



# Building Societies Act 1997

## 1997 CHAPTER 32

### PART V

#### MISCELLANEOUS AND SUPPLEMENTAL

##### *Miscellaneous*

#### **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.”

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(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.

(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—

*“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.

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- (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 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 Local Government etc. (Scotland) Act 1994;
  - (c) any district council within the meaning of the Local Government Act (Northern Ireland) 1972.

*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.

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- (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.

*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 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."

### **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,

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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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- (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.”

### **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.”

### **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,

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 Companies Act 1985 or Article 212 of the 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;



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- (b) an institution authorised under section 3 or 4 of the 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 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 Banking Act 1987;
- (e) a friendly society authorised under section 32(9) of the 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 Companies Act 1985 or, as regards Northern Ireland, the 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—

- (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.”

## 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 Companies Act 1985 (registration of charges); and
  - (b) Part XIII of the 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.”

## 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.

### *Supplemental*

## 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.

## 45 Minor and consequential amendments

- (1) In section 10 of the 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 Building Societies Act 1986.”

- (2) In paragraph 2(3) of Schedule 12 to the 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)”.

#### **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 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.

#### **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 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.