STATUTORY INSTRUMENTS

1990 No. 1695

BUILDING SOCIETIES

The Building Societies (Transfer of Business) (Amendment) Regulations 1990

Made - - - -	*16th August 1990*
Laid before Parliament	*17th August 1990*
Coming into force	*1st November 1990*

The Building Societies Commission, in exercise of the powers conferred on it by section 102 of the Building Societies Act 1986(**a**) and of all other powers enabling it in that behalf, and with the consent of the Treasury, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Building Societies (Transfer of Business) (Amendment) Regulations 1990 and shall come into force on 1st November 1990.

Amendment of previous regulations

2. The Building Societies (Transfer of Business) Regulations 1988(**b**) are hereby amended by the substitution for regulations 9 and 10 thereof of the following regulations:

"**Priority liquidation distributions**

9.—(1) The priority liquidation distribution to which qualifying members of a society are to be entitled on the liquidation of the successor company in accordance with section 100(2)(c) of the Act, in the case of a transfer of the society's business to a specially formed company, is a distribution to each qualifying member calculated according to the formula–

$$\frac{A \times B}{C}$$

where–

(a) the amount of the member's qualifying investment on the date on which the successor company resolves that it be wound up or on which a winding up order is made against it, as the case may be, is A;

(b) the amount of the society's reserves required to be stated pursuant to paragraph 13 of Part I of the Schedule to these regulations in the transfer statement less–

(i) the aggregate amount of funds to be distributed to members of the society in respect of the right conferred in pursuance of section 100(2)(b) of the Act, and

(ii) the cost of an incidental to the transfer borne or incurred by the society and the successor company save to the extent that such cost has been taken into account in calculating the amount of the reserves,

(a) 1986 c.53.
(b) S.I. 1988/1153.

is B; and

(c) the aggregate amount invested by qualifying members in shares in the society on the day immediately preceding the vesting date is C.

(2) For the purposes of paragraph (1)(b) and (c) above, the aggregate amount referred to in paragraph (1)(b)(i) above, the amount of the cost referred to in paragraph (1)(b)(ii) above and the aggregate amount referred to in paragraph (1)(c) above shall, if certified by the auditor of the successor company as soon as reasonably practicable after the vesting date, be taken respectively to be quantified as so certified.

(3) Where the liability which the successor company assumes in respect of qualifying shares is in respect of a deposit held in more than one qualifying account, the amount in each account shall be treated as a separate deposit and thus as a separate qualifying investment in respect of which a priority liquidation distribution may be due.

(4) For the purposes of paragraph (1) above a member's qualifying investment is a sum equal to the amount of the member's initial deposit less the aggregate of the withdrawals and transfers of funds from his qualifying account but increased by the amount of any transfer of funds to that account from any other qualifying account of that member to the extent that the qualifying investment in that other account is thereby reduced.

(5) In this regulation–

(a) "initial deposit", in relation to a qualifying account means the amount of the liability which the successor company assumes pursuant to section 100(2)(a) on the vesting day in respect of that account; and

(b) "qualifying account" means an account between a member and the society in respect of qualifying shares in the society or as the case may be, an account between a member and the successor company in which an initial deposit was held as from the transfer date, and where the member has more than one such account, each of them.

(6) For the purposes of this regulation a transfer of funds from a qualifying account to another qualifying account shall be taken to be effected where either–

(a) a sum is directly transferred from the first account to the second such account in the accounting records of the successor company, or

(b) a sum is withdrawn from the first such account and is paid into the second such account and the following conditions are satisfied that is to say

(i) the payment into the second account is made immediately after the withdrawal, and

(ii) the depositor requesting the withdrawal has not acknowledged in writing either that he does not intend that withdrawal to operate with payment to another qualifying account as a transfer or that he has received notice from the society or the successor company to the effect that a transfer of funds between qualifying accounts would have effect set out in paragraph (4) above, but that a withdrawal would diminish the qualifying amount.

(7) For the purposes of this regulation interest, other than interest which has been credited by way of capitalisation, shall be disregarded in calculating a member's qualifying investment, and payment of interest, other than interest so credited, shall not be treated as a withdrawal.

Security for priority liquidation distributions

10.—(1) Any transfer agreement relating to the transfer of a society's business to a specially formed company shall include such provisions as are necessary–

(a) for the purposes of regulation 9 above; and

(b) to ensure that, in the event of the liquidation of the company, a priority liquidation distribution can be paid to all those entitled to such a distribution, in accordance with section 100(6)(b) of the Act (which sets out the priority which the right to that distribution is to confer), before any

payment is made in satisfaction of the company's other liabilities apart from preferential debts.

(2) For the purposes of paragraph (1)(b) above, the agreement shall in particular include provision–

(a) for the entitlement of the members of the society to a priority liquidation distribution to be secured on or before the vesting date by a floating charge on the company's property or undertaking, and for the charge to be duly registered under Part XII (Registration of Charges) of the Companies Act 1985(**a**) or Part XIII (Registration of Charges) of the Companies (Northern Ireland) Order 1986(**b**);

(b) for the furnishing of a statement by the board of directors of the successor company, supported by the successor company's auditor, that the floating charge is not rendered to any extent invalid by section 245 (Avoidance of certain floating charges) of the Insolvency Act 1986(**c**) or in the case of a company registered in Northern Ireland by article 573 (Effect of floating charge) of the Companies (Northern Ireland) Order 1986 or, in the absence of such statement so supported, the taking of such other security as the trustee hereinafter mentioned may reasonably regard as necessary in addition to that floating charge to secure that entitlement;

(c) for the charge referred to in sub-paragraph (a) to be vested in a trustee to hold the same upon trust for the persons entitled to a priority liquidation distribution;

(d) for the appointment of one or more persons independent of the company to be that trustee;

(e) for the terms of the floating charge to prohibit, subject to any provision permitted by paragraph (3) below, the company

(i) from creating any fixed or floating charge or other security over any property or undertaking of the company ranking in priority to, or pari passu with the floating charge; and

(ii) from disposing of any of its property or undertaking if the effect thereof, taken with any other disposal, would in the opinion of the trustee be substantial having regard to the financial position of the company or would in his opinion be such as to bring about a material change in the nature of the company's business;

(f) to confer on the trustee all powers necessary to secure that the priority to which section 100(6)(b) of the Act refers is not prejudiced.

(3) The terms of the floating charge for the purpose of the prohibitions referred to in paragraph (2)(e) above may provide for securities or dispositions prohibited thereby to be given or made, notwithstanding such prohibition, if the prior consent of the trustee is obtained to such security or disposition, and where such provision is made for such consent, shall require the trustee not to grant any such consent save to the extent that he is satisfied that its grant would not be materially prejudicial

(a) to the preservation of the priority to which section 100(6)(b) of the Act refers,

(b) to the rights of members to a priority liquidation distribution having regard to the aggregate amount thereof outstanding at the time of such disposal,

but subject thereto may provide that such consent shall not be unreasonably withheld in the case of a disposition of any of the company's property or undertaking to a wholly owned subsidiary of the company where the following conditions are satisfied:

(i) any such subsidiary creates a floating charge over its property or undertaking in favour of the trustee creating the like security as specified in paragraph (2)(a) above and such charge is duly registered in the manner so specified;

(ii) any such subsidiary furnishes the like statement by its board of

(**a**) 1985 c.6.
(**b**) S.I. 1986/1032 (N.I.6).
(**c**) 1986 c.45.

directors and supported by its auditors as are required in the case of the successor company by paragraph (2)(b) above or in the absence of such statement so supported furnishes such other security, as the trustee may require as therein mentioned; and

(iii) the floating charge created by the subsidiary pursuant to condition (i) above includes a prohibition on creating securities and on dealing with the subsidiary's property or undertaking to the like effect as that required to be included in the charge by the successor company pursuant to paragraph (2)(e) above."

In witness whereof the common seal of the Building Societies Commission is hereunto fixed, and is authenticated by me, a person authorised under paragraph 14 of Schedule 1 to the Building Societies Act 1986, on 30th July 1990.

L.S.

Norman Digance
Secretary to the Commission

We consent to these Regulations.

Michael Fallon
Kenneth Carlisle
16th August 1990 Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations which are made under section 102 of the Building Societies Act 1986 replace regulations 9 and 10 of the Building Societies (Transfer of Business) Regulations 1988 with substituted regulations. Regulations 9 and 10 relate to the rights of members of a building society, the business of which is transferred, under the provisions of section 97 of the Act, to a company specially formed for the purpose, to receive a priority distribution out of the assets of the sucessor company in the event of its being wound up.

Regulation 9 prescribed the manner of calculation of that distribution and regulation 10 prescribed the nature of the security which the successor company must provide for the purpose of securing the priority of that distribution. The initial amount of the entitlement is proportionate to the amount held on deposit as at the transfer date in lieu of a shareholding in the society but it was to abate as withdrawals are made and regulation 9 provided alternative methods of calculation of that abatement. The substituted regulation 9 changes the method of calculation so that deposits in different accounts are treated as giving rise to separate entitlements whereas before they might be aggregated and so that transfers from one account to another while abating the entitlement in respect of one account accrue to the other and do not merely count as a withdrawal. A withdrawal from one account followed immediately by a payment in to another can in some circumstances operate for this purpose in the same way as a transfer.

Regulation 10 prescribed that the security for the priority distribution should be a floating charge on the successor company's assets, to be vested in a trustee and that the change should restrict disposal of those assets without the consent of the trustee. The substituted regulation 10 sets out circumstances in which the trustee may consent to a disposal to a subsidiary of the successor company provided that the subsidiary creates a similar floating charge on its assets.

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