

SCHEDULES

SCHEDULE 11

Section 77.

AUDITORS : APPOINTMENT, TENURE, QUALIFICATIONS

Appointment

- 1 (1) The first auditors of a building society may be appointed by the directors at any time before the first general meeting of the building society following the end of the society's first financial year and auditors so appointed shall hold office until the conclusion of that meeting.
- (2) If the directors fail to exercise their powers under sub-paragraph (1) above those powers may be exercised by the building society in general meeting.
- 2 The directors, or the building society in general meeting, may fill any casual vacancy in the office of auditor; but while any such vacancy continues, the surviving or continuing auditor or auditors (if any) may act.
- 3 (1) If at any annual general meeting of a building society no auditors are appointed or re-appointed, the Commission may appoint a person to fill the vacancy; and the society shall, within one week of the power of the Commission becoming exercisable, give it notice of that fact.
- (2) If a building society fails to give the notice required by sub-paragraph (1) above the society 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.
- 4 (1) A resolution at a general meeting of a building society—
 - (a) appointing as auditor a person other than a retiring auditor; or
 - (b) filling a casual vacancy in the office of auditor ; or
 - (c) reappointing as auditor a retiring auditor who was appointed by the directors to fill a casual vacancy ; or
 - (d) removing an auditor before the expiration of his term of office,shall not be effective unless notice of the intention to move it has been given to the society not less than twenty-eight days before the meeting at which it is moved.
- (2) A building society shall give to its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting, or, if that is not practicable, shall give them notice of the resolution, not less than twenty-one days before the meeting, either by advertisement in a newspaper having an appropriate circulation or in any other way allowed by the rules of the society.
- (3) On receipt of notice of such an intended resolution as is mentioned above the society shall forthwith send a copy of it—

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- (a) to the person proposed to be appointed or removed, as the case may be ;
 - (b) in a case within sub-paragraph (1)(a), to the retiring auditor ; and
 - (c) where, in a case within sub-paragraph (1)(b) or (c), the casual vacancy was caused by the resignation of an auditor, to the auditor who resigned.
- (4) Where notice is given of such a resolution as is mentioned in sub-paragraphs (1)(a) or (d) and the retiring auditor, or (as the case may be) the auditor proposed to be removed, makes with respect to the intended resolution representations in writing to the society (not exceeding a reasonable length) and requests their notification to the members, the society shall (unless the representations are received by it too late to do so)—
 - (a) in any notice of the resolution given to members, state the fact of the representations having been made, and
 - (b) send a copy of the representations to every member to whom notice of the meeting is or has been sent.
- (5) If a copy of such representations is not sent out as required by sub-paragraph (4) above 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 representations shall be read out at the meeting.
- (6) The building society or any person claiming to be aggrieved may, within fourteen days of the receipt by the society of any representations made to it under sub-paragraph (4) above, apply in accordance with sub-paragraph (7) or (8) below to—
 - (a) the High Court, or
 - (b) the Commission,for an order that copies of the representations need not or, as the case may be, shall not be sent out nor the representations read out at the meeting.
- (7) An application under this sub-paragraph is an application to the High Court on the ground that the auditor is abusing the rights conferred by sub-paragraph (4) above to secure needless publicity for defamatory matter, and if the court is satisfied that the auditor is so abusing those rights it may by order direct that copies of the representations need not be sent out nor the representations read out at the meeting; and the court may further 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.
- (8) An application under this sub-paragraph is an application to the Commission on the ground that the sending out of copies of or the reading out at the meeting of the representations would be likely to diminish substantially the confidence in the society of investing members of the public and if the Commission is satisfied that the sending out of copies of the representations or the reading of them would have that effect it shall by order direct that copies of the representations shall not be sent out nor the representations read at the meeting.
- (9) The building society shall—
 - (a) if the High Court makes an order under sub-paragraph (7) above or the Commission makes an order under sub-paragraph (8) above, send within fourteen days of the decision a statement setting out the effect of the order to the persons mentioned in sub-paragraph (4)(b) above ; and
 - (b) if not, either send a copy of the written representations made under sub-paragraph (4) above to those persons or cause the representations to be read out at the meeting.

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- (10) If default is made in complying with sub-paragraph (4) or (9) above the building society shall be liable—
- (a) on conviction on indictment to a fine ; or
 - (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.

Qualification and disqualification of auditors

- 5 (1) A person is not qualified for appointment as auditor of a building society unless he is a member of one or more of the following bodies—
- (a) the Institute of Chartered Accountants in England and Wales;
 - (b) the Institute of Chartered Accountants of Scotland ;
 - (c) the Chartered Association of Certified Accountants ;
 - (d) the Institute of Chartered Accountants in Ireland ;
 - (e) any other body of accountants established in the United Kingdom and for the time being recognised by the Secretary of State for the purposes of section 389(1) of the Companies Act 1985; and
 - (f) any other body of accountants established in the United Kingdom or any other member State, being a body for the time being designated by order by the Commission with the consent of the Treasury.
- (2) None of the following persons is qualified for appointment as an auditor of a building society—
- (a) a director or employee of the society ;
 - (b) a person who is a partner of, or in the employment of, or who employs, a director or employee of the society ;
 - (c) a person who is disqualified from acting as auditor of any subsidiary of the society under section 389(6) of the Companies Act 1985 ;
 - (d) a body corporate.
- (3) Nothing in this paragraph shall prevent the appointment as auditor of a Scottish firm if none of the partners of the firm is by virtue of this paragraph disqualified for appointment as auditor of the society.
- (4) The power to make an order under sub-paragraph (1)(f) above is exercisable by statutory instrument subject to annulment by a resolution of either House of Parliament.
- (5) No person shall act as auditor of a building society at a time when he knows that he is disqualified from appointment to that office; and if an auditor of a building society to his knowledge becomes so disqualified during his term of office he shall thereupon vacate his office and give notice to the society that he has vacated it by reason of that disqualification.
- (6) A person who acts as auditor in contravention of sub-paragraph (5), or fails without reasonable excuse to give notice of vacating his office as required by that sub-paragraph, 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 an additional fine not exceeding one-tenth of the statutory maximum for every day during which the offence continues.

Removal of auditors

- 6 (1) A building society may by resolution in general meeting remove an auditor before the expiration of his term of office, notwithstanding anything in any agreement between it and him.
- (2) Where a resolution removing an auditor is passed at a general meeting of a building society, the society shall within 14 days give notice of that fact to the central office.
- (3) If a building society fails to give the notice required by sub-paragraph (2) above the society shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale and, 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 every officer who is also guilty of the offence.
- (4) Nothing in this paragraph is to be taken as depriving a person removed under it of compensation or damages that may be payable to him in respect of the termination of his appointment as auditor.

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 central office, 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 Commission,
 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

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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 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 Commission 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 Commission 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 Commission, send to the persons mentioned in sub-paragraph (3)—
- (a) if the court makes an order under sub-paragraph (5) above or the Commission 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).
- (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
 - (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.
- 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 his 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.
- (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,

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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 Commission by the society or a person aggrieved, the Commission is satisfied that the circulating or reading out of the statement would 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.

9 In the application of this Schedule to Scotland, references to the High Court shall be read as references to the Court of Session.