



# Building Societies Act 1997

## 1997 CHAPTER 32

### PART V

#### MISCELLANEOUS AND SUPPLEMENTAL

##### *Miscellaneous*

#### **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,

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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 <sup>M1</sup>Companies Act 1985 or Article 212 of the <sup>M2</sup>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 <sup>M3</sup>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 <sup>M4</sup>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 <sup>M5</sup>Banking Act 1987;
  - (e) a friendly society authorised under section 32(9) of the <sup>M6</sup>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;

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“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 <sup>M7</sup>Companies Act 1985 or, as regards Northern Ireland, the <sup>M8</sup>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.”

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**Marginal Citations**

- M1** 1985 c.6.
- M2** S.I. 1986/1032 (N.I.6).
- M3** 1982 c.50.
- M4** 1986 c.60.
- M5** 1987 c.22.
- M6** 1992 c.40.
- M7** 1985 c.6.
- M8** S.I. 1986/1032 (N.I.6).

**Changes to legislation:**

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