

SCHEDULES

SCHEDULE 20

Section 120.

TRANSITIONAL AND SAVING PROVISIONS

Preliminary

1 In this Schedule—

" the commencement date for " any provision of this Act means the date on which that provision comes into operation;

" existing society" means a building society registered at the passing of this Act under the repealed enactments ; and

" existing rules " means the rules of a society in force immediately before the commencement date for section 5.

Adoption of powers and alteration of rules

2 (1) At any time during the period beginning two months after the passing of this Act and ending with the relevant commencement date, a building society may, for the purposes of the transition to this Act.—

(a) by special resolution, agree in a memorandum upon—

(i) the purpose or principal purpose of the society,

(ii) whether to adopt any and, if so, what adoptable powers (with or without restrictions),

(iii) whether to assume any and, if so, what restrictions on the extent of its other powers under this Act, and

(iv) any alterations to its rules required for conformity with any provision made in pursuance of (ii) or (iii) above; and

(b) send to the central office four copies of the memorandum and of any altered rules accompanied by a statutory declaration by the secretary that the agreement was effected by a resolution passed as a special resolution.

(2) The commencement date relevant to the matters specified in sub-paragraph (1) above is—

(a) in the case of the society's purpose, the commencement date for section 5,

(b) in the case of an adoptable power, the commencement date for the provision of this Act which confers the power,

(c) in the case of a restriction on the extent of any other power, the commencement date for section 5, and

(d) in the case of a rule altered for conformity, the commencement date applicable to the provision of the memorandum which requires the alteration.

(3) On agreeing upon its purpose, on the adoption of, or the assumption of a restriction on the extent of, a power or on any alteration of any of its rules for conformity, under this paragraph, the building society shall determine the date on which the society

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intends it to take effect and the memorandum and altered rules (if any) sent to the central office shall be accompanied by a record specifying that date (in this paragraph referred to as " the specified date ").

- (4) Subject to paragraph 11 below, the central office, if satisfied that the provisions of the memorandum and any altered rules are in conformity with this Act and any instruments under it, shall—
 - (a) retain and register one copy of the memorandum and of the altered rules,
 - (b) return another copy to the secretary of the society, together with a certificate of registration, and
 - (c) keep another copy, together with the record of the specified date sent to it under sub-paragraph (3) above and a copy of that registration certificate, in the public file of the society.
 - (5) The provisions of a memorandum registered under this paragraph shall take effect on the specified date for that provision or, if registration of the memorandum is not effected until a later date, that later date, and so with the rules altered for conformity with a provision of the memorandum.
- 3
- (1) Before the end of the transitional period each existing building society shall—
 - (a) by special resolution agree in a memorandum upon—
 - (i) the purpose or principal purpose of the society,
 - (ii) whether to adopt any and, if so, what adoptable powers (with or without restrictions), and
 - (iii) whether to assume any and, if so, what restrictions on the extent of its other powers under this Act;
 - (b) by special resolution agree upon the alterations to be made to its rules so that they conform to this Act; and
 - (c) send to the central office four copies of the memorandum and of the rules as altered each signed by the secretary and accompanied by a statutory declaration by the secretary that the agreement was effected by a resolution passed as a special resolution.
 - (2) In agreeing upon its purpose, on the adoption of, or the assumption of a restriction on the extent of, a power, or on any alteration to its rules, under this paragraph, the building society shall, subject to sub-paragraph (3) below, determine the date on which the society intends it to take effect and the memorandum and rules sent to the central office shall be accompanied by a record specifying that date (in this paragraph referred to as " the specified date ").
 - (3) No date shall be specified under sub-paragraph (2) above in relation to a society's purpose or its rules which falls more than six months after the date of the meeting at which the society agreed upon the memorandum or the rules, as the case may be.
 - (4) Subject to paragraph 11 below, the central office, if satisfied that—
 - (a) the provisions of the memorandum are in conformity with this Act and any instruments under it, and
 - (b) the rules, as altered, are in conformity with this Act,shall retain and register a copy of the memorandum and of the altered rules.
 - (5) On registering a copy of the memorandum and of the altered rules under sub-paragraph (4) above, the central office shall—

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- (a) return another copy to the secretary of the society, together with a certificate of registration, and
 - (b) keep another copy, together with the record of the specified date sent to it under sub-paragraph (2) above and a copy of that certificate, in the public file of the society.
- (6) The provisions of a memorandum registered under this paragraph shall take effect on the specified date for that provision or, if registration of the memorandum is not effected until a later date, that later date.
- (7) The rules registered under this paragraph shall take effect on the specified date for the rule or, if registration of the rules is not effected until a later date, that later date.
- (8) In this paragraph " the transitional period " means the period beginning with the commencement date for section 5 and expiring with such day as the Commission, with the consent of the Treasury, prescribes by order in a statutory instrument.

Default powers

- 4
- (1) If the central office has not, before the end of the transitional period, received from an existing building society copies of the memorandum in accordance with paragraph 2 or 3 above, the society shall be treated as having agreed upon the purpose specified as its purpose in its existing rules or on such purpose conforming to section 1(1) of the Building Societies Act 1962 as the central office directs as its apparent purpose.
 - (2) If the central office has not, before the end of the transitional period, received from an existing building society copies of its rules as altered in accordance with paragraph 3 above, the society shall be treated as having agreed upon such alteration of its rules as, in conformity with model rules made under this paragraph, the central office directs.
 - (3) The Commission may, by order in a statutory instrument made with the consent of the Treasury, prescribe model rules for building societies for the purposes of this paragraph.
 - (4) Where, under this paragraph, a society is treated as having agreed upon a purpose or as having agreed upon altered rules then the central office shall prepare three copies of a memorandum and of rules for the society and shall—
 - (a) retain and register one copy,
 - (b) return another to the secretary of the society, together with a certificate of registration, and
 - (c) keep another copy, together with a copy of that certificate, in the public file of the society.
 - (5) The memorandum and rules so registered shall be for all purposes the memorandum and rules of the society until altered under paragraph 4 of Schedule 2 to this Act.
 - (6) Such fee as is prescribed shall be due from the society to the Chief Registrar for the registration of a memorandum and rules under this paragraph.
 - (7) In this paragraph " the transitional period " means the period beginning with the commencement date for section 5 and expiring with such day as the Commission, with the consent of the Treasury, prescribes by order in a statutory instrument.

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Registration with existing authorities

- 5 A building society which, at the commencement date for section 5, was registered under the Building Societies Act (Northern Ireland) 1967 or registered or deemed to be registered in Northern Ireland under the enactments repealed by that Act shall be treated, for the purposes of this Act, as registered with the central office immediately before the commencement of that section.

Authorisation under existing enactments

- 6 (1) A building society which, at the commencement date for section 9 is authorised to raise money and accept deposits under—
- (a) the Building Societies (Authorisation) Regulations 1981, or
 - (b) the Building Societies (Authorisation) Regulations (Northern Ireland) 1982,
- shall be treated, whether or not the requirements of subsection (4) of section 9 would be fulfilled in its case, at the commencement of that section as authorised for the purposes of this Act (in particular Part VI).
- (2) The central office shall record in the public file of each building society to which sub-paragraph (1) above applies the fact that, by virtue of that sub-paragraph, the society is to be treated as authorised for the purposes of this Act.

Anticipation of powers: declaratory provision

- 7 (1) It is hereby declared that every building society has had, as from 19th December 1985, power, for the purposes of any power conferred by this Act on building societies or building societies of its description, to do such things, subject to sub-paragraph (2) below, as are reasonably necessary to enable it—
- (a) to decide whether or not, and to what extent, to exercise (and in the case of an adoptable power to adopt) the power, and
 - (b) if it decides to exercise the power, to exercise it as from the date when it becomes exercisable by the society.
- (2) Sub-paragraph (1)(b) above does not authorise a society—
- (a) to make contracts, other than conditional contracts, for the acquisition of land, the acquisition of a business or the acquisition of shares in any company if that company offers the public any service or facility within the power,
 - (b) to issue invitations to members of the society or the public to apply for any power to be exercised for their benefit, or
 - (c) to retain shares in a company which offers the public any service or facility within the power ;
- and, in this sub-paragraph, "conditional", in relation to contracts with respect to the exercise of a power, means conditional on the power's becoming exercisable by the society.
- (3) The power conferred by this paragraph, and activities carried on under it, for the purposes of an adoptable power are not to be treated as included in, or in activities comprised in, that adoptable power for the purposes of paragraph 8 of this Schedule.

Unlawful anticipation of powers

- 8 (1) Where a building society adopts any adoptable power under paragraph 2 or 3 above—

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- (a) it shall, by virtue of this paragraph, assume an obligation, enforceable as provided in paragraph 9 below, not to exercise that power until the date on which the memorandum of its powers takes effect as respects that power, and
 - (b) it shall send to the central office, with the documents required by paragraph 2(1) or 3(1) above a declaration as respects that power made on behalf of the society which satisfies the requirements of this paragraph.
- (2) The obligation assumed by virtue of this paragraph on the adoption of a power does not extend to the exercise of any power included in the adoptable power which the society has under the law in force at any time before the registration takes effect.
- (3) A declaration, to satisfy the requirements of this paragraph, must be made by the chairman of the board of directors of the society, by one other director and by the chief executive of the society and it must either—
- (a) state that, to the best of the knowledge and belief of the declarants, after due enquiry, the society has not, or has not with the permitted qualification, carried on any activity comprised in the power during the period which began one year before the specified date (or with 1 April 1986, if later) and expired with the date of the meeting at which the power was adopted, or
 - (b) state that, to the best of the knowledge and belief of the declarants, after due enquiry, the society, with specified exceptions, has not, or has not with the permitted qualification, carried on any activity comprised in the power during the period which began one year before the specified date (or with 1 April 1986, if later) and expired with the date of the meeting at which the power was adopted.
- (4) The qualification of the statement so required which is permitted is that in so far as the society has, at any time during the said period, carried on any activity comprised in the power to which the statement relates, the society had the power to carry on that activity at that time under the law in force at that time.
- (5) The exceptions to the statement so required must not include activities of the society which constitute significant excesses of its powers during the said period ; and a declaration specifying activities as exceptions to the statement so required must also state the opinion of the declarants that the activities are believed not to constitute significant excesses of the society's powers during the period to which the declaration relates.

Penalty for breach of undertaking

- 9 If, in breach of the obligation assumed by virtue of paragraph 8 above, a building society exercises any power to which the obligation extends, then—
- (a) the society shall be liable on conviction on indictment or on summary conviction to a fine not exceeding, on summary conviction, the statutory maximum, and
 - (b) every officer of the society who is also guilty of the offence shall be liable, on summary conviction to a fine not exceeding the statutory maximum.

Penalty for false declaration

- 10 If the statement in a declaration made for the purposes of paragraph 8 above is false, then, any person who made the statement knowing it to be false or reckless as to whether it was true or false shall be liable—

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- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both, and
- (b) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or both.

Powers of central office

- 11 (1) The central office, on receiving from a building society the declaration required by and the other documents referred to in paragraph 8 above, shall refer to the Commission for its determination the question whether or not the memorandum of the society's powers is to be registered.
- (2) On a reference to the Commission of the question whether or not the memorandum of a society's power is to be registered—
- (a) if the declaration contains the statement specified in paragraph 8(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 8 above extends at any time during the period which began one year before the specified date (or with 1st April 1986, if later) and expired on the date on which it considers the reference, the Commission shall direct the central office to register the memorandum, and
 - (b) in any other case, the Commission may, as it thinks fit, direct the central office to register, or not to register, the memorandum.
- (3) The Commission, in deciding, in a case falling within sub-paragraph (2)(b) above, whether or not to direct the registration of the memorandum of a society's powers may have regard to all the circumstances of the case.
- (4) No registration of a memorandum shall be effected by the central office under paragraph 2(2) or 3(2) 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 8 above.
- (5) If the central office, in pursuance of a direction of the Commission under sub-paragraph (2) above, refuses registration of the memorandum 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 memorandum 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) Nothing in the foregoing provisions of this Schedule implies that it is improper for any of the following, that is to say—
- (a) the Chief Registrar or any assistant registrar of the central office,
 - (b) the assistant registrar of friendly societies for Scotland,

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- (c) the registrar of building societies for Northern Ireland, or
- (d) the Commission,

to give to a building society or building societies generally an indication of the action the Commission might or might not take in exercising its functions under this paragraph; and no decision of the Commission under this paragraph shall be liable to be set aside by reason of the indication having been given.

- (8) In this paragraph " the specified date " has the same meaning as in paragraph 2 or, as the case may be, 3 above.

Permissible securities for advances

- 12 (1) Until provision is made by an order under section 10(6) prescribing the descriptions of equitable interests in land which may be taken as security for advances secured on land, building societies may advance money on the security of an equitable interest in land in England and Wales or Northern Ireland in addition to a mortgage of the freehold or leasehold estate where the lease or a related instrument includes provision entitling the leaseholder to acquire a beneficial interest of any extent in the freehold or a greater leasehold interest and the right to acquire that interest is assigned as additional security.
- (2) Until such provision is made, section 17(10) shall have effect with the substitution of a reference to an equitable interest of the description specified in sub-paragraph (1) above for the reference to an equitable interest specified in an order under section 10(6).
- (3) On the making of the first order under section 10(6) this paragraph shall cease to have effect.
- 13 Until provision is made by an order under section 12(3) prescribing indemnities given by a local authority as a description of additional security for the purposes of section 11(4)(c), an indemnity given under section 442 of the Housing Act 1985, under section 31 of the Tenants' Rights, Etc. (Scotland) Act 1980 or under Article 156 of the Housing (Northern Ireland) Order 1981 shall be such a security ; and on the making of the first order under section 12(3) this paragraph shall cease to have effect.

Existing business names

- 14 Any person who, at the commencement date for section 107, uses a name for business purposes which indicates a connection between—
- (a) that person, or his business, and a building society, or
 - (b) that person, or his business, and building societies generally,
- shall be deemed for the purposes of section 107 to have been given approval, under subsection (4) of that section, by the Commission for the continued use of that name.

Directors in office

- 15 (1) Except as provided in this paragraph, an existing director shall be treated for the purposes of sections 60 and 61 as having been duly elected a director on the date of his appointment as a director or, as the case may be, of his most recent re-appointment to that office before the commencement date.

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- (2) An existing director who holds office as director by virtue of holding some other position in the society shall, except in a case within sub-paragraph (4) below, be treated for the purposes of sections 60 and 61 as having been duly elected a director at the commencement date.
- (3) If the term of office of an existing director would, in accordance with the terms on which he holds office, expire on an earlier date than is provided for by sub-paragraph (1) above, he shall vacate office on that earlier date.
- (4) An existing director who has attained the normal retirement age, or the compulsory retirement age (if any), as the case may be, before the commencement date shall retire from office at the first annual general meeting of the society after the commencement date.
- (5) If, at the commencement date, an existing director, other than a director falling within sub-paragraph (2) above, has held office since the date of his appointment or most recent re-appointment for a period longer than is provided for in section 60(11)(a), he shall retire from office at the first annual general meeting of the society after the commencement date.
- (6) In this paragraph—
 - " the commencement date " means the commencement date for sections 60 and 61 ;
 - " existing director " means any director of a building society in office immediately before the commencement date ; and
 - " the compulsory retirement age " and " the normal retirement age " have the meanings given in section 60(8).

Existing financial years

- 16 In the case of a building society established before 25th August 1894—
- (a) if—
 - (i) before 1st October 1962 the society had altered its financial year in exercise of the power conferred by section 70(2) of the Building Societies Act 1960, or
 - (ii) after that date and before the commencement date for section 117, the society has exercised the corresponding power conferred by section 128(2) of the Building Societies Act 1962,
 - " financial year " shall, after the date on which the society exercised the power, have the meaning given in section 117 and shall (so far as may be relevant for the purposes of this Act) include the period for which the society made up its accounts in the exercise of the power, and
 - (b) subject to the preceding provisions of this paragraph, " financial year" means a period of 12 months ending with the time up to which, at the commencement date for section 117, the accounts of the society were annually made up.

Qualifying assets

- 17 For the purposes of the application of section 118 by reference to the annual accounts of a building society prepared before the first financial year for which accounts under Part VIII of this Act are prepared, the reference to the total

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commercial assets of a society shall have effect as a reference to the amount in the last balance sheet prepared under the Building Societies Act 1962 which represents the total assets constituted by mortgage debts outstanding to the society.

Provision of conveyancing services for building societies

- 18 (1) A building society may, at any time during the period of three years beginning with the day on which section 66 of the Administration of Justice Act 1985 ("section 66") comes or came into force or for such shorter period as is prescribed by the Commission by order in a statutory instrument, alter the rules of the society by resolution of the board of directors so as to provide for conveyancing services to be carried out on the society's behalf, in relation to estates or interests in land in England and Wales, by all or any of the following, namely—
- (a) a recognised body within the meaning of section 9 of that Act;
 - (b) a licensed conveyancer within the meaning of section 11(2) of that Act; and
 - (c) a recognised body within the meaning of Part II of that Act.
- (2) If, on the day on which this paragraph comes into operation, no day has been appointed for the commencement of section 66, the rules of a building society may be so altered within the period of three years from the commencement of this paragraph or such shorter period as is prescribed by the Commission by order in a statutory instrument.
- (3) Where any alteration of the rules of a society is effected under sub-paragraph (1) above, the society shall send to the central office three copies of the alteration signed by the secretary and a statutory declaration by an officer of the society that the alteration was effected by resolution of the board of directors.
- (4) Where copies are sent to the central office in accordance with sub-paragraph (3) above, and the central office is satisfied that the alteration is in conformity with this Act and (where applicable) any instruments under it, it shall—
- (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 that certificate, in the public file of the society.
- (5) If a building society fails to comply with 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.
- (6) The power to alter the rules under sub-paragraph (1) above shall cease to be exercisable by a building society if, during the period of three years mentioned in that sub-paragraph or sub-paragraph (2) or within such lesser period as is prescribed under those sub-paragraphs, as the case may be, a special resolution is passed altering (in any respect) the rules of the society in pursuance of paragraph 4 of Schedule 2 to this Act.
- (7) In this paragraph, "conveyancing services" has the same meaning as in paragraph 1(3) of Schedule 21 to this Act