act;

“mobile home loan” means a loan under section 15;

“mortgage” includes charge;

“mortgage debt”, in relation to an advance secured on land, has the meaning given by section 11(14) and, in relation to a loan so secured, has a corresponding meaning;

“notice” means written notice and “notice to” a person means notice given to that person, and “notify” shall be construed accordingly;

“officer”, in relation to a building society, means any director, chief executive, secretary or manager of the society; and, in relation to any offence, “officer” also includes any person who purports to act as an officer of the society; and in relation to any other body corporate means the corresponding officers of that body;

“officially notified”, in relation to the appointment or address of a director or the chief executive of a building society, means respectively notified to, and the last address notified to, the central office under section 61(13) or 59(6), as the case may be;

“prescribed”, in relation to fees, means prescribed under section 2 or 116 according as the fees are payable to the Commission or, in the case of functions of the central office, to the Chief Registrar;

“the public file”, in relation to a building society, means the file relating to the society which the central office is required to maintain under section 106;

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“qualifying asset holding”, in relation to a building society, shall be construed in accordance with section 118;

“registered address”, in relation to a member of a building society, has the meaning given by paragraph 13 of Schedule 2 to this Act;

“the repealed enactments” means the <sup>M11</sup>Building Societies Act 1962 or the <sup>M12</sup>Building Societies Act 1874 or, in relation to Northern Ireland, the <sup>M13</sup>Building Societies Act (Northern Ireland) 1967;

“share” includes stock;

“shareholder and depositor” includes a potential shareholder or depositor;

“special resolution” has the meaning given by paragraph 27 of Schedule 2 to this Act;

“subsidiary” [<sup>F8</sup>has the meaning given by section 736 of] the <sup>M14</sup>Companies Act 1985;

“summary financial statement” has the meaning given by section 76(1);

“total commercial assets”, in relation to a building society, means the aggregate of its class 1 assets, its class 2 assets and its class 3 assets.

- (2) In relation to advances secured on land in Scotland, “mortgage” means a heritable security, “mortgagor” and “mortgagee” mean respectively the debtor and creditor in a heritable security and connected expressions shall be construed accordingly.
- (3) For the purposes of any provision of this Act referring to the value of a person’s shareholding in a building society—
  - (a) the value of a person’s shares shall be taken as the amount standing to his credit in respect of payments made by him on the shares and interest credited to him by way of capitalisation; and
  - (b) shares held by a person to whom, as the holder of the share, the society has made an advance, shall be disregarded.
- (4) The value in sterling of any transaction effected by or with a building society in another currency shall be determined for any purpose of this Act in accordance with directions given by the Commission under this subsection.
- (5) The foregoing provisions of this Act shall be construed and have effect as if section 124 and Schedule 21 were contained in another Act and references in those provisions to this Act shall be construed accordingly.

#### Textual Amendments

**F8** Words substituted by virtue of [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 145(4), [Sch. 18 para. 45](#)

#### Modifications etc. (not altering text)

**C1** Definition of “total commercial assets” modified by [S.I. 1986/2168](#), [art. 4\(2\)\(a\)\(ii\)\(3\)](#)

#### Marginal Citations

**M11** 1962 c. 37.

**M12** 1874 c. 42.

**M13** 1967 c. 31 (N.I.).

**M14** 1985 c. 6.

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## **120 Amendments, repeals, revocations and transitional and saving provisions.**

- (1) The enactment specified in Schedule 18 to this Act shall have effect with the amendments made by that Schedule.
- (2) Subject to the saving provisions of Schedule 20, and of any order under section 121, the enactments specified in Schedule 19 to this Act are hereby repealed or revoked to the extent specified in the third column of that Schedule.
- (3) Where any enactment amended or repealed or revoked by subsection (1) or (2) above extends to any part of the United Kingdom, the amendment or repeal or revocation extends to that part.
- (4) The transitional and saving provisions of Schedule 20 to this Act shall have effect.

### **Modifications etc. (not altering text)**

**C2** S. 120(2) excluded by S.I. 1986/2168, art. 2(2)

## **121 Power to make transitional and saving provisions.**

- (1) The Treasury may, by order made by statutory instrument, make such provision as appears to them to be necessary or expedient for the purposes of the transition to the provisions of this Act from the existing enactments applicable in England and Wales, Scotland or Northern Ireland to building societies.
- (2) An order under this section may—
  - (a) modify any of the existing enactments or provisions of this Act, in particular in their application to proceedings pending before the Chief Registrar or the Commission;
  - (b) create criminal offences or otherwise provide for the enforcement of obligations imposed by or under the order;
  - (c) provide for the charging of fees but not of any charge in the nature of taxation.
- (3) An order under this section which contains any provision authorised by subsection (2) (b) or (c) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) In this section “the existing enactments” means the enactments in force at the passing of this Act, including any enactment amended by Schedule 18 to this Act.

### **Modifications etc. (not altering text)**

**C3** S. 121 amended by Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), s. 844, Sch. 30 para. 16

## **122 Northern Ireland**

- (1) With the exception of section 15, section 124 and Schedule 21 and subject to section 120(3), this Act extends to Northern Ireland.
- (2) Subject to any Order made by virtue of subsection (1)(a) of section 3 of the<sup>M15</sup>Northern Ireland Constitution Act 1973 building societies shall not be a transferred matter for

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the purposes of that Act but shall for the purposes of subsection (2) of that section be treated as specified in Schedule 3 to that Act.

**Marginal Citations**

**M15** 1973 c. 36.

**123 Expenses.**

There shall be paid out of money provided by Parliament—

- (a) any expenses incurred by the Commission which are attributable to the provisions of this Act, and
- (b) any expenses incurred by the Chief Registrar which are attributable to any functions of his or of the central office under this Act.



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