



# Building Societies Act 1986

## 1986 CHAPTER 53

### PART X

#### DISSOLUTION, WINDING UP, MERGERS AND TRANSFER OF BUSINESS

##### *Transfer of business to commercial company*

#### **97 Transfer of business to commercial company.**

- (1) A building society may, in accordance with this section and the other applicable provisions of this Act, transfer the whole of its business to a company (its “successor”).
- (2) The applicable provisions of this Act other than this section are section 98, section 99, [<sup>F1</sup>section 99A,] section 100, section 101, section 102 [<sup>F2</sup>sections 102B, 102C and 102D], paragraph 30 of Schedule 2 and Schedule 17.
- (3) The successor may be a company formed by the society wholly or partly" for the purpose of assuming and conducting the society's business in its place or an existing company which is to assume and conduct the society's business in its place; [<sup>F3</sup>and for the purposes of the transfer the society may, notwithstanding anything in section 18, form, or acquire and hold shares in, a company whose objects extend to the carrying on of activities which the building society has no power to carry on.]
- (4) In order to transfer its business to its successor a building society must—
  - (a) in the case of a specially formed company, secure that it is formed having articles of association with the requisite protective provisions;
  - (b) agree conditionally with its successor in a transfer agreement on the terms of the transfer which, in so far as they are regulated terms, comply with section 99, section 100 and transfer regulations;
  - (c) approve the transfer and the terms of the transfer by the requisite transfer resolutions, that is to say, resolutions passed by the members of the society in accordance with paragraph 30 of Schedule 2 to this Act; and
  - (d) obtain the confirmation of the [<sup>F4</sup>appropriate authority] of the transfer and its terms.

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- (5) In so far as the transfer agreement made between the society and its successor provides for rights to be conferred on members or officers of the society, whether or not in pursuance of regulated terms, the members or officers shall, in relation to those provisions, be treated as if they had been parties to the agreement and the rights shall be enforceable accordingly.
- (6) If the [<sup>F5</sup>appropriate authority] confirms the transfer under section 98 then, on the vesting date, all the property, rights and liabilities of the society making the transfer (whether or not capable of being transferred or assigned), except any shares in its successor, shall by virtue of this subsection and in accordance with transfer regulations be transferred to and vested in the successor.
- (7) Where a building society continues to hold shares in its successor after the vesting date, the consideration (if any) for the disposal of the shares together with any other property, rights or liabilities of the society acquired or incurred after that date shall, by virtue of this subsection, be transferred to and vested in its successor on the date specified for its dissolution under subsection (10) below.
- (8) A building society which has obtained confirmation of the transfer of its business shall [<sup>F6</sup>send to each of the FCA and, if the society is a PRA-  
authorised person, the PRA] notice of the date which is to be the vesting date and shall do so not later than seven days before that date; and the [<sup>F7</sup>FCA must] record the date and, if a later date is notified under subsection (10) below, that date, in the public file of the society.
- (9) Except where notice is given under subsection (10) below, a building society which, under this section, transfers its business to its successor shall, by virtue of this subsection, be dissolved on the vesting date; but the transfer effected by subsection (6) above shall be deemed to have been effected immediately before the dissolution.
- (10) A building society may, for the purpose of facilitating the disposal of shares in its successor, include in the notice of the vesting date under subsection (8) above notice of a later date for the dissolution of the society; and if it does so, the society shall by virtue of this subsection be dissolved on that date instead of the vesting date, but the transfer effected by subsection (7) above shall be deemed to have been effected immediately before the dissolution.
- (11) As from the vesting date, a society which has given notice under subsection (10) above shall cease to transact any business except such as is necessary for the purpose of securing the disposal of the society's holding of shares in its successor.
- (12) In this section, and the other applicable provisions of this Act—
- “company” means a company [<sup>F8</sup>as defined in section 1(1) of the Companies Act 2006] which is a public company limited by shares; and a company is a “specially formed” company if it is formed by a building society (and by no others than its nominees) for the purpose of assuming and conducting its business in its place and is an “existing” company if it is a company carrying on business as a going concern on the date of the transfer agreement;
- “confirmation”, in relation to a transfer, means the confirmation of the [<sup>F9</sup>appropriate authority] required by subsection (4)(d) above;
- “regulated terms” means any terms of a transfer agreement which are regulated terms under section 99, section 100 or section 102;
- “the requisite protective provisions” means the provisions required to be made by section 101(2);

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[<sup>F10</sup>“the requisite shareholders” resolution’ has the meaning given by paragraph 30(1) of Schedule 2;]

“the requisite transfer resolutions” has the meaning given by subsection (4) (c) above;

“successor”, in relation to a building society, has the meaning given by subsection (1) above;

“transfer agreement” means the agreement required by subsection (4)(b) above and, in relation to it, “conditionally” means conditional on the approval of the transfer by the requisite transfer resolutions and on confirmation of the transfer;

“transfer of business” means the transfer of the business of a building society to its successor under this section and “transfer” has a corresponding meaning;

“transfer regulations” means regulations under section 102; and

“the vesting date” means the date specified in or determined under the transfer agreement as the vesting date for the purposes of subsection (6) above.

<sup>F11</sup>(13) .....

#### Textual Amendments

- F1** Words in s. 97(2) inserted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 45(1)**; S.I. 1997/1427, **art. 2(f)**
- F2** Words in s. 97(2) inserted (21.3.1997 with application as mentioned in s. 2(2) of the amending Act) by 1997 c. 41, **s. 1(2)**
- F3** Words in s. 97(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(2), 47(3), **Sch. 7 para. 45(2)**, **Sch. 9**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(y)(z)(xxvii)(cc)(xiii)**
- F4** Words in s. 97(4)(d) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 41(2)** (with Sch. 12)
- F5** Words in s. 97(6) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 41(3)** (with Sch. 12)
- F6** Words in s. 97(8) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 41(4)(a)** (with Sch. 12)
- F7** Words in s. 97(8) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 41(4)(b)** (with Sch. 12)
- F8** Words in s. 97(12) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 87(5)** (with art. 10)
- F9** Words in s. 97(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. 41(5)** (with Sch. 12)
- F10** Definition in s. 97(12) 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. 45(3)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xxvii)**
- F11** S. 97(13) omitted (31.12.2020) by virtue of The Building Societies Legislation (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1187), regs. 1, 4; 2020 c. 1, Sch. 5 para. 1(1)

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

- C1** Ss. 97-102D: 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
- C2** Ss. 97-102D applied (with modifications) (5.3.2009) by The Mutual Societies (Transfers) Order 2009 (S.I. 2009/509), arts. 1(2), **3-18**

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**C3** Ss. 97-102D excluded by 2009 c. 1, s. 84D(6) (as inserted (10.1.2015) by [The Building Societies \(Bail-in\) Order 2014 \(S.I. 2014/3344\)](#), arts. 1, **2(3)**)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 5(11)-(14) inserted by [2007 c. 26 s. 1\(2\)](#)
- s. 5(13)(a) substituted by [S.I. 2013/496 Sch. 8 para. 4\(4\)](#)
- s. 7(6A)-(6C) inserted by [2007 c. 26 s. 1\(1\)\(a\)](#)
- s. 7(8A) inserted by [2007 c. 26 s. 1\(1\)\(c\)](#)
- s. 176ZB excluded by [S.I. 2017/400 reg. 14](#)
- s. 246ZA-246ZC excluded by [S.I. 2017/400 reg. 15](#)
- s. 246ZD excluded by [S.I. 2017/400 reg. 16](#)