

Status: Point in time view as at 20/03/2003.

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SCHEDULES

SCHEDULE 11

AUDITORS: APPOINTMENT, TENURE, QUALIFICATIONS

Modifications etc. (not altering text)

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

Appointment

- 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—
- (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.

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- (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 [F1Authority],
- 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 [F1Authority] 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 [F1Authority] 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 [F1Authority] 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.
- [F2(9A) Sub-paragraphs (9B) and (9C) apply where—
- (a) a copy of representations is required to be sent under sub-paragraph (4)(b) or (9)(b); or
 - (b) a statement is required to be sent under sub-paragraph (9)(a).
- (9B) Where a copy of representations or a statement is required to be sent to a member—
- (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 (9C) are satisfied.
- (9C) The conditions of this sub-paragraph are satisfied in the case of a copy of representations or a statement if—

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- (a) the society and the member 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 representations or statement in question;
 - (c) the member is notified, in a manner agreed between him and the society, of—
 - (i) the publication of the copy of the representations or the statement on a web site,
 - (ii) the address of that web site,
 - (iii) the place on that web site where the representations or statement may be accessed, and how it may be accessed,and where the notification concerns the publication of a statement required to be sent by sub-paragraph (9)(a), the member is notified within the period specified in that paragraph; and
 - (d) the copy of the representations or the statement is published continuously on that web site throughout the period beginning with the date on which notification is given in accordance with paragraph (c) and ending with the conclusion of the meeting.]
- (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.
- [^{F3}(10A) Where, in a case in which sub-paragraph (9A)(b) is relied on for compliance with a requirement of sub-paragraph (4) or (9)—
- (a) a copy of representations or a statement is published on a web site for a part, but not all, of the period mentioned in sub-paragraph (9C)(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 (10) by reason of that failure.]

Textual Amendments

- F1** Words in Sch. 11 para. 4 substituted (17.8.2001 for certain purposes otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II para. 206(a)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2**
- F2** Sch. 11 para. 4(9A)-(9C) inserted (20.3.2003) by **The Building Societies Act 1986 (Electronic Communications) Order 2003** (S.I. 2003/404), arts. 1(1), **22(2)**
- F3** Sch. 11 para. 4(10A) inserted (20.3.2003) by **The Building Societies Act 1986 (Electronic Communications) Order 2003** (S.I. 2003/404), arts. 1(1), **22(3)**

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