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## SCHEDULES

### SCHEDULE 12

Section 83.

#### SCHEMES FOR INVESTIGATION OF COMPLAINTS

#### PART I

##### MATTERS TO BE PROVIDED FOR IN SCHEMES

The matters for which provision is, subject to [<sup>F1</sup>Part III of this Schedule], to be made are the following:

##### Textual Amendments

- F1** Words in [Sch. 12 Pt. I](#) substituted (1.12.1997) by [1997 c. 32, s. 43](#), [Sch. 7 para. 62\(1\)](#); S.I. 1997/2668, art. 2, [Sch. Pt. I\(1\)\(xvi\)](#)

##### *Administration*

- 1 The establishment and functioning of an independent body (whether corporate or unincorporate) which is to administer the scheme.
- 2 The identity of the members.
- 3 The manner in which the expenses of the scheme are to be met by the members.

##### *The adjudicator*

- 4 The appointment of an independent adjudicator to conduct investigations under the scheme and his tenure of office and remuneration.

##### *Scope of scheme*

- 5 The matters action in relation to which is to be subject to investigation under the scheme and the grounds for making it subject to investigation.

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### *Functions of adjudicator*

- 6      The duty of the adjudicator to investigate, and make determinations on, actions duly referred for investigation.
- 7      The powers of, and procedure to be followed in the conduct of investigations by, the adjudicator.
- 8      The powers of the adjudicator on the making of determinations.

### *Determinations and their effects*

- 9      The extent to which determinations are binding.
- 10     The manner in which determinations are to be communicated and published.

### *Reports by investigators to administering body*

- 11     The making to the body administering the scheme of regular reports by the adjudicator as to the discharge of his functions, and their publication.

### *Amendment or revocation of scheme*

- 12     The manner of amending or revoking the scheme.

### *Accession to membership*

- 13     Accession to membership of other societies.

### *Withdrawal from membership*

- 14     Withdrawal from membership.

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## <sup>F2</sup>PART II

### REQUIREMENTS FOR RECOGNISED SCHEMES:MATTERS OF COMPLAINT

#### Textual Amendments

**F2** Sch. 12 Pt. II repealed (1.12.1997) by 1997 c. 32, ss. 43, 46(2), Sch. 7 para. 62(2), Sch. 9; S.I. 1997/2668, art. 2, Sch. Pt. I(j)(l)(xvi)(o)(viii)

#### *Share accounts*

- 1 The operation or termination of a share account and the grant or refusal to grant a shareholder other facilities normally available to shareholders of his description.

*Note:* The operation or termination of a share account includes any aspect of the relationship or termination of the relationship between the society and a shareholder as such and in particular the operation or termination of any services incidental to such accounts.

*Note:* The grant of facilities includes the terms on which they are granted.

#### *Deposit accounts*

- 2 The operation or termination of a deposit account and the grant or refusal to grant a depositor other facilities normally available to depositors of his description.

*Note:* The operation or termination of a deposit account includes any aspect of the relationship or the termination of the relationship between the society and a depositor as such, including in particular the operation or termination of any services incidental to such accounts.

*Note:* The grant of facilities includes the terms on which they are granted.

#### *Borrowing members: class 1 or class 2 advances*

- 3 The operation or termination of the account of a member borrowing on a class 1 or class 2 advance and the grant or refusal to grant a borrowing member of that description other or further class 1, or as the case may be, class 2 advances secured on the same or different land or other facilities normally available to borrowing members of his description.

*Note:* The operation or termination of the account of a borrowing member includes any aspect of the relationship or the termination of the relationship between the society and a borrowing member as such, including in particular the exercise of the right of foreclosure or any other power over the land by virtue of the mortgage.

*Note:* The grant of advances includes the terms on which they are granted.

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*Borrowers: mobile home loans*

- 4 The operation or termination of the account of a borrower under section 15 and the grant or refusal to grant a borrower under that section other facilities normally available to borrowers of his description.

*Note:* The operation or termination of the account of a borrower under section 15 includes any aspect of the relationship or the termination of the relationship between the lender and such a borrower, including in particular the exercise of any power over the security.

*Note:* The grant of facilities includes the terms on which they are granted.

*Borrowers: other loans*

- 5 The operation or termination of the account of a borrower under section 16 and the grant or refusal to grant a borrower under that section other facilities normally available to borrowers of his description.

*Note:* The operation or termination of the account of a borrower under section 16 includes any aspect of the relationship or the termination of the relationship between the lender and such a borrower including in particular, in the case of a secured loan, the exercise of any power over the security.

*Note:* The grant of facilities includes the terms on which they are granted.

*Money transmission services*

- 6 The terms on which are provided, the operation of, or the withdrawal of money transmission services.

*Note:* “Money transmission services” means the services of that description provided in accordance with Schedule 8 to this Act.

*Foreign exchange facilities*

- 7 The terms on which are provided, the operation of, or the withdrawal of foreign exchange services.

*Note:* “Foreign exchange services” means services of that description provided in accordance with Schedule 8 to this Act.

*Agency payments and receipts*

- 8 The terms on which payments are made or received as agents or the operation or withdrawal of the service.

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*Note:* The payments made or received as agents are those made or received in accordance with Schedule 8 to this Act.

### *Provision of credit*

- 9 The operation or termination of the account of a borrower with the person providing the credit.

*Note:* The credit provided is credit provided under arrangements for the provision of credit in accordance with Schedule 8 to this Act.

## PART III

### MINIMUM REQUIREMENTS FOR RECOGNISED SCHEMES: OTHER PROVISIONS

### *Grounds of complaint*

- [<sup>F3</sup>1 (1) The grounds for making action by a building society or connected undertaking subject to investigation under the scheme must be that the action constitutes—
- (a) in the case of a building society, a breach of the society's obligations under this Act, its rules or any contract, or
  - (b) in the case of a connected undertaking, a breach of the undertaking's obligations under its rules (if any) or any contract, or
  - (c) unfair treatment, or
  - (d) maladministration, or
  - (e) a decision to which sub-paragraph (2) below applies, or action consequential on such a decision,
- in relation to the complainant and has caused him pecuniary loss or expense or inconvenience.
- (2) This sub-paragraph applies to any decision in connection with the provision of a relevant service which is made otherwise than in the legitimate exercise of commercial judgment.]

#### Textual Amendments

**F3** Sch. 12 Pt. III para. 1 substituted (1.12.1997) by 1997 c. 32, s. 34(2); S.I. 1997/2668, art. 2, Sch. Pt. I(f)

### *Permissible exclusions from investigation*

- 2 A scheme must not exclude action from investigation on any other than the following grounds, that is to say—
- (a) that the complaint is frivolous or vexatious;
  - (b) that the action is the subject of proceedings in a court of law or was the subject of such proceedings in which a judgment on the merits was given;

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- [<sup>F4</sup>(bb) that the action is the subject of an investigation by another adjudicator (by whatever name called) operating under a comparable scheme (whether or not a recognised scheme), or was the subject of such an investigation in which a decision on the merits was made;]
- (c) that, where the society or [<sup>F5</sup>connected undertaking] has a procedure for the resolution of complaints by it (an “internal procedure”), the procedure has not been invoked or has not been exhausted;
- (d) that there has been undue delay in having the matter investigated under the scheme [<sup>F6</sup>, or in furnishing evidence in support of the complaint]; or
- (e) that the action in question occurred outside the United Kingdom.

*Note:* An international procedure for resolution of complaints is not to be treated as having been invoked unless the complainant has made his complaint to the principal office of the society or, as the case may be, [<sup>F7</sup>of the connected undertaking] and is not to be treated as having been exhausted unless more than three months has elapsed since the complainant invoked it without any decision on his complaint having been communicated to him.

*Note:* Delay in having a matter investigated under the scheme is not “undue delay” unless at least six months (disregarding the period for exhausting the society’s or [<sup>F8</sup>connected undertaking’s] internal procedure) has expired since the matter came to the knowledge of the complainant; and a person is not, for this purpose, to be presumed to have knowledge of the contents of a document which contains or relates to the terms or proposed terms of any transaction between him and the society.

[<sup>F9</sup>*Note:* Delay in furnishing evidence in support of the complaint is not “undue delay” unless at least six months have elapsed since the adjudicator acknowledged receipt of the complaint.]

#### Textual Amendments

- F4** Sch. 12 Pt. III para. 2(bb) inserted (1.12.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 62(3)(a)**; S.I. 1997/2668, art. 2, **Sch. Pt. I(l)(xvi)**
- F5** Words in Sch. 12 Pt. III para. 2(c) substituted (1.12.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 62(3)(b)**; S.I. 1997/2668, art. 2, **Sch. Pt. I(l)(xvi)**
- F6** Words in Sch. 12 Pt. III para. 2(d) inserted (1.12.1997) by 1997 c. 32, s. 34(3)(a); S.I. 1997/2668, art. 2, **Sch. Pt. I(f)**
- F7** Words in Sch. 12 Pt. III para. 2 substituted (1.12.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 62(3)(c)**; S.I. 1997/2668, art. 2, **Sch. Pt. I(l)(xvi)**
- F8** Words in Sch. 12 Pt. III para. 2 substituted (1.12.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 62(3)(d)**; S.I. 1997/2668, art. 2, **Sch. Pt. I(l)(xvi)**
- F9** Note in Sch. 12 Pt. III para. 2 inserted (1.12.1997) by 1997 c. 32, s. 34(3)(b); S.I. 1997/2668, art. 2, **Sch. Pt. I(f)**

#### *Functions of adjudicator*

- 3 A scheme must, as regards the duties and powers attached to the investigation of complaints under the scheme—

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- (a) impose on the adjudicator a duty, subject to the provision made in pursuance of sub-paragraph (c) below, to investigate and determine any complaint duly made;
- (b) impose on the adjudicator a duty to afford the complainant and the society or <sup>F10</sup>connected undertaking] an opportunity to make representations (whether orally or in writing) in relation to the action complained of;
- (c) confer power on the adjudicator to advise, mediate or act as conciliator before proceeding further with an investigation;
- (d) confer power on the adjudicator to extend the scope of his investigation to other matters related to the action complained of; and
- (e) confer on an adjudicator such powers to require information and documents relevant to the matter to be furnished to him as are necessary for the purposes of the investigation.

#### Textual Amendments

**F10** Words in Sch. 12 Pt. III paras. 3-5, 6(1), 7 substituted (1.12.1997) by 1997 c. 32, s. 43, Sch. 7 para. 62(4); S.I. 1997/2668, art. 2, Sch. Pt. I(j)(1)(xvi)

- 4
- (1) Subject to any provision made in pursuance of sub-paragraph (3) below, a scheme must authorise the adjudicator, in reaching his decision, to have regard to, but not to be bound by, any matter (whether or not of obligation) relevant to the action complained of and to question any decision.
  - (2) A scheme must impose on the adjudicator a duty, in reaching his decision, to have regard to—
    - (a) the rules (if any) of the society or <sup>F11</sup>connected undertaking];
    - (b) the provisions of any deed or contract binding the society and the complainant or, as the case may be, the <sup>F11</sup>connected undertaking] and the complainant;
    - (c) the provisions of any code of conduct applicable to the conduct by the society or <sup>F11</sup>connected undertaking] of its affairs or business;
    - (d) any advertisement issued by the society or <sup>F11</sup>connected undertaking] in connection with any aspect of its activities and any communication with the complainant.
  - (3) Subject to sub-paragraph (4) below, a scheme may preclude the adjudicator, in his determination, from questioning the merits of any decision taken by the society or <sup>F11</sup>connected undertaking] with reference to—
    - (a) the taking or conduct of legal proceedings to enforce any right of the society or <sup>F11</sup>connected undertaking]; or
    - (b) the creditworthiness, for the purposes of any advance or other service or facility, of the complainant;but not otherwise.
  - (4) Where investigation of a complaint on the ground of maladministration involves consideration by the adjudicator of any decision taken with reference to the creditworthiness of the complainant the scheme must confer power on the adjudicator

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to direct the society or associated body to take its decision again and reach it by proper procedures.

#### Textual Amendments

**F11** Words in [Sch. 12 Pt. III paras. 3-5, 6\(1\), 7](#) substituted (1.12.1997) by [1997 c. 32, s. 43, Sch. 7 para. 62\(4\)](#); S.I. 1997/2668, art. 2, [Sch. Pt. I\(j\)\(1\)\(xvi\)](#)

- 5 (1) Subject to sub-paragraph (2) below, a scheme must confer power on the adjudicator, by his determination, to do either or both of the following, that is to say—
- (a) direct the society or [<sup>F12</sup>connected undertaking] whose action is complained of to take or desist from taking such steps as are specified in the determination;
  - (b) order the society or [<sup>F12</sup>connected undertaking] whose action is complained of to pay the complainant a sum by way of compensation for the loss, expense or inconvenience caused by the action.
- (2) A scheme may impose a limit on the amount of compensation that a society or [<sup>F12</sup>connected undertaking] may be ordered to pay a complainant, but the limit must not be less than £100,000.

#### Textual Amendments

**F12** Words in [Sch. 12 Pt. III paras. 3-5, 6\(1\), 7](#) substituted (1.12.1997) by [1997 c. 32, s. 43, Sch. 7 para. 62\(4\)](#); S.I. 1997/2668, art. 2, [Sch. Pt. I\(j\)\(1\)\(xvi\)](#)

#### *Effect of determinations and their communication*

- 6 (1) Subject to any provision made in pursuance of sub-paragraph (2) or (3) below, a scheme must provide that, if the complainant, by notice to the adjudicator within the period specified in the scheme, accepts his determination the society or [<sup>F13</sup>connected undertaking] is under an obligation to take the steps it is directed to take or pay the compensation awarded or both.
- (2) A scheme may relieve a society of the obligation imposed by a determination if, but only if, the society undertakes an obligation to give notice to its members of the reasons for its non-fulfilment of the obligations imposed by the determination in the next directors' report under section 75 and to give notice of those reasons to the public in such manner as the adjudicator requires.
- (3) A scheme may relieve [<sup>F14</sup> a connected undertaking] of the obligations imposed by a determination if, but only if, each of the building societies [<sup>F15</sup>of which it is a connected undertaking] undertakes an obligation to give notice to its members of the reasons for the non-fulfilment of the obligations imposed by the determination in the next directors' report under section 75 and to give notice of those reasons to the public in such manner as the adjudicator requires.



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#### Textual Amendments

- F13** Words in Sch. 12 Pt. III paras. 3-5, 6(1), 7 substituted (1.12.1997) by 1997 c. 32, s. 43, Sch. 7 para. 62(4); S.I. 1997/2668, art. 2, Sch. Pt. I(j)(l)(xvi)
- F14** Words in Sch. 12 Pt. III para. 6(3) substituted (1.12.1997) by 1997 c. 32, s. 43, Sch. 7 para. 62(5)(a); S.I. 1997/2668, art. 2, Sch. Pt. I(j)(l)(xvi)
- F15** Words in Sch. 12 Pt. III para. 6(3) substituted (1.12.1997) by 1997 c. 32, s. 43, Sch. 7 para. 62(5)(b); S.I. 1997/2668, art. 2, Sch. Pt. I(j)(l)(xvi)

- 7 A scheme must impose on the adjudicator an obligation not to disclose, whether in his determination or otherwise, any information or opinion furnished in confidence to the society or, as the case may be, to the [<sup>F16</sup>connected undertaking] for the purpose of any action on its part.

#### Textual Amendments

- F16** Words in Sch. 12 Pt. III paras. 3-5, 6(1), 7 substituted (1.12.1997) by 1997 c. 32, s. 43, Sch. 7 para. 62(4); S.I. 1997/2668, art. 2, Sch. Pt. I(j)(l)(xvi)

#### *Reports by adjudicator to administering body*

- 8 A scheme must require reports by the adjudicator as to the discharge of his functions to be made to the body administering the scheme not less frequently than once in every year.

#### *Publication*

- 9 (1) A scheme must permit the body administering the scheme to publish the whole or any parts of the reports made to them by the adjudicator.
- (2) A scheme, if it makes the provision authorised by paragraph 6(2) or (3) above, must require the body administering the scheme to send to the Commission, not less frequently than once in every year, particulars of the cases in which building societies have undertaken the alternative obligation authorised by either or both of those subparagraphs.

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