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## SCHEDULES

### SCHEDULE 16

Sections 93, 94 and 95.

#### MERGERS: SUPPLEMENTARY PROVISIONS

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

C1 Sch. 16 excluded by S.I. 1986/2168, art. 9(2)(b)(3)

#### PART I

##### ISSUE OF STATEMENTS TO MEMBERS

- 1 (1) A building society which desires—
- (a) to amalgamate with one or more other building societies, or
  - (b) to transfer its engagements to another building society, or
  - (c) to undertake to fulfil the engagements of another building society,
- shall, unless the [<sup>F1</sup>Authority], in the case of a society desirous of undertaking to fulfil another's engagements, has consented under section 94(5) to its proceeding by resolution of the board of directors, send to every member entitled to notice of a meeting of the society a statement concerning the matters specified in sub-paragraph (4) below.
- (2) A building society shall include the statement referred to in sub-paragraph (1) above in or with the notice to be sent to its members of the meeting of the society at which the resolutions require for the approval of the amalgamation or, as the case may be, the transfer are to be moved.
- [<sup>F2</sup>(2A) Where a statement is required to be sent to a member in or with the notice of the meeting under sub-paragraph (2)—
- (a) in a case where notice of the meeting is given to that member electronically in accordance with paragraph 22A of Schedule 2, the statement may be sent to him electronically only if it is sent to the same electronic address, and at the same time, as the notice;
  - (b) in a case where notice of the meeting is given on a web site in accordance with paragraph 22B of Schedule 2, the requirement to send it shall also be treated as satisfied if the conditions set out in sub-paragraph (2B) are satisfied.
- (2B) The conditions of this sub-paragraph are satisfied in the case of a statement if—
- (a) the society and that 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 statement in question;

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- (c) at the same time and in the same manner as the society notifies that person of the publication of the notice of the meeting, it notifies him of—
    - (i) the publication of the statement on a web site,
    - (ii) the address of that web site,
    - (iii) the place on that web site where the statement may be accessed, and how it may be accessed; and
  - (d) the statement is published continuously on that web site throughout the period beginning with the giving of that notification and ending with the decision of the Authority whether to confirm the amalgamation or transfer of engagements pursuant to section 95.
- (2C) Where, in a case in which sub-paragraph (2A)(b) above is relied on for compliance with a requirement under sub-paragraph (2)—
- (a) a statement is published for a part, but not all, of the period mentioned in subparagraph (2B)(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,
- that failure shall not invalidate the proceedings of a meeting or prevent the requirements of sub-paragraph (2B) from being treated as fulfilled in relation to section 95(4)(c).]
- (3) No statement shall be sent unless its contents, so far as they concern the matters specified in sub-paragraph (4) below, have been approved by the [<sup>F1</sup>Authority].
- (4) Those matters are the following, namely—
- (a) the financial position of the building society and that of the other building society or societies participating in the amalgamation or transfer;
  - (b) the interest of the directors of the building society in the amalgamation or transfer of engagements;
  - (c) the compensation or other consideration (if any) proposed to be paid to or in respect of the directors or other officers of the building society and of the other building society or societies participating in the amalgamation or transfer;
  - (d) the payments (if any) to be made to members of the building society and of the other building society or societies participating in the amalgamation or transfer by way of a distribution of funds in consideration of the amalgamation or transfer;
  - (e) the changes (if any) to be made, in connection with the amalgamation or transfer of engagements, in the terms governing outstanding [<sup>F3</sup>loans made by the building society which are secured on land];
  - (f) any other matter which the [<sup>F1</sup>Authority] requires in the case of the particular amalgamation or transfer of engagements.
- <sup>F4</sup>(5) .....
- (6) Any expression used in this paragraph and in section 96 has the same meaning in this paragraph as in that section.

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### Textual Amendments

- F1** Word in Sch. 16 para. 1 substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II para. 211(a)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2**
- F2** Sch. 16 para. 1(2A)-(2C) inserted (20.3.2003) by The Building Societies Act 1986 (Electronic Communications) Order 2003 (S.I. 2003/404), arts. 1(1), **25**
- F3** Words in Sch. 16 Pt. I para. 1(4)(e) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 66(1)(a)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xxxviii)**
- F4** Sch. 16 Pt. I para. 1(5) repealed (1.12.1997) by 1997 c. 32, ss. 43, 46(2), Sch. 7 para. 66(1)(b), **Sch. 9**; S.I. 1997/2668, art. 2, **Sch. Pt. I(j)(k)(l)(xx)(o)(ix)**

## PART II

### NOTIFICATION OF PROPOSALS FOR MERGER

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

- C2** Sch. 16 Pt. II (paras. 2–6) excluded by S.I. 1986/2169, **art. 10**

#### *Preliminary*

- 2 In this Part of this Schedule—
- “merger” means an amalgamation of building societies under section 93 or a transfer of all the engagements of one building society to another under section 94; and “merger” has a corresponding meaning;
- “merger proposal”, in relation to a building society, means a proposal in writing, by another building society desiring to merge with it, for the societies to merge, with or without terms for the merger; and “proposer” has a corresponding meaning;
- “merger resolutions”, in relation to a building society, means the resolutions required for the approval of a merger of the society with another building society under section 93(2) or 94(2);
- “merger statement” means a statement containing the requisite particulars of a merger proposal; and
- “requisite particulars”, in relation to a merger proposal, means the particulars required by paragraph 3(2) below to be given in a merger statement.

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

- C3** Definition applied (1.6.1999) by S.I. 1999/1215, **reg. 3(6)**

#### *Duty to notify members*

- 3 (1) Subject to sub-paragraph (3) below, it shall be the duty of a building society receiving a merger proposal to send, in accordance with this Part of this Schedule, a merger

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statement in respect of the proposal to every member entitled to notice of a meeting of the society.

(2) A merger statement must contain the following particulars—

- (a) the fact that a merger proposal has been made, and
- (b) the identity of the proposer,

with or without other particulars regarding the proposal.

(3) Sub-paragraph (1) above does not require a merger statement to be sent to members if the proposer has requested in writing that the requisite particulars are to be treated as confidential; and, where such a request is made and is at a later date withdrawn in writing, the society receiving the proposal shall, for the purposes of this Part of this Schedule, treat the proposal as having been received on that date instead of any earlier date.

4 (1) A building society shall include in or with every notice of its annual general meeting a merger statement with respect to any merger proposal, other than a proposal of which notice has already been given under this paragraph,—

- (a) received by it during the period of 12 months ending with the ninth month of the last financial year of the society before that meeting; or
- (b) treated by paragraph 3(3) above as having been received by it during the last three months of that financial year;

and the society may also include, under this sub-paragraph, a merger statement with respect to any proposal received, or treated as received, by it after the end of either period.

<sup>F5</sup>(2) In any case where merger resolutions are to be moved at any meeting of a building society, every notice of the meeting shall have included in or with it—

- (a) a merger statement with respect to any merger proposal, other than a proposal of which notice has already been given under this paragraph, received by it more than 42 days before the date of the meeting; and
- (b) a transfer proposal notification with respect to any transfer proposal so received by it.

[ Where a merger statement or a transfer proposal notification is required to be sent <sup>F6</sup>(2A) to a person in or with the notice of a meeting of the society under sub-paragraph (1) or (2)—

- (a) in a case where notice of a meeting is given electronically to a person in accordance with paragraph 22A of Schedule 2, the merger statement or transfer proposal notification may be sent to him electronically only if it is sent to the same electronic address and at the same time as the notice;
- (b) in a case where notice of a meeting is given on a web site in accordance with paragraph 22B of Schedule 2, the requirement to send the statement or notification shall also be treated as satisfied if the conditions set out in sub-paragraph (2B) are satisfied.

(2B) The conditions of this sub-paragraph are satisfied in the case of a merger statement or transfer proposal notification if—

- (a) the society and that person 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 merger statement or transfer proposal notification in question;

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- (c) at the same time and in the same manner as the society notifies that person of the publication of the notice of the meeting, it notifies him of—
- (i) the publication of the merger statement or transfer proposal notification on a web site,
  - (ii) the address of that web site,
  - (iii) the place on that web site where that statement or notification may be accessed, and how it may be accessed; and
- (d) the statement or notification is published continuously on that web site throughout the period beginning when the person is notified in accordance with paragraph (c) and ending with the conclusion of the meeting.
- (2C) Where, in a case in which sub-paragraph (2A)(b) is relied on for compliance with a requirement under sub-paragraph (1) or (2)—
- (a) a statement or notification is published for a part, but not all, of the period mentioned in sub-paragraph (2B)(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,
- that failure shall not invalidate the proceedings of a meeting or prevent the requirements of sub-paragraph (2B) from being treated as fulfilled in relation to section 95(4)(c).]
- (3) In this paragraph and paragraph 5 below—
- “transfer proposal” has the same meaning as in Part IA of Schedule 17;
  - “transfer proposal notification” means a transfer proposal notification (within the meaning of that Part) required to be sent to members by paragraph 5B(1) of that Schedule.]

#### Textual Amendments

- F5** Sch. 16 Pt. II para. 4(2)(3) substituted for Sch. 16 Pt. II para. 4(2) (1.12.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 66(2)**; S.I. 1997/2668, art. 2, **Sch. Pt. I(j)(l)(xx)**
- F6** Sch. 16 para. 4(2A)-(2C) inserted (20.3.2003) by The Building Societies Act 1986 (Electronic Communications) Order 2003 (S.I. 2003/404), arts. 1(1), **26(1)**

#### *Duty to notify [F7 Authority]*

#### Textual Amendments

- F7** Word in cross-heading substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II para. 211(a)(ii)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2**

- 5 (1) Where a building society sends a merger statement [F8 or transfer proposal notification] to its members under paragraph 4 above in connection with a meeting of the society, it shall send a copy of the statement [F9 or notification] to the [F10 Authority] at least 14 days before the date of the meeting.
- (2) The [F10 Authority] shall keep the copy of a merger statement [F11 or transfer proposal notification] received by it from a building society in the public file of that society.

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#### Textual Amendments

- F8** Words in Sch. 16 Pt. II para. 5(1) inserted (1.12.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 66(3)(a)**; S.I. 1997/2668, art. 2, **Sch. Pt. I(j)(I)(xx)**
- F9** Words in Sch. 16 Pt. II para. 5(1) inserted (1.12.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 66(3)(b)**; S.I. 1997/2668, art. 2, **Sch. Pt. I(j)(I)(xx)**
- F10** Words in Sch. 16 para. 5 substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II para. 211(a)** (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2
- F11** Words in Sch. 16 Pt. II para. 5(2) inserted (1.12.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 66(4)**; S.I. 1997/2668, art. 2, **Sch. Pt. I(j)(I)(xx)**

#### *Penalty*

- 6 <sup>[F12]</sup>(1) If default is made by a building society in complying with paragraph 4(1), 4(2) or 5 above, the society shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale; and so shall any officer who is also guilty of the offence.
- <sup>[F13]</sup>(2) Where, in a case in which paragraph 4(2A)(b) is relied on for compliance with a requirement under sub-paragraph (1) or (2) of paragraph 4(2)—
- (a) a merger statement or transfer proposal notification is published for a part, but not all, of the period mentioned in sub-paragraph (2B)(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 this paragraph by reason of that failure.]

#### Textual Amendments

- F12** Sch. 16 para. 6(1) renumbered (20.3.2003) by *The Building Societies Act 1986 (Electronic Communications) Order 2003* (S.I. 2003/404), arts. 1(1), **26(2)**
- F13** Sch. 16 para. 6(2) inserted (20.3.2003) by *The Building Societies Act 1986 (Electronic Communications) Order 2003* (S.I. 2003/404), arts. 1(1), **26(2)**

### PART III

#### CONFIRMATION BY <sup>[F14]</sup>AUTHORITY: PROCEDURE

#### Textual Amendments

- F14** Words in Sch. 16 para. Pt. III (Heading) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II para. 211(a)(i)** (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2

- 7 An application for confirmation by the <sup>[F15]</sup>Authority of an amalgamation or transfer of engagements shall be made in such manner as the <sup>[F15]</sup>Authority may <sup>[F16]</sup>direct].

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#### Textual Amendments

- F15** Words in Sch. 16 para. 7 substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. II para. 211(a) (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2
- F16** Word in Sch. 16 para. 7 substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. II para. 211(b) (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2

- 8 (1) Where a building society applies to the [<sup>F17</sup>Authority] for confirmation of an amalgamation or transfer or engagements, the society shall publish notice of the application in any one or more of the London Gazette, the Edinburgh Gazette or the Belfast Gazette, as the [<sup>F17</sup>Authority] directs and, if it so directs, in one or more newspapers.
- (2) A notice published in pursuance of sub-paragraph (1) above shall—
- (a) state that any interested party has the right to make representations to the [<sup>F17</sup>Authority] with respect to the application; and
  - (b) specify a date determined by the [<sup>F17</sup>Authority] before which any written representations or notice of a person's intention to make oral representations must be received by the Commission; and
  - (c) specify a date determined by the [<sup>F17</sup>Authority] as the day on which it intends to hear any oral representations.

#### Textual Amendments

- F17** Words in Sch. 16 para. 8 substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. II para. 211(a) (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2

- 9 (1) After the date specified in pursuance of paragraph 8(2)(b) above, the [<sup>F18</sup>Authority] shall—
- (a) determine the time and place at which oral representations may be made;
  - (b) give notice of that determination to the building societies participating in the amalgamation or transfer and any persons who have given notice of their intention to make oral representations; and
  - (c) send copies of the written representations received by the [<sup>F18</sup>Authority] to the building societies participating in the amalgamation or transfer.
- (2) The [<sup>F18</sup>Authority] shall allow any building society participating in the amalgamation or transfer an opportunity to comment on the written representations, whether at a hearing or in writing before the expiration of such period as the [<sup>F18</sup>Authority] specifies in a notice to the society.

#### Textual Amendments

- F18** Words in Sch. 16 paras. 9 substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. II para. 211(a) (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2

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