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*Changes to legislation: Building Societies Act 1986, SCHEDULE 2 is up to date with all changes known to be in force on or before 06 June 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 2

Sections 5, 93, 94 and 97.

#### ESTABLISHMENT, INCORPORATION AND CONSTITUTION OF BUILDING SOCIETIES

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

**C1** Sch. 2 modified (3.1.1995) by 1994 c. 40, ss. 17(3), 82(2)

#### **PART I**

#### **GENERAL**

##### *Requirements for establishment*

- 1 (1) Any ten or more persons may establish a society under this Act by taking the following steps—
- (a) agreeing upon the purpose or principal purpose of the society and upon the extent of its powers in a memorandum the provisions of which comply with the requirements of this Part of this Schedule;
  - (b) agreeing upon rules for the regulation of the society which comply with the requirements of this Part of this Schedule;
  - (c) sending to the central office four copies of the memorandum and the rules, each copy signed by at least ten of those persons (or, if there are only ten, by all of them) and by the intended secretary.
- (2) Where copies of the memorandum and rules are sent to the central office in accordance with sub-paragraph (1)(c) above, the central office, if satisfied that—
- (a) the provisions of the memorandum are in conformity with this Act and any instruments under it,
  - (b) the rules are in conformity with this Act,
  - (c) the intended name of the society is not, in its opinion, undesirable,
- shall register the society and issue it with a certificate of incorporation.
- (3) On registering a building society under sub-paragraph (2) above, the central office shall—
- (a) retain and register one copy of the memorandum and of the rules,
  - (b) return another copy to the secretary of the society, together with a certificate of registration, and
  - (c) keep another copy, together with a copy of the certificate of incorporation, and of the certificate of registration of the memorandum and the rules, in the public file of the society.

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- (4) Subject to Schedule 20 in this Act, in relation to a building society—
- “adoptable powers” means powers which, by any provision of this Act, must, in order to be exercisable, be adopted by the society;
  - “adopt” or “adopted” means adopt or adopted by agreement upon the establishment of the society or subsequently under paragraph 4 below; and
  - “assume” or “assumed” means assume or assumed by agreement upon the establishment of the society or subsequently under paragraph 4 below;
  - “memorandum” means the memorandum of the purpose and the extent of the powers of the society including the record of any alteration under paragraph 4 below.

#### *The memorandum*

- 2 (1) The memorandum of a building society shall specify—
- (a) the name of the society and the address of its principal office;
  - (b) the purpose or principal purpose of the society;
  - (c) the adoptable powers (if any) which the society has adopted, including the restrictions (if any) on their extent which it has assumed; and
  - (d) the restrictions (if any) which it has assumed on the extent of any of its other powers under this Act.
- (2) Subject to sub-paragraph (3) below, in order to comply with sub-paragraph (1)(c) and (d) above the terms of each adoptable power and of each restriction on the extent of any power must be set out in the memorandum.
- (3) For compliance with sub-paragraph (1)(c) above as respects the powers conferred by section 18 or under section 23, it shall be sufficient—
- (a) in the case of section 18, to specify (as the case may be) the fact that the power of investment or support or both the powers of investment and support has or have been adopted in the case of companies, industrial and provident societies, corresponding European bodies and bodies included in designation orders under that section respectively, specifying, in the case of designated bodies, or descriptions of designated bodies, the body or description of body in relation to which the power or powers is or are exercisable;
  - (b) in the case of section 23, to specify the power in terms of subsection (1) of that section.
- (4) The provisions of the memorandum of a building society, as read with the provisions of this Act as in force for the time being, are binding upon—
- (a) each of the members and officers of the society; and
  - (b) all persons claiming on account of a member or under the rules;
- and all such members, officers and persons so claiming and all persons dealing with the society shall be taken to have notice of those provisions.
- (5) Where any adoptable power conferred by virtue of an instrument under a provision of this Act ceases, by reason of the amendment or revocation of the instrument, to be available to building societies or building societies of any description, every society affected by the amendment or revocation shall annex to its memorandum a note of the fact that, as from the operative date of the instrument, it no longer has that power

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and shall send a copy of the note to the central office which shall keep the copy in the public file of the society.

### *The rules*

- 3 (1) The rules of a building society shall provide for the matters specified in the Table in sub-paragraph (4) below.
- (2) The rules of a building society are binding upon each of the members and officers of the society and on all persons claiming on account of a member or under the rules; and all such members, officers and persons (but no others) shall be taken to have notice of the rules.
- (3) Nothing in this paragraph shall be taken to authorise any provision to be made which is inconsistent with this Act or an instrument made under it by the Commission or the Treasury or to affect the operation of any provision of this Act making rules void to any specified extent.

- (4) The Table referred to in sub-paragraph (1) above is as follows:—

#### TABLE OF MATTERS TO BE COVERED BY THE RULES

1. The name of the society and the address of its principal Office.
2. The manner in which the stock or funds of the society is or are to be raised.
3. The manner in which the terms are to be determined on which shares are to be issued and the manner in which shareholders are to be informed of changes in the terms on which their shares are held.
4. Whether any preferential or deferred shares are to be issued and, if so, within what limits.
5. The manner in which advances are to be made and repaid, and the conditions on which a borrower may redeem the amount due from him before the end of the period for which the advance was made.
6. The manner in which losses are to be ascertained and provided for.
7. The manner in which membership is to cease.
8. The manner of remunerating the auditors.
9. As respects directors— (a) the manner of electing them and whether they may be co-opted; (b) any conditions which must be satisfied with respect to the holding of shares in the society if a person is to become, or is to remain, a director; (c) the manner of remunerating and, where it is not to be fixed by resolution at the annual general meeting, the maximum amount of the remuneration to be paid to, directors; and (d) the circumstances in which pensions may be awarded to persons by virtue of their office as director and the method of determining the terms of such pensions.
10. The powers and duties of the board of directors.
11. The custody of the mortgage deeds and other securities belonging to the society.
12. The form, custody and use of the society's common seal.

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13. The calling and holding of meetings and, in particular— (a) the right of members to requisition meetings; (b) the right of members to move resolutions at meetings; (c) the manner in which notice of any resolutions to be moved at meetings is to be given to members; (d) the procedure to be observed at meetings; (e) the form of notice for the convening of a meeting and the manner of its service; (f) the voting rights of members, the right to demand a poll and the manner in which a poll is to be taken.

14. The entitlement of members to participate in the distribution of any surplus assets after payments to creditors, on the winding up, or dissolution by consent, of the society.

*Requirements for alteration of purpose, powers and rules*

- 4 (1) A building society may by special resolution—
- (a) alter its purpose or principal purpose;
  - (b) alter its powers by the adoption or the rescission of the adoption of any adoptable power or by the assumption, rescission of the assumption or variation of a restriction on a power (whether an adoptable or other power); or
  - (c) alter its rules by the addition, rescission or variation of any rule.
- (2) Where a building society alters its purpose or powers or its rules under this paragraph, it shall send to the central office—
- (a) three copies of a record of the alteration signed by the secretary; and
  - (b) a statutory declaration by the secretary that the alteration was effected by a resolution passed as a special resolution and that the record is a true record of the resolution.
- (3) On altering its purpose or powers or its rules under this paragraph the building society shall determine the date on which it intends the alteration to take effect; and the record of the alteration shall specify that date (in this paragraph referred to as “the specified date”).
- (4) Where copies of a record of an alteration of a building society’s purpose, powers or rules are sent to the central office under sub-paragraph (2) above and the central office is satisfied that the alteration is in conformity with this Act and (where applicable) any instruments under it, the central office shall, subject to paragraph 19 below—
- (a) retain and register one of the copies,
  - (b) return another to the secretary of the society together with a certificate of registration of the alteration, and
  - (c) keep another copy, together with a copy of the certificate of registration of the alteration, in the public file of the society.
- (5) An alteration of the purpose or powers or of the rules of a building society under this paragraph shall take effect on the specified date or, if registration of the alteration is not effected under sub-paragraph (4) above until a later date, that later date.
- (6) Any provision in the rules of a building society that the memorandum or rules may be altered without passing a special resolution shall be void.

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- (7) If a building society arranges for the publication in consolidated form of its rules or memorandum as altered for the time being, it shall send a copy to the central office and the central office—
- (a) shall keep the copy in the public file of the society, but
  - (b) shall not register the copy.
- (8) If a building society fails to comply with sub-paragraph (2) 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.

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

C2 Sch. 2 para. 4(1)(3) modified (3.1.1995) by 1994 c. 40, ss. 17(2), 82(2)

*Membership*

- 5 (1) The rules of a building society may allow a person to become a member without holding a share in the society.
- (2) Such of the rules as concern the making of advances to members need not be expressed in terms which treat a member to whom an advance is made as being, by reason of the making of the advance, the holder of a share in the society.
- (3) A person who is a minor—
- (a) may, if the rules do not otherwise provide, be admitted as a member of a building society and give all necessary receipts; but
  - (b) may not vote or hold any office in the society; and
  - (c) may not nominate, or join in nominating, a person for election as a director of the society.

*Liability of members*

- 6 (1) The liability of a member of a building society in respect of a share on which no advance has been made shall be limited to the amount actually paid, or in arrear, on the share.
- (2) The liability of a member of a building society in respect of a share on which an advance has been made shall be limited to the amount payable on the share under any mortgage or other security or under the rules of the society.
- (3) The liability of a member of a building society to whom an advance is made under rules made in pursuance of paragraph 5(1) or (2) above shall be no greater than it would be if the rules treated him as being, by reason of the making of the advance, the holder of a share in the society.

*Joint shareholders*

- 7 (1) Two or more persons may jointly hold shares in a building society and the following provisions of this paragraph shall apply to any shares so held.

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- (2) In this paragraph, in relation to any shares jointly held, “representative joint holder” means that one of the joint holders who is named first in the records of the society.
- (3) Except where the rules of the society otherwise provide, any notice or other document may be given or sent by the society to the joint holders by being given or sent to the representative joint holder; but this sub-paragraph shall not prevent any of the joint holders from exercising the rights under this Act of a member of a building society to obtain from the society on demand a copy of the summary financial statement, the annual accounts and the annual business statement.
- (4) For the purpose of determining—
- (a) who is entitled to vote in an election of directors of the society;
  - (b) who is qualified to vote on a resolution of the society, and
  - (c) where it is relevant, the number of votes a person may then give,
- the shares shall be treated as held by the representative joint holder alone; and accordingly a person who is a member of the society by reason only of being a joint holder of those shares (other than the representative joint holder) shall not be entitled to vote in any such election or qualified to vote on any such resolution.
- (5) For the purposes of sections 87 and 93 to 102 the shares shall be treated as held by the representative joint holder alone; and accordingly a person who is a member of the society by reason only of being a joint holder of those shares (other than the representative joint holder) shall not be regarded as a member of the society for the purposes of those sections.
- [<sup>F1</sup>(5A) In its application to section 100, sub-paragraph (5) above shall have effect subject to the provisions of section 102A.]
- (6) The representative joint holder (but none of the other joint holders) shall have the right to join in making an application under section 56 and any reference in that section to the total membership of a building society shall be construed accordingly.
- (7) In the register to be maintained under paragraph 13 below the entry of that one of the joint holders who is the representative joint holder shall indicate that fact.
- (8) The joint holders shall be entitled to choose the order in which they are named in the records of the society.

#### **Textual Amendments**

**F1** Sch. 2 para. 7(5A) inserted (1.5.1995 with application as mentioned in s. 2(2) of the amending Act) by 1995 c. 5, s. 1(2)

#### *Joint borrowers*

- 8 (1) Where an advance secured on land is made by a building society to two or more persons jointly the following provisions of this paragraph shall apply to their rights as borrowing members of the society.

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- (2) In this paragraph, in relation to any rights of theirs as borrowing members, “representative joint borrowers” means that one of the joint borrowers who is named first in the records of the society.
- (3) Except where the rules of the society otherwise provide, any notice or other document may be given or sent by the society to the joint borrowers by being given or sent to the representative joint borrowers; but this sub-paragraph shall not prevent any of the joint borrowers from exercising the rights under this Act of a borrowing member of a building society to obtain from the society on demand a copy of the summary financial statement, the annual accounts and the annual business statement.
- (4) For the purpose of determining—
  - (a) who is entitled to vote in any election of directors of the society, and
  - (b) who is qualified to vote on a resolution of the society,the rights of the joint borrowers as borrowing members of the society shall be treated as the rights of the representative joint borrower alone; and accordingly a person who is a member of the society by reason only of being a joint borrower (other than the representative joint borrower) shall not be entitled to vote in any such election or qualified to vote on any such resolution.
- (5) For the purposes of sections 87 and 93 to 102 the rights of the joint borrowers as borrowing members of the society shall be treated as the rights of the representative joint borrower alone; and accordingly a person who is a member of the society by reason only of being a joint borrower (other than the representative joint borrower) shall not be regarded as a borrowing member of the society for the purposes of those sections.
- (6) The representative joint borrower (but none of the other joint borrowers) shall have the right to join in making an application under section 56 and any reference in that section to the total membership of a building society shall be construed accordingly.
- (7) In the register to be maintained under paragraph 13 below the entry of that one of the joint borrowers who is the representative joint borrower shall indicate that fact.
- (8) The joint borrowers shall be entitled to choose the order in which they are named in the records of the society.

#### *Use and change of name*

- 9 (1) The common seal of a building society shall bear the registered name of the society.
- (2) A building society shall not use any name or title other than its registered name.
- (3) A building society may change its name by special resolution.
- (4) Where a society changes its name in accordance with this paragraph notice of the change of name shall be sent to the central office and, unless the central office is of the opinion that the changed name is undesirable, the central office shall register the notice of the change of name and give the society a certificate of registration.
- (5) A change of name shall take effect on the date on which the certificate of registration under sub-paragraph (4) above is issued or on such later date as may be specified in the certificate.

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- (6) The central office shall keep a copy of the certificate of registration issued under sub-paragraph (4) above in the public file of the society.
- (7) A change of name shall not affect the rights and obligations of the society or of any of its members or of any other person concerned.

*Offences relating to society's name*

- 10 (1) If a building society contravenes paragraph 9(2) above, the society shall be liable on summary conviction—
- (a) to a fine not exceeding level 4 on the standard scale; and
  - (b) in the case of a continuing offence, to an additional fine not exceeding £100 for every week during which the offence continuesX;
- and so shall any officer who is also guilty of the offence.
- (2) If a building society fails to send to the central office a notice which it is required to send to it under paragraph 9(4) 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.

VALID FROM 01/12/1997

*[<sup>F2</sup>Restrictions on business names]*

**Textual Amendments**

**F2** Cross-heading inserted (1.12.1997) by 1997 c. 32, s. 36(4); S.I. 1997/2668, art. 2, Sch. Pt. I(h)

- <sup>F3</sup>10A(1) This paragraph and paragraph 10B below apply where a building society carries on business under a name other than the following, namely—
- (a) its registered name;
  - (b) its registered name with the omission of the words “Building Society”; and
  - (c) its registered name with an addition which merely indicates that the business is carried on in succession to a former building society with which it has merged.
- (2) The society shall not, without the written approval of the Commission, carry on business under a name which—
- (a) would be likely to give the impression that the business is connected with Her Majesty’s Government or with any local authority, or
  - (b) includes any word or expression for the time being specified in regulations made under sub-paragraph (3) below.
- (3) The Commission may, with the consent of the Treasury, by regulations—



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- (a) specify words or expressions for the use of which as or as part of a business name the approval of the Commission is required by sub-paragraph (2) above, and
  - (b) in relation to any such word or expression, specify a Government department or other body for the purposes of sub-paragraph (4) below.
- (4) Where the society proposes to carry on business under a name which is or includes any such word or expression, and a government department or other body is specified under sub-paragraph (3)(b) above in relation to that word or expression, the society shall—
- (a) request (in writing) the relevant body to indicate whether (and if so why) it has any objections to the proposal, and
  - (b) submit to the Commission a statement that such a request has been made and a copy of any response received from the relevant body.
- (5) For the purposes of this paragraph “local authority” means—
- (a) any local authority within the meaning of the <sup>M1</sup>Local Government Act 1972, the Common Council of the City of London or the Council of the Isles of Scilly;
  - (b) any local authority within the meaning of the <sup>M2</sup>Local Government etc. (Scotland) Act 1994;
  - (c) any district council within the meaning of the <sup>M3</sup>Local Government Act (Northern Ireland) 1972.]

#### Textual Amendments

**F3** Sch. 2 Pt. I paras. 10A-10C inserted (1.12.1997) by 1997 c. 32, s. 36(4); S.I. 1997/2668, art. 2, Sch. Pt. I(h)

#### Marginal Citations

**M1** 1972 c.70.

**M2** 1994 c.39.

**M3** 1972 c.9 (N.I.).

VALID FROM 01/12/1997

*[<sup>F4</sup>Use of business names: required disclosure]*

#### Textual Amendments

**F4** Cross-heading inserted (1.12.1997) by 1997 c. 32, s. 36(4); S.I. 1997/2668, art. 2, Sch. Pt. I(h)

[<sup>F5</sup>10B(1) Paragraph 9(2A) above shall have effect as if after the words “in legible characters” there were inserted the words “which are reasonably prominent”.

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- (2) The society shall in all documents mentioned in paragraph 9(2A) above state in legible characters an address in the United Kingdom at which service of any document relating in any way to the business will be effective.
- (3) The society shall also in any premises where the business is carried on and to which the members of the society, the customers of the business or suppliers of any goods or services to the business have access, display in a prominent position so that it may easily be read by such persons a notice containing the society's registered name and the address mentioned in sub-paragraph (2) above.
- (4) The society shall secure that the registered name and the address mentioned in sub-paragraph (2) above is immediately given, by written notice, to any person with whom anything is done or discussed in the course of the business and who asks for the registered name or the address.
- (5) The Commission may, with the consent of the Treasury, by regulations require a notice under sub-paragraph (3) or (4) above to be displayed or given in a specified form.]

#### Textual Amendments

- F5** Sch. 2 Pt. 1 paras. 10A-10C inserted (1.12.1997) by 1997 c. 32, s. 36(4); S.I. 1997/2668, art. 2, Sch. Pt. I(h)

VALID FROM 01/12/1997

*[<sup>F6</sup>Use of business names: supplementary]*

#### Textual Amendments

- F6** Cross-heading inserted (1.12.1997) by 1997 c. 32, s. 36(4); S.I. 1997/2668, art. 2, Sch. Pt. I(h)

- <sup>F7</sup>10C(1) A building society which contravenes paragraph 10A(2) above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (2) A building society which, without reasonable excuse, does not comply with paragraph 9(2A) or 10B(2), (3) or (4) above, or any regulations made under paragraph 10B(5) above, shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
  - (3) Where paragraph 10A above applies any legal proceedings brought by the society to enforce a right arising out of a contract made in the course of the business in respect of which the society was, at the time the contract was made, in breach of paragraph 9(2A) or 10B(2), (3) or (4) above shall be dismissed if the defendant (or, in Scotland, the defender) to the proceedings shows—
    - (a) that he has a claim against the plaintiff (pursuer) arising out of that contract which he has been unable to pursue by reason of the plaintiff's (pursuer's) breach of paragraph 9(2A) or 10B(2), (3) or (4) above, or

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(b) that he has suffered some financial loss in connection with the contract by reason of the latter's breach of paragraph 9(2A) or 10B(2), (3) or (4) above, unless the court before which the proceedings are brought is satisfied that it is just and equitable to let the proceedings continue.

(4) Sub-paragraph (3) above is without prejudice to the right of any person to enforce such rights as he may have against another person in any proceedings brought by that person.

(5) Regulations made under paragraph 10A(3) or 10B(5) above shall be made by statutory instrument subject to annulment by resolution of either House of Parliament.

(6) Such regulations may contain such transitional provisions and savings as the Commission thinks fit, and may make different provision for different cases or classes of case.]

#### Textual Amendments

**F7** Sch. 2 Pt. I paras. 10A-10C inserted (1.12.1997) by 1997 c. 32, s. 36(4); S.I. 1997/2668, art. 2, Sch. Pt. I(h)

#### *Change of principal office*

- 11 (1) A building society may change its principal office—
- (a) in such manner as its rules direct, or
  - (b) if there is no such direction in the rules, [<sup>F8</sup>by an ordinary resolution].
- (2) Notice of any such change and of the date of it shall, within seven days after the change, be sent to the central office and the central office shall keep the notice in the public file of the society.
- (3) It is not necessary to alter the memorandum or rules of a building society by reason only that its principal office is changed.
- (4) If a building society fails to send to the central office a notice which it is required to send to it under sub-paragraph (2) 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.

#### Textual Amendments

**F8** Words in Sch. 2 Pt. I para. 11(1)(b) substituted (9.6.1997) by 1997 c. 32, s. 43, Sch. 7 para. 56(9); S.I. 1997/1427, art. 2(k)(n)(xv)

#### *Societies to supply copies of rules etc.*

- 12 (1) A building society shall, on demand, give a copy of its statutory documents—

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- (a) free of charge, to any member of the society to whom a copy of those documents has not previously been given, and
  - (b) to any other person, upon payment of such fee as the society may require, not exceeding the prescribed amount.
- (2) The reference in sub-paragraph (1) above to a copy of a building society’s statutory documents is a reference to—
- (a) a printed copy of the society’s rules for the time being, with a copy of the certificate of incorporation of the society annexed to it, and
  - (b) a printed copy of the memorandum of the society for the time being.
- (3) If a building society fails to comply with the requirements of sub-paragraph (1) 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.
- (4) In sub-paragraph (1) above the “prescribed amount” means £1 or such other amount as the Commission prescribes by order made by statutory instrument.

#### *Register of members*

- 13 (1) Every building society shall maintain a register of the names and addresses of the members of the society.
- (2) The register shall be kept at the principal office or at such other place or places as the directors think fit.
- (3) If a building society contravenes sub-paragraph (1) 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.
- (4) For the purposes of this Act “registered address” in relation to a member of a building society, means—
- (a) the address shown in the register maintained under this paragraph, except in a case where paragraph (b) below applies;
  - (b) where the member has requested that communications from the society be sent to some other address, that other address.

#### *Exception to duties to send documents*

- 14 (1) A building society is not obliged by any provision of this Act or its rules to send a notice or other document to a member in whose case the society has reason to believe that communications sent to him at his registered address are unlikely to be received by him.
- (2) Where the requirement relates to notice of a meeting or postal ballot of the society, the society must, instead, comply with the advertising requirements of paragraph 35 below.

#### *Right of members to obtain particulars from the register*

- 15 <sup>F9</sup>(1) At any time when a building society—

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- (a) has had its authorisation revoked under section 43; and
- (b) has not been re-authorised under section 44,

a member of the society shall, subject to sub-paragraph (1A) below, have the right to obtain, from the register kept under paragraph 13 above, the names and addresses of members of the society, for the purpose of communicating with them on a subject relating to the affairs of the society.

- (1A) Sub-paragraph (1) above shall not apply unless the member in question—
- (a) is qualified under the rules of the society to join in a members' requisition for a special meeting, or to join in nominating a person for election as a director; or
  - (b) would be so qualified if any requirements as to length of time a person must have been a shareholding or borrowing member were omitted.
- (2) If, at any time not falling within sub-paragraph (1) above, a member of a building society who is qualified under the rules of the society to join in a members' requisition for a special meeting, or to join in nominating a person for election as a director, makes a written application to the Commission for the right to obtain names and addresses from the register, the Commission—
- (a) if satisfied that the applicant—
    - (i) requires that right for the purpose of communicating with members of the society on a subject relating to its affairs; and
    - (ii) has not, since making the application, voluntarily ceased to be a member of the society; and
  - (b) having regard to the interests of the members as a whole and to all the other circumstances; and
  - (c) on payment by the applicant of a fee of £25 or such other amount as may be prescribed,
- may direct that the applicant shall have the right to obtain from the register the names and addresses of the members for the purpose of communicating with them on that subject.]
- (3) Any direction under sub-paragraph (2) above may be given subject to such limitations or conditions as the Commission may think fit.
- (4) Before giving a direction under sub-paragraph (2) above, the Commission shall give particulars of the application to the building society and shall afford the society an opportunity of making representations with respect to the application; and the Commission shall, if the applicant or the society so requests, afford to the applicant and to the society an opportunity of being heard by it.
- (5) A member entitled under this paragraph to obtain the names of members of a building society may apply in writing to the society, describing in the application the subject on which he proposes to communicate with other members of the society; and the society shall give him all necessary information as to the place or places where the register, or part of it, is kept, and reasonable facilities for inspecting the register and taking a copy of any names and addresses in the register.
- (6) A building society shall not be obliged to disclose to a member making an application under this paragraph any particulars contained in the register other than the names of the members and their addresses, and may construct the register in such a way that it is possible to disclose the names and addresses to inspection without disclosing any such other particulars.

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- [<sup>F10</sup>(7) No information obtained under sub-paragraph (1) or (2) above or this sub-paragraph and relating to a member of the society may be disclosed except—
- (a) with the consent of that member; or
  - (b) in the case of information obtained under sub-paragraph (1) or (2) above, for purposes connected with the purpose mentioned in that paragraph.
- (8) Any person who discloses information in contravention of sub-paragraph (7) above shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both; and
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (9) The Treasury may, by regulations, prescribe the amount of any fees payable under sub-paragraph (2) above; and regulations under this sub-paragraph may include—
- (a) provision for any fees so payable to be reduced or for payment of any fees to be waived by the Commission in circumstances determined by or under the regulations; and
  - (b) such incidental, supplementary and transitional provision as appears to the Treasury to be necessary or expedient.
- (10) The power to make regulations under sub-paragraph (9) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (11) The amounts received by the Commission under sub-paragraph (2) above shall be applied as an appropriation in aid of money provided by Parliament for the expenses of the Commission under this Act, and in so far as not so applied, shall be paid into the Consolidated Fund.]

#### Textual Amendments

- F9** Sch. 2 Pt. I para. 15(1)(1A)(2) substituted for Sch. 2 para. 15(1)(2) (9.6.1997) by 1997 c. 32, s. 37(1); S.I. 1997/1427, art. 2(i)
- F10** Sch. 2 Pt. I para. 15(7)-(11) inserted (9.6.1997) by 1997 c. 32, s. 37(2); S.I. 1997/1427, art. 2(i)

## PART II

### UNLAWFUL ANTICIPATION OF POWERS

#### *Undertaking against and declaration of non-anticipation of powers*

- 16 (1) Where a building society adopts any adoptable power under paragraph 4 above then—
- (a) it shall, by virtue of this paragraph, assume an obligation, enforceable as provided in paragraph 17 below, not to exercise that power until the date on which the alteration of its powers takes effect, and
  - (b) it shall send to the central office, with the documents required by paragraph 4(2) above, a declaration as respects that power made on behalf of the society which satisfies the requirements of this paragraph.

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- (2) The obligation assumed by virtue of this paragraph on the adoption of a power does not extend to the exercise of any power included in the adoptable power which the society has under the law in force at any time before the registration takes effect.
  - (3) A declaration, to satisfy the requirements of this paragraph, must be made by the chairman of the board of directors of the society, by one other director and by the chief executive of the society and it must either—
    - (a) state that, to the best of the knowledge and belief of the declarants, after due enquiry, the society has not, or has not with the permitted qualification, carried on any activity comprised in the power during the period which began one year before the specified date and expired with the date of the meeting at which the power was adopted, or
    - (b) state that, to the best of the knowledge and belief of the declarants, after due enquiry, the society, with specified exceptions, has not, or has not with the permitted qualification, carried on any activity comprised in the power during the period which began one year before the specified date and expired with the date of the meeting at which the power was adopted.
  - (4) The qualification of the statement so required which is permitted is that in so far as the society has, at any time during the said period, carried on any activity comprised in the power to which the statement relates, the society had the power to carry on that activity at that time under the law in force at that time
  - (5) The exceptions to the statement so required must not include activities of the society which constitute significant excesses of its powers during the said period; and a declaration specifying activities as exceptions to the statement so required must also state the opinion of the declarants that the activities are believed not to constitute significant excesses of the society's powers during the period to which the declaration relates.
- 16 (1) Where a building society adopts any adoptable power under paragraph 4 above then—
- (a) it shall, by virtue of this paragraph, assume an obligation, enforceable as provided in paragraph 17 below, not to exercise that power until the date on which the alteration of its powers takes effect, and
  - (b) it shall send to the central office, with the documents required by paragraph 4(2) above, a declaration as respects that power made on behalf of the society which satisfies the requirements of this paragraph.
- (2) The obligation assumed by virtue of this paragraph on the adoption of a power does not extend to the exercise of any power included in the adoptable power which the society has under the law in force at any time before the registration takes effect.
  - (3) A declaration, to satisfy the requirements of this paragraph, must be made by the chairman of the board of directors of the society, by one other director and by the chief executive of the society and it must either—
    - (a) state that, to the best of the knowledge and belief of the declarants, after due enquiry, the society has not, or has not with the permitted qualification, carried on any activity comprised in the power during the period which began one year before the specified date and expired with the date of the meeting at which the power was adopted, or

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- (b) state that, to the best of the knowledge and belief of the declarants, after due enquiry, the society, with specified exceptions, has not, or has not with the permitted qualification, carried on any activity comprised in the power during the period which began one year before the specified date and expired with the date of the meeting at which the power was adopted.
- (4) The qualification of the statement so required which is permitted is that in so far as the society has, at any time during the said period, carried on any activity comprised in the power to which the statement relates, the society had the power to carry on that activity at that time under the law in force at that time
- (5) The exceptions to the statement so required must not include activities of the society which constitute significant excesses of its powers during the said period; and a declaration specifying activities as exceptions to the statement so required must also state the opinion of the declarants that the activities are believed not to constitute significant excesses of the society's powers during the period to which the declaration relates.

*Penalty for breach of undertaking*

- 17 If, in breach of the obligation assumed by virtue of paragraph 16 above, a building society exercises any power to which the obligation extends, then—
- (a) the society shall be liable on conviction on indictment or on summary conviction to a fine not exceeding, on summary conviction, the statutory maximum, and
- (b) any officer of the society who is also guilty of the offence shall be liable on summary conviction to a fine not exceeding the statutory maximum.

*Penalty for false declaration*

- 18 If the statement in a declaration made for the purposes of paragraph 16 above is false, then, any person who made the statement knowing it to be false or reckless as to whether it was true or false shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both, and
- (b) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or both.

*Powers of central office*

- 19 (1) The central office, on receiving from a building society the declaration required by and the other documents referred to in paragraph 16 above, shall refer to the Commission for its determination the question whether or not the alteration of the society's powers is to be registered.
- (2) On a reference to the Commission of the question whether or not the alteration of a society's powers is to be registered—



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- (a) if the declaration contains the statement specified in paragraph 16(3)(a) above and the Commission has no reasonable cause to believe that the society in question has carried on any activity comprised in the power to which the obligation imposed by paragraph 16 above extends at any time during the period which began one year before the specified date and expired on the date on which it considers the reference, the Commission shall direct the central office to register the alteration, and
  - (b) in any other case, the Commission may, as it thinks fit, direct the central office to register, or not to register, the alteration.
- (3) The Commission, in deciding, in a case falling within subparagraph (2)(b) above, whether or not to direct the registration of the alteration of a society's powers may have regard to all the circumstances of the case.
- (4) No registration of an alteration shall be effected by the central office under paragraph 4(4) above before the expiry of the period of 21 days beginning with the date on which it receives the declaration required by and the other documents referred to in paragraph 16 above.
- (5) If the central office, in pursuance of a direction of the Commission under subparagraph (2) above, refuses registration of the alteration of a society's powers under subparagraph (1) above it shall serve on the society a notice—
- (a) recording its refusal,
  - (b) specifying the activity which is believed to constitute a breach of the society's obligation, and
  - (c) directing the society to make an application to the Commission under section 38 for a determination under that section whether the activity was or was not within the powers of the society at the time specified under subparagraph (b) above,
- and shall send a copy of the notice to the Commission.
- (6) The central office shall comply with any direction as regards the registration of the alteration of the society's powers given to it by the Commission consequent on the Commission's determination of the society's powers under section 38.
- (7) In this paragraph "the specified date" has the same meaning as in paragraph 4 above.

### PART III

#### MEETINGS, RESOLUTIONS AND POSTAL BALLOTS

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

**C3** Sch. 2 Pt. III (paras. 20–36) excluded (*temp.*) by S.I. 1986/2168, art. 3(1)(2)

**C4** Sch. 2 Pt. III (paras. 20–36) modified by S.I. 1987/426, art. 4

#### *Annual general meeting*

- 20 (1) Subject to sub-paragraph (2) below, every building society shall hold a meeting in the first four months of each financial year as its annual general meeting (in addition

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to any other meetings in that year) and shall specify the meeting as such in the notices calling it.

- (2) Sub-paragraph (1) above does not require a building society to hold an annual general meeting in the calendar year in which it is incorporated.
- (3) If default is made in holding a meeting in accordance with sub-paragraph (1) above, the Commission may—
  - (a) call, or direct the calling of, an annual general meeting in that financial year, and
  - (b) give such ancillary or consequential directions as it thinks expedient, including directions modifying or supplementing the operation of the rules of the society in relation to the calling, holding and conducting of the meeting.
- (4) Notwithstanding anything in the rules of a building society, the business which may be dealt with at the annual general meeting shall include any resolution whether special or not.
- (5) In any case where default is made—
  - (a) in holding an annual general meeting in accordance with sub-paragraph (1) above, or
  - (b) in complying with any directions of the Commission given under sub-paragraph (3) above,

the building 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.

VALID FROM 01/12/1997

*[<sup>F11</sup>Special meeting on members' requisition]*

**Textual Amendments**

**F11** Sch. 2 Pt. III para. 20A and cross-heading inserted (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. 25, 47\(3\)](#); [S.I. 1997/2668](#), art. 2, [Sch. Pt. II\(q\)](#)

<sup>F12</sup>20A(1) On a members' requisition, a building society shall—

- (a) duly call a special meeting, and specify the meeting as such in the notice calling it; and
- (b) if so required by the requisition, send to each member entitled to receive notice of the meeting a copy of a statement of not more than 500 words with respect to the matters to be dealt with at the meeting;

and where a meeting is so called no business shall be conducted at the meeting other than that stated in the notice calling it or (where applicable) that mentioned in sub-paragraph (8)(b) below.

- (2) A members' requisition is a requisition of not less than the requisite number of members of the society; and that number is 100 or such lesser number as may be specified in the rules of the society.

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- (3) The requisition—
- (a) must state the objects of the meeting, be signed by the requisitionists and be deposited at the society's principal office; and
  - (b) may consist of several documents in like form each signed by one or more requisitionists and each after the first deposited within three months of the date on which the first was deposited.
- (4) Where the requisition consists of several documents, the date of its deposit shall be taken to be the date on which the document signed by the requisitionist making up the requisite number is deposited at the society's principal office.
- (5) The rules of the society may require a requisitionist—
- (a) to state his full name and address;
  - (b) to fulfil one or other of the following conditions, namely—
    - (i) to have been a shareholding member for a specified period and to hold, or to have held at any time during that period, shares in the society to such value (not greater than the prescribed amount) as is specified in the rules; and
    - (ii) to have been a borrowing member for a specified period and to owe to the society, or to have owed to the society at any time during that period, a mortgage debt of such amount (not greater than the prescribed amount) as is so specified; and
  - (c) to identify a share or mortgage account with the society which will evidence the fact that he fulfils one or other of those conditions;
- and in this sub-paragraph “specified period” means such period (not more than two years) before the date of the requisition as is specified in the rules.
- (6) No objection may be made by virtue of such rules to the requisition or, where the requisition consists of several documents, to any of those documents unless it is made within 14 days of the requisition or document being deposited at the society's principal office.
- (7) The rules of the society may also require a sum of money, not exceeding £25 per requisitionist, to be deposited with the requisition; and, where any money is so deposited, it shall be forfeited to the society, or returned to the persons who deposited it, as provided by the rules.
- (8) The rules shall not provide for any deposited money to be forfeited to the society except—
- (a) where a quorum is not present within half an hour after the time appointed for the meeting; or
  - (b) where and to the extent that those eligible to vote at the meeting decide by ordinary resolution that the money should be applied to defray the whole or any part of the expenses of holding the meeting.
- (9) If the rules of a building society so provide, sub-paragraph (1) above does not require the society—
- (a) to call a special meeting if the only or main object of the meeting is to move a resolution in substantially the same terms as any resolution which has been defeated at a meeting or on a postal ballot during the period beginning with the third annual general meeting before the date on which the requisition is deposited at the society's principal office; or

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- (b) to call a special meeting to be held during the period of four months beginning one month after the end of its financial year.
- (10) Sub-paragraph (1)(b) above does not require the society to send copies of a statement to members entitled to receive notice of a meeting in any case where—
- (a) publicity for the statement would be likely to diminish substantially the confidence in the society of investing members of the public; or
  - (b) the rights conferred by sub-paragraph (1)(b) above are being abused to seek needless publicity for defamatory matter or for frivolous or vexatious purposes;
- and that provision shall not be taken to confer any rights on members, or to impose any duties on a building society, in respect of a statement which does not relate directly to the affairs of the society.
- (11) Where sub-paragraph (1)(b) above requires copies of a statement to be sent to members entitled to receive notice of a meeting, the proceedings at the meeting are not invalidated by—
- (a) the accidental omission to send a copy of the statement to a member entitled to receive one, or
  - (b) the non-receipt of such a copy by such a member.
- (12) The Commission shall hear and determine any dispute arising under sub-paragraph (10)(a) above, whether on the application of the society or of any other person who claims to be aggrieved.
- (13) The Commission may, with the consent of the Treasury, by order substitute—
- (a) for the number specified in sub-paragraph (2) above; or
  - (b) for the sum specified in sub-paragraph (7) above,
- such other number or sum as appears to it to be appropriate; and an order under this subsection may make such supplementary, transitional and saving provision as appears to the Commission to be necessary or expedient.
- (14) The power to make an order under sub-paragraph (13) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

#### **Textual Amendments**

- F12** [Sch. 2 Pt. III para. 20A](#) and cross-heading inserted (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. 25, 47\(3\)](#); [S.I. 1997/2668, art. 2, Sch. Pt. II\(q\)](#)

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VALID FROM 01/12/1997

*[<sup>F13</sup>Failure to comply with members' requisition]*

**Textual Amendments**

**F13** Sch. 2 Pt. III para. 20B and cross-heading inserted (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. 26, 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(r)

- <sup>F14</sup>~~20B~~(1) This paragraph applies where a members' requisition is deposited at a building society's principal office and the society is not relieved of the obligation to call a special meeting by paragraph 20A(9)(a) above.
- (2) Subject to sub-paragraph (5) below, if the society does not within 28 days from the date of the deposit of the requisition duly call a meeting to be held within 63 days from that date—
- (a) the requisitionists, or any proportion of them exceeding one half, may themselves call a meeting to be held within five months from that date; and
- (b) no business shall be conducted at a meeting so called other than that stated in the notice calling it or (where applicable) that mentioned in paragraph 20A(8)(b) above.
- (3) A meeting called under sub-paragraph (2) above by requisitionists shall be called in the same manner, as nearly as may be, as that in which meetings are to be called by the society.
- (4) If—
- (a) paragraph 20A(1)(b) above requires the society to send to each member entitled to receive notice of the meeting a copy of a statement of not more than 500 words with respect to the matters to be dealt with at the meeting; and
- (b) subject to sub-paragraph (5) below, that requirement is not complied with within 28 days from the date of the deposit of the requisition, the requisitionists, or any proportion of them exceeding one half, may themselves send a copy of the statement to each such member.
- (5) If the rules of the society make such provision as is mentioned in paragraph 20A(9)(b) above, any days falling within the period there mentioned shall be disregarded in determining any period for the purposes of sub-paragraph (2) or (4)(b) above.
- (6) Any reasonable expenses incurred by the requisitionists by reason of the failure of the society to call a meeting, or to comply with such a requirement as is mentioned in sub-paragraph (4) above, shall be repaid to the requisitionists by the society.
- (7) Any sum so repaid shall be recoverable by the society from such of the directors of the society as were responsible for the failure (whether by the retention of fees or other remuneration in respect of services or otherwise).]

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### **Textual Amendments**

- F14** Sch. 2 Pt. III para. 20B and cross-heading inserted (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. 26, 47(3); S.I. 1997/2668, art. 2, **Sch. Pt. II(r)**

### *Length of notice for calling meetings*

- 21 (1) Any provision contained in the rules of a building society shall be void to the extent that it provides for the calling of a meeting of the society (other than an adjourned meeting) by less than 21 days' notice expiring with the date of the meeting or, if earlier, the date specified by the society, under its rules, as the final date for the receipt of instruments appointing proxies to vote at the meeting.
- (2) A meeting of a building society may be called by 21 days' notice, unless the rules provide for longer notice of the meeting to be given.
- (3) Where notice of a meeting is given in accordance with sub-paragraph (2) above, the notice shall be taken for the purposes of this Act or any other enactment to have been duly given according to the rules of the building society.

### *Persons entitled to notice of meetings*

- 22 (1) Subject to the provisions of this Part of this Schedule, notice of a meeting of a building society shall be given to every member of the society who would be eligible to vote at the meeting if the meeting were held on the date of the notice.
- (2) If the notice of the meeting includes notice of the intention to move a resolution as a borrowing members' resolution, notice of the meeting shall, subject to those provisions, be given also to every person who becomes a borrowing member of the society before the date which the society specifies as the final date for the receipt of instruments appointing proxies to vote on that resolution.
- (3) Accidental omission to give notice of a meeting to, or non-receipt of notice of a meeting by, any person entitled to receive notice of the meeting does not invalidate the proceedings at that meeting.

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

- C5** Sch. 2 Pt. III paras. 22, 34 excluded by S.I. 1987/426, **art. 3**

### *Members' entitlement to vote on resolutions*

- 23 (1) A member of a building society is entitled to vote—
- (a) on a resolution, other than a borrowing members' resolution, if he was also a member at the end of the last financial year before the voting date; and
- (b) on a borrowing members' resolution if he was, at the end of that year, and is, on the voting date, a borrowing member of the society,

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but subject, in either case, to paragraphs 5(3), 7(4) and 8(4) above and, in the case of paragraph (a), to sub-paragraph (3) below.

- (2) Subject to the following provisions of this paragraph, any provision in the rules of a building society is void to the extent that it would have the effect of restricting the rights conferred on members by sub-paragraph (1) above.
- (3) If the rules of the society so provide, a member is not entitled to vote on a resolution (other than a borrowing members' resolution) if—
  - (a) he did not have a qualifying shareholding at the qualifying shareholding date; or
  - (b) he does not have any shares on the voting date; or
  - (c) although he was a member at the qualifying shareholding date and is a member on the voting date, he ceased to be a member at some time during the intervening period.
- (4) Where a building society's rules provide that a member is not entitled to vote on a resolution (other than a borrowing members' resolution) unless he has a qualifying shareholding on the qualifying shareholding date, he shall be taken to satisfy that requirement if he had such a holding—
  - (a) at the end of the last financial year before the voting date, except where paragraph (b) below applies; or
  - (b) in a case where the voting date falls during that part of a financial year which follows the conclusion of the annual general meeting commenced in that year, at the beginning of the period of 56 days immediately preceding the voting date for members voting in person at a meeting or, as the case may be, on a postal ballot.
- (5) For the purposes of this paragraph a member of a building society has a "qualifying shareholding" at any time if at that time he holds shares in the society to a value not less than the prescribed amount or such lesser amount as may be specified in the rules.
- (6) In this paragraph "voting date", with reference to any resolution, means—
  - (a) the date of the meeting at which the resolution is intended to be moved, except where paragraph (b) or (c) below applies;
  - (b) where voting on the resolution is to be conducted by postal ballot, the date which the society specifies as the final date for the receipt of completed ballot papers;
  - (c) in the case of a member appointing a proxy to vote instead of him at a meeting, the date which the society specifies as the final date for the receipt of instruments appointing proxies to vote on that resolution.

#### *Proxies*

- 24 (1) A member of a building society who is entitled to attend and vote at a meeting of the society—
- (a) may appoint another person (whether a member of the society or not) as his proxy, to attend and, subject to sub-paragraph (3) below, to vote at the meeting instead of him, and
  - (b) may direct the proxy how to vote at the meeting.



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- (2) Where the society, under its rules, specifies a final date for the receipt of instruments appointing proxies to vote at a meeting, a person appointed a proxy by a member who at that date is entitled to attend and vote at the meeting may act as his proxy at the meeting whether or not the member ceases to be so entitled after that date.
- (3) A proxy is entitled to vote on a poll but, subject to any provision in the rules of the building society, not otherwise.
- (4) In every notice calling a meeting of a building society there shall appear with reasonable prominence a statement—
  - (a) that a member entitled to attend and vote may appoint a proxy (or, where it is allowed, one or more proxies) to attend and vote at the meeting instead of him;
  - (b) that the proxy need not be a member of the society; and
  - (c) that the member may direct the proxy how to vote at the meeting.
- (5) If default is made in complying with sub-paragraph (4) above in respect of a meeting of a building society, 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.
- (6) Any provision contained in the rules of a building society shall be void in so far as it would have the effect of requiring the instrument appointing a proxy, or any other document necessary to show the validity of, or otherwise relating to, the appointment of a proxy, to be received by the society or any other person more than seven days before a meeting or adjourned meeting in order that the appointment may be effective at the meeting or adjourned meeting.

#### *Right to demand a poll*

- 25 (1) Any provision contained in the rules of a building society shall be void in so far as it would have the effect either—
  - (a) of excluding the right to demand a poll at a meeting of the society on any question other than the election of a chairman of the meeting or the adjournment of the meeting, or
  - (b) of making ineffective a demand for a poll on any such question which is made by not less than ten members having the right to vote at the meeting.
- (2) The instrument appointing a proxy to vote at a meeting of a building society shall be taken also to confer authority to demand or join in demanding a poll; and for the purposes of sub-paragraph (1) above a demand by a person as proxy of a member shall be the same as the demand by the member.

#### *Special resolutions*

- 26 No resolution of a building society shall be passed as a special resolution unless it is required to be so passed by or under any provision of this Act or by the rules of the society.
- 27 (1) A resolution of a building society shall be a special resolution when it has been passed by not less than three-quarters of the number of the members of the society qualified to vote on a special resolution and voting either—



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- (a) in person or by proxy on a poll on the resolution at a meeting of the society of which notice specifying the intention to move the resolution as a special resolution has been duly given; or
  - (b) in a postal ballot on the resolution of which notice specifying that the resolution will not be effective unless it is passed as a special resolution has been duly given.
- (2) In any rules made by a building society on or after 1st October 1960, whether before or after the commencement of this Act, “special resolution”, unless the context otherwise requires, means a special resolution as defined in this paragraph.

VALID FROM 01/12/1997

[<sup>F15</sup>27A A resolution of a building society shall be a shareholding members’ resolution when it has been passed by not less than three-quarters of the number of the shareholding members of the society—

- (a) qualified to vote on a shareholding members’ resolution; and
- (b) voting in person or by proxy on a poll on the resolution at a meeting of the society of which notice specifying the intention to move the resolution as a shareholding members’ resolution has been duly given.]

#### Textual Amendments

**F15** Sch. 2 Pt. III para. 27A inserted (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. 57(8)**; S.I. 1997/2668, art. 2, **Sch. Pt. II((w)(z)(xxxiv)**

#### *Borrowing members’ resolutions*

- 28 No resolution of a building society shall be passed as a borrowing members’ resolution unless it is required to be so passed by or under any provision of this Act or by the rules of the society.
- 29 (1) A resolution of a building society shall be a borrowing members’ resolution when it has been passed by a majority of the borrowing members of the society voting either—
- (a) in person or by proxy on a poll on the resolution at a meeting of the society of which notice specifying the intention to move the resolution as a borrowing members’ resolution has been duly given; or
  - (b) in a postal ballot on the resolution of which notice specifying that the resolution will not be effective unless it is passed as a borrowing members’ resolution has been duly given.
- (2) For the purposes of this Part of this Schedule a person is a borrowing member of a building society at any time if at that time his indebtedness to the society is in respect of an advance fully secured on land and the amount of his mortgage debt is not less than the prescribed amount.

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- (3) Where a borrowing member's resolution approving a transfer of engagements by a building society is moved, only those borrowing members whose mortgages are to be transferred shall be entitled to vote on the resolution.
- (4) In any rules made by a building society after the commencement of this paragraph, "borrowing members' resolution", unless the context otherwise requires, means a borrowing members' resolution as defined in this paragraph.

#### *Transfer resolutions*

- 30 (1) The transfer resolutions required for the purposes of section 97 for the approval by members of a building society of a transfer of its business are two resolutions, of which—
  - (a) one is passed as a borrowing members' resolution, and
  - (b) the other ("the requisite shareholders' resolution") is passed in accordance with sub-paragraphs (2) to (5) below.
- (2) In a case where the successor is to be a specially formed company, the requisite shareholders' resolution—
  - (a) must be passed as a special resolution, and
  - (b) must be passed on a poll on which not less than 20 per cent. of the members of the society qualified to vote on a special resolution voted;

and the notice of the resolution required by sub-paragraph (a) or sub-paragraph (b) of paragraph 27(1) above, as the case may be, must specify that the resolution will not be effective unless both of the requirements specified in this sub-paragraph are fulfilled.
- (3) Subject to any direction under sub-paragraph (5) below, in a case where the successor is to be an existing company, the requisite shareholders' resolution must be passed as a special resolution and either—
  - (a) must be passed by not less than 50 per cent. of the members qualified to vote on a special resolution, or
  - (b) must be passed by the holders, being members qualified to vote on a special resolution, of shares in the society to a value, on the voting date, representing not less than 90 per cent. of the total value of the shares held on that date by the members so qualified to vote;

and, in either case, the resolution must be a resolution in relation to which the notice required by paragraph 27 above includes a statement specifying that the resolution will not be effective unless either of the above requirements is fulfilled has been duly given.
- (4) If the Commission considers it expedient, in relation to a transfer of the business of a building society to an existing company, to do so for the purpose of protecting the investments of the shareholders of or depositors with the society, the Commission may give a direction under sub-paragraph (5) below.
- (5) A direction under this sub-paragraph is a direction that, for the purposes of the transfer of business specified in the direction, the requisite shareholders' resolution is to be effective if it is passed as a special resolution.

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- (6) The Treasury, after consultation with the Commission, may by order amend sub-paragraph (2)(b), (3)(a) or (3)(b) above so as to substitute for the percentage for the time being specified in the subparagraph such other percentage as it thinks appropriate.
- (7) The power to make orders under sub-paragraph (6) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) In this paragraph “voting date”, with reference to a requisite shareholders’ resolution, has the same meaning as in paragraph 23(6) above.

*Members’ right to propose and circulate resolutions*

- 31 (1) If at least the requisite number of qualified members of a building society give notice to the society of their intention to have moved on their behalf a resolution, other than a borrowing members’ resolution, specified in the notice at an annual general meeting of the society, it shall be the duty of the society, subject to sub-paragraphs (4), (5) and (6) below—
- (a) to include in the notice of the annual general meeting a notice specifying the intention to have the resolution moved on their behalf at the meeting and, where applicable, the intention to move it as a special resolution;
  - (b) at the request of the members intending to have the resolution moved on their behalf, to send to each member entitled to receive notice of the meeting a copy of any statement of not more than 100 words with respect to the matter referred to in the resolution.
- (2) For the purposes of sub-paragraph (1) above—
- (a) “the requisite number”—
    - (i) in the case of a society with a qualifying asset holding, is fifty or such lesser number as is specified for the purpose in the rules of the society, and
    - (ii) in the case of any other society is ten or such lesser number as is specified for the purpose in the rules of the society;
  - (b) every member of a building society is a “qualified member” unless the rules make other provision for the purpose which is not rendered void under sub-paragraph (3) below.
- (3) Any provision contained in the rules of a building society shall be void to the extent that it would have the effect of requiring a qualified member, for the purposes of sub-paragraph (1) above,—
- (a) to hold or have at any time held shares in the society to a value greater than the prescribed amount in force on the qualifying date, or
  - (b) to have held shares in the society at any time before the commencement of the period of two years ending with the qualifying date;
- and for the purposes of this sub-paragraph the qualifying date is the date on which the notice is given to the society under sub-paragraph (1) above.
- (4) Sub-paragraph (1) above does not require a building society to send notices of a resolution or copies of a statement to members of the society in any case where—

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- (a) publicity for the resolution or, as the case may be, the statement would be likely to diminish substantially the confidence in the society of investing members of the public; or
- (b) the rights conferred by sub-paragraph (1) are being abused to seek needless publicity for defamatory matter or for frivolous or vexatious purposes;

and that sub-paragraph shall not be taken to confer any rights on members, or to impose any duties on a building society, in respect of a resolution or statement which does not relate directly to the affairs of the society.

- (5) If the rules of a building society so provide, sub-paragraph (1) above does not require notice of a resolution to be given to members of the society if the resolution is in substantially the same terms as any resolution which has been defeated at a meeting or on a postal ballot during the period beginning with the third annual general meeting before the date on which notice of the resolution is given to the society.
- (6) No copies of a statement with respect to a resolution shall be sent to members of a building society if, on any of the grounds in sub-paragraph (4) or (5) above, the society does not give the notice of the resolution to them required by sub-paragraph (1)(a) above.
- (7) The Commission shall hear and determine any dispute arising under sub-paragraph (4)(a) above, whether on the application of the building society or of any other person who claims to be aggrieved.
- (8) If a building society fails to comply with the requirements of sub-paragraph (1) above where notice is duly given under that sub-paragraph, 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.

*Members' resolutions: supplementary provisions*

- 32 (1) Notice of a resolution given under paragraph 31(1) above must be given to the building society not later than the last day of the financial year preceding the financial year in which is held the annual general meeting at which it is intended to move the resolution; and any statement to be sent to members under paragraph 31 (1)(b) above must also be notified to the society not later than that day.
- (2) The notices of a resolution and the copies of a statement required to be sent to members by paragraph 31(1)(a) or (b) above shall be sent to them in the same manner and (so far as practicable) at the same time as the notice of the annual general meeting at which the resolution is intended to be moved; and, where it is not practicable for them to be sent at the same time as the notice, they shall be sent as soon as practicable thereafter.
- (3) Where notices of a resolution, or copies of a statement in respect of a resolution, intended to be moved at a meeting of a building society are required to be sent to any persons, the proceedings at the meeting are not invalidated by—
  - (a) the accidental omission to send a notice or copy to a person entitled to receive one, or
  - (b) the non-receipt of a notice or copy by such a person.
- (4) The Commission may by order vary—

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- (a) the definition of “requisite number” or “qualified member” in sub-paragraph (2) of paragraph 31 above, or
- (b) the descriptions of provisions which are rendered void by sub-paragraph (3) of that paragraph.

whether by the addition of any description or other provision or by the substitution or deletion of any definition, description or other provision for the time being specified or contained in that paragraph.

- (5) An order under sub-paragraph (4) above shall be made by statutory instrument subject to annulment in pursu" ance of a resolution of either House of Parliament.
- (6) An order under sub-paragraph (4) above may contain transitional, consequential or supplementary provision.

### *Postal ballots*

- 33
- (1) The rules of a building society may provide for the voting in an election of directors or on any resolution of the society to be conducted in all, or in any particular, circumstances by postal ballot; and in this Act “ballot” or “postal ballot”, in relation to an election or a resolution of the society, means the postal ballot, if any, taking place by virtue of those rules in the case of the election or the resolution in question.
  - (2) Where, under the rules of a society, a postal ballot is to take place, the following provisions of this paragraph have effect.
  - (3) Notice of a postal ballot shall be given not less than 21 nor more than 56 days before the date which the society specifies as the final date for the receipt of completed ballot papers (referred to in this paragraph as “the voting day”).
  - (4) Subject to the provisions of this Part of this Schedule, notice of a postal ballot shall be given to every member of the society who would be entitled to vote in the election or on the resolution if the voting date for the election or the resolution fell on the date of the notice.
  - (5) If voting on the postal ballot is to be in respect of a resolution of which notice has been given of the intention to move it as a borrowing members’ resolution, notice of the postal ballot shall, subject to those provisions, be given also to every person who becomes a borrowing member of the society before the voting day.
  - (6) Notice of a postal ballot—
    - (a) shall contain such other notices relating to the election or resolution, and
    - (b) shall be accompanied by such other documents,as would be required to be given or sent to a member in connection with notice of a meeting, had it been intended to hold the election or vote on the resolution at a meeting instead of by postal ballot with the exception, however, of any notice relating to voting by proxy at a meeting.
  - (7) Accidental omission—
    - (a) to give notice of a postal ballot, or
    - (b) to send any document required by sub-paragraph (6) above to accompany such a notice,

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to any person entitled to receive it, or non-receipt of such a notice or document by such a person, does not invalidate the postal ballot.

*Declarations to be made in proxy and ballot forms*

- 34 (1) If a member of a building society who purports to exercise his right—
- (a) to appoint a proxy to vote instead of him at a meeting of the society, or
  - (b) to vote in a postal ballot, or
  - (c) to vote on a poll at a meeting of the society,
- fails to make a declaration in accordance with sub-paragraph (2) below in the instrument of appointment or, as the case may be, on the voting paper, the appointment made or, as the case may be, the vote cast by him is invalid.
- (2) The declaration to be made by a person in pursuance of sub-paragraph (1) above is as follows—
- (a) that he has attained the age of 18 years or will have attained that age on or before the voting date or, where he is voting by proxy, on or before the date of the meeting;
  - (b) where the vote is to be cast otherwise than on a borrowing members' resolution, that on the voting date he is or, so far as he can reasonably foresee, will be a shareholder of the society;
  - (c) where the vote is to be cast on a borrowing members' resolution, that on the voting date he is or, so far as he can reasonably foresee, will be a borrowing member of the society; and
  - (d) where the member is not entitled to vote unless he had a qualifying shareholding at the qualifying shareholding date, that he had or, so far as he can reasonably foresee, will have such a shareholding on that date.
- (3) A building society shall secure that every document issued by it for use as a voting paper or as an instrument for the appointment of a proxy incorporates a form of declaration under this paragraph for completion by the member using it.
- (4) If a building society fails to comply with the requirements of sub-paragraph (3) 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.
- (5) In this paragraph—
- “qualifying shareholding” shall be construed in accordance with paragraph 23(5) above;
- “qualifying shareholding date” has the same meaning as it has for the purposes of paragraph 23 above; and
- “voting date” has the meaning given by paragraph 23(6) above.

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

C6 Sch. 2 Pt. III paras. 22, 34 excluded by S.I. 1987/426, art. 3

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*Advertising requirements in lieu of notice of meetings, etc.*

- 35 (1) The advertising requirements referred to in paragraph 14 above, in relation to notices of meetings or postal ballots of building societies, are as follows.
- (2) Notice of the holding of the meeting or of the postal ballot must be given either—
- (a) by displaying a notice in a prominent position in every branch office, or
  - (b) by advertisement in one or more newspapers circulating in the areas in which the members of the society reside,
- according as the rules of the society provide.
- (3) The notice must be given not later than 21 days before the date of the proposed meeting or, as the case may be, the final date for the receipt of completed ballot papers.
- (4) The notice shall state where members may obtain copies of the resolutions and any statements with respect to the matter referred to in a resolution, forms relating to voting by proxy and, in the case of a postal ballot, the ballot papers.

*The prescribed amount*

- 36 (1) For the purposes of this Part of this Schedule, the “prescribed amount” is £100 or such other amount as the Commission, with the consent of the Treasury, by order specifies for the time being.
- (2) The power to make an order under sub-paragraph (1) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) An order under sub-paragraph (1) above may contain transitional, consequential or supplementary provision.

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