



Building Societies Act 1986

1986 CHAPTER 53

PART X

DISSOLUTION, WINDING UP, MERGERS AND TRANSFER OF BUSINESS

Mergers

93 Amalgamations

- (1) Any two or more building societies desiring to amalgamate may do so by establishing a building society as their successor in accordance with this section and Schedule 16 to this Act.
- (2) In order to establish a building society as their successor the societies desiring to amalgamate must—
 - (a) agree upon the purpose or principal purpose of their successor and upon the extent of its powers in a memorandum which complies with the requirements of Schedule 2 to this Act;
 - (b) agree upon the rules for the regulation of their successor which comply with the requirements of that Schedule;
 - (c) each approve the terms of the amalgamation by two resolutions, of which—
 - (i) one is passed as a special resolution which also approves the memorandum and the rules of their successor, and
 - (ii) the other is passed as a borrowing members' resolution, in accordance with the applicable provisions of that Schedule;
 - (d) make a joint application to the Commission for confirmation of the amalgamation and send to the central office four copies of the rules and of the memorandum, each copy signed by the secretary of each of the societies.
- (3) If the Commission confirms the amalgamation under section 95, the central office, if it is satisfied, as regards the proposed successor, of the matters relating to its rules, its purpose and powers and its name as to which it must, under paragraph 1 of Schedule 2 to this Act, be satisfied before it registers a society, shall—

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- (a) register the successor society,
 - (b) issue to it a certificate of incorporation, specifying a date (" the specified date ") as from which the incorporation takes effect,
 - (c) retain and register one copy of the memorandum and of the rules,
 - (d) return another copy to the secretary of the successor, together with a certificate of registration, and
 - (e) keep another copy, together with a copy of the certificate of incorporation and of the certificate of registration of the memorandum and the rules, in the public file of the successor society.
- (4) On the specified date all the property, rights and liabilities of each of the societies whose amalgamation was confirmed by the Commission (whether or not capable of being transferred or assigned) shall by virtue of this subsection be transferred to and vested in the society so incorporated as their successor.
- (5) On the specified date, each of the societies to which the successor succeeds shall be dissolved by virtue of this subsection; but the transfer effected by subsection (4) above shall be deemed to have been effected immediately before the dissolution.
- (6) If, on the specified date, the societies whose amalgamation was confirmed by the Commission are all authorised, their successor shall be treated as authorised for the purposes of this Act, whether or not the requirements of section 9(4) would be fulfilled in its case, as from that date.
- (7) The central office shall record in the public file of the successor the fact that, by virtue of subsection (6) above, the society is to be treated as authorised for the purposes of this Act.

94 Transfer of engagements

- (1) A building society may, in accordance with this section and Schedule 16 to this Act, transfer its engagements to any extent to another building society which, in accordance with this section and that Schedule, undertakes to fulfil the engagements.
- (2) A building society, in order to transfer its engagements, must resolve to do so by two resolutions, of which one is passed as a special resolution and the other as a borrowing members' resolution in accordance with the applicable provisions of Schedule 2.
- (3) A building society, in order to transfer some but not all of its engagements to its members in respect of shares held by them (with or without other engagements) must, in addition to resolving to transfer the engagements by the two resolutions required by subsection (2) above, resolve to do so by an affected shareholders' resolution.
- (4) For the purposes of this section in its application to a transfer by a society of engagements in respect of some shares in the society, an " affected shareholders' resolution " is a resolution passed by a majority of the holders of those shares who, under the rules of the society, would be entitled to vote on a special resolution, disregarding for this purpose any shares of theirs in respect of which the society's engagements are not to be transferred.
- (5) A building society, in order to undertake to fulfil the engagements of another society, must resolve to do so—

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- (a) by two resolutions, of which one is passed as a special resolution and the other as a borrowing members' resolution in accordance with the applicable provisions of Schedule 2 ; or
 - (b) by a resolution of the board of directors, if the Commission consents to that mode of proceeding.
- (6) The extent of the transfer, as so resolved by the society making and the society taking the transfer, shall be recorded in an instrument of transfer of engagements.
- (7) A transfer of engagements between building societies shall be of no effect unless—
- (a) the transfer is confirmed by the Commission under section 95; and
 - (b) a registration certificate is issued in respect of the transfer under subsection (8) below.
- (8) Where the Commission confirms a transfer of engagements between building societies, the central office shall—
- (a) register a copy of the instrument of transfer of engagements ; and
 - (b) issue a registration certificate to the building society taking the transfer;
- and, on such date as is specified in the certificate, the property, rights and liabilities of the society transferring its engagements (whether or not capable of being transferred or assigned) shall, by virtue of this subsection, be transferred to and vested in the society taking the transfer to the extent provided in the instrument of transfer of engagements.
- (9) The central office shall keep a copy of the instrument and of the registration certificate issued under subsection (8) above in the public file of the building society taking the transfer.
- (10) Where all its engagements have been transferred, the society shall, by virtue of this subsection, be dissolved on the date specified in the registration certificate; but the transfer effected by subsection (8) above shall be deemed to have been effected immediately before the dissolution.

95 Mergers: provisions supplementing ss. 93 and 94

- (1) Part I of Schedule 16 to this Act shall have effect for imposing on building societies proposing to amalgamate or to transfer or undertake engagements requirements to issue statements to their members relating to the proposed amalgamation or transfer.
- (2) Part II of Schedule 16 to this Act shall have effect for imposing requirements for notification by a building society, to its members and to the central office, of the receipt by the society of proposals for a transfer of engagements or an amalgamation.
- (3) Where application is made to the Commission for confirmation of an amalgamation or transfer of engagements it shall, except as provided in subsections (4) to (9) below, confirm the amalgamation or transfer; and Part III of Schedule 16 to this Act shall have effect with respect to the procedure on an application for such confirmation.
- (4) Subject to subsection (5) below, the Commission shall not confirm an amalgamation or transfer of engagements if it considers that—
 - (a) some information material to the members' decision about the amalgamation or transfer was not made available to all the members eligible to vote; or
 - (b) the vote on any resolution approving the amalgamation or transfer does not represent the views of the members eligible to vote; or

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- (c) some relevant requirement of this Act or the rules of any of the societies participating in the amalgamation or transfer was not fulfilled or not fulfilled as regards that society.
- (5) The Commission shall not be precluded from confirming an amalgamation or transfer of engagements by virtue only of the non-fulfilment of some relevant requirement of this Act or the rules of a society if it appears to the Commission that it could not have been material to the members' decision about the amalgamation or transfer and the Commission gives a direction that the failure is to be disregarded for the purposes of this section.
- (6) Where the Commission would be precluded from confirming an amalgamation or transfer of engagements by reason of any of the defects specified in paragraphs (a), (b) and (c) of subsection (4) above, it may direct any building society concerned—
 - (a) to take such steps to remedy the defect or defects, including the calling of a further meeting, as it specifies in the direction; and
 - (b) to furnish the Commission with evidence satisfying it that it has done so ;and, if the Commission is satisfied that the steps have been taken and the defect or defects has or have been substantially remedied, the Commission shall confirm the amalgamation or transfer; but, if it is not so satisfied, it shall refuse its confirmation.
- (7) The Commission shall not confirm an amalgamation of or transfer of engagements between any two building societies one of which does not have a qualifying asset holding and is, for the purposes of this subsection, of disproportionate size in relation to the other unless the Commission is satisfied that, as regards the smaller society, the amalgamation or transfer—
 - (a) has the requisite support of its members, or
 - (b) is desirable in order to protect the investments of share holders and depositors.
- (8) For the purposes of subsection (7) above—
 - (a) one society is of " disproportionate size " in relation to another if its total assets amount to less than one-eighth of the total assets of the other;
 - (b) " the requisite support ", in relation to the members of a society, is constituted by the votes of not less than 20 per cent, of the members qualified to vote on a special resolution of the society cast in favour of the special resolution approving the terms of the amalgamation or transfer of engagements; and
 - (c) " total assets ", in relation to a building society, means its total assets as shown in the latest balance sheet.
- (9) Where more than two building societies propose an amalgamation or transfer of engagements and, by virtue of subsection (7)(a) above the Commission refuses to confirm the amalgamation or transfer because of the failure of the smaller of any two of the societies that are of disproportionate size to secure the requisite support, the Commission shall refuse to confirm the amalgamation or transfer in relation to the other societies participating in the amalgamation or transfer.
- (10) A failure to comply with a relevant requirement of this Act or any rules of a society shall not invalidate an amalgamation or transfer of engagements; but, if a society fails without reasonable excuse to comply with such a requirement 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.
- (11) In this section "relevant requirement", with reference to this Act or the rules of a society, means a requirement of section 93 or 94 or this section or of Schedule 16

to this Act or of any rules prescribing the procedure to be followed by the society in approving or effecting an amalgamation or transfer of engagements.

96 Mergers: compensation for loss of office and bonuses to members

- (1) The terms of an amalgamation of or transfer of engagements between building societies may include provision for compensation to be paid by a society to or in respect of any director or other officer of that or any other society for loss of office or diminution of emoluments attributable to the amalgamation or transfer, but the provision must be authorised as follows, that is to say—
 - (a) except in so far as paragraph (b) below applies, the provision for such compensation to be paid by a society must be approved by the society by a resolution passed as a special resolution, not being the resolution required by section 93(2)(c) or 94(2) for the approval of the other terms of the amalgamation or transfer;
 - (b) if regulations are made under subsection (2) below authorising payments of such compensation within prescribed limits and the provision for such compensation includes only payments of amounts not exceeding the prescribed limits, the passing of the special resolution approving the terms of the amalgamation or transfer is sufficient authority for their payment.
- (2) The Commission, with the consent of the Treasury, may by regulations authorise payments by building societies of compensation to directors or other officers for loss of office or diminution of emoluments attributable to amalgamations of, or transfers of engagements between, societies subject to limits specified in or determinable under the regulations and the regulations may make different provision for different classes of person.
- (3) Nothing in subsection (1) or (2) above prevents a director or other officer from receiving payments from societies which, in the aggregate, exceed any limit applicable to him under subsection (2) above if the excess payment is included in provision approved as required by subsection (1)(a) above; but if any payment is received which has not been authorised under paragraph (a) or (b) of that subsection it shall be repaid.
- (4) The terms of an amalgamation of, or transfer of engagements between, building societies may include provision for part of the funds of one or more of the participating societies to be distributed in consideration of the amalgamation or transfer among any of the members of the participating societies, but the provision must be authorised as follows, that is to say—
 - (a) subject to paragraph (b) below, the provision for such a distribution by a society shall not exceed the limits prescribed by regulations under subsection (5) below and the distribution must be approved by the special resolution giving the approval of the society to the terms of the amalgamation or transfer;
 - (b) if the provision for such a distribution by a society exceeds the prescribed limits, it must be approved by the special resolution of that society and each of the other societies participating in the amalgamation or transfer by which each approved the terms of the amalgamation or transfer.
- (5) The Commission, with the consent of the Treasury, shall by regulations authorise distributions of funds to members by building societies participating in amalgamations or transfers of engagements subject to limits specified in or determinable under

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the regulations and the regulations may make different provision for different circumstances.

- (6) Where the terms of a transfer of engagements include provision for a distribution of the funds of the society transferring or the society undertaking the engagements and the society undertaking the engagements applies to the Commission for its consent to the society's approving the transfer by a resolution of the board of directors instead of a special resolution of the society, the Commission shall not give its consent unless it is satisfied that the distribution proposed to be made by each society will not exceed the prescribed limits.
- (7) The power to make regulations under subsection (2) or (5) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) In this section—
- " compensation " includes the provision of benefits in kind;
 - " distribution of funds " with reference to bonuses paid to members, includes distribution by means of a special rate of interest available to members for a limited period;
 - " loss of office " includes, in relation to a director or other officer of a building society holding office in a subsidiary of that society or in an associated body by virtue of his position in that society, the loss of that office;
 - " prescribed " with reference to limits on compensation or on distributions of assets, means prescribed by regulations under subsection (2) or (5) above, as the case may be.