

Status: Point in time view as at 01/12/1997.

Changes to legislation: Building Societies Act 1986, Part II is up to date with all changes known to be in force on or before 08 July 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 2

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)

[^{F1}PART II

CAPACITY OF SOCIETY AND POWER OF DIRECTORS TO BIND IT]

Textual Amendments

F1 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)**

[^{F2} Capacity of society not limited by its memorandum]

Textual Amendments

F2 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)**

- [^{F3}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.]

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Textual Amendments

- F3** 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)**

[^{F4} Power of directors to bind society]

Textual Amendments

- F4** 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)**

- ^{F5}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 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

- F5** 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)**

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[^{F6} No duty to enquire as to capacity of society etc.]

Textual Amendments

- F6** 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)**

- [^{F7}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

- F7** 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.

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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.

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