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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](#)

### [<sup>F1</sup>PART III

#### MODIFIED APPLICATION OF INSOLVENCY (NORTHERN IRELAND) ORDER 1989

##### Textual Amendments

- F1** Sch. 15 paras. 34-55E substituted (N.I.) (1.10.1991) for Sch. 15 paras. 34-55 by [S.I. 1989/2405 \(N.I. 19\)](#), arts. 2(1), 381, [Sch. 9 Pt. II para. 45\(c\)](#); S.R. 1991/411, [art. 2](#)

### PARTS V AND XI

#### *Preliminary*

- 34 In this Part of this Schedule, Part V of the Insolvency (Northern Ireland) Order 1989 is referred to as “Part V”, that Order is referred to as “the Order” and references to “Articles” are references to Articles of that Order.

- [<sup>F2</sup>34A. In the following provisions 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) paragraph (1) of Article 121 (general functions of liquidator in winding up by the High Court);
- (b) paragraph (3) of Article 127 (debts due from contributory to company);
- (c) paragraph (4) of Article 143 (supplementary powers);
- (d) paragraph (2)(b) of Article 149 (preferential debts (general provision));
- (e) paragraph (1) of Article 150ZA (payment of expenses of winding up); and
- (f) paragraphs (3)(b) and (5)(a) of Article 150A (share of assets for unsecured creditors).]

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#### Textual Amendments

- F2** Sch. 15 para. 34A inserted (1.1.2015) by [The Banks and Building Societies \(Depositor Preference and Priorities\) Order 2014 \(S.I. 2014/3486\)](#), arts. 1(2), **34(2)** (with art. 3)

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

- 35 (1) Article 61 (liability of members) is modified as follows.
- (2) In paragraph (1), the reference to any past member shall be omitted.
- (3) Sub-paragraphs (a) to (d) of paragraph (2) shall be omitted; and so shall paragraph (3).
- [ In sub-paragraph (f) of paragraph (2) the reference to a sum due to a member of the  
<sup>F3</sup>(3A) 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

- F3** Sch. 15 para. 35(3A) inserted (1.1.2015) by [The Banks and Building Societies \(Depositor Preference and Priorities\) Order 2014 \(S.I. 2014/3486\)](#), arts. 1(2), **34(3)** (with art. 3)

- 36 Articles 62 to 65 and 69 in Chapter I of Part V (miscellaneous provisions not relevant to building societies) do not apply.
- 37 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 Article 177 (imputed responsibility for fraudulent trading) or Article 178 (wrongful trading).

#### *Voluntary winding up*

- 38 (1) Article 70 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.
- 39 In paragraph (1) of Article 87 (appointment of liquidation committee), the reference to functions conferred on a liquidation committee by or under the Order shall have

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effect as a reference to its functions by or under the Order as applied to building societies.

40 (1) Article 93 (distribution of property) does not apply; and the following applies in its place.

(2) Subject to the provisions of Part V 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 (including any liability resulting from the variation to the liquidator's duty effected by section 28 or 31 of this Act) *pari passu* and, subject to that application, in accordance with the rules of the society.

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

#### Textual Amendments

**F4** Sch. 15 para. 40(3) inserted (1.1.2015) by [The Banks and Building Societies \(Depositor Preference and Priorities\) Order 2014 \(S.I. 2014/3486\)](#), arts. 1(2), **34(4)** (with art. 3)

41 Articles 96 and 97 (liquidator accepting shares, etc, as consideration for sale of company property) do not apply.

42 Article 101 (saving for certain rights) 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 High Court*

43 Article 102 (circumstances in which company may be wound up by the High Court) does not apply.

44 Article 104 (application for winding up) does not apply.

45 (1) In Article 105 (powers of High Court on hearing of petition), paragraph (1) applies with the omission of the words from "but the Court" to the end of the paragraph.

(2) The conditions which the High Court may impose under Article 105 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 of the proceedings on that petition be defrayed by the person or persons responsible for the default.

46 Article 106 (power of High Court, between petition and winding-up order, to stay or restrain proceedings against company) has effect with the omission of paragraph (2).

47 If, before the presentation of a petition for the winding up by the High Court of a building society, an instrument of dissolution under section 87 is placed in the society's public file, Article 109(1) (commencement of winding up by the High Court) shall also apply in relation to the date on which the instrument is so

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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.

- 48 (1) Article 110 (consequences of winding-up order) shall have effect with the following modifications.
- (2) Paragraphs (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-authorised person, the PRA] ; and [<sup>F6</sup>the 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** Words in Sch. 15 para. 48(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\(8\)\(a\)](#) (with Sch. 12)
- F6** Words in Sch. 15 para. 48(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\(8\)\(b\)](#) (with Sch. 12)

49 Article 119 (appointment of liquidator by High Court in certain circumstances) does not apply.

50 In the application of Article 120(1) (liquidation committee) to building societies, the references to functions conferred on a liquidation committee by or under the Order shall have effect as references to its function by or under the Order as so applied.

[<sup>F7</sup>50A. Article 121 (general functions of liquidator in winding up by the High Court) of the Order has effect as if after paragraph (1) there were inserted—

“(1A) Subject to the provisions of Part V 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 paragraph (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. 50A](#) inserted (1.1.2015) by [The Banks and Building Societies \(Depositor Preference and Priorities\) Order 2014 \(S.I. 2014/3486\)](#), arts. 1(2), [34\(5\)](#) (with art. 3)

51 The conditions which the High Court may impose under Article 125 (power to stay winding up) shall include those specified in paragraph 45(2) above.

52 Article 132 (adjustment of rights of contributories) shall have effect with the modification that any surplus is to be distributed in accordance with the rules of the society.

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<sup>F8</sup>53 . . . . .

#### Textual Amendments

- F8** Sch. 15 para. 53 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*

- 54 Article 158 (power to make over assets to employees) does not apply.
- 55 (1) In Article 166 (dissolution: voluntary winding up), paragraph (2) applies without the words from “and on the expiration” to the end of the paragraph and, in paragraph (3), the word “However” shall be omitted.
- (2) Articles 167 and 168 (early dissolution) do not apply.
- 55A In Article 169 (dissolution: winding up by the High Court) paragraph (1) applies with the omission of the words from “and, subject” to the end of the paragraph; and in paragraphs (2) and (3) references to the Department shall have effect as references to the [<sup>F9</sup>appropriate authority] .

#### Textual Amendments

- F9** Words in Sch. 15 para. 55A 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\(9\)](#) (with [Sch. 12](#))

#### *Penal provisions*

- 55B Articles 180 and 181 (restriction on re-use of name) do not apply.
- 55C (1) Articles 182 and 183 (prosecution of delinquent officers) do not apply in relation to offences committed by members of a building society acting in that capacity.
- (2) Article 182(4) and paragraphs (1) and (2) of Article 183 do not apply.
- (3) The references in paragraphs (3) and (5) of Article 183 to the Department shall have effect as references to the [<sup>F10</sup>FCA] ; and the reference in paragraph (3) to Article 182 shall have effect as a reference to that Article as supplemented by paragraph 55D below.

#### Textual Amendments

- F10** Word in Sch. 15 para. 55C 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\(10\)](#) (with [Sch. 12](#))

- 55D (1) Where a report is made to the prosecuting authority (within the meaning of Article 182) under Article 182(3), in relation to an officer of a building society, he may, if he thinks fit, refer the matter to the [<sup>F11</sup>FCA] for further enquiry.
- (2) On such a reference to it the [<sup>F11</sup>FCA] shall exercise its power under section 55(1) of this Act to appoint one or more investigators to investigate and report on the matter.

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- (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. 55D 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(11)** (with Sch. 12)

*Preferential debts*

- 55E Article 347 (meaning in Schedule 4 of “the relevant date”) applies with the omission of paragraphs (2) and (4) to (6).]

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