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operation on 1 January 1988 by the Financial Services Act 1986 (Commencement) (No 7) Order 1987, SI 1987/2158; paras 40, 41, 44, 45 (as originally enacted) were brought into operation on 12 January 1987 by the Financial Services Act 1986 (Commencement No 3) Order 1986, SI 1986/2246; para 43 was brought into operation on 29 April 1988 by the Financial Services Act 1986 (Commencement) (No 8) Order 1988, SI 1988/740 (all made under s 211(1) ante).

**Para 38: The Commission.** See the note to para 2 ante.

**Para 40A: Incorporated friendly society.** As to such friendly societies, see, generally, the Friendly Societies Act 1992, Pt II post.

**Para 45: Statutory instrument.** For provisions as to statutory instruments generally, see the Statutory Instruments Act 1946, Vol 41, title Statutes.

**Definitions.** For "friendly society", see s 207(1) ante; for "the Commission", see para 1 ante.

**Friendly Societies Act 1974.** See this title ante. For the meaning of "registered", see s 111(1) thereof.

**Friendly Societies Act (Northern Ireland) 1970.** 1970 c 31 (NI). That Act is repealed by the Friendly Societies Act 1992, s 120(2), Sch 22, Pt II.

**House of Commons Disqualification Act 1975, Sch 1, Pt III.** See Vol 32, title Parliament.

**Northern Ireland Assembly Disqualification Act 1975, Sch 1, Pt III.** See Vol 31, title Northern Ireland (Pt 2).

**Statutory Instruments Act 1946.** See Vol 41, title Statutes.

(Sch 12 substitutes the Companies Act 1985, ss 428-430, Vol 8, title Companies; as to Sch 13 and for Schs 14-17, see Vol 30, title Money (Pt 1).)

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## FRIENDLY SOCIETIES ACT 1992 (1992 c 40)

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An Act to make further registration under the Act 1974 and about for connected purposes.

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## NOTES

**Commencement.** This s force on 8 June 1992 by the 1992/1325 (made under s 12

**General Note.** This sectio extend the functions hitherto vest the new regulatory po

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*An Act to make further provision for friendly societies; to provide for the cessation of registration under the Friendly Societies Act 1974; to make provision about disputes involving friendly societies or other bodies registered under the Friendly Societies Act 1974 and about the functions of the Chief Registrar of friendly societies; and for connected purposes* [16 March 1992]

Northern Ireland This Act applies; see s 124 post.

PART I

THE FRIENDLY SOCIETIES COMMISSION

1 The Friendly Societies Commission

(1) For the purposes of this Act and the 1974 Act there shall be established a body of Commissioners to be called the Friendly Societies Commission (in this Act referred to as "the Commission").

(2) The Commission shall consist of not less than 4 and not more than 10 members to be appointed by the Treasury and the Treasury shall appoint one member to be the chairman, and another member to be the deputy chairman, of the Commission.

(3) Any appointment under subsection (2) above may be on either a full-time or a part-time basis.

(4) The general functions of the Commission shall be—

- (a) to promote the protection by each friendly society of its funds;
- (b) to promote the financial stability of friendly societies generally;
- (c) to secure that the purposes of each friendly society are in conformity with this Act and any other enactment regulating the purposes of friendly societies;
- (d) to administer the system of regulation of the activities of friendly societies; and
- (e) to advise and make recommendations to the Treasury and other government departments on any matter relating to friendly societies,

and the Commission shall have the other functions conferred on it by or under this Act or any other Act.

(5) The Commission shall have power to do anything which is calculated to facilitate the discharge of its functions, or is incidental or conducive to their discharge.

(6) The functions of the Commission, and of its officers and employees, shall be performed on behalf of the Crown.

(7) The Treasury may by order transfer some or all of the functions of the Commission to such other person or body as the order may specify.

(8) Without prejudice to the generality of section 121(3) below, an order under this section may in consequence of the transfer—

- (a) amend any enactment or instrument;
- (b) direct that the Commission shall cease to exist on a day specified in the order.

(9) Schedule 1 to this Act shall have effect with respect to the Commission.

NOTES

**Commencement.** This section and ss 2-4, 116-119, 121-123, 126, Sch 1 post were brought into force on 8 June 1992 by the Friendly Societies Act 1992 (Commencement No 1) Order 1992, SI 1992/1325 (made under s 126(2) post).

**General Note.** This section establishes the Friendly Societies Commission which will exercise and extend the functions hitherto carried out by the Chief Registrar of Friendly Societies. The decision to vest the new regulatory powers in a commission, whose membership will include independent

members who have suitable experience outside the public service, reflects the developments in regulation which have occurred elsewhere in the financial services sector. The Commission's new powers are based on the requirement contained in s 31 post that all active friendly societies are to be authorised. Its principal power rests in the granting or revocation of authorisation to carry on insurance or other contractual business, and in the imposition of conditions on any such authorisation (see ss 32-43 post). The Commission is also empowered to exercise a range of prudential powers if it considers that a society has failed to comply with the criteria of prudent management set out in s 50 post, to obtain information necessary for its supervisory functions from societies and their subsidiaries, and to conduct inspections and investigations into societies (see ss 62-67 post). There is, however, an independent appeals procedure against the Commission's decisions, in line with banking and building societies legislation (see ss 58-61 post). See further the statement of the Economic Secretary to the Treasury on moving the second reading of the Bill of this Act (205 HC Official Report cols 661, 662; 9 March 1992).

**Sub-s (1): The Commission.** As to financial provision for the Commission, see s 2 post; as to the requirement that the Commission keep proper accounts, see s 3 post; and as to annual and other reports of the Commission, see s 4 post.

See also, as to security of information, the Companies Act 1985, s 449, Vol 8, title Companies (as amended by s 120(1), Sch 21, Pt 1, para 7 post); the Banking Act 1987, s 84(1), Vol 4, title Banking (as amended by s 120(1), Sch 21, Pt 1, para 9 post); and the Companies Act 1989, s 87(4), Vol 30, title Money (Pt 1) (as amended by s 120(1), Sch 21, Pt 1, para 11 post).

**Sub-s (2): Treasury.** In the Commissioners of HM Treasury; see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes.

**Sub-s (7): Person.** Unless the contrary intention appears this includes a body of persons corporate or unincorporate; see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes.

**Definitions.** For "friendly society", see s 116 post. Note as to "the Commission", sub-s (1) above.

**1974 Act.** In the Friendly Societies Act 1974 ante; see s 119(1) post.

**Orders under this section.** Up to 1 June 1994 no orders had been made under sub-ss (7), (8) above.

For general provisions as to orders, see s 121 post.

## 2 Financial provision for Commission

(1) There shall be charged on friendly societies such a general charge towards the expenses of the Commission and such fees in respect of the exercise of its functions as are authorised under this section.

(2) The Treasury may, by regulations, make provision for—

- (a) a general charge to be levied on friendly societies with respect to each accounting year of the Commission and to be paid at such rate computed by reference to such criteria, at such time and in such manner as may be prescribed by the regulations; and
- (b) fees of such amounts as may be so prescribed to be paid by friendly societies in respect of the exercise of the Commission's functions in relation to them.

(3) The provision to be made from time to time under subsection (2) above, by way of the general charge and fees, shall be such as to produce an annual revenue of the Commission sufficient to meet its expenses properly chargeable to revenue account, taking one year with another.

(4) Regulations under subsection (2) above may include provision for any fees payable by societies to be reduced or for payment of any fees to be waived by the Commission in circumstances determined by or under the regulations.

(5) The amounts received by the Commission under this section shall be applied as an appropriation in aid of money provided by Parliament for the expenses of the Commission, and in so far as not so applied, shall be paid into the Consolidated Fund.

(6) In this Part of this Act "accounting year", in relation to the Commission, means the period of 12 months ending with 31st March in any year, except that the Commission's first accounting year shall end on 31st March 1993.

## NOTES

**Commencement.** 8 June 1993.

**General Note.** See the General Note.

**Sub-s (2): Treasury.** See the note to s 1 above.

**Sub-s (3): From time to time.** See the note to s 1 above. See also *Holliday v Holliday* [1962] 1 All ER 1000 and *Re Von Dembinska, ex p Evershed* MR.

**Sub-s (5): Consolidated Fund.** Established by the Consolidated Fund Act 1954, s 34(3), Vol 30, title Money (Pt 1) thereof. See also, as to payments into the Fund, s 13, in conjunction with the Money (Pt 1), and the Finance Act 1993, s 119(1) post.

**Sub-s (6): This Part of this Act.** Twelve months ending with 31st March. In this manner is to include the day on which the period ends, para 1127.

**Definitions.** For "the Commission", see the note to s 1 above.

**Regulations under this section.** See the note to s 1 above.

For general provisions as to regulations, see s 121 post.

## 3 Accounts of Commission

(1) The Commission shall prepare in respect of each accounting year a statement of accounts and shall prepare in respect of each accounting year a statement of accounts in the form as the Treasury may direct.

(2) The statement of accounts shall be prepared in conjunction with the statement of accounts required to be prepared as regards the Commission's accounts.

(3) The Commission shall submit to the Auditor General, before the end of each accounting year, a copy of the statement of accounts.

(4) The Comptroller and Auditor General shall examine every statement of accounts submitted to him and shall prepare a copy of the statement and a report thereon.

## NOTES

**Commencement.** 8 June 1993.

**General Note.** See the General Note.

**Treasury.** See the note to s 1 above.

**Comptroller and Auditor General.** See the Comptroller and Auditor General Act 1866, s 1, Vol 41, title Statutes. See, in particular, s 1, both Vol 30, title Money (Pt 1) and Vol 41, title Statutes.

**Seven months after, etc.** See the note to s 1 above. See also *Dodds v Walker* [1981] 1 All ER 1000 and *Eurostile Holdings Ltd* [1985] 3 All ER 1000. See also the note to s 1 above.

**Lay ... before ... Parliament.** See the note to s 1 above.

**Definitions.** For "the Commission", see the note to s 1 above.

For general provisions as to reports, see s 121 post.

## 4 Annual and other reports

(1) It shall be the duty of the Commission to lay before Parliament as soon as possible after the end of each accounting year a copy of the statement of accounts and a report thereon.

## NOTES

**Commencement.** 8 June 1992; see the note to s 1 ante.

**General Note.** See the General Note to s 1 ante.

**Sub-s (2): Treasury.** See the note to s 1 ante.

**Sub-s (3): From time to time.** This means "as the occasion shall arise" or "as and when it is appropriate so to do"; see *Holliday v Wakefield Corpn* (1887) 57 LT 559 at 562, 563, per Mathew J, and *Re Von Dembinska, ex p The Debtor* [1954] 2 All ER 46 at 48, [1954] 1 WLR 748, CA, per Evershed MR.

**Sub-s (5): Consolidated Fund.** Is the Consolidated Fund of the United Kingdom which was established by the Consolidated Fund Act 1816, s 1, Vol 30, title Money (Pt 1). By the Finance Act 1954, s 34(3), Vol 30, title Money (Pt 1), any charge on the Fund extends to the growing produce thereof. See also, as to payment out of the Fund, the Exchequer and Audit Departments Act 1866, s 13, in conjunction with the Exchequer and Audit Departments Act 1957, s 2, both Vol 30, title Money (Pt 1), and the Finance Act 1975, s 56, Vol 30, title Money (Pt 3).

**Sub-s (6): This Part of this Act.** Is Pt I (ss 1-4 and Sch 1).

**Twelve months ending with, etc.** As a general rule the effect of defining a period in such a manner is to include the day on which the event in question occurs; see 45 Halsbury's Laws (4th edn) para 1127.

**Definitions.** For "the Commission", see s 1(1) ante; for "friendly society", see s 116 post. Note as to "accounting year", sub-s (6) above.

**Regulations under this section.** The Friendly Societies (General Charge and Fees) Regulations 1993, SI 1993/547, as amended by SI 1994/657.

For general provisions as to regulations, see s 121 post.

### 3 Accounts of Commission and audit

(1) The Commission shall keep proper accounts and proper accounting records and shall prepare in respect of each accounting year a statement of accounts in such form as the Treasury may direct.

(2) The statement of the accounts required by subsection (1) above may be combined with the statement of the accounts of the Chief Registrar which he is required to prepare as regards his functions.

(3) The Commission shall send to the Treasury and to the Comptroller and Auditor General, before the end of the period of seven months after the end of each accounting year, a copy of the statement of accounts for that year.

(4) The Comptroller and Auditor General shall examine, certify and report on every statement of accounts received by him from the Commission and shall lay a copy of the statement and of his report thereon before each House of Parliament.

## NOTES

**Commencement.** 8 June 1992; see the note to s 1 ante.

**General Note.** See the General Note to s 1 ante.

**Treasury.** See the note to s 1 ante.

**Comptroller and Auditor General.** Is the officer appointed in pursuance of the Exchequer and Audit Departments Act 1866, Vol 30, title Money (Pt 1); see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes. See, in particular, ss 3 and 6 of the 1866 Act and the National Audit Act 1983, s 1, both Vol 30, title Money (Pt 1).

**Seven months after, etc.** As a general rule the effect of defining a period in such a manner is to exclude the day on which the event in question occurs; see 45 Halsbury's Laws (4th edn) para 1127. See also *Dodds v Walker* [1981] 2 All ER 609, [1981] 1 WLR 1027, HL; *E J Riley Investments Ltd v Eurostile Holdings Ltd* [1985] 3 All ER 181, CA, and 45 Halsbury's Laws (4th edn) para 1111, as to the day of expiry of periods of a month or a specified number of months.

**Lay ... before ... Parliament.** For meaning, see the Laying of Documents before Parliament (Interpretation) Act 1948, s 1(1), Vol 41, title Statutes.

**Definitions.** For "the Commission", see s 1(1) ante; for "accounting year", see s 2(6) ante; for "the Chief Registrar", see s 119(1) post.

### 4 Annual and other reports

(1) It shall be the duty of the Commission to lay before the Treasury and before Parliament as soon as possible after the end of each accounting year a report on the discharge of its functions during that year.

(2) The Commission may lay before Parliament from time to time such other reports relating to the discharge of its functions, whether in relation to friendly societies generally or a particular friendly society, as it thinks fit.

#### NOTES

**Commencement.** 8 June 1992; see the note to s 1 ante.

**General Note.** See the General Note to s 1 ante.

**It shall be the duty, etc.** As to the remedies for failure to perform a statutory duty, see generally the Preliminary Note to the title Statutes, Vol 41, under the heading "8. Enforcement"; and see also 1(1) Halsbury's Laws (4th edn reissue) paras 132, 201, 211, and 44 Halsbury's Laws (4th edn) paras 941 et seq and, as to actions for damages for breach of statutory duty, 45 Halsbury's Laws (4th edn) paras 1279 et seq.

**Lay . . . before Parliament.** See the note to s 3 ante.

**Treasury.** See the note to s 1 ante.

**From time to time.** See the note to s 2 ante.

**Thinks fit.** Statutory powers are often conferred in subjective terms, the competent authority being entitled to act, eg, when it "thinks fit", or when it is "satisfied" or it "appears" to it that a prescribed state of affairs exists, but the inherent jurisdiction of the courts to determine whether such powers have been exceeded is not readily ousted by the use of such language; see further 1(1) Halsbury's Laws (4th edn reissue) para 21.

**Definitions.** For "the Commission", see s 1(F) ante; for "accounting year", see s 2(6) ante; for "friendly society", see s 116 post.

## PART II

### INCORPORATED FRIENDLY SOCIETIES

**Power to modify, etc.** So much of this Part of this Act (ie Pt II (ss 5-26 and Schs 2-10)) as relates to winding up may be modified by order made under s 102 post; see s 102(1), (2)(a), (3)-(5) post.

#### *Constitution and purposes of incorporated friendly societies*

#### 5 Establishment of incorporated friendly societies

- (1) This Part of this Act has effect—
  - (a) to enable societies to be established in accordance with this Act and to be registered and incorporated under it; and
  - (b) to enable friendly societies registered under the 1974 Act to be registered and incorporated under this Act.
- (2) A society may be established under this Act if under its proposed memorandum—
  - (a) its purposes are to include the carrying on of one or more activities falling within Head A, B, C or D of Schedule 2 to this Act;
  - (b) any such activity—
    - (i) is to be carried on by the society with a view to the provision, for its members and such persons connected with its members as may be prescribed in its rules, of insurance or other benefits; and
    - (ii) is to be funded by voluntary subscriptions from members of the society, with or without donations; and
  - (c) any other purposes which it is to have are within the permitted capacity of incorporated friendly societies under this Act.
- (3) A society established under this Act is incorporated as from the date of its registration under this Act by the central office.
- (4) The Commission may by order made with the consent of the Treasury vary Schedule 2 to this Act by adding to or deleting, or by varying the description of, any activity for the time being specified in it.

(5) No such order shall be made unless it is approved by a resolution of both Houses of Parliament.

(6) Schedule 3 to this Act shall have effect.

- (a) the procedure for the registration of this Act (in relation to friendly societies);
- (b) the memorandum and rules for the registration of friendly societies;
- (c) the name and other particulars of friendly societies.

and certain incidents of the winding up of friendly societies.

(7) In this Part of this Act, "friendly society" has the meaning assigned to it in section 7.

#### NOTES

**Commencement.** Sub-sections (1) and (2) of s 5 of the Friendly Societies Act 1992 (Commencement) (made under s 126(2) post) shall have effect from the commencement date of this Act. See the Commencement note to this Act.

**General Note.** European Directive 90/269/EEC on the long-term life or general insurance of persons engaged in other services through separate entities, adopted under the Friendly Societies Act 1992, shall have effect from 1 January 1992. The Directive is set out in paras 4.1-4.8 of the Green Paper (1990), by allowing societies to be established as friendly societies which will be able to provide a range of financial and other services to members of a friendly society to incorporate their assets directly rather than through a company for other purposes.

Sch 2 post gives effect to the provisions of the existing purposes and powers of friendly societies which will continue to apply to friendly societies which differs from Sch 1 (repealed) in relation to insurance business corresponding to s 119(1) post, and to a limited extent to title Insurance (Pt 2).

**Sub-s (1): This Part of this Act.** This Part of this Act shall have effect from the commencement date of this Act. See the Commencement note to this Act.

**Registered and incorporated.** A friendly society or registered society may be registered and incorporated under the purposes of the Income Tax (Earnings and Pensions) Act 1992 (MIRAS scheme) and such a society shall be treated as a company for the purposes of Chapter IV (ss 630-655) of that Act, Vol 44, title Taxation.

For exemption from incorporation in relation to insurance business and other purposes, see s 119(1) post, Vol 44, title Taxation.

Where the rules of an occupational pension scheme provide for the entire pension, and the scheme is a friendly society, the society is to be treated as a company for the purposes of Chapter IV of that Act, Vol 44, title Taxation.

On the incorporation of a friendly society, no loss consideration and capital gains tax shall be chargeable on a subsequent disposal of the assets of the society. See Vol 43, title Taxation.

See also the Income Tax (Earnings and Pensions) Act 1992 (MIRAS scheme and premium relief), Vol 44, title Taxation, in the same title.

**Sub-s (2): Purposes.** As to the purposes of a friendly society, see s 116 post.

**Sub-s (4): Treasury.** See s 126(2) post.

(5) No such order shall be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.

(6) Schedule 3 to this Act shall have effect in relation to—

- (a) the procedure for registration of societies as societies incorporated under this Act (in this Act referred to as “incorporated friendly societies”);
- (b) the memorandum of the purposes and extent of the powers of, and the rules for the regulation of, such societies,
- (c) the name and registered office of such societies,

and certain incidents of membership of incorporated friendly societies.

(7) In this Part of this Act references to the permitted capacity of incorporated friendly societies under this Act are to the capacity to carry on all the activities mentioned in section 7(2) below.

#### NOTES

**Commencement.** Sub-ss (1)–(5), (7) were brought into force on 1 February 1993 by the Friendly Societies Act 1992 (Commencement No 3 and Transitional Provisions) Order 1993, SI 1993/16 (made under s 126(2) post). As to the commencement of sub-s (6) above and Sch 3 post, see the Commencement note to that Schedule.

**General Note.** European Community insurance legislation prohibits an institution which provides long-term life or general insurance from engaging directly in other activities, although it may offer other services through separately managed and financed subsidiaries. A friendly society registered under the Friendly Societies Act 1974 ante is an unincorporated society of individuals and is prohibited from owning subsidiaries. This section, s 6 and Schs 3, 4 post implement the recommendations made in paras 4.1–4.8 of the Green Paper “Friendly Societies: A New Framework” (Cm 919) (January 1990), by allowing societies registered under the 1974 Act to incorporate as a new category of friendly society which will enable them to form and acquire subsidiaries so as to provide a wider range of financial and other services (see s 13 post). Although there is no obligation on an existing friendly society to incorporate, incorporation offers advantages to a society, such as the ability to own assets directly rather than through trustees and to have legal personality for contractual and certain other purposes.

Sch 2 post gives effect to the proposals contained in paras 5.1–5.4 of the Green Paper that the existing purposes and powers of friendly societies should be redefined and updated, although those purposes will continue to include provision of traditional friendly society services. The new Sch 2 differs from Sch 1 (repealed) to the Friendly Societies Act 1974 in that the specification of classes of insurance business correspond to those set out in the EC Life and Non-life Insurance Directives (see s 119(1) post), and to a limited extent to those in the Insurance Companies Act 1982, Schs 1, 2, Vol 22, title Insurance (Pt 2).

**Sub-s (1): This Part of this Act.** Ie Pt II (ss 5–26 and Schs 2–10).

**Registered and incorporated.** The Company Directors Disqualification Act 1986, Vol 8, title Companies, applies, with modifications, to incorporated friendly societies; see s 22B of that Act, as inserted by s 120(1), Sch 21, Pt I, para 8 post.

A friendly society or registered branch within the meaning of this Act is a “qualifying lender” for the purposes of the Income and Corporation Taxes Act 1988, ss 369–378 (provision relating to the MIRAS scheme) and such a friendly society is an “authorised insurance company” for the purposes of Chapter IV (ss 630–655) of Pt XIV of that Act (personal pension schemes); see s 376(4)(g), (4A), 630 of that Act, Vol 44, title Taxation.

For exemption from income tax or corporation tax on the profits of a friendly society from life or endowment business and other business, see the Income and Corporation Taxes Act 1988, ss 460–466, Vol 44, title Taxation.

Where the rules of an occupational pension scheme allow a lump sum payment in commutation of the entire pension, and the pension is secured by an annuity contract with a friendly society, the society is to be treated as the administrator of the scheme and therefore accountable for the special tax charged by the Income and Corporation Taxes Act 1988, s 599; see s 599(7), (8)(b) of that Act, Vol 44, title Taxation.

On the incorporation of an existing friendly society, the assets are treated as transferred for no gain no loss consideration and capital allowances made to the predecessor society are taken into account on a subsequent disposal of those assets; see the Taxation Chargeable Gains Act 1992, ss 217A–217C, Vol 43, title Taxation.

See also the Income and Corporation Taxes Act 1988, ss 266, 267, Schs 14, 15 (life assurance premium relief), Vol 44, title Taxation, and Chapter II (ss 539–554) (life policies) of Pt XIII of that Act, in the same title.

**Sub-s (2): Purposes.** As to the purposes of an incorporated friendly society, see s 7(1), (2) post.

**Sub-s (4): Treasury.** See the note to s 1 ante.



**Definitions.** For "incorporated friendly society", "registered branch" and "registered friendly society", see s 116 post; for "the central office", see s 119(1) post; for "memorandum", see Sch 3, para 4(3) post.

**1974 Act.** In the Friendly Societies Act 1974 ante; see s 119(1) post.

## 7 Purposes and powers of an incorporated friendly society

(1) The purposes of an incorporated friendly society shall be those provided for by the society's memorandum.

(2) The purposes for which an incorporated friendly society may exist are—

- (a) the carrying on, subject to section 5(2)(b) above, of—
  - (i) any business of any description falling within a class specified in Head A or B or within Head C of Schedule 2 to this Act, or
  - (ii) any activity falling within Head D of that Schedule; and
- (b) the carrying on, in addition to any business or activity falling within paragraph (a) above, of any of the following, namely—
  - (i) social or benevolent activities in accordance with section 10 below;
  - (ii) group insurance business in accordance with section 11 below;
  - (iii) reinsurance, in accordance with section 12 below, of risks insured by other friendly societies;
  - (iv) control or joint control of bodies corporate in accordance with section 13 below;

and the memorandum of an incorporated friendly society may also confer on the society power to do anything falling within Schedule 5 to this Act.

(3) The memorandum of an incorporated friendly society may confer on it any other power specified in this Part of this Act, but no such power may be exercised except for carrying out the society's purposes.

(4) An incorporated friendly society shall, subject to the provisions of this Act, its memorandum and its rules, have any other power which is incidental or conducive to the carrying out of its purposes or for doing anything falling within Schedule 5 to this Act.

(5) Nothing in this Act shall be taken as preventing an incorporated friendly society from providing in its rules—

- (a) for such system of representation of the members in the making of decisions by the society as the society may think fit;
- (b) for the division of the society's members into groups under the control of the society and bound to contribute to the funds of the society but, subject to that, having funds and property of their own vested in trustees and administered by themselves or through their own trustees, officers or committees (and in accordance with their own rules);
- (c) for the delegation of authority to any such group (or to its committee or any of its officers) to act, within such limits as the society may set, on the society's behalf;

but no such group may do anything on its own account which does not fall within Head D of Schedule 2 or within Schedule 5 to this Act.

(6) Schedule 6 to this Act shall have effect in relation to the making of contracts and execution of documents by incorporated friendly societies.

### NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**General Note.** See the General Note to s 5 ante.

**Sub-s (1): Purposes of an incorporated friendly society.** A society may also include among its purposes social and benevolent activities (see s 10 post), the carrying on of any group insurance

business (see s 11 post), the carrying on of any reinsurance business (see s 12 post), and the formation and control of subsidiaries and other bodies coroporate (see s 13 post).

**Memorandum.** As to the memorandum of an incorporated friendly society, see s 5(6) ante, Sch 3, paras 1(1)(a), 4 post.

**Sub-s (2): Carrying on . . . business.** The words "carry on business" denote something of a permanent character, not merely an isolated transaction and a business is carried on only where there is some degree of management or control; see *Brown v London and North Western Rly Co* (1863) 32 LJQB 318, [1861-73] All ER Rep 487; *Graham v Lewis* (1888) 22 QBD 1, CA; and *Cain v Butler* [1916] 1 KB 759 at 762; but contrast *Cornelius v Phillips* [1918] AC 199, [1916-17] All ER Rep 685, HL. See also *Kirkwood v Gadd* [1910] AC 422 at 423, [1908-10] All ER Rep 768 at 771, HL; *Newman v Oughton* [1911] 1 KB 792; *Transport and General Credit Corp Ltd v Morgan* [1939] Ch 531, [1939] 2 All ER 17; *Re Brauch (a debtor), ex p Britannic Securities and Investments Ltd* [1978] Ch 316, [1978] 1 All ER 1004, CA; and *Re Sarflax Ltd* [1979] Ch 592, [1979] 1 All ER 529. On the meaning of "business", see 47 Halsbury's Laws (4th edn) paras 2, 3, and 1 Words and Phrases (3rd edn) 204 et seq.

**Bodies corporate.** For the general law relating to corporations, see 9 Halsbury's Laws (4th edn) paras 1201 et seq.

**Sub-s (3): Any other power.** As to the power of an incorporated friendly society to invest its funds, see s 14 post; as to the power of a society to hold land for purposes other than investment, see s 15 post; as to a society's power to provide assistance to subsidiaries and jointly controlled bodies, see s 16 post; and as to the power of a society to advance loans to assured members, see s 17 post.

Any carrying on by a friendly society of an activity beyond its powers is to be treated, for the purposes of s 50 post, as a failure on the part of the committee of management prudently to conduct the affairs of the society; see s 50(8) post (and see also s 50(9) post). A statement whether and, if so, what activities carried on by the society are believed to have been carried on outside its powers is required in a report under s 71 post; see s 71(1)(c) post (and see also s 71(2)(c) post).

For the powers of the Friendly Societies Commission where it has reason to believe that a friendly society is carrying on activities which are not activities which are permitted by this Act or the Friendly Societies Act 1974 ante, or is not carrying on any activity falling within Sch 2 post, see s 52(1), (2)(a), (b), (3), (4)(a), (5)-(7) post.

**This Part of this Act.** ie Pt II (ss 5-26 and Schs 2-10).

**Sub-s (4): Rules.** For the matters to be covered by such rules, see s 5(6) ante, Sch 3, para 5 post.

**Sub-s (5): Nothing in this Act shall be taken as preventing, etc.** A scheme under s 6(5) ante may not identify for exclusion from transfer under s 6(4) ante any property, etc of a branch which is referable only to an activity of the branch which a branch would, by virtue of sub-s (5) above, be unable to carry on on its own behalf; see s 6(7) ante, Sch 4, para 2(4) post.

**Definitions.** For "incorporated friendly society", see s 116 post; for "officer", see s 119(1) post; for "memorandum", see Sch 3, para 4(3) post.

## 8 Effect of the memorandum of an incorporated society

(1) The provisions of the memorandum of an incorporated friendly society are binding upon—

- (a) each of the members and officers of the society,
- (b) all persons claiming on account of a member or under its rules, and all such members, officers and persons (but no others) shall be taken to have notice of the provisions of the memorandum.

(2) A person not of a description mentioned in subsection (1)(a) or (b) above who is a party to a transaction with an incorporated friendly society which is within the permitted capacity of such societies under this Act is not bound to enquire as to whether the transaction is within the capacity of the society in question.

(3) Subsection (4) below applies to any act of an incorporated society which is within the permitted capacity of such societies under this Act but is beyond the capacity of the society in question.

(4) In favour of a person who—

- (a) is not a person mentioned in subsection (1) above;
- (b) gives valuable consideration for the act; and
- (c) does not know that the act is beyond the capacity of the society,

any act to which this subsection applies is deemed to be one which is within the capacity of the society to enter into, notwithstanding the provisions of the memorandum.

(5) Where an incorporated friendly society has an interest in property, the fact that the society does not affect the title to the property or an interest in the property of the circumstances affecting the title.

(6) Subsection (4) above applies to—

- (a) the right of the society to bring proceedings for the fulfilment of its obligations as a society) which are not the duty of the society to perform their powers;
- (b) the duty of the society to perform their powers;
- (c) any liability of the society beyond its capacity.

(7) Relief from any liability agreed to by special resolution.

(8) In any proceedings for proving that a person is a member, the question lies on the person.

(9) In this section "trading"

## NOTES

**Commencement.** 1 February 1975.

**Sub-s (1): Memorandum.** For the memorandum of an incorporated friendly society, see s 5(6) ante, Sch 3, para 4 post.

**Sub-s (4): Valuable consideration.** See *Currie v Misa* (1875) LR 10 Ex 101. Valuable consideration, interest, profit, or benefit a person is liable for a responsibility, given, suffered or incurred, see s 52(1) ante, paras 310 et seq.

**Act . . . within the capacity of the society.** For an incorporated friendly society, see s 9(3) post.

**Deemed.** The primary fact that a person is a member otherwise be excluded; see *Brown v London and North Western Rly Co* (1863) 32 LJQB 318, HL per Viscount Simon and *Public Trustee v IRC* [1966] AC 141, HL.

**Sub-s (6): Committee of management.** See s 27, Sch 11.

**Sub-s (7): Special resolution.**

**Definitions.** As to "person", see s 116(1) post; for "incorporated friendly society", see s 119(1) post; for "memorandum", see Sch 3, para 4(3) post. Note as to "transaction", see s 50(8) post.

## 9 Effect of the rules of an incorporated society

(1) The provisions of the rules of an incorporated friendly society are binding upon—

- (a) each of the members and officers of the society,
- (b) all persons claiming on account of a member or under its rules, and all such members, officers and persons (but no others) shall be taken to have notice of the provisions of the rules.

(2) A party to a transaction with an incorporated friendly society which is within the permitted capacity of such societies under this Act is not bound to enquire as to whether the transaction is within the capacity of the society in question.

(5) Where an incorporated friendly society purports to transfer or grant an interest in property, the fact that the act was beyond the capacity of the society does not affect the title of a person who in good faith subsequently acquired the property or an interest in it for valuable consideration and without actual notice of the circumstances affecting the validity of the society's act.

(6) Subsection (4) above does not affect—

- (a) the right of a member of an incorporated friendly society to bring proceedings to restrain the doing of an act (other than an act done in fulfilment of a legal obligation arising from a previous act of the society) which is beyond the capacity of the society;
- (b) the duty of the committee of management to observe any limitation on their powers flowing from the society's memorandum; or
- (c) any liability incurred by any person by reason of the society acting beyond its capacity.

(7) Relief from any liability mentioned in subsection (6)(c) above must be agreed to by special resolution.

(8) In any proceedings arising out of subsection (4) above, the burden of proving that a person knew that an act was beyond the capacity of the society in question lies on the person making the allegation.

(9) In this section "transaction" includes any act.

#### NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**Sub-s (1): Memorandum.** As to the contents of the memorandum of an incorporated friendly society, see s 5(6) ante, Sch 3, para 4 post.

**Sub-s (4): Valuable consideration.** This, according to the well-known definition given in *Currie v Misa* (1875) LR 10 Exch 153 at 162, "in the sense of the law, may consist either in some right, interest, profit, or benefit accruing to the one party, or some forbearance, detriment, loss, or responsibility, given, suffered, or undertaken by the other". See further 9 Halsbury's Laws (4th edn) paras 310 et seq.

**Act . . . within the capacity of the society, etc.** S 9(4) post applies in relation to any act of an incorporated friendly society which is deemed by sub-s (4) above to be within the capacity of the society; see s 9(3) post.

**Deemed.** The primary function of the word "deem" is to bring in something which would otherwise be excluded; see *Barclay's Bank Ltd v IRC* [1961] AC 509 at 523, [1960] 2 All ER 817 at 820, HL per Viscount Simonds. For other relevant cases, see 2 Words and Phrases (2nd edn) 27, 28, and *Public Trustee v IRC* [1960] AC 398, [1960] 1 All ER 1 at 510, HL per Lord Radcliffe.

**Sub-s (6): Committee of management.** For general provisions as to the committee of management, see s 27, Sch 11 post.

**Sub-s (7): Special resolution.** See s 30, Sch 12, para 7 post.

**Definitions.** As to "permitted capacity of an incorporated friendly society", see s 5(7) ante; for "incorporated friendly society", see s 116 post; for "committee of management" and "officer", see s 119(1) post; for "memorandum", see Sch 3, para 4(3) post; for "special resolution", see Sch 12, para 7 post. Note as to "transaction", sub-s (9) above.

### 9 Effect of the rules of an incorporated society

(1) The provisions of the rules of an incorporated friendly society are binding upon—

- (a) each of the members and officers of the society,
- (b) all persons claiming on account of a member or under its rules, and all such members, officers and persons (but no others) shall be taken to have notice of the provisions of the rules.

(2) A party to a transaction with an incorporated friendly society who is not of a description mentioned in subsection (1)(a) or (b) above is not bound to enquire as to any limitation on the powers of the committee of management to bind the society.

(3) Subsection (4) below applies in relation to any act of an incorporated friendly society which is, or is deemed by section 8(4) above to be, within the capacity of the society and is decided upon by the committee of management acting beyond their powers under the constitution of the society.

(4) In favour of a person who—

- (a) is not a person mentioned in subsection (1) above;
- (b) gives valuable consideration for an act to which this subsection applies; and
- (c) does not know that the act is beyond the powers of the committee of management;

the power of the committee of management to bind the society shall be deemed free of any limitation in the society's constitution.

(5) Where an incorporated friendly society purports to transfer or grant an interest in property, the fact that the committee of management acted beyond their powers under the society's constitution does not affect the title of a person who in good faith subsequently acquires the property or an interest in it for valuable consideration and without actual notice of the circumstances (if any) affecting the validity of the society's act.

(6) Subsection (4) above does not affect—

- (a) the right of a member of an incorporated friendly society to bring proceedings to restrain the doing of an act (other than an act done in fulfilment of a legal obligation arising from a previous act of the society) which is beyond the powers of the committee of management;
- (b) the duty of the committee of management to act within their powers under the constitution of the society;
- (c) any liability incurred by any person by reason of the committee of management exceeding their powers.

(7) Action by the committee of management of an incorporated friendly society which is beyond their powers under the society's constitution but is within its capacity may be ratified by the society in general meeting in such manner as its rules may provide; but relief from any liability mentioned in subsection (6)(c) above must be agreed to by special resolution separate from any resolution ratifying the committee's action.

(8) In this section—

- (a) references to limitations on the committee's powers under the constitution of the society include limitations deriving from a resolution of the society in general meeting or any agreement between the members of the society; and
- (b) "transaction" includes any act.

(9) In any proceedings arising out of subsection (4) above, the burden of proving that a person knew that an act was beyond the powers of the committee of management lies on the person making the allegation.

(10) This section shall not affect the application, in relation to an incorporated friendly society, of any rule of law relating to the validity of acts which are within the capacity of a body corporate but may have been affected by defects arising from its internal management under its constitution.

#### NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**Sub-s (1): The rules.** For the matters which must be covered by such rules, see s 5(6) ante, Sch 3, para 5 post.

**Sub-s (2): Committee of management.** For general provisions as to the committee of management, see s 27, Sch 11 post.

**Sub-s (3): Deemed.** See the  
**Sub-s (4): Valuable consid**  
**Sub-s (7): General meetin**  
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#### 10 Social and benevole

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#### 11 Group insurance

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(3) Group insurance

- Sub-s (3): Deemed.** See the note to s 8 ante.
- Sub-s (4): Valuable consideration.** See the note to s 8 ante.
- Sub-s (7): General meeting; special resolution.** As to meetings of friendly societies generally, see s 30, Sch 12 post, and as to special resolutions, see para 7 of that Schedule.
- Sub-s (10): Body corporate.** See the note "Bodies corporate" to s 7 ante.
- Definitions.** For "incorporated friendly society", see s 116 post; for "committee of management" and "officer", see s 119(1) post; for "special resolution", see Sch 12, para 7 post. Note as to "limitations on the committee's powers under the constitution of the society" and "transaction", sub-s (8) above.

## 10 Social and benevolent activities

(1) An incorporated friendly society may include among its purposes the carrying on of any social or benevolent activity which is not inconsistent with the other purposes of the society.

(2) For the purposes of this section "benevolent activity" means the making of donations, the raising of funds or any other activity carried on for a charitable purpose or for any other benevolent purpose.

### NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**Charitable purpose.** Charities in the legal sense comprise four principal divisions: trusts for the relief of poverty, trusts for the advancement of education, trusts for the advancement of religion, and trusts for other purposes beneficial to the community not falling under any of the preceding heads; see *Income Tax Special Purposes Comrs v Pemsel* [1891] AC 531 at 583, [1891-4] All ER Rep 28 at 55, HL, per Lord Macnaghten. The essentials of charitable purposes are considered generally in 5(2) Halsbury's Laws (4th edn reissue) paras 1 et seq, and particular charitable purposes and non-charitable purposes are described in *ibid*, paras 16 et seq. As to certain charities which fall within the fourth division mentioned above, see the Recreational Charities Act 1958, Vol 5, title Charities.

**Definitions.** For "incorporated friendly society", see s 116 post. Note as to "benevolent activity", sub-s (2) above.

## 11 Group insurance

(1) An incorporated friendly society may include among its purposes the carrying on of any group insurance business.

(2) In this Act "group insurance business" means business (carried on in accordance with the society's rules) which—

- (a) is of a description falling within Head A, or class 2 of Head B, of Schedule 2 to this Act; and
- (b) is carried on as the business of providing benefits, in pursuance of a contract with a qualifying person, for or in respect of the members of a group scheme.

(3) For the purposes of this section—

"group scheme" means a scheme or other arrangement under which benefits are to be provided for or in respect of persons who are members of the scheme and who qualify for membership by virtue of—

- (a) being employees of a particular employer, or
- (b) being members of some other group of persons of a description prescribed in regulations under subsection (7) below;

"qualifying person" means a person who has established or is otherwise responsible for the operation of a group scheme or a trustee of such a scheme; and

"member", in relation to a group scheme, includes any person for or in respect of whom benefits are to be provided under the scheme, whatever the terms in which such persons are described in the scheme.

(3) Group insurance business may be carried on by an incorporated friendly

society whether or not members of the group scheme are, or are required by the society to be, members of the society.

(4) Where an incorporated friendly society carries on any group insurance business and the rules of the society so provide, any qualifying person with whom the society contracts (or his nominee) may be accorded the rights of a member of the society (including any right to vote) for the purpose of participating in the affairs of the society in the interests of the members of the group scheme with which he is concerned.

(5) A person who is accorded the rights of a member of a society by virtue of subsection (4) above shall, for the purposes of any power conferred on the Commission by this Act which is exercisable in the interests of members of the society, be treated as if he were a member of the society.

(6) The rules of an incorporated friendly society may not prevent a person from being a member of the society in his private capacity by reason only of the fact that he has been accorded the rights of a member by virtue of subsection (4) above.

(7) The Commission may make regulations specifying the manner in which group insurance business may be carried on by incorporated friendly societies; and such regulations may in particular include limitations or requirements relating to—

- (a) the contracts in pursuance of which group insurance business may be carried on; or
- (b) the persons with whom, or the groups of persons for whose benefit, such contracts may be made.

#### NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**Sub-s (1): Carrying on . . . business.** See the note to s 7 ante.

**Sub-s (3): Whether or not members of the group scheme . . . are members of the society.** As to supervision by the Commission of group insurance business where members of the group are not members of the society, see s 55 post.

**Sub-s (4): Rules of the society.** For the matters to be covered by such rules, see s 5(6) ante, Sch 3, para 5 post.

**Sub-s (7): The Commission may make regulations, etc.** The Commission may also make regulations under sub-s (7) above which apply to group insurance business carried on by registered friendly societies; see the Friendly Societies Act 1974, s 65A(8) ante.

**Removal of restrictions on pension business.** For the power of the Secretary of State to make regulations for enabling an incorporated friendly society to conduct group insurance business, within the meaning of this section, with a view to the establishment of occupational pension schemes or personal pension schemes, see the Pension Schemes Act 1993, s 162, Vol 40, title Social Security.

**Definitions.** For "the Commission", see s 1(1) ante; for "incorporated friendly society", see s 116 post. Note as to "group insurance business", sub-s (2) above, and as to "group scheme", "qualifying person" and "member", sub-s (3) above.

**Regulations under this section.** The Friendly Societies (Group Schemes) Regulations 1993, SI 1993/59.

For general provisions as to regulations, see s 121 post.

## 12 Reinsurance

(1) An incorporated friendly society may include among its purposes the carrying on of any reinsurance business to which subsection (2) below applies to such extent or in such circumstances as may from time to time be approved by the appropriate actuary.

(2) This subsection applies to business consisting of the effecting and carrying out of contracts of reinsurance of risks which—

- (a) are insured or to be insured by any other friendly society (whether incorporated or not); and

(b) are of a class of risks which are carrying on the business.

(3) An incorporated friendly society may provide in its rules of procedure that any such business may from time to time be approved by the appropriate actuary, and that any such business are or are to be insured by any other friendly society.

#### NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**Carrying on . . . business.** See the note to s 7 ante.

**From time to time.** See the note to s 116 post.

**Rules.** For the matters to be covered by such rules, see s 5(6) ante, Sch 3, para 5 post.

**Definitions.** For "friendly society", see s 116 post; for "group insurance business", see s 117(1) post; for "qualifying person", see s 118(1) post; for "reinsurance business", see s 117(3)-(5) post; for "the Commission", see s 1(1) ante.

## 13 Control of subsidiaries

(1) Subject to the following provisions of this section, an incorporated friendly society may include among its purposes—

- (a) forming subsidiaries;
- (b) taking part with other persons in the carrying on of any business controlled by any other person;
- (c) otherwise acquiring or disposing of any business or undertaking which is or may be carried on by a company or other body corporate.

(2) An incorporated friendly society may include among its purposes the carrying on of any business otherwise acquire or dispose of any business or undertaking (referred to as "qualifying business") which is or may be carried on by a company or other body corporate.

- (a) companies which are wholly or more than 50% controlled by the society;
- (b) bodies formed or incorporated in the carrying on of the business of the society or member State.

(3) A company or other body corporate may be included among the purposes enable it to be controlled or joint control of the society.

(4) An incorporated friendly society may include among its purposes the control of a body corporate which is an incorporated friendly society.

(5) The Commission may make regulations as to the conditions as it thinks fit.

(6) Any alteration of the constitution of a company or other body corporate included among its purposes mentioned in subsection (1) above must be approved by the society in general meeting which permits it to do so.

(7) A registered friendly society may include among its purposes the carrying on of any business for the purposes of para (2) above, enabling it on incorporation to be included among its purposes mentioned in subsection (1) above unless it is approved by the society in general meeting.

(8) The Commission may make regulations as to the conditions as it thinks fit.

(b) are of a class or part of a class of insurance business which the society carrying on the reinsurance business itself carries on.

(3) An incorporated friendly society which carries on any insurance business may provide in its rules for the reinsurance to such extent as may from time to time be approved by the appropriate actuary of any risks against which persons are or are to be insured by the society.

#### NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**Carrying on . . . business.** See the note to s 7 ante.

**From time to time.** See the note to s 2 ante.

**Rules.** For the matters to be covered by such rules, see s 5(6) ante, Sch 3, para 5 post.

**Definitions.** For "friendly society" and "incorporated friendly society", see s 116 post; for "insurance business", see s 117(1) post; for "reinsurance business", see s 117(2) post; as to a "class" of insurance business, see s 117(3)-(5) post; for "the appropriate actuary", see s 119(1) post.

### 13 Control of subsidiaries and other bodies corporate

(1) Subject to the following provisions of this section, an incorporated friendly society may include among its purposes any of the following activities—

- (a) forming subsidiaries;
- (b) taking part with others in forming bodies corporate to be jointly controlled by it;
- (c) otherwise acquiring, or keeping, control or joint control of bodies corporate.

(2) An incorporated friendly society may form or take part in forming or may otherwise acquire control or joint control of the following bodies corporate (referred to as "qualifying bodies") but no others—

- (a) companies whose objects are limited to the carrying on of any one or more of the activities specified in Schedule 7 to this Act; and
- (b) bodies formed in another member State whose purposes are limited to the carrying on of any one or more of those activities in another member State.

(3) A company or other body corporate is not a qualifying body if its objects or purposes enable it to form or take part in forming or otherwise to acquire control or joint control of bodies corporate.

(4) An incorporated friendly society may not take part in forming or acquire control of a body corporate jointly with any person other than another incorporated friendly society without the consent of the Commission.

(5) The Commission may give consent without conditions or subject to such conditions as it thinks fit.

(6) Any alteration of the memorandum of an incorporated friendly society to include among its purposes and powers the carrying on of any activity such as is mentioned in subsection (1) above must be adopted by a special resolution of the society in general meeting; and any amendment of a provision in its memorandum which permits it to do so must also be so adopted.

(7) A registered friendly society may not include in a memorandum adopted for the purposes of paragraph 2(1)(c) of Schedule 3 to this Act any provision enabling it on incorporation to carry on any activity such as is mentioned in subsection (1) above unless its inclusion has been authorised by a special resolution of the society in general meeting.

(8) The Commission may by order made with the consent of the Treasury

vary Schedule 7 to this Act by adding to or deleting from it any activity or by varying the description of any activity for the time being specified in it.

(9) For the purposes of this Act—

- (a) an incorporated friendly society has control of a body corporate if the society—
  - (i) holds a majority of the voting rights in it; or
  - (ii) is a member of it and has the right to appoint or remove a majority of its board of directors; or
  - (iii) is a member of it and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in it;
- (b) a body corporate is a subsidiary of an incorporated friendly society if the society has control of it;
- (c) an incorporated friendly society has joint control of a body corporate if, in pursuance of an agreement or other arrangement between them, the society and another person—
  - (i) hold a majority of the voting rights in that body; or
  - (ii) are members of it and together have the right to appoint or remove a majority of its board of directors; or
  - (iii) are members of it and alone control, pursuant to an agreement with other shareholders or members, a majority of the voting rights in it;
- (d) a body corporate is a body jointly controlled by an incorporated friendly society if the society has joint control of it;

and a society acquires joint control whenever any of the conditions mentioned in paragraph (c) above are satisfied with respect to a body corporate, notwithstanding that it may already be a subsidiary of the society.

(10) Schedule 8 to this Act shall have effect for supplementing this section.

(11) In this section "company" means a company within the meaning of the Companies Act 1985 or the Companies (Northern Ireland) Order 1986.

#### NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**General Note.** This section, which implements the proposals in paras 5.7–5.10 of the Green Paper "Friendly Societies: A New Framework" (Cm 919) (January 1990), empowers incorporated friendly societies to establish subsidiaries or, with other societies or institutions, joint control over companies in order to provide a range of financial services to individuals which will complement those services traditionally provided by friendly societies. Sch 7 post sets out the new activities which may be provided by societies, ranging from the establishment and management of unit trusts and personal equity plans to the establishment and management of sheltered housing, residential homes for the elderly, hospitals and nursing homes. Such services may be provided not only for the members of a friendly society, but also for the public at large. In future, the list of these activities may be added to as appropriate by statutory instrument rather than by fresh primary legislation, allowing friendly societies' powers to be adapted to changing market conditions thereby ensuring that their legislative framework does not unjustifiably restrict their ability to compete (see sub-s (8) above). See also the statement of the Economic Secretary to the Treasury on moving the second reading of the Bill of this Act (205 HC Official Report col 659; 9 March 1992).

**Sub-s (1): Forming subsidiaries, etc.** In connection with subsidiaries and jointly controlled bodies, see also s 15 post (holding of land); s 16 post (assistance); s 50 post (criteria of prudent management); s 52 post (applications to court); s 54 post (supervision of activities of subsidiaries, etc); s 62 post (power to obtain information and documents, etc); s 65 post (investigations on behalf of Commission); s 66 post (inspections and special meetings: general); s 67 post (inspections: supplementary provisions); s 68 post (accounting records and systems of business control); s 69 post (duty to prepare accounts); s 71 post (report by the committee of management); s 73 post (auditors' report); s 75 post (auditors' rights to information and to attend meetings); s 79 post (auditors' duties to Commission and related rights); and s 92 post (compensation for loss of office). See also the

Solicitors Act 1974, s 23, Vol (preparation of papers for pro

**Bodies corporate.** See the

**Sub-s (2): Member State**

European Communities Act 1

by the Interpretation Act 1978

**Sub-s (4): Person.** See the

**Sub-s (5): Thinks fit.** See

**Sub-s (6): Memorandum**

ante, Sch 3, paras 4, 5(13) pos

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**Special resolution; gene**

Sch 12 post, and as to special re

**Sub-s (8): Treasury.** See th

**Definitions.** For "the Com

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**Companies Act 1985.** See

s 735(1) thereof.

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**Orders under this section**

For general provisions as to

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#### 14 Investment of funds

- (1) An incorporated friendly society may invest its funds—
  - (a) in the purchase of securities thereon;
  - (b) upon any other investment other than permitted by this Act relating to investments;
  - (c) in any other investment by law authorised.

(2) An incorporated friendly society below may also invest its funds in its constitution.

- (3) An incorporated friendly society—
  - (a) it is a society to which section 48 below applies;
  - (b) it maintains the funds in the virtue of that section.

- (4) An incorporated friendly society—
  - (a) it carries on insurance business;
  - (b) section 48 below applies;
  - (c) it maintains the funds by or determined in accordance with the provisions of this section.

(5) Once a society falls within section 48 above and continues to do so for the purposes of this section, it serves a notice under subsection (1) above.

(6) Where it appears to the Commission that a society has ceased to fall within subsection (1) above, it may serve a notice stating that fact.

(7) The powers of investment conferred by this section

Solicitors Act 1974, s 23, Vol 41, title Solicitors, as amended by s 120(1), Sch 21, Pt I, para 5 post (preparation of papers for probate, etc).

**Bodies corporate.** See the note to s 7 ante.

**Sub-s (2): Member State.** I.e a State which is a member of the European Communities; see the European Communities Act 1972, s 1(2), Sch 1, Pt II, Vol 17, title European Communities, as applied by the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes.

**Sub-s (4): Person.** See the note to s 1 ante.

**Sub-s (5): Thinks fit.** See the note to s 4 ante.

**Sub-s (6): Memorandum.** As to the memorandum of an incorporated friendly society, see s 5(6) ante, Sch 3, paras 4, 5(13) post. Sch 3, para 6(1) does not apply to an alteration to which sub-s (6) above applies; see Sch 3, para 6(2) post.

**Special resolution; general meeting.** As to meetings of friendly societies generally, see s 30, Sch 12 post, and as to special resolutions, see para 7 of that Schedule post.

**Sub-s (8): Treasury.** See the note to s 1 ante.

**Definitions.** For "the Commission", see s 1(1) ante; for "incorporated friendly society", see s 116 post; for "memorandum", see Sch 3, para 4(3) post; for "special resolution", see Sch 12, para 7 post. Note as to "qualifying bodies", sub-s (2) above; as to "control of a body corporate", "subsidiary", "joint control of a body corporate", "body jointly controlled by an incorporated friendly society" and "acquires joint control", sub-s (9) above; and as to "company", sub-s (11) above.

**Companies Act 1985.** See Vol 8, title Companies. For the meaning of "company" in that Act, see s 735(1) thereof.

**Companies (Northern Ireland) Order 1986.** SI 1986/1032 (NI 6).

**Orders under this section.** Up to 1 June 1994 no orders had been made under sub-s (8) above. For general provisions as to orders, see s 121 post.

#### *Powers of incorporated friendly societies*

### 14 Investment of funds

(1) An incorporated friendly society may invest its funds—

- (a) in the purchase of land, or in the erection of offices or other buildings thereon;
- (b) upon any other security expressly directed by the rules of the society, other than personal security (but without prejudice to any provision of this Act relating to loans); or
- (c) in any other investment of a kind which trustees are for the time being by law authorised to make.

(2) An incorporated friendly society which falls within subsection (3) or (4) below may also invest the funds of the society in any other manner authorised by its constitution.

(3) An incorporated friendly society falls within this subsection if—

- (a) it is a society to which section 48 below applies; and
- (b) it maintains the margin of solvency which it is required to maintain by virtue of that section.

(4) An incorporated friendly society falls within this subsection if—

- (a) it carries on insurance business in the United Kingdom;
- (b) section 48 below does not apply to it; and
- (c) it maintains a margin of solvency of such amount as may be prescribed by or determined in accordance with regulations made for the purposes of this section.

(5) Once a society falls within subsection (3) or (4) above, it shall be treated as continuing to do so for the purposes of subsection (2) above unless the Commission serves a notice under subsection (6) below on it.

(6) Where it appears to the Commission that an incorporated friendly society has ceased to fall within subsection (3) or (4) above, it shall serve on the society a notice stating that fact.

(7) The powers of investment of a society on which a notice is served under

subsection (6) above shall accordingly, until the notice is revoked under subsection (10) below, be limited to investment falling within subsection (1) above.

(8) A notice under subsection (6) above may direct a society to dispose of an investment which it could not have acquired except under subsection (2) above.

(9) Subject to subsection (8) above, a society may retain any investment which it could only have acquired under subsection (2) above.

(10) The Commission may, by a subsequent notice to the society, revoke a notice under this section at any time when it appears to it that the society again falls within subsection (3) or (4) above.

(11) On serving a notice under subsection (6) or (10) above on a society the Commission shall send a copy of it to the central office.

(12) The central office shall keep a copy of such a notice in the public file of the society.

#### NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**Sub-s (1): Land.** This includes buildings and other structures, land covered with water, and any estate, interest, easement, servitude or right over land; see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes.

**Buildings.** It is thought that this expression must be given its ordinary meaning, which, in the words of Byles J, in *Stevens v Gourley* (1859) 7 CBNS 99 at 112, is "a structure of considerable size and intended to be permanent or at least to endure for a considerable time". Perhaps there must also be added, in accordance with the view expressed by Lord Esher MR, in *Moir v Williams* [1892] 1 QB 264 at 270, that the structure must be covered by a roof. It is submitted, however, that contrary to that view, the structure need not consist of bricks and stone-work. In fact a wooden structure of considerable size was held to be a building in *Stevens v Gourley* supra, and in any case the presence of bricks and stone-work seems to be irrelevant in the light of modern technology. Nevertheless, it would seem that a structure cannot be regarded as a building unless it can be said to form part of the reality and change the physical character of the land; see *Cheshire CC v Woodward* [1962] 2 QB 126, [1962] 1 All ER 517. See also the cases cited in 1 Words and Phrases (3rd edn) 196 et seq.

**Rules of the society.** See s 5(6) ante, Sch 3, para 5 post. As to the investment of a society's funds, see, in particular, para 5(3), Table, para 8 of that Schedule post.

**Any provision . . . relating to loans.** See further ss 15-17, 82 post.

**Sub-s (4): Carries on . . . business.** See the note "Carrying on . . . business" to s 7 ante.

**United Kingdom.** ie Great Britain and Northern Ireland; see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes. "Great Britain" means England, Scotland and Wales by virtue of the Union with Scotland Act 1706, preamble, Art 1, Vol 10, title Constitutional Law (Pt 1), as read with s 22(1) of, and Sch 2, para 5(a) to, the 1978 Act. Neither the Channel Islands nor the Isle of Man is within the United Kingdom.

**Sub-s (5): Serves a notice.** As to the service of notices, see s 113 post.

**Sub-s (6): Appears.** See the note "Thinks fit" to s 4 ante.

**Sub-s (12): Public file.** See s 104 post.

**Investment of funds in housing associations.** See s 7 ante, Sch 5, para 4 post, which paragraph has effect without prejudice to any power the society may have by virtue of this section.

**Application.** Sub-ss (2)-(12) above apply in respect of the powers of investment of the trustees of a registered friendly society (within the meaning of the Friendly Societies Act 1974 ante); see s 46(2A) of the 1974 Act ante.

**Definitions.** For "the Commission", see s 1(1) ante; for "the public file", see s 104 post; for "incorporated friendly society", see s 116 post; for "insurance business", see s 117(1) post; for "the central office" and "notice", see s 119(1) post.

**Regulations under this section.** Up to 1 June 1994 no regulations had been made for the purposes of this section.

For general provisions as to regulations, see s 121 post.

### 15 Holding of land for purposes other than investment

An incorporated friendly society may acquire and hold land—

- (a) for the purpose of carrying on any of its activities; or
- (b) for the purpose of enabling a subsidiary of the society, or a body jointly controlled by it, to conduct its business;

and may dispose of, or

#### NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.  
**Land.** See the note to s 14 ante.  
**Conduct its business.** See the note to s 7 ante.  
**Definitions.** For "jointly controlled friendly society", see s 116 post.

### 16 Assistance to subsidiaries

(1) An incorporated friendly society may, in respect of any liability which it jointly controls—

- (a) loans of money or interest;
- (b) the use of services;
- (c) grants of money or property;
- (d) guarantees of debts.

(2) An incorporated friendly society may, in respect of any liability of the liabilities of any of its subsidiaries—

#### NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.  
**Definitions.** For "jointly controlled friendly society", see s 116 post.

### 17 Loans to assured members

(1) An incorporated friendly society may, in respect of any liability of his life, on the written consent of the assured, and with the approval of the Commission, cautioners for the loan—

- (2) The amount so advanced shall not exceed the sum assured, without prejudice to any other provision of the rules.
- (3) A person's membership of the society at the time of incorporation is to be taken into account for the purposes of this section.

#### NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.  
**Written.** Expressions referring to writing shall include references to other forms of communication.  
**Definitions.** For "incorporated friendly society", see s 116 post.

### 18 Terms on which loans may be made

(1) The terms on which a loan may be made shall be—

- (a) specified in its rules;
  - (b) determined in accordance with its rules.
- (2) If the terms on which a loan may be made are not specified in its rules, the society—

and may dispose of, or otherwise deal with, any land so held by it.

#### NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**Land.** See the note to s 14 ante.

**Conduct its business.** Cf the note "Carrying on . . . business" to s 7 ante.

**Definitions.** For "jointly controlled body" and "subsidiary", see s 13(9) ante; for "incorporated friendly society", see s 116 post.

### 16 Assistance to subsidiaries and jointly controlled bodies

(1) An incorporated friendly society may provide its subsidiaries or bodies which it jointly controls with any of the following services—

- (a) loans of money, with or without security and whether or not at interest;
- (b) the use of services or property, whether or not for payment;
- (c) grants of money, whether or not repayable; and
- (d) guarantees of the discharge of their liabilities.

(2) An incorporated friendly society may make payments towards the discharge of the liabilities of any of its subsidiaries.

#### NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**Definitions.** For "jointly controlled body" and "subsidiary", see s 13(9) ante; for "incorporated friendly society", see s 116 post.

### 17 Loans to assured members

(1) An incorporated friendly society may advance to a member of at least one full year's standing any sum not exceeding one half of the amount of an assurance of his life, on the written security of himself and two satisfactory sureties or, in Scotland, cautioners for repayment.

(2) The amount so advanced, with all interest on it, may be deducted from the sum assured, without prejudice in the meantime to the operation of the security.

(3) A person's membership of a registered friendly society before the society's incorporation is to be taken into account in calculating his standing for the purposes of this section.

#### NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**Written.** Expressions referring to writing are, unless the contrary intention appears, to be construed as including references to other modes of representing or reproducing words in a visible form; see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes.

**Definitions.** For "incorporated friendly society" and "registered friendly society", see s 116 post.

#### *Benefit terms*

### 18 Terms on which benefits are available

(1) The terms on which an incorporated friendly society provides any benefit shall be—

- (a) specified in its rules; or
- (b) determined in a manner specified in its rules.

(2) If the terms on which a benefit is provided are not specified in the society's rules, the society—

- (a) shall make copies of them available free of charge to members of the society at every office of the society; and
- (b) shall send, free of charge, copies of them to any member of the society who demands them.

(3) If, on demand made of it under subsection (2) above, a society fails, in accordance with that subsection, to make available or, as the case may be, within 7 days of the demand, to send to a person a copy of the terms on which a benefit is provided, the society shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) Schedule 9 to this Act shall have effect in relation to nominations by members of incorporated friendly societies and related matters.

#### NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**Incorporated friendly society.** For meaning, see s 116 post.

**Rules.** See s 5(6) ante, Sch 3, para 5 post. As to the provision of benefits, see, in particular, para 5(3), Table, para 2 of that Schedule post.

**Within 7 days of, etc.** The general rule in cases where an act is to be done within a specified time is that the day from which it runs is not to be counted; see *Goldsmiths' Co v West Metropolitan Rly Co* [1904] 1 KB 1, [1900-3] All ER Rep 667, CA; *Stewart v Chapman* [1951] 2 KB 792, [1951] 2 All ER 613; and the other cases cited in 45 Halsbury's Laws (4th edn) para 1134.

**Person.** See the note to s 1 ante.

**Guilty of an offence.** As to the time limit for commencing proceedings, see s 107 post; as to offences by bodies corporate, partnerships and unincorporated associations, see s 108 post; as to the defence of due diligence, see s 109 post; and as to the jurisdiction of magistrates' courts, see s 110 post.

**Summary conviction.** Summary jurisdiction and procedure are mainly governed by the Magistrates' Courts Act 1980, Vol 27, title Magistrates, and by rules made under s 144 of that Act.

**Standard scale.** By the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes, as amended, and the Criminal Justice Act 1982, s 37(3), Vol 27, title Magistrates, this means the standard scale set out in s 37(2) of the 1982 Act. The scale is: level 1: £200; level 2: £500; level 3: £1,000; level 4: £2,500; and level 5: £5,000, but different amounts may be substituted by order under the Magistrates' Courts Act 1980, s 143, Vol 27, title Magistrates.

As to the fixing of fines, see the Criminal Justice Act 1991, s 18, Vol 12, title Criminal Law.

#### *Dissolution and winding up*

#### 19 Modes of dissolution and winding up

(1) An incorporated friendly society—

- (a) may be dissolved by consent of the members; or
- (b) may be wound up voluntarily or by the court,

in accordance with this Part of this Act; and an incorporated friendly society may not, except where it is dissolved by virtue of section 85(4), 86(5) or 90(9) below, be dissolved or wound up in any other manner.

(2) An incorporated friendly society which is in the course of dissolution by consent, or is being wound up voluntarily, may be wound up by the court.

#### NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**Dissolved by consent.** As to dissolution by consent, see s 20 post.

**Wound up voluntarily or by the court.** As to voluntary winding up, see s 21 post; as to winding up by the court, see s 22 post.

**This Part of this Act.** *le Pt II* (ss 5-26 and Schs 2-10).

**Definitions.** For "incorporated friendly society", see s 116 post; for "the court", see s 119(1) post.

#### 20 Dissolution by co

(1) An incorporated friendly society may be dissolved by special resolution.

(2) An instrument of dissolution may be made by special resolution.

(3) An instrument of

- (a) the liabilities of the society;
- (b) the number of members of the society;
- (c) the claims of members of the society;
- (d) the intended purposes of the society;
- (e) the names of the members of the society;

(4) An instrument of dissolution may have effect if it is approved by a special resolution.

(5) The provisions of this section shall not apply if the instrument of dissolution were the only instrument of dissolution.

(6) The trustees shall—

- (a) within 15 days of the date of the instrument of dissolution, send to the members of the society a copy of the instrument of dissolution and the date of the instrument of dissolution;
- (b) within 15 days of the date of the instrument of dissolution, send to the members of the society a copy of the instrument of dissolution, enclosing a statement of the assets and liabilities of the society as at the date of the instrument of dissolution.

and if the trustees fail to do so, they shall be guilty of an offence and liable on summary conviction to a fine not exceeding the standard scale.

(7) An instrument of dissolution may be made by special resolution binding on all members of the society if the instrument or altered instrument is approved by a special resolution of the society under subsection (2).

(8) The trustees shall, on the date of the instrument of dissolution, give notice to the central office of the society of the instrument of dissolution and balance sheet showing—

- (a) the assets and liabilities of the society as at the date of dissolution; and
- (b) the way in which the assets and liabilities have been discharged.

(9) If the trustees fail to do so, they shall be guilty of an offence and liable on summary conviction to a fine not exceeding the standard scale.

- (a) to a fine not exceeding the standard scale;
- (b) in the case of a second or subsequent offence, to a fine not exceeding one-tenth of the standard scale.

(10) Except with the consent of the members of the society, no alteration to such an instrument of dissolution or altered instrument or any other instrument of dissolution or altered instrument may be made.

(11) Any provision of this section shall not apply if the instrument of dissolution were the only instrument of dissolution.

**20 Dissolution by consent**

(1) An incorporated friendly society may be dissolved by an instrument of dissolution.

(2) An instrument of dissolution shall only have effect if it is approved by special resolution.

(3) An instrument of dissolution shall set out—

- (a) the liabilities and assets of the society in detail;
- (b) the number of members, and the nature of their interests in the society;
- (c) the claims of creditors, and the provision to be made for their payment;
- (d) the intended appropriation or division of the funds and property of the society;
- (e) the names of one or more persons to be appointed as trustees for the purposes of the dissolution, and their remuneration.

(4) An instrument of dissolution may be altered, but the alteration shall only have effect if it is approved by special resolution.

(5) The provisions of this Act shall continue to apply in relation to an incorporated friendly society as if the trustees appointed under the instrument of dissolution were the committee of management of the society.

(6) The trustees shall—

- (a) within 15 days of the passing of a special resolution approving an instrument of dissolution, give notice to the central office of the fact and the date of commencement of the dissolution, enclosing a copy of the instrument; and
- (b) within 15 days of the passing of a special resolution approving an alteration of such an instrument, give notice to the central office of the fact, enclosing a copy of the altered instrument;

and if the trustees fail to comply with this subsection, they shall each be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) An instrument of dissolution or an alteration to such an instrument shall be binding on all members of the society as from the date on which the copy of the instrument or altered instrument, as the case may be, is placed on the public file of the society under subsection (12) below.

(8) The trustees shall, within 28 days from the termination of the dissolution, give notice to the central office of the fact and the date of the termination, enclosing an account and balance sheet signed and certified by them as correct, and showing—

- (a) the assets and liabilities of the society at the commencement of the dissolution; and
- (b) the way in which those assets and liabilities have been applied and discharged.

(9) If the trustees fail to comply with subsection (8) above they shall each be guilty of an offence and liable on summary conviction—

- (a) to a fine not exceeding level 2 on the standard scale; and
- (b) in the case of a continuing offence, to an additional fine not exceeding one-tenth of that level for every day during which the offence continues.

(10) Except with the consent of the Commission, no instrument of dissolution or alteration to such an instrument shall be of any effect if the purpose of the proposed dissolution or alteration is to effect or facilitate the transfer of the society's engagements to any other friendly society or to a company.

(11) Any provision in a resolution or document that members of an

incorporated friendly society proposed to be dissolved shall accept membership of some other body in or towards satisfaction of their rights in the dissolution shall be conclusive evidence of such purpose as is mentioned in subsection (10) above.

(12) The central office shall keep in the public file of the society any notice or other document received by it under subsection (6) or (8) above and shall record in that file the date on which the notice or document is placed in it.

#### NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**Sub-s (1): May be dissolved by an instrument of dissolution.** An incorporated friendly society which is in the course of dissolution by consent may be wound up by the court; see s 19(2) ante. On the hearing of a winding up petition, the conditions which the court may impose under the Insolvency Act 1986, s 125, Vol 4, title Bankruptcy and Insolvency, as applied by s 23, Sch 10, Pt II, para 21(1) post, include conditions for securing that the society be dissolved under this section; see para 21(2)(a) of that Schedule post.

**Sub-s (2): Special resolution.** See s 30, Sch 12, para 7 post.

Where a special resolution approving an instrument of dissolution under this section has been passed, the Friendly Societies Commission must give a direction under s 40(1) post; see s 40(2)(d) post.

For the functions of the Policyholders Protection Board which are exercisable in the case of an incorporated friendly society if an instrument of dissolution has been approved under this section, see the Policyholders Protection Act 1975, s 5A(2)(a), as inserted by s 97, Sch 17, para 5 post. A friendly society in the case of which the Board's functions are thus exercisable is a "closing society" for the purposes of the 1975 Act (see s 5A(3) thereof as so inserted), and ss 12, 13, 14(2)-(9), 15, 19, 20 of, and Sch 2 to, the 1975 Act, Vol 21, title Insurance (Pt 1), are applied to such societies by ss 11A, 19(11) thereof, as inserted and added, respectively, by s 97, Sch 17, paras 10, 14 post.

**Sub-s (3): Number of members.** See *Sibun v Pearce* (1890) 44 Ch D 354, 63 LT 123, CA (member who has given notice of withdrawal).

**Appropriation or division.** Cf the note "Division or appropriation" to the Friendly Societies Act 1974, s 94 ante.

**Sub-s (5): Committee of management.** For general provisions as to the committee of management, see s 27, Sch 11 post.

**Sub-s (6): Within 15 days of, etc.** See the note "Within 7 days of, etc" to s 18 ante.

**Give notice.** As to the form of documents to be sent to the central office and for the power to prescribe fees for the inspection, etc of documents in the custody of the central office, see s 114 post.

**Guilty of an offence.** As to the time limit for commencing proceedings, see s 107 post; as to offences by bodies corporate, partnerships and unincorporated associations, see s 108 post; as to the defence of due diligence, see s 109 post; and as to the jurisdiction of magistrates' courts, see s 110 post.

**Summary conviction; standard scale.** See the notes to s 18 ante.

**Sub-s (8): Within 28 days from, etc.** See the note "Within 7 days of, etc" to s 18 ante.

**Account and balance sheet.** As to accounts generally, see ss 68 et seq post.

**Sub-s (9): Every day during which the offence continues.** The fine must not be calculated by reference to a period of more than six months before the information was laid; see the Magistrates' Courts Act 1980, s 127(1), Vol 27, title Magistrates; *R v Slade, ex p Saunders* [1895] 2 QB 247; *R v Struve etc Glamorganshire Justices* (1895) 59 JP 584; and *R v Chertsey Justices, ex p Franks* [1961] 2 QB 152, [1961] 1 All ER 825. However, the period over which the fine accrues does not stop at the date on which the information was laid but continues until the date on which the information is heard or alternatively until a known earlier date when the offence ceased; see *Grice v Needs* [1979] 3 All ER 501, [1980] 1 WLR 45.

**Sub-s (10): Transfer of the society's engagements.** For provisions as to the transfer of engagements, see s 86 post.

**Sub-s (11): Conclusive evidence.** The tendering of evidence declared by statute to be conclusive precludes evidence to the contrary unless the evidence adduced is inaccurate on the face of it or fraud is shown, but other evidence to the same effect is not made inadmissible; see 17 Halsbury's Laws (4th edn) para 28.

**Sub-s (12): Public file.** See s 104 post.

**Further provisions.** For the power of the court to declare a dissolution under this section void, see s 25 post; and for the power of the central office to cancel the registration of an incorporated friendly society which has been dissolved, see s 26 post.

**Definitions.** For "the Commission", see s 1(1) ante; for "the public file", see s 104 post; for "friendly society" and "incorporated friendly society", see s 116 post; for "the central office", "committee of management" and "notice", see s 119(1) post; for "special resolution", see Sch 12, para 7 post.

## 21 Voluntary winding

(1) An incorporated friendly society may be wound up voluntarily.

(2) A copy of any special resolution passed by an incorporated friendly society under this section shall be filed in the public file of the society 15 days after it is passed; and a copy shall be kept in the public file of the society.

(3) A copy of any special resolution passed by an incorporated friendly society under this section shall be filed in the public file of the society 15 days after it is passed; and a copy shall be kept in the public file of the society.

(4) If an incorporated friendly society is wound up voluntarily under this section, the society shall be liable to a fine not exceeding level 3 on the standard scale.

(5) For the purposes of this section, an officer of an incorporated friendly society is an officer of it.

#### NOTES

**Commencement.** 1 February 1993.

**Sub-s (1): May be wound up voluntarily.** May be wound up voluntarily may be wound up voluntarily.

As to the continuation of long, see the note "Continuation of long" to s 19 ante. On the hearing of a winding up petition, the conditions which the court may impose under the Insolvency Act 1986, s 125, Vol 4, title Bankruptcy and Insolvency, as applied by s 23, Sch 10, Pt II, para 21(1) post, include conditions for securing that the society be dissolved under this section; see para 21(2)(a) of that Schedule post.

Where a special resolution approving an instrument of dissolution under this section has been passed, the Friendly Societies Commission must give a direction under s 40(1) post; see s 40(2)(d) post.

For the functions of the Policyholders Protection Board which are exercisable in the case of an incorporated friendly society if an instrument of dissolution has been approved under this section, see the Policyholders Protection Act 1975, s 5A(2)(a), as inserted by s 97, Sch 17, para 5 post. A friendly society in the case of which the Board's functions are thus exercisable is a "closing society" for the purposes of the 1975 Act (see s 5A(3) thereof as so inserted), and ss 12, 13, 14(2)-(9), 15, 19, 20 of, and Sch 2 to, the 1975 Act, Vol 21, title Insurance (Pt 1), are applied to such societies by ss 11A, 19(11) thereof, as inserted and added, respectively, by s 97, Sch 17, paras 10, 14 post.

**Special resolution.** See s 30, Sch 12, para 7 post.

**Sub-s (2): A copy . . . shall be filed in the public file.** See s 104 post.

**Sub-s (3): Memorandum; public file.** See s 104 post.

**Sub-s (4): Guilty of an offence.** As to the time limit for commencing proceedings, see s 107 post; as to offences by bodies corporate, partnerships and unincorporated associations, see s 108 post; as to the defence of due diligence, see s 109 post.

**Summary conviction; standard scale.** See the notes to s 18 ante.

**Definitions.** For "the Commission", see s 1(1) ante; for "friendly society" and "incorporated friendly society", see s 116 post; for "the central office", "committee of management" and "notice", see s 119(1) post; for "special resolution", see Sch 12, para 7 post.

## 22 Winding up by court

(1) An incorporated friendly society may be wound up by the court if—

(a) the society has failed to comply with the provisions of the Act relating to the winding up of the society;

## 21 Voluntary winding up

(1) An incorporated friendly society may be wound up voluntarily under the applicable winding up legislation if it resolves by special resolution that it be wound up voluntarily.

(2) A copy of any special resolution passed for the voluntary winding up of an incorporated friendly society shall be sent by the society to the central office within 15 days after it is passed; and the central office shall keep the copy in the public file of the society.

(3) A copy of any such resolution shall be annexed to every copy of the memorandum or of the rules issued after the passing of the resolution.

(4) If an incorporated friendly society fails to comply with subsection (2) or (3) above, the society shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) For the purposes of this section, a liquidator of the society shall be treated as an officer of it.

### NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**Sub-s (1): May be wound up voluntarily.** An incorporated friendly society which is being wound up voluntarily may be wound up by the court; see s 19(2) ante.

As to the continuation of long term business, see s 24 post; for the power of the court to declare a dissolution under this section void, see s 25 post; and as to the cancellation of the registration of an incorporated friendly society following a winding up, see s 26 post.

Where a special resolution has been passed for the voluntary winding up of an incorporated friendly society or an order to wind up the society has been made, the Friendly Societies Commission must give a direction under s 40(1) post; see s 40(2)(a), (b) post.

For the functions of the Policyholders Protection Board which are exercisable in the case of an incorporated friendly society if a special resolution that it be wound up voluntarily has been passed under this section, see the Policyholders Protection Act 1975, s 5A(2)(b), as inserted by s 97, Sch 17, para 5 post. A friendly society in the case of which the Board's functions are thus exercisable is a "closing society" for the purposes of the 1975 Act (see s 5A(3) thereof, as so inserted), and ss 12, 13, 14(2)-(9), 15, 19, 20 of, and Sch 2 to, the 1975 Act, Vol 21, title Insurance (Pt 1), are applied to such societies by ss 11A, 19(11) thereof, as inserted and added, respectively, by s 97, Sch 17, paras 10, 14 post.

**Special resolution.** See s 30, Sch 12, para 7 post.

**Sub-s (2): A copy . . . shall be sent, etc.** As to the form of documents to be sent to the central office and for the power to prescribe fees for the inspection, etc of documents in the custody of the central office, see s 114 post.

**Within 15 days after, etc.** See the note "Within 7 days of, etc," to s 18 ante.

**Public file.** See s 104 post.

**Sub-s (3): Memorandum; rules.** As to the memorandum of an incorporated friendly society, see s 5 ante, Sch 3, paras 1(1)(a), 4 post; for the matters to be covered by a society's rules, see s 5(6) ante, Sch 3, para 5 post.

**Sub-s (4): Guilty of an offence.** As to the time limit for commencing proceedings, see s 107 post; as to offences by bodies corporate, partnerships and unincorporated associations, see s 108 post; as to the defence of due diligence, see s 109 post; and as to the jurisdiction of magistrates' courts, see s 110 post.

**Summary conviction; standard scale.** See the notes to s 18 ante.

**Definitions.** For "the applicable winding up legislation", see s 23(3) post; for "the public file", see s 104 post; for "incorporated friendly society", see s 116 post; for "the central office", see s 119(1) post; for "memorandum", see Sch 3, para 4(3) post; for "special resolution", see Sch 12, para 7 post.

## 22 Winding up by court: grounds and petitioners

(1) An incorporated friendly society may be wound up under the applicable winding up legislation by the court on any of the following grounds, that is to say, if—

- (a) the society has by special resolution resolved that it be wound up by the court;

- (b) the number of members is reduced below 7;
- (c) the number of members of the committee of management is reduced below 2;
- (d) the society has not commenced business within a year from its incorporation or has suspended its business for a whole year;
- (e) the society exists for an illegal purpose;
- (f) the society is unable to pay its debts; or
- (g) the court is of the opinion that it is just and equitable that the society should be wound up.

(2) Except as provided by subsection (3) below or the applicable winding up legislation, a petition for the winding up of an incorporated friendly society may be presented by—

- (a) the Commission;
- (b) the society or its committee of management;
- (c) any creditor or creditors (including any contingent or any prospective creditor); or
- (d) any contributory or contributories,

or by all or any of those parties, together or separately.

(3) A contributory may not present a petition unless the number of members is reduced below 7 or he has been a contributory for at least six months before the winding up.

(4) In this section "contributory" has the meaning assigned to it by paragraph 9 of Schedule 10 to this Act.

#### NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**May be wound up.** As to the continuation of long-term business, see s 24 post; for the power of the court to declare a dissolution following a winding up void, see s 25 post; and as to the cancellation of the registration of an incorporated friendly society following a winding up, see s 26 post.

Where a special resolution has been passed for the voluntary winding up of an incorporated society or an order to wind up the society has been made, the Friendly Societies Commission must give a direction under s 40(1) post; see s 40(2)(a), (b) post.

For the functions of the Policyholders Protection Board which are exercisable in the case of an incorporated friendly society if an order has been made for winding up on a petition under this section, see the Policyholders Protection Act 1975, s 5A(2)(c), as inserted by s 97, Sch 17, para 5 post. A friendly society in the case of which the Board's functions are thus exercisable is a "closing society" for the purposes of the 1975 Act (see s 5A(3) thereof as so inserted), and ss 12, 13, 14(2)-(9), 15, 19, 20 of, and Sch 2 to, the 1975 Act, Vol 21, title Insurance (Pt 1), are applied to such societies by ss 11A, 19(11) thereof, as inserted and added, respectively, by s 97, Sch 17, paras 10, 14 post.

For the power of the Commission to exercise the powers conferred by this section where an incorporated friendly society (being a regulated friendly society which is an authorised person) contravenes the Financial Services Act 1986, see Sch 11, para 26(1), (2)(b) to the 1986 Act ante.

**Special resolution.** See s 30, Sch 12, para 7 post.

**Number of members is reduced below 7.** See, with reference to this provision, s 5 ante, Sch 3, para 1 post.

**Committee of management.** For general provisions as to the committee of management, see s 27, Sch 11 post. With reference to sub-s (1)(c) above, see, in particular, s 27(1) post.

**Society has not commenced business; unable to pay its debts; just and equitable.** Cf the corresponding notes to the Insolvency Act 1986, s 122, Vol 4, title Bankruptcy and Insolvency.

**Within a year from, etc.** Cf the note "Within 7 days of, etc" to s 18 ante. A society is incorporated under this Act as from the date of its registration under this Act by the central office; see ss 5(3), 6(1) ante.

**Definitions.** For "the Commission", see s 1(1) ante; for "the applicable winding up legislation", see s 23(3) post; for "incorporated friendly society", see s 116 post; for "committee of management" and "the court", see s 119(1) post; for "special resolution", see Sch 12, para 7 post. Note as to "contributory", sub-s (4) above.

#### 23 Application of winding up provisions to friendly societies

(1) In this section "the provisions" means the provisions of this Act which are applicable in relation to the winding up of a friendly society which are specified in paragraph 1 of Schedule 10 to this Act; and "an offence" means an offence which creates an offence before the commencement of this section.

(2) In its application to a friendly society, this section shall have effect with the modifications specified in Schedule 10 to this Act; and the supplement to this section in relation to such a winding up shall be as follows—

(3) In section 21 and in the provisions of this Act relating to the companies winding up

#### NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.  
**England; Wales.** For meaning of "friendly society", see s 6(1) ante.  
**Incorporated friendly society.** See s 6(1) ante.

#### 24 Continuation of long-term business

(1) This section has effect in relation to a friendly society which carries on a long-term business (including a business).

(2) The liquidator shall have the power to carry on the term business of the society under this Act; and, in carrying on that business, he may vary or discharge any contracts made but shall not effect a novation of any contract.

(3) If the liquidator is of the opinion that the liabilities of the society are such that it is expedient in the interests of the society to appoint a special manager to the court, and the court is of the opinion that that business to act during the winding up (including any of the power of the court) should be carried on by the court.

(4) Section 177(5) of the Insolvency Act 1986 (which relates to the appointment of a special manager under that section) shall apply to a special manager appointed under that section as if it were contained in that section.

(5) The court may, if it is of the opinion that it is expedient in the interests of the society, determine, reduce or discharge any contracts made in the course of carrying on its long-term business.

(6) The court may, if it is of the opinion that it is expedient in the interests of the society, appoint a special manager to investigate the long-term business of the liquidator, the special manager shall have the power to investigate the desirability or otherwise of carrying on the contracts made in the course of carrying on its long-term business for its successful continuation.

### 23 Application of winding up legislation to incorporated friendly societies

(1) In this section "the companies winding up legislation" means the enactments applicable in relation to England and Wales, Scotland and Northern Ireland which are specified in paragraph 1 of Schedule 10 to this Act (including any enactment which creates an offence by any person arising out of acts or omissions occurring before the commencement of the winding up).

(2) In its application to the winding up of an incorporated friendly society, by virtue of section 21(1) or 22(1) above, the companies winding up legislation shall have effect with the modifications effected by Parts I to III of Schedule 10 to this Act; and the supplementary provisions of Part IV of that Schedule also have effect in relation to such a winding up and in relation to a dissolution by consent.

(3) In section 21 and 22 above "the applicable winding up legislation" means the companies winding up legislation as so modified.

#### NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**England; Wales.** For meanings, see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes.

**Incorporated friendly society.** For meaning, see s 116 post.

### 24 Continuation of long term business

(1) This section has effect in relation to the winding up of an incorporated friendly society which carries on long term business (including any reinsurance business).

(2) The liquidator shall, unless the court otherwise orders, carry on the long term business of the society with a view to its being transferred as a going concern under this Act; and, in carrying on that business, the liquidator may agree to the variation of any contracts of insurance in existence when the winding up order is made but shall not effect any new contracts of insurance.

(3) If the liquidator is satisfied that the interests of the creditors in respect of liabilities of the society attributable to its long term business require the appointment of a special manager of the society's long term business, he may apply to the court, and the court may on such application appoint a special manager of that business to act during such time as the court may direct, with such powers (including any of the powers of a receiver or manager) as may be entrusted to him by the court.

(4) Section 177(5) of the Insolvency Act 1986 or, as the case may be, Article 151 of the Insolvency (Northern Ireland) Order 1989 shall apply to a special manager appointed under subsection (3) above as it applies to a special manager appointed under that section or that Article.

(5) The court may, if it thinks fit and subject to such conditions (if any) as it may determine, reduce the amount of the contracts made by the society in the course of carrying on its long term business.

(6) The court may, on the application of the liquidator, a special manager appointed under subsection (3) above or the Commission appoint an independent actuary to investigate the long term business of the society and to report to the liquidator, the special manager or the Commission, as the case may be, on the desirability or otherwise of that business being continued and on any reduction in the contracts made in the course of carrying on that business that may be necessary for its successful continuation.

## NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**Sub-s (1): Carries on . . . business.** See the note "Carrying on . . . business" to s 7 ante.

**Sub-s (2): Transferred as a going concern.** As to the transfer of engagements by a friendly society, see s 86 post.

**Sub-s (3): Satisfied.** See the note "Thinks fit" to s 4 ante.

**Definitions.** For "the Commission", see s 1(1) ante; for "incorporated friendly society", see s 116 post; for "long term business", see s 117(1) post; for "reinsurance business", see s 117(2) post; for "actuary", "contract of insurance" and "the court", see s 119(1) post.

**Insolvency Act 1986, s 177(5).** See Vol 4, title Bankruptcy and Insolvency.

**Insolvency (Northern Ireland) Order 1989.** SI 1989/2405 (NI 19).

## 25 Power of court to declare dissolution void

(1) Where an incorporated friendly society has been dissolved under section 20 above or following a winding up, the court may, at any time within 12 years after the date on which the society was dissolved, make an order under this section declaring the dissolution to have been void.

(2) An order under this section may be made, on such terms as the court thinks fit, on an application by the trustees under section 20 above or the liquidator, as the case may be, or by any other person appearing to the court to be interested.

(3) When an order under this section is made, such proceedings may be taken as might have been taken if the society had not been dissolved.

(4) The person on whose application the order is made shall, within 7 days of its being so made, or such further time as the court may allow, furnish the central office with a copy of the order; and the central office shall keep the copy in the public file of the society.

(5) If a person fails to comply with subsection (4) above, he shall be guilty of an offence and liable on summary conviction—

- (a) to a fine not exceeding level 3 on the standard scale; and
- (b) in the case of a continuing offence, to an additional fine not exceeding one-tenth of that level for every day during which the offence continues.

(6) In this section "the court" means—

- (a) in relation to a society whose registered office is in England and Wales, the High Court;
- (b) in relation to a society whose registered office is in Scotland, the Court of Session; and
- (c) in relation to a society whose registered office is in Northern Ireland, the High Court in Northern Ireland.

## NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**Sub-s (1): A winding up.** See a winding up under s 21 or 22 ante.

**Within 12 years after, etc.** Cf the note "Within 7 days of, etc" to s 18 ante.

**Sub-s (2): Person.** See the note to s 1 ante.

**Sub-s (4): Within 7 days of, etc.** See the note to s 18 ante.

**Furnish . . . a copy of the order.** As to the form of documents to be sent to the central office and for the power to prescribe fees for the inspection, etc of documents in the custody of the central office, see s 114 post.

**Public file.** See s 104 post.

**Sub-s (5): Guilty of an offence.** As to the time limit for commencing proceedings, see s 107 post; as to offences by bodies corporate, partnerships and unincorporated associations, see s 108 post; as to the defence of due diligence, see s 109 post; and as to the jurisdiction of magistrates' courts, see s 110 post.

**Summary conviction; standard scale.** See the notes to s 18 ante.

**Every day during which the offence continues.** See the note to s 20 ante.

**Sub-s (6): Registered office.** The memorandum of an incorporated friendly society must specify the address of its registered office; see s 5(6) ante, Sch 3, para 4(1)(c) post.

**England; Wales.** See the High Court; High Court

Vol 41, title Statutes. For the Supreme Court Act 1981, s 1 of that Act; and for the constitution of the Judicature (Northern Ireland) Act 1978, s 1(1) Northern Ireland (Pt 2).

**Definitions.** For "the public file" and "the central office", see s 104 post.

## 26 Cancellation of registration

(1) Where the central office has been dissolved under section 20 above, the central office shall cancel the registration of any society—

(2) Where the central office has been dissolved under section 20 above, the central office shall—

- (a) that a certificate of registration was issued in fraud or mistake; and
- (b) that the society was not a friendly society at the time of registration.

the central office may cancel the registration of any society—

(3) Without prejudice to subsection (2) above, the central office may, if it thinks fit, cancel the registration of any society, evidenced in substance by a certificate of registration, if—

(4) Before cancelling the registration of any society under subsection (2) above, the central office shall give 3 months' previous notice to the society.

(5) Where the registration of any society is cancelled under subsection (2) above—

- (a) where the registered office of the society is in England and Wales, to the High Court;
- (b) where that office is in Scotland, to the Court of Session; and
- (c) where that office is in Northern Ireland, to the High Court in Northern Ireland.

and on any such appeal the registration shall be cancelled.

(6) Where the registration of any society is cancelled under subsection (2) above, then, subject to subsection (7) below, so far as it continues to exist, the society shall be treated as if it had never been registered.

(7) Subsection (6) above shall not apply to any incorporated friendly society as if the cancellation of its registration is a nullity.

(8) Any cancellation of the registration of any society under this section shall be published in the Belfast Gazette.

(9) As soon as practicable after the cancellation of the registration of any incorporated friendly society, a notice thereof to be published in the Belfast Gazette according to the requirements, if any, that the central office thinks fit, in one or more of the following ways—

## NOTES

**Commencement.** 1 February 1993.

**Sub-s (1): Following a winding up.** See the note to s 20 ante.

**Sub-s (3): Thinks fit.** See the note to s 4 ante.

**England; Wales.** See the note to s 23 ante.

**High Court; High Court in Northern Ireland.** See the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes. For the constitution of Her Majesty's High Court of Justice in England, see the Supreme Court Act 1981, s 4, Vol 11, title Courts and Legal Services, and for its divisions, see ss 5, 7 of that Act; and for the constitution of Her Majesty's High Court of Justice in Northern Ireland, see the Judicature (Northern Ireland) Act 1978, s 2, and for its divisions, see s 5 of that Act, Vol 31, title Northern Ireland (Pt 2).

**Definitions.** For "the public file", see s 104 post; for "incorporated friendly society", see s 116 post; for "the central office", see s 119(1) post. Note as to "the court", sub-s (6) above.

## 26 Cancellation of registration

(1) Where the central office is satisfied that an incorporated friendly society has been dissolved under section 20 above or following a winding up, the central office shall cancel the society's registration under this Act.

(2) Where the central office is satisfied, with respect to an incorporated friendly society—

- (a) that a certificate of incorporation has been obtained for the society by fraud or mistake; or
- (b) that the society has ceased to exist,

the central office may cancel the registration of the society.

(3) Without prejudice to subsection (2) above, the central office may, if it thinks fit, cancel the registration of an incorporated friendly society at the request of the society, evidenced in such manner as the central office may direct.

(4) Before cancelling the registration of an incorporated friendly society under subsection (2) above, the central office shall give to the society not less than two months' previous notice, specifying briefly the grounds of the proposed cancellation.

(5) Where the registration of an incorporated friendly society is cancelled under subsection (2) above, the society may appeal—

- (a) where the registered office of the society is situated in England and Wales, to the High Court;
- (b) where that office is situated in Scotland, to the Court of Session; or
- (c) where that office is situated in Northern Ireland, to the High Court in Northern Ireland;

and on any such appeal the court may, if it thinks it just to do so, set aside the cancellation.

(6) Where the registration of a society is cancelled under subsection (2) or (3) above, then, subject to the right of appeal under subsection (5) above, the society, so far as it continues to exist, shall cease to be a society incorporated under this Act.

(7) Subsection (6) above shall not affect any liability actually incurred by an incorporated friendly society; and any such liability may be enforced against the society as if the cancellation had not taken place.

(8) Any cancellation of the registration of an incorporated friendly society under this section shall be effected in writing signed by the central office.

(9) As soon as practicable after the cancellation of the registration of an incorporated friendly society under this section the central office shall cause notice thereof to be published in the London Gazette, the Edinburgh Gazette or the Belfast Gazette according to the situation of the society's registered office, and if it thinks fit, in one or more newspapers.

## NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**Sub-s (1): Following a winding up.** See a winding up under s 21 or 22 ante.

**Sub-s (3): Thinks fit.** See the note to s 4 ante.

**Sub-s (4): Not less than two months' previous notice.** The words "not less than" indicate that two clear months must intervene between the day on which notice is given and that on which cancellation takes place; see *R v Turner* [1910] 1 KB 346, 79 LJKB 176, CCA; *Re Hector Whaling Ltd* [1936] Ch 208, [1935] All ER Rep 302; and the other cases cited in 45 Halsbury's Laws (4th edn) para 1133. See, however, *Dodds v Walker* [1981] 2 All ER 609, [1981] 1 WLR 1027, HL; *E J Riley Investments Ltd v Eurostile Holdings Ltd* [1985] 3 All ER 181, [1985] 1 WLR 1139, CA and 45 Halsbury's Laws (4th edn) para 1111, as to the day of expiry of periods of a month or a specified number of months.

As to the form of documents to be sent to or by the central office and for the power to prescribe fees for the inspection, etc of documents in the custody of the central office, see s 114 post. As to evidence of documents, see s 111 post.

**Sub-s (5): Registered office.** The memorandum of an incorporated friendly society must specify the address of its registered office; see s 5(6) ante, Sch 3, para 4(1)(c) post.

**England; Wales.** See the note to s 23 ante.

**High Court; High Court in Northern Ireland.** See the note to s 25 ante.

**Sub-s (8): Writing.** See the note "Written" to s 17 ante.

**Sub-s (9): Practicable.** The meaning of this word and the difference between "practicable" and the less strict standard of "reasonably practicable" have been most often considered judicially in relation to safety legislation; see 20 Halsbury's Laws (4th edn) para 553, and the cases there cited. See also *Hammond v Haigh Castle & Co Ltd* [1973] 2 All ER 289, [1973] ICR 148; *Owen v Crown House Engineering Ltd* [1973] 3 All ER 618, [1973] ICR 511; and *Dedman v British Building and Engineering Appliances Ltd* [1974] 1 All ER 520, [1974] ICR 53, CA.

**Definitions.** For "incorporated friendly society", see s 116 post; for "the central office" and "notice", see s 119(1) post.

### PART III

#### MANAGEMENT AND ADMINISTRATION

##### *Committee of management and other officers*

#### 27 Committee of management

(1) Every friendly society shall have a committee of management with at least 2 members.

(2) The committee of management shall appoint one of its members to be chairman of the committee.

(3) Members of the committee of management shall (unless co-opted on to the committee) be elected to office in accordance with the rules of the society.

(4) The committee of management may co-opt as a member of the committee (whether as an additional member or to fill any vacancy) any person—

- (a) who appears to the committee to be fit and proper to be a member, and
- (b) who has not failed, having been nominated at an election held within the preceding 12 months, to be elected as a member of the committee;

and such a person may be co-opted notwithstanding that he is not a member of the society.

(5) Part I of Schedule 11 to this Act shall have effect in relation to committees of management and Part II shall have effect with regard to dealings with members of committees of management of friendly societies and registered branches.

#### NOTES

**Commencement.** Sub-ss (1)–(4) were brought into force on 13 January 1993 for the purposes of the management and administration of incorporated friendly societies by the Friendly Societies Act 1992 (Commencement No 3 and Transitional Provisions) Order 1993, SI 1993/16 (made under s 126(2) post), and to the extent not already in force on 1 January 1994 by the Friendly Societies Act 1992 (Commencement No 6 and Transitional Provisions) Order 1993, SI 1993/2213 (made under s 126(2), (3) post). As to the commencement of sub-s (5) above and Sch 11 post, see the Commencement note to that Schedule.

**Committee of management.** As to the duty of a committee of management to produce an

annual report and accounts, see s 72 and Sch 14 post.

**Rules of the society.** The rules for in the rules of an incorporated friendly society.

**Appears.** See the note "Written".

**Months.** This means calendar months.

**Definitions.** For "friendly society", see s 116 post.

#### 28 Chief executive and committee of management

(1) Every friendly society shall have a chief executive.

(2) The chief executive of a friendly society (whether or not a member of the committee of management) is responsible for the conduct of the business of the society.

(3) The secretary of a friendly society shall be a member of the committee of management or, if the rules of the society so provide, shall be appointed with the rules.

(4) The committee of management shall take such steps to secure that the chief executive has the necessary knowledge and experience to discharge his duties.

(5) The offices of chief executive and secretary shall be held by one person.

(6) Anything required to be done by the chief executive of a friendly society may be done by the secretary of the society if, for any reason no secretary or chief executive is appointed.

(a) any assistant secretary or chief executive as the case may be.

(b) if there is no secretary or chief executive, any member of the society's staff appointed by the committee of management.

#### NOTES

**Commencement.** This section and the provisions of the Friendly Societies Act 1992 (Commencement No 3 and Transitional Provisions) Order 1993, SI 1993/16 (made under s 126(2) post), and the provisions of the Friendly Societies Act 1992 (Commencement No 6 and Transitional Provisions) Order 1993, SI 1993/2213 (made under s 126(2), (3) post).

**Committee of management.** See s 27 ante, Sch 11 post.

**Rules of the society.** The rules of the society, as amended by the provisions of the election, appointment or co-opting of officers.

**Definitions.** For "friendly society", see s 116 post.

**Transitional provisions.** See the Transitional Provisions) Order 1993, SI 1993/16 and SI 1993/2213.

#### 29 Notification of officers

(1) Where a person becomes a member of the committee of management of a friendly society, he shall, as soon as practicable after that fact, including that fact, give notice in writing to the central office.

(2) The notice shall specify the name of the person which he became, or ceased to be, a member of the society, and the person becoming a member of the committee of management.

annual report and accounts, see ss 69–71 post; as to its duty to secure the audit of accounts by auditors, see s 72 and Sch 14 post.

**Rules of the society.** The powers and duties of the committee of management must be provided for in the rules of an incorporated friendly society; see s 5(6) ante, Sch 3, para 5(3), Table, para 7 post.

**Appears.** See the note "Thinks fit" to s 4 ante.

**Months.** This means calendar months; see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes.

**Definitions.** For "friendly society" and "registered branch", see s 116 post.

## 28 Chief executive and secretary

(1) Every friendly society shall have a chief executive and a secretary.

(2) The chief executive of a friendly society shall be a person appointed by the committee of management who (whether alone or jointly with one or more other persons) is responsible under the immediate authority of the committee for the conduct of the business of the society.

(3) The secretary of a friendly society shall be appointed by the committee of management or, if the rules of the society so provide, elected to office in accordance with the rules.

(4) The committee of management of a friendly society shall take all reasonable steps to secure that the person appointed as chief executive has the requisite knowledge and experience to discharge the functions of his office.

(5) The offices of chief executive and secretary may be held by the same person.

(6) Anything required or authorised to be done by or to the secretary or chief executive of a friendly society may, if the office is vacant or there is for any other reason no secretary or chief executive capable of acting be done by or to—

- (a) any assistant or deputy secretary or assistant or deputy chief executive, as the case may be; or
- (b) if there is no assistant or deputy capable of acting, any member of the society's staff who is authorised generally or specially for that purpose by the committee of management.

## NOTES

**Commencement.** This section and s 29 post were brought into force on 13 January 1993 for the purposes of the management and administration of incorporated friendly societies by the Friendly Societies Act 1992 (Commencement No 3 and Transitional Provisions) Order 1993, SI 1993/16 (made under s 126(2) post), and to the extent not already in force on 1 January 1994 by the Friendly Societies Act 1992 (Commencement No 6 and Transitional Provisions) Order 1993, SI 1993/2213 (made under s 126(2), (3) post).

**Committee of management.** For general provisions as to the committee of management, see s 27 ante, Sch 11 post.

**Rules of the society.** The rules of an incorporated friendly society must provide for the manner of the election, appointment or removal of officers; see s 5(6) ante, Sch 3, para 5(3), Table, para 6 post.

**Definitions.** For "friendly society", see s 116 post; for "committee of management", see s 119(1) post.

**Transitional provisions.** See the Friendly Societies Act 1992 (Commencement No 6 and Transitional Provisions) Order 1993, SI 1993/2213, art 3.

## 29 Notification of officers to central office

(1) Where a person becomes or ceases to be a member of the committee of management of a friendly society, the society shall within one month give notice of that fact, including the information specified in subsection (2) below, to the central office.

(2) The notice shall state the person's full name and address and the date on which he became, or ceased to be, a member of the committee and in the case of a person becoming a member, the date of his birth.

(3) Where a person becomes or ceases to be the chief executive or the secretary of a friendly society, the society shall within one month give notice of that fact to the central office, stating the person's full name and address and the date on which he became, or ceased to be, chief executive or secretary.

(4) If a friendly society fails to comply with subsection (1) or (3) above, it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(5) On receipt of a notice under this section, the central office shall record the name of the person to whom the notice relates and the date on which he began to hold, or, as the case may be, ceased to hold office, in the public file of the society.

#### NOTES

**Commencement.** See the note to s 28 ante.

**Committee of management.** For general provisions as to the committee of management, see s 27 ante, Sch 11 post.

**Within one month, etc.** The general rule in cases where an act is to be done within a specified time is that the day from which it runs is not to be counted; see *Goldsmiths' Co v West Metropolitan Rly Co* [1904] 1 KB 1, [1900-3] All ER Rep 667, CA; *Stewart v Chapman* [1951] 2 KB 792, [1951] 2 All ER 613; and the other cases cited in 45 Halsbury's Laws (4th edn) para 1134. A requirement that something be done within a specified period means that the full amount of that period up to midnight on the last day is available; see *Manorlike Ltd v Le Vitas Travel Agency and Consultancy Services Ltd* [1986] 1 All ER 573, 278 Estates Gazette 412, CA. See also *Dodds v Walker* [1981] 2 All ER 609, [1981] 1 WLR 1027, HL; *E J Riley Investments Ltd v Eurostile Holdings Ltd* [1985] 3 All ER 181, [1985] 1 WLR 1139, CA, and 45 Halsbury's Laws (4th edn) para 1111, as to the day of expiry of periods of a month or a specified number of months.

**Give notice.** As to the form of documents to be sent to the central office and for the power to prescribe fees for the inspection, etc of documents in the custody of the central office, see s 114 post.

**Chief executive; secretary.** As to the appointment of these officers, see s 28 ante.

**Guilty of an offence.** As to the time limit for commencing proceedings, see s 107 post; as to offences by bodies corporate, partnerships and unincorporated associations, see s 108 post; as to the defence of due diligence, see s 109 post; and as to the jurisdiction of magistrates' courts, see s 110 post.

**Summary conviction; standard scale.** See the notes to s 18 ante.

**Public file.** See s 104 post.

**Definitions.** For "the public file", see s 104 post; for "friendly society", see s 116 post; for "the central office", "committee of management" and "notice", see s 119(1) post.

### Meetings and resolutions

#### 30 Meetings and resolutions

Schedule 12 to this Act shall have effect with respect to meetings and resolutions of friendly societies and registered branches.

#### NOTES

**Commencement.** See the Commencement note to Sch 12 post.

**Definitions.** For "friendly society" and "registered branch", see s 116 post.

## PART IV

### AUTHORISATION OF FRIENDLY SOCIETIES' BUSINESS

**Power to modify.** This Part of this Act (ie Pt IV (ss 31-43 and Sch 13)) may be modified by order made under s 102 post; see s 102(1), (2)(b), (3)-(5) post.

*Restriction on carrying on business*

#### 31 Restriction on carrying on business

(1) Subject to subsection (2), a friendly society shall not carry on business in the United Kingdom unless it is authorised by the Commission.

(2) A friendly society

(a) carried on, by

(i) insurance

authorised

(ii) non-insurance

(b) is not authorised

description of

may carry on without authorisation or carrying out of contracts.

(3) A friendly society shall not carry on or a contract for non-insurance business without authorisation.

(4) A friendly society shall not carry on business in the United Kingdom in contravention of subsection (1) above shall

(a) on conviction

(b) on summary conviction

maximum.

#### NOTES

**Commencement.** This section comes into force on 1 January 1994 in relation to carrying on of business by a friendly society (Commencement No 3 and Transitional Provisions and Savings Order 1994 (SI 1994/1000)); on 1 January 1994 in relation to carrying on of business by a registered friendly society (Commencement No 4 and Transitional Provisions and Savings Order 1994 (SI 1994/1001)); on 1 January 1994 in relation to carrying on of business by a friendly society (as defined) which has carried on business under s 32 or 33 post for authorisation purposes (Commencement No 5 and Transitional Provisions and Savings Order 1994 (SI 1994/1002)); on 1 January 1994 in relation to carrying on of business by a friendly society (as defined) which has carried on business under s 32(7) post by SI 1993/2213; or non-insurance business by a friendly society (as defined) which has carried on business in the relevant year exceeded £3,000 (Commencement No 6 and Transitional Provisions and Savings Order 1994 (SI 1994/1003)); on 1 January 1994 in relation to carrying on of business by a friendly society (as defined) which has carried on business under s 32 or 33 post for authorisation purposes (Commencement No 7 and Transitional Provisions and Savings Order 1994 (SI 1994/1004)); on 1 January 1995 in relation to the carrying on of business by a friendly society to which s 96(2) post applies (Commencement No 8 and Transitional Provisions and Savings Order 1995 (SI 1995/1000)).

**General Note.** See the General Note to Part IV.

**Carry on . . . business.** Cf s 31(1).

**United Kingdom.** See the definition of "United Kingdom" in s 119(1).

**Authorised by the Commission.** See the definition of "authorised by the Commission" in s 119(1).

**treatment of contracts entered into.** See s 114.

**Shall be . . . liable, etc.** For the meaning of "shall be liable, etc." see s 119(1).

**either summarily or on indictment.** See s 110.

**Magistrates.** See s 110.

**Guilty of an offence.** As to the meaning of "guilty of an offence" see s 110.

**offences by bodies corporate, partnerships and unincorporated associations.** See s 108.

**defence of due diligence.** See s 109.

**Conviction on indictment.** See s 110.

**Court; see the Supreme Court Act 1981 (s 84).**

*Restriction on carrying on unauthorised business***31 Restriction on carrying on unauthorised insurance or non-insurance business**

(1) Subject to subsections (2) and (3) below, a friendly society shall not carry on in the United Kingdom any insurance business or non-insurance business unless it is authorised by the Commission to do so.

(2) A friendly society which—

(a) carried on, before the commencement of this section—

(i) insurance business of any description that did not require to be authorised under the 1987 Regulations; or

(ii) non-insurance business of any description; and

(b) is not authorised by the Commission to carry on business of that description after that commencement,

may carry on without authorisation business of that description consisting of the carrying out of contracts effected by the society before that commencement.

(3) A friendly society may without authorisation effect an insurance contract, or a contract for non-insurance benefits, in pursuance of a term in a subsisting contract which the society may, by virtue of subsection (2) above, carry out without authorisation.

(4) A friendly society which carries on any business in contravention of subsection (1) above shall be guilty of an offence and liable—

(a) on conviction on indictment, to a fine;

(b) on summary conviction, to a fine not exceeding the statutory maximum.

**NOTES**

**Commencement.** This section was brought into force on 13 January 1993 for the purposes of the carrying on of business by incorporated friendly societies by the Friendly Societies Act 1992 (Commencement No 3 and Transitional Provisions) Order 1993, SI 1993/16 (made under s 126(2) post); on 1 January 1994 in relation to the carrying on of any insurance business or non-insurance business by a registered friendly society (a) the value of whose specified income for the relevant year (as defined) exceeded £3,000 and (b) which does not duly apply to the Commission before that date under s 32 or 33 post for authorisation to carry on or to continue to carry on any class or part of a class of insurance business or any description of non-insurance business, by the Friendly Societies Act 1992 (Commencement No 6 and Transitional Provisions) Order 1993, SI 1993/2213 (made under s 126(2), (3) post); on 1 January 1994 in relation to the carrying on by a registered friendly society of insurance business in respect of which the society is deemed to be granted an authorisation under s 32(7) post by SI 1993/2213; on 1 July 1994 in relation to the carrying on of any insurance business or non-insurance business by a registered friendly society (a) the value of whose specified income for the relevant year exceeded £3,000 and (b) which duly applies to the Commission before 1 January 1994 under s 32 or 33 post for authorisation to carry on or to continue to carry on any class or part of a class of insurance business or any description of non-insurance business, by SI 1993/2213; and on 1 January 1995 in relation to the carrying on of any insurance or non-insurance business by a friendly society to which s 96(2) post applies by the Friendly Societies Act 1992 (Commencement No 7 and Transitional Provisions and Savings) Order 1993, SI 1993/3226 (made under s 126(2), (3) post).

**General Note.** See the General Note to s 1 ante.

**Carry on . . . business.** Cf the note "Carrying on . . . business" to s 7 ante.

**United Kingdom.** See the note to s 14 ante.

**Authorised by the Commission.** As to the grant of authorisation, see s 32 post; and as to the treatment of contracts entered into without such authorisation, see s 42 post.

**Shall be . . . liable, etc.** For the procedure for determining the mode of trial of offences triable either summarily or on indictment, see the Magistrates' Courts Act 1980, ss 18 et seq, Vol 27, title Magistrates.

**Guilty of an offence.** As to the time limit for commencing proceedings, see s 107 post; as to offences by bodies corporate, partnerships and unincorporated associations, see s 108 post; as to the defence of due diligence, see s 109 post; and as to the jurisdiction of magistrates' courts, see s 110 post.

**Conviction on indictment.** All proceedings on indictment are to be brought before the Crown Court; see the Supreme Court Act 1981, s 46(1), Vol 11, title Courts and Legal Services. As to

indictments and the trial thereof, see generally 11(2) Halsbury's Laws (4th edn reissue) paras 913 et seq, 942 et seq.

**Fine.** There is no specific limit to the amount of the fine which may be imposed on conviction on indictment, but it has for long been the law that the fine should be within the offender's capacity to pay (see, in particular, *R v Churchill (No 2)* [1967] 1 QB 190, [1966] 2 All ER 215, CCA (revsd on other grounds sub nom *Churchill v Walton* [1967] 2 AC 224, [1967] 1 All ER 497, HL) and *R v Garner* [1986] 1 All ER 78, [1986] 1 WLR 73, CA; and see also the Bill of Rights (1688), s 1, Vol 10, title Constitutional Law (Pt 1)), and it is now provided by the Criminal Justice Act 1991, s 18(3), Vol 12, title Criminal Law, that in fixing the amount of a fine a court shall take into account, inter alia, the financial circumstances of the offender so far as they are known, or appear, to the court. For further provisions as to the fixing of fines, see s 18 of the 1991 Act, Vol 12, title Criminal Law, and as to when a fine may be imposed in addition to imprisonment, see *R v Garner* above.

**Summary conviction.** See the note to s 18 ante.

**Statutory maximum.** Is the prescribed sum within the meaning of the Magistrates' Courts Act 1980, s 32, Vol 27, title Magistrates; see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes, as amended. By s 32(9) of the 1980 Act, the prescribed sum is £5,000 but a different sum may be substituted by order under s 143 of the 1980 Act.

As to the fixing of fines, see the Criminal Justice Act 1991, s 18, Vol 12, title Criminal Law.

**Definitions.** For "the Commission", see s 1(1) ante; for "authorised" and "authorisation", see ss 32(9), 43 post; for "contract for non-insurance benefits", see s 43 post; for "friendly society", see ss 43, 116 post; for "insurance business", see s 117(1), (2) post; for "contract of insurance" and "non-insurance business", see s 119(1) post.

**1987 Regulations.** Is the Friendly Societies (Long Term Insurance Business) Regulations 1987, SI 1987/2132; see s 43 post.

#### *Authorisation to carry on business*

### 32 Grant of authorisation by Commission: general

(1) The Commission may, subject to this Part of this Act, authorise friendly societies to carry on in the United Kingdom any class, or any part of a class, of insurance business and any description of non-insurance business.

(2) Where, on an application duly made under this section or section 33 below, the Commission determines to grant authorisation to a friendly society, it shall do so in writing in terms specifying—

- (a) each class of insurance business,
- (b) in relation to any class of such business the whole of which is not covered, each part of the class, and
- (c) each description of non-insurance business,

the carrying on of which is covered by the authorisation.

(3) Authorisation may be restricted to industrial assurance business; and a friendly society is not authorised to carry on industrial assurance business unless the terms of its authorisation expressly specify such business.

(4) Authorisation entitles a friendly society to carry on business anywhere in the United Kingdom unless, at the request of the society, the terms of its authorisation are expressly restricted to a part of the United Kingdom.

(5) Authorisation may be granted to a friendly society unconditionally or subject to written conditions to be complied with by the society as provided by section 34 below.

(6) Schedule 13 to this Act shall have effect in relation to the making and determination of applications for authorisation, the imposition of conditions and the withdrawal of authorisation.

(7) An authorisation granted to a friendly society by the Chief Registrar under regulation 5 or 6 of the 1987 Regulations which is in force immediately before the commencement of section 31 above shall have effect as if it were an authorisation granted by the Commission under this section which authorised the society to carry on insurance business of such classes (or such parts of classes) as correspond to the business specified in the authorisation.

(8) Where an application for authorisation has been decided before the Chief Registrar shall send to the applicant or otherwise received by the applicant shall be treated as being received by the Chief Registrar.

(9) In this Part of this Act (except where the context requires) means an authorisation granted by the Commission or deemed by the Commission to be "authorised" shall be deemed to be granted by the Commission.

### NOTES

**Commencement.** This section and the provisions of this Act relating to the authorisation of incorporated friendly societies registered in the United Kingdom shall come into force on that date for which applications for authorisation for incorporated friendly societies, by the Commission (the Commission's Provisions) Order 1993, SI 1993/1113, Sch 13 post were brought into force on 1 January 1994, for all remaining provisions of this Act and Transitional Provisions.

**General Note.** See the General Note to this Act.

**Sub-s (1): This Part of this Act.**

**Authorise friendly societies to carry on business in the United Kingdom insurance business.** For the purposes of this section, "authorisation" means an authorisation granted by the Commission under s 32(1) thereof, as amended, to a friendly society and certain provisions of this Act relating to them (see ss 1(2), 116, 117, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000).

The Insurance Companies Act 1982, s 1(2), Sch 1, paras 1, 2, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000).

**Carry on . . . business.** See the definition of "business" in the United Kingdom. See the definition of "business" in the United Kingdom. See the definition of "business" in the United Kingdom.

**Sub-s (2): Determines the terms of the authorisation.** See s 58 post.

**Writing.** See the note "Writing" to this Act.

**Sub-s (5): Authorisation may be restricted to industrial assurance business.** See the definition of "industrial assurance business" in the United Kingdom.

**Further provisions.** See the definition of "friendly society" in the United Kingdom.

**Definitions.** For "the Commission", see s 1(1) ante; for "class" and "friendly society", see ss 1(2), 116, 117, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165

(8) Where an application for authorisation under the 1987 Regulations has not been decided before the commencement of subsection (1) above, the Chief Registrar shall send to the Commission the information submitted by the society or otherwise received by him in relation to the application; and the application shall be treated as being an application under this section.

(9) In this Part of this Act "authorisation" (except where the context otherwise requires) means an authorisation which is granted by the Commission under this section or deemed by this section to have been so granted; and "authorise" and "authorised" shall be construed accordingly.

#### NOTES

**Commencement.** This section was brought into force on 13 January 1993 for the purposes of the authorisation of incorporated friendly societies following application from such societies and from registered friendly societies seeking to be incorporated under this Act, and Sch 13 post was brought into force on that date for the purposes of the authorisation of incorporated friendly societies and applications for authorisation from registered friendly societies to carry on business as incorporated friendly societies, by the Friendly Societies Act 1992 (Commencement No 3 and Transitional Provisions) Order 1993, SI 1993/16 (made under s 126(2) post). Except for sub-s (7), this section and Sch 13 post were brought into force on 13 September 1993, and sub-s (7) was brought into force on 1 January 1994, for all remaining purposes by the Friendly Societies Act 1992 (Commencement No 6 and Transitional Provisions) Order 1993, SI 1993/2213 (made under s 126(2), (3) post).

**General Note.** See the General Note to s 1 ante.

**Sub-s (1): This Part of this Act.** *ie* Pt IV (ss 31-43 and Sch 13).

**Authorise friendly societies, etc.** A society authorised under this section to carry on in the United Kingdom insurance business such as is mentioned in s 31 ante is an "authorised friendly society" for the purposes of the Policyholders Protection Act 1975, Vol 22, title Insurance (Pt 1) (see s 32(1) thereof, as amended by s 97, Sch 17, para 18(1), (2) post). Such societies are also "qualifying friendly societies" and certain functions of the Policyholders Protection Board are exercisable in relation to them (see ss 1(2)(aa), (b), 3A, 21(10), 25(1) of the 1975 Act, as inserted or amended by s 97, Sch 17, paras 1, 2, 15, 16 post).

The Insurance Companies Act 1982, s 49, Vol 22, title Insurance (Pt 2), applies, with adaptations, to a transfer of business of an insurance company to an incorporated friendly society or a registered friendly society authorised under this Part of this Act (*ie* Pt IV (ss 31-43 and Sch 13)); see s 49A of the 1982 Act, as inserted by s 120(1), Sch 21, Pt 1, para 6(2) post.

**Carry on . . . business.** Cf the note "Carrying on . . . business" to s 7 ante.

**United Kingdom.** See the note to s 14 ante.

**Sub-s (2): Determines to grant authorisation.** For the right of appeal against a refusal to grant authorisation, see s 58 post.

**Writing.** See the note "Written" to s 17 ante.

**Sub-s (5): Authorisation may be granted . . . subject to written conditions.** As to the imposition of conditions on the extension of a current authorisation, see s 35(2) post.

**Further provisions.** See also s 33 post (applications from certain existing friendly societies); s 34 post (grant of unconditional or conditional authorisation); s 35 post (extension of current authorisation); s 36 post (imposition of conditions on current authorisation); ss 37, 38 post (restrictions on business of certain authorised societies); ss 39-41 post (powers of Commission in relation to authorised societies); and s 85, Sch 15, para 11 post (confirmation of amalgamations), paras 14-16 post (confirmation of transfers).

**Definitions.** For "the Commission", see s 1(1) ante; for "industrial insurance business", see s 43 post; for "class" and "friendly society", see ss 43, 116 post; for "insurance business", see s 117(1), (2) post; for "the Chief Registrar" and "non-insurance business", see s 119(1) post. Note as to "authorisation", "authorise" and "authorised", sub-s (9) above.

**1987 Regulations.** *ie* the Friendly Societies (Long Term Insurance Business) Regulations 1987, SI 1987/2132; see s 43 post.

### 33 Applications from certain existing friendly societies

(1) A friendly society which—

- (a) is not authorised and has not made any previous application for authorisation;
- (b) was, before the commencement of section 32 above, carrying on in the United Kingdom any insurance or non-insurance business; and

- (c) was, immediately before that commencement, neither required to be authorised under the 1987 Regulations nor subject to an order under section 88(1) of the 1974 Act (power of Chief Registrar to suspend business of friendly societies);

may apply under this section for authorisation to continue to carry on any business it was carrying on before that commencement.

(2) If the Commission is satisfied, on an application duly made under this section—

- (a) that it has received adequate information about the society; and  
(b) that there is no reason to believe that the interests of the members of the society require refusal of the application;

it shall, subject to section 37 below, authorise the society to carry on any class (or part of a class) of insurance business, and any description of non-insurance business, which corresponds to any business carried on by the society immediately before the commencement of section 32 above.

#### NOTES

**Commencement.** This section was brought into force on 13 January 1993 for the purposes of applications from registered friendly societies seeking to be incorporated under this Act and from incorporated friendly societies for authorisation to carry on existing business as incorporated friendly societies by the Friendly Societies Act 1992 (Commencement No 3 and Transitional Provisions) Order 1993, SI 1993/16 (made under s 126(2) post), and on 13 September 1993 for all remaining purposes by the Friendly Societies Act 1992 (Commencement No 6 and Transitional Provisions) Order 1993, SI 1993/2213 (made under s 126(2), (3) post).

**General Note.** See the General Note to s 1 ante.

**Carrying on . . . business.** Cf the note to s 7 ante.

**United Kingdom.** See the note to s 14 ante.

**May apply . . . for authorisation.** For the procedure on applying for authorisation under this section, see s 32(2), (6) ante and Sch 13, para 2(1), (3)–(5) post.

**Satisfied.** See the note "Thinks fit" to s 4 ante.

**Further provisions.** Cf the note to s 32 ante.

**Definitions.** For "the Commission", see s 1(1) ante; for "authorisation", "authorise" and "authorised", see s 32(9) ante; for "class", see s 43 post; for "friendly society", see ss 43, 116 post; for "insurance business", see s 117(1), (2) post; for "non-insurance business", see s 119(1) post.

**1987 Regulations.** Ie the Friendly Societies (Long Term Insurance Business) Regulations 1987, SI 1987/2132; see s 43 post.

**1974 Act.** Ie the Friendly Societies Act 1974 ante; see s 119(1) post. S 88 is repealed by s 120(2), Sch 22, Pt I post.

### 34 Grant of unconditional or conditional authorisation

(1) On an application duly made by a friendly society ("the society"), the Commission shall, subject to section 37 below, grant unconditional or conditional authorisation, or refuse to grant authorisation, in accordance with the following provisions of this section.

(2) The Commission shall grant unconditional authorisation if it is satisfied that—

- (a) the chairman of the committee of management, the secretary and the chief executive of the society are each fit and proper persons to hold their respective offices;  
(b) the members of the committee of management, with the secretary and chief executive, have the capacity and intention to direct the affairs of the society in accordance with the criteria of prudent management;  
(c) the society is likely to comply with any requirements of this Act which relate to the business to be covered by the authorisation; and  
(d) the interests of the members of the society will be adequately protected without the imposition of conditions.

(3) Subject to subsection (4) above, the Commission shall, if it is satisfied that the conditions mentioned in subsection (2) above are satisfied, grant authorisation to carry on the business mentioned in subsection (1) above.

(4) Where the Commission is satisfied that the conditions mentioned in subsection (2) above are satisfied, it shall grant authorisation to carry on the business mentioned in subsection (1) above if it is satisfied that the conditions mentioned in subsection (3) above are also satisfied.

- (c) and (d) above but is satisfied that—  
(a) the direction of the business to be carried on is in the interests of prudent management;  
(b) the likelihood of the business being carried on in accordance with this Act which relate to the business to be covered by the authorisation; and  
(c) the adequate protection of the interests of the members of the society will be adequately protected without the imposition of conditions.

it shall grant authorisation to carry on the business mentioned in those objects.

(5) The conditions that the Commission may impose under subsection (2) above shall—

- (a) relate to any class of business of which authorisation is granted;  
(b) require the society to carry on the business in accordance with the course of action specified in the authorisation;  
(c) require the society to carry on the business in a subsidiary or branch.

(6) Without prejudice to subsection (5) above, the Commission may impose under subsection (2) above—

- (a) limitations on the business to be carried on for non-insurance business;  
(b) require the society to carry on the business in a subsidiary or branch;  
(c) where the society is carrying on the business in a subsidiary or branch, regard to the adequacy of the protection of the interests of the members of the society.

(7) Conditions imposed under subsection (2) above may be—

- (a) added to or varied by the Commission;  
(b) may be revoked or varied by the Commission if they are no longer necessary or appropriate; and  
(c) imposed;

and, on adding to, varying or revoking or varying such conditions, the Commission may, if it is satisfied that it is in the interests of the society, send to the secretary of the society a copy of the conditions to which its authorisation is subject.

(8) Subsections (2) to (7) above shall apply to an application made under section 33 above as they apply to an application made under section 32 above.

- (a) of subsection (2) above;  
(b) of the reference in subsection (2) above to the conditions mentioned in subsection (3) above;  
(c) of subsection (4) above.

(9) Subsections (2) to (7) above shall apply to an application for authorisation to carry on the business mentioned in section 37(8) below—

- (a) with the substitution of "authorisation" for "authorisation to carry on the business";  
(b) with the insertion of "the business to be covered by the authorisation" after "authorisation";  
(c) with the insertion of "the business to be covered by the authorisation" after "authorisation";  
(d) with the insertion of "the business to be covered by the authorisation" after "authorisation";  
(e) with the insertion of "the business to be covered by the authorisation" after "authorisation";  
(f) with the insertion of "the business to be covered by the authorisation" after "authorisation";  
(g) with the insertion of "the business to be covered by the authorisation" after "authorisation";  
(h) with the insertion of "the business to be covered by the authorisation" after "authorisation";  
(i) with the insertion of "the business to be covered by the authorisation" after "authorisation";  
(j) with the insertion of "the business to be covered by the authorisation" after "authorisation";  
(k) with the insertion of "the business to be covered by the authorisation" after "authorisation";  
(l) with the insertion of "the business to be covered by the authorisation" after "authorisation";  
(m) with the insertion of "the business to be covered by the authorisation" after "authorisation";  
(n) with the insertion of "the business to be covered by the authorisation" after "authorisation";  
(o) with the insertion of "the business to be covered by the authorisation" after "authorisation";  
(p) with the insertion of "the business to be covered by the authorisation" after "authorisation";  
(q) with the insertion of "the business to be covered by the authorisation" after "authorisation";  
(r) with the insertion of "the business to be covered by the authorisation" after "authorisation";  
(s) with the insertion of "the business to be covered by the authorisation" after "authorisation";  
(t) with the insertion of "the business to be covered by the authorisation" after "authorisation";  
(u) with the insertion of "the business to be covered by the authorisation" after "authorisation";  
(v) with the insertion of "the business to be covered by the authorisation" after "authorisation";  
(w) with the insertion of "the business to be covered by the authorisation" after "authorisation";  
(x) with the insertion of "the business to be covered by the authorisation" after "authorisation";  
(y) with the insertion of "the business to be covered by the authorisation" after "authorisation";  
(z) with the insertion of "the business to be covered by the authorisation" after "authorisation";

(3) Subject to subsection (4) below, if the Commission is not satisfied as mentioned in subsection (2) above, it shall refuse to grant authorisation.

(4) Where the Commission is not satisfied as mentioned in subsection (2)(b), (c) and (d) above but is satisfied that the imposition of conditions will secure—

- (a) the direction of the affairs of the society in accordance with the criteria of prudent management;
- (b) the likelihood of compliance by the society with any requirements of this Act which relate to the business to be covered by the authorisation; and
- (c) the adequate protection of the interests of the members of the society,

it shall grant authorisation subject to such conditions as it thinks fit for securing those objects.

(5) The conditions that may be so imposed may—

- (a) relate to any class (or part of a class) or description of business in respect of which authorisation is sought;
- (b) require the society to take steps or to refrain from adopting a particular course of action or to restrict the scope of its business in a particular way;
- (c) require the society to take steps with regard to the activities of any subsidiary or body jointly controlled by the society.

(6) Without prejudice to the generality of subsection (5) above, conditions imposed under subsection (4) above may—

- (a) impose limitations on the effecting of contracts of insurance or contracts for non-insurance benefits or the accepting of new members;
- (b) require the removal of an officer of the society or of any registered branch;
- (c) where the society has branches, require the society to take steps with regard to the activities of any registered branch.

(7) Conditions imposed under subsection (4) above—

- (a) may be added to or varied from time to time by agreement between the Commission and the society; and
- (b) may be revoked at any time by the Commission if it is satisfied that they are no longer needed for the purpose for which they were imposed;

and, on adding to, varying or revoking any such conditions, the Commission shall (unless it considers it unnecessary to do so by reason of the nature of the changes) send to the secretary of the society a statement of the terms of all the subsisting conditions to which its authorisation is subject.

(8) Subsections (2) to (7) above apply in relation to applications for authorisation made under section 33 above with the omission—

- (a) of subsection (2)(a) and (b);
- (b) of the reference to subsection (2)(b) in subsection (4); and
- (c) of subsection (4)(a).

(9) Subsections (2) to (7) above apply in relation to a society applying for authorisation to carry on both long term and general business by virtue of section 37(8) below—

- (a) with the substitution, in subsection (2), for the words "unconditional authorisation", of the words "authorisation subject only to the conditions required by section 37 below";
- (b) with the insertion in subsections (2)(d) and (4), after the words "imposition of", of the word "further".

## NOTES

**Commencement.** This section and s 35 post were brought into force on 13 January 1993 for the purposes of the grant and extension of authorisation of incorporated friendly societies following applications from incorporated friendly societies and from registered friendly societies seeking to be incorporated under this Act by the Friendly Societies Act 1992 (Commencement No 3 and Transitional Provisions) Order 1993, SI 1993/16 (made under s 126(2) post), and on 13 September 1993 for all remaining purposes by the Friendly Societies Act 1992 (Commencement No 6 and Transitional Provisions) Order 1993, SI 1993/2213 (made under s 126(2), (3) post).

**General Note.** See the General Note to s 1 ante.

**Sub-s (1): Application duly made.** Is an application made under s 32 or 33 ante in accordance with those sections and Sch 13 post.

**Sub-s (2): Committee of management.** For general provisions as to the committee of management, see s 27 ante, Sch 11 post.

**Secretary; chief executive.** As to the appointment of these officers, see s 28 ante.

**Sub-s (4): Imposition of conditions.** By virtue of s 50(2) post the power of the Commission to impose conditions is a prudential power relevant for the purposes of that section. A failure to comply with any conditions to which an authorisation under s 32 ante is subject is to be treated, for the purposes of s 50 post, as a failure on the part of the committee of management prudently to conduct the affairs of the society; see s 50(7) post.

As to the imposition of conditions on the extension of a current authorisation, see s 35(2) post; and as to the right of appeal against the imposition of conditions or the conditions imposed, see s 58 post.

If an authorisation was subject to conditions and it appears to the Commission that the society has not complied with a condition, the Commission may give a direction under s 40(1) post; see s 40(3)(d) post.

**Sub-s (7): Conditions imposed, etc.** Sub-s (7) above applies to conditions imposed under s 36 post; see s 36(3) post.

**From time to time.** See the note to s 2 ante.

**Definitions.** For "the Commission", see s 1(1) ante; for "subsidiary" and "body jointly controlled", see s 13(9) ante; for "authorisation", see s 32(9) ante; for "class" and "contract for non-insurance benefits", see s 43 post; for "friendly society", see ss 43, 116 post; for "the criteria of prudent management", see s 50 post; for "registered branch", see s 116 post; for "long term business" and "general business", see s 117(1) post; for "committee of management", "contract of insurance" and "officer", see s 119(1) post. Note as to "the society", sub-s (1) above.

## 35 Extension of current authorisation

(1) This section applies where an authorised friendly society applies under section 32 above for authorisation to carry on insurance business of a class (or part of a class), or non-insurance business of a description, which is not covered by the society's current authorisation.

(2) On such an application, the conditions which the Commission may impose under section 34 above include—

- (a) conditions relating to any business covered by the society's current authorisation; and
- (b) where the current authorisation is subject to conditions, conditions which vary the current conditions (whether by adding to, amending or replacing any of them).

(3) Where the Commission determines to grant authorisation on such an application, it shall be granted in terms including all current terms of the society's authorisation (including any that were otherwise unaffected by the determination); and those terms shall have effect in place of the previously subsisting terms.

## NOTES

**Commencement.** See the note to s 34 ante.

**General Note.** See the General Note to s 1 ante.

**Carry on . . . business.** Cf the note to s 7 ante.

**The conditions which the Commission may impose.** If an authorisation was subject to conditions and it appears to the Commission that the society has not complied with a condition, the Commission may give a direction under s 40(1) post; see s 40(3)(d) post.

**Terms of authorisation.** As to the placing on the public file of a copy of the terms of authorisation on an application under this section, see s 32(6) ante, Sch 13, para 5(2) post.

**Definitions.** For "the Commission", see s 43 post; for "friendly society", see s 43 post; for "non-insurance business", see s 43 post.

## 36 Imposition of conditions

(1) If the Commission is satisfied that it is in the interests of the members of a friendly society to grant an authorisation to the society under Part II of Schedule 1, it may impose conditions on the grant of the authorisation—

- (a) impose conditions which vary the current conditions (whether by adding to, amending or replacing any of them);
- (b) where an authorisation is subject to conditions, conditions which vary the current conditions (whether by adding to, amending or replacing any of them);

and the conditions that are imposed on the grant of the authorisation—

(2) Without prejudice to the conditions that are imposed on the grant of the authorisation—

- (a) the submission of a sound financial statement;
- (b) modification (or modification) of the terms of the authorisation;
- (c) the implementation of the conditions which are imposed on the grant of the authorisation.

(3) Subsection (7) of section 35 above applies to this section as it applies to section 35.

## NOTES

**Commencement.** This section was brought into force for the purposes of the control of friendly societies under the Friendly Societies Act 1992 (Commencement No 3 and Transitional Provisions) Order 1993, SI 1993/16 (made under s 126(2) post), and for all remaining purposes by the Friendly Societies Act 1992 (Commencement No 6 and Transitional Provisions) Order 1993, SI 1993/2213 (made under s 126(2), (3) post).

**General Note.** See the General Note to s 1 ante.

**Impose conditions.** For the power of the Commission to impose conditions imposed, see s 58 post.

If an authorisation was subject to conditions and it appears to the Commission that the society has not complied with a condition, the Commission may give a direction under s 40(1) post; see s 40(3)(d) post.

For the power of the Commission to grant an authorisation to a registered friendly society or to a person who is an authorised person under the 1986 Act ante.

**Definitions.** For "the Commission", see s 43 post; for "friendly society", see ss 43, 116 post.

## [36A Directions for directors]

(1) Subsection (2) below applies to a friendly society if it appears to the Commission that it is in the interests of the members of the society to grant an authorisation to the society under Part II of Schedule 1, it may impose conditions on the grant of the authorisation—

- (a) it appears to the Commission that it is in the interests of the members of the society to grant an authorisation to the society under Part II of Schedule 1, it may impose conditions on the grant of the authorisation—
- (b) the Commission may impose conditions on the grant of the authorisation—

(2) If the Commission is satisfied that it is in the interests of the members of a friendly society to grant an authorisation to the society under Part II of Schedule 1, it may impose conditions on the grant of the authorisation—

**Definitions.** For "the Commission", see s 1(1) ante; for "authorisation", see s 32(9) ante; for "class", see s 43 post; for "friendly society", see ss 43, 116 post; for "insurance business", see s 117(1), (2) post; for "non-insurance business", see s 119(1) post.

### 36 Imposition of conditions on current authorisation

(1) If the Commission considers it expedient to do so, it may (in accordance with Part II of Schedule 13 to this Act)—

- (a) impose conditions on a friendly society's authorisation, or
- (b) where an authorisation is subject to conditions, impose conditions which vary the current conditions (whether by adding to, amending or replacing any of them);

and the conditions that may be so imposed include any condition that might be imposed on the grant of authorisation.

(2) Without prejudice to the generality of subsection (1) above, conditions so imposed may require—

- (a) the submission to the Commission of a plan for the restoration of a sound financial position or a short-term financial scheme;
- (b) modification of the plan or scheme (or the plan or scheme as previously modified) if the Commission considers it inadequate; and
- (c) the implementation of the plan or scheme if the Commission consider it adequate.

(3) Subsection (7) of section 34 above applies to conditions imposed under this section as it applies to conditions imposed under that section.

#### NOTES

**Commencement.** This section and ss 37–43 post were brought into force on 13 January 1993 for the purposes of the control of conduct of business by incorporated friendly societies by the Friendly Societies Act 1992 (Commencement No 3 and Transitional Provisions) Order 1993, SI 1993/16 (made under s 126(2) post), and for all remaining purposes on 13 September 1993 by the Friendly Societies Act 1992 (Commencement No 6 and Transitional Provisions) Order 1993, SI 1993/2213 (made under s 126(2), (3) post).

**General Note.** See the General Note to s 1 ante.

**Impose conditions.** For the right of appeal against the imposition of such conditions or the conditions imposed, see s 58 post.

If an authorisation was subject to conditions and it appears to the Commission that the society has not complied with a condition, the Commission may give a direction under s 40(1) post; see s 40(3)(d) post.

For the power of the Commission to exercise the powers conferred by this section where a registered friendly society or an incorporated friendly society (being a regulated friendly society which is an authorised person) contravenes the Financial Services Act 1986, see Sch 11, para 26(1), (2) to the 1986 Act ante.

**Definitions.** For "the Commission", see s 1(1) ante; for "authorisation", see s 32(9) ante; for "friendly society", see ss 43, 116 post.

#### [36A Directions for deeming conditions to have been imposed

(1) Subsection (2) below applies where—

- (a) it appears to the Commission that there has been or is, on the part of an authorised friendly society to which section 37(2) or (3) below applies or its committee of management, a failure to satisfy the 8th criterion in section 50(3) below; and
- (b) the Commission proposes, on that ground, to impose conditions under section 36 above on the society's authorisation.

(2) If the Commission considers it expedient to do so in order to protect the interests of members of the society, the Commission may direct that, for the period—

- (a) beginning with service of notice of the proposal under paragraph 7(1) or 8(2) of Schedule 13 to this Act, and
- (b) ending with service of the Commission's decision notice,

the proposed conditions shall be deemed to have been imposed under section 36 above on the society's authorisation.

(3) In subsection (2) above "the Commission's decision notice" means—

- (a) in relation to a notice of the proposal under paragraph 7(1) of Schedule 13 to this Act, notice of the Commission's decision under paragraph 7(5) of that Schedule or notice of an alternative proposal under paragraph 8(2) of that Schedule;
- (b) in relation to a notice of the proposal under paragraph 8(2) of that Schedule, notice of the Commission's decision under paragraph 8(6) of that Schedule or notice of an alternative proposal under the said paragraph 8(2).

(4) The Commission may revoke a direction under this section if it is satisfied that the direction is no longer needed for the purpose for which it was imposed.

(5) The provisions of this Act (so far as applicable)—

- (a) apply in relation to a decision of the Commission to give a direction under this section as they apply in relation to a decision of the Commission to impose conditions under section 36 above, and
- (b) apply to conditions which, by virtue of such a direction, are deemed to have been imposed under that section as they apply to conditions so imposed.]

#### NOTES

This section was inserted by the Friendly Societies (Amendment) Regulations 1993, SI 1993/2519, reg 2(1), with effect from 1 January 1994.

**Committee of management.** For general provisions as to the committee of management, see s 27 ante, Sch 11 post.

**Direct.** As to the service of directions, see s 113 post.

**Provisions of this Act . . . apply, etc.** Cf the note "Impose conditions" to s 36 ante.

**Definitions.** For "the Commission", see s 1(1) ante; for "authorised", see s 32(9) ante; for "friendly society", see ss 43, 116 post; for "committee of management" and "notice", see s 119(1) post.

#### *Restrictions on business of certain authorised societies*

### 37 Restriction of combinations of business

(1) [Subject to subsections (1A) and (7A) below], an authorised friendly society to which subsection (2) or (3) below applies may not carry on business falling into more than one of the following categories, namely—

- (a) long term business;
- (b) general business; and
- (c) non-insurance business;

and, accordingly, the Commission shall not grant such a society authorisation to do so.

[(1A) Nothing in subsection (1) above shall prevent an authorised friendly society to which subsection (2) or (3) below applies from carrying on, or being authorised to carry on, both long term business and general business of either or both of classes 1 and 2 of Head B of Schedule 2 to this Act.]

(2) This subsection applies to a friendly society which carries on long term business—

- (a) if its rules require contributions from other persons;
- (b) if its annual contribution exceeds 500,000 ECU in any direction under

and, for the purposes of paragraph 7(1) of Schedule 13 to this Act, shall be disregarded.

(3) This subsection applies to a friendly society carrying on business—

- (a) if its rules require contributions from other persons;
- (b) if its annual contribution exceeds 500,000 ECU in any direction under subsection

and, for the purposes of paragraph 7(1) of Schedule 13 to this Act, shall be disregarded.

(4) In subsections (2) and (3) above, "annual contribution income" means the contribution income, as determined at the relevant time, accounted for in the accounts.

(5) The Commission may give a direction under this section in relation to international obligations of a friendly society—

- (a) which is, by virtue of its rules, a society to which this section applies;
- (b) which is, by virtue of its rules, a society to which

shall, unless the direction is given, be subject to subsection (2) or, as the case may be,

(6) If—

- (a) the Commission is satisfied that, in relation to a society, the contribution income exceeds 500,000 ECU in any direction specified in the

the Commission shall give a direction—

(7) If—

- (a) the Commission is satisfied that, in relation to a society, the contribution income mentioned in
- (b) the society's annual contribution exceeds 500,000 ECU in any direction ending after a

the Commission shall give a direction—

[(7A) Where a friendly society was on 15th March 1979 in the United Kingdom, the society may carry on (or be authorised to carry on) a class) of long term or general business—

(8) Where a friendly society is authorised by virtue of this section to carry on general business in the United Kingdom—

- (a) the Commission may give a direction imposing such conditions

- (a) if its rules do not contain provision for calling up additional contributions, for reducing benefits or for claiming assistance from other persons who have undertaken to provide it; or
- (b) if its annual contribution income from long term business exceeded 500,000 ECU for 3 consecutive years and it is not the subject of a direction under subsection (5) below;

and, for the purposes of paragraph (b) above, years ending before 1st January 1985 shall be disregarded.

(3) This subsection applies to a friendly society which carries on general business—

- (a) if its rules do not contain provision for calling up additional contributions or for reducing benefits; or
- (b) if its annual contribution income from general business in any previous year exceeded 1,000,000 ECU and it is not the subject of a direction under subsection (5) below;

and, for the purposes of paragraph (b) above, years ending before 1st January 1993 shall be disregarded.

(4) In subsections (2) and (3) above a reference to a year, in relation to annual contribution income, is a reference to any financial year of a society for which, at the relevant time, accounts have been or ought to have been prepared.

(5) The Commission may, if it is satisfied that it is consistent with the international obligations of the United Kingdom to do so, direct that a friendly society—

- (a) which is, by virtue only of paragraph (b) of subsection (2) above, a society to which that subsection applies; or
- (b) which is, by virtue only of paragraph (b) of subsection (3) above, a society to which that subsection applies;

shall, unless the direction is revoked, be treated as not being a society to which subsection (2) or, as the case may be, subsection (3) above applies.

(6) If—

- (a) the Commission has given a direction under subsection (5) above in relation to a society such as is mentioned in subsection (5)(a) above; and
- (b) the Society's annual contribution income from long term business exceeds 500,000 ECU for 3 consecutive years ending after a date specified in the direction,

the Commission shall revoke the direction.

(7) If—

- (a) the Commission has given a direction in relation to a society such as is mentioned in subsection (5)(b) above; and
- (b) the society's annual contribution income from general business in a year ending after a date specified in the direction exceeded 1,000,000 ECU,

the Commission shall revoke the direction.

[(7A) Where a friendly society to which subsection (2) or (3) above applies was on 15th March 1979 carrying on long term and general business in the United Kingdom, the society may (if authorised to do so) carry on any class (or part of a class) of long term or general business.

(8) Where a friendly society to which subsection (2) or (3) above applies is authorised by virtue of subsection (1A) or (7A) above to carry on long term and general business in the United Kingdom—

- (a) the Commission shall (whether or not other conditions are imposed) impose such conditions on the society's authorisation as the Commission

- thinks fit for securing that the society's long term business and general business are kept separate; and
- (b) those conditions shall, subject to the exceptions mentioned in subsection (9) below, require that the assets representing the funds maintained in respect of the society's long term business or, as the case may be, its general business are to be generally applicable for the purposes of that business only.]
- (9) The exceptions mentioned in subsection (8) above are—
- (a) that assets representing funds in respect of long term business may be transferred so as to be available for general business if—
- (i) they represent the excess of the long term business funds over the society's liabilities in respect of that business; or
- (ii) the transfer is by way of reimbursement of expenditure borne by other assets in respect of long term business; and
- (b) that assets representing funds in respect of general business may be transferred so as to be available for long term business if they represent the excess of the general business funds over the society's liabilities in respect of that business.

## NOTES

The words in square brackets in sub-s (1) were substituted, sub-s (1A) was inserted, and sub-ss (7A), (8) were substituted for the original sub-s (8), by the Friendly Societies (Amendment) Regulations 1993, SI 1993/2519, reg 3.

**Commencement.** See the note to s 36 ante.

**General Note.** See the General Note to s 1 ante.

**Sub-s (1): Carry on business.** See the note "Carrying on . . . business" to s 7 ante.

**Shall not grant such a society authorisation.** If there exists a ground on which the Commission would be prohibited from granting authorisation to the society, the Commission may give a direction under s 40(1) post; see s 40(3)(b) post.

**Sub-s (2): Friendly society which carries on long term business, etc.** A society of this description must cause to be carried out an annual actuarial investigation; see s 46 post.

**Rules.** For the matters to be covered by such rules, see s 5(6) ante, Sch 3, para 5 post.

**Sub-s (5): Satisfied.** See the note "Thinks fit" to s 4 ante.

**United Kingdom.** See the note to s 14 ante.

**Direct.** As to the service of directions, see s 113 post.

**Further provisions.** As to restrictions on commercial business in respect of authorised friendly societies to which sub-s (2) or (3) above applies, see s 38 post; as to the requirement that a society falling under sub-s (2) or (3) above maintain a margin of solvency in relation to insurance business, see s 48 post. In connection with the implementation of Council Directives 88/357/EEC (the Second Non-Life Directive), 90/619/EEC (the Second Life Directive) and 92/96/EEC (the Third Life Directive), see, in particular, s 36A ante, ss 50(3), 57A, Sch 15, para 15A, Sch 20, Pt II post, and the Friendly Societies (Amendment) Regulations 1993, SI 1993/2519, regs 8–13 (made under the European Communities Act 1972, s 2, Vol 17, title European Communities).

**Definitions.** For "the Commission", see s 1(1) ante; for "authorisation" and "authorised", see s 32(9) ante; for "class", see s 43 post; for "friendly society", see ss 43, 116 post; for "annual contribution income", "general business" and "long term business", see s 117(1) post; for "financial year", see s 118 post; for "non-insurance business", see s 119(1) post; for "ECU", see s 119(2) post.

**Transitional provisions.** See the Friendly Societies Act 1992 (Transitional and Consequential Provisions and Savings) Regulations 1993, SI 1993/932, reg 7.

## 38 Restriction on commercial business

(1) An authorised friendly society to which section 37(2) or (3) applies shall not carry on any commercial business otherwise than in connection with or for the purposes of its insurance business.

(2) Subsection (1) above shall not prevent a friendly society which was on 15th March 1979 carrying on long term business and a savings business in the United Kingdom from continuing to carry on the savings business.

(3) Subsection (1) above has effect without prejudice to any stricter obligations

imposed on friendly societies. It is not to be taken to imply that a friendly society may carry on any purposes permitted by this Part and the constitution of the society.

## NOTES

**Commencement.** See the note to s 36 ante.  
**General Note.** See the General Note to s 1 ante.  
**Carry on . . . business.** See the note "Carrying on . . . business" to s 7 ante.  
**United Kingdom.** See the note to s 14 ante.  
**This Part.** *ie* Pt IV (ss 31–41).  
**Activity . . . permitted by this Part.** See the note "Activity . . . permitted by this Part" to s 37 ante.  
**Definitions.** For "authorised friendly society", see s 32(9) ante; for "friendly society", see ss 43, 116 post; for "annual contribution income", "general business" and "long term business", see s 117(1) post; for "financial year", see s 118 post; for "non-insurance business", see s 119(1) post; for "ECU", see s 119(2) post.  
**1974 Act.** *ie* the Friendly Societies Act 1974.

## Powers of the Commission

## 39 Power to direct application

(1) If, with respect to a friendly society, the Commission has reasonable cause to believe—

- (a) that the society is not carrying on its business in a way that is consistent with the objects of the society, or
- (i) in a way that is not consistent with the objects of the society; or
- (ii) so as not to be consistent with the objects of the society; or
- (b) that by reason of the way in which its general business is conducted, the society's affairs should be examined;

it may by notice direct the society to submit to the Commission an application under section 40.

(2) The period so specified in the notice shall begin with the date of the notice and shall extend to such date as may be specified in the notice.

(3) A notice under this section shall not be given unless the Commission has decided to give notice under section 40.

(4) The business covered by a notice under this section shall not be the same as the business covered by a notice under this section given in the previous one.

(5) If the Commission gives notice of its refusal to give a notice under this section, the notice shall expire on the date of the refusal.

(6) The making of an application under this section shall not prevent the Commission, at any time, from giving a notice under this Part or a direction under section 41.

## NOTES

**Commencement.** See the note to s 36 ante.  
**General Note.** See the General Note to s 1 ante.  
**Sub-s (1): By notice direct**

imposed on friendly societies under this Part; and nothing in this section shall be taken to imply that a friendly society may carry out any activity other than for purposes permitted by this Act (or, in the case of registered societies, the 1974 Act) and the constitution of the society.

#### NOTES

**Commencement.** See the note to s 36 ante.

**General Note.** See the General Note to s 1 ante.

**Carry on . . . business.** See the note "Carrying on . . . business" to s 7 ante.

**United Kingdom.** See the note to s 14 ante.

**This Part.** *ie* Pt IV (ss 31-43 and Sch 13).

**Activity . . . permitted by this Act.** See ss 5, 7 ante and Sch 2 post.

**Definitions.** For "authorised", see s 32(9) ante; for "friendly society", see ss 43, 116 post; for "registered friendly society", see s 116 post; for "insurance business", see s 117(1), (2) post; for "long term business", see s 117(1) post.

**1974 Act.** *ie* the Friendly Societies Act 1974 ante; see s 119(1) post.

#### *Powers of Commission in relation to authorised societies*

### 39 Power to direct application for fresh authorisation

(1) If, with respect to an authorised friendly society, the Commission has reason to believe—

- (a) that the society's business is being, or will in the future be, conducted—
  - (i) in a way that may not adequately protect the interests of members of the society; or
  - (ii) so as not to comply with the requirements of this Act which relate to the business for which the society's authorisation was granted; or
- (b) that by reason of any increase in the volume of its long term or its general business it is appropriate for the society's affairs to be re-examined;

it may by notice direct the society to make within such period as is specified in the notice an application under section 32 above for fresh authorisation.

(2) The period so specified shall not be shorter than 3 nor longer than 6 months beginning with the date of the notice; but the Commission may, on representations being made to it, extend or further extend the period within which the application is to be made.

(3) A notice under subsection (1) above shall state the grounds on which the Commission decided to give the direction.

(4) The business covered by, and the conditions imposed on, a society's fresh authorisation need not be the same as that covered by, or those imposed on, the previous one.

(5) If the Commission refuses to grant fresh authorisation, it may specify in the notice of its refusal a date for the expiry of the current authorisation; and the authorisation shall expire on that date.

(6) The making of an application for fresh authorisation shall not preclude the Commission, at any time while the application is pending, from exercising any power under this Part of this Act in relation to the society; but if it gives a direction under section 41 below, the proceedings on the application shall abate.

#### NOTES

**Commencement.** See the note to s 36 ante.

**General Note.** See the General Note to s 1 ante.

**Sub-s (1): By notice direct, etc.** As to the service of notices and directions, see s 113 post.

**Application . . . for fresh authorisation.** As to the withdrawal of authorisation where a society has failed to make such an application or has been refused fresh authorisation, see s 40 post; as to the placing on the public file of a copy of the terms of authorisation where an application for fresh authorisation under this section is granted, see s 32(6) ante, Sch 13, para 5(2) post.

For the power of the Commission to exercise the powers conferred by this section where a registered friendly society or an incorporated friendly society (being a regulated friendly society which is an authorised person) contravenes the Financial Services Act 1986, see Sch 11, para 26(1), (2) to the 1986 Act ante.

**Sub-s (2): 3(6) months beginning with, etc.** The use of the words "beginning with" makes it clear that in computing this period the day from which it runs is to be included; see *Hare v Gocher* [1962] 2 QB 641, [1962] 2 All ER 763, and *Trow v Ind Coope (West Midlands) Ltd* [1967] 2 QB 899 at 909, [1967] 2 All ER 900, CA. See also *Dodds v Walker* [1981] 2 All ER 609, [1981] 1 WLR 1027, HL; *E J Riley Investments Ltd v Eurostile Holdings Ltd* [1985] 3 All ER 181, CA, and 45 Halsbury's Laws (4th edn) para 1111, as to the day of expiry of periods of a month or a specified number of months.

**Sub-s (5): Authorisation shall expire on that date.** See further s 58(4) post.

**Sub-s (6): This Part of this Act.** See Pt IV (ss 31-43 and Sch 13).

**Definitions.** For "the Commission", see s 1(1) ante; for "authorisation" and "authorised", see s 32(9) ante; for "friendly society", see ss 43, 116 post; for "general business" and "long term business", see s 117(1) post; for "notice", see s 119(1) post.

#### 40 Withdrawal of authorisation in respect of new business

(1) Subject to the following provisions of this section, the Commission may by notice direct—

- (a) that a friendly society authorised to carry on insurance business shall, from a date specified in the direction, cease to be authorised to effect contracts of insurance, or contracts of a class (or part of a class) so specified; or
- (b) that a friendly society authorised to carry on non-insurance business shall, from a date specified in the direction, cease to be authorised to effect contracts for non-insurance benefits, or contracts of a description so specified.

(2) The Commission shall give such a direction in relation to a friendly society if—

- (a) in the case of an incorporated society, a special resolution has been passed for its voluntary winding up;
- (b) an order to wind up the society has been made;
- (c) an event declared by the rules of the society to be the termination of the society has happened;
- (d) an instrument of dissolution has been executed as mentioned in section 93(1)(b) of the 1974 Act or a special resolution approving an instrument of dissolution under section 20 above has been passed; or
- (e) in the case of a registered society, the Commission has made an award under section 95(3) or 95A(1) of the 1974 Act for the dissolution of the society.

(3) The Commission may give such a direction in relation to a friendly society at the request of the society or if—

- (a) it appears to the Commission that the society has failed to satisfy an obligation to which it is subject by virtue of the Industrial Assurance Act 1923, the 1974 Act, the Industrial Assurance (Northern Ireland) Order 1979 or this Act;
- (b) there exists a ground on which the Commission would be prohibited from granting authorisation to the society;
- (c) it appears to the Commission to be expedient to make the proposed direction in order to protect the interests of members of the society;
- (d) the authorisation was subject to conditions and it appears to the Commission that the society has not complied with a condition;

- (e) it appears to the Commission that the society has failed to satisfy an obligation to which it is subject by or on behalf of the society, or that the society has failed to comply with a condition of the law of a country or territory;
- (f) it appears to the Commission that the society has failed to comply with an obligation of the law of a country or territory;
- (g) the society, having failed to comply with section 39 above, has failed to effect the period allowed for the effecting of new business since the previous authorisation.

(4) A direction under this section in relation to a friendly society having effect without the pursuance of a term of a contract of insurance.

(5) A direction under this section in relation to a friendly society.

- (a) shall be given in writing;
- (b) may not be revoked.

but has effect without the pursuance of a term of a contract of insurance.

#### NOTES

**Commencement.** See the notes on the commencement of this Act.

**General Note.** See the General Note on this Part of the Act.

**Sub-s (1): Commission may give such a direction.** The Commission may exercise the powers conferred by this section in relation to a friendly society (being a regulated friendly society) which is an authorised person under the Financial Services Act 1986, see s 26(1), (2) to the 1986 Act ante.

**As to the right of appeal following a direction under s 58 post.** As to the service of notice of appeal, see s 58(5) above and Sch 13, Pt II post.

**Carry on business.** Cf the notes on s 32(9) ante.

**Sub-s (2): Special resolution.** See the notes on s 32(9) ante.

**Voluntary winding up.** See the notes on s 32(9) ante.

**Rules of the society.** For the definition of "rules", see s 32(9) ante.

**Sub-s (3): Direction . . . to give such a direction by virtue of this section.** The Commission may give a direction by virtue of this section in relation to a friendly society which is an authorised person under the Financial Services Act 1986, see s 26(1), (2) to the 1986 Act ante.

**Prohibited from granting authorisation.** See the notes on s 32(9) ante.

**Subject to conditions.** See the notes on s 32(9) ante.

**False.** A statement may be false if it is untrue or misleading. See *Lord Kylsant* [1932] 1 KB 442, [1932] 1 All ER 101, CA.

**Material particular.** A particular is material if it is more credible; see *R v Tyson* (1974) 1 WLR 820, CA.

**Misleading.** See the note "False or misleading" on s 32(9) ante.

**United Kingdom.** See the notes on s 32(9) ante.

**Sub-s (5): Part II of Schedule 13.** See the notes on s 32(9) ante.

**Definitions.** For "the Commission", see s 1(1) ante; for "class" and "contract for insurance", see ss 43, 116 post; for "friendly society", see s 43(1) ante; for "insurance business", see s 117(1) ante; for "notice", see s 119(1) post; for "special resolution", see s 32(9) ante.

- (e) it appears to the Commission that information furnished to it on behalf of the society or, in connection with an application for authorisation, by or on behalf of an officer of the society is false in a material particular, misleading or inaccurate;
- (f) it appears to the Commission that a friendly society has failed to satisfy an obligation to which it is subject by virtue of any provision of the law of a country or territory outside the United Kingdom; or
- (g) the society, having been directed to apply for fresh authorisation under section 39 above, has either failed to make such an application within the period allowed or been refused fresh authorisation covering the effecting of new contracts of any description covered by the society's previous authorisation.

(4) A direction under this section shall not prevent a friendly society from effecting an insurance contract, or a contract for non-insurance benefits, in pursuance of a term of a subsisting contract of that description.

(5) A direction under this section or section 41 below—

- (a) shall be given in accordance with Part II of Schedule 13 to this Act, and
- (b) may not be revoked or varied,

but has effect without prejudice to the subsequent grant to the society of authorisation to carry on any business to which the direction relates.

#### NOTES

**Commencement.** See the note to s 36 ante.

**General Note.** See the General Note to s 1 ante.

**Sub-s (1): Commission may by notice direct, etc.** For the power of the Commission to exercise the powers conferred by this section where a registered friendly society or an incorporated friendly society (being a regulated friendly society which is an authorised person) contravenes the Financial Services Act 1986, see Sch 11, para 26(1), (2) to the 1986 Act ante.

As to the right of appeal following a decision by the Commission to withdraw authorisation, see s 58 post. As to the service of notices and directions, see s 113 post; and as to directions, see also sub-s (5) above and Sch 13, Pt II post.

**Carry on business.** Cf the note "Carrying on . . . business" to s 7 ante.

**Sub-s (2): Special resolution.** See s 30 ante, Sch 12, para 7 post.

**Voluntary winding up.** See s 21 ante.

**Rules of the society.** For the matters to be covered by such rules, see s 5(6) ante, Sch 3, para 5 post.

**Sub-s (3): Direction . . . to protect the interests of members.** By virtue of s 50(2) post the giving of a direction by virtue of sub-s (3)(c) above is a prudential power relevant for the purposes of that section.

**Prohibited from granting authorisation.** See ss 32(3), (8), (9), 37(1), (1A) ante.

**Subject to conditions.** See ss 34, 35(2), 36 ante.

**False.** A statement may be false on account of what it omits even though it is literally true; see *v Lord Kylsani* [1932] 1 KB 442, [1931] All ER Rep 179, and *R v Bishirgian* [1936] 1 All ER 586; and cf *Curtis v Chemical Cleaning and Dyeing Co Ltd* [1951] 1 KB 805 at 808, 809, [1951] 1 All ER 631 at 634, CA. Whether or not gain or advantage accrues from the false statement is irrelevant; see *Jones v Meatyard* [1939] 1 All ER 140; *Stevens & Steeds Ltd and Evans v King* [1943] 1 All ER 314; *Clear v Smith* [1981] 1 WLR 399, [1980] Crim LR 246; and *Barrass v Reeve* [1980] 3 All ER 705, [1981] 1 WLR 408.

**Material particular.** A particular may be material on the ground that it renders another statement more credible; see *R v Tyson* (1867) LR 1 CCR 107. As to whether evidence should be adduced to show why a piece of information was a material particular, see *R v Mallett* [1978] 3 All ER 10, [1978] 1 WLR 820, CA.

**Misleading.** See the note "False or misleading" to s 62 post.

**United Kingdom.** See the note to s 14 ante.

**Sub-s (5): Part II of Schedule 13.** The relevant provisions are contained in paras 10–12 of that Schedule post.

**Definitions.** For "the Commission", see s 1(1) ante; for "authorisation" and "authorised", see s 32(9) ante; for "class" and "contract for non-insurance benefits", see s 43 post; for "friendly society", see ss 43, 116 post; for "incorporated friendly society" and "registered friendly society", see s 116 post; for "insurance business", see s 117(1), (2) post; for "contract of insurance", "non-insurance business" and "officer", see s 119(1) post; for "special resolution", see Sch 12, para 7 post.

1974 Act. *See* the Friendly Societies Act 1974 ante; see s 119(1) post.  
**Industrial Assurance Act 1923.** *See* this title ante.  
**Industrial Assurance (Northern Ireland) Order 1979.** SI 1979/1574 (NI 13).

#### 41 Withdrawal of authorisation to carry on insurance business

(1) Where the Commission is satisfied that a friendly society which is authorised to carry on insurance business—

- (a) has ceased to carry on in the United Kingdom any insurance business, or insurance business of any class (or of any part of a class) specified in the society's authorisation; or
- (b) has not, since the grant of authorisation to carry on insurance business of any class (or part of a class), carried on in the United Kingdom any insurance business or insurance business of that class (or part of a class) and at least twelve months has elapsed since that grant;

the Commission may by notice direct that the society shall cease to be authorised to carry on insurance business or, as the case may be, insurance business of that class (or part of a class).

(2) Where the Commission is satisfied that a friendly society which is authorised to carry on non-insurance business—

- (a) has ceased to carry on in the United Kingdom any non-insurance business or non-insurance business of a description specified in the authorisation; or
- (b) has not, since the grant of authorisation to carry on non-insurance business of any description, carried on in the United Kingdom any non-insurance business or non-insurance business of that description, and at least twelve months has elapsed since that grant;

the Commission may direct that it shall cease to be authorised to carry on non-insurance business or, as the case may be, non-insurance business of that description.

(3) For the purposes of this section a friendly society shall be taken to have ceased to carry on business, or business of a particular class or description, if at no time during a financial year of the society which began and ended during the currency of the authorisation did it carry on business or, as the case may be, business of that class or description.

#### NOTES

**Commencement.** *See* the note to s 36 ante.

**General Note.** *See* the General Note to s 1 ante.

**Carry on . . . business.** *Cf* the note "Carrying on . . . business" to s 7 ante.

**United Kingdom.** *See* the note to s 14 ante.

**Months.** *See* the note to s 27 ante.

**Commission may by notice direct, etc.** As to the abatement of proceedings on an application for fresh authorisation, see s 39 ante; as to the effect of a direction given under this section, see s 40(5) ante.

As to the service of notices and directions, see s 113 post, and see also as to directions, s 40(5) ante and Sch 13, Pt II post.

**Society shall cease to be authorised.** As to the right of appeal following a decision by the Commission to withdraw authorisation, see s 58 post.

**Definitions.** For "the Commission", see s 1(1) ante; for "authorisation" and "authorised", see s 32(9) ante; for "class", see s 43 post; for "friendly society", see ss 43, 116 post; for "insurance business", see s 117(1)-(5) post; for "financial year", see s 118 post; for "non-insurance business", see s 119(1) post.

#### 42 Contracts effected

(1) Where a contract between a friendly society and a member may, subject to the following provisions, be

- (a) to enforce the contract;
- (b) to recover any compensation payable with it;

and the compensation so payable, any court of competent jurisdiction may determine.

(2) Any such court may, in exercising its jurisdiction under subsection (1) above, order

- (a) that the society should be wound up if it did not constitute a company;
- (b) that it is just and equitable to wind up the society.

(3) A member who has effected a contract under subsection (1) above shall

- (a) shall not be entitled to any benefit under the contract;
- (b) shall repay any amount received under the contract.

and, where any property has been received by the society under this subsection to that property, the time at which it was received.

(4) A contravention of subsection (1) above in respect of a contract of insurance or any greater extent than is provided for in subsection (1) above in respect of a reinsurance contract entered into

#### NOTES

**Commencement.** *See* the note to s 36 ante.  
**Just and equitable.** *Cf* the note "Just and equitable" to s 1 ante.  
**Reinsurance contract.** As to the definition of "reinsurance contract", see s 117(1)-(5) post; for "contract of insurance", see s 43, 116 post; for "contract of reinsurance", see s 117(1)-(5) post.

#### 43 Interpretation of Part 2

In this Part of this Act—

- "authorisation" means the authorisation given with section 3 of the Industrial Assurance Act 1923;
- "class", in relation to a friendly society, means the class of members defined in section 2 to this Act;
- "contract for non-insurance business" means a contract for non-insurance business of carrying on any business other than insurance;
- "friendly society", in relation to a friendly society, means the centenary of the society's formation;
- "industrial assurance contract" means a contract of insurance under the Industrial Assurance Act 1923 (Northern Ireland).

*Supplementary***42 Contracts effected in contravention of section 31(1)**

(1) Where a contract of insurance or for non-insurance benefits is entered into between a friendly society and a member in contravention of section 31(1) above the member may, subject to subsection (2) below, elect—

- (a) to enforce the contract; or
- (b) to recover any money paid by him under the contract, together with compensation for any loss sustained by him as a result of having parted with it;

and the compensation so recoverable shall be such as the parties may agree or as any court of competent jurisdiction may, on the application of either party, determine.

(2) Any such court may allow money paid by a member under a contract to which subsection (1) applies to be retained by the friendly society if it is satisfied—

- (a) that the society reasonably believed that its entering into the contract did not constitute a contravention of section 31(1) above; and
- (b) that it is just and equitable for the money to be retained.

(3) A member who recovers the money paid under a contract to which subsection (1) above applies—

- (a) shall not be entitled to any benefits under the contract; and
- (b) shall repay any money and return any other property received by him under the contract;

and, where any property so received has passed to a third party, the reference in this subsection to that property shall be construed as a reference to its value at the time at which it was received by the member.

(4) A contravention of subsection (1) of section 31 above shall not make a contract of insurance or contract for non-insurance benefits illegal or invalid to any greater extent than is provided in this section; and a contravention of that subsection in respect of a contract of insurance shall not affect the validity of any reinsurance contract entered into in respect of that contract.

**NOTES**

**Commencement.** See the note to s 36 ante.

**Just and equitable.** Cf the note to s 22 ante.

**Reinsurance contract.** As to such contracts, see s 12 ante.

**Definitions.** For "contract for non-insurance benefits", see s 43 post; for "friendly society", see ss 43, 116 post; for "contract of insurance", see s 119(1) post.

**43 Interpretation of Part IV**

In this Part of this Act—

"authorisation" and related expressions shall be construed in accordance with section 32(9) above;

"class", in relation to insurance business, means a class specified in Schedule 2 to this Act;

"contract for non-insurance benefits" means a contract effected in the course of carrying on any non-insurance business;

"friendly society", in relation to a registered friendly society with branches, means the central body and the branches of the society;

"industrial assurance business" has the meaning given in section 1(2) of the Industrial Assurance Act 1923 or Article 3(1) of the Industrial Assurance (Northern Ireland) Order 1979;



## NOTES

**Commencement.** This section was brought into force on 13 January 1993 for the purposes of the regulation of the business of incorporated friendly societies by the Friendly Societies Act 1992 (Commencement No 3 and Transitional Provisions) Order 1993/16 (made under s 126(2) post); sub-s (8) was brought into force on 13 September 1993 and sub-ss (1)–(7) were brought into force on 1 January 1994 for all remaining purposes by the Friendly Societies Act 1992 (Commencement No 6 and Transitional Provisions) Order 1993, SI 1993/2213 (made under s 126(2), (3) post).

**General Note.** This section and ss 45–47 post give effect to the proposals contained in paras 6.20, 6.21 of the Green Paper "Friendly Societies: A New Framework" (Cm 919) (January 1990), that a friendly society engaging in life insurance business should appoint an actuary who will carry out regular actuarial valuations and annual and triennial investigations into the condition of certain societies.

**Sub-s (1): Carries on . . . business.** Cf the note "Carrying on . . . business" to s 7 ante.

**United Kingdom.** See the note to s 14 ante.

**Appoint an actuary.** As to the duties, etc of an actuary under this Act, see s 12(3) ante, ss 46, 47, 62(5), (12), 64(1)(a), (2)(c), 65(3), (6), 67, 77(2), 87(2)–(5), 88(2), 92(1), (2)(d), 106, Sch 13, Pt I, para 2(4)(a) post.

**Practicable.** See the note to s 26 ante.

**Sub-s (2): One month beginning with, etc.** See the note "3(6) months beginning with, etc" to s 39 ante.

**Sub-s (3): May direct, etc.** As to the service of directions, see s 113 post.

**Sub-s (6): 14 days commencing with, etc.** The use of the words "commencing with" makes it clear that in computing this period the day from which it runs is to be included; see *Hare v Gocher* [1962] 2 QB 641, [1962] 2 All ER 763, and *Trow v Ind Coope (West Midlands) Ltd* [1967] 2 QB 899 at 909, [1967] 2 All ER 900, CA.

**Definitions.** For "the Commission", see s 1(1) ante; for "friendly society", see s 116 post; for "long term business", see s 117(1) post; for "notice", see s 119(1) post.

**Regulations under this section.** The Friendly Societies (Qualifications of Actuaries No 2) Regulations 1993, SI 1993/2518.

For general provisions as to regulations, see s 121 post.

## 45 Valuation of assets and liabilities

(1) Any determination of the value of any assets or the amount of any liabilities of a friendly society which is required for the purposes of any provision of this Part of this Act shall be made in accordance with regulations made by the Commission with the consent of the Treasury.

(2) Without prejudice to the generality of subsection (1) above, regulations under this section may provide that, for any specified purpose, assets or liabilities of any specified class or description shall be left out of account or taken into account only to a specified extent.

## NOTES

**Commencement.** This section and s 50 post were brought into force on 13 January 1993 for the purposes of the regulation of the business of incorporated friendly societies by the Friendly Societies Act 1992 (Commencement No 3 and Transitional Provisions) Order 1993, SI 1993/16 (made under s 126(2) post), and on 13 September 1993 for all remaining purposes by the Friendly Societies Act 1992 (Commencement No 6 and Transitional Provisions) Order 1993, SI 1993/2213 (made under s 126(2), (3) post).

**General Note.** See the General Note to s 44 ante.

**This Part of this Act.** ie Pt V (ss 44–67).

**Treasury.** See the note to s 1 ante.

**Definitions.** For "the Commission", see s 1(1) ante; for "friendly society", see s 116 post.

**Regulations under this section.** The Friendly Societies (Insurance Business No 2) Regulations 1993, SI 1993/2520.

For general provisions as to regulations, see s 121 post.

*Actuarial investigations*

## 46 Annual investigation into condition of certain societies

(1) A friendly society which is authorised under section 32 above to carry on long term business and which—

- (a) is a society to which subsection 37(2) above applies; or
- (b) is a society of a description prescribed by regulations,

shall, once in every period of 12 months, cause an investigation to be made by the appropriate actuary into the financial condition of the society in respect of its long term business.

(2) The first investigation into a society's financial condition under this section shall be—

- (a) in the case of a friendly society to which section 37(2) above applies which—
  - (i) is a registered friendly society that was authorised under the Friendly Societies (Long Term Insurance Business) Regulations 1987; or
  - (ii) is an incorporated friendly society which was formerly a registered friendly society so authorised,

an investigation into its condition at a date not later than 12 months after the date to which the accounts of the society were made up for the purposes of the last investigation under regulation 11 of those regulations;

- (b) in the case of any other friendly society to which section 37(2) above applies, an investigation into its condition at a date not later than 12 months after the date on which it became such a society or the commencement of this section, whichever is later; and
- (c) in the case of a friendly society which is of a description prescribed in regulations under subsection (1)(b) above, an investigation into its condition at a date not later than 12 months after it became such a society or the coming into operation of the regulations, whichever is later.

(3) When such an investigation has been made, the society shall—

- (a) cause an abstract of the actuary's report of the investigation to be made; and
- (b) send three copies of that abstract to the Commission within the period of 6 months beginning with the date to which the accounts of the society were made up for the purposes of the investigation or such further period (not exceeding 3 months) as the Commission may by notice to the society direct;

and one of those copies shall be signed by such persons as may be prescribed by regulations.

(4) The Commission shall consider the abstract, and if it appears to the Commission to be inaccurate or incomplete in any respect, it shall communicate with the society with a view to the correction of any such inaccuracies and the supply of deficiencies.

(5) An investigation under this section shall include—

- (a) a valuation of the liabilities of the society attributable to its long term business; and
- (b) a determination of any excess over those liabilities of the assets representing the fund or funds maintained by the society in respect of that business and, where any rights of any long term policy holders to participate in profits relate to particular parts of such a fund, a determination of any excess of assets over liabilities in respect of each of those parts.

(6) At least once in every period of 5 years a friendly society to which this section applies shall prepare a statement of its long term business at the date to

which the accounts of the society were made up under this section.

(7) The form and content of the statement shall be such as the Commission may by regulations be given to societies of a description prescribed by regulations.

(8) Regulations under this section shall be made with the consent of the Treasury.

#### NOTES

**Commencement.** This section regulates the business of friendly societies (Commencement No 3 and Transitional Provisions Regulations 1993, SI 1993/2520, paras 12, 14 post); sub-ss (1), (3), (8) were brought into force on 1 January 1993 (Commencement No 6 and Transitional Provisions Regulations 1993, SI 1993/2520, paras 12, 14 post).

**General Note.** See the General Note to the Regulations. Sub-s (1): Carry on . . . business. Once in every period of 12 months. For the meaning of "months" see s 97, Sch 17, paras 12, 14 post.

Sub-s (2): 12 months after the date to which the accounts of the society were made up. Sub-s (3): Send . . . copies. Send abstracts of actuaries' reports to the Commission for the purposes of the Policyholders' Protection Act 1975 of that section as added by s 97 of the Friendly Societies Act 1972 applied to such friendly societies by s 97, Sch 17, paras 12, 14 post.

6 months beginning with the date to which the accounts of the society were made up. By notice. As to the service of notices see s 97, Sch 17, paras 12, 14 post. Sub-s (4): Appears. See the Friendly Societies Act 1972, s 97, Sch 17, paras 12, 14 post. Sub-s (7): May direct. As to the power to direct see s 97, Sch 17, paras 12, 14 post. Sub-s (8): Treasury. See the Friendly Societies Act 1972, s 97, Sch 17, paras 12, 14 post.

**Definitions.** For "the Commission" see s 97, Sch 17, paras 12, 14 post. For "the actuary", "the appropriate actuary" and "registered friendly society", see s 97, Sch 17, paras 12, 14 post. **Friendly Societies (Long Term Insurance Business) Regulations under this section.** 1993, SI 1993/2520.

For general provisions as to regulations see s 97, Sch 17, paras 12, 14 post. **Transitional provisions.** See the Friendly Societies (Long Term Insurance Business) Regulations 1993, SI 1993/2520.

#### 47 Triennial investigation

(1) Subject to the following provisions, a society to which this section applies shall—

- (a) is not a society to which section 37(2) above applies; or
- (b) is a society of a description prescribed by regulations,

shall, at least once in every period of 3 years, cause an investigation to be made by the appropriate actuary into the financial condition of the society in respect of its long term insurance business.

(2) Where an investigation is made under this section, the appropriate actuary shall cause an abstract of the actuary's report of the investigation to be made, and send three copies of that abstract to the Commission within 6 months of the date to which the accounts of the society were made up for the purposes of the investigation or such further period (not exceeding 3 months) as the Commission may by notice to the society direct;

which the accounts of the society are made up for the purposes of an investigation under this section.

(7) The form and contents of any abstract or statement under this section shall be such as the Commission may direct; and a direction under this subsection may be given to societies of a specified description or to a specified society.

(8) Regulations under this section shall be made by the Commission with the consent of the Treasury.

#### NOTES

**Commencement.** This section was brought into force on 13 January 1993 for the purposes of the regulation of the business of incorporated friendly societies by the Friendly Societies Act 1992 (Commencement No 3 and Transitional Provisions) Order 1993, SI 1993/16 (made under s 126(2) post); sub-ss (1), (3), (8) were brought into force on 13 September 1993 and sub-ss (2), (4)–(7) were brought into force on 1 January 1994 for all remaining purposes by the Friendly Societies Act 1992 (Commencement No 6 and Transitional Provisions) Order 1993, SI 1993/2213 (made under s 126(2), (3) post).

**General Note.** See the General Note to s 44 ante.

**Sub-s (1): Carry on . . . business.** Cf the note "Carrying on . . . business" to s 7 ante.

**Once in every period of 12 months.** Triennial investigations must be carried out in the case of certain other societies; see s 47 post.

For the meaning of "months", see the note to s 27 ante.

**Sub-s (2): 12 months after, etc.** See the note "Seven months after, etc" to s 3 ante.

**Sub-s (3): Send . . . copies of that abstract, etc.** Certain friendly societies which are required to send abstracts of actuaries' reports under this section are "societies in financial difficulties" for the purposes of the Policyholders Protection Act 1975, s 16, Vol 22, title Insurance (Pt 1) (see sub-s (10) of that section as added by s 97, Sch 17, para 11 post), and ss 17, 19, 20 of, and Sch 2 to, that Act are applied to such friendly societies (see ss 17(8), 19(11) thereof, as amended and added, respectively, by s 97, Sch 17, paras 12, 14 post).

**6 months beginning with, etc.** See the note "3(6) months beginning with, etc" to s 39 ante.

**By notice.** As to the service of notices, see s 113 post.

**Sub-s (4): Appears.** See the note "Thinks fit" to s 4 ante.

**Sub-s (7): May direct.** As to the service of directions, see s 113 post.

**Sub-s (8): Treasury.** See the note to s 1 ante.

**Definitions.** For "the Commission", see s 1(1) ante; for "friendly society", "incorporated friendly society", and "registered friendly society", see s 116 post; for "long term business", see s 117(1) post; for "the actuary", "the appropriate actuary" and "notice", see s 119(1) post.

**Friendly Societies (Long Term Insurance Business) Regulations 1987.** SI 1987/2132.

**Regulations under this section.** The Friendly Societies (Insurance Business No 2) Regulations 1993, SI 1993/2520.

For general provisions as to regulations, see s 121 post.

**Transitional provisions.** See the Friendly Societies Act 1992 (Transitional and Consequential Provisions and Savings) Regulations 1993, SI 1993/932, regs 3, 4.

#### 47 Triennial investigations into condition of certain societies

(1) Subject to the following provisions of this section, a friendly society which—

- (a) is not a society to which section 46 above applies and carries on insurance business; or
- (b) is a society to which that section applies and carries on general business;

shall, at least once in every period of 3 years, cause an investigation to be made by the appropriate actuary into the financial condition of the society in respect of its insurance business.

(2) Where an investigation under this section is carried out, the society shall cause an abstract of the actuary's report to be made and sent to the Commission within 6 months of the date to which the accounts of the society were made up for the purposes of that investigation or such further period (not exceeding 6 months) as the Commission may by notice to the society direct.

(3) The first investigation into a society's financial condition under this section shall be—

- (a) in the case of a registered friendly society, or an incorporated friendly society which was formerly a registered friendly society, an investigation into its condition at a date not later than 3 years after—
  - (i) the commencement of this section; or
  - (ii) the date as at which its assets and liabilities were last valued under section 41 of the 1974 Act,

whichever is earlier; or

- (b) in the case of any other incorporated friendly society, an investigation into its condition at a date not later than 3 years after the date on which it is registered.

(4) Subject to subsection (5) below, a friendly society shall send to the Commission, not later than 6 months after each anniversary of the date to which the accounts of the society were made up for the purposes of the last investigation into its financial condition under this section—

- (a) a certificate given by the appropriate actuary that there has been no material change in its financial condition in respect of its insurance business since it sent the last abstract under subsection (2) above; or
- (b) a statement by the appropriate actuary that he is unable to give such a certificate.

(5) A society is not under the duty imposed by subsection (4) above if, before a date by which a certificate or statement must be sent, a further investigation under this section has been carried out and the requisite abstract has been sent to the Commission.

(6) If a society sends the Commission a statement under subsection (4)(b) above, it shall be the society's duty to cause an investigation to be carried out under this section; and in such a case—

- (a) the date to which the society's accounts are made up for the purposes of the investigation shall be the latest anniversary of the date to which its accounts were made up for the purposes of the last investigation under this section; and
- (b) the abstract required by subsection (2) above shall be sent to the Commission within 6 months of the date by which that statement was required to be sent under subsection (4) above.

(7) An investigation under this section into the financial condition of a society which falls within subsection (1)(a) above shall include—

- (a) a valuation of the liabilities of the society attributable to its insurance business; and
- (c) a determination of any excess over the liabilities so attributable of the assets representing the fund or funds maintained by the society in respect of its insurance business and, where any rights of any long term policy holders to participate in profits relate to particular parts of such a fund, a determination of any excess of assets over liabilities in respect of each of those parts.

(8) An investigation under this section into the financial condition of a society falling within subsection (1)(b) above shall include—

- (a) a valuation of the liabilities of the society attributable to its general business; and
- (b) a determination of any excess over the liabilities so attributable of the assets representing the fund or funds maintained by the society in respect of that business.

(9) The form and content of the investigation shall be such as the Commission may direct; and the Commission may direct a specified description or to a

(10) The Commission may direct a society to (6) above in respect of a society whose insurance business, it

(11) The Commission may direct a society to (6) above in respect of a society in the Commission's opinion, the nature of its business, or the nature of its nature or scale or the

(12) In relation to any society to which subsection (11) above, subsection

- (a) references to the Commission in relation to the
- (b) subsections (7) and (8) above shall be taken to be references to those attrib

(13) The Commission may direct a society to (6) above in respect of a society to which subsection (11) above, subsection

(14) A direction under subsection (11) above shall be given in the form of a provision as the Commission

#### NOTES

The lettering of the paragraphs of this section is for the purposes of the regulation of the Act 1992 (Commencement No. 3 s 126(2) post) and on 1 January 1993 (Commencement No. 6 and Transitional Provisions and Savings) Regulation (3) post.

**General Note.** See the General Note.

**Sub-s (1):** Carries on . . . business.

**Sub-s (2):** Within 6 months after the date of the notice . . . direct. As to the

**Sub-s (3):** 3 years after, etc.

**Sub-s (4):** 6 months after, etc.

**Sub-s (6):** It shall be the society's duty to cause an investigation to be carried out under this section.

**Sub-s (9):** May direct. As to the

**Sub-s (10):** Deem. Cf the note on

**Sub-ss (11), (14):** Opinion; etc.

**Definitions.** For "the Commission", "friendly society", and "registered friendly society", and "general business", see s 117(1) and s 119(1) post.

**1974 Act.** In the Friendly Societies Act 1974 (Transitional Provisions and Savings) Regulation

#### 48 Margins of solvency of friendly societies

- (1) This section applies to a friendly society which
  - (a) carries on long term business in respect of which subsection (2) of section 48 applies;
  - (b) carries on general business in respect of which subsection (3) of section 48 applies;

(9) The form and contents of any abstract under this section shall be such as the Commission may direct; and such a direction may be given to societies of a specified description or to a specified society.

(10) The Commission may dispense with the requirements of subsections (1) to (6) above in respect of societies to whose purposes, or the nature or scale of whose insurance business, it may deem those provisions inapplicable.

(11) The Commission may dispense with the requirements of subsections (1) to (6) above in respect of any particular insurance business of a society if, in the Commission's opinion, those provisions are inapplicable to that business because of its nature or scale or the manner in which it is carried on.

(12) In relation to any society on which a partial exemption is conferred under subsection (11) above, subsections (1) to (8) above shall have effect as if—

- (a) references to the financial condition of the society excluded its condition in relation to the business to which the partial exemption relates; and
- (b) subsections (7) and (8) referred only to the assets and liabilities other than those attributable to that business.

(13) The Commission may direct that this section shall have effect, in relation to societies of a specified description or to a specified society, as if for any reference to 3 years there were substituted a reference to 5 years.

(14) A direction under subsection (12) or (13) above may make such transitional provision as the Commission considers appropriate.

#### NOTES

The lettering of the paragraphs of sub-s (7) above follows the Queen's Printer's copy of this Act.

**Commencement.** This section and s 55 post were brought into force on 13 January 1993 for the purposes of the regulation of the business of incorporated friendly societies by the Friendly Societies Act 1992 (Commencement No 3 and Transitional Provisions) Order 1993, SI 1993/16 (made under s 126(2) post) and on 1 January 1994 for all remaining purposes by the Friendly Societies Act 1992 (Commencement No 6 and Transitional Provisions) Order 1993, SI 1993/2213 (made under s 126(2), (3) post).

**General Note.** See the General Note to s 44 ante.

**Sub-s (1): Carries on . . . business.** Cf the note "Carrying on . . . business" to s 7 ante.

**Sub-s (2): Within 6 months of, etc.** See the note "Within one month, etc" to s 29 ante.

**By notice . . . direct.** As to the service of notices and directions, see s 113 post.

**Sub-s (3): 3 years after, etc.** Cf the note "Seven months after, etc" to s 3 ante.

**Sub-s (4): 6 months after, etc.** See the note "Seven months after, etc" to s 3 ante.

**Sub-s (6): It shall be the society's duty, etc.** Cf the note "It shall be the duty, etc" to s 4 ante.

**Sub-s (9): May direct.** As to the service of directions, see s 113 post.

**Sub-s (10): Deem.** Cf the note "Deemed" to s 8 ante.

**Sub-ss (11), (14): Opinion; considers appropriate.** See the note "Thinks fit" to s 4 ante.

**Definitions.** For "the Commission", see s 1(1) ante; for "friendly society", "incorporated friendly society", and "registered friendly society", see s 116 post; for "insurance business", see s 117(1), (2) post; for "general business", see s 117(1) post; for "actuary", "the appropriate actuary" and "notice", see s 119(1) post.

**1974 Act.** See the Friendly Societies Act 1974 ante; see s 119(1) post.

**Transitional provisions.** See the Friendly Societies Act 1992 (Transitional and Consequential Provisions and Savings) Regulations 1993, SI 1993/932, regs 4, 5.

#### *Margins of solvency*

#### **48 Margins of solvency in relation to insurance business of certain societies**

(1) This section applies to a friendly society which—

- (a) carries on long term business in the United Kingdom and falls within subsection (2) of section 37 above;
- (b) carries on general business in the United Kingdom and falls within subsection (3) of that section; or



**Definitions.** For "the Commission", see s 1(1) ante; for "friendly society", see s 116 post; for "insurance business", see s 117(1), (2) post; for "long term business" and "general business", see s 117(1) post. Note as to "margin of solvency", sub-s (5) above.

**Regulations under this section.** The Friendly Societies (Insurance Business No 2) Regulations 1993, SI 1993/2520.

For general provisions as to regulations, see s 121 post.

#### 49 Failure to maintain prescribed margin of solvency

(1) If the margin of solvency maintained by a friendly society in respect of its insurance business falls below such amount as may be prescribed by or determined in accordance with regulations made for the purposes of this section by the Commission with the consent of the Treasury, the society shall at the request of the Commission submit to it a short-term financial scheme.

(2) A friendly society that has submitted a scheme to the Commission under subsection (1) above shall propose modifications to the scheme (or the scheme as previously modified) if the Commission considers it inadequate, and shall give effect to any scheme accepted by it as adequate.

(3) Where a friendly society carries on both long term and general business, subsection (1) above shall have effect as if the reference to the margin of solvency maintained by the society were a reference to the margin of solvency maintained in respect of each of those two kinds of business.

#### NOTES

**Commencement.** This section was brought into force on 13 January 1993 for the purposes of the regulation of the business of incorporated friendly societies by the Friendly Societies Act 1992 (Commencement No 3 and Transitional Provisions) Order 1993, SI 1993/16 (made under s 126(2) post); sub-s (1) was brought into force on 13 September 1993 and sub-ss (2), (3) were brought into force on 1 January 1994 for all remaining purposes by the Friendly Societies Act 1992 (Commencement No 6 and Transitional Provisions) Order 1993, SI 1993/2213 (made under s 126(2), (3) post).

**Treasury.** See the note to s 1 ante.

**Carries on . . . business.** See the note "Carrying on . . . business" to s 7 ante.

**Definitions.** For "the Commission", see s 1(1) ante; for "margin of solvency", see s 48(5) ante; for "friendly society", see s 116 post; for "insurance business", see s 117(1), (2) post; for "long term business" and "general business", see s 117(1) post.

**Regulations under this section.** The Friendly Societies (Insurance Business No 2) Regulations 1993, SI 1993/2520.

For general provisions as to regulations, see s 121 post.

#### *Criteria of prudent management*

#### 50 The criteria of prudent management

(1) If it appears to the Commission—

- (a) that there has been or is, on the part of a friendly society or its committee of management, a failure to satisfy any one or more of the following criteria of prudent management; or
- (b) that the society's officers do not have the capacity and intention to conduct its affairs so as to satisfy those criteria,

it shall be entitled to assume for the purposes of its relevant prudential powers that it is expedient to exercise the powers in order to protect the interests of members of the society.

(2) The prudential powers relevant for the purposes of this section are its powers—

- (a) under section 34 above to impose conditions on a society's authorisation;
- (b) under section 40 above to give a direction by virtue of subsection (3)(c);

- (c) under section 51 below to make an order forbidding the acceptance of new members;
- (d) under section 53 below, to give a direction;
- (e) under section 90 below, to order a transfer of the society's engagements.

(3) For the purposes of this Act, the criteria of prudent management are—

- 1 Maintenance of any margin of solvency required by section 48 above.
- 2 Maintenance of liquid assets sufficient to meet the liabilities of the society as they become due.
- 3 Maintenance of the requisite accounting records and systems of control of business and of inspection and report.
- 4 Direction and management—
  - (a) by a sufficient number of persons who are fit and proper to be members of the committee of management or, as the case may be, other officers, in their respective positions,
  - (b) conducted by them, with prudence and integrity, in the interests of the members of the society.
- 5 In relation to insurance business, direction and management which, in addition to satisfying the other requirements as to direction and management, is such as to fulfil the reasonable expectations of members of the society as to the conduct of such business.
- 6 Conduct of the society's activities with adequate professional skills.
- 7 Supervision of the activities—
  - (a) of any subsidiary of the society or of any body of which the society has joint control; and
  - (b) of any registered branch of the society;

with due care and diligence in the interests of the members of the society and without detriment to the conduct of the society's activities.

- [8 In the case of a society to which section 37(2) or (3) above applies, direction and management which, in addition to satisfying the other requirements as to direction and management, is such as to secure compliance with any obligation imposed on the society by any provision (whether of the law of any part of the United Kingdom or of the law of another member State) giving effect to any of the general insurance or life Directives.]

(4) Nothing in this section implies that it is improper for a determination for any purpose of the Commission's relevant prudential powers to take account of factors other than the criteria in subsection (3) above.

(5) In considering whether a society has satisfied the 7th criterion in subsection (3) above, the Commission shall have regard to the extent to which the operation of the subsidiary, jointly controlled body or registered branch is undertaken in accordance with [the other 7 criteria] in that subsection so far as they are relevant.

(6) A failure to satisfy any of the first 3 criteria in subsection (3) above shall be treated, for the purposes of this section, as a failure on the part of a society's committee of management prudently to conduct the affairs of the society.

(7) A failure on the part of an authorised friendly society to comply with any conditions to which its authorisation under section 32 above is subject shall be treated, for the purposes of this section, as a failure on the part of the society's committee of management prudently to conduct the affairs of the society.

(8) Any carrying on by a friendly society of an activity beyond its powers shall be treated, for the purposes of this section, as a failure on the part of the society's committee of management prudently to conduct the affairs of the society.

(9) Any carrying on of activities which are beyond its powers—

- (a) by a subsidiary friendly society;
- (b) by a registered

shall be treated for the purposes of this section as if it were a committee of management of a jointly controlled body or registered branch of the society.

(10) The following provisions of this section shall apply to a society in subsection (3) above in relation to its "activities" including "requisite", with reference to means such as a "sufficient" with reference to management of range and scale

#### NOTES

The words in square brackets were substituted, by the Friendly Societies Act 1974 (3).

**Commencement.** See the note "Thinly Capitalised" s 27 ante, Sch 11 post.

**General Note.** This section is set out in Paper "Friendly Societies: A New Regime" societies to satisfy the Commission's criteria of prudent management set out in sub-s (3) with the criteria of prudent management of a society's members for other purposes set out in sub-s (2) above.

**Appears.** See the note "Thinly Capitalised" s 27 ante, Sch 11 post.

**United Kingdom.** See the note "Member state." See the note "Definitions." For "the Commission" see s 13(9) ante; for "margin of solvency" see s 117(1), (2) post; for "the life Directives" and "officer of the Commission" see s 117(1), (2) post, and as to "the criteria of prudent management" see s 117(1), (2) post.

**Member state.** See the note "Definitions." For "the Commission" see s 13(9) ante; for "margin of solvency" see s 117(1), (2) post; for "the life Directives" and "officer of the Commission" see s 117(1), (2) post, and as to "the criteria of prudent management" see s 117(1), (2) post.

#### 51 Power to forbid acceptance of new members

(1) Subject to the provisions of this section, it shall be expedient to do so in the interests of the members of the friendly society, it may give directions to the society's committee of management to refuse to accept new members.

(2) If the Commission is satisfied that it is expedient to do so in the interests of the members of the friendly society, it may give directions to the society's committee of management to refuse to accept new members.

(3) A notice under subsection (2) above shall be in writing and shall propose a direction.

(4) The Commission shall give notice of any direction proposed under subsection (2) above to the society's committee of management within such period (not being less than 14 days) as the Commission may so requests, shall afford to the society's committee of management within that period.

(5) The Commission may give directions to the society's committee of management to refuse to accept new members.

- (a) by a subsidiary of, or a body jointly controlled by, an incorporated friendly society; or  
 (b) by a registered branch of a registered friendly society,

shall be treated for the purposes of this section as a failure on the part of the society's committee of management to supervise the activities of the subsidiary, jointly controlled body or registered branch with due care and diligence.

(10) The following provisions apply for the interpretation of the list of criteria in subsection (3) above in their application to a friendly society, that is to say—

- “activities” includes activities the society proposes to carry on;  
 “requisite”, with reference to accounting records and systems of control, means such as are required by section 68 below; and  
 “sufficient” with reference to the number of members of a committee of management or of other officers, means sufficient having regard to the range and scale of the society's business.

#### NOTES

The words in square brackets in sub-s (3) were added, and the words in square brackets in sub-s (5) were substituted, by the Friendly Societies (Amendment) Regulations 1993, SI 1993/2519, reg 2(2), (3).

**Commencement.** See the note to s 45 ante.

**General Note.** This section is based on the proposals outlined in paras 6.11, 6.24, 6.25 of the Green Paper “Friendly Societies: A New Framework” (Cm 919) (January 1990), requiring all friendly societies to satisfy the Commission that they are observing certain specified criteria of prudent management set out in sub-s (3) above. If the Commission is not satisfied that a society is complying with the criteria of prudent management or if it thinks it needs to take action to protect the interests of a society's members for other reasons, it may exercise the range of prudential powers contained in sub-s (2) above.

**Appears.** See the note “Thinks fit” to s 4 ante.

**Committee of management.** For general provisions as to the committee of management, see s 27 ante, Sch 11 post.

**United Kingdom.** See the note to s 14 ante.

**Member state.** See the note to s 13 ante.

**Definitions.** For “the Commission”, see s 1(1) ante; for “jointly controlled body” and “subsidiary”, see s 13(9) ante; for “margin of solvency”, see s 48(5) ante; for “friendly society”, “incorporated friendly society”, “registered branch” and “registered friendly society”, see s 116 post; for “insurance business”, see s 117(1), (2) post; for “committee of management”, “the general insurance Directives”, “the life Directives” and “officer”, see s 119(1) post. Note as to “relevant prudential powers”, sub-s (2) above, and as to “the criteria of prudent management”, sub-s (3) above.

#### *Powers of Commission*

##### **51 Power to forbid acceptance of new members**

(1) Subject to the provisions of this section, if the Commission considers it expedient to do so in the interests of the members or potential members of a friendly society, it may give the society a direction forbidding it to accept any new members.

(2) If the Commission proposes to give such a direction, it shall serve on the society a notice stating that it proposes to give a direction.

(3) A notice under subsection (2) above shall specify the grounds for the proposed direction.

(4) The Commission shall consider any representations made by the society within such period (not being less than one month) from the date on which the society is served with the notice as the Commission may allow and, if the society so requests, shall afford to it an opportunity of being heard by the Commission within that period.

(5) The Commission may not give a direction unless all the grounds for giving

it are those, or among those, which were specified in the notice served on the society under subsection (2) above.

(6) On giving a direction, the Commission shall—

- (a) serve notice of it on the society, specifying the grounds for making it;
- (b) publish notice of it in one or more of the London, Edinburgh and Belfast Gazettes and in any such other ways as it considers appropriate; and
- (c) send a copy of it to the central office.

(7) A society which contravenes a direction given to it under this section shall be guilty of an offence and shall be liable—

- (a) on conviction on indictment, to a fine; and
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

(8) The central office shall keep a copy of a direction given to a friendly society under this section in the public file of the society.

#### NOTES

**Commencement.** This section and ss 52–54, 56, 57, 62–67 post were brought into force on 13 January 1993 for the purposes of the regulation of the business of incorporated friendly societies by the Friendly Societies Act 1992 (Commencement No 3 and Transitional Provisions) Order 1993, SI 1993/16 (made under s 126(2) post), and on 28 April 1993 for all remaining purposes by the Friendly Societies Act 1992 (Commencement No 5 and Savings) Order 1993, SI 1993/1186 (made under s 126(2) post).

**Sub-s (1): Give ... a direction.** For the power of the Commission to exercise the powers conferred by this section where a registered friendly society or an incorporated friendly society (being a regulated friendly society which is an authorised person) contravenes the Financial Services Act 1986, see Sch 11, para 26(1), (2) to the 1986 Act ante.

As to the service of directions, see s 113 post, and as to the right of appeal against the Commission's decision to give such a direction, see s 58 post.

**Forbidding it to accept any new members.** By virtue of s 50(2) ante the making of an order forbidding the acceptance of new members by a society is a prudential power relevant for the purposes of that section.

**Sub-s (2): Serve ... a notice.** As to service of notices, see s 113 post.

**Sub-s (4): Month.** See the note "Months" to s 27 ante.

**Sub-s (6): Send a copy of it to the central office.** As to the form of documents to be sent to or by the central office and for the power to prescribe fees for the inspection, etc of documents in the custody of the central office, see s 114 post.

**Sub-s (7): Guilty of an offence.** As to the time limit for commencing proceedings, see s 107 post; as to offences by bodies corporate, partnerships and unincorporated associations, see s 108 post; as to the defence of due diligence, see s 109 post; and as to the jurisdiction of magistrates' courts, see s 110 post.

**Shall be liable; conviction on indictment; fine; statutory maximum.** See the notes to s 31 ante.

**Summary conviction.** See the note to s 18 ante.

**Sub-s (8): Public file.** See s 104 post.

**Definitions.** For "the Commission", see s 1(1) ante; for "the public file", see s 104 post; for "friendly society", see s 116 post; for "the central office" and "notice", see s 119(1) post.

## 52 Applications to court

(1) Where the Commission has reason to believe that any of the conditions mentioned in subsection (2) below is satisfied, it may present a petition to the High Court for the winding up of the society under the applicable winding up legislation.

(2) The conditions referred to in subsection (1) above are—

- (a) that a friendly society is carrying on activities that are not activities which such a society is permitted by this Act or the 1974 Act to carry on;

- (b) that the society is carrying on activities which are prohibited by s 2 to this Act;
- (c) that the society is carrying on activities which are prohibited by virtue of an order made under s 104(1) to this Act;
- (d) that a subsidiary of the society is controlled by a person mentioned in S

and a court shall not make an order under this section unless it is satisfied that one or both of the conditions mentioned in subsection (2) above are satisfied.

(3) Where the Commission is satisfied that the conditions mentioned in subsection (2) above are satisfied, it may present a petition to the High Court for an order under this section.

(4) The conditions referred to in subsection (2) above are—

- (a) any of the conditions mentioned in subsection (2) above;
- (b) that an incorporated friendly society has acquired control of another friendly society mentioned in S

and a court shall not make an order under this section unless it is satisfied that one or both of the conditions mentioned in subsection (2) above are satisfied.

(5) An order under this section shall have effect as if it were an order made by the court in relation to its business as directed in the order, or, where the condition mentioned in subsection (2) above is satisfied, directing the Society to cease to carry on its business.

(6) Where a court makes an order under this section, it shall send a copy of it to the central office in the public file of the society.

(7) The power to present a petition under subsection (5) above shall not be exercisable if the society has previously presented a petition for its winding up under this Act or otherwise, and that petition has not been withdrawn.

(8) In the application of this section to a friendly society which is in Scotland or Northern Ireland, references to the Court of Session shall be construed as references to the Court of Northern Ireland.

(9) In this section "the Commission" means the Commission for Friendly Societies, and "friendly society" means an incorporated friendly society, or a registered friendly society, or (where the society's registered office is in Northern Ireland) an incorporated friendly society (Northern Ireland).

#### NOTES

**Commencement.** See the notes to s 1 ante.

**Sub-s (1): High Court.** See the notes to s 1 ante.

**Winding up of the society.** The power to wind up a friendly society exercisable in the case of an incorporated friendly society is exercisable on a petition under this section, s 97, Sch 17, para 5 post. A friendly society which is not an incorporated friendly society exercisable is a "closing society" under s 12, 13, 14(2)–(9), 15, 19, and ss 12, 13, 14(2)–(9), 15, 19, applied to such societies by ss 11, 12, 13, 14(2)–(9), 15, 19, paras 10, 14 post.

For the power of the Commission to present a petition, see s 52(1) ante.

- (b) that the society is not carrying on any activity falling within Schedule 2 to this Act;
- (c) that the society is failing to satisfy an obligation to which it is subject by virtue of any provision of the law of another member state giving effect to the general insurance or the life Directives;
- (d) that a subsidiary of an incorporated friendly society or a body jointly controlled by such a society is carrying on activities other than those mentioned in Schedule 7 to this Act;

and a court shall not make an order for the winding up of a society by virtue of this section unless it is satisfied that one or more of those conditions is satisfied.

(3) Where the Commission has reason to believe that any of the conditions mentioned in subsection (4) below is satisfied, it may make an application to the High Court for an order under subsection (5) below.

(4) The conditions referred to in subsection (3) above are—

- (a) any of the conditions mentioned in subsection (2) above; or
- (b) that an incorporated friendly society has taken part in forming or has acquired control of a body corporate jointly with any person other than another incorporated friendly society without the consent of the Commission;

and a court shall not make an order under subsection (5) below unless it is satisfied that one or both of the conditions mentioned in this subsection is satisfied.

(5) An order under this subsection is an order directing the society to modify its business as directed in the order or to take such other steps as may be so directed or, where the condition mentioned in subsection (4)(b) above is satisfied, an order directing the Society to cease jointly controlling the body corporate.

(6) Where a court makes an order under subsection (5) above, the Commission shall send a copy of it to the central office and the central office shall keep the copy in the public file of the society.

(7) The power to present a petition or to make an application for an order under subsection (5) above is available to the Commission whether or not it has previously presented a petition or made an application for such an order, as the case may be.

(8) In the application of this section to a friendly society whose registered office is in Scotland or Northern Ireland, references to the High Court shall be read as references to the Court of Session or, as the case may be, the High Court in Northern Ireland.

(9) In this section "the applicable winding up legislation", in relation to an incorporated friendly society, has the same meaning as in section 23 above and, in relation to a registered friendly society, means Part V of the Insolvency Act 1986 or (where the society's registered office is in Northern Ireland) Part VI of the Insolvency (Northern Ireland) Order 1989.

#### NOTES

**Commencement.** See the note to s 51 ante.

**Sub-s (1): High Court.** See the corresponding note to s 25 ante.

**Winding up of the society.** For the functions of the Policyholders Protection Board which are exercisable in the case of an incorporated friendly society if an order has been made for winding up on a petition under this section, see the Policyholders Protection Act 1975, s 5A(2)(c), as inserted by s 97, Sch 17, para 5 post. A friendly society in the case of which the Board's functions are thus exercisable is a "closing society" for the purposes of the 1975 Act (see s 5A(3) thereof as so inserted), and ss 12, 13, 14(2)-(9), 15, 19, 20 of, and Sch 2 to, the 1975 Act, Vol 21, title Insurance (Pt 1), are applied to such societies by ss 11A, 19(11) thereof, as inserted and added, respectively, by s 97, Sch 17, paras 10, 14 post.

For the power of the Commission to exercise the powers conferred by this section where a

registered friendly society or an incorporated friendly society (being a regulated friendly society which is an authorised person) contravenes the Financial Services Act 1986, see Sch 11, para 26(1), (2) to the 1986 Act ante.

**Sub-s (2): Member state.** See the note to s 13 ante.

**Sub-s (4): Body corporate.** See the note "Bodies corporate" to s 7 ante.

**Person.** See the note to s 1 ante.

**Sub-s (6): Send a copy of it to the central office.** As to the form of documents to be sent to the central office and for the power to prescribe fees for the inspection, etc of documents in the custody of the central office, see s 114 post.

**Public file.** See s 104 post.

**Sub-s (8): Registered office.** The memorandum of an incorporated friendly society must specify the address of its registered office; see s 5(6) ante, Sch 3, para 4(1)(c) post.

**High Court in Northern Ireland.** See the corresponding note to s 25 ante.

**Definitions.** For "the Commission", see s 1(1) ante; for "acquires joint control", "jointly controlled body" and "subsidiary", see s 13(9) ante; for "the public file", see s 104 post; for "friendly society", "incorporated friendly society" and "registered friendly society", see s 116 post; for "the central office", "the court", "the general insurance Directives" and "the life Directives", see s 119(1) post. Note as to "the applicable winding up legislation", sub-s (9) above.

**1974 Act.** See the Friendly Societies Act 1974 ante; see s 119(1) post.

**Insolvency Act 1986, Pt V.** See Vol 4, title Bankruptcy and Insolvency.

**Insolvency (Northern Ireland) Order 1989.** SI 1989/2405 (NI 19).

### 53 Residual power to impose requirements for protection of members

(1) If the Commission considers it expedient to do so in order to protect the interests of members of a friendly society which does not require authorisation under section 32 above, it may direct the society to take such action as appears to the Commission to be appropriate, having regard to any risk—

- (a) that the society may be unable to meet its liabilities; or
- (b) that it will not be managed in the interests of its members.

(2) The power conferred by this section shall not be exercised in such a way as to restrict the society's freedom to dispose of its assets except where the ground for intervention arises out of the submission by the society to the Commission of an account or statement specifying, as the amount of any liabilities of the society, an amount appearing to the Commission to have been determined otherwise than in accordance with—

- (a) valuation regulations; or
- (b) where no such regulations are applicable, generally accepted accounting concepts, bases and policies or other generally accepted methods appropriate for friendly societies.

#### NOTES

**Commencement.** See the note to s 51 ante.

**It may direct, etc.** By virtue of s 50(2) ante the giving of a direction under sub-s (1) above is a prudential power relevant for the purposes of that section.

**As to the service of directions,** see s 113 post.

**Appears.** See the note "Thinks fit" to s 4 ante.

**Valuation regulations.** See s 45 ante.

**Definitions.** For "the Commission", see s 1(1) ante; for "friendly society", see s 116 post; for "valuation regulations", see s 119(1) post.

### 54 Supervision of activities of subsidiaries etc

(1) In this section "friendly society group" means an incorporated friendly society, subsidiaries of that society and bodies jointly controlled by it.

(2) If it appears to the Commission that the activities of subsidiaries of an incorporated friendly society or bodies jointly controlled by it are or may become disproportionate to those of the friendly society group as a whole, it may direct the society—

- (a) to take or view to become disprop

- (b) to take steps
  - (i) that it jointly
  - (ii) that any

(3) If it appears to the Commission that it is unsuitable for a member

- (a) to take steps activity ceas
- (b) to take steps
  - (i) that it jointly c
  - (ii) that the

(4) A direction under this section may be given with it and may do so before the occurrence of an event.

- (5) A society given a direction under this section
  - (a) comply with
  - (b) convert itself

(6) The Commission may give a direction under this section.

(7) If a society requires a direction under this section the Commission shall comply with the request.

(8) The Commission may give a direction under this section in any description of such social circumstances in which

- (9) The Commission may give a direction under this section
  - (a) of a direction
  - (b) of a notice under s 114
  - (c) of a notification under s 114

and the central office shall

#### NOTES

**Commencement.** See the note to s 51 ante.

**Sub-s (2): Activities of subsidiaries.** See the note "Friendly society group" to s 54 ante.

**It may direct.** As to the Commission's decision to give a direction, see s 58 post; as to the power to give a direction, see s 58 post.

**Sub-s (4): Direction under this section.** See the note "It may direct" to s 54 ante.

**Sub-s (5): Part VIII of the Companies Act 1985.** See ss 91, 92, Sch 15 post.

**Sub-s (6): By notice.** As to the power to give a direction, see s 58 post.

**Sub-s (9): Shall send . . . a notice.** See s 114 post.

**Public file.** See s 104 post.

**Definitions.** For "the Commission", see s 1(1) ante; for "friendly society", "incorporated friendly society" and "subsidiary", see s 116 post.

- (a) to take or refrain from taking steps specified in the direction with a view to securing that the activities in question cease to be or do not become disproportionate; or
- (b) to take steps so specified with a view to securing—
- (i) that it ceases to have control or joint control of any subsidiary or jointly controlled body in question; or
  - (ii) that any such subsidiary or jointly controlled body is wound up.
- (3) If it appears to the Commission that any activity of a subsidiary of an incorporated friendly society or of a body jointly controlled by such a society is unsuitable for a member of a friendly society group, it may direct the society—
- (a) to take steps specified in the direction with a view to securing that that activity ceases; or
  - (b) to take steps so specified with a view to securing—
    - (i) that it ceases to have control or joint control of the subsidiary or jointly controlled body; or
    - (ii) that the subsidiary or jointly controlled body is wound up.
- (4) A direction under this section may specify when the society is to comply with it and may do so by reference to a date, the end of a period or the happening of an event.
- (5) A society given a direction under this section must—
- (a) comply with the direction; or
  - (b) convert itself into a company in accordance with Part VIII of this Act.
- (6) The Commission may by notice to the society vary or revoke a direction under this section.
- (7) If a society requests the Commission to notify it as to whether in the opinion of the Commission it has complied with a direction under this section, the Commission shall comply with the request.
- (8) The Commission may issue to incorporated friendly societies (or to any description of such societies) such general guidance as it thinks appropriate as to circumstances in which a direction under this section is or is not likely to be given.
- (9) The Commission shall send to the central office a copy—
- (a) of a direction under this section;
  - (b) of a notice under subsection (6) above; or
  - (c) of a notification under subsection (7) above;
- and the central office shall keep a copy in the public file of the society.

#### NOTES

**Commencement.** See the note to s 51 ante.

**Sub-s (2): Activities of subsidiaries . . . or bodies jointly controlled.** As to the activities which may be carried on by a subsidiary or jointly controlled body, see s 13 ante, Sch 7 post.

**It may direct.** As to the service of directions, see s 113 post; as to the right of appeal against the Commission's decision to give a direction under this section, or as to the steps specified in such a direction, see s 58 post; as to the determination of such an appeal, see, in particular, s 59(5), (7)(d) post.

**Sub-s (4): Direction under this section, etc.** Sub-ss (4)–(9) above also apply to a direction in respect of the supervision of group insurance business under s 55 post; see s 55(3) post.

**Sub-s (5): Part VIII of this Act.** Ie ss 85–92 and Sch 15. The relevant provisions are contained in ss 91, 92, Sch 15 post.

**Sub-s (6): By notice.** As to the service of notices, see s 113 post.

**Sub-s (9): Shall send . . . a copy.** As to the form of documents to be sent to the central office and for the power to prescribe fees for the inspection, etc of documents in the custody of the central office, see s 114 post.

**Public file.** See s 104 post.

**Definitions.** For "the Commission", see s 1(1) ante; for "control", "joint control", "jointly controlled body" and "subsidiary", see s 13(9) ante; for "the public file", see s 104 post; for "incorporated friendly

society", see s 116 post; for "the central office" and "notice", see s 119(1) post. Note as to "friendly society group", sub-s (1) above.

### 55 Supervision of group insurance business

(1) This section applies where a friendly society carries on any group insurance business providing benefits for or in respect of a group of persons who are not members of the society.

(2) If it appears to the Commission that the business so carried on is or may become disproportionate to the other activities of the society (including any group insurance business carried on for the provision of benefits for or in respect of persons who are members of the society), it may direct the society to take or refrain from taking steps specified in the direction with a view to securing that the group business in question ceases to be or does not become disproportionate.

(3) Subsections (4) to (9) of section 54 above shall apply in relation to a direction under this section as they apply to a direction under that section.

#### NOTES

**Commencement.** See the note to s 47 ante.

**Carries on . . . business.** See the note "Carrying on . . . business" to s 7 ante.

**It may direct.** As to the service of directions, see s 113 post; as to the right of appeal against the Commission's decision to give a direction under this section, or as to the steps specified in such a direction, see s 58 post; as to the determination of such an appeal, see, in particular, s 59(5), (7)(d) post.

**Definitions.** For "the Commission", see s 1(1) ante; for "group insurance business", see s 11 ante; for "friendly society", see s 116 post.

### 56 Linked long-term insurance contracts

(1) Regulations may be made by the Commission, with the consent of the Treasury, as respects the matters specified in subsection (2) below, in relation to contracts made by friendly societies the effecting of which constitutes the carrying on of insurance business falling within class III in head A in Schedule 2 to this Act.

(2) Regulations under this section may make provision for—

- (a) restricting the descriptions of property or the indices of the value of property by reference to which benefits under the contracts may be determined;
- (b) restricting the proportion of those benefits which may be determined by reference to property of a specified description or a specified index;
- (c) regulating the manner in which and the frequency with which property of any description is to be valued for the purpose of determining those benefits and the times at which reference is to be made for that purpose to any index of the value of property;
- (d) requiring friendly societies that enter into such contracts to appoint valuers for carrying out valuations of property of any description for the purpose of determining benefits under the contracts (being valuers who comply with the prescribed requirement as to qualifications and independence from the society) and to furnish the Commission with the prescribed information in relation to such appointments;
- (e) requiring societies that enter into such contracts to furnish in such manner and at such times or intervals as may be prescribed such information relating to the value of the benefits under the contracts as may be prescribed, whether by sending notices to their members, depositing statements with the Commission, publication in the press or otherwise;
- (f) requiring societies that enter into such contracts to furnish to the Commission in such manner and at such times or intervals as may be

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**Sub-s (1): Treasury.** See th

**Carrying on . . . business.**

**Sub-s (2): Furnish . . . info**  
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**Sub-s (5): Passing of this**  
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**Definitions.** For "the Com  
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### 57 Covering of risks s

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prescribed, such information certified in such manner as may be prescribed with respect to so much of their business as is concerned with the contracts or with any class or description of the contracts, and enabling the Commission to publish such information in such ways as it thinks appropriate.

(3) Regulations made for the purposes of subsection (2)(e) above may, in relation to notices required to be sent to members of friendly societies, impose requirements (whether as to type, size, colour or disposition of lettering, quality or colour of paper, or otherwise) for securing that such notices are easily legible.

(4) The Commission may, on the application of any friendly society, alter the requirements of regulations under this section so as to adapt those requirements to the circumstances of that society or to any particular kind of contract entered into or proposed to be entered into by that society.

(5) Regulations under this section may, to such extent as may be specified in them, apply in relation to contracts entered into before the coming into operation of the regulations, including contracts entered into before the passing of this Act.

(6) In this section "prescribed" means prescribed by regulations under this section.

#### NOTES

**Commencement.** See the note to s 51 ante.

**Sub-s (1): Treasury.** See the note to s 1 ante.

**Carrying on . . . business.** See the note to s 7 ante.

**Sub-s (2): Furnish . . . information.** If it appears to the Commission that information furnished to it on behalf of the society is false in a material particular, misleading or inaccurate, the Commission may give a direction under s 40(1) ante; see s 40(3)(e) ante.

**Sub-s (5): Passing of this Act.** This Act was passed, ie received the Royal Assent, on 16 March 1992.

**Definitions.** For "the Commission", see s 1(1) ante; for "friendly society", see s 116 post; for "insurance business", see s 117(1), (2) post; for "notice", see s 119(1) post. Note as to "prescribed", sub-s (6) above.

**Regulations under this section.** The Friendly Societies (Insurance Business No 2) Regulations 1993, SI 1993/2520.

For general provisions as to regulations, see s 121 post.

#### *Covering of risks situated in another member State*

### 57 Covering of risks situated in another member State

(1) Where a friendly society intends to cover any insurance risks falling within any class of Head B of Schedule 2 to this Act which are situated in a member State other than the United Kingdom—

- (a) through an establishment in the United Kingdom, or
- (b) through an establishment in a member State other than that in which the risks will be situated,

it shall before doing so give notice of its intention to the Commission.

(2) The notice shall indicate—

- (a) the member State in which the insurance is to be provided;
- (b) the nature of the risks which the society intends to cover;
- (c) the member state in which the establishment through which the risks will be covered is situated.

(3) Where the society intends to cover risks situated in more than one member State, the information specified above may be contained in a single notice but must be set out separately for each member State.

(4) Where a society has duly notified the Commission of its intention to cover

risks situated in another member State where administrative authorisation is required to do so then, if the original notice related—

- (a) only to risks in respect of which such authorisation is required; or
- (b) only to risks in respect of which such authorisation is not required,

and the society subsequently intends to extend its activities to risks falling within the other category, it shall before doing so (without prejudice to the generality of the preceding provisions of this section) comply with subsections (1) to (3) above in relation to those risks.

(5) A friendly society with the intention mentioned in subsection (1) above may apply to the Commission for a certificate attesting—

- (a) that the society possesses the minimum margin of solvency calculated in accordance with Article 16 and 17 of the first general insurance Directive, and
- (b) that by virtue of this Act and the society's authorisation under section 32 above, issued in accordance with Article 7(1) of that Directive, the society is able to operate outside the member State of establishment.

(6) A friendly society with the intention mentioned in subsection (1) above in respect of risks to be covered through an establishment in the United Kingdom may apply to the Commission for a certificate—

- (a) indicating the classes of insurance business which the society is authorised to carry on in the United Kingdom; and
- (b) stating that the Commission does not object to the society covering the risks through such an establishment.

(7) The Commission shall, if it thinks an application under subsection (5) or (6) above ought to be granted, issue the certificate.

(8) If the Commission refuses such an application it shall give notice to the society of its decision and of the reasons for it.

(9) Expressions used in this section [and section 57A below] which are defined in section 81A or 96A of the Insurance Companies Act 1982 have the same meanings as they have for the purposes of that Act.

#### NOTES

The words in square brackets in sub-s (9) were inserted by the Friendly Societies (Amendment) Regulations 1993, SI 1993/2519, reg 4(1).

**Commencement.** See the note to s 51 ante.

**Member State.** See the note to s 13 ante.

**United Kingdom.** See the note to s 14 ante.

**Give notice.** As to the service of notices, see s 113 post.

**Definitions.** For "the Commission", see s 1(1) ante; for "margin of solvency", see s 48(5) ante; for "friendly society", see s 116 post; for "insurance business", see s 117(1), (2) post; as to "class of insurance business", see s 117(3)–(5) post. By virtue of sub-s (9) above, as to "provision of insurance in a member State", see the Insurance Companies Act 1982, s 81A(1), Vol 22, title Insurance (Pt 2), for "member State of establishment", see s 81A(2) of that Act, for "the first general insurance Directive", see s 96A(1)(a) of that Act, for "establishment" and as to a company being "established in a member State", see s 96A(2) of that Act, and as to "the member State where the risk is situated", see s 96A(3) thereof.

**Insurance Companies Act 1982, ss 81A, 96A.** See Vol 22, title Insurance (Pt 2).

#### [57A Covering of commitments situated in another member State

(1) Where a friendly society intends to cover any commitments which are situated in a member State other than the United Kingdom—

- (a) through an establishment in the United Kingdom, or
- (b) through an establishment in a member State other than that in which the commitments will be situated,

it shall before doing so

- (2) The notice shall i
  - (a) the member
  - (b) the nature of
  - (c) the member commitment

(3) Where the society member State, the information but must be set out separately

(4) Where a friendly society to cover commitments authorisation is required

- (a) only to commitments or
- (b) only to commitments required,

and the society subsequently within the other category generality of the preceding to (3) above in relation to

(5) A friendly society may apply to the Commission

- (a) that the society in accordance
- (b) that by virtue of 32 above, issued society is able

(6) A friendly society respect of commitments Kingdom may apply to

- (a) indicating the to carry on in
- (b) stating that the commitments

(7) The Commission above ought to be granted

(8) If the Commission society of its decision and

(9) In this section—

"commitment" does business of class "friendly society" applies.]

#### NOTES

This section was inserted by reg 4(2), with effect from 1 Jan.

**Sub-s (1): Member State.** See

**United Kingdom.** See the

**Give notice.** As to the service

**Definitions.** For "the Commission sub-s (9) above); for "commitment business", see s 117(1), (2) post; and

it shall before doing so give notice of its intention to the Commission.

(2) The notice shall indicate—

- (a) the member State in which the insurance is to be provided;
- (b) the nature of the commitments which the society intends to cover;
- (c) the member State in which the establishment through which the commitments will be covered is situated.

(3) Where the society intends to cover commitments situated in more than one member State, the information specified above may be contained in a single notice but must be set out separately for each member State.

(4) Where a friendly society has duly notified the Commission of its intention to cover commitments situated in another member State where administrative authorisation is required to do so then, if the original notice related—

- (a) only to commitments in respect of which such authorisation is required; or
- (b) only to commitments in respect of which such authorisation is not required,

and the society subsequently intends to extend its activities to commitments falling within the other category, it shall before doing so (without prejudice to the generality of the preceding provisions of this section) comply with subsections (1) to (3) above in relation to those commitments.

(5) A friendly society with the intention mentioned in subsection (1) above may apply to the Commission for a certificate attesting—

- (a) that the society possesses the minimum margin of solvency calculated in accordance with Article 19 of the first life Directive, and
- (b) that by virtue of this Act and the society's authorisation under section 32 above, issued in accordance with Article 6(1) of that Directive, the society is able to operate outside the member State of establishment.

(6) A friendly society with the intention mentioned in subsection (1) above in respect of commitments to be covered through an establishment in the United Kingdom may apply to the Commission for a certificate—

- (a) indicating the classes of insurance business which the society is authorised to carry on in the United Kingdom; and
- (b) stating that the Commission does not object to the society covering the commitments through such an establishment.

(7) The Commission shall, if it thinks an application under subsection (5) or (6) above ought to be granted, issue the certificate.

(8) If the Commission refuses such an application it shall give notice to the society of its decision and of the reasons for it.

(9) In this section—

“commitment” does not include a commitment represented by insurance business of class VII of Head A of Schedule 2 to this Act;

“friendly society” means a friendly society to which section 37(2) above applies.]

#### NOTES

This section was inserted by the Friendly Societies (Amendment) Regulations 1993, SI 1993/2519, reg 4(2), with effect from 1 January 1994.

**Sub-s (1): Member State.** See the note to s 13 ante.

**United Kingdom.** See the note to s 14 ante.

**Give notice.** As to the service of notices, see s 113 post.

**Definitions.** For “the Commission”, see s 1(1) ante; for “friendly society”, see s 116 post (and note sub-s (9) above); for “commitment”, see s 117(1) post (and note sub-s (9) above); for “insurance business”, see s 117(1), (2) post; as to “class of insurance business”, see s 117(3)–(5) post; as to “member



condition which is the subject of an appeal under subsection (2) above in so far as it seeks to prevent the person making the appeal from holding, or continuing to hold, office in the society.

#### NOTES

**Commencement.** This section and ss 59–61, 80, 81, 83, 114 post were brought into force on 13 January 1993 by the Friendly Societies Act 1992 (Commencement No 3 and Transitional Provisions) Order 1993, SI 1993/16 (made under s 126(2) post).

**General Note.** This section, which is loosely based on the recommendations in paras 6.27, 6.28 of the Green Paper "Friendly Societies: A New Framework" (Cm 919) (January 1990), makes provision for an independent appeals procedure against the Commission's decisions.

**Sub-s (1): Appeal.** As to the costs, evidence and procedure on an appeal, see s 60 post; as to the right of further appeal, see s 61 post.

The Income and Corporation Taxes Act 1988, ss 461A–461C, Vol 44, title Taxation, introduce a new exemption in respect of profits from business other than life or endowment business for incorporated friendly societies which satisfy certain conditions, and provide a machinery for the Commission to propose in certain circumstances withdrawing the tax exemption, for representations to be made in respect of the proposal and for an appeals procedure if the Commission decides to withdraw the exemption. If the Commission so decides, the friendly society may appeal against the decision to a tribunal constituted in accordance with s 59(2) post, and regulations may provide for this section and ss 59–61 post to have effect in relation to such an appeal, with modifications if necessary (s 461C(6), (7) of the 1988 Act).

**To a tribunal.** An appeal tribunal constituted under this section is under the direct supervision of the Council on Tribunals; see the Tribunals and Inquiries Act 1992, Sch 1, para 21A, as inserted by s 120(1), Sch 21, Pt 1, paras 12, 15 post.

**Sub-s (2): Any person . . . may appeal, etc.** For the right of the friendly society concerned to be heard on the appeal, see s 60(2) post.

**Sub-s (3): Until it is determined, etc.** As to the determination of appeals, see s 59 post.

**Definitions.** For "the Commission", see s 1(1) ante; for "authorisation", see s 32(9) ante; for "friendly society", see s 116 post; for "office", see s 119(1) post.

#### 59 Determination of appeals

(1) Where an appeal is brought under section 58 above, a tribunal to determine the appeal shall be constituted in accordance with subsection (2) below.

(2) The tribunal shall consist of—

- (a) a chairman appointed by the Lord Chancellor or, where the society concerned has its registered office in Scotland, by the Lord Chancellor in consultation with the Lord Advocate; and
- (b) two other members appointed by the Treasury.

(3) The chairman shall be a person who—

- (a) has a seven year general qualification, within the meaning of the Courts and Legal Services Act 1990;
- (b) is an advocate or solicitor in Scotland of at least seven years' standing; or
- (c) is a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least seven years standing;

and the other two members shall be persons appearing to the Treasury to have experience of accountancy, the business of insurance or the business of friendly societies.

(4) Subject to subsection (5) below, on any appeal against a decision of the Commission the question for the determination of the tribunal shall be whether, for the reasons adduced by the appellant, the decision was unlawful or not justified by the evidence on which it was based.

(5) In the case of an appeal against a decision to give a direction under section 54 or 55 above—

- (a) the tribunal shall, on the evidence adduced before it, reconsider the decision to give the direction and the steps specified in the direction (according to the extent of the appeal);
- (b) if the tribunal determines that such a direction should not be given, it shall reverse the decision; and
- (c) if the tribunal determines that those steps should not be so specified, it may give the Commission such guidance as it thinks fit as to what the appropriate steps might be.

(6) The tribunal may, on the application of the friendly society concerned, order that the operation of any condition which is the subject of an appeal by the society be suspended pending the determination of the appeal.

(7) The tribunal may confirm or reverse the decision which is the subject of the appeal but shall not have power to vary it except by directing the Commission—

- (a) in the case of an appeal against a decision to refuse to grant authorisation, to determine conditions to which the grant of authorisation is to be subject;
- (b) in the case of an appeal against the imposition of conditions or as to the conditions imposed by the decision, to determine conditions or different conditions subject to which the authorisation is to be granted or is to continue, as the case may be;
- (c) in the case of an appeal against a decision to withdraw authorisation, to determine conditions or different conditions subject to which the authorisation is to continue in force, as the case may be;
- (d) in the case of an appeal against a decision as to the steps specified in a direction under section 54 or 55 above, to determine, having taken account of any guidance given under subsection (5) above, the steps which are to be so specified.

(8) Where by virtue of subsection (7)(d) above the tribunal directs the Commission to determine the steps to be specified in the direction, the society may appeal against the steps so specified.

(9) Where by virtue of subsection (7) above the tribunal directs the Commission to determine conditions or different conditions—

- (a) the Commission shall in accordance with section 34 or 36 above impose such conditions as it thinks fit; and
- (a) paragraphs 7 and 8 of Schedule 13 to this Act shall apply subject to the modifications made by paragraph 9 of that Schedule;

and the society may appeal to the tribunal against any condition so imposed.

(10) On any such appeal the tribunal may confirm or reverse the Commission's decision with respect to the conditions which are the subject of the appeal or may direct the Commission to determine different conditions; and where by virtue of this subsection the tribunal directs the Commission to determine different conditions, subsection (9) above shall apply as it applies where the tribunal gives such a direction by virtue of subsection (7) above.

(11) Where the tribunal reverses a decision of the Commission to refuse to grant authorisation, it shall direct the Commission to grant it; and where the tribunal reverses a decision of the Commission to make the grant of authorisation subject to conditions, it shall direct the Commission to grant it unconditionally.

(12) Notice of a tribunal's determination, together with a statement of its reasons, shall be given to the appellant and to the Commission; and unless the tribunal has directed the Commission to determine conditions or, in any other case, the tribunal directs otherwise, the determination shall come into operation when the notice is given to the appellant.

(13) The Treasury may appoint persons appointed as allowances in respect of expenses incurred for the

#### NOTES

**Commencement.** 13 Jan 1978.  
**Prospective amendments.** Pensions and Retirement Act 1978, s 31(2) of that Act, Vol 11, ti

"(3A) A person shall not be chairman of a tribunal unless

**Sub-s (1):** Where an appeal is brought as the result of the Commission's decision, see the second paragraph of this section.

**Tribunal.** For provisions relating to the Tribunal, see s 60 post; as to the right of appeal, see s 58 post.

**Sub-s (2):** Lord Chancellor's Act 1978, s 5, Sch 1, Vol 41, ti

**Registered office.** The meaning of its registered office; see s 58 post.

**Treasury.** See the note to s 58 post.

**Sub-s (3):** Supreme Court Act 1981, s 101(1) for Northern Ireland; see the Introduction of this court, see the Judicature Act 1925, s 101(1).

**Sub-s (12):** Notice . . . s 58 post.

**Definitions.** For "the Commission" and "friendly society", see s 116 post.

**Courts and Legal Services Act 1978, s 71(3) of that Act, Vol 11, ti**

#### 60 Costs, procedure

(1) A tribunal may order a society to pay or expenses by any party to the appeal.

(2) On an appeal under section 58 above, which the determination of the tribunal shall be entitled to be heard.

(3) The Treasury may make regulations under section 58 above; and those regulations may—

- (a) as to the persons who may be appointed as assessors;
- (b) as to the manner in which the proceedings are to be conducted, including provision for the taking of evidence, the attendance of witnesses, the custody or use of documents, and the taking of oaths or affirmations;
- (c) for requiring the attendance of witnesses, the custody or use of documents, and the taking of oaths or affirmations;
- (d) for granting relief from or right to fund costs incurred in England and Wales, or to any person who has been granted by the tribunal;
- (e) for enabling the tribunal to order a society to withdraw its appeal, or to order such withdrawal.

(13) The Treasury may out of money provided by Parliament pay to the persons appointed as members of a tribunal under this section such fees and allowances in respect of expenses as the Treasury may determine and any other expenses incurred for the purposes of this section.

#### NOTES

**Commencement.** 13 January 1993; see the note to s 58 ante.

**Prospective amendment.** The following subsection is inserted after sub-s (3) by the Judicial Pensions and Retirement Act 1993, s 26(10), Sch 6, para 68, as from a day to be appointed under s 31(2) of that Act, Vol 11, title Courts and Legal Services:

"(3A) A person shall not be appointed after the day on which he attains the age of 70 to be the chairman of a tribunal under this section."

**Sub-s (1): Where an appeal is brought, etc.** As to the application of this section to an appeal brought as the result of the Commission's withdrawal of certain tax exemptions allowed to a friendly society, see the second paragraph of the note "Appeal" to s 58 ante.

**Tribunal.** For provisions as to costs, procedure and evidence relating to an appeal to the tribunal, see s 60 post; as to the right of further appeal, see s 61 post.

**Sub-s (2): Lord Chancellor.** Is the Lord High Chancellor of Great Britain; see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes.

**Registered office.** The memorandum of an incorporated friendly society must specify the address of its registered office; see s 5(6) ante, Sch 3, para 4(1)(c) post.

**Treasury.** See the note to s 1 ante.

**Sub-s (3): Supreme Court of Northern Ireland.** Is the Supreme Court of Judicature of Northern Ireland; see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes. For the constitution of this court, see the Judicature (Northern Ireland) Act 1978, s 1, Vol 31, title Northern Ireland (Pt 2).

**Sub-s (12): Notice . . . shall be given to the appellant.** As to the service of notices, see s 113 post.

**Definitions.** For "the Commission", see s 1(1) ante; for "authorisation", see s 32(9) ante; for "friendly society", see s 116 post; for "notice", see s 119(1) post.

**Courts and Legal Services Act 1990.** For the meaning of "seven year general qualification", see s 71(3) of that Act, Vol 11, title Courts and Legal Services.

#### 60 Costs, procedure and evidence

(1) A tribunal may give such directions as it thinks fit for the payment of costs or expenses by any party to an appeal.

(2) On an appeal under section 58(2) above the friendly society in relation to which the determination was made, or upon which the requirement was imposed, shall be entitled to be heard.

(3) The Treasury may make regulations with respect to appeals under section 58 above; and those regulations may in particular make provision—

- (a) as to the period within which and the manner in which such appeals are to be brought;
- (b) as to the manner in which such appeals are to be conducted, including provision for any hearing to be held in private;
- (c) for requiring any person, on tender of the necessary expenses of his attendance, to attend and give evidence or produce documents in his custody or under his control and for authorising the administration of oaths to witnesses;
- (d) for granting to any person such discovery or inspection of documents or right to further particulars as might be granted by a county court in England and Wales or Northern Ireland or, in Scotland, for granting to any person such recovery or inspection of documents as might be granted by the sheriff;
- (e) for enabling an appellant to withdraw an appeal or the Commission to withdraw its opposition to an appeal and for the consequences of any such withdrawal;



**61 Further appeals on points of law**

(1) An appeal shall lie to the High Court at the instance of the friendly society or other person concerned or of the Commission on any question of law arising from any decision of a tribunal under section 59 above; and if the court is of the opinion that the decision was erroneous in law, it shall remit the matter to the tribunal for rehearing and determination by it.

(2) In the application of this section to a friendly society whose registered office is in Scotland or Northern Ireland, references to the High Court shall be construed as references to the Court of Session or, as the case may be, the High Court in Northern Ireland.

(3) No appeal to the Court of Appeal or to the Court of Appeal in Northern Ireland shall be brought from a decision under subsection (1) above except with the leave of that court or of the court or judge from whose decision the appeal is brought.

(4) An appeal shall lie, with the leave of the Court of Session or the House of Lords, from any decision of the Court of Session under this section, 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.

**NOTES**

**Commencement.** 13 January 1993; see the note to s 58 ante.

**An appeal shall lie, etc.** As to the application of this section to an appeal brought as the result of the Commission's withdrawal of certain tax exemptions allowed to a friendly society, see the second paragraph of the note "Appeal" to s 58 ante.

**High Court; High Court in Northern Ireland.** See the note to s 25 ante.

**Question of law.** On whether a question is one of fact or law, see in particular *Bracegirdle v Oxley* [1947] KB 349, [1947] 1 All ER 126; *Hemms v Wheeler* [1948] 2 KB 61, 92 Sol Jo 194, CA; *Edwards v Bairstow* [1956] AC 14, [1955] 3 All ER 48, HL; *Re Helbert Wagg & Co Ltd* [1956] 1 Ch 323, [1956] 1 All ER 129; *Chivers & Sons Ltd v Cambridge County Council* [1957] 2 QB 68, [1957] 1 All ER 882, CA; and *Global Plant Ltd v Secretary of State for Health and Social Security* [1972] 1 QB 139, [1971] 3 All ER 385. Many of the cases on this question are irreconcilable; see, eg, the review of the decisions in 62 LQR 248. The court may, however, treat as a question of fact what is described as a question of law (*Metropolitan Water Board v Kingston Union Assessment Committee* [1925] 2 KB 509, CA; affd sub nom *Kingston Union Assessment Committee v Metropolitan Water Board* [1926] AC 331, [1926] All ER Rep 1, HL). A mixed question of law and fact is open to review by the court (*Great Western Rly Co v Bate* [1922] 2 AC 1, HL).

**Registered office.** The memorandum of an incorporated friendly society must specify the address of its registered office; see s 5(6) ante, Sch 3, para 4(1)(c) post.

**Court of Appeal; Court of Appeal in Northern Ireland.** Ie, in relation to England and Wales, Her Majesty's Court of Appeal in England, or, in relation to Northern Ireland, Her Majesty's Court of Appeal in Northern Ireland; see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes. For the constitution of the Court of Appeal in England, see the Supreme Court Act 1981, s 2, and for its two divisions, see s 3 of that Act, Vol 11, title Courts and Legal Services; for the constitution of the Court of Appeal in Northern Ireland, see the Judicature (Northern Ireland) Act 1978, s 3, Vol 31, title Northern Ireland (Pt 2).

**Definitions.** For "the Commission", see s 1(1) ante; for "friendly society", see s 116 post.

**Information****62 Powers to obtain information and documents etc**

(1) This section applies to information, documents or other material, or explanations of matters which relate to—

- (a) the activities or the plans for future development of a friendly society; or



ment of a subsidiary of or  
friendly society;

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of the discharge by the

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communication or, in Scotland, a  
closure on the ground of

confidentiality, made by him or to him in that capacity or the furnishing  
of information contained in such communication so made;

(b) by a person who is not a barrister or solicitor of a document or material  
contained in a communication made by him or to him which is  
privileged by virtue of section 63 of the Courts and Legal Services Act  
1990 or the furnishing of information contained in such a communi-  
cation; or

(c) by an independent qualified conveyancer, an executry practitioner or a  
recognised financial institution of a document or material contained in  
a communication made by him or to him which is protected from  
disclosure by virtue of section 22 of the Law Reform (Miscellaneous  
Provisions) (Scotland) Act 1990 or the furnishing of information  
contained in such a communication.

(8) Where, by virtue of subsection (3), (4) or (5) above, the Commission  
requires the production by a friendly society or other body or any other person of  
documents or material, the Commission may—

(a) if the documents or material are not produced, require that person to  
state, to the best of his knowledge and belief, where the documents or  
material are;

(b) if the documents or material are produced, take copies of or extracts  
from them and require that person or any other person who is or has  
been an officer, employee or agent of the friendly society or other body,  
as the case may be, to provide an explanation of the documents or  
material.

(9) Any person who, when required to do so under this section, fails without  
reasonable excuse to furnish any information or report, to produce any documents  
or material, or to provide any explanation or make any statement, shall be guilty  
of an offence and liable on summary conviction—

(a) to a fine not exceeding level 5 on the standard scale; and

(b) in the case of a continuing offence, to an additional fine not exceeding  
one tenth of that level for every day during which the offence continues.

(10) Any friendly society which furnishes any information, provides any  
explanation or makes any statement which is false or misleading in a material  
particular, shall be guilty of an offence and liable—

(a) on conviction on indictment, to a fine; and

(b) on summary conviction to a fine not exceeding the statutory maximum.

(11) Any person who knowingly or recklessly furnishes any information,  
provides any explanation or makes any statement which is false or misleading in a  
material particular shall be guilty of an offence and liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding  
2 years or to a fine or both; and

(b) on summary conviction, to a fine not exceeding the statutory  
maximum.

(12) In this section—

"specified" means specified in a notice under this section; and

"agent", in relation to a friendly society or a subsidiary of, or body jointly  
controlled by, an incorporated friendly society, includes its bankers,  
accountants, solicitors and auditors and the appropriate actuary.

#### NOTES

**Commencement.** See the note to s 51 ante.

**Sub-s (2): Carries on business.** See the note "Carrying on . . . business" to s 7 ante.

**United Kingdom.** See the note to s 14 ante.

**Sub-s (3): Notice.** As to the service of notices, see s 113 post.

**Require the body . . . to furnish, etc.** For the power of the Commission to exercise the powers conferred by this section where a registered friendly society or an incorporated friendly society (being a regulated friendly society which is an authorised person) contravenes the Financial Services Act 1986, see Sch 11, para 26(1), (2) to the 1986 Act ante.

**Such specified information, etc.** It appears to the Commission that information furnished to it on behalf of the society is false in a material particular, misleading or inaccurate, the Commission may give a direction under s 40(1) ante; see s 40(3)(e) ante.

**Sub-s (4): Person.** See the note to s 1 ante.

**Under his control.** See the note "In his custody or under his control" to s 60 ante.

**Sub-s (5): Appears.** See the note "Thinks fit" to s 4 ante.

**Sub-s (9): Reasonable excuse.** See the note to s 60 ante.

**Guilty of an offence.** As to the time limit for commencing proceedings, see s 107 post; as to offences by bodies corporate, partnerships and unincorporated associations, see s 108 post; as to the defence of due diligence, see s 109 post; and as to the jurisdiction of magistrates' courts, see s 110 post.

**Summary conviction; standard scale.** See the notes to s 18 ante.

**Every day during which the offence continues.** See the note to s 20 ante.

**Sub-s (10): Any friendly society which furnishes any information.** See the note "Such specified information" above.

**False or misleading.** It may be doubted whether the addition of the words "or misleading" is in itself of great practical importance, for there is authority for saying that information may be false because it conveys a false impression although it is literally true; see *R v Lord Kylsant* [1932] 1 KB 442, [1931] All ER Rep 179, and *R v Bishirgian* [1936] 1 All ER 586. Yet there may be statements which cannot create a wrong impression in the mind of a person of intelligence and education, but are apt to mislead lesser or less tutored minds and which, therefore, are misleading though not false; cf *Eno v Dunn* (1890) 15 App Cas 252 at 258, per Lord Watson. Nevertheless it is obvious that the abstract possibility that confusion may be created is not sufficient and that no information can be regarded as misleading unless there is "a reasonable probability of confusion"; cf *Re Bayer Products Ltd's Application* [1947] 2 All ER 188 at 190, CA, per Lord Greene MR. On the other hand, the fact that information is designed to mislead seems to give rise to a strong inference that it is likely to achieve its aim; cf *Johnston v Orr Ewing* (1882) 7 App Cas 219 at 230, 231, per Lord Blackburn.

Whether or not gain or advantage accrues from the false or misleading information is irrelevant; see *Jones v Meatyard* [1939] 1 All ER 140; *Stevens & Steeds Ltd and Evans v King* [1943] 1 All ER 314; *Clear v Smith* [1981] 1 WLR 399, [1980] Crim LR 246; and *Barras v Reeve* [1980] 3 All ER 705, [1981] 1 WLR 408.

**Material particular.** See the note to s 40 ante.

**Shall be . . . liable; conviction on indictment; fine; statutory maximum.** See the notes to s 31 ante.

**Sub-s (11): Knowingly.** Knowledge is an essential ingredient of the offence and must be proved by the prosecution; see, in particular, *Gaumont British Distributors Ltd v Henry* [1939] 2 KB 711, [1939] 2 All ER 808.

Knowledge includes the state of mind of a person who shuts his eyes to the obvious; see *James & Son Ltd v Smeed* [1955] 1 QB 78 at 91, [1954] 3 All ER 273 at 278 per Parker J, and *Westminster City Council v Croyalgrange Ltd* [1986] 2 All ER 353, [1986] 1 WLR 674, HL. Moreover, there is authority for saying that where a person deliberately refrains from making inquiries the results of which he might not care to have, this constitutes in law actual knowledge of the facts in question; see *Knox v Boyd* 1941 JC 82 at 86; *Taylor's Central Garages (Exeter) Ltd v Roper* (1951) 115 JP 445 at 449, 450, [1951] WN 383 per Devlin J; and *Westminster City Council v Croyalgrange Ltd* above; and see also *Mallon v Allon* [1964] 1 QB 385 at 394, [1963] 3 All ER 843 at 847. Yet mere neglect to ascertain what could have been found out by making reasonable inquiries is not tantamount to knowledge; see *Taylor's Central Garages (Exeter) Ltd v Roper* above per Devlin J, and cf *London Computer Ltd v Seymour* [1944] 2 All ER 11; but see also *Mallon v Allon* above.

As to when the knowledge of an employee or agent may be imputed to his employer or principal, see 11(1) Halsbury's Laws (4th edn reissue) para 55.

**Recklessly.** A person is reckless if he does an act which in fact involves an obvious and serious risk of harmful consequences and either (i) he fails to give any thought to the possibility of there being any such risk, or (ii) having recognised that there is some risk involved, he nonetheless goes on to take it; see *R v Lawrence* [1982] AC 510 at 527, [1981] 1 All ER 974 at 982, HL, and *Metropolitan Police Comr v Caldwell* [1982] AC 341 at 354, sub nom *R v Caldwell* [1981] 1 All ER 961 at 967, HL, per Lord Diplock. A risk is "obvious" if it is obvious to an ordinary prudent individual rather than obvious to the particular accused having regard to his age, mental capacity and experience; see *Elliott v C (a minor)* [1983] 2 All ER 1005, [1983] 1 WLR 939, and *R v Rogers* (1984) 149 JP 89, sub nom *R v R (Stephen Malcolm)* 79 Cr App Rep 334, CA. See further 11(1) Halsbury's Laws (4th edn reissue) paras 14, 15.

**Definitions.** For "the Commission", see s 1(1) ante; for "jointly controlled body" and "subsidiary", see s 13(9) ante; for "friendly society" and "incorporated friendly society", see s 116 post; for "actuary", "the appropriate actuary", "notice" and "officer", see s 119(1) post. Note as to "the purposes of its supervisory functions", sub-s (1) above, and as to "specified" and "agent", sub-s (12) above.

Courts and Legal Services  
Law Reform (Miscellaneous  
work.

## 63 Confidentiality of

(1) Subject to section . . .  
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## NOTES

**Commencement.** See the r

**Sub-s (1): No restricted in**  
on disclosure, see s 64 post.

**Person.** See the note to s 1 an

**Sub-s (2): Public.** For cases  
in various contexts, see *Tatem S*  
CA; *Income Tax Comr v Bjordal*  
[1960] 2 All ER 467; *Morrisons*  
*Park Investments Ltd* [1966] CH  
[1969] 2 All ER 980, CA; *Beyn*  
114 Sol Jo 90; and *A-G's Refere*

**Sub-s (4): Shall be . . . liab**  
the notes to s 31 ante.

**Guilty of an offence.** As to  
offences by bodies corporate, p  
defence of due diligence, see s 10

**Summary conviction.** See t

**Definitions.** For "the Comr  
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"the primary recipient" and "res

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**Courts and Legal Services Act 1990, s 63.** See Vol 11, title Courts and Legal Services.  
**Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, 1990 c 40;** not printed in this work.

### 63 Confidentiality of certain information

(1) Subject to section 64 below, no restricted information which relates to the business or other affairs of a friendly society, a registered branch of a friendly society or any other person shall be disclosed (otherwise than to an officer or employee of the primary recipient) by—

- (a) the primary recipient; or
- (b) any person obtaining the information directly or indirectly from him,

without the consent of the person from whom the primary recipient obtained the information and, if different, the person to whom it relates.

(2) For the purposes of this section—

“the primary recipient” means the Commission, the Chief Registrar, the central office or any officer or servant of any such person; and

“restricted information” means information which is obtained by the primary recipient for the purposes of, or in the discharge of his functions under, this Act or the 1974 Act;

but information shall not be treated as restricted information if it has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by this section.

(3) Any information disclosed to the Commission or the Chief Registrar by an overseas regulatory authority (within the meaning of section 64 below) shall be treated as restricted information for the purposes of this section.

(4) A person who discloses information in contravention of this section shall be guilty of an offence and liable—

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

#### NOTES

**Commencement.** See the note to s 51 ante.

**Sub-s (1): No restricted information . . . shall be disclosed.** For exceptions from restrictions on disclosure, see s 64 post.

**Person.** See the note to s 1 ante.

**Sub-s (2): Public.** For cases on the meaning of “public”, “the public” and “member of the public” in various contexts, see *Tatem Steam Navigation Co Ltd v IRC* [1941] 2 KB 194, [1941] 2 All ER 616, CA; *Income Tax Comr v Bjordal* [1955] AC 309, [1955] 1 All ER 401, PC; *DPP v Milbanke Tours Ltd* [1960] 2 All ER 467; *Morrisons Holdings Ltd v IRC* [1966] 1 All ER 789, [1966] 1 WLR 553; *IRC v Park Investments Ltd* [1966] Ch 701, [1966] 2 All ER 785, CA; *R v Delmayne* [1970] 2 QB 170, [1969] 2 All ER 980, CA; *Beynon v Caerphilly Lower Licensing Justices* [1970] 1 All ER 618, (1969) 114 Sol Jo 90; and *A-G's Reference (No 2 of 1977)* [1978] 2 All ER 646, [1978] 1 WLR 290, CA.

**Sub-s (4): Shall be . . . liable; conviction on indictment; fine; statutory maximum.** See the notes to s 31 ante.

**Guilty of an offence.** As to the time limit for commencing proceedings, see s 107 post; as to offences by bodies corporate, partnerships and unincorporated associations, see s 108 post; as to the defence of due diligence, see s 109 post; and as to the jurisdiction of magistrates' courts, see s 110 post.

**Summary conviction.** See the note to s 18 ante.

**Definitions.** For “the Commission”, see s 1(1) ante; for “friendly society” and “registered branch”, see s 116 post; for “the central office”, “the Chief Registrar” and “officer”, see s 119(1) post. Note as to “the primary recipient” and “restricted information”, sub-s (2) above.

**1974 Act.** Ie the Friendly Societies Act 1974 ante; see s 119(1) post.

**64 Exceptions from restrictions on disclosure**

(1) Information which is restricted information for the purposes of section 63 above may be disclosed—

- (a) to any person with a view to the institution of, or otherwise for the purposes of, relevant proceedings;
- (b) if it is information which is or has been available to the public from other sources;
- (c) in the form of a summary or collection of information so framed as not to enable information related to any particular body or person to be ascertained from it;
- (d) to the extent that it is information which is provided for the purpose, under any provision of this Act or the 1974 Act, of its being made available to the public in any manner;
- (e) in pursuance of any Community obligation;
- (f) for the purpose of facilitating the discharge by the Commission, the Chief Registrar or the central office of any of their functions under this Act or the 1974 Act;
- (g) to the Treasury, if the disclosure is made for the purpose of facilitating the discharge of any functions of the Treasury under this Act or the 1974 Act or otherwise in the interests of members of friendly societies or in the public interest;
- (h) for the purpose of enabling or assisting any person appointed investigator under section 65 below or inspector under section 66 below to discharge his duties under that section; or
- (i) for the purpose of facilitating the discharge by the auditors of a friendly society of their duties to the Commission.

(2) For the purposes of subsection (1)(a) above "relevant proceedings" are—

- (a) any criminal proceedings;
- (b) any civil proceedings by or at the relation of or against the Commission or the Chief Registrar arising out of the discharge of any of their functions under this Act or the 1974 Act;
- (c) any disciplinary proceedings relating to—
  - (i) the exercise by a solicitor, auditor, accountant, actuary or valuer of his professional duties;
  - (ii) the discharge by a public servant of his duties;

and in paragraph (c) above "public servant" means an officer or servant of the Crown (including an officer or servant of the Crown in right of Her Majesty's Government in Northern Ireland) or of any public or other authority designated for the purpose by order made by the Treasury.

(3) Nothing in section 63 above prohibits the disclosure of information to the Secretary of State or the Department of Economic Development in Northern Ireland in circumstances where it is desirable or expedient—

- (a) that the information should be disclosed in the interests of members of a friendly society or in the public interest; or
- (b) it is desirable or expedient that the information should be disclosed for the purpose of facilitating the discharge—
  - (i) by the Secretary of State, of any functions of his under the enactments relating to companies, insurance companies, or insolvency or under the Financial Services Act 1986 or any provision of Parts II, III or VII of the Companies Act 1989; or
  - (ii) by the Department, of any of its functions relating to companies or insolvency, or under Part III of the Companies (Northern

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Ireland) Order 1990 or Part II or V of the Companies (No. 2) (Northern Ireland) Order 1990;

nor does that section prohibit further disclosure of the information by the Secretary of State or the Department with the consent of the Commission.

[(3A) Nothing in section 63 above prohibits the disclosure of information to the Treasury in circumstances where it is desirable or expedient that the information should be disclosed for the purpose of facilitating the discharge by the Treasury of any functions of theirs under the Financial Services Act 1986 or under Part III or Part VII of the Companies Act 1989 nor does that section prohibit further disclosure of the information by the Treasury with the consent of the Commission.]

(4) Nothing in section 63 above prohibits the disclosure of information to an authority mentioned in subsection (5) below (a "relevant authority") in circumstances where, in the opinion of the Commission, it is desirable or expedient that the information should be disclosed—

- (a) in the interests of members of a friendly society or in the public interest; or
- (b) with a view to facilitating the discharge by the authority, of any functions of the authority (including functions in relation to proceedings) mentioned in that subsection ("relevant functions");

nor does that section prohibit further disclosure of the information, with the consent of the Commission.

(5) The relevant authorities mentioned in subsection (4) above and the relevant functions in relation to each such authority, are as follows—

<i>Authority</i>	<i>Functions</i>
An inspector appointed under Part XIV of the Companies Act 1985, Part XV of the Companies (Northern Ireland) Order 1986 or section 94 or 177 of the Financial Services Act 1986.	Functions under that Part or that section or Article.
A person authorised to exercise powers under section 44 of the Insurance Companies Act 1982, section 447 of the Companies Act 1985, section 106 of the Financial Services Act 1986 or section 84 of the Companies Act 1989 or Article 440 of the Companies (Northern Ireland) Order 1986.	Functions under that section or Article.
The Policyholders Protection Board.	Functions under the Policyholders Protection Act 1975.
A designated agency within the meaning of the Financial Services Act 1986.	Functions under that Act or Part VII of the Companies Act 1989.
A transferee body or the competent authority within the meaning of the Financial Services Act 1986.	Functions under that Act.
A body administering a scheme under section 54 of the Financial Services Act 1986.	Functions under the scheme.
A recognised self-regulating organisation, recognised professional body, recognised investment exchange, recognised clearing house, or recognised self-regulating organisation for	Functions in its capacity as an organisation, body, exchange or clearing house recognised under that Act.

<i>Authority</i>	<i>Functions</i>
friendly societies (within the meaning of the Financial Services Act 1986). The Bank of England.	Functions under the Banking Act 1987 and any other functions. Functions under Part II of that Act.
A body established by order under section 46 of the Companies Act 1989.	Functions as such a body.
A recognised supervisory or qualifying body within the meaning of Part II of the Companies Act 1989.	Functions under the enactments relating to industrial assurance.
The Industrial Assurance Commissioner for Northern Ireland.	Functions under the Insurance Brokers (Registration) Act 1977.
The Insurance Brokers Registration Council.	Functions under the enactments relating to insolvency.
The Official Receiver or the Official Receiver for Northern Ireland.	Functions in its capacity as such a body under that Act.
A recognised professional body (within the meaning of section 391 of the Insolvency Act 1986).	Functions under the Building Societies Act 1986.
The Building Societies Commission.	Functions under the Financial Services Act 1986.
The Director-General of Fair Trading.	
(6) The Commission, with the consent of the Treasury, may by order—	
(a) amend the Table in subsection (5) above so as to—	
(i) add any public or other authority to the Table and specify the relevant functions of that authority;	
(ii) remove any authority from the Table; or	
(iii) add functions to, or remove functions from, those which are relevant functions in relation to an authority specified in the Table;	
(b) restrict the circumstances in which information may, by virtue of subsection (4) above, be disclosed or further disclosed; and	
(c) impose conditions subject to which the information may be disclosed or further disclosed.	
(7) Nothing in section 63 above prohibits the disclosure to an overseas regulatory authority of information for the purpose of assisting that authority in the discharge of its functions.	
(8) In this section—	
“authority” includes any body (corporate or unincorporate) which is charged with the regulation of the carrying on of any description of financial or insurance business or the practice of any profession to which the carrying on of such business is incidental;	
“overseas regulatory authority” means any government department or public or other authority in a country or territory outside the United Kingdom which is charged under the law of that country or territory with the regulation of companies, insurance companies, financial services, banking or any business corresponding to the business which may be carried on by friendly societies (or their subsidiaries); and	
“regulation”, in relation to any public or other authority, means regulation in the public interest or for the protection of private interests.	

## NOTES

Sub-s (3A) was inserted by the Transfer of Functions (Financial Services) Order 1992, SI 1992/1315, art 10(1), Sch 4, para 14.

**Commencement.** See the **Sub-s (1): Person.** See the **Public.** See the note to s 63.  
**Community obligation.** Vol 17, title European Community Statutes.

**Treasury.** See the note to s 63.  
**Public interest.** As resp Mackinnon J in *Consent Iron CA*, that it may be considered individuals; that the expression “number”. It is submitted that (1874) 9 Ch App 423 at 427 direct benefit.

The question whether a pa question of fact (cf *Re Amalgamated*) be decided in the light of a notwithstanding that they w when this Act was passed (*CA* [1969] 2 QB 62, [1969] 1 All ER 1000).

**The auditors of a friendly society.**  
**Sub-s (3): Secretary of State.** Interpretation Act 1978, s 5, Secretary of State for Trade and Industry.

**Sub-s (4): Opinion.** See the note to s 63.  
**Sub-s (5): Bank of England.** Interpretation Act 1978, s 5, Secretary of State for Trade and Industry.

**Industrial Assurance Commission.** Industrial Assurance (Northern Ireland) Act 1978, s 1, Vol 47, title Trade and Industry.

**Sub-s (8): United Kingdom.** Definitions. For “the company”, see s 116 post; for “independent”, see s 116 post; for “the Chief Registrar”, see s 116 post; for “regulation”, sub-s (8) above.

**1974 Act.** In the Friendly Societies Act 1974, s 1, Vol 8, title Companies. For the Money (Pt 1); for “competent exchange”, “recognised professional”, “regulation”, sub-s (8) above. See s 140 of, Sch 11, para 1 to that Act ante.

**Companies Act 1989.** For the Money (Pt 1); for Pt III, see Vol 19, title Companies, s 32(4) of, Sch 12 to that Act.

**Companies (Northern Ireland) Act 1985.** Pt III, s 3, Vol 19, title Companies, s 32(4) of, Sch 12 to that Act.  
**Companies (Northern Ireland) Act 1985.** Pt III, s 3, Vol 19, title Companies, s 32(4) of, Sch 12 to that Act.  
**Insurance Companies Act 1985.** Pt III, s 3, Vol 19, title Companies, s 32(4) of, Sch 12 to that Act.

**Policyholders Protection Act 1985.** Functions of the Policyholders Protection Board under other provisions of that Act, s 3, Vol 19, title Companies, s 32(4) of, Sch 12 to that Act.  
**Banking Act 1987.** See Vol 19, title Companies, s 32(4) of, Sch 12 to that Act.

**Insurance Brokers (Registration) Act 1977.** See the establishment of the Insurance Brokers Registration Council, s 3, Vol 19, title Companies, s 32(4) of, Sch 12 to that Act.  
**Insolvency Act 1986.** s 3, Vol 19, title Companies, s 32(4) of, Sch 12 to that Act.  
**Building Societies Act 1986.** Building Societies Commission, s 3, Vol 19, title Companies, s 32(4) of, Sch 12 to that Act.

**Orders under this section.** See the note to s 63 above.

For general provisions as to

## Functions

under the Banking Act 1987  
other functions.  
under Part II of that Act.

as such a body.

under the enactments relat-  
industrial assurance.  
under the Insurance Brokers  
(ation) Act 1977.  
under the enactments relat-  
insolvency.

in its capacity as such a body  
at Act.

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disclosure to an overseas  
assisting that authority in

unincorporate) which is  
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of any profession to which

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ritory outside the United  
that country or territory  
ce companies, financial  
ng to the business which  
ir subsidiaries); and  
horoughly, means regulation  
private interests.

services) Order 1992, SI 1992/

**Commencement.** See the note to s 51 ante.

**Sub-s (1): Person.** See the note to s 1 ante.

**Public.** See the note to s 63 ante.

**Community obligation.** For meaning, see the European Communities Act 1972, Sch 1, Pt II, Vol 17, title European Communities, as applied by the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes.

**Treasury.** See the note to s 1 ante.

**Public interest.** As respects the similar expression "national interest" it was suggested by Mackinnon J in *Conssett Iron Co Ltd v Clavering Trustees* (1934) unreported; revsd [1935] 2 KB 42, CA, that it may be considered as something which is to be distinguished from the private interest of individuals; that the expression is akin to the economic doctrine of "the greatest good of the greatest number". It is submitted that "public interest" is synonymous with "public benefit". In *A-G v Terry* (1874) 9 Ch App 423 at 427, 428, Sir George Jessel MR said that "public benefit" must involve a direct benefit.

The question whether a particular thing is in the public interest is a question of the times and is a question of fact (cf *Re Amalgamated Anthracite Collieries Ltd's Application* (1927) 43 TLR 672). It is to be decided in the light of all the circumstances and conditions as they exist at the present time notwithstanding that they would probably not have been specifically envisaged by the legislature when this Act was passed (*Cartwright v Post Office* [1968] 2 QB 439, [1968] 2 All ER 646 at 651; affd [1969] 2 QB 62, [1969] 1 All ER 421, CA).

**The auditors of a friendly society.** See, generally, s 72, Sch 14 post.

**Sub-s (3): Secretary of State.** In one of Her Majesty's Principal Secretaries of State; see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes. The Secretary of State here concerned is the Secretary of State for Trade and Industry.

**Sub-s (4): Opinion.** See the note "Thinks fit" to s 4 ante.

**Sub-s (5): Bank of England.** For meaning, see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes; and for the legislation relating to the Bank of England, see Vol 4, title Banking.

**Industrial Assurance Commissioner for Northern Ireland.** As to this Commissioner, see the Industrial Assurance (Northern Ireland) Order 1979, SI 1979/1574 (NI 13).

**Director General of Fair Trading.** This officer is appointed under the Fair Trading Act 1973, s 1, Vol 47, title Trade and Industry (Pt 1).

**Sub-s (8): United Kingdom.** See the note to s 14 ante.

**Definitions.** For "the Commission", see s 1(1) ante; for "subsidiary", see s 13(9) ante; for "friendly society", see s 116 post; for "insurance business", see s 117(1), (2) post; for "actuary", "the central office" and "the Chief Registrar", see s 119(1) post. Note as to "authority", "overseas regulatory authority" and "regulation", sub-s (8) above.

**1974 Act.** In the Friendly Societies Act 1974 ante; see s 119(1) post.

**Financial Services Act 1986.** For ss 54, 94, 106, see Vol 30, title Money (Pt 1); for s 177, see Vol 8, title Companies. For the meaning of "designated agency", see s 114(3) of that Act, Vol 30, title Money (Pt 1); for "competent authority", "recognised clearing house", "recognised investment exchange", "recognised professional body", and "recognised self-regulating organisation", see 207(1) of that Act, Vol 30, title Money (Pt 1); for "recognised self-regulating organisation for friendly societies", see s 140 of, Sch 11, para 1 to, that Act ante; for "transferee body", see s 140 of, Sch 11, para 28(4) to, that Act ante.

**Companies Act 1989.** For Pt II, s 46, see Vol 8, title Companies; for Pt VII, s 84, see Vol 30, title Money (Pt 1); for Pt III, see Vol 8, title Companies, and Vol 30, title Money (Pt 1). For the meaning of "recognised supervisory body", see s 30(5) of, Sch 11 to, that Act, and for "recognised qualifying body", see s 32(4) of, Sch 12 to, that Act, Vol 8, title Companies.

**Companies (Northern Ireland) Order 1990.** SI 1990/593 (NI 5).

**Companies (No 2) (Northern Ireland) Order 1990.** SI 1990/1504 (NI 10).

**Companies Act 1985, Pt XIV, s 447.** See Vol 8, title Companies.

**Companies (Northern Ireland) Order 1986.** SI 1986/1032 (NI 6).

**Insurance Companies Act 1982, s 44.** See Vol 22, title Insurance (Pt 2).

**Policyholders Protection Act 1975.** See Vol 22, title Insurance (Pt 1). For the establishment and functions of the Policyholders Protection Board, see s 1 thereof, as amended, together with certain other provisions of that Act, by s 97, Sch 17 post.

**Banking Act 1987.** See Vol 4, title Banking.

**Insurance Brokers (Registration) Act 1977.** See Vol 22, title Insurance (Pt 1). For the establishment of the Insurance Brokers Registration Council, see s 1 thereof.

**Insolvency Act 1986, s 391.** See Vol 4, title Bankruptcy and Insolvency. For provisions as to official receivers, see ss 399–401 of that Act.

**Building Societies Act 1986.** See Vol 5, title Building Societies. For the establishment of the Building Societies Commission, see s 1 thereof.

**Orders under this section.** Up to 1 June 1994 no orders had been made under sub-ss (2), (6) above.

For general provisions as to orders, see s 121 post.

*Inspections etc***65 Investigations on behalf of Commission**

(1) If it appears to the Commission desirable to do so for the purpose of its supervisory functions in relation to a friendly society, the Commission may appoint one or more competent persons to investigate and report to it on the state and conduct of the activities of the society, or any particular aspect of those activities.

(2) If a person appointed under subsection (1) above thinks it necessary for the purposes of his investigation, he may also investigate the activities of any body corporate which is or has at any relevant time been a subsidiary of, or jointly controlled by, the society under investigation.

(3) It shall be the duty of every person who is or has been an officer, employee and agent of a friendly society or other body which is under investigation—

- (a) to produce to the persons appointed under subsection (1) above all records, books and papers relating to the body concerned which are in his custody or power; and
- (b) to attend before those persons when required to do so;
- (c) to answer any question which is put to him by those persons with respect to any friendly society or other body which is under investigation,

and otherwise to give to those persons all assistance in connection with the investigation which he is reasonably able to give.

(4) A person who, without reasonable excuse—

- (a) fails to produce any records, books or papers which it is his duty to produce under subsection (3)(a) above; or
- (b) fails to comply with his duty under subsection (3)(b) or (c) above;

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) A person who is or has been an officer, employee or agent of a friendly society or other body and who knowingly or recklessly furnishes to any person appointed under subsection (1) above any information which is false or misleading in a material particular, shall be guilty of an offence and liable—

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

(6) In this section—

“agent”, in relation to a friendly society or other body whose activities are under investigation, includes its bankers, accountants, solicitors and auditors and the appropriate actuary;

“the purposes of its supervisory functions”, in relation to the Commission, has the same meaning as in section 62 above.

**NOTES**

**Commencement.** See the note to s 51 ante.

**Sub-s (1): Appears.** See the note “Thinks fit” to s 4 ante.

**Appoint . . . competent persons.** Information which is restricted information for the purposes of s 63 ante may be disclosed for the purpose of enabling or assisting any person appointed investigator under this section; see s 64(1)(h) ante.

On a reference made under Sch 10, para 35(1) post, the Commission must exercise its power under sub-s (1) above and answers given to questions put in the exercise of the powers conferred by this section on an investigator may be used in evidence; see para 35(2), (3) of that Schedule post.

For the powers of the Commission in relation to a registered friendly society (within the meaning

of the Friendly Societies Act 1974) or upon an investigation under section 63 ante, see section 64(1)(h) ante. For the power of the Commission to appoint one or more registered friendly society or other body (which is an authorised person) to investigate and report to it on the 1986 Act ante.

**Sub-s (2): Body corporate.**

**Sub-s (3): In his custody.**

**Sub-s (4): Reasonable excuse.**

**Guilty of an offence.** As to offences by bodies corporate, see section 64(1)(h) ante. For the defence of due diligence, see s 64(1)(h) ante.

**Summary conviction; standard scale.**

**Sub-s (5): Knowingly; recklessness.**

**Furnishes . . . any information.** Information which is restricted information for the purposes of s 63 ante may give a direction under s 64(1)(h) ante.

**Material particular.** See the note to s 62(1) ante.

**Shall be . . . liable; conviction.** See section 64(1)(h) ante.

**Sub-s (6): Auditors.** See, generally, section 64(1)(h) ante.

**Inspection of industrial premises.** See section 64(1)(h) ante. For the power of the Commission, or any inspector appointed under section 64(1)(h) ante, to inspect a company; see the Industrial Assurance Act 1969, section 1(1).

**Definitions.** For “the Commission”, see section 62(1) ante; for “friendly society”, see section 62(1) ante; for “agent”, see section 62(1) post. Note as to “agent” in section 62(1) post.

**66 Inspections and special investigations**

(1) In the circumstances specified in subsection (2) below, the Commission may—

- (a) appoint one or more persons to inspect the affairs of a friendly society or other body;
- (b) call a special meeting of the members of a friendly society or other body;
- (c) appoint (whether or not in addition to inspectors appointed under subsection (2) below) one or more persons to inspect the affairs of a friendly society or other body.

and, in the circumstances specified in subsection (2) below, consideration may extend to the period of time before the relevant time has been specified in subsection (2) above as being concerned.

(2) The powers conferred by subsection (1) above shall be exercisable—

- (a) on the application of a friendly society or other body concerned; or
- (b) where the Commission has reason to believe that the Commission should be held into the affairs of a friendly society or other body, or that it should call for consideration of the affairs of a friendly society or other body.

but paragraph (a) above shall not apply in the case of a friendly society or other body (regardless of the number of members of that society) if the Commission has no reason to believe that the Commission should be held into the affairs of that society.

(3) The powers conferred by subsection (1) above shall extend to the investigation of a friendly society or other body which has been a subsidiary of or joint venture of another friendly society or other body.

- (a) where an application is made by a friendly society or other body concerned;
- (b) where the Commission has reason to believe that the Commission should be held into the affairs of a friendly society or other body, or that it should call for consideration of the affairs of a friendly society or other body.

of the Friendly Societies Act 1974) on receiving a report from a person appointed under this section or upon an investigation under this section, see ss 87, 95A of that Act ante.

For the power of the Commission to exercise the powers conferred by this section where a registered friendly society or an incorporated friendly society (being a regulated friendly society which is an authorised person) contravenes the Financial Services Act 1986, see Sch 11, para 26(1), (2) to the 1986 Act ante.

**Sub-s (2): Body corporate.** See the note "Bodies corporate" to s 7 ante.

**Sub-s (3): In his custody.** See the note "In his custody or under his control" to s 60 ante.

**Sub-s (4): Reasonable excuse.** See the note to s 60 ante.

**Guilty of an offence.** As to the time limit for commencing proceedings, see s 107 post; as to offences by bodies corporate, partnerships and unincorporated associations, see s 108 post; as to the defence of due diligence, see s 109 post; and as to the jurisdiction of magistrates' courts, see s 110 post.

**Summary conviction; standard scale.** See the notes to s 18 ante.

**Sub-s (5): Knowingly; recklessly; false or misleading.** See the notes to s 62 ante.

**Furnishes . . . any information, etc.** If it appears to the Commission that information furnished to it on behalf of the society is false in a material particular, misleading or inaccurate, the Commission may give a direction under s 40(1) ante; see s 40(3)(e) ante.

**Material particular.** See the note to s 40 ante.

**Shall be . . . liable; conviction on indictment; fine; statutory maximum.** See the notes to s 31 ante.

**Sub-s (6): Auditors.** See, generally, s 72, Sch 14 post.

**Inspection of industrial assurance companies.** The powers given by this Part of this Act (ie Pt V (ss 44-67)) to a person appointed to investigate a friendly society may be exercised by the Commission, or any inspector appointed by it for the purpose, in respect of an industrial assurance company; see the Industrial Assurance Act 1923, s 17(1) ante.

**Definitions.** For "the Commission", see s 1(1) ante; for "subsidiary" and "jointly controlled body", see s 13(9) ante; for "the purposes of its supervisory functions", see (by virtue of sub-s (6) above), s 62(1) ante; for "friendly society", see s 116 post; for "the appropriate actuary" and "officer", see s 119(1) post. Note as to "agent", sub-s (6) above.

## 66 Inspections and special meetings: general

(1) In the circumstances mentioned in subsection (2) below, the Commission may—

- (a) appoint one or more competent inspectors to investigate and report on the affairs of a friendly society; or
- (b) call a special meeting of a friendly society to consider its affairs; or
- (c) appoint (whether on the same or on different occasions) an inspector or inspectors and call a special meeting for those purposes;

and, in the circumstances mentioned in subsection (3) below, the investigation or consideration may extend to the affairs of any body corporate which is or at any relevant time has been a subsidiary of or jointly controlled by the society concerned.

(2) The powers conferred by subsection (1) above may be exercised either—

- (a) on the application of the requisite number of members of the society concerned; or
- (b) where the Commission is of the opinion that an investigation should be held into the affairs of the society, or that the affairs of the society call for consideration by a meeting of its members;

but paragraph (a) above shall not apply to a registered society with branches (regardless of the number of members) except with the consent of the central body of that society.

(3) The powers conferred by subsection (1) above may be exercised so as to extend the investigation or consideration to the affairs of a body which is or has been a subsidiary of or jointly controlled by a friendly society either—

- (a) where an application referred to in subsection (2)(a) above so requests; or
- (b) where the Commission is of the opinion that it is necessary for the purposes of the investigation into or consideration of the affairs of the

friendly society that the affairs of the subsidiary or other body should also be investigated or considered.

(4) Where the inspectors are of the opinion mentioned in subsection (3)(b) above in relation to a subsidiary of or a body jointly controlled by the society under investigation they may, with the consent of the Commission, extend their investigation to the affairs of the subsidiary or other body and make their report accordingly.

(5) For the purposes of subsections (1) to (3) above the requisite number of members—

- (a) in the case of a friendly society having more than 1,000 members, is 100; and
- (b) in the case of any other friendly society, is one-tenth of the whole number of members of the society.

(6) Where an application is made as mentioned in subsection (2) above—

- (a) the application shall be supported by such evidence as the Commission may require for the purpose of showing that the applicants have good reason for making the application and are not actuated by malicious, frivolous, vexatious or scandalous motives;
- (b) such notice of the application shall be given to the society concerned and, if the application extends to the affairs of a subsidiary of or body jointly controlled by that society, to that subsidiary or other body, as the Commission may direct;
- (c) the Commission may require the applicants to give security for payment of the costs of the investigation or meeting before the inspector is appointed or the meeting is called subject, in the case of the costs of an investigation, to an amount not exceeding the corresponding Companies Act limit; and
- (d) as regards the expenses of or incidental to the investigation or meeting—
  - (i) in the case of an investigation (in whichever way instituted), the expenses shall be defrayed in the first instance by the Commission but without prejudice to its rights to contribution under section 67(10) below;
  - (ii) in the case of a meeting, the expenses shall be defrayed by the applicants, or out of the funds of the society, or by the members or officers or former members or officers of the society, in such proportions as the Commission may direct.

(7) Before exercising its powers under subsection (1) above in a case falling within subsection (2)(b) above, the Commission shall inform the society of the action which it proposes to take and the grounds for that action, and the society shall, within 14 days of receiving the information, be entitled to give the Commission an explanatory statement in writing by way of a reply.

(8) Where the Commission proposes to exercise its powers under subsection (1) above in a case falling within subsection (3)(b) above, subsection (7) above shall apply in relation to the subsidiary or jointly controlled body as it applies in relation to the society.

(9) Inspectors appointed under this section shall, in addition to having the powers which are necessary for or incidental to the discharge of their functions under this section, have the power specified in section 67 below.

(10) Where a special meeting is called under this section—

- (a) the Commission may—
  - (i) direct at what time and place the meeting is to be held and what matters are to be discussed and determined at the meeting; and

- (ii) direct w  
and may give su  
holding and conc
- (b) the Commis  
or, in default  
chairman;
- (c) the meeting  
the rules of th

and the provisions of th  
effect notwithstanding a

(11) In this section 'security for the payment of the sum as is specified for the Companies Act 1985 or Order 1986.

#### NOTES

**Commencement.** See the  
**Sub-s (1): Appoint . . .**  
exercise the powers conferred  
friendly society (being a regu  
Financial Services Act 1986, s  
Information which is restri  
purpose of enabling or assistin  
**Body corporate.** See the n  
**Sub-s (2): Opinion.** See th  
**Sub-s (6): Notice; direct**  
**Sub-s (7): Within 14 day**  
**Writing.** See the note "Wr  
**Sub-s (10): Thinks fit.** See  
**Rules of the society.** See s  
particular, para 5(3), Table, pa  
**Inspection of industrial**  
**Definitions.** For "the Com  
and "subsidiary", see s 13(9) a  
post; for "notice" and "officer"  
sub-s (11) above.  
**Companies Act 1985, s 4.**  
**Companies (Northern Ir**

#### 67 Inspections: suppl

- (1) In this section—  
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  - (i) the frien  
or
  - (ii) the frien  
controlle

as the case may be  
"the inspectors" r  
section 66 above t  
"the investigation  
the inspectors

and references to officer  
officers, employees or ag  
subsidiary of or body j

(ii) direct which members may attend and vote at the meeting, and may give such other directions as it thinks fit with respect to the call, holding and conduct of the meeting;

(b) the Commission may appoint a person to be chairman at the meeting or, in default of such an appointment, the meeting may appoint its own chairman;

(c) the meeting shall have all the powers of a meeting called according to the rules of the society;

and the provisions of this subsection and any direction given under it shall have effect notwithstanding anything in the rules of the society.

(11) In this section "the corresponding Companies Act limit", in relation to security for the payment of the costs of an investigation, is £5,000 or such other sum as is specified for the time being in an order under section 431(4) of the Companies Act 1985 or Article 424(4) of the Companies (Northern Ireland) Order 1986.

#### NOTES

**Commencement.** See the note to s 51 ante.

**Sub-s (1): Appoint ... competent inspectors, etc.** For the power of the Commission to exercise the powers conferred by this section where a registered friendly society or an incorporated friendly society (being a regulated friendly society which is an authorised person) contravenes the Financial Services Act 1986, see Sch 11, para 26(1), (2) to the 1986 Act ante.

Information which is restricted information for the purposes of s 63 ante may be disclosed for the purpose of enabling or assisting any person appointed inspector under this section; see s 64(1)(h) ante.

**Body corporate.** See the note "Bodies corporate" to s 7 ante.

**Sub-s (2): Opinion.** See the note "Thinks fit" to s 4 ante.

**Sub-s (6): Notice; direct.** As to the service of notices and directions, see s 113 post.

**Sub-s (7): Within 14 days of, etc.** See the note "Within 7 days of, etc" to s 18 ante.

**Writing.** See the note "Written" to s 17 ante.

**Sub-s (10): Thinks fit.** See the note to s 4 ante.

**Rules of the society.** See s 5(6) ante, Sch 3 post. As to the calling and holding of meetings, see, in particular, para 5(3), Table, para 11 of that Schedule post.

**Inspection of industrial assurance companies.** Cf the note to s 65 ante.

**Definitions.** For "the Commission", see s 1(1) ante; for "joint control", "jointly controlled body" and "subsidiary", see s 13(9) ante; for "friendly society" and "registered friendly society", see s 116 post; for "notice" and "officer", see s 119(1) post. Note as to "the corresponding Companies Act limit", sub-s (11) above.

**Companies Act 1985, s 431(4).** See Vol 8, title Companies.

**Companies (Northern Ireland) Order 1986.** SI 1986/1032 (NI 6).

#### 67 Inspections: supplementary provision

(1) In this section—

"the body under investigation" means—

- (i) the friendly society whose affairs are the subject of the investigation, or
- (ii) the friendly society, and each subsidiary of or body jointly controlled by the society, whose affairs are so subject,

as the case may be;

"the inspectors" means the person appointed by the Commission under section 66 above to conduct the investigation;

"the investigation" means the investigation under section 66 above which the inspectors have been appointed to hold;

and references to officers, employees or agents include past, as well as present, officers, employees or agents; and "agents", in relation to a friendly society or any subsidiary of or body jointly controlled by an incorporated friendly society,



(c) cause the report to be printed and published.

(9) A copy of a report of inspectors appointed under section 66 above to hold an investigation under that section, certified by the Commission to be a true copy, is admissible in any legal proceedings as evidence of the opinion of the inspectors in relation to any matter contained in the report; and a document purporting to be such a certificate shall be received in evidence and be deemed to be such a certificate, unless the contrary is proved.

(10) The Commission shall be entitled to be repaid the expenses of the investigation defrayed by it under section 66(6)(d) above as provided in the following paragraph, that is to say—

- (a) by the applicants for the investigation, to such extent (if any) as the Commission may direct;
- (b) by any body whose affairs were the subject of the investigation, to such extent (if any) as the Commission may direct;
- (c) by any person convicted of an offence in proceedings instituted as a result of the investigation, to such extent (if any) as the court by or before which he was convicted may order;

and a person liable under any one of paragraphs (a) to (c) above is entitled to contribution from any other person liable under the same paragraph, according to the amount of their respective liabilities under it.

(11) In the application of this section to a friendly society whose registered office is in Scotland or Northern Ireland, any reference to the High Court shall be read as a reference to the Court of Session or, as the case may be, to the High Court in Northern Ireland.

#### NOTES

**Commencement.** See the note to s 51 ante.

**Sub-s (1): Auditors.** See, generally, s 72, Sch 4 post.

**Sub-s (2): In their custody.** See the note "In his custody or under his control" to s 60 ante.

**Sub-s (3): Person.** See the note to s 1 ante.

**Sub-s (4): Oath.** This includes affirmation and declaration; see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes. As to oaths, affirmations and declarations, see the Oaths Act 1978, Vol 17, title Evidence, and the other relevant enactments noted to s 1 of that Act.

**Sub-s (6): Writing.** See the note "Written" to s 17 ante.

**High Court.** See the corresponding note to s 25 ante.

**Contempt of the court.** As to the power of courts to punish contempt, see 9 Halsbury's Laws (4th edn) paras 97 et seq.

**Sub-s (7): Directed.** As to the service of directions, see s 113 post.

**Sub-s (8): Thinks fit.** See the note to s 4 ante.

**Prescribed fee.** As to the power of the Treasury to make regulations prescribing fees, see s 2 ante and s 114 post.

**Sub-s (9): Deemed.** See the note to s 8 ante.

**Sub-s (10): May direct.** See the note "Directed" above.

**Sub-s (11): Registered office.** The memorandum of an incorporated friendly society must specify the address of its registered office; see s 5(6) ante, Sch 3, para 4(1)(c) post.

**High Court in Northern Ireland.** See the corresponding note to s 25 ante.

**Definitions.** For "the Commission", see s 1(1) ante; for "jointly controlled body" and "subsidiary", see s 13(9) ante; for "friendly society" and "incorporated friendly society", see s 116 post; for "the appropriate actuary" and "officer", see s 119(1) post. Note as to "the body under investigation", "the inspectors", "the investigation", "officers", "employees" and "agents", sub-s (1) above.

## PART VI

### ACCOUNTS AND AUDIT

**Power to modify, etc.** This Part of this Act (ie Pt VI (ss 68–79 and Sch 14)) may be modified by order made under s 102 post (see s 102(1), (2)(d), (3)–(5) post) and modified or excluded in relation to particular friendly societies by order made under s 103 post.

*Records and systems***68 Accounting records and systems of business control**

(1) Every friendly society and every registered branch shall—

- (a) cause accounting records to be kept; and
- (b) establish and maintain systems of control of its business and records and of inspection and report,

in accordance with this section.

(2) The accounting records must be sufficient to show and explain the transactions of the society or branch and—

- (a) disclose, with reasonable accuracy and promptness, the financial position of the society or branch at any time;
- (b) enable the committee of management properly to discharge the duties imposed on them by or under this Act or the 1974 Act and their function of direction of the affairs of the society or branch; and
- (c) enable the society or branch properly to discharge the duties imposed on it by or under this Act or the 1974 Act,

and must be kept in an orderly manner.

(3) The accounting records shall in particular contain—

- (a) entries from day to day of all sums received and paid by the society or branch and the matters in respect of which they are received or paid;
- (b) entries from day to day of every transaction entered into by the society or branch which will or there is reasonable ground for expecting may give rise to liabilities or assets of the society or branch other than insignificant assets or liabilities in respect of the management of the society or branch; and
- (c) a record of the assets and liabilities of the society or branch.

(4) The system of control which is to be established and maintained by a friendly society or a registered branch is a system for the control of the conduct of its activities in accordance with this Act and the decisions of the committee of management and for the control of the accounting and other records of its activities.

(5) The system of inspection and report which is to be established and maintained by a friendly society or registered branch is a system of inspection on behalf of and report to the committee of management on the operation of the system of control of the activities of the society or branch and records required by subsection (1)(b) above.

(6) The systems of control and of inspection and report must be such as to—

- (a) enable the committee of management properly to discharge the duties imposed on them by or under this Act or the 1974 Act and their functions of direction of the affairs of the society or branch; and
- (b) enable the society or branch properly to discharge the duties imposed on it by or under this Act or the 1974 Act;

and no such system of control shall be treated as established or maintained unless there is kept available to the committee of management a detailed statement in writing of the system as in operation for the time being.

(7) Without prejudice to the generality of subsection (6) above, the systems of control and of inspection and report must be such as to secure that the activities of the society or branch are so conducted and its records so kept that—

- (a) the information necessary to enable the committee of management and the society or branch to discharge their duties and functions is sufficiently

accurate, and sufficient provisions for the information under or for the purpose for w

and in this subsection, in includes that regularity r

(8) The accounting re or branch or at such othe fit, and shall at all times b

(9) Accounting recor they were made.

(10) Where an incorp other bodies, the society s such systems of control an by them as will enable th in relation to the business bodies.

(11) The committee c period of 6 months begin to the Commission a stat section have been compl the case of a registered fr branches, and the statem committee of managem

**NOTES**

**Commencement.** This sect for the purposes of the account Act 1992 (Commencement No s 126(2) post), and on 1 Janu (Commencement No 6 and Tra (3) post).

**General Note.** This section New Framework" (Cm 919) business control and inspection be extended to require the c information and control and re

**Sub-s (1): Accounting r** Commission must deal with t s 79(2), (3) post. The mainten of prudent management for the

See further as to records kept **Sub-s (2): Committee o** management, see s 27 ante, Sch

**Sub-s (6): Writing.** See the **Sub-s (8): Registered offi** the address of its registered offic

**Thinks fit.** See the note to s

**Sub-s (9): 6 years from, et**

**Sub-s (11): 6 months beg** s 39 ante.

**Chairman; chief executi** management and the chief execu

**Definitions.** For "the Com and "subsidiary", see s 13(9) a branch" and "registered friend

"committee of management", se

1974 Act. In the Friendly So

accurate, and is available with sufficient regularity or at need and with sufficient promptness, for those purposes; and

(b) the information regularly obtained by or furnished to the Commission under or for the purposes of this Act is sufficiently accurate for the purpose for which it is obtained or furnished and is regularly furnished; and in this subsection, in its application in relation to the Commission, "regularly" includes that regularity requested by or agreed with the Commission.

(8) The accounting records shall be kept at the registered office of the society or branch or at such other place or places as the committee of management thinks fit, and shall at all times be open to inspection by the committee of management.

(9) Accounting records shall be preserved for 6 years from the date on which they were made.

(10) Where an incorporated friendly society has subsidiaries or jointly controls other bodies, the society shall also secure that such accounting records are kept and such systems of control and of inspection and report are established and maintained by them as will enable the society to comply with the requirements of this section in relation to the business of the society and those subsidiaries and jointly controlled bodies.

(11) The committee of management of every friendly society shall within the period of 6 months beginning with the end of each financial year make and send to the Commission a statement of their opinion whether the requirements of this section have been complied with in respect of that year by the society and also, in the case of a registered friendly society with registered branches, by each of those branches, and the statement shall be signed by the chairman on behalf of the committee of management and by the chief executive.

#### NOTES

**Commencement.** This section and ss 69, 73–79 were brought into force on 13 January 1993 for the purposes of the accounts and audit of incorporated friendly societies by the Friendly Societies Act 1992 (Commencement No 3 and Transitional Provisions) Order 1993, SI 1993/16 (made under s 126(2) post), and on 1 January 1994 for all other purposes by the Friendly Societies Act 1992 (Commencement No 6 and Transitional Provisions) Order 1993, SI 1993/2213 (made under s 126(2), (3) post).

**General Note.** This section gives effect to para 461B of the Green Paper "Friendly Societies: A New Framework" (Cm 919) (January 1990), that the requirement to have adequate systems of business control and inspection, as incorporated in the Friendly Societies Act 1974, s 29 ante, should be extended to require the documentation of systems and to cover systems for management information and control and report.

**Sub-s (1): Accounting records; systems of control.** The auditors' annual report to the Commission must deal with the accounting records and systems of control under this section; see s 79(2), (3) post. The maintenance of accounting records and systems of control are one of the criteria of prudent management for the purposes of this Act; see s 56(3) ante.

See further as to records kept by a friendly society, s 112 post.

**Sub-s (2): Committee of management.** For general provisions as to the committee of management, see s 27 ante, Sch 11 post.

**Sub-s (6): Writing.** See the note "Written" to s 17 ante.

**Sub-s (8): Registered office.** The memorandum of an incorporated friendly society must specify the address of its registered office; see s 5(6) ante, Sch 3 para 4(1)(c) post.

**Thinks fit.** See the note to s 4 ante.

**Sub-s (9): 6 years from, etc.** Cf the note "Seven months after, etc" to s 3 ante.

**Sub-s (11): 6 months beginning with, etc.** See the note "3(6) months beginning with, etc" to s 39 ante.

**Chairman; chief executive.** As to the appointment of the chairman of the committee of management and the chief executive of a friendly society, see ss 27, 28 ante.

**Definitions.** For "the Commission", see s 1(1) ante; for "joint control", "jointly controlled body" and "subsidiary", see s 13(9) ante; for "friendly society", "incorporated friendly society", "registered branch" and "registered friendly society", see s 1(6) post; for "financial year", see s 118 post; for "committee of management", see s 119(1) post.

1974 Act, ie the Friendly Societies Act 1974 ante; see s 119(1) post.



(5) The annual accounts shall also contain, whether in the form of notes or otherwise, such supplementary information as is prescribed.

(6) The Commission shall, by regulations made with the consent of the Treasury, make provision with respect to the contents and the form of the annual accounts.

(7) Without prejudice to the generality of subsections (5) and (6) above, the regulations may—

- (a) prescribe accounting principles and rules;
- (b) require corresponding information for a preceding financial year;
- (c) require the accounts of incorporated friendly societies to deal also with bodies jointly controlled by them;
- (d) require the accounts to give particulars of the emoluments, pensions, compensation for loss of office and financial interests of members of the committee of management, other officers and employees of prescribed descriptions of the society;
- (e) add to the classes of documents to be comprised in the annual accounts;
- (f) make provision as to the matters to be included in any document so added;
- (g) modify the requirements of this Part of this Act as to the matters to be stated in any document comprised in the annual accounts; and
- (h) reduce the classes of documents to be comprised in the annual accounts;

and the regulations may make different provision for different cases.

(8) Where compliance with regulations under this section would not be sufficient to give a true and fair view, the necessary additional information shall be given in the accounts or in a note to them.

(9) If in special circumstances compliance with any provisions contained in regulations is inconsistent with the requirement to give a true and fair view, the committee of management shall depart from that provision to the extent necessary to give a true and fair view.

(10) Particulars of any such departure, the reasons for it and its effect shall be given in a note to the accounts.

(11) It is the duty of every member of the committee of management, other officer and employee of a society or registered branch as respects whom prescribed particulars are by virtue of subsection (7)(d) above required to be given in the accounts to give notice to the society of such matters as may be necessary to enable the society to give those particulars in the accounts.

#### NOTES

**Commencement.** This section was brought into force on 13 January 1993 for the purposes of the accounts and audit of incorporated friendly societies by the Friendly Societies Act 1992 (Commencement No 3 and Transitional Provisions) Order 1993, SI 1993/16 (made under s 126(2) post); sub-ss (5)–(7) were brought into force on 13 September 1993 and sub-ss (1)–(4), (8)–(11) were brought into force on 1 January 1994 for all other purposes by the Friendly Societies Act 1992 (Commencement No 6 and Transitional Provisions) Order 1993, SI 1993/2213 (made under s 126(2), (3) post).

**General Note.** See the General Note to s 69 ante.

**Sub-s (4): Group accounts.** As to the duty of the committee of management of a friendly society to prepare group accounts, see s 69(2) ante.

**Sub-s (6): Treasury.** See the note to s 1 ante.

**Sub-s (7): This Part of this Act.** Ie Pt VI (ss 68–79 and Sch 14).

**Sub-s (9): Committee of management.** For general provisions as to the committee of management, see s 27 ante, Sch 11 post.

**Sub-s (11): It is the duty, etc.** See the note "It shall be the duty, etc" to s 4 ante.

**Notice.** As to service of notices, see s 113 post.

**Definitions.** For "the Commission", see s 1(1) ante; for "jointly controlled body" and "subsidiary", see s 13(9) ante; for "friendly society", "incorporated friendly society", "registered branch" and

"registered friendly society", see s 116 post; for "financial year", see s 118 post; for "committee of management", "notice" and "officer", see s 119(1) post.

**Regulations under this section.** Up to 1 June 1994 no regulations had been made under this section.

For general provisions as to regulations, see s 121 post.

#### *Committee of management's annual report*

### **71 Report on a friendly society's affairs by the committee of management**

(1) The committee of management of a friendly society shall prepare for submission to the annual general meeting of the society a report on the activities of the society containing—

- (a) a fair review of the development of the activities of the society during the financial year and of its position at the end of it; and
- (b) such information relating to such aspects of the activities of the society as may be prescribed by regulations made by the Commission with the consent of the Treasury; and
- (c) a statement whether any and, if so, what activities carried on during the year by the society are believed to have been carried on outside its powers.

(2) Where an incorporated friendly society has subsidiaries or jointly controls other bodies, the report shall—

- (a) contain such information relating to such aspects of the activities of any subsidiaries or bodies which it jointly controls as may be prescribed by regulations made by the Commission with the consent of the Treasury;
- (b) review the development of any such subsidiaries and bodies during the year and their position at the end of it; and
- (c) contain a statement whether any and, if so, what activities carried on during the year by any of its subsidiaries or by any body which it jointly controls are believed to have been carried on outside the powers of the subsidiary or jointly controlled body.

(3) If a report under this section does not contain the prescribed information or the information in the report is not given in accordance with the regulations, each member of the committee of management shall be guilty of an offence and liable—

- (a) on conviction on indictment, to a fine; and
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

#### **NOTES**

**Commencement.** This section was brought into force on 13 January 1993 for the purposes of the accounts and audit of incorporated friendly societies by the Friendly Societies Act 1992 (Commencement No 3 and Transitional Provisions) Order 1993, SI 1993/16 (made under s 126(2) post); sub-ss (1), (2) were brought into force on 13 September 1993 for the purposes of powers to make regulations for the purposes of this section and the entire section was brought into force for all remaining purposes on 1 January 1994 by the Friendly Societies Act 1992 (Commencement No 6 and Transitional Provisions) Order 1993, SI 1993/2213 (made under s 126(2), (3) post).

**General Note.** See the General Note to s 69 ante.

**Committee of management.** For general provisions as to the committee of management, see s 27 ante, Sch 11 post.

**Annual general meeting.** For provisions as to annual general meetings, see s 30 ante, Sch 12, paras 1–3 post.

**A report on the activities of the society.** See further, as to this report, s 78(1), (3), (5)–(8) post.

**Treasury.** See the note to s 1 ante.

**Carried on outside its powers.** For the powers of an incorporated friendly society under this Act, see ss 7, 14–17 ante.

**Shall be . . . liable; conviction**  
s 31 ante.

**Guilty of an offence.** As offences by bodies corporate, defence of due diligence, see s . . .

**Summary conviction.** See . . .  
**Definitions.** For "the Com . . . and "subsidiary", see s 13(9) ante; for "financial year", see s . . .

**Regulations under this section.**

For general provisions as to . . .

### **72 Auditors' appointment**

(1) Every friendly society shall at its annual general meeting appoint one or more auditors for that meeting until the . . .

(2) Schedule 14 to this Act . . .

- (a) the appointment
- (b) their qualifications
- (c) the resignation
- (d) the remuneration

#### **NOTES**

**Commencement.** Sub-s (1) accounts and audit of incorporated friendly societies (Commencement No 3 and Transitional Provisions) Order 1993, SI 1993/16 (made under s 126(2) post), and on 1 January 1994 by the Friendly Societies Act 1992 (Commencement No 6 and Transitional Provisions) Order 1993, SI 1993/2213 (made under s 126(2), (3) post). As to the commencement of this section, see Schedule 14.

**General Note.** See the General Note to s 69 ante.  
**Annual general meeting.** paras 1–3 post.

**An auditor or auditors.** Intended to be disclosed to any person by an auditor of his professional duties to the Friendly Society. For the duties, etc of auditors see s 78(8)(b)(ii) ante.

See, further, s 73 post (auditors' rights to information and to attend general meetings); s 106 post (auditors' duties to cover manner of remuneration).

**Definitions.** For "friendly society" see s 1(1) ante.

### **73 Auditor's report**

(1) The auditors of a friendly society shall at the annual general meeting of the society or branch at the . . .

(2) The auditors of a friendly society, in connection with their report, carry out such investigations as to—

- (a) whether proper accounts have been kept above;

Shall be . . . liable; conviction on indictment; fine; statutory maximum. See the notes to s 31 ante.

**Guilty of an offence.** As to the time limit for commencing proceedings, see s 107 post; as to offences by bodies corporate, partnerships and unincorporated associations, see s 108 post; as to the defence of due diligence, see s 109 post; and as to the jurisdiction of magistrates' courts, see s 110 post.

**Summary conviction.** See the note to s 18 ante.

**Definitions.** For "the Commission", see s 1(1) ante; for "joint control", "jointly controlled body" and "subsidiary", see s 13(9) ante; for "friendly society" and "incorporated friendly society", see s 116 post; for "financial year", see s 118 post; for "committee of management", see s 119(1) post.

**Regulations under this section.** Up to 1 June 1994 no regulations had been made under this section.

For general provisions as to regulations, see s 121 post.

### Auditors

#### 72 Auditors' appointment, tenure, qualifications, etc

(1) Every friendly society and every registered branch shall at each annual general meeting appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting.

(2) Schedule 14 to this Act has effect as regards—

- (a) the appointment of auditors;
- (b) their qualifications and grounds of disqualification;
- (c) the resignation and removal of auditors; and
- (d) the remuneration of auditors.

#### NOTES

**Commencement.** Sub-s (1) was brought into force on 13 January 1993 for the purposes of the accounts and audit of incorporated friendly societies by the Friendly Societies Act 1992 (Commencement No 3 and Transitional Provisions) Order 1993, SI 1993/16 (made under s 126(2) post), and on 1 January 1994 for all remaining purposes by the Friendly Societies Act 1992 (Commencement No 6 and Transitional Provisions) Order 1993, SI 1993/2213 (made under s 126(2), (3) post). As to the commencement of sub-s (2) and Sch 14 post, see the Commencement note to that Schedule.

**General Note.** See the General Note to s 69 ante.

**Annual general meeting.** For provisions as to annual general meetings, see s 30 ante, Sch 12, paras 1–3 post.

**An auditor or auditors.** Information which is restricted information for the purposes of s 63 ante may be disclosed to any person in connection with disciplinary proceedings relating to the exercise by an auditor of his professional duties, and for the purposes of facilitating the discharge by auditors of their duties to the Friendly Societies Commission; see s 64(1)(a), (i), (2)(c) ante.

For the duties, etc of auditors where a friendly society is being investigated, see s 67(1), (2), (4)–(6), (8)(b)(ii) ante.

See, further, s 73 post (auditors' report); s 74 post (signature of auditors' report); s 75 post (auditors' rights to information and to attend meetings); s 79 post (auditors' duties to Commission and related rights); s 106 post (auditors not to be exempted from liability); and Sch 3, para 5, Table post (rules to cover manner of remuneration).

**Definitions.** For "friendly society" and "registered branch", see s 116 post.

### Auditors' report on annual accounts

#### 73 Auditor's report

(1) The auditors of a friendly society or of a registered branch shall make a report to the members on the annual accounts which are to be laid before the society or branch at the annual general meeting during their tenure of office.

(2) The auditors of a friendly society or registered branch shall, in preparing their report, carry out such investigations as will enable them to form an opinion as to—

- (a) whether proper accounting records have been kept under section 68 above;

- (b) whether satisfactory systems of control of the business and records of the society or branch and of inspection and report under that section have been maintained; and
- (c) whether the annual accounts are in agreement with the accounting records;

and, if the auditors are of the opinion that proper accounting records have not been kept, they shall state that fact in their report.

(3) If the auditors fail to obtain all the information and explanations and the access to documents which, to the best of their knowledge and belief, are necessary for the purposes of their audit, they shall state that fact in their report.

(4) The auditors shall, in their report, also make a report to the members on the report of the committee of management, in so far as subsection (7) below requires them to do so.

(5) The auditors' report shall state whether in the auditors' opinion the annual accounts have been properly prepared in accordance with this Act and the regulations made under it and in particular whether a true and fair view is given—

- (a) in the case of the income and expenditure account, of the income and expenditure of the society or branch for the financial year; and
- (b) in the case of the balance-sheet, of the state of the affairs of the society or branch as at the end of the financial year; and
- (c) in the case of the group accounts of an incorporated friendly society, of the state of affairs as at the end of the financial year of the society and any subsidiaries of the society.

(6) Subsection (5) above, in its application to the group accounts of an incorporated friendly society, is to be read as referring to the society and (so far as it concerns the members of the society) the subsidiaries dealt with in the group accounts.

(7) The auditors' report, in so far as it deals with the report of the committee of management, shall state whether in the auditors' opinion it has been prepared in accordance with this Act and the regulations made under it and whether the information given in the report of the committee of management is consistent with the accounting records and the annual accounts for the financial year.

#### NOTES

**Commencement.** See the note to s 68 ante.

**Sub-s (1): The auditors.** For appointment, see s 72 ante, Sch 14 post.

**Report.** See, further, s 74 post (signature of auditors' report); s 78 post (laying and furnishing of auditors' report); and Sch 14, para 17 post (disclosure of certain information in auditors' report).

**Annual accounts.** For the duty of the committee of management to prepare annual accounts, see s 69(1) ante.

**Annual general meeting.** For provisions as to annual general meetings, see s 30 ante, Sch 12, paras 1-3 post.

**Sub-s (4): Committee of management.** For general provisions as to the committee of management, see s 27 ante, Sch 11 post.

**Sub-s (5): Prepared in accordance with . . . regulations.** As to such regulations, see s 70(1) ante.

**Group accounts.** For the duty of the committee of management to prepare group accounts, see s 69(2) ante.

**Definitions.** For "subsidiary", see s 13(9) ante; for "friendly society", "incorporated friendly society" and "registered branch", see s 116 post; for "financial year", see s 118 post; for "committee of management", see s 119(1) post.

#### 74 Signature of auditor's report

(1) The auditors' report to the members of a friendly society or registered branch shall state the names of the auditors and be signed by them.

(2) The copies of the report shall be kept at the central office under section 72.

(3) Every copy of the report shall be made available in general meeting, sent to the members, circulated, published or otherwise made available to the public.

(4) If a copy of the report is made available to the public—

- (a) is laid before the central office or other office of the society or branch as its representative at the meeting;
- (b) is sent to the members of the society or branch as its representative at the meeting;

and the auditors of a friendly society or registered branch shall be liable on conviction of an offence under this section to a fine not exceeding £500.

(5) References in this section to the report of the auditor is held by a friendly society or registered branch or the body corporate or partnership.

#### NOTES

**Commencement.** See the note to s 68 ante.

**Sub-s (1): Auditor's report.** For appointment, see s 72 ante, Sch 14 post.

**Sub-s (4): Guilty of an offence.** For definition of "offence", see s 110 post.

**Conviction on indictment.** For definition of "conviction on indictment", see s 110 post.

**Sub-s (5): Body corporate or partnership.** For definition of "body corporate or partnership", see s 116 post; for "the central office", see s 72 ante; for "the central office of the society or branch as its representative", see s 116 post; for "the central office of the society or branch as its representative", see s 116 post; for "the central office of the society or branch as its representative", see s 116 post.

**Definitions.** For "friendly society", "incorporated friendly society" and "registered branch", see s 116 post; for "financial year", see s 118 post; for "committee of management", see s 119(1) post.

#### 75 Auditor's rights to information

(1) The auditors of a friendly society or registered branch shall have the following rights—

- (a) to access at all times to all the books, accounts, vouchers and other documents of the society or branch as its representative at the meeting;
- (b) to require the society or branch as its representative to provide explanations of any entries in the books, accounts, vouchers and other documents of the society or branch as its representative at the meeting;
- (c) to receive from the society or branch as its representative at the meeting—
  - (i) notice of any general meeting of the society or branch as its representative at the meeting relating to the business of the society or branch as its representative at the meeting;
  - (ii) copies of any resolutions passed at any general meeting of the society or branch as its representative at the meeting;
- (d) to attend any general meeting of the society or branch as its representative at the meeting.

and the auditors of a friendly society or registered branch shall be liable on conviction of an offence under this section to a fine not exceeding £500.

(2) The right to attend any general meeting of the society or branch as its representative at the meeting shall be exercisable by the auditors of a friendly society or registered branch as its representative at the meeting.

(3) An officer of a friendly society or registered branch who is guilty of an offence under this section shall be liable on conviction of an offence under this section to a fine not exceeding £500.

(2) The copies of the auditors' report which are sent to the Commission or the central office under section 78(1) or (2) below shall be signed by the auditors.

(3) Every copy of the auditors' report which is laid before the society or branch in general meeting, sent to the Commission or the central office or is otherwise circulated, published or issued shall state the names of the auditors.

(4) If a copy of the auditors' report—

- (a) is laid before the society or branch, sent to the Commission or central office or otherwise circulated, published or issued, without the required statement of the auditors' names; or
- (b) is sent to the Commission or the central office without being signed as required by this section,

the society or branch and every officer of it who is in default is guilty of an offence and liable on conviction on indictment to a fine.

(5) References in this section to signature by the auditors are, where the office of auditor is held by a body corporate or partnership, to signature in the name of the body corporate or partnership by a person authorised to sign on its behalf.

#### NOTES

**Commencement.** See the note to s 68 ante.

**Sub-s (1): Auditor's report.** See the report prepared under s 73 ante.

**The auditors.** For appointment, etc, see s 72 ante, Sch 14 post.

**Sub-s (4): Guilty of an offence.** As to the time limit for commencing proceedings, see s 107 post; as to offences by bodies corporate, partnerships and unincorporated associations, see s 108 post; as to the defence of due diligence, see s 109 post; and as to the jurisdiction of magistrates' courts, see s 110 post.

**Conviction on indictment; fine.** See the notes to s 31 ante.

**Sub-s (5): Body corporate.** See the note "Bodies corporate" to s 7 ante.

**Definitions.** For "the Commission", see s 1(1) ante; for "friendly society" and "registered branch", see s 116 post; for "the central office" and "officer", see s 119(1) post. Note as to "signature by the auditors", sub-s (5) above.

#### 75 Auditor's rights to information and to attend meetings

(1) The auditors of a friendly society are entitled—

- (a) to access at all times to the books, accounts and vouchers of the society;
- (b) to require from the officers of the society such information and explanations as they think necessary for the performance of their duties as auditors;
- (c) to receive from the society—
  - (i) notice of any general meeting of the society and of any matter relating to the business of such a meeting of which notice is given (by whatever means) to the society's members; and
  - (ii) copies of any communications sent to the society's members with respect to any such meeting; and
- (d) to attend any general meeting of the society and to be heard on any part of the business of the meeting which concerns them as auditors;

and the auditors of a registered branch have the corresponding rights to those specified in paragraphs (a) to (d) above, with the substitution for references to the society of references to the branch.

(2) The right to attend or be heard at a meeting is exercisable in the case of a body corporate or partnership by an individual authorised by it in writing to act as its representative at the meeting.

(3) An officer of a friendly society is guilty of an offence if he knowingly or

recklessly makes to the society's auditors a statement (whether written or oral) which—

- (a) conveys or purports to convey any information or explanations which the auditors require, or are entitled to require, as auditors of the society; and
- (b) is misleading, false or deceptive in a material particular.

(4) An officer of a registered branch is guilty of an offence if he knowingly or recklessly makes to the auditors of the branch a statement (whether written or oral) which—

- (a) conveys or purports to convey any information or explanations which the auditors require, or are entitled to require, as auditors of the branch; and
  - (b) is misleading, false or deceptive in a material particular.
- (5) A person guilty of an offence under subsection (3) or (4) above is liable —
- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both; and
  - (b) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both.
- (6) It shall be the duty of a subsidiary of a friendly society which is—
- (a) a company within the meaning of the Companies Act 1985 incorporated in Great Britain; or
  - (b) a company within the meaning of the Companies (Northern Ireland) Order 1986 incorporated in Northern Ireland,

and of the auditors of such a subsidiary to give to the auditors of the society such information and explanations as those auditors may reasonably require for the purposes of their duties as auditors of that society.

- (7) If—
- (a) a subsidiary to which subsection (6) above applies fails to comply with that subsection; or
  - (b) an auditor of such a subsidiary fails without reasonable excuse to comply with that subsection,

the subsidiary or auditor is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(8) An incorporated friendly society having a subsidiary to which subsection (6) above does not apply shall, if required by its auditors to do so, take all such steps as are reasonably open to it to obtain from the subsidiary such information and explanations as they may reasonably require for the purposes of their duties as auditors of that society.

(9) If an incorporated friendly society fails to comply with subsection (8) above, it is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### NOTES

**Commencement.** See the note to s 68 ante.

**Sub-s (1): Auditors of a friendly society; auditors of a registered branch.** For appointment, etc, see s 72 ante, Sch 14 post. As to the rights of auditors under this section after they have been removed or have resigned, see s 72 ante, Sch 14, paras 10, 13 post.

**Notice.** As to the service of notices, see s 113 post.

**Sub-s (2): Body corporate.** See the note "Bodies corporate" to s 7 ante.

**Individual.** This word is used instead of the word "person" in order, presumably, to exclude bodies of persons corporate or unincorporate; cf the definition of "person" in the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes, and *Whitney v IRC* [1926] AC 37 at 43 per Viscount Cave LC.

**Writing.** See the note "Written" to s 17 ante.

**Sub-s (3): Guilty of an offence.** See the note "Offences" to s 68 ante. As to offences by bodies corporate, see the note "Bodies corporate" to s 110 post.

**Knowingly; recklessly.** See the note "Mens rea" to s 68 ante.

**Misleading; false.** See the note "Mens rea" to s 68 ante.

**Material particular.** See the note "Material particular" to s 68 ante.

**Sub-s (5): Is liable; corresponding notes to s 31 ante.**

**Summary conviction.** See the note "Summary conviction" to s 68 ante.

**Sub-s (6): Great Britain.** See the note "Great Britain" to s 68 ante. 1706, preamble, Art I, Vol 1 of the Statutes, s 22(1), Sch 2, para 5(a).

**Sub-s (7): Reasonable explanation.** See the note "Reasonable explanation" to s 68 ante.

**Definitions.** For "subsidiary of a friendly society", and "registered branch of a friendly society", see the definitions in the Companies Act 1985. See the note "Definitions" to s 68 ante.

**Companies Act 1985.** See the note "Companies Act 1985" to s 68 ante.

**Companies (Northern Ireland) Order 1986.** See the note "Companies (Northern Ireland) Order 1986" to s 68 ante.

#### 76 Approval and signature of accounts

(1) The annual accounts of a friendly society shall be approved by the committee of management of the society.

(2) The accounts so approved shall be signed by the committee of management of the society; and the signature of the secretary of the society shall be required.

(3) Every copy of the accounts which is sent to the members of the society in general meeting, or to the members of any branch of the society, shall bear the name of the secretary of the society.

(4) The copy of the accounts which is sent to the Comptroller and Auditor General shall be signed by the secretary of the society.

(5) If annual accounts are not approved in accordance with the requirements of this section, the secretary of the society who is party to their approval shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

For this purpose every copy of the accounts which is approved shall be taken to be a copy of the accounts which the secretary of the society has taken all reasonable steps to ensure that it is a true and correct copy of the accounts.

(6) If a copy of the accounts is laid before the members of the society or issued, with or without this section of the accounts being included, the secretary of the society shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

- (a) is laid before the members of the society or issued, with or without this section of the accounts being included,
- (b) is sent to the Comptroller and Auditor General as required by subsection (4).

the society or branch of the society shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### NOTES

**Commencement.** See the note "Commencement" to s 68 ante.

**Sub-s (1): Annual accounts.** See the note "Annual accounts" to s 68 ante.

**Sub-s (3): Guilty of an offence.** As to the time limit for commencing proceedings, see s 107 post; as to offences by bodies corporate, partnerships and unincorporated associations, see s 108 post; as to the defence of due diligence, see s 109 post; and as to the jurisdiction of magistrates' courts, see s 110 post.

**Knowingly; recklessly.** See the notes to s 62 ante.

**Misleading; false.** See the note "False or misleading" to s 62 ante.

**Material particular.** See the note to s 40 ante.

**Sub-s (5): Is liable; conviction on indictment; fine; statutory maximum.** See the corresponding notes to s 31 ante.

**Summary conviction.** See the note to s 18 ante.

**Sub-s (6): Great Britain.** In England, Scotland and Wales; see the Union with Scotland Act 1706, preamble, Art I, Vol 10, title Constitutional Law (Pt 1), as read with the Interpretation Act 1978, s 22(1), Sch 2, para 5(a), Vol 41, title Statutes.

**Sub-s (7): Reasonable excuse.** See the note to s 60 ante.

**Standard scale.** See the note to s 18 ante.

**Definitions.** For "subsidiary", see s 13(9) ante; for "friendly society", "incorporated friendly society", and "registered branch", see s 116 post; for "notice" and "officer", see s 119(1) post.

**Companies Act 1985.** See Vol 8, title Companies. For the meaning of "company", see s 735(1) thereof.

**Companies (Northern Ireland) Order 1986.** SI 1986/1032 (NI 6).

## 76 Approval and signing of accounts

(1) The annual accounts of a friendly society or a registered branch shall be approved by the committee of management.

(2) The accounts so approved shall be signed by the secretary of the society or branch; and the signature shall be on the balance sheet.

(3) Every copy of the balance sheet which is laid before the society or branch in general meeting, or is otherwise circulated, published or issued, shall state the name of the secretary of the society or branch.

(4) The copy of the balance sheet of a friendly society or a registered branch which is sent to the Commission or to the central office under section 78 below shall be signed by the secretary of the society or branch.

(5) If annual accounts of a society or branch are approved which do not comply with the requirements of this Act, every member of the committee of management who is party to their approval and who knows that they do not comply or is reckless as to whether they comply is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

For this purpose every member of the committee at the time the accounts are approved shall be taken to be a party to their approval unless he shows that he took all reasonable steps to prevent their being approved.

(6) If a copy of the balance sheet of a society or branch—

(a) is laid before the society or branch, or otherwise circulated, published or issued, without the balance sheet having been signed as required by this section or without the required statement of the signatory's name being included; or

(b) is sent to the Commission or to the central office without being signed as required by this section,

the society or branch and every officer of it who is in default is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## NOTES

**Commencement.** See the note to s 68 ante.

**Sub-s (1): Annual accounts.** For the duty of the committee of management to prepare annual accounts, see s 69(1) ante.

**Committee of management.** For general provisions as to the committee of management, see s 27 ante, Sch 11 post.

**Sub-s (2): Secretary.** As to the appointment of this officer, see s 28 ante.

**Sub-s (5): Knows; reckless.** See the corresponding notes to s 62 ante.

**Guilty of an offence.** As to the time limit for commencing proceedings, see s 107 post; as to offences by bodies corporate, partnerships and unincorporated associations, see s 108 post; as to the defence of due diligence, see s 109 post; and as to the jurisdiction of magistrates' courts, see s 110 post.

**Summary conviction; standard scale.** See the notes to s 18 ante.

**Definitions.** For "the Commission", see s 1(1) ante; for "friendly society" and "registered branch", see s 116 post; for "the central office", "committee of management" and "officer", see s 119(1) post.

### 77 Information on appointed actuary to be annexed to balance sheet

(1) This section applies to any copy of a friendly society's balance sheet which—

- (a) is furnished to the Commission or the central office under section 78 below or at its or their request;
- (b) is laid before the society at its annual general meeting; or
- (c) is furnished to a member at his request.

(2) Subject to the provisions of this section, a friendly society shall annex to each copy of its balance sheet to which this section applies as respects every person who, at any time during the financial year to which the balance sheet relates, was its appointed actuary, a statement of the following information—

- (a) whether the actuary was a member of the society or any subsidiary of the society at any time during that year;
- (b) particulars of any pecuniary interest of the actuary in any transaction between the actuary and the society or any subsidiary of the society and subsisting at any time during that year or, in the case of transactions of a minor character, a general description of such interests;
- (c) the aggregate amount of any remuneration and the value of any other benefits other than a pension or other future or contingent benefit under any contract of service of the actuary with, or contract for services by the actuary to, the society or any subsidiary of the society, receivable by the actuary in respect of any period in that year; and
- (d) a general description of any other pecuniary benefit (including any pension and other future contingent benefit) received by the actuary from the society or any subsidiary of the society in that year or receivable by him from the society or any such subsidiary,

together with a statement that the society has made a request to the actuary to furnish to it the particulars specified in this subsection and identifying any particulars furnished pursuant to the request.

(3) Subsection (2) above applies in relation—

- (a) to the actuary's spouse;
- (b) to a partner of the actuary;
- (c) to any child or step-child of the actuary who is under 18;
- (d) to any person (other than the society concerned or any subsidiary of that society) of whom the actuary is an employee; and
- (e) to any body corporate (other than the society concerned or any subsidiary of that society) of which the actuary is a director or which is controlled by him,

as it applies in relation to the actuary.

(4) For the purposes of subsection (3) above, an actuary shall be taken to control a body corporate if he is a person—

- (a) in accordance with whose directions or instructions the directors of that body corporate or of a body corporate of which it is a subsidiary are accustomed to act; or

- (b) who, either under this subsection, or under any other subsection, is or more of them is a body corporate or

(5) If a friendly society is required to send above to a copy of its balance sheet, the copy concerned shall be guilty of an offence if it is not exceeding level 3 on

### NOTES

**Commencement.** See the notes to s 1 ante.

**Sub-s (1): Balance sheet.** See s 69(1)(a) ante.

**Annual general meeting.** See paras 1-3 post.

**Sub-s (2): Appointed actuary.** See s 119(1) ante.

**Contract of service; contract for services.** See s 119(1) ante (or employment) and a contract for services.

**Sub-s (3): Under 18.** A person is under 18 at the relevant anniversary of the birth of the child.

**Person.** See the note to s 1 ante.

**Body corporate.** See the notes to s 1 ante.

**Sub-s (5): Guilty of an offence.** See s 119(1) ante (or employment) and a contract for services; as to the defence of due diligence, see s 110 post.

**Summary conviction; standard scale.** See the notes to s 18 ante.

**Definitions.** For "the Commission", see s 1(1) ante; for "friendly society", see s 116 post; for "the central office", see s 119(1) post.

### Laying

### 78 Laying and furnishing

(1) The committee of management shall—

- (a) lay before the society a copy of the annual accounts and a copy of the annual report of management for that year;
- (b) send to the Commission a copy of those accounts and report not later than 14 days after the end of June or 14 days after the end of the financial year.

copies of the annual accounts and report of management for that year.

(2) The committee of management shall—

- (a) lay before the society a copy of the annual accounts and a copy of the annual report of management for that year;
- (b) send to the Commission a copy of those accounts and report not later than 14 days after the end of June or 14 days after the end of the financial year.

copies of the annual accounts and report of management for those accounts.

(3) Every friendly society shall cause a copy of the annual accounts and report of management for that year to be sent to the Commission—

- (a) make copies of the annual accounts and report of management for that year and send them to the members of the society who are entitled to receive them;
- (b) send, free of charge, a copy of those accounts and report to every member of the society who is entitled to receive them.

(b) who, either alone or with any other person falling within that subsection, is entitled to exercise or controls the exercise of, one third or more of the voting power at any general meeting of the body corporate or of a body corporate of which it is a subsidiary.

(5) If a friendly society fails to annex the statement required by subsection (2) above to a copy of its balance sheet to which this section applies, the society concerned shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### NOTES

**Commencement.** See the note to s 68 ante.

**Sub-s (1): Balance sheet.** For the duty of the committee of management to prepare a balance sheet, see s 69(1)(a) ante.

**Annual general meeting.** For provisions as to annual general meetings, see s 30 ante, Sch 12, paras 1-3 post.

**Sub-s (2): Appointed actuary.** See s 44 ante.

**Contract of service; contract for services.** As to the distinction between a contract of service (or employment) and a contract for services, see 16 Halsbury's Laws (4th edn) para 501.

**Sub-s (3): Under 18.** A person attains a particular age expressed in years at the commencement of the relevant anniversary of the date of his birth; see the Family Law Reform Act 1969, s 9, Vol 6, title Children.

**Person.** See the note to s 1 ante.

**Body corporate.** See the note "Bodies corporate" to s 7 ante.

**Sub-s (5): Guilty of an offence.** As to the time limit for commencing proceedings, see s 107 post; as to offences by bodies corporate, partnerships and unincorporated associations, see s 108 post; as to the defence of due diligence, see s 109 post; and as to the jurisdiction of magistrates' courts, see s 110 post.

**Summary conviction; standard scale.** See the notes to s 18 ante.

**Definitions.** For "the Commission", see s 1(1) ante; for "subsidiary", see s 13(9) ante; for "friendly society", see s 116 post; for "financial year", see s 118 post; for "appointed actuary" and "the central office", see s 119(1) post.

#### *Laying and furnishing of accounts and reports*

#### **78 Laying and furnishing of accounts and reports**

(1) The committee of management of a friendly society shall in each year—

- (a) lay before the society at the annual general meeting; and
- (b) send to the Commission and to the central office not later than 30th June or 14 days before that meeting, whichever is earlier,

copies of the annual accounts for the last financial year, the report of the committee of management for that year and the auditors' report on those accounts.

(2) The committee of management of a registered branch shall in each year—

- (a) lay before the branch at the annual general meeting; and
- (b) send to the Commission and to the central office not later than 30th June or 14 days before that meeting, whichever is earlier,

copies of the annual accounts for the last financial year and the auditors' report on those accounts.

(3) Every friendly society shall, as from the date by which at the latest its committee of management is required by subsection (1) above to send them to the Commission—

- (a) make copies of the annual accounts, the report of the committee of management and the auditors' report available free of charge to members of the society at every office of the society; and
- (b) send, free of charge, copies of those documents to any member of the society who demands them;

and that duty shall cease, as respects those accounts, when the society comes to be under the same duty in respect of the accounts for the next financial year.

(4) Every registered branch shall, as from the date by which at the latest the committee of management is required by subsection (2) above to send them to the Commission—

- (a) make copies of the annual accounts and the auditors' report available free of charge to members of the branch at every office of the branch, and
- (b) send, free of charge, copies of those documents to any member of the branch who demands them;

and that duty shall cease, as respects those accounts, when the branch comes to be under the same duty in respect of the accounts for the next financial year.

(5) If default is made in complying with subsection (1) or (2) above, every person who was a member of the committee of management of the society or, as the case may be, the branch, at any time during the relevant period shall be guilty of an offence and liable on summary conviction—

- (a) to a fine not exceeding level 5 on the standard scale; and
- (b) in the case of a continuing offence, to an additional fine not exceeding one-tenth of that level for every day during which the offence continues.

(6) If, on demand made of it under subsection (3) or (4) above, a friendly society or registered branch fails, in accordance with that subsection, to make available or, as the case may be, within 7 days of the demand, to send to a person a copy of the annual accounts, the society or branch shall be guilty of an offence and liable on summary conviction—

- (a) to a fine not exceeding level 3 on the standard scale; and
- (b) in the case of a continuing offence, to an additional fine not exceeding one-tenth of that level for every day during which the offence continues.

(7) In subsection (5) above "the relevant period" means the period beginning at the end of the last financial year and ending with the date which falls 14 days before the annual general meeting following the end of that year.

(8) The central office shall keep the copies of documents received by it from a friendly society under subsection (1) above in the public file of the society.

#### NOTES

**Commencement.** See the note to s 68 ante.

**General Note.** See the General Note to s 69 ante.

**Sub-s (1): Committee of management.** For general provisions as to the committee of management, see s 27 ante, Sch 11 post.

**Annual general meeting.** For provisions as to annual general meetings, see s 30 ante, Sch 12, paras 1-3 post.

**Send . . . to the central office.** As to the form of documents to be sent to the central office and for the power to prescribe fees for the inspection, etc of documents in the custody of the central office, see s 114 post. As to evidence of documents, see s 111 post.

**Not later than . . . 14 days before.** When an act has to be done not later than a given period before the happening of a certain event, the day on which the event happens is excluded in the calculation of the period, and the specified number of clear days must be allowed in arriving at the last day on which the act could be done; see *Carapanayoti & Co Ltd v Comptoir Commercial Andre & Cie SA* [1972] 1 Lloyd's Rep 139, CA.

**Copies of the annual accounts.** For the duty of the committee of management to prepare annual accounts, see s 69(1) ante.

Copies of a society's or branch's balance sheet sent to the Commission or the central office under this section must be signed by the secretary of the society or branch; see s 76(4) ante; as to the information which must be annexed to the copy of the balance sheet so furnished, see s 77 ante.

**Report of the committee of management.** See s 71 ante.

**The auditors' report.** See ss 73, 74 ante. Copies submitted under sub-s (1) or (2) above must be signed by the auditors; see s 74(2) ante.

**Sub-s (5): Guilty of an offence.** As to the time limit for commencing proceedings, see s 107

post; as to offences by bodies as to the defence of due diligence s 110 post.

**Summary conviction; st**

**Every day during which**

**Sub-s (6): Within 7 days**

**Sub-s (8): Public file. See**

**Definitions.** For "the Commission", "friendly society" and "registered branch", see s 1(1) and "central office" and "committee of management".

#### 79 Auditors' duties to

(1) The auditors of a friendly society or registered branch shall, in relation to the financial year of the society or branch, comply with the requirements of this section in relation to the management of the society or branch in that year in relation to the management of the society or branch.

(2) The auditors' report shall—

- (a) the accounting records;
- (b) the systems of control and report maintenance.

(3) The report shall specify in subsection (2) above a

- (a) as regards the systems of control, whether they comply with the requirements of each requirement, or if not, specify in which it was not complied with;
- (b) as regards the systems of report maintenance, whether they comply with the requirements of each requirement, or if not, specify in which it was not complied with;
- (c) as regards the systems of control and report maintenance, whether they comply with the requirements of each requirement, or if not, specify in which it was not complied with.

(4) Where an incorporated friendly society or registered branch which the report relates to is a body to which the auditors' report shall be made, the auditors shall give their opinion as to compliance with the requirements of this section on application to incorporate or to be incorporated, or to control or to be controlled by other bodies.

(5) The auditors of a friendly society or registered branch shall, within 6 months beginning with the end of the financial year of the society or branch, submit to the Commission together with their report a copy of the report which they think fit to make.

(6) A friendly society or registered branch shall not be liable to be dissolved or to have its name struck off the register of friendly societies or registered branches by the Commission.

(7) If the committee of management of a friendly society or registered branch fails to submit to the Commission under subsection (5) a copy of the report which the auditors have submitted to the Commission with the report,

post; as to offences by bodies corporate, partnerships and unincorporated associations, see s 108 post; as to the defence of due diligence, see s 109 post; and as to the jurisdiction of magistrates' courts, see s 110 post.

**Summary conviction; standard scale.** See the notes to s 18 ante.

**Every day during which the offence continues.** See the note to s 20 ante.

**Sub-s (6): Within 7 days of, etc.** See the note to s 18 ante.

**Sub-s (8): Public file.** See s 104 post.

**Definitions.** For "the Commission", see s 1(1) ante; for "the public file", see s 104 post; for "friendly society" and "registered branch", see s 116 post; for "financial year", see s 118 post; for "the central office" and "committee of management", see s 119(1) post.

## 79 Auditors' duties to Commission and related rights

(1) The auditors of a friendly society shall, unless they are exempt from the requirements of this section, make a report to the Commission, as respects each financial year of the society, on the conduct of the activities of the society in that year in relation to the matters specified in subsection (2) below.

(2) The auditors' report shall deal with—

- (a) the accounting records kept by the society under section 68 above; and
- (b) the systems of control of its business and records and of inspection and report maintained under that section.

(3) The report shall state the auditors' opinion as respects the matters specified in subsection (2) above as follows, that is to say—

- (a) as regards the accounting records of the society, whether or not they comply with the requirements of section 68 above and, if not, specifying each requirement not complied with and the respects in which it was not complied with;
- (b) as regards the system of control of its business and records, whether or not the system complies with the requirements of section 68 above and, if not, specifying each requirement not complied with and the respects in which it was not complied with;
- (c) as regards the system of inspection and report, whether or not the system complies with the requirements of section 68 above and, if not, specifying each requirement not complied with and the respects in which it was not complied with.

(4) Where an incorporated friendly society had, at any time during the year to which the report relates, subsidiaries or jointly controlled other bodies, the auditors' report shall deal also with and contain corresponding statements of their opinion as to compliance with the requirements of section 68 above in its application to incorporated friendly societies having subsidiaries or jointly controlling other bodies.

(5) The auditors of a friendly society shall send their report under this section to the society and, subject to subsection (6) below, shall do so within the period of 6 months beginning with the end of the financial year to which it relates, and the society shall, within the period of 9 months so beginning, send the report to the Commission together with such comments as the committee of management thinks fit to make.

(6) A friendly society may allow its auditors a longer period in which to send their report than that specified in subsection (5) above, but not so as to prevent the society from complying with the duty imposed on it by that subsection as regards the Commission.

(7) If the committee of management of a friendly society makes any comments to the Commission under subsection (5) above, the committee shall cause a copy of the comments to be sent to the auditors before they send them to the Commission with the report under that subsection.

(8) The auditors of a friendly society, if they are satisfied that it is expedient to do so in order to protect the interests of members of the society or if they are requested to do so by the Commission on its being so satisfied, shall be entitled, notwithstanding any obligation of confidence incumbent on them and whether or not to do so would be contrary to the interests of the society, to furnish information to the Commission relating to the conduct of the activities of the society or, in the case of an incorporated friendly society, the business of any of its subsidiaries or any body of which it has joint control.

(9) The Treasury may by order impose on the auditors of friendly societies an obligation to furnish to the Commission, in such circumstances as may be prescribed in the order, relevant information available to them of such descriptions as may be prescribed in the order; and it shall be the duty of any auditor to furnish information to which the obligation extends notwithstanding any obligation of confidence incumbent on him.

(10) In subsection (9) above, "relevant information" means information relating to the conduct of the business of friendly societies or their subsidiaries or bodies of which they have joint control.

(11) Subject to subsection (12) below, the auditors of a friendly society are exempt from the requirements of this section if the auditors of that society do not need to be members of a recognised supervisory body.

(12) The Commission may direct that the auditors of a society specified in the direction whose auditors would otherwise be exempt from the requirements of this section shall not be exempt from those requirements.

#### NOTES

**Commencement.** See the note to s 68 ante.

**General Note.** See the General Note to s 69 ante.

**Sub-s (1): The auditors.** For appointment, etc, see s 72 ante, Sch 14 post.

**Sub-s (5): 6(9) months beginning with, etc.** See the note "3(6) months beginning with, etc" to s 39 ante.

**Committee of management.** For general provisions as to the committee of management, see s 27 ante, Sch 11 post.

**Sub-s (9): Treasury.** See the note to s 1 ante.

**It shall be the duty, etc.** See the note to s 4 ante.

**Sub-s (12): Direct.** As to the service of directions, see s 113 post.

**Definitions.** For "the Commission", see s 1(1) ante; for "joint control", "jointly controlled body", and "subsidiary", see s 13(9) ante; for "friendly society" and "incorporated friendly society", see s 116 post; for "financial year", see s 118 post; for "committee of management", see s 119(1) post; for "recognised supervisory body", see Sch 14, para 4(3) post.

**Orders under this section.** The Friendly Societies (Auditors) Order 1994, SI 1994/132.

For general provisions as to orders, see s 121 post.

## PART VII DISPUTES

### *Disputes relating to friendly societies*

#### 80 Determination of certain disputes by arbitration

- (1) Subject to the following provisions of this section, any dispute between—
- a member or person claiming through a member or under the rules of a friendly society or registered branch and the society or branch;
  - a person aggrieved who has ceased to be a member of a friendly society or registered branch, or a person claiming through such a person, and the society or branch or an officer of the society or branch;
  - a registered branch and the society of which it is a registered branch;

- an officer of a branch; or
- two or more

shall be determined by the society or branch.

(2) An application for this section may be made

(3), (4) (*Apply to Scot*)

(5) If the parties to a dispute agree that it shall be determined by arbitration, it may be so determined under this section.

(6) If—

- a party to a dispute applies to the Commission for determination of the dispute beginning with
- either party to a dispute has applied to court or, in Scotland,

the dispute may be so determined

(7) If the society has made a determination

- the period of the determination made in succession to arbitration in
- the rules may be successive determinations

(8) In this section "dispute"

- includes any dispute between a person aggrieved and the society or branch and may be reinstated a
- in the case of a dispute as provided in subsection (1) on a question of membership;
- does not include a dispute between a member and a registered branch or a society or branch

#### NOTES

**Commencement.** 13 January 1994.

**General Note.** The responsibility for determining a dispute between a friendly society and a member or person claiming through a member or under the rules of a society may be transferred to the Registrar's rules under the rules of a society may be transferred to the Registrar's rules will continue the Registrar's rules post and the statement of the Registrar's rules under the Bill of this Act (205 HC O

**Sub-s (1): Any dispute.** A dispute between a registered branch and the society of which it is a registered branch may be determined by arbitration or by the Registrar's rules accede to schemes for the inv

- (d) an officer of a registered branch and the society of which it is a registered branch; or
  - (e) two or more registered branches, or any of their officers,
- shall be determined by arbitration in the manner directed by the rules of the society or branch.

(2) An application for the enforcement of an award on an arbitration under this section may be made to the county court.

(3), (4) (*Apply to Scotland only.*)

(5) If the parties to a dispute of a description specified in subsection (1) above agree that it shall be determined by the county court or, in Scotland, the sheriff, it may be so determined instead of being determined by arbitration under this section.

(6) If—

- (a) a party to a dispute of a description specified in subsection (1) above applies to the society or branch in accordance with the rules for determination of the dispute by arbitration;
- (b) no such determination has been made within the period of 40 days beginning with the day on which the application was made; and
- (c) either party applies for determination of the dispute by the county court or, in Scotland, the sheriff,

the dispute may be so determined.

(7) If the society has registered branches—

- (a) the period of 40 days shall not begin to run until application has been made in succession to all the bodies entitled to determine the dispute by arbitration in accordance with the rules; but
- (b) the rules may not require a greater delay than 3 months between each successive determination by such a body.

(8) In this section "dispute"—

- (a) includes any dispute arising on the question whether a member or person aggrieved is entitled to be, or to continue to be, a member or to be reinstated as a member; but
- (b) in the case of a person who has ceased to be a member does not (except as provided in paragraph (a) above) include any dispute other than one on a question which arose while he was a member, or arises out of his membership; and
- (c) does not include a dispute between parties mentioned in subsection (1)(a) or (b) above which has arisen as a result of and incidentally to a dispute between a member, or person aggrieved who has ceased to be a member and a person claiming through him, or under the rules of a society or branch.

**NOTES**

**Commencement.** 13 January 1993; see the note to s 58 ante.

**General Note.** The responsibility of the Registrar of Friendly Societies for hearing disputes between a friendly society and its members is removed by the repeal by ss 93, 120, Sch 16, para 26, Sch 22, Pt I post of the Friendly Societies Act 1974, s 77. In future, disputes which cannot be settled under the rules of a society may be referred to the courts (sub-s (5) above). The Commission, however, will continue the Registrar's role of using its good offices in order to resolve complaints (see s 81(2) post and the statement of the Economic Secretary to the Treasury announcing the second reading of the Bill of this Act (205 HC Official Report col 662; 9 March 1992)).

**Sub-s (1):** Any dispute ... shall be determined by arbitration. A friendly society or registered branch may establish internal procedures for the resolution of complaints, or make or accede to schemes for the investigation and settlement by an adjudicator of complaints; see s 81(1)

post. This section also applies to the determination of disputes arising out of loans of surplus funds from one society or branch to another; see s 82 post.

Until the expiry of the transitional period defined in s 93(14) post, where the rules of a registered friendly society or branch do not provide for the determination of the disputes described in sub-s (1) above by arbitration, they are to be determined instead by a reference to the county court or, in Scotland, to the sheriff; see the Friendly Societies Act 1992 (Commencement No 3 and Transitional Provisions) Order 1993, SI 1993/16, art 6.

Where the rules of a registered friendly society or branch provide for the determination of the disputes described in sub-s (1) above by arbitration by the Chief Registrar or an assistant registrar, any such disputes are to be determined instead by reference to the county court or, in Scotland, to the sheriff; see the Friendly Societies Act 1992 (Transitional and Consequential Provisions and Savings) Regulations 1993, SI 1993/932, reg 8.

**Rules of the society.** See s 5(6) ante, Sch 13, para 5 post. As to the manner in which disputes are to be settled, see, in particular, para 5(3), Table, para 9 of that Schedule post.

**Sub-s (2): County court.** See the note to s 60 ante.

**Sub-s (6): 40 days beginning with, etc.** See the note "14 days commencing with, etc" to s 44 ante.

**Sub-s (7): Months.** See the note to s 27 ante.

**Definitions.** For "friendly society" and "registered branch", see s 116 post; for "officer", see s 119(1) post. Note as to "dispute", sub-s (8) above.

### 81 Complaints by members of friendly societies

(1) Nothing in section 80 above shall affect the power of a friendly society or registered branch—

- (a) to establish internal procedures for the resolution of complaints; or
- (b) to make, to join with any other persons in making, or to accede to, schemes for the investigation and settlement by an adjudicator of complaints;

but a society or branch may not prevent a member from referring any dispute to arbitration under that section by purporting to require instead the making of a complaint or the acceptance of any determination of a complaint.

(2) The Commission shall have the function of promoting the establishment by friendly societies and registered branches of—

- (a) internal complaints procedures; and
- (b) schemes for the investigation and settlement of complaints;

and, in particular, the Commission may issue such guidance on those matters to friendly societies and registered branches as it thinks fit.

(3) In this section—

"accede", in relation to a scheme, means assume the obligations and rights of membership of the scheme;

"complaint" includes any complaint made by a member about action of a friendly society or branch which constitutes (in relation to that member) unfair treatment, maladministration or breach of any contractual or other duty and causes him pecuniary loss or inconvenience;

"member" in relation to a friendly society or branch includes any person who is or was a member of the society or branch or is claiming through a member or under the rules; and

"action" includes omissions.

#### NOTES

**Commencement.** 13 January 1993; see the note to s 58 ante.

**General Note.** See the General Note to s 80 ante.

**Thinks fit.** See the note to s 4 ante.

**Rules.** See s 5(6) ante, Sch 13, para 5 post. As to the manner in which disputes are to be settled, see, in particular, para 5(3), Table, para 9 of that Schedule post.

**Definitions.** For "the Commission" see s 116 post. Note as to "accede"

### 82 Disputes arising out of loans of surplus funds description

(1) Where—

- (a) a registered friendly society or branch has made or agreed to make an advance or agreement to another friendly society or branch;
- (b) the lender is or was a member of the society or branch;

subject to subsection (3) above, the determination of a dispute arising out of an advance or agreement made or agreed to be made under the rules of the borrower—

(2) In the application of this section to the rules of the borrower—

(3) Section 80 above shall not affect the determination of any dispute arising out of any proceedings, application or agreement made by a borrower.

(4) Proceedings for the determination of a dispute arising out of an advance or agreement made or agreed to be made apart from this subsection—

(5) The reference in subsection (4) to the 1974 Act includes, in the case of Northern Ireland, a reference to the Friendly Societies Act (Northern Ireland) 1974.

#### NOTES

**Commencement.** This section was inserted by the Friendly Societies Act 1992 (Commencement No 3 and Transitional Provisions) Order 1993, SI 1993/3226 (made under s 126 of the Friendly Societies Act 1992).

**General Note.** See the General Note to s 80 ante.

**Definitions.** For "registered friendly society or branch", "the lender" and "the borrower" see the Friendly Societies Act 1992 (Transitional and Consequential Provisions and Savings) Regulations 1993, SI 1993/932, reg 8.

That Act is repealed by ss 96(1) and 97(1) of the Friendly Societies Act 1992.

### Disputes

### 83 Disputes relating to industrial and provident societies

The following subsections apply to disputes relating to industrial and provident societies—

(2) The county court has jurisdiction to determine a dispute arising out of an advance or agreement made or agreed to be made by a registered society if—

- (a) both parties to the dispute are members of the society;
- (b) the rules of the society provide for the determination of the dispute.

**Definitions.** For "the Commission", see s 1(1) ante; for "friendly society" and "registered branch", see s 116 post. Note as to "accede", "complaint", "member" and "action", sub-s (3) above.

## 82 Disputes arising out of loans of surplus funds to societies of different description

### (1) Where—

- (a) a registered friendly society or a registered branch ("the lender") has made or agreed to make advances under section 50 of the 1974 Act to another society or branch ("the borrower"); and
- (b) the lender is by reason of this empowered by the rules of the borrower to take part in the government or control of the borrower,

subject to subsection (3) below, section 80 above shall apply in relation to the determination of a dispute between the lender and the borrower relating to such an advance or agreement or to the rights of the lender or an officer of the lender under the rules of the borrower, as if the borrower were a branch of the lender.

(2) In the application of section 80 above to any such dispute, references in that section to the rules of the society are references to the rules of the borrower.

(3) Section 80 above shall not prevent the bringing of legal proceedings for the determination of any such dispute unless, before the commencement of the proceedings, application has been made for a reference under the rules of the borrower.

(4) Proceedings for the determination of any such dispute may be brought in a county court or, in Scotland, before the sheriff, whether or not the court would apart from this subsection have jurisdiction to entertain them.

(5) The reference in subsection (1) above to advances under section 50 of the 1974 Act includes, in the case of a society formerly registered in Northern Ireland, a reference to advances made under section 42 of the Friendly Societies Act (Northern Ireland) 1970.

### NOTES

**Commencement.** This section (except sub-s (5)) was brought into force on 13 January 1993 by the Friendly Societies Act 1992 (Commencement No 3 and Transitional Provisions) Order 1993, SI 1993/16 (made under s 126(2) post); sub-s (5) was brought into force on 1 January 1994 by the Friendly Societies Act 1992 (Commencement No 7 and Transitional Provisions and Savings) Order 1993, SI 1993/3226 (made under s 126(2), (3) post).

**General Note.** See the General Note to s 80 ante.

**County court.** See the note to s 60 ante.

**Definitions.** For "registered branch" and "registered friendly society", see s 116 post. Note as to "the lender" and "the borrower", sub-s (1) above.

**1974 Act.** ie the Friendly Societies Act 1974 ante; see s 119(1) post.

**Friendly Societies Act (Northern Ireland) 1970.** 1970 c 31 (NI); not printed in this work. That Act is repealed by ss 96(4), 120(2), Sch 22, Pt II post.

### *Disputes relating to industrial and provident societies*

## 83 Disputes relating to industrial and provident societies

The following subsection shall be substituted for subsection (2) of section 60 of the Industrial and Provident Societies Act 1965 (decision of dispute)—

"(2) The county court or, in Scotland, the sheriff may determine a dispute in a registered society if—

- (a) both parties to the dispute consent; or
- (b) the rules of the society concerned contain no directions as to disputes."

## NOTES

**Commencement.** 13 January 1993; see the note to s 58 ante.

**General Note.** See the General Note to s 80 ante.

**County court.** See the first sentence to the note to s 60 ante.

**Registered society.** For meaning, see the Industrial and Provident Societies Act 1965, s 74, Vol 21, title Industrial and Provident Societies.

**Industrial and Provident Societies Act 1965, s 60(2).** See Vol 21, title Industrial and Provident Societies.

*Disputes under National Savings Bank Act 1971 and National Debt Act 1972*

**84 Disputes under the National Savings Bank Act 1971 and National Debt Act 1972**

- (1) The jurisdiction as to disputes such as are mentioned—
- in subsection (1) of section 10 of the National Savings Bank Act 1971 (disputes between the Director of Savings and depositors etc); and
  - in subsection (1) of section 5 of the National Debt Act 1972 (disputes between the Director and the holder of any stock registered in the National Savings Stock Register or a person claiming to be entitled to any such stock),

shall be exercisable by a person ("the adjudicator") appointed by the Treasury.

- (2) The adjudicator shall be a person who—
- has a seven year general qualification, within the meaning of the Courts and Legal Services Act 1990;
  - is an advocate or solicitor in Scotland of at least seven years' standing; or
  - is a member of the bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least seven years' standing.

(3) Subject to subsections (4) and (5) below, the adjudicator shall hold and vacate office in accordance with the terms of his appointment.

(4) A person may at any time resign office as adjudicator by giving the Treasury a signed notice stating that he resigns that office.

(5) The adjudicator may be removed from office by the Chancellor of the Exchequer on the ground of incapacity or misbehaviour.

(6) The Treasury may pay, or make such payments towards the provision of, such remuneration, pensions, allowances or gratuities to the adjudicator as the Treasury may determine.

(7) The Chancellor of the Exchequer may appoint for the adjudicator such staff as he thinks fit with such remuneration and other terms and conditions of service as he thinks fit.

(8) Payments under this section shall be made out of money provided by Parliament.

## NOTES

**Commencement.** This section was brought into force on 1 January 1993 by the Friendly Societies Act 1992 (Commencement No 2) Order 1992, SI 1992/3117 (made under s 126(2) post).

**General Note.** The responsibility for the determination of disputes between the Department of National Savings and its investors is transferred under this section from the Chief Registrar of Friendly Societies to an independent adjudicator on the ground that it is anomalous for one of the Chancellor's departments to determine disputes which involve another; see the statement of the Economic Secretary to the Treasury on moving the second reading of the Bill of this Act (205 HC Official Report col 663; 9 March 1992).

**Sub-s (1):** The adjudicator is appointed under the supervision of the Council on Tribunals and is inserted by s 120(1), Sch 21, para 10 of the Act.  
**Treasury.** See the note to s 102 ante.  
**Sub-s (2):** Supreme Court of Northern Ireland.  
**Sub-s (4):** Notice. For meaning, see the National Savings Bank Act 1971, s 10(2), amended by s 120(1), Sch 21, para 10 of the National Debt Act 1972, s 5(1), Sch 21, para 4 post.  
**Courts and Legal Services Act 1990, s 71(3)** of that Act, Vol 11, title Courts and Legal Services.

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**Power to modify, etc.** This section may be modified by order made under s 102 post.

**85 Amalgamation of**

(1) Any two or more societies registered under this Act, amalgamate by agreement with their successor.

(2) In order to establish an amalgamation, the societies to amalgamate must—

- comply with the provisions of this Act;
- take the steps necessary to give effect to the agreement;
- each approve the agreement to take place by a resolution of the members of the society;
- obtain the consent of the Council on Tribunals.

and, on obtaining that consent, the societies shall be deemed to have been incorporated under this Act.

(3) If the Commission for the Amalgamation of Friendly Societies registered under this Act is satisfied that it is in the interests of the office shall specify a date on which the amalgamation shall take effect.

(4) On the transfer date—

- all the property of the societies to be amalgamated shall vest in the successor society, together with all rights and liabilities of the societies;
- each such society shall be deemed to have been dissolved on the transfer date.

but the transfer from each of the societies shall be deemed to have been effected on the transfer date.

(5) Where a friendly society is registered under this Act, the transfer date shall be the date of registration under this Act.

(6) Schedule 15 to this Act shall apply to the transfer of property.

## NOTES

**Commencement.** This section was brought into force on 1 January 1993 by the Friendly Societies Act 1992 (Commencement No 2) Order 1992, SI 1992/3117 (made under s 126(2) post).

**Sub-s (1): The adjudicator.** An adjudicator appointed under this section is under the direct supervision of the Council on Tribunals; see the Tribunals and Inquiries Act 1992, Sch 1, para 33A, as inserted by s 120(1), Sch 21, Pt 1, paras 12, 16 post.

**Treasury.** See the note to s 1 ante.

**Sub-s (2): Supreme Court of Northern Ireland.** See the note to s 59 ante.

**Sub-s (4): Notice.** For meaning, see s 119(1) post. As to the service of notices, see s 113 post.

**National Savings Bank Act 1971, s 10(1).** See Vol 39, title Savings Banks. That provision is amended by s 120(1), Sch 21, para 2 post.

**National Debt Act 1972, s 5(1).** See Vol 30, title Money (Pt 2). S 5 is substituted by s 120(1), Sch 21, para 4 post.

**Courts and Legal Services Act 1990.** For the meaning of "seven year general qualification", see s 71(3) of that Act, Vol 11, title Courts and Legal Services.

## PART VIII

### AMALGAMATIONS, TRANSFERS OF ENGAGEMENTS AND CONVERSION OF FRIENDLY SOCIETIES INTO COMPANIES

**Power to modify, etc.** This Part of this Act (ie Pt VIII (ss 85-92 and Sch 15)) may be modified by order made under s 102 post; see s 102(1), (2)(e), (3)-(5) post.

#### *Amalgamations*

#### **85 Amalgamation of friendly societies**

(1) Any two or more friendly societies may, in accordance with this Part of this Act, amalgamate by establishing an incorporated friendly society as their successor.

(2) In order to establish a society as their successor, friendly societies proposing to amalgamate must—

- (a) comply with the applicable requirements of Part I of Schedule 15 to this Act;
- (b) take the steps required by paragraph 1(2) of Schedule 3 to this Act;
- (c) each approve the proposed amalgamation and the terms on which it is to take place by special resolution; and
- (d) obtain the confirmation of the Commission of the amalgamation;

and, on obtaining that confirmation, the successor may be registered and incorporated under this Act.

(3) If the Commission confirms the amalgamation and the successor society is registered under this Act, the certificate of incorporation issued by the central office shall specify a date as the transfer date for that amalgamation.

(4) On the transfer date—

- (a) all the property, rights and liabilities of each society participating in the amalgamation shall become by virtue of this subsection the property, rights and liabilities of the successor society; and
- (b) each such society shall be dissolved;

but the transfer from each such society effected by paragraph (a) above shall be deemed to have been effected immediately before the dissolution of that society.

(5) Where a friendly society is dissolved by subsection (4)(b) above, its registration under this Act or the 1974 Act shall be cancelled by the central office.

(6) Schedule 15 to this Act has effect for supplementing this section.

#### **NOTES**

**Commencement.** This section and ss 86-92, Sch 15 post were brought into force on 13 September 1993 by the Friendly Societies Act 1992 (Commencement No 6 and Transitional Provisions) Order 1993, SI 1993/2213 (made under s 126(2), (3) post).

**Sub-s (1): May . . . amalgamate.** On the hearing of a winding up petition the conditions which the court may impose under the Insolvency Act 1986, s 125, Vol 4, title Bankruptcy and Insolvency, as applied by s 23 ante, Sch 10, Pt II, para 21(1) post, include conditions for securing that the society amalgamates with another friendly society under this section; see para 21(2)(b) of that Schedule post.

**This Part of this Act.** Ie Pt VIII (ss 85-92 and Sch 15).

**Sub-s (2): Requirements of Part I of Schedule 15.** The relevant requirements are contained in paras 1, 2 of that Schedule post.

**Terms on which it is to take place.** Such terms may include provision for compensation for loss of office or diminution of emoluments attributable to the amalgamation; see s 92(1) post.

**Special resolution.** See s 30 ante, Sch 12, para 7 post.

**Registered and incorporated under this Act.** As to registration and incorporation of a friendly society, see s 6 ante, Sch 4 post.

**Sub-s (4): Deemed.** See the note to s 8 ante.

**Definitions.** For "the Commission", see s 1(1) ante; for "friendly society" and "incorporated friendly society", see s 116 post; for "the central office", see s 119(1) post; for "special resolution", see Sch 12, para 7 post.

**1974 Act.** Ie the Friendly Societies Act 1974 ante; see s 119(1) post.

### *Transfers of engagements*

#### **86 Transfer of engagements by or to friendly society**

(1) A friendly society may, in accordance with this Part of this Act, transfer its engagements to any extent to any of the following persons, that is to say—

- (a) to another friendly society;
- (b) to an industrial and provident society;
- (c) to a company within the meaning of the Companies Act 1985 or the Companies (Northern Ireland) Order 1986 incorporated in Great Britain or Northern Ireland;
- (d) in relation to engagements the fulfilment of which will constitute the carrying on of insurance business, to any other person who is an insurance company (within the meaning of the Insurance Companies Act 1982);
- (e) in relation to engagements the fulfilment of which will not constitute the carrying on of insurance business, to a person (or body of persons) who is not of a description specified in paragraph (a), (b) or (c) above.

(2) A friendly society, in order to transfer any of its engagements, must—

- (a) comply with the applicable requirements of Part I of Schedule 15 to this Act;
- (b) resolve to transfer the engagements by special resolution;
- (c) if the transfer is of some but not all of its engagements, resolve to do so by an affected members' resolution;
- (d) record the extent of the transfer as so resolved in an instrument of transfer of engagements; and
- (e) obtain the confirmation of the Commission of the transfer;

and, on obtaining that confirmation, the instrument of transfer of engagements may be registered under subsection (4) below.

(3) Where it is proposed to transfer the engagements of one friendly society to another friendly society, the proposed transferee, in order to undertake to fulfil them, must—

- (a) comply with the applicable requirements of Part I of Schedule 15 to this Act and, if required, with sections 87 and 88 below; and
- (b) resolve to undertake to fulfil the engagements by special resolution or, if the Commission consents to that mode of proceeding, by resolution of the committee of management.

(4) Where the Commission confirms a transfer of engagements, the central

office shall, on the application of the proposed transferee—

- (a) register a copy of the instrument of transfer;
- (b) issue a registration certificate.

and a registration certificate.

(5) On the transfer date—

- (a) the property, rights and liabilities of the society shall be transferred to the transferee, provided in the instrument of transfer;
- (b) if the transfer is of engagements only, the transferee shall be deemed to have dissolved;

but the transfer shall be deemed to have taken effect notwithstanding such dissolution.

(6) The central office shall issue a registration certificate issued under subsection (5) where—

- (a) where the transferee is a friendly society;
- (b) in any other case, the transferee has no other engagements.

(7) Where a friendly society is transferred under this Act, the transferee shall be deemed to have dissolved.

(8) Where it is proposed to transfer engagements of a friendly society to another friendly society, the transferee shall be deemed to have undertaken to fulfil them, if it is proposed to transfer engagements to undertake to fulfil them,

(9) For the purposes of this section, a friendly society shall be deemed to have undertaken to fulfil them, if—

- (a) an "affected member" of the transferee has undertaken to fulfil the engagements of the transferee, and the transferee has agreed to indemnify the members whose engagements are transferred and who are entitled to vote at the meeting of the transferee;
- (b) the "appropriate majority" of the transferee (three quarters of the members of the transferee or its proxy) at a meeting of the transferee has agreed to indemnify the members whose engagements are transferred and who are entitled to vote at the meeting of the transferee;

and sub-paragraphs (1)(b) and (2)(b) of this Act shall apply to an affected member of the transferee as if he were a member of the transferee.

(10) Delegate voting may be used in relation to the transfer of engagements and where the rules of a friendly society require that they must provide for voting by proxy, the transferee shall be deemed to have undertaken to fulfil them, if it is proposed to transfer engagements to undertake to fulfil them,

(11) Schedule 15 to this Act shall apply to the transfer of engagements.

#### **NOTES**

**Commencement.** 13 September 1986.

**General Note.** This section and sections 87-92 of the Green Paper "Friendly Societies" provide for the transfer of engagements of a friendly society in terminal decay to another friendly society, in order to allow the society's continued development. The transfer of engagements is a better served by a transfer of its engagements to another friendly society, in order to allow the society's continued development.

**Sub-s (1): May . . . transfer.** This section provides for the transfer of engagements of a friendly society in terminal decay to another friendly society, in order to allow the society's continued development. The transfer of engagements is a better served by a transfer of its engagements to another friendly society, in order to allow the society's continued development.

**This Part of this Act.** Ie Pt V

office shall, on the application of the society proposing to transfer them and the proposed transferee—

- (a) register a copy of the instrument of transfer of engagements; and
- (b) issue a registration certificate to the transferee,

and a registration certificate shall specify a date as the transfer date for that transfer.

(5) On the transfer date—

- (a) the property, rights and liabilities of the society transferring its engagements shall by virtue of this subsection become, to the extent provided in the instrument of transfer of engagements, the property, rights and liabilities of the transferee; and
- (b) if the transfer is of all the society's engagements, the society shall be dissolved;

but the transfer shall be deemed to have been effected immediately before any such dissolution.

(6) The central office shall keep a copy of the instrument and of the registration certificate issued under subsection (4) above—

- (a) where the transferee is a friendly society, in the public file of that society;
- (b) in any other case, in the public file of the society transferring the engagements.

(7) Where a friendly society is dissolved by subsection (5)(b) above, its registration under this Act or the 1974 Act shall be cancelled by the central office.

(8) Where it is proposed that any engagements of a person other than a friendly society should be transferred to a friendly society, the proposed transferee, in order to undertake to fulfil them, must resolve to do so by special resolution.

(9) For the purposes of this section—

- (a) an "affected members' resolution" is a resolution approving a transfer of engagements which is passed by the appropriate majority of those members whose contracts with the society are included in the transfer and who are entitled to vote on the resolution; and
- (b) the "appropriate majority" means a majority consisting of not less than three quarters of those who vote on the resolution (in person or by proxy) at a meeting of the society or in a postal ballot;

and sub-paragraphs (1)(b) and (c), (4), (5) and (6) of paragraph 7 of Schedule 12 to this Act shall apply to an affected members' resolution as they apply to a special resolution.

(10) Delegate voting may not take place on an affected members' resolution; and where the rules of a friendly society provide for delegate voting on any matter, they must provide for voting by individual members on such resolutions.

(11) Schedule 15 to this Act has effect for supplementing this section.

#### NOTES

**Commencement.** 13 September 1993; see the note to s 85 ante.

**General Note.** This section and ss 87–90 post are based on the recommendations made in paras 7.1–7.6 of the Green Paper "Friendly Societies: A New Framework" (Cm 919) (January 1990). If a friendly society is in terminal decline, or a management void appears, its members' interests may be better served by a transfer of its engagements to another society which is willing to accept them than to allow the society's continued decline or its winding up.

**Sub-s (1): May . . . transfer its engagements.** On the hearing of a winding up petition the conditions which the court may impose under the Insolvency Act 1986, s 125, Vol 4, title Bankruptcy and Insolvency, as applied by s 23 ante, Sch 10, Pt II, para 21(1) post, include conditions for securing that the society transfers all or any of its engagements to another friendly society under this section; see para 21(2)(b) of that Schedule post.

**This Part of this Act.** Ie Pt VIII (ss 85–92 and Sch 15).

**Persons.** See the note "Person" to s 1 ante.

**Great Britain.** See the note to s 75 ante.

**Carrying on . . . business.** Cf the note to s 7 ante.

**Sub-s (2): Requirements of Part I of Schedule 15.** The relevant provisions are contained in paras 1, 2 of that Schedule post.

**Resolve to transfer the engagements by special resolution; affected members' resolution.** The requirements of sub-s (2)(b), (c) above may be modified by a direction given by the Commission; see s 89(1)(a), (2) post.

As to special resolutions, see s 30 ante, Sch 12, para 7 post.

**Instrument of transfer.** This document is exempt from stamp duty; see s 105 post.

**Sub-s (3): Committee of management.** For general provisions as to the committee of management, see s 27 ante, Sch 11 post.

**Sub-s (4): On the application of the society, etc.** As to the form of documents to be sent to the central office and for the power to prescribe fees for the inspection, etc of documents in the custody of the central office, see s 114 post.

**Sub-s (6): Public file.** See s 104 post.

**Sub-s (9): Postal ballot.** For provisions as to postal ballots, see s 30 ante, Sch 12, para 8 post.

**Sub-s (10): Rules.** See s 5(6) ante, Sch 3, para 5 post. As to the voting rights of members, see, in particular, para 5(3), Table, para 10(f) of that Schedule post.

**Further provisions.** As to the need for an actuary's report where a friendly society which is under a duty to maintain a margin of solvency proposes to transfer any of its engagements, see s 87 post; as to the need for an actuary's report on the transfer of long term business, see s 88 post; as to the power of the Commission to effect a transfer of engagements, see s 90 post; and as to compensation for loss of office or diminution of emoluments attributable to a transfer of engagements, see s 92 post.

**Definitions.** For "the Commission", see s 1(1) ante; for "the public file", see s 104 post; for "friendly society", see s 116 post; for "insurance business", see s 117(1), (2) post; for "the central office" and "committee of management", see s 119(1) post; for "special resolution", see Sch 12, para 7 post. Note as to "affected members' resolution" and "appropriate majority", sub-s (9) above.

**Companies Act 1985.** See Vol 8, title Companies. For the meaning of "company", see s 735(1) thereof.

**Companies (Northern Ireland) Order 1986.** SI 1986/1032 (NI 6).

**Insurance Companies Act 1982.** See Vol 22, title Insurance (Pt 2). For the meaning of "insurance company", see s 96(1) thereof.

**1974 Act.** Is the Friendly Societies Act 1974 ante; see s 119(1) post.

## 87 Actuary's report as to margin of solvency

(1) This section applies where a friendly society ("the transferor") proposes to transfer any of its engagements under section 86 above to another friendly society ("the transferee").

(2) Where—

- (a) the fulfilment of any of the engagements to be transferred will constitute the carrying on of insurance business in the United Kingdom, and
- (b) the transferee will, after taking the proposed transfer into account, be under a duty to maintain the margin of solvency required by section 48 above;

the transferee shall furnish the Commission with a report by the appropriate actuary as to whether it will immediately after the proposed transfer, possess that margin of solvency.

(3) Where—

- (a) the fulfilment of any of the engagements will constitute the carrying on of long-term business, and
- (b) a report is not required to be furnished under subsection (2) above,

the Commission may direct the transferee to furnish the Commission with a report by the appropriate actuary as to whether it will, immediately after the proposed transfer, possess an excess of assets over liabilities.

(4) The appropriate actuary has a right of access at all times to the books, accounts and vouchers of the transferor and of the transferee, and is entitled to require from the officers of either society such information and explanations as he thinks necessary to enable him to prepare a report under this section.

(5) If the appropriate actuary is of the opinion that the transferee does not possess the necessary information and documents, he may require the transferee to produce such information and documents as he thinks necessary for the purposes of this section, and the access to documents so required shall be such as to enable the actuary to verify the information and documents so produced.

(6) An officer of a friendly society who knowingly or recklessly furnishes false or misleading information in writing or orally which—

- (a) conveys or purports to convey information which he requires, or is required to furnish, under this section; and
  - (b) is misleading or false;
- (7) A person guilty of an offence under subsection (6) shall be liable—
- (a) on conviction on indictment, to imprisonment for a term of 2 years, or to a fine, or both;
  - (b) on summary conviction, to imprisonment for a term of 6 months, or to a fine, or both.

## NOTES

**Commencement.** 13 September 1986.

**General Note.** See the General Note to this Act.

**Sub-s (2): Carrying on . . . business.** See the note to s 7 ante.

**United Kingdom.** See the note to s 75 ante.

**Report by the appropriate actuary.** See s 87 ante, and the note to s 87 ante, and the note to s 88 post.

The Commission may not direct the transferee to furnish a report under s 88 post if the transferee is required by this section to furnish a report under s 87 post; see Sch 15, para 10 post.

**Sub-s (3): Direct.** As to the Commission's power to direct the transferee to furnish a report, see s 87 ante.

**Sub-s (6): Guilty of an offence.** See s 110 post; as to offences by bodies corporate, see s 110 post; as to the defence of due diligence, see s 110 post.

**Knowingly; recklessly.** See the note to s 110 post.

**Misleading; false.** See the note to s 110 post.

**Material particular.** See the note to s 110 post.

**Sub-s (7): Is liable; convicted.** See s 31 ante.

**Summary conviction.** See s 110 post.

**Definitions.** For "the Commission", see s 1(1) ante; for "friendly society", see s 116 post; for "insurance business", see s 117(1), (2) post; for "the central office" and "committee of management", see s 119(1) post; for "special resolution", see Sch 12, para 7 post. Note as to "affected members' resolution" and "appropriate majority", sub-s (9) above.

## 88 Actuary's report on margin of solvency

(1) This section applies where a friendly society ("the transferor") proposes to transfer any of its engagements under section 86 above to another friendly society ("the transferee").

- (a) a friendly society which is carrying on insurance business in the United Kingdom, and
- (b) a friendly society which is carrying on any such engagements in the United Kingdom.

(2) The Commission may direct the transferee to furnish the Commission with a report by the appropriate actuary as to whether it will, immediately after the proposed transfer, possess an excess of assets over liabilities.

(3) A friendly society

(5) If the appropriate actuary fails to obtain all the information and explanations and the access to documents which, to the best of his knowledge and belief, are necessary for the purposes of a report under this section, he shall state that fact in his report.

(6) An officer of a transferor or of the transferee shall be guilty of an offence if he knowingly or recklessly makes to the appropriate actuary a statement (whether written or oral) which—

- (a) conveys or purports to convey any information or explanations which he requires, or is entitled to require, for the purposes of a report under this section; and
- (b) is misleading, false or deceptive in a material particular.

(7) A person guilty of an offence under subsection (6) above is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both; and
- (b) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both.

#### NOTES

**Commencement.** 13 September 1993; see the note to s 85 ante.

**General Note.** See the General Note to s 86 ante.

**Sub-s (2): Carrying on . . . business.** See the note to s 7 ante.

**United Kingdom.** See the note to s 14 ante.

**Report by the appropriate actuary.** Sub-ss (4)–(7) above also apply in relation to an actuary preparing a report under s 88 post; see s 88(4) post.

The Commission may not confirm a transfer of engagements under s 86 ante in any case where the transferee is required by this section to furnish the Commission with a report unless it is satisfied as to certain matters; see Sch 15, para 13 post.

**Sub-s (3): Direct.** As to the service of directions, see s 113 post.

**Sub-s (6): Guilty of an offence.** As to the time limit for commencing proceedings, see s 107 post; as to offences by bodies corporate, partnerships and unincorporated associations, see s 108 post; as to the defence of due diligence, see s 109 post; and as to the jurisdiction of magistrates' courts, see s 110 post.

**Knowingly; recklessly.** See the notes to s 62 ante.

**Misleading; false.** See the note "False or misleading" to s 62 ante.

**Material particular.** See the note to s 40 ante.

**Sub-s (7): Is liable; conviction on indictment; fine; statutory maximum.** See the notes to s 31 ante.

**Summary conviction.** See the note to s 18 ante.

**Definitions.** For "the Commission", see s 1(1) ante; for "friendly society", see s 116 post; for "insurance business", see s 117(1), (2) post; for "long-term business", see s 117(1) post; for "the appropriate actuary" and "officer", see s 119(1) post. Note as to "the transferor" and "the transferee", sub-s (1) above.

#### 88 Actuary's report on transfer of long term business

(1) This section applies where—

- (a) a friendly society (a "transferor society") proposes to transfer to any person engagements the fulfilment of which will constitute the carrying on of long term insurance business in the United Kingdom; or
- (b) a friendly society (a "transferee society") proposes to undertake to fulfil any such engagements to be transferred to it from another friendly society.

(2) The Commission may direct a transferor society or a transferee society to furnish the Commission with a report by an independent actuary on the terms of the proposed transfer and as to his opinion on the likely effects of the transfer on the members of the society who are long term policyholders.

(3) A friendly society which is directed to furnish a report under this section



- (c) the Commission has considered any representations made by the society with respect to the notice mentioned in paragraph (b) above within such period (not being less than one month) from the date on which the society was served with the notice as the Commission may allow; and
- (d) if the society so requests, the Commission has afforded to it an opportunity of being heard by it within that period.

(4) If the Commission considers it expedient to do so in the interests of the members or potential members of the society concerned, it may vary or revoke a direction by a further direction.

(5) On giving a direction in relation to a society, the Commission shall serve on the society a copy of the direction, specifying the considerations which have led it to conclude that it is expedient to give the direction; but the Commission may not give a direction unless all the considerations so specified were those, or among those, which were specified in the notice served on the society under subsection (3) above.

(6) Notice of a direction shall be published by the Commission in one or more of the London Gazette, the Belfast Gazette or the Edinburgh Gazette, as it thinks appropriate, and in such other ways as appear to the Commission expedient for informing the public.

(7) The Commission shall send a copy of a direction to the central office and the central office shall keep the copy in the public file of the society concerned.

#### NOTES

**Commencement.** 13 September 1993; see the note to s 85 ante.

**General Note.** See the General Note to s 86 ante.

**Sub-s (1): Satisfied.** See the note "Thinks fit" to s 4 ante.

**Direction.** As to the service of directions, see s 113 post.

**Requirements of Part I of Schedule 15.** The relevant provisions are contained in paras 1, 2 of that Schedule post.

**Proposed transfer; all transfers.** See a transfer of engagements; see s 86 ante.

**Sub-s (3): Not less than one month before, etc.** The words "not less than" indicate that one clear month must intervene between the day on which the notice is served and that on which the direction is given; see *R v Turner* [1910] 1 KB 346, 79 LJKB 176, CCA; *Re Hector Whaling Ltd* [1936] Ch 208, [1935] All ER Rep 302; and the other cases cited in 45 Halsbury's Laws (4th edn) para 1133. See also *Dodds v Walker* [1981] 2 All ER 609, [1981] 1 WLR 1027, HL; *E J Riley Investments Ltd v Eurostile Holdings Ltd* [1985] 3 All ER 181, [1985] 1 WLR 1139, CA, and 45 Halsbury's Laws (4th edn) para 1111, as to the day of expiry of periods of a month or a specified number of months.

**Served . . . a notice.** As to the service of notices, see s 113 post.

**Sub-s (6): Thinks appropriate; appear.** See the note "Thinks fit" to s 4 ante.

**Public.** See the note to s 63 ante.

**Sub-s (7): Public file.** See s 104 post.

**Definitions.** For "the Commission", see s 1(1) ante; for "the public file", see s 104 post; for "friendly society", see s 116 post; for "the central office", "modification" and "notice", see s 119(1) post. Note as to "a direction", sub-s (1) above.

#### 90 Power of Commission to effect transfer of engagements

(1) Subject to the following provisions of this section the Commission may give a direction under this section ("a direction") providing for the transfer of such of the engagements of a friendly society ("the society") as are specified in the order to a person so specified ("the transferee").

(2) The Commission may give a direction if—

(a) it considers that—

- (i) the society is unable to manage its affairs satisfactorily in relation to the engagements specified in the order; and

- (ii) a transfer of those engagements would be expedient to protect the interests of the members of the society; and
- (b) the proposed transferee has complied with paragraph 1 of Schedule 15 to this Act and has resolved to undertake to fulfil the engagements by special resolution or, if the Commission consents to that mode of proceeding, by resolution of the committee of management;

but the Commission may direct that paragraph (b) above shall be modified in relation to a particular proposed transfer (but not to permit a society to resolve to undertake to fulfil the engagements by less than a majority or more than a three-quarters majority of those voting).

(3) The Commission may not give a direction if, were the transfer to be proposed to be made under section 86 above, it would be precluded from confirming it by any provision of paragraphs 13 to 17 of Schedule 15 to this Act.

(4) Before giving a direction, the Commission shall—

- (a) serve on the society a notice stating that it proposes to give the direction and specifying the considerations which have led it to conclude that giving the direction would be expedient to protect the interests of the members of the society; and
- (b) publish notice of the proposed direction in one or more of the London Gazette, the Belfast Gazette or the Edinburgh Gazette, as it thinks appropriate, and, if it thinks appropriate, in one or more newspapers.

(5) A notice published in pursuance of subsection (4)(b) above shall—

- (a) state that any interested party has the right to make representations to the Commission with respect to the proposed direction;
- (b) specify a date determined by the Commission before which any written representations or notice of a person's intention to make oral representations must be received by the Commission; and
- (c) specify a date determined by the Commission as the day on which it intends to hear any oral representations.

(6) After the date specified in pursuance of subsection (5)(b) above, the Commission shall—

- (a) determine the time and place at which oral representations may be made;
- (b) give notice of that determination to the society and the proposed transferee and to any persons who have given notice of their intention to make oral representations; and
- (c) send copies of the written representations received by the Commission to the society concerned and the proposed transferee.

(7) The Commission shall allow the society and the proposed transferee an opportunity to comment on the written representations, whether at a hearing or in writing before the expiration of such period as the Commission specifies in a notice to it.

(8) If the Commission gives a direction it shall furnish a copy to the central office, who shall—

- (a) register that copy; and
- (b) issue a registration certificate to the transferee;

and the registration certificate shall specify a date as the transfer date for the transfer.

(9) On the transfer date—

- (a) the property, rights and liabilities of the society shall be transferred to the transferee, and subsection (1) above shall apply to the transferee as if he were the transferee; and
- (b) if the transferee is a company, the property, rights and liabilities of the society shall be transferred to the company, and subsection (1) above shall apply to the company as if it were the transferee;

but the transfer shall be deemed to have taken effect on the date of the registration certificate—

- (a) if the transferee is a company, the property, rights and liabilities of the society shall be transferred to the company, and subsection (1) above shall apply to the company as if it were the transferee;
- (b) in any other case, the property, rights and liabilities of the society shall be transferred to the transferee, and subsection (1) above shall apply to the transferee as if he were the transferee.

(11) Where a friendly society is registered under this Act

#### NOTES

**Commencement.** 13 September 1974.

**General Note.** See the General Note to this Act.

**Sub-s (1):** Commission may give a direction if it is satisfied that it is expedient to do so for the purposes of that section.

**Transfer of ... engagements:** See the note to s 86 ante.

**Person.** See the note to s 1 ante.

**Sub-s (2):** Special resolution: See the note to s 27 ante, Sch 11 post.

**Committee of management:** See the note to s 27 ante, Sch 11 post.

**Sub-s (4):** Serve ... a notice: See the note to s 27 ante, Sch 11 post.

**Thinks appropriate.** See the note to s 27 ante, Sch 11 post.

**Sub-s (5):** Written. See the note to s 27 ante, Sch 11 post.

**Sub-s (8):** Furnish a copy to the central office and for the custody of the central office, see s 27 ante, Sch 11 post.

**Sub-s (9):** Deemed. See the note to s 27 ante, Sch 11 post.

**Sub-s (10):** Public file. See the note to s 27 ante, Sch 11 post.

**Definitions.** For "the Commission", see s 116 post; for "the central office", see s 116 post; for "special resolution", see s 27 ante, Sch 11 post.

**Transferee.** See the note to s 27 ante, Sch 11 post.

**1974 Act.** Is the Friendly Societies Act 1974.

#### 91 Conversion of friendly society

(1) A friendly society may resolve to convert itself into a company registered in the (Northern Ireland) Order

(2) In order to convert itself into a company, a friendly society shall

- (a) comply with the provisions of this Act;
- (b) approve the proposed terms of conversion and the proposed name of the company by special resolution;
- (c) obtain the consent of the Registrar of Companies, and, on obtaining that consent, the Registrar shall register the company.

(3) The terms on which the company shall be converted shall be the terms on which

be expedient to protect the  
and

paragraph 1 of Schedule 15  
to fulfil the engagements by  
consents to that mode of  
of management;

above shall be modified in  
to permit a society to resolve to  
or more than a three-

if, were the transfer to be  
would be precluded from  
of Schedule 15 to this Act.

proposes to give the direction  
have led it to conclude that  
to protect the interests of the

one or more of the London  
Gazette, as it thinks  
one or more newspapers.

4)(b) above shall—

to make representations to  
ed direction;  
on before which any written  
intention to make oral  
mission; and  
sion as the day on which it

subsection (5)(b) above, the

ral representations may be

society and the proposed  
ven notice of their intention

received by the Commission  
ransferee.

the proposed transferee an  
ns, whether at a hearing or  
e Commission specifies in a

urnish a copy to the central

ee;

as the transfer date for the

- (a) the property, rights and liabilities of the society shall by virtue of this subsection become, to the extent provided in the direction, the property, rights and liabilities of the transferee; and
- (b) if the transfer is of all the society's engagements, the society shall be dissolved;

but the transfer shall be deemed to have been effected before any such dissolution.

(10) The central office shall keep a copy of a direction and of the registration certificate—

- (a) if the transferee is a friendly society, in the public file of that society;
- (b) in any other case, in the public file of the society transferring the engagements.

(11) Where a friendly society is dissolved by subsection (9)(b) above, its registration under this Act or the 1974 Act shall be cancelled by the central office.

#### NOTES

**Commencement.** 13 September 1993; see the note to s 85 ante.

**General Note.** See the General Note to s 86 ante.

**Sub-s (1): Commission may give a direction, etc.** By virtue of s 50(2) ante the Commission's power to order a transfer of a friendly society's engagements is a prudential power relevant for the purposes of that section.

As to the service of directions, see s 113 post.

**Transfer of . . . engagements.** For provisions as to the voluntary transfer of engagements by a friendly society, see s 86 ante.

**Person.** See the note to s 1 ante.

**Sub-s (2): Special resolution.** See s 30 ante, Sch 12, para 7 post.

**Committee of management.** For general provisions as to the committee of management, see s 27 ante, Sch 11 post.

**Sub-s (4): Serve . . . a notice.** As to the service of notices, see s 113 post.

**Thinks appropriate.** See the note "Thinks fit" to s 4 ante.

**Sub-s (5): Written.** See the note to s 17 ante.

**Sub-s (8): Furnish a copy to the central office.** As to the form of documents to be sent by or to the central office and for the power to prescribe fees for the inspection, etc of documents in the custody of the central office, see s 114 post.

**Sub-s (9): Deemed.** See the note to s 8 ante.

**Sub-s (10): Public file.** See s 104 post.

**Definitions.** For "the Commission", see s 1(1) ante; for "the public file", see s 104 post; for "friendly society", see s 116 post; for "the central office", "committee of management" and "notice", see s 119(1) post; for "special resolution", see Sch 12, para 7 post. Note as to "a direction", "the society" and "the transferee", sub-s (1) above.

**1974 Act.** Is the Friendly Societies Act 1974 ante; see s 119(1) post.

#### Conversions

##### 91 Conversion of friendly society into company

(1) A friendly society may, in accordance with this Part of this Act, convert itself into a company registered under the Companies Act 1985 or the Companies (Northern Ireland) Order 1986 ("a company").

(2) In order to convert itself into a company a friendly society must—

- (a) comply with the applicable requirements of Part I of Schedule 15 to this Act;
- (b) approve the proposed conversion, the terms on which it is to take place and the proposed memorandum and articles of association for the company by special resolution; and
- (c) obtain the confirmation of the Commission of the conversion;

and, following the confirmation, the society may apply for registration as a company.

The terms on which the conversion of a friendly society into a company is

to take place may include provision for part of the funds of the society or the company to be distributed among, or for other rights in relation to shares in the company to be conferred on, members of the society.

(4) Where—

(a) a special resolution of a society contains the particulars required by the Companies Act 1985 or the Companies (Northern Ireland) Order 1986 to be contained in—

- (i) the memorandum of association of a company; or
- (ii) the articles of association of a company; and

(b) a copy of the resolution has been registered at the central office,

a copy of that resolution under the seal and stamp of the central office shall have the same effect as a memorandum of association or, as the case may be, as articles of association, which have been duly signed under the Companies Act 1985 or the Companies (Northern Ireland) Order 1986.

(5) On the registration of a friendly society as a company the registration of the society under this Act or the 1974 Act shall be cancelled by the central office.

(6) Where a friendly society converts into a company the terms approved by the society and confirmed by the Commission shall, in so far as they provide for the conferral of rights on members or officers of the society, be enforceable as if they had been the subject of an agreement between the society and those members and officers.

(7) Registration of a friendly society as a company shall not affect any right or claim subsisting against the society or any penalty incurred by the society; and for the purpose of enforcing any such right, claim or penalty, the society may be sued and proceeded against in the same manner as if it had not become registered as a company.

(8) The Commission, with the consent of the Treasury, may make regulations providing for the regulation of the conversion of friendly societies into companies; and such regulations may, in particular make provision—

- (a) for and in connection with the transition from regulation by and under this Act or the 1974 Act to regulation by and under any other enactments on a society's ceasing to be registered under that Act; and
- (b) for the treatment, in the hands of the company into which a friendly society has converted, of the property, rights and liabilities of the society immediately before its conversion and for the modification of any enactment in its application to any such property, rights and liabilities.

(9) Schedule 15 to this Act has effect for supplementing this section.

#### NOTES

**Commencement.** 13 September 1993; see the note to s 85 ante.

**Sub-s (1): A friendly society may . . . convert itself into a company.** On the hearing of a winding up petition the conditions which the court may impose under the Insolvency Act 1986, s 125, Vol 4, title Bankruptcy and Insolvency, as applied by s 23 ante, Sch 10, Pt II, para 21(1) post, include conditions for securing that the society converts itself into a company under this section; see para 21(2)(c) of that Schedule post.

If an incorporated friendly society which qualified for the exemption in respect of profits from business other than life or endowment business is converted into a company registered under the Companies Act 1985, which under this section involves losing its status as an incorporated friendly society and therefore its tax exemption, the company will continue to be exempt from tax on profits of its business (other than life or endowment business) relating to contracts made before the date of conversion. This exemption will only apply as long as there is no increase in the scale of benefits provided. Any part of the company's business qualifying for transitional exemption is to be treated as a separate business from any other carried on by the company; see the Income and Corporation Taxes Act 1988, ss 461A, 461B(5)-(7), 466(1), Vol 44, title Taxation.

**This Part of this Act.** ie Pt VIII (ss 85-92 and Sch 15).

**Sub-s (2): Requirements** paras 3, 4 of that Schedule post.  
**Special resolution.** See s 3.  
**Sub-s (6): Terms appro** compensation for loss of office post.

**Sub-s (8): Treasury.** See the  
**Definitions.** For "the Com central office", "modification" 7 post. Note as to "a company" Companies Act 1985. See Companies (Northern Ir 1974 Act. Ie the Friendly S Regulations under this s (8) above.

For general provisions as to

#### 92 Compensation for

(1) Subject to subsection

- (a) an amalgamat
- (b) a transfer of e
- or
- (c) a conversion u

may include provision emoluments attributable by a participating friendl in subsection (2) below.

(2) Those persons are—

- (a) the officers of
- (b) in the case of participating s
- (c) in the case of a the transfer; and
- (d) the appointed amalgamation

(3) Any such provis approved by the society separate from any resolu transfer or conversion.

(4) If compensation subsection (3) above is re

(5) In this section—

"compensation" in "loss of office" incl society holdin subsidiary of t loss of that offi "participating soci friendly societ relation to the

**Sub-s (2): Requirements of Part I of Schedule 15.** The relevant provisions are contained in paras 3, 4 of that Schedule post.

**Special resolution.** See s 30 ante, Sch 12, para 7 post.

**Sub-s (6): Terms approved by the society, etc.** Such terms may include provision for compensation for loss of office or diminution of emoluments attributable to the conversion; see s 92 post.

**Sub-s (8): Treasury.** See the note to s 1 ante.

**Definitions.** For "the Commission", see s 1(1) ante; for "friendly society", see s 116 post; for "the central office", "modification" and "officer", see s 119(1) post; for "special resolution", see Sch 12, para 7 post. Note as to "a company", sub-s (1) above.

**Companies Act 1985.** See Vol 8, title Companies.

**Companies (Northern Ireland) Order 1986.** SI 1986/1032 (NI 6).

**1974 Act.** ie the Friendly Societies Act 1974 ante; see s 119(1) post.

**Regulations under this section.** Up to 1 June 1994 no regulations had been made under sub-s (8) above.

For general provisions as to regulations, see s 121 post.

### Supplementary

#### 92 Compensation for loss of office

(1) Subject to subsection (3) below, the terms of—

- (a) an amalgamation under section 85 above,
- (b) a transfer of engagements of a friendly society under section 86 above,  
or
- (c) a conversion under section 91 above,

may include provision for compensation for loss of office or diminution of emoluments attributable to the amalgamation, transfer or conversion to be paid by a participating friendly society to or in respect of any of the persons mentioned in subsection (2) below.

(2) Those persons are—

- (a) the officers of the society which is to pay the compensation;
- (b) in the case of an amalgamation or transfer, the officers of any other participating society;
- (c) in the case of a transfer, the officers of any other person participating in the transfer; and
- (d) the appointed actuary (if any) of any society participating in the amalgamation or transfer.

(3) Any such provision as is mentioned in subsection (1) above must be approved by the society which is to pay the compensation by a special resolution separate from any resolution approving the other terms of the amalgamation, transfer or conversion.

(4) If compensation which has not been authorised in accordance with subsection (3) above is received by an officer, it shall be repaid.

(5) In this section—

"compensation" includes the provision of benefits in kind;

"loss of office" includes, in relation to an officer of an incorporated friendly society holding office by virtue of his position in the society in a subsidiary of the society or body jointly controlled by the society, the loss of that office; and

"participating society", in relation to an amalgamation or transfer, means a friendly society participating in the amalgamation or transfer and, in relation to the conversion of a friendly society, that society.

## NOTES

**Commencement.** 13 September 1993; see the note to s 85 ante.

**Special resolution.** See s 30 ante, Sch 12, para 7 post.

**Definitions.** For "body jointly controlled" and "subsidiary", see s 13(9) ante; for "friendly society" and "incorporated friendly society", see s 116 post; for "appointed actuary", see s 44 ante; for "officer", see s 119(1) post; for "special resolution", see Sch 12, para 7 post. Note as to "compensation", "loss of office" and "participating society", sub-s (5) above.

PART IX  
MISCELLANEOUS

*Societies registered under 1974 Act*

**93 Registration of societies under 1974 Act**

(1) No society may be registered under the 1974 Act after the commencement of this section.

(2) Subject to section 7 of the 1974 Act, a society registered under the 1974 Act immediately before the commencement of this section (an "existing society") shall continue as a registered society in accordance with the provisions of that Act.

(3) Nothing in subsection (1) above shall be taken as preventing the registration after the commencement of this section of a branch of an existing society as a registered branch.

(4) Nothing in this Act shall be taken as preventing—

- (a) the performance by an existing friendly society of any contract which is in force immediately before the commencement of this section; or
- (b) the carrying on by such a society of any social or benevolent activity which is not inconsistent with the other activities of the society.

(5) Before the end of the transitional period each existing friendly society shall—

- (a) by special resolution agree upon the alterations to be made to its rules so that they conform to this Act and the 1974 Act; and
- (b) send to the central office four copies of the rules as altered each signed by the secretary and accompanied by a statutory declaration by the secretary that that agreement was effected by a resolution passed as a special resolution.

(6) On agreeing upon any such alteration to its rules a society shall, subject to subsection (7) below, determine the date on which the society intends it to take effect, and any alteration to the society's rules sent to the central office shall be accompanied by a record specifying that date (in this paragraph referred to as "the specified date").

(7) No date shall be specified under subsection (6) above which falls more than six months after the date of the meeting at which the society agreed upon the alteration to its rules.

(8) The central office, if satisfied that the rules as altered are in conformity with this Act and the 1974 Act, shall retain and register a copy of the altered rules.

(9) On registering a copy of the altered rules under subsection (8) above, the central office shall—

- (a) return another copy to the secretary of the society, together with a certificate of registration, and
- (b) keep another copy with the record of the specified date sent to it under subsection (6) above and a copy of that certificate, in the public file of the society.

(10) Rules registered under this section shall be subject to the provisions of this section for the rule or, if registration is required, for the date.

(11) If the central office is satisfied that the rules as altered are in accordance with subsection (8) above, the central office shall, upon such alteration of its rules—

(12) Where the Commission is satisfied that the rules as altered are in accordance with subsection (8) above in relation to a society—

- (a) serve on the society a copy of the rules as altered and
- (b) consider any request for a copy of the rules (not being less than a copy served as the Commission is satisfied that the rules as altered are in accordance with subsection (8) above in relation to a society) and, if the society so requires, a copy of the rules as altered after being heard by the Commission.

(13) Where under this section the central office is satisfied that the rules as altered are in accordance with subsection (8) above in relation to a society—

- (a) retain and register a copy of the rules as altered;
- (b) send another copy of the rules as altered to the secretary of the society; and
- (c) keep another copy of the rules as altered in the public file of the society.

and the rules so registered shall be subject to the provisions of this section amended under the 1974 Act.

(14) In this section "the transitional period" means the period beginning on the commencement date of this section and ending on the date of the Commission, with the commissioning date.

(15) Subsections (5) to (13) apply to a society registered under this section as an existing friendly society.

## NOTES

**Commencement.** Sub-ss (1) to (13) of this section and s 119(1) of the Societies Act 1992 (Commencement (made under s 126(2) post); sub-ss (14) to (15) of this section and s 119(1) of the Societies Act 1992 (Commencement (made under s 126(2), (3) post).

**Sub-s (1): No society may be registered under this section after the commencement date of this section.**

**Sub-s (5): Special resolution.**

**Send to the central office.** For the power to prescribe fees for the services of the central office, see s 114 post.

**Statutory declaration.** See s 1 of the Statutory Declarations Act 1965, Vol 17, title Evidence; see the Interpretation Act 1979, s 3(1).

**Sub-s (7): Six months after the commencement date.**

**Rules.** See s 5(6) ante, Sch 3, para 1(2) ante, and s 5(3), Table, para 1(2) ante.

**Sub-s (8): Satisfied.** See the Interpretation Act 1979, s 3(1).

**Sub-s (9): Public file.** See s 119(1) post.

**Sub-s (11): Directs.** As to the meaning of "directs", see s 119(1) post.

**Sub-s (12): Serve . . . a notice.**

**Not being less than 14 days.**

intervene between the day on which the notice is served and the day on which it is to be considered; see *R v Turner* [1975] AC 413, [1975] All ER Rep 302, Ch 208, [1935] All ER Rep 302.

(10) Rules registered under this paragraph shall take effect on the specified date for the rule or, if registration of the rules is not effected until a later date, that later date.

(11) If the central office has not, before the end of the transitional period, received from an existing registered friendly society copies of its rules as altered in accordance with subsection (5) above, the society shall be treated as having agreed upon such alteration of its rules as the Commission directs.

(12) Where the Commission proposes to give a direction under subsection (11) above in relation to a society it shall—

- (a) serve on the society a notice stating that it proposes to give a direction; and
- (b) consider any representations made by the society within such period (not being less than fourteen days) from the date on which the notice is served as the Commission may allow;

and, if the society so requests, the Commission shall afford to it an opportunity of being heard by the Commission within that period.

(13) Where under this section a society is treated as having agreed upon altered rules, the central office shall prepare three copies of rules for the society and shall—

- (a) retain and register one copy,
- (b) send another to the secretary of the society, together with a certificate of registration, and
- (c) keep another copy, together with a copy of that certificate, in the public file of the society;

and the rules so registered shall be for all purposes the rules of the society until amended under the 1974 Act.

(14) In this section "the transitional period" means the period beginning with the commencement date for this section and expiring with such day as the Commission, with the consent of the Treasury, prescribes by order.

(15) Subsections (5) to (14) above apply to the rules of a registered branch of an existing friendly society as they apply to the rules of the society.

#### NOTES

**Commencement.** Sub-ss (1)–(4) were brought into force on 1 February 1993 by the Friendly Societies Act 1992 (Commencement No 3 and Transitional Provisions) Order 1993, SI 1993/16 (made under s 126(2) post); sub-ss (5)–(15) were brought into force on 1 January 1994 by the Friendly Societies Act 1992 (Commencement No 6 and Transitional Provisions) Order 1993, SI 1993/2213 (made under s 126(2), (3) post).

**Sub-s (1): No society may be registered, etc.** See also the Friendly Societies Act 1974, s 7 ante. A body which has been registered under the Friendly Societies Act 1974 as a branch of a society may not be registered as a society after the commencement of this section; see s 13(1) of the 1974 Act ante.

**Sub-s (5): Special resolution.** See s 30 ante, Sch 12, para 7 post.

**Send to the central office.** As to the form of documents to be sent by or to the central office and for the power to prescribe fees for the inspection, etc of documents in the custody of the central office, see s 114 post.

**Statutory declaration.** I.e a declaration made by virtue of the Statutory Declarations Act 1835, Vol 17, title Evidence; see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes.

**Sub-s (7): Six months after, etc.** See the note "Seven months after, etc" to s 3 ante.

**Rules.** See s 5(6) ante, Sch 3, para 5 post. As to the procedure for altering the society's rules, see, in particular, para 5(3), Table, para 13 of that Schedule post.

**Sub-s (8): Satisfied.** See the note "Thinks fit" to s 4 ante.

**Sub-s (9): Public file.** See s 104 post.

**Sub-s (11): Directs.** As to the service of directions, see s 113 post.

**Sub-s (12): Serve . . . a notice.** As to the service of notices, see s 113 post.

**Not being less than 14 days, etc.** The words "not less than" indicate that 14 clear days must intervene between the day on which the notice is served and that on which the representations will be considered; see *R v Turner* [1910] 1 KB 346, 79 LJKB 176, CCA; *Re Hector Whaling Ltd* [1936] Ch 208, [1935] All ER Rep 302; and the other cases cited in 45 Halsbury's Laws (4th edn) para 1133.

**Sub-s (13): The central office . . . shall . . . send, etc.** See the note "Send to the central office" above.

**Sub-s (14): Treasury.** See the note to s 1 ante.

**Definitions.** For "the Commission", see s 1(1) ante; for "the public file", see s 104 post; for "friendly society", "registered branch" and "registered friendly society", see s 116 post; for "the central office" and "notice", see s 119(1) post; for "special resolution", see Sch 12, para 7 post. Note as to "existing society", sub-s (1) above, and as to "the transitional period", sub-s (14) above.

**1974 Act.** *ie* the Friendly Societies Act 1974 ante: see s 119(1) post.

**Orders under this section.** Up to 1 June 1994 no orders had been made under sub-s (14) above. For general provisions as to orders, see s 121 post.

#### 94 Registered friendly societies and branches: validation and ratification by members

(1) Subject to subsection (3) below, if action not permitted by the rules of a registered friendly society or a registered branch is taken by or on behalf of the society or branch, the action is valid (whether or not it would be valid apart from this subsection) if all the members of the society or branch—

- (a) signified their agreement to it in writing before it was taken; or
- (b) signified their approval of it in writing before the end of the period of 28 days commencing with the day on which it was taken.

(2) Subject to subsection (3) below, if a contract between a registered friendly society or branch and its members purports to create rights and obligations as to which the rules of the society or branch do not permit rights and obligations to be created, the contract shall be valid and shall bind all members of the society or branch if all members of the society or branch are parties to it.

(3) This section does not validate the taking of any action or any term in a contract unless the matter falls within the capacity of a registered friendly society or branch under the 1974 Act or this Act.

(4) In this section references to the members of a society or branch are to the members entitled to vote at a meeting of the society or branch.

#### NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**Writing.** See the note "Written" to s 17 ante.

**28 days commencing with, etc.** See the note "14 days commencing with, etc" to s 44 ante.

**Definitions.** For "registered branch" and "registered friendly society", see s 116 post. Note as to "the members of a society or branch", sub-s (4) above.

**1974 Act.** *ie* the Friendly Societies Act 1974 ante; see s 119(1) post.

#### 95 Amendments of 1974 Act

Schedule 16 to this Act (which contains amendments to the 1974 Act) shall have effect.

#### NOTES

**Commencement.** This section and the following provisions of Sch 16 were brought into force as follows:

13 January 1993: paras 2(1)(a), (3), 25, 26, 28 (Friendly Societies Act 1992 (Commencement No 3 and Transitional Provisions) Order 1993, SI 1993/16, made under s 126(2) post);

1 February 1993: paras 4(a), (c), 5-7, 10, 16, 19, 24 (to the extent that it repeals the Friendly Societies Act 1974, ss 70-73, 75), 37, 38(a), 42(a), 45, 47, 48(b), (e), 52 (SI 1993/16);

28 April 1993: paras 3, 34-36, 38(b), (c) (to the extent that it introduces the Friendly Societies Act 1974, s 93(3)(a), (b)), 39-41 (Friendly Societies Act 1992 (Commencement No 5 and Savings) Order 1993, SI 1993/1186, made under s 126(2) post);

13 September 1993: paras 29, 31, 33 (Friendly Societies Act 1992 (Commencement No 6 and Transitional Provisions) Order 1993, SI 1993/2213, made under s 126(2), (3) post);

1 January 1994: paras 4(b), 8, 9, 11, 12, 15, 17, 18(1)(a), 22, 23, 43, 51 (SI 1993/2213); paras

2(1)(b), (2), 13, 14, 18(1)(b), 20 (Friendly Societies Act 1974, s 93(3)(c)), 42(b), 43 (Commencement No 7 and Transitional Provisions) Order 1993, SI 1993/1186, made under s 126(2), (3) post).

As regards Sch 16, para 32, the provisions of the 1974 Act were brought into force on 1 February 1993, and SI 1993/1186 brought the 1974 Act into force for all remaining provisions on 1 February 1993, and SI 1993/1186 brought the 1974 Act into force for all remaining provisions on 1 February 1993, and SI 1993/1186 brought the 1974 Act into force for all remaining provisions on 1 February 1993.

Up to 1 June 1994 no further orders had been made under sub-s (14) above. For general provisions as to orders, see s 121 post.

**1974 Act.** *ie* the Friendly Societies Act 1974 ante: see s 119(1) post.

#### 96 Extension of 1974 Act

(1) The 1974 Act shall apply to Northern Ireland as if it were contained in the 1974 Act.

(2) Societies which, immediately before the commencement of this Act, were societies registered under the Friendly Societies Act (Northern Ireland) 1970, shall be treated as if they were societies registered under the 1974 Act.

(3) A branch of a society which, immediately before the commencement of this Act, was a branch of the society under the 1974 Act.

(4) In consequence of the repeal of the Friendly Societies Act (Northern Ireland) 1970, the provisions of that Act shall apply to Northern Ireland as if they were contained in the 1974 Act.

#### NOTES

**Commencement.** This section and the following provisions of Sch 16 were brought into force as follows: 1 February 1993; see the note to s 6 ante.

**Writing.** See the note "Written" to s 17 ante.

**28 days commencing with, etc.** See the note "14 days commencing with, etc" to s 44 ante.

**Definitions.** For "registered branch" and "registered friendly society", see s 116 post. Note as to "the members of a society or branch", sub-s (4) above.

**1974 Act.** *ie* the Friendly Societies Act 1974 ante; see s 119(1) post.

#### 97 Insurance protection

The Policyholders Protection Act 1975 shall apply to Northern Ireland as if it were contained in the 1974 Act.

#### NOTES

**Commencement.** Up to 1 June 1994 no further orders had been made under sub-s (14) above. For general provisions as to orders, see s 121 post.

**General Note.** This section and the following provisions of Sch 16 were brought into force as follows: 13 January 1993: paras 2(1)(a), (3), 25, 26, 28 (Friendly Societies Act 1992 (Commencement No 3 and Transitional Provisions) Order 1993, SI 1993/16, made under s 126(2) post); 1 February 1993: paras 4(a), (c), 5-7, 10, 16, 19, 24 (to the extent that it repeals the Friendly Societies Act 1974, ss 70-73, 75), 37, 38(a), 42(a), 45, 47, 48(b), (e), 52 (SI 1993/16); 28 April 1993: paras 3, 34-36, 38(b), (c) (to the extent that it introduces the Friendly Societies Act 1974, s 93(3)(a), (b)), 39-41 (Friendly Societies Act 1992 (Commencement No 5 and Savings) Order 1993, SI 1993/1186, made under s 126(2) post); 13 September 1993: paras 29, 31, 33 (Friendly Societies Act 1992 (Commencement No 6 and Transitional Provisions) Order 1993, SI 1993/2213, made under s 126(2), (3) post); 1 January 1994: paras 4(b), 8, 9, 11, 12, 15, 17, 18(1)(a), 22, 23, 43, 51 (SI 1993/2213); paras

2(1)(b), (2), 13, 14, 18(1)(b), 20 (Friendly Societies Act 1974, s 93(3)(c)), 42(b), 43 (Commencement No 7 and Transitional Provisions) Order 1993, SI 1993/1186, made under s 126(2), (3) post).

As regards Sch 16, para 32, the provisions of the 1974 Act were brought into force on 1 February 1993, and SI 1993/1186 brought the 1974 Act into force for all remaining provisions on 1 February 1993, and SI 1993/1186 brought the 1974 Act into force for all remaining provisions on 1 February 1993.

Up to 1 June 1994 no further orders had been made under sub-s (14) above. For general provisions as to orders, see s 121 post.

**1974 Act.** *ie* the Friendly Societies Act 1974 ante: see s 119(1) post.

2(1)(b), (2), 13, 14, 18(1)(b), 20, 21, 27, 30, 38(c) (to the extent that it introduces the Friendly Societies Act 1974, s 93(3)(c)), 42(b), (c), 44, 46, 48(a), (c), (d), 49, 50 (Friendly Societies Act 1992 (Commencement No 7 and Transitional Provisions and Savings) Order 1993, SI 1993/3226, made under s 126(2), (3) post).

As regards Sch 16, para 32, SI 1993/16 brought that paragraph "except paragraph (8)" into force on 1 February 1993, and SI 1993/2213 brought the same paragraph "except subsection (8) of section 84A" into force for all remaining purposes on 13 September 1993. By SI 1993/3226 that paragraph "to the extent that it inserts section 84A(8) of the 1974 Act" was brought into force on 1 January 1994.

Up to 1 June 1994 no further order had been made under s 126 post bringing Sch 16, para 24 into force to the extent that it repeals the Friendly Societies Act 1974, s 74 ante.

1974 Act. *ie* the Friendly Societies Act 1974 ante; see s 119(1) post.

#### *Societies registered in Northern Ireland*

### 96 Extension of 1974 Act to Northern Ireland

(1) The 1974 Act shall extend to Northern Ireland.

(2) Societies which, immediately before the commencement of subsection (1) above, were societies registered under any provision of section 1 of the Friendly Societies Act (Northern Ireland) 1970 shall be treated as if they were societies registered under the corresponding provision of section 7 of the 1974 Act.

(3) A branch of a society registered under that Act of 1970 which is, immediately before the commencement of subsection (1) above, a registered branch of the society under that Act, shall be treated as a branch registered under the 1974 Act.

(4) In consequence of subsections (1) to (3) above, the Friendly Societies Act (Northern Ireland) 1970 is repealed.

#### NOTES

**Commencement.** This section and s 124 post were brought into force on 1 January 1994 by the Friendly Societies Act 1992 (Commencement No 7 and Transitional Provisions and Savings) Order 1993, SI 1993/3226 (made under s 126(2), (3) post).

1974 Act. *ie* the Friendly Societies Act 1974 ante; see s 119(1) post.

**Friendly Societies Act (Northern Ireland) 1970.** 1970 c 31 (NI); not printed in this work. That Act is also repealed by s 120(2), Sch 22, Pt II post.

#### *Other miscellaneous provisions*

### 97 Insurance protection

The Policyholders Protection Act 1975 shall have effect subject to the amendments in Schedule 17 to this Act, being amendments to extend that Act to contracts of insurance with friendly societies.

#### NOTES

**Commencement.** Up to 1 June 1994 no order had been made under s 126 post bringing this section and Sch 17 post into force.

**General Note.** This section and Sch 17 post implement the proposals contained in paras 7.7, 7.8 of the Green Paper "Friendly Societies: A New Framework" (Cm 919) (January 1990). Although the larger friendly societies belong to a voluntary investor protection scheme, certain smaller societies have not joined. The Government therefore thought it desirable to institute a statutory scheme, to be mandatory on any society giving its members contractual rights to cash benefits in specified circumstances or at a specified time. Accordingly, the Policyholders Protection Act 1975, Vol 22, title Insurance (Pt 1), which covers investor protection in the insurance industry, is amended by Sch 17 post so as to bring policyholders of friendly societies within its scope on the same terms as insurance companies.

**Definitions.** For "friendly society", see s 116 post; for "contract of insurance", see s 119(1) post.

**Policyholders Protection Act 1975.** See Vol 22, title Insurance (Pt 1).



**[101 Law applicable to contracts of insurance with friendly societies**

(1) The law applicable to a contract of insurance made by a friendly society the effecting of which constitutes general business and which covers risks situated in the United Kingdom or another member State shall be determined—

- (a) in the case of a society to which section 37(3) above applies, in accordance with Part I of Schedule 20 to this Act; and
- (b) in any other case, in accordance with that Part of that Schedule as modified by subsection (3) below.

(2) The law applicable to a contract of insurance made by a friendly society the effecting of which constitutes long term business and which covers commitments or risks situated in the United Kingdom or another member State shall be determined—

- (a) in the case of a society to which section 37(2) above applies, in accordance with Part II of Schedule 20 to this Act; and
- (b) in any other case, in accordance with Part I of that Schedule as modified by subsection (3) below.

(3) For the purposes of paragraph (b) of subsections (1) and (2) above, Part I of Schedule 20 to this Act shall be modified as follows—

- (a) the words “or central administration”, in each place where they occur, shall be omitted;
- (b) in paragraph 5(1), for the words from “shall act” to the end there shall be substituted the words “shall apply the general rules of private international law of that part of the United Kingdom concerning contractual obligations”; and
- (c) in paragraph 5(2), for the words “those provisions” there shall be substituted the words “those rules”.

(4) The provisions of this section do not apply in relation to a contract of reinsurance.]

**NOTES**

This section was substituted by the Friendly Societies (Amendment) Regulations 1993, SI 1993/2519, reg 6(1), with effect from 1 January 1994.

**United Kingdom.** See the note to s 14 ante.

**Member State.** See the note to s 13 ante.

**Definitions.** For “friendly society”, see s 116 post; for “commitment”, “general business” and “long term business”, see s 117(1) post; as to “member State where the commitment or risk is situated”, see s 117(6), (7) post.

**PART X****GENERAL AND SUPPLEMENTARY***General***102 Power to amend, etc to assimilate to company law or law relating to persons carrying on insurance business**

(1) If, on any modification of the statutory provisions in force in Great Britain or Northern Ireland relating—

- (a) to companies; or
- (b) to persons or bodies of persons, other than friendly societies, whether incorporated or not, carrying on insurance business (including reinsurance business),

it appears to the Treasury to be expedient to modify the relevant provisions of this

Act for the purpose of assimilating the law relating to friendly societies to the law as so modified, the Treasury may, by order, make such modifications of the relevant provisions of this Act as they think appropriate for that purpose.

(2) The "relevant provisions of this Act" are the following provisions as for the time being in force, that is to say—

- (a) so much of Part II as relates to winding up;
- (b) Part IV;
- (c) Part V;
- (d) Part VI; and
- (e) Part VIII.

(3) The power conferred by subsection (1) above includes power to modify the relevant provisions of this Act so as to—

- (a) confer power to make orders, regulations, rules or other subordinate legislation;
- (b) create criminal offences; or
- (c) provide for the charging of fees but not any charge in the nature of taxation.

(4) An order under this section may—

- (a) make consequential amendments of or repeals in other provisions of this Act; or
- (b) make such transitional or saving provisions as appear to the Treasury to be necessary or expedient.

(5) In this section—

"modification" includes any additions and, as regards modifications of the statutory provisions relating to companies, any modification whether effected by any future Act or by an instrument made after the passing of this Act under an Act whenever passed; and

"statutory provisions" includes the provisions of any instrument made under an Act.

#### NOTES

In the Queen's Printer's copy of this Act, the marginal note was incomplete. It is thought that it should read "Power to amend, etc to assimilate to company law or law relating to persons carrying on insurance business".

**Commencement.** 1 February 1993; see the note to s 6 ante.

**Sub-s (1): Great Britain.** See the note to s 75 ante.

**Persons.** See the note "Person" to s 1 ante.

**Carrying on . . . business.** See the note to s 7 ante.

**Appears; think appropriate.** See the note "Thinks fit" to s 4 ante.

**Treasury.** See the note to s 1 ante.

**Sub-s (2): Part II; Part IV; Part V; Part VI; Part VIII.** I.e ss 5–26 and Schs 2–10 (Pt II) (the relevant provisions of Pt II are ss 19–26 and Sch 10); ss 31–43 and Sch 13 (Pt IV); ss 44–67 (Pt V); ss 68–79 and Sch 14 (Pt VI); ss 85–92 and Sch 15 (Pt VIII).

**Sub-s (5): Passing of this Act.** This Act was passed, ie received the Royal Assent, on 16 March 1992.

**Definitions.** For "friendly society", see s 116 post; for "insurance business", see s 117(1) post; for "reinsurance business", see s 117(2) post; for "modifications", see s 119(1) post (and note sub-s (5) above). Note as to "relevant provisions of this Act", sub-s (2) above, and as to "statutory provisions", sub-s (5) above.

**Orders under this section.** Up to 1 June 1994 no orders had been made under this section.

For general provisions as to orders, see s 121 post.

### 103 Power to modify Parts V and VI in relation to particular friendly societies

(1) The Commission may, on the application or with the consent of a friendly society, by order direct that all or any of the provisions of Part V or VI of this Act

shall not apply to the society specified in the order.

(2) An order under this

(3) An order under this time; and the Commission or with the consent of the

#### NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**Part V or VI of this Act.** I.e ss 44–67 and Sch 14 (Pt V); ss 68–79 and Sch 14 (Pt VI).

**Definitions.** For "the Commission", see s 119(1) post.

**Orders under this section.** I.e orders under s 103.

For general provisions as to orders, see s 121 post.

### 104 Public file of a friendly society

(1) The central office of a friendly society (to be known as the

- (a) contain the documents prescribed and the records of the society under this Act to be kept in the public file of a friendly society;
- (b) be available for public inspection on payment of a fee.

(2) Any member of a friendly society prescribed, to be furnished with a copy of any document kept in the public file of a friendly society.

(3) The central office of a friendly society shall keep any documents relating to the society and any documents relating to the

#### NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**Directed by or under any order.** I.e orders under s 104. See paras 3(c), 6(6)(c), (8), 9(5)(c), 11(2) post.

**Public.** See the note to s 63 ante.

**Definitions.** For "friendly society", see s 116 post; for "the central office", see s 117(1) post.

### 105 Exemptions from stamp duty

Stamp duty shall not be payable on any instrument made under this Act, the 1974 Act or of a registered friendly society.

#### NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**Definitions.** For "friendly society", see s 116 post.

**1974 Act.** I.e the Friendly Societies Act 1974.

shall not apply to the society or shall apply to it with such modifications as may be specified in the order.

(2) An order under this section may be subject to conditions.

(3) An order under this section may be revoked by the Commission at any time; and the Commission, may at any time vary any such order on the application or with the consent of the society to which it applies.

#### NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**Part V or VI of this Act.** ie ss 44–67 (Pt V); ss 68–79 and Sch 14 (Pt VI).

**Definitions.** For “the Commission”, see s 1(1) ante; for “friendly society”, see s 116 post; for “modifications”, see s 119(1) post.

**Orders under this section.** Up to 1 June 1994 no orders had been made under this section. For general provisions as to orders, see s 121 post.

#### 104 Public file of a friendly society

(1) The central office shall prepare and maintain a file relating to each friendly society (to be known as the public file) and the file shall—

- (a) contain the documents or, as the case may be, copies of the documents and the records of the matters directed by or under any provision of this Act to be kept in the public file of the society; and
- (b) be available for inspection on reasonable notice by members of the public on payment of the fee prescribed under section 114 below.

(2) Any member of the public shall be entitled, on payment of the fee so prescribed, to be furnished with a copy of all or any of the documents or records kept in the public file of a friendly society.

(3) The central office may keep in the public file of a registered friendly society any documents relating to a registered branch of the society which correspond to documents relating to the society which it is required to keep on that file.

#### NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**Directed by or under any provision of this Act to be kept in the public file.** See ss 14(12), 20(12), 21(2), 25(4), 29(5), 51(8), 52(6), 54(9), 78(8), 86(6), 89(7), 90(10), 93(9), (13) ante, Sch 3, paras 3(c), 6(6)(c), (8), 9(5)(c), 12(2)(c), Sch 4; para 2(6)(c), Sch 10, paras 4, 24(3), 67, Sch 13, paras 5, 11(2) post.

**Public.** See the note to s 63 ante.

**Definitions.** For “friendly society”, “registered branch”, and “registered friendly society”, see s 116 post; for “the central office”, see s 119(1) post.

#### 105 Exemptions from stamp duty

Stamp duty shall not be chargeable upon any document required or authorised by this Act, the 1974 Act or by the constitution of an incorporated friendly society or of a registered friendly society or registered branch.

#### NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**Definitions.** For “incorporated friendly society”, “registered branch”, and “registered friendly society”, see s 116 post.

**1974 Act.** ie the Friendly Societies Act 1974 ante; see s 119(1) post.

**106 Officers and auditors not to be exempted from liability**

(1) Subject to subsection (3) below, any provision to which this section applies, whether contained in the constitution of a friendly society or in any contract with a friendly society or otherwise, shall be void.

(2) This section applies to any provision for—

- (a) exempting any member of the committee of management, other officer, or person employed as auditor of a friendly society from any liability which, by virtue of any rule of law, would otherwise attach to him in respect of the negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the society; or
- (b) indemnifying any such person against any such liability.

(3) Subsection (1) above shall not prevent a friendly society—

- (a) from purchasing and maintaining for such a person insurance against any such liability; or
- (b) from indemnifying such a person against any liability incurred by him in defending any proceedings (whether criminal or civil) in which judgement is given in his favour or in which he is acquitted.

(4) Section 727 of the Companies Act 1985 or Article 675 of the Companies (Northern Ireland) Order 1986 (each of which empowers the court to grant relief in certain cases of negligence, default, breach of duty or breach of trust) shall apply in relation to officers and auditors of a friendly society as it applies in relation to officers and auditors of a company.

(5) For the purposes of this section a reference to an officer of a friendly society includes a reference to the appropriate actuary.

**NOTES**

**Commencement.** 1 February 1993; see the note to s 6 ante.

**Committee of management.** For general provisions as to the committee of management, see s 27 ante, Sch 11 post.

**Auditor of a friendly society.** For appointment, etc, see s 72 ante, Sch 14 post.

**Definitions.** For "friendly society", see s 116 post; for "the appropriate actuary", "committee of management" and "officer", see s 119(1) post.

**Companies Act 1985, s 727.** See Vol 8, title Companies.

**Companies (Northern Ireland) Order 1986.** SI 1986/1032 (NI 6).

**107 Time limit for commencing proceedings**

(1) Notwithstanding any limitation on the time for the taking of proceedings contained in any enactment, summary proceedings for any offence under this Act may, subject to subsection (2) below, be commenced by the Commission at any time within the period of one year beginning with the date on which evidence sufficient in the opinion of the Commission to justify a prosecution for the offence, comes to its knowledge.

(2) Nothing in subsection (1) above shall authorise the commencement of proceedings for any offence at a time more than three years after the date on which the offence was committed.

(3) For the purposes of subsection (1) above a certificate, purporting to be signed by or on behalf of the Commission, as to the date on which such evidence as is mentioned in that subsection came to its knowledge, shall be conclusive evidence of that date.

(4), (5) (*Apply to Scotland only.*)

**NOTES**

**Commencement.** 1 February 1993; see the note to s 6 ante.  
**The Commission.** For meaning, see s 6 ante.  
**One year beginning with the date on which evidence sufficient in the opinion of the Commission to justify a prosecution for the offence, comes to its knowledge.** See s 107(1).  
**Three years after, etc.** See s 107(2).  
**Conclusive evidence.** See s 107(3).

**108 Offences by bodies of persons or associations**

(1) Where an offence under this Act has been committed by a body of persons or an association, any person who is a director, manager, secretary or other officer of the body, or a person who was purporting to act as such, shall be guilty of the offence if he is shown to be guilty of the offence, and shall be punished accordingly.

(2) Where the offence is committed in connection with his functions as a director, manager, secretary or other officer of the body, or as a person purporting to act as such, the person shall be guilty of the offence if he is shown to be guilty of the offence, and shall be punished accordingly.

(3) Where a partnership is a body of persons, any partner who is shown to be guilty of the offence, or any person who is shown to be guilty of the offence, shall be liable to be proceeded against and punished accordingly.

(4) Where an offence under this Act is committed by a body of persons or an association, any person who is a director, manager, secretary or other officer of the body, or a person who was purporting to act as such, shall be guilty of the offence if he is shown to be guilty of the offence, and shall be punished accordingly.

- (a) every officer of the body who is shown to be guilty of the offence, or any person who is shown to be guilty of the offence, shall be liable to be proceeded against and punished accordingly.
- (b) if there is no person who is shown to be guilty of the offence, or any person who is shown to be guilty of the offence, shall be liable to be proceeded against and punished accordingly.

shall also be guilty of the offence if he is shown to be guilty of the offence, and shall be punished accordingly.

**NOTES**

**Commencement.** 1 February 1993; see the note to s 6 ante.

**Offence . . . committed by a body of persons or an association.** See s 108(1).  
 where, by the nature of the offence, it is necessary to prove that the person who represent the directing mind of the body, or a person who was purporting to act as such, is one for which an employer is liable, see *Harvey* [1965] 2 QB 233, [1965] 1 All ER 1000, and *Weatherfoil Ltd* [1972] 1 All ER 1000, 9 Halsbury's Law 35, and as to vicarious liability, see s 108(2).  
 As to the defence of due diligence, see s 108(3).  
**Consent.** There is authority that a person who is shown to be guilty of the offence, or any person who is shown to be guilty of the offence, shall be liable to be proceeded against and punished accordingly, see *Harvey* (1876) 1 Ch D 521 at 528, C 100, [1924] All ER Rep 220 at 223, and *Boyd* 1941 JC 82 at 86; *Taylor v Boyd* [1951] WN 383, per Devlin J, 278 per Parker J; and *Mallon v Mallon* [1965] 1 All ER 1000, 9 Halsbury's Law 35, per Parker J; and *Godfrey v Godfrey* [1965] 1 All ER 1000, 9 Halsbury's Law 35, per Parker J.  
**Connivance.** Though there is authority that a person who is shown to be guilty of the offence, or any person who is shown to be guilty of the offence, shall be liable to be proceeded against and punished accordingly, see *Godfrey v Godfrey* [1965] 1 All ER 1000, 9 Halsbury's Law 35, per Parker J, in which earlier decisions are

## NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**The Commission.** For meaning, see s 1(1) ante.

**One year beginning with, etc.** Cf the note "3(6) months beginning with, etc" to s 39 ante.

**Three years after, etc.** Cf the note "Seven months after, etc" to s 3 ante.

**Conclusive evidence.** See the note to s 20 ante.

### 108 Offences by bodies corporate, partnerships and unincorporated associations

(1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any member of the committee of management, director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by the members, subsection (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) Where a partnership is guilty of an offence under this Act, every partner, other than a partner who is proved to have been ignorant of or to have attempted to prevent the commission of the offence, shall also be guilty of that offence and be liable to be proceeded against and punished accordingly.

(4) Where an unincorporated association (other than a partnership) is guilty of an offence under this Act—

- (a) every officer of the association who is bound to fulfil any duty of which the breach is the offence; or
- (b) if there is no such officer, every member of the governing body other than a member who is proved to have been ignorant of or to have attempted to prevent the commission of the offence,

shall also be guilty of the offence and be liable to be proceeded against and punished accordingly.

## NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**Offence . . . committed by a body corporate.** Except when the penalty is inappropriate or where, by the nature of the offence, it must be committed by an individual, a corporation may be convicted for the criminal acts (including those requiring mens rea) of the directors and managers who represent the directing mind and will of the corporation and control what it does (*DPP v Kent & Sussex Contractors Ltd* [1944] KB 146, [1944] 1 All ER 119; *R v ICR Haulage Ltd* [1944] KB 551, [1944] 1 All ER 691, CCA; *Tesco Supermarkets Ltd v Natrass* [1972] AC 153, [1971] 2 All ER 127, HL), but it cannot be convicted for the criminal acts of its inferior servants or agents unless the offence is one for which an employer or principal may be vicariously liable (*John Henshall (Quarries) Ltd v Harvey* [1965] 2 QB 233, [1965] 1 All ER 725; *Tesco Supermarkets Ltd v Natrass* above; *R v Andrews-Weatherfoil Ltd* [1972] 1 All ER 65, [1972] 1 WLR 118, CA). See further, on the criminal liability of corporations, 9 Halsbury's Laws (4th edn) para 1379 and 11(1) Halsbury's Laws (4th edn reissue) para 35, and as to vicarious liability, 11(1) Halsbury's Laws (4th edn reissue) paras 52 et seq.

As to the defence of due diligence, see s 109 post.

**Consent.** There is authority for saying that this presupposes knowledge; see *Re Caughey, ex p Ford* (1876) 1 Ch D 521 at 528, CA, per Jessel MR, and *Lamb v Wright & Co* [1924] 1 KB 857 at 864, [1924] All ER Rep 220 at 223. It is thought, however, that actual knowledge is not necessary; cf *Knox v Boyd* 1941 JC 82 at 86; *Taylor's Central Garages (Exeter) Ltd v Roper* (1951) 115 JP 445 at 449, 450, [1951] WN 383, per Devlin J; *James & Son Ltd v Smeed* [1955] 1 QB 78 at 91, [1954] 3 All ER 273 at 278 per Parker J; and *Mallon v Allon* [1964] 1 QB 385 at 394, [1963] 3 All ER 843 at 847.

**Connivance.** Though there are many decisions on the meaning of this word in matrimonial law (see *Godfrey v Godfrey* [1965] AC 444, [1964] 3 All ER 154, HL, especially the speech of Lord Guest in which earlier decisions are reviewed), there is little authority as to its meaning in the context in



- (a) for the reference in paragraph (a) to a magistrates' court acting for a petty sessions area there shall be substituted a reference to a magistrates' court acting for a county court division; and
- (b) paragraph (b) shall be omitted.

#### NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**Magistrates' court.** For meaning, see, by virtue of the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes, the Magistrates' Courts Act 1980, s 148, Vol 27, title Magistrates.

**Petty sessions area.** For meaning, see, by virtue of the Magistrates' Courts Act 1980, s 150(1), the Justices of the Peace Act 1979, s 4, both Vol 27, title Magistrates.

**Registered office.** The memorandum of an incorporated friendly society must specify the address of its registered office; see s 5(6) ante, Sch 3, para 4(1)(c) post.

**Person.** See the note to s 1 ante.

**Resident.** A person resides where in common parlance he lives, and a temporary absence is immaterial provided there is an intention to return and a house or lodging to which to return; see *R v St Leonard's, Shoreditch, Inhabitants* (1865) LR 1 QB 21, and *R v Glossop Union* (1866) LR 1 QB 227. The word "reside" implies a degree of permanence (*Levene v IRC* [1928] AC 217 at 222, 223, [1928] All ER Rep 746 at 749, 750, HL; *Fox v Stirk* [1970] 2 QB 463 at 477, [1970] 3 All ER 7 at 13, CA; *Brokelmann v Barr* [1971] 2 QB 602, [1971] 3 All ER 29), but a person may be resident in more than one place at the same time (*Levene v IRC* above; *Langford Property Co Ltd v Tureman* [1949] 1 KB 29, sub nom *Langford Property Co Ltd v Athanassoglou* [1948] 2 All ER 722, CA; *Herbert v Byrne* [1964] 1 All ER 882, [1964] 1 WLR 519, CA; and contrast *Beck v Scholz* [1953] 1 QB 570, [1953] 1 All ER 814, CA). Whether a person is resident in a particular place and whether that residence is permanent are questions of fact and degree and it is possible to be resident in accommodation such as a tent or a vehicle; moreover the legality or lawfulness or otherwise of the residence is not generally a relevant consideration; see *Hipperson v Electoral Registration Officer for the District of Newbury* [1985] 1 QB 1060, [1985] 2 All ER 456, CA.

As to the residence of incorporated bodies, see 9 Halsbury's Laws (4th edn) para 1225.

**Definitions.** For "friendly society", see s 116 post; for "officer", see s 119(1) post.

**Magistrates' Courts Act 1980.** See Vol 27, title Magistrates.

**Magistrates' Courts (Northern Ireland) Order 1981.** SI 1981/165 (NI 26).

#### 111 Evidence

(1) Any document purporting to have been signed by a registrar on behalf of the central office and to be a certificate of incorporation or registration or other document relating to a friendly society shall be received in evidence and shall, in the absence of any evidence to the contrary, be deemed to have been signed by a registrar on behalf of the central office.

(2) Any printed document purporting to be a copy of the rules or memorandum of an incorporated friendly society or the rules of a registered friendly society or a registered branch and certified by the secretary or other officer of the society or branch to be a true copy of its rules or memorandum as registered, shall be received in evidence and shall, in the absence of any evidence to the contrary, be deemed to be a true copy of its rules or memorandum.

#### NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**Deemed.** See the note to s 8 ante.

**Secretary.** As to the appointment of a secretary, see s 28 ante.

**Rules; memorandum.** For the matters to be covered by the rules of a friendly society, see s 5(6) ante, Sch 3, para 5(3), Table post; as to the memorandum of an incorporated friendly society, see s 5(6) ante, Sch 3, paras 1(1)(a), 4 post.

**Definitions.** For "friendly society", "incorporated friendly society", "registered branch" and "registered friendly society", see s 116 post; for "the central office" and "officer", see s 119(1) post.

JP 55, 29 TLR 51, and Glanville  
that the word implies knowledge  
are again positive knowledge is not  
or inattention is not; see *Rogers v*  
ect in this section).

the person knows or ought to  
All ER 269 at 271 per Simonds J.  
o neglect on the part of a director,  
5, 147, [1968] 1 WLR 53, HL and  
Elliot [1970] 1 All ER 189, (1969)

the committee of management, see

porting to act in any such capacity is  
a director who had not been duly  
pany.

s 119(1) post.

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tions and exercised all due  
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ffence and may be discharged by  
f probability, of what the accused  
All ER 156; *R v Dunbar* [1958] 1  
5] 1 All ER 721.

s exercised all due diligence is a  
there was no evidence to support  
638, [1931] All ER Rep 70.

ue diligence is the failure of the  
ubordinate managers and similar  
gence is not necessarily the failure  
1971] 2 All ER 127, HL).

ce that it is indistinguishable from  
*Ltd v Lancashire Shipping Co Ltd*  
lmer LJ, revsd on other grounds

magistrates' Courts Act 1980 or  
d as to the jurisdiction of a  
eland all summary offences

society or any officer of a  
acting for the petty sessions  
ety is situated; and  
her than a friendly society  
magistrates' court acting for  
resident at the time of the

thern Ireland—

- (c) in the case of a partnership, be served on any partner;
- (d) in the case of an unincorporated association, other than a partnership or a registered friendly society or registered branch, be served on any member of its governing body.
- (4) For the purposes of this section and section 7 of the Interpretation Act 1978 (service of documents) in its application to this section, the proper address of any person is—
- (a) in the case of a friendly society or its secretary, the address of its registered office;
- (b) in the case of a member of an incorporated friendly society, his registered address;
- (c) in the case of a member of the committee of management or the chief executive of a friendly society, his officially notified address;
- (d) in the case of a body corporate (other than an incorporated friendly society), its secretary or clerk, the address of its registered or principal office in the United Kingdom;
- (e) in the case of an unincorporated association (other than a partnership, registered friendly society or registered branch) or a member of its governing body, its principal office in the United Kingdom;
- and, in any other case, his last-known address (whether of his residence or of a place where he carries on business or is employed).

#### NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**Rules.** For the matters to be covered by the rules of a friendly society, see s 5(6) ante, Sch 3, para 5(3), Table post.

**Person.** See the note to s 1 ante.

**May be served ... by post.** This provision brings into operation the provisions of the Interpretation Act 1978, s 7, Vol 41, title Statutes, to the effect that service is deemed to be effected by properly addressing, prepaying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Service by post may be effected by ordinary or registered letter; see *T O Supplies (London) Ltd v Jerry Creighton Ltd* [1952] 1 KB 42, [1951] 2 All ER 992. It follows that it is also permissible to use the recorded delivery service.

As this provision is permissive only, it is clear that, where a notice is served in a different manner and is received, this constitutes good service; see *Sharpley v Manby* [1942] 1 KB 217, sub nom *Re Sharpley's and Manby's Arbitration* [1942] 1 All ER 66, CA, and *Stylo Shoes Ltd v Prices Tailors Ltd* [1960] Ch 396, [1959] 3 All ER 901.

**Leaving it at his proper address.** If a notice is served in this way it must be left in a manner which a reasonable person, minded to bring the document to the attention of the person to whom it is addressed, would adopt; see *Lord Newborough v Jones* [1975] Ch 90, [1974] 3 All ER 17, CA.

**Secretary.** As to the appointment of a secretary, see s 28 ante.

**Body corporate.** See the note "Bodies corporate" to s 7 ante.

**Registered office.** The memorandum of an incorporated friendly society must specify the address of its registered office; see s 5(6) ante, Sch 3, para 4(1)(c) post.

**Committee of management.** For general provisions as to the committee of management, see s 27 ante, Sch 11 post.

**Chief executive.** As to the appointment of a chief executive, see s 28 ante.

**Officially notified address.** See s 29(3) ante.

**Registered or principal office.** As to the registered office of a company, see the Companies Act 1985, s 287, Vol 8, title Companies. The "principal office" is the place where the business of the body corporate is managed and controlled as a whole; see *Garton v Great Western Rly Co* (1858) EB & E 837; *Palmer v Caledonian Rly Co* [1892] 1 QB 823; and *Clokey v London and North Western Rly Co* [1905] 2 IR 251.

**United Kingdom.** See the note to s 14 ante.

**Last known address.** Though as a general rule an address which the person concerned is known to have left is not a proper address for service (*White v Weston* [1968] 2 QB 647, [1968] 2 All ER 842, CA), the position is otherwise where the use of the last known address is expressly authorised (*Re Follick, ex p Trustee* (1907) 97 LT 645). However, service at the last known address in England or Wales is not good if a later address abroad is known (*R v Farmer* [1892] 1 QB 637, [1891-4] All ER Rep 921, CA). For other relevant cases, see *Hanrott's Trustees v Evans* (1887) 4 TLR 128; *R v Webb*

### 112 Records of friendly societies

(1) Subject to any other provision of this Act or regulations under it, any record to be kept by a friendly society may be kept in any manner.

(2) Where any such record is not kept by making entries in a bound book, but by some other means, adequate precautions shall be taken for guarding against falsification and facilitating its discovery.

(3) The power in subsection (1) above includes power to keep the record by recording matters otherwise than in legible form so long as the recording is capable of being reproduced in a legible form; and any duty imposed by or under this Act to allow inspection of, or to furnish a copy of, the record or any part of it is to be treated as a duty to allow inspection of, or to furnish, a reproduction of the recording or of the relevant part of it in a legible form.

(4) The Commission may, by regulations made with the consent of the Treasury, make such provision in addition to subsection (3) above as it considers appropriate in connection with such records as are kept otherwise than in legible form; and the regulations may make modifications of this Act so far as it relates to the records of friendly societies.

(5) If default is made in complying with this section the society shall be guilty of an offence and liable on summary conviction—

- (a) to a fine not exceeding level 4 on the standard scale; and
- (b) in the case of a continuing offence, to an additional fine not exceeding one-tenth of that level for every day during which the offence continues.

#### NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**Sub-s (4): Treasury.** See the note to s 1 ante.

**Considers appropriate.** See the note "Thinks fit" to s 4 ante.

**Sub-s (5): Guilty of an offence.** As to the time limit for commencing proceedings, see s 107 ante; as to offences by bodies corporate, partnerships and unincorporated associations, see s 108 ante; as to the defence of due diligence, see s 109 ante; and as to the jurisdiction of magistrates' courts, see s 110 ante.

**Summary conviction; standard scale.** See the notes to s 18 ante.

**Every day during which the offence continues.** See the note to s 20 ante.

**Definitions.** For "the Commission", see s 1(1) ante; for "friendly society", see s 116 post; for "modifications", see s 119(1) post.

**Regulations under this section.** Up to 1 June 1994 no regulations had been made under sub-s (4) above.

For general provisions as to regulations, see s 121 post.

### 113 Service of notices

(1) This section has effect in relation to any notice, directions or other document required or authorised by or under any provision of this Act or by the rules of a friendly society to be served on any person other than the Commission and the central office but subject, in the case of notices or other documents to be given or sent to members of a friendly society, to any provision of its rules.

(2) Any such document may be served on the person in question—

- (a) by delivering it to him;
- (b) by leaving it at his proper address; or
- (c) by sending it by post to him at that address.

(3) Any such document may—

- (a) in the case of a friendly society, be served on the secretary of the society;
- (b) in the case of a body corporate (other than an incorporated friendly society), be served on the secretary or clerk of that body;

- (c) in the case of
- (d) in the case of a registered member of its

(4) For the purposes of (service of documents) a person is—

- (a) in the case of registered office
- (b) in the case of registered address
- (c) in the case of executive of a
- (d) in the case of society), its secretary office in the U
- (e) in the case of registered friendly governing bo

and, in any other case, place where he carries on

#### NOTES

**Commencement.** 1 February

**Rules.** For the matters to be 5(3), Table post.

**Person.** See the note to s 1

**May be served ... by** Interpretation Act 1978, s 7, V properly addressing, prepaying is proved, to have been effect course of post.

Service by post may be effect *Jerry Creighton Ltd* [1952] 1 K the recorded delivery service.

As this provision is permiss and is received, this constitute *Sharpley's and Manby's Arbitr* [1960] Ch 396, [1959] 3 All E

**Leaving it at his proper** which a reasonable person, m is addressed, would adopt; see

**Secretary.** As to the appoint

**Body corporate.** See the n

**Registered office.** The me of its registered office; see s 5(6

**Committee of management** s 27 ante, Sch 11 post.

**Chief executive.** As to the

**Officially notified address**

**Registered or principal** 1985, s 287, Vol 8, title Comp corporate is managed and con 837; *Palmer v Caledonian Rly* [1905] 2 IR 251.

**United Kingdom.** See the

**Last known address.** Tho to have left is not a proper ad 842, CA), the position is other *Follick, ex p Trustee* (1907) 9 Wales is not good if a later ad Rep 921, CA). For other rele

[1896] 1 QB 487; *Berry v Farrow* [1914] 1 KB 632; *Stylo Shoes Ltd v Prices Tailors Ltd* [1960] Ch 396, [1959] 3 All ER 901; and *McGlynn v Stewart* 1974 SLT 230.

**Definitions.** For "the Commission", see s 1(1) ante; for "friendly society", "incorporated friendly society", "registered branch", and "registered friendly society", see s 116 post; for "the central office", "committee of management", and "registered address", see s 119(1) post.

**Interpretation Act 1978, s 7.** See Vol 41, title Statutes.

#### 114 Form of documents and power to prescribe fees

(1) The Chief Registrar may, by directions under this subsection, make provision with respect to the form of, and the particulars to be included in, any document to be issued or sent by, or to be sent to, the central office under this Act or the 1974 Act.

(2) The Treasury may make regulations providing for fees, of such amounts as may be prescribed in the regulations, to be paid to the Chief Registrar for the inspection, or the furnishing of copies, of any documents in the custody of the central office, or in respect of the exercise by the central office of any of its functions, under this Act or the 1974 Act.

(3) Any amounts received by the Chief Registrar under subsection (2) above shall be applied as an appropriation in aid of money provided by Parliament for the expenses of the Chief Registrar under this Act and the 1974 Act and, in so far as not so applied, shall be paid by the Chief Registrar into the Consolidated Fund.

#### NOTES

**Commencement.** 13 January 1993; see the note to s 58 ante.

**Treasury.** See the note to s 1 ante.

**Fees.** See also s 104(1)(b) ante.

**Consolidated Fund.** See the note to s 2 ante.

**Definitions.** For "the central office" and "the Chief Registrar", see s 119(1) post.

**1974 Act.** Is the Friendly Societies Act 1974 ante; see s 119(1) post. As to "the central office" under that Act, see s 1(2) thereof.

**Regulations under this section.** The Friendly Societies (General Charge and Fees) Regulations 1993, SI 1993/547, as amended by SI 1994/657.

For general provisions as to regulations, see s 121 post.

#### 115 Provision as to information supplied for purposes of social security

(1) Subject to any exceptions or conditions prescribed by regulations of the Secretary of State, the Secretary of State shall at the request of any person claiming benefit from an incorporated friendly society provide the society for the purposes of the claim with a copy or abstract of any medical certificate relating to that person and supplied by him to the Secretary of State for the purposes of the enactments relating to social security.

(2) Where the Secretary of State furnishes an incorporated friendly society, in connection with a claim for benefit from the society with information relating to a claim or award under those enactments, the expenses incurred in connection with his doing so by the Secretary of State or any other government department shall be treated as expenses in carrying those enactments into effect.

#### NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**Secretary of State.** Cf the note to s 64 ante.

**Incorporated friendly society.** For meaning, see s 116 post.

**Regulations under this section.** Up to 1 June 1994 no regulations had been made under sub-s (1) above.

For general provisions as to regulations, see s 121 post.

#### 116 Friendly societies

In this Act—

"friendly society"

friendly society

"incorporated friendly society"

"registered branch"

separately registered

"registered friendly society"

of the 1974 Act

which it is a

#### NOTES

**Commencement.** 8 July 1993; see the note to s 58 ante.  
**Society incorporated under the 1974 Act.** Is the Friendly Societies Act 1974 ante; see s 119(1) post. As to "the central office" under that Act, see s 1(2) thereof.

#### 117 Insurance business

(1) For the purposes of this section—

"annual contribution"

term business

deduction of

["commitment"]

37(2) applied

class of Head A

"insurance business"

not included

the resources

contribute

"long term business"

in head A of

"general business"

head B of t

(2) For the purposes of this section, unless the context otherwise requires—

(a) references to

business; and

(b) reinsurance

contract of

the carrying

and "reinsurance business" means reinsurance.

(3) For the purposes of this section, a business whose principal object is to carry on a class of long term business related and subsidiary to that class constitute the carrying on of that class, or no other, if subsection (2) above applies.

(4) This subsection applies to a class of long term business in head A of the general business class of Head B of t above to carry on long

*Interpretation***116 Friendly societies etc**

In this Act—

- “friendly society” means an incorporated friendly society or a registered friendly society;
- “incorporated friendly society” means a society incorporated under this Act;
- “registered branch” means a branch of a registered friendly society which is separately registered within the meaning of the 1974 Act;
- “registered friendly society” means a society registered within the meaning of the 1974 Act by virtue of section 7(1)(a) of that Act or any enactment which it repealed.

**NOTES**

- Commencement.** 8 June 1992; see the note to s 1 ante.  
**Society incorporated under this Act.** See ss 5, 6 ante.  
**1974 Act.** I.e. the Friendly Societies Act 1974 ante; see s 119(1) post. For the meaning of “branch” and “registered” under that Act, see s 111(1) thereof.

**117 Insurance business etc**

(1) For the purposes of this Act—

- “annual contribution income” means, in relation to a friendly society’s long term business, the income of the society in a financial year without any deduction for reinsurance cessions;
- [“commitment” means, in relation to a friendly society to which section 37(2) applies, a commitment represented by insurance business of any class of Head A of Schedule 2 to this Act;]
- “insurance business” means long-term business and general business but does not include the operations of a society whose benefits vary according to the resources available and which require each of its members to contribute on a flat-rate basis;
- “long term business” means insurance business of any of the classes specified in head A of Schedule 2 to this Act; and
- “general business” means insurance business of any of the classes specified in head B of that Schedule.

(2) For the purposes of any provision of Parts IV, V, VI and VIII of this Act, unless the context otherwise requires—

- (a) references to insurance business include references to reinsurance business; and
- (b) reinsurance business consisting of the effecting and carrying out of a contract of reinsurance of risks of any class shall be taken to constitute the carrying on of insurance business of that class;

and “reinsurance business” means the effecting and carrying out of contracts of reinsurance.

(3) For the purposes of this Act the effecting and carrying out of a contract whose principal object is within one class of insurance business, but which contains related and subsidiary provisions within another class or classes, shall be taken to constitute the carrying on of insurance business of the first-mentioned class, and no other, if subsection (4) or (5) below applies to the contract.

(4) This subsection applies to a contract whose principal object is within any class of long term business, but which contains subsidiary provisions within general business class 1 or 2, if the society concerned is authorised under section 32 above to carry on long term business class 1.

(5) This subsection applies to a contract whose principal object is within one of the classes of general business but which contains subsidiary provisions within another of those classes.

[(6) In relation to a contract of insurance entered into by a person on any date with a friendly society to which section 37(3) above applies the effecting of which constitutes general business, or a contract of insurance entered into by a person on any date with a friendly society to which section 37(2) above applies the effecting of which constitutes long term business, references in this Act to the member State where the risk or commitment is situated shall be construed as follows—

- (a) where that person is an individual, as references to the member State where he has his habitual place of residence on that date; and
- (b) in any other case, as references to the member State where the establishment of that person to which the contract relates is situated on that date.

(7) In relation to any other contract of insurance with a friendly society, references in this Act to the member State where the risk is situated shall be construed as references to the member State where the person who has entered into the contract has his habitual place of residence.]

#### NOTES

The definition of "commitment" was inserted and sub-ss (6), (7) were substituted for the original sub-s (6) by the Friendly Societies (Amendment) Regulations 1993, SI 1993/2519, reg 7.

**Commencement.** 8 June 1992; see the note to s 1 ante.

**Sub-s (2): Parts IV, V, VI and VIII of this Act.** Ie ss 31–43 and Sch 13 (Pt IV); ss 44–67 (Pt V); ss 68–79 and Sch 14 (Pt VI); ss 85–92 and Sch 15 (Pt VIII).

**Sub-s (3): Carrying on . . . business.** Cf the note to s 7 ante.

**Sub-s (6): Member State.** See the note to s 13 ante.

**Habitual place of residence.** The word "habitual" denotes a regular physical presence enduring for some time; habitual residence is to be distinguished from ordinary residence and is equivalent to the residence required to establish domicile without the element of animus necessary for the purpose of domicile (*Cruse v Chittum (formerly Cruse)* [1974] 2 All ER 940, (1974) 118 Sol Jo 499).

A person resides where, in common parlance, he lives, and a temporary absence is immaterial provided there is the intention to return and a house or lodging to which to return; see *R v St Leonard's, Shoreditch, Inhabitants* (1865) LR 1 QB 21, and *R v Glossop Union* (1866) LR 1 QB 227. The word "reside" implies a degree of permanence (*Levene v IRC* [1928] AC 217 at 222, 223, [1928] All ER Rep 746 at 749, 750, HL; *Fox v Stirk* [1970] 2 QB 463 at 477, [1970] 3 All ER 7 at 13, CA; *Brokelmann v Barr* [1971] 2 QB 602, [1971] 3 All ER 29), but a person may be resident in more than one place at the same time (*Levene v IRC* above; *Langford Property Co Ltd v Tureman* [1949] 1 KB 29, sub nom *Langford Property Co Ltd v Athanassoglou* [1948] 2 All ER 722, CA; *Herbert v Byrne* [1964] 1 All ER 882, CA; and contrast *Beck v Scholz* [1953] 1 QB 570, [1953] 1 All ER 814, CA). Whether a person is resident in a particular place and whether that residence is permanent are questions of fact and degree and it is possible to be resident in accommodation such as a tent or vehicle; moreover the legality or lawfulness or otherwise of the residence is not generally a relevant consideration; see *Hipperson v Electoral Registration Officer for the District of Newbury* [1985] 1 QB 1060, [1985] 2 All ER 456, CA.

**Definitions.** For "friendly society", see s 116 ante; for "financial year", see s 118 post.

#### 118 Financial year of friendly societies

(1) Subject to subsection (2) below, in this Act "financial year" means the period of 12 months ending with 31st December.

(2) The initial financial year of a friendly society shall be such period as expires with the end of the calendar year in which it is registered under the 1974 Act or incorporated under this Act and the final financial year of the society shall be such shorter period than 12 months as expires with the date as at which the society makes up its final accounts.

#### NOTES

**Commencement.** 8 June 1992; see the note to s 1 ante.  
**12 months ending with . . .**  
**Friendly society.** For meaning see s 116 ante.  
**Incorporated under this Act.** For meaning see s 116 ante.  
**Months.** See the note to s 118 ante.  
**1974 Act.** Ie the Friendly Societies Act 1974.

#### 119 General interpretation

(1) In this Act, unless

"the 1974 Act" means

"actuary" means

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## NOTES

**Commencement.** 8 June 1992; see the note to s 1 ante.

**12 months ending with, etc.** See the note to s 2 ante.

**Friendly society.** For meaning, see s 116 ante.

**Incorporated under this Act.** See ss 5, 6 ante.

**Months.** See the note to s 27 ante.

**1974 Act.** I.e. the Friendly Societies Act 1974 ante; see s 119(1) post.

## 119 General interpretation

(1) In this Act, unless the context otherwise requires—

“the 1974 Act” means the Friendly Societies Act 1974;

“actuary” means an actuary possessing the qualifications prescribed by regulations under section 44 above;

“annuities on human life” does not include superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment, or of the dependants of such persons;

“appointed actuary” means the actuary appointed under section 44 above;

“the appropriate actuary” means—

(a) if the society is under the duty imposed by section 44(1) above, the society’s appointed actuary; and

(b) if it is not under that duty, an actuary appointed to perform the function in question;

“the central office” means the central office of the registry of friendly societies except in relation to Scotland where it means the assistant registrar of friendly societies for Scotland;

“the Chief Registrar” means the Chief Registrar of Friendly Societies;

“collecting society” has the same meaning as in the Industrial Assurance Act 1923 or the Industrial Assurance (Northern Ireland) Order 1979;

“the Commission” means the Friendly Societies Commission established by section 1 above;

“committee of management” means the committee of management or other directing body of a society or branch;

“contract of insurance” includes any contract the effecting of which constitutes the carrying on of insurance business by virtue of section 117 above;

“the court” except in relation to the winding-up of an incorporated friendly society, means—

(a) in the case of a body whose registered office is situated in England and Wales or in Northern Ireland, the county court for the district in which the office is situated;

(b) in the case of a body whose registered office is situated in Scotland, the sheriff in whose jurisdiction the office is situated;

and, in relation to the winding-up of an incorporated friendly society, means the court which has jurisdiction under the applicable winding-up legislation to wind-up the society;

“the criteria of prudent management” means the criteria set out in section 50 above;

“financial year” is to be construed in accordance with section 118;

“the first general insurance Directive” means Council Directive 73/239/EEC of 24th July 1973 on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance;

- "the first life Directive" means Council Directive 79/267/EEC of 5th March 1979 on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance;
- "the general insurance Directives" means the first general insurance Directive and the second general insurance Directive as amended, and such other Directives as make provision with respect to the business of direct insurance other than life assurance;
- "group business" is to be construed in accordance with section 11 above;
- "jointly controlled body" is to be construed in accordance with section 13 above;
- "the life Directives" means the first life Directive and the second life Directive as amended, and such other Directives as make provision with respect to the business of direct life assurance;
- "memorandum" has the meaning given by paragraph 4(3) of Schedule 3 to this Act;
- "modifications", in relation to enactments, includes additions, omissions and amendments;
- "non-insurance business" means business falling within head C of Schedule 2 to this Act;
- "notice" means written notice and "notice to" a person means notice given to that person, and "notify" shall be construed accordingly;
- "officer" means—
- (a) in relation to a registered friendly society or a registered branch—
    - (i) a trustee;
    - (ii) the treasurer, secretary and chief executive (however described);
    - (iii) a member of the committee of management; and
    - (iv) a person appointed by the society or branch to sue or be sued on its behalf; or
  - (b) in relation to an incorporated friendly society, a member of the committee of management, the chief executive (however described) and the secretary;
- "the public file", in relation to a friendly society, means the file relating to the society which the central office is required to maintain under section 104 above;
- "registered address", in relation to a member of an incorporated friendly society, has the meaning given by paragraph 14(6) of Schedule 3 to this Act;
- "the second general insurance Directive" means Council Directive 88/357/EEC of 22nd June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC;
- "the second life Directive" means Council Directive 90/619/EEC of 8th November 1990 on the co-ordination of laws, regulations and administrative provisions relating to direct life assurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC;
- "special resolution" has the meaning given by paragraph 7 of Schedule 12 to this Act;
- "subscription" includes any premium or other sum (however described) payable, in respect of the provision of benefits, by (or on behalf of) a member of a friendly society under the rules of the society;
- "subsidiary" is to be construed in accordance with section 13 above; and

"valuation regulat

(2) References in this defined in Council Regu rates as between the ECU on 31st December shall October for which excha published in the Official

#### NOTES

**Commencement.** 8 June 1  
**Central office of the regi**  
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**Committee of managem**  
s 27 ante, Sch 11 post.  
**Carrying on . . . business.**  
**Registered office.** The me  
of its registered office; see s 5(6  
**England; Wales.** See the n  
**County court.** See the note  
**Direct insurance.** For pro  
(4th edn) para 16-84.  
**Written.** See the note to s 1  
**Person.** See the note to : 1 a  
**Secretary; chief executiv**  
**Member States.** See the no  
**Definitions.** For "friendly  
"registered friendly society", see  
**Friendly Societies Act 19'**  
**Industrial Assurance Act**  
s 1(1A) thereof.  
**Industrial Assurance (No**  
**Council Directive 73/239**  
**Council Directive 79/267**  
**Council Directive 88/357**  
**Council Directive 90/619**  
**Council Regulation (EEC**

#### 120 Amendments and

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#### 121 Orders and regula

- (1) Any power of the  
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- (2) Any statutory ins  
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- (3) Any power confer  
includes power—

"valuation regulations" means regulations under section 45 above.

(2) References in this Act to the "ECU" are to the unit of account of that name defined in Council Regulation (EEC) No 3180/78 as amended; and the exchange rates as between the ECU and pounds sterling to be applied for each year beginning on 31st December shall be the rates applicable on the last day of the preceding October for which exchange rates for the currencies of all the member States were published in the Official Journal of the Communities.

#### NOTES

**Commencement.** 8 June 1992; see the note to s 1 ante.

**Central office of the registry of friendly societies.** See the Friendly Societies Act 1974, s 1(2) ante.

**Committee of management.** For general provisions as to the committee of management, see s 27 ante, Sch 11 post.

**Carrying on . . . business.** Cf the note to s 7 ante.

**Registered office.** The memorandum of an incorporated friendly society must specify the address of its registered office; see s 5(6) ante, Sch 3, para 4(1)(c) post.

**England; Wales.** See the note to s 23 ante.

**County court.** See the note to s 60 ante.

**Direct insurance.** For provisions in respect of direct non-life insurance, see 52 Halsbury's Laws (4th edn) para 16-84.

**Written.** See the note to s 17 ante.

**Person.** See the note to s 1 ante.

**Secretary; chief executive.** As to the appointment, etc of these officers, see s 28 ante.

**Member States.** See the note "Member State" to s 13 ante.

**Definitions.** For "friendly society", "incorporated friendly society", "registered branch", and "registered friendly society", see s 116 ante.

**Friendly Societies Act 1974.** See this title ante.

**Industrial Assurance Act 1923.** See this title ante. For the meaning of "collecting society", see s 1(1A) thereof.

**Industrial Assurance (Northern Ireland) Order 1979.** SI 1979/1574 (NI 13).

**Council Directive 73/239/EEC.** See OJ L228, 16.8.73, p 3.

**Council Directive 79/267/EEC.** See OJ L63, 13.3.79, p 1.

**Council Directive 88/357/EEC.** See OJ L172, 4.7.88, p 1.

**Council Directive 90/619/EEC.** See OJ L330, 29.11.90, p 50.

**Council Regulation (EEC) No 3180/78.** See OJ L379, 30.12.78, p 1.

### Supplementary

#### 120 Amendments and repeals

(1) The enactments specified in Schedule 21 to this Act shall have effect with the amendments made by that Schedule.

(2) The enactments specified in Schedule 22 to this Act are repealed to the extent specified in the third column of that Schedule.

#### NOTE

**Commencement.** As to the commencement of this section and Schs 21, 22 post, see the Commencement notes to those Schedules.

#### 121 Orders and regulations

(1) Any power of the Treasury or the Commission to make regulations or an order under this Act is exercisable by statutory instrument.

(2) Any statutory instrument containing such regulations or such an order, other than an order under section 5 above or section 126 below, shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) Any power conferred by this Act to make such regulations or such an order includes power—

- (a) to make different provision for different cases; and
- (b) to make transitional, consequential or supplementary provision.

**NOTES**

**Commencement.** 8 June 1992; see the note to s 1 ante.

**Treasury.** See the note to s 1 ante.

**The Commission.** For meaning, see s 1(1) ante. The Statutory Instruments Act 1946, Vol 41, title Statutes, applies to all powers of the Commission of making statutory instruments under this Act as if the Commission were a Minister of the Crown; see s 1 ante, Sch 1, para 11 post.

**Statutory instrument; subject to annulment.** For provisions as to statutory instruments generally, see the Statutory Instruments Act 1946, Vol 41, title Statutes, and as to statutory instruments which are subject to annulment in pursuance of a resolution of either House of Parliament, see ss 5(1), 7(1) of that Act.

**122 Expenses**

There shall be paid out of money provided by Parliament—

- (a) any expenses incurred by the Commission which are attributable to the provisions of this Act;
- (b) any expenses incurred by the Chief Registrar which are attributable to any functions of his or of the central office under this Act;
- (c) any increase attributable to this Act in the sums so payable under any other enactment.

**NOTES**

**Commencement.** 8 June 1992; see the note to s 1 ante.

**Definitions.** For "the Commission", see s 1(1) ante; for "the Chief Registrar" and "the central office", see s 119(1) ante.

**123 Power to make transitional, consequential etc provisions**

(1) The Treasury may by regulations make such transitional and consequential provisions and such savings as they consider necessary or expedient in preparation for, in connection with, or in consequence of—

- (a) the coming into force of any provision of this Act; or
- (b) the operation of any enactment repealed or amended by a provision of this Act during any period when the repeal or amendment is not wholly in force.

(2) Regulations under this section may make modifications of any enactment contained in this or in any other Act.

**NOTES**

**Commencement.** 8 June 1992; see the note to s 1 ante.

**Treasury.** See the note to s 1 ante.

**Modifications.** For meaning, see s 119(1) ante.

**Regulations under this section.** The Friendly Societies Act 1992 (Transitional and Consequential Provisions and Savings) Regulations 1993, SI 1993/932; the Friendly Societies Act 1992 (Consequential Provisions) (No 2) Regulations 1993, SI 1993/1187; the Friendly Societies Act 1992 (Transitional and Consequential Provisions) Regulations 1993, SI 1993/3084.

For general provisions as to regulations, see s 121 ante.

**124 Northern Ireland**

(1) This Act extends

(2) Subject to any subsection (1)(a) of section 1 of the Friendly Societies Act 1992, any provisions of this Act which apply shall not be a transitional provision for the purposes of subsection (1) of that Act.

**NOTES**

**Commencement.** 1 January 1992.  
**Passing of this Act.** This Act was passed by the Northern Ireland Assembly on 17 December 1991.  
**Northern Ireland (Consequential Provisions) Act 1992 (Pt 2).**  
**1974 Act.** ie the Friendly Societies Act 1974.

**125 Channel Islands**

(1) Her Majesty may by Order in Council make such provision as she thinks fit for the purposes of this Act or any instrument made under this Act (in any case where the Order is made under this section) as may be specified in the Order.

- (a) any of the Channel Islands;
- (b) the Isle of Man.

(2) An Order in Council made under this section may be made so as to be incidental or supplementary to, or expedient for, any other Order in Council made under this section.

**NOTES**

**Commencement.** 1 February 1992.  
**Channel Islands.** ie the Channel Islands, Jersey and Guernsey, and their dependencies. The Channel Islands are not part of the United Kingdom. The Channel Islands Insurance Co Ltd v Ringrose [1992] 1 All ER 1000 (Q.B.), where the Channel Islands were held to be part of the "British Islands" as defined in section 1(1) of the Statute Law (Repeals) Act 1972, and where it was held that the provisions of Parliament do not apply to the Channel Islands. When an Act of Parliament is made, it is not necessary to register it in the Channel Islands. See further, 6 Halsbury's Laws of England (4th edn) paras 879-881.

**Isle of Man.** The Isle of Man is not part of the United Kingdom. It is included in the Channel Islands for the purposes of the Statute Law (Repeals) Act 1972, Vol 41, title Statutes. Legislation of the Isle of Man is made by the Queen in Council. Legislation of the Isle of Man is not subject to the provisions of the Statute Law (Repeals) Act 1972, Vol 41, title Statutes, but is confined to matters of special importance. See further, 6 Halsbury's Laws of England (4th edn) paras 879-881.

**Order in Council under this section.** See the Statute Law (Repeals) Act 1972, Vol 41, title Statutes, s 1(1), for the power to make Orders in Council.

The power to make Orders in Council is conferred by the Statute Law (Repeals) Act 1972, s 1(1), and the Statute Law (Repeals) Act 1972, s 1(1), and the Statute Law (Repeals) Act 1972, s 1(1).

**126 Short title and commencement**

(1) This Act may be cited as the Friendly Societies Act 1992.

(2) This Act shall come into force on such day as may be appointed and different days may be appointed for different purposes.

**124 Northern Ireland**

(1) This Act extends to Northern Ireland.

(2) Subject to any Order made after the passing of this Act by virtue of subsection (1)(a) of section 3 of the Northern Ireland Constitution Act 1973, the regulation of friendly societies and the other societies to which the 1974 Act applies shall not be a transferred matter for the purposes of that Act but shall for the purposes of subsection (2) of that section be treated as specified in Schedule 3 to that Act.

**NOTES**

**Commencement.** 1 January 1994; see the note to s 96 ante.

**Passing of this Act.** This Act was passed, ie received the Royal Assent, on 16 March 1992.

**Friendly society.** For meaning, see s 116 ante.

**Northern Ireland Constitution Act 1973, s 3(1)(a), (2), Sch 3.** See Vol 31, title Northern Ireland (Pt 2).

**1974 Act.** ie the Friendly Societies Act 1974 ante; see s 119(1) ante.

**125 Channel Islands and Isle of Man**

(1) Her Majesty may by Order in Council direct that any of the provisions of this Act or any instrument made under it shall extend, with such modifications (if any) as may be specified in the Order, to—

- (a) any of the Channel Islands; or
- (b) the Isle of Man.

(2) An Order in Council under this section may make such transitional, incidental or supplementary provision as appears to Her Majesty to be necessary or expedient.

**NOTES**

**Commencement.** 1 February 1993; see the note to s 6 ante.

**Channel Islands.** ie the islands of Jersey, Guernsey, Alderney and Sark and their respective dependencies. The Channel Islands are not part of the United Kingdom (*Navigators and General Insurance Co Ltd v Ringrose* [1962] 1 All ER 97, [1962] 1 WLR 173, CA), though they are included in the "British Islands" as defined by the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes. Acts of Parliament do not apply to the Channel Islands except by express mention or necessary implication. When an Act of Parliament is to apply there, it is sent to the Royal Courts of Jersey and Guernsey for registration. See further, 6 Halsbury's Laws (4th edn) paras 869 et seq.

**Isle of Man.** The Isle of Man is not part of the United Kingdom (*Davison v Farmer* (1851) 6 Exch 242), though it is included in the British Islands as defined by the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes. Legislation passed by the Tynwald Court (or Tynwald) must be assented to by the Queen in Council. Legislation passed by the United Kingdom Parliament does not extend to the Isle of Man except by express mention or necessary implication and that which does so extend is confined to matters of special importance and non-local character. See further 6 Halsbury's Laws (4th edn) paras 879-881.

**Order in Council under this section.** Up to 1 June 1994 no Order in Council had been made under this section.

The power to make Orders in Council is exercisable by statutory instrument; see the Statutory Instruments Act 1946, s 1(1), Vol 41, title Statutes.

**126 Short title and commencement**

(1) This Act may be cited as the Friendly Societies Act 1992.

(2) This Act shall come into force on such day as the Treasury may by order appoint and different days may be appointed for different provisions or different purposes.

(3) An order under subsection (2) above may contain such transitional provisions and savings (whether or not involving the modification of any statutory provision) as appear to the Treasury necessary or expedient in connection with the provisions brought into force.

## NOTES

**Commencement.** 8 June 1992; see the note to s 1 ante.

**Treasury.** See the note to s 1 ante.

**Modification.** For meaning, see s 119(1) ante.

**Appear.** See the note "Thinks fit" to s 4 ante.

**Orders under this section.** The Friendly Societies Act 1992 (Commencement No 1) Order 1992, SI 1992/1325; the Friendly Societies Act 1992 (Commencement No 2) Order 1992, SI 1992/3117; the Friendly Societies Act 1992 (Commencement No 3 and Transitional Provisions) Order 1993, SI 1993/16; the Friendly Societies Act 1992 (Commencement No 4) Order 1993, SI 1993/197; the Friendly Societies Act 1992 (Commencement No 5 and Savings) Order 1993, SI 1993/1186; the Friendly Societies Act 1992 (Commencement No 6 and Transitional Provisions) Order 1993, SI 1993/2213; the Friendly Societies Act 1992 (Commencement No 7 and Transitional Provisions and Savings) Order 1993, SI 1993/3226.

The effect of the above orders are noted to the Commencement notes throughout this Act.

## SCHEDULES

## SCHEDULE 1

## Section 1

## THE FRIENDLY SOCIETIES COMMISSION

*Status*

1. The Commission shall be a body corporate.

*Tenure of office of member*

2.—(1) Subject to the provisions of this paragraph, a person shall hold and vacate office as a member or the chairman or deputy chairman of the Commission in accordance with the terms of the instrument appointing him to that office.

(2) A person may at any time resign office as a member or the chairman or deputy chairman of the Commission by giving the Treasury a signed notice stating that he resigns that office.

(3) When a member becomes or ceases to be the chairman or deputy chairman, the Treasury may vary the terms of his appointment so as to alter the date on which he is to vacate office as a member.

(4) If the chairman or deputy chairman ceases to be a member, he shall cease to be the chairman or deputy chairman, as the case may be.

(5) If the Treasury are satisfied—

- (a) that a member has been absent from meetings of the Commission for a period longer than three consecutive months without the permission of the Commission, or
- (b) that a member has become bankrupt or made an arrangement with or granted a trust deed for his creditors, or
- (c) that a member's estate has been sequestrated, or
- (d) that a member is incapacitated by physical or mental illness, or
- (e) that a member is otherwise unable or unfit to discharge the functions of his office,

the Treasury may declare his office as a member vacant, and shall notify the declaration in such manner as they think fit; and thereupon the office shall become vacant.

3. No person who has attained the age of 70 years is eligible to be or to remain a part-time member of the Commission.

*Remuneration*

4. The Commission shall pay allowances in respect of expenses incurred by a member.

5.—(1) If the Treasury are satisfied that a part-time member of the Commission is entitled to the payment of such pensions or allowances as are specified in the Schedule, the Treasury may pay to him such amount as the Treasury think fit.

(2) Where a person who is a member otherwise than as a part-time member is entitled to such compensation, the Treasury may pay to him such amount as the Treasury think fit.

6.—(1) In Part II of Schedule 2 (bodies of which all members are part-time members) appropriate place the entry for the Commission.

(2) A corresponding amendment shall be made in the Ireland Assembly Disqualification Act 1992.

7. The Commission may employ such staff as it thinks fit, subject to the approval of the Treasury in respect of service.

8. The quorum of the Commission shall be such as the Commission may determine.

9. The validity of any proceedings of the Commission notwithstanding any vacancy among the members shall not be affected.

10.—(1) With the exception of the Commission, the Commission may authorise any member of the Commission such of the Commission as are specified in the Schedule (paragraph) as are specified in the Schedule.

(2) The Commission shall have power to do so.

11. The Statutory Instruments made by the Commission in making statutory instruments shall be made in the name of the Crown.

12. In Schedule 2 to the Statutory Instruments Act 1969, appropriate place in alphabetical order shall be given to the Commission.

13. The fixing of the commission of the chairman or deputy chairman of the Commission to act for that person shall be subject to the approval of the Treasury.

14.—(1) A document purporting to be a document of the Commission shall be received in evidence and shall, unless the contrary is proved, be deemed to be a document of the Commission executed.

(2) A document purporting to be a document of the Commission in evidence and shall, unless the contrary is proved, be deemed to be a document of the Commission executed.

15. (*Applies to Scotland only*)

*Remuneration and pensions, etc for part-time members*

4. The Commission shall pay to its part-time members such fees for services and such allowances in respect of expenses as may be determined by the Treasury.

5.—(1) If the Treasury so determine in the case of any person who is or has been a part-time member of the Commission, the Commission shall pay or make arrangements for the payment of such pensions to or in respect of that person as the Treasury may determine.

(2) Where a person who is a part-time member of the Commission ceases to be a member otherwise than on the expiry of his term of office and it appears to the Treasury that there are special circumstances which make it right for that person to receive compensation, the Treasury may direct the Commission to make to that person a payment of such amount as the Treasury may determine.

*Parliamentary disqualification*

6.—(1) In Part II of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified under that Act) there shall be inserted at the appropriate place the entry: "The Friendly Societies Commission".

(2) A corresponding amendment shall be made in Part II of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975.

*Staff*

7. The Commission may appoint such staff as the chairman of the Commission thinks fit, subject to the approval of the Treasury as to numbers and as to terms and conditions of service.

*Proceedings*

8. The quorum of the Commission and the arrangements relating to its meeting shall be such as the Commission may determine.

9. The validity of any proceedings of the Commission shall not be affected by any vacancy among the members or by any defect in the appointment of a member.

*Performance of functions*

10.—(1) With the exception specified in sub-paragraph (2) below, the Commission may authorise any member or members of the Commission to perform on behalf of the Commission such of the Commission's functions (including the power conferred by this paragraph) as are specified in the authorisation.

(2) The Commission shall not delegate any power exercisable by statutory instrument.

11. The Statutory Instruments Act 1946 shall apply to all powers of the Commission of making statutory instruments under this Act as if the Commission were a Minister of the Crown.

12. In Schedule 2 to the Parliamentary Commissioner Act 1967 (which lists the departments etc. subject to investigation under that Act) there shall be inserted in the appropriate place in alphabetical order the words "Friendly Societies Commission".

*Instruments*

13. The fixing of the common seal of the Commission shall be authenticated by the signature of the chairman or deputy chairman or by some other person authorised by the Commission to act for that purpose.

14.—(1) A document purporting to be duly executed under the seal of the Commission shall be received in evidence and shall, unless the contrary is proved, be deemed to be so executed.

(2) A document purporting to be signed on behalf of the Commission shall be received in evidence and shall, unless the contrary is proved, be deemed to be so signed.

15. (*Applies to Scotland only.*)

NOTES

**Commencement.** 8 June 1992; see the note to s 1 ante.  
**General Note.** See the General Note to s 1 ante.  
**Para 1: Body corporate.** See the note "Bodies corporate" to s 7 ante.  
**Para 2: Member . . . of the Commission.** As to the appointment of a member, the chairman or deputy chairman, see s 1(2) ante.  
**Treasury.** See the note to s 1 ante.  
**Satisfied; thinks fit.** See the note "Thinks fit" to s 4 ante.  
**Months.** See the note to s 27 ante.  
**Para 3: Attained the age, etc.** A person attains a given age expressed in years at the commencement of the relevant anniversary of the date of his birth; see the Family Law Reform Act 1969, s 9, Vol 6, title Children.  
**Para 5: Appears.** See the note "Thinks fit" to s 4 ante.  
**Para 8: Quorum.** "The word 'quorum' in its ordinary signification has reference to the existence of a complete body of persons, of whom a certain specified number is competent to transact the business of the whole"; see *Faure Electric Accumulator Co Ltd v Phillipart* (1888) 58 LT 525 at 527.  
**Para 10: Commission's functions.** For the general functions of the Commission, see s 1(4) ante.  
**Para 13: Common seal.** A corporation aggregate generally requires a seal for the purpose of executing deeds. Note however, that the Corporate Bodies' Contracts Act 1960, s 1, Vol 11, title Contract, abolished the common law rule that contracts entered into by a corporation were unenforceable unless executed under seal.  
**Para 14: Deemed.** See the note to s 8 ante.  
**Definitions.** For "the Commission", see s 1(1) ante; for "notice" and "notify", see s 119(1) ante.  
**House of Commons Disqualification Act 1975, Sch 1, Pt II.** See Vol 32, title Parliament.  
**Northern Ireland Assembly Disqualification Act 1975, Sch 1, Pt II.** See Vol 31, title Northern Ireland (Pt 2).  
**Statutory Instruments Act 1946.** See Vol 41, title Statutes.  
**Parliamentary Commissioner Act 1967, Sch 2.** See Vol 10, title Constitutional Law (Pt 4).

SCHEDULE 2

Sections 5 and 7

THE ACTIVITIES OF A FRIENDLY SOCIETY

A. Long term business of one or more of the following classes:

Number	Description	Nature of business
I	Life and annuity	Effecting and carrying out contracts of insurance on human life or contracts to pay annuities on human life, but excluding (in each case) contracts within Class III below.
II	Marriage and birth	Effecting and carrying out contracts of insurance to provide a sum on marriage or on the birth of a child, being contracts expressed to be in effect for a period of more than one year.
III	Linked long term	Effecting and carrying out contracts of insurance on human life or contracts to pay annuities on human life where the benefits are wholly or partly to be determined by reference to the value of, or the income from, property of any description (whether or not specified in the contracts) or by reference to fluctuation in, or in an index of, the value of property of any description (whether or not so specified).

Number	
IV	Perm
V	Tonti
VI	Capit
VII	Pensio

B. General business of one or

Number	
1	Accid

Number	Description	Nature of business
IV	Permanent health	Effecting and carrying out contracts of insurance providing specified benefits against risks of persons becoming incapacitated in consequence of sustaining injury as a result of an accident or of an accident of a specified class or of sickness or infirmity, being contracts that: <ul style="list-style-type: none"> <li>(a) are expressed to be in effect for a period of not less than five years, or until the normal retirement age for the persons concerned, or without limit of time, and</li> <li>(b) either are not expressed to be terminable by the insurer, or are expressed to be so terminable only in special circumstances mentioned in the contract.</li> </ul>
V	Tontines	Effecting and carrying out tontines.
VI	Capital redemption	Effecting and carrying out capital redemption contracts.
VII	Pension fund management	Effecting and carrying out— <ul style="list-style-type: none"> <li>(a) contracts to manage the investments of pension funds; or</li> <li>(b) contracts of the kind mentioned in paragraph (a) above that are combined with contracts of insurance covering either conservation of capital or payment of a minimum interest.</li> </ul>

B. General business of one or more of the following classes:

Number	Description	Nature of business
1	Accident	Effecting and carrying out contracts of insurance providing fixed pecuniary benefits or benefits in the nature of indemnity (or a combination of both) against risks of the person insured: <ul style="list-style-type: none"> <li>(a) sustaining injury as the result of an accident or of an accident of a specified class, or</li> <li>(b) dying as the result of an accident or of an accident of a specified class, or</li> <li>(c) becoming incapacitated in consequence of disease or of disease of a specified class,</li> </ul>

Number	Description	Nature of business
2	Sickness	<p>inclusive of contracts relating to industrial injury and occupational disease but exclusive of contracts falling within Class 2 below or within Class IV in head A of this Schedule (permanent health).</p> <p>Effecting and carrying out contracts of insurance providing fixed pecuniary benefits or benefits in the nature of indemnity (or a combination of the two) against risks of loss to the persons insured attributable to sickness or infirmity, but exclusive of contracts falling within Class IV in head A of this Schedule.</p>
3	Miscellaneous financial loss	<p>Effecting and carrying out contracts of insurance against any of the following risks, namely:</p> <p>(a) risks of loss to the persons insured attributable to their being unemployed, or</p> <p>(b) risks of loss to the persons insured attributable to their being in distressed circumstances, or</p> <p>(c) risks of loss to the persons insured attributable to sickness or infirmity, but exclusive of contracts falling within Class 2 above or Class IV in head A of this Schedule.</p>

C. Business, not falling within the descriptions of insurance business in head A or B above, consisting of the effecting and carrying out of contracts in accordance with which benefits are provided—

- (a) for the relief or maintenance of any persons during sickness or when in distressed circumstances; or
- (b) to meet the funeral expenses of any persons.

D. Activities carried out in accordance with the society's rules (or with arrangements made under the rules) whereby discretionary benefits are provided—

- (a) for the education of any persons;
- (b) for the relief or maintenance of any persons during sickness, when out of employment or when in distressed circumstances; or
- (c) for the funeral expenses of any persons.

#### NOTES

**Commencement.** This Schedule was brought into force on 1 February 1993 by the Friendly Societies Act 1992 (Commencement No 3 and Transitional Provisions) Order 1993, SI 1993/16 (made under s 126(2) ante).

**General Note.** See the General Note to s 5 ante.

**Tontines.** A tontine is an annuity with benefit of survivorship among several persons; see 19 Halsbury's Laws (4th edn) para 104 n 1.

**Further provisions.** As to the Commission's power to petition for the winding up of an incorporated friendly society which is not carrying on any activity falling within this Schedule, see

s 52(1), (2)(b) ante; for the purposes of s 5(4), (5) ante.

**Definitions.** For "insurance of insurance", see s 119(1) ante.

#### Section 5

#### ESTABLISHMENT OF INCOME

#### Requirements

1.—(1) Any 7 or more persons shall, before the society is established, take the following steps—

- (a) agreeing upon the terms of the memorandum of association and this Schedule;
- (b) agreeing upon the rules of the society in accordance with the requirements of this Schedule;
- (c) sending to the Registrar a copy of the memorandum of association and the rules, signed by all the persons mentioned in (a) and (b) and (unless the society is to be established in England or Wales) by the persons mentioned in (a) and (b) who are to be the first members of the society.

(2) Where two or more persons are to be the first members of the society, they shall establish the following—

- (a) agreeing upon the terms of the memorandum of association and this Schedule;
- (b) agreeing upon the rules of the society in accordance with the requirements of this Schedule;
- (c) each approving the memorandum of association and the rules;
- (d) sending to the Registrar a copy of the memorandum of association and the rules, signed by all the persons mentioned in (a) and (b) and (unless the society is to be established in England or Wales) by the persons mentioned in (a) and (b) who are to be the first members of the society.

(3) Where copies of the memorandum of association and the rules are sent to the Registrar in accordance with sub-paragraph (a) of paragraph (1) or (2) above, the Registrar shall register the society and issue a certificate of registration.

- (a) the memorandum of association and the rules;
- (b) the intended name of the society.

shall register the society and issue a certificate of registration.

(4) The central office shall be responsible for the registration of societies proposing to amalgamate and for the proposed amalgamation.

2.—(1) A registered friendly society shall, before the society is established, take the following steps are taken—

- (a) the proposal to amalgamate and the proposed amalgamation;
- (b) consent to the amalgamation by the members of the society who are to be the first members of the society;
- (c) the society agrees, in accordance with the requirements of this Schedule, to amalgamate with the society proposed to be amalgamated with;
- (d) there are sent to the Registrar copies of the memorandum of association and the rules, signed by all the persons mentioned in (a) and (b) and (unless the society is to be established in England or Wales) by the persons mentioned in (a) and (b) who are to be the first members of the society.

s 52(1), (2)(b) ante; for the power of the Friendly Societies Commission to vary this Schedule, see s 5(4), (5) ante.

**Definitions.** For "insurance business", see s 117(1) ante; for "annuities on human life" and "contract of insurance", see s 119(1) ante.

### SCHEDULE 3

#### Section 5

#### ESTABLISHMENT, INCORPORATION AND CONSTITUTION OF INCORPORATED FRIENDLY SOCIETIES

##### *Requirements for establishment and incorporation*

1.—(1) Any 7 or more persons may establish a society under this Act by taking the following steps—

- (a) agreeing upon the purposes of the society and upon the extent of its powers in a memorandum the provisions of which comply with the requirements of this Schedule;
- (b) agreeing upon rules for the regulation of the society which comply with the requirements of this Schedule; and
- (c) sending to the central office 3 copies of the memorandum and the rules, each copy signed by at least 7 of those persons (or, if there are only 7, by all of them) and (unless the secretary is to be elected) by the intended secretary.

(2) Where two or more friendly societies propose to amalgamate under section 85 above, they shall establish their successor society by—

- (a) agreeing upon the purposes of their successor and upon the extent of its powers in a memorandum the provisions of which comply with the requirements of this Schedule;
- (b) agreeing upon rules for the regulation of their successor which comply with the requirements of this Schedule;
- (c) each approving the memorandum and the rules by special resolution; and
- (d) sending to the central office 3 copies of the rules and of the memorandum, each copy signed by the secretary of each of the societies participating in the amalgamation.

(3) Where copies of the memorandum and the rules are sent to the central office in accordance with sub-paragraph (1)(c) or (2)(d) above, the central office, if satisfied that—

- (a) the memorandum and the rules are in conformity with this Act; and
- (b) the intended name of the society is not, in its opinion, undesirable,

shall register the society and issue it with a certificate of incorporation.

(4) The central office shall not register a society as the successor society to any friendly societies proposing to amalgamate unless it is satisfied that the Commission has confirmed the proposed amalgamation under section 85 above.

2.—(1) A registered friendly society may be incorporated under this Act only if the following steps are taken—

- (a) the proposal to apply for incorporation is submitted to the members of the society for their consent by the procedure required for a proposal to amend the rules (or, in the case of a society with branches, the general rules) of the society;
- (b) consent to the application is given in accordance with that procedure;
- (c) the society agrees, in accordance with that procedure—

- (i) upon the purposes of the society after incorporation, and upon the extent of its powers, in a memorandum the provisions of which comply with the requirements of this Schedule; and
- (ii) upon rules for the regulation of the society after incorporation which comply with the requirements of this Schedule; and

(d) there are sent to the central office—

- (i) 3 copies of the memorandum and the rules, each signed by at least 7 members and by the secretary of the society; and
- (ii) a statutory declaration by the secretary that the steps mentioned in paragraphs (a) and (b) above were taken.

(2) Where copies of the memorandum, the rules and the statutory declaration are sent to the central office in accordance with paragraph (c) of sub-paragraph (1) above, the central office, if satisfied that—

- (a) the steps mentioned in sub-paragraph (1)(a) and (b) were taken;
- (b) the provisions of the memorandum and the rules are in conformity with this Act; and
- (c) the name proposed for the society after incorporation is not, in its opinion, undesirable,

shall register the society and issue it with a certificate of incorporation.

3. On registering a society under paragraph 1 or 2 above, the central office shall—

- (a) retain and register one copy of the memorandum and of the rules;
- (b) return another copy to the secretary of the society, together with a certificate of registration; and
- (c) keep another copy, a copy of the certificate of incorporation and a copy of the certificate of registration of the memorandum and the rules, in the public file of the society.

*The memorandum*

4.—(1) The memorandum of an incorporated friendly society shall—

- (a) specify the name of the society;
- (b) state whether the registered office of the society is to be situated in England and Wales, or in Scotland, or in Northern Ireland;
- (c) specify the address of its registered office;
- (d) state the purposes of the society and the extent of its powers; and
- (e) if any of those purposes are to include the carrying on of any business outside the United Kingdom, state with respect to those purposes that that is the case.

(2) The choice stated in a society's memorandum in pursuance of sub-paragraph (1)(b) above may not be altered by the society.

(3) In this Act, in relation to an incorporated friendly society, "memorandum" means the memorandum registered under paragraph 3 above, including the record of any alteration under paragraph 6 below.

*The rules*

5.—(1) The rules of an incorporated friendly society shall provide for the matters specified in the Table in sub-paragraph (3) below.

(2) Nothing in this paragraph shall be taken to authorise any provision in the rules of a society which is inconsistent with, or rendered void by, this Act (or any instrument made under it).

(3) The Table referred to in sub-paragraph (1) above is as follows:—

TABLE OF MATTERS TO BE COVERED BY THE RULES

- 1 The terms of admission of members and the manner in which membership is to cease.
- 2 If the terms on which a benefit is provided are not in the rules, the manner in which they are to be determined.
- 3 Any forfeitures which may be imposed on any member.
- 4 The consequences of non-payment of any subscription.
- 5 The manner of remunerating the auditors.
- 6 As respects the officers—
  - (a) the manner of their election or appointment and their removal;

- (b) the manner of re
- (c) the circumstanc
- their office and t

- 7 The powers and duties o
- 8 The investment of the fu
- 9 The manner in which di
- 10 If the society has a com
- 11 The calling and holding
  - (a) the right to requ
  - (b) the right to mov
  - (c) the manner in w
  - meetings, is to b
  - (d) the procedure to
  - (e) the form of noti
  - (f) the voting righ
  - which a poll is to

- 12 The entitlement of mem
- payments to creditors, on t
- 13 The procedure for alter

*Requir*

6.—(1) An incorporated friendly society shall send to the central office a copy of the memorandum or rules in accordance with the provision.

(2) Sub-paragraph (1) above applies or which is p

(3) An alteration to the memorandum or rules shall (instead of being effected by the society) be effected below; and it is not necessary for the society to register only that its name or registered office is altered.

(4) Where a society makes an alteration in pursuance of paragraph, it shall send to the central office—

- (a) 3 copies of a record of the alteration in accordance with
- (b) a statutory declaration by the secretary in accordance with

(5) On making an alteration to the memorandum or rules, the society shall determine the date on which the alteration shall take effect (the "alteration date").

(6) Where copies of a record of an alteration to the memorandum or rules are sent to the central office in accordance with paragraph (4) above, that the alteration is in conformity with the memorandum or rules.

- (a) retain and register one copy of the memorandum and of the rules;
- (b) return another copy to the secretary of the society, together with a certificate of registration of the alteration, in the public file of the society;
- (c) keep another copy, a copy of the certificate of incorporation and a copy of the certificate of registration of the memorandum and the rules, in the public file of the society.

(7) An alteration of the memorandum or rules shall not take effect until the society has registered the alteration in accordance with paragraph (6) above on a later date, than the alteration date.

(8) If an incorporated friendly society makes an alteration to its memorandum or rules in accordance with paragraph (7) above, it shall send to the central office—

- (a) it shall send a copy of the memorandum and of the rules to the central office in accordance with
- (b) the central office shall retain and register one copy of the memorandum and of the rules;

- (b) the manner of remunerating them; and
  - (c) the circumstances in which pensions may be awarded to persons by virtue of their office and the method of determining the terms of such pensions.
- 7 The powers and duties of the committee of management.
- 8 The investment of the funds of the society.
- 9 The manner in which disputes are to be settled.
- 10 If the society has a common seal, the form, custody and use of the seal.
- 11 The calling and holding of meetings and, in particular—
- (a) the right to requisition meetings;
  - (b) the right to move resolutions at meetings;
  - (c) the manner in which notice of meetings, and of any resolutions to be moved at meetings, is to be given;
  - (d) the procedure to be observed at meetings;
  - (e) the form of notice for the convening of a meeting;
  - (f) the voting rights of members, the right to demand a poll and the manner in which a poll is to be taken.
- 12 The entitlement of members to participate in the distribution of any surplus assets after payments to creditors, on the winding up, or dissolution by consent, of the society.
- 13 The procedure for altering the society's memorandum and rules.

*Requirements for alteration of memorandum and rules*

6.—(1) An incorporated friendly society may in the manner prescribed by its rules alter the memorandum or rules of the society by the addition, rescission or variation of any provision.

(2) Sub-paragraph (1) above does not apply to any alteration to which section 13(6) above applies or which is prohibited by paragraph 4(2) above.

(3) An alteration to the name or registered office of an incorporated friendly society shall (instead of being effected under this paragraph) be effected under paragraph 9 or 12 below; and it is not necessary to alter the memorandum or rules of such a society by reason only that its name or registered office is changed.

(4) Where a society makes an alteration of its memorandum or rules under this paragraph, it shall send to the central office—

- (a) 3 copies of a record of the alteration signed by the secretary; and
- (b) a statutory declaration by the secretary that the alteration was made in accordance with the procedure prescribed by the society's rules.

(5) On making an alteration of its memorandum or rules under this paragraph the society shall determine the date on which it intends the alteration to take effect; and the record of the alteration shall specify that date (in this paragraph referred to as "the specified date").

(6) Where copies of a record of an alteration of a society's memorandum or rules are sent to the central office under sub-paragraph (4) above and the central office is satisfied that the alteration is in conformity with this Act, the central office shall—

- (a) retain and register one of the copies;
- (b) return another to the secretary of the society together with a certificate of registration of the alteration; and
- (c) keep another copy, together with a copy of the certificate of registration of the alteration, in the public file of the society.

(7) An alteration of the memorandum or rules of a society under this paragraph shall not take effect until the specified date or, if the alteration is registered under sub-paragraph (6) above on a later date, the date on which the certificate of registration is issued.

(8) If an incorporated friendly society arranges for the publication in consolidated form of its memorandum or rules as altered for the time being—

- (a) it shall send a copy to the central office; and
- (b) the central office shall keep the copy in the public file of the society; but the central office shall not register the copy.

(9) If an incorporated friendly society fails, within the period of 3 months beginning with the date on which an alteration to its memorandum or rules is made, to comply with sub-paragraph (4) above, the society shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

*Membership*

7. A person under 18—

- (a) may, if the rules do not otherwise provide, be admitted as a member of an incorporated friendly society and, if he is over 16 by himself, and he is under 16 by his parent or guardian, execute all instruments and give all receipts necessary to be executed or given under the rules;
- (b) may not vote or hold any office in the society; and
- (c) may not nominate, or join in nominating, a person for election as a member of the committee of management, or (if the secretary is elected) as secretary, of the society.

*Liability of members*

8.—(1) The liability of a member of an incorporated friendly society is limited to the amount of any subscription to the society which is outstanding.

(2) No subscription of a member of an incorporated friendly society shall be recoverable at law except on the winding up of the society.

*Name*

9.—(1) The name of an incorporated friendly society must have "Limited" as its last word, except that, if the society is to be registered with a memorandum stating that its registered office is to be situated in Wales, the name may have "cyfyngedig" (the Welsh equivalent of "Limited") as its last word.

(2) The name of an incorporated friendly society which is a collecting society must have "Collecting Society Limited" as its last three words, except that if the society is registered with a memorandum stating that its registered office is to be situated in Wales, the name may have "Cymdeithas Casglu Cyfyngedig" as its last three words.

(3) If the society has a common seal, it shall bear the registered name of the society.

(4) An incorporated friendly society may change its name by a resolution of the society in general meeting after the giving of such notice as is required for special resolution.

(5) Where a society changes its name under this paragraph, notice of the change shall be sent to the central office and, unless it is of the opinion that the changed name is undesirable, the central office shall—

- (a) register the notice of the change of name;
- (b) issue the society with a certificate of registration; and
- (c) keep a copy of the certificate of registration in the public file of the society.

(6) A change of name shall not take effect until the date on which the certificate of registration under sub-paragraph (5) above is issued or such later date as may be specified in the certificate.

(7) A change of name shall not affect the rights and obligations of the society, of any of its members or of any other person concerned.

10.—(1) Every incorporated friendly society shall have its name mentioned in legible characters—

- (a) in all its business letters, its notices and its other official publications;
- (b) in all its bills of parcels, invoices, receipts and letters of credit; and
- (c) in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the society.

(2) Where the name of an incorporated friendly society does not include the words "friendly society", the fact that it is an incorporated friendly society shall be shown in legible characters in all documents such as are mentioned in sub-paragraph (1) above.

11.—(1) If an incorporated friendly society fails, within the period of 3 months beginning with the date on which an alteration to its memorandum or rules is made, to comply with sub-paragraph (4) above, the society shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

- (a) fails, within the period of 3 months beginning with the date on which an alteration to its memorandum or rules is made, to comply with sub-paragraph (4) above;
- (b) fails to comply with sub-paragraph (4) above;

the society shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) If an officer of an incorporated friendly society—

- (a) issues or authorises the publication of the name of the society in any document other than paragraph 10(1) above;
- (b) signs or authorises any promissory note or order for money in the society's name;

he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale. If, in addition to the offence mentioned in paragraph (a) above, he is further personally liable in respect of the cheque or order for money, he shall be liable in respect of the society).

(3) If an officer of an incorporated friendly society—

- (a) issues or authorises the publication of the name of the society in any document other than paragraph (2)(a) above, and the name is not shown in legible characters;
- (b) signs or authorises any promissory note or order for money in the society's name, and the name is not shown in legible characters;

he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale. If, in addition to the offence mentioned in paragraph (a) above, he is further personally liable in respect of the cheque or order for money, he shall be liable in respect of the society).

12.—(1) An incorporated friendly society shall have its name mentioned in legible characters in all documents such as are mentioned in sub-paragraph (1) above, in the manner as its rules prescribe, and the fact that it is an incorporated friendly society shall be shown in legible characters in all documents such as are mentioned in sub-paragraph (1) above.

(2) Notice of any such change shall—

- (a) register the notice of the change of name;
- (b) issue the society with a certificate of registration; and
- (c) keep a copy of the certificate of registration in the public file of the society.

(3) A change of name shall not take effect until the date on which the certificate of registration under sub-paragraph (2) above is issued or such later date as may be specified in the certificate.

(4) If an incorporated friendly society changes its name under this paragraph, notice of the change shall be sent to the central office and, unless it is of the opinion that the changed name is undesirable, the central office shall—

*Offences relating to society's name*

11.—(1) If an incorporated friendly society—

- (a) fails, within the period of 3 months beginning with the date on which a resolution changing its name is passed, to send to the central office the notice required by paragraph 9(5) above; or
- (b) fails to comply with paragraph 10(1) or (2) above;

the society shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) If an officer of an incorporated friendly society or a person on its behalf—

- (a) issues or authorises the issue of any business letter, notice or other official publication of the society or any bill of parcels, invoice, receipt or letter of credit of the society in which the society's name is not mentioned as required by paragraph 10(1) above; or
- (b) signs or authorises to be signed on behalf of the society any bill of exchange, promissory note, endorsement, cheque or order for money or goods in which the society's name is not so mentioned,

he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale; and, in the case of the conduct mentioned in paragraph (b) above, he is further personally liable to the holder of the bill of exchange, promissory note, cheque or order for money or goods for the amount of it (unless it is duly paid by the society).

(3) If an officer of an incorporated friendly society whose name does not include the words "friendly society" or a person on its behalf—

- (a) issues or authorises the issue of any such document as is mentioned in sub-paragraph (2)(a) above, and the fact that it is an incorporated friendly society is not shown in legible characters in the document; or
- (b) signs or authorises to be signed on behalf of the society any such document as is mentioned in sub-paragraph (2)(b) above, and the fact that it is an incorporated friendly society is not shown in legible characters in the document,

he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale; and, in the case of the conduct mentioned in paragraph (b) above, he is further personally liable to the holder of the bill of exchange, promissory note, cheque or order for money or goods for the amount of it (unless it is duly paid by the society).

*Change of registered office*

12.—(1) An incorporated friendly society may change its registered office in such manner as its rules prescribe or, if the rules do not provide for that matter, by a resolution of the society in general meeting after the giving of such notice as is required for a special resolution.

(2) Notice of any such change shall be sent to the central office and the central office shall—

- (a) register the notice of the change of registered office;
- (b) issue the society with a certificate of registration; and
- (c) keep a copy of the certificate of registration in the public file of the society.

(3) A change of registered office shall not take effect until the date on which the certificate of registration under sub-paragraph (2) above is issued or such later date as may be specified in the certificate.

(4) If an incorporated friendly society fails, within the period of 3 months beginning with the date on which a resolution changing its registered office is passed, to send to the central office the notice required by sub-paragraph (2) above, the society shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

*Societies to supply copies of rules etc*

13.—(1) An incorporated friendly society shall, on demand, give a copy of its statutory documents—

- (a) free of charge, to any member of the society to whom a copy of those documents has not previously been given; and
- (b) to any other person, upon payment of such fee as the society may require, not exceeding the prescribed amount.

(2) The reference in sub-paragraph (1) above to a copy of an incorporated friendly society's statutory documents is a reference to—

- (a) a printed copy of the society's rules for the time being, with a copy of the certificate of incorporation of the society annexed to it; and
- (b) a printed copy of the memorandum of the society for the time being.

(3) If an incorporated friendly society fails to comply with the requirements of sub-paragraph (1) above, the society shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(4) In sub-paragraph (1) above the "prescribed amount" means £1 or such other amount as the Commission prescribes by order.

*Register of members*

14.—(1) Every incorporated friendly society shall maintain a register of the names and addresses of the members of the society.

(2) The register shall be kept at the registered office or at such other place or places as the committee of management thinks fit.

(3) A society which was previously a registered friendly society need not enter in the register the address of a member who became a member before its incorporation while it has no address for him and his whereabouts are unknown.

(4) Where it appears to an incorporated friendly society that the registered address shown in the register for a member is no longer current, the society—

- (a) may remove that address from the register; and
- (b) need not enter in the register an address for that member while it has no address for him and his whereabouts are unknown.

(5) If an incorporated friendly society contravenes sub-paragraph (1) above, the society shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(6) For the purposes of this Act "registered address", in relation to a member of an incorporated friendly society, means—

- (a) the address shown in the register mentioned under this paragraph, except in a case where paragraph (b) below applies;
- (b) where the member has requested that communications from the society be sent to some other address, that other address.

*Inspection of records by members*

15.—(1) Subject to sub-paragraph (2) below, a member or person having an interest in the funds of an incorporated friendly society may inspect the records at all reasonable hours at the registered office of the society or at any other place where they are kept.

(2) Unless he is an officer of the society or is specially authorised by resolution of the society to do so, a member or such a person shall not have the right to inspect the loan account of any other member without the written consent of that member.

**NOTES**

**Commencement.** This Schedule (except para 9(2)) was brought into force on 1 February 1993 by the Friendly Societies Act 1992 (Commencement No 3 and Transitional Provisions) Order 1993, SI 1993/16 (made under s 126(2) ante). Up to 1 June 1994 no further order had been made under that provision bringing para 9(2) into force.

**General Note.** See the General Note to s 5 ante.

**Para 1: Purposes of the society,** see ss 5, 7, 10–13 ante.

**Sending to the central office and for the power to prescribe the fee,** see s 114 ante. As to evidence, see s 28 ante.

**Secretary; intended secretary,** see s 28 ante.

**Special resolution.** See s 114 ante.

**Satisfied.** See the note "The society is satisfied" ante.

**Para 2: Memorandum.** For the purposes of para 2(1) activity mentioned in s 13(1) society; see s 13(7) ante.

**Statutory declaration.** See s 114 ante.

**Opinion.** See the note "The society's opinion" ante.

**Para 3: Public file.** See s 114 ante.

**Para 4: The memorandum of the society.** See s 8 ante.

**England; Wales.** See the note "The society's powers" ante.

**Extent of its powers.** See the note "The society's powers" ante.

**United Kingdom.** See the note "The society's powers" ante.

**Para 5: The rules of an incorporated friendly society.** See s 8 ante.

**The auditors.** For appointment, see s 27 ante, Sch 11 post.

**Committee of management.** See s 27 ante, Sch 11 post.

**Disputes.** See also ss 80–81 ante.

**Common seal.** Cf the note "The society's seal" ante.

**Winding up, or dissolution.** See s 114 ante.

**Para 6: 3 months beginning with the date of the winding up or dissolution.** See s 27 ante.

**Guilty of an offence.** As to offences by bodies corporate, see s 114 ante.

**Defence of due diligence.** See s 114 ante.

**Summary conviction; summary conviction; summary conviction.** See s 114 ante.

**Para 7: Under 18; over 18.** See para 7 above, any person is eligible for membership of a friendly society; see s 27 ante.

**Para 13: Person.** See the note "The society's members" ante.

**Para 15: At all reasonable hours.** See s 114 ante.

**Written.** See the note to s 114 ante.

**Definitions.** For "the Commission", "friendly society", "incorporated friendly society", "central office", "collecting society", see s 119(1) ante; for "special resolution", see s 114 ante; and as to "registered address", see s 114 ante.

**Orders under this Schedule.** See s 114 ante.

**For general provisions as to the law relating to friendly societies,** see s 114 ante.

## Section 5

## INCORPORATED FRIENDLY SOCIETIES

1.—(1) This Schedule (except para 9(2)) was brought into force on 1 February 1993 by the Friendly Societies Act 1992 (Commencement No 3 and Transitional Provisions) Order 1993, SI 1993/16 (made under s 126(2) ante). Up to 1 June 1994 no further order had been made under that provision bringing para 9(2) into force.

(2) In this Schedule "bra"

**Para 1: Purposes of the society.** As to the permitted purposes of an incorporated friendly society, see ss 5, 7, 10–13 ante.

**Sending to the central office.** As to the form of documents to be sent to or by the central office and for the power to prescribe fees for the inspection, etc of documents in the custody of the central office, see s 114 ante. As to evidence of documents, see s 111 ante.

**Secretary; intended secretary.** Every incorporated friendly society must have a secretary; see s 28 ante.

**Special resolution.** See s 30 ante, Sch 12, para 7 post.

**Satisfied.** See the note "Thinks fit" to s 4 ante.

**Para 2: Memorandum.** A registered friendly society may not include in a memorandum adopted for the purposes of para 2(1)(c) above any provision enabling it on incorporation to carry on any activity mentioned in s 13(1) ante unless its inclusion has been authorised by a special resolution of the society; see s 13(7) ante.

**Statutory declaration.** See the note to s 93 ante.

**Opinion.** See the note "Thinks fit" to s 4 ante.

**Para 3: Public file.** See s 104 ante.

**Para 4: The memorandum . . . shall, etc.** For the effect of the memorandum of an incorporated friendly society, see s 8 ante.

**England; Wales.** See the note to s 23 ante.

**Extent of its powers.** As to the powers of an incorporated friendly society, see ss 7, 14–17 ante.

**United Kingdom.** See the note to s 14 ante.

**Para 5: The rules of an incorporated friendly society.** For the effect of the rules of an incorporated friendly society, see s 9 ante.

**The auditors.** For appointment, etc, see s 72 ante, Sch 14 post.

**Committee of management.** For general provisions as to the committee of management, see s 27 ante, Sch 11 post.

**Disputes.** See also ss 80–82 ante as to the determination of disputes.

**Common seal.** Cf the note to Sch 1 ante.

**Winding up, or dissolution by consent, of the society.** See ss 19–26, 52 ante.

**Para 6: 3 months beginning with, etc.** See the note "3(6) months beginning with, etc" to s 39 ante.

**Guilty of an offence.** As to the time limit for commencing proceedings, see s 107 ante; as to offences by bodies corporate, partnerships and unincorporated associations, see s 108 ante; as to the defence of due diligence, see s 109 ante; and as to the jurisdiction of magistrates' courts, see s 110 ante.

**Summary conviction; standard scale.** See the notes to s 18 ante.

**Para 7: Under 18; over (under) 16.** See the note "Under 18" to s 77 ante. Subject to, inter alia, para 7 above, any person is eligible to be elected as a member of the committee of management of a friendly society; see s 27 ante, Sch 11, para 2 post.

**Para 13: Person.** See the note to s 1 ante.

**Para 15: At all reasonable hours.** What is a reasonable time is a question of fact and must necessarily depend on the circumstances of the particular case; see 45 Halsbury's Laws (4th edn) para 1147. The time during which the premises in question are open for business purposes will ordinarily be deemed reasonable (cf *Davies v Winstanley* (1930) 144 LT 433), and presumably an authorised person would not be justified, except in special circumstances, in demanding that premises should be opened at an unusual time such as Sunday afternoon (*Small v Bickley* (1875) 32 LT 726).

**Written.** See the note to s 17 ante.

**Definitions.** For "the Commission", see s 1(1) ante; for "the public file", see s 104 ante; for "friendly society", "incorporated friendly society", and "registered friendly society", see s 116 ante; for "the central office", "collecting society", "committee of management", "notice", "officer" and "subscription", see s 119(1) ante; for "special resolution", see Sch 12, para 7 post. Note as to "memorandum", para 4(3) above; and as to "registered address", para 14(6) above.

**Orders under this Schedule.** Up to 1 June 1994 no orders had been made under para 13 above.

For general provisions as to orders, see s 121 ante.

#### SCHEDULE 4

##### Section 5

#### INCORPORATION OF REGISTERED FRIENDLY SOCIETIES: SUPPLEMENTARY

##### *Preliminary*

1.—(1) This Schedule has effect in relation to an incorporated friendly society ("the incorporated society") which was formerly a registered friendly society ("the registered society"); and in this Schedule "incorporation" means the incorporation of that society.

(2) In this Schedule "branch", in relation to the registered society, means any registered

or unregistered branch of the society and, in relation to the incorporated society, means a group of members provided for by the rules of the society—

- (a) which is under the control, and bound to contribute to the funds, of the society; and
  - (b) which has its own funds and other property vested in trustees and administered (in accordance with its rules) by the members of the group themselves, or through its own committee or other officers.
- (3) In this Schedule references to an agreement include references to any agreement (whether in writing or not) and any deed, bond or other instrument.
- (4) Nothing in section 6 above or this Schedule shall be taken as affecting any power or liability of a branch of a registered friendly society to secede or to be expelled from that society.

#### *Schemes under section 6(5)*

2.—(1) This paragraph applies to a registered society with branches which proposes—

- (a) that the incorporated society will have branches; and
- (b) that any of those branches is to be treated as a continuation of a branch of the registered society.

(2) The registered society may, by the procedure required to amend the rules of the society, approve a scheme under subsection (5) of section 6 above (a "scheme") identifying property, rights and liabilities of a branch which are to continue to be property, rights and liabilities of the branch (as a branch of the incorporated society) and so are to be excluded from transfer under subsection (4) of that section.

(3) A scheme—

- (a) may deal with property, rights and liabilities of one or more branches of the registered society; and
- (b) may, instead of specifying any property, rights and liabilities of a branch of the registered society, refer to all the property, rights and liabilities referable to such part of its activities as is specified in the scheme.

(4) A scheme may not identify for exclusion from transfer under section 6(4) above any property, rights or liabilities of a branch of the registered society which are referable only to an activity of the branch which a branch of the incorporated society would (by virtue of section 7(5) above) be unable to carry on on its own behalf.

(5) On making a scheme the registered society shall send to the central office—

- (a) 4 copies of the scheme, each signed by the secretary;
- (b) a statutory declaration by the secretary that the scheme was duly approved by the society;
- (c) in the case of a scheme identifying any property, rights or liabilities of a branch which was (immediately before incorporation) carrying on any insurance or non-insurance business; a certificate from the appropriate actuary that the incorporated society will, on incorporation, possess sufficient assets to meet such of the liabilities to be transferred to the society from that branch as are referable to that business.

(6) On receiving copies of a scheme, the central office shall, if satisfied that the society has duly approved the scheme—

- (a) retain and register one copy of the scheme;
- (b) return another copy to the secretary of the registered society, together with a certificate of registration;
- (c) keep another copy in the public file of the registered society and, after incorporation, in the public file of the incorporated society;

and the central office shall not register the incorporated society under this Act until after it has registered the scheme.

#### *Effect of incorporation on registered society*

3.—(1) Subject to the provisions of this Act, the incorporated society shall be treated after incorporation as the same person as the registered society.

(2) Without prejudice to any agreement made, transaction effected or done by, to which this Act or any other Act applies, references to the society—

- (a) in any agreement made, transaction effected or done by, to which this Act or any other Act applies,
- (b) in any process or proceedings of any proceeding, and
- (c) in any other document, shall be taken as referring to the society.

shall be taken as referring to the society.

4. On incorporation of the society—

- (a) a person who was a member of the society shall be a member of the incorporated society;
- (b) any appointment made by the society shall be an appointment made by the incorporated society;
- (c) all other persons holding corresponding offices shall be taken as referring to the society.

but paragraph (c) above shall not apply to the incorporation as respects the management and its other officers.

5. Any agreement made by the society before incorporation shall have effect as if made by the incorporated society.

- (a) for references to the society, references to members of the society, references to the treasurer, there shall be references to the corresponding officers of the incorporated society;
- (b) for references to the society, references to the society shall be taken as referring to the society;
- (c) for references to the society, references to such officers of the society as are referred to shall be taken as referring to the corresponding officers of the incorporated society.

6. It is hereby declared that—

- (a) any contract of employment entered into before incorporation by the society shall be a contract of employment entered into by the incorporated society (in any other way);
- (b) any period of employment entered into by the society shall be a period of employment entered into by the incorporated society;
- (c) the rights and liabilities of the society shall be the rights and liabilities of the incorporated society, and—
  - (i) under any agreement made, allowances or other benefits payable to or for any person shall be payable to or for that person;
  - (ii) under the law of the society.

7.—(1) The final financial statement of the society exceeding 12 months as expires on the day of incorporation shall be the final financial statement of the incorporated society.

(2) Anything which, if it had been done by the registered society at a time when it was a friendly society, would have been done by the registered society shall be taken as having been done by the incorporated society.

(3) If the incorporated friendly society fails to do any act which the registered friendly society had failed to do it, the registered friendly society shall be treated as having done that act.

(2) Without prejudice to the generality of sub-paragraph (1) above, any agreement made, transaction effected or other thing done by, to or in relation to the registered society which is in force or effective immediately before incorporation shall have effect as if made, effected or done by, to or in relation to the incorporated society; and, accordingly, references to the society—

- (a) in any agreement;
- (b) in any process or other document issued, prepared or employed for the purposes of any proceeding before any court or other tribunal or authority; and
- (c) in any other document whatsoever (other than an enactment) relating to or affecting any property, right or liability of the society,

shall be taken as referring to the incorporated society.

4. On incorporation of the registered society—

- (a) a person who was immediately before incorporation a member of the registered society shall be a member of the incorporated society;
- (b) any appointment as trustee or treasurer of the society shall determine; and
- (c) all other persons who were officers of the registered society shall become officers, holding corresponding offices, of the incorporated society;

but paragraph (c) above is without prejudice to anything done by the society after incorporation as respects the election or appointment of members of its committee of management and its other officers.

5. Any agreement made by the registered society which is in force immediately before incorporation shall have effect as if—

- (a) for references to members of the registered society there were substituted references to members of the incorporated society;
- (b) for references to officers of the registered society (other than its trustees or treasurer) there were substituted references to the corresponding officers of the incorporated society;
- (c) for references to the trustees of the registered society there were substituted references to the incorporated society; and
- (d) for references to the treasurer of the registered society there were substituted references to such person as the incorporated society may appoint or in default of appointment to the officer of that society who corresponds as nearly as may be to the treasurer.

6. It is hereby declared for the avoidance of doubt that—

- (a) any contract of employment with the registered society in force immediately before incorporation is merely modified by the substitution of the name of the incorporated society as the employer (and is not terminated or varied in any other way);
- (b) any period of employment with the registered society shall count for all purposes as a period of employment with the incorporated society; and
- (c) the rights and liabilities referred to in section 6 above include any rights and liabilities subsisting immediately before incorporation—
  - (i) under any agreement or arrangement for the payment of pensions, allowances or gratuities; or
  - (ii) under the law of any country or territory outside the United Kingdom.

7.—(1) The final financial year of the registered friendly society shall be such period not exceeding 12 months as expires immediately before its incorporation.

(2) Anything which, if it had not been incorporated, would be required to be done by the registered society at a time after its incorporation shall be done by the incorporated society.

(3) If the incorporated friendly society fails to do anything which it is required to do by virtue of sub-paragraph (2) above, the society and its officers shall be subject to the sanctions to which the registered friendly society and its officers would have been subject if the society had failed to do it.

*Effect of incorporation on branches of registered society*

8.—(1) This paragraph applies where the property, rights and liabilities of a branch of the registered society ("the branch") are all transferred to the incorporated society by section 6(4) above.

(2) The provisions of paragraphs 3 to 7 above shall apply in relation to the branch as they apply in relation to the registered society—

- (a) with the omission from paragraph 4 of the words following "shall determine"; and
- (b) in paragraph 5, with the substitution for references to the members, officers, trustees or treasurer of the society of references to the corresponding officers of the branch;

and the branch shall be deemed to be dissolved immediately after the transfer of its property, rights and liabilities to the incorporated society.

9.—(1) This paragraph applies where the property, rights and liabilities of a branch of the registered society are all excluded by virtue of a scheme from transfer to the incorporated society.

(2) On incorporation of the registered society, the property, rights and liabilities of the branch shall continue as property, rights and liabilities of the branch (as a branch of the incorporated society).

(3) The branch of the incorporated society shall be treated as a continuation of the branch of the registered society; and so on incorporation—

- (a) any member of the branch shall continue as a member; and
- (b) any trustee, treasurer or other officer of the branch immediately before incorporation shall continue in office;

but paragraphs (a) and (b) above are without prejudice to anything done after incorporation as respects the membership and officers of the branch.

10.—(1) This paragraph applies where some of the property, rights and liabilities of a branch of the registered society are transferred to the incorporated society by section 6(4) above and some are excluded from transfer by virtue of a scheme.

(2) As respects the property, rights and liabilities transferred from the branch to the incorporated society, the provisions of paragraphs 3, 5, 6 and 7 above shall apply in relation to the branch as they apply in relation to the registered society—

- (a) with, in paragraph 5, the substitution for references to the members, officers, trustees or treasurer of the society of references to the corresponding officers of the branch; and
- (b) with the omission of paragraph 7(1).

(3) On incorporation of the registered society, the property, rights and liabilities of the branch which are excluded from transfer shall continue as property, rights and liabilities of the branch (as a branch of the incorporated society).

(4) As respects the property, rights and liabilities so excluded, the branch shall, after incorporation of the registered society, be treated as a continuation of the branch of the registered society; and so on incorporation—

- (a) any member of the branch shall continue as a member; and
- (b) any trustee, treasurer or other officer of the branch shall continue in office;

but paragraphs (a) and (b) above are without prejudice to anything done after incorporation as respects membership and officers of the branch.

*Consequences of transfer*

11. No transfer effected by section 6 above shall give rise to any liability to stamp duty.

12.—(1) The action mentioned in the following provisions of this paragraph shall be taken not later than the end of the period of 90 days beginning with the day on which the registered society is incorporated.

(2) The persons who were the trustees and treasurer of the registered society immediately before its incorporation shall deliver to the incorporated society—

- (a) any property of the society held by them; and

(b) any documents of the society or its firm.

(3) The persons who were the trustees and treasurer of the society immediately before its incorporation shall deliver to the incorporated society—

- (a) any property of the society held by them; and
- (b) any documents of the society or its firm as are so transferred.

(4) The Public Trustee shall deliver to the incorporated society immediately before its incorporation any documents held by him and any documents of the society or its firm.

(5) Nothing in this Act shall apply to any act or omission before the incorporation of the registered friendly society.

## NOTES

**Commencement.** 1 February 1966.

**General Note.** See the General Note at the end of this Schedule.

**Para 1: Registered society.** A registered society or branch of a registered society or branch of a registered society under this Schedule. See s 104 ante.

**Taxation.** See s 114 ante.

**Para 2: Procedure required.** See s 114 ante.

**Shall send to the central office.** See s 114 ante. As to evidence, see s 114 ante.

**Statutory declaration.** See s 114 ante.

**Carrying on . . . business.** See the note "This Act applies to . . . business." at the end of this Schedule.

**Satisfied.** See the note "This Act applies to . . . business." at the end of this Schedule.

**Public file.** See s 104 ante.

**Para 3: Person.** Cf the note "This Act applies to . . . business." at the end of this Schedule.

**Para 4: Committee of management.** See s 27 ante, Sch 11 post.

**Para 6: It is hereby declared.** See s 114 ante. It confers no new jurisdiction on the Public Trustee.

**United Kingdom.** See the note "This Act applies to . . . business." at the end of this Schedule.

**Para 7: Months.** See the note "This Act applies to . . . business." at the end of this Schedule.

**Para 12: 90 days beginning with the day on which the registered society is incorporated.** See s 114 ante.

**Public Trustee.** For the definition, see s 116 ante.

**Definitions.** For "the public Trustee", see s 116 ante. For "the central office", see s 119(1) ante. Note as to "the incorporated society" and "an agreement", para 1 above.

## Section 7

## ADDITIONAL

1. An incorporated friendly society shall be treated as a company for the purposes of the provisions of this Schedule.

2.—(1) An incorporated friendly society shall be treated as a company for the purposes of the provisions of this Schedule.

- (b) any documents relating to the property, rights and liabilities of the registered society or its financial affairs.
- (3) The persons who were the trustees and treasurer of any branch of the registered society immediately before its incorporation shall deliver to the incorporated society—
- (a) any property (formerly property of the branch) which is transferred to the society by section 6(4) above; and
- (b) any documents relating to such of the property, rights or liabilities of the branch as are so transferred.
- (4) The Public Trustee shall, if he held property on trust for the registered society immediately before its incorporation, deliver to the incorporated society any property so held by him and any documents relating to it.
- (5) Nothing in this Act shall have effect to relieve the former trustees or treasurer of a registered friendly society or branch or the Public Trustee from any liability arising from acts or omissions before the incorporation of the society.

## NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**General Note.** See the General Note to s 5 ante.

**Para 1: Registered society; branch.** As regards the capital gains tax consequences of a member of a registered society or branch becoming, on incorporation, a member of an incorporated society or branch under this Schedule, see the Taxation of Chargeable Gains Act 1992, s 217B, Vol 43, title Taxation.

**Para 2: Procedure required to amend the rules.** As to this procedure, see s 5(6), Sch 3, para 6 ante.

**Shall send to the central office.** As to the form of documents to be sent to or by the central office and for the power to prescribe fees for the inspection, etc of documents in the custody of the central office, see s 114 ante. As to evidence of documents, see s 111 ante.

**Statutory declaration.** See the note to s 93 ante.

**Carrying on . . . business.** See the note to s 7 ante.

**Satisfied.** See the note "Thinks fit" to s 4 ante.

**Public file.** See s 104 ante.

**Para 3: Person.** Cf the note to s 1 ante.

**Para 4: Committee of management.** For general provisions as to the committee of management, see s 27 ante, Sch 11 post.

**Para 6: It is hereby declared, etc.** It follows from the fact that para 6 above is declaratory that it confers no new jurisdiction on any court, but only removes doubts as to the jurisdiction which a court has aliunde.

**United Kingdom.** See the note to s 14 above.

**Para 7: Months.** See the note to s 27 ante.

**Para 12: 90 days beginning with, etc.** See the note "14 days commencing with, etc" to s 44 ante.

**Public Trustee.** For the establishment of the office of public trustee, see the Public Trustee Act 1906, Vol 48, title Trusts and Settlements (Pt 1).

**Definitions.** For "the public file", see s 104 ante; for "incorporated friendly society" and "registered friendly society", see s 116 ante; for "insurance business", see s 117(1) ante; for "the appropriate actuary", "the central office", "committee of management", "non-insurance business" and "officer", see s 119(1) ante. Note as to "the incorporated society", "the registered society", "incorporation", "branch" and "an agreement", para 1 above.

## SCHEDULE 5

## Section 7

## ADDITIONAL ACTIVITIES OF INCORPORATED SOCIETIES

*Introductory*

1. An incorporated friendly society may do anything mentioned in the following provisions of this Schedule in the manner directed by the society's rules.

*Loans out of separate loan fund*

2.—(1) An incorporated friendly society may, out of any separate loan fund to be formed by contributions or deposits from its members, make loans to members on their personal security, with or without surerties or, in Scotland, cautioners, subject to the restrictions in sub-paragraphs (2) to (4) below.

(2) A loan shall not at any time be made out of money contributed otherwise than for the purpose of the loan fund.

(3) A member shall not be capable of holding any interest in the loan fund exceeding £800.

(4) The society shall not—

(a) make any loan to a member on personal security beyond the amount fixed by the rules, or make any loan which, together with any money owing by a member to the society, exceeds £200; or

(b) hold at any one time on deposit from its members any money beyond the amount fixed by the rules, and the amount so fixed shall not exceed two thirds of the total sums owing to the society by the members who have borrowed from the loan fund.

(5) The Commission may by order made with the consent of the Treasury amend subparagraph (3) or (4) above to substitute, for the sum for the time being specified in that subparagraph, such greater sum as is specified in the order.

#### *Power to set up funds for purchasing Government Securities*

3.—(1) An incorporated friendly society may set up and administer a fund for the purchase, on behalf of members contributing thereto, of Defence Bonds, National Savings Certificates, Ulster Savings Certificates or such other securities of Her Majesty's Government as the Commission may prescribe.

(2) A society may allow persons to become members of the society for the purpose only of contributing to a fund set up by virtue of this paragraph.

(3) Any securities prescribed, before the commencement of this paragraph, for the purposes of section 47 of the 1974 Act shall be treated as having been prescribed under subparagraph (1) above.

#### *Investment of funds in housing association*

4.—(1) An incorporated friendly society may invest funds of the society in subscribing for any of the share or loan capital of a housing association (within the meaning of the Housing Associations Act 1985) other than shares or debentures not fully paid up at the time of issue.

(2) This paragraph has effect without prejudice to any power the society may have by virtue of section 14 above.

#### *Accumulation of members' surplus contributions*

5. An incorporated friendly society may accumulate at interest, for the use of any member, any surplus of his contributions to the funds of the society which may remain after providing for any assurance in respect of which they are paid and for the withdrawal of the accumulations.

#### *Subscriptions to other bodies*

6. An incorporated friendly society may subscribe out of its funds to any hospital, infirmary, charitable or provident institution, any annual or other sum which may be necessary to secure to members of the society and their families the benefits of that institution.

7. An incorporated friendly society may contribute to the funds and take part in the government of any other friendly society.

#### NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**Para 1: The society's rules.** For the matters which must be covered by such rules, see s 5(6), Sch 3, para 5 ante.

**Para 2: Treasury.** See the note to s 1 ante.

**Definitions.** For "the Co-friended society", see s 116 ante. For "the Friendly Society Act 1974", see the Friendly Society Act 1974. For "the Housing Associations Act 1985", see s 1(1) thereof. For "the Orders under this Schedule", see the Orders under this Schedule. For general provisions as to

#### Section 7 MAKING OF COMPANIES INCORPORATED IN IRELAND

1. Under the law of Eire, a company may be made—

- (a) by an incorporated friendly society,
- (b) on behalf of an incorporated friendly society, by an authority, expressed or implied, of the society.

and any formalities required by law to apply, unless a contrary provision is made in the rules of the incorporated friendly society.

2.—(1) The following provisions apply to a company made by an incorporated friendly society in Ireland.

(2) A document is executed by a company on its common seal.

(3) An incorporated friendly society may execute the following sub-paragraphs as if they were its own.

(4) A document signed by a director of an incorporated friendly society and expressed (in whatever form) to be signed and expressed (in whatever form) as if executed under the common seal of the company.

(5) A document executed by a director of an incorporated friendly society on its face that it is intended by the director to be delivered, as a deed; and it shall be deemed to have been delivered upon its being so delivered.

(6) In favour of a purchaser of a share in an incorporated friendly society, the signature of a director of management and the seal of the company shall be deemed to be the signature of the persons making it to be a deed.

(7) In sub-paragraph (6), the signature of a director of management and the seal of the company shall be deemed to be the signature of the persons making it to be a deed.

3. (Applies to Scotland only)

#### NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.  
**England; Wales.** See the note to s 6 ante.  
**Writing.** See the note "Writing" to s 6 ante.  
**Common seal.** See the note "Common seal" to s 6 ante.  
**Person.** Cf the note to s 1 ante.  
**Individual.** See the note to s 6 ante.  
**Committee of management.** See the note to s 27 ante, Sch 11 post.  
**Secretary.** As to the appointment of a secretary, see the note to s 6 ante.

**Definitions.** For "the Commission", see s 1(1) ante; for "friendly society" and "incorporated friendly society", see s 116 ante.

**1974 Act.** Is the Friendly Societies Act 1974 ante; see s 119(1) ante.

**Housing Associations Act 1985.** See Vol 21, title Housing. For the meaning of "housing association", see s 1(1) thereof.

**Orders under this Schedule.** Up to 1 June 1994 no orders had been made under para 2 above.

For general provisions as to orders, see s 121 ante.

## SCHEDULE 6

### Section 7

#### MAKING OF CONTRACTS AND EXECUTION OF DOCUMENTS BY INCORPORATED FRIENDLY SOCIETIES

##### *England and Wales and Northern Ireland*

1. Under the law of England and Wales and Northern Ireland a contract may be made—

- (a) by an incorporated friendly society, by writing under its common seal; or
- (b) on behalf of an incorporated friendly society, by any person acting under its authority, express or implied;

and any formalities required by law in the case of a contract made by an individual also apply, unless a contrary intention appears, to a contract made by or on behalf of an incorporated friendly society.

2.—(1) The following provisions have effect with respect to the execution of documents by an incorporated friendly society under the law of England and Wales and of Northern Ireland.

(2) A document is executed by an incorporated friendly society by the affixing of its common seal.

(3) An incorporated friendly society need not have a common seal, however, and the following sub-paragraphs apply whether it does or not.

(4) A document signed by a member of the committee of management and the secretary of an incorporated friendly society, or by 2 members of the committee of management, and expressed (in whatever form of words) to be executed by the society has the same effect as if executed under the common seal of the society.

(5) A document executed by an incorporated friendly society which makes it clear on its face that it is intended by the person or persons making it to be a deed has effect, upon delivery, as a deed; and it shall be presumed, unless a contrary intention is proved, to be delivered upon its being so executed.

(6) In favour of a purchaser a document shall be deemed to have been duly executed by an incorporated friendly society if it purports to be signed by a member of the committee of management and the secretary of the society, or by 2 members of the committee of management, and, where it makes it clear on its face that it is intended by the person or persons making it to be a deed, to have been delivered upon its being executed.

(7) In sub-paragraph (6) above a "purchaser" means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property.

3. (*Applies to Scotland only.*)

### NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**England; Wales.** See the note to s 23 ante.

**Writing.** See the note "Written" to s 17 ante.

**Common seal.** See the note to Sch 1 ante.

**Person.** Cf the note to s 1 ante.

**Individual.** See the note to s 75 ante.

**Committee of management.** For general provisions as to the committee of management, see s 27 ante, Sch 11 post.

**Secretary.** As to the appointment of this officer, see s 28 ante.

**Deemed; valuable consideration.** See the notes to s 8 ante.  
**Definitions.** For "incorporated friendly society", see s 116 ante; for "committee of management", see s 119(1) ante.

## SCHEDULE 7

## Section 13

## ACTIVITIES WHICH MAY BE CARRIED ON BY A SUBSIDIARY OF OR BODY JOINTLY CONTROLLED BY AN INCORPORATED FRIENDLY SOCIETY

*Activities*

1. The establishment and management of personal equity plans within the meaning of the Finance Act 1986.
2. The establishment and management of unit trust schemes within the meaning of the Financial Services Act 1986.
3. The carrying on of long-term or general business.
4. Arranging for the provision of, or giving advice as to, insurance of any description.
5. Arranging for the provision of credit, whether as agents for the borrower or the person providing credit and the provision of services in connection with current loan agreements to the person providing credit.
6. The provision of fund management services for trustees of pension funds.
7. The administration of estates and the execution of trusts of wills.
8. The provision of executry services (within the meaning of Part II of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990) where the subsidiary or body is an executry practitioner (within the meaning of that Part of that Act) and the administration of testamentary trusts.
9. The establishment and management of—
  - (a) sheltered housing,
  - (b) residential homes for the elderly,
  - (c) hospitals, or
  - (d) nursing homes or mental nursing homes (within the meaning of the Registered Homes Act 1984) or, in Northern Ireland, nursing homes (within the meaning of the Nursing Homes and Nursing Agencies Act (Northern Ireland) 1971),
 and the provision of medical, administrative or other services for persons owning or managing any of them.
10. The provision of administrative services for friendly societies or other bodies whose business consists of any activity falling within paragraphs 1 to 9 above.

## NOTES

- Commencement.** 1 February 1993; see the note to s 6 ante.  
**General Note.** See the General Note to s 13 ante.  
**Para 3: Carrying on . . . business.** See the note to s 7 ante.  
**Para 5: Person.** See the note to s 1 ante.  
**Winding up.** As to the Commission's power to petition for the winding up of a society whose subsidiary, etc carries on activities other than those mentioned in this Schedule, see s 52(1), (2)(d) ante.  
**Power to amend.** For the power of the Commission to vary this Schedule, see s 13(8) ante.  
**Definitions.** For "friendly society", see s 116 ante; for "general business" and "long term business", see s 117(1) ante.  
**Finance Act 1986.** The provisions of that Act relating to personal equity plans were repealed by the Income and Corporation Taxes Act 1983, s 844, Sch 31. As to personal equity plans, see now s 333 of the 1988 Act, Vol 44, title Taxation.  
**Financial Services Act 1986.** For the meaning of unit trust scheme, see s 75(8) thereof, Vol 30, title Money (Pt 1).  
**Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.** 1990 c 40; not printed in this work.  
**Registered Homes Act 1984.** See Vol 35, title Public Health and Environmental Protection. For the meaning of nursing home and mental nursing home, see ss 21, 22, respectively, thereof.

**Nursing Homes and N**  
 printed in this work.

## Section 13

## PROVIS

1. The provisions of otherwise supplement the
2. In section 13(9)(a) a to the rights conferred on corporate not having a share corporate on all, or substa
- 3.—(1) For the purpos or remove a majority of th holding a majority of the matters.
  - (2) Without prejudice
    - (a) an incorporate (9)(a) as having
      - (i) a person's officer of t
      - (ii) the direct
    - (b) an incorporate for the purpose if—
      - (i) in a case w to the dir
      - officer of t have direc
      - (ii) the direct
- and a right to appoint or re of another person shall be or, as the case may be, rem
4. Rights which are exe only—
  - (a) when the circu or
  - (b) when the circu
- and rights which are norm continue to be taken into a
5. Rights held by a pers
6. Rights held by a pers and rights shall be regarde his instructions or with his
7. Rights attached to sha providing the security—
  - (a) where apart fro value of the se accordance with
  - (b) where the share normal business purpose of prese exercisable only
8. Rights shall be treat any of its subsidiaries; and r rights held by an incorpora

**Nursing Homes and Nursing Agencies Act (Northern Ireland) 1971.** 1971 c 32 (NI); not printed in this work.

## SCHEDULE 8

## Section 13

## PROVISIONS SUPPLEMENTARY TO SECTION 13

1. The provisions of this Schedule explain expressions used in section 13 above and otherwise supplement that section.

2. In section 13(9)(a) and (c) the references to the voting rights in a body corporate are to the rights conferred on shareholders in respect of their shares or, in the case of a body corporate not having a share capital, on members, to vote at general meetings of the body corporate on all, or substantially all, matters.

3.—(1) For the purposes of section 13(9)(a) and (c) the reference to the right to appoint or remove a majority of the board of directors is to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all, or substantially all, matters.

(2) Without prejudice to the generality of subsection (9)(a) and (c) of section 13—

(a) an incorporated friendly society shall be treated for the purposes of subsection (9)(a) as having the right to appoint to a directorship if—

(i) a person's appointment to it follows necessarily from his appointment as an officer of the society, or

(ii) the directorship is held by the society itself; and

(b) an incorporated friendly society and some other person together shall be treated for the purposes of section 13(9)(c) as having the right to appoint to a directorship if—

(i) in a case where that other person is a body corporate, a person's appointment to the directorship follows necessarily from his appointment both as an officer of the society and as a director of that body or, where it does not have directors, as a member of its managing body, or

(ii) the directorship is held jointly by the society and that other person;

and a right to appoint or remove which is exercisable only with the consent or concurrence of another person shall be left out of account unless no other person has a right to appoint or, as the case may be, remove in relation to that directorship.

4. Rights which are exercisable only in certain circumstances shall be taken into account only—

(a) when the circumstances have arisen, and for so long as they continue to obtain, or

(b) when the circumstances are within the control of the person having the rights; and rights which are normally exercisable but are temporarily incapable of exercise shall continue to be taken into account.

5. Rights held by a person in a fiduciary capacity shall be treated as not held by him.

6. Rights held by a person as nominee for another shall be treated as held by the other; and rights shall be regarded as held as nominee for another if they are exercisable only on his instructions or with his consent or concurrence.

7. Rights attached to shares held by way of security shall be treated as held by the person providing the security—

(a) where apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in accordance with his instructions;

(b) where the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in his interests.

8. Rights shall be treated as held by an incorporated friendly society if they are held by any of its subsidiaries; and nothing in paragraph 6 or 7 above shall be construed as requiring rights held by an incorporated friendly society to be treated as held by any of its subsidiaries.

9. For the purposes of paragraph 7 above rights shall be treated as being exercisable in accordance with the instructions or in the interests of an incorporated friendly society if they are exercisable in accordance with the instructions of or, as the case may be, in the interests of any subsidiary of that society.

10. The voting rights in a body corporate shall be reduced by any rights held by the body itself.

11. References in any provision of paragraphs 5 to 10 above to rights held by a person include rights falling to be treated as held by him by virtue of any other provision of those paragraphs but not rights which by virtue of any such provision are to be treated as not held by him.

#### NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**Para 2: Body corporate.** See the note "Bodies corporate" to s 7 ante.

**Para 3: Person.** See the note to s 1 ante.

**Definitions.** For "subsidiary", see s 13(9) ante; for "incorporated friendly society", see s 116 ante; for "officer", see s 119(1) ante.

### SCHEDULE 9

#### Section 18

#### NOMINATIONS BY MEMBERS OF INCORPORATED FRIENDLY SOCIETIES AND RELATED MATTERS

1.—(1) Subject to the following provisions of this paragraph, a member of an incorporated friendly society who is not under the age of 16 years may by writing under his hand delivered at or sent to the registered office of the society, or made in a book kept at that office, nominate a person or persons to whom any sum of money payable by the society on the death of that member or any specified amount of money so payable, shall be paid at his decease.

(2) The total amount which may be nominated under this paragraph shall not exceed the relevant maximum, that is to say, £5,000 or such higher amount as, by virtue of an order under section 6 of the Administration of Estates (Small Payments) Act 1965, may for the time being apply for the purposes of the enactments specified in subsection (1) of that section.

(3) The sum payable on the death of a member by an incorporated friendly society shall include sums of money contributed to or deposited in the separate loan fund, together with interest on them, and any sum of money accumulated for the use of the member under the provisions of this Act, together with interest on it.

(4) A person nominated under this paragraph must not at the date of the nomination be an officer or employee of the society unless he is the husband, wife, father, mother, child, brother, sister, nephew or niece of the nominator.

(5) Nominations so made may be revoked or varied by any similar document under the hand of the nominator delivered, sent, or made as mentioned in sub-paragraph (1) above.

(6) The marriage of a member of the society shall operate as a revocation of any nomination previously made by that member under this paragraph.

(7) Where a society has paid money to a nominee in ignorance of a marriage subsequent to the nomination, the receipt of the nominee shall be a valid discharge to the society.

2.—(1) Subject to sub-paragraph (2) below, on receiving satisfactory proof of the death of a nominator, an incorporated society shall pay to his nominee or nominees the amount due to the deceased or, as the case may be, the amount specified in the nomination.

(2) The total amount paid by an incorporated friendly society by virtue of a nomination (whether in favour of one nominee or more) shall not exceed the relevant maximum referred to in paragraph 1(2) above.

(3) The receipt of a nominee over 16 years of age for any amount paid in accordance with this paragraph shall be valid.

3.—(1) If any member sum not exceeding the relevant maximum having made any nomination of administration or probate distribute the sum among s society may deem satisfactory

(2) A payment made by valid and effectual against a next of kin or personal representative recovery of the money paid received that money.

#### NOTES

**Commencement.** 1 February

**Under . . . 16; over 16.** See

**Delivered.** This must be done

*Pioneers Society* (1892) 92 LT J

**Sent.** As to the service of documents

**Registered office.** The member

of its registered office; see s 5(6)

**Nominate a person or persons**

**exceed . . . £5,000; nominator**

1974, s 66 ante.

**Separate loan fund.** See s 7

**Money accumulated for the**

**Satisfactory proof.** Cf the

**May . . . distribute; entitled**

**Payment . . . shall be valid**

**Definitions.** For "incorporated

**Administration of Estates**

**Administrators.**

#### Section 23

#### APPLICATION OF INCOME

#### GENERAL

1. The enactments which apply to this Schedule as "the enactments"

(a) Parts IV, VI, VII, VIII

(b) Parts V, VI, XI and XII

and, in so far as they relate to the application of income and Schedule 10 to, that Act

2. Subject to the following provisions, the winding up of an incorporated friendly society registered under the Companies Act 1986 (Ireland) Order 1986.

3.—(1) Subject to the following provisions, on their application to incorporate

(a) for "company" of the

(b) for "directors" of the

(c) for "the registrar" of the

(d) for "the articles" of the

(2) Subject to the following provisions, the enactments to incorporated friendly societies

3.—(1) If any member of an incorporated friendly society entitled from its funds to a sum not exceeding the relevant maximum referred to in paragraph 1(2) above dies without having made any nomination of that sum then subsisting, the society may, without letters of administration or probate of any will or, in Scotland, without any grant of confirmation, distribute the sum among such persons as appear to the society, upon such evidence as the society may deem satisfactory, to be entitled by law to receive that sum.

(2) A payment made by an incorporated friendly society under this Schedule shall be valid and effectual against any demand made upon the society by any other person, but the next of kin or personal representatives of the deceased member shall have a remedy for recovery of the money paid under paragraph 2(1) above against the person who has received that money.

#### NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**Under ... 16; over 16.** See the note "Under 18" to s 77 ante.

**Delivered.** This must be during the nominator's lifetime (*Fielding and Lord v Rochdale Equitable Pioneers Society* (1892) 92 LT Jo 431).

**Sent.** As to the service of documents, see s 113 ante.

**Registered office.** The memorandum of an incorporated friendly society must specify the address of its registered office; see s 5(6), Sch 3, para 4(1)(c) ante.

**Nominate a person or persons; payable ... on the death of that member; shall not exceed ... £5,000; nominations ... may be revoked.** Cf the notes to the Friendly Societies Act 1974, s 66 ante.

**Separate loan fund.** See s 7, Sch 5, para 2 ante.

**Money accumulated for the use of the member.** See s 7, Sch 5, para 5 ante.

**Satisfactory proof.** Cf the note to the Friendly Societies Act 1974, s 67 ante.

**May ... distribute; entitled by law.** Cf the notes to the Friendly Societies Act 1974, s 68 ante.

**Payment ... shall be valid.** Cf the note to the Friendly Societies Act 1974, s 69 ante.

**Definitions.** For "incorporated friendly society", see s 116 ante; for "officer", see s 119(1) ante.

**Administration of Estates (Small Payments) Act 1965, s 6.** See Vol 17, title Executors and Administrators.

### SCHEDULE 10

#### Section 23

#### APPLICATION OF COMPANIES WINDING UP LEGISLATION TO INCORPORATED FRIENDLY SOCIETIES

#### PART I

#### GENERAL MODE OF APPLICATION

1. The enactments which comprise the companies winding up legislation (referred to in this Schedule as "the enactments") are the provisions of—

- (a) Parts IV, VI, VII, XII and XIII of the Insolvency Act 1986, or
- (b) Parts V, VI, XI and XII of the Insolvency (Northern Ireland) Order 1989,

and, in so far as they relate to offences under any such enactment, sections 430 and 432 of, and Schedule 10 to, that Act or Article 373 of, and Schedule 7 to, that Order.

2. Subject to the following provisions of this Schedule, the enactments apply to the winding up of incorporated friendly societies as they apply to the winding up of companies registered under the Companies Act 1985 or (as the case may be) the Companies (Northern Ireland) Order 1986.

3.—(1) Subject to the following provisions of this Schedule, the enactments shall, in their application to incorporated friendly societies, have effect with the substitution—

- (a) for "company" of "incorporated friendly society";
- (b) for "directors" of "committee of management";
- (c) for "the registrar of companies" or "the registrar" of "the central office"; and
- (d) for "the articles" of "the rules".

(2) Subject to the following provisions of this Schedule in the application of the enactments to incorporated friendly societies—



- (b) for the purposes of all proceedings for determining, and all proceedings prior to the determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory; and
- (c) includes persons who are liable to pay or contribute to the payment of—
- (i) any debt or liability of the incorporated friendly society being wound up; or
  - (ii) any sum for the adjustment of rights of members among themselves; or
  - (iii) the expenses of the winding up;

but does not include persons liable to contribute by virtue of a declaration by the court under section 213 (imputed responsibility for fraudulent trading) or section 214 (wrongful trading) of the Act.

#### *Voluntary winding up*

10.—(1) Section 84 of the Act does not apply.

(2) In the enactments as applied to an incorporated friendly society, the expression “resolution for voluntary winding up” means a resolution passed under section 21(1) above.

11. Section 88 shall have effect with the omission of the words from the beginning to “and”.

12.—(1) Subsection (1) of section 89 shall have effect as if for the words from the beginning to “meeting” there were substituted the words—

“(1) Where it is proposed to wind up an incorporated friendly society voluntarily, the committee of management (or, in the case of an incorporated friendly society whose committee of management has more than two members, the majority of them) may at a meeting of the committee”.

(2) The reference to the directors in subsection (2) shall be construed as a reference to members of the committee of management.

13. Section 90 shall have effect as if for the words “directors’ statutory declaration under section 89” there were substituted the words “statutory declaration made under section 89 by members of the committee of management”.

14. Sections 95(1) and 96 shall have effect as if the word “directors” were omitted from each of them.

15. In subsection (1) of section 101 (appointment of liquidation committee) of the Act, the reference to functions conferred on a liquidation committee by or under that Act shall have effect as a reference to its functions by or under that Act as applied to incorporated friendly societies.

16.—(1) Section 107 (distribution of property) of the Act does not apply; and the following applies in its place.

(2) Subject to the provisions of Part IV relating to preferential payments, an incorporated friendly society’s property in a voluntary winding up shall be applied in satisfaction of the society’s liabilities to creditors *pari passu* and, subject to that application, in accordance with the rules of the society.

17. Sections 110 and 111 (liquidator accepting shares, etc. as consideration for sale of company property) of the Act do not apply.

#### *Winding up by the court*

18. In sections 117 (High Court and county court jurisdiction) and 120 (Court of Session and sheriff court jurisdiction) of the Act, each reference to a company’s share capital paid up or credited as paid up shall have effect as a reference to the amount of the contribution or subscription income of an incorporated friendly society as shown by the latest balance sheet.

19. Section 122 (circumstances in which company may be wound up by the court) of the Act does not apply.

20. Section 124 (application for winding up) of the Act does not apply.

21.—(1) In section 125 (powers of court on hearing of petition) of the Act, subsection (1) applies with the omission of the words from “but the court” to the end of the subsection.

(2) The conditions which the court may impose under section 125 of the Act include conditions for securing—

- (a) that the incorporated friendly society be dissolved by consent of its members under section 20 above; or
- (b) that the society amalgamates with, or transfers all or any of its engagements to, another friendly society under section 85 or 86 above, or
- (c) that the society converts itself into a company under section 91 above,

and may also include conditions for securing that any default which occasioned the petition be made good and that the costs, or in Scotland the expenses, of the proceedings on that petition be defrayed by the person or persons responsible for the default.

22. Section 126 (power of court, between petition and winding-up order, to stay or restrain proceedings against company) of the Act has effect with the omission of subsection (2).

23. If, before the presentation of a petition for the winding up by the court of an incorporated friendly society, an instrument of dissolution under section 20 above is placed in the society's public file, section 129(1) (commencement of winding up by the court) of the Act shall also apply in relation to the date on which the notice is so placed and to any proceedings in the course of the dissolution as it applies to the commencement date for, and proceedings in, a voluntary winding up.

24.—(1) Section 130 of the Act (consequences of winding-up order) shall have effect with the following modifications.

(2) Subsections (1) and (3) shall be omitted.

(3) An incorporated friendly society shall, within 15 days of a winding-up order being made in respect of it, give notice of the order to the central office; and the central office shall keep the notice in the public file of the society.

(4) If an incorporated friendly society fails to comply with sub-paragraph (3) above, it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

25. Section 140 (appointment of liquidator by court in certain circumstances) of the Act does not apply.

26. In the application of sections 141(1) and 142(1) (liquidation committees), of the Act to incorporated friendly societies, the references to functions conferred on a liquidation committee by or under that Act shall have effect as references to its functions by or under that Act as so applied.

27. The conditions which the court may impose under section 147 (power to stay or sist winding up) of the Act shall include those specified in paragraph 21(2) above.

28. Section 154 (adjustment of rights of contributories) of the Act shall have effect with the modification that any surplus is to be distributed in accordance with the rules of the society.

29. In section 165(2) (liquidator's powers) of the Act, the reference to an extraordinary resolution shall have effect as a reference to a special resolution.

#### *Winding up: general*

30. Section 187 (power to make over assets to employees) of the Act does not apply.

31.—(1) In section 201 (dissolution: voluntary winding up) of the Act, subsection (2) applies without the words from "and on the expiration" to the end of the subsection and, in subsection (3), the word "However" shall be omitted.

(2) Sections 202 to 204 (early dissolution) of the Act do not apply.

32. In section 205 (dissolution: winding up by the court) of the Act, subsection (2) applies with the omission of the words from "and, subject" to the end of the subsection; and in subsections (3) and (4) references to the Secretary of State shall have effect as references to the Commission.

33. Sections 216 and

34.—(1) Sections 216 and 217 shall apply in relation to officers of a friendly society acting in that capacity.

(2) Sections 218(5) and 219 do not apply.

(3) The references in sections 216 and 217 to the Secretary of State shall have effect as references to the Commission to section 218 of the Act and paragraph 35 below.

35.—(1) Where a reference to a friendly society, he may make an enquiry.

(2) On such a reference to a friendly society, section 65(1) above to appoint or

(3) An answer given to a friendly society conferred by section 65 of the Act to the person giving it.

36. Section 387 (meaning of "friendly society") of the Act has effect with the omission of subsection (2).

#### NOTES

- Commencement.** 1 Feb 1986.
- Para 9: Person.** Cf the note to s 201 above.
- Deemed.** Cf the note to s 201 above.
- Para 12: Committee.** Cf the note to s 201 above.
- Para 13: Statutory declaration.** Cf the note to s 201 above.
- Para 16: Rules of the society.** Cf the note to s 201 above.
- Para 17: Distribution of assets.** Cf the note to s 201 above.
- Para 18: Public file.** Cf the note to s 201 above.
- Para 19: Public file.** Cf the note to s 201 above.
- Para 20: Public file.** Cf the note to s 201 above.
- Para 21: Public file.** Cf the note to s 201 above.
- Para 22: Public file.** Cf the note to s 201 above.
- Para 23: Public file.** Cf the note to s 201 above.
- Para 24: Within 15 days.** Cf the note to s 201 above.
- Para 25: Give notice.** Cf the note to s 201 above.
- Para 26: Prescribe fees for the inspector.** Cf the note to s 201 above.
- Para 27: As to evidence of documents.** Cf the note to s 201 above.
- Para 28: Public file.** Cf the note to s 201 above.
- Para 29: Guilty of an offence.** Cf the note to s 201 above.
- Para 30: Offences by bodies corporate.** Cf the note to s 201 above.
- Para 31: Defence of due diligence.** Cf the note to s 201 above.
- Para 32: Summary conviction.** Cf the note to s 201 above.
- Para 33: Special resolution.** Cf the note to s 201 above.
- Para 34: Power to modify, etc.** Cf the note to s 201 above.
- Para 35: Definitions.** For "the Commission", "the court", "notice", "officer" and "friendly society" see the definitions in this Schedule ante; for "special resolution" see para 6 above, as to "contributory" see para 10(2) above.
- Insolvency Act 1986.** See the note to s 201 above.

(Pt III modifies the Insolvency Act 1986 as printed in this work.)

*Penal provisions*

33. Sections 216 and 217 of the Act (restriction on re-use of name) do not apply.

34.—(1) Sections 218 and 219 (prosecution of delinquent officers) of the Act do not apply in relation to offences committed by members of an incorporated friendly society acting in that capacity.

(2) Sections 218(5) of the Act and subsections (1) and (2) of section 219 of the Act do not apply.

(3) The references in subsections (3) and (4) of section 219 of the Act to the Secretary of State shall have effect as references to the Commission; and the reference in subsection (3) to section 218 of the Act shall have effect as a reference to that section as supplemented by paragraph 35 below.

35.—(1) Where a report is made to the prosecuting authority (within the meaning of section 218) under section 218(4) of the Act, in relation to an officer of an incorporated friendly society, he may, if he thinks fit, refer the matter to the Commission for further enquiry.

(2) On such a reference to it the Commission shall exercise its power under section 65(1) above to appoint one or more investigators to investigate and report on the matter.

(3) An answer given by a person to a question put to him, in exercise of the powers conferred by section 65 above on a person so appointed, may be used in evidence against the person giving it.

*Preferential debts*

36. Section 387 (meaning in Schedule 6 of "the relevant date") of the Act applies with the omission of subsections (2) and (4) to (6).

## NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**Para 9: Person.** Cf the note to s 1 ante.

**Deemed.** Cf the note to s 8 ante.

**Para 12: Committee of management.** For general provisions as to the committee of management, see s 27 ante, Sch 11 post.

**Para 13: Statutory declaration.** See the note to s 93 ante.

**Para 16: Rules of the society.** See s 5(6), Sch 3, para 5 ante. As to the entitlement of members to participate in the distribution of any surplus assets on the winding up of the society, see, in particular, para 5(3), Table, para 12 of that Schedule ante.

**Para 24: Within 15 days of, etc.** See the note "Within 7 days of, etc" to s 18 ante.

**Give notice.** As to the form of documents to be sent to the central office and for the power to prescribe fees for the inspection, etc of documents in the custody of the central office, see s 114 ante. As to evidence of documents, see s 111 ante.

**Public file.** See s 104 ante.

**Guilty of an offence.** As to the time limit for commencing proceedings, see s 107 ante; as to offences by bodies corporate, partnerships and unincorporated associations, see s 108 ante; as to the defence of due diligence, see s 109 ante; and as to the jurisdiction of magistrates' courts, see s 110 ante.

**Summary conviction; standard scale.** See the notes to s 18 ante.

**Para 29: Special resolution.** See s 30 ante, Sch 12, para 7 post.

**Power to modify, etc.** See the Introductory Note to Pt II of this Act ante.

**Definitions.** For "the Commission", see s 1(1) ante; for "the public file", see s 104 ante; for "incorporated friendly society", see s 116 ante; for "the central office", "committee of management", "the court", "notice", "officer" and "subscription", see s 119(1) ante; for "the enactments", see para 1 of this Schedule ante; for "special resolution", see Sch 12, para 7 post. Note as to "Part IV" and "the Act", para 6 above, as to "contributory", para 9(2) above, and as to "resolution for voluntary winding up", para 10(2) above.

**Insolvency Act 1986.** See Vol 4, title Bankruptcy and Insolvency.

(Pt III modifies the *Insolvency (Northern Ireland) Order 1989, SI 1989/2045 (NI 19)* (not printed in this work).)

PART IV  
SUPPLEMENTARY

*Dissolution of incorporated friendly society after winding up*

67.—(1) Where an incorporated friendly society has been wound up voluntarily, it is dissolved as from 3 months from the date of the placing in the public file of the society of the return of the final meetings of the society and its creditors made by the liquidator under—

- (a) section 94 or 106 of the Insolvency Act 1986 (as applied to incorporated friendly societies), or on such other date as is determined in accordance with section 201 of that Act; or
- (b) Article 80 or 92 of the Insolvency (Northern Ireland) Order 1989 (as so applied), or on such other date as is determined in accordance with Article 166 of that Order.

(2) Where an incorporated friendly society has been wound up by the court, it is dissolved as from 3 months from the date of the placing in the public file of the society of the liquidator's notice under—

- (a) section 172(8) of the Insolvency Act 1986 (as applied to incorporated friendly societies) or on such other date as is determined in accordance with section 205 of that Act; or
- (b) Article 146(7) of the Insolvency (Northern Ireland) Order 1989 (as so applied) or on such other date as is determined in accordance with Article 169 of that Order.

68.—(1) Sections 654 to 658 of the Companies Act 1985 or Articles 605 to 609 of the Companies (Northern Ireland) Order 1986 (provisions as to corporate property as bona vacantia), shall have the same effect in relation to the property of a dissolved incorporated friendly society (whether dissolved under section 20 above or following its winding up) as they have in relation to the property of a dissolved company, but with the following modifications.

(2) Paragraph 3(1) above shall apply to those sections for the purpose of their application to incorporated friendly societies.

(3) Subsection (2) of section 654 and subsections (1) and (3) of section 655 apply without the words "or 653"; and the references in those subsections to section 651 shall have effect as references to section 25 above.

(4) Paragraph (2) of Article 605 and paragraph (1) of Article 606 apply without the words "or 604"; and the references in those paragraphs to Article 602 shall have effect as references to section 25 above.

*Insolvency rules and fees*

69.—(1) Rules may be made under—

- (a) section 411 of the Insolvency Act 1986; or
- (b) Article 359 of the Insolvency (Northern Ireland) Order 1989,

for the purpose of giving effect, in relation to incorporated friendly societies, to the provisions of the applicable winding up legislation.

(2) An order made by the competent authority under section 414 of the Insolvency Act 1986 may make provision for fees to be payable under that section in respect of proceedings under the applicable winding-up legislation and the performance by the official receiver or the Secretary of State of functions under it.

(3) An order made by the competent authority under Article 361 of the Insolvency (Northern Ireland) Order 1989 may make provisions for fees to be payable under that section in respect of proceedings under the applicable winding-up legislation and the performance by the official receiver in Northern Ireland or the Department of Economic Development in Northern Ireland of functions under it.

NOTES

**Commencement.** 1 February 1986.  
**Para 67:** 3 months from, Public file. See s 104 ante.

**Para 69:** Secretary of State. Power to modify, etc. See **Definitions.** For "the applicable provisions" see s 104 ante; for "incorporated friendly society" see Insolvency Act 1986. See also modifications, to incorporated friendly societies, Insolvency (Northern Ireland) Order 1989. See also modifications, to incorporated friendly societies, Companies Act 1985, ss 605 to 609 and Companies (Northern Ireland) Order 1986.

Section 27

COMMITTEES

ELIGIBILITY AND

1.—(1) This Part of this Act shall apply to the management of a friendly society as if—

- "the committee" meant the committee of management authorised by paragraph 1 in its rules;
- "the normal retirement age" meant the normal retirement age of the committee.

(2) For the purposes of paragraph 1, the date of the meeting at which the committee was first elected shall be the date of the meeting at which the committee was first elected.

2. Subject to paragraph 1, a person shall be eligible for election to the committee of the society, if—

3.—(1) The rules of the society prescribe a minimum age without which a person is not eligible for election to the committee, sub-paragraph 1, and that age is not greater than the normal retirement age of the committee, sub-paragraph 1.

(2) If the rules of the society prescribe a minimum age without which a person is not eligible for election to the committee, sub-paragraph 1, and that age is not greater than the normal retirement age of the committee, sub-paragraph 1, a person who has attained that age shall be eligible for election to the committee.

(3) Except in the case mentioned in paragraph 2, a person shall not be eligible for election to the committee unless—

- (a) he has been approved by the committee, and
- (b) his age and the normal retirement age of the committee are notified to every member of the committee.

(4) If a friendly society elects a person who has a summary conviction to a failure shall invalidate the election.

## NOTES

**Commencement.** 1 February 1993; see the note to s 6 ante.

**Para 67: 3 months from, etc.** See the note "Seven months after, etc" to s 3 ante.

**Public file.** See s 104 ante.

**Para 69: Secretary of State.** See the note to s 64 ante.

**Power to modify, etc.** See the Introductory Note to Pt II of this Act ante.

**Definitions.** For "the applicable winding up legislation", see s 23(3) ante; for "the public file", see s 104 ante; for "incorporated friendly society", see s 116 ante; for "the court", see s 119(1) ante.

**Insolvency Act 1986.** See Vol 4, title Bankruptcy and Insolvency. That Act is applied, with modifications, to incorporated friendly societies by Pts I, II of this Schedule ante.

**Insolvency (Northern Ireland) Order 1989.** SI 1989/2045 (NI 19). That Order is applied, with modifications, to incorporated friendly societies by Pts I, III of this Schedule.

**Companies Act 1985, ss 654-658.** See Vol 8, title Companies.

**Companies (Northern Ireland) Order 1986.** SI 1986/1032 (NI 6).

## SCHEDULE 11

## Section 27

## COMMITTEE OF MANAGEMENT: SUPPLEMENTARY

## PART I

## ELIGIBILITY AND RETIREMENT OF COMMITTEE MEMBERS

*Preliminary*

1.—(1) This Part of this Schedule applies in relation to members of the committee of management of a friendly society ("the society"); and in this Schedule—

"the committee" means the committee of management of the society;

"the compulsory retirement age", where the rules of the society make the provision authorised by paragraph 3(1) below, means the age prescribed for that purpose in its rules;

"the normal retirement age" means 70 years or such lesser age as the rules of the society may prescribe as the normal retirement age for members of its committee.

(2) For the purposes of this Act the date of a person's election to office as a member of the committee, where the rules of the society provide for election by postal ballot, is the date of the meeting at which the declaration of the result of the ballot is made.

*Eligibility to be elected committee member*

2. Subject to paragraph 3 below, paragraph 7 of Schedule 3 to this Act and to the rules of the society, any person is eligible to be elected as a member of the committee.

3.—(1) The rules of the society may require the members of the committee to retire at a prescribed age without eligibility for re-election or reappointment; and, if the age so prescribed is no greater than the age which is the normal retirement age for members of the committee, sub-paragraph (3) below shall have no application to the society.

(2) If the rules of the society make the provision authorised by sub-paragraph (1) above, a person who has attained the age so prescribed shall not be eligible to be elected as a member of the committee.

(3) Except in the case mentioned in sub-paragraph (1) above, if a person has attained the normal retirement age for the society, he shall not be eligible to be elected as a member of the committee unless—

(a) he has been approved as eligible to be so elected by resolution of the committee; and

(b) his age and the reasons for the committee's approval of his eligibility have been notified to every person entitled to vote at the election.

(4) If a friendly society, in a case where its committee has approved as eligible for election a person who has attained the normal retirement age, fails to notify every person entitled to vote at the election, the society shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale; but no such failure shall invalidate the election.

*Eligibility to be co-opted committee member*

4. No person may be co-opted as a member of the committee who has attained the normal retirement age or the compulsory retirement age (where that age is less than the normal retirement age).

*Notice to society of age of committee member*

5.—(1) A person who holds office as, or is to his knowledge nominated for election or proposed for co-option to the committee as, a member of the committee shall, not later than 28 days before he attains the normal retirement age or, as the case may be, the compulsory retirement age for members of the committee, give the society notice of the date on which he will attain that age.

(2) A person who fails to give to a friendly society a notice required, in relation to that society, by sub-paragraph (1) above shall be guilty of an offence and liable on summary conviction—

- (a) to a fine not exceeding level 3 on the standard scale; and
- (b) in the case of a continuing offence, to an additional fine not exceeding one-tenth of that level for every week during which the offence continues.

*Retirement of elected committee members*

6.—(1) A member of the committee shall retire from office—

- (a) in any case not provided for by paragraph (b) below, sub-paragraph (2) below or rules under sub-paragraph (3) below, at the fifth annual general meeting of the society following the date of his election; and
- (b) in a case where he had attained the normal retirement age at his election, at the next annual general meeting following that date.

(2) A member of the committee attaining the normal retirement age or, as the case may be, the compulsory retirement age shall, subject to any provision of the rules for earlier retirement, retire from office at the next annual general meeting of the society.

(3) The rules of the society, if they provide for the retirement by rotation of members of its committee, may provide that a person elected to fill a vacant seat on the committee must retire at the annual general meeting at which, in accordance with the rules for retirement by rotation, the seat is to fall vacant.

(4) Sub-paragraph (3) above applies to any vacancy arising when an elected member ceases to hold office for any reason before the annual general meeting at which (disregarding his age) the seat is due to fall vacant.

*Retirement of co-opted members*

7.—(1) A person who is co-opted as a member of the committee shall cease to hold office at the end of the permitted period unless he is elected to office as a member of the committee within that period.

(2) For the purposes of sub-paragraph (1) above "the permitted period", with reference to the tenure of office of a co-opted member of the committee, is the period beginning with the date of his appointment and ending with the declaration of the next election of members of the committee conducted after his appointment or the expiration of the period of 16 months beginning with the date of his appointment, whichever first occurs.

PART II

DEALINGS WITH MEMBERS OF COMMITTEE OF MANAGEMENT

8.—(1) Sections 312 (payment for loss of office etc) and 316(3) (supplementary) of the Companies Act 1985 shall have effect as if any reference in them to a director of a company included a reference to a member of the committee of management of a friendly society or a registered branch but with the substitution in section 316(3) of a reference to section 312 for the reference to sections 312 to 315.

(2) Articles 320 (payment for loss of office etc) and 324(3) (supplementary) of the Companies (Northern Ireland) Order 1986 shall have effect as if any reference in them to a director of a company included a reference to a member of the committee of management

of a friendly society or a reference to Article 320 f

9.—(1) The following

- (a) section 62 (pro
- (b) section 63 (dis
- (c) section 64 (sub
- (d) section 65 (rest
- (e) section 66 (san
- (f) section 68 (rec
- (g) section 69 (dis
- (h) section 70 (inte

shall have effect as if any to a member of the comm

(2) The provisions ma application to such memb

- (a) of a reference r building societ
- (b) of a reference directors or bo

(3) Section 65 shall in a

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- (b) with the subst property" for th

(4) Section 69 shall in a

- (a) of the following

"(3) The following a

- (a) legal services
- (b) accountancy
- (c) services of a b
- (d) reinsurance of
- (e) any other ser

- (b) of a reference to Schedule 10 to t

(6) The requisite particu registered branch are accor

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10. Where the business requisite particulars of its b

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- (b) the aggregate a consideration of

12. Where the business insurance broking services. the following---

- (a) the aggregate of commission; and

of a friendly society or a registered branch but with the substitution in Article 324(3) of a reference to Article 320 for the reference to Articles 320 to 323.

9.—(1) The following provisions of the Building Societies Act 1986—

- (a) section 62 (prohibition of tax-free payments to directors);
- (b) section 63 (disclosure of interests in contracts and other transactions);
- (c) section 64 (substantial property transactions);
- (d) section 65 (restriction on loans etc);
- (e) section 66 (sanctions);
- (f) section 68 (records of loans etc) with Schedule 9;
- (g) section 69 (disclosure and record of related businesses); and
- (h) section 70 (interpretation),

shall have effect as if any reference to a director of a building society included a reference to a member of the committee of management of a friendly society or registered branch.

(2) The provisions mentioned in sub-paragraph (1) above shall have effect in their application to such members with the substitution—

- (a) of a reference to a friendly society or registered branch for every reference to a building society; and
- (b) of a reference to the committee of management for every reference to the directors or board of directors.

(3) Section 65 shall in addition have effect in its application to them—

- (a) with the omission of subsection (1)(c); and
- (b) with the substitution in subsection (1)(d) of the words “loan or disposal of property” for the words “loan, disposal of property or payment”.

(4) Section 69 shall in addition have effect with the substitution—

- (a) of the following subsection for subsection (3)—

“(3) The following are relevant services—

- (a) legal services;
- (b) accountancy services;
- (c) services of a broker in respect of the society's insurance business;
- (d) reinsurance of the society's insurance business;
- (e) any other services designated as relevant services.”; and

- (b) of a reference to Part II of this Schedule for every reference in subsection (7) to Schedule 10 to the Building Societies Act.

(6) The requisite particulars of the business of a business associate of a friendly society or registered branch are accordingly those set out in paragraphs 10 to 12 or 13 to 15 below.

*Requisite particulars where no adoption of this Part*

10. Where the business associate of the society or branch provides legal services the requisite particulars of its business in any financial year are the following—

- (a) the aggregate amount of the fees paid to it by the society or branch concerned for the provision of legal services; and
- (b) the aggregate amount of any fees paid to it by the society or branch in consideration of the provision of management services to the society or branch.

11. Where the business associate of the society or branch provides accountancy services the requisite particulars of its business in any financial year are the following—

- (a) the aggregate amount of the fees paid to it by the society or branch for the provision of accountancy services; and
- (b) the aggregate amount of any fees paid to it by the society or branch in consideration of the provision of management services to the society or branch.

12. Where the business associate of the society or branch arranges for the provision of insurance broking services, the requisite particulars of its business in any financial year are the following—

- (a) the aggregate of the amounts paid to it by the society or branch by way of commission; and

- (b) the aggregate amount of any fees paid to it by the society or branch in consideration of the provision of management services to the society or branch.

*Requisite particulars on adoption of this Part*

13. Where the business associate of the society or branch provides legal services, the requisite particulars of its business in any financial year are the following—

- (a) the prescribed band within which falls the estimated aggregate amount of the fees paid to it by the society or branch for the provision of legal services; and
- (b) the prescribed band within which falls the estimated aggregate amount of any fees paid to it by the society or branch in consideration of the provision of management services to the society or branch.

14. Where the business associate of the society or branch provides accountancy services the requisite particulars of its business in any financial year are the following—

- (a) the prescribed band within which falls the estimated aggregate amount of the fees paid to it by the society or branch for the provision of accountancy services; and
- (b) the prescribed band within which falls the estimated aggregate amount of any fees paid to it by the society or branch in consideration of the provision of management services to the society or branch.

15. Where the business associate of the society or branch provides insurance broking services the requisite particulars of its business in any financial year are the following—

- (a) the prescribed band within which falls the estimated aggregate of the amounts paid to it by or by way of commission; and
- (b) the prescribed band within which falls the estimated aggregate amount of any fees paid to it by the society or branch in consideration of the provision of management services to the society or branch.

*Power to prescribe bands*

16.—(1) The Commission, with the consent of the Treasury, may by order prescribe, for the purposes of the provisions of this Part of this Schedule, series of monetary amounts by reference to limits specified in the order; and, in any such provision, "prescribed band" means, in relation to monetary amounts, any series of monetary amounts so prescribed for the purposes of that provision.

(2) The power conferred by this paragraph includes power to prescribe different series of monetary amounts for the purposes of different provisions.

**NOTES**

**Commencement.** This Schedule was brought into force on 13 January 1993 for the purposes of the committee of management of incorporated friendly societies by the Friendly Societies Act 1992 (Commencement No 3 and Transitional Provisions) Order 1993, SI 1993/16 (made under s 126(2) ante); para 16 was brought into force on 13 September 1993 for the purposes of the power to prescribe series of monetary amounts by order and the entire Schedule was brought into force on 1 January 1994 for all remaining purposes by the Friendly Societies Act 1992 (Commencement No 6 and Transitional Provisions) Order 1993, SI 1993/2213 (made under s 126(2), (3) ante).

**Para 1: Rules of the society.** For the matters to be covered by such rules, see s 5(6), Sch 3, para 5(3), Table ante.

**Para 3: Attained the age, etc.** See the note to Sch 1 ante.

**Notify; notified.** As to the service of notices, see s 113 ante.

**Guilty of an offence.** As to the time limit for commencing proceedings, see s 107 ante; as to offences by bodies corporate, partnerships and unincorporated associations, see s 108 ante; as to the defence of due diligence, see s 109 ante; and as to the jurisdiction of magistrates' courts, see s 110 ante.

**Summary conviction; standard scale.** See the notes to s 18 ante.

**Para 5: Not later than 28 days before.** See the note "Not later than . . . 14 days before" to s 78 ante.

**Every week during which the offence continues.** Cf the note "Every day during which the offence continues" to s 20 ante.

**Para 6: Annual general meeting.** See s 30 ante, Sch 12, para 1 post.

**Para 7: Period beginning with, etc.** Cf the note "3(6) months beginning with, etc." to s 39 ante.

**Para 16: Treasury.** See the note to s 1 ante.

**Definitions.** For "the Commission", see s 1(1) ante; for "friendly society" and "registered branch",

see s 116 ante; for "insurance committee of management", "committee of management", "the compulsory to "prescribed band", para 16 of the **Companies Act 1985, s 16**, **Companies (Northern Ireland) Act 1985, s 16**, **Building Societies Act 1986, s 16**, **Orders under this Schedule**. For general provisions as to

Section 30

1.—(1) Every friendly society shall hold a general meeting as its annual general meeting.

(2) Not more than 14 days' notice of the meeting and that of the notice shall be given to those entitled to attend the meeting.

(3) If an incorporated friendly society has been incorporated for less than 12 months of its incorporation, the notice shall be given following year.

(4) If a registered friendly society has been registered for less than 18 months of its registration or for less than 12 months of its registration, the notice shall be given following year.

2.—(1) A meeting of a friendly society registered branch shall be held in accordance with the following provisions.

(2) Notwithstanding a resolution of a friendly society, a business which may be dissolved or otherwise dealt with (whether a special resolution or otherwise) shall be dealt with at a meeting of the society.

3.—(1) If a friendly society is convicted of an offence and liable to a fine, the fine shall be paid to the standard scale.

(2) If such default is made, the following provisions shall apply.

(a) call, or direct the society to call, a meeting of the society.

(b) give such ancillary directions as may be necessary for the purposes of the directions concerned in relation to the meeting.

(3) If default is made in relation to the provisions of this paragraph, the society shall be liable to a summary conviction to a fine not exceeding the standard scale.

4.—(1) A meeting of a friendly society shall be held at least 14 days' notice to members of the society.

(a) with the date of the meeting.

(b) where proxy voting is permitted, the society, or the society's committee, shall appointing proxy holders.

and the notice to members of the society shall be in accordance with the rules of the society or branch.

(2) Where the rules of a friendly society provide for notices to those entitled to attend the meeting, the rules may provide for the following provisions.

(3) If the rules provide for the following provisions, the rules must include provisions for the following purposes.

see s 116 ante; for "insurance business", see s 117(1) ante; for "financial year", see s 118 ante; for "committee of management", "notice" and "notify", see s 119(1) ante. Note as to "the society", "the committee", "the compulsory retirement age" and "the normal retirement age", para 1 above, and as to "prescribed band", para 16(1) above.

**Companies Act 1985**, ss 312, 316(3). See Vol 8, title Companies.

**Companies (Northern Ireland) Order 1986**. SI 1986/1032 (NI 6).

**Building Societies Act 1986**. See Vol 5, title Building Societies.

**Orders under this Schedule**. Up to 1 June 1994 no orders had been made under this Schedule. For general provisions as to orders, see s 121 ante.

## SCHEDULE 12

### Section 30

### MEETINGS AND RESOLUTIONS

#### *Annual general meeting*

1.—(1) Every friendly society and registered branch shall in each year hold a general meeting as its annual general meeting (in addition to any other meetings in that year).

(2) Not more than 15 months shall elapse between the date of one annual general meeting and that of the next.

(3) If an incorporated friendly society holds its first annual general meeting within 18 months of its incorporation, it need not hold it in the year of its incorporation or in the following year.

(4) If a registered friendly society or registered branch holds its first annual general meeting within 18 months of its registration under the 1974 Act, it need not hold it in the year of its registration or in the following year.

2.—(1) A meeting to be held as the annual general meeting of a friendly society or registered branch shall be specified as such in any notice calling it.

(2) Notwithstanding anything in the rules of a friendly society or registered branch, the business which may be dealt with at the annual general meeting includes any resolution (whether a special resolution or not).

3.—(1) If a friendly society or registered branch fails to hold a meeting as its annual general meeting in accordance with paragraph 1 above, the society or branch shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(2) If such default is made, the Commission may—

- (a) call, or direct the calling of, an annual general meeting, and
- (b) give such ancillary or consequential directions as it thinks expedient, including directions modifying or supplementing the operation of the rules of the society concerned in relation to the calling, holding and conducting of the meeting.

(3) If default is made in complying with any directions of the Commission given under this paragraph, the society or branch concerned shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### *Notice for calling meetings*

4.—(1) A meeting of a friendly society or registered branch must be called by not less than 14 days' notice to members, or such longer period as the rules may require, expiring—

- (a) with the date of the meeting; or
- (b) where proxy voting is permitted, with such earlier date as may be specified by the society, under its rules, as the final date for the receipt of instruments appointing proxies to vote at the meeting;

and the notice to members of a meeting shall be given in such manner as is prescribed by the rules of the society or branch.

(2) Where the rules of a friendly society do not provide for the giving of individual notices to those entitled (when the notice is given) to vote at meetings of any description, the rules may provide for the giving of notice of such meetings by advertisement.

(3) If the rules provide for the giving of notice of any meetings by advertisement, the rules must include provision requiring the necessary advertisements to be inserted—

- (a) in at least one newspaper circulating in the areas in which the members of the society reside; or
- (b) where the membership of the society is drawn from a professional body or wholly or mainly from persons who are or have been engaged in a particular trade, profession or vocation, in an appropriate professional journal,

as the rules may provide.

- (4) The rules of a friendly society or registered branch may provide—

- (a) for adjourned meetings to be called without notice or with such notice as the rules may require;
- (b) for meetings to be held at a specified time and place, on such dates as are prescribed by the rules, either without further notice or with such notice as the rules may require;

and sub-paragraphs (1) to (3) above shall not apply to meetings held by virtue of such provision.

(5) This paragraph is without prejudice to any requirement under the rules of a friendly society or registered branch as to the giving of notice of special resolutions to be moved, or any other business to be transacted, at a meeting of the society or branch.

#### *Members' entitlement to vote on resolutions*

5.—(1) Subject to sub-paragraph (2) below, any provision in the rules of a friendly society or registered branch is void to the extent that it would have the effect of making the voting rights conferred on members by the rules conditional upon the amount of their subscriptions.

(2) Sub-paragraph (1) above shall not apply to any provision in the rules excluding or limiting the voting rights of members by reference to the amount of their subscriptions in such cases or circumstances as the Commission may by regulations prescribe.

(3) In this section "subscription" includes a contribution payment falling to be made by a member.

#### *Right to demand a poll*

6.—(1) Any provision contained in the rules of a friendly society or registered branch shall be void in so far as it would have the effect either—

- (a) of excluding the right to demand a poll at a meeting of the society on any question other than the election of a chairman of the meeting or the adjournment of the meeting; or
- (b) of making ineffective a demand for a poll on any such question which is made by not less than 10 members who are entitled to vote at the meeting or, in the case of a society whose rules provide for delegate voting, 5 delegates who are so entitled.

(2) The reference in sub-paragraph (1)(b) above to members includes a reference, where the rules allow the appointment of proxies, to persons who are duly appointed on behalf of members entitled to attend and vote at the meeting.

#### *Special resolutions*

7.—(1) No resolution of a friendly society shall be passed as a special resolution unless—

- (a) it is required to be so passed by or under any provision of this Act or the 1974 Act or by the rules of the society;
- (b) at least 14 day's notice, or such longer period as the rules may require, expiring—
  - (i) with the date of the meeting at which the resolution is to be moved; or
  - (ii) where proxy voting is permitted, with such earlier date as may be specified by the society, under its rules, as the final date for the receipt of instruments appointing proxies to vote at the meeting;

is given to members in such manner as is prescribed by the rules; and

- (c) any such notice (or, in the case of a postal ballot, the ballot papers) includes a statement that the resolution will not be effective unless it is passed as a special resolution;

and, in this Act, "special reso

(2) Subject to sub-paragraph (3) below, a special resolution shall be effective as a special resolution if it is passed by a majority of a number of the members of the society (or, where proxy voting is permitted, by a number of delegates entitled to vote by proxy) on a poll at a meeting of the society.

(3) Where the rules of a friendly society provide that a special resolution shall not be effective as a special resolution unless it is passed by a majority of a number of delegates entitled to vote by proxy on a postal ballot,

(4) Where the rules of a friendly society provide that a special resolution shall not be effective as a special resolution unless it is passed by a majority of a number of delegates entitled to vote by proxy on a postal ballot, the rules may provide that the special resolution shall be effective as a special resolution if it is passed by a majority of a number of delegates entitled to vote by proxy on a postal ballot.

(5) If the rules of a friendly society provide that a special resolution shall not be effective as a special resolution unless it is passed by a majority of a number of delegates entitled to vote by proxy on a postal ballot, the rules may provide that the special resolution shall be effective as a special resolution if it is passed by a majority of a number of delegates entitled to vote by proxy on a postal ballot.

- (a) in at least one newspaper circulating in the areas in which the members of the society reside; or
- (b) where the membership of the society is drawn from a professional body or wholly or mainly from persons who are or have been engaged in a particular trade, profession or vocation, in an appropriate professional journal,

as the rules may provide.

(6) Proxy voting shall be permitted by the rules of a friendly society other than the rules of a friendly society for such proxy voting as may be prescribed by the Commission.

8.—(1) The rules of a friendly society shall be void in so far as they would have the effect of making the election of a chairman of the meeting or the adjournment of the meeting conditional upon the amount of the members' subscriptions.

- (a) in an election of a chairman of the meeting or the adjournment of the meeting;
- (b) on any resolution of the society.

to be conducted in all, or in any, of the following cases:—

(2) Where a postal ballot is used, the election shall be conducted by ballot or by postal ballot, and the election shall be conducted by ballot or by postal ballot, and the election shall be conducted by ballot or by postal ballot.

(3) Notice of a postal ballot shall be given to the members of the society on the date which the society specifies in its rules, and the ballot papers (referred to in sub-paragraph (2) above) shall be sent to the members of the society on the date which the society specifies in its rules.

(4) Subject to the provisions of this section, a special resolution of a friendly society shall be effective as a special resolution if it is passed by a majority of a number of the members of the society (or, where proxy voting is permitted, by a number of delegates entitled to vote by proxy) on a poll at a meeting of the society.

(5) Notice of a postal ballot shall be given to the members of the society on the date which the society specifies in its rules, and the ballot papers (referred to in sub-paragraph (2) above) shall be sent to the members of the society on the date which the society specifies in its rules.

- (a) shall contain such particulars as may be prescribed by the Commission;
- (b) shall be accompanied by such particulars as may be prescribed by the Commission.

as would be required to be passed by a majority of a number of the members of the society (or, where proxy voting is permitted, by a number of delegates entitled to vote by proxy) on a poll at a meeting of the society.

9.—(1) Where by any provision of this Act or the 1974 Act a special resolution of a friendly society is required to be passed, and the resolution is not effective as a special resolution, the resolution shall be effective as a special resolution if it is passed as a special resolution.

(2) The friendly society shall be deemed to have passed the resolution as a special resolution if it is passed as a special resolution.

and, in this Act, "special resolution" means a resolution so passed.

(2) Subject to sub-paragraph (3) below, a resolution of a friendly society shall not be effective as a special resolution unless it is passed by not less than three-quarters of the number of the members of the society entitled to vote on it and voting either (in person or by proxy) on a poll at a meeting of the society or in a postal ballot.

(3) Where the rules of a friendly society provide for delegate voting, a resolution shall not be effective as a special resolution unless it is passed by not less than three quarters of the number of delegates entitled to vote on the resolution and voting on a poll at a meeting or in a postal ballot.

(4) Where the rules of a friendly society do not provide for the giving of individual notices to those entitled (when the notice is given) to vote on special resolutions of any description, the rules may provide for the giving of notice by advertisement.

(5) If the rules provide for the giving of notice of any special resolutions by advertisement, the rules must include provision requiring the necessary advertisements to be inserted—

- (a) in at least one newspaper circulating in the areas in which the members of the society reside; or
- (b) where the membership of the society is drawn from a professional body or wholly or mainly from persons who are or have been engaged in a particular trade, profession or vocation, in an appropriate professional journal,

as the rules may provide.

(6) Proxy voting shall be permitted (notwithstanding anything to the contrary in a society's rules) on any resolution which is to be moved as a special resolution at any meeting of a friendly society other than a meeting of delegates; and the procedure adopted by the society for such proxy voting shall comply with any requirements prescribed in regulations by the Commission.

#### *Postal ballots*

8.—(1) The rules of a friendly society or registered branch may provide for the voting—

- (a) in an election of the committee of management or, where applicable, of the secretary, or
- (b) on any resolution (whether special or not),

to be conducted in all, or in any particular, circumstances by postal ballot; and in this Act "ballot" or "postal ballot" in relation to an election or a resolution of the society or branch, means a postal ballot taking place by virtue of those rules.

(2) Where a postal ballot is to take place, the following provisions of this paragraph have effect.

(3) Notice of a postal ballot shall be given not less than 14 nor more than 56 days before the date which the society or branch specifies as the final date for the receipt of completed ballot papers (referred to in this paragraph as "the voting date").

(4) Subject to the provisions of this Act, notice of a postal ballot shall be given to every member of the society or branch who would be entitled to vote in the election or on the resolution if the voting date for the election or the resolution fell on the date of the notice.

(5) Notice of a postal ballot—

- (a) shall contain such other notices relating to the election or resolution; and
- (b) shall be accompanied by such other documents,

as would be required to be given or sent to a member in connection with the election or resolution had it been intended to hold the election or vote on the resolution at a meeting instead of by postal ballot with the exception, however, of any notice relating to voting by proxy at a meeting.

#### *Resolutions requiring special notice*

9.—(1) Where by any provision of this Act special notice is required of a resolution, the resolution is not effective unless notice of the intention to move it has been given to the friendly society concerned at least 28 days before the meeting at which it is moved.

(2) The friendly society concerned shall give its members notice of any such resolution

at the same time and in the same manner as is required by its rules for notice of the meeting or, if that is not practicable, shall give them notice (either by advertisement in a newspaper having an appropriate circulation or in any other mode allowed by the society's rules) at least 14 days before the meeting.

(3) If, after notice of the intention to move such a resolution has been given to the society, a meeting is called for a date 28 days or less after the notice has been given, the notice is deemed properly given, though not given within the time required.

#### NOTES

It is clear that in para 5(3) above the expression "section" should be read as "paragraph".

**Commencement.** This Schedule was brought into force for the purposes of the meetings and resolutions of incorporated friendly societies by the Friendly Societies Act 1992 (Commencement No 3 and Transitional Provisions) Order 1993, SI 1993/16 (made under s 126(2) ante); para 7 was brought into force on 13 September 1993 and paras 1-6, 8, 9 were brought into force on 1 January 1994 for all remaining purposes by the Friendly Societies Act 1992 (Commencement No 6 and Transitional Provisions) Order 1993, SI 1993/2213 (made under s 126(2), (3) ante).

**Para 1: Annual general meeting.** The rules of an incorporated friendly society must provide for the calling and holding of meetings and for certain specified matters in relation thereto; see s 5(6), Sch 3, para 5(3), Table, para 11 ante.

**Months.** See the note to s 27 ante.

**Para 2: Notice.** As to the service of notices, see s 113 ante.

**Para 3: Guilty of an offence.** As to the time limit for commencing proceedings, see s 107 ante; as to offences by bodies corporate, partnerships and unincorporated associations, see s 108 ante; as to the defence of due diligence, see s 109 ante; and as to the jurisdiction of magistrates' courts, see s 110 ante.

**Summary conviction; standard scale.** See the notes to s 18 ante.

**Directions.** As to the service of directions, see s 113 ante.

**Rules of the society.** See the note "Annual general meeting" above.

**Para 4: Meeting.** See the note "Annual general meeting" above.

**Not less than 14 days' notice.** Cf the note "Not less than 2 months' previous notice" to s 26 ante.

**Newspaper circulating in the areas.** This expression is not restricted to a local newspaper but includes a national newspaper and a newspaper which circulates among a limited class of persons and not among the public generally; see *Re Southern Builders and Contractors (London) Ltd* (1961) Times, 10 October, and *R v Westminster Betting Licensing Committee, ex p Peabody Donation Fund (Governors)* [1963] 2 QB 750, [1963] 2 All ER 544.

**Reside.** See the note "Resident" to s 110 ante.

**Wholly or mainly.** The word "mainly" probably means "more than half" though there is nothing here to indicate by reference to what this is to be calculated; cf *Fawcett Properties Ltd v Buckingham CC* [1961] AC 636 at 669, [1960] 3 All ER 503 at 512, HL per Lord Morton of Henryton. See also on the meaning of "wholly or mainly" (or "exclusively or mainly"), *Re Hatschek's Patents, ex p Zerener* [1909] 2 Ch 68; *Miller v Otilie (Owners)* [1944] 1 KB 188, [1944] 1 All ER 277; *Franklin v Gramophone Co Ltd* [1948] 1 KB 542 at 555, [1948] 1 All ER 353 at 358, CA per Somervell LJ; and *Berthelemy v Neale* [1952] 1 All ER 437, 96 Sol Jo 165, CA.

**Para 7: At least 14 days' notice.** The words "at least" indicate that the period allowed is to be exclusive of the day of service and the day of expiry of the notice; see *Rightside Properties Ltd v Gray* [1975] Ch 72, [1974] 2 All ER 1169, and the other cases cited in 45 Halsbury's Laws (4th edn) para 1133.

See, further, the note "Notice" to the Friendly Societies Act 1974, s 86 ante.

**Not less than three-quarters of the number of the members of the society entitled to vote, etc.** Cf the note to the Friendly Societies Act 1974, s 86 ante.

**Para 8: Committee of management.** For general provisions as to the committee of management, see s 27, Sch 11 ante.

**Secretary.** As to the appointment of this officer, see s 28 ante.

**Para 9: Practicable.** See the note to s 26 ante.

**Deemed.** See the note to s 8 ante.

**Affected members' resolution.** As to the application of para 7 above to an affected members' resolution on the transfer of engagements by a friendly society, see s 86(2), (9) ante.

**Definitions.** For "the Commission", see s 1(1) ante; for "friendly society", "incorporated friendly society", "registered branch" and "registered friendly society", see s 116 ante; for "committee of management", "notice" and "subscription", see s 119(1) ante (and note as to "subscription", para 5(3) above). Note as to "special resolution", para 7(1) above, and as to "ballot" and "postal ballot", para 8(1) above.

**1974 Act.** Is the Friendly Societies Act 1974 ante; see s 119(1) ante.

**Regulations under this Schedule.** The Friendly Societies (Proxy Voting) Regulations 1993, SI 1993/2294 (made under para 7(6) above). Up to 1 June 1994 no regulations had been made under para 5(2) above.

For general provisions as to regulations, see s 121 ante.

1.—(1) In this Part of the Act, "authorisation" means an authorisation of a friendly society for authorisation a friendly society making the application.

(2) For the purposes of this section, a friendly society, does not include a society which is not a friendly society.

2.—(1) An application for authorisation may be made either generally or in any particular case.

(2) Subject to sub-paragraph (3), the Commission may, in relation to such proposals as to the making of forecasts and such other matters as may be specified in regulations made by the Commission, require the applicant to submit to the Commission such information as the Commission may require.

(3) Where the applicant is a friendly society, the Commission may require the applicant to submit to the Commission such information as the Commission may require.

(4) The documents referred to in sub-paragraph (3) are—

(a) a statement by the applicant, or by an actuary or some other person, which describes—

(i) the insurance business of the applicant, and the immediate and prospective liabilities in relation to that business, and head A or B of the statement; and

(ii) the non-insurance business of the applicant, and the immediate and prospective liabilities in relation to that business, and head C or D of the statement;

(b) where any solvency statement is submitted to the society, a copy of that statement, together with any opinion, the Commission may require;

(c) a statement made by the applicant, or by the secretary and the treasurer, in accordance with sub-paragraph (3).

(5) The Commission may, in relation to information referred to in sub-paragraph (3) above, the documents referred to in sub-paragraph (4) above.

3.—(1) If on an application for authorisation the Commission is satisfied that the provisions of paragraphs 7 and 8 of Schedule 1 are satisfied, the Commission may authorise the friendly society.

(2) If the Commission is not satisfied that the Commission is satisfied that the provisions of paragraphs 7 and 8 of Schedule 1 are satisfied, the Commission may—

(a) that it proposes to make such regulations as it thinks fit; or

(b) the grounds for its decision; or

(c) that the society is not a friendly society within such period as the Commission may determine.

## SCHEDULE 13

Section 32

## AUTHORISATION: SUPPLEMENTARY PROVISIONS

## PART I

## APPLICATIONS FOR AUTHORISATION

*Preliminary*

1.—(1) In this Part of this Schedule “application” means an application by a friendly society for authorisation and, in relation to any application, “the society” means the friendly society making the application.

(2) For the purposes of this Part of this Schedule “officer”, in relation to a registered friendly society, does not include a trustee of the society.

*Procedure for granting authorisation*

2.—(1) An application shall be made in such manner as the Commission may specify, either generally or in any particular case.

(2) Subject to sub-paragraph (3) below, the society must submit to the Commission such proposals as to the manner in which it proposes to carry on business, such financial forecasts and such other information as may be required by or in accordance with regulations made by the Commission with the consent of the Treasury.

(3) Where the application is made under section 33 above the society shall, instead of submitting the information mentioned in sub-paragraph (2) above, furnish the Commission with the documents referred to in sub-paragraph (4) below and such other information as the Commission may request.

(4) The documents referred to in sub-paragraph (3) above are—

(a) a statement by the society, signed by its secretary and certified by its appropriate actuary or some other independent person acceptable to the Commission, which describes—

- (i) the insurance business carried on by the society in the United Kingdom immediately before the commencement of section 32 above (and stating, in relation to each description of insurance business, the class specified in head A or B of Schedule 2 to this Act into which that description falls); and
- (ii) the non-insurance business carried on by it in the United Kingdom at that time;

(b) where any solvency requirements imposed by or under this Act are applicable to the society, a statement by the society's appropriate actuary that, in his opinion, the society complies with those requirements; and

(c) a statement made jointly by each member of the committee of management, the secretary and the chief executive that the affairs of the society are directed in accordance with the criteria of prudent management and will continue to be so.

(5) The Commission shall decide an application within 6 months of receiving the information referred to in sub-paragraph (2) above or, in the case of an application under section 33 above, the documents and other information mentioned in sub-paragraph (3) above.

3.—(1) If on an application the Commission proposes to impose conditions, the provisions of paragraphs 7 and 8 below shall apply.

(2) If the Commission proposes to refuse to grant authorisation, it shall serve a notice on the society stating—

- (a) that it proposes to refuse to grant authorisation;
- (b) the grounds for the proposed refusal; and
- (c) that the society may make representations with respect to the proposed refusal within such period of not less than 28 days as may be specified in the notice and

that, if the society so requests, the Commission will afford to it an opportunity of being heard by the Commission within that period.

(3) If the grounds for the proposed refusal include the ground that a person is not a fit and proper person to hold office in the society, the Commission shall also serve the notice specified in sub-paragraph (2) above on the person concerned giving him the like right to make representations and to be heard with respect to his fitness and propriety for office.

(4) If, on an application made by virtue of section 33 above, the grounds for the proposed refusal include the ground that the Commission is not satisfied that a statement referred to in paragraph 2(4)(b) or (c) above is accurate, it shall also serve the notice specified in sub-paragraph (2) above on the person or, as the case may be, each person who made the statement giving him the like right to make representations and to be heard with respect to the accuracy of his statement.

(5) The Commission shall, before reaching a decision on the application, consider any representations made to it in accordance with sub-paragraph (2), (3) or (4) above.

(6) If, on an application for authorisation, the Commission refuses to grant authorisation it shall serve—

- (a) on the society and each of its officers;
- (b) on any other person on whom a notice was served under sub-paragraph (4) above,

a notice stating the Commission's decision and the grounds for it.

(7) The non-receipt by an officer or other person of a notice of a matter under this paragraph does not affect the validity of any action on the part of the Commission.

#### *Offences in connection with application*

4.—(1) A friendly society which furnishes any information or makes any statement which is false or misleading in a material particular in connection with an application shall be guilty of an offence and liable—

- (a) on conviction on indictment, to a fine; and
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

(2) Any person who knowingly or recklessly furnishes any information or makes any statement which is false or misleading in a material particular in connection with an application shall be guilty of an offence and liable—

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

#### *Terms of authorisation: supplementary*

5.—(1) On granting authorisation to a friendly society the Commission shall send a copy of the terms of the authorisation—

- (a) to the secretary of the society; and
- (b) to the central office;

and the central office shall keep a copy of those terms in the public file of the society.

(2) Where the terms of a society's authorisation are superseded by the grant of authorisation—

- (a) on an application to which section 35 above applies, or
- (b) on an application required by a direction under section 39 above,

the central office shall, on placing the copy of the terms of the authorisation on the public file of the society under sub-paragraph (1) above, indicate on the copy of the previous terms kept on that file that they have been superseded.

#### NOTES

**Commencement.** See the note to s 32 ante.

**Para 2: Submit . . . such proposals . . . and such other information.** If it appears to the Commission that information furnished to it on behalf of the society or, in connection with an application for authorisation, by or on behalf of an officer of the society is false in a material particular, misleading or inaccurate, the Commission may give a direction under s 40(1) ante; see s 40(3)(e) ante.

**Carry on business.** See the note to s 32 ante.  
**Treasury.** See the note to s 32 ante.  
**Secretary; chief executive.** See the note to s 32 ante.  
**United Kingdom.** See the note to s 32 ante.  
**Solvency requirements.** See the note to s 32 ante.  
**Committee of management.** See the note to s 27, Sch 11 ante.

**Within 6 months of, etc.** See the note to s 32 ante.  
**Para 3: It shall serve a notice.** See the note to s 32 ante.  
**Para 4: Furnishes any information.** See the note to s 32 ante.  
**Other information** above.

**False or misleading; knowingly or recklessly.** See the note to s 32 ante.  
**Material particular.** See the note to s 32 ante.  
**Guilty of an offence.** See the note to s 32 ante.  
**Offences by bodies corporate.** See the note to s 32 ante.  
**Defence of due diligence.** See the note to s 32 ante.

**Shall be . . . liable; conviction.** See the note to s 31 ante.

**Summary conviction.** See the note to s 31 ante.

**Para 5: Send a copy . . .** See the note to s 32 ante.  
**Central office and for the power to give a direction.** See the note to s 114 ante.

**Public file.** See s 104 ante.

**Power to modify, etc.** See the note to s 32 ante.

**Definitions.** For "the Commission", see s 32 ante; for "friendly society", see ss 43, 114 ante; for "management", see s 50 ante; for "material particular", see s (2) ante; for "the appropriate authority", see s 32 ante; for "insurance business" and "office", see s 32 ante; for "application" and "the society", see s 32 ante.

**Regulations under this section.** See s 32 ante; 1993, SI 1993/2521.

**For general provisions as to** see the note to s 32 ante.

#### IMPOSITION OF CON

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**Carry on business.** See the note "Carrying on . . . business" to s 7 ante.

**Treasury.** See the note to s 1 ante.

**Secretary; chief executive.** As to the appointment of these officers, see s 28 ante.

**United Kingdom.** See the note to s 14 ante.

**Solvency requirements imposed by . . . this Act.** See s 48 ante.

**Committee of management.** For general provisions as to the committee of management, see s 27, Sch 11 ante.

**Within 6 months of, etc.** See the note "Within one month, etc" to s 29 ante.

**Para 3: It shall serve a notice.** As to the service of notices, see s 113 ante.

**Para 4: Furnishes any information, etc.** See the note "Submit . . . such proposals . . . and such other information" above.

**False or misleading; knowingly; recklessly.** See the notes to s 62 ante.

**Material particular.** See the note to s 40 ante.

**Guilty of an offence.** As to the time limit for commencing proceedings, see s 107 ante; as to offences by bodies corporate, partnerships and unincorporated associations, see s 108 ante; as to the defence of due diligence, see s 109 ante; and as to the jurisdiction of magistrates' courts, see s 110 ante.

**Shall be . . . liable; conviction on indictment; fine; statutory maximum.** See the notes to s 31 ante.

**Summary conviction.** See the note to s 18 ante.

**Para 5: Send a copy . . . to the central office.** As to the form of documents to be sent to the central office and for the power to prescribe fees for the inspection, etc of documents in the custody of the central office, see s 114 ante. As to evidence of documents, see s 111 ante.

**Public file.** See s 104 ante.

**Power to modify, etc.** See the Introductory Note to Pt IV of this Act ante.

**Definitions.** For "the Commission", see s 1(1) ante; for "authorisation", see s 32(9) ante; for "friendly society", see ss 43, 116 ante; as to "class", see ss 43, 117(3)-(5) ante; for "the criteria of prudent management", see s 50 ante; for "the public file", see s 104 ante; for "insurance business", see s 117(1), (2) ante; for "the appropriate actuary", "the central office", "committee of management", "non-insurance business" and "officer", see s 119(1) ante (but note as to "officer" para 1(2) above). Note as to "application" and "the society", para 1(1) above.

**Regulations under this Schedule.** The Friendly Societies (Authorisation No 2) Regulations 1993, SI 1993/2521.

For general provisions as to regulations, see s 121 ante.

## PART II

### IMPOSITION OF CONDITIONS AND WITHDRAWAL OF AUTHORISATION

#### *Preliminary*

6.—(1) In this Part of this Schedule "the society" means—

- (a) in relation to the imposition of conditions on the grant of authorisation, the friendly society making the application for authorisation; and
- (b) in relation to the imposition of conditions on a current authorisation, the friendly society on whose authorisation the Commission proposes to impose conditions.

(2) For the purposes of this Part of this Schedule "officer", in relation to a registered friendly society, does not include a trustee of the society.

#### *Imposition of conditions*

7.—(1) If the Commission proposes to impose conditions, it shall serve on the society and on each of its officers a notice stating—

- (a) that the Commission proposes to impose conditions;
- (b) what conditions the Commission proposes to impose;
- (c) the grounds for their imposition; and
- (d) that the society may make representations with respect to the proposed imposition of the conditions within such period of not less than 14 days as may be specified in the notice and that, if it so requests, the Commission will afford to it an opportunity of being heard by the Commission within that period.

(2) If any condition proposed to be imposed on the society includes a requirement for a person's removal from office (whether an office in the society or in any registered branch of the society), the Commission shall also serve the notice specified in sub-paragraph (1)

above on the person whose removal is proposed giving him the like right to make representations and to be heard with respect to his proposed removal from office.

(3) The Commission shall, before reaching a decision on whether to impose conditions and, if so, what conditions, consider any representations made in accordance with sub-paragraph (1) or (2) above.

(4) The Commission may not impose conditions on grounds other than those stated, or grounds included in those stated, in the notice served by it under sub-paragraph (1) above.

(5) Except where paragraph 8 below applies, the Commission shall serve—

- (a) on the society and each of its officers; and
- (b) on every other person on whom a notice was served under sub-paragraph (2) above,

a notice stating its decision and, where it has decided to impose conditions, specifying the conditions and stating the grounds for imposing them.

(6) Where conditions are imposed on an authorisation which is already subject to conditions, the notice served on the society under sub-paragraph (5) above shall be accompanied by a statement of all subsisting conditions to which the authorisation is subject (including any that were otherwise unaffected by the decision); and the Commission shall send a copy of that statement to the central office.

8.—(1) This paragraph applies where the Commission has decided to impose conditions but proposes to impose conditions different from and more onerous than those stated in the notice served by the Commission under paragraph 7(1) above.

(2) The Commission shall serve on the society and on each of its officers a notice stating—

- (a) what conditions the Commission proposes to impose;
- (b) the grounds for their imposition instead of the conditions stated in the notice under paragraph 7(1) above; and
- (c) that the society may make representations with respect to the conditions the Commission proposes to impose within such period of not less than 7 days as may be specified in the notice and that, if the society so requests, the Commission will afford to it an opportunity of being heard by the Commission within that period.

(3) If any new or different condition proposed to be imposed on the society includes a requirement for a person's removal from office (whether an office in the society or in any registered branch of the society), the Commission shall also serve the notice specified in sub-paragraph (2) above on the person whose removal is proposed giving him the like right to make representations and to be heard with respect to his proposed removal from office.

(4) The Commission shall, before reaching a decision on whether to impose conditions different from those stated in the notice served under paragraph 7(1) above and, if so, what conditions, consider any representations made in accordance with sub-paragraph (2) or (3) above.

(5) The Commission may not impose conditions on grounds other than those stated, or grounds included in those stated, in the notice served by it under sub-paragraph (2) above.

(6) The Commission shall serve—

- (a) on the society and each of its officers; and
- (b) on every other person on whom a notice was served under sub-paragraph (3) above,

a notice stating its decision and, where it has decided to impose conditions, specifying the conditions and stating the grounds for imposing them.

(7) Where conditions are imposed on an authorisation which is already subject to conditions, the notice served on the society under sub-paragraph (6) above shall be accompanied by a statement of all subsisting conditions to which the authorisation is subject (including any that were otherwise unaffected by the decision); and the Commission shall send a copy of that statement to the central office.

(8) The procedure in this paragraph may be repeated; and on any such repeat references

in this paragraph to the notice shall be construed as references to the latest notice under sub-

9.—(1) The modification of an application to the imposition of an appeal tribunal under

(2) The notice under paragraph 7 above shall be served on the persons there specified with a copy of the notice received from the Commission and a copy shall also be sent to the central office.

(3) The notice under paragraph 7 above may be made in accordance with the provisions of paragraph 7(2) above.

(4) If the Commission has decided to impose conditions on other persons there specified in the notice served by it under paragraph 7(1) above, it shall also serve on each of those persons a notice stating—

10.—(1) Subject to sub-paragraph (2) below, the Commission shall, in any direction under section 40 of the Act, serve on each of its officers a notice stating—

- (a) that the Commission has decided to impose conditions;
- (b) the grounds for those conditions;
- (c) that the society may make representations with respect to those conditions within such period of not less than 7 days as may be specified in the notice and that, if the society so requests, the Commission will afford to it an opportunity of being heard by the Commission within that period.

(2) If the grounds for the imposition of conditions are specified in sub-paragraph (1) above, the Commission shall make representations and to be heard with respect to his proposed removal from office.

(3) Before reaching a decision on whether to impose conditions, the Commission shall consider any representations made in accordance with sub-paragraph (2) above.

(4) Except where the Commission has decided to give a direction (in which case paragraph 7(1) above applies to the society and each of its officers), the Commission shall give a direction, the grounds for which shall be specified in the notice.

(5) The Commission may not give a direction on grounds included in those stated, or grounds included in those stated, in the notice served by it under paragraph 7(1) above.

(6) Sub-paragraphs (1) to (5) above shall apply to a society which is given a direction under section 40 of the Act but the notice of any such direction shall be given to the society on which it is given.

11.—(1) On giving a direction under section 40 of the Act above the Commission shall—

- (a) publish notice of the direction in the London Gazette, and in any other newspaper for notifying the public of the direction;
- (b) send a copy of the notice to the central office;
- (c) where it relates to a society, send a copy of the notice to the society in the direction, to the secretary of the society.

(2) The central office—

- (a) shall keep the copy of the notice in the public file of the

in this paragraph to the notice under paragraph 7(1) above shall be construed as reference to the latest notice under sub-paragraph (2) of this paragraph.

*Imposition of conditions on appeal*

9.—(1) The modifications of the provisions of paragraphs 7 and 8 above in their application to the imposition of conditions by the Commission in pursuance of a direction of an appeal tribunal under section 59 above are as follows.

(2) The notice under paragraph 7(1) above shall be served on the society and the other persons there specified within the period of 14 days beginning with the date on which the Commission received notice of the tribunal's decision under subsection (10) of that section; and a copy shall also be sent within that period to the tribunal.

(3) The notice under paragraph 7(1) above may specify, as the period within which representations may be made, a period of not less than 7 days.

(4) If the Commission serves a notice under paragraph 8(2) above on the society and other persons there specified it shall send a copy of the notice to the tribunal.

*Procedure for withdrawing authorisation*

10.—(1) Subject to sub-paragraph (6) below, if the Commission proposes to give a direction under section 40 or section 41 above it shall serve on the society and on each of its officers a notice stating—

- (a) that the Commission proposes to give such a direction;
- (b) the grounds for the proposed direction; and
- (c) that the society may make representations with respect to the proposed direction within such period of not less than 14 days as may be specified in the notice and that, if the society so requests, it will be afforded an opportunity of being heard by the Commission within that period.

(2) If the grounds for the proposed direction include the ground that a person is not a fit and proper person to hold office in the society, the Commission shall also serve the notice specified in sub-paragraph (1) above on the person concerned giving him the like right to make representations and to be heard with respect to his fitness and propriety for office.

(3) Before reaching a decision on whether to give a direction, the Commission shall consider any representations made to it in accordance with sub-paragraph (1) or (2) above.

(4) Except where the Commission proposes to impose conditions instead of giving a direction (in which case paragraphs 7 and 8 above apply), the Commission shall serve on the society and each of its officers a notice stating its decision and, where it has decided to give a direction, the grounds for the decision.

(5) The Commission may not give a direction on grounds other than those stated, or grounds included in those stated, in the notice served under sub-paragraph (1) above.

(6) Sub-paragraphs (1) to (5) above shall not apply in relation to a direction to a friendly society which is given at the request of the society or under section 40(2) or (3)(g) above; but the notice of any such direction sent to the secretary of the society shall state the grounds on which it is given.

11.—(1) On giving a direction in relation to a friendly society under section 40 or 41 above the Commission shall—

- (a) publish notice of it in one or more of the London, Edinburgh and Belfast Gazettes, and in any such other ways as the Commission considers appropriate for notifying the public;
- (b) send a copy of it to the secretary of the society concerned and to the central office;
- (c) where it relates only to part of the business covered by the society's authorisation, send a copy of the terms of the authorisation, after taking account of the direction, to the secretary of the society and to the central office.

(2) The central office—

- (a) shall keep the copy of a direction sent to it under sub-paragraph (1)(b) above on the public file of the society;

- (b) where a copy of the terms of the society's authorisation is sent to it under sub-paragraph (1)(c) above, shall keep the copy on the public file of the society.

*Non-receipt of notice by officer*

12. The non-receipt by an officer of a friendly society or registered branch of a notice of a matter does not affect the validity of any action on the part of the Commission.

**NOTES**

- Commencement.** See the note to s 32 ante.  
**Para 6: Imposition of conditions.** See ss 34, 36 ante. If an authorisation was subject to conditions and it appears to the Commission that the society has not complied with a condition, the Commission may give a direction under s 40(1) ante; see s 40(3)(d) ante.  
**Para 7: It shall serve . . . a notice.** As to the service of notices, see s 113 ante.  
**Not less than 14 days.** Cf the note "Not less than 2 months' previous notice" to s 26 ante.  
**Send a copy . . . to the central office.** As to the form of documents to be sent to the central office and for the power to prescribe fees for the inspection, etc of documents in the custody of the central office, see s 114 ante. As to evidence of documents, see s 111 ante.  
**Para 9: 14 days beginning with, etc.** See the note "14 days commencing with, etc" to s 44 ante.  
**Para 10: Secretary.** As to the appointment of this officer, see s 28 ante.  
**Para 11: Considers appropriate.** See the note "Thinks fit" to s 4 ante.  
**Public.** See the note to s 63 ante.  
**Public file.** See s 104 ante.  
**Power to modify, etc.** See the Introductory Note to Pt IV of this Act ante.  
**Definitions.** For "the Commission", see s 1(1) ante; for "authorisation", see s 32(9) ante; for "the public file", see s 104 ante; for "friendly society", "registered branch" and "registered friendly society", see s 116 ante; for "the central office", "notice" and "officer" (but note as to "officer" para 6(2) above), see s 119(1) ante. Note as to "the society", para 6(1) above.

SCHEDULE 14

Section 72

AUDITORS: APPOINTMENT, TENURE, QUALIFICATIONS AND REMUNERATION

*Appointment*

- 1.—(1) The first auditors of a friendly society or registered branch may be appointed by the committee of management of the society or branch at any time before the first general meeting of the society or branch following the end of its initial financial year; and auditors so appointed shall hold office until the conclusion of that meeting.  
 (2) If the committee of management fails to exercise its powers under sub-paragraph (1) above, those powers may be exercised by the society or branch in general meeting.  
 2. The committee of management, or the society or branch in general meeting, may fill any casual vacancy in the office of auditor; but while any such vacancy continues, the surviving or continuing auditor or auditors (if any) may act.  
 3.—(1) If at any annual general meeting of a friendly society or registered branch no auditors are appointed or re-appointed, the Commission may appoint a person to fill the vacancy; and the society or branch shall, within one week of the power of the Commission becoming exercisable, give it notice of that fact.  
 (2) If a society or branch fails to give the notice required by sub-paragraph (1) above, the society or branch shall be guilty of an offence and liable on summary conviction—  
 (a) to a fine not exceeding level 3 on the standard scale; and  
 (b) in the case of a continuing offence to an additional fine not exceeding one-tenth of that level for every day during which the offence continues.

*Eligibility for appointment*

- 4.—(1) Subject to paragraph 7 below, a person is eligible for appointment as the auditor of a friendly society or registered branch only if he—  
 (a) is a member of a recognised supervisory body; and

- (b) is not ineligible  
 (2) An individual or registered branch.  
 (3) In this Schedule—  
 "firm" means a body "recognised supervisory for the purpose of Companies (N  
 5.—(1) A person is in registered branch of the so  
 (a) an officer or employee of a society;  
 (b) a partner or employee of a partner, or, in the case of an incorporated 27(1)(a) or (b) of the Corporation (Ireland) Order 1990 for a of a body jointly controlled  
 (2) For this purpose an officer or employee of a society  
 (3) A person is also ineligible if there exists between him and the incorporated friendly society may be specified by regulation  
 (4) In this paragraph "a Act 1989 or Article 54 of

- 6.—(1) The following Schedule of a partnership in Ireland, or under the law of a legal person.  
 (2) The appointment is partnership as such and not  
 (3) Where the partnership  
 (a) any partnership for the appointment  
 (b) any person who partnership and  
 (4) For this purpose a another partnership only if same as those of the former as succeeding to the practice substantially the whole of t  
 (5) Where the partnership paragraph (3) above, the partnership body be treated as extending who succeeds to the business the body shall be treated as

*Cases in which au*

- 7.—(1) A person who is auditor of a registered friendly  
 (a) its receipts and p the aggregate, ex  
 (b) the number of it

(b) is not ineligible for the appointment under the rules of that body.

(2) An individual or a firm may be appointed as auditor of a friendly society or registered branch.

(3) In this Schedule—

“firm” means a body corporate or a partnership; and  
 “recognised supervisory body” means a body which is a recognised supervisory body for the purposes of Part II of the Companies Act 1989 or Part III of the Companies (Northern Ireland) Order 1990.

5.—(1) A person is ineligible for appointment as an auditor of a friendly society or a registered branch of the society under this Schedule if he is—

- (a) an officer or employee of the friendly society or any registered branch of the society;
- (b) a partner or employee of such a person or a partnership of which such a person is a partner,

or, in the case of an incorporated friendly society, if he is ineligible by virtue of section 27(1)(a) or (b) of the Companies Act 1989 or Article 20(1) of the Companies (Northern Ireland) Order 1990 for appointment as company auditor of a subsidiary of the society or of a body jointly controlled by the society and some other person.

(2) For this purpose an auditor of a friendly society or branch shall not be regarded as an officer or employee of the society or branch.

(3) A person is also ineligible for appointment as auditor of a friendly society or branch if there exists between him or any associate of his and the society or branch or, if it is an incorporated friendly society, any of its subsidiaries, a connection of any such description as may be specified by regulations made by the Commission.

(4) In this paragraph “associate” has the meaning given by section 52 of the Companies Act 1989 or Article 54 of the Companies (Northern Ireland) Order 1990.

#### *Appointment of partnerships*

6.—(1) The following provisions apply to the appointment as auditor under this Schedule of a partnership constituted under the law of England and Wales or Northern Ireland, or under the law of any other country or territory in which a partnership is not a legal person.

(2) The appointment is (unless a contrary intention appears) an appointment of the partnership as such and not of the partners.

(3) Where the partnership ceases, the appointment shall be treated as extending to—

- (a) any partnership which succeeds to the practice of that partnership and is eligible for the appointment; and
- (b) any person who succeeds to that practice having previously carried it on in partnership and is eligible for the appointment.

(4) For this purpose a partnership shall be regarded as succeeding to the practice of another partnership only if the members of the successor partnership are substantially the same as those of the former partnership; and a partnership or other person shall be regarded as succeeding to the practice of a partnership only if it or he succeeds to the whole or substantially the whole of the business of the former partnership.

(5) Where the partnership ceases and no person succeeds to the appointment under sub-paragraph (3) above, the appointment may with the consent of the recognised supervisory body be treated as extending to a partnership or other person eligible for the appointment who succeeds to the business of the former partnership or to such part of it as is agreed by the body shall be treated as comprising the appointment.

#### *Cases in which auditor need not be a member of a recognised supervisory body*

7.—(1) A person who is not a member of a recognised supervisory body may be an auditor of a registered friendly society if—

- (a) its receipts and payments in respect of the preceding financial year did not, in the aggregate, exceed £5,000; and
- (b) the number of its members at the end of that year did not exceed 500; and

- (c) the value of its assets at the end of that year did not, in the aggregate, exceed £5,000; and
- (d) it is not a collecting society.

(2) A person who is not a member of a recognised supervisory body may be an auditor of a registered branch if—

- (a) the conditions mentioned in sub-paragraph (1)(a), (b) and (c) above are satisfied; and
- (b) it is not a branch of a collecting society.

(3) A person who is not a member of a recognised supervisory body may also be an auditor of a registered branch if—

- (a) the conditions mentioned in sub-paragraph (1)(a) and (b) and sub-paragraph (2)(b) above are satisfied; and
- (b) at the end of the preceding financial year at least 75 per cent of its assets had been transferred to the society of which it is a branch or to another registered branch of that society for the purpose of being invested, in accordance with the 1974 Act, by that society or other branch, and the value of its assets not so transferred did not, in the aggregate, exceed £5,000; and
- (c) an auditor of the society or branch to which the assets were transferred must be a member of a recognised supervisory body.

(4) Regulations made by the Commission, with the consent of the Treasury, may—

- (a) substitute for any sum or number for the time being specified in sub-paragraph (1) above, or for any sum or percentage for the time being specified in sub-paragraph (3) above, such sum, number or percentage as may be specified in the regulations; and
- (b) prescribe what receipts and payments of a body shall be taken into account for the purposes of those sub-paragraphs.

(5) A registered friendly society or registered branch which, by virtue of this paragraph, may appoint a person who is not a member of a recognised supervisory body as an auditor in respect of any financial year is in this Schedule referred to as an exempt society or, as the case may be, an exempt branch, in respect of that financial year.

(6) Subject to any direction given by the Commission under sub-paragraph (7) below, a society or branch which in respect of any financial year is an exempt society or, as the case may be, an exempt branch shall in respect of that year appoint—

- (a) one or more qualified auditors; or
- (b) two or more persons who are not qualified auditors,

to audit its annual accounts for that year.

(7) The Commission may give a direction in the case of any particular society or branch which is an exempt society or branch in respect of any financial year that sub-paragraph (4) above shall apply to it in respect of that year as if it were not an exempt society or branch.

#### *Effect of ineligibility*

8.—(1) No person shall act as an auditor under this Act if he is ineligible for appointment to the office.

(2) If during his term of office an auditor appointed under this Schedule become ineligible for appointment to the office, he shall thereupon vacate office and shall forthwith give notice in writing to the society concerned that he has vacated it by reason of ineligibility.

(3) A person who acts as auditor under this Act in contravention of sub-paragraph (1) above, or fails to give notice of vacating his office as required by sub-paragraph (2) above, is guilty of an offence and liable—

- (a) on conviction on indictment, to a fine; and
- (b) on summary conviction, to a fine not exceeding the statutory maximum and, in the case of a continuing offence, to an additional fine not exceeding one-tenth of the statutory maximum for every day during which the offence continues.

(4) In proceedings against a person for an offence under this paragraph it is a defence for

him to show that he did not know or believe himself to be ineligible for appointment.

#### *Powers*

9.—(1) Where a person is appointed as auditor of a friendly society or registered branch during a period during which the Commission may direct that the person is not eligible for appointment—

- (a) to audit the relevant accounts; and
- (b) to review the firmness of the audit if an audit is needed;

and the society or branch shall be bound to comply with the directions so given.

(2) If a second audit is required, the Commission may direct that such steps as are necessary to comply with the directions shall be taken.

(3) Where a direction is given under this paragraph, the Commission may direct that the person appointed as auditor shall be bound to comply with the directions of the direction to the centre of the society or branch receiving any report under this paragraph.

(4) Any statutory or other provision which applies so far as practicable, in relation to the audit of accounts, shall apply to the audit of accounts of a friendly society or registered branch.

(5) If a society or branch is guilty of an offence and liable to a fine under this paragraph, the standard scale; and in the case of a fine, one-tenth of that level for every day during which the offence continues.

(6) A direction under this paragraph is enforceable by injunction or by order under the Companies Act 1988.

(7) If a person accepts an appointment as auditor at a time when he knows he is ineligible for appointment, he is liable to a fine of the costs incurred by it in complying with the directions.

10.—(1) A friendly society or registered branch may, by resolution of a meeting, remove an auditor by a resolution of a meeting remove anything in any agreement between the auditor and the society or branch.

(2) Where such a resolution is passed, the auditor shall give notice of that fact to the centre of the society or branch.

(3) If a friendly society or registered branch is guilty of an offence under this paragraph, it shall be liable to a fine not exceeding level 3 on the standard scale; and in the case of a fine, one-tenth of that level for every day during which the offence continues.

(4) Nothing in this paragraph shall affect any claim for compensation or damages that may be made by an auditor or of an appointment as auditor or of an appointment as auditor.

(5) An auditor of a friendly society or registered branch, notwithstanding his removal, shall continue to be liable to the general meeting of the society or branch.

- (a) his term of office was not completed; and
- (b) it is proposed to fill the vacancy.

#### *Rights of auditors*

11.—(1) Special notice is required for the removal of a society or registered branch—

- (a) removing an auditor

him to show that he did not know and had no reason to believe that he was, or had become, ineligible for appointment.

*Power of Commission to require second audit*

9.—(1) Where a person appointed auditor under this Schedule was, for any part of the period during which the audit was conducted, ineligible for appointment to that office, the Commission may direct the friendly society or registered branch concerned to retain a person eligible for appointment as auditor under this Schedule—

- (a) to audit the relevant accounts again; or
- (b) to review the first audit and to report (giving his reasons) whether a second audit is needed;

and the society or branch shall comply with such a direction within 21 days of its being given.

(2) If a second audit is recommended, the society or branch shall forthwith take such steps as are necessary to comply with the recommendation.

(3) Where a direction is given under this paragraph, the Commission shall send a copy of the direction to the central office; and the society or branch shall within 21 days of receiving any report under sub-paragraph (1)(b) above send a copy of it to the central office.

(4) Any statutory or other provisions applying in relation to the first audit shall apply, so far as practicable, in relation to a second audit under this paragraph.

(5) If a society or branch fails to comply with the requirements of this paragraph, it is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale; and in the case of a continuing offence to an additional fine not exceeding one-tenth of that level for every day during which the offence continues.

(6) A direction under this paragraph is, on the application of the Commission, enforceable by injunction or, in Scotland, by an order under section 45 of the Court of Session Act 1988.

(7) If a person accepts an appointment, or continues to act, as an auditor under this Act at a time when he knows he is ineligible, the society concerned may recover from him any costs incurred by it in complying with the requirements of this paragraph.

*Removal of auditors*

10.—(1) A friendly society or registered branch may by ordinary resolution in general meeting remove an auditor before the expiration of his term of office, notwithstanding anything in any agreement between it and him.

(2) Where such a resolution is passed, the society or branch shall within 14 days give notice of that fact to the central office.

(3) If a friendly society or branch fails to give the notice required by sub-paragraph (2) above, it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale and in the case of a continuing offence to an additional fine not exceeding one-tenth of that level for every day during which the offence continues.

(4) Nothing in this paragraph is to be taken as depriving a person removed under it of compensation or damages that may be payable to him in respect of the termination of his appointment as auditor or of any appointment terminating with that as auditor.

(5) An auditor of a friendly society or registered branch who has been removed has, notwithstanding his removal, the rights conferred by section 75 above in relation to any general meeting of the society or branch at which—

- (a) his term of office would otherwise have expired; or
- (b) it is proposed to fill the vacancy caused by his removal.

*Rights of auditors who are removed or not re-appointed*

11.—(1) Special notice is required for a resolution at a general meeting of a friendly society or registered branch—

- (a) removing an auditor before the expiration of his term of office; or



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it is proposed to fill the vacancy caused by his resignation, state the fact that the statement has been made;

- (b) include in or with that notice a copy of a statement in writing by him (not exceeding a reasonable length) of the circumstances connected with his resignation; and
- (c) make copies of the statement available to members at any such meeting.

(4) If the committee of management does not within 21 days from the date of the deposit of a requisition under this paragraph proceed duly to convene a meeting for a day not more than 28 days after the date on which the notice convening the meeting is given, every member of the committee who failed to take all reasonable steps to secure that a meeting was convened as mentioned above is guilty of an offence and liable—

- (a) on conviction on indictment, to a fine; and
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

(5) If notice of the statement mentioned above is not given as required because received too late or because of the default of the society or branch, the auditor may (without prejudice to his right to be heard orally) require that the statement be read out at the meeting in question.

(6) The steps required by sub-paragraphs (3) and (5) above need not be taken if, on the application of the society or branch or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this paragraph are being abused to secure needless publicity for defamatory matter; and the court may order the costs of the society or branch on such an application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

(7) An auditor who has resigned has, notwithstanding his resignation, the rights conferred by section 75 above in relation to any such general meeting of the society or branch as is mentioned in sub-paragraph (3) above; and in such a case, the references in that section to matters concerning the auditors as auditors shall be construed as references to matters concerning him as a former auditor.

*Statement by person ceasing to hold office*

14.—(1) Where an auditor of a friendly society or registered branch ceases for any reason to hold office, he shall deposit at the registered office of the society or branch concerned—

- (a) a statement of any circumstances connected with his ceasing to hold office which he considers should be brought to the attention of the members or creditors of the society or branch; or
- (b) if he considers that there are no such circumstances, a statement that there are none.

(2) In a case falling within sub-paragraph (1)(a) above it shall also be the duty of the auditor, unless he receives notice of an application under sub-paragraph (4) below before the end of the period of 21 days beginning with the day on which he deposited the statement, to send the central office a copy within a further 7 days.

(3) In the case of resignation, the statement shall be deposited along with the notice of resignation; in the case of failure to seek re-appointment, the statement shall be deposited not less than 14 days before the end of the time allowed for next appointing auditors; in any other case, the statement shall be deposited not later than the end of the period of 14 days beginning with the date on which he ceases to hold office.

(4) If the statement is of circumstances which the auditor considers should be brought to the attention of the members or creditors of the society or branch, the society shall within 14 days of the deposit of the statement either—

- (a) send a copy of it to every member who is, when the statement is deposited, entitled to vote at a meeting of the society or branch; or
- (b) apply to the court.

(5) The society or branch shall if it applies to the court notify the auditor of the application.

(6) If the court is satisfied that the auditor is using the statement to secure needless publicity for defamatory matter—



their report or require the relevant information to be disclosed in a note to the accounts of the society or branch and require the auditors to supply the committee of management of the society or branch with such information as is necessary to enable that disclosure to be made.

#### NOTES

**Commencement.** This Schedule, except para 7, was brought into force on 13 January 1993 for the purposes of the auditors of incorporated friendly societies by the Friendly Societies Act 1992 (Commencement No 3 and Transitional Provisions) Order 1993, SI 1993/16 (made under s 126(2) ante). Para 17 was brought into force for all remaining purposes and para 7(4) was brought into force on 13 September 1993 by the Friendly Societies Act 1992 (Commencement No 6 and Transitional Provisions) Order 1993, SI 1993/2213 (made under s 126(2), (3) ante). The entire Schedule, except for para 7, was brought into force for all remaining purposes and para 7(1)–(3), (5)–(7) were brought into force on 1 January 1994 by SI 1993/2213.

**General Note.** See the General Note to s 69 ante.

**Para 1: Committee of management.** For general provisions as to the committee of management, see s 27, Sch 11 ante.

**Initial financial year.** As to the initial financial year of a friendly society, see s 118(2) ante.

**Para 3: Annual general meeting.** For provisions as to annual general meetings, see s 30, Sch 12, paras 1–3 ante.

**Within one week of, etc.** Cf the note "Within 7 days of, etc" to s 18 ante.

**Guilty of an offence.** As to the time limit for commencing proceedings, see s 107 ante; as to offences by bodies corporate, partnerships and unincorporated associations, see s 108 ante; as to the defence of due diligence, see s 109 ante; and as to the jurisdiction of magistrates' courts, see s 110 ante.

**Summary conviction; standard scale.** See the notes to s 18 ante.

**Every day during which the offence continues.** See the note to s 20 ante.

**Para 4: Individual.** See the note to s 75 ante.

**Body corporate.** See the note "Bodies corporate" to s 7 ante.

**Para 5: Person.** Cf the note to s 1 ante.

**Para 6: England; Wales.** See the note to s 23 ante.

**Para 7: Treasury.** See the note to s 1 ante.

**Annual accounts.** See ss 69, 70 ante.

**Direction.** As to the service of directions, see s 113 ante.

**Para 8: Forthwith.** A provision to the effect that a thing must be done "forthwith" or "immediately" means that it must be done as soon as possible in the circumstances, the nature of the act to be done being taken into account; see *Re Southam, ex p Lamb* (1881) 19 Ch D 169 at 173, [1881–5] All ER Rep 391, CA; *Re Muscovitch, ex p Muscovitch* [1939] Ch 694 at 697, 698, [1939] 1 All ER 135 at 139, CA; and *Sameen v Abeyewickrema* [1963] AC 597, [1963] 3 All ER 382, PC. Provided, however, that no harm is done, "forthwith" means "at any reasonable time thereafter", and in the absence of some detriment suffered by the person affected failure to act "forthwith" does not invalidate the action taken; see *Hillingdon London Borough v Cutler* [1968] 1 QB 124, [1967] 2 All ER 361, CA; and see also *R v Secretary of State for Social Services, ex p Child Poverty Action Group* [1987] 1 All ER 1047, [1989] 3 WLR 1116, CA. See, further, 45 Halsbury's Laws (4th edn) para 1148 and 2 Words and Phrases (3rd edn) 272–274.

**Give notice.** As to the service of notices, see s 113 ante.

**Writing.** See the note "Written" to s 17 ante.

**Is ... liable; conviction on indictment; fine; statutory maximum.** See the notes to s 31 ante.

**It is a defence, etc.** See the note "It shall be a defence, etc" to s 109 ante.

**Know.** Cf the note "Knowingly" to s 62 ante.

**Reason to believe.** It is submitted that these words require not only that the person in question has reason to believe but also that he does actually believe; see *R v Banks* [1916] 2 KB 621, [1916–17] All ER Rep 356, and *R v Harrison* [1938] 3 All ER 134, 159 LT 95; and see also *Nakkuda Ali v Jayaratne* [1951] AC 66, PC.

The existence of the reason to believe and of the belief founded on it is ultimately a question of fact to be tried on evidence and the grounds on which the person acted must be sufficient to induce in a reasonable person the required belief; see in particular, *McArdle v Egan* (1933) 150 LT 412, [1933] All ER Rep 611, CA; *Nakkuda Ali v Jayaratne* above; *Registrar of Restrictive Trading Agreements v W H Smith & Son Ltd* [1969] 3 All ER 1065 at 1070, [1969] 1 WLR 1460 at 1468, CA per Lord Denning MR, and *IRC v Rossminster Ltd* [1980] AC 952, [1980] 1 All ER 80 at 84, 92, 103, 104, HL.

**Para 9: Within 21 days of, etc.** See the note "Within 7 days of, etc" to s 18 ante.

**Shall send a copy ... to the central office.** As to the form of documents to be sent to the central office and for the power to prescribe fees for the inspection, etc of documents in the custody of the central office, see s 114 ante. As to evidence of documents, see s 111 ante.

**Practicable.** See the note to s 26 ante.

**Para 11: Special notice.** As to resolutions requiring special notice, see s 30, Sch 12, para 9 ante.

**Para 12: Registered office.** The memorandum of an incorporated friendly society must specify the address of its registered office; see s 5(6), Sch 3, para 4(1)(c) ante.

**Para 13: 28 days after, etc.** As a general rule the effect of defining a period in such a manner is to exclude the day on which the event in question occurs; see 45 Halsbury's Laws (4th edn) para 1127.

**Para 14: 21(14) days beginning with; etc.** See the note "14 days commencing with, etc" to s 44 ante.

**Para 17: Their report.** As to the auditors' report, see s 73 ante.

**Power to modify, etc.** See the Introductory Note to Pt VI of this Act ante.

**Definitions.** For "the Commission", see s 1(1) ante; for "jointly controlled body" and "subsidiary", see s 13(9) ante; for "friendly society", "incorporated friendly society", "registered branch" and "registered friendly society", see s 116 ante; for "financial year", see s 118 ante; for "the central office", "collecting society", "committee of management", "the court", "notice", "notification", "notify", "officer", see s 119(1) ante. Note as to "firm" and "recognised supervisory body", para 4(3) above; as to "associate", para 5(4) above; as to "exempt society" and "exempt branch", para 7(5) above; as to "remuneration", para 16(4) above; and as to "associate", para 17(2) above.

**Companies Act 1989, Pt II, ss 27(1)(a), (b), 52.** See Vol 8, title Companies. For the meaning of "recognised supervisory body", see s 30(5) of, and Sch 11 to, that Act.

**Companies (Northern Ireland) Order 1990, SI 1990/593 (NI 5).**

**1974 Act.** I.e. the Friendly Societies Act 1974 ante; see s 119(1) ante.

**Court of Session Act 1988.** 1988 c 36; not printed in this work.

**Regulations under this Schedule.** Up to 1 June 1994 no regulations had been made under paras 5(3), 7(4) or 17 above.

For general provisions as to regulations, see s 121 ante.

## SCHEDULE 15

### Section 85

### AMALGAMATIONS, TRANSFERS OF ENGAGEMENTS AND CONVERSION: SUPPLEMENTARY

#### PART I

#### PROVISION OF INFORMATION TO MEMBERS

##### *Statements relating to amalgamations and transfers*

1.—(1) A friendly society which desires—

- (a) to amalgamate under section 85 above; or
- (b) to transfer its engagements to any person, or to undertake to fulfil the engagements of another friendly society, under section 86 above;

shall, subject to sub-paragraph (2) below, send a statement concerning the matters specified in paragraph 2 below to every member entitled (when the statements are sent) to vote on any resolution required by section 85, 86 or 90.

(2) Sub-paragraph (1) above does not apply, in the case of a friendly society desirous of undertaking to fulfil another society's engagements, where the Commission has consented under section 86(3)(b) or 90(2)(b) above to its proceeding by resolution of the committee of management.

(3) The statement referred to in sub-paragraph (1) above shall be sent so as to arrive no later than 14 days (or such longer period as the rules may require for notice of any resolution required by section 85, 86 or 90 above) before—

- (a) the meeting at which any such resolution is to be moved; or
- (b) where proxy voting is permitted, such earlier date as may be specified by the society, under its rules, as the final date for the receipt of instruments appointing proxies to vote at the meeting.

(4) If it appears to the Commission that it is impractical to include the summary mentioned in paragraph 2(1)(d) below in the statement referred to in sub-paragraph (1) above, the Commission may direct that the summary shall be sent separately from that statement within such period as the Commission may specify in the direction.

2.—(1) The matters of which a statement required by paragraph 1 above is to give particulars are the following, namely—

- (a) the financial position of the society and that of every other society or person participating in the amalgamation or transfer;
- (b) any interest of the members of the committee of management of the society in the amalgamation or transfer;

(c) the compensation respect of—

- (i) the member society; and
- (ii) the office amalgamation

(d) in the case of a directed to furnish

(e) any other matter amalgamation

(2) No statement shall specified in this paragraph

#### *Statements*

3.—(1) A friendly society above shall send a statement

(a) such matters as the consent of t

(b) such other matters particular conv

to every member entitled by subsection (2) of that se

(2) Regulations under matters any alternatives to

4. The statement referred than 14 days (or such longer required by section 91 abo

(a) the meeting at v

(b) where proxy v society, under its proxies to vote

but no such statement mentioned in that paragraph

5.—(1) An application

(a) of an amalgama

(b) of a transfer of e

(c) of the conversio

shall be made in such manr section, in regulations mad

(2) An application for friendly societies concerne

6.—(1) Where a friendl or conversion, it shall publi

(a) in one or more

Gazette, as the C

(b) if it so directs, in

(2) The notice shall—

(a) state that any in

Commission wi

- (c) the compensation or other consideration (if any) proposed to be paid to or in respect of—
- (i) the members of the committee of management or other officers of the society; and
  - (ii) the officers of every other society or person participating in the amalgamation or transfer;
- (d) in the case of a transfer, a summary of any actuary's report which the society is directed to furnish to the Commission under section 88 above; and
- (e) any other matter which the Commission requires in the case of the particular amalgamation or transfer.

(2) No statement shall be sent unless its contents, so far as they concern the matters specified in this paragraph, have been approved by the Commission.

*Statements relating to conversion of society into company*

3.—(1) A friendly society which desires to convert into a company under section 91 above shall send a statement concerning—

- (a) such matters as may be prescribed in regulations made by the Commission with the consent of the Treasury; and
- (b) such other matters as may be required by the Commission in the case of the particular conversion;

to every member entitled (when the statements are sent) to vote on any resolution required by subsection (2) of that section.

(2) Regulations under sub-paragraph (1) above may include among the prescribed matters any alternatives to a proposed conversion which may be available.

4. The statement referred to in paragraph 3 above shall be sent so as to arrive no later than 14 days (or such longer period as the rules may require for notice of any resolution required by section 91 above) before—

- (a) the meeting at which any such resolution is to be moved; or
- (b) where proxy voting is permitted, such earlier date as may be specified by the society, under its rules, as the final date for the receipt of instruments appointing proxies to vote at the meeting;

but no such statement may be sent unless its contents, so far as they concern the matters mentioned in that paragraph, have been approved by the Commission.

PART II

CONFIRMATION BY COMMISSION

*Applications for confirmation*

5.—(1) An application by a friendly society for confirmation by the Commission—

- (a) of an amalgamation under section 85 above,
- (b) of a transfer of engagements of a friendly society under section 86 above, or
- (c) of the conversion of a friendly society into a company under section 91 above,

shall be made in such manner as may be prescribed, with respect to applications under that section, in regulations made by the Commission with the consent of the Treasury.

(2) An application for confirmation of an amalgamation shall be made jointly by the friendly societies concerned.

6.—(1) Where a friendly society applies for confirmation of an amalgamation, transfer or conversion, it shall publish a notice of the application—

- (a) in one or more of the London Gazette, the Edinburgh Gazette or the Belfast Gazette, as the Commission directs, and,
- (b) if it so directs, in one or more newspapers.

(2) The notice shall—

- (a) state that any interested party has the right to make representations to the Commission with respect to the application;

- (b) specify a date determined by the Commission before which any written representations or notice of a person's intention to make oral representation must be received by the Commission; and
- (c) specify a date determined by the Commission as the day on which it intends to hear any oral representations.

(3) Where a friendly society participating in a transfer is required under section 88 above to furnish an actuary's report, the society shall publish a notice in the manner required by sub-paragraph (1) above—

- (a) stating that such a report has been obtained;
- (b) stating the addresses of the offices of the society at which copies of the report shall be available for inspection for a period of not less than 21 days beginning with the date of the first publication of the notice; and
- (c) containing such particulars of any other matter relating to the report which the Commission requires in the case of the transfer in question;

and such a society may include the notice required by this sub-paragraph in the notice required by sub-paragraph (1) above.

7. After the date specified in the notice in pursuance of paragraph 6(2)(b) above, the Commission shall—

- (a) determine the time and place at which oral representations may be made;
- (b) give notice of that determination to the friendly society applying for confirmation and to any persons who have given notice of their intention to make oral representations; and
- (c) send copies of any written representations received by the Commission to that society;

and the Commission shall allow that society an opportunity to comment on the written representations (whether at a hearing or in writing) before the expiration of such period as the Commission specifies in a notice to the society.

#### *Confirmation by Commission: General*

8.—(1) Where an application is duly made for confirmation by the Commission of an amalgamation, transfer of engagements or conversion, the Commission shall confirm the amalgamation, transfer or conversion unless it is precluded from doing so by any of the following provisions of this Schedule.

(2) If it appears to the Commission, in relation to any amalgamation or transfer of engagements, that there is a substantial risk that the successor society or the person taking the transfer will not be able lawfully to carry out the engagements to be transferred to it under section 85(4) or 86(5) above, the Commission—

- (a) shall not confirm the amalgamation or transfer; and
- (b) where it has confirmed the amalgamation or transfer, shall, by notice to the central office, withdraw its confirmation;

but it may not withdraw its confirmation on or after the transfer date for the amalgamation or transfer.

(3) For the purposes of sub-paragraph (2) above, the Commission may have regard to any requirements of the law of a country or territory outside the United Kingdom which appear to the Commission to be relevant.

9.—(1) Subject to sub-paragraph (3) below, the Commission shall not confirm an amalgamation or transfer if it considers that—

- (a) some information material to the members' decision (including any decision on an affected members' resolution under section 86 above) about the amalgamation or transfer was not made available to all the members eligible to vote;
- (b) the vote on any resolution approving the amalgamation or transfer does not represent the views of the members eligible to vote; or
- (c) some relevant requirement of this Act or the rules of any friendly society participating in the amalgamation or transfer was not fulfilled or not fulfilled as regards that society.

(2) Subject to sub-paragraph (3) below, the Commission shall not confirm the conversion of a society if it considers that—

- (a) some information material to the members' decision (including any decision on an affected members' resolution under section 86 above) about the amalgamation or transfer was not made available to all the members eligible to vote;
- (b) the vote on any resolution approving the amalgamation or transfer does not represent the views of the members eligible to vote; or
- (c) there is a substantial risk that the transferee will not be able lawfully to carry out the engagements to be transferred to it under section 85(4) or 86(5) above, the Commission shall not confirm the amalgamation or transfer.

(3) The Commission shall not confirm the amalgamation or conversion by virtue of this Act or the rules of a friendly society if it appears to the Commission that the transferee will not be able lawfully to carry out the engagements to be transferred to it under section 85(4) or 86(5) above, the Commission shall not confirm the amalgamation or transfer.

10.—(1) Where the Commission is required by section 87 above to confirm the amalgamation or transfer of engagements, it may give to any friendly society which is a party to the case may be, to the society—

- (a) from confirmation of the amalgamation or transfer specified in paragraph 9(2) above;
- (b) from confirmation of the amalgamation or transfer specified in paragraph 9(2) above.

it may give to any friendly society which is a party to the case may be, to the society—

(2) A direction under section 87 above—

- (a) to take such steps as may be necessary to give effect to the direction;
- (b) to furnish the Commission with such information as it may require.

and if the Commission is satisfied that the transferee has or have been substantially unable to carry out the transfer or conversion.

11. The Commission shall not confirm the amalgamation or transfer of engagements if it considers that—

- (a) that the successor society or the person taking the transfer is not a friendly society in the United Kingdom;
- (b) that there is no authority under section 87 above to confirm the amalgamation or transfer.

12. The Commission shall not confirm the amalgamation or transfer of engagements if it considers that—

- (a) that all the engagements to be transferred are not engagements which are specified in section 86 above;
- (b) that the transferee is not a friendly society participating in the amalgamation or transfer;
- (c) where the transferee is a friendly society, the purposes of each of the engagements to be transferred, continuing to be carried out within Schedule 1.

13.—(1) The Commission shall not confirm the amalgamation or transfer of engagements if it is required by section 87 above to confirm the amalgamation or transfer and it considers that the transferee will (after the transfer)—

- (a) where the transferee is a friendly society, be unable to carry out the engagements to be transferred required by section 86 above;
- (b) where the transferee is a friendly society, be unable to carry out the engagements to be transferred required by section 86 above.

(2) The Commission shall not confirm the amalgamation or transfer of engagements if it considers that the transferee will (after the transfer)—

- (a) some information material to the members' decision about the conversion was not made available to all the members eligible to vote;
- (b) the vote on any resolution approving the conversion does not represent the views of the members eligible to vote;
- (c) there is a substantial risk, in the case of conversion into a company which will require to be authorised under Part I of the Insurance Companies Act 1982, that the company will not be so authorised; or
- (d) some relevant requirement of this Act or the rules of the society was not fulfilled.

(3) The Commission shall not be precluded from confirming an amalgamation, transfer or conversion by virtue only of the non-fulfilment of some relevant requirement of this Act or the rules of a friendly society if it appears to the Commission that it could not have been material to the members' decision about the amalgamation, transfer or conversion and the Commission gives a direction that the failure is to be disregarded for the purposes of this paragraph.

10.—(1) Where the Commission would be precluded—

- (a) from confirming an amalgamation or transfer by reason of any of the defects specified in paragraph 9(1) above, or
- (b) from confirming a conversion by reason of any of the defects specified in paragraph 9(2) above,

it may give to any friendly society participating in the amalgamation or transfer or, as the case may be, to the society proposing to convert a direction under sub-paragraph (2) below.

(2) A direction under this sub-paragraph is a direction requiring a friendly society—

- (a) to take such steps to remedy the defect or defects, including the calling of a further meeting, as are specified in the direction; and
- (b) to furnish the Commission with evidence that those steps have been taken;

and if the Commission is satisfied that the steps have been taken and the defect or defects has or have been substantially remedied, the Commission shall confirm the amalgamation, transfer or conversion.

#### *Confirmation of amalgamations*

11. The Commission shall not confirm an amalgamation unless it is satisfied—

- (a) that the successor society will be able to carry on the business of the amalgamating societies in the United Kingdom without authorisation under section 32 above; or
- (b) that there is no substantial risk that the successor society will not be granted such authorisation under that section as will permit it to carry on that business in the United Kingdom.

#### *Confirmation of transfers of engagements*

12. The Commission shall not confirm a transfer unless it is satisfied—

- (a) that all the engagements included in the transfer may be transferred under section 86 above to the transferee;
- (b) that the transfer is in the interests of the members of each friendly society participating in the transfer; and
- (c) where the transfer is not of all the engagements of the transferor, that the purposes of each friendly society participating in the transfer will, after the transfer, continue to include the carrying on of one or more activities falling within Schedule 2 to this Act.

13.—(1) The Commission shall not confirm a transfer in any case where the transferee is required by section 87 above to furnish the Commission with a report unless it is satisfied that the transferee will (after taking the proposed transfer into account)—

- (a) where the report is furnished under section 87(2), possess the margin of solvency required by section 48 above;
- (b) where the report is furnished under section 87(3), possess an excess of assets over liabilities.

(2) The Commission shall not confirm a transfer of any engagements the fulfilment of which will constitute the carrying on of insurance business in the United Kingdom in any

case where the transferee is a person to whom Part II of the Insurance Companies Act 1982 applies unless the Secretary of State certifies that the transferee will, after taking the proposed transfer into account, possess any margin of solvency required by that Part of that Act.

14. The Commission shall not confirm a transfer of any engagements the fulfilment of which will constitute the carrying on in the United Kingdom of insurance business unless it is satisfied—

- (a) that the proposed transferee will be able to fulfil the engagements without authorisation under Part I of the Insurance Companies Act 1982 or section 32 of this Act; or
- (b) that there is no substantial risk that the proposed transferee will not have such authorisation as will permit it to fulfil them.

15.—(1) This paragraph applies to a transfer of engagements (other than contracts of reinsurance) the effecting of which constituted the carrying on of general business.

(2) The Commission shall not confirm such a transfer if it is to a transferee who is or will be authorised under Part I of the Insurance Companies Act 1982 to carry on in the United Kingdom insurance business and whose head office is situated in another member State, unless the supervisory authorities of that State certify that the transferee will, after taking the proposed transfer into account, possess the margin of solvency required for compliance with the first general insurance Directive.

(3) The Commission shall not confirm such a transfer in relation to engagements entered into by way of provision of insurance in another member State unless—

- (a) the transferee fulfils or will fulfil the conditions mentioned in Articles 13 to 16 of the second general insurance Directive in the member State where the risk is situated; and
- (b) the supervisory authorities of that member State agree to the transfer.

(4) The Commission shall not confirm such a transfer, in relation to engagements which cover risks situated in the United Kingdom, to a transferee who is not or will not be authorised under section 32 above or Part I of the Insurance Companies Act 1982 unless—

- (a) the transferee is an insurance company established in another member State which is or will be entitled in accordance with section 81B of the Insurance Companies Act 1982 to provide insurance in the United Kingdom in respect of those risks through that establishment; and
- (b) the supervisory authorities of the member State of that establishment agree to the transfer.

(5) The Commission shall not confirm such a transfer, in relation to engagements which cover risks situated in another member State, to a transferee who is not or will not be authorised under section 32 above or Part I of the Insurance Companies Act 1982 unless—

- (a) the transferee is an insurance company established in another member State and the supervisory authorities of that member State agree to the transfer; and
- (b) where the risk is not situated in the transferee's member State of establishment—
  - (i) the transferee fulfils the conditions mentioned in Articles 13 to 16 of the second general insurance Directive in the member State where the risk is situated;
  - (ii) the law of that member State provides for the possibility of such a transfer; and
  - (iii) the supervisory authorities of that member State agree to the transfer.

[15A.—(1) This paragraph applies to a transfer by a friendly society to which section 37(2) above applies of engagements (other than contracts of reinsurance) the effecting of which constituted the carrying on of long term business.

(2) The Commission shall not confirm such a transfer if it is to a transferee who is or will be authorised under Part I of the Insurance Companies Act 1982 to carry on in the United Kingdom insurance business and whose head office is situated in another member State, unless the supervisory authorities of that State certify that the transferee will, after taking the proposed transfer into account, possess the margin of solvency required for compliance with the first life Directive.

(3) The Commission shall not confirm such a transfer if it is to a transferee who is or will be authorised under Part I of the Insurance Companies Act 1982 to carry on in the United Kingdom insurance business and whose head office is situated in another member State, unless the supervisory authorities of that State certify that the transferee will, after taking the proposed transfer into account, possess the margin of solvency required for compliance with the first life Directive.

- (a) the transferee fulfils or will fulfil the conditions mentioned in Articles 13 to 16 of the second general insurance Directive in the member State where the risk is situated; and
- (b) the supervisory authorities of that member State agree to the transfer.

(4) The Commission shall not confirm such a transfer, in relation to engagements which cover commitments situated in the United Kingdom, to a transferee who is not or will not be authorised under section 32 above or Part I of the Insurance Companies Act 1982 unless—

- (a) the transferee is an insurance company established in another member State which is or will be entitled in accordance with section 81B of the Insurance Companies Act 1982 to provide insurance in the United Kingdom in respect of those commitments through that establishment; and
- (b) the supervisory authorities of the member State of that establishment agree to the transfer.

(5) The Commission shall not confirm such a transfer, in relation to engagements which cover commitments situated in another member State, to a transferee who is not or will not be authorised under section 32 above or Part I of the Insurance Companies Act 1982 unless—

- (a) the transferee is an insurance company established in another member State and the supervisory authorities of that member State agree to the transfer; and
- (b) where the risk is not situated in the transferee's member State of establishment—
  - (i) the transferee fulfils the conditions mentioned in Articles 13 to 16 of the second general insurance Directive in the member State where the risk is situated;
  - (ii) the law of that member State provides for the possibility of such a transfer; and
  - (iii) the supervisory authorities of that member State agree to the transfer.

16. The Commission shall not confirm such a transfer, in relation to engagements which cover risks situated in another member State, to a transferee who is not or will not be authorised under section 32 above or Part I of the Insurance Companies Act 1982 unless the society will not be authorised under section 32 above or Part I of the Insurance Companies Act 1982 of that description.

*Eff*

17. A failure to comply with section 37(2) above shall not invalidate the transfer of a society which—

- (a) participates in the insurance business of another member State; or
- (b) fails without reasonable excuse to comply with section 37(2) above.

shall be guilty of an offence under section 4 on the standard scale.

18. In this Part of this Act—

- (a) expressions which are defined in section 37(2) above and in section 37(2) of the Insurance Companies Act 1982 (i) relating to insurance business and (ii) relating to insurance business of another member State; and
- (b) "relevant requirements" means the requirements of section 37(2) above and section 37(2) of the Insurance Companies Act 1982 relating to the procedure for the amalgamation of societies.

(3) The Commission shall not confirm such a transfer in relation to engagements entered into by way of provision of insurance in another member State unless—

- (a) the transferee fulfils or will fulfil the conditions mentioned in Articles 11, 12, 14 and 16 of the second life Directive in the member State in which the commitment is situated; and
- (b) the supervisory authorities of that member State agree to the transfer.

(4) The Commission shall not confirm such a transfer, in relation to engagements which cover commitments situated in the United Kingdom, to a transferee who is not or will not be authorised under section 32 above or Part I of the Insurance Companies Act 1982 unless—

- (a) the transferee is an insurance company established in another member State which is or will be entitled in accordance with section 81B of the Insurance Companies Act 1982 to provide insurance in the United Kingdom in respect of those commitments through that establishment; and
- (b) the supervisory authorities of the member State of that establishment agree to the transfer.

(5) The Commission shall not confirm such a transfer, in relation to engagements which cover commitments situated in another member State, to a transferee who is not or will not be authorised under section 32 above or Part I of the Insurance Companies Act 1982 unless—

- (a) the transferee is an insurance company established in another member State and the supervisory authorities of that member State agree to the transfer; and
- (b) where the commitment is not situated in the transferee's member State of establishment—
  - (i) the transferee fulfils the conditions mentioned in Articles 11, 12, 14 and 16 of the second life Directive in the member State in which the commitment is situated;
  - (ii) the law of that member State provides for the possibility of such a transfer; and
  - (iii) the supervisory authorities of that member State agree to the transfer.]

16. The Commission shall not confirm a transfer to a friendly society of engagements the fulfilment of which will constitute the carrying on in the United Kingdom of non-insurance business of any description unless it is satisfied that there is no substantial risk that the society will not be authorised under section 32 above to carry on non-insurance business of that description.

#### *Effect of failure to comply with relevant requirements*

17. A failure to comply with a relevant requirement of this Act or any rules of a friendly society shall not invalidate any amalgamation, transfer of engagements or conversion; but a society which—

- (a) participates in an amalgamation or transfer or converts into a company; and
- (b) fails without reasonable excuse to comply with such a requirement;

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

#### *Interpretation*

18. In this Part of this Schedule—

- (a) expressions which are defined in section 81A or 96A of the Insurance Companies Act 1982 (interpretation of expressions derived from European Directives relating to insurance) have the same meaning as they have for the purposes of that Act;
- (b) "relevant requirement", with reference to this Act or the rules of a friendly society means a requirement of this Part of this Act or of any rules prescribing the procedure to be followed by the society in approving or effecting an amalgamation or transfer of engagements or its conversion into a company.

## NOTES

It is clear that in para 7(b) above the word "give" the second time it appears should be read as "given".

Para 15A was inserted by the Friendly Societies (Amendment) Regulations 1993, SI 1993/2519, reg 5.

**Commencement.** 13 September 1993; see the note to s 85 ante.

**Para 1: Person.** See the note to s 1 ante.

**Committee of management.** For general provisions as to the committee of management, see s 27, Sch 11 ante.

**No later than 14 days . . . before.** See the note "Not later than . . . 14 days before" to s 78 ante.

**Rules.** See s 5(6), Sch 3, para 5 ante. As to notice requirements, see, in particular, para 5(3), Table, para 11(c) of that Schedule ante.

**Appears.** See the note "Thinks fit" to s 4 ante.

**Direct.** As to the service of directions, see s 113 ante.

**Para 3: Treasury.** See the note to s 1 ante.

**Para 6: Written.** See the note to s 17 ante.

**21 days beginning with, etc.** See the note "14 days commencing with, etc" to s 44 ante.

**Para 7: The Commission shall . . . give notice.** As to the service of notices, see s 113 ante.

**Para 8: Notice to the central office.** As to the form of documents to be sent to the central office and for the power to prescribe fees for the inspection, etc of documents in the custody of the central office, see s 114 ante. As to evidence of documents, see s 111 ante.

**United Kingdom.** See the note to s 14 ante.

**Para 10: Satisfied.** See the note "Thinks fit" to s 4 ante.

**Para 11: Carry on . . . business.** See the note "Carrying on . . . business" to s 7 ante.

**Para 13: Secretary of State.** See the note to s 64 ante.

**Para 15: Member State.** See the note to s 13 ante.

**Para 17: Reasonable excuse.** See the note to s 60 ante.

**Guilty of an offence.** As to the time limit for commencing proceedings, see s 107 ante; as to offences by bodies corporate, partnerships and unincorporated associations, see s 108 ante; as to the defence of due diligence, see s 109 ante; and as to the jurisdiction of magistrates' courts, see s 110 ante.

**Summary conviction; standard scale.** See the notes to s 18 ante.

**Para 18: This Part of this Act.** See Pt VIII (ss 85-92 and Sch 15).

**Power to modify, etc.** See the Introductory Note to Pt VIII of this Act ante.

**Definitions.** For "the Commission", see s 1(1) ante; for "friendly society", see s 116 ante; for "insurance business", see s 117(1), (2) ante; for "commitment", "general business" and "long term business", see s 117(1) ante; as to "member State where the commitment is situated", see s 117(6) ante; for "the central office", "committee of management", "first life Directive", "non-insurance business", "notice", "officer" and "second life Directive", see s 119(1) ante. By virtue of para 18(a) above, as to "provision of insurance in a member State", see the Insurance Companies Act 1982, s 81A(1), Vol 22, title Insurance (Pt 1), for "member State of establishment", see s 81A(2) of that Act, for "insurance company" and as to the "covering of a risk" and "covering of a commitment", see s 81A(3) of that Act, for "the first general insurance Directive" and "the second general insurance Directive", see s 96A(1), (1A) of that Act, as to a "company established in a particular member State", see s 96A(2) of that Act, and as to "member State where the risk is situated", see s 96A(3) thereof, in the same title. Note as to "relevant requirement", para 18(b) above.

**Insurance Companies Act 1982.** See Vol 22, title Insurance (Pt 2).

**Regulations under this Schedule.** Up to 1 June 1994 no regulations had been made under para 3 or 5 above.

For general provisions as to regulations, see s 121 ante.

(Sch 16, paras 1, 2 amend the Friendly Societies Act 1974, s 4(1), (3), and insert s 4(2A) of that Act ante; paras 1, 3 repeal s 6(2) thereof; paras 1, 4 amend s 7(1) thereof ante; paras 1, 5 amend s 13(1) thereof ante; paras 1, 6 substitute s 15 of that Act ante and repeal s 17 thereof, but not so as to affect the operation of ss 15(2), 17 in relation to an acknowledgement of registration issued to a registered society under s 15(1); paras 1, 7 amend s 21 of that Act ante; paras 1, 8 insert s 23A of that Act ante; paras 1, 9 substitute s 24 thereof ante; paras 1, 10 substitute s 26 thereof ante; paras 1, 11 repeal ss 27, 28 thereof; paras 1, 12 repeal ss 29-45 thereof in relation to registered friendly societies and registered branches of such societies; paras 1, 13 insert s 35(5A) thereof ante; paras 1, 14 add s 40(3) thereof ante; paras 1, 15 repeal s 46(1)(a), (b) thereof, but without prejudice to the generality of s 46(1)(e), and insert s 46(2A) thereof ante; paras 1, 16 amend s 49 thereof ante; paras 1, 17 insert s 50(2A) thereof ante; paras 1, 18 amend s 51(2), (4) thereof ante; paras 1, 19 substitute s 53(1) thereof and repeal s 53(3) thereof; paras 1, 20 amend s 55(4) thereof ante; paras 1, 21 insert s 57A thereof ante; paras 1, 22 insert s 63A thereof ante; paras 1, 23 insert ss 65A, 65B thereof ante; paras 1, 24 repeal ss 70-75 thereof (as from a day to be appointed in the case of s 74); paras 1, 25 amend s 76 thereof ante; paras 1, 26 repeal s 77 thereof; paras 1, 27 amend s 78(1) thereof ante; paras 1, 28 amend s 80 thereof ante; paras 1, 29

amend s 82(2), (3), insert s s 83(3), (8) thereof ante; paras 1, 32 insert s 84A thereof ante; paras 1, 33 insert s 87 thereof ante; paras 1, 34 insert s 88 thereof ante; paras 1, 35 insert s 89 thereof ante; paras 1, 36 insert s 90 thereof ante; paras 1, 37 insert s 91 thereof ante; paras 1, 38 insert s 92 thereof ante; paras 1, 39 insert s 93 thereof ante; paras 1, 40 insert s 94 thereof ante; paras 1, 41 insert s 95A thereof ante; paras 1, 42 amend s 98 thereof ante; paras 1, 43 amend s 102 thereof ante; paras 1, 44 amend s 103 thereof ante; paras 1, 45 amend s 104 thereof ante; paras 1, 46 amend s 105 thereof ante; paras 1, 47 amend s 110(2) thereof ante; paras 1, 48 amend s 111 thereof ante; paras 1, 49 amend s 112 thereof ante; paras 1, 50 amend s 113 thereof ante; paras 1, 51 amend s 114 thereof ante; paras 1, 52 insert s

## Section 97

## AMENDMENT

1.—(1) In section 1 (1) of this Act, paragraph (a) there shall be

"(aa) to take the purpose of i protecting—

(i) member United societies

(ii) others v inability and

(iii) persons societies a group Societies

but, in relation to scheme, a person indemnified, assist members of the s

(2) In paragraph (b) of t "friendly societies".

2. After section 3 there

## "3A Authorised and

(1) The functions of persons such as are ment societies in question are

(2) Friendly societies

(a) they are auth

(b) the Board is s

(c) the Board has

(3) A society falls wi

(a) it is required

margin of sol

(b) it possesses th

(4) A society falls wi

(a) it is not requi

a margin of s

(b) the value of i

(5) It shall be the du

amend s 82(2), (3), insert s 82(3A), (3B), and add s 82(8), (9) thereof ante; paras 1, 30 amend s 83(3), (8) thereof ante; paras 1, 31 repeal s 84 thereof in relation to registered friendly societies; paras 1, 32 insert s 84A thereof ante; paras 1, 33 amend s 86 thereof ante; paras 1, 34 substitute s 87 thereof ante; paras 1, 35 repeal ss 88, 89 thereof; paras 1, 36 repeal s 90 thereof in relation to registered friendly societies; paras 1, 37 amend s 91(4) thereof ante; paras 1, 38 amend s 93 thereof ante; paras 1, 39 repeal s 95 thereof in relation to registered friendly societies and insert s 95A thereof ante; paras 1, 40 amend s 96 thereof ante; paras 1, 41 amend s 97(1) thereof ante; paras 1, 42 amend s 98 thereof ante; paras 1, 43 amend s 100 thereof ante; paras 1, 44 amend s 102 thereof ante; paras 1, 45 repeal s 106 thereof; paras 1, 46 insert s 107(2A) thereof ante; paras 1, 47 amend s 110(2) thereof ante; paras 1, 48 amend s 111(1) thereof ante; paras 1, 49 repeal s 115 thereof ante; paras 1, 50 amend s 117(3) thereof ante; paras 1, 51 amend Sch 2, para 3 to that Act ante and repeal Sch 2, paras 7, 12, 15 thereto in relation to registered friendly societies; paras 1, 52 insert Sch 6A to that Act ante.)

## SCHEDULE 17

## Section 97

## AMENDMENTS OF POLICYHOLDERS PROTECTION ACT 1975

1.—(1) In section 1 (the Policyholders Protection Board), in subsection (2), after paragraph (a) there shall be inserted the following paragraph—

“(aa) to take the measures provided for by sections 8A to 16 below for the purpose of indemnifying (in whole or in part) or otherwise assisting or protecting—

- (i) members of friendly societies carrying on insurance business in the United Kingdom who have entered into contracts of insurance with societies of which they are members; and
- (ii) others who have been or may be prejudiced in consequence of the inability of friendly societies to meet their liabilities under such contracts; and
- (iii) persons who have entered into contracts of insurance with friendly societies for the provision of group insurance benefits to the members of a group scheme (within the meaning of section 11 of the Friendly Societies Act 1992);

but, in relation to benefits provided by a friendly society in pursuance of such a scheme, a person falling within sub-paragraph (iii) above is not entitled to be indemnified, assisted or protected if the members of the scheme are required to be members of the society.”

(2) In paragraph (b) of that subsection, after the word “companies” there shall be inserted “friendly societies”.

2. After section 3 there shall be inserted the following section—

## “3A Authorised and other friendly societies

(1) The functions of the Board under this Act shall be exercisable in relation to persons such as are mentioned in section 1(2)(aa) above only in cases where the friendly societies in question are qualifying friendly societies.

(2) Friendly societies are qualifying friendly societies if—

- (a) they are authorised friendly societies;
- (b) the Board is satisfied that they fall within subsection (3) or (4) below; or
- (c) the Board has at any time been so satisfied.

(3) A society falls within this subsection if—

- (a) it is required by section 48 of the Friendly Societies Act 1992 to maintain a margin of solvency; and
- (b) it possesses the margin of solvency which it is required to maintain.

(4) A society falls within this subsection if—

- (a) it is not required by section 48 of the Friendly Societies Act 1992 to maintain a margin of solvency; but
- (b) the value of its assets exceeds its liabilities.

(5) It shall be the duty of the Commission to send the Board any abstract or other

information required by the Board to enable it to perform the functions conferred on it by this section."

3. In section 4 (protection confined to United Kingdom policies) after subsection (2) there shall be inserted the following subsection—

"(3) A contract of insurance with a friendly society is a United Kingdom policy for the purposes of this Act at any time when the performance by the society of any of its obligations under the contract would constitute the carrying on by the society in the United Kingdom of insurance business of any class."

4. In the heading preceding section 5 (duties of the Board in case of companies in liquidation) after the word "companies" there shall be inserted "and friendly societies".

5. After section 5 there shall be inserted the following section—

**"5A Application of sections 8A, 10 and 11**

(1) The functions of the Board under sections 8A, 10 and 11 below are exercisable in the case of a registered friendly society if—

- (a) an order has been made for the winding up of the society on a petition under section 87 of the Friendly Societies Act 1974;
- (b) it has terminated under paragraph (a) of subsection (1) of section 93 of that Act upon the happening of an event;
- (c) it has been dissolved in accordance with paragraph (b) of that subsection; or
- (d) an award has been made under section 95 or section 95A of that Act.

(2) The functions of the Board under sections 8, 10 and 11 below are exercisable in the case of an incorporated friendly society if—

- (a) an instrument of dissolution has been approved under section 20 of the Friendly Societies Act 1992;
- (b) a special resolution that it be wound up voluntarily has been passed under section 21 of that Act; or
- (c) an order has been made for the winding up of the society on a petition under section 22 or 52 of that Act.

(3) In this Act "closing society" means a friendly society in the case of which the Board's functions are exercisable under subsection (1) or (2) above.

(4) References in this Act to the beginning of the liquidation of a closing society are references—

- (a) in a case falling within paragraph (a) of subsection (1) above, to the date of the order;
- (b) in a case falling within paragraph (b) of that subsection, to the date of the happening of the event;
- (c) in a case falling within paragraph (c) of that subsection, to the date of signature of the instrument of dissolution;
- (d) in a case falling within paragraph (d) of that subsection, to the date of the award;
- (e) in a case falling within paragraph (a) of subsection (2) above, to the date of signature of the instrument of dissolution;
- (f) in a case falling within paragraph (b) of that subsection, to the date of the passing of the special resolution; and
- (g) in a case falling within paragraph (c) of that subsection, to the date of the order."

6.—(1) In section 8 (general policies other than compulsory policies), in subsection (1) after the word "policy", in the first place where it occurs, there shall be inserted "issued by an authorised insurance company".

(2) In subsection (4) of that section, for the words "this Act" there shall be substituted "the application of this Act to authorised insurance companies".

7. After section 8 there shall be inserted the following section—

**"8A General contracts made by friendly societies**

Subject to sections 13 and 14 below, where the Board's functions are exercisable in

relation to a closing society to ninety per cent of the (within the meaning of which constituted the United Kingdom policy soon as reasonably practicable

8.—(1) In section 10 (there shall be substituted "

(2) At the end of that section

"(3) In this Act references to a society, references to a long term business of an

9. In section 11 (special subsection (3) there shall be

"(3A) This section applies to long term policy of a company

(a) with the addition of the giving up

(b) in subsection "company" of

10. After section 11 there shall be inserted the following section—

**"11A Applications of sections 12, 13, 14(2) to a company in liquidation."**

Sections 12, 13, 14(2) to a company in liquidation."

11. At the end of section 11 there shall be inserted the following subsection—

"(10) This section applies to a friendly society

(a) with the substitution of

"(1) A friendly society in financial difficulties for the purposes of this section

(a) it is in financial difficulties for the purposes of this section

to section 11A(1) of the Friendly Societies Act 1992

(b) it falls within paragraph (1A) of that section

(c) a provision of that section applies to it

(d) it has incurred debts

(1A) A friendly society is in financial difficulties for the purposes of this section if it is required by section 11A(1) to provide abstracts of accounts and it does not possess sufficient assets to do so

(1B) It shall be assumed that a friendly society is in financial difficulties for the purposes of this section if it has been given possession of its assets

(b) with the omission of

12. In section 17 (special provisions for friendly societies in financial difficulties) at the end of that section there shall be inserted the following subsection—

relation to a closing society, it shall be the duty of the Board to secure that a sum equal to ninety per cent of the amount of any liability of the society to a private policyholder (within the meaning of section 6(7) above) under the terms of a contract the effecting of which constituted the carrying on of general business of any class and which was a United Kingdom policy at the beginning of the liquidation is paid to the member as soon as reasonably practicable after the beginning of the liquidation."

8.—(1) In section 10 (long term policies), in subsection (1) for the words "this Act" there shall be substituted "the application of this Act to insurance companies".

(2) At the end of that section there shall be added the following subsection—

"(3) In this Act references to a "long term policy" include, in relation to a friendly society, references to a contract the effecting of which constituted the carrying on of long term business of any class, not being a contract of reinsurance."

9. In section 11 (special provision for future benefits under long term policies) after subsection (3) there shall be inserted the following subsection—

"(3A) This section applies to a long term policy of a closing society as it applies to a long term policy of a company in liquidation but—

- (a) with the addition at the end of subsection (3) above of the words "subject to the giving up of any right to a payment on dissolution of the society"; and
- (b) in subsection (5) below, with the insertion after the words "insurance company" of the words "or friendly society"."

10. After section 11 there shall be inserted the following section—

**"11A Applications of provisions to closing societies**

Sections 12, 13, 14(2) to (9) and 15 shall apply to a closing society as they apply to a company in liquidation."

11. At the end of section 16 (companies in financial difficulties) there shall be added the following subsection—

"(10) This section applies to a friendly society, not being a closing society—

- (a) with the substitution of the following subsections for subsection (1)—

"(1) A friendly society, not being a closing society, is a society in financial difficulties for the purposes of this section if—

- (a) it is required by section 42 or 46 of the Friendly Societies Act 1992 to send abstracts of actuaries' reports to the Commission and the most recent abstract so sent shows that it has ceased to fall within subsection (2) or subsection (3) of section 3A above;
- (b) it fails to comply with a direction of the Board under subsection (1A) below;
- (c) a provisional liquidator of the society has been appointed under section 135 of the Insolvency Act 1986 or, as the case maybe, Article 115 of the Insolvency (Northern Ireland) Order 1989; or
- (d) it has been proved on a winding-up petition to be unable to pay its debts.

(1A) A direction under this subsection is a direction that a society, not required by section 42 or 46 of the Friendly Societies Act 1992 to send abstracts of actuaries' reports to the Commission, satisfy the Board that it possesses sufficient assets to meet its liabilities.

(1B) It shall be the duty of the Commission to send the Board any information required by the Board to enable it to determine whether it is satisfied that a society to which a direction under subsection (1A) above has been given possesses sufficient assets to meet its liabilities."; and

- (b) with the omission of subsection (6)(a)."

12. In section 17 (special provision with respect to long term business of a company in financial difficulties) at the end of subsection (8) there shall be added the words "and this section applies to friendly societies in financial difficulties as it applies to companies in financial difficulties".



so included any information which is false in a material particular shall be guilty of an offence and liable—

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

(2) Any friendly society which makes default in complying with paragraph 4 above as so applied shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale."

#### NOTES

**Commencement.** Up to 1 June 1994 no order had been made under s 126 ante bringing this Schedule into force.

**General Note.** See the General Note to s 97 ante.

**Para 1: Carrying on . . . business.** See the note to s 7 ante.

**United Kingdom.** See the note to s 14 ante.

**Persons.** See the note "Person" to s 1 ante.

**Para 2: S 8A: It shall be the duty, etc.** See the note to s 4 ante.

**Para 7: S 8A: Reasonably practicable.** The meaning of this expression and the difference between "reasonably practicable" and the stricter standard of "practicable" have been most often considered judicially in relation to safety legislation; see 20 Halsbury's Laws (4th edn) para 553 and the cases there cited.

**Para 18: Friendly Societies Commission.** As to the establishment, etc of the Friendly Societies Commission, see ss 1-4 ante.

**Para 19: Knows; recklessly.** See the corresponding notes to s 62 ante.

**False; material particular.** See the notes to s 40 ante.

**Shall be . . . liable; conviction on indictment; fine; statutory maximum.** See the notes to s 31 ante.

**Summary conviction; standard scale.** See the notes to s 18 ante.

**Definitions.** For "the Board", see the Policyholders Protection Act 1975, s 1(1), Vol 22, title Insurance (Pt 1); for "authorised insurance company", see s 3(2) of that Act; for "United Kingdom policy", see s 4(2) thereof (and note s 4(3) thereof, as added by para 3 above); for "company in liquidation", see s 5(4) thereof; for "long term policy", see s 10(1) thereof (and note s 10(3) thereof, as added by para 8(2) above); for "company in financial difficulties", see s 16(1) thereof. By virtue of s 32(2)(a) of that Act, for "general business" and "long term business", see the Insurance Companies Act 1982, s 1(1), Vol 22, title Insurance (Pt 2), and for "contract of insurance" and "insurance company", see s 96(1) of the 1982 Act. Note as to "closing society", s 5A(3) of the 1975 Act, as inserted by para 5 above; as to "the beginning of the liquidation of a closing society", s 5A(4) of the 1975 Act, as so inserted; as to "authorised friendly society", "the Commission", "friendly society", "incorporated friendly society" and "qualifying society", s 32(1) of the 1975 Act, as amended by para 18(1), (2) above; as to "policy holder", in relation to friendly societies, s 32(2A) thereof, as inserted by para 18(1), (4) above; as to "insurance business of any class", in relation to friendly societies, s 32(2B) thereof, as so inserted; and as to "a liability of a closing society towards a member", etc, s 32(4A) thereof, as inserted by s 18(1), (5) above.

**Policyholders Protection Act 1975.** See Vol 22, title Insurance (Pt 1).

**Friendly Societies Act 1974, ss 87, 93(1), 95, 95A.** See this title ante.

**Insolvency Act 1986, s 135.** See Vol 4, title Bankruptcy and Insolvency.

**Insolvency (Northern Ireland) Order 1989.** SI 1989/2405 (NI 19).

### SCHEDULE 18

Section 98

#### AMENDMENTS OF FINANCIAL SERVICES ACT 1986

##### PART I

#### AMENDMENTS OF PROVISIONS OTHER THAN SCHEDULE 11

1. The following section shall be substituted for section 23—

##### "23 Friendly societies

A friendly society which carries on investment business in the United Kingdom is an

authorised person as respects any investment business which it carries on for or in connection with any of the activities mentioned in Schedule 2 to the Friendly Societies Act 1992."

2. In section 113 (periodical fees), for subsection (3) there shall be substituted the following subsection—

"(3) So long as a friendly society is authorised under section 23 above to carry on investment business it shall pay to the Friendly Societies Commission such periodical fees as the Commission may by regulations specify."

3. ...

4. In section 179 (restrictions on disclosure of information), in subsection (3), for paragraph (e) there shall be substituted—

"(e) the Friendly Societies Commission".

5. In section 180 (exceptions from restrictions on disclosure), in subsection (1), for paragraph (h) there shall be substituted—

"(h) for the purpose of enabling or assisting the Friendly Societies Commission to discharge its functions under this Act, the enactments relating to friendly societies or the enactments relating to industrial assurance".

6-8. ...

9.—(1) In the following provisions of Schedule 14 (restriction of Rehabilitation of Offenders Act 1974)—

- (a) paragraph 5 of Part I,
- (b) paragraph 7 of Part II, and
- (c) paragraph 4 of Part III,

for the words "Chief Registrar of friendly societies, the Registrar of Friendly Societies for Northern Ireland" there shall be substituted "Friendly Societies Commission".

(2) In paragraph 6 of Part I of that Schedule, for the word "Registrar" there shall be substituted "Friendly Societies Commission".

*(Pt II amends the Financial Services Act 1986, Sch 11 ante.)*

#### NOTES

Para 3 amends the Financial Services Act 1986, s 141(2) ante; paras 6-8 amend ss 204(1), 207(1), 210(3), respectively, of that Act ante.

**Commencement.** This Schedule was brought into force on 1 February 1993 for the purposes of the application of the Financial Services Act 1986 to incorporated friendly societies by the Friendly Societies Act 1992 (Commencement No 3 and Transitional Provisions) Order 1993, SI 1993/16 (made under s 126(2) ante); para 3 was brought into force on 28 April 1993 for all remaining purposes by the Friendly Societies Act 1992 (Commencement No 5 and Savings) Order 1993, SI 1993/1186 (made under s 126(2) ante); paras 1, 2, 4-12, 14-22 were brought into force on 1 January 1994 for all remaining purposes by the Friendly Societies Act 1992 (Commencement No 6 and Transitional Provisions) Order 1993, SI 1993/2213 (made under s 126(2), (3) ante); para 13 was brought into force on that date for all remaining purposes by the Friendly Societies Act 1992 (Commencement No 7 and Transitional Provisions and Savings) Order 1993, SI 1993/3226 (made under s 126(2), (3) ante).

**Para 1: S 23: Carries on investment business in the United Kingdom.** For the meaning of "investment business", see the Financial Services Act 1986, s 1(2), Sch 1, Pts II, III, Vol 30, title Money (Pt 1); and for the circumstances in which a person is treated as carrying on investment business in the United Kingdom, see s 1(3) thereof, in the same title. See also the note "Carrying on ... business" to s 7 ante and the note "United Kingdom" to s 14 ante.

**Para 2: Friendly Societies Commission.** As to the establishment, etc of the Friendly Societies Commission, see ss 1-4 ante.

**Financial Services Act 1986.** For the provisions mentioned, see Vol 30, title Money (Pt 1). That Act is also repealed in part by s 120(2) ante, Sch 22, Pt I post.

#### Section 100

1. The Industrial Assurance Act 1911, ss 2-7. ...

8. In section 26, for sub-

"(1) A person assured under section 26 above shall not be liable to give his written consent or, in the case of a company, the consent of his parent or controller, or to a collector of directors, or to a collector of other officers of any company, under section 37 below, if the provisions of that section are not complied with." Act."

9. ...

10. For section 33 there shall be substituted—

**"33 Disabilities of collectors."**

(1) A collector of an industrial assurance policy shall not be liable to give his written consent or, in the case of a company, the consent of his parent or controller, or to a collector of directors, or to a collector of other officers of any company, under section 37 below, if the provisions of that section are not complied with." Act."

(2) A collector or supervisor of an industrial assurance policy shall not be liable to give his written consent or, in the case of a company, the consent of his parent or controller, or to a collector of directors, or to a collector of other officers of any company, under section 37 below, if the provisions of that section are not complied with." Act."

11-16. ...

#### NOTES

Para 2 substitutes the Industrial Assurance Act 1911, s 26(1) of the Act for s 10(1) of the Act. It also amends s 17(3), 18(1), (3), 39(1), 43(1) of the Act and s 23 thereof ante; para 9 substitutes s 45(1) thereof ante; para 10 amends s 8(2), 13(1), 17A(1), 20(1) of the Act, ss 1948, 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 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Section 100

SCHEDULE 19  
INDUSTRIAL ASSURANCE

PART I  
GREAT BRITAIN

*Industrial Assurance Act 1923*

1. The Industrial Assurance Act 1923 shall be amended as follows.

2-7. . . .

8. In section 26, for subsection (1) there shall be substituted the following subsection—

“(1) A person assured with an industrial assurance company shall not, without his written consent or, in the case of a person under the age of 18, without the written consent of his parent or other guardian, be transferred from the company to another company or to a collecting society except on an amalgamation or transfer of business under section 37 below or any other enactment, and any company and any collector or other officer of any company concerned in such a transfer shall, if the provisions of this section are not complied with, be deemed to have contravened the provisions of this Act.”

9. . . .

10. For section 33 there shall be substituted the following section—

**“33 Disabilities of collectors etc**

(1) A collector of an industrial assurance company shall not be a member of the board of directors, or hold any other office in the company except that of superintending collectors within a specified area.

(2) A collector or superintendent shall not be present at any meeting of the company.”

11-16. . . .

**NOTES**

Para 2 substitutes the Industrial Assurance Act 1923, s 1(1A) and amends s 1(2)(d) thereof ante; para 3 substitutes s 10(1) of that Act ante; para 4 amends s 11(2) thereof ante; para 5 amends ss 10(3), 17(3), 18(1), (3), 39(1), 43 thereof ante; para 6 substitutes s 17(1), (2) thereof ante; para 7 substitutes s 23 thereof ante; para 9 substitutes s 32 thereof ante; para 11 amends s 39(5) thereof ante; para 12 amends s 45(1) thereof ante; paras 13-16 amend the Industrial Assurance and Friendly Societies Act 1948, ss 8(2), 13(1), 17A(1), 23(1), respectively ante.

**Commencement.** This Schedule was brought into force as follows:

13 January 1993: in Pt I, para 9 (Friendly Societies Act 1992 (Commencement No 3 and Transitional Provisions) Order 1993, SI 1993/16, made under s 126(2) ante);

1 February 1993: in Pt I, paras 2(1), 6, 12 (SI 1993/16); and in Pt I, paras 2(2), 3, 4, 5(1)(a), (b), (d), (e), 5(2)(a), 11, 13-16 for the purposes of the amendment of industrial assurance legislation in relation to incorporated friendly societies and industrial assurance companies (SI 1993/16);

28 April 1993: in Pt I, paras 2(2), 3, 4, 5(1)(a), (b), (d), (e), 5(2)(a), 11, 13, 15, 16 for all remaining purposes (Friendly Societies Act 1992 (Commencement No 5 and Savings) Order 1993, SI 1993/1186, made under s 126(2) ante);

13 September 1993: in Pt I, para 14 for all remaining purposes (Friendly Societies Act 1992 (Commencement No 6 and Transitional Provisions) Order 1993, SI 1993/2213, made under s 126(2), (3) ante);

1 January 1994: in Pt I, paras 5(1)(c), (2)(b), 7 (SI 1993/2213); in Pt II, paras 18-25, 27, 29-32 (Friendly Societies Act 1992 (Commencement No 7 and Transitional Provisions and Savings) Order 1993, SI 1993/3226, made under s 126(2), (3) ante).

Up to 1 June 1994 no further orders had been made under s 126 ante bringing the remainder of this Schedule into force.

**Para 8: Written.** See the note to s 17 ante.

**Age of 18.** See the note “Under 18” to s 77 ante.

**Definitions.** For “industrial assurance company”, see the Industrial Assurance Act 1923, s 1(1A) ante; for “collector”, see s 45(1) of that Act ante.

**Industrial Assurance Act 1923.** See this title ante.

(Pt II amends the Industrial Assurance (Northern Ireland) Order 1979, SI 1979/1574 (NI 13) (not printed in this work).)

## SCHEDULE 20

## Section 101

## LAW APPLICABLE TO CERTAIN CONTRACTS OF INSURANCE

## [PART I

## GENERAL BUSINESS BY SOCIETIES TO WHICH SECTION 37(3) APPLIES]

*General rules as to applicable law*

1.—(1) Where the person ("the person insured") who has entered into the contract of insurance with a friendly society has his habitual residence [or central administration] within the territory of the member State where the risk is situated, the law applicable to the contract is the law of that member State.

However, where the law of that member State so allows, the parties may choose the law of another country.

(2) Where the person insured does not have his habitual residence [or central administration] within the territory of the member State where the risk is situated, the parties to the contract may choose to apply either—

- (a) the law of the member State where the risk is situated, or
- (b) the law of the country in which the person insured has his habitual residence [or central administration].

(3) Where the person insured carries on a business and the contract covers two or more risks relating to his business which are situated in different member States, the freedom of choice of the law applicable to the contract extends to the laws of those member States and of the country in which he has his habitual residence [or central administration].

In this sub-paragraph "business" includes a trade or profession.

(4) Where the member States referred to in sub-paragraph (2) or (3) grant greater freedom of choice of the law applicable to the contract, the parties may take advantage of that freedom.

(5) Notwithstanding sub-paragraphs (1) to (3) above, when the risks covered by the contract are limited to events occurring in a member State other than the member State where the risk is situated, the parties may always choose the law of the former State.

*Applicable law in the absence of choice*

2.—(1) The choice referred to in paragraph 1 above must be expressed or demonstrated with reasonable certainty by the terms of the contract or the circumstances of the case.

(2) If that is not so, or if no choice has been made, the contract shall be governed by the law of the country (from amongst those considered in the relevant sub-paragraphs) with which it is most closely connected.

(3) Nevertheless, a severable part of the contract which has a closer connection with another country (from amongst those considered in the relevant sub-paragraphs) may by way of exception be governed by the law of that other country.

(4) A contract is rebuttably presumed to be most closely connected with the member State where the risk is situated.

*Mandatory rules*

3.—(1) The fact that in the cases referred to in paragraph 1 above the parties have chosen a law does not, where all the other elements relevant to the situation at the time of the choice are connected with one member State only, prejudice the application of the mandatory rules of the law of that member State, which means the rules from which the law of that member State allows no derogation by means of a contract.

(2) Nothing in [this Part of this Schedule] restricts the application of the rules of a part

of the United Kingdom otherwise applicable to the

4.—(1) Where a member State has its own rules concerning contracts of insurance for the purposes of identifying

(2) The provisions of the law of the different parts of the United Kingdom

5.—(1) Subject to the provisions of this Part of the United Kingdom (Applicable Law) Act 1993

(2) In particular, reference

(a) to ascertain for the purposes of identifying

(b) to determine the law applicable in accordance with the provisions of the Act

applied in accordance with the provisions of the Act

applicable in accordance with the provisions of the Act

## LONG TERM BUSINESS

6. The law applicable to the contract shall be the law of the country in which the commitment is made

However, where the law of the country in which the commitment is made is the law of another country.

7. Where the person insured has his habitual residence in a member State other than the member State where the risk is situated, the parties may choose the law of the former State.

8. Nothing in this Part of the United Kingdom (Applicable Law) Act 1993 otherwise applicable to the

9.—(1) Where a member State has its own rules of law concerning contracts of insurance for the purposes of identifying

(2) The provisions of the law of the different parts of the United Kingdom

10.—(1) Subject to the provisions of this Part of the United Kingdom (Applicable Law) Act 1993

(2) In particular, reference to paragraph 6 above where the law of the United Kingdom.]

## NOTES

The provisions of this Schedule which are in square brackets in para 1 above and Pt II of this Schedule were inserted by SI 1993/2519, reg 6(2)-(4), with effect from the commencement of this Schedule. This S

of the United Kingdom in a situation where they are mandatory, irrespective of the law otherwise applicable to the contract.

*Supplementary provisions*

4.—(1) Where a member State includes several territorial units, each of which has its own rules concerning contractual obligations, each unit shall be considered as a country for the purposes of identifying the applicable law.

(2) The provisions of [this Part of this Schedule] apply to conflicts between the laws of the different parts of the United Kingdom.

5.—(1) Subject to the preceding provisions of [this Part of this Schedule], a court in a part of the United Kingdom [shall act in accordance with the provisions of the Contracts (Applicable Law) Act 1990].

(2) In particular, reference shall be made to [those provisions]—

- (a) to ascertain for the purposes of paragraph 1 above what freedom of choice the parties have under the law of a part of the United Kingdom; and
- (b) to determine whether the mandatory rules of another member State should be applied in accordance with paragraph 3(1) above where the law otherwise applicable is the law of a part of the United Kingdom.

[PART II

LONG TERM BUSINESS BY SOCIETIES TO WHICH SECTION 37(2) APPLIES

*General rules as to applicable law*

6. The law applicable to the contract of insurance is the law of the member State in which the commitment is situated.

However, where the law of that member State so allows, the parties may choose the law of another country.

7. Where the person who has entered into the contract of insurance is an individual and has his habitual residence in a member State other than that of which he is a national, the parties may choose the law of the member State of which he is a national.

*Mandatory rules*

8. Nothing in this Part of this Schedule restricts the application of the rules of a part of the United Kingdom in a situation where they are mandatory, irrespective of the law otherwise applicable to the contract.

*Supplementary provisions*

9.—(1) Where a member State includes several territorial units, each of which has its own rules of law concerning contractual obligations, each unit shall be considered as a country for the purposes of identifying the applicable law.

(2) The provisions of this Part of this Schedule apply to conflicts between the laws of the different parts of the United Kingdom.

10.—(1) Subject to the preceding provisions of this Part of this Schedule, a court in a part of the United Kingdom shall act in accordance with the provisions of the Contracts (Applicable Law) Act 1990.

(2) In particular, reference shall be made to those provisions to ascertain for the purposes of paragraph 6 above what freedom of choice the parties have under the law of a part of the United Kingdom.]

**NOTES**

The provisions of this Schedule as originally enacted became Pt I under a new heading, the words in square brackets in para 1 were inserted, the words in square brackets in paras 3–5 were substituted, and Pt II of this Schedule was added, by the Friendly Societies (Amendment) Regulations 1993, SI 1993/2519, reg 6(2)–(4), with effect from 1 January 1994.

**Commencement.** This Schedule, as originally enacted, was brought into force on 1 February



*Insurance Companies Act 1982*

6.—(1) In section 49 of the Insurance Companies Act 1982, (sanction of court for transfer of long term business) at the beginning of subsection (1) there shall be inserted "Subject to section 49A below".

(2) After that section there shall be inserted the following section—

**"49A Transfer of long term business to friendly society**

(1) Section 49 above applies, with the following adaptations, to a transfer of business to an incorporated friendly society or registered friendly society authorised under Part IV of the Friendly Societies Act 1992.

(2) In subsection (3)(c) (service of documents), after the words "the Secretary of State" there shall be inserted the words "and on the Friendly Societies Commission".

(3) In subsection (5) (persons entitled to be heard on petition), in paragraph (a) after the words "the Secretary of State" there shall be inserted the words "and the Friendly Societies Commission".

(4) In subsection (6) (requirement that transferee company be authorised to carry on long term business), for the words "authorised under section 3 or 4 above" there shall be substituted the words "authorised under Part IV of the Friendly Societies Act 1992."

*Companies Act 1985*

7.—(1) In section 449 of the Companies Act 1985 (provision for security of information obtained), in subsection (1), after paragraph (dd) there shall be inserted the following paragraphs—

"(de) for the purpose of enabling or assisting the Chief Registrar of friendly societies or the Assistant Registrar of friendly societies for Scotland to discharge his functions under the enactments relating to friendly societies;

(df) for the purpose of enabling or assisting the Friendly Societies Commission to discharge its functions under the Financial Services Act 1986."

(2) In subsection (3) of that section, after paragraph (j) there shall be inserted the following paragraph—

"(jj) the Friendly Societies Commission".

*Company Directors Disqualification Act 1986*

8. After section 22A of the Company Directors Disqualification Act 1986 (application of Act to building societies) there shall be inserted the following section—

**"22B Application of Act to incorporated friendly societies**

(1) This Act applies to incorporated friendly societies as it applies to companies.

(2) References in this Act to a company, or to a director or an officer of a company include, respectively, references to an incorporated friendly society within the meaning of the Friendly Societies Act 1992 or to a member of the committee of management or officer, within the meaning of that Act, of an incorporated friendly society.

(3) In relation to an incorporated friendly society every reference to a shadow director shall be omitted.

(4) In the application of Schedule 1 to the members of the committee of management of an incorporated friendly society, references to provisions of the Insolvency Act or the Companies Act include references to the corresponding provisions of the Friendly Societies Act 1992."

*Banking Act 1987*

9. In section 84(1) of the Banking Act 1987 (disclosure of information obtained under that Act), in the Table showing the authorities to which, and functions for the purposes of which, disclosure may be made, after the entry beginning "The Chief Registrar of friendly societies" there shall be inserted the following entry—



*Social Security Contributions and Benefits (Northern Ireland) Act 1992*

18. In section 171(2) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, after "157" there shall be inserted the words "and regulations made by the Chief Registrar of friendly societies under paragraph 10(2) of Schedule 1 to this Act."

19.—(1) In Schedule 1 to that Act, in paragraph 10(2)—

- (a) for the words "Friendly Societies Act (Northern Ireland) 1970" there shall be substituted "Friendly Societies Act 1974"; and
- (b) for the words "Registrar of Friendly Societies for Northern Ireland" there shall be substituted "Chief Registrar of Friendly Societies".

(2) In that Schedule, in paragraph 10 for sub-paragraph (3) there shall be substituted the following sub-paragraph—

"(3) The power conferred by sub-paragraph (2) above on the Chief Registrar of Friendly Societies to make regulations shall be exercisable by statutory instrument, and—

- (a) the Statutory Instruments Act 1946 shall apply to that power as if the Chief Registrar were a Minister of the Crown, and
- (b) section 171(3) to (5) above shall apply to those regulations as they apply to regulations made by the Department."

**NOTES**

**Commencement.** Pt I, paras 1, 5–11 were brought into force on 1 February 1993 by the Friendly Societies Act 1992 (Commencement No 3 and Transitional Provisions) Order 1993, SI 1993/16 (made under s 126(2) ante); Pt I, paras 2–4 were brought into force on 1 January 1993 by the Friendly Societies Act 1992 (Commencement No 2) Order 1992, SI 1992/3117 (made under s 126(2) ante); Pt I, paras 18, 19 and Pt II were brought into force on 1 January 1994 by the Friendly Societies Act 1992 (Commencement No 7 and Transitional Provisions and Savings) Order 1993, SI 1993/3226 (made under s 126(2), (3) ante).

Up to 1 June 1994 no further orders had been made under s 126 ante bringing the remainder of this Schedule into force.

**Para 4: S 5(1): Dispute; person claiming to be entitled.** The meaning of these expressions in what is now the National Debt Act 1972, s 5(1), Vol 30, title Money (Pt 2), was considered in *R v Chief Registrar of Friendly Societies, ex p Mills* [1970] 3 All ER 1076, [1970] 1 WLR 1534.

**Director of Savings.** As to the appointment and functions of the Director of Savings, see the National Debt Act 1972, s 1, Vol 30, title Money (Pt 2).

**Writing.** See the note "Written" to s 17 ante.

**S 5(2): Sent by post.** This provision brings into operation the provisions of the Interpretation Act 1978, s 7, Vol 41, title Statutes, to the effect that service is deemed to be effected by properly addressing, prepaying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Service by post may be effected by ordinary or registered letter; see *T O Supplies (London) Ltd v Jerry Creighton Ltd* [1952] 1 KB 42, [1951] 2 All ER 992. It follows that it is also permissible to use the recorded delivery service.

**Oaths.** See the note "Oath" to s 67 ante.

**Para 6: S 49A(3): Friendly Societies Commission.** As to the establishment, etc of the Friendly Societies Commission, see ss 1–4 ante.

**Para 8: S 22B: Committee of management.** For general provisions as to the committee of management, see s 27, Sch 11 ante.

**Loan Societies Act 1840, s 27.** See Vol 30, title Money (Pt 4). S 27 is further repealed in part by s 120(2) ante, Sch 22, Pt I post.

**National Savings Bank Act 1971, ss 10, 11, 27.** See Vol 39, title Savings Banks.

**National Debt Act 1972, s 5.** See Vol 30, title Money (Pt 2). For the meaning of "the register" in that Act, see s 2(1) thereof.

**Solicitors Act 1974, s 23(2), (2A).** See Vol 41, title Solicitors.

**Insurance Companies Act 1982, s 49.** See Vol 22, title Insurance (Pt 2).

**Companies Act 1985, s 449.** See Vol 8, title Companies. S 449(3) is repealed in part by s 120(2) ante, Sch 22, Pt I post.

**Financial Services Act 1986.** See this title ante and Vol 30, title Money (Pt 1). That Act is amended and repealed in part by ss 98, 120(2), Sch 18 ante, Sch 22, Pt I post.

**Company Directors Disqualification Act 1986, s 22A.** See Vol 8, title Companies. For the meaning of "the Companies Act" and "the Insolvency Act" in that Act, see s 22(7) thereof.

**Banking Act 1987, s 84(1).** See Vol 4, title Banking. S 84(1) is repealed in part by s 120(2) ante, Sch 22, Pt I post.