

SCHEDULES

SCHEDULE 1

Section 3(2).

[PART II OF SCHEDULE 2 TO 1986 ACT]

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;
 - (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.

Status: This is the original version (as it was originally enacted).

- (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.