

SCHEDULE 4

Regulation 16

Amendments to Part 8 of the Building Societies Act 1986

PART 1

Introductory

1. In this Schedule—
 - (a) a reference to a numbered section is a reference to that section of Building Societies Act 1986; and
 - (b) a reference to a numbered Schedule is a reference to that Schedule to that Act.

PART 2

Amendments to Part 8 of the Building Societies Act 1986

2. Part 8 of the Building Societies Act 1986 is amended as follows.
3. In section 78 (auditor's report)(1)—
 - (a) in subsection (1), before “report” insert “written”;
 - (b) for subsections (3A) to (4A) substitute—

“(3A) The auditor's report must include—

 - (a) the identity of the building society whose annual accounts are the subject of the audit,
 - (b) a description of the annual accounts that are the subject of the audit (including the period covered by those accounts),
 - (c) a description of the financial reporting framework that has been applied in the preparation of those accounts, and
 - (d) a description of the scope of the audit identifying the auditing standards in accordance with which the audit was conducted.
 - (4) The report must clearly state the opinion of the auditor as to—
 - (a) whether the annual accounts have been properly prepared in accordance with the requirements of this Act (and, where applicable, Article 4 of the IAS Regulation), and
 - (b) in particular whether the annual accounts give a true and fair view in accordance with the relevant financial reporting framework—
 - (i) in the case of an individual balance sheet, of the state of affairs of the society as at the end of the financial year,
 - (ii) in the case of an individual income and expenditure account, of the income and expenditure of the society for the financial year, and
 - (iii) in the case of group accounts, of the state of affairs as at the end of the financial year and the income and expenditure for the financial year of the

(1) Section 78 was amended by paragraphs 1 and 7 of Schedule 9 to the Financial Services (Banking Reform) Act 2013 (c. 33) and by S.I. 1995/3233, 2004/3380, 2008/1519.

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society and the subsidiary undertakings dealt with in the group accounts, so far as concerns members of the society.

- (4A) The auditor's opinion must—
- (a) be either unqualified or qualified,
 - (b) include a reference to any matters to which the auditor wishes to draw attention by way of emphasis without qualifying the audit opinion,
 - (c) include a statement on any material uncertainty relating to events or conditions that may cast significant doubt about the building society's ability to continue as a going concern, and
 - (d) identify the auditor's place of establishment.”;

(c) in subsection (6), after “subsection (4)” insert “(b)”;

(d) for subsection (7) substitute—

“(7) The auditor's report, in so far as it deals with the documents specified in subsection (3) above, must—

- (a) state whether, in his opinion, based on the work undertaken in the course of the audit—
 - (i) the documents have been prepared so as to conform to the requirements of, or made under, sections 74 and 75 respectively,
 - (ii) the information given in the annual business statement gives a true representation of the matters in respect of which it is given, and
 - (iii) the information given in the directors' report for the financial year for which the accounts are prepared is consistent with those accounts,
- (b) state whether, in the light of the knowledge and understanding of the building society and its environment obtained in the course of the audit, the auditor has identified material misstatements in the directors' report, and
- (c) if applicable, give an indication of the nature of each of the misstatements referred to in paragraph (b).”;

(e) after subsection (10) insert—

“(11) Where more than one person is appointed as an auditor—

- (a) all the persons appointed must jointly make a report under this section and the report must include a statement as to whether all the persons appointed agree—
 - (i) on the matters contained in the report, and
 - (ii) on the statements and indications given under subsection (7); and
- (b) if all the persons appointed cannot agree on—
 - (i) the matters contained in the report, or
 - (ii) on the statements and indications given under subsection (7),

the report must include the opinions of each person appointed and give reasons for the disagreement.”.

4. In section 78A (signature of auditor's report)(2)—

- (a) in subsection (1), after “the auditor” insert “(or, where more than one person is appointed as auditor, all of their names)”; and
- (b) after subsection (2) insert—

(2) Section 78A was inserted by [S.I. 2004/3380](#) and then substituted by [S.I. 2008/1519](#).

“(2A) Where more than one person is appointed as auditor, the report must be signed by all of them.”.

5. After section 78C(1) (names to be stated in copies of auditor’s report filed or published)(3) insert—

“(1A) If more than one individual is appointed as auditor, the reference in subsection (1) (a) to the name of the auditor is to be read as a reference to the names of all the auditors.”.

6. At the beginning of section 78D(1) (circumstances in which names may be omitted)(4), for “The” substitute “An”.

7. In subsection 79 (auditor’s duties and powers)(5)—

(a) for subsection (2) substitute—

“(2) If the auditor is of the opinion that—

(a) proper accounting records have not been kept under section 71, or

(b) the annual accounts are not in agreement with the accounting records,

the auditor must state that fact in his report.”; and

(b) after subsection (6) insert—

“(6A) Where more than one person is appointed as auditor, the report must include a statement as to whether all the persons appointed agree on any statements given under subsections (2) and (6) and, if they cannot agree on those statements, the report must include the opinions of each person appointed and give reasons for the disagreement.”.

8. In Schedule 11—

(a) after paragraph 3 insert—

“**3A.**—(1) Any term in a contract which, in relation to the conduct of an audit of a building society, has the effect of restricting the general meeting of the building society’s choice of auditor to certain categories or lists of auditors has no effect.

(2) If a third party attempts to impose a contractual clause of the kind mentioned in subparagraph (1), or to improperly influence the decision of a general meeting of the building society on the selection of an auditor, the directors of the building society must inform the competent authority without delay.

3B.—(1) This paragraph applies to the appointment of an auditor or auditors under section 77, where the building society has an audit committee.

(2) Before an appointment to which this paragraph applies is made—

(a) the audit committee of the building society must make a recommendation to the directors in connection with the appointment, and

(b) the directors must propose an auditor or auditors for appointment, including the following information in the proposal—

(i) the recommendation made by the audit committee in connection with the appointment, or

(ii) if the directors’ proposal departs from the preference of the audit committee, the reasons for not following the recommendation.

(3) Section 78C was inserted by S.I. 2004/3380 and then substituted by S.I. 2008/1519; it was amended by S.I. 2013/496.

(4) Section 78D was inserted by S.I. 2004/3380 and then substituted by S.I. 2008/1519; it was amended by S.I. 2013/496.

(5) Section 79 was amended by paragraph 34 of Schedule 7, and Schedule 9, to the Building Societies Act 1997 (c. 32) and by S.I. 2001/2617 and 2008/1519.

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(3) Before the audit committee makes a recommendation or the directors make a proposal under sub-paragraph (2), the committee or directors must carry out a selection procedure in accordance with Article 16(3) of the Audit Regulation.

(4) The audit committee must in its recommendation—

- (a) identify its first and second choice candidates for appointment,
- (b) give reasons for the choices so identified,
- (c) state that—
 - (i) the recommendation is free from influence by a third party, and
 - (ii) no contractual term of the kind mentioned in paragraph 3A has been imposed on the building society.

(5) Sub-paragraphs (3) and (4) do not apply in relation to a recommendation or proposal for appointment of an auditor or auditors for a financial year (“the relevant financial year”)

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- (a) if the relevant financial year begins during a transitional period mentioned in sub-paragraph (6); or
 - (b) if—
 - (i) a selection procedure mentioned in sub-paragraph (7) has been carried out in respect of the appointment of the auditor or auditors in relation to a financial year beginning less than ten years before the first day of the relevant financial year; and
 - (ii) the auditor or auditors were appointed for the financial year before the relevant financial year.

(6) The transitional periods are—

- (a) in the case of an auditor who was first appointed for a financial year beginning before 17th June 1994 and who continues to hold office on 17th June 2016, the period which begins on 17th June 2016 and ends on the day before the first day of the first financial year of the building society that begins on or after 17th June 2020;
- (b) in the case of an auditor who was first appointed for a financial year beginning on or after 17th June 1994 and before 17th June 2003 and who continues to hold office on 17th June 2016, the period which begins on 17th June 2016 and ends on the day before the first day of the first financial year of the building society that begins on or after 17th June 2023.

(7) The selection procedures are—

- (a) a selection procedure which is in accordance with sub-paragraphs (3) and (4);
- (b) a selection procedure which substantially meets the requirements of Article 16(2) to (5) of the Audit Regulation, having regard to the circumstances at the time (including whether the building society had an audit committee), which was carried out in relation to a financial year which began before 17th June 2016.

3C.—(1) This paragraph applies to the appointment of an auditor or auditors under section 77, where the building society does not have an audit committee.

(2) Before an appointment to which this paragraph applies is made the directors must propose an auditor or auditors for appointment.

(3) Before the directors make a proposal under sub-paragraph (2), they must carry out a selection procedure in accordance with Article 16(3) of the Audit Regulation.

- (4) Sub-paragraph (3) does not apply in relation to a proposal for appointment of an auditor or auditors for a financial year (“the relevant financial year”)—
- (a) if the relevant financial year begins during a transitional period mentioned in sub-paragraph (5); or
 - (b) if—
 - (i) a selection procedure mentioned in sub-paragraph (6) has been carried out in respect of the appointment of the auditor or auditors in relation to a financial year beginning less than ten years before the first day of the relevant financial year; and
 - (ii) the auditor or auditors were appointed for the financial year before the relevant financial year.
- (5) The transitional periods are—
- (a) in the case of an auditor who was first appointed in respect of a financial year beginning before 17th June 1994 and who continues to hold office on 17th June 2016, the period which begins on 17th June 2016 and ends on the day before the first day of the first financial year of the building society that begins on or after 17th June 2020;
 - (b) in the case of an auditor who was first appointed in respect of a financial year beginning on or after 17th June 1994 and before 17th June 2003 and who continues to hold office on 17th June 2016, the period which begins on 17th June 2016 and ends on the day before the first day of the first financial year of the building society that begins on or after 17th June 2023.
- (6) The selection procedures are—
- (a) a selection procedure which is in accordance with sub-paragraph (4);
 - (b) a selection procedure which substantially meets the requirements of Article 16(2) to (5) of the Audit Regulation, having regard to the circumstances at the time (including whether the company had an audit committee), which was carried out in relation to a financial year which began before 17th June 2016.”.”;
- (b) before paragraph 6 insert—

“Tenure

5A.—(1) The terms of appointment of an auditor or auditors are subject to the requirement that the auditor or auditors cease to hold office at the conclusion of the annual general meeting in respect of the first complete financial year that follows the expiry of the maximum engagement period.

(2) In this paragraph—

“the maximum engagement period” means, subject to sub-paragraph (3) and paragraph 5B (which makes transitional provision in relation to auditors appointed before 17th June 2016), whichever of the following periods is longest—

- (a) the period of ten years beginning with the first day of the first financial year in respect of which the auditor was appointed,
- (b) the period of twenty years beginning with the first day of the first financial year in respect of which the auditor was appointed, if the selection requirements are satisfied for at least one financial year which begins every ten years in that period, or

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- (c) such other period of no more than twenty years beginning with the first day of the first financial year in respect of which the auditor was appointed and ending on the last day of the relevant ten year period;
“the relevant ten year period” means the period of ten years beginning with the first day of the last financial year—
 - (a) which begins within ten years of the first day of the first financial year in respect of which the auditor was appointed, and
 - (b) in respect of which the auditor was reappointed following the carrying out of a selection procedure in accordance with the selection requirements; and“the selection requirements” means—
 - (a) the requirements of paragraph 3B(3) and (4) if the building society has an audit committee, or
 - (b) the requirements of paragraph 3C(3) if the building society does not have an audit committee.
- (3) The maximum engagement period may be extended by a period of up to two years with the approval of the competent authority, provided that—
 - (a) in a case where the period within paragraph (a) of the definition of “the maximum engagement period” is being extended, the appointment of the auditor for the first complete financial year following the end of that period is made following the carrying out of a selection procedure in accordance with the selection requirements; and
 - (b) in all cases, the competent authority is satisfied that exceptional circumstances exist.
- (4) An auditor is ineligible for appointment as auditor if—
 - (a) within the four years preceding the start of the financial year to which that appointment relates the auditor has ceased by virtue of sub-paragraph (1) to hold office as auditor of that building society, or
 - (b) the auditor is a member of the same network as an auditor who within the four years preceding the start of the financial year to which that appointment relates has ceased by virtue of that sub-paragraph to hold office as auditor of that building society.
- (5) In this paragraph, “network” means an association of persons other than a firm co-operating in audit work by way of—
 - (a) profit-sharing;
 - (b) cost-sharing;
 - (c) common ownership, control or management;
 - (d) common quality control policies and procedures;
 - (e) common business strategy; or
 - (f) use of a common name.

Maximum engagement period: transitional arrangements

5B.—(1) In the case of an auditor who was first appointed in respect of a financial year beginning before 17th June 1994 and who continues to hold office on 17th June 2016, “the maximum engagement period” means the period ending on the day before the first day of the first financial year of the building society that begins on or after 17th June 2020.

(2) In the case of an auditor who was first appointed in respect of a financial year beginning on or after 17th June 1994 and before 17th June 2003 and who continues to hold office on 17th June 2016, “the maximum engagement period” means the period ending on the day before the first day of the first financial year of the building society that begins on or after 17th June 2023.

(3) In the case of an auditor who was first appointed in respect of a financial year beginning on or after 17th June 2003 and before 17th June 2016 and who continues to hold office on 17th June 2016, “the maximum engagement period” means whichever of the following periods is longest—

- (a) the period ending on whichever is the later of—
 - (i) the day before the first day of the first financial year of the building society that begins on or after 17th June 2016;
 - (ii) the last day of the period of ten years beginning with the first day of the first financial year of the building society in respect of which the auditor was appointed.
- (b) the period of twenty years beginning with the first day of the first financial year in respect of which the auditor was appointed, if the selection requirements are satisfied for at least one financial year which begins every ten years in the period beginning on 17th June 2007, or
- (c) such other period of no more than twenty years beginning with the first day of the first financial year in respect of which the auditor was appointed and ending on the last day of the relevant ten year period.

(4) In this paragraph—

“the relevant ten year period” means the period of ten years beginning with the first day of the last financial year—

- (a) which begins either within ten years of the first day of the first financial year in respect of which the auditor was appointed or if later, on or before 16th June 2017, and
- (b) in respect of which the auditor was reappointed following the carrying out of a selection procedure in accordance with the selection requirements;

“the selection requirements” means—

- (a) in relation to a financial year beginning on or after 17th June 2016—
 - (i) the requirements of paragraph 3B(3) and (4) if the building society has an audit committee, or
 - (ii) the requirements of paragraph 3C(3) if the building society does not have an audit committee,
- (b) in relation to a financial year beginning before 17th June 2016, the requirement that the building society carries out a tender process which substantially meets the requirements of Article 16(2) to (5) of the Audit Regulation, having regard to the circumstances at the time (including whether the building society had an audit committee).

(5) The maximum engagement period may be extended by a period of up to two years with the approval of the competent authority, provided that—

- (a) in a case where the period under sub-paragraph (3)(a) is being extended, the appointment of the auditor for the first complete financial year following the end of that period is made following the carrying out of a selection procedure in accordance with the selection requirements; and

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- (b) in all cases, the competent authority is satisfied that exceptional circumstances exist.”;
- (c) after paragraph 6(4) insert—
 - “(5) An auditor may not be removed from office before the expiration of that auditor’s term of office except—
 - (a) by resolution under this paragraph, or
 - (b) in accordance with paragraph 6ZA.”;
- (d) after paragraph 6 insert—

“Application to court to remove auditor from office

6ZA.—(1) The competent authority may apply to the High Court for an order removing an auditor of a building society from office if the authority considers that there are proper grounds for removing the auditor from office.

(2) The members of a building society may apply to the High Court for an order removing an auditor of the building society from office if the applicant or applicants consider that there are proper grounds for removing the auditor from office.

(3) If the court is satisfied, on hearing an application under sub-paragraph (1), that there are proper grounds for removing the auditor from office, it may make an order removing the auditor from office.

(4) If the court is satisfied, on hearing an application under sub-paragraph (2), that—

- (a) the applicants represent in total—
 - (i) not less than 5% of the voting rights of all the members having a right to vote at a general meeting of the building society, or
 - (ii) not less than 5% in nominal value of the amount standing to the credit of shares in a building society as shown by the latest balance sheet, and
- (b) there are proper grounds for removing the auditor from office,

the court may make an order removing the auditor from office.

(5) For the purposes of this paragraph, divergence of opinions on accounting treatments or audit procedures are not to be taken to be proper grounds for removing an auditor from office.”;

- (e) in paragraph 6A(1)(6), after “removed from office” insert “, other than by order of the High Court made under paragraph 6ZA,”;
- (f) for the heading to paragraph 8C(7) substitute “Interpretation”; and
- (g) for paragraph 8C substitute—

“8C. In this Schedule—

“appropriate audit authority” means—

- (a) the Secretary of State, or
- (b) if the Secretary of State has delegated functions under section 1252 of the Companies Act 2006(8) to a body whose functions include receiving the equivalent notice under section 522(9) or 523(10) of that Act, that body;

(6) Paragraph 6A was inserted by [S.I. 2008/1519](#).

(7) Paragraph 8C was inserted by [S.I. 2008/1519](#).

(8) [2006 c. 46](#).

(9) Section 522 was amended by [S.I. 2015/1732](#).

“audit committee” means a body which performs the functions referred to in Article 39(6) of [Directive 2006/43/EC](#) of the European Parliament and of the Council on statutory audits of annual accounts and consolidated accounts, amending Council Directives [78/660/EEC](#) and [83/349/EEC](#) and repealing Council [Directive 84/253/EEC](#), or equivalent functions;

“Audit Regulation” means Regulation 537/2014 of the European Parliament and of the Council on specific requirements regarding statutory audit of public interest entities and repealing Commission [Decision 2005/989/EC](#); and

“competent authority” means the Financial Reporting Council Limited⁽¹¹⁾.”.

(10) Section 523 was amended by section 18 of the Deregulation Act 2015.

(11) A company registered in England and Wales with number 02486368.