1988 No. 1153

BUILDING SOCIETIES

The Building Societies (Transfer of Business) Regulations 1988

Made - - - -	*4th July 1988*
Laid before Parliament	*5th July 1988*
Coming into force	*28th July 1988*

The Building Societies Commission, in exercise of the powers conferred on it by section 102 of, and paragraph 5 of Schedule 17 to, 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) Regulations 1988 and shall come into force on 28th July 1988.

Interpretation

2. In these Regulations, except where the context requires otherwise–

"the Act" means the Building Societies Act 1986;

"merger" means an amalgamation of building societies under section 93 (Amalgamations) of the Act or a transfer (to any extent) of the engagements of one building society to another under section 94 (Transfer of engagements) of the Act, and "merge" has a corresponding meaning;

"society" means a building society that proposes to transfer, or, as the case may be, has transferred, its business to a successor company under section 97 (Transfer of business to commercial company) of the Act and, in relation to a society which has so transferred its business, "member" means a former member of that society;

"successor company" means a company to which a society proposes to transfer, or, as the case may be, has transferred, its business; and

"vesting date" means the date which is the vesting date for the purpose of the transfer of a society's business.

Transfer statements

3.—(1) Subject to paragraph (2) below, any transfer statement sent to members of a society under paragraph 2 of Schedule 17 (Transfers of Business: Supplementary Provisions) to the Act shall give particulars of the matters specified in Part I of the Schedule to these Regulations, particulars of the matters specified in either Part II or Part III of that Schedule according to whether the society proposes to transfer its business to an existing company or a specially formed company, and, if shares or rights in relation to shares are to be offered in connection with the transfer, also particulars of the matters specified in Part IV of that Schedule.

(a) 1986 c. 53.

Construction of other documents

5.—(1) Any instrument or other document (to the extent that it is not an agreement or deed to which regulation 4 above applies or an enactment) in being immediately before the vesting date which refers, whether specifically, generally or by implication, to the society shall have effect on and after the vesting date with the modifications set out in regulation 4(2)(a) and (b) above and shall be construed in the manner in which agreements and deeds are required to be construed by regulation 4(3) and (4) above, and without prejudice to the generality of the foregoing–

(a) testamentary instruments made before the vesting date whether the testator dies before, on or after that date, and

(b) negotiable instruments and orders for payment of money whether drawn, given, accepted or endorsed before, on or after the vesting date,

shall have effect in accordance with this paragraph and with the modifications so prescribed.

(2) Without prejudice to the generality of regulation 4 and paragraph (1) of this regulation, any instrument or document (not being an enactment) which relates to the use of any land or premises in which any interest was vested in, or which was occupied by, the society immediately before the vesting date and which, in relation to that use, refers to a building society or to activities (however described) of a building society shall, for as long as any interest in the land or premises is vested in, or the land or premises are occupied by, the successor company, have effect as if the reference were respectively to the successor company or to activities of a similar character carried on by the successor company.

(3) For the purposes of this regulation, any register or record preserved by any device for storing and processing information shall, if that register or record is so preserved immediately before the vesting date, be treated as a document in being immediately before that date.

Rights, powers and remedies

6. Without prejudice to the generality of the provisions of regulations 4 and 5(1) above, the successor company and any other person shall, as from the vesting date, have the same rights, powers and remedies (and in particular the same rights and powers as to the taking or resisting of legal proceedings or the taking or resisting of proceedings by or before any authority or arbitrator) for ascertaining, perfecting or enforcing any right, liability or obligation transferred to the successor company by virtue of section 97 of the Act as he would have had if that right, liability or obligation had at all material times been a right, liability or obligation of the successor comany.

Legal proceedings

7. Without prejudice to the generality of the provisions of regulations 4, 5(1) and 6 above, any legal proceedings or proceedings by or before any authority or arbitrator pending immediately before the vesting date by or against the society in so far as they relate to any property, right, liability or obligation transferred to the successor company by virtue of section 97 of the Act or to any agreement relating to any such property, right, liability or obligation shall, as from the vesting date, fall to be continued by or against the successor company to the exclusion of the society.

Statutory guarantee

8. Where upon the vesting date any obligation under section 22 of the Act (Obligation to meet liabilities of associated bodies) is transferred from the society to the successor company, any discharge of liability to which that obligation relates shall discharge or, as the case may be, reduce that obligation which shall not thereafter be renewed or increased by any subsequent dealings by the associated body in respect of which that obligation arose.

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 distributed to members of the society in pursuance of section 100(2)(b) of the Act, and

(ii) the cost of and 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,

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) For the purposes of paragraph (1) above, a member's qualifying investment is a sum equal to either–

(a) the amount of the member's initial deposit less the aggregate amount of the withdrawals since the vesting date from the account in which the deposit was then held, or

(b) the lesser (or, as the case may be, the least) of the following, namely the amount of the member's initial deposit and the amount held on the date of any periodic review in the account in which that deposit was held,

whichever is provided for in the transfer agreement.

(4) In this regulation–

(a) a member's "initial deposit" means the amount of the liability which the successor company assumes in respect of the qualifying shares held by the member on the vesting date pursuant to section 100(2)(a) of the Act, and where that liability is in respect of a deposit held in more than one account, either–

(i) the amount in each account shall be treated as a separate deposit and thus a separate qualifying investment in respect of which a priority liquidation distribution may be due, or

(ii) the accounts in which the deposit was held shall be treated as if they were a single account,

whichever is provided for in the transfer agreement; and

(b) a "periodic review" means a review undertaken at regular intervals following the vesting date, being either annual intervals or more frequent intervals specified in the transfer agreement.

(5) For the purposes of this regulation–

(a) a transfer of any sum from one account to another account in the name of the same member shall not be treated as a withdrawal where both accounts were accounts in which the member's initial deposit was held but shall be so treated where the account from which the sum was transferred was, and the other account was not, an account (or, as the case may be, one of the accounts) in which the member's initial deposit was held;

(b) accounts in joint names shall not be treated as being a single account with any other account except one of which all the joint holders are the same as those of the former; and

(c) interest, other than interest which has been credited by way of capitalisation, shall be disregarded in calculating a member's initial deposit, 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 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 referred to above to prohibit, or to prohibit without the consent of the trustee thereof, the company from creating any fixed or floating charge or other security over any property of the company ranking in priority to, or pari passu with, the floating charge and to confer on the trustee all the powers necessary to secure that the priority to which section 100(6)(b) of the Act refers is not prejudiced; and

(f) for the terms of the floating charge, where it provides for the consent of the trustee as specified in sub-paragraph (e) above, to require the trustee not to grant such consent save to the extent that he is satisfied that its grant would not be materially prejudicial to the preservation of the priority to which section 100(6)(b) of the Act refers.

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 4th July 1988.

L.S.

P. H. Gevers
Secretary to the Commission

We consent to these Regulations.

David Lightbown
Tony Durant

4th July 1988 — Two of the Lords Commissioners of Her Majesty's Treasury

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

SCHEDULE

Regulation 3

PRESCRIBED MATTERS FOR TRANSFER STATEMENTS

PART I

MATTERS OF WHICH PARTICULARS ARE TO BE INCLUDED IN THE CASE OF ANY TRANSFER

1. The consequences of the transfer–

(a) for members holding shares in the society;

(b) for borrowing members of the society; and

(c) for employees of the society.

2. The principal objects of the successor company.

3. The financial position of the society and its subsidiaries at the most recent reasonably practicable date and in any case not more than six months prior to the date of the statement.

4. The main features of the financial record of the society and its subsidiaries for each of the last five financial years in respect of which information relating to that record has been published.

5. The changes proposed, in consequence of the transfer, in the ownership of the society's subsidiaries and other bodies associated with it.

6. The successor company's authorised and issued share capital and the proposals, if any, for changes therein for the purposes of, or consequent upon, the transfer.

7. The prospective financial position of the successor company immediately following the transfer.

8. The future financial prospects of the successor company.

9. The interest of the directors of the society in the transfer including their interests in the society and its associated bodies and interests and prospective interests in the successor company and its associated companies.

10. The compensation or other consideration (if any) proposed to be paid to or in respect of, or to be receivable by or in respect of, the directors or other officers of the society attributable to the transfer.

11. The manner in which the salary, fees, borrowing rights and other benefits of officers of the society to be appointed to any position by the successor company or any of its associated companies will be affected by such appointment.

12. The distribution of funds (if any) proposed to be made to members of the society in consideration of the transfer.

13. The amount of the society's reserves ascertained as at the most recent reasonably practicable date, and in any case not more than six months before the transfer statement is issued.

14. The opinion of the society's auditor, or of some other accountant who would be qualified to be the auditor of the society pursuant to paragraph 5 of Schedule 11 (Auditors: Appointment, Tenure, Qualifications) to the Act, as to the inclusion in the transfer statement of particulars–

(a) of the matters particulars whereof are required to be included in the statement by paragraphs 3, 4, 6, 7 and 13 of this Part of this Schedule;

(b) in the case of a transfer to an existing company, of the matters particulars whereof are required to be included in the statement by paragraph 3 of Part II of this Schedule; and

(c) in the case of a transfer to a specially formed company, of the matter particulars whereof are required to be included in the statement by paragraph 4 of Part III of this Schedule.

15. Whether the person referred to in the foregoing paragraph has given his written consent to the inclusion of particulars of his opinion in the transfer statement in the form and context in which it appears and whether that consent continues to be in effect.

16. If any report or opinion (other than the opinion referred to in paragraph 14 above or a report thereof) appears or is referred to in the transfer statement and is attributed to an expert, whether that expert has given his written consent to the inclusion of that report or opinion or particulars thereof in the transfer statement in the form and context in which that report or opinion appears or those particulars appear and whether that consent continues to be in effect.

17. Any rights to be conferred on members, officers or employees of the society to acquire or receive shares in the successor company in priority to, or on terms not available to, other investors.

18. The terms on which the investments of members of the society will be held as deposits with the successor company.

19. The extent to which any statutory protection scheme that will apply in relation to those deposits differs from that applying to investments in the society.

PART II

MATTERS OF WHICH PARTICULARS ARE TO BE INCLUDED IN THE CASE OF A TRANSFER TO AN EXISTING COMPANY

1. The range and relative importance of the activities of the successor company and any change in those activities or that relative importance intended in consequence of the transfer.

2. The structure and activities of any group to which the successor company belongs.

3. The financial record of the successor company, and of any group to which it belongs, for each of the last five financial years in respect of which information relating to that record has been published.

4. Any person who is known to the successor company to have an interest, either directly or indirectly, in 5 per cent or more of the company's equity share capital (within the meaning of the Companies Act 1985 or, as the case may be, the Companies (Northern Ireland) Order 1986) and the amount of any such person's interest.

5. The directors of the successor company, their interests in the company and in the transfer, and their other business interests.

6. The auditors of the successor company.

7. Whether the successor company is authorised under the Banking Act 1987(a), or whether the Bank of England has indicated that, on the basis of the information available to it, it would be prepared to authorise the successor company under that Act.

PART III

MATTERS OF WHICH PARTICULARS ARE TO BE INCLUDED IN THE CASE OF A TRANSFER TO A SPECIALLY FORMED COMPANY

1. The intended range and relative importance of the successor company's activities following the transfer.

2. The directors and auditors of the successor company following the transfer, their prospective interests in the company and their other business interests.

3. Whether the Bank of England has indicated that, on the basis of the information available to it, it would be prepared to authorise the successor company under the Banking Act 1987.

4. The priority liquidation distribution by the successor company to which members of the society will be entitled following the transfer and the manner in which it is to be secured.

5. The effect which withdrawal or transfer of money from any account in which any deposit is held may, pursuant to regulation 9 and the transfer agreement, have in reducing the amount to which, in

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(a) 1987 c. 22.

the event of liquidation of the successor company, members of the society may be entitled by way of priority liquidation distribution.

PART IV

MATTERS OF WHICH PARTICULARS ARE TO BE INCLUDED IN A CASE WHERE SHARES OR RIGHTS IN RELATION TO SHARES ARE TO BE OFFERED IN CONNECTION WITH A TRANSFER

1. The nature and amount of the shares and the nature of any rights to be offered.

2. The time at which the offer will be made.

3. The descriptions of persons to whom and the manner in which the shares or rights will be offered.

4. The principal rights that will be attached to any shares to which the offer relates.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations which are made under section 102 of, and paragraph 5 of Schedule 17 to, the Building Societies Act 1986 ("the Act") prescribe certain matters connected with the transfer of the property, rights and liabilities of a building society to a company incorporated under the Companies Acts which may, by virtue of sections 97(3) and (12) of the Act, be either a company specially formed by the society (and by no others than its nominees) for the purpose of assuming and conducting its business in its place or an already existing company carrying on business as a going concern.

When a society proposes a transfer in either of these ways resolutions have to be voted upon by the investing members and separately by the borrowing members of the society and a transfer statement must be put before all those eligible to vote to inform them of the nature of the transfer. Regulation 3 and the Schedule to the Regulations prescribe the matters particulars of which must be included in any such transfer statement. In addition to the matters thus prescribed, such a statement must, as required by paragraph 3(b) of Schedule 17 to the Act, give particulars of any other matters required by the Building Societies Commission in the case of the particular transfer. Part I of the Schedule to the Regulations sets out the matters common to both kinds of transfer, Part II sets out matters which are relevant to a transfer to an existing company, Part III contains those matters specific to a transfer to a specially formed company and Part IV deals with those matters of which particulars are to be stated where shares or rights in relation to shares are to be offered in connection with a transfer.

Section 97(6) of the Act provides for the successor company to assume the property, rights and liabilities of the society and regulations 4 and 5 contain provisions enabling contracts and other documents to be read as referring to the successor company and as if it and the transferring society were, in law, the same person. Thus, provisions of contracts which would cause consequences to flow from a transfer of interest to a third party will not operate in the case of a transfer under the Act (except in a case where the contract specifically referred to the statutory transfer). Regulations 6 and 7 provide for the successor company to be substituted for the society in rights of action and in proceedings before courts and other tribunals.

Under section 22 of the Act a building society is under a statutory obligation to accept the liabilities of any subsidiary companies (and certain other associated bodies) which it may have, so far as they are not discharged by the subsidiary or associate. A public limited company is not under a corresponding statutory obligation but a successor company will, by taking on the liabilities of its predecessor society, succeed to any extant liability, whether present or contingent, under section 22. Regulation 8 provides that the obligation will not extend to cover new liabilities incurred after the transfer.

The members of a building society have certain rights not only to the return of their money deposited but also, so far as is specified in the society's rules, to share in any surplus when the society is wound up (the Act, Schedule 2, paragraph 3(4), Table, item 14). The shareholdings of members are converted into deposits with the successor company; the Act also provides for those rights on winding up (which come to an end on transfer of business) to be replaced by a priority in the distribution if the successor company is wound up. The Act requires the regulations to prescribe the mode of calculation of that priority distribution and this is effected by regulation 9. Initially it would be calculated by reference to the actual amount deposited at the transfer date but as time goes by the amount will be reduced by withdrawals and the regulations provide alternative methods of calculating how the right reduces.

Those rights are required to be secured and regulation 10 prescribes the nature of the security as a floating charge on the company's undertaking, to be vested in an independent trustee. It also provides that, unless the successor company's board of directors furnishes a certificate, supported by the company's auditors, that the floating charge is not rendered to any extent invalid by the effects of insolvency legislation, the transfer agreement must contain provision for the trustee to require other security in addition to the floating charge to secure the priority distribution.