

SCHEDULES

SCHEDULE 15

APPLICATION OF COMPANIES WINDING UP LEGISLATION TO BUILDING SOCIETIES

PART III

MODIFIED APPLICATION OF THE COMPANIES (NORTHERN IRELAND) ORDER 1986, PART XX

Preliminary

34 In this Part of this Schedule, Part XX of the Companies (Northern Ireland) Order 1986 is referred to as " Part XX ", that Order is referred to as " the Order " and references to " Articles " are references to Articles of that Order.

Members of building society as contributories in winding up

35 (1) Article 468 (liability of members) is modified as follows.

(2) In paragraph (1), the references to any past member shall be omitted.

(3) Sub-paragraphs (a) to (d) of paragraph (2) shall be omitted ; and so shall paragraph (3).

(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.

36 Articles 469 to 472 and 477 in Chapter I of Part XX (miscellaneous provisions not relevant to building societies) do not apply.

37 (1) Article 473 (meaning of " contributory ") 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 Article 583 (imputed responsibility for fraudulent trading).

Status: This is the original version (as it was originally enacted).

Voluntary winding up

- 38 (1) Article 529 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 Articles 539, 540 and 551 (liquidator accepting shares, etc. as consideration for sale for company property) do not apply.
- 40 In the application of Article 548 (committees of inspection) to building societies, a committee of inspection shall exercise only those functions conferred by or under the Order as so applied.
- 41 (1) Article 555 (distribution of property) does not apply; and the following applies in its place.
- (2) Subject to the provisions of Part XX 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.
- 42 Article 562 (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 court

- 43 Article 479 (circumstances in which company may be wound up by the court) does not apply.
- 44 Article 481 (application for winding up) does not apply.
- 45 (1) Article 482 (powers of court on hearing of petition) applies with the omission of the words from " but the court" to the end of the Article.
- (2) The conditions which the court may impose under Article 482 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 483 (power of 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 court of a building society, an instrument of dissolution under section 87 is placed in the society's public file, Article 486(1) (commencement of winding up by the court) 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.

- 48 (1) Article 487 (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 to the central office, and the central office shall 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.
- 49 In the application of Article 507 (committees of inspection) to building societies, a committee of inspection shall exercise only those functions conferred by or under the Order as so applied.
- 50 The conditions which the court may impose under Article 510 (power to stay winding up) shall include those specified in paragraph 45(2) above.
- 51 Article 519 (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.
- 52 In Article 556(1) (liquidator's powers), the reference to an extraordinary resolution shall have effect as a reference to a special resolution.

Winding up: general

- 53 (1) Article 610 (power to make over assets to employees) does not apply.
- (2) Article 543(5) and Article 553(6) (final meeting and dissolution: voluntary winding up) shall apply without the words from "and on the expiration " to " dissolved ; but".

Penal provisions

- 54 (1) Articles 585 and 586 (prosecution of delinquent officers) do not apply in relation to offences committed by members of a building society acting in that capacity.
- (2) Article 585(3) and paragraphs (1) and (2) of Article 586 do not apply.
- (3) The references in paragraphs (3) and (4) of Article 586 to the Department of Economic Development shall have effect as references to the Commission ; and the reference in paragraph (3) to Article 585 shall have effect as a reference to that Article as supplemented by paragraph 55 below.
- 55 (1) Where a report is made to the prosecuting authority (within the meaning of Article 585) under Article 585(2) in relation to an officer of a building society, he may, if he thinks fit, refer the matter to the Commission for further enquiry.
- (2) On such reference to it the Commission 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.