

*Status: Point in time view as at 31/12/2020.*

*Changes to legislation: Building Societies Act 1986, SCHEDULE 2 is up to date with all changes known to be in force on or before 18 January 2024. 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)
- C2** Sch. 2 applied (with modifications) (7.4.2010) by [The Building Societies \(Financial Assistance\) Order 2010 \(S.I. 2010/1188\)](#), arts. 1(2), 8

#### 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 <sup>[F1]</sup>FCA<sup>[F2]</sup> three 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 <sup>[F1]</sup>FCA in accordance with sub-paragraph (1)(c) above, the <sup>[F1]</sup>FCA, 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 <sup>[F1]</sup>FCA 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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- <sup>F3</sup>[(4) In this Act “memorandum”, in relation to a building society, 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.]

#### Textual Amendments

- F1** Words in Sch. 2 para. 1 substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\), art. 1\(1\), Sch. 8 para. 53\(2\)](#) (with Sch. 12)
- F2** Words in Sch. 2 para. 1(1)(c) 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. 200\(b\)](#) (with S. 13(3), Sch. 5); [S.I. 2001/3538, art. 2](#)
- F3** Sch. 2 Pt. I para. 1(4) 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. 56\(2\); S.I. 1997/2668, art. 2, Sch. Pt. II\(w\)\(z\)\(xxxiii\)](#)

#### *The memorandum*

- 2 <sup>F4</sup>(1) The memorandum of a building society shall state the purpose or principal purpose of the society to be that of making loans which are secured on residential property and are funded substantially by its members.
- (2) The memorandum of a building society shall specify—
- (a) the name of the society and the address of its principal office;
  - (b) any purposes of the society other than that mentioned in sub-paragraph (1) above; and
  - (c) the powers of the society.]
- (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.
- <sup>F5</sup>(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 and shall send a copy of the note to the <sup>F6</sup>[Authority] which shall keep the copy in the public file of the society.]

#### Textual Amendments

- F4** Sch. 2 Pt. I para. 2(1)(2) substituted for Sch. 2 Pt. I para. 2(1)-(3) (1.12.1997 in specified cases and for specified purposes and otherwise ) by [1997 c. 32, ss. 43, 47\(3\), Sch. 7 para. 56\(3\); S.I. 1997/2668, art. 2, Sch. Pt. II\(w\)\(z\)\(xxxiii\)](#)
- F5** Sch. 2 Pt. I para. 2(5) repealed (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, 46\(3\), 47\(3\), Sch. 7 para. 56\(4\), Sch. 9; S.I. 1997/2668, art. 2, Sch. Pt. II\(w\)\(y\)\(z\)\(xxxiii\)\(cc\)\(xviii\)](#)

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**F6** Words in Sch. 2 para. 2(5) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 13(1), **Sch. 3 Pt. II para. 200(a)**; S.I. 2001/3538, **art. 2(1)**

### *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 <sup>F7</sup> . . . 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 [<sup>F8</sup> funds of the society 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 [<sup>F9</sup> loans] 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 [loan] 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.
13. The calling and holding of meetings and, in particular—
  - (a) the right of members to requisition meetings;

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- (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 [<sup>F10</sup>on the dissolution by consent] of the society.

[<sup>F11</sup>15. The entitlement of members, on the winding up of the society, to participate in the distribution of any surplus assets after payments are made in satisfaction of the society's liabilities to creditors and shareholding members under the companies winding up legislation as modified by Parts 1 to 3 of Schedule 15 to this Act.]

- [<sup>F12</sup>(5) Nothing in the rules of a society shall prevent the service of a notice or other document by the society—
- (a) by sending it electronically to an electronic address notified for the purpose in accordance with express provision made by this Act; or
  - (b) by its publication on a web site in accordance with any such provision.]

#### Textual Amendments

- F7** Words in Sch. 2 para. 3(3) repealed (1.12.2001) by [S.I. 2001/2617](#), arts. 2(b), 13(2), [Sch. 4](#) (with [S. 13\(3\)](#), [Sch. 5](#)); [S.I. 2001/3538](#), [art. 2](#)
- F8** Words in Sch. 2 Pt. I para. 3(4) 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. 56\(5\)\(a\)](#); [S.I. 1997/2668](#), [art. 2](#), [Sch. Pt. II\(w\)\(z\)\(xxxiii\)](#)
- F9** Words in Sch. 2 Pt. I para. 3(4) 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. 56\(5\)\(b\)](#); [S.I. 1997/2668](#), [art. 2](#), [Sch. Pt. II\(w\)\(z\)\(xxxiii\)](#)
- F10** Words in [Sch. 2 para. 3\(4\)](#) substituted (1.1.2015) by [The Banks and Building Societies \(Depositor Preference and Priorities\) Order 2014 \(S.I. 2014/3486\)](#), arts. 1(2), [35\(2\)](#) (with art. 3)
- F11** Words in [Sch. 2 para. 3\(4\)](#) added (1.1.2015) by [The Banks and Building Societies \(Depositor Preference and Priorities\) Order 2014 \(S.I. 2014/3486\)](#), arts. 1(2), [35\(3\)](#) (with arts. 3, 36)
- F12** [Sch. 2 para. 3\(5\)](#) inserted (20.3.2003) by [The Building Societies Act 1986 \(Electronic Communications\) Order 2003 \(S.I. 2003/404\)](#), arts. 1(1), [10](#)

#### *Requirements for alteration of purpose, powers and rules*

- 4 [<sup>F13</sup>(1) A building society may by special resolution alter its purposes, alter its powers or alter its rules.]
- (2) Where a building society alters its purpose or powers or its rules under this paragraph, it shall send to the [<sup>F14</sup>FCA] —
- (a) three copies of a record of the alteration signed by the secretary; and

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- (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 [F15FCA] under sub-paragraph (2) above and the [F15FCA] is satisfied that the alteration is in conformity with this Act and (where applicable) any instruments under it, the [F15FCA] shall, [F16subject 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.
- (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 [F17FCA] and the [F17FCA] —
- (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.

#### Textual Amendments

- F13** Sch. 2 Pt. I para. 4(1) 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. 56(6)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xxxiii)**
- F14** Word in Sch. 2 para. 4(2) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 53(3)** (with Sch. 12)
- F15** Word in Sch. 2 para. 4(4) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 53(3)** (with Sch. 12)
- F16** Words in Sch. 2 Pt. I para. 4(4) repealed (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, 46(3), 47(3), Sch. 7 para. 56(7), **Sch. 9**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(y)(z)(xxxiii)(cc)(xviii)**
- F17** Word in Sch. 2 para. 4(7) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 53(3)** (with Sch. 12)

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

**C3** Sch. 2 para. 4(1)(3) modified (3.1.1995) by 1994 c. 40, ss. 17(2), 82(2)

#### *Membership*

- 5 [F18(1) The rules of a building society shall provide that no person shall be a member of the society unless he is a shareholding member or a borrowing member or both.
- (2) In this Act, in relation to a building society—
- “borrowing member” means, subject to sub-paragraphs (2A) and (2B) and paragraph 29(2) below, an individual who is indebted to the society—
- (a) in respect of a loan which is fully secured on land; or
- (b) if the rules of the society so provide, in respect of a loan which is (within the meaning of the rules) substantially secured on land;
- “shareholding member” means a person who holds a share in the society.
- (2A) If the rules of a building society so provide, an individual shall cease to be a borrowing member at any time if at that time the society—
- (a) takes possession of, or exercises its power of sale in relation to, the whole or any part of the land on which the loan is secured; or
- (b) obtains an order for foreclosure absolute or, in Scotland, foreclosure in respect of the whole or any part of that land.
- (2B) Unless the rules of a building society so provide, an individual shall not be a borrowing member at any time if at that time the loan is owed to the society in equity rather than at law.]
- (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 [F19propose a resolution,] vote or hold any office in the society; and
- (c) may not [F20join in requisitioning a special meeting or] nominate, or join in nominating, a person for election as a director of the society.

#### **Textual Amendments**

- F18** Sch. 2 Pt. I para. 5(1)-(2B) substituted for Sch. 2 para. 5(1)(2) (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. 2(1), 47(3) (with s. 46(1), Sch. 8 paras. 4, 5); S.I. 1997/2668, art. 2, Sch. Pt. II(b)(aa)(i)(ii)
- F19** Words in Sch. 2 Pt. I para. 5(3)(b) 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. 2(2)(a), 47(3) (with s. 46(1), Sch. 8 paras. 4, 5); S.I. 1997/2668, art. 2, Sch. Pt. II(b)(aa)(i)(ii)
- F20** Words in Sch. 2 Pt. I para. 5(3)(c) 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. 2(2)(b), 47(3) (with s. 46(1), Sch. 8 paras. 4, 5); S.I. 1997/2668, art. 2, Sch. Pt. II(b)(aa)(i)(ii)

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### *Liability of members*

- [<sup>F216</sup> (1) The liability at any time of a shareholding member of a building society shall be limited to the amount which, at that time, has been actually paid, or is in arrear, on his shares in the society.
- (2) The liability at any time of a borrowing member of a building society shall be limited to the amount which, at that time, is payable under the mortgage or other security by which his indebtedness to the society in respect of the loan is secured.]

#### **Textual Amendments**

- F21** Sch. 2 Pt. I para. 6 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. 2(3), 47(3) (with s. 46(1), Sch. 8 paras. 4, 5); S.I. 1997/2668, art. 2, Sch. Pt. II(b)(aa)(i)(ii)

### *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.
- (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 <sup>F22</sup>... 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>F23</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.

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- (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**

- F22** Words in Sch. 2 para. 7(3) omitted (18.2.2014) by virtue of [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(2\), Sch. 9 para. 7\(b\)](#)
- F23** 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 [<sup>F24</sup>a loan] 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.
- (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 <sup>F25</sup>... 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.



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- (8) The joint borrowers shall be entitled to choose the order in which they are named in the records of the society.

#### Textual Amendments

- F24** Words in Sch. 2 para. 8(1) 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. 56(8)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xxxiii)**
- F25** Words in Sch. 2 para. 8(3) omitted (18.2.2014) by virtue of **Financial Services (Banking Reform) Act 2013 (c. 33)**, s. 148(2), **Sch. 9 para. 7(b)**

#### *Use and change of name*

- 9 (1) The common seal of a building society shall bear the registered name of the society.
- <sup>F26</sup>(2) Every building society shall paint or affix, and keep painted or affixed, its registered name on the outside of every office or place in which its business is carried on, in a conspicuous position and in letters easily legible.
- (2A) Every building society shall state its registered name in legible characters in all of the following documents, [<sup>F27</sup>in every electronic communication containing any of the following documents and on every web site on which any of the following documents is published,] namely—
- (a) its business letters;
  - (b) its account statements, including those relating to deposit, share, loan or mortgage accounts;
  - (c) its passbooks;
  - (d) its notices and publications, including all documents sent to members;
  - (e) its invoices and receipts;
  - (f) its letters of credit and any instruments creating or acknowledging its indebtedness;
  - (g) its contracts, agreements, mortgages and deeds; and
  - (h) its bills of exchange, promissory notes, endorsements, cheques and orders for money or goods.]
- (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 [<sup>F28</sup>FCA] and, unless the [<sup>F28</sup>FCA] is of the opinion that the changed name is undesirable, the [<sup>F28</sup>FCA] 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.
- (6) The [<sup>F28</sup>FCA] 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.

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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 18 January 2024. 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)*

[<sup>F29</sup>(8) For the purposes of this paragraph and paragraphs 10 to 10C below “registered name”, in relation to a building society, means the name of the society which is for the time being registered with the [<sup>F28</sup>FCA] .]

#### Textual Amendments

- F26** Sch. 2 Pt. I para. 9(2)(2A) substituted for Sch. 2 para. 9(2) (1.12.1997) by 1997 c. 32, s. 36(1); S.I. 1997/2668, art. 2, **Sch. Pt. I(h)**
- F27** Words in Sch. 2 para. 9(2A) inserted (20.3.2003) by The Building Societies Act 1986 (Electronic Communications) Order 2003 (S.I. 2003/404), arts. 1(1), **11**
- F28** Word in Sch. 2 para. 9 substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 53(4)** (with Sch. 12)
- F29** Sch. 2 Pt. I para. 9(8) inserted (1.12.1997) by 1997 c. 32, s. 36(2); S.I. 1997/2668, art. 2, **Sch. Pt. I(h)**

#### *Offences relating to society's name*

- [<sup>F30</sup>10 (1) If a building society does not—
- (a) paint or affix its registered name; or
  - (b) keep its registered name painted or affixed,
- as required by paragraph 9(2) above, the society 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) above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) If an officer of a building society or a person on its behalf issues or authorises the issue of any document mentioned in paragraph 9(2A)(a) to (g) above, in which the society's registered name is not stated as required by that paragraph, he shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) If an officer of a building society or a person on its behalf signs or authorises to be signed on behalf of the building society any document mentioned in paragraph 9(2A)(h) above in which the society's registered name is not stated as required by that paragraph—
- (a) he shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale; and
  - (b) he shall be further personally liable to the holder of the bill of exchange, promissory note, cheque or order for money or goods for the amount of it (unless it is duly paid by the building society).
- (5) If a building society fails to send to the [<sup>F31</sup>FCA] 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 3 on the standard scale and so shall any officer who is also guilty of the offence.]

#### Textual Amendments

- F30** Sch. 2 Pt. I para. 10 substituted (1.12.1997) by 1997 c. 32, s. 36(3); S.I. 1997/2668, art. 2, **Sch. Pt. I(h)**
- F31** Word in Sch. 2 para. 10(5) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 53(5)** (with Sch. 12)

*Status: Point in time view as at 31/12/2020.*

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<sup>F32</sup>[Restrictions on business names]

**Textual Amendments**

**F32** Cross-heading inserted (1.12.1997) by 1997 c. 32, s. 36(4); S.I. 1997/2668, art. 2, Sch. Pt. I(h)

<sup>F33</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 <sup>F34</sup>[FCA], 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 <sup>F35</sup>[Treasury may], by regulations—

- (a) specify words or expressions for the use of which as or as part of a business name the approval of the <sup>F36</sup>[FCA] 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 <sup>F37</sup>[FCA] 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**

**F33** 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)

*Status: Point in time view as at 31/12/2020.*

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- F34** Word in Sch. 2 para. 10A(2) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), **Sch. 8 para. 53(6)** (with Sch. 12)
- F35** Words in Sch. 2 para. 10A(3) 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. 200(e)** (with S. 13(3), Sch. 5); [S.I. 2001/3538](#), **art. 2**
- F36** Word in Sch. 2 para. 10A(3) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), **Sch. 8 para. 53(6)** (with Sch. 12)
- F37** Word in Sch. 2 para. 10A(4) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), **Sch. 8 para. 53(6)** (with Sch. 12)

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

- C4** Sch. 2 para. 10A(3); Functions of Building Societies Commission transferred (1.12.2001) to the Treasury by [S.I. 2001/2617](#), arts. 2(b), 4(1), Sch. 1 Pt. III; [2001/3538](#) art. 2(1)

#### Marginal Citations

- M1** [1972 c.70.](#)
- M2** [1994 c.39.](#)
- M3** [1972 c.9 \(N.I.\).](#)

### *<sup>F38</sup>[Use of business names: required disclosure]*

#### Textual Amendments

- F38** Cross-heading inserted (1.12.1997) by [1997 c. 32, s. 36\(4\)](#); [S.I. 1997/2668](#), art. 2, **Sch. Pt. I(h)**

[<sup>F39</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”.

- (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 [<sup>F40</sup>Treasury may], by regulations require a notice under sub-paragraph (3) or (4) above to be displayed or given in a specified form.]

#### Textual Amendments

- F39** 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)**
- F40** Words in Sch. 2 para. 10B(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. 200(e)** (with S. 13(3), Sch. 5); [S.I. 2001/3538](#), **art. 2**

*Status: Point in time view as at 31/12/2020.*

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

- C5** Sch. 2 para. 10B(5); Functions of Building Societies Commission transferred (1.12.2001) to the Treasury by S.I. 2001/2617, arts. 2(b), 4(1), **Sch. 1 Pt. III**; S.I. 2001/3538, **art. 2**

<sup>F41</sup>*[Use of business names: supplementary]*

#### Textual Amendments

- F41** Cross-heading inserted (1.12.1997) by 1997 c. 32, s. 36(4); S.I. 1997/2668, art. 2, **Sch. Pt. I(h)**

- <sup>F42</sup>10(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
- (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 <sup>F43</sup>Treasury think] fit, and may make different provision for different cases or classes of case.]

#### Textual Amendments

- F42** 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)**
- F43** Words in Sch. 2 para. 10C(6) 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. 200(f)** (with S. 13(3), Sch. 5); S.I. 2001/3538, **art. 2**

*Status: Point in time view as at 31/12/2020.*

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

- C6** Sch. 2 para. 10C(6): Functions of Building Societies Commission transferred (1.12.2001) to the Treasury by S.I. 2001/2617, arts. 2(b), 4(1), **Sch. 1 Pt. III**; S.I. 2001/3538, **art. 2(1)**

#### *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>F44</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 [<sup>F45</sup>FCA] and the [<sup>F45</sup>FCA] 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 [<sup>F45</sup>FCA] 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**

- F44** 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)**
- F45** Word in Sch. 2 para. 11 substituted (1.4.2013) by **The Financial Services Act 2012 (Mutual Societies) Order 2013** (S.I. 2013/496), art. 1(1), **Sch. 8 para. 53(7)** (with Sch. 12)

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

- 12 (1) A building society shall, on demand, give a copy of its statutory documents—
- (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 [<sup>F46</sup>Treasury prescribe] by order made by statutory instrument.

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#### Textual Amendments

**F46** Words in Sch. 2 para. 12(4) 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. 200(g)** (with S. 13(3), Sch. 5); S.I. 2001/3538, **art. 2**

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

**C7** Sch. 2 para. 12(4): Functions of Building Societies Commission transferred (1.12.2001) to Treasury by S.I. 2001/2617, arts. 2(b), 4(1), **Sch. 1 Pt. III**; 2001/3538 art. 2(1)

### Register of members

- 13 <sup>F47</sup>(1) Every building society shall maintain a register of members showing—
- (a) the name and <sup>F48</sup>postal] address of each member; and
  - (b) whether each member is a shareholding member or a borrowing member or both.]
- <sup>F49</sup>(1A) Where a member has notified to the building society an electronic address for the purpose of receiving notices or documents required to be sent by the society under this Act, the register shall show—
- (a) the electronic address in addition to the postal address of the member; and
  - (b) the purposes for which the electronic address has been notified.]
- (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 <sup>F50</sup>postal] 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 <sup>F51</sup>postal] address, that other address.

#### Textual Amendments

**F47** Sch. 2 Pt. I para. 13(1) 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. 56(10)**; S.I. 1997/2668, **art. 2, Sch. Pt. II(w)(z)(xxxiii)**

**F48** Word in Sch. 2 para. 13(1)(a) inserted (20.3.2003) by **The Building Societies Act 1986 (Electronic Communications) Order 2003** (S.I. 2003/404), arts. 1(1), **12(2)**

**F49** Sch. 2 para. 13(1A) inserted (20.3.2003) by **The Building Societies Act 1986 (Electronic Communications) Order 2003** (S.I. 2003/404), arts. 1(1), **12(3)**

**F50** Word in Sch. 2 para. 13(4)(a) inserted (20.3.2003) by **The Building Societies Act 1986 (Electronic Communications) Order 2003** (S.I. 2003/404), arts. 1(1), **12(4)(a)**

**F51** Word in Sch. 2 para. 13(4)(b) inserted (20.3.2003) by **The Building Societies Act 1986 (Electronic Communications) Order 2003** (S.I. 2003/404), arts. 1(1), **12(4)(b)**

*Status: Point in time view as at 31/12/2020.*

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*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>F52</sup>(1) At any time when a building society—
- (a) has had its <sup>F53</sup>permission under <sup>F54</sup>Part 4A] of the Financial Services and Markets Act 2000 to accept deposits cancelled]; and
  - (b) has not <sup>F55</sup>subsequently been given such permission],
- 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 <sup>F56</sup>FCA] for the right to obtain names and addresses from the register, the <sup>F56</sup>FCA] —
- (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; <sup>F57</sup> ...
  - <sup>F57</sup>(c) .....]
- <sup>F58</sup>(2A) The <sup>F56</sup>FCA] may charge a reasonable fee for considering an application under sub-paragraph (2) above.]
- (3) Any direction under sub-paragraph (2) above may be given subject to such limitations or conditions as the <sup>F56</sup>FCA] may think fit.
- <sup>F59</sup>(3A) The FCA must consult the PRA before giving a direction under sub-paragraph (2).]



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- (4) Before giving a direction under sub-paragraph (2) above, the [F56FCA] 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 [F56FCA] 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.
- [F60(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.
- F61(9) .....
- F61(10) .....
- F61(11) .....]

**Textual Amendments**

- F52** 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)
- F53** Words in Sch. 2 para. 15(1)(a) 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. 200(h)(i) (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2
- F54** Words in Sch. 2 para. 15(1) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), Sch. 8 para. 53(8)(b) (with Sch. 12)
- F55** Words in Sch. 2 para. 15(1)(b) 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. 200(h)(ii) (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2
- F56** Word in Sch. 2 para. 15 substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), Sch. 8 para. 53(8)(a) (with Sch. 12)
- F57** Sch. 2 para. 15(c) and the word “and” immediately preceding repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), Sch. 4 (with S. 13(3), Sch. 5); S.I. 2001/3538, art. 2

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- F58** Sch. 2 para. 15(2A) inserted (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. 200(h)(v)** (with S. 13(3), Sch. 5); S.I. 2001/3538, **art. 2**
- F59** Sch. 2 para. 15(3A) inserted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 53(8)(c)** (with Sch. 12)
- F60** 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(j)**
- F61** Sch. 2 para 15(9)-(11) repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with S. 13(3), Sch. 5); S.I. 2001/3538, **art. 2**

## <sup>F62</sup>[PART II

### CAPACITY OF SOCIETY AND POWER OF DIRECTORS TO BIND IT]

#### Textual Amendments

- F62** Sch. 2 Pt. II 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. 3(2), 47(3), **Sch. 1**; S.I. 1997/2668, art. 2, **Sch. Pt. II(c)**

### <sup>F63</sup> *Capacity of society not limited by its memorandum]*

#### Textual Amendments

- F63** Sch. 2 Pt. II 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. 3(2), 47(3), **Sch. 1**; S.I. 1997/2668, art. 2, **Sch. Pt. II(c)**

- <sup>F64</sup>16 (1) The validity of an act done by a building society shall not be called into question on the ground of lack of capacity by reason of anything included in the society's memorandum.
- (2) A member of a building society may bring proceedings to restrain the doing of an act which but for sub-paragraph (1) above would be beyond the society's capacity; but no such proceedings shall lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the society.
- (3) It remains the duty of the directors of a building society to observe any limitations on their powers flowing from the society's memorandum; and action by the directors which but for sub-paragraph (1) above would be beyond the society's capacity may only be ratified by the society by special resolution.
- (4) A resolution ratifying such action shall not affect any liability incurred by the directors or any other person; relief from any such liability must be agreed to separately by special resolution.]

#### Textual Amendments

- F64** Sch. 2 Pt. II 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. 3(2), 47(3), **Sch. 1**; S.I. 1997/2668, art. 2, **Sch. Pt. II(c)**

*Status: Point in time view as at 31/12/2020.*

*Changes to legislation: Building Societies Act 1986, SCHEDULE 2 is up to date with all changes known to be in force on or before 18 January 2024. 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)*

### [<sup>F65</sup> Power of directors to bind society]

#### Textual Amendments

**F65** Sch. 2 Pt. II 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. 3(2), 47(3), **Sch. 1**; S.I. 1997/2668, art. 2, **Sch. Pt. II(c)**

- [<sup>F66</sup>17 (1) In favour of a person dealing with a building society in good faith, the power of the board of directors to bind the society, or authorise others to do so, shall not be limited by reason of anything included in the society's constitution, that is to say, its memorandum and rules.
- (2) For this purpose—
- (a) a person deals with a building society if he is a party to any transaction or other act to which the society is a party;
  - (b) a person shall not be regarded as acting in bad faith by reason only of his knowing that an act is beyond the powers of the directors under the society's constitution; and
  - (c) a person shall be presumed to have acted in good faith unless the contrary is proved.
- (3) The references above to limitations on the directors' powers under the society's constitution include limitations deriving from a resolution of the society passed at a general meeting or special meeting or on a postal [<sup>F67</sup>or electronic] ballot, or from any agreement between the members of the society.
- (4) Notwithstanding anything in paragraph 3(2) above, sub-paragraph (1) above applies in relation to members of the society, and to persons claiming on account of members or under the rules of the society, as it applies in relation to other persons.
- (5) Sub-paragraph (1) above does not affect any right of a member of the society to bring proceedings to restrain the doing of an act which is beyond the powers of the directors; but no such proceedings shall lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the society.
- (6) Nor does that sub-paragraph affect any liability incurred by the directors, or any other person, by reason of the directors' exceeding their powers.]

#### Textual Amendments

**F66** Sch. 2 Pt. II 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. 3(2), 47(3), **Sch. 1**; S.I. 1997/2668, art. 2, **Sch. Pt. II(c)**

**F67** Words in Sch. 2 para. 17(3) inserted (20.3.2003) by **The Building Societies Act 1986 (Electronic Communications) Order 2003** (S.I. 2003/404), arts. 1(1), **30(6)(a)**

*Status: Point in time view as at 31/12/2020.*

*Changes to legislation: Building Societies Act 1986, SCHEDULE 2 is up to date with all changes known to be in force on or before 18 January 2024. 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)*

<sup>F68</sup> *[No duty to enquire as to capacity of society etc.]*

**Textual Amendments**

**F68** Sch. 2 Pt. II 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. 3(2), 47(3), **Sch. 1**; S.I. 1997/2668, art. 2, **Sch. Pt. II(c)**

- [<sup>F69</sup>18 (1) A party to a transaction with a building society is not bound to enquire as to whether it is permitted by the society's constitution or as to any limitation on the powers of the board of directors to bind the society or authorise others to do so.
- (2) Notwithstanding anything in paragraph 3(2) above, sub-paragraph (1) above applies in relation to members of the society as it applies in relation to other persons.]

**Textual Amendments**

**F69** Sch. 2 Pt. II 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. 3(2), 47(3), **Sch. 1**; S.I. 1997/2668, art. 2, **Sch. Pt. II(c)**

*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—
- (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.

*Status: Point in time view as at 31/12/2020.*

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- (5) If the central office, in pursuance of a direction of the Commission under sub-paragraph (2) above, refuses registration of the alteration of a society's powers under sub-paragraph (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 sub-paragraph (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)

- C8** Sch. 2 Pt. III (paras. 20–36) excluded (*temp.*) by S.I. 1986/2168, art. 3(1)(2)
- C9** 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 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 [F70FCA] 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—

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- (a) in holding an annual general meeting in accordance with sub-paragraph (1) above, or
- (b) in complying with any directions of the [<sup>F70</sup>FCA] 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.

#### Textual Amendments

**F70** Word in *Sch. 2 para. 20* substituted (1.4.2013) by *The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496)*, art. 1(1), **Sch. 8 para. 53(9)** (with *Sch. 12*)

<sup>F71</sup>*[Special meeting on members' requisition]*

#### Textual Amendments

**F71** *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>F72</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.

[ Where a copy of a statement is required to be sent to a member under sub-<sup>F73</sup>(1A) paragraph (1)(b)—

- (a) it may be sent to him electronically only if it is sent to an electronic address notified by the member for the purpose; but
- (b) the requirement to send it shall also be treated as satisfied if the conditions set out in sub-paragraph (1B) are satisfied.

(1B) The requirements of this sub-paragraph are satisfied in the case of a statement if—

- (a) the society and that member have agreed that information which 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;
- (c) no later than one working day after the statement is first capable of being accessed on a web site that person is notified <sup>F74</sup>... 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

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- (d) a copy of the statement is published continuously on that web site throughout the period beginning (so far as practicable) at the same time as copies of the statement are sent to members in accordance with sub-paragraph (1)(b), and ending with the conclusion of the meeting.]
- (2) A members' requisition is a requisition of not less than the requisite number of members of the society; and that number is [F75500] or such lesser number as may be specified in the rules of the society.
- (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 [F76£50] 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.

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- (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 [<sup>F77</sup>or electronic] 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
  - (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.
- [ Where, in a case in which sub-paragraph (1A)(b) is relied on for compliance with a <sup>F78</sup>(11A) requirement of sub-paragraph (1)(b)—
- (a) a statement is published for a part, but not all, of the period mentioned in subparagraph (1B)(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,
- the failure shall not invalidate the proceedings at the meeting.]
- (12) The [<sup>F79</sup>appropriate authority] 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 [<sup>F80</sup>Treasury may], 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 [<sup>F81</sup>them] to be appropriate; and an order under this subsection may make such supplementary, transitional and saving provision as appears to the [<sup>F82</sup>Treasury] 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.]



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### Textual Amendments

- F72** 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)
- F73** Sch. 2 para. 20A(1A)(1B) inserted (20.3.2003) by The Building Societies Act 1986 (Electronic Communications) Order 2003 (S.I. 2003/404), arts. 1(1), 13(2)
- F74** Words in Sch. 2 para. 20A(1B)(c) omitted (18.2.2014) by virtue of Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(2), Sch. 9 para. 12(2)
- F75** Figure in Sch. 2 para. 20A substituted (1.12.1999) by S.I. 1999/3031, art. 2
- F76** Word in Sch. 2 para. 20A(7) substituted (6.4.2007) by The Building Societies Act 1986 (Substitution of Specified Amounts and Modification of the Funding Limit Calculation) Order 2007 (S.I. 2007/860), arts. 1, 2(7)
- F77** Words in Sch. 2 para. 20A(9)(a) inserted (20.3.2003) by The Building Societies Act 1986 (Electronic Communications) Order 2003 (S.I. 2003/404), arts. 1(1), 30(6)(b)
- F78** Sch. 2 para. 20A(11A) inserted (20.3.2003) by The Building Societies Act 1986 (Electronic Communications) Order 2003 (S.I. 2003/404), arts. 1(1), 13(3)
- F79** Words in Sch. 2 para. 20A(12) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), Sch. 8 para. 53(10) (with Sch. 12)
- F80** Words in Sch. 2 para. 20A(13) 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. 200(k)(i) (with S. 13(3), Sch. 5); S.I. 2001/3538, art. 2
- F81** Word in Sch. 2 para. 20A(13) 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. 200(k)(ii) (with S. 13(3), Sch. 5); S.I. 2001/3538, art. 2
- F82** Word in Sch. 2 para. 20A(13) 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. 200(k)(iii) (with S. 13(3), Sch. 5); S.I. 2001/3538, art. 2

### Modifications etc. (not altering text)

- C10** Sch. 2 para. 20A(13): Functions of Building Societies Commission transferred (1.12.2001) to the Treasury by S.I. 2001/2617 arts. 2(b), 4(1), Sch. 1 Pt. III; S.I. 2001/3538, art. 2

<sup>F83</sup> [Failure to comply with members' requisition]

### Textual Amendments

- F83** 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>F84</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—
- 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
  - 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.

*Status: Point in time view as at 31/12/2020.*

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- (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).]

#### Textual Amendments

**F84** 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 [<sup>F85</sup>appointments of] 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.

#### Textual Amendments

**F85** Words in Sch. 2 para. 21(1) substituted (20.3.2003) by [The Building Societies Act 1986 \(Electronic Communications\) Order 2003 \(S.I. 2003/404\)](#), arts. 1(1), **29(3)(a)**

*Status: Point in time view as at 31/12/2020.*

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### *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.
- <sup>F86</sup>(2) Notice of the meeting shall, subject to those provisions, be given also to every person—
- (a) who becomes a shareholding or borrowing member of the society after the date of the notice under sub-paragraph (1) above and before the specified date; or
  - (b) who, being such a member at the date of that notice, attains the age of 18 after that date and on or before the date of the meeting,
- and who would (in either case) be eligible to vote at the meeting if he remained such a member until the date of the meeting.
- (2A) In sub-paragraph (2) above “the specified date” means the date specified by the society as the final date for the receipt of [<sup>F87</sup>appointments of] proxies to vote at the meeting.]
- (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.

#### **Textual Amendments**

- F86** Sch. 2 Pt. III para. 22(2)(2A) substituted for Sch. 2 Pt. III para. 22(2) (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(2)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xxxiv)**
- F87** Words in Sch. 2 para. 22(2A) substituted (20.3.2003) by **The Building Societies Act 1986 (Electronic Communications) Order 2003 (S.I. 2003/404)**, arts. 1(1), **29(3)(b)**

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

- C11** Sch. 2 Pt. III paras. 22, 34 excluded by S.I. 1987/426, **art. 3**

### *<sup>F88</sup>Transmission of notice of meeting to an electronic address*

#### **Textual Amendments**

- F88** Sch. 2 paras. 22A, 22B and cross-headings inserted (20.3.2003) by **The Building Societies Act 1986 (Electronic Communications) Order 2003 (S.I. 2003/404)**, arts. 1(1), **14**

- 22A (1) Where a notice of a meeting of a society is required to be sent to a person under any provision of this Act, the notice may be sent to him electronically only if it is sent to an electronic address notified by him to the society for the purpose.
- (2) In a case in which this paragraph is relied on for compliance with a requirement to send a notice, a notice given in accordance with this paragraph is to be treated as given to a person on the day that the notice is transmitted.

*Status: Point in time view as at 31/12/2020.*

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*Publication of notice of meeting on a web site*

- 22B (1) A requirement under any provision of this Act to send a notice of a meeting of the society to a person shall also be treated as satisfied if the conditions set out in sub-paragraph (2) are satisfied.
- (2) The conditions of this sub-paragraph are satisfied in the case of a notice of a meeting of a society if—
- (a) the society and the person have agreed that notices which are required to be sent to him may instead be accessed by him on a web site;
  - (b) the agreement applies to the notice in question
  - (c) that person is notified <sup>F89</sup> ... of—
    - (i) the publication of the notice on a web site,
    - (ii) the address of that web site, and
    - (iii) the place on that web site where the notice may be accessed, and how it may be accessed; and
  - (d) the notice is published continuously on that web site throughout the period beginning with the giving of that notification and ending with the conclusion of the meeting.
- (3) A notification given for the purposes of sub-paragraph (2)(c) must—
- (a) state that it concerns a notice of a meeting of the society served in accordance with this Act;
  - (b) specify the place, date and time of the meeting; and
  - (c) state whether the meeting is to be an annual or special general meeting.
- (4) In a case in which this paragraph is relied on for compliance with a requirement to send a notice, a notice given in accordance with this paragraph is to be treated as given to a person on the day that person is notified in compliance with sub-paragraphs (2)(c) and (3).
- (5) Where, in a case in which this paragraph is relied on for compliance with a requirement to send a notice of a meeting—
- (a) a notice is published for a part, but not all, of the period mentioned in sub-paragraph (2)(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,
- the failure shall not invalidate the proceedings of the meeting.]

**Textual Amendments**

**F89** Words in Sch. 2 para. 22B(2)(c) omitted (18.2.2014) by virtue of [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(2), [Sch. 9 para. 12\(3\)](#)

*Members' entitlement to vote on resolutions*

- 23 <sup>F90</sup>(1) A member of a building society is entitled to vote—
- (a) on an ordinary resolution or a special resolution if he was, at the end of the last financial year before the voting date, and is, on that date, a shareholding or borrowing member of the society;

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- (b) on a shareholding members' resolution, if he was, at the end of that year, and is, on that date, a shareholding member of the society; and
  - (c) on a borrowing members' resolution if he was, at the end of that year, and is, on that date, a borrowing member of the society,
- but subject, in either case, to paragraphs 5(3), 7(4) and 8(4) above [<sup>F91</sup>and sub-paragraph (5A) below] and, in the case of paragraphs (a) and (b), 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.
- <sup>F92</sup>[(3) If the rules of the society so provide, a shareholding member is not entitled to vote on an ordinary resolution or a special resolution as such a member, or to vote on a shareholding members' resolution—
- (a) if he did not have a qualifying shareholding at the qualifying shareholding date; or
  - (b) if he ceased to hold shares at some time between that date and the voting date.
- (4) Where a building society's rules make such provision as is mentioned in sub-paragraph (3)(a) above, a shareholding member shall be taken to have had a qualifying shareholding at the qualifying shareholding date 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 [<sup>F93</sup>or electronic] 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.
- <sup>F94</sup>(5A) If the rules of the society so provide, a member who is also an employee of the building society shall not be entitled to exercise, directly or indirectly, any voting rights that the member may have with respect to a relevant resolution.
- <sup>F95</sup>(5B) For the purposes of sub-paragraph (5A), a relevant resolution is a resolution to approve an increase in the maximum ratio between the fixed and variable components of remuneration as permitted by—
- (a) rule 15.10 of the Remuneration Part of the Rulebook made by the Prudential Regulation Authority under the Financial Services and Markets Act 2000, or
  - (b) rule 19D.3.49 of the Senior Management Arrangements, Systems and Controls sourcebook made by the Financial Conduct Authority under that Act,
- where the member referred to would be directly affected by the increase.]
- [ For the purposes of sub-paragraph (5B), references to rules made by the Prudential
- <sup>F96</sup>(5BA) Regulation Authority or the Financial Conduct Authority are to those rules as they have effect on IP completion day.]

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<sup>F97</sup>(5C) . . . . .]

- (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 [<sup>F98</sup>or by electronic ballot in the case of which not all the voting is electronic (within the meaning of paragraph 33A of Schedule 2)], the date which the society specifies as the final date for the receipt of completed ballot papers;
  - [<sup>F99</sup>(bb) in the case of an election conducted by electronic ballot in which all the voting is electronic voting (within the meaning of that paragraph), the date which the society [<sup>F100</sup>specifies] as the final date for registering votes;]
  - (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 [<sup>F101</sup>appointments of] proxies to vote on that resolution.

#### Textual Amendments

- F90** Sch. 2 Pt. III para. 23(1) 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. 57(3)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xxxiv)**
- F91** Words in Sch. 2 para. 23(1) inserted (1.1.2014) by *The Capital Requirements Regulations 2013* (S.I. 2013/3115), reg. 1(2), **Sch. 2 para. 35(a)**
- F92** Sch. 2 Pt. III para. 23(3)(4) 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. 57(4)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xxxiv)**
- F93** Words in Sch. 2 para. 23(4)(b) inserted (20.3.2003) by *The Building Societies Act 1986 (Electronic Communications) Order 2003* (S.I. 2003/404), arts. 1(1), **30(7)(a)**
- F94** Sch. 2 para. 23(5A)-(5C) inserted (1.1.2014) by *The Capital Requirements Regulations 2013* (S.I. 2013/3115), reg. 1(2), **Sch. 2 para. 35(b)**
- F95** Sch. 2 para. 23(5B) substituted (31.12.2020) by *The Building Societies Legislation (Amendment) (EU Exit) Regulations 2018* (S.I. 2018/1187), regs. 1, **6(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F96** Sch. 2 para. 23(5BA) inserted (31.12.2020) by *The Building Societies Legislation (Amendment) (EU Exit) Regulations 2018* (S.I. 2018/1187), regs. 1, **6(b)** (as amended by S.I. 2020/1301, regs. 1, 3, **Sch. para. 4(b)**); 2020 c. 1, Sch. 5 para. 1(1)
- F97** Sch. 2 para. 23(5C) omitted (31.12.2020) by virtue of *The Building Societies Legislation (Amendment) (EU Exit) Regulations 2018* (S.I. 2018/1187), regs. 1, **6(c)**; 2020 c. 1, Sch. 5 para. 1(1)
- F98** Words in Sch. 2 para. 23(6)(b) inserted (20.3.2003) by *The Building Societies Act 1986 (Electronic Communications) Order 2003* (S.I. 2003/404), arts. 1(1), **30(7)(b)**
- F99** Sch. 2 para. 23(6)(bb) inserted (20.3.2003) by *The Building Societies Act 1986 (Electronic Communications) Order 2003* (S.I. 2003/404), arts. 1(1), **30(7)(c)**
- F100** Words in Sch. 2 para. 23(6)(bb) substituted (12.4.2011) by *The Mutual Societies (Electronic Communications) Order 2011* (S.I. 2011/593), arts. 1(1), **3(2)(a)**
- F101** Words in Sch. 2 para. 23(6)(c) substituted (20.3.2003) by *The Building Societies Act 1986 (Electronic Communications) Order 2003* (S.I. 2003/404), arts. 1(1), **29(3)(c)**

#### *Proxies*

- 24 (1) A member of a building society who is entitled to attend and vote at a meeting of the society—

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- (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.

[<sup>F102</sup>(1A) A form for the appointment of a proxy—

- (a) may be sent electronically to a member if it is sent to an electronic address notified by that member to the society for the purpose;
- (b) is to be treated as having been sent electronically to a member, where the conditions in sub-paragraph (1B) below are satisfied.

(1B) The conditions are that—

- (a) the society and the member have agreed that a form may instead be accessed by the member on a website;
- (b) <sup>F103</sup>... the member is notified of—
  - (i) the publication of the form on a website;
  - (ii) the address of that website; and
  - (iii) the place on that website where the form may be accessed, and how it may be accessed; and
- (c) the form is published on the website throughout the period beginning with the day on which the member is notified in accordance with paragraph (b) above and ending with the last day specified for the return of appointments of proxies.

(1C) If the form is absent from the website for part of the period referred to in sub-paragraph (1B)(c), the absence is to be disregarded if it is wholly attributable to circumstances that it would not be reasonable to have expected the society to prevent or avoid.

(1D) Where a form for the appointment of a proxy is made available by a society on a website in accordance with subsection (1A)(b), the society may also make available on the website a facility for completing the form and returning the appointment in an electronic communication (but see paragraph 34).]

- (2) Where the society, under its rules, specifies a final date for the receipt of [<sup>F104</sup>appointments of] 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.

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- [<sup>F105</sup>(4A) Every form for the appointment of a proxy sent by a building society to persons entitled to notice of a meeting of the society must contain provision enabling that person to 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, [<sup>F106</sup>or in complying with sub-paragraph (4A) above in respect of a form of appointment of a proxy,] 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 [<sup>F107</sup>the appointment of a proxy, or any] 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.

#### Textual Amendments

- F102** Sch. 2 para. 24(1A)-(1D) substituted for Sch. 2 para. 24(1A)(1B) (12.4.2011) by [The Mutual Societies \(Electronic Communications\) Order 2011 \(S.I. 2011/593\)](#), arts. 1(1), **2(1)**
- F103** Words in Sch. 2 para. 24(1B)(b) omitted (18.2.2014) by virtue of [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(2), **Sch. 9 para. 12(4)**
- F104** Words in Sch. 2 para. 24(2) substituted (20.3.2003) by [The Building Societies Act 1986 \(Electronic Communications\) Order 2003 \(S.I. 2003/404\)](#), arts. 1(1), **29(3)(d)**
- F105** Sch. 2 Pt. III para. 24(4A) 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(5)**; [S.I. 1997/2668, art. 2, Sch. Pt. II\(w\)\(z\)\(xxxiv\)](#)
- F106** Words in Sch. 2 Pt. III para. 24(5) 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(6)**; [S.I. 1997/2668, art. 2, Sch. Pt. II\(w\)\(z\)\(xxxiv\)](#)
- F107** Words in Sch. 2 para. 24(6) substituted (20.3.2003) by [The Building Societies Act 1986 \(Electronic Communications\) Order 2003 \(S.I. 2003/404\)](#), arts. 1(1), **29(4)**

#### *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) [<sup>F108</sup>Any appointment of] 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.



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#### Textual Amendments

**F108** Words in Sch. 2 para. 25(2) substituted (20.3.2003) by [The Building Societies Act 1986 \(Electronic Communications\) Order 2003 \(S.I. 2003/404\)](#), arts. 1(1), **29(5)**

#### *Special resolutions*

- 26 No resolution of a building society shall be passed as a special resolution<sup>[F109]</sup>, or as a shareholding 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.

#### Textual Amendments

**F109** Words in Sch. 2 Pt. III para. 26 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(7)**; [S.I. 1997/2668, art. 2](#), **Sch. Pt. II(w)(z)(xxxiv)**

- 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—
- (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 <sup>[F110]</sup>or electronic] 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.

#### Textual Amendments

**F110** Words in Sch. 2 para. 27(1)(b) inserted (20.3.2003) by [The Building Societies Act 1986 \(Electronic Communications\) Order 2003 \(S.I. 2003/404\)](#), arts. 1(1), **30(8)**

- <sup>[F111]</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

**F111** 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)**

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### *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<sup>F112</sup>(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 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.]
- <sup>F113</sup>(2) For the purposes of this Part of this Schedule, an individual who is indebted to a building society in respect of a loan fully secured on land is not a borrowing member of the society at any time if at that time the amount of his mortgage debt is less than the prescribed amount.]
- (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.

#### **Textual Amendments**

**F112** Sch. 2 Pt. III para. 29(1) 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. 57(9)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xxxiv)**

**F113** Sch. 2 Pt. III para. 29(2) 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. 2(4), 47(3) (with s. 46(1), Sch. 8 paras. 4, 5); S.I. 1997/2668, art. 2, **Sch. Pt. II(b)**

### *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 [<sup>F114</sup>shareholding members' resolution], and
  - (b) must be passed on a poll on which not less than [<sup>F115</sup>50] per cent. of the members of the society qualified to vote on a [<sup>F114</sup>shareholding members' resolution] voted;

and the notice of the resolution required by [<sup>F116</sup>paragraph 27A above] must specify that the resolution will not be effective unless both of the requirements specified in this sub-paragraph are fulfilled.

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- (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 [<sup>F117</sup>shareholding members' resolution] and either—
- (a) must be passed by not less than 50 per cent. of the members qualified to vote on a [<sup>F117</sup>shareholding members' resolution], or
  - (b) must be passed by the holders, being members qualified to vote on a [<sup>F117</sup>shareholding members' 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 [<sup>F118</sup>paragraph 27A] above includes a statement specifying that the resolution will not be effective unless either of the above requirements is fulfilled [<sup>F119</sup>has been duly given].

- (4) If the [<sup>F120</sup>appropriate authority] 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 [<sup>F121</sup>it] may give a direction under sub-paragraph (5) below.

[<sup>F122</sup>(4A) If the appropriate authority is the PRA, it must consult the FCA before giving a direction under sub-paragraph (5).]

- (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 [<sup>F123</sup>shareholding members' resolution].
- (6) The Treasury <sup>F124</sup>. . . 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 [<sup>F125</sup>they think] 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.

#### Textual Amendments

**F114** Words in Sch. 2 Pt. III para. 30(2) 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. 57(10)(a)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xxxiv)**

**F115** Words in Sch. 2 para. 30(2)(b) substituted (5.12.1997) by S.I. 1997/2714, **art. 2**

**F116** Words in Sch. 2 Pt. III para. 30(2) 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. 57(10)(b)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xxxiv)**

**F117** Words in Sch. 2 Pt. III para. 30(3) 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. 57(11)(a)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xxxiv)**

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- F118** Words in Sch. 2 Pt. III para. 30(3) 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. 57(11)(b)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xxxiv)**
- F119** Words in Sch. 2 Pt. III para. 30(3) repealed (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, 46(3), 47(3), Sch. 7 para. 57(11)(c), **Sch. 9**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(y)(z)(xxxiv)(cc)(xviii)**
- F120** Words in Sch. 2 para. 30(4) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 53(11)** (with Sch. 12)
- F121** Words in Sch. 2 para. 30(4) 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. 200(1)(i)(ii)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2**
- F122** Sch. 2 para. 30(4A) inserted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 53(12)** (with Sch. 12)
- F123** Words in Sch. 2 Pt. III para. 30(5) 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. 57(12)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xxxiv)**
- F124** Words in Sch. 2 para. 30(6) repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2**
- F125** Words in Sch. 2 para. 30(6) 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. 200(m)(ii)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2**

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

- C12** Sch. 2 para. 30: power to modify conferred (16.1.2009) by Building Societies (Funding) and Mutual Societies (Transfers) Act 2007 (c. 26), ss. 3, 6(2); S.I. 2009/36, art. 2
- C13** Sch. 2 para. 30 applied (with modifications) (5.3.2009) by The Mutual Societies (Transfers) Order 2009 (S.I. 2009/509), arts. 1(2), **3-18**

*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 <sup>F126</sup>a shareholding members' resolution or] 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 <sup>F127</sup>500 words] with respect to the matter referred to in the resolution.
- (2) For the purposes of sub-paragraph (1) above—
- (a) “the requisite number”—
- <sup>F128</sup>(i) in the case of a society in relation to which the difference between the total assets of the society as shown in the accounts last prepared by it under <sup>F129</sup>section 72A or 72E] immediately before the date on which the members gave notice to the society under sub-paragraph (1) above and the aggregate of—
- (aa) the liquid assets of the society as shown in those accounts in pursuance of regulations <sup>F130</sup>under section 72C or 72G or in

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- accordance with [<sup>F131</sup>UK-adopted international accounting standards], as appropriate]; and
- (bb) the fixed assets of the society as so shown, exceeds £100 million, is [<sup>F132</sup>five hundred] 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 [<sup>F133</sup>one hundred] 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,—
- <sup>F134</sup>(a) to have been a member for more than two years ending with the qualifying date; or
- (b) if he claims eligibility as a shareholding member, to hold, or to have held at any time, shares in the society to a value greater than the prescribed amount in force on the qualifying date; or
- (c) if he claims eligibility as a borrowing member, to owe to the society, or to have owed to the society at any time, a mortgage debt of an amount greater than the prescribed amount in force on 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—
- (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 [<sup>F135</sup>or electronic] 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 [<sup>F136</sup>PRA] 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.

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- (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.
- [<sup>F137</sup>(9) For the purposes of this paragraph “liquid assets” and “fixed assets”, in the case of societies which produce IAS individual accounts or IAS group accounts, have the same meaning as given in section 6(16).]

#### Textual Amendments

- F126** Words in Sch. 2 Pt. III para. 31(1) 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(13)(a)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xxxiv)**
- F127** Words in Sch. 2 Pt. III para. 31(1) 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. 57(13)(b)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xxxiv)**
- F128** Sch. 2 Pt. III para. 31(2)(a)(i) substituted (1.1.1998) by S.I. 1997/2840, **art. 2(2)** (with transitional provisions in art. 3)
- F129** Words in Sch. 2 para. 31(2)(a)(i) substituted (22.12.2004) (with effect in accordance with art. 1(2) of the amending S.I.) by **The Building Societies Act 1986 (International Accounting Standards and Other Accounting Amendments) Order 2004 (S.I. 2004/3380)**, art. 1, **Sch. para. 8(a)**
- F130** Words in Sch. 2 para. 31(2)(a)(i) (aa) substituted (22.12.2004) (with effect in accordance with art. 1(2) of the amending S.I.) by **The Building Societies Act 1986 (International Accounting Standards and Other Accounting Amendments) Order 2004 (S.I. 2004/3380)**, art. 1, **Sch. para. 8(b)**
- F131** Words in Sch. 2 para. 31(2)(a) substituted (31.12.2020) by **The International Accounting Standards and European Public Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/685)**, reg. 1(2), **Sch. 1 para. 36** (with reg. 1(3)(4), Sch. 1 para. 66) (as amended by S.I. 2020/523, regs. 1(2), 22, **25(d)**); 2020 c. 1, Sch. 5 para. 1(1)
- F132** Words in Sch. 2 para. 31(2)(a)(i) substituted (1.12.1999) by S.I. 1999/3033, **art. 2**
- F133** Words in Sch. 2 para 31(2)(a)(ii) substituted (1.12.1999) by S.I. 1999/3033 art. 2
- F134** Sch. 2 Pt. III para. 31(3)(a)-(c) substituted for Sch. 2 para. 31(3)(a)(b) (1.1.1998) by S.I. 1997/2840, **art. 2(3)** (with transitional provisions in art. 3)
- F135** Words in Sch. 2 para. 31(5) inserted (20.3.2003) by **The Building Societies Act 1986 (Electronic Communications) Order 2003 (S.I. 2003/404)**, arts. 1(1), **30(9)**
- F136** Word in Sch. 2 para. 31(7) substituted (1.4.2013) by **The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496)**, art. 1(1), **Sch. 8 para. 53(13)** (with Sch. 12)
- F137** Sch. 2 para. 31(9) inserted (22.12.2004) (with effect in accordance with art. 1(2) of the amending S.I.) by **The Building Societies Act 1986 (International Accounting Standards and Other Accounting Amendments) Order 2004 (S.I. 2004/3380)**, art. 1, **Sch. para. 8(c)**

#### *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

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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.

- [<sup>F138</sup>(2A) Sub-paragraph (2B) applies where, in a case in which a society gives notice in accordance with paragraph 22A or 22B of this Schedule of the annual general meeting at which a resolution is intended to be moved, the notice of the resolution and the copy of a statement in respect of the resolution that are required to be sent to a member under paragraph 3 1 (1)(a) or (b) are not transmitted or published at the same time as the notice.
- (2B) The requirement of sub-paragraph (2) to send a member his notice of the resolution and his copy of a statement in the same manner as the notice of the annual general meeting is satisfied if—
- (a) a notice of the resolution and a copy of the statement are made available to the member in the same way as the notice; or
  - (b) such a notice and such a copy (without being made available to the member in that way) are sent to the member in a manner set out by the society for the purpose in the notice.
- (2C) Where a notice of a resolution and copy of a statement are sent to a member electronically under sub-paragraph (2B), they must be sent to an electronic address notified by the member for the purpose.
- (2D) The requirements of sub-paragraph (2) or (2B)(a) are satisfied by the publication of a notice of the resolution and a copy of the statement on a web site only if—
- (a) the notice of the annual general meeting at which the resolution is intended to be moved is a notice given to that member by being published on a web site;
  - (b) an agreement between the society and the member to his accessing information on a web site applies to the notice of a resolution and copy of a statement for the meeting in question;
  - (c) the member is notified <sup>F139</sup>... of—
    - (i) the publication of the notice of a resolution and copy of a statement on a web site,
    - (ii) the address of that web site,
    - (iii) the place on that web site where the notice and copy may be accessed, and how they may be accessed;
  - (d) the notification for the purposes of paragraph (c) is given no later than the day after the date on which the notice of a resolution and the copy of a statement are first capable of being accessed on the notified web site;
  - (e) that date was the same as the date on which the notice of the annual general meeting was first capable of being accessed on a web site or (in a case to which sub-paragraph (2B)(a) applies) was as soon as practicable after that date;
  - (f) the notice of a resolution and copy of a statement are continuously published on the notified web site for a period beginning (so far as practicable) at the same time as the notices and statements are sent to members in accordance with sub-paragraph (2), and ending with the conclusion of the annual general meeting at which the resolution is moved.]
- (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—

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- (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.

[<sup>F140</sup>(3A) Where, in a case in which sub-paragraph (2D) is relied on for compliance with a requirement of sub-paragraph (2) or (2B)(a)—

- (a) a notice or copy [<sup>F141</sup>is] published for a part, but not all, of the period mentioned in subparagraph (2D)(f), 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,

the failure shall not invalidate the proceedings at the meeting.]

(4) The [<sup>F142</sup>Treasury] may by order vary—

- (a) the definition of “requisite number” or “qualified member” in subparagraph (2) of paragraph 31 above, or
- (b) the descriptions of provisions which are rendered void by subparagraph (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 subparagraph (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 subparagraph (4) above may contain transitional, consequential or supplementary provision.

#### **Textual Amendments**

- F138** Sch. 2 para. 32(2A)-(2D) inserted (20.3.2003) by [The Building Societies Act 1986 \(Electronic Communications\) Order 2003 \(S.I. 2003/404\)](#), arts. 1(1), **16(2)**
- F139** Words in Sch. 2 para. 32(2D)(c) omitted (18.2.2014) by virtue of [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(2), **Sch. 9 para. 12(5)**
- F140** Sch. 2 para. 32(3A) inserted (20.3.2003) by [The Building Societies Act 1986 \(Electronic Communications\) Order 2003 \(S.I. 2003/404\)](#), arts. 1(1), **16(3)**
- F141** Word in Sch. 2 para. 32(3A) inserted (12.4.2011) by [The Mutual Societies \(Electronic Communications\) Order 2011 \(S.I. 2011/593\)](#), arts. 1(1), **3(2)(b)**
- F142** Words in Sch. 2 para. 32(4) 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. 200(o)** (with art. 13(3), Sch. 5); [S.I. 2001/3538](#), **art. 2**

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

- C14** Sch. 2 paras. 32(4)(6): Functions of Building Societies Commission transferred (1.12.2001) to the Treasury by [S.I. 2001/2617](#), arts. 2(b), 4(1), **Sch. 1 Pt. III**; [S.I. 2001/3538](#), **art. 2**

#### *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 [<sup>F143</sup>(other than a shareholding members’ resolution or a borrowing members’ resolution)] to be conducted in all, or in any particular, circumstances by postal ballot; <sup>F144</sup>...



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- [<sup>F145</sup>(1A) Rules made pursuant to sub-paragraph (1) may also make provision in relation to the use of electronic communications in the conduct of a postal ballot.]
- (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.
- [<sup>F146</sup>(5) Notice of the postal ballot shall, subject to those provisions, be given also to every person—
- (a) who becomes a shareholding or borrowing member of the society after the date of the notice under sub-paragraph (4) above and before the voting day; or
- (b) who, being such a member at the date of that notice, attains the age of 18 after that date and on or before the voting day,
- and who would (in either case) be eligible to vote in the election or on the resolution if he remained such a member until that day.
- [ Where a notice of a postal ballot is required to be given to a person by sub-<sup>F147</sup>(5A) paragraph (4) or (5), the notice may be sent to him electronically only if it is sent to an electronic address notified by the person to the society for the purpose.
- (5B) In a case in which notice of a postal ballot is sent electronically to an electronic address in accordance with sub-paragraph (5A), the notice is to be treated as given to a person on the day on which it is transmitted.
- (5C) A requirement of sub-paragraph (4) or (5) to send a notice of a postal ballot shall also be treated as satisfied if—
- (a) the society and the person have agreed that notices which are required to be sent to him may instead be accessed by him on a web site;
- (b) the agreement applies to the notice in question
- (c) that person is notified <sup>F148</sup>... of—
- (i) the publication of the notice on a web site,
- (ii) the address of that web site, and
- (iii) the place on that web site where the notice may be accessed, and how it may be accessed; and
- (d) the notice is published continuously on that web site throughout the period beginning with the giving of that notification and ending with the voting date (within the meaning of section 60(17)).
- (5D) In a case in which sub-paragraph (5B) is relied on for compliance with a requirement of sub-paragraph (4) or (5), a notice of a postal ballot is to be treated as sent to a person on the day when notification is given in accordance with sub-paragraph (5C) (d).

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(5E) Where, in a case in which sub-paragraph (5C) is relied on for compliance with a requirement of sub-paragraph (4) or (5)—

- (a) a notice of a postal ballot is published for a part, but not all, of the period mentioned in sub-paragraph (5C)(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,

the failure shall not invalidate the postal ballot.]

(6) Notice of a postal ballot—

- (a) shall contain such other notices relating to the election or resolution [<sup>F149</sup> (“related notices”)], and
- (b) shall be accompanied by such other documents [<sup>F150</sup> (“accompanying 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.

[ Where the notice of a postal ballot is required by sub-paragraph (6) to contain a <sup>F151</sup>(6A) related notice or to be accompanied by an accompanying document—

- (a) in a case where the notice of that ballot is given to a person electronically in accordance with sub-paragraph (5A), the related notice or accompanying document may be sent to him electronically only if it is sent to the same electronic address, and at the same time as the notice of the postal ballot;
- (b) in a case where notice of that ballot is given on a web site in accordance with subparagraph (5C), the requirement to send the related notice or accompanying document to that person shall also be treated as satisfied if the conditions set out in sub-paragraph (6B) are satisfied.

(6B) The conditions of this sub-paragraph are satisfied in the case of a related notice or accompanying document if—

- (a) the society and that member have agreed that information which is required to be sent to him may instead be accessed by him on a web site;
- (b) the agreement applies to the related notice or accompanying document in question;
- (c) at the same time and in the same manner as the society notifies that person of the publication of the notice of the postal ballot, it notifies him of—
  - (i) the publication of the related notice or accompanying document 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 related notice or accompanying document is published continuously on that web site throughout the period beginning with the giving of that notification in accordance with paragraph (c) and ending with the voting date (within the meaning of section 60(17)).

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(6C) Where notice of a postal ballot and any related notice or accompanying document is sent to a person electronically, that person may return the completed voting paper to the society either—

- (a) by post; or
- (b) electronically by sending it to an electronic address notified by the society to that person for the purpose,

unless the rules of the society make provision to the contrary.]

(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,

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.

[ Where, in a case in which sub-paragraph (6A)(b) is relied on for compliance with a <sup>F152</sup>(7A) requirement of sub-paragraph (6)—

- (a) a related notice or accompanying document is published for a part, but not all, of the period mentioned in sub-paragraph (6B)(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,

the failure shall not invalidate the postal ballot.]]

#### Textual Amendments

- F143** Words in Sch. 2 Pt. III para. 33(1) 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(14)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xxxiv)**
- F144** Words in Sch. 2 para. 33(1) omitted (20.3.2003) by virtue of [The Building Societies Act 1986 \(Electronic Communications\) Order 2003](#) (S.I. 2003/404), arts. 1(1), 17(2), 30(10)
- F145** Sch. 2 para. 33(1A) inserted (20.3.2003) by [The Building Societies Act 1986 \(Electronic Communications\) Order 2003](#) (S.I. 2003/404), arts. 1(1), **17(3)**
- F146** Sch. 2 Pt. III para. 33(5) 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. 57(15)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xxxiv)**
- F147** Sch. 2 para. 33(5A)-(5E) inserted (20.3.2003) by [The Building Societies Act 1986 \(Electronic Communications\) Order 2003](#) (S.I. 2003/404), arts. 1(1), **17(4)**
- F148** Words in Sch. 2 para. 33(5C)(c) omitted (18.2.2014) by virtue of [Financial Services \(Banking Reform\) Act 2013](#) (c. 33), s. 148(2), **Sch. 9 para. 12(3)**
- F149** Words in Sch. 2 para. 33(6)(a) inserted (20.3.2003) by [The Building Societies Act 1986 \(Electronic Communications\) Order 2003](#) (S.I. 2003/404), arts. 1(1), **17(5)(a)**
- F150** Words in Sch. 2 para. 33(6)(b) inserted (20.3.2003) by [The Building Societies Act 1986 \(Electronic Communications\) Order 2003](#) (S.I. 2003/404), arts. 1(1), **17(5)(b)**
- F151** Sch. 2 para. 33(6A)-(6C) inserted (20.3.2003) by [The Building Societies Act 1986 \(Electronic Communications\) Order 2003](#) (S.I. 2003/404), arts. 1(1), **17(6)**
- F152** Sch. 2 para. 33(7A) inserted (20.3.2003) by [The Building Societies Act 1986 \(Electronic Communications\) Order 2003](#) (S.I. 2003/404), arts. 1(1), **17(7)**

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## *f<sup>F153</sup>Electronic ballots*

### **Textual Amendments**

**F153** Sch. 2 para 33A and cross-heading inserted (20.3.2003) by [The Building Societies Act 1986 \(Electronic Communications\) Order 2003 \(S.I. 2003/404\)](#), arts. 1(1), **18**

- 33A. (1) Where—
- (a) the rules of a building society provide for a postal ballot to be conducted in any circumstances in the case of an election or resolution, and
  - (b) those rules do not expressly prohibit the conduct of an electronic ballot in those circumstances,
- the ballot in the case of that election or resolution may, in those circumstances, be an electronic ballot instead of a postal ballot.
- (2) A ballot in the case of an election or resolution is an electronic ballot if it is conducted—
- (a) in accordance with the following provisions of this paragraph as to electronic voting; and
  - (b) in so far as it is not conducted with those provisions, as if it were a postal ballot.
- (3) But voting in the case of an election or resolution may not be conducted by an electronic ballot in which all the voting is electronic voting in accordance with sub-paragraphs (8) to (10) unless the rules of the society expressly permit it.
- (4) The rules of a building society may provide for voting in the case of—
- (a) an election of directors, or
  - (b) a resolution of the society other than a share holding members' resolution or a borrowing members' resolution,
- to be conducted by an electronic ballot in which all the voting is electronic voting in accordance with sub-paragraphs (8) to (10).
- (5) Where voting may be conducted by electronic ballot by virtue of sub-paragraph (1) the rules of the society may contain provision supplementing rules relating to postal ballots in so far as it is necessary to provide for the conduct of electronic voting in accordance with sub-paragraphs (8) to (10).
- (6) Where voting may be conducted by electronic ballot by virtue of sub-paragraph (1) or (3) the rules of the society may make provision as to the consequences of any irregularities occurring in the course of a ballot, including (but not restricted to) provision as to the validity of multiple votes cast by a member in the same election or on the same resolution.
- (7) In the case of an electronic ballot, the society is not required to send notice of the ballot to any person if—
- (a) that person has agreed, in accordance with sub-paragraph (9)(a) below, that notices of electronic ballots and a voting facility may be accessed by him on a web site; and
  - (b) the society notifies that person in accordance with sub-paragraph (9)(c) below.
- (8) The voting of a person in an electronic ballot is electronic if—

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- (a) a person has access on a web site to the notice of the electronic ballot, any document which is required to accompany the notice and a facility for registering his vote;
  - (b) that person registers his vote by means of that facility; and
  - (c) the conditions set out in sub-paragraph (9) are satisfied.
- (9) The conditions of this sub-paragraph are satisfied if—
- (a) the society and the person have agreed that notices of electronic ballots, any document which is required to accompany the notice, and a voting facility may be accessed by him on a web site;
  - (b) that agreement applies to the electronic ballot and accompanying documents in question;
  - (c) that person is notified <sup>F154</sup>... of—
    - (i) the publication of the notice and documents and the availability of the voting facility on a web site,
    - (ii) the address of that web site, and
    - (iii) the place on that web site where the notice, any such documents, and the facility may be accessed, and how they may be accessed; and
  - (d) the notice and each such document continues to be published and the facility continues to be available on that web site throughout the period beginning with the giving of that notification and ending with the date which the society specifies as the final date for the registration of votes.
- (10) A notice given for the purposes of sub-paragraph (9)(c) must—
- (a) state that it concerns a notice of an electronic ballot given in accordance with this Act; and
  - (b) state whether the voting to be conducted by the electronic ballot is in an election or on a resolution or both.
- (11) Nothing in sub-paragraph (9) shall invalidate an electronic ballot where—
- (a) any notice or document that is required to be published, and any facility which is required to be made available, for the period mentioned in sub-paragraph (6)(d) is published or made available for a part, but not all, of that period, but
  - (b) the failure to publish that notice or document, or make that facility available, throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the society to prevent or avoid.
- (12) Sub-paragraphs (3) to (7) of paragraph 33 apply, with the modification specified in subparagraph (13) below, in relation to notices of an electronic ballot as they apply in relation to notices of a postal ballot.
- (13) Sub-paragraph (3) of paragraph 33 has effect as if the reference to the receipt of completed ballot papers included a reference to the registration of votes by means of a voting facility on a web site.
- (14) For the purposes of sub-paragraph (3) of paragraph 33 (as applied to electronic ballots by sub-paragraph (13) above), in a case in which a person is notified for the purposes of subparagraph (9)(c), a notice of an electronic ballot is treated as given to a person on the day when notification is given in accordance with that sub-paragraph.]

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### Textual Amendments

**F154** Words in Sch. 2 para. 33A(9)(c) omitted (18.2.2014) by virtue of [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(2), [Sch. 9 para. 12\(6\)](#)

### *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 [<sup>F155</sup>or electronic] 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 <sup>F156</sup>... 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.
- [<sup>F157</sup>(2) A person making a declaration in pursuance of sub-paragraph (1) above shall—
- (a) declare 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 on a shareholding members' resolution, declare—
    - (i) that on the voting date he is or, so far as he can reasonably foresee, will be a shareholder of the society; and
    - (ii) where the person is not entitled to vote unless he had a qualifying shareholding on the qualifying shareholding date, that he had or, so far as he can reasonably foresee, will have such a shareholding on that date;
  - (c) where the vote is to be cast on a borrowing members' resolution, declare 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 vote is to be cast on an ordinary or special resolution, declare either as mentioned in paragraph (b) above, or as mentioned in paragraph (c) above, or both.]

[<sup>F158</sup>(2A) Where an appointment of a proxy is [<sup>F159</sup>returned in an electronic communication in accordance with paragraph 24(1D)], the requirements of sub-paragraph (2) above are satisfied only if—

    - (a) the appointment incorporates the terms of the declaration required by that subparagraph; and
    - (b) the authenticity and integrity of the appointment is established (whether by an electronic signature or otherwise) in such manner as may have been agreed between the member and the society.

(2B) Where a member voting in a postal ballot returns a completed voting paper electronically as mentioned in sub-paragraph (6E)(b) of paragraph 33 above, the requirements of sub-paragraph (2) above are satisfied only if—

    - (a) the voting paper incorporates the terms of the declaration required by that subparagraph; and

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- (b) the authenticity and integrity of the completed paper is established (whether by electronic signature or otherwise) in such manner as may have been agreed between the member and the society.
- (2C) Where a member registers a vote on a web site in accordance with sub-paragraph (8) (b) of paragraph 33A above, the requirements of sub-paragraph (2) above are satisfied only if—
- (a) at the place on the web site where the voting facility is accessed, the member has confirmed the terms of the declaration specified by that sub-paragraph; and
- (b) the authenticity and integrity of the member’s vote is established (whether by electronic signature or otherwise) in such a manner as may have been agreed between the member and the society.]
- (3) A building society shall secure that every document issued by it for use as a voting paper [F160 and every] appointment of a proxy incorporates a form of declaration under this paragraph for completion by the member using it.
- [F161(3A) A building society shall ensure that—
- (a) every voting paper sent by it to a member by means of an electronic communication incorporates a declaration in accordance with sub-paragraph (2) above, and
- (b) every voting facility provided by it on a web site is accompanied by such a declaration,
- for completion or confirmation by the member purporting to exercise his right to vote.]
- (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—
- [F162“authenticity” and “integrity”, with reference to an electronic communication, must be construed in accordance with section 15(2) of the Electronic Communications Act 2000;
- “electronic signature” has the same meaning as in section 7(2) of that Act;]
- “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.

#### Textual Amendments

- F155** Words in Sch. 2 para. 34(1)(b) inserted (20.3.2003) by [The Building Societies Act 1986 \(Electronic Communications\) Order 2003 \(S.I. 2003/404\)](#), arts. 1(1), **30(11)**
- F156** Words in Sch. 2 para. 34(1) omitted (20.3.2003) by virtue of [The Building Societies Act 1986 \(Electronic Communications\) Order 2003 \(S.I. 2003/404\)](#), arts. 1(1), **29(6)(a)**
- F157** Sch. 2 Pt. III para. 34(2) 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. 57(16)**; [S.I. 1997/2668](#), art. 2, **Sch. Pt. II(w)(z)(xxxiv)**

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**F158** Sch. 2 para. 34(2A)-(2C) inserted (20.3.2003) by [The Building Societies Act 1986 \(Electronic Communications\) Order 2003 \(S.I. 2003/404\)](#), arts. 1(1), **19(2)**

**F159** Words in Sch. 2 para. 34(2A) substituted (12.4.2011) by [The Mutual Societies \(Electronic Communications\) Order 2011 \(S.I. 2011/593\)](#), arts. 1(1), **2(2)**

**F160** Words in Sch. 2 para. 34(3) substituted (20.3.2003) by [The Building Societies Act 1986 \(Electronic Communications\) Order 2003 \(S.I. 2003/404\)](#), arts. 1(1), **29(6)(b)**

**F161** Sch. 2 para. 34(3A) inserted (20.3.2003) by [The Building Societies Act 1986 \(Electronic Communications\) Order 2003 \(S.I. 2003/404\)](#), arts. 1(1), **19(3)**

**F162** Words in Sch. 2 para. 34(5) inserted (20.3.2003) by [The Building Societies Act 1986 \(Electronic Communications\) Order 2003 \(S.I. 2003/404\)](#), arts. 1(1), **19(4)**

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

**C15** Sch. 2 Pt. III paras. 22, 34 excluded by [S.I. 1987/426](#), **art. 3**

*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 [<sup>F163</sup>or electronic] 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 [<sup>F164</sup>or for the registration of votes in an electronic ballot (as the case may be)].
- (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 [<sup>F165</sup>, or, in the case of an electronic ballot, how members may access electronic voting facilities].

**Textual Amendments**

**F163** Words in Sch. 2 para. 35(1) inserted (20.3.2003) by [The Building Societies Act 1986 \(Electronic Communications\) Order 2003 \(S.I. 2003/404\)](#), arts. 1(1), **30(12)(a)**

**F164** Words in Sch. 2 para. 35(3) inserted (20.3.2003) by [The Building Societies Act 1986 \(Electronic Communications\) Order 2003 \(S.I. 2003/404\)](#), arts. 1(1), **30(12)(b)**

**F165** Words in Sch. 2 para. 35(4) inserted (20.3.2003) by [The Building Societies Act 1986 \(Electronic Communications\) Order 2003 \(S.I. 2003/404\)](#), arts. 1(1), **30(12)(c)**

*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 [<sup>F166</sup>Treasury by order specify] 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.



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- (3) An order under sub-paragraph (1) above may contain transitional, consequential or supplementary provision.

#### **Textual Amendments**

**F166** Words in Sch. 2 para. 36(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. 200(p)** (with S. 13(3), Sch. 5); S.I. 2001/3538, **art. 2**

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

**C16** Sch. 2 para. 36(1)(3): functions of Building Societies Commission transferred (1.12.2001) to the Treasury by S.I. 2001/2617, arts. 2(b), 4(1), **Sch. 1 Pt. III**; S.I. 2001/3538, **art. 2**

**Status:**

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**Changes to legislation:**

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