

1986 No. 2168

BUILDING SOCIETIES

The Building Societies Act 1986 (Rules and Miscellaneous Transitional Provisions) Order 1986.

<i>Made - - - -</i>	<i>9th December 1986</i>
<i>Laid before Parliament</i>	<i>10th December 1986</i>
<i>Coming into Operation</i>	<i>1st January 1987</i>

ARRANGEMENT OF ARTICLES

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The Treasury, in exercise of the powers conferred on them by section 121 of the Building Societies Act 1986(a), and of all other powers enabling them in that behalf, hereby make the following Order:—

Citation and commencement

1. This Order may be cited as the Building Societies Act 1986 (Rules and Miscellaneous Transitional Provisions) Order 1986 and shall come into operation on 1st January 1987.

Interpretation and effect

2.—(1) In this Order—

“the Act” means the Building Societies Act 1986;

“the commencement date” means 1st January 1987;

“Northern Ireland society” means a society which, prior to the commencement date, was registered in Northern Ireland;

“the previous enactments” means—

(a) except in relation to a Northern Ireland society, the Building Societies Act 1962(b), and

(a) 1986 c.53.

(b) 1962 c.37.

(b) in relation to a Northern Ireland society, the Building Societies Act (Northern Ireland) 1967 (a);

“the registrar” means—

(a) except in relation to a Northern Ireland society, the Chief Registrar, and

(b) in relation to a Northern Ireland society, the officer appointed to perform the functions of registrar of building societies in Northern Ireland; and

“society” means a building society.

(2) So far as this Order saves any provision of the existing enactments (whether or not subject to modifications), this Order shall have effect notwithstanding the coming into operation of section 120(2) of the Act (dealing with repeals and revocations).

Rules

3.—(1) So long as the rules in effect of a society incorporated before the commencement date are not rules containing the alterations required by paragraph 3(1)(b) or directed under paragraph 4(2) of Schedule 20 to the Act (which contains transitional provisions), the following paragraphs of this Article shall apply to that society.

(2) Notwithstanding any provision of section 5(8)(c) of, or Part III of Schedule 2 to, the Act (dealing with meetings, postal ballots and resolutions), those rules shall continue to have effect insofar as they provide for anything which would be required to be provided for by section 4(2) of the previous enactments (which required rules to provide for the calling and holding of meetings), were it still in operation, so that—

(a) any resolution passed as a special resolution of the society in accordance with those rules shall be treated as a special resolution for the purposes of the Act;

(b) any resolution passed as a borrowing members' resolution of the society which—

(i) is passed by a majority of the borrowing members voting, and

(ii) except as respects the identification of members eligible to vote, complies with the provisions of those rules relating to the passing of a resolution of the society,

shall be treated as a borrowing members' resolution for the purposes of the Act; and

(c) any other resolution passed as a resolution of the society in accordance with those rules shall be treated as a resolution of the society for the purposes of the Act.

(3) Notwithstanding any provision of section 60(1), (2), (3), (9) or (10) or section 61 of the Act (dealing with directors), those rules shall continue to have effect insofar as they provide for the manner of appointing and remunerating the board of directors.

(4) Notwithstanding any provision of section 85 of or Schedule 14 to the Act (dealing with disputes), those rules shall, subject to paragraph (5) below, continue to have effect, in relation to disputes other than those which the Act requires the Commission to hear and determine, insofar as—

(a) 1967 c.31 (N.I.).

- (a) where a society is not a member of one or more recognised schemes for the purposes of section 83(3) of the Act (which deals with schemes for investigation of complaints), they provide for the reference to the central office of any dispute to which paragraph 1(2) of Schedule 14 to the Act (which deals with settlement of disputes) applies, and
- (b) where a society is a member of one or more such schemes, they provide for the reference to the central office of any dispute to which paragraph 4(1) of that Schedule applies,

and, where such a dispute is so referred to the central office, sections 95(1) and (3), 97 and 98 of the previous enactments (which deal with disputes) shall apply to that dispute as if they were still in operation and applied to disputes under the Act.

(5) Paragraph (4) above shall apply to Northern Ireland societies as if “the registrar” were substituted for “the central office” on each occasion where that expression appears.

Treatment for asset classification purposes of advances made before the commencement date

4.—(1) Any mortgage debt of a corporate borrower to an authorised society under an advance made before the commencement date shall be treated for the purposes of the Act as a class 2 asset.

(2) Subject to paragraph (3) below—

- (a) the composite debt relating to an authorised society, that is to say the aggregate from time to time of mortgage debts to it which are mortgage debts under advances made before the commencement date (or made by instalments the first of which is paid before the commencement date) and which are not mortgage debts of corporate borrowers shall, subject to subparagraph (b) below, be treated, for the purposes of—
 - (i) section 20 (which sets out commercial asset structure requirements), and
 - (ii) the definition of ‘total commercial assets’ in section 119 (dealing with interpretation),

of the Act, as constituting a class 1 asset as to part and a class 2 asset as to the remainder in accordance with a statement which shall be sent to the society by the Commission and shall be headed: ‘Statement of Composite Debt’; and

- (b) where a mortgage debt relating to land is included within a society’s composite debt and the society makes a further advance on the security of that land, that mortgage debt shall be subtracted from that composite debt and shall be treated for the purposes of the Act as an asset of the same class as that constituted by the further advance.

(3) The Commission and an authorised society may agree that each advance to which paragraph (2) above would otherwise apply shall be treated, for the purposes of the Act, as a class 1 or class 2 advance in accordance with the agreement and, where such an agreement is made, those advances shall be so treated for the purposes of the Act.

(4) In this Article “corporate borrower” means a borrower which is a body corporate for the purposes of section 21 of the previous enactments (dealing with special advances).

Commercial asset limits

5. The requirements of section 20(2) and (3) of the Act (which limits the class 2 and class 3 assets which a society may hold) shall not apply so as to limit the class 2 or class 3 assets which may be held at the end of a financial year which ends before 31st December 1987.

Special advances

6.—(1) Where a financial year of a society includes the commencement date but begins before it, the provisions of sections 21 to 24 of the previous enactments (which deal with special advances) shall continue to apply in relation to that financial year so as to limit the special advances which the society may make during that financial year, subject to paragraph (2) and the modifications set out in paragraph (3) below.

(2) Paragraph (1) above shall not apply to a society—

- (a) the special advances of which, in the period commencing at the beginning of that financial year and ending on the day before the commencement date, did not exceed in the total advanced the total special advances which, had that period been a financial year, the society could have made under those provisions, and
- (b) which, before the end of that financial year, elects by resolution of its board of directors that paragraph (1) above shall not apply to it and notifies the registrar of that fact.

(3) Where paragraph (1) above applies to a society—

- (a) the limits specified in subsections (3) to (5) of section 22 of the previous enactments shall apply in relation to all advances made by the society during that financial year, disregarding, in the case of a society which is empowered to lend money under section 15, 16 or 18 (which sections authorise lending otherwise than as advances secured on land) of the Act, any loan made under any of those sections on or after the commencement date;
- (b) subsections (7) and (8) of section 22 of the previous enactments shall not apply in relation to a failure to comply with the requirements of that section, but any such failure shall be treated, for the purposes of section 45 of the Act (which sets out criteria of prudent management), as a failure on the part of the society’s directors prudently to conduct the affairs of the society.

Liquid assets

7.—(1) Until the first liquid asset regulations under section 21(7) of the Act come into operation, funds of societies may be (any may continue to be)—

- (a) invested in a manner which would be authorised by the previous orders, or
- (b) kept in a manner which would accord with section 59(1) of the previous enactments,

were those provisions still in operation, and the assets so represented by such funds shall be treated as if they were prescribed in liquid asset regulations as assets which societies were empowered to hold under section 21 of the Act (which deals with liquid assets).

- (2) In this Article “the previous orders” means—
- (a) except in relation to a Northern Ireland society, the Building Societies (Authorised Investments) (No. 2) Order 1977 **(a)**, and
 - (b) in relation to a Northern Ireland society, the Building Societies (Authorised Investments) Order (Northern Ireland) 1984 **(b)**.

Aggregation of assets and liabilities

8.—(1) Until aggregation rules under section 7(10) of the Act (which provides for such rules) come into operation, none of the liabilities of any body corporate associated with a society shall be taken into account in determining the liabilities of the society for the purposes of section 7(3) of the Act (which limits the percentage of liabilities represented by non-retail funds).

(2) Until aggregation rules under section 8(3) of the Act (which provides for such rules) come into operation, none of the liabilities of any body corporate associated with a society shall be taken into account in determining the liabilities in respect of deposits of that society for the purposes of section 8(1) of the Act (which limits the percentage of liabilities represented by deposits).

(3) Until aggregation rules under section 20(9) of the Act (which provides for such rules) come into operation none of the assets of any body corporate associated with a society shall be taken into account in determining the asset holding of that society for the purposes of section 20 of the Act (which includes provisions limiting the percentage of commercial assets represented by class 2 and class 3 assets).

Merger procedures

9.—(1) This Article applies where two or more societies propose to merge and before the commencement date the registrar has, in the case of each society, either approved the contents of a statement to be sent to its members under subsection (1) of section 20 of the previous enactments, or exempted it from the requirements of that subsection.

- (2) Subject to paragraph (3) below, in a case where this Article applies—
- (a) sections 18 to 20 of the previous enactments (dealing with mergers) shall continue to have effect with respect to the merger on and after the commencement date;
 - (b) sections 93 to 96 of, and Schedule 16 to, the Act (dealing with mergers) shall not have effect with respect to the merger, except that section 93(6) of the Act (relating to authorisation) shall apply to any society formed by union under section 18 of the previous enactments (as continued in effect by this Article) as if the union were an amalgamation and the date of registration of the notice of that union were the specified date relating to that society under section 93(3)(b) of the Act (which relates to incorporation of successor societies).

(a) S.I. 1977/2052, amended by S.I. 1979/1301, 1982/1761, 1983/1769 and 1986/406.

(b) S.R. (N.I.) 1984 No. 368.

(3) Paragraph (2) above shall cease to have effect on 1st July 1987 with respect to a merger if notice of the merger is not registered before that date.

(4) In this Article “merger” means a union under section 18, or a transfer of engagements under section 19, of the previous enactments and “merge” shall be construed accordingly.

Saving of exercises of discretion where notice of intention has been served

10.—(1) Where, before the commencement date, the registrar has served notice under section 49(1) of the previous enactments that he proposes to make an order applying section 48(2) thereof (dealing with suspension of borrowing and subscription for shares) to a society—

- (a) he may proceed, in accordance with sections 48(1), (2), (3), (5) and (6) and section 49(1) to (5) thereof (relating to such orders), to make such an order in relation to the society;
- (b) on making such an order he shall, under regulation 8(2) of the previous regulations, revoke the authorisation of the society under the previous regulations; and
- (c) from the time of that revocation the society shall no longer be authorised for the purposes of the Act, and—
 - (i) sections 43(6) and (7) (dealing with the effect of revocation on existing obligations) and 44 (dealing with reauthorisation) of the Act shall apply as if that revocation were a revocation of authorisation under the Act; and
 - (ii) the registrar may direct the central office to record on the public file of the society that the society is no longer authorised for the purposes of the Act;

and the provisions of the previous enactments and regulations specified in this paragraph shall continue to have effect so far as is necessary for the purposes of this paragraph.

(2) Where, before the commencement date, the registrar has served notice under section 52(1) of the previous enactments that he proposes to give a direction under section 51 thereof (controlling advertising) in relation to a society—

- (a) he may proceed, in accordance with sections 51(1) and (2) and 52(1) to (5) thereof (relating to such directions), to give such a direction in relation to the society; and
- (b) section 50(7) (relating to revocation of the direction) and (8) (dealing with failure to comply) of the Act shall apply to such a direction as if it were a direction under section 50 of the Act (dealing with control of advertising);

and the provisions of the previous enactments specified in this paragraph shall continue to have effect so far as is necessary for the purposes of this paragraph.

(3) Subject to paragraph (4) below where, before the commencement date, the central office has given notice under section 113(4) of the previous enactments that it proposes to cancel registration of a society under section 113 thereof (dealing with compulsory cancellation of registration)—

- (a) the central office may proceed, in accordance with section 113(1) to (5) thereof, to cancel registration of the society; and

- (b) section 103(5), (6) and (7) of the Act (dealing with consequences of cancellation of registration) shall apply to such a cancellation as if it were a cancellation of registration under section 103(2) of the Act (dealing with grounds for cancellation);

and the provisions of the previous enactments specified in this paragraph shall continue to have effect so far as is necessary for the purposes of this paragraph.

- (4) Paragraph (3) above shall apply to Northern Ireland societies as if—
- (a) any reference to the central office were a reference to the registrar, and
 - (b) any reference to section 113 of the previous enactments were a reference to section 114 thereof.

(5) Where, before the commencement date, the registrar has served notice under regulation 9(1) of the previous regulations that he proposes to revoke a society's authorisation on any ground mentioned in regulation 8(1) thereof (setting out optional grounds for revocation)—

- (a) he may proceed, in accordance with regulation 9 thereof (relating to such revocation), to revoke the society's authorisation;
- (b) an appeal shall lie against such a revocation in accordance with regulation 10 thereof (providing for appeal on a point of law); and
- (c) from the time of that revocation the society shall no longer be authorised for the purposes of the Act, and—
 - (i) sections 43(6) and (7) (dealing with the effect of revocation on existing obligations) and 44 (dealing with reauthorisation) of the Act shall apply as if that revocation were a revocation of authorisation under the Act; and
 - (ii) the registrar may direct the central office to record on the public file of the society that the society is no longer authorised for the purposes of the Act;

and the provisions of the previous regulations specified in this paragraph shall continue to have effect so far as is necessary for the purposes of this paragraph.

- (6) In this Article "the previous regulations" means—
- (a) except in relation to a Northern Ireland society, the Building Societies (Authorisation) Regulations 1981 (a), and
 - (b) in relation to a Northern Ireland Society, the Building Societies (Authorisation) Regulations (Northern Ireland) 1982 (b).

Winding up on breach of limits or abuse of purpose

11. Where, before 1st January 1988, section 37(1)(a) or (b) of the Act (which sets out circumstances in which the Commission may petition for winding up) applies to a society and the Commission presents a petition for the winding up of the society, the reference in section 37(1) of the Act to "the applicable winding up legislation" shall, notwithstanding section 90(3) of the Act (which defines that term), be construed as a reference to the legislation under which the registrar is empowered by the previous enactments to present a winding up petition.

(a) S.I. 1981/1488.

(b) S.R. (N.I.) 1982 No. 155.

Accounts and audit

12.—(1) Where a financial year of a society has begun before the commencement date—

- (a) section 12(12) of the Act (dealing with the custody of documents relating to mortgaged properties) and the provisions of Part VIII of, and Schedule 11 to, the Act (dealing with accounts and audit) other than—
 - (i) subsections (9) and (10) of section 78 of the Act (dealing with the auditors' report on the statement of transactions with directors),
 - (ii) subsections (3), (4), (5), (6), (8) and (9) of section 79 of the Act (dealing with rights of access of auditors), and
 - (iii) subsections (8) to (11) of section 82 of the Act (dealing with the furnishing of information to the Commission by auditors), shall not apply; and
- (b) section 27(1) of the previous enactments (dealing with records of advances), sections 76 to 91 of the previous enactments (dealing with accounts, audit and annual return) and the provisions of the previous regulations shall apply, to that society during, in respect of things to be done in relation to, and in respect of things to be done at or for its annual general meeting following, that financial year.

(2) Where a financial year of a society begins on or after the commencement date but before 1st October 1987—

- (a) sections 12(12) and 71(1) to (10) (dealing with accounting records and systems of business control) of the Act shall not apply to that society during that financial year;
- (b) sections 27(1) and 76(1) to (4) (dealing with keeping of books of account and office management) of the previous enactments shall apply to that society during that financial year;
- (c) failure during that financial year on the part of the society to comply with section 76(1) to (4) of the previous enactments shall be treated, for the purposes of section 45 of the Act (which sets out criteria of prudent management), as a failure on the part of the society's directors prudently to conduct the affairs of the society;
- (d) section 71(11) of the Act (dealing with the report of the directors and chief executive to the Commission on the compliance with section 71 of the Act) shall be modified so as to require the statement to be sent thereunder to be a statement of that society's directors' and chief executive's opinion whether the requirements of sections 27(1) and 76(1) to (4) of the previous enactments have been complied with during that financial year;
- (e) section 79(1) and (2) of the Act (dealing with the auditors' duty to investigate compliance with section 71 of the Act and to report to a society's members if of the opinion that annual accounts are not in agreement with accounting records) shall be modified so as to impose a duty on the society's auditors, in preparing their report to the society's members under section 78 of the Act (dealing with that report) on the society's annual accounts to be laid at its annual general meeting following that financial year, to carry out such investigations as will enable them to form an opinion—
 - (i) as to each of the previous matters of investigation, and

- (ii) as to whether those annual accounts are in agreement with the books of account and records of the society, and, if they are of the opinion that those annual accounts are not in agreement with those books of account and records, to state that fact in their report; and
- (f) section 82(1) to (4) of the Act (dealing with the auditors' report to the Commission on compliance with the Act) shall be modified so as to require the auditors of the society, in making their report under that section in respect of that financial year, to state their opinion—
 - (i) as to each of the previous matters of investigation, and
 - (ii) as to whether the annual accounts of that society referred to in subparagraph (e) above are in agreement with the books of account and records of the society.
- (3) In this Article—
 - (a) “the previous matters of investigation” means the matters set out in paragraphs (a) and (b) of subsection (4) of section 87 of the previous enactments (dealing with the auditors' report to members) as to which that subsection requires the auditors of a society to carry out such investigations as will enable them to form an opinion; and
 - (b) “the previous regulations” means—
 - (i) except in relation to a Northern Ireland society, the Building Societies (Accounts and Annual Return) Regulations 1983 (a), and
 - (ii) in relation to a Northern Ireland society, the Building Societies (Accounts and Annual Return) Regulations (Northern Ireland) 1984 (b).

Fees and Forms

- 13.—(1) Fees payable under the previous regulations in respect of—
- (a) the certificate of registration of an instrument of dissolution or alteration therein, or an award of dissolution,
 - (b) registration of a union or transfer of engagements,
 - (c) confirmation of a union or transfer of engagements,
 - (d) reference of a dispute, or
 - (e) an award on a dispute,
- shall continue to be payable in respect of functions carried out on or after the commencement date under provisions of the previous enactments (including provisions of the previous enactments continued in effect by any order, including this Order, made under section 121 of the Act (which deals with transitional provisions)).
- (2) Forms required by the previous regulations or the previous rules to be used in respect of any provision of the previous enactments which continues in effect after the commencement date (including any such provision continued in effect by any Order, including this Order, made under section 121 of the Act) shall continue to be so used.
- (3) In this Article—
- (a) “the previous regulations” means—

(a) S.I. 1983/1768.

(b) S.R. (N.I.) 1984 No. 334.

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- (i) except in relation to a Northern Ireland society, the Building Societies (Forms and Fees) Regulations 1962 (a), and
 - (ii) in relation to a Northern Ireland society, the Building Societies (Forms and Fees) Regulations (Northern Ireland) 1968 (b), and
- (b) “the previous rules” means—
- (i) except in relation to a Northern Ireland society, the Building Societies Rules 1962 (c), and
 - (ii) in relation to a Northern Ireland society, the Building Societies Rules (Northern Ireland) 1968 (d).

Tony Durant,
Peter Lloyd,
Two of the Lords Commissioners
of Her Majesty’s Treasury.

9th December 1986.

(a) S.I. 1962/2045, amended by S.I. 1986/609.
(b) S.R. & O. (N.I.) 1968 No. 131, amended by S.R. (N.I.) 1985 No. 129.
(c) S.I. 1962/1936.
(d) S.R. & O. (N.I.) 1968 No. 130.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order provides for the transition from the Building Societies Act 1962 and the Building Societies Act (Northern Ireland) 1967 to the Building Societies Act 1986 in relation to the matters set out below.

The 1986 Act contains provisions concerning building society meetings (Schedule 2, Part III), appointment of directors (sections 60 and 61) and dispute proceedings (section 85 and Schedule 14). Article 3 validates societies' existing rules in these respects, notwithstanding any inconsistency with those provisions, until they have amended their rules to comply with the 1986 Act.

Article 4 provides for the Commission to determine the commercial asset classification of societies' total mortgage debt outstanding immediately before the commencement date.

Article 5 postpones the operation of the statutory limits (section 20 of the 1986 Act) on the amounts of class 2 and 3 assets which societies can hold, so that these restrictions do not affect financial years ending before 31st December 1987.

Article 6 provides, for societies whose financial year straddles the 1st January 1987 commencement date, for the treatment of advances categorised by the previous legislation as special advances (advances exceeding £60,000 and those to bodies corporate). It requires societies to observe the 1962 and 1967 Act limits on their special advances for the whole of that financial year, unless the total of such advances made before 31st December 1986 is within equivalent limits.

Article 7 provides that investments authorised under the previous legislation shall continue to be authorised and shall count as liquid assets (section 21 of the 1986 Act) until the first liquid asset regulations have been made under the 1986 Act.

Article 8 postpones the aggregation of assets and liabilities of associated corporate bodies with those of societies (for the purpose of observing statutory limits under sections 7, 8 and 20 of the 1986 Act) until such time as aggregation rules, made by the Commission, are in operation.

Article 9 saves the provisions of previous legislation in respect of mergers where the statement to be sent to members has been approved before the commencement date, though the saving ends if the merger is not complete before 1st July 1987.

Article 10 provides that, where before the end of 1986 a notice of intention to exercise a discretionary control (for example to prohibit the receipt of deposits by a society) has been served, the discretion may be exercised after the commencement date.

Article 11 applies the winding up proceedings of the previous legislation when the Commission petitions for winding up before 1st January 1988 under section 37 of the 1986 Act.

Article 12 applies the accounts and audit provisions of the previous legislation (with modifications) to financial years beginning before the commencement date. It also postpones, until financial years beginning on or after 1st October 1987, the coming into effect of 1986 Act requirements for accounting records and systems (section 71) and the ending of parallel provisions of previous legislation.

Article 13 preserves the right to charge fees under the previous legislation in respect of functions saved from that legislation, and also provides that the same forms shall continue to be used in respect of those functions. A separate statutory instrument falls to be made under sections 2(2) and 116(2) of the Building Societies Act 1986 in respect of fees under the 1986 Act.

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