

1999 No. 1215

BUILDING SOCIETIES

**The Building Societies (Merger Notification Statement)
Regulations 1999**

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| <i>Made - - - -</i> | <i>27th April 1999</i> |
| <i>Laid before Parliament</i> | <i>29th April 1999</i> |
| <i>Coming into force</i> | <i>1st June 1999</i> |

The Building Societies Commission, with the consent of the Treasury, in exercise of the powers conferred upon it by section 42B(8)(a) of the Building Societies Act 1986^(a), and of all other powers enabling it in that behalf, hereby makes the following Regulations—

Citation and commencement

1. These Regulations may be cited as the Building Societies (Merger Notification Statement) Regulations 1999 and shall come into force on 1st June 1999.

Interpretation

2. In these Regulations, except where the context requires otherwise—

“the Act” means the Building Societies Act 1986;

“accepting society” means a building society to which a transferring society proposes to transfer all or, as the case may be, part of its engagements under section 94 (Transfer of engagements) of the Act^(b);

“date of the merger notification statement” means the date upon which the Building Societies Commission approves the contents of the merger notification statement in accordance with paragraph 3(4) of Schedule 8A (Transfer Directions: Modification of Part X) to the Act^(c);

“effective date” means the date which is the effective date for the purpose of the transfer of a society’s engagements under section 94(8) of the Act and, if more than one such date, each of them;

“member” includes where the context so requires in relation to a society which has transferred its engagements a former member of that society;

“merger notification statement” means the statement required by paragraph 3 of Schedule 8A to the Act;

“transfer of engagements” means the transfer of the engagements of a building society to one or more other building societies in accordance with section 94 of the Act;

“transferring society” means a building society that proposes to transfer, or, as the case may be, has transferred, all its engagements to one or more building societies under section 94 of the Act.

^(a) 1986 c. 53; section 42B was inserted by s.17(1) of the Building Societies Act 1997 (c. 32).

^(b) Section 94 was amended by section 43 of and paragraph 42 of Schedule 7 to the Building Societies Act 1997.

^(c) Schedule 8A was inserted by section 17(2) of and Schedule 4 to the Building Societies Act 1997.

Merger Notification Statements

3.—(1) Subject to paragraph (2) below, any merger notification statement sent to members of a society under paragraph 3 of Schedule 8A to the Act shall give particulars of the matters specified in the Schedule to these Regulations.

(2) Where, by virtue of paragraph (1) above, particulars are required to be stated of any matter, which is not ascertainable at the time when the statement is made, there shall be substituted for that matter a forecast thereof and the fact that the particulars given in the statement relate to a forecast shall be specified in the statement and so shall particulars of—

- (a) the persons making the forecast,
- (b) the persons (if any) consulted for the purposes of the forecast by its makers, and
- (c) the facts and assumptions on which it is based.

(3) Where, during the 12 months preceding the date of a merger notification statement, a written proposal has been made to the transferring society issuing the statement—

- (a) by or on behalf of a company, for the transferring society to transfer its business to that company, or
- (b) by or on behalf of another building society other than the accepting society, for the transferring society to merge with that other building society,

paragraph (4) below shall apply to that merger notification statement.

(4) Where this paragraph applies to a merger notification statement it shall, notwithstanding, in the case of a merger proposal, that notice of the proposal is required to be given to members of the transferring society under Part II of Schedule 16 (Mergers: Supplementary Provisions) to the Act(a), or, in the case of a transfer proposal, that notice of the proposal is required to be given to members of the transferring society under Part IA of Schedule 17 (Transfers of Business: Supplementary Provisions) to the Act(b), give particulars of the following matters—

- (a) the fact of the proposal and the name of the company or society by or on whose behalf the proposal was made, save where the company or society, by or on whose behalf the proposal was made, has made in writing a request that the proposal be treated as confidential and has not withdrawn that request in writing; and
- (b) the terms of the proposal, save to the extent that the company or society, by or on whose behalf the proposal was made, has made in writing a request that any such term be treated as confidential and has not withdrawn that request in writing.

(5) Where the engagements of the transferring society are to be divided between two or more accepting societies, the particulars of the matters specified in the Schedule to these Regulations relating to the accepting society shall be given for each accepting society.

(6) In paragraphs 3(3) and (4) above—

“merge” means to amalgamate building societies under section 93 (Amalgamations) of the Act(c) or to transfer to any extent the engagements of one building society to another under section 94 of the Act;

“merger proposal” has the same meaning as in Part II of Schedule 16 to the Act;

“transfer its business” means to transfer the whole of the business of a building society to a company under section 97 (Transfer of business to commercial company) of the Act(d);

“transfer proposal” has the same meaning as in Part IA of Schedule 17 to the Act.

In witness whereof the common seal of the Building Societies Commission is hereunto affixed, and is authenticated by me, a person authorised under paragraph 14 of Schedule 1 to the Building Societies Act 1986, on 22nd April 1999.

(a) Schedule 16 was amended by section 43 of and paragraph 66 of Schedule 7 to the Building Societies Act 1997.

(b) Schedule 17 was amended by section 30(3) of and Schedule 5 to the Building Societies Act 1997.

(c) Section 93 was amended by section 43 of and paragraph 41 of Schedule 7 to the Building Societies Act 1997.

(d) Section 97 was amended by section 43 of and paragraph 45 of Schedule 7 to the Building Societies Act 1997 and by section 1(2) of the Building Societies (Distributions) Act 1997 (c. 41).



G. S. Johnson
Secretary to the Commission

We consent to these Regulations.

Jim Dowd
Jane Kennedy
Two of the Lords Commissioners of
Her Majesty's Treasury

27th April 1999

PRESCRIBED MATTERS FOR MERGER NOTIFICATION STATEMENTS

1. The fact that the board of directors of the transferring society is proceeding to transfer the engagements of the society to the accepting society by board resolution at the direction of the Building Societies Commission.
2. The procedure for the Building Societies Commission to confirm the transfer of engagements, the date for the receipt of written representations and notice of intention to make oral representations and the address to which they should be sent.
3. The name and principal office address of the accepting society.
4. A comparison of the activities of the accepting society and its connected undertakings with the activities of the transferring society and its connected undertakings and a description of any change intended in either of those activities in consequence of the transfer of engagements.
5. The location of the branches of the transferring society and of the accepting society and any changes in those branches intended in consequence of the transfer of engagements.
6. The directors and other officers of the accepting society, their interests in the accepting society and any of its connected undertakings and in the transfer of engagements.
7. The auditors of the accepting society.
8. The proposed effective date.
9. Either:
 - (a) a summary of the most recently published and audited balance sheet of the transferring society and its connected undertakings (which must not relate to a period ended more than twelve months prior to the date of the merger notification statement), or
 - (b) if such a balance sheet is not available, the audited financial position of the transferring society and its connected undertakings at the most reasonably practicable date and in any case not more than six months prior to the date of the merger notification statement and the opinion of the society's auditor, or of some other person qualified to be the auditor of the society pursuant to paragraph 5 of Schedule 11 (Auditors: Appointment, Tenure, Qualifications) to the Act^(a) as to the statement of the financial position.
10. Either:
 - (a) a summary of the most recently published and audited balance sheet of the accepting society and its connected undertakings (which must not relate to a period ended more than twelve months prior to the date of the merger notification statement), or
 - (b) if such a balance sheet is not available, the audited financial position of the accepting society and its connected undertakings at the most reasonably practicable date and in any case not more than six months prior to the date of the merger notification statement and the opinion of the accepting society's auditor, or of some other person qualified to be the auditor of the accepting society pursuant to paragraph 5 of Schedule 11 to the Act as to the statement of the financial position.
11. Arrangements for members of the transferring society to obtain copies of the memorandum and rules of the accepting society.

(a) Paragraph 5 of Schedule 11 was amended by S.I. 1991/1997, S.I. 1995/2723 and section 43 of and paragraph 61 of Schedule 7 to the Building Societies Act 1997.

12. The provisions of the rules of the accepting society relating to continuity of membership for members of other building societies becoming members of the accepting society on a transfer of engagements to the accepting society.

13. Any distribution of funds (by way of bonus or otherwise) made or proposed to be made to—

- (a) shareholding members, and
- (b) borrowing members,

of the transferring society in consideration of, or by reason of, the transfer of engagements.

14. (a) Any changes in the terms on which the investments of the members of the transferring society will be operated by the accepting society, and

- (b) a description of the arrangements to assimilate the range of investment accounts operated for shareholding members of the transferring society into the range of accounts operated for shareholding members of the accepting society.

15. Any changes in the terms on which loans by the transferring society to its borrowing members secured on land will be operated by the accepting society.

16. The interests of the directors and other officers of the transferring society in the transfer of engagements including their interests in the transferring society and any of its connected undertakings and interests and prospective interests in the accepting society and any of its connected undertakings.

17. The compensation or other consideration (if any) proposed to be paid to or in respect of, or to be receivable by or in respect of, the directors and other officers of the transferring society attributable to the transfer of engagements.

18. The manner in which the salary, fees, borrowing rights and other benefits of directors and other officers of the transferring society to be appointed to any position by the accepting society and any of its connected undertakings will be affected by such appointment.

19. Any benefits (whether in the form of a distribution of funds or otherwise) proposed to be conferred on the directors and other officers of the transferring society.

20. Any terms of the instrument of transfer of engagements providing for its termination or providing conditions precedent to the completion of the transfer of engagements.

21. The acceptance of responsibility by each of the directors of the transferring society and by each of the directors of the accepting society for the content of the merger notification statement.

22. Where the engagements of the transferring society are to be divided between two or more accepting societies, a description of the basis on which the engagements of the transferring society have been allocated to each of the accepting societies and a summary describing the engagements of the transferring society allocated to each of the accepting societies.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the information to be sent to members of a building society where the Building Societies Commission has directed the society, under section 42B of the Building Societies Act 1986, to resolve to transfer the engagements of the society to one or more other societies by resolution of the board of directors of the society rather than by resolution of its members.

The Commission may make such a direction where it considers it expedient to do so to protect the investments of shareholders or depositors and it has directed a society to transfer its engagements or has only not done so because the society is already seeking to transfer its engagements.

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