

## SCHEDULES

### SCHEDULE 9

Section 138

#### BUILDING SOCIETIES

##### *Introductory*

1 The Building Societies Act 1986 is amended as follows.

##### *Exclusion of small business deposits from funding limit*

2 (1) Section 7 (the funding limit) is amended as follows.

(2) In subsection (3), omit the “and” at the end of paragraph (a) and after that paragraph insert—

“(aa) subject to subsection (3A), the principal of, and interest accrued on, sums deposited with the society or any subsidiary undertaking of the society by a small business (see subsection (10));”.

(3) After subsection (3) insert—

“(3A) In respect of any day by reference to which the value of X falls to be calculated for the purposes of subsection (1) in relation to the society, the total amount to be disregarded under subsection (3)(aa) may not exceed 10% of the amount that would, in the absence of subsection (3)(aa), be the value of X on that day.”

(4) After subsection (6) insert—

“(6ZA) Where a person declares that the person is a small business, the person shall, unless the contrary is shown, be conclusively presumed for the purposes of this section to be a small business.”

(5) After subsection (9) insert—

“(10) In this section “small business” means any person (other than an individual acting as a sole trader) carrying on a business which had a turnover in the relevant financial year of less than £1,000,000.

(11) For the purposes of subsection (10)—

(a) the “relevant financial year”, in relation to any day by reference to which the value of X falls to be calculated for the purposes of subsection (1) in relation to a building society, means the last financial year ending before that day;

(b) “turnover”, in relation to a small business, means the amount derived from the provision of goods and services falling within the business’s ordinary activities, after deduction of trade discounts, value added tax and any other taxes based on the amounts so derived;

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- (c) in respect of any relevant financial year, the reference to £1,000,000 includes the equivalent amount in any other currency, calculated as at the last day of that year.
- (12) The Treasury may, by order made by statutory instrument, amend the figure for the time being specified in subsections (10) and (11)(c).
- (13) A statutory instrument containing an order under subsection (12) is subject to annulment in pursuance of a resolution of either House of Parliament.”
- 3 (1) In article 3 of the Building Societies Act 1986 (Substitution of Specified Amounts and Modification of the Funding Limits Calculation) Order 2007 (S.I. 2007/860), in paragraph 3, for “the modification required by this article” substitute “the modifications required by this article and by section 7(3)(aa)”.
- (2) The amendment by this paragraph of a provision contained in subordinate legislation is without prejudice to any power to amend that provision by subordinate legislation.

*Ability to create floating charges*

- 4 (1) Omit section 9B (restriction on creation of floating charges).
- (2) In Schedule 15A (application of other companies insolvency legislation to building societies), omit the following paragraphs—
  - (a) paragraph 18 (which modifies section 15 of the Insolvency Act 1986);
  - (b) paragraph 20 (which modifies section 19 of that Act);
  - (c) paragraph 40 (which modifies Article 28 of the Insolvency (Northern Ireland) Order 1989);
  - (d) paragraph 42 (which modifies Article 31 of that Order).
- (3) In consequence of the amendment made by sub-paragraph (1)—
  - (a) in section 1(1A)(b), for “, 9A and 9B” substitute “and 9A”;
  - (b) in the Building Societies Act 1997, omit section 11;
  - (c) in section 11(3) of the Banking (Special Provisions) Act 2008, for paragraph (c) substitute—
    - “(c) sections 8 and 9A of the Building Societies Act 1986 (restrictions on raising funds and borrowing and on transactions involving derivative instruments etc);”;
  - (d) in section 251 of the Banking Act 2009, omit subsection (7);
  - (e) in the Financial Services Act 2012, omit section 55.

*Annual business statements*

- 5 (1) Section 74 (duty of directors to prepare annual business statement) is amended as follows.
  - (2) In subsection (4), omit the words from “and other officers” to “them”.
  - (3) In subsection (8), omit “or other officer”.

*Summary financial statements*

- 6 (1) Section 76 (summary financial statement for members and depositors) is amended as follows.

(2) After subsection (8A) insert—

“(8AA) The society shall also—

- (a) publish the summary financial statement and (where applicable) the auditor’s report on a web site, and
- (b) ensure that the statement and (where applicable) the report may be accessed on the web site until the publication of the next summary financial statement.”

(3) After subsection (8D) insert—

“(8E) If, at any time during the period beginning with the publication of the summary financial statement and ending with the publication of the next summary financial statement, an individual for the first time subscribes for shares in the society, the society shall at that time notify the individual of the information in subsection (8C)(c)(i) to (iii).

(8F) In a case where subsection (8E) applies, the society is not required under section 115B (right to hard copy version) to send the individual a version of the summary financial statement or (where applicable) the auditor’s report in hard copy form (within the meaning of that section).”

(4) Omit subsections (9) to (9E).

(5) In subsection (11), for “subsection (9)” substitute “subsection (8AA) or (8E)”.

7 In consequence of the amendments made by paragraph 6—

- (a) in section 78(6), for “subsections (8) and (9) of section 76 extend” substitute “subsection (8) of section 76 extends”;
- (b) in paragraphs 7(3) and 8(3) of Schedule 2, omit “the summary financial statement,”.

#### *Transfers of business: distributions and share rights*

8 (1) Section 100 (regulated terms etc: distributions and share rights) is amended as follows.

(2) For subsection (8) substitute—

“(8) The terms of a transfer of a society’s business may confer a right to acquire shares in the successor on a member of the society only if the member—

- (a) held shares in the society throughout the period of two years ending with the qualifying day, or
- (b) on that day, holds deferred shares in the society that are of a class described in the transfer agreement;

and it is unlawful for any right in relation to shares to be conferred in contravention of this subsection.”

(3) In subsection (9), for the words from “who” to “and” substitute

“who—

- (a) held shares in the society throughout the period of two years ending with the qualifying day, or

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- (b) on that day, hold deferred shares in the society that are of a class described in the transfer agreement;

and”.

*Methods of communicating with members etc*

9 After section 115 insert—

**“115A Deemed agreement to use of web site**

- (1) For the purposes of this Act, a person is to be taken to have agreed with a building society to access a document, information or facility on a web site if—
  - (a) the person has been asked individually by the society to agree to access documents, information or facilities generally, or documents, information or facilities of the description in question, on a web site, and
  - (b) the society has not received a response within the period of 28 days beginning with the date on which the society’s request was received.

This is subject to subsections (2) to (4).

- (2) A person is not to be taken to have so agreed if the society’s request—
  - (a) did not state clearly what the effect of a failure to respond would be, or
  - (b) was sent less than 12 months after a previous request made to the person for the purposes of this section in respect of the same or a similar description of document, information or facility.
- (3) A person who is taken to have made an agreement by virtue of subsection (1) may revoke the agreement.
- (4) Subsection (1) does not apply in relation to the following documents—
  - (a) a statement required to be sent to members by paragraph 1(1) of Schedule 16 (statements in connection with proposed mergers);
  - (b) a merger statement (within the meaning of Part 2 of that Schedule) required to be sent to members by paragraph 3 of that Schedule;
  - (c) a transfer statement or transfer summary (within the meaning of Part 1 of Schedule 17) required to be sent to members by paragraph 4(1) or (2) of that Schedule;
  - (d) a transfer proposal notification (within the meaning of Part 1A of Schedule 17) required to be sent to members by paragraph 5B(1) of that Schedule.

**115B Right to hard copy version**

- (1) Where a person has received a document or information from a building society otherwise than in hard copy form, the person is entitled to require the society to send the person a version of the document or information in hard copy form.
- (2) The society must send the document or information in hard copy form within 21 days of receipt of the request from the person.

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- (3) The society may not make a charge for providing the document or information in that form.
- (4) Subsection (1) does not apply if the recipient of the document or information is the FCA or the PRA.
- (5) A building society that fails to comply with this section is to be treated as having contravened rules made under section 137A of the Financial Services and Markets Act 2000.
- (6) For the purposes of this section a person is treated as receiving a document or information from a building society if—
  - (a) the society is required by this Act to send the document or information to the person, and
  - (b) the requirement to send it is treated as satisfied.
- (7) For the purposes of this section—
  - (a) a document or information is sent or supplied in hard copy form if it is sent or supplied in a paper copy or similar form capable of being read, and
  - (b) a document or information can be read only if it can be read with the naked eye, or (to the extent that it consists of images) it can be seen with the naked eye.

### **115C Other agreed forms of communication**

- (1) A document or information that is sent or supplied by a building society otherwise than in hard copy form or electronically or by means of a web site is validly sent or supplied if it is sent or supplied in a form or manner that has been agreed by the intended recipient.
  - (2) For the purposes of this section “hard copy form” is to be read in accordance with section 115B(7).”
- 10 In the following provisions, omit “, in a manner agreed between him and the society,”—  
section 60(7B)(c),  
section 61(7D)(c),  
section 68(6B)(c),  
section 69(15B)(c),  
section 76(8C)(c).
- 11 In section 81(3B)(c), omit “, in a manner agreed for the purpose between him and the society,”.
- 12 (1) Schedule 2 is amended as follows.
- (2) In paragraph 20A(1B)(c), omit “, in a manner agreed between him and the society,”.
  - (3) In paragraphs 22B(2)(c) and 33(5C)(c), omit “, in a manner agreed between him and the society for that purpose,”.
  - (4) In paragraph 24(1B)(b), omit “in a manner agreed between the society and that member,”.

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- (5) In paragraph 32(2D)(c), omit “, in a manner agreed between the society and the member.”.
- (6) In paragraph 33A(9)(c), omit “, in a manner agreed for the purpose between him and the society”.
- 13 In paragraphs 3(2B)(c) and 9(2B)(c) of Schedule 8A, omit “in a manner agreed between the society and that person.”.
- 14 (1) Schedule 11 is amended as follows.
  - (2) In paragraph 4(9C)(c), omit “, in a manner agreed between him and the society,”.
  - (3) In paragraph 7(7C)(c), for “in a manner agreed between the society and that person, he” substitute “the person”.
  - (4) In paragraph 8(3B)(c), omit “, in a manner agreed between him and the society for the purpose,”.

*Financial year*

- 15 (1) Section 117 (financial year of building societies) is amended as follows.
  - (2) For subsection (1) substitute—
    - “(1) A building society’s financial years (apart from its final financial year) are determined according to its year-end date in each calendar year.
    - For provision about a building society’s final financial year, see subsection (1G).
    - (1A) The year-end date of a building society established before 25th August 1894 is—
      - (a) the date up to which, as at 1st January 1987, the accounts of the society were annually made up, or
      - (b) if the society has, at any time before the day on which subsection (1) comes into force (“the relevant day”), altered its financial year in exercise of a power within subsection (1B), 31st December.
    - (1B) The powers referred to in subsection (1A)(b) are—
      - (a) the power conferred by section 70(2) of the Building Societies Act 1960,
      - (b) the power conferred by section 128(2) of the Building Societies Act 1962, and
      - (c) the power conferred by subsection (3) of this section (as it had effect immediately before the relevant day).
    - (1C) The year-end date of a building society established on or after 25th August 1894 and before the relevant day is 31st December.
    - (1D) The year-end date of a building society established on or after the relevant day is the last day of the month in which the anniversary of its establishment falls.

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(1E) The financial year of a building society established before the relevant day is the period of 12 months ending with the year-end date of the society (but see subsection (1G)).

(1F) In the case of a building society established on or after the relevant day—

- (a) the initial financial year of the society shall be the period of more than 6 months, but not more than 18 months, beginning with the date of its establishment and ending with its year-end date, and
- (b) its subsequent financial years are successive periods of 12 months beginning immediately after the end of the previous financial year and ending with its year-end date (but see subsection (1G)).

(1G) The final financial year of a building society is a period of less than 12 months that begins immediately after the end of the previous financial year and ends with the date as at which the society makes up its final accounts.

(1H) This section has effect subject to section 117A (alteration of financial year).”

(3) Omit subsections (2) and (3).

16 After section 117 insert—

**“117A Alteration of financial year**

(1) A building society may by notice given to the FCA specify a new year-end date.

(2) A notice given under subsection (1) has effect in relation to—

- (a) the financial year in which the notice is given (“the current financial year”), and
- (b) subsequent financial years.

(3) The notice must state whether the current financial year—

- (a) is to be shortened, so as to come to an end on the first occasion on which the new year-end date falls or fell after the beginning of the current financial year, or
- (b) is to be extended, so as to come to an end on the second occasion on which that date falls or fell after the beginning of the current financial year.

(4) A notice extending a building society’s financial year is not effective if given less than 5 years after the end of an earlier financial year of the society that was extended under this section.

(5) A financial year of a building society may not be extended so as to exceed 18 months and a notice under subsection (1) is ineffective if the current financial year as extended in accordance with the notice would exceed that limit.”

17 In Schedule 20 (transitional and saving provisions), omit paragraph 16 (existing financial years).

18 The amendments made by paragraphs 15 to 17 have effect in relation to financial years beginning on or after the day on which those amendments come into force.