

**1981 No. 1488****BUILDING SOCIETIES****The Building Societies (Authorisation) Regulations 1981***Laid before Parliament in draft**Made - - - - 19th October 1981**Coming into Operation 1st December 1981*

## ARRANGEMENT OF REGULATIONS AND SCHEDULES

*Regulation*

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The Registry of Friendly Societies, being a Department designated (a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to the authorisation of the carrying on of the business of a building society and the regulation of such business and its conduct and in relation to anything supplemental or incidental thereto, in exercise of the powers conferred by that section, hereby makes the following Regulations, a draft of which has been approved by resolution of each House of Parliament:—

*Citation and commencement*

1. These Regulations may be cited as the Building Societies (Authorisation) Regulations 1981 and shall come into operation on 1st December 1981.

*Interpretation*

2. In these Regulations—

“the 1962 Act” means the Building Societies Act 1962(c);

“appointed day” means the day on which these Regulations come into operation;

“authorisation”, “authorised” and “authorised building society” have the meaning given by regulation 3 of these Regulations;

“deferred shares”, “assets” and “reserves” have the meaning given by Schedule 1 to these Regulations.

Unless a contrary intention appears, all other expressions used have the same meaning as in the 1962 Act.

*Restrictions on building societies' borrowing and acceptance of subscriptions for shares*

3.—(1) Except as provided by regulation 4 below, a building society shall not—

(a) accept the deposit of, or otherwise borrow, any money, or

(b) accept any payment representing the whole or any part of the amount due by way of subscription for a share in the society

unless it is authorised to do so in accordance with regulation 5 below. The expressions “authorisation”, “authorised” and “authorised building society” in these Regulations shall be construed accordingly.

(2) The fact that funds are accepted in contravention of this regulation shall not affect any civil liability arising in respect of the acceptance or of the funds accepted.

*Exceptions to the restrictions in regulation 3*

4. The restrictions in regulation 3 above shall not apply to—

(a) the acceptance of payments by way of subscription for deferred shares;

(b) the acceptance of payments, representing the whole or any part of the amount due by way of subscription for a share in the society, which fell due before the restrictions applied to the society;

(c) the acceptance of payments for amounts due in respect of a share which represent interest on, or the repayment of, an advance made to the holder of the share;

(a) The European Communities (Designation) (No. 2) Order 1981 (S.I. 1981/833).

(b) 1972 c. 68.

(c) 1962 c. 37.

- (d) borrowing from a banking or finance company, or from a director or other officer of the society, if the society has obtained the consent in writing of the Chief Registrar;
- (e) borrowing under section 44 of the 1962 Act (assistance by one building society to another).

*Authorised building societies*

5.—(1) Authorisation may be granted by the Chief Registrar on an application in that behalf by a building society.

(2) A building society shall be deemed to be authorised on the appointed day if—

- (a) it was formed, whether by incorporation or union, before the appointed day; and
- (b) in the case of a society which was incorporated on or after 1st October 1960, it has before the appointed day obtained a certificate under section 13(1) of the 1962 Act; and
- (c) it is not on the appointed day subject—
  - (i) to an order made under section 48 of the 1962 Act (power to suspend borrowing and subscription for shares); or
  - (ii) to a direction made under section 55(5) of the 1962 Act (special power in relation to small societies); or
  - (iii) to an order made under any of the previous relevant enactments; and
- (d) on the appointed day the society is not in the course of being wound up or dissolved.

(3) In paragraph (2)(c)(iii) above “the previous relevant enactments” means—

- (a) section 11 of the Prevention of Fraud (Investments) Act 1939(a);
- (b) section 11 of the Prevention of Fraud (Investments) Act 1958(b); and
- (c) section 6 of the Building Societies Act 1960(c).

(4) A building society formed on or after the appointed day on the union of two or more societies shall be deemed to be authorised, if all those societies are authorised at the time when the union takes effect.

*Procedure on application for authorisation*

6.—(1) An application for authorisation shall be made in such manner as the Chief Registrar may specify and shall be accompanied by such information as he may reasonably require, either generally or in any particular case, in order to reach a decision on the application.

(2) If required to do so by notice in writing from the Chief Registrar, given at any time before a decision has been reached on an application under paragraph (1) above, the applicant society shall send to the Chief Registrar such additional information as he may reasonably require in order to reach a decision.

(3) If, on an application falling within paragraph (1) above, the Chief Registrar proposes to refuse to grant authorisation, he shall serve a notice on the applicant society stating—

- (a) that he proposes to refuse to grant authorisation; and

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(a) 1939 c. 16.

(b) 1958 c. 45.

(c) 1960 c. 64.

- (b) the reasons for the proposed refusal; and
  - (c) that the applicant society may make representations with respect to the proposed refusal within such period of not less than twenty-eight days as may be specified in the notice, and that, if the society so requests, he will afford to it an opportunity of being heard by him within that period.
- (4) Before reaching a decision to refuse an application under paragraph (1) above, the Chief Registrar shall—
- (a) consider any representations which have been made in accordance with paragraph (3)(c) above; and
  - (b) obtain the consent of the Treasury to his proposed decision.
- (5) If, on an application under paragraph (1) above, the Chief Registrar grants authorisation, he shall issue to the applicant society a certificate in Form A1 of Schedule 2 below.
- (6) If, on an application under paragraph (1) above, the Chief Registrar refuses to grant authorisation, he shall give notice in writing to the applicant society of the refusal and of the reasons for it and, subject to paragraph (7) below, this notice shall be given before the expiry of the period of six months beginning on the date on which the application was received by the Chief Registrar.
- (7) In any case where, under paragraph (2) above, the Chief Registrar requires additional information with respect to an application, the latest time for the giving of a notice under paragraph (6) above with respect to that application shall be the expiry of whichever of the following periods first expires, namely—
- (a) the period of six months beginning on the date on which the additional information was received by the Chief Registrar; or
  - (b) the period of twelve months beginning on the date on which the application was received by the Chief Registrar.

*Conditions for the grant of authorisation*

7. On an application by a building society for authorisation under regulation 6 above, the Chief Registrar shall not grant authorisation unless he is satisfied—

- (a) that the society fulfils the conditions, as to deferred shares or reserves, specified in Schedule 1 below; and
- (b) that the business of the society is effectively directed by individuals who—
  - (i) are at least two in number; and
  - (ii) are of sufficiently good repute and sufficient experience to perform their duties.

*Grounds for revocation of authorisation*

8.—(1) The Chief Registrar may revoke the authorisation of a building society if it appears to him that—

- (a) any of the information furnished in connection with the application by the society under regulation 6 above was false or misleading in any material particular; or
- (b) a period of twelve months has elapsed since the date when the society

was authorised or deemed to be authorised and the society has not accepted any funds (other than payments for deferred shares) during that period; or

- (c) the society has not accepted any funds (other than payments for deferred shares) during a period exceeding six months; or
- (d) subject to paragraph (3) below, the society does not fulfil any one or more of the conditions mentioned in sub-paragraphs (a) or (b) of regulation 7 above; or
- (e) the society can no longer be relied upon to fulfil its obligations to its creditors, depositors or members.

(2) The Chief Registrar shall revoke the authorisation of a building society if—

- (a) he has made an order under section 48 of the 1962 Act applying subsection (2) of that section to the society; or
- (b) he has given to the society a direction under section 55(5) of the 1962 Act; or
- (c) the registration of the society has been cancelled or suspended in accordance with the provisions of sections 113 or 114 of the 1962 Act; or
- (d) the society has transferred its engagements to, or united with, another building society; or
- (e) the society has given notice in writing that it wishes to renounce authorisation; or
- (f) proceedings have been commenced for the winding up or dissolution of the society.

(3) In the case of a society which is deemed to be authorised by virtue of regulation 5(2) above, the Chief Registrar shall not within a period of 18 months after the appointed day revoke the authorisation of the society under paragraph (1)(d) above on the ground that it does not comply with regulation 7 above.

#### *Procedure on revocation of authorisation*

9.—(1) If the Chief Registrar proposes to revoke the authorisation of a building society on any ground mentioned in paragraph (1) of regulation 8 above, he shall serve a notice on the society, and on every director of the society, stating—

- (a) that he proposes to revoke the society's authorisation; and
- (b) the reasons for the proposed revocation; and
- (c) that the society may make representations with respect to the proposed revocation within such period of not less than fourteen days as may be specified in the notice, and that, if the society so requests, he will afford to it an opportunity of being heard by him within that period.

(2) Before reaching a decision to revoke the authorisation of a building society on any ground mentioned in paragraph (1) of regulation 8 above the Chief Registrar shall—

- (a) consider any representations which have been made in accordance with paragraph 1(c) above; and
- (b) obtain the consent of the Treasury to his proposed decision.

(3) On revoking the authorisation of a building society, the Chief Registrar shall serve on the society, and on every director of the society, a notice in Form A2 of Schedule 2 below, together with a notice of the reasons for the revocation; and where revocation is effected on any ground mentioned in paragraph (1) of regulation 8 above, the Chief Registrar shall not have power to revoke the society's authorisation unless all the said reasons are those, or among those, stated in the notice mentioned in paragraph (1) above.

(4) A notice under this regulation may be served on a director of a building society by sending it by post to his address, or latest address, as notified to the Chief Registrar or the central office by the society or the director; and failure to serve a notice under this regulation on a director shall not affect the validity of a revocation of authorisation.

### *Appeals*

**10.—**(1) An appeal shall lie to the Court at the instance of the building society concerned on any question of law arising from any decision of the Chief Registrar to refuse to grant authorisation or to revoke authorisation; and if the Court is of the opinion that the decision appealed against was erroneous in point of law, it shall remit the matter to the Chief Registrar with the opinion of the Court for redetermination by him.

(2) In paragraph (1) above "the Court" means the High Court for a building society having its chief office in England or Wales, and the Court of Session for a building society having its chief office in Scotland.

(3) No appeal to the Court of Appeal shall be brought from a decision of the High Court under paragraph (1) above, except with the leave of the High Court or of the Court of Appeal.

(4) An appeal shall lie, with the leave of the Court of Session or of the House of Lords, from any decision of the Court of Session under paragraph (1) above, and such leave may be given on such terms as to costs, expenses or otherwise as the Court of Session or the House of Lords may determine.

### *Effect of lack of authorisation on obligations of a society and of its investors, etc*

**11.—**(1) Subject to paragraph (2) below, any obligation to make a payment to a building society which, by virtue of regulation 3 above, the society is prohibited from accepting, shall be wholly rescinded.

(2) If—

(a) on the appointed day; or

(b) at the time when the authorisation of the society is revoked,

a member is under an obligation to make payments to a society which represent instalments of the amount due by way of subscription for a share in the society and which by virtue of regulation 3 above the society is prohibited from accepting, the obligation shall (subject to anything in the rules of the society or any agreement between the society and the member) be suspended in respect of each instalment for the period when the society is not authorised; and accordingly, if the society is subsequently granted authorisation, the sum due shall again become payable by instalments.

(3) Where the authorisation of a building society has been revoked, it shall be the duty of the society to make reasonable arrangements for using the funds of the society to meet applications by depositors or holders of shares in the

society (being applications duly made in accordance with the rules of the society) for repayment of the money deposited or subscribed by them.

(4) If it appears to the Chief Registrar that, when a society's authorisation has been revoked, the society has been applying an undue proportion of the funds of the society in making advances, in preference to meeting such applications as are mentioned in the last preceding paragraph, he may, after giving notice to the society and affording it an opportunity of making representations, present a petition for the winding up of the society under the Companies Act 1948(a).

*Power to obtain information and confidentiality of information*

12.—(1) If the Chief Registrar decides that, for the purpose of considering whether to grant or revoke the authorisation of a building society, or of monitoring its continued entitlement to be authorised, he requires information, on a periodic basis or otherwise, which any person is likely to be able to furnish, the Chief Registrar may serve on that person a notice requiring him—

- (a) to furnish to the Chief Registrar, within a period or at a time or times specified in the notice, such information as is so specified;
- (b) to produce such documents or other material as are specified in the notice at a time and place so specified and to permit a person nominated by the Chief Registrar for the purpose to take copies of the documents or other material at that time and place;

provided that such a notice may not require any person to produce a privileged communication, nor to furnish information contained in such a communication, made by or to a barrister, advocate or solicitor in that capacity.

(2) Where any person claims a lien on any documents or other material which he is required to produce under paragraph (1) above, the production shall be without prejudice to the lien.

(3) No information obtained by virtue of this regulation, or by virtue of paragraphs (1) or (2) of regulation 6 above, shall be disclosed except—

- (a) for the purpose of any criminal proceedings or any investigation with a view to such proceedings; or
- (b) for the purpose of facilitating the performance by the Chief Registrar or the central office of their functions under the 1962 Act or under these Regulations, or for the purpose of any proceedings under the 1962 Act or under these Regulations; or
- (c) for the purpose of enabling the Chief Registrar to decide whether to grant or revoke the authorisation of a building society; or
- (d) for the purpose of enabling the Chief Registrar to fulfil a Community obligation; or
- (e) with the consent of the person to whom the information relates; or
- (f) to the extent that it is information which is at the time of disclosure, or has previously been, available to the public from other sources.

*Penalties*

13.—(1) If a building society contravenes any of the restrictions imposed by regulation 3 above, then—

- (a) the society shall be guilty of an offence and liable on conviction on

indictment or on summary conviction to a fine which, on summary conviction, shall not exceed the statutory maximum; and

- (b) every officer of the society who is in default shall be guilty of an offence and liable
  - (i) on summary conviction to a fine not exceeding the statutory maximum; or
  - (ii) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or both.

(2) Any person who—

- (a) in connection with an application for authorisation under regulation 6 above; or
- (b) in purporting to furnish information required by a notice served on him under regulation 12(1) above,

furnishes any information which he knows to be false or misleading in a material particular or recklessly furnishes information which is false or misleading in a material particular, shall be guilty of an offence.

(3) Any person who discloses information in contravention of regulation 12(3) above shall be guilty of an offence.

(4) A person guilty of an offence under paragraph (2) or (3) above shall be liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or both.

(5) Any person who, without reasonable excuse, fails to comply with a notice served on him under regulation 12(1) above shall be liable on summary conviction to a fine not exceeding £400.

(6) In this regulation “statutory maximum”, in relation to a fine on summary conviction, means—

- (a) in England and Wales, the prescribed sum within the meaning of section 32 of the Magistrates’ Courts Act 1980(a) (£1,000 or another sum substituted by order under section 143(1) of that Act);
- (b) in Scotland, the prescribed sum within the meaning of section 289B of the Criminal Procedure (Scotland) Act 1975(b) (£1,000 or another sum substituted by order under section 289D(1) of that Act).

#### *Power to issue deferred shares*

14. On and after the appointed day every building society shall have power, notwithstanding anything in its rules, to issue deferred shares.

#### *Certificates of authorisation and notices of revocation*

15. Schedule 2 below shall have effect as to certificates of authorisation and notices of revocation of authorisation.

#### *Amendments of 1962 Act*

16. The 1962 Act shall have effect subject to the amendments specified in Schedule 3 below.

(a) 1980 c. 43.

(b) 1975 c. 21.



*K. Brading,*  
Chief Registrar of Friendly Societies.

19th October 1981

Reg. 7(a)

SCHEDULE 1

PART I

CONDITIONS AS TO DEFERRED SHARES OR RESERVES

1. The conditions referred to in paragraph (a) of regulation 7 of these Regulations are—

- (a) in the case of a building society which after incorporation has not yet made its first annual return to the Chief Registrar under section 88 of the 1962 Act, that not less than ten of the members of the society have been issued in equal amounts with, and have paid in cash for, deferred shares to the total value of not less than £50,000; or
- (b) in any other case, that the society's annual return for its last financial year shows that at the end of that financial year the society had reserves, or deferred shares, or a combination of reserves and deferred shares, of not less than whichever is the greater of—
  - (i) £50,000; or
  - (ii) 2½ per cent of its assets not exceeding £100 million, and  
2 per cent of its assets exceeding £100 million but not exceeding £500 million, and  
1½ per cent of its assets exceeding £500 million but not exceeding £1,000 million, and  
1¼ per cent of its assets exceeding £1,000 million.

PART II

MEANING OF DEFERRED SHARES, RESERVES AND ASSETS

2.—(1) For the purposes of these Regulations, the expression “deferred shares” means shares issued by a building society on the following terms:—

- (a) that no interest may be paid on the shares in any financial year until interest has been paid on all other classes of shares; and that in such case the entitlement to interest shall be no more favourable than that attaching to any other class of shares; and
- (b) that the shares carry no right to participate in the profits of the society in any financial year, until the holders of all other classes of shares have so participated; and that in such case the entitlement to participate in profits shall be no more favourable than that attaching to any other class of shares; and
- (c) that, if share capital is to be used in order to contribute to the losses of the society, the share capital representing these shares shall be used in full before recourse is had to other share capital; and
- (d) that, on the winding-up or dissolution of the society, the shares may not be repaid until all other classes of shares have been repaid in full; and
- (e) that the society shall not give effect to or recognise any transfer of the shares by the person to whom they were issued; provided that this sub-paragraph shall not prevent the society from giving effect to any transmission of the shares by operation of law; and

- (f) that, except on the winding-up or dissolution of the society, or its termination by other means, the shares may not be repaid at any time if, following such repayment, the reserves of the society, together with any remaining deferred shares, would amount to less than the sum mentioned in paragraph 1(b) above.
- (2) In sub-paragraph (1)(c), (d) and (f) above—
  - (a) any reference to shares includes a reference to unpaid interest on those shares; and
  - (b) in relation to such interest, any reference to repayment includes a reference to payment.
- 3. For the purposes of these Regulations—
  - “reserves” means the amount of the reserves, together with the amount of any provision against depreciation of or losses on investments, less the aggregate of—
    - (a) the amount of any reserve set aside for a particular purpose,
    - (b) any amount by which the book value of the society’s investments exceeds their market value, and
    - (c) any amount recommended by the society’s directors for distribution as interest, dividend or bonus, in respect of the financial year or any part thereof covered by the annual return and not charged as expenditure for that year;
  - “assets” means the amount of the assets less the aggregate of—
    - (a) the amount owing by the society in respect of any loans made to it under the House Purchase and Housing Act 1959(a),
    - (b) any amount by which the book value of the society’s investments exceeds their market value, and
    - (c) the amount of any reserve set aside for a particular purpose.

SCHEDULE 2

Reg. 15

PROVISION AS TO CERTIFICATES OF AUTHORISATION AND NOTICES OF REVOCATION OF AUTHORISATION

- 1. On the appointed day the Chief Registrar shall issue certificates of authorisation to building societies which are deemed to be authorised in accordance with regulation 5(2) above.
- 2. Certificates of authorisation and notices of revocation of authorisation (as currently in force for any building society) and notices of the reasons for revocation shall be among the documents open to public inspection at the Registry of Friendly Societies at the fee applicable to the inspection of other documents.
- 3. The Chief Registrar shall, on issuing a certificate of authorisation, other than one issued under paragraph 1 above, or on serving notice of revocation of authorisation, publish notice to this effect in the London, Edinburgh and Belfast Gazettes; and he may, if he thinks fit, publish notice to this effect in such other ways as appear to him expedient for informing the public.
- 4. The forms of certificates of authorisation and of notices of revocation of authorisation shall respectively be as in Forms A1 and A2 below.

Form A1. THE BUILDING SOCIETIES (AUTHORISATION) REGULATIONS 1981

*Certificate of authorisation pursuant to regulations 5 and 6 of the said Regulations*

I hereby certify that .....Building Society Register No.....  
 is an authorised building society within the meaning of the above-mentioned Regulations.

Date

Chief Registrar

## Form A2. THE BUILDING SOCIETIES (AUTHORISATION) REGULATIONS 1981

*Notice of revocation of authorisation pursuant to regulations 8 and 9 of the said Regulations*

The authorisation of the .....Building Society  
Register No.....  
is hereby revoked.

Date

Chief Registrar

*Note*

As from the date of this notice, and subject to the limited exceptions mentioned in regulation 4 of the above-mentioned Regulations, the society must not—

- (a) accept the deposit of, or otherwise borrow, any money, or
- (b) accept any payment representing the whole or any part of the amount due by way of subscription for a share in the society.

Reg. 16

## SCHEDULE 3

## AMENDMENTS OF THE 1962 ACT

1. Subject to paragraph 8 below, the amendments of the 1962 Act which are set out in this Schedule shall take effect on the appointed day.

2. The following provisions of the 1962 Act shall cease to have effect—  
section 4(3);  
section 13;  
section 56(4) and (5);  
the First Schedule.

3. In subsection (1) of section 39 (borrowing powers of a building society) after the word “Act” there shall be inserted the words “and the Building Societies (Authorisation) Regulations 1981”.

4. In section 55 (special power in relation to small societies)—

- (a) in subsection (1) for the words “one hundred thousand pounds” there shall be substituted the words “one million pounds”;
- (b) in subsection (3)—
  - (i) in paragraph (a) for the words “shares in the society on terms which comply with the requirements of the First Schedule to this Act” there shall be substituted the words “deferred shares within the meaning of the Building Societies (Authorisation) Regulations 1981”; and
  - (ii) in paragraphs (b) and (c), for the words “five thousand pounds”, in both places where they occur, there shall be substituted the words “fifty thousand pounds”.

5. In subsection (3) of section 56 (supplementary provisions as to small societies), for the words “one hundred thousand pounds” there shall be substituted the words “one million pounds”.

6. The following paragraph shall be inserted after paragraph (a) of section 63(1) (right of member to obtain particulars from register)—

- “(aa) when a building society is not authorised in accordance with the Building Societies (Authorisation) Regulations 1981, or”.

7. In section 118 (annual report of Chief Registrar) after the words "this Act" there shall be inserted the words "and of his proceedings under the Building Societies (Authorisation) Regulations 1981".

8. Where on the appointed day a building society has "relevant shares" within the meaning of the First Schedule to the 1962 Act, the provisions of that Schedule shall continue to apply to the society until the end of "the relevant period", as defined by that Schedule, except that the reference in paragraph 6 of that Schedule to "one hundred thousand pounds" shall have effect, on and after the appointed day, as if it were a reference to one million pounds.

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#### EXPLANATORY NOTE

*(This Note is not part of the Regulations.)*

These Regulations give effect, for building societies, to the provisions of the EEC First Council Directive of 12th December 1977 on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (77/780/EEC). In accordance with the requirements of the Directive, the Regulations introduce a scheme of authorisation for building societies. They make certain consequential amendments of the Building Societies Act 1962.

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