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## SCHEDULES

### SCHEDULE 15

#### APPLICATION OF COMPANIES WINDING UP LEGISLATION TO BUILDING SOCIETIES

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

- C1** Sch. 15 applied (with modifications) (7.4.2010) by [The Building Societies \(Financial Assistance\) Order 2010 \(S.I. 2010/1188\)](#), arts. 1(2), **9**

### PART II

#### MODIFIED APPLICATION OF INSOLVENCY ACT 1986

### PARTS IV AND XII

#### *Preliminary*

- 6 In this Part of this Schedule, Part IV of the Insolvency Act 1986 is referred to as “Part IV”; and that Act is referred to as “the Act”.
- [<sup>F1</sup>6A. In the following provisions of the Act a reference to the creditors, general creditors or unsecured creditors of a company includes a reference to every shareholding member of the building society to whom a sum due from the society in relation to the member’s shareholding is due in respect of a deposit—
- (a) subsection (1) of section 143 (general functions of liquidator in winding up by the court);
  - (b) subsection (3) of section 149 (debts due from contributory to company);
  - (c) subsection (4) of section 168 (supplementary powers (England and Wales));
  - (d) subsection (2)(b) of section 175 (preferential debts (general provision));
  - (e) subsection (1) of section 176ZA (payment of expenses of winding up (England and Wales)); and
  - (f) subsections (3)(b) and (5)(a) of section 176A (share of assets for unsecured creditors).]

##### Textual Amendments

- F1** Sch. 15 para. 6A inserted (1.1.2015) by [The Banks and Building Societies \(Depositor Preference and Priorities\) Order 2014 \(S.I. 2014/3486\)](#), arts. 1(2), **33(2)** (with art. 3)

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*Members of a building society as contributories in winding up*

- 7 (1) Section 74 (liability of members) of the Act is modified as follows.
- (2) In subsection (1), the reference to any past member shall be omitted.
- (3) Paragraphs (a) to (d) of subsection (2) shall be omitted; and so shall subsection (3).
- [<sup>F2</sup>(3A) In paragraph (f) of subsection (2) the reference to a sum due to a member of the company by way of dividends, profits or otherwise does not include a sum due to a shareholding member of a building society in respect of a deposit.]
- (4) The extent of the liability of a member of a building society in a winding up shall not exceed the extent of his liability under paragraph 6 of Schedule 2 to this Act.

**Textual Amendments**

**F2** Sch. 15 para. 7(3A) inserted (1.1.2015) by [The Banks and Building Societies \(Depositor Preference and Priorities\) Order 2014 \(S.I. 2014/3486\)](#), arts. 1(2), **33(3)** (with art. 3)

- 8 Sections 75 to 78 and 83 in Chapter I of Part IV (miscellaneous provisions not relevant to building societies) do not apply.
- 9 (1) Section 79 (meaning of “contributory”) of the Act does not apply.
- (2) In the enactments as applied to a building society, “contributory”—
- (a) means every person liable to contribute to the assets of the society in the event of its being wound up, and
  - (b) for the purposes of all proceedings for determining, and all proceedings prior to the determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory, and
  - (c) includes persons who are liable to pay or contribute to the payment of—
    - (i) any debt or liability of the building society being wound up, or
    - (ii) any sum for the adjustment of rights of members among themselves,
 or
    - (iii) the expenses of the winding up;
- but does not include persons liable to contribute by virtue of a declaration by the court under section 213 (imputed responsibility for fraudulent trading) or section 214 (wrongful trading) of the Act.

*Voluntary winding up*

- 10 (1) Section 84 of the Act does not apply.
- (2) In the enactments as applied to a building society, the expression “resolution for voluntary winding up” means a resolution passed under section 88(1) of this Act.
- 11 In subsection (1) of section 101 (appointment of liquidation committee) of the Act, the reference to functions conferred on a liquidation committee by or under that Act shall have effect as a reference to its functions by or under that Act as applied to building societies.
- 12 (1) Section 107 (distribution of property) of the Act does not apply; and the following applies in its place.

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(2) Subject to the provisions of Part IV relating to preferential payments, a building society's property in a voluntary winding up shall be applied in satisfaction of the society's liabilities to creditors<sup>F3</sup> . . . pari passu and, subject to that application, in accordance with the rules of the society.

[<sup>F4</sup>(3) In sub-paragraph (2) the reference to the society's liabilities to creditors includes a reference to the society's liabilities to shareholding members of the society in respect of deposits which are not relevant deposits.]

#### Textual Amendments

**F3** Words in Sch. 15 para. 12(2) repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), Sch. 4 (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2

**F4** Sch. 15 para. 12(3) inserted (1.1.2015) by The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), 33(4) (with art. 3)

13 Sections 110 and 111 (liquidator accepting shares, etc. as consideration for sale of company property) of the Act do not apply.

14 Section 116 (saving for certain rights) of the Act shall also apply in relation to the dissolution by consent of a building society as it applies in relation to its voluntary winding up.

#### *Winding up by the court*

15 In sections 117 (High Court and county court jurisdiction) and 120 (Court of Session and sheriff court jurisdiction) of the Act, each reference to a company's share capital paid up or credited as paid up shall have effect as a reference to the amount standing to the credit of shares in a building society as shown by the latest balance sheet.

16 Section 122 (circumstances in which company may be wound up by the court) of the Act does not apply.

17 Section 124 (application for winding up) of the Act does not apply.

18 (1) In section 125 (powers of court on hearing of petition) of the Act, subsection (1) applies with the omission of the words from "but the court" to the end of the subsection.

(2) The conditions which the court may impose under section 125 of the Act include conditions for securing—

- (a) that the building society be dissolved by consent of its members under section 87, or
- (b) that the society amalgamates with, or transfers its engagements to, another building society under section 93 or 94, or
- (c) that the society transfers its business to a company under section 97,

and may also include conditions for securing that any default which occasioned the petition be made good and that the costs, or in Scotland the expenses, of the proceedings on that petition be defrayed by the person or persons responsible for the default.

19 Section 126 (power of court, between petition and winding up order, to stay or restrain proceedings against company) of the Act has effect with the omission of subsection (2).

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- 20 If, before the presentation of a petition for the winding up by the court of a building society, an instrument of dissolution under section 87 is placed in the society's public file, section 129(1) (commencement of winding up by the court) of the Act shall also apply in relation to the date on which the instrument is so placed and to any proceedings in the course of the dissolution as it applies to the commencement date for, and proceedings in, a voluntary winding up.
- 21 (1) Section 130 of the Act (consequences of winding-up order) shall have effect with the following modifications.
- (2) Subsections (1) and (3) shall be omitted.
- (3) A building society shall, within 15 days of a winding-up order being made in respect of it, give notice of the order [<sup>F5</sup>to the FCA and, if the society is a PRA-authorized person, the PRA] ; and the [<sup>F6</sup>FCA must] keep the notice in the public file of the society.
- (4) If a building society fails to comply with sub-paragraph (3) above, it shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale; and so shall any officer who is also guilty of the offence.

#### Textual Amendments

- F5** Word in Sch. 15 para. 21(3) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), [Sch. 8 para. 57\(4\)\(a\)](#) (with Sch. 12)
- F6** Word in Sch. 15 para. 21(3) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), [Sch. 8 para. 57\(4\)\(b\)](#) (with Sch. 12)

- 22 Section 140 (appointment of liquidator by court in certain circumstances) of the Act does not apply.
- 23 In the application of sections 141(1) and 142(1) (liquidation committees), of the Act to building societies, the references to functions conferred on a liquidation committee by or under that Act shall have effect as references to its functions by or under that Act as so applied.
- [<sup>F7</sup>23A. Section 143 (general functions of liquidator in winding up by the court) of the Act has effect as if after subsection (1) there were inserted—
- “(1A) Subject to the provisions of Part 4 relating to preferential payments, a building society's property in the winding up shall be applied in satisfaction of the society's liabilities to creditors *pari passu* and, subject to that application, in accordance with the rules of the society.
- (1B) In subsection (1A) the reference to the society's liabilities to creditors includes a reference to the society's liabilities to shareholding members of the society in respect of deposits which are not relevant deposits.”]

#### Textual Amendments

- F7** [Sch. 15 para. 23A](#) inserted (1.1.2015) by [The Banks and Building Societies \(Depositor Preference and Priorities\) Order 2014 \(S.I. 2014/3486\)](#), arts. 1(2), [33\(5\)](#) (with art. 3)

- 24 The conditions which the court may impose under section 147 (power to stay or sist winding up) of the Act shall include those specified in paragraph 18(2) above.

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25 Section 154 (adjustment of rights of contributories) of the Act shall have the effect with the modification that any surplus is to be distributed in accordance with the rules of the society.

<sup>F8</sup>26 .....

**Textual Amendments**

**F8** Sch. 15 para. 26 repealed (1.10.2007) by [The Companies Act 2006 \(Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/2194\)](#), art. 1(3)(a), Sch. 4 para. 49(1), [Sch. 5](#) (with art. 12, Sch. 4 para. 49(2))

*Winding up: general*

27 Section 187 (power to make over assets to employees) of the Act does not apply.

28 (1) In section 201 (dissolution: voluntary winding up) of the Act, subsection (2) applies without the words from “and on the expiration” to the end of the subsection and, in subsection (3), the word “However” shall be omitted.

(2) Sections 202 to 204 (early dissolution) of the Act do not apply.

29 In section 205 (dissolution: winding up by the court) of the Act, subsection (2) applies with the omission of the words from “and, subject” to the end of the subsection; and in subsections (3) and (4) references to the Secretary of State shall have effect as references to the [<sup>F9</sup>appropriate authority] .

**Textual Amendments**

**F9** Words in Sch. 15 para. 29 substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), [Sch. 8 para. 57\(5\)](#) (with Sch. 12)

*Penal provisions*

30 Sections 216 and 217 of the Act (restriction on re-use of name) do not apply.

31 (1) Sections 218 and 219 (prosecution of delinquent officers) of the Act do not apply in relation to offences committed by members of a building society acting in that capacity.

(2) Sections 218(5) of the Act and subsections (1) and (2) of section 219 of the Act do not apply.

(3) The references in subsections (3) and (4) of section 219 of the Act to the Secretary of State shall have effect as references to the [<sup>F10</sup>FCA] ; and the reference in subsection (3) to subsection 218 of the Act shall have effect as a reference to that section as supplemented by paragraph 32 below.

**Textual Amendments**

**F10** Word in Sch. 15 para. 31 substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), [Sch. 8 para. 57\(6\)](#) (with Sch. 12)

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- 32 (1) Where a report is made to the prosecuting authority (within the meaning of section 218) under section 218(4) of the Act, in relation to an officer of a building society, he may, if he thinks fit, refer the matter to the [F11FCA] for further enquiry.
- (2) On such a reference to it the [F11FCA] shall exercise its power under section 55(1) of this Act to appoint one or more investigators to investigate and report on the matter.
- (3) An answer given by a person to a question put to him in exercise of the powers conferred by section 55 on a person so appointed may be used in evidence against the person giving it.

#### **Textual Amendments**

- F11** Word in Sch. 15 para. 32 substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), [Sch. 8 para. 57\(7\)](#) (with Sch. 12)

#### *Preferential debts*

- 33 Section 387 (meaning in Schedule 6 of “the relevant date”) of the Act applies with the omission of subsections (2) and (4) to (6).

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