Building Societies Act 1997

1997 CHAPTER 32

An Act to amend the Building Societies Act 1986; to make provision for amalgamating the Building Societies Investor Protection Board and the Deposit Protection Board into a single board and the Building Societies Investor Protection Fund and the Deposit Protection Fund into a single fund; and for connected purposes. [21st March 1997]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

VALID FROM 09/06/1997

PART I

CONSTITUTION AND POWERS

VALID FROM 01/12/1997

1 Principal purpose and powers.

(1) For subsection (1) of section 5 (establishment, constitution and powers) of the [M1]Building Societies Act 1986 ("the 1986 Act") there shall be substituted the following subsection—

"(1) A society may be established under this Act if (and only if) it complies with the following requirements, namely—

(a) its purpose or principal purpose is that of making loans which are secured on residential property and are funded substantially by its members; and

(b) its principal office is in the United Kingdom."

(2) After subsection (4) of that section there shall be inserted the following subsection—

"(4A) If, after its establishment, a building society fails to comply with the requirements imposed by subsection (1)(a) or (b) above—

(a) the powers conferred on the Commission by section 36 or 37 shall become exercisable in relation to the society; but

(b) the failure shall not affect the validity of any transaction or other act."

(3) For subsections (5) to (7) of that section there shall be substituted the following subsection—

"(5) Subject to the provisions of this Act, a building society shall have the powers conferred on it by its memorandum."

(4) For subsection (10) of that section there shall be substituted the following subsection—

"(10) In this Act "residential property" means land at least 40 per cent of which—

(a) is normally used as, or in connection with, one or more dwellings; or

(b) has been, is being or is to be developed or adapted for such use;

and for the purposes of this subsection, the area of any land which comprises a building or other structure containing two or more storeys shall be taken to be the aggregate of the floor areas of each of those storeys."

Commencement Information

I1 S. 1 in force at 1.12.1997 by S.I. 1997/2668, art. 2, **Sch. Pt. II** (subject as mentioned in art. 2(2)-(5) of that S.I.)

Marginal Citations

M1 1986 c.53.

VALID FROM 01/12/1997

2 Membership and liability of members.

(1) In paragraph 5 of Schedule 2 to the 1986 Act (membership), for sub-paragraphs (1) and (2) there shall be substituted the following sub-paragraphs—

"(1) The rules of a building society shall provide that no person shall be a member of the society unless he is a shareholding member or a borrowing member or both.

(2) In this Act, in relation to a building society—

"borrowing member" means, subject to sub-paragraphs (2A) and (2B) and paragraph 29(2) below, an individual who is indebted to the society—

(a) in respect of a loan which is fully secured on land; or

(b) if the rules of the society so provide, in respect of a loan which is (within the meaning of the rules) substantially secured on land;

"shareholding member" means a person who holds a share in the society.

(2A) If the rules of a building society so provide, an individual shall cease to be a borrowing member at any time if at that time the society—

(a) takes possession of, or exercises its power of sale in relation to, the whole or any part of the land on which the loan is secured; or

(b) obtains an order for foreclosure absolute or, in Scotland, foreclosure in respect of the whole or any part of that land.

(2B) Unless the rules of a building society so provide, an individual shall not be a borrowing member at any time if at that time the loan is owed to the society in equity rather than at law."

(2) In sub-paragraph (3) of that paragraph—

(a) in paragraph (b), after the words "may not" there shall be inserted the words " propose a resolution, "; and

(b) in paragraph (c), after the words "may not" there shall be inserted the words " join in requisitioning a special meeting or ".

(3) For paragraph 6 of that Schedule there shall be substituted the following paragraph—

"6 (1) The liability at any time of a shareholding member of a building society shall be limited to the amount which, at that time, has been actually paid, or is in arrear, on his shares in the society.

(2) The liability at any time of a borrowing member of a building society shall be limited to the amount which, at that time, is payable under the mortgage or other security by which his indebtedness to the society in respect of the loan is secured."

(4) For sub-paragraph (2) of paragraph 29 of that Schedule (borrowing members' resolutions) there shall be substituted the following sub-paragraph—

"(2) For the purposes of this Part of this Schedule, an individual who is indebted to a building society in respect of a loan fully secured on land is not a borrowing member of the society at any time if at that time the amount of his mortgage debt is less than the prescribed amount."

Commencement Information

I2 S. 2 in force at 1.12.1997 by S.I. 1997/2668, art. 2, **Sch. Pt. II** (subject as mentioned in art. 2(2)-(5) of that S.I.)

Status: *Point in time view as at 21/03/1997. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Building Societies Act 1997. (See end of Document for details)*

VALID FROM 01/12/1997

3 Capacity etc.

(1) In subsection (8) of section 5 of the 1986 Act—

(a) for paragraph (b) there shall be substituted the following paragraph—

"(b) Part II makes provision with respect to the capacity of a society and the powers of its directors to bind it; and"; and

(b) for the words from "and in this section" to the end there shall be substituted the words " and in this section "scheduled", with reference to requirements for establishment, means contained in that Schedule ".

(2) For Part II of Schedule 2 to the 1986 Act there shall be substituted the provisions set out in Schedule 1 to this Act (capacity of society and power of directors to bind it).

Commencement Information

I3 S. 3 in force at 1.12.1997 by S.I. 1997/2668, art. 2, **Sch. Pt. II** (subject as mentioned in art. 2(2)-(5) of that S.I.)

VALID FROM 01/12/1997

4 The lending limit.

For section 6 of the 1986 Act there shall be substituted the following section—

" Making loans

6 The lending limit.

(1) A building society shall secure that the difference between—

(a) the value of X on any quarter day; and

(b) the value of Y on that day or the value of Y on the immediately preceding quarter day, whichever is the greater,

does not exceed 25 per cent of that value of X.

(2) For the purposes of subsection (1) above—

X = the difference between the total assets of the society and any subsidiary undertakings of the society as shown in the society's accounts and the aggregate of—

(a) the liquid assets of the society and any such undertakings as shown in those accounts in pursuance of regulations under section 73(7);

(b) the fixed assets of the society and any such undertakings as so shown; and

(c) where any such undertakings are insurance companies within the meaning of the [M2]Insurance Companies Act 1982, such of

their assets as shown in those accounts as represent long term insurance funds; and

Y = the principal of, and interest accrued on, loans which are owed to the society or any subsidiary undertaking of the society and are fully secured on residential property;

and for the purposes of this subsection the total assets of a society and any subsidiary undertakings of the society shall be taken to be increased by the amount of any provision made for bad or doubtful debts of the society or any such undertaking.

(3) Any loans owed to the society or any subsidiary undertaking of the society shall be disregarded for the purposes of the definition of "Y" in subsection (2) above to the extent that they are not included in the total assets of the society and any such undertakings as shown in the society's accounts.

(4) Any reference in subsection (2) or (3) above to anything being shown in a society's accounts shall be construed—

(a) in relation to a quarter day on which a financial year of the society ends, as a reference to its being shown in the accounts prepared by the society for that year;

(b) in relation to any other quarter day, as a reference to its being shown in the accounts which would have been prepared by the society for the year ending on that day if that year were a financial year of the society.

(5) If a building society fails to comply with the requirement imposed by subsection (1) above—

(a) the powers conferred on the Commission by section 36 shall become exercisable in relation to the society; but

(b) the failure shall not affect the validity of any transaction or other act.

(6) The Treasury may by order substitute for the percentage specified in subsection (1) above such greater percentage (not greater than 40 per cent) as appears to them to be appropriate; and an order under this subsection may make such supplementary, transitional and saving provision as appears to the Treasury to be necessary or expedient.

(7) The Commission may, with the consent of the Treasury, by order—

(a) modify subsections (2) and (3) above in their application to assets of subsidiary undertakings;

(b) apply those subsections to corresponding assets of associated undertakings; or

(c) modify those subsections in their application to such assets.

(8) An order under subsection (7) above may make—

(a) different provision for different circumstances;

(b) provision for particular assets of undertakings to be disregarded; and

(c) such supplementary, transitional and saving provision as appears to the Commission to be necessary or expedient.

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(9) The power to make an order under subsection (6) or (7) above is exercisable by statutory instrument.

(10) No order shall be made under subsection (6) above unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.

(11) A statutory instrument containing an order under subsection (7) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(12) In this section "long term insurance funds", in relation to an insurance company within the meaning of the [M3]Insurance Companies Act 1982, means funds maintained by it—

(a) under section 28(1)(b) of that Act (assets attributable to long term business); or

(b) where it is incorporated in a country or territory outside the United Kingdom, under the corresponding provisions of the law of that country or territory.

(13) Where a loan is owed to a lending syndicate of which a building society or connected undertaking of a building society is a member, so much of the loan as is referable to the society's or undertaking's participation in the syndicate shall be treated for the purposes of this section and sections 6A and 6B as a loan owed to the society or undertaking.

(14) In this section and section 7—

"accounts"—

(a) in relation to a building society without subsidiary undertakings, means individual accounts under subsection (1) of section 72;

(b) in relation to such a society with such undertakings, means group accounts under subsection (2) of that section;

"quarter day", in relation to a building society, means a day on which a financial year of the society ends, or a day which is three months, six months or nine months after such a day;

and references to any value on a quarter day are references to that value at the close of business on that day.

(15) If an agreement between the Commission and a building society so provides, the definition of "quarter day" in subsection (14) above shall have effect in relation to the society as if for any reference to a number of months there were substituted a reference to a number of days specified in the agreement."

Commencement Information

I4 S. 4 in force at 1.12.1997 by S.I. 1997/2668, art. 2, **Sch. Pt. II** (subject as mentioned in art. 2(2)-(5) of that S.I.)

Marginal Citations

M2 1982 c.50.

M3 1982 c.50.

VALID FROM 01/12/1997

5 Loans secured on land.

After section 6 of the 1986 Act there shall be inserted the following section—

"6A Loans secured on land.

(1) For the purposes of this Act a loan is secured on land if it is secured by—
- (a) a mortgage of a legal estate in land in England and Wales or Northern Ireland;
- (b) a heritable security over land in Scotland; or
- (c) a qualifying security over land in an EEA country or territory other than the United Kingdom.

(2) For the purposes of this Act a loan is also secured on land if—
- (a) it is secured by a mortgage of an equitable interest in land in England and Wales or Northern Ireland;
- (b) the equitable interest is an equitable interest in land of a description, and is created in circumstances, prescribed in an order made by the Commission with the consent of the Treasury; and
- (c) any conditions prescribed in the order are complied with;

and an order under this subsection may apply in relation to securities held by or on behalf of building societies or connected undertakings of a description specified in the order, or securities held by or on behalf of all such societies or undertakings other than those of a description so specified.

(3) For the purposes of this Act—
- (a) a loan shall be treated as secured by a mortgage of a legal estate in registered land in England and Wales or Northern Ireland notwithstanding that the loan is made before the mortgagor is registered as proprietor of the estate; and
- (b) a loan shall be treated as secured by a heritable security over land in Scotland notwithstanding that the loan is made before title to that land has been transferred to the debtor in the heritable security.

(4) The Commission may, with the consent of the Treasury, by order provide for any provisions of this Act to have effect in relation to loans secured on land outside the European Economic Area with such modifications as appear to the Commission to be appropriate.

(5) An order under subsection (2) or (4) above may make such incidental, supplementary and transitional provision as appears to the Commission to be necessary or expedient.

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Changes to legislation: *There are currently no known outstanding effects for the Building Societies Act 1997. (See end of Document for details)*

(6) The power to make an order under subsection (2) or (4) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(7) In this section and section 6B—

"EEA country or territory" means a country or territory in the European Economic Area;

"qualifying security", in relation to land in an EEA country or territory other than the United Kingdom and a loan, means a security over the land which—

(a) acknowledges, and requires repayment of, the loan; and

(b) secures repayment of the loan on the land;

and for the purposes of this section and that section, the Channel Islands, the Isle of Man and Gibraltar shall be treated as included in the European Economic Area.

(8) In this Act "land", in the expression "loan secured on land", means—

(a) land in an EEA country or territory; and

(b) in so far as land in any other country or territory is, under any provision of this Act, land on which loans may be secured, land in that other country or territory."

Commencement Information

I5 S. 5 in force at 1.12.1997 by S.I. 1997/2668, art. 2, **Sch. Pt. II** (subject as mentioned in art. 2(2)-(5) of that S.I.)

VALID FROM 01/12/1997

6 Loans fully secured on land.

After section 6A of the 1986 Act there shall be inserted the following section—

"**6B Loans fully secured on land.**

(1) For the purposes of this Act a loan which is owed to a building society or a subsidiary undertaking of a building society and is secured on residential property or other land is fully secured on the land if—

(a) the principal of, and interest accrued on, the loan does not exceed the value of the requisite security; and

(b) no, or no more than one, mortgage of the land which has priority over the society's or undertaking's mortgage is outstanding in favour of an outside person.

(2) Where a mortgage of the residential property or other land which has priority over the society's or undertaking's mortgage is outstanding, the principal of the loan secured or, in the case of a loan by instalments,

intended to be secured by that mortgage shall be deducted from the value of the requisite security for the purposes of subsection (1)(a) above.

(3) Where the loan is secured on residential property or other land in the United Kingdom, any outstanding charge over the land which—

(a) in the case of land in England and Wales, is registered in the appropriate local land charges register;

(b) in the case of land in Scotland, is recorded in the Register of Sasines, or registered in the Land Register, under section 108 of the [M4]Civic Government (Scotland) Act 1982 or Schedule 9 to the [M5]Housing (Scotland) Act 1987;

(c) in the case of land in Northern Ireland, is registered in the statutory charges register under section 87 of, and Schedule 11 to, the [M6]Land Registration Act (Northern Ireland) 1970,

shall be disregarded for the purposes of subsections (1)(b) and (2) above.

(4) Where, on the occasion on which a building society or a subsidiary undertaking of a building society makes or acquires a loan which is secured on land, the society or undertaking is satisfied that the loan is—

(a) a loan which is fully secured on residential property;

(b) a loan which is not so secured but is fully secured on land; or

(c) a loan which is not fully secured on land,

the loan shall be treated as such a loan for the purposes of this Act until such time (if any) as subsection (7) below applies.

(5) Subsection (4) above shall have effect in relation to a loan which the society or undertaking makes by two or more payments on different dates as if—

(a) the reference to the occasion on which the society or undertaking makes the loan were a reference to the occasion on which it makes the first of the payments;

(b) other references to the loan were references to it in its intended maximum amount; and

(c) the value of any security for the loan were its expected maximum value.

(6) Where a building society or a subsidiary undertaking of a building society makes or acquires a loan which is secured on land, the society or undertaking shall be deemed to be satisfied as mentioned in paragraph (c) of subsection (4) above until such time (if any) as it is satisfied as mentioned in paragraph (a) or (b) of that subsection.

(7) Where at any time, in the case of a loan treated as falling within paragraph (a), (b) or (c) of subsection (4) above, the society or undertaking—

(a) is satisfied—

(i) on a revaluation that the value of the requisite security has changed;

(ii) on notice given to it by the borrower that there has been a change in the use of the land;

(iii) that so much of the mortgage debt as represents the principal of the loan has changed;

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(iv) that the principal of the loan secured by a prior mortgage has changed or has been repaid; or

(v) that the relative priority of the mortgage of the land on which the loan is secured has changed;

(b) is also satisfied that the change or repayment is such that, if it were to make a loan equal to the mortgage debt at that time, the loan would instead be a loan falling within another of those paragraphs; and

(c) in a case falling within paragraph (a)(i) above, elects that this subsection shall apply,

the loan shall be treated as such a loan for the purposes of this Act until such time (if any) as this subsection again applies.

(8) In this section—

"outside person", in relation to a building society or a subsidiary undertaking of a building society, means any person other than the following, namely—

(a) the society;

(b) a subsidiary undertaking of the society;

(c) a lending syndicate of which the society or such an undertaking is a member; and

(d) trustees of a trust under which the society or such an undertaking is a beneficiary;

"the requisite security", in relation to a loan secured on residential property or other land, means—

(a) the security constituted by the legal estate in, or the heritable or qualifying security over, the land; or

(b) in a case where an equitable interest in land in England and Wales or Northern Ireland is or is also taken as security, that constituted by that security or, as the case may be, the combined securities;

"trust" includes arrangements—

(a) which have effect under the law of a country or territory outside the United Kingdom; and

(b) under which persons acting in a fiduciary capacity hold and administer property on behalf of other persons,

and "beneficiary" and "trustees", in relation to such arrangements, shall be construed accordingly.

(9) In the application of subsections (1), (2) and (7) above to residential property or other land in Scotland or an EEA country or territory other than the United Kingdom, references to a mortgage of the land shall be construed as references to a heritable or, as the case may require, qualifying security over the land."

Commencement Information

I6 S. 6 in force at 1.12.1997 by S.I. 1997/2668, art. 2, **Sch. Pt. II** (subject as mentioned in art. 2(2)-(5) of that S.I.)

Marginal Citations

M4 1982 c.45.
M5 1987 c.26.
M6 1970 c.18 (N.I.).

VALID FROM 01/12/1997

7 Discharge of mortgages.

(1) After section 6B of the 1986 Act there shall be inserted the following section—

"**6C Discharge of mortgages.**

Schedule 2A to this Act, which contains supplementary provisions as to the discharge of mortgages, shall have effect."

(2) After Schedule 2 to the 1986 Act there shall be inserted, as Schedule 2A, the provisions set out in Schedule 2 to this Act (supplementary provisions as to the discharge of mortgages).

VALID FROM 01/12/1997

8 The funding limit.

For section 7 of the 1986 Act there shall be substituted the following section—

"**7 The funding limit.**

(1) A building society shall secure that the difference between—
(a) the value of X on any quarter day; and
(b) the value of Y on that day or the value of Y on the immediately preceding quarter day, whichever is the greater,
does not exceed 50 per cent of that value of X.

(2) For the purposes of subsection (1) above—

X = the aggregate of the following, namely—
(a) the principal value of, and interest accrued on, shares in the society;
(b) the principal of, and interest accrued on, sums deposited with the society or any subsidiary undertaking of the society; and
(c) the principal value of, and interest accrued under, bills of exchange, instruments or agreements creating or acknowledging indebtedness and accepted, made, issued or entered into by the society or any such undertaking; and

Y = the principal value of, and interest accrued on, shares in the society held by individuals otherwise than as bare trustees (or,

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in Scotland, simple trustees) for bodies corporate or for persons who include bodies corporate.

(3) The following shall be disregarded for the purposes of subsection (2) above, namely—

(a) any sums or amounts which are own funds; and

(b) to the extent that they are not included in the total liabilities of the society and any subsidiary undertakings of the society as shown in the society's accounts—

(i) any sums deposited with the society or any such undertaking; and

(ii) any indebtedness created or acknowledged by bills of exchange, instruments or agreements accepted, made, issued or entered into by the society or any such undertaking.

(4) The reference in subsection (3) above to anything being shown in a society's accounts shall be construed—

(a) in relation to a quarter day on which a financial year of the society ends, as a reference to its being shown in the accounts prepared by the society for that year;

(b) in relation to any other quarter day, as a reference to its being shown in the accounts which would have been prepared by the society for the year ending on that day if that year were a financial year of the society.

(5) If a building society fails to comply with the requirement imposed by subsection (1) above—

(a) the powers conferred on the Commission by section 36 shall become exercisable in relation to the society; but

(b) the failure shall not affect the validity of any transaction or other act.

(6) Where an individual declares that he is acquiring any shares in a building society otherwise than as a bare trustee (or, in Scotland, a simple trustee) for a body corporate, or for persons who include a body corporate, he shall, unless the contrary is shown, be conclusively presumed for the purposes of this section to hold the shares otherwise than as such a trustee.

(7) The Commission may, with the consent of the Treasury, by order—

(a) modify subsections (2) and (3) above in their application to liabilities of subsidiary undertakings;

(b) apply those subsections to corresponding liabilities of associated undertakings; or

(c) modify those subsections in their application to such liabilities.

(8) An order under subsection (7) above may make—

(a) different provision for different circumstances;

(b) provision for particular liabilities of undertakings to be disregarded; and

(c) such supplementary, transitional and saving provision as appears to the Commission to be necessary or expedient.

(9) The power to make an order under subsection (7) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament."

Commencement Information

I7 S. 8 in force at 1.12.1997 by S.I. 1997/2668, art. 2, **Sch. Pt. II** (subject as mentioned in art. 2(2)-(5) of that S.I.)

VALID FROM 01/12/1997

9 Raising funds and borrowing.

For section 8 of the 1986 Act there shall be substituted the following section—

"**8 Raising funds and borrowing.**

(1) Subject to subsection (2) below, a building society shall not do any of the following things, namely—
- (a) accept a deposit from an individual;
- (b) raise funds from an individual otherwise than by the issue of shares; and
- (c) raise funds from a body corporate, or from a bare trustee (or, in Scotland, a simple trustee) for a body corporate or for persons who include a body corporate, otherwise than by the issue of deferred shares.

(2) Nothing in subsection (1)(a) above shall apply in relation to—
- (a) the maintenance on behalf of an individual of a current account, or a deposit account which contains in its title the word "client" or the word "trust" or "trustee";
- (b) the issue to an individual of a transferable instrument;
- (c) the acceptance from an individual of a qualifying time deposit or an overseas deposit; or
- (d) in the case of a building society which has announced publicly that it intends, in accordance with section 97 and the other applicable provisions of this Act, to transfer the whole of its business to a company, anything done by the society during the period of two years beginning with the date of the announcement.

(3) The Commission may, if it thinks fit, extend or further extend the period mentioned in subsection (2)(d) above if written application is made to it before the expiry of that period or that period as extended; and a direction under this subsection—
- (a) shall be in writing;
- (b) may be given subject to such limitations or conditions as the Commission may think fit.

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Changes to legislation: *There are currently no known outstanding effects for the Building Societies Act 1997. (See end of Document for details)*

(4) A contravention of subsection (1) above shall not invalidate any transaction or other act.

(5) The power of a building society to raise funds by the issue of shares is a power—

(a) to issue shares of one or more denominations, whether in sterling or another currency; and

(b) to issue them either as shares paid up in full or as shares to be paid by periodical or other payments, and (in either case) with accumulating or other interest;

and funds so raised may be repaid when they are no longer required for the purposes of the society.

(6) In the case of deferred shares, the power of a building society to raise funds by the issue of shares includes the issue of shares at a premium.

(7) If a building society issues deferred shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to the society's reserves.

(8) For the purposes of this section the acceptance of deposits (including the issue of debt securities) shall not constitute the raising of funds.

(9) In this section, in relation to a building society—

"overseas deposit" means a deposit which is accepted by a branch or agency of the society in a country or territory outside the United Kingdom and is repayable in such a country or territory;

"qualifying time deposit" has the meaning given by section 482(6) of the [M7]Income and Corporation Taxes Act 1988;

"raise funds" means, subject to subsection (8) above, raise funds by the issue of shares or other securities;

"transferable instrument" means an instrument which embodies a transferable right to receive an amount referable to a deposit with the society.

(10) A right is transferable for the purposes of the definition of "transferable instrument" in subsection (9) above if it is transferable by delivery of the instrument, or it is a right—

(a) which may, under the terms of the instrument, be held by any person, or by any person other than a person of a description specified in the instrument;

(b) express provision for the transfer of which is included in the instrument; and

(c) the transfer of which, under the terms of the instrument, does not require the consent of any person.

(11) Where an individual declares that he is acquiring any shares in a building society otherwise than as a bare trustee (or, in Scotland, a simple trustee) for a body corporate, or for persons who include a body corporate, he shall, unless the contrary is shown, be conclusively presumed for the purposes of this section to hold the shares otherwise than as such a trustee.

(12) The Commission may, with the consent of the Treasury, by order vary subsections (2), (9) and (10) above by adding to or deleting from them any provision or by varying any provision contained in them; and an order under this subsection may make such supplementary, transitional and saving provision as appears to the Commission to be necessary or expedient.

(13) The power to make an order under subsection (12) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament."

Commencement Information

I8 S. 9 in force at 1.12.1997 by S.I. 1997/2668, art. 2, **Sch. Pt. II** (subject as mentioned in art. 2(2)-(5) of that S.I.)

Marginal Citations

M7 1988 c.1.

VALID FROM 01/12/1997

10 Restrictions on certain transactions.

After section 9 of the 1986 Act there shall be inserted the following section—

" Restrictions on powers

9A Restrictions on certain transactions.

(1) Subject to subsections (2) to (4) below, a building society shall not do, and shall secure that each of its subsidiary undertakings does not do, any of the following things, namely—

(a) act as a market maker in securities, commodities or currencies;

(b) trade in commodities or currencies; and

(c) enter into any transaction involving derivative investments;

but a contravention of this subsection shall not invalidate any transaction or other act.

(2) No transaction entered into by a building society, or a subsidiary undertaking of a building society, shall be taken into account for the purposes of subsection (1)(a) above if—

(a) it relates only to securities or currencies or both and the amount or value of the consideration given by the society or undertaking does not exceed £100,000; or

(b) it is entered into in the society's or undertaking's capacity as the manager of a collective investment scheme.

(3) No transaction so entered into shall be taken into account for the purposes of subsection (1)(b) above if—

Status: *Point in time view as at 21/03/1997. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Building Societies Act 1997. (See end of Document for details)*

(a) it relates only to currencies and the amount or value of the consideration given by the society or undertaking does not exceed £100,000; or

(b) it is ancillary or incidental to another transaction entered into by the society or undertaking.

(4) Nothing in subsection (1)(c) above shall apply in relation to any transaction entered into by a building society, or a subsidiary undertaking of a building society, if—

(a) it is entered into in the society's or undertaking's capacity as the manager of a collective investment scheme;

(b) it is entered into for the purpose of limiting the extent to which the society, or a connected undertaking of the society, will be affected by changes in any of the following factors, namely—

(i) interest rates;

(ii) exchange rates;

(iii) any index of retail prices;

(iv) any index of residential property prices; and

(v) any index of the prices of securities; or

(c) it involves a derivative investment falling within paragraph (d) of the definition in subsection (9) below and it is entered into for the purpose of limiting the extent to which any person will be affected by changes in any interest or exchange rate applicable to—

(i) a loan owed by him to;

(ii) shares held by him in; or

(iii) a deposit of his with,

the society, or a connected undertaking of the society.

(5) Nothing in subsection (1)(c) above shall apply in relation to any transaction entered into by a subsidiary undertaking of a building society, if it is entered into in the undertaking's capacity—

(a) as a body authorised under section 3 or 4 of the [M8]Insurance Companies Act 1982 (authorised insurance companies) to carry on insurance business of a class specified in Schedule 1 to that Act (classes of long term business); or

(b) as an EC company which is authorised under Article 6 of the first long term insurance Directive;

and in this subsection expressions which are also used in that Act have the same meanings as in that Act.

(6) A building society shall also do all that is reasonably practicable to secure that neither it nor any of its subsidiary undertakings (either alone or with any or any others of those undertakings)—

(a) holds at any time more than 5 per cent of the issued share capital; or

(b) is at any time entitled to exercise, or to control the exercise of, more than 5 per cent of the voting power at any general meeting,

of an undertaking which is, at that time, doing any of the things which the society is prohibited from doing by subsection (1) above, or an

undertaking whose subsidiary undertaking is, at that time, doing any of those things.

(7) The monetary limit in subsection (2) or (3) above refers to the time when the transaction is entered into; and where the amount or value of the consideration there referred to is not in sterling, it shall be converted at the rate of exchange prevailing at that time.

(8) For the purposes of subsection (2) or (3) above, two or more transactions which form part of a larger transaction or series of transactions shall be treated as a single transaction.

(9) In this section—

"collective investment scheme" has the same meaning as in the [M9]Financial Services Act 1986;

"commodity" means any produce of agriculture, forestry or fisheries, or any mineral, either in its natural state or having undergone only such processes as are necessary or customary to prepare the produce or mineral for the market;

"derivative investment" means any investment of a description falling within one or more of the following paragraphs of Part I of Schedule 1 to the Financial Services Act 1986, namely—

(a) paragraph 4 (instruments entitling to shares or securities);

(b) paragraph 7 (options);

(c) paragraph 8 (futures); and

(d) paragraph 9 (contracts for differences etc);

"market maker" means, subject to subsection (10) below, a person who holds himself out as willing at all normal times to buy or sell at a price specified by him securities, commodities or currencies of a particular description;

"securities" means shares, stock, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme and other securities of any description.

(10) A building society, or subsidiary undertaking of a building society, shall not by reason of holding itself out as willing to issue its own securities be regarded for the purposes of this section as acting as a market maker in such securities.

(11) The Treasury may by order vary subsections (1) to (10) above by adding to or deleting from them any provision or by varying any provision contained in them.

(12) The Commission may, with the consent of the Treasury, by order—

(a) substitute for the amount specified in subsection (2) or (3) above, or for the percentage specified in subsection (6) above, such other amount or percentage as it thinks appropriate; or

(b) vary subsection (4)(b) above by adding to or deleting from it any reference to a factor or by varying any reference to a factor contained in it.

(13) An order under subsection (11) or (12) above may make—

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Changes to legislation: *There are currently no known outstanding effects for the Building Societies Act 1997. (See end of Document for details)*

(a) different provision for different cases or purposes; and

(b) such supplementary, transitional and saving provision as appears to the Treasury or, as the case may be, the Commission to be necessary or expedient;

and the power to make such an order is exercisable by statutory instrument.

(14) No order shall be made under subsection (11) above unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.

(15) A statutory instrument containing an order under subsection (12) above shall be subject to annulment in pursuance of a resolution of either House of Parliament."

Commencement Information

I9 S. 10 in force at 1.12.1997 by S.I. 1997/2668, art. 2, **Sch. Pt. II** (subject as mentioned in art. 2(2)-(5) of that S.I.)

Marginal Citations

M8 1982 c.50.

M9 1986 c.60.

11 Restriction on creation of floating charges.

After section 9A of the 1986 Act there shall be inserted the following section—

"**9B Restriction on creation of floating charges.**

(1) A building society shall not create a floating charge on the whole or part of its undertaking or property.

(2) A floating charge created in contravention of this section shall be void."

VALID FROM 01/12/1997

12 Superseded provisions of 1986 Act.

(1) The following provisions of the 1986 Act (which are superseded by the foregoing provisions of this Part and this section) shall cease to have effect, namely—

(a) Part III (advances, loans and other assets);

(b) section 33 (assistance to other building societies);

(c) Part V (powers to provide services); and

(d) sections 38 to 40 (power to determine extent of building society powers).

(2) In relation to any time after Schedule 4 to the 1986 Act ceases to have effect by virtue of subsection (1) above, any rule of law requiring a mortgagee to take reasonable care to obtain a proper price or true market value shall have effect as if paragraph 1(1)(a) of that Schedule (duty to take reasonable care to ensure best

price that can reasonably be obtained), and corresponding earlier enactments, had not been enacted.

(3) In so far as a building society is carrying on any activity comprised in the provision of a banking service, it shall be treated for all purposes—

(a) as a bank and a banker; and

(b) as carrying on the business of banking or a banking undertaking,

whether or not it would be so treated apart from this subsection.

(4) In this section "mortgagee", as respects Scotland, has the meaning given by section 119(2) of the 1986 Act.

Commencement Information

I10 S. 12 partly in force; S. 12 not in force at Royal Assent see s. 47(3); s. 12(1)(a) partly in force and 12(2)(4) wholly in force at 1.12.1997 by S.I. 1997/2668, **art. 2 Sch. Pt. I**; S. 12 in force at 1.12.1997 by S.I. 1997/2668, art. 2, **Sch. Pt. II** (subject as mentioned in art. 2(2)-(5) of that S.I.)

VALID FROM 09/06/1997

PART II

POWERS OF CONTROL OF COMMISSION

VALID FROM 01/12/1997

13 Power to direct restructuring of business etc.

(1) For section 36 of the 1986 Act there shall be substituted the following section—

" Powers in relation to principal purpose and nature limits

36 Power to direct restructuring of business etc.

(1) The provisions of this section have effect where, by reason of a building society's failure to comply with—

(a) the requirement imposed by section 5(1)(a) or (b) (purpose or principal purpose and principal office);

(b) the requirement imposed by section 6(1) (the lending limit); or

(c) the requirement imposed by section 7(1) (the funding limit),

the powers conferred by this section become exercisable by the Commission in relation to the society (the requirements referred to in paragraphs (a), (b) and (c) above being referred to in this section as "the relevant statutory requirements").

Status: *Point in time view as at 21/03/1997. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Building Societies Act 1997. (See end of Document for details)*

(2) The Commission may give the society a direction under subsection (3), (5) or (6) below.

(3) A direction by the Commission under this subsection is a direction requiring the society, within a specified period, to submit for its approval a plan (in this section referred to as a "restructuring plan") designed to secure the following purposes, that is to say—

(a) that the society will, by the end of a specified period, comply with the relevant statutory requirements as applied at the last day of that period, and

(b) that it will not thereafter fail to comply with those requirements.

(4) For the purpose of applying the relevant statutory requirements as directed by subsection (3)(a) above—

(a) in the case of a requirement which operates by reference to a quarter day, the day as at which the requirements are to be applied shall be treated as such a day; and

(b) the assets and liabilities of the society shall be determined by reference to a balance sheet prepared by the directors by reference to that day and sent to the Commission within the period of three months beginning with that day;

and subsection (4) of section 81 shall apply in the event of a default in complying with this provision as it applies in the event of a default in complying with subsection (2) of that section.

(5) A direction by the Commission under this subsection is a direction requiring the society—

(a) within a specified period, to submit to its members for their approval at a meeting the requisite transfer resolutions for a transfer of the business of the society to a company under section 97; and

(b) to notify the Commission of the result of the meeting.

(6) A direction by the Commission under this subsection is a direction requiring the society, at its option, either—

(a) within a specified period, to submit for approval a restructuring plan; or

(b) within a specified period, to submit to its members for their approval at a meeting the requisite transfer resolutions for a transfer of the business of the society to a company under section 97;

and, within a specified period, to notify the Commission of the option it has decided to pursue.

(7) Where the Commission gives a direction under subsection (3), (5) or (6) above, it may also give a direction under this subsection—

(a) imposing limitations on the issue of shares, the acceptance of deposits or the making of loans;

(b) requiring the society within a specified period to take certain steps, or to refrain from adopting or pursuing a particular course of action, or to restrict the scope of its business in a particular way;

(c) requiring the society within a specified period to take steps with regard to the conduct of the business of any connected undertaking of the society;

(d) requiring within a specified period the removal of any director or other officer.

(8) Where a restructuring plan is submitted by a society to the Commission under subsection (3) or (6) above then—

(a) if it appears to the Commission that the plan is reasonably likely to secure its purposes, the Commission shall approve it and direct the society to carry it out;

(b) if it appears to it that the plan is, with modifications, likely to secure its purposes and the Commission and the society agree on appropriate modifications within the period of 21 days from the date on which the Commission notifies the society of the modifications it proposes for the society's agreement, the Commission shall approve the plan as modified and direct the society to carry it out;

but otherwise it shall reject the plan.

(9) Where a meeting is held, in pursuance of a direction under subsection (5) or (6) above, for the purpose of voting on the requisite transfer resolutions, then—

(a) if the resolutions are agreed to and the confirmation of the transfer by the Commission is obtained, the society shall proceed under section 97 to transfer its business to a successor company;

(b) if either resolution is disagreed to, the society shall notify the Commission of that fact as soon as it is practicable to do so.

(10) In the event of the Commission receiving a notice from a society under subsection (9)(b) above, it may, if it thinks fit, serve on the society a direction requiring it, within a specified period, to submit to the Commission for its approval a restructuring plan; and if the Commission does so, subsection (8) above shall apply as if the plan had been submitted under subsection (3) above.

(11) The Commission may, if it thinks fit, extend or further extend any period during which a building society is to take any steps required of it under any of the foregoing provisions of this section and may do so whether or not application is made to it before the expiry of the period in question.

(12) If a building society which has been directed under subsection (8) above to carry out a restructuring plan fails, within the period allowed to it under the foregoing provisions of this section, to secure the purpose of the plan specified in subsection (3)(a) above, the powers conferred on the Commission by section 36A shall become exercisable in relation to the society.

(13) If a building society fails, within the period allowed to it under the foregoing provisions of this section—

(a) where it has been given a direction under subsection (3) or (10) above, to submit a restructuring plan;

(b) where it has been given a direction under subsection (5) above, to submit to members the requisite transfer resolutions;

(c) where it has been given a direction under subsection (6) above, to either submit a restructuring plan or submit to members the requisite transfer resolutions;

(d) where it has been given a direction under subsection (7) above, to comply with any requirement imposed by the direction;

(e) where it has been directed under subsection (8) above to carry out a restructuring plan, to secure the purpose of the plan specified in subsection (3)(a) above;

(f) to agree to the requisite transfer resolutions submitted to the members in pursuance of subsection (5) or (6) above; or

(g) where it has agreed to the requisite transfer resolutions, to proceed under section 97 to transfer its business to the successor company,

or if the Commission rejects a restructuring plan under subsection (8) above, the powers conferred on the Commission by section 37 shall become exercisable in relation to the society.

(14) The provisions of Schedule 7A to this Act regulating the giving of directions apply in relation to directions under subsection (3), (5), (6), (7) or (10) above.

(15) In this section—

"confirmation", "the requisite transfer resolutions" and "transfer" have the same meaning as in section 97;

"quarter day" has the same meaning as in sections 6 and 7.

(16) Nothing in this section implies that it is improper for the Commission to give to a building society or building societies generally an indication of the action it might or might not take in relation to any proposed activity of theirs."

(2) After Schedule 7 to the 1986 Act there shall be inserted, as Schedule 7A, the provisions set out in Schedule 3 to this Act (supplementary provisions as to directions).

Commencement Information

I11 S. 13 in force at 1.12.1997 by S.I. 1997/2668, art. 2, **Sch. Pt. II** (subject as mentioned in art. 2(2)-(5) of that S.I.)

VALID FROM 01/12/1997

14 Power to make prohibition orders.

After section 36 of the 1986 Act there shall be inserted the following section—

"36A Power to make prohibition orders.

(1) Where by virtue of section 36(12) the powers conferred by this section become exercisable in relation to a building society, the Commission may serve on the society a notice of the Commission's intention to issue a prohibition order directed to the society.

(2) A prohibition order under this section is an order—

(a) prohibiting, subject to the saving or transitional provisions of the order, the continuance or, as the case may be, the carrying on of the activity specified in the order after a date so specified, either absolutely or unless conditions so specified are complied with; and

(b) requiring, subject to the saving or transitional provisions of the order, the disposal within a period specified in the order of all assets acquired or otherwise in its possession by virtue of the activity.

(3) A disposal of assets in pursuance of a prohibition order shall vest the assets in the transferee but without prejudice to any claim against the society by a person who had an interest in the assets.

(4) The saving or transitional provisions which may be included in a prohibition order shall be such as appear to the Commission to be just having regard to—

(a) the interests of shareholders of and depositors with the society; and

(b) the interests of other persons who will be affected by the order.

(5) A notice under subsection (1) above of the Commission's intention to issue a prohibition order shall—

(a) specify the date on which the order is to be issued, being a date not earlier than the end of the period of 21 days beginning with the date of the notice;

(b) specify the terms of the order, including any saving or transitional provisions proposed to be included in it; and

(c) inform the society of its right to make representations to the Commission, not less than 7 days before the date specified in the order, as to the provisions to be included in the order.

(6) After considering any representations made by the society, the Commission may make the prohibition order with such saving and transitional provisions (if any) as it thinks just; and where it does so, the Commission—

(a) shall issue the order by causing it to be served on the society; and

(b) shall direct the central office to keep a copy of it in the public file of the society.

(7) A prohibition order so made and issued shall, subject to subsection (11) below, take effect on the date specified in the order.

(8) A copy of any order issued under subsection (6) above shall also be served on each director and on the chief executive of the society.

(9) The requirement of subsection (8) above, so far as it relates to directors, is satisfied by serving a copy on each director whose appointment has been officially notified and the non-receipt of a copy by a director or the chief executive does not affect the validity of the order.

(10) Subject to subsection (11) below, a prohibition order shall remain in force until revoked by the Commission.

(11) The Commission may suspend or revoke a prohibition order so far as it relates to an asset the disposal of which appears to it, on the application of the society, to be impracticable.

(12) If a society contravenes a prohibition order issued against it under this section—

(a) the power conferred on the Commission by section 37(1) shall become exercisable in relation to the society; and

(b) the Commission may exercise that power or certify the contravention in writing to the High Court, or do both of those things;

but the contravention shall not invalidate any transaction or other act.

(13) On receiving such a certification, the High Court—

(a) may inquire into the case; and

(b) after hearing any witnesses who may be produced against or on behalf of the society and after hearing any statement which may be offered in defence, may punish the society in like manner as if it had been guilty of contempt of the court.

(14) Where a contravention of a prohibition order which is so certified is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the society he, as well as the society, may be punished in like manner as if he had been guilty of contempt of the court.

(15) In the application of this section to a building society whose principal office is in Scotland, references to the High Court shall be read as references to the Court of Session."

Commencement Information

I12 S. 14 in force at 1.12.1997 by S.I. 1997/2668, art. 2, **Sch. Pt. II** (subject as mentioned in art. 2(2)-(5) of that S.I.)

VALID FROM 01/12/1997

15 Powers to petition for winding up etc.

For section 37 of the 1986 Act there shall be substituted the following section—

"**37 Powers to petition for winding up etc.**

(1) Where—

(a) by virtue of section 36(13) the powers conferred by this section become exercisable in relation to a building society;

(b) by virtue of section 36A(12) the power conferred by this subsection becomes so exercisable; or

(c) the Commission has reason to believe that a building society has ceased to comply with the requirement imposed by section 5(1)(a) (purpose or principal purpose),

the Commission may present a petition to the High Court for the winding up of the society under the applicable winding up legislation; and the power conferred by this subsection is available to the Commission whether or not it has previously presented a petition.

(2) Where by virtue of section 36(13) the powers conferred by this section become exercisable in relation to a building society, the Commission may make an application to the High Court for an order giving directions to the society under subsection (3) below; and the power conferred by this subsection is available to the Commission whether or not it has previously made an application for such an order.

(3) An order under this subsection is an order directing the society to comply with a direction under subsection (3), (5), (6), (7) or (10) of section 36 as directed in the order, or to carry out a restructuring plan as so directed.

(4) Where the High Court makes an order under subsection (3) above, the Commission shall give a copy of it to the central office and the central office shall keep the copy in the public file of the society.

(5) The High Court shall not make an order winding up the society on an application under subsection (1)(c) above unless it is satisfied that the society has ceased to comply with the requirement imposed by section 5(1)(a).

(6) In the application of this section to a building society whose principal office is in Scotland, references to the High Court shall be read as references to the Court of Session."

Commencement Information

I13 S. 15 in force at 1.12.1997 by S.I. 1997/2668, art. 2, **Sch. Pt. II** (subject as mentioned in art. 2(2)-(5) of that S.I.)

16 Imposition or variation of conditions in urgent cases.

After section 42 of the 1986 Act there shall be inserted the following section—

Status: *Point in time view as at 21/03/1997. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Building Societies Act 1997. (See end of Document for details)*

"42A Imposition or variation of conditions in urgent cases.

(1) No notice need be given under Part III or Part IV of Schedule 3 to this Act in respect of the imposition of conditions under section 42 in any case in which the Commission considers that the conditions should be imposed as a matter of urgency.

(2) Conditions imposed under section 42 may be varied by the Commission without the agreement of the building society concerned in any case in which the Commission considers that the conditions should be varied as a matter of urgency.

(3) In any such case the Commission may by written notice to the building society concerned impose or vary the conditions.

(4) Any such notice shall state the reasons for which the Commission has acted and particulars of the rights conferred by subsection (6) below and by section 46.

(5) If conditions as imposed or varied by a notice under subsection (3) above include a requirement for the removal from office of any person who is an officer of the society, the Commission shall give that person—

(a) a copy of that notice; and

(b) a statement of his rights under subsection (6) below;

but the Commission may omit from a copy notice given to a person by virtue of this subsection any matter which does not relate to him.

(6) A building society to which a notice is given under subsection (3) above of the imposition or variation of conditions, and a person who is given a copy of it by virtue of subsection (5) above, may within the period of 14 days beginning with the day on which the notice was given make representations to the Commission.

(7) After giving a notice under subsection (3) above imposing or varying conditions and taking into account any representations made in accordance with subsection (6) above the Commission shall decide whether—

(a) to confirm or rescind its original decision; or

(b) to impose different conditions or to vary the conditions in a different manner.

(8) The Commission shall within the period of 28 days beginning with the day on which the notice was given under subsection (3) above give the building society concerned written notice of its decision under subsection (7) above and, except where the decision is to rescind the original decision, the notice shall state the reasons for the decision.

(9) Where the notice under subsection (8) above is of a decision to take the action specified in subsection (7) (b) above the notice under subsection (8) shall have the effect of imposing the conditions specified in the notice, or varying the conditions in the manner so specified, with effect from the date on which the notice is given."

Status: *Point in time view as at 21/03/1997. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Building Societies Act 1997. (See end of Document for details)*

17 Power to direct transfers of engagements or business.

(1) After section 42A of the 1986 Act there shall be inserted the following section—

"**42B Power to direct transfers of engagements or business.**

(1) If, with respect to a building society for which an authorisation is in force, the Commission considers it expedient to do so in order to protect the investments of shareholders or depositors, it may either—
   (a) direct the society, within a specified period, to transfer all its engagements to one or more other building societies under section 94; or
   (b) direct the society, within a specified period, to transfer its business to an existing company under section 97.

(2) Failure by a society to comply with a direction given under subsection (1) shall render it liable to have its authorisation revoked under section 43(1).

(3) Where the Commission—
   (a) gives a building society a direction under subsection (1)(a) above; or
   (b) does not give a building society such a direction solely because the society is already seeking to transfer all its engagements to one or more other building societies under section 94,

   the Commission may, if it considers it expedient to do so in order to protect the investments of shareholders or depositors, direct that, instead of resolving to transfer its engagements by the two resolutions required by section 94(2) (with or without the additional resolution required by section 94(3)), the society may resolve to do so by a resolution of the board of directors.

(4) Where the Commission—
   (a) gives a building society a direction under subsection (1)(b) above; or
   (b) does not give a building society such a direction solely because the society is already seeking to transfer its business to an existing company under section 97,

   the Commission may, if it considers it expedient to do so in order to protect the investments of shareholders or depositors, direct that, instead of approving the transfer and the terms of the transfer by the two resolutions required by section 97(4)(c), the society may approve the transfer and those terms by a resolution of the board of directors.

(5) A direction under subsection (3) or (4) above—
   (a) shall be in writing;
   (b) may be given subject to such limitations or conditions as the Commission may think fit; and
   (c) unless renewed by a further direction, shall cease to have effect at the end of the period of 90 days beginning with the day on which it is given.

(6) Section 45 has effect for the purpose of any determination whether or not it is expedient to exercise the powers conferred by this section.

(7) In Schedule 8A to this Act—

Status: *Point in time view as at 21/03/1997. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Building Societies Act 1997. (See end of Document for details)*

(a) Part I (which contains provisions modifying sections 94 to 96 and Schedule 16 to this Act) shall apply where a direction is given under subsection (3) above; and

(b) Part II (which contains provisions modifying sections 97 to 100 and Schedule 17 to this Act) shall apply where a direction is given under subsection (4) above.

(8) The Commission, with the consent of the Treasury, may make regulations for the purpose of specifying, as prescribed matters—

(a) the matters of which statements under paragraph 3 of Schedule 8A to this Act are to give particulars; and

(b) the matters of which statements under paragraph 9 of that Schedule are to give particulars.

(9) The power to make regulations under this section is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament."

(2) Immediately before Schedule 9 to the 1986 Act there shall be inserted, as Schedule 8A, the provisions set out in Schedule 4 to this Act (transfer directions: modifications of Part X).

18 Notification and confirmation of transfer directions.

After section 42B of the 1986 Act there shall be inserted the following section—

"**42C Notification and confirmation of transfer directions.**

(1) A direction under section 42B(1) shall be given by notice in writing and may be varied by a further direction; and a direction may be revoked by the Commission by a notice in writing to the building society concerned.

(2) A direction under section 42B(1), except one varying a previous direction with the agreement of the building society concerned—

(a) shall state the reasons for which it is given and give particulars of the society's rights under subsection (3) below and section 46; and

(b) shall cease to have effect at the end of the period of 28 days beginning with the day on which it is given unless before the end of that period it is confirmed by a further written notice given by the Commission to the society concerned.

(3) A building society to which a direction is given which requires confirmation under subsection (2) above may, within the period of 14 days beginning with the day on which the direction is given, make written representations to the Commission; and the Commission shall take any such representations into account in deciding whether to confirm the direction."

19 Revocation: supplementary directions.

After section 43 of the 1986 Act there shall be inserted the following section—

"**43A Revocation: supplementary directions.**

(1) The Commission may give a building society directions under this section—

(a) when giving it notice that the Commission proposes to revoke its authorisation;

(b) at any time after such a notice has been given to the society (whether before or after its authorisation is revoked);

(c) when giving the society a notice of revocation under subsection (3)(e) of section 43 where the requisite initial step (within the meaning of that section) is the passing of a resolution for voluntary winding up or the execution of an instrument of dissolution; or

(d) at any time after the society has requested the Commission to revoke its authorisation or the central office to cancel its registration.

(2) Directions under this section—

(a) shall be such as appear to the Commission to be desirable in the interests of the society's shareholders or depositors, whether for the purpose of safeguarding its assets or otherwise; and

(b) may relate to any activities of the society, whether or not those for which an authorisation is required.

(3) Directions under this section may in particular—

(a) impose limitations on the issue of shares, the acceptance of deposits or the making of loans;

(b) require the society to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way;

(c) require the society to take steps with regard to the conduct of the business of any connected undertaking of the society;

(d) require the removal of any director or other officer.

(4) No direction shall be given by virtue of paragraph (a) or (b) of subsection (1) above, and any direction given by virtue of either of those paragraphs shall cease to have effect, if—

(a) the Commission gives the building society notice that it is not proposing to take any further action pursuant to the notice mentioned in that paragraph; or

(b) the Commission's decision to revoke the society's authorisation is reversed on appeal.

(5) No direction shall be given by virtue of paragraph (d) of subsection (1) above, and any direction given by virtue of that paragraph shall cease to have effect, if the society's request to the Commission to revoke its authorisation, or to the central office to cancel its registration, is withdrawn.

(6) No direction shall be given to a building society under this section after it has ceased to have any liability in respect of shares or deposits for which it had a liability at a time when it was authorised; and any such direction which is in force with respect to a building society shall cease to have effect when the society ceases to have any such liability.

Status: *Point in time view as at 21/03/1997. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Building Societies Act 1997. (See end of Document for details)*

(7) A building society which fails to comply with any requirement or contravenes any prohibition imposed on it by a direction under this section shall be guilty of an offence and liable—

(a) on conviction on indictment, to a fine;

(b) on summary conviction, to a fine not exceeding the statutory maximum.

(8) A contravention of a prohibition imposed under this section shall not invalidate any transaction or other act."

20 Notification and confirmation of supplementary directions.

After section 43A of the 1986 Act there shall be inserted the following section—

"**43B Notification and confirmation of supplementary directions.**

(1) A direction under section 43A shall be given by notice in writing and may be varied by a further direction; and a direction may be revoked by the Commission by a notice in writing to the building society concerned.

(2) A direction under that section, except one varying a previous direction with the agreement of the building society concerned—

(a) shall state the reasons for which it is given and give particulars of the society's rights under subsection (4) below and section 46; and

(b) without prejudice to section 43A(4), (5) and (6), shall cease to have effect at the end of the period of 28 days beginning with the day on which it is given unless before the end of that period it is confirmed by a further written notice given by the Commission to the society concerned.

(3) Where a direction requires the removal of a person as director or other officer of a building society, the Commission shall give that person a copy of the direction (together with a statement of his rights under subsection (4) below) and, if the direction is confirmed, a copy of the notice mentioned in subsection (2)(b) above.

(4) A building society to which a direction is given which requires confirmation under subsection (2) above and a person who is given a copy of it under subsection (3) above may, within the period of 14 days beginning with the day on which the direction is given, make written representations to the Commission; and the Commission shall take any such representations into account in deciding whether to confirm the direction.

(5) The Commission may omit from the copies given to a person under subsection (3) above any matter which does not relate to him."

VALID FROM 01/12/1997

21 The criteria of prudent management.

For section 45 of the 1986 Act there shall be substituted the following section—

"**45 The criteria of prudent management.**

(1) If it appears to the Commission that there has been or is, on the part of a building society or its directors, a failure to satisfy any one or more of the following criteria of prudent management, it shall be entitled to assume for the purposes of its relevant prudential powers that the failure is such as to prejudice the security of the investments of shareholders or depositors.

(2) The prudential powers relevant for the purposes of this section are the Commission's powers—

(a) under section 42, to impose conditions on a society's authorisation,

(b) under section 42B, to direct a society to transfer all its engagements or its business, and

(c) under section 43, to revoke a society's authorisation,

by reference to the expedience of the imposition, direction or revocation for the protection of the investments of shareholders or depositors.

(3) For the purposes of this Act, the criteria of prudent management are—

(1) Compliance with the requirements imposed by sections 5(1), 6(1) and 7(1), and the restrictions on powers imposed by section 9A(1).

(2) Maintenance of—

(a) adequate reserves and other capital resources; and

(b) own funds which amount to not less than the sum which, for the purposes of section 9, is the prescribed minimum in relation to qualifying capital.

(3) Maintenance of adequate assets in liquid form.

(4) Maintenance of a system for managing and containing risks to the net worth of the business, and risks to its net income, whether arising from fluctuations in interest or exchange rates or from other factors.

(5) Maintenance of the requisite arrangements—

(a) for assessing the adequacy of securities for loans which are to be made or acquired by the society or subsidiary undertakings of the society, and are to be substantially secured on land; and

(b) for assessing the willingness and ability of borrowers to repay such loans.

(6) Maintenance of the requisite accounting records and systems of control of business and of inspection and report.

(7) Direction and management—

(a) by a sufficient number of persons who are fit and proper to be directors or, as the case may be, officers, in their respective positions,

(b) conducted by them with prudence and integrity.

(8) Conduct of the business with adequate professional skills.

Status: *Point in time view as at 21/03/1997. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Building Societies Act 1997. (See end of Document for details)*

(4) Nothing in this section implies that it is improper for a determination for any purpose of the Commission's relevant prudential powers to take account of other factors than the criteria in subsection (3) above.

(5) A failure to satisfy any of the first six criteria in subsection (3) above shall be treated, for the purposes of this section, as a failure on the part of a society's directors prudently to conduct the affairs of the society.

(6) A failure on the part of the society to comply with the conditions to which its authorisation is subject shall be treated, for the purposes of this section, as a failure on the part of the society's directors prudently to conduct the affairs of the society.

(7) The following provisions apply for the interpretation of the list of criteria in subsection (3) above in their application to a building society, that is to say—

"adequate", except with reference to liquidity, means adequate having regard to the range and scale of the society's business;

"adequate", with reference to liquidity, means of such proportion and composition as will at all times enable the society to meet its liabilities as they arise and "liquid form", in relation to assets, shall be construed accordingly;

"business" includes business the society proposes to carry on and references to the business of the society include, where it has connected undertakings, references to the business of those undertakings;

"requisite", with reference to the arrangements for assessing the adequacy of securities, means such as may reasonably be expected to ensure—

(i) that any person who assesses the adequacy of any security for a loan to be secured on land will have furnished to him a written report on the value of the land; and

(ii) that any person who assesses the adequacy of any security, or reports on the value of any land, will be competent to perform that task, and will not be subject to any conflict of interest or potential conflict of interest;

"requisite", with reference to the arrangements for assessing the ability of borrowers to repay loans, means such as may reasonably be expected to ensure that any person who assesses the ability of any borrower to repay a loan—

(i) will be competent to perform that task; and

(ii) will not be subject to any conflict of interest or potential conflict of interest;

"requisite", with reference to accounting records and systems of control, means such as are required by section 71;

"sufficient", with reference to the number of directors and officers, means sufficient having regard to the range and scale of the society's business.

(8) In determining for the purposes of the seventh criterion in subsection (3) above whether a person is a fit and proper person to hold any particular position, regard shall be had, in particular—

(a) to his probity;

(b) to his competence and soundness of judgement for fulfilling the responsibilities of that position;

(c) to the diligence with which he is fulfilling or likely to fulfil those responsibilities; and

(d) to whether the interests of shareholders or depositors of the society are, or are likely to be, in any way threatened by his holding that position.

(9) The Treasury may by order vary subsections (3) to (8) above by adding to or deleting from them any provision or by varying any provision contained in them; and an order under this subsection may make—

(a) different provisions for different descriptions of building societies; and

(b) such incidental, supplementary and transitional provision as appears to the Treasury to be necessary or expedient.

(10) The power to make an order under subsection (9) above is exercisable by statutory instrument; but no order shall be made under that subsection unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.

(11) Nothing in this section shall give rise to any claim against a building society or its directors, or afford a defence to any claim made by a building society."

Commencement Information

I14 S. 21 in force at 1.12.1997 by S.I. 1997/2668, art. 2, **Sch. Pt. II** (subject as mentioned in art. 2(2)-(5) of that S.I.)

VALID FROM 01/12/1997

22 Statements of principles etc. by Commission.

After section 45 of the 1986 Act there shall be inserted the following section—

" General functions of Commission

45AA Statements of principles etc. by Commission.

(1) The Commission shall, as soon as practicable after the coming into force of this section, publish in such manner and in such detail as it thinks appropriate a statement of the principles in accordance with which it is acting or proposing to act—

(a) in exercising its powers of control; and

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Changes to legislation: *There are currently no known outstanding effects for the Building Societies Act 1997. (See end of Document for details)*

(b) in interpreting the criteria of prudent management.

(2) If in the course of a financial year the Commission makes a material change in the principles in accordance with which it is acting or proposing to act as mentioned in subsection (1) above, the Commission shall include in the report made by it for that year under section 4 a statement of the change in such detail as it thinks appropriate.

(3) The Commission may, at any time, publish in such manner and in such detail as it thinks appropriate, either or both of the following, namely—

(a) a statement of the principles in accordance with which it is acting or proposing to act as mentioned in subsection (1) above; and

(b) a statement containing additional guidance as to the exercise of its powers of control and its interpretation of the criteria of prudent management.

(4) In this section "powers of control", in relation to the Commission, means—

(a) the powers conferred on it by sections 36, 36A and 37; and

(b) its powers to grant or revoke an authorisation, to impose conditions on an authorisation or to direct the making of an application under section 41."

23 Rights of appeal.

For section 46 of the 1986 Act there shall be substituted the following section—

"**46 Rights of appeal.**

(1) A building society which is aggrieved by a decision of the Commission—

(a) to refuse to grant authorisation;

(b) to revoke authorisation;

(c) to impose or vary conditions or as to the conditions imposed or varied; or

(d) to give a direction,

may appeal against the decision to a tribunal constituted in accordance with section 47.

(2) Any person in relation to whom the Commission, in deciding to refuse to grant or to revoke authorisation, to impose or vary conditions or to give a direction, makes a determination that a person is not a fit and proper person to hold, or as the case may be, to remain in an office in the society or imposes a requirement that he be removed from an office in the society, may appeal against the decision so far as it relates to that determination or requirement.

(3) The revocation of a society's authorisation, or a direction under section 36(3), (5), (6), (7) or (10), shall not have effect until—

(a) the end of the period within which an appeal can be brought against the Commission's decision to revoke the authorisation or give the direction; and

(b) if such an appeal is brought, until it is determined or withdrawn.

(4) Subsection (3) above applies in relation to the expiry of a society's authorisation on a refusal to grant authorisation under section 41 as it applies to the revocation of a society's authorisation.

(5) Subject to subsection (3) above and any order of the tribunal made under section 47(5), an appeal under subsection (1)(c) or (d) or (2) above shall not affect the operation, pending the determination of the appeal, of any condition or direction which is the subject of the appeal; and no determination of an appeal by any person under subsection (2) above shall affect the revocation or direction for the purposes of which the Commission made its determination or requirement in relation to that person.

(6) In this section and section 47—

"conditions" means conditions to be complied with by a building society and imposed on the grant of authorisation under section 9, on the renewal of authorisation under section 41, on reauthorisation under section 44, or under section 42, or imposed or varied under section 42A;

"direction" means a direction under section 36(3), (5), (6), (7) or (10), section 42B(1) or section 43A;

"grant" includes renew;

"revoke" means revoke under section 43(1)."

Commencement Information

I15 S. 23 partly in force; s. 23 not in force at Royal Assent see s. 47(3); s. 23 in force for certain purposes at 9.6.1997 by S.I. 1997/1427, **art. 2**; S. 23 in force at 1.12.1997 by S.I. 1997/2668, art. 2, **Sch. Pt. II** (subject as mentioned in art. 2(2)-(5) of that S.I.)

24 Determination of appeals.

(1) For subsections (5) to (8) of section 47 of the 1986 Act (determination of appeals) there shall be substituted the following subsections—

"(5) The tribunal may, on the application of the building society concerned, order that the operation of—

(a) any condition or variation of a condition; or

(b) any direction under section 36(3), (5), (6), (7) or (10), section 42B(1) or section 43A,

which is the subject of an appeal by the society be suspended pending the determination of the appeal.

(6) The tribunal may confirm or reverse the decision which is the subject of the appeal but shall not have power to vary it except by directing the Commission—

(a) in the case of an appeal against a decision to refuse to grant authorisation, to determine the conditions to which the grant of authorisation is to be subject;

(b) in the case of an appeal against a decision to revoke authorisation, to determine the conditions or different conditions subject to which the authorisation is to continue in force, as the case may be;

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(c) in the case of an appeal against the imposition of conditions or as to the conditions imposed by the decision, to determine different conditions subject to which the authorisation is to be granted or is to continue, as the case may be;

(d) in the case of an appeal against the variation of conditions or as to the variation imposed by the decision, to determine different variations of the conditions subject to which the authorisation is to continue;

(e) in the case of an appeal against the giving of a direction under section 36(3), to give a direction under section 36(5) or (6);

(f) in the case of an appeal against the giving of a direction under section 36(5), to give a direction under section 36(3) or (6);

(g) in the case of an appeal against the giving of a direction under section 36(7), section 42B(1) or section 43A, to give a direction imposing different requirements.

(7) Where by virtue of subsection (6) above the tribunal directs the Commission to determine conditions or different conditions or to determine different variations of conditions—

(a) the Commission shall by notice to the society concerned impose such conditions, or such variations of conditions, to be complied with by the society as it considers expedient in order to protect the investments of shareholders or depositors;

(b) Part III of Schedule 3 to this Act shall apply subject to the modifications made by paragraph 9 of that Schedule; and

(c) the society concerned may appeal to the tribunal against any of those conditions or variations;

and on any such appeal the tribunal may confirm or reverse the Commission's decision with respect to the conditions or variations which are the subject of the appeal or may direct the Commission to determine different conditions or variations.

(7A) Where by virtue of subsection (6) above the tribunal directs the Commission to give a different direction under section 36—

(a) the Commission shall by notice to the society concerned give such direction as it considers expedient in order to ensure compliance with the relevant statutory requirements within the meaning of that section;

(b) paragraphs 2 and 3 of Schedule 7A to this Act shall apply subject to the modifications made by paragraph 4 of that Schedule; and

(c) the society concerned may appeal to the tribunal against that direction;

and on any such appeal the tribunal may confirm or reverse the Commission's decision with respect to the direction which is the subject of the appeal or may direct the Commission to give a different direction.

(7B) Where by virtue of subsection (6) above the tribunal directs the Commission to give a different direction under section 43A—

(a) the Commission shall by notice to the society concerned give such direction as it considers desirable in the interests of shareholders or depositors; and

(b) the society concerned may appeal to the tribunal against that direction;

and on any such appeal the tribunal may confirm or reverse the Commission's decision with respect to the direction which is the subject of the appeal or may direct the Commission to give a different direction.

(8) Where by virtue of subsection (7), (7A) or (7B) above the tribunal, on an appeal against any conditions or variations of conditions or any direction, directs the Commission—

(a) to determine different conditions or variations; or

(b) to give a different direction,

the other provisions of that subsection shall apply as they apply where the tribunal gives such a direction by virtue of subsection (6) above."

(2) In subsection (10) of that section, for the word "conditions" there shall be substituted the words " conditions, variations or directions ".

Commencement Information

I16 S. 24 partly in force; s. 24 not in force at Royal Assent see s. 47(3); s. 24 in force for certain purposes at 9.6.1997 by S.I. 1997/1427, **art. 2**; S. 24 in force at 1.12.1997 by S.I. 1997/2668, art. 2, **Sch. Pt. II** (subject as mentioned in art. 2(2)-(5) of that S.I.)

VALID FROM 09/06/1997

PART III

ACCOUNTABILITY TO MEMBERS

VALID FROM 01/12/1997

25 Special meeting on members' requisition.

After paragraph 20 of Schedule 2 to the 1986 Act there shall be inserted the following paragraph—

Special meeting on members' requisition

"20A (1) On a members' requisition, a building society shall—

(a) duly call a special meeting, and specify the meeting as such in the notice calling it; and

(b) if so required by the requisition, send to each member entitled to receive notice of the meeting a copy of a statement of not more than 500 words with respect to the matters to be dealt with at the meeting;

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Changes to legislation: *There are currently no known outstanding effects for the Building Societies Act 1997. (See end of Document for details)*

and where a meeting is so called no business shall be conducted at the meeting other than that stated in the notice calling it or (where applicable) that mentioned in sub-paragraph (8)(b) below.

(2) A members' requisition is a requisition of not less than the requisite number of members of the society; and that number is 100 or such lesser number as may be specified in the rules of the society.

(3) The requisition—

(a) must state the objects of the meeting, be signed by the requisitionists and be deposited at the society's principal office; and

(b) may consist of several documents in like form each signed by one or more requisitionists and each after the first deposited within three months of the date on which the first was deposited.

(4) Where the requisition consists of several documents, the date of its deposit shall be taken to be the date on which the document signed by the requisitionist making up the requisite number is deposited at the society's principal office.

(5) The rules of the society may require a requisitionist—

(a) to state his full name and address;

(b) to fulfil one or other of the following conditions, namely—

(i) to have been a shareholding member for a specified period and to hold, or to have held at any time during that period, shares in the society to such value (not greater than the prescribed amount) as is specified in the rules; and

(ii) to have been a borrowing member for a specified period and to owe to the society, or to have owed to the society at any time during that period, a mortgage debt of such amount (not greater than the prescribed amount) as is so specified; and

(c) to identify a share or mortgage account with the society which will evidence the fact that he fulfils one or other of those conditions;

and in this sub-paragraph "specified period" means such period (not more than two years) before the date of the requisition as is specified in the rules.

(6) No objection may be made by virtue of such rules to the requisition or, where the requisition consists of several documents, to any of those documents unless it is made within 14 days of the requisition or document being deposited at the society's principal office.

(7) The rules of the society may also require a sum of money, not exceeding £25 per requisitionist, to be deposited with the requisition; and, where any money is so deposited, it shall be forfeited to the society, or returned to the persons who deposited it, as provided by the rules.

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Changes to legislation: *There are currently no known outstanding effects for the Building Societies Act 1997. (See end of Document for details)*

(8) The rules shall not provide for any deposited money to be forfeited to the society except—

(a) where a quorum is not present within half an hour after the time appointed for the meeting; or

(b) where and to the extent that those eligible to vote at the meeting decide by ordinary resolution that the money should be applied to defray the whole or any part of the expenses of holding the meeting.

(9) If the rules of a building society so provide, sub-paragraph (1) above does not require the society—

(a) to call a special meeting if the only or main object of the meeting is to move a resolution in substantially the same terms as any resolution which has been defeated at a meeting or on a postal ballot during the period beginning with the third annual general meeting before the date on which the requisition is deposited at the society's principal office; or

(b) to call a special meeting to be held during the period of four months beginning one month after the end of its financial year.

(10) Sub-paragraph (1)(b) above does not require the society to send copies of a statement to members entitled to receive notice of a meeting in any case where—

(a) publicity for the statement would be likely to diminish substantially the confidence in the society of investing members of the public; or

(b) the rights conferred by sub-paragraph (1)(b) above are being abused to seek needless publicity for defamatory matter or for frivolous or vexatious purposes;

and that provision shall not be taken to confer any rights on members, or to impose any duties on a building society, in respect of a statement which does not relate directly to the affairs of the society.

(11) Where sub-paragraph (1)(b) above requires copies of a statement to be sent to members entitled to receive notice of a meeting, the proceedings at the meeting are not invalidated by—

(a) the accidental omission to send a copy of the statement to a member entitled to receive one, or

(b) the non-receipt of such a copy by such a member.

(12) The Commission shall hear and determine any dispute arising under sub-paragraph (10)(a) above, whether on the application of the society or of any other person who claims to be aggrieved.

(13) The Commission may, with the consent of the Treasury, by order substitute—

(a) for the number specified in sub-paragraph (2) above; or

(b) for the sum specified in sub-paragraph (7) above,

such other number or sum as appears to it to be appropriate; and an order under this subsection may make such supplementary,

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transitional and saving provision as appears to the Commission to be necessary or expedient.

(14) The power to make an order under sub-paragraph (13) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament."

Commencement Information

I17 S. 25 in force at 1.12.1997 by S.I. 1997/2668, art. 2, **Sch. Pt. II** (subject as mentioned in art. 2(2)-(5) of that S.I.)

VALID FROM 01/12/1997

26 Failure to comply with members' requisition.

After paragraph 20A of Schedule 2 to the 1986 Act there shall be inserted the following paragraph—

Failure to comply with members' requisition

"20B (1) This paragraph applies where a members' requisition is deposited at a building society's principal office and the society is not relieved of the obligation to call a special meeting by paragraph 20A(9)(a) above.

(2) Subject to sub-paragraph (5) below, if the society does not within 28 days from the date of the deposit of the requisition duly call a meeting to be held within 63 days from that date—

(a) the requisitionists, or any proportion of them exceeding one half, may themselves call a meeting to be held within five months from that date; and

(b) no business shall be conducted at a meeting so called other than that stated in the notice calling it or (where applicable) that mentioned in paragraph 20A(8)(b) above.

(3) A meeting called under sub-paragraph (2) above by requisitionists shall be called in the same manner, as nearly as may be, as that in which meetings are to be called by the society.

(4) If—

(a) paragraph 20A(1)(b) above requires the society to send to each member entitled to receive notice of the meeting a copy of a statement of not more than 500 words with respect to the matters to be dealt with at the meeting; and

(b) subject to sub-paragraph (5) below, that requirement is not complied with within 28 days from the date of the deposit of the requisition,

the requisitionists, or any proportion of them exceeding one half, may themselves send a copy of the statement to each such member.

(5) If the rules of the society make such provision as is mentioned in paragraph 20A(9)(b) above, any days falling within the period there mentioned shall be disregarded in determining any period for the purposes of sub-paragraph (2) or (4)(b) above.

(6) Any reasonable expenses incurred by the requisitionists by reason of the failure of the society to call a meeting, or to comply with such a requirement as is mentioned in sub-paragraph (4) above, shall be repaid to the requisitionists by the society.

(7) Any sum so repaid shall be recoverable by the society from such of the directors of the society as were responsible for the failure (whether by the retention of fees or other remuneration in respect of services or otherwise).”

Commencement Information

I18 S. 26 in force at 1.12.1997 by S.I. 1997/2668, art. 2, **Sch. Pt. II** (subject as mentioned in art. 2(2)-(5) of that S.I.)

VALID FROM 01/12/1997

27 Election of directors: general.

(1) In subsection (1) of section 60 of the 1986 Act (directors: elections and retirements), for paragraph (a) there shall be substituted the following paragraph—

“(a) on a poll taken at the annual general meeting of the society, or”.

(2) After that subsection there shall be inserted the following subsection—

“(1A) Where directors of a building society are to be elected to office on a poll taken at the annual general meeting of the society, a form for the appointment of a proxy shall be sent to each person entitled to notice of the meeting.”

(3) For subsection (3) of that section there shall be substituted the following subsections—

“(3) Where, in the case of an election of directors of a building society, there are more candidates than vacancies to be filled by the election, a person entitled to vote in the election—

(a) shall have one vote in respect of every vacancy, but

(b) cannot be required to cast all or any of his votes.

(3A) Where, in the case of an election of directors of a building society, there are not more candidates than vacancies to be filled by the election—

(a) a person entitled to vote in the election shall have one vote in respect of every candidate, but cannot be required to cast all or any of his votes;

(b) each vote shall be capable of being cast either for or against the candidate concerned; and

(c) a candidate shall be elected if, and only if, more votes are cast for him than against him."

(4) In subsection (4) of that section, for the words "any person" there shall be substituted the words " any natural person ".

(5) In subsection (10) of that section, for paragraph (b) there shall be substituted the following paragraph—

"(b) their qualifications as respects length of membership and the value of their shares or the amount of their mortgage debt;".

(6) After that subsection there shall be inserted the following subsection—

"(10A) A nomination of a candidate for election as a director of a building society—

(a) may be made at any time; but

(b) if made after the closing date for the nomination of candidates for the next election of directors, shall be carried forward (unless the candidate otherwise requires) as a nomination for the next election of directors after that;

and in this subsection and section 61 "the closing date for the nomination of candidates", in relation to an election of directors, means the last day of the last financial year to end before the voting date."

(7) In subsection (17) of that section, the definition of "ordinary resolution" shall cease to have effect.

Commencement Information

I19 S. 27 in force at 1.12.1997 by S.I. 1997/2668, art. 2, **Sch. Pt. II** (subject as mentioned in art. 2(2)-(5) of that S.I.)

VALID FROM 01/12/1997

28 Election of directors: supplementary.

(1) For subsections (1) and (2) of section 61 of the 1986 Act (directors: supplementary provisions as to elections etc.) there shall be substituted the following subsections—

"(1) Rules made under section 60(10)(a), in order to comply with this section, must not require—

(a) in the case of a society whose total commercial assets do not exceed £100 million, more than 10 members;

(b) in the case of a society whose total commercial assets exceed £100 million but do not exceed £250 million, more than 20 members;

(c) in the case of a society whose total commercial assets exceed £250 million but do not exceed £1,000 million, more than 30 members;

(d) in the case of a society whose total commercial assets exceed £1,000 million but do not exceed £5,000 million, more than 40 members; and

(e) in the case of a society whose total commercial assets exceed £5,000 million, more than 50 members,

to join in nominating a person for election as a director.

(2) Rules under section 60(10)(b), in order to comply with this section, must not require a nominating member—

(a) to have been a member for more than two years before the date of the nomination; or

(b) if he claims eligibility as a shareholding member, to hold, or to have held at any time during that period, shares in the society to a value greater than £100; or

(c) if he claims eligibility as a borrowing member, to owe to the society, or to have owed to the society at any time during that period, a mortgage debt of an amount greater than £100."

(2) For subsection (4) of that section there shall be substituted the following subsections—

"(3A) In subsection (1) above "total commercial assets", in relation to a building society, means the difference between the total assets of the society as shown in the relevant accounts and the aggregate of—

(a) the liquid assets of the society as shown in those accounts in pursuance of regulations under section 73(7); and

(b) the fixed assets of the society as so shown;

and in this subsection "the relevant accounts" means the accounts which, immediately before the closing date for the nomination of candidates, were the accounts last prepared by the society under section 72.

(4) The Commission may, by order, substitute—

(a) for any amount or number specified in subsection (1) above;

(b) for any amount specified in subsection (2) above; or

(c) for any amount or percentage specified in subsection (3) above,

such other amount, number or percentage as it thinks appropriate; and the Commission may, with the consent of the Treasury, by order vary subsection (3A) above by adding to or deleting from it any provision or by varying any provision contained in it."

(3) In subsection (7) of that section—

(a) for the words from "If" to "nominations" there shall be substituted the words " If, before the closing date for the nomination of candidates, a duly nominated candidate for election as a director of a building society furnishes the society with an election address, or a revised election address, of not more than 500 words "; and

(b) in paragraph (a), after the words "the address" there shall be inserted the words " or, as the case may require, the revised address ".

(4) In subsection (8) of that section—

(a) after the words "an address", in both places where they occur, there shall be inserted the words " or a revised address "; and

(b) after the words "the address" there shall be inserted the words " or revised address ".

Commencement Information

I20 S. 28 in force at 1.12.1997 by S.I. 1997/2668, art. 2, **Sch. Pt. II** (subject as mentioned in art. 2(2)-(5) of that S.I.)

VALID FROM 01/12/1997

29 Acquisition or establishment of a business.

After section 92 of the 1986 Act there shall be inserted the following section—

" New business

92A Acquisition or establishment of a business.

(1) A building society—

(a) in order to acquire, or allow a subsidiary undertaking to acquire, a business to which subsections (3) and (4) below apply; or

(b) in order to establish, or allow such an undertaking to establish, a business to which subsections (3) and (5) below apply,

must resolve so to do by an ordinary resolution; but a failure to comply with this subsection shall not invalidate any transaction or other act.

(2) In order to be effective for the purposes of subsection (1) above, an ordinary resolution of a building society must be passed by a majority of the members of the society entitled to vote on such a resolution and voting either—

(a) in person or by proxy on a poll on the resolution at a meeting of the society; or

(b) in a postal ballot on the resolution;

and in a case falling within paragraph (a) above, a form for the appointment of a proxy shall be sent to each person entitled to notice of the meeting.

(3) This subsection applies to a business which is proposed to be acquired or established if, in the opinion of the board of directors of the society—

(a) the greater part of the income of the business is or will be derived from activities having no connection with loans secured on residential property;

(b) the greater part of the resources of the business are or will be devoted to such activities; or

(c) the greater part of the business consists or will consist of such activities.

(4) This subsection applies to a business which is proposed to be acquired if X is not less than 15 per cent of Y where—

X = the amount or value of the consideration to be given for the shares, voting rights or assets proposed to be acquired;

Y = the amount of the society's own funds as at the relevant date.

(5) This subsection applies to a business which is proposed to be established if X is not less than 15 per cent of Y where—

X = the aggregate of the following as estimated by the society, namely—

(a) the cost of acquiring, developing, adapting or repairing any premises required for the purposes of the business;

(b) the initial cost of acquiring any plant or equipment, or any intellectual property, so required;

(c) the initial cost of employing or training staff so required;

(d) the cost of obtaining any professional advice required in connection with the establishment of the business;

(e) any other non-recurring items of expenditure to be incurred in that connection; and

(f) in the case of a business proposed to be established by a subsidiary undertaking, the amount of any capital to be provided by the society which will not be used for defraying items of expenditure falling within the foregoing paragraphs;

Y = the amount of the society's own funds as at the relevant date.

(6) Where a business is proposed to be acquired or established by a syndicate whose members include a building society or subsidiary undertaking—

(a) subsection (1) above shall have effect as if the business were proposed to be acquired or (as the case may be) established by the society; and

(b) whichever of subsections (4) and (5) above is applicable shall have effect as if X were only so much of X as is referable to participation in the syndicate by the society or undertaking.

(7) For the purposes of subsections (1)(a) and (4) above, two or more proposed acquisitions by a building society or subsidiary undertaking which will form part of a larger acquisition or series of acquisitions shall be treated as a single acquisition.

(8) Nothing in this section shall apply in relation to a building society in so far as it undertakes, in accordance with section 94 and Schedule 16 to this Act, to fulfil engagements transferred to it in accordance with that section and that Schedule.

(9) In this section—

"initial", in relation to any cost, means incurred, or likely in the directors' opinion to be incurred, not later than 12 months after the establishment of the business;

"intellectual property" includes—

(a) any patent, know-how, trade mark, service mark, registered design, copyright or design right; and

(b) any licence under or in respect of any such right;

"the relevant date", in relation to a building society, means—

(a) the date of the end of its last financial year or, failing that, the date of its establishment; or

(b) where it has been involved in a transfer of engagements, the date of that transfer,

whichever is the later.

(10) The Commission may, with the consent of the Treasury, by order substitute for the percentage specified in subsection (4) or (5) above such other percentage as appears to it to be appropriate; and an order under this subsection may make such supplementary, transitional and saving provision as appears to the Commission to be necessary or expedient.

(11) The Commission may, with the consent of the Treasury, by order vary subsections (5) and (9) above by adding to or deleting from them any provision or by varying any provision contained in them; and an order under this subsection may make—

(a) different provisions for different cases or purposes; and

(b) such supplementary, transitional and saving provision as appears to the Commission to be necessary or expedient.

(12) The power to make an order under subsection (10) or (11) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament."

Commencement Information

I21 S. 29 in force at 1.12.1997 by S.I. 1997/2668, art. 2, **Sch. Pt. II** (subject as mentioned in art. 2(2)-(5) of that S.I.)

VALID FROM 01/12/1997

30 Information about transfers or proposed transfers of business.

(1) In subsection (1) of section 98 of the 1986 Act (transfers of business: supplementary provisions), after the word "statements" there shall be inserted the words " or summaries ".

(2) After that subsection there shall be inserted the following subsection—

"(1A) Part IA of that Schedule 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 a proposal for the transfer of the whole of its business to a company."

(3) For Part I of Schedule 17 to the 1986 Act there shall be substituted, as Parts I and IA, the provisions set out in Parts I and II respectively of Schedule 5 to this Act (information about transfers or proposed transfers of business).

31 Transfers of business: increased remuneration etc.

After section 99 of the 1986 Act there shall be inserted the following section—

"**99A Transfers of business: increased remuneration etc.**

(1) Subject to subsection (2) below, the terms of a transfer of business by a building society to the company which is to be its successor may include provision for any director or other officer of the society to receive increased emoluments in consequence of the transfer, whether by way of increased remuneration or the grant of share options or otherwise.

(2) An ordinary resolution approving any such provision must be put before a meeting of the society."

VALID FROM 09/06/1997

PART IV

PROTECTION OF INVESTORS AND INVESTIGATION OF COMPLAINTS

32 Amalgamation of building society and banking protection schemes.

(1) The Treasury, after consultation with the Commission, the Bank, the Building Societies Investor Protection Board and the Deposit Protection Board, may by order—
  (a) amalgamate those Boards into a single board to be known as the Deposit Protection Board; and
  (b) amalgamate the Deposit Protection Fund and the Building Societies Investor Protection Fund into a single fund to be known as the Deposit Protection Fund.

(2) An order under this section shall make, in relation to the amalgamated board and the amalgamated fund, provisions corresponding to those of sections 50 to 57 and 63 to 66 of and Schedule 4 to the 1987 Act but—
  (a) with the modifications mentioned in subsection (3) below; and
  (b) with or without the modifications mentioned in subsection (4) below.

(3) The modifications referred to in subsection (2)(a) above are modifications—
  (a) providing for the chairman of the Commission to be an ex officio member of the amalgamated board and to be consulted by the Governor of the Bank on the appointment of ordinary members of that board;
  (b) enabling officers or employees of the Commission to be appointed as ordinary members of that board;
  (c) providing for building societies, and for institutions which, but for the order, would be or would be entitled to become participating EEA institutions within the meaning of section 24 of the 1986 Act, to be or to be entitled to become participating institutions within the meaning of the corresponding provisions;
  (d) providing for authorised building societies, and for institutions which, but for the order, would be or would be liable to become contributory institutions within the meaning of the protective scheme provisions of Part IV of the

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1986 Act, to be or to be liable to become contributory institutions within the meaning of the corresponding provisions; and

(e) providing for the deposit base of any such society or institution as is mentioned in paragraph (d) above to include an amount determined by the amalgamated board as representing the average value, over the period mentioned in section 52(4) of the 1987 Act, of shareholdings in the society or institution.

(4) The modifications referred to in subsection (2)(b) above are modifications—

(a) increasing the number of ordinary members of the joint board that may be appointed; and

(b) providing for contributions to be levied on contributory institutions of different descriptions at different rates and at different times.

(5) An order under this section—

(a) shall repeal sections 50 to 57 and 63 to 66 of and Schedule 4 to the 1987 Act, and sections 24, 25, 26 and 29 to 31 of and Schedule 5 to the 1986 Act;

(b) shall provide for—

(i) any reference in sections 58 to 62 of the 1987 Act to the Deposit Protection Board or to the Deposit Protection Fund; and

(ii) any reference in section 27 or 28 of, or Schedule 6 to, the 1986 Act to the Building Societies Investor Protection Board or to the Building Societies Investor Protection Fund,

to have effect as a reference to the amalgamated board or to the amalgamated fund, as the case may require; and

(c) may make such other consequential amendments of those Acts and of other enactments and instruments, and such incidental, supplemental and transitional provisions, as may appear to the Treasury to be necessary or expedient.

(6) The power to make an order under this section shall be exercisable by statutory instrument; but no such order shall be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.

(7) In this section—

"the 1987 Act" means the [M10]Banking Act 1987;

"the Bank" means the Bank of England.

Marginal Citations

M10 1987 c.22.

33 Liability of insolvent society in respect of payments made by Board.

(1) In subsection (2) of section 28 of the 1986 Act (liability of insolvent society in respect of payments made by Board), in paragraph (a) the words "as in respect of a contractual debt incurred immediately before the institution began to be wound up" shall cease to have effect.

(2) After that subsection there shall be inserted the following subsection—

"(2A) The liability imposed by subsection (2)(a) above shall have effect—

(a) where the liability of the institution to the investor is referable to deposits, as a liability in respect of deposits received immediately before the time when the institution began to be wound up;

(b) where that liability is referable to shares, as a liability in respect of shares issued immediately before that time."

(3) In subsections (4)(b) and (5)(b) of that section, for the words "apart from this section" there shall be substituted the words " apart from this paragraph ".

VALID FROM 01/12/1997

34 Recognised schemes for investigation of complaints.

(1) For section 83 of the 1986 Act there shall be substituted the following section—

"**83 Recognised schemes for investigation of complaints.**

(1) A person to whom section 83A applies shall, by virtue of and in accordance with a scheme under this section, have the right, as against a building society, to have investigated under the scheme any complaint of his about action—

(a) which has been taken by the society in relation to a relevant service provided by it; and

(b) which affects him in prescribed respects.

(2) A person to whom section 83A applies shall also, by virtue of and in accordance with a scheme under this section, have the right, as against any connected undertaking of a building society, to have investigated under the scheme any complaint of his about action—

(a) which has been taken by the undertaking in relation to a relevant service provided by it; and

(b) which affects him in prescribed respects.

(3) Every authorised building society shall be a member (or the sole member) of one or more recognised schemes which or which between them confer the rights required to be conferred by subsection (1) above in relation to every relevant service provided by the society.

(4) Every authorised building society shall secure that each of its connected undertakings is a member (or the sole member) of one or more recognised schemes which or which between them confer the rights required to be conferred by subsection (2) above in relation to every relevant service provided by the undertaking.

(5) Schedule 12 to this Act has effect for the purposes of this section and, in that Schedule—

(a) Part I prescribes the matters for which provision must be made by a scheme if it is to be a scheme which qualifies for recognition for the purposes of this section; and

(b) Part III contains other requirements to which a scheme must conform if it is to be so recognised.

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(6) The Commission, with the consent of the Treasury, may by order vary Part I or Part III of Schedule 12 by adding to or deleting from it any provision or by varying any provision contained in it; and an order under this subsection may make such incidental, supplementary and transitional provision as appears to the Commission to be necessary or expedient.

(7) The Commission shall have the function, in accordance with Schedule 13 to this Act, of granting recognition of schemes and of withdrawing any recognition it has granted; but recognition does not extend to, and is not required for, provisions in a scheme which are not required to be made in pursuance of Schedule 12.

(8) The Commission shall have power to do anything which is calculated to facilitate the discharge of its functions under subsection (7) above, or is incidental or conducive to their discharge, but this does not extend to expenditure for the purpose of operating a scheme.

(9) The central office shall have the function, in accordance with Schedule 13, of recording accessions to schemes and of confirming any withdrawal from a scheme.

(10) A building society's withdrawal from membership of a recognised scheme shall not be effective except in accordance with the applicable provisions of Schedule 13.

(11) The power to make an order under subsection (6) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(12) In this section, section 84 and Schedules 12 and 13—

"accede", in relation to a scheme, means assume the obligations and rights of membership and "accession" has a corresponding meaning;

"action" includes any failure to act, and so as regards "exercise" in relation to any power; and "action", in relation to a society, includes action on its behalf by any person;

"prescribed", in relation to the respects in which a complainant is affected by any action, means prescribed for the time being in Part III of Schedule 12 as grounds for making action subject to investigation under the scheme;

"recognition" means recognition of a scheme by the Commission for the purposes of this section;

"relevant service" means a service of a kind which is provided by building societies for individuals in the ordinary course of business."

(2) For paragraph 1 (grounds of complaint) of Part III of Schedule 12 to the 1986 Act there shall be substituted the following paragraph—

"1 (1) The grounds for making action by a building society or connected undertaking subject to investigation under the scheme must be that the action constitutes—

(a) in the case of a building society, a breach of the society's obligations under this Act, its rules or any contract, or

(b) in the case of a connected undertaking, a breach of the undertaking's obligations under its rules (if any) or any contract, or

(c) unfair treatment, or

(d) maladministration, or

(e) a decision to which sub-paragraph (2) below applies, or action consequential on such a decision,

in relation to the complainant and has caused him pecuniary loss or expense or inconvenience.

(2) This sub-paragraph applies to any decision in connection with the provision of a relevant service which is made otherwise than in the legitimate exercise of commercial judgment."

(3) In paragraph 2 (permissible exclusions from investigation) of that Part of that Schedule—

(a) in paragraph (d), after the word "scheme" there shall be inserted the words " , or in furnishing evidence in support of the complaint "; and

(b) after the second Note there shall be inserted the following Note—
"**Note:**

Delay in furnishing evidence in support of the complaint is not "undue delay" unless at least six months have elapsed since the adjudicator acknowledged receipt of the complaint."

VALID FROM 01/12/1997

35 Persons entitled to have complaints investigated.

After section 83 of the 1986 Act there shall be inserted the following section—

"**83A Persons entitled to have complaints investigated.**

(1) This section applies to any individual.

(2) This section applies to any partnership, club or other unincorporated body if the amount of the body's turnover for its last financial year does not exceed £1 million.

(3) This section applies to any body corporate if—

(a) where it is not a member of a group, the amount of its turnover for its last financial year; or

(b) where it is such a member, the amount of the group's turnover for its last financial year,

does not exceed £1 million.

(4) The Commission may, with the consent of the Treasury, by order substitute for the amount specified in subsection (2) or (3) above such other amount as it thinks appropriate.

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(5) The power to make an order under subsection (4) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(6) The amount of a body's or group's turnover for a financial year—

(a) shall be the amount shown as such in its accounts for that year; or

(b) where it has not prepared accounts for that year, shall be determined in such manner as may be provided by the scheme in accordance with which the complaint is made.

(7) Where the amount of a body's or group's turnover for a financial year is expressed otherwise than in sterling, it shall be converted into sterling at the rate of exchange prevailing at the end of that year.

(8) For a period which is a body's or group's financial year but is not in fact a year the amount specified in subsection (2) or, as the case may be, subsection (3) above shall be proportionately adjusted.

(9) In this section—

"body corporate" does not include a Scottish firm;

"group" means a parent undertaking and its subsidiary undertakings;

"last financial year", in relation to a body or group, means its last financial year to end before the complaint is made;

"parent undertaking" shall be construed in accordance with the relevant provisions;

"the relevant provisions" means the provisions of section 258 of the [M11]Companies Act 1985, read in conjunction with sections 259 and 260 of, and Schedule 10A to, that Act.

(10) Any person who, if he were an undertaking within the meaning given by section 259(1) of the [M12]Companies Act 1985, would be a parent undertaking shall be treated as if he were such an undertaking for purposes of—

(a) the definition of "group" in subsection (9) above; and

(b) the relevant provisions as they apply for the purposes of the definition of "subsidiary undertaking" in section 119(1)."

Marginal Citations

M11 1985 c.6.

M12 1985 c.6.

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PART V

MISCELLANEOUS AND SUPPLEMENTAL

Miscellaneous

VALID FROM 01/12/1997

36 Registered and business names.

(1) For sub-paragraph (2) of paragraph 9 of Schedule 2 to the 1986 Act (building society not to use any name or title other than registered name) there shall be substituted the following sub-paragraphs—

"(2) Every building society shall paint or affix, and keep painted or affixed, its registered name on the outside of every office or place in which its business is carried on, in a conspicuous position and in letters easily legible.

(2A) Every building society shall state its registered name in legible characters in all of the following documents, namely—

(a) its business letters;
(b) its account statements, including those relating to deposit, share, loan or mortgage accounts;
(c) its passbooks;
(d) its notices and publications, including all documents sent to members;
(e) its invoices and receipts;
(f) its letters of credit and any instruments creating or acknowledging its indebtedness;
(g) its contracts, agreements, mortgages and deeds; and
(h) its bills of exchange, promissory notes, endorsements, cheques and orders for money or goods."

(2) After sub-paragraph (7) of that paragraph there shall be inserted the following sub-paragraph—

"(8) For the purposes of this paragraph and paragraphs 10 to 10C below "registered name", in relation to a building society, means the name of the society which is for the time being registered with the central office."

(3) For paragraph 10 of Schedule 2 to the 1986 Act (offences relating to society name) there shall be substituted the following paragraph—

"10 (1) If a building society does not—

(a) paint or affix its registered name; or
(b) keep its registered name painted or affixed,

as required by paragraph 9(2) above, the society shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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(2) A building society which, without reasonable excuse, does not comply with paragraph 9(2A) above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) If an officer of a building society or a person on its behalf issues or authorises the issue of any document mentioned in paragraph 9(2A)(a) to (g) above, in which the society's registered name is not stated as required by that paragraph, he shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) If an officer of a building society or a person on its behalf signs or authorises to be signed on behalf of the building society any document mentioned in paragraph 9(2A)(h) above in which the society's registered name is not stated as required by that paragraph—

(a) he shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale; and

(b) he shall be further personally liable to the holder of the bill of exchange, promissory note, cheque or order for money or goods for the amount of it (unless it is duly paid by the building society).

(5) If a building society fails to send to the central office a notice which it is required to send to it under paragraph 9(4) above, the society shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale and so shall any officer who is also guilty of the offence."

(4) After that paragraph there shall be inserted the following paragraphs—

"10A **Restrictions on business names**

(1) This paragraph and paragraph 10B below apply where a building society carries on business under a name other than the following, namely—

(a) its registered name;

(b) its registered name with the omission of the words "Building Society"; and

(c) its registered name with an addition which merely indicates that the business is carried on in succession to a former building society with which it has merged.

(2) The society shall not, without the written approval of the Commission, carry on business under a name which—

(a) would be likely to give the impression that the business is connected with Her Majesty's Government or with any local authority, or

(b) includes any word or expression for the time being specified in regulations made under sub-paragraph (3) below.

(3) The Commission may, with the consent of the Treasury, by regulations—

(a) specify words or expressions for the use of which as or as part of a business name the approval of the Commission is required by sub-paragraph (2) above, and

(b) in relation to any such word or expression, specify a Government department or other body for the purposes of sub-paragraph (4) below.

(4) Where the society proposes to carry on business under a name which is or includes any such word or expression, and a government department or other body is specified under sub-paragraph (3)(b) above in relation to that word or expression, the society shall—

(a) request (in writing) the relevant body to indicate whether (and if so why) it has any objections to the proposal, and

(b) submit to the Commission a statement that such a request has been made and a copy of any response received from the relevant body.

(5) For the purposes of this paragraph "local authority" means—

(a) any local authority within the meaning of the [M13]Local Government Act 1972, the Common Council of the City of London or the Council of the Isles of Scilly;

(b) any local authority within the meaning of the [M14]Local Government etc. (Scotland) Act 1994;

(c) any district council within the meaning of the [M15]Local Government Act (Northern Ireland) 1972.

10B **Use of business names: required disclosure**

(1) Paragraph 9(2A) above shall have effect as if after the words "in legible characters" there were inserted the words "which are reasonably prominent".

(2) The society shall in all documents mentioned in paragraph 9(2A) above state in legible characters an address in the United Kingdom at which service of any document relating in any way to the business will be effective.

(3) The society shall also in any premises where the business is carried on and to which the members of the society, the customers of the business or suppliers of any goods or services to the business have access, display in a prominent position so that it may easily be read by such persons a notice containing the society's registered name and the address mentioned in sub-paragraph (2) above.

(4) The society shall secure that the registered name and the address mentioned in sub-paragraph (2) above is immediately given, by written notice, to any person with whom anything is done or discussed in the course of the business and who asks for the registered name or the address.

(5) The Commission may, with the consent of the Treasury, by regulations require a notice under sub-paragraph (3) or (4) above to be displayed or given in a specified form.

10C **Use of business names: supplementary**

(1) A building society which contravenes paragraph 10A(2) above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) A building society which, without reasonable excuse, does not comply with paragraph 9(2A) or 10B(2), (3) or (4) above, or any regulations made under

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paragraph 10B(5) above, shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) Where paragraph 10A above applies any legal proceedings brought by the society to enforce a right arising out of a contract made in the course of the business in respect of which the society was, at the time the contract was made, in breach of paragraph 9(2A) or 10B(2), (3) or (4) above shall be dismissed if the defendant (or, in Scotland, the defender) to the proceedings shows—

(a) that he has a claim against the plaintiff (pursuer) arising out of that contract which he has been unable to pursue by reason of the plaintiff's (pursuer's) breach of paragraph 9(2A) or 10B(2), (3) or (4) above, or

(b) that he has suffered some financial loss in connection with the contract by reason of the latter's breach of paragraph 9(2A) or 10B(2), (3) or (4) above,

unless the court before which the proceedings are brought is satisfied that it is just and equitable to let the proceedings continue.

(4) Sub-paragraph (3) above is without prejudice to the right of any person to enforce such rights as he may have against another person in any proceedings brought by that person.

(5) Regulations made under paragraph 10A(3) or 10B(5) above shall be made by statutory instrument subject to annulment by resolution of either House of Parliament.

(6) Such regulations may contain such transitional provisions and savings as the Commission thinks fit, and may make different provision for different cases or classes of case."

Marginal Citations

M13 1972 c.70.
M14 1994 c.39.
M15 1972 c.9 (N.I.).

VALID FROM 09/06/1997

37 Access to registers of members.

(1) For sub-paragraphs (1) and (2) of paragraph 15 of Schedule 2 to the 1986 Act (right of members to obtain particulars from register) there shall be substituted the following sub-paragraphs—

"(1) At any time when a building society—

(a) has had its authorisation revoked under section 43; and

(b) has not been re-authorised under section 44,

a member of the society shall, subject to sub-paragraph (1A) below, have the right to obtain, from the register kept under paragraph 13 above,

the names and addresses of members of the society, for the purpose of communicating with them on a subject relating to the affairs of the society.

(1A) Sub-paragraph (1) above shall not apply unless the member in question—

(a) is qualified under the rules of the society to join in a members' requisition for a special meeting, or to join in nominating a person for election as a director; or

(b) would be so qualified if any requirements as to length of time a person must have been a shareholding or borrowing member were omitted.

(2) If, at any time not falling within sub-paragraph (1) above, a member of a building society who is qualified under the rules of the society to join in a members' requisition for a special meeting, or to join in nominating a person for election as a director, makes a written application to the Commission for the right to obtain names and addresses from the register, the Commission—

(a) if satisfied that the applicant—

(i) requires that right for the purpose of communicating with members of the society on a subject relating to its affairs; and

(ii) has not, since making the application, voluntarily ceased to be a member of the society; and

(b) having regard to the interests of the members as a whole and to all the other circumstances; and

(c) on payment by the applicant of a fee of £25 or such other amount as may be prescribed,

may direct that the applicant shall have the right to obtain from the register the names and addresses of the members for the purpose of communicating with them on that subject."

(2) After sub-paragraph (6) of that paragraph there shall be inserted the following sub-paragraphs—

"(7) No information obtained under sub-paragraph (1) or (2) above or this sub-paragraph and relating to a member of the society may be disclosed except—

(a) with the consent of that member; or

(b) in the case of information obtained under sub-paragraph (1) or (2) above, for purposes connected with the purpose mentioned in that paragraph.

(8) Any person who discloses information in contravention of sub-paragraph (7) above shall be liable—

(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 a fine not exceeding the statutory maximum.

(9) The Treasury may, by regulations, prescribe the amount of any fees payable under sub-paragraph (2) above; and regulations under this sub-paragraph may include—

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Changes to legislation: *There are currently no known outstanding effects for the Building Societies Act 1997. (See end of Document for details)*

(a) provision for any fees so payable to be reduced or for payment of any fees to be waived by the Commission in circumstances determined by or under the regulations; and

(b) such incidental, supplementary and transitional provision as appears to the Treasury to be necessary or expedient.

(10) The power to make regulations under sub-paragraph (9) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(11) The amounts received by the Commission under sub-paragraph (2) above shall be applied as an appropriation in aid of money provided by Parliament for the expenses of the Commission under this Act, and in so far as not so applied, shall be paid into the Consolidated Fund."

VALID FROM 01/12/1997

38 Transactions with directors and persons connected with them.

After section 66 of the 1986 Act there shall be inserted the following section—

"**66A Transactions with directors and persons connected with them.**

(1) This section applies where a building society enters into a transaction the parties to which include—

(a) a director of the society; or

(b) a person connected with such a director,

and the board of directors, in connection with the transaction, exceed any limitation on their powers by reason of anything included in the society's constitution, that is to say, its memorandum and rules.

(2) The transaction is voidable at the instance of the society.

(3) Whether or not it is avoided, any such party to the transaction as is mentioned in subsection (1)(a) or (b) above, and any director of the society who authorised the transaction, is liable—

(a) to account to the society for any gain which he has made directly or indirectly by the transaction, and

(b) to indemnify the society for any loss or damage resulting from the transaction.

(4) Nothing in the above provisions shall be construed as excluding the operation of any other enactment or rule of law by virtue of which the transaction may be called in question or any liability to the society may arise.

(5) The transaction ceases to be voidable if—

(a) restitution of any money or other asset which was the subject-matter of the transaction is no longer possible, or

(b) the society is indemnified for any loss or damage resulting from the transaction, or

(c) rights acquired bona fide for value and without actual notice of the directors' exceeding their powers by a person who is not party to the transaction would be affected by the avoidance, or

(d) the transaction is ratified by the society in general meeting, by ordinary or special resolution or otherwise as the case may require.

(6) A person other than a director of the society is not liable under subsection (3) above if he shows that at the time the transaction was entered into he did not know that the directors were exceeding their powers.

(7) This section does not affect the operation of sub-paragraph (1) of paragraph 17 of Schedule 2 in relation to any party to the transaction not within subsection (1)(a) or (b) above.

But where a transaction is voidable by virtue of this section and valid by virtue of that sub-paragraph in favour of such a person, the court may, on the application of that person or of the society, make such order affirming, severing or setting aside the transaction, on such terms, as appear to the court to be just.

(8) In this section "transaction" includes any act; and the reference in subsection (1) above to limitations under the society's constitution includes limitations deriving—

(a) from a resolution of the society passed at a general or special meeting or on a postal ballot; or

(b) from any agreement between the members of the society."

Commencement Information

I22 S. 38 in force at 1.12.1997 by S.I. 1997/2668, art. 2, **Sch. Pt. II** (subject as mentioned in art. 2(2)-(5) of that S.I.)

VALID FROM 01/12/1997

39 Application of certain insolvency legislation.

(1) After section 90 of the 1986 Act there shall be inserted the following section—

"**90A Application of other companies insolvency legislation to building societies.**

For the purpose of—

(a) enabling voluntary arrangements to be approved in relation to building societies,

(b) enabling administration orders to be made in relation to building societies, and

(c) making provision with respect to persons appointed in England and Wales or Northern Ireland as receivers and managers of building societies' property,

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the enactments specified in paragraph 1(2) of Schedule 15A to this Act shall apply in relation to building societies with the modifications specified in that Schedule."

(2) After Schedule 15 to the 1986 Act there shall be inserted, as Schedule 15A, the provisions set out in Schedule 6 to this Act (application of other companies insolvency legislation to building societies).

40 Abolition of priority liquidation distribution rights.

In section 100 of the 1986 Act (distribution and share rights), the following provisions (which confer rights to priority liquidation distributions) shall cease to have effect, namely—

(a) in subsection (2), paragraph (c) and the word "and" immediately before that paragraph; and

(b) subsections (5) and (6).

41 Protective provisions for specially formed successors.

For section 101 of the 1986 Act there shall be substituted the following section—

"**101 Protective provisions for specially formed successors.**

(1) No company specially formed by a building society to be its successor shall, at any time during the protective period—

(a) offer for sale or invite subscription for any shares in the company or allot or agree to allot any such shares with a view to their being offered for sale, or

(b) allot or agree to allot any share in the company, or

(c) register a transfer of shares in the company,

if the effect of the offer, the invitation, the allotment or the registration of the transfer would be that more shares than the permitted proportion would be held by any one person (other than the society), or by any two or more persons who are parties to a concert party agreement which relates to shares in the company.

(2) The articles of association of the company shall include provision such as will secure that the company does not offer, invite subscription for, allot or register transfers of, shares in contravention of subsection (1) above and no alteration in those provisions may be made by the company during the protective period.

(3) Any provision (including any altered provision) of the company's articles of association which is to any extent inconsistent with subsection (1) above shall, to that extent, be void; and any allotment or registration of a transfer of shares in contravention of that subsection shall be void.

(4) This section shall cease to apply to a company if—

(a) a financial institution becomes a subsidiary undertaking of the company, or the company or such an undertaking acquires the whole, or substantially the whole, of the business of such an institution;

(b) a special resolution to that effect is passed by the requisite majority of the members of the company; or

(c) the Bank by notice to the company gives a direction to that effect;

and the Bank shall not give such a direction unless it considers it desirable to do so in the interests of the depositors and potential depositors of the company.

(5) If this section ceases to apply to a company, any provision included by virtue of subsection (2) above in its articles of association shall cease to have effect.

(6) In this section—

"the Bank" means the Bank of England;

"concert party agreement" means an agreement to which section 204 of the [M16]Companies Act 1985 or Article 212 of the [M17]Companies (Northern Ireland) Order 1986 applies;

"EEA country or territory" has the same meaning as in sections 6A and 6B;

"financial institution" means any of the following, namely—

(a) a building society authorised under this Act;

(b) an institution authorised under section 3 or 4 of the [M18]Insurance Companies Act 1982 to carry on business of a class specified in Schedule 1 or 2 to that Act;

(c) a person authorised under Chapter III of Part I of the [M19]Financial Services Act 1986 or included in the list maintained by the Bank under section 43 of that Act;

(d) an institution authorised under section 9 of the [M20]Banking Act 1987;

(e) a friendly society authorised under section 32(9) of the [M21]Friendly Societies Act 1992;

(f) any body formed in or incorporated under the law of an EEA country or territory outside the United Kingdom and carrying on in the United Kingdom business of a kind which, if it were formed in or incorporated under the law of any part of the United Kingdom, it would be precluded from carrying on there without being authorised as mentioned in the preceding paragraphs;

"the permitted proportion", in relation to shares in the company, is 15 per cent. of the company's issued share capital;

"the protective period" is the period beginning with the date of the company's incorporation and ending five years after the vesting date or, if this section ceases to apply to the company, ending on the date on which it so ceases;

"the requisite majority" means a majority of the members having the right to attend and vote at a general meeting of the company, being a majority together holding not less than 75 per cent in nominal value of the shares giving that right;

"transfer", in relation to shares, does not include a transfer to a person to whom the right to any shares has been transmitted by operation of law;

and any expression used in this section and in the [M22]Companies Act 1985 or, as regards Northern Ireland, the [M23]Companies (Northern Ireland) Order 1986 has the same meaning in this section as in that Act or that Order.

(7) For the purposes of this section—

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(a) shares held by a person in a fiduciary capacity shall be treated as not held by him;

(b) shares held by a person as nominee for another shall be treated as held by the other; and

(c) shares shall be regarded as held as nominee for another if any voting rights attaching to them are exercisable only on his instructions or with his consent or concurrence.

(8) Any reference in this section to shares includes a reference—

(a) to any warrant or other instrument entitling the holder to subscribe for shares; and

(b) to any certificate or other instrument issued by or on behalf of the company and conferring a right to acquire shares otherwise than by subscription;

and for the purposes of subsection (1) above any shares to which any such instrument relates shall be deemed to be held by the holder of the instrument."

Marginal Citations

M16 1985 c.6.
M17 S.I. 1986/1032 (N.I.6).
M18 1982 c.50.
M19 1986 c.60.
M20 1987 c.22.
M21 1992 c.40.
M22 1985 c.6.
M23 S.I. 1986/1032 (N.I.6).

VALID FROM 09/06/1997

42 Registration of charges by building societies.

After section 104 of the 1986 Act there shall be inserted the following section—

"**104A Registration of charges: application of company law.**

(1) For the purpose of securing the registration of charges created by building societies, the Secretary of State may, by order made with the concurrence of the Treasury and after consultation with the Commission, provide that such of the provisions of—

(a) Part XII of the [M24]Companies Act 1985 (registration of charges); and

(b) Part XIII of the [M25]Companies (Northern Ireland) Order 1986,

as may be specified in the order shall apply in relation to building societies, and charges created by building societies, with such modifications as may be so specified.

(2) An order under this section may make different provision for different cases or different areas and may contain such incidental, supplemental and transitional provisions as may appear to the Secretary of State to be necessary or expedient.

(3) The power to make an order under this section is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament."

Marginal Citations

M24 1985 c.6.

M25 S.I. 1986/1032 (N.I.6).

VALID FROM 09/06/1997

43 Other amendments of 1986 Act.

Schedule 7 to this Act (which contains other amendments of the 1986 Act including some that are minor amendments or amendments consequential on the foregoing provisions of this Act) shall have effect.

Commencement Information

I23 S. 43 partly in force; s. 43 not in force at Royal Assent see s. 47(3); s. 43 in force for certain purposes at 9.6.1997 by S.I. 1997/1427, **art. 2**; s. 43 in force at 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pts. I, II, **III** (subject as mentioned in art. 2(2)-(5) of that S.I.)

Supplemental

VALID FROM 09/06/1997

44 Financial provisions.

There shall be paid out of money provided by Parliament any increase attributable to this Act in the sums payable out of money so provided under the 1986 Act.

VALID FROM 09/06/1997

45 Minor and consequential amendments.

(1) In section 10 of the [M26]Bankers' Books Evidence Act 1879 (interpretation of "legal proceeding" etc.), in the definition of "legal proceeding" for the words from "an arbitration" to the end there shall be substituted the following paragraphs—

"(a) an arbitration;

(b) an application to, or an inquiry or other proceeding before, the Solicitors Disciplinary Tribunal or any body exercising functions in relation to solicitors in Scotland or Northern Ireland corresponding to the functions of that Tribunal; and

(c) an investigation of a complaint by the adjudicator of a recognised scheme for the purposes of section 83 of the [M27]Building Societies Act 1986."

(2) In paragraph 2(3) of Schedule 12 to the [M28]Finance Act 1988 (meaning of "financial stock" in relation to a building society), for the words "by virtue of regulations under section 21(7) of the Building Societies Act 1986 (liquid assets etc.)" there shall be substituted the words " in liquid form (within the meaning given by section 45(7) of the Building Societies Act 1986) ".

Commencement Information

I24 S. 45(1) partly in force; s. 45 not in force at Royal Assent see s. 47(3); s. 45(1) in force at 9.6.1997 by S.I. 1997/1427, **art. 2**; S. 45(2) in force at 1.12.1997 by S.I. 1997/2668, art. 2, **Sch. Pt. II** (subject as mentioned in art. 2(2)-(5) of that S.I.)

Marginal Citations

M26 1879 c.11.
M27 1986 c.53.
M28 1988 c.39.

46 Transitional provisions, savings and repeals etc.

(1) The transitional provisions and savings contained in Schedule 8 to this Act shall have effect; but those provisions and savings are without prejudice to sections 16 and 17 of the [M29]Interpretation Act 1978 (effect of repeals).

(2) The enactments and instruments specified in Schedule 9 to this Act are hereby repealed or revoked to the extent specified in the third column of that Schedule.

Commencement Information

I25 S. 46 partly in force at Royal Assent see s. 47(3). S. 46 partly in force (21.5.1997) by S.I. 1997/1307, **art. 2**; s. 46 in force at 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pts. I, II, **III** (subject as mentioned in art. 2(2)-(5) of that S.I.)

Marginal Citations

M29 1978 c.30.

PROSPECTIVE

47 Short title, interpretation, commencement and extent.

(1) This Act may be cited as the Building Societies Act 1997.

(2) In this Act "the 1986 Act" means the Building Societies Act 1986 and expressions which are also used in that Act have the same meanings as in that Act.

(3) This Act, except—

(a) sections 40 and 41 above;

(b) paragraphs 9 and 10 of Schedule 8 to this Act and section 46(1) above so far as relating to those paragraphs; and

(c) section 46(2) above and Schedule 9 to this Act so far as relating to the repeals in section 100 of the 1986 Act and the revocations in the [M30]Building Societies (Transfer of Business) Regulations 1988,

shall come into force on such day as the Treasury may by order made by statutory instrument appoint, and different days may be appointed for different purposes or for building societies of different descriptions.

(4) Where any enactment amended or repealed by this Act extends to any part of the United Kingdom, the amendment or repeal extends to that part.

(5) Subject to subsection (4) above, this Act extends to Northern Ireland.

Subordinate Legislation Made

P1 S. 47(3) power partly exercised (15.5.1997): 21.5.1997 appointed for specified provisions by S.I. 1997/1307, **art. 2**
S. 47(3) power partly exercised (5.6.1997): 9.6.1997 appointed for specified provisions by S.I. 1997/1427, **art. 2**

Marginal Citations

M30 S.I. 1988/1153.

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SCHEDULES

VALID FROM 01/12/1997

SCHEDULE 1

Section 3(2).

[PART II OF SCHEDULE 2 TO 1986 ACT]

Commencement Information

I26 Sch. 1 in force at 1.12.1997 by S.I. 1997/2668, art. 2, **Sch. Pt. II** (subject as mentioned in art. 2(2)-(5) of that S.I.)

" CAPACITY OF SOCIETY AND POWER OF DIRECTORS TO BIND IT

Capacity of society not limited by its memorandum

16 (1) The validity of an act done by a building society shall not be called into question on the ground of lack of capacity by reason of anything included in the society's memorandum.

(2) A member of a building society may bring proceedings to restrain the doing of an act which but for sub-paragraph (1) above would be beyond the society's capacity; but no such proceedings shall lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the society.

(3) It remains the duty of the directors of a building society to observe any limitations on their powers flowing from the society's memorandum; and action by the directors which but for sub-paragraph (1) above would be beyond the society's capacity may only be ratified by the society by special resolution.

(4) A resolution ratifying such action shall not affect any liability incurred by the directors or any other person; relief from any such liability must be agreed to separately by special resolution.

Power of directors to bind society

17 (1) In favour of a person dealing with a building society in good faith, the power of the board of directors to bind the society, or authorise others to do so, shall not be limited by reason of anything included in the society's constitution, that is to say, its memorandum and rules.

(2) For this purpose—

(a) a person deals with a building society if he is a party to any transaction or other act to which the society is a party;

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(b) a person shall not be regarded as acting in bad faith by reason only of his knowing that an act is beyond the powers of the directors under the society's constitution; and

(c) a person shall be presumed to have acted in good faith unless the contrary is proved.

(3) The references above to limitations on the directors' powers under the society's constitution include limitations deriving from a resolution of the society passed at a general meeting or special meeting or on a postal ballot, or from any agreement between the members of the society.

(4) Notwithstanding anything in paragraph 3(2) above, sub-paragraph (1) above applies in relation to members of the society, and to persons claiming on account of members or under the rules of the society, as it applies in relation to other persons.

(5) Sub-paragraph (1) above does not affect any right of a member of the society to bring proceedings to restrain the doing of an act which is beyond the powers of the directors; but no such proceedings shall lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the society.

(6) Nor does that sub-paragraph affect any liability incurred by the directors, or any other person, by reason of the directors' exceeding their powers.

No duty to enquire as to capacity of society etc.

18 (1) A party to a transaction with a building society is not bound to enquire as to whether it is permitted by the society's constitution or as to any limitation on the powers of the board of directors to bind the society or authorise others to do so.

(2) Notwithstanding anything in paragraph 3(2) above, sub-paragraph (1) above applies in relation to members of the society as it applies in relation to other persons."

VALID FROM 01/12/1997

SCHEDULE 2 Section 7(2).

[SCHEDULE 2A TO 1986 ACT]

" DISCHARGE OF MORTGAGES: SUPPLEMENTARY PROVISIONS

Main provisions

1 (1) When all money intended to be secured by a mortgage given to a building society has been fully paid or discharged, the society may endorse on or annex to the mortgage one or other of the following—

(a) a receipt in the prescribed form signed by any person acting under the authority of the board of directors;

(b) a reconveyance of the mortgaged property to the mortgagor;

(c) a reconveyance of the mortgaged property to such person of full age, and on such trusts (if any), as the mortgagor may direct.

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(2) Where in pursuance of sub-paragraph (1) above a receipt is endorsed on or annexed to a mortgage, not being a charge or incumbrance registered under the [M31]Land Registration Act 1925, the receipt shall operate in accordance with section 115(1), (3), (6) and (8) of the [M32]Law of Property Act 1925 (discharge of mortgages by receipt) in the like manner as a receipt which fulfils all the requirements of subsection (1) of that section.

(3) Section 115(9) of the Law of Property Act 1925 shall not apply to a receipt in the prescribed form endorsed or annexed by a building society in pursuance of sub-paragraph (1) above; and in the application of that subsection to a receipt so endorsed or annexed which is not in that form, the receipt shall be taken to be executed in the manner required by the statute relating to the society if it is signed as mentioned in sub-paragraph (1)(a) above.

(4) The foregoing sub-paragraphs shall, in the case of a mortgage of registered land, have effect without prejudice to the operation of the Land Registration Act 1925 or any rules in force under it.

(5) In this paragraph—

"mortgage" includes a further charge;

"the mortgagor", in relation to a mortgage, means the person for the time being entitled to the equity of redemption; and

"registered land" has the same meaning as in the Land Registration Act 1925.

(6) This paragraph does not extend to Scotland.

Application of paragraph 1 to Northern Ireland

2 (1) In its application to Northern Ireland, paragraph 1 above shall have effect with the following modifications.

(2) In sub-paragraph (1) after the words "on such trusts" there shall be inserted the words "or uses".

(3) In sub-paragraph (2)—

(a) for the words from "charge" to "Property Act 1925" there shall be substituted the words "charge on registered land, the receipt shall operate in accordance with Article 3(1), (7) and (9) of the [M33]Property (Discharge of Mortgage by Receipt) (Northern Ireland) Order 1983"; and

(b) for the words "subsection (1) of that section" there shall be substituted the words "paragraph (1) of that Article".

(4) For sub-paragraphs (3) and (4) there shall be substituted the following sub-paragraphs— "

(3) If the mortgage is registered in accordance with the [M34]Registration of Deeds Act (Northern Ireland) 1970, the registrar under that Act shall—

(a) on production of the receipt mentioned in sub-paragraph (1) above make a note in the Abstract Book against the entry relating to the mortgage that the mortgage is satisfied; and

(b) grant a certificate, either on the mortgage or separately, that the mortgage is satisfied.

(4) The certificate granted under sub-paragraph (3)(b) above shall—

(a) be received in all courts and proceedings without further proof; and

(b) have the effect of clearing the register of the mortgage."

(5) In sub-paragraph (5) for the definition of "registered land" there shall be substituted the following definition—

"

"registered land" means land the title to which is registered under Part III of the [M35]Land Registration Act (Northern Ireland) 1970. "

Power to prescribe form of documents

3 (1) The Chief Registrar may make rules for prescribing anything authorised or required by paragraph 1 above to be prescribed; and in this Schedule "prescribed" means prescribed by rules made under this paragraph.

(2) The power to make rules under this paragraph shall be exercisable by statutory instrument."

Marginal Citations

M31 1925 c.21.
M32 1925 c.20.
M33 S.I. 1983/766 (N.I.9).
M34 1970 c.25 (N.I.).
M35 1970 c.18 (N.I.).

VALID FROM 01/12/1997

SCHEDULE 3

Section 13(2).

[SCHEDULE 7A TO 1986 ACT]

Commencement Information

I27 Sch. 3 in force at 1.12.1997 by S.I. 1997/2668, art. 2, **Sch. Pt. II** (subject as mentioned in art. 2(2)-(5) of that S.I.)

. . . . . .

Status: *Point in time view as at 21/03/1997. This version of this Act contains provisions that are not valid for this point in time.*
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VALID FROM 09/06/1997

SCHEDULE 4 Section 17(2).

[SCHEDULE 8A TO 1986 ACT]

" Transfer directions: modifications of Part X

PART I

DIRECTIONS UNDER SECTION 42B(3)

Preliminary

1 This Part of this Schedule applies where a direction is given under section 42B(3) ("the direction").

Compensation for loss of office

2 (1) The consent of the Commission shall be sufficient authority for the provision for any such compensation as is mentioned in section 96(1)(a).

(2) A resolution of the board of directors passed in pursuance of the direction shall be sufficient authority for any such payments as are mentioned in section 96(1)(b).

Statements to members

3 (1) The following provisions of this paragraph shall apply in place of paragraph 1 of Schedule 16.

(2) The society shall send to every member entitled to notice of a meeting of the society, a statement containing—

(a) the particulars required, in relation to prescribed matters, by regulations under section 42B(8); and

(b) particulars of any other matters required by the Commission in the case of the particular transfer of engagements,

with or without other particulars regarding that transfer.

(3) The statement shall be sent—

(a) where the Commission has given the society a direction under section 42B(1)(a), within the period (not being less than 28 days) specified in the notice of confirmation under section 42C(2)(b);

(b) where the Commission has not given the society such a direction, within 14 days of the board of directors passing a resolution in pursuance of the direction.

(4) No statement shall be sent unless its contents, so far as they concern the prescribed matters or any matter of which particulars are required to be given under sub-paragraph (2)(b) above, have been approved by the Commission.

(5) A failure to comply with a requirement of this paragraph shall not invalidate the transfer of engagements; but, if the 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.

Application for confirmation

4 No application for confirmation by the Commission of the transfer of engagements may be made under Part III of Schedule 16 until after the society has complied with the requirements of paragraph 3 above.

Grounds for not confirming transfer

5 Section 95 shall apply as if—

(a) for paragraphs (a) and (b) of subsection (4) there were substituted the following paragraph—

"

(a) the members or a proportion of them would be unreasonably prejudiced by the transfer;"

; and

(b) in subsection (6), for the words "paragraphs (a), (b) and (c)" there were substituted the words "paragraphs (a) and (c)" and, in paragraph (a), the words ", including the calling of a further meeting," were omitted.

PART II

DIRECTIONS UNDER SECTION 42B(4)

Preliminary

6 This Part of this Schedule applies where a direction is given under section 42B(4) ("the direction").

Compensation for loss of office

7 (1) The consent of the Commission shall be sufficient authority for the provision for any such compensation as is mentioned in section 99(2)(a).

(2) A resolution of the board of directors passed in pursuance of the direction shall be sufficient authority for any such payments as are mentioned in section 99(2)(b).

Increased remuneration

8 If the Commission consents to the inclusion of any such provision as is mentioned in section 99A(1), it shall not be necessary for an ordinary resolution approving the provision to be put before a meeting of the society.

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Statements to members

9 (1) The following provisions of this paragraph shall apply in place of Part I of Schedule 17.

(2) The society shall send to every member entitled to notice of a meeting of the society, a statement containing—

(a) the particulars required, in relation to prescribed matters, by regulations under section 42B(8); and

(b) particulars of any other matters required by the Commission in the case of the particular transfer of business,

with or without other particulars regarding that transfer.

(3) The statement shall be sent—

(a) where the Commission has given the society a direction under section 42B(1)(b), within the period (not being less than 28 days) specified in the notice of confirmation under section 42C(2)(b);

(b) where the Commission has not given the society such a direction, within 14 days of the board of directors passing a resolution in pursuance of the direction.

(4) No statement shall be sent unless its contents, so far as they concern the prescribed matters or any matter of which particulars are required to be given under sub-paragraph (2)(b) above, have been approved by the Commission.

(5) A failure to comply with a requirement of this paragraph shall not invalidate the transfer of business; but, if the 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.

Application for confirmation

10 No application for confirmation by the Commission of the transfer of business may be made under Part II of Schedule 17 until after the society has complied with the requirements of paragraph 9 above.

Grounds for not confirming transfer

11 Section 98 shall apply as if—

(a) for paragraphs (a) and (b) of subsection (3) there were substituted the following paragraph—

“

(a) the members or a proportion of them would be unreasonably prejudiced by the transfer;”

;

(b) in subsection (5), for the words “paragraphs (a), (b), (c) and (d)” there were substituted the words “paragraphs (a), (c) and (d)”; and

(c) in subsection (6), the words “the calling of a further meeting,” were omitted.”

Status: *Point in time view as at 21/03/1997. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Building Societies Act 1997. (See end of Document for details)*

VALID FROM 01/12/1997

SCHEDULE 5

Section 30(3).

INFORMATION ABOUT TRANSFERS OR PROPOSED TRANSFERS OF BUSINESS

PART I

[PART I OF SCHEDULE 17 TO 1986 ACT]

" ISSUE OF STATEMENT OR SUMMARY TO MEMBERS

Preliminary

1 In this Part of this Schedule—

"prescribed matters" in relation to any transfer of the business of a building society to its successor, means the matters relating to the transfer, the society, its officers, members or depositors, or the successor, which are prescribed in regulations made under paragraph 5(1) below;

"transfer statement", in relation to a transfer of business by a building society, means the statement with respect to the transfer which may be sent or handed to members of the society under paragraph 2 below;

"transfer summary", in relation to a transfer of business by a building society, means the summary of the transfer statement which may be sent to members of the society under that paragraph.

Duty to send transfer statements or summaries to members

2 A building society which desires to transfer its business shall, in accordance with this Part of this Schedule, send a transfer statement, or a transfer summary, to every member entitled to notice of a meeting of the society.

3 (1) A transfer statement, in relation to a transfer of business by a building society, shall contain—

(a) the particulars required, in relation to the prescribed matters, by the regulations made under paragraph 5(1) below, and

(b) particulars of any other matters required by the Commission in the case of the particular transfer,

with or without other particulars regarding the transfer.

(2) A transfer summary, in relation to a transfer of business by a building society, shall contain—

(a) the information required by the regulations made under paragraph 5(2) below, and

(b) any other information required by the Commission in the case of the particular transfer,

with or without other particulars regarding the transfer.

Status: *Point in time view as at 21/03/1997. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Building Societies Act 1997. (See end of Document for details)*

4 (1) Subject to sub-paragraph (3) below, a building society shall, in relation to a transfer of business, include a transfer statement, or a transfer summary, in or with the notice to be sent to its members of the meeting of the society at which the requisite transfer resolutions are to be moved.

(2) Subject to sub-paragraph (3) below, where a building society sends a transfer summary, a transfer statement—

(a) shall be handed forthwith and free of charge to any member to whom the summary was sent who asks for such a statement at an office or branch of the society; and

(b) shall be sent forthwith and free of charge to any such member who asks for such a statement otherwise than at such an office or branch.

(3) No transfer statement shall be sent or handed to a member unless its contents, so far as they concern the prescribed matters or any matter of which particulars are required to be given under paragraph 3(1)(b) above, have been approved by the Commission.

5 (1) The Commission, with the consent of the Treasury, may make regulations for the purpose of specifying, as prescribed matters, the matters of which transfer statements are to give particulars; and the regulations may also require particulars to be given of any alternatives to the particular transfer which were available to the society making the transfer.

(2) The Commission, with the consent of the Treasury, may make regulations for the purpose of specifying the information which transfer summaries are to give.

(3) Any power to make regulations under this paragraph is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament."

PART II

[PART IA OF SCHEDULE 17 TO 1986 ACT]

" NOTIFICATION OF PROPOSALS FOR TRANSFERS OF BUSINESS

Preliminary

5A In this Part of this Schedule—

"requisite particulars", in relation to a transfer proposal, means the particulars required by paragraph 5B(2) below to be given in a transfer proposal notification;

"transfer", in relation to a building society, means a transfer of the whole of its business to a company under section 97;

"transfer proposal", in relation to a building society, means a proposal in writing by a company for a transfer by the society to the company, with or without terms for the transfer; and "proposer" has a corresponding meaning;

"transfer proposal notification" means a notification containing the requisite particulars of a transfer proposal;

"transfer resolutions", in relation to a building society, means the resolutions required for the approval of a transfer by the society under section 97.

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Duty to notify members

5B (1) Subject to sub-paragraph (3) below, it shall be the duty of a building society receiving a transfer proposal to send, in accordance with this Part of this Schedule, a transfer proposal notification in respect of the proposal to every member entitled to notice of a meeting of the society.

(2) A transfer proposal notification must contain the following particulars—

(a) the fact that a transfer proposal has been made, and

(b) the identity of the proposer;

with or without other particulars regarding the proposal.

(3) Sub-paragraph (1) above does not require a transfer proposal notification to be sent to members if the proposer has requested in writing that the requisite particulars are to be treated as confidential; and, where such a request is made and is at a later date withdrawn in writing, the society receiving the proposal shall, for the purposes of this Part of this Schedule, treat the proposal as having been received on that date instead of any earlier date.

5C A building society shall include in or with every notice of its annual general meeting a transfer proposal notification with respect to any transfer proposal, other than a proposal of which notice has already been given under this paragraph—

(a) received by it during the period of 12 months ending with the ninth month of the last financial year of the society before that meeting; or

(b) treated by paragraph 5B(3) above as having been received by it during the last three months of that financial year;

and the society may also include, under this paragraph, a transfer proposal notification with respect to any proposal received, or treated as received, by it after the end of either period.

Duty to notify central office

5D (1) Where a building society sends a transfer proposal notification to its members under paragraph 5C above in connection with a meeting of the society, it shall send a copy of the notification to the central office at least 14 days before the date of the meeting.

(2) The central office shall keep the copy of a transfer proposal notification received by it from a building society in the public file of that society.

Penalty

5E If default is made by a building society in complying with paragraph 5C or 5D 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.”

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VALID FROM 01/12/1997

SCHEDULE 6

Section 39(2).

[SCHEDULE 15A TO 1986 ACT]

" Application of other companies insolvency legislation to building societies

PART I

GENERAL MODE OF APPLICATION

1 (1) Subject to the provisions of this Schedule, the enactments specified in sub-paragraph (2) below (referred to in this Schedule as "the enactments") apply in relation to building societies as they apply in relation to companies limited by shares and registered under the [M36]Companies Act 1985 or (as the case may be) the [M37]Companies (Northern Ireland) Order 1986.

(2) The enactments referred to in sub-paragraph (1) above are—

(a) Parts I and II, Chapter I of Part III, Parts VI, VII, XII and XIII, section 434 and Part XVIII of the [M38]Insolvency Act 1986, or

(b) Parts I to IV, VII, XI and XII and Article 378 of the [M39]Insolvency (Northern Ireland) Order 1989,

and, in so far as they relate to offences under any such enactment, sections 430 and 432 of, and Schedule 10 to, the [M40]Insolvency Act 1986 or Article 2(6) and 373 of, and Schedule 7 to, the [M41]Insolvency (Northern Ireland) Order 1989.

2 (1) The enactments shall, in their application to building societies, have effect with the substitution—

(a) for "company" of "building society";

(b) for "the registrar of companies" or "the registrar" of "the central office";

(c) for "the articles" of "the rules"; and

(d) for "registered office" of "principal office".

(2) In the application of the enactments to building societies—

(a) every reference to the officers, or to a particular officer, of a company shall have effect as a reference to the officers, or to the corresponding officer, of the building society and as including a person holding himself out as such an officer; and

(b) every reference to an administrative receiver shall be omitted.

3 (1) Where any of the enactments as applied to building societies requires a notice or other document to be sent to the central office, it shall have effect as if it required the central office to keep the notice or document in the public file of the society concerned and to record in that file the date on which the notice or document is placed in it.

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(2) Where any of the enactments, as so applied, refers to the registration, or to the date of registration, of such a notice or document, that enactment shall have effect as if it referred to the placing of the notice or document in the public file or (as the case may be) to the date on which it was placed there.

4 (1) Rules may be made under section 411 of the [M42]Insolvency Act 1986 or, as the case may be, Article 359 of the [M43]Insolvency (Northern Ireland) Order 1989 for the purpose of giving effect, in relation to building societies, to the provisions of the enactments.

(2) An order made by the competent authority under section 414 of the Insolvency Act 1986 may make provision for fees to be payable under that section in respect of proceedings under the enactments and the performance by the official receiver or the Secretary of State of functions under them.

(3) An order made by the Department of Economic Development under Article 361 of the Insolvency (Northern Ireland) Order 1989 may make provision for fees to be payable under that Article in respect of proceedings under the enactments and the performance by the official receiver or that Department of functions under them.

5 Any enactment which specifies a money sum altered by order under section 416 of the Insolvency Act 1986, or, as the case may be, Article 362 of the Insolvency (Northern Ireland) Order 1989, (powers to alter monetary limits) applies with the effect of the alteration.

PART II

MODIFIED APPLICATION OF PARTS I AND II AND CHAPTER I OF PART III OF INSOLVENCY ACT 1986

Preliminary

6 In this Part of this Schedule, the [M44]Insolvency Act 1986 is referred to as "the Act".

Voluntary arrangements

7 Section 1 of the Act (proposals for voluntary arrangements) has effect as if—

(a) it required any proposal under Part I of the Act to be so framed as to enable a building society to comply with the requirements of this Act; and

(b) any reference to debts included a reference to liabilities owed to the holders of shares in a building society.

8 In section 2 (procedure where nominee is not liquidator or administrator) and section 3 (summoning of meetings) of the Act as applied to a building society, any reference to a meeting of the society is a reference to—

(a) a meeting of both shareholding and borrowing members of the society; and

(b) a meeting of shareholding members alone.

9 In section 6 of the Act (challenge of decisions) as applied to a building society, "contributory"—

(a) means every person liable to contribute to the assets of the society in the event of its being wound up, and

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(b) for the purposes of all proceedings for determining, and all proceedings prior to the determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory, and

(c) includes persons who are liable to pay or contribute to the payment of—

(i) any debt or liability of the building society being wound up, or

(ii) any sum for the adjustment of rights of members among themselves, or

(iii) the expenses of the winding up;

but does not include persons liable to contribute by virtue of a declaration by the court under section 213 (imputed responsibility for fraudulent trading) or section 214 (wrongful trading) of the Act.

Administration orders

10 (1) Section 8 of the Act (power of court to make administration order) has effect as if it included provision that, where—

(a) an application for an administration order to be made in relation to a building society is made by the Commission (with or without other parties); and

(b) the society has defaulted in an obligation to pay any sum due and payable in respect of any deposit or share,

the society shall be deemed for the purposes of subsection (1) to be unable to pay its debts.

(2) In subsection (3) of that section, paragraph (c) and, in subsection (4) of that section, the words from "nor where" to the end are omitted.

11 (1) Subsection (1) of section 9 of the Act (application for administration order) as applied to a building society has effect as if—

(a) it enabled an application to the court for an administration order to be by petition presented, with or without other parties, by the Commission or by a shareholding member entitled under section 89(3) of this Act to petition for the winding up of the society; and

(b) the words from "or by the clerk" to "on companies)" were omitted.

(2) In subsection (2)(a) of that section as so applied, the reference to any person who has appointed, or is or may be entitled to appoint, an administrative receiver of the society is a reference to the Commission (unless it is a petitioner).

(3) Subsection (3) of that section, and in subsection (4) of that section, the words "Subject to subsection (3)," are omitted.

12 In section 10 of the Act (effect of application for administration order), the following are omitted, namely—

(a) in subsection (2), paragraphs (b) and (c); and

(b) subsection (3).

13 In section 11 of the Act (effect of administration order), the following are omitted, namely—

(a) in subsection (1), paragraph (b) and the word "and" immediately preceding that paragraph;

(b) in subsection (3), paragraph (b);

(c) in subsection (4), the words "an administrative receiver of the company has vacated office under subsection (1)(b), or"; and

(d) subsection (5).

14 In subsection (1) of section 12 of the Act (notification of administration order), the reference to every invoice, order for goods or business letter is a reference to every statement of account, order for goods or services, business letter or advertisement.

15 Subsection (3) of section 13 of the Act (appointment of administrator) has effect as if it enabled an application for an order under subsection (2) of that section to be made by the Commission.

16 (1) Subject to sub-paragraph (2) below, section 14 of the Act (general powers of administrator) has effect as if it required the administrator of a building society, in exercising his powers under that section—

(a) to ensure compliance with the provisions of this Act; and

(b) not to appoint to be a director any person who is not a fit and proper person to hold that position.

(2) Sub-paragraph (1)(a) above does not apply in relation to section 5, 6 or 7 of this Act or paragraph (a) of the seventh criterion in section 45(3) of this Act.

(3) In subsection (4) of that section as applied to a building society, the reference to any power conferred by the Act or the [M45]Companies Act 1985 or by the memorandum or articles of association is a reference to any power conferred by this Act or by the society's memorandum or rules.

(4) Subsection (8) of section 45 of this Act applies for the purposes of sub-paragraph (1)(b) above as it applies for the purposes of the seventh criterion in subsection (3) of that section.

17 (1) Subject to sub-paragraph (3) below, paragraph 16 of Schedule 1 to the Act (powers of administrators) as applied to a building society has effect as if it conferred power to transfer liabilities in respect of deposits with or shares in the society.

(2) No transfer under that paragraph shall be a transfer of engagements for the purposes of Part X of this Act.

(3) No transfer under that paragraph which, apart from sub-paragraph (2) above, would be a transfer of engagements for the purposes of that Part shall be made unless it is approved by the court, or by meetings summoned under section 23(1) or 25(2) of the Act (as modified by paragraph 21 or 23 below).

18 In section 15 of the Act (power to deal with charged property etc.)—

(a) subsection (1) is omitted; and

(b) for subsections (3) and (4) there is substituted the following subsection—

"

(3) Subsection (2) applies to any security other than one which, as created, was a floating charge."

19 (1) Section 17 of the Act (general duties of administrator) has effect as if, instead of the requirement imposed by subsection (3), it required the administrator of a building society to summon a meeting of the society's creditors if—

(a) he is requested, in accordance with the rules, to do so by 500 of the society's creditors, or by one-tenth, in number or value, of those creditors, or

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(b) he is directed to do so by the court.

(2) That section also has effect as if it required the administrator of a building society to summon a meeting of the society's shareholding members if—

(a) he is requested, in accordance with the rules, to do so by 500 of the society's shareholding members, or by one-tenth, in number, of those members, or

(b) he is directed to do so by the court.

20 In subsection (4) of section 19 of the Act (vacation of office) as applied to a building society, the words "in priority to any security to which section 15(1) then applies" are omitted.

21 (1) Subsection (1) of section 23 of the Act (statement of proposals) as applied to a building society has effect as if—

(a) the reference to the central office included a reference to the Commission and the Investor Protection Board;

(b) the reference to all creditors included a reference to all holders of shares in the society; and

(c) the reference to a meeting of the society's creditors included a reference to a meeting of holders of shares in the society.

(2) In subsection (2) of that section as so applied, references to members of the society do not include references to holders of shares in the society.

22 Section 24 of the Act (consideration of proposals by creditors' meeting) as applied to a building society has effect as if any reference to a meeting of creditors included a reference to a meeting of holders of shares in the society.

23 (1) Section 25 of the Act (approval of substantial revisions) as applied to a building society has effect as if—

(a) subsection (2) required the administrator to send a statement in the prescribed form of his proposed revisions to the Commission and to the Investor Protection Board; and

(b) the reference in that subsection to a meeting of creditors included a reference to a meeting of holders of shares in the society.

(2) In subsection (3) of that section as so applied, references to members of the society do not include references to holders of shares in the society.

24 Subsection (1) of section 27 of the Act (protection of interests of creditors and members) has effect—

(a) as if it enabled the Commission or Investor Protection Board to apply to the court by petition for an order under that section; and

(b) in relation to an application by the Commission or that Board, as if the words "(including at least himself)" were omitted.

Receivers and managers

25 In section 38 of the Act (receivership accounts), "prescribed" means prescribed by regulations made by statutory instrument by the Commission.

26 In subsection (1) of section 39 of the Act (notification that receiver or manager appointed), the reference to every invoice, order for goods or business letter is a reference to every statement of account, order for goods or services, business letter or advertisement.

27 Section 40 (payment of debts out of assets subject to floating charge) and sections 42 to 49 (administrative receivers) of the Act are omitted.

PART III

MODIFIED APPLICATION OF PARTS II, III AND IV OF INSOLVENCY (NORTHERN IRELAND) ORDER 1989

Preliminary

28 In this Part of this Schedule, the [M46]Insolvency (Northern Ireland) Order 1989 is referred to as "the Order".

Voluntary arrangements

29 Article 14 of the Order (proposals for voluntary arrangements) has effect as if—
- (a) it required any proposal under Part II of the Order to be so framed as to enable a building society to comply with the requirements of this Act; and
- (b) any reference to debts included a reference to liabilities owed to the holders of shares in a building society.

30 In Article 15 (procedure where nominee is not liquidator or administrator) and Article 16 (summoning of meetings) of the Order as applied to a building society, any reference to meetings of the society is a reference to—
- (a) a meeting of both shareholding and borrowing members of the society; and
- (b) a meeting of shareholding members alone.

31 In Article 19 of the Order (challenge of decisions) as applied to a building society, "contributory"—
- (a) means every person liable to contribute to the assets of the society in the event of its being wound up, and
- (b) for the purposes of all proceedings for determining, and all proceedings prior to the determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory, and
- (c) includes persons who are liable to pay or contribute to the payment of—
  - (i) any debt or liability of the building society being wound up, or
  - (ii) any sum for the adjustment of rights of members among themselves, or
  - (iii) the expenses of the winding up;

  but does not include persons liable to contribute by virtue of a declaration by the High Court under Article 177 (imputed responsibility for fraudulent trading) or Article 178 (wrongful trading) of the Order.

Administration orders

32 (1) Article 21 of the Order (power of High Court to make administration order) has effect as if it included provision that, where—
- (a) an application for an administration order to be made in relation to a building society is made by the Commission (with or without other parties); and

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(b) the society has defaulted in an obligation to pay any sum due and payable in respect of any deposit or share,

the society shall be deemed for the purposes of paragraph (1) to be unable to pay its debts.

(2) In paragraph (3) of that Article, sub-paragraph (c) and, in paragraph (4) of that Article, the words from "nor where" to the end are omitted.

33 (1) Paragraph (1) of Article 22 of the Order (application for administration order) as applied to a building society has effect as if—

(a) it enabled an application to the High Court for an administration order to be by petition presented, with or without other parties, by the Commission or by a shareholding member entitled under section 89(3) of this Act to petition for the winding up of the society; and

(b) the words from "or by the chief clerk" to "on companies)", in the second place where they occur, were omitted.

(2) In paragraph (2)(a) of that Article as so applied, the reference to any person who has appointed, or is or may be entitled to appoint, an administrative receiver of the society is a reference to the Commission (unless it is a petitioner).

(3) Paragraph (3) of that Article, and in paragraph (4) of that Article, the words "Subject to paragraph (3)," are omitted.

34 In Article 23 of the Order (effect of application for administration order), the following are omitted, namely—

(a) in paragraph (2), sub-paragraphs (b) and (c); and

(b) paragraph (3).

35 In Article 24 of the Order (effect of administration order), the following are omitted, namely—

(a) in paragraph (1), sub-paragraph (b) and the word "and" immediately preceding that sub-paragraph;

(b) in paragraph (3), sub-paragraph (b);

(c) in paragraph (4), the words "an administrative receiver of the company has vacated office under paragraph (1)(b), or"; and

(d) paragraph (5).

36 In paragraph (1) of Article 25 of the Order (notification of administration order), the reference to every invoice, order for goods or business letter is a reference to every statement of account, order for goods or services, business letter or advertisement.

37 Paragraph (3) of Article 26 of the Order (appointment of administrator) has effect as if it enabled an application for an order under paragraph (2) of that Article to be made by the Commission.

38 (1) Subject to sub-paragraph (2) below, Article 27 of the Order (general powers of administrator) has effect as if it required the administrator of a building society, in exercising his powers under that Article—

(a) to ensure compliance with the provisions of this Act; and

(b) not to appoint to be a director any person who is not a fit and proper person to hold that position.

(2) Sub-paragraph (1)(a) above does not apply in relation to section 5, 6 or 7 of this Act or paragraph (a) of the seventh criterion in section 45(3) of this Act.

(3) In paragraph (4) of that Article as applied to a building society, the reference to any power conferred by the Order or the [M47]Companies (Northern Ireland) Order 1986 or by the memorandum or articles of association is a reference to any power conferred by this Act or by the society's memorandum or rules.

(4) Subsection (8) of section 45 of this Act applies for the purposes of sub-paragraph (1)(b) above as it applies for the purposes of the seventh criterion in subsection (3) of that section.

39 (1) Subject to sub-paragraph (3) below, paragraph 17 of Schedule 1 to the Order (powers of administrators) as applied to a building society has effect as if it conferred power to transfer liabilities in respect of deposits with or shares in the society.

(2) No transfer under that paragraph shall be a transfer of engagements for the purposes of Part X of this Act.

(3) No transfer under that paragraph which, apart from sub-paragraph (2) above, would be a transfer of engagements for the purposes of that Part shall be made unless it is approved by the High Court, or by meetings summoned under Article 35(1) or 37(2) of the Order (as modified by paragraph 43 or 45 below).

40 In Article 28 of the Order (power to deal with charged property etc.)—

(a) paragraph (1) is omitted; and

(b) for paragraphs (3) and (4) there is substituted the following paragraph—

"

(3) Paragraph (2) applies to any security other than one which, as created, was a floating charge."

41 (1) Article 29 of the Order (general duties of administrator) has effect as if, instead of the requirement imposed by paragraph (3), it required the administrator of a building society to summon a meeting of the society's creditors if—

(a) he is requested, in accordance with the rules, to do so by 500 of the society's creditors, or by one-tenth, in number or value, of those creditors, or

(b) he is directed to do so by the High Court.

(2) That Article also has effect as if it required the administrator of a building society to summon a meeting of the society's shareholding members if—

(a) he is requested, in accordance with the rules, to do so by 500 of the society's shareholding members, or by one-tenth, in number, of those members, or

(b) he is directed to do so by the High Court.

42 In paragraph (4) of Article 31 of the Order (vacation of office) as applied to a building society, the words "in priority to any security to which Article 28(1) then applies" are omitted.

43 (1) Paragraph (1) of Article 35 of the Order (statement of proposals) as applied to a building society has effect as if—

(a) the reference to the central office included a reference to the Commission and the Investor Protection Board;

(b) the reference to all creditors included a reference to all holders of shares in the society; and

(c) the reference to a meeting of the society's creditors included a reference to a meeting of holders of shares in the society.

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(2) In paragraph (2) of that Article as so applied, references to members of the society do not include references to holders of shares in the society.

44 Article 36 of the Order (consideration of proposals by creditors' meeting) as applied to a building society has effect as if any reference to a meeting of creditors included a reference to a meeting of holders of shares in the society.

45 (1) Article 37 of the Order (approval of substantial revisions) as applied to a building society has effect as if—

(a) paragraph (2) required the administrator to send a statement in the prescribed form of his proposed revisions to the Commission and to the Investor Protection Board; and

(b) the reference in that paragraph to a meeting of creditors included a reference to a meeting of holders of shares in the society.

(2) In paragraph (3) of that Article as so applied, references to members of the society do not include references to holders of shares in the society.

46 Paragraph (1) of Article 39 of the Order (protection of interests of creditors and members) has effect—

(a) as if it enabled the Commission or Investor Protection Board to apply to the High Court by petition for an order under that section; and

(b) in relation to an application by the Commission or that Board, as if the words "(including at least himself)" were omitted.

Receivers and managers

47 In Article 48 of the Order (receivership accounts), "prescribed" means prescribed by regulations made by statutory instrument by the Commission.

48 In paragraph (1) of Article 49 of the Order (notification that receiver or manager appointed), the reference to every invoice, order for goods or business letter is a reference to every statement of account, order for goods or services, business letter or advertisement.

49 Article 50 (payment of debts out of assets subject to floating charge) and Articles 52 to 59 (administrative receivers) of the Order are omitted."

Marginal Citations

M36 1985 c.6.
M37 S.I. 1986/1032 (N.I.6).
M38 1986 c.45.
M39 S.I. 1989/2405 (N.I.19).
M40 1986 c.45.
M41 S.I. 1989/2405 (N.I.19).
M42 1986 c.45.
M43 S.I. 1989/2405 (N.I.19).
M44 1986 c.45.
M45 1985 c.6.
M46 S.I. 1989/2405 (N.I.19).
M47 S.I. 1986/1032 (N.I.6).

Status: *Point in time view as at 21/03/1997. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Building Societies Act 1997. (See end of Document for details)*

VALID FROM 09/06/1997

SCHEDULE 7

Section 43.

OTHER AMENDMENTS OF 1986 ACT

. . . . . .

SCHEDULE 8

Section 46(1).

TRANSITIONAL PROVISIONS AND SAVINGS

VALID FROM 21/05/1997

Alterations of purpose, powers and rules

1 (1) At any time during the period beginning two months after the passing of this Act and ending with the commencement of sections 1 and 2 of this Act, a building society may, for the purposes of the transition to the 1986 Act as amended by those sections—

(a) by special resolution, alter its purpose or principal purpose, alter its powers and alter its rules; and

(b) send to the central office four copies of a record of the alterations accompanied by a statutory declaration by the secretary that the alterations were effected by a resolution passed as a special resolution and that the record is a true record of the resolution.

(2) On altering its purpose or principal purpose, its powers and its rules under this paragraph, the building society shall determine the date on which the society intends the alterations to take effect and the record of the alterations sent to the central office shall specify that date (in this paragraph referred to as "the specified date").

(3) Subject to sub-paragraph (4) below, the central office, if satisfied that the alterations are in conformity with the 1986 Act as amended by sections 1 and 2 of this Act, shall—

(a) retain and register one copy of the record of the alterations;

(b) return another copy to the secretary of the society, together with a certificate of registration; and

(c) keep another copy, together with a copy of that registration certificate, in the public file of the society.

(4) No registration of a record of alterations shall be effected by the central office under sub-paragraph (3) above before the end of the period of 21 days beginning with the date on which it receives copies of the record under sub-paragraph (1) above.

Status: *Point in time view as at 21/03/1997. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Building Societies Act 1997. (See end of Document for details)*

(5) A record of alterations registered under this paragraph shall take effect on the specified date or, if registration of the record is not effected until a later date, that later date.

VALID FROM 01/12/1997

2 (1) Before the end of the transitional period each existing building society shall—

(a) by special resolution, alter its purpose or principal purpose, alter its powers and alter its rules, so as (in each case) to secure conformity with the 1986 Act as amended by sections 1 and 2 of this Act; and

(b) send to the central office four copies of a record of the alterations accompanied by a statutory declaration by the secretary that the alterations were effected by a resolution passed as a special resolution and that the record is a true record of the resolution.

(2) On altering its purpose or principal purpose, its powers and its rules under this paragraph, the building society shall determine the date on which the society intends the alterations to take effect and the record of the alterations sent to the central office shall specify that date (in this paragraph referred to as "the specified date").

(3) No date shall be specified under sub-paragraph (2) above which falls more than six months after the date of the meeting at which the special resolution was agreed.

(4) Subject to sub-paragraph (5) below, the central office, if satisfied that the alterations are in conformity with the 1986 Act as amended by sections 1 and 2 of this Act, shall—

(a) retain and register one copy of the record of the alterations;

(b) return another copy to the secretary of the society, together with a certificate of registration; and

(c) keep another copy, together with a copy of that registration certificate, in the public file of the society.

(5) No registration of a record of alterations shall be effected by the central office under sub-paragraph (4) above before the end of the period of 21 days beginning with the date on which it receives copies of the record under sub-paragraph (1) above.

(6) A record of alterations registered under this paragraph shall take effect on the specified date or, if registration of the record is not effected until a later date, that later date.

(7) In this paragraph—

"existing building society" means a building society registered under the 1986 Act immediately before the commencement of sections 1 and 2 of this Act;

"the transitional period" means the period beginning with that commencement and expiring with such day as the Commission, with the consent of the Treasury, prescribes by order made by a statutory instrument.

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Changes to legislation: *There are currently no known outstanding effects for the Building Societies Act 1997. (See end of Document for details)*

VALID FROM 01/12/1997

Default powers

3 (1) If the central office has not, before the end of the transitional period, received from an existing building society copies of a record of alterations in accordance with paragraph 1 or 2 above, the society shall be treated as having, by special resolution—

(a) altered its purpose or principal purpose to that required by section 5(1) of the 1986 Act as amended by section 1(1) of this Act;

(b) so altered its powers as to include all powers which were exercisable by it immediately before the commencement of sections 1 and 2 of this Act; and

(c) made such alteration of its rules as, in conformity with model rules made under this paragraph, the central office directs.

(2) The Commission may, by order made by a statutory instrument made with the consent of the Treasury, prescribe model rules for building societies for the purposes of this paragraph.

(3) Where, under this paragraph, a society is treated as having by special resolution, altered its purpose or principal purpose, its powers and its rules, the central office shall prepare three copies of a record of the alterations 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.

(4) A record of alterations so registered shall have effect for all purposes of the society's memorandum and rules until further alterations are made under paragraph 4 of Schedule 2 to the 1986 Act.

(5) Such fee as is prescribed shall be due from the society to the Chief Registrar for the registration of a record of alterations under this paragraph.

(6) In this paragraph—

"existing building society" means a building society registered under the 1986 Act immediately before the commencement of sections 1 and 2 of this Act;

"prescribed"—

(a) except in sub-paragraph (5) above, means prescribed by the Commission, with the consent of the Treasury, by order made by statutory instrument; and

(b) in that sub-paragraph, means prescribed by the Chief Registrar, with the consent of the Treasury, by order so made;

"the transitional period" means the period beginning with that commencement and expiring with such day as is prescribed.

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Changes to legislation: *There are currently no known outstanding effects for the Building Societies Act 1997. (See end of Document for details)*

VALID FROM 01/12/1997

Existing members to whom advances have been made

4 (1) Nothing in section 2 of this Act shall affect the operation of sub-paragraph (2) of paragraph 6 of Schedule 2 to the 1986 Act in relation to any person who, immediately before the commencement of that section, is the holder of a share on which an advance has been made.

(2) Nothing in that section shall affect the operation of sub-paragraph (3) of that paragraph in relation to any person who, immediately before the commencement of that section, is a member of a building society to whom an advance has been made under rules made in pursuance of paragraph 5(1) or (2) of that Schedule.

Commencement Information

I70 Sch. 8 para. 4 in force at 1.12.1997 by S.I. 1997/2668, art. 2, **Sch. Pt. II** (subject as mentioned in art. 2(2)-(5) of that S.I.)

VALID FROM 01/12/1997

Existing borrowing members which are corporations

5 Nothing in section 2 of this Act shall affect the operation of Schedule 2 to the 1986 Act in relation to any body corporate which, immediately before the commencement of that section, is a borrowing member of a building society within the meaning given by paragraph 5(2) of that Schedule (as substituted by that section).

Commencement Information

I71 Sch. 8 para. 5 in force at 1.12.1997 by S.I. 1997/2668, art. 2, **Sch. Pt. II** (subject as mentioned in art. 2(2)-(5) of that S.I.)

VALID FROM 01/12/1997

Existing fully secured loans

6 (1) Subject to subsection (7) of section 6B of the 1986 Act—

(a) any advance which immediately before the commencement of that section was or was treated as a class 1 advance shall be treated as a loan falling within paragraph (a) of subsection (4) of that section;

(b) any advance which immediately before that commencement was or was treated as a class 2 advance shall be treated as a loan falling within that paragraph if the building society concerned determines that, on the assumption mentioned in sub-paragraph (2) below, it would have been a class 1 advance;

(c) any advance not falling within paragraph (b) above which immediately before that commencement was or was treated as a class 2 advance shall be treated as a loan falling within paragraph (b) of that subsection; and

(d) any advance which immediately before that commencement neither was nor was treated as a class 1 or a class 2 advance shall be treated as a loan falling within paragraph (c) of that subsection.

(2) The assumption is that section 11 of the 1986 Act had effect at all material times—

(a) with the substitution for paragraph (b) of subsection (2) of the following paragraph—

"(b) the land is for residential use;"; and

(b) with the omission from subsection (3) of the words "by the borrower or a dependant of his of a prescribed description".

Commencement Information

I72 Sch. 8 para. 6 in force at 1.12.1997 by S.I. 1997/2668, art. 2, **Sch. Pt. II** (subject as mentioned in art. 2(2)-(5) of that S.I.)

VALID FROM 01/12/1997

Existing shareholders

7 Unless the contrary is shown, a building society may assume that any shares in the society which are held by an individual at the commencement of section 8 of this Act are held otherwise than as a bare trustee (or, in Scotland, a simple trustee) for a body corporate, or for persons who include a body corporate.

Commencement Information

I73 Sch. 8 para. 7 in force at 1.12.1997 by S.I. 1997/2668, art. 2, **Sch. Pt. II** (subject as mentioned in art. 2(2)-(5) of that S.I.)

VALID FROM 01/12/1997

Existing depositors and shareholders

8 (1) Nothing in section 9 of this Act shall affect the operation of the 1986 Act in relation to—

(a) any deposit accepted by a building society from an individual before the commencement of that section;

(b) any deposit accepted by a building society from an individual to whom sub-paragraph (2) below applies which is to be credited to a deposit account opened before that commencement;

(c) any deposit accepted by a building society from an individual which is to be credited to a tax-exempt special savings account opened before that commencement; or

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Changes to legislation: *There are currently no known outstanding effects for the Building Societies Act 1997. (See end of Document for details)*

(d) any share issued by a building society to a body corporate before that commencement.

(2) This sub-paragraph applies to an individual if—

(a) a deposit of his is held in a deposit account opened before the commencement of section 9 of this Act;

(b) he has been notified by the building society that he may transfer the deposit without penalty into an account which, at the date of the notice, was an equivalent share account; and

(c) he has chosen not to do so.

(3) In this paragraph—

"access period", in relation to a deposit or share account, means the period of notice required for making withdrawals from the account;

"equivalent share account", in relation to a deposit account, means a share account—

(a) whose access period is no longer than that of the deposit account; and

(b) whose rate of interest is not less than that of each other share account with the society which has the same access period or, where there is no such account, that of any one share account with the society which has a longer access period;

"tax-exempt special savings account" has the meaning given by section 326A(2) of the [M56]Income and Corporation Taxes Act 1988.

(4) In relation to anything which, after the commencement of section 9 of this Act, is done by a building society under paragraph (d) of section 8(2) of the 1986 Act, sub-paragraphs (1) and (2) above shall have effect as if any reference to that commencement were a reference to the expiry of the period mentioned in that paragraph.

Commencement Information

I74 Sch. 8 para. 8 in force at 1.12.1997 by S.I. 1997/2668, art. 2, **Sch. Pt. II** (subject as mentioned in art. 2(2)-(5) of that S.I.)

Marginal Citations

M56 1988 c.1.

Existing transfer statements referring to the abolition of priority liquidation distribution rights

9 (1) Where before the commencement of section 40 of this Act, a building society issued a transfer statement which satisfies the requirements of sub-paragraph (2) below and either—

(a) the transfer of the society's business to the company which is to be its successor is effected after that commencement; or

(b) that transfer was effected after the relevant date and before that commencement and the company is not being wound up at that commencement,

section 100 of the 1986 Act shall be deemed to have had effect in relation to the transfer as if section 40 of this Act had come into force on that date.

(2) The requirements of this sub-paragraph are that the statement—

(a) referred to the possibility of provision being made to the like effect as section 40 of this Act; and

(b) stated that, if such provision were made, either no rights to priority liquidation distributions would be conferred on qualifying members of the society or, if such rights had been so conferred, they would be withdrawn.

(3) In this paragraph—

"the relevant date" means 6th November 1996;

"transfer statement" has the same meaning as in Part I of Schedule 17 to the 1986 Act.

Existing specially formed successor companies

10 (1) This paragraph applies where before the passing of this Act a company has been specially formed by a building society to be its successor.

(2) Nothing in section 101 of the 1986 Act as substituted by section 41 of this Act shall be taken—

(a) to impose any requirement which would not be imposed, or to render void any provision, allotment or registration which would not be rendered void, if that section of this Act had not been enacted; or

(b) to prevent any alterations in the provisions of the company's articles of association which are such as to secure that the company does not contravene, or that those provisions are consistent with, subsection (1) of section 101 of that Act as so substituted.

SCHEDULE 9

Section 46(2).

REPEALS AND REVOCATIONS

Commencement Information

I75 Sch. 9 partly in force; S. 9 partly in force at Royal Assent 21.3.1997 see s. 47(3); Sch. 9 partly in force at 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pts. I, II, **III** (subject as mentioned in art. 2(2)-(5) of that S.I.)

Reference	Short title or title	Extent of repeal or revocation
1974 c.47.	Solicitors Act 1974.	Section 86.
1978 c.27.	Home Purchase Assistance and Housing Corporation Guarantee Act 1978.	Section 3(1)(b).
S.I. 1981/156 (N.I.3).	Housing (Northern Ireland) Order 1981.	Article 155.

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Changes to legislation: *There are currently no known outstanding effects for the Building Societies Act 1997. (See end of Document for details)*

1985 c.68.	Housing Act 1985.	Section 450.
1986 c.53.	Building Societies Act 1986.	Section 4(2).
		In section 9(3), paragraph (d) and the word “or” immediately preceding that paragraph.In section 28(1), the words “as in respect of a contractual debt incurred immediately before the institution began to be wound up”.
		Section 33.
		Sections 38 to 40.
		In section 41, subsections (14) to (16).
		Section 51.
		Section 52(3).
		In section 60(17), the definition of “ordinary resolution”.
		In section 65(10), the word “and” immediately following the definition of “provision of funds”.
		Section 71(10A).
		Section 79(5).
		In section 82, in subsection (2), paragraph (c) and the word “and” immediately preceding that paragraph and, in subsection (3), paragraph (d).
		Section 84(1).
		In section 95, subsections (7) to (9).
		In section 97(3), the words from “and for the purposes” to the end.
		In section 100, in subsection (2), paragraph (c) and the word “and” immediately before that paragraph, and subsections (5) and (6).

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		Section 105.
		Section 108.
		Section 118.
		In section 119, in subsection (1), the definitions of “adopt”, “adopted”, “adoptable powers”, “advance secured on land”, “advance fully secured on land”, “advance secured on third party land”, “mobile home loan”, “qualifying asset holding”, “subsidiary” and “total commercial assets” and, in subsection (3)(a), the words “by him” and “to him”.
		In section 122(1), the words “section 15,”.
		In Schedule 2, paragraph 2(5), in paragraph 4(4), the words “subject to paragraph 19 below” and, in paragraph 30(3), the words “has been duly given”.
		In Schedule 10, in paragraphs 1, 2, 5 and 6, the words “under section 6, 10, 17 or 19”.
		In Schedule 12, Part II.
		In Schedule 16, paragraph 1(5).
		In Schedule 18, paragraphs 18(4) and 23(3).
		In Schedule 20, in paragraph 1, the definitions of “existing society” and “existing rules”, and paragraphs 2 to 4, 7 to 15 and 17 and 18.
1987 c.22.	Banking Act 1987.	In Schedule 6, in paragraph 26, sub-paragraphs (1) and (8).
S.I. 1988/1153.	Building Societies (Transfer of Business) Regulations 1988.	Regulations 9 and 10.

Status: *Point in time view as at 21/03/1997. This version of this Act contains provisions that are not valid for this point in time.*
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		In the Schedule, in Part I, paragraph 14(c) and, in Part III, paragraphs 4 and 5.
1994 c.40.	Deregulation and Contracting Out Act 1994.	Sections 16 and 17.
		In Schedule 11, paragraph 7(6).
S.I. 1995/1442.	Credit Institutions (Protection of Depositors) Regulations 1995.	Regulation 41(5).

Status:
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Changes to legislation:
There are currently no known outstanding effects for the Building Societies Act 1997.