

*Status: Point in time view as at 01/04/2013.*

*Changes to legislation: Building Societies Act 1986, Cross Heading: Resignation of auditors is up to date with all changes known to be in force on or before 31 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 11

#### AUDITORS: APPOINTMENT, TENURE<sup>F1</sup> ...

##### Textual Amendments

**F1** Words in Sch. 11 heading omitted (6.4.2008) by virtue of [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), [Sch. 1 para. 14\(a\)](#), Sch. 2 (with arts. 6, 11, 12)

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

**C1** Sch. 11 excluded by [S.I. 1986/2168](#), art. 12(a)

#### *Resignation of auditors*

- 7 (1) An auditor of a building society may resign his office by depositing a notice to that effect at the principal office of the society; and any such notice operates to bring his term of office to an end on the date on which the notice is deposited, or on such later date as may be specified in it.
- (2) An auditor's notice of resignation shall not be effective unless it contains either—
- (a) a statement to the effect that there are no circumstances connected with his resignation which he considers should be brought to the notice of the members of, or depositors with, the society, or
  - (b) a statement of any such circumstances as are mentioned above.
- (3) Where a notice under this paragraph is deposited at the principal office of a building society it shall within fourteen days send a copy of that notice—
- (a) to the [<sup>F1</sup>FCA and, if the society is a PRA-authorized person, the PRA], and
  - (b) if the notice contains a statement under sub-paragraph (2)(b) above, to every person who under section 76(8) is entitled to receive a copy of the summary financial statement.
- (4) The building society or any person claiming to be aggrieved may, within fourteen days of the receipt by the society of a notice containing a statement under sub-paragraph (2)(b), apply in accordance with sub-paragraph (5) or (6) below to—
- (a) the High Court; or
  - (b) the [<sup>F2</sup>appropriate authority],
- for an order that copies of the notice need not or, as the case may be, shall not be sent out.
- (5) An application under this sub-paragraph is an application to the High Court on the ground that the auditor is using the notice to secure needless publicity for defamatory matter, and if the court is satisfied that the auditor is using the notice for that purpose it may by order direct that copies of it need not be sent out; and the court may further

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order the society's costs on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

- (6) An application under this sub-paragraph is an application to the [<sup>F3</sup>appropriate authority] on the ground that the sending out of the notice would be likely to diminish substantially the confidence in the society of investing members of the public; and if the [<sup>F3</sup>appropriate authority] is satisfied that the sending out of the notice would be likely to have that effect it shall by order direct that copies of it shall not be sent out.
- (7) The building society shall, within fourteen days of the decision of the High Court or of the [<sup>F4</sup>appropriate authority] , send to the persons mentioned in sub-paragraph (3) —
- (a) if the court makes an order under sub-paragraph (5) above or the [<sup>F4</sup>appropriate authority] makes an order under sub-paragraph (6), a statement setting out the effect of the order; and
  - (b) if not, a copy of the notice containing the statement under sub-paragraph (2) (b).
- [<sup>F5</sup>(7A) Sub-paragraphs (7B) and (7C) apply where—
- (a) the reference to a notice containing a statement under sub-paragraph (2) (b) is required to be sent to a person under sub-paragraph (3)(b) or sub-paragraph (7)(b); or
  - (b) a statement is required to be sent under sub-paragraph (7)(a).
- (7B) Where a notice or a statement is required to be sent to a person, the notice or statement may be sent to him electronically only if—
- (a) in a case where a person mentioned in sub-paragraph (3)(b) has notified the society of an electronic address for the purpose of this paragraph, it is sent to that address; or
  - (b) in a case where no electronic address has been notified for the purpose of this paragraph, it is sent to an electronic address notified by him for the purpose of subsection (8B) of section 76 (electronic address for the reception of summary financial statement for members and depositors).
- (7C) The requirement to send a notice or a statement shall also be treated as satisfied if—
- (a) the society and a person mentioned in sub-paragraph (3)(b) have agreed that information that is required to be sent to him may instead be accessed by him on a web site;
  - (b) the agreement applies to the notice or statement in question;
  - (c) in a manner agreed between the society and that person, he is notified of—
    - (i) the publication of the notice or statement on a web site,
    - (ii) the address of that web site, and
    - (iii) the place on that web site where the notice or statement may be accessed, and how it may be accessed; and
  - (d) the notice or statement is published on the web site throughout a period of at least 14 days, beginning with the day on which the person is notified in accordance with paragraph (c).]

(8) If default is made in complying with sub-paragraph (3) or sub-paragraph (7) the building society shall be liable—

    - (a) on conviction on indictment to a fine; or

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- (b) on summary conviction to a fine not exceeding the statutory maximum and, in the case of a continuing offence, to a fine not exceeding one tenth of the statutory maximum for every day during which the offence continues;

and so shall any officer who is also guilty of the offence.

[<sup>F6</sup>(8A) Where, in a case in which sub-paragraph (7C) is relied on for compliance with a requirement under sub-paragraph (3) or (7)—

- (a) a notice or a statement is published for a part, but not all, of the period mentioned in sub-paragraph (7C)(d), but
- (b) the failure to publish it throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the society to prevent or avoid,

no offence is committed under sub-paragraph (8) by reason of that failure.]

#### Textual Amendments

- F1** Words in Sch. 11 para. 7(3)(a) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 55(6)(a)** (with Sch. 12)
- F2** Words in Sch. 11 para. 7(4) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 55(6)(b)** (with Sch. 12)
- F3** Words in Sch. 11 para. 7(6) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 55(6)(b)** (with Sch. 12)
- F4** Words in Sch. 11 para. 7(7) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 55(6)(b)** (with Sch. 12)
- F5** Sch. 11 para. 7(7A)-(7C) inserted (20.3.2003) by The Building Societies Act 1986 (Electronic Communications) Order 2003 (S.I. 2003/404), arts. 1(1), **23(2)**
- F6** Sch. 11 para. 7(8A) inserted (20.3.2003) by The Building Societies Act 1986 (Electronic Communications) Order 2003 (S.I. 2003/404), arts. 1(1), **23(3)**

- 8 (1) Where an auditor's notice of resignation contains a statement under paragraph 7(2)(b) above he may also deposit at the principal office of the society a requisition signed by him calling on the directors of the society forthwith duly to convene a special general meeting of the society for the purpose of receiving and considering such explanation of the circumstances connected with this resignation as he may wish to place before the meeting.
- (2) Where an auditor's notice of resignation contains such a statement the auditor may request the society to send to its members—
- (a) before the general meeting at which his term of office would otherwise expire or expires, as the case may be; or
  - (b) before any general meeting at which it is proposed to fill the vacancy caused by his resignation,
- a statement in writing (not exceeding a reasonable length) of the circumstances connected with his resignation.
- (3) The society shall in that case (unless the statement is received by it too late for it to comply)—
- (a) in any notice of the meeting given to members state the fact of the statement having been made, and
  - (b) send a copy of the statement to every member to whom notice of the meeting is or has been sent.

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- [<sup>F7</sup>(3A) Where a copy of a statement is required to be sent to a member under sub-paragraph (3)(b)—
- (a) it may be sent to him electronically only if it is sent to an electronic address notified by the member for the purpose; but
  - (b) the requirement to send it shall also be treated as satisfied if the conditions set out in sub-paragraph (3B) are satisfied.
- (3B) The conditions of this sub-paragraph are satisfied in the case of a copy of a statement if—
- (a) the society and the member have agreed that information which is required to be sent to him may instead be accessed by him on a web site;
  - (b) the agreement applies to the statement in question;
  - (c) that member is notified, in a manner agreed between him and the society for the purpose, of—
    - (i) the publication of the statement on a web site,
    - (ii) the address of that web site, and
    - (iii) the place on that web site where the notice may be accessed, and how it may be accessed; and
  - (d) the statement is published continuously on that web site throughout the period beginning with the giving of that notification and ending with the conclusion of the meeting.
- (3C) Where, in a case in which sub-paragraph (3A)(b) is relied on for compliance with a requirement under sub-paragraph (3)(b)—
- (a) a statement is published for a part, but not all, of the period mentioned in subparagraph (3B)(d), but
  - (b) the failure to publish it throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the society to prevent or avoid,
- that failure shall not invalidate the proceedings of the meeting.]
- (4) If the directors of the society do not within 21 days from the date of the deposit of a requisition under this paragraph proceed duly to convene a meeting for a day not more than 28 days after the date on which the notice convening the meeting is given, every director who failed to take all reasonable steps to secure that a meeting was so convened shall be liable—
- (a) on conviction on indictment to a fine; or
  - (b) on summary conviction to a fine not exceeding the statutory maximum.
- (5) If a copy of the statement mentioned in sub-paragraph (2) is not sent out as required by sub-paragraph (3) because it was received too late or because of the society's default, the auditor may (without prejudice to his right to be heard orally) require that the statement be read out at the meeting.
- (6) Copies of a statement need not be sent out and the statement need not be read out at the meeting if—
- (a) on an application made to the High Court by the society or a person aggrieved, the court is satisfied that the rights conferred by this paragraph are being abused to secure needless publicity for defamatory matter; or
  - (b) on an application to the [<sup>F8</sup>PRA] by the society or a person aggrieved, the [<sup>F8</sup>PRA] is satisfied that the circulating or reading out of the statement would

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be likely to diminish substantially the confidence in the society of investing members of the public.

- (7) If the High Court makes an order under sub-paragraph (6)(a) above it may also order the society's costs of the application to be paid by the auditor notwithstanding that he is not a party to the application.
- (8) An auditor who has resigned his office is entitled to attend any such meeting as is mentioned in sub-paragraph (2)(a) or (b) and to receive all notices of, and other communications relating to, any such meeting which any member of the society is entitled to receive, and to be heard at any such meeting which he attends on any part of the business of the meeting which concerns him as former auditor of the society.

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**Textual Amendments**

- F7** Sch. 11 para. 8(3A)-(3C) inserted (20.3.2003) by [The Building Societies Act 1986 \(Electronic Communications\) Order 2003 \(S.I. 2003/404\)](#), arts. 1(1), **24**
- F8** Word in Sch. 11 para. 8(6)(b) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), **Sch. 8 para. 55(7)** (with Sch. 12)

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