



AN BILLE CUMANN FOIRGNIOCHTA, 1975 BUILDING SOCIETIES BILL, 1975

Mar a ritheadh ag Seanad Éireann

As passed by Seanad Éireann

EXPLANATORY MEMORANDUM

The purpose of the Bill is to consolidate, amend and extend the law on building societies. The societies have evolved as organisations which raise funds for lending to members on the security of freehold or leasehold estate or interest.

The present law is contained in the Building Societies Acts, 1874 to 1974, the principal Acts being those of 1874 and 1894. Minor amendments were made by Acts passed in 1875, 1877, 1884, 1936, 1942 and 1974. The Bill will replace the existing code and amend, extend and update its provisions. In proposing revisions of the statute law relating to societies, the approach has been to adopt, with appropriate modifications, provisions enacted by the Oireachtas in recent years in the case of commercial banks, credit unions and companies. In this way it is hoped to develop a desirable consistency and uniformity in the law bearing on these bodies. The relationship of sections of the Bill to these existing provisions is cited in the general body of this memorandum.

The following is a summary of the principal changes proposed.

Establishment of a Society: Existing legislation allows any three or more persons to establish a society. Under *sections 8 and 18* of the Bill, not less than ten members may establish a society; each of the founders must be issued with shares to such value as the Minister for Local Government, after consultation with the Minister for Finance, may prescribe; the shares must be paid for in cash, must not be issued on more favourable terms than other shares of a similar class issued by the society and, save where a founder-member dies or becomes disqualified, the shares may not be repaid or transferred within a period of five years after issue.

Rules: *Section 10* provides that the Minister may prescribe rules, either generally or by reference to a specified class or classes of rules or societies. If the rules of a society are not, in the opinion of the Registrar, substantially in accordance with the prescribed rules and if, after notice from him, the society does not bring its rules into conformity, the prescribed rules will, subject to appeal, be deemed to be the rules of the society.

Restrictions on the commencement of business: At present, once a building society is incorporated, it may carry on business. *Section 18* provides that a society incorporated after the date of publication of the Bill (5th December, 1975), or a society which was incorporated before that date but had not then commenced to carry on business, may not raise funds until it has complied with the specified requirements and has furnished the Registrar with evidence confirming that the deposit required under *Section 20* has been lodged with the Central Bank.

Restrictions on advertising: Section 19 provides that a society incorporated after the 5th December, 1975, or a society which, on that date, had assets of less than £1 million may not solicit subscriptions until it has obtained the written permission of the Registrar. Permission will be granted only where the Registrar is satisfied that the society complies with requirements related to the conduct of its business, founders' shares, the deposit with the Central Bank, compliance with liquidity ratios etc. An appeal lies to the High Court against a refusal of permission.

Deposit at Central Bank: Section 20 prohibits a society from carrying on business unless it maintains in the Central Bank a deposit calculated by reference to the total of the society's shares and deposits, but subject to a minimum deposit of £20,000 and a maximum of £500,000.

Controls over societies by the Registrar: Sections 4 and 5 of the 1894 Act provided limited powers for the Registrar to investigate the affairs of a society. Sections 29 to 34 of the Bill give him wide powers, on the application of members or on his own initiative, to appoint inspectors to investigate the affairs of a society or to call a meeting. He is also empowered to issue a direction suspending the raising or soliciting of funds in the case of a society whose affairs are being investigated, or a society unable, or likely to be unable, to meet its obligations to its creditors.

Liquidity and other ratios: Section 37 empowers the Minister for Finance, after consultation with the Minister for Local Government, the Registrar and the Central Bank, to require a society to maintain a specified ratio between its assets and its liabilities.

Investment of Surplus funds: Hitherto a society could invest its surplus funds in trustee securities only. Section 38 empowers the Minister for Finance, after consultation with the Minister for Local Government and the Central Bank, to prescribe the investments in which a society may invest these funds. The section specifies the manner in which funds may be kept on current or deposit account and enables the Registrar to fix limits on the amount of investments. It will also enable a society to invest in Central Bank Reserve Bonds, hitherto reserved for licensed banks.

Disclosure of interest by directors: Section 41 requires a director of a society, interested in a contract with the society, to declare the nature of his interest at a meeting of the board of directors of the society. A copy of the declaration must be recorded by the society.

Loans to directors: Section 43 requires the annual return furnished to the Registrar, in compliance with section 70, to contain particulars of any loan made to a director or a member of the family of an officer. The annual accounts of the society must contain particulars of any loan made to an officer or a member of his family where the amount of the loan exceeds an amount fixed by the Registrar or where the loan is made for a purpose other than one approved by him. The section prohibits the making of a loan to a member of the family of an officer on terms more favourable than those applicable to other loans of a like amount and for a similar purpose.

Payments to directors: Under section 44, the annual accounts must show the aggregate amount of directors' emoluments, former directors' pensions and any compensation payable to directors or former directors for loss of office. Section 45 prohibits the payment of tax-free remuneration to directors.

Attendance and voting at meetings: Section 52 provides that all members who held investment shares to which voting rights attached, at the end of the financial year prior to the meeting and at the date of the meeting continued to hold these shares, may attend a meeting of a society, and also that the rules of a society may confer a right on other persons to attend. Section 53 provides that members, other

than persons aged under twenty-one years, who held a minimum shareholding of £10 at the end of the previous financial year and who, at the date of the meeting, continued to hold these shares, may vote at a meeting of a society.

Special resolution : Section 56 defines a special resolution. *Section 57* details the procedure to be adopted in the case of a special resolution proposed by a member and enables the board of a society, in certain circumstances, to refuse to give notice of a proposed special resolution.

Commission, insurance etc. : Section 75 prohibits the payment of commission by a society, or the acceptance of commission by any person in connection with the introduction of, or an undertaking to introduce, mortgage business, or the making of a loan. It also prohibits an officer, solicitor or surveyor of a society from accepting any commission, in addition to remuneration authorised by the rules of the society, in connection with the making of a loan. A director of a society, who is also an auctioneer, is prohibited from accepting commission in his capacity as auctioneer in connection with any transaction involving a property in respect of which a loan is made or proposed to be made by a society. The section also prohibits a society from requiring a borrower to take out a life assurance or other insurance policy, other than a policy of a specified type, in connection with the making of a loan.

Regulations relating to management : Section 76 empowers the Minister for Local Government, on the recommendation of the Registrar and after consultation with the Minister for Finance and the Building Societies Advisory Committee, to make regulations to secure the proper and efficient management of societies. The regulations may provide, *inter alia*, for limits on expenditure on management and for a code of practice to be observed by societies.

Regulations relating to loans : Section 77 empowers the Minister for Local Government (subject to the consent of the Minister for Finance and after consultation with the Registrar) to make regulations regarding the amounts and purposes of loans.

Guarantee of borrowings by societies : Section 87 empowers the Minister for Finance to guarantee monies borrowed by societies, otherwise than under *section 22* (which deals with the acceptance of deposits). The total amounts to be guaranteed are limited to £20 million.

Winding up of Societies : Section 95 provides that a society may be wound up in the same manner as a company under Part VI of the Companies Act, 1963.

PART I

PRELIMINARY AND GENERAL

Part I contains the usual provisions regarding citation, interpretation, commencement, service of notices, making of regulations, repeals and expenses in the administration of the Act. Under *section 3* Parts or sections of the Bill may be brought into operation at different times to facilitate societies in making any necessary administrative adjustments. Power will be conferred on the Ministers for Local Government and Finance by *section 5* to make regulations prescribing various matters.

PART II

ESTABLISHMENT, RULES, POWERS ETC. OF SOCIETIES

Section 8 provides that ten or more persons, not disqualified by the Act, may establish a society by agreeing on rules which comply

with the requirements of *sections 10 and 11*. *Section 18* provides that, in the case of a society incorporated after the 5th December, 1975, each of the founder-members must have a financial interest of not less than a prescribed amount in the society and that the appropriate deposit, required by *section 20*, has been lodged with the Central Bank. *Section 42* precludes an undischarged bankrupt and certain other persons from establishing a society.

Section 9 provides that the words "building society" or "cumann foirgníochta" must be included in the name of the building society and that these words may not be used to describe any other type of society, other than a public utility society in existence at the coming into operation of the section. This is a new provision based on a requirement in *section 14* of the Central Bank Act, 1971, and *section 31* of the Credit Union Act, 1966.

Section 10 specifies the provisions which a society's rules must contain. The requirements will provide for such matters as the name of the society, the manner in which the funds are to be raised and applied, how shares may be issued and repaid and mortgages redeemed, the powers, duties and manner of appointing, remunerating and removing officers, the manner in which auditors are to be remunerated, how disputes are to be settled, the imposition of fines and forfeitures, how the society may be wound up and membership may cease, rights of members to requisition meetings, the form and method of service of notice of meetings, procedure at meetings and voting rights. In the case of a society incorporated on or after the commencement of the section the rules must provide that the founder-members' financial interest in the society complies with *section 18*. The rules will be binding on all members and officers, and copies may be obtained by any person at a fee fixed by the Registrar.

Under *section 10* the Minister may also, by regulations, prescribe rules either generally or in relation to a specified class or classes of rules or societies. Where rules have been prescribed and where the Registrar is of opinion that the rules of a society are not substantially in accordance with prescribed rules he shall, within six months of the commencement of the regulations, notify the society and the society will have to bring its rules into line with the regulations, otherwise the prescribed rules will be deemed to be the rules of the society. An appeal lies to the High Court against the opinion of the Registrar.

Section 11 lays down the procedure to be followed regarding the registration of rules by the Registrar and the incorporation of a society and is on the lines of *section 17* of the 1874 Act and *section 21* of the Companies Act, 1963. The Registrar is, however, given wider discretion to refuse to register the rules if, in his opinion, registration would not be in the interest of the orderly and proper regulation of building society business or if the name of the society is undesirable or the name resembles that of another society or a person carrying on banking business. The signatories of the rules may appeal to the High Court against a refusal to register rules. *Subsection (4)* contains a time limit for a decision by the Registrar.

Section 12 provides that a society may by special resolution alter its rules, other than the rule relating to the name of a society. *Sections 16 (5) and 18* of the 1874 Act provided that the rules should contain provision for the manner of their alteration and rescission. The Bill provides that the rules may be altered only by special resolution, a procedure new to building society legislation. Special resolutions are dealt with in *sections 56 and 57*. *Section 13* contains separate provisions regarding the change of the name of a society.

Section 13 allows a society, by special resolution, to change its name. It is based generally on *section 22* of the 1874 Act and *section 23* of the 1963 Act. The section also provides that any existing society which is registered by a name considered by the Registrar to be undesirable, or to resemble the name of another financial institution, may be required by him to alter its name. An appeal lies

to the High Court against the Registrar's refusal to register a change of name or against his requirement that an existing name be changed.

Section 14 requires every society to have a chief office in the State and notice of its situation and of any change to be sent to the Registrar. The provision is on the lines of section 113 of the Companies Act, 1963.

Under *section 15* a society may not use any name or title other than its registered name. This is on the lines of section 15 (1) of the 1894 Act. *Subsection (2) (a), (b) and (c)*, relating to the display of the name on the premises, on the seal and on notices, letterheads, etc., is based on section 114 of the Companies Act, 1963. The requirement in *subsection 2 (d)* is in conformity with the European Communities (Companies) Regulations 1973. Provision is also made for the use of an abbreviated version of a registered name.

Section 16 sets out the powers of a society to purchase, hold, improve and sell land and buildings for the purpose of the society. Any land to which a society becomes entitled through surrender must be sold as soon as practicable or converted into money. The powers in the section are similar to those in sections 13 and 37 of the 1874 Act.

Section 17 provides that every person holding one or more shares in a society shall be a member, that a society may allow a person to whom a loan is being made to become a member without holding a share and that two or more persons may jointly hold shares. The section deals with the liabilities of a member and the entitlement of persons under twenty-one years of age and joint holders. The provisions in *subsections (1), (3), (4) and (5)* are similar to those in sections 14, 38 and 39 of the 1874 Act. *Subsection (2)* will allow a person getting a loan from a society to become a member without holding a share.

Section 18 prohibits a society incorporated after the 5th December, 1975 or which was incorporated before that date but had not then commenced to carry on business from raising funds or borrowing money unless written evidence is produced to the Registrar that it complies with certain requirements in relation to founder-members' shares and lodgment with the Central Bank of the appropriate deposit required by *section 20*. The founder-members' shares may not be issued on terms more favourable than those applicable to other shares of a similar class in the society, may not be transferred or repaid by the society unless a founder-member becomes disqualified or dies or the society is wound up. If the evidence is not produced within specified periods or if any of the requirements relating to the founders' shares is not met, the Registrar may cancel the registration of the society or may apply to the High Court to have the society wound up. Existing legislation does not require founder-members to have a financial stake in the society. The purpose of the section is to require that each of the founders shall have and retain a minimum interest in the society from the start.

Section 19 prohibits a society incorporated after the 5th December, 1975, or a society which on that date had total assets of less than £1 million from advertising for or otherwise soliciting deposits or subscriptions for shares without the prior written permission of the Registrar. Permission may be valid for a specified period. The Registrar may, at his discretion, require a society soliciting deposits or subscriptions for shares to submit evidence regarding the total value of its assets. He will give permission to advertise only if he is satisfied that, during all or part of the two years prior to the application for permission, the business conduct of the society was not prejudicial to the orderly and proper regulation of building society business and that certain other requirements have been met.

An application for permission to advertise may not be made before a society has sent to the Registrar at least one annual return under *section 70*, covering a period of not less than twelve months. An

appeal lies to the High Court against a refusal of the Registrar to give permission to advertise.

Under *section 20* a society may not carry on business or raise funds or borrow money unless it maintains a deposit at the Central Bank. The amount of the deposit will be prescribed by the Minister, after consultation with the Minister for Finance, on the basis of the total of a society's shares and deposits but will be not less than £20,000 and not more than £500,000. It will be calculated twice yearly by the Central Bank by reference to returns made to it by the society. A deposit will carry interest at such rate and be payable in such manner as the Bank may determine. Subject to the provisions of *section 21*, a deposit under the section may not be used to satisfy any claim, judgment, order or decree. In the case of a society carrying on business at 5th December, 1975, the provisions of the section will not apply for three months after the coming into operation of the section. In other cases the deposit will be calculated as soon as may be after the coming into operation of the section or incorporation of the society whichever is the later.

The section will provide additional protection for deposits with a society and is similar to the requirement on licensed banks under sections 7 and 13 of the Central Bank Act, 1971.

Section 21 provides that where a person obtains a judgment, order or decree against a society for payment of an amount deposited with that society, he may apply to the High Court for an order directing that the amount, with or without costs, shall be met out of the sum deposited with the Central Bank. The Court may either direct that the Central Bank deposit be not released for a specified period, or direct that the judgment be satisfied out of the deposit. The section empowers the Court to make an order restricting payments from any bank account in the name of the society against whom the judgment was obtained. Where an order is made by the High Court directing that the Central Bank deposit be not released for a specified period or prohibiting payment out of a society's bank account, the society will be deemed to be unable to pay its debts and may be wound up by the Court. The section also provides for an appeal to the Supreme Court against an order made by the High Court under the section.

The section is based on section 29 of the Central Bank Act, 1971.

Section 22 empowers a society to raise funds by the issue of shares and to borrow money by the acceptance of deposits and loans at interest. A deposit may be accepted only on condition that at least one month's notice of withdrawal or repayment may be required. *Subsection (1)* also empowers a society to repay funds raised by way of shares when the funds are no longer required. Repayment may not be made to a shareholder, other than at his request, between the date on which he indicated his intention to put forward a resolution (or support a nomination) at a meeting of the society and the date of the meeting. A society may not issue shares under *subsection (1)* to which voting rights do not attach, unless the society, at the 5th December, 1975, had issued shares which did not carry voting rights.

The section is a re-enactment of parts of sections 13 and 15 of the 1874 Act and of parts of section 15 of the 1894 Act. The section also facilitates the repayment of funds no longer required, but protects the interests of shareholders.

Section 23 provides that every deposit book, acknowledgment or security given by a society for a deposit or loan shall contain such information as the Registrar may require. The information will set out rights and liabilities of shareholders and depositors and the power vested in the society to borrow money. A person, when he first becomes an investor, shall be entitled to receive a copy of the statement as required by *section 61*. Provision is also made for the repayment of investments where an investor dies intestate, provided that the sum does not exceed that fixed from time to time by the Registrar. The requirement that copies of the financial statement be supplied to investors is new and is designed to protect the interests of investors.

Section 24 empowers a society to lend money to another society where the Registrar, with the consent of the Minister for Finance, so authorises. It will authorise payments made since 1st July, 1974, in a case where the society making the loan was in the process of accepting a transfer of engagements of the borrowing society. This is a new provision designed to enable a society to assist another society which might be in financial difficulty or to facilitate the transfer of engagements of a society in financial difficulty.

Sections 25 to 28 set out the procedure to be adopted in the case of a union of two or more societies or a transfer of the engagements of one society to another. A union or transfer may take place—

(a) if such a proposal is approved by special resolution of each society, and

(b) either

(i) the proposal obtains the consent in writing of the holders of not less than two-thirds the total value of shares in each society, or

(ii) the union or transfer is confirmed by the Registrar.

In the case of a transfer of engagements, *section 26* allows the Registrar to accept the passing of a resolution by a general meeting or by the board of the transferee society instead of a special resolution of the members. Where the procedure at (a) and (b) (i) is followed, the Registrar will register the union or transfer. Where the procedure at (a) and (b) (ii) is adopted, *section 27* provides that, after due approval of the proposal, any of the societies involved may apply to the Registrar for confirmation of the union or transfer. Within seven days, the society making the application is required to publish a notice giving particulars of the application and indicating that representations in relation to it may be made to the Registrar. The Registrar must consider the application and any objections and may confirm the union or transfer or, if he is not satisfied that all the requirements have been complied with or that the union or transfer would be in the public interest or in the interest of the orderly and proper regulation of building society business, he may refuse to confirm it.

Provision is contained in *section 27* for an appeal to the High Court in a case where the Registrar has refused to confirm a union or transfer. The section also provides that a union or transfer shall operate as an effectual conveyance of the funds, property and assets without the need for a formal conveyance, transfer or assignment.

Section 28 sets out the information to be made available to members in connection with a proposal to unite with another society, or to transfer the engagements of, or undertake to fulfil the engagements of, another society. The information relates to the financial position of each society involved, the interest of the directors in the proposal, details of any payments or compensation to directors or officers and of arrangements relating to employees.

Section 25 provides that the restrictions on the commencement of business and on advertising shall not apply to a society formed by a union of two or more societies, if, before the union, they did not apply to at least one of the societies forming the union.

These sections are a re-enactment, with modification, of section 33 of the 1874 Act, section 5 of the 1877 Act, section 19 of the 1894 Act and section 2 of the 1974 Act. The discretion given to the Registrar to authorise the holding of a meeting of the board of a society in the case of a proposal to undertake to fulfil a transfer of engagements is new.

PART III

CONTROL OF SOCIETIES BY REGISTRAR

Section 29 empowers the Registrar to appoint inspectors to investigate and report on the affairs of a society or to call a meeting of the

society: (a) if application is made to him by not less than one-tenth of all the members or by not less than 100 members where the membership exceeds 1,000, or (b) if he is of opinion that an investigation should be held or that a meeting should be called.

An application must be supported by evidence that the action sought is not motivated maliciously. The Registrar will be required to give notice to a society of the receipt of an application and may direct how any expenses incurred in connection with an investigation or the holding of a meeting shall be defrayed, and he may require applicants to give security in such amount as he considers reasonable for payment of the cost of the investigation or meeting. He will also have powers in relation to the calling, holding and conduct of a meeting and the appointment of a chairman. Before appointing an inspector or calling a meeting, the Registrar may, if he considers that it would not be prejudicial to the interests of members and depositors, notify the society of the action he proposes and the grounds on which he proposes to take it. The society can give the Registrar an explanatory statement in writing.

The section empowers an inspector, with the consent of the Registrar, to investigate also the affairs of any other society or body corporate associated with the society he is authorised to investigate. This is a re-enactment of parts of sections 4 and 5 of the 1894 Act, but gives wider powers to the Registrar, on the lines of sections 166 and 167 of the Companies Act, 1963. The 1894 Act did not give the Registrar effective power to act on his own initiative nor did it empower him both to investigate and to call a meeting or to investigate any other society or body corporate. It was obligatory on the Registrar under section 5 of the 1894 Act to give advance notice of the action he proposed. It is now provided that such notice shall be given only in certain circumstances.

Section 30 deals with matters arising from the appointment of an inspector under section 29. It lays a duty on all officers, members and agents of the society to produce to the inspector any documents in their custody or power and to give him all the assistance they can reasonably give. The inspector may examine officers on oath. Power is also given to him to apply to the High Court to have officers, members or agents examined before it. The section provides that the inspector shall make a report to the Registrar who shall send a copy to the Minister, the Minister for Finance, the Minister for Industry and Commerce and the society. The Minister may lay the report before each House of the Oireachtas. The Registrar may also have the report printed and published. If he is satisfied from the report of the investigation that a person is guilty of an offence he may refer the matter to the Director of Public Prosecutions. If after consideration of the inspector's report, he deems it expedient to do so, he may present a petition to the Court to have the society wound up. The section also makes provision for the taking of proceedings in the public interest for the recovery of damages or misapplied property on behalf of a society. The powers conferred on an inspector in relation to a building society will apply to any other society or body corporate, the affairs of which are being investigated under section 29 of the Bill. The section is on the lines of sections 168 to 173 of the Companies Act, 1963.

Sections 31 and 32 empower the Registrar to issue a direction to a society to suspend the raising of funds, the borrowing of money or advertising if, in his opinion, the society is unable to meet its obligations to creditors, if it is expedient in the interests of members or of the orderly and proper regulation of building society business, or if it is being investigated under section 29. He may give notice to the society of his intention to issue a direction if he considers that this would not be prejudicial to the interests of the members. The Registrar will have to consider any representations made to him in relation to the proposed direction and to give notice in *Iris Oifigiúil* of the issue or revocation of a direction. The purpose of these sections, which are similar to sections 21 and 22 of the Central Bank Act, 1971, is to prevent share issues or borrowing or advertising by a society where it appears that it is running into financial difficulties or that abuses may be taking place.

Section 33 provides for an appeal to the High Court against a direction under *section 31* or *section 32*. It also empowers the Registrar to apply to the High Court for an order confirming a direction under *section 31* or *32*, or for an order extending the period of operation of a direction under *section 31*. In the latter case, if an order is made, the society shall be deemed, for the purposes of *section 95*, to be unable to pay its debts.

Under *section 34* the Registrar may obtain documents and information relating to the business of the society and for that purpose he may serve a notice on the society or any person who has such documents. The Registrar may also appoint a person to enter the premises where books and records of the society are kept and make copies of or extracts from the documents. The power to enter premises is similar to that in *section 17 (3)* of the Central Bank Act, 1971.

Section 35 empowers the Registrar, with the consent of the Minister, to give directions regarding the matter and form of any advertisement or other means of soliciting deposits or shares. A direction under the section may require that advertisements etc. include a statement regarding the financial position of a society or any other information relating to the society. A direction may apply to all societies or to specified classes of societies and to all or specified classes of advertising. The Registrar is required to specify the considerations by reference to which he felt it necessary to issue the direction.

This is a new provision, designed to prevent misleading information being given in advertisements (e.g. in relation to assets, reserves etc. or date of establishment) or to ensure that, if a society devotes a high proportion of its advances to loans of substantial amounts, this fact is disclosed in its advertising.

Section 36 authorises the Registrar to fix the form of any application, notice or document required by the Act to be sent to him and to fix the fees for inspection and furnishing of documents.

Certificates issued under the existing Acts are prescribed in the Third Schedule to the 1894 Act. Forms of application etc. for submission to the Registrar are prescribed in regulations made in 1895. The form of certificates to be issued by the Registrar will be prescribed by the Minister (*section 5*) and the form of any application, documents etc. sent to the Registrar may be fixed by the Registrar. The Registrar is also being empowered to fix the amount of the fees to be charged in connection with the supply and inspection of documents in his custody or in the custody of the societies.

PART IV

RATIOS AND INVESTMENTS

The Minister for Finance, after consultation with the Minister for Local Government, the Registrar and the Central Bank may, under *section 37*, fix ratios relating to assets and liabilities of societies. Ratios may be specified for all societies or specified classes of societies. This is a new provision and is on the lines of *section 23* of the Central Bank Act, 1971.

Section 38 empowers the Minister for Finance, after consultation with the Minister for Local Government and the Central Bank, to prescribe the investments in which a society may invest surplus funds. A society may keep part of its surplus funds in cash or on account with the Central Bank, a licensed bank, the Post Office Savings Bank, a Trustee Savings Bank, the Agricultural Credit Corporation Ltd. or the Industrial Credit Company Ltd. The investments which the Minister may prescribe may, with the consent of the Central Bank include Central Bank Reserve Bonds, which are normally issued only to banks licensed under the Central Bank Act, 1971. The section also empowers the Registrar, after consultation with the Minister for Local Government, the Minister for Finance and the Central Bank, to fix limits in respect of a society's investments in securities or a specified class of securities.

Section 17 of the 1894 Act enables a society to invest surplus funds in trustee securities. The Minister for Finance may now prescribe investments for this purpose and the Registrar may control the proportion of funds invested in different types of securities.

PART V

MANAGEMENT AND ADMINISTRATION OF SOCIETIES

Section 39 provides for the giving of security by every officer of a society having the receipt or charge of monies belonging to the society. The section also provides for the rendering of an account by an officer and for the delivery by him of all monies, securities etc. belonging to the society in his custody and for application to the Circuit Court in the event of refusal or neglect to deliver monies, securities etc. The section follows the lines of sections 23 and 24 of the 1874 Act.

Section 40 provides that a society shall have not less than three directors and that a body corporate may not be a director. Because of the nature of building society business it is considered that a minimum of three directors is necessary. Section 174 of the Companies Act, 1963, provides for a minimum of two. The provision relating to a body corporate is based on section 176 of the Companies Act, 1963.

Section 41 imposes an obligation on every director who is interested in a contract or proposed contract with the society to disclose the nature of his interest at a meeting of the directors. A record of every declaration made under the section shall be available for inspection at general meetings. This section follows generally the lines of section 194 of the Companies Act, 1963.

Section 42 provides that a person who is an undischarged bankrupt or who has been convicted on indictment of any offence involving fraud or dishonesty may not establish a society, act as director or be concerned in the management of a society. A founder, director or manager who becomes ineligible under the section must forthwith cease to hold office. The section is based on section 183 of the Companies Act, 1963 and section 26 of the Credit Union Act, 1966.

Section 43 requires the annual return submitted to the Registrar under *section 70* to contain details of any loans made to a director or a member of the family of an officer or to a body corporate where an officer or a member of his family held shares of a nominal value not exceeding 20 per cent of the shares of that body. Accounts laid before the annual general meeting under *section 60* must show the amount of any loan made to an officer or a member of his family where the loan exceeded an amount specified for the purpose of the section by the Registrar or was issued for a purpose other than one approved by the Registrar. Where a society approves a loan to a member of the family of an officer the terms of the loan shall not be in any respect more favourable than those applicable to other loans made by the society for a similar purpose. The provisions relating to the member of a family of an officer do not apply where that member is a full-time employee of the society.

If the requirements of the section are not met, the auditor must refer to the matter in his report and, if possible, give the required particulars. An officer must give notice in writing to the society of such matters as may be necessary in connection with the section. The section is based generally on sections 192 and 193 of the Companies Act, 1963.

Section 44 provides that the accounts of a society shall show the aggregate amounts of directors' emoluments, pensions and any compensation for loss of office. Where the requirements of the section are not complied with, it will be the duty of the auditor to include in his report a statement giving the particulars in so far as he

is able to do so. This is on the lines of section 191 of the Companies Act, 1963, and the definitions of "emoluments", "pension" and "compensation" are generally similar to those in that section.

Section 45, which is new to building society legislation and prohibits the payment to a director of remuneration free of income tax, is similar to section 185 of the Companies Act, 1963. The prohibition will not apply to remuneration due under a contract in force on 5th December, 1975, or to remuneration in respect of any period prior to commencement of the section.

Section 46 requires directors' names to appear on all business letters and is similar to section 196 of the Companies Act, 1963. The Registrar can grant exemption from the requirements of the section in certain circumstances.

Sections 47 to 50 deal with the settlement of disputes. *Section 10* provides that the rules of a society shall indicate if disputes are to be settled by arbitration, by the Registrar or by a court. *Section 47* limits the type of dispute to one between a society and a member about any matter other than the construction of a mortgage deed or contract based on a document other than the rules of the society and to any other dispute where the rules expressly so apply. Where the rules require disputes to be determined by arbitration, *section 48* provides that the Arbitration Act of 1954 (No. 26 of 1954) will apply. The section provides that the rules of the society shall be deemed to be an arbitration agreement for the purposes of the Arbitration Act, that arbitrators shall be selected in accordance with the rules (or, if they make no provision, one arbitrator shall be named by the board of directors and one by the member), that arbitrators shall not be beneficially interested, and that the names of the arbitrators shall be recorded in a register kept by the society. *Section 49* provides that, where the rules require the determination of disputes by the Registrar, the provisions of the Arbitration Act, 1954, will apply to the determination and that the Registrar will be deemed to be a single arbitrator. *Section 50* provides that where the rules of a society so require, the Circuit Court may hear and determine the dispute. A determination by the Court will be final and binding and not subject to appeal except on a point of law. These sections are based generally on sections 34, 35 and 36 of the 1874 Act, section 2 of the 1884 Act and section 20 of the 1894 Act except that the procedure in the case of a determination by arbitration or by the Registrar will follow that laid down in the Arbitration Act.

Under *section 51* any provision in a society's rules shall be void in so far as it provides for the calling of a meeting (other than an adjourned meeting) by shorter notice than 21 days. A meeting called by a shorter notice than 21 days shall be deemed to have been properly called if agreed by the auditor and by the Registrar on application having been made to him. Notice of a meeting shall not be issued to members more than 42 days before the date of the meeting. Notice of a meeting shall be given by sending a notice to every person entitled to receive it or, with the consent of the Registrar, by publication in a newspaper in such form as the Registrar may direct.

Section 52 provides that a member who at the end of the previous financial year held shares issued under *section 22 (1)* to which voting rights attached and who, at the date of the meeting still held the shares, shall be entitled to attend a meeting of a society, but the rules may also confer this right on other persons.

Section 53 provides that a member (aged 21 years or more) shall be entitled to vote at a meeting of a society if, at the end of the previous financial year, he held shares issued under *section 22 (1)* to which voting rights attached, to a value of not less than £10 and, at the date of the meeting, still held the shares. Section 38 of the 1874 Act prohibited a minor from voting or holding office.

Section 54 provides that any member entitled to attend and vote at a meeting may appoint a proxy to attend and speak and to vote on a poll on his behalf. The instrument appointing a proxy must be in a form fixed by the Registrar. In every notice calling a meeting, the entitlement of a member to appoint a proxy must be mentioned. Any provision in the rules of a society is void if it requires the instrument appointing a proxy to be received by the society more than 48 hours before a meeting. This is on the lines of section 136 of the Companies Act, 1963.

Section 55 stipulates that any provision in the rules of a society shall be void if it excludes the right to demand a poll at a meeting on any question other than the election of the chairman or the adjournment of the meeting or if it would render ineffective a demand for a poll on any such question made by not less than ten members having the right to vote. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll. This is based on section 137 of the Companies Act, 1963.

Section 56 provides that a special resolution shall be one passed by a simple majority of members entitled to vote on a poll at a meeting in respect of which a notice was issued specifying the intention to propose the resolution as a special resolution. The terms of a special resolution may, in certain circumstances, be amended by an ordinary resolution. The special resolution procedure is new to building society legislation but is well established in the law relating to Industrial and Provident Societies, Friendly Societies and Companies. The proposal to allow a special resolution to be passed by a simple majority is in line with the Industrial and Provident Societies (Amendment) Act, 1971. (Company law requires a three-fourths majority for a special resolution).

Section 57 provides that where a member who is entitled under section 53 to vote on a special resolution makes written application to propose a special resolution, the text of which is included in the application, the society shall specify such proposal in the notice of the meeting. The society may refuse to give notice of the resolution if it is of the opinion that the subject matter is vexatious or frivolous, not related to the affairs of the society, or, if passed, could involve the society in activities likely to be *ultra vires*. Where a society refuses to give notice it shall, within ten days, notify the proposer accordingly and of the grounds for refusal. A member may treat the refusal of a society to give notice of a special resolution as a dispute for the purposes of sections 47 to 50.

Section 58 provides that a society shall hold an annual general meeting in the State in the first four months of each financial year, except in the year in which it is incorporated. The Registrar may, on written application, extend the period of four months. He is also empowered to call a general meeting where the society fails to call a meeting as required by the section.

The existing law does not specifically require the holding of an annual meeting. It is considered desirable, in line with section 131 of the Companies Act, 1963, to require the holding of an annual meeting. While the Companies Act permits the holding of the meeting at any time during each year, it is desirable that building societies should hold annual meetings during the first four months of the financial year.

Section 59 provides that every society shall keep proper books of account which give a true and fair view of the state of the society's affairs. It also requires the establishment and maintenance of systems of control and inspection of the books, the supervision of cash holdings, receipts and remittances and a system to ensure the safe custody of documents. Every record, other than deeds of title etc., shall be kept for at least six years after the date to which it relates. Penalties may be imposed for failure to comply with the requirements of the section. Section 40 of the 1874 Act requires societies, *inter alia*, to

prepare a statement of account at least once a year. The new section, which is on the lines of section 147 of the Companies Act, 1963, and section 7 of the Credit Union Act, 1966, imposes more stringent requirements regarding the keeping of books of account and systems of control and inspection.

Section 60 provides that the directors shall lay before the annual general meeting of the society an income and expenditure account and a balance sheet covering the previous financial year. In the case of a first account the period covered by the income and expenditure account and balance sheet will be the period since incorporation. Section 40 of the 1874 Act and section 2 of the 1894 Act contain provisions about the preparation of accounts. The requirements now proposed are on the lines of section 148 of the Companies Act, 1963 and section 7 of the Credit Union Act, 1966.

Section 61 requires a society to display in every office, branch or other place of business a statement in relation to the business carried on by it and in such form as the Registrar may direct. The requirement is on the lines of section 20 of the Central Bank Act, 1971.

Section 62 provides that the income and expenditure account and the balance sheet shall be in such form and contain such particulars as the Registrar may direct. Different requirements may be fixed for different classes of societies. Unless the Registrar otherwise directs, the income and expenditure account and the balance sheet for any financial year shall include corresponding particulars for the preceding financial year.

Section 2 (1) of the 1894 Act gives power to the Registrar, with the approval of the Minister for Industry and Commerce, to specify the form of accounts.

Section 63 requires the balance sheet to be signed by two directors and by the secretary or other officer of the society. This is in line with section 156 of the Companies Act, 1963. Every balance sheet shall have annexed to it the income and expenditure account and the auditor's report and the accounts must be approved by the directors before the balance sheet is signed. The requirement is similar to that in section 157 (1) of the Companies Act.

Section 64 provides that every balance sheet laid before an annual general meeting of a society shall have attached to it a report, signed by two of the directors, on the state of the society's affairs and containing such particulars as the Registrar may direct. This requirement is on the lines of section 158 of the Companies Act, 1963.

Section 65 provides that every balance sheet (and every document required by law to be annexed to it) which is to be laid before the annual general meeting together with a copy of the directors' and auditor's report shall be sent to the Registrar not later than 21 days after the meeting. Every member and depositor shall be entitled to obtain a copy of the documents on payment of a fee to be fixed by the Registrar and the documents shall be available for inspection by any member at the offices of the society. The Registrar may require the balance sheet to be sent to every person entitled to attend meetings of the society. Section 40 of the 1874 Act and section 2 of the 1894 Act contain requirements regarding the availability of copies of the annual accounts and the furnishing of same to the Registrar.

Sections 66, 67 and 68 deal in considerable detail with the appointment, retiral, replacement and the necessary professional qualifications of auditors of societies. The provisions of the sections are on the lines of sections 160, 161 and 162 of the Companies Act, 1963.

Section 69 provides that the auditor shall report to the members on the accounts examined by him and laid before every annual general meeting and his report shall be read at the meeting and be open to inspection. The section details the content of the report and imposes

a duty on him to carry out an adequate investigation of the society's affairs. The section also confers the right of access to records and information and to receive notice of, and attend and be heard at, meetings. The proposals are based on section 163 of the Companies Act, 1963.

Section 70 requires every society to submit an annual return to the Registrar, in a form to be fixed by him, within 21 days after the date of the annual general meeting and such other information and returns within such period as he, or the Minister may require. A report on the annual return by the auditor must be attached to it. A copy of the most recently available annual return shall be supplied to any member or depositor on payment of a fee. A mortgagor is entitled to be furnished with so much of any return made under the section as relates to his mortgage.

Section 71 provides that any provision in a society's rules which would exempt an officer or auditor from, or indemnify him against, liability which might attach to him for negligence, default or breach of trust in relation to the society shall be void. Any exemption or indemnity now in existence will apply insofar as things done or omitted to be done before the commencement of the section are concerned. The section is on the lines of section 200 of the Companies Act, 1963.

Section 72 allows the High Court to grant relief to an officer or auditor liable for negligence, default or breach of duty or breach of trust. The Court may take into account all the circumstances of any cases where proceedings are taken against an officer or auditor. The section is similar to section 391 of the Companies Act, 1963.

Section 73 provides that a society shall keep a register of the names and addresses of members and, where the membership exceeds 50, an index of the names. A member of a society wishing to communicate with other members on a matter relating to the affairs of the society may request the secretary to transmit information to those members; if the secretary, having regard to the interests of the members as a whole and to any relevant circumstances, is satisfied that the application is made in good faith, he shall comply with the request. In such a case the applicant will be liable for the costs incurred and the society may require security to be given. If the secretary refuses an application he must notify the applicant of the grounds for refusal and the applicant may appeal to the Registrar. Having heard any representations from the society, the Registrar may direct the society to comply with the request subject to such limitations and conditions as he may think fit.

This is based generally on sections 116 and 119 of the Companies Act, 1963, except that the proposals in the Bill do not require that the register shall show the shareholding of members and that access to it will not be permitted.

Section 74 requires a society to keep a register of its directors and secretary with particulars of names and addresses and, in the case of each director, his business occupation and other directorships. Provision is made for a member or other person to acquire a copy of the register or part of it and for inspection of the register, free of charge, by a member and by any other person on payment of a fee.

This is new to building society legislation and is based generally on section 195 of the Companies Act, 1963. It is desirable that existing and potential investors should be able to obtain reasonable particulars concerning the persons in control of a society.

Section 75 prohibits a society from giving commission in connection with the introduction to it of mortgage business. It also prohibits a society from entering into an arrangement with a person having a financial interest in the disposal of an estate under which the society would receive commission in connection with the making of a loan in respect of the estate. A society may not require a borrower to take out a life assurance policy, other than a mortgage protection policy. The prohibition will not apply in the case of a loan where

the borrower pays interest only during the repayment period, leaving the principal to be met out of the proceeds of a life assurance policy. The section prohibits a person from accepting any commission in connection with the introduction of mortgage business to a society. It also prohibits an officer, solicitor or surveyor of a society from accepting, in addition to the remuneration authorised by the rules, any commission in connection with a loan made by the society. The section prohibits a director of a society, who is also an auctioneer, from accepting any commission in his capacity of auctioneer, in connection with a transaction involving a property for which a loan is made by the society. An officer, solicitor or surveyor of a society is also prohibited from accepting commission in connection with the effecting of an insurance policy (including life assurance) where the policy is taken out to comply with the terms on which a loan is made, where the society makes an addition to a loan to enable payment of a premium to be made, or where a charge on the policy is given as additional security. A person who gives any commission the acceptance of which is prohibited by the section shall also be guilty of an offence.

Section 76 enables the Minister, on the recommendation of the Registrar and after consultation with the Minister for Finance and the Building Societies Advisory Committee, to make such regulations regarding the management of societies as he considers necessary or expedient for their proper and efficient management and for the promotion of the orderly and proper regulation of building society business. The regulations may include limits on management expenses and may also provide for the establishment of a code of practice with which societies must take all practicable steps to comply.

PART VI

LOANS

Section 77 empowers the Minister, with the consent of the Minister for Finance and after consultation with the Registrar, to make regulations regarding the amounts and purposes of loans advanced by societies. Regulations may contain provisions fixing the maximum amount of a loan, the purpose for which a loan may be made and the maximum amount that a society may advance to a body corporate and the total amount of such advances. A society may not make a loan to a body corporate within two years of its incorporation or its receipt of permission to advertise.

Section 78 provides that a loan made by a society may not exceed the valuation placed in accordance with section 79 on the freehold or leasehold estate offered as security. The Registrar may give directions regarding the class of security, other than freehold or leasehold estate, which may be taken into account as additional security in determining the amount of a loan. Where a loan is sought for defraying the purchase price of an estate and additional security (other than freehold or leasehold estate) is taken into account, the loan may not exceed the purchase price and may not exceed by more than 25% the maximum amount which the society would advance if the additional security had not been taken into account.

Section 3 of the 1942 Act enabled a society to take into account, in determining the amount of a loan, the value of additional security, other than freehold or leasehold estate, available in respect of the loan. This provision is being re-enacted. The provision empowering the Registrar to give directions as to the class of security offered is new, as is the limitation on the maximum additional amount which may be advanced through the offer of additional security. These provisions are considered necessary as safeguards against the taking of inadequate security and against the possibility that an undue proportion of a society's loans might be secured otherwise than by the mortgaging of freehold and leasehold estate.

Section 79 imposes a duty on every director of a society to satisfy himself that the arrangements for assessing the adequacy of the security to be taken in respect of loans will ensure that the security is assessed by a director or other officer competent to do so and that there will be available a written report by a competent and experienced person, other than an officer of the society. A report by a person who has a financial interest in the disposal of the relevant estate may not be accepted. Similarly, a person assessing the adequacy of the security may not have a financial interest in the disposal of the estate. Existing legislation is silent on the detailed arrangements to be made in connection with assessment of the adequacy of security taken by a society and regarding the persons who may report on the value of such security. The section will place a responsibility on every director to satisfy himself as to these arrangements.

Section 80 prohibits a society from advancing money on the security of freehold or leasehold estate which is subject to a prior mortgage unless the prior mortgage is in favour of the society.

This section is a re-enactment of section 13 (1) and (3) of the 1894 Act. Section 13 (2) of that Act exempted societies which at the time of the passing of that Act were authorised by their rules to make loans on second mortgages. Re-enactment of this provision is not necessary.

Section 81 prohibits balloting for loans and is a re-enactment of section 12 (1) of the 1894 Act.

Section 82 requires that, where a society recovers possession of a mortgaged property on the default of a borrower and the property is sold, the society shall pay to the borrower the value of the interest in the property after deduction of outstanding principal, interest and costs. Where a power of sale is exercised, the society shall take all practicable steps to ensure that the best possible price is obtained and, within 21 days of completion of the sale, the society shall send to the mortgagor such particulars of the sale as the Registrar may require.

Section 83 requires a society to keep records showing, in relation to every loan, particulars including the amount of the loan, the purpose for which it was made, the valuation placed on the freehold or leasehold estate, the person by whom the report under *section 79* was made, particulars of any additional security taken and any other information relative to loans which the Registrar may direct.

This is a new provision designed to ensure that information is readily available on a society's lending activities and in particular on the type of loans it is making and the relationship between the amounts of loans and the values of the relevant properties.

Section 84 provides, in the case of unregistered land, that when all moneys secured by a mortgage have been fully paid the society may endorse on, or annex to, the mortgage a reconveyance of the mortgaged property to the owner or a receipt under the seal of the society. Such a receipt shall vest the estate in the person for the time being entitled to the equity of redemption without further reconveyance or re-surrender. A receipt given in accordance with the section shall be accepted for the purpose of registration of title as evidence that the mortgage is satisfied. A certificate under the section shall be accepted as evidence in all courts without further proof that the mortgage has been cleared.

The section also makes appropriate provision in respect of a charge on registered land.

PART VII

MISCELLANEOUS

Section 85 provides that the Registrar of Friendly Societies shall be the Registrar of Building Societies.

Section 86 requires the Registrar to submit an annual report on the exercise by him of his functions under the Act to the Ministers for Local Government, Finance and Industry and Commerce. The report will be laid before each House of the Oireachtas.

Section 87 empowers the Minister for Finance to guarantee the repayment of moneys borrowed by a society (other than deposits under *section 22 (3)*) and the payment of interest on such borrowings, subject to the total amount of principal guaranteed not exceeding £20 million. The section authorises the issue of a guarantee in respect of moneys borrowed by the societies since 18th October, 1973. The Minister for Finance may require a society to give security for the repayment of moneys guaranteed. The section provides for the laying before each House of the Oireachtas, after the end of each year, a statement giving particulars of each guarantee given under the section. The requirements in the section are those generally applicable to State guarantees.

Section 88 provides that the financial year in relation to a society shall be the calendar year ending on 31st December. Transitional provision is made for societies whose financial year does not at present end on the 31st December.

Section 89 provides that a certificate of incorporation or of registration relating to a society, purporting to be signed by the Registrar, shall, in the absence of evidence to the contrary, be deemed to have been signed by him and shall be received in evidence. A printed document purporting to be a copy of the rules of a society and certified by the secretary or other officer shall, in the absence of evidence to the contrary, be deemed to be a true copy of the rules and received in evidence accordingly.

Section 90 provides that any register, record or book of account required by the Act to be kept by a society or by the Registrar may be kept either by making entries in bound books or by recording the matters in any other manner. Where records are kept otherwise than by entries in a bound book adequate precautions must be taken against falsification and for facilitating the discovery of any such falsification. The provision, new to building society legislation, is based on *section 378* of the Companies Act, 1963.

Section 91 provides for exemption from stamp duty of a range of instruments which would otherwise be liable to duty. The section does not exempt mortgage deeds.

Section 92 provides for the imposition of penalties for contravention of the Act and for liability for losses incurred in making loans in contravention of the Act. The section is generally on the lines of *section 58* of the Central Bank Act, 1971 and *sections 21 and 22* of the Unit Trusts Act, 1972.

Section 93 provides that where a person obtains in any court a judgment against a society and all claims under the judgment are not satisfied within 21 days from the date of the judgment, the society shall be deemed for the purposes of *section 95* to be unable to pay its debts. (*Section 95* provides that a society which is unable to pay its debts may be wound up by the Court). Provision is contained in *section 93*, where an appeal is lodged against a judgment, for the court to defer the presumption that the society is unable to pay its debts and to make an order requiring lodgment in court of funds or security to meet the amount due under the judgment.

This is new to building society legislation and is based on *section 28* of the Central Bank Act, 1971.

Section 94 empowers the Registrar to suspend the registration of a society for not more than three months and to extend the suspension from time to time by not more than three months on each occasion where the society has wilfully and after notice from him violated a provision or failed to comply with a requirement of the Act. The

Registrar may cancel the registration of a society where he is satisfied that it has ceased to function or where he is requested to do so by the society. Provision is made for the publication of notice of suspension or cancellation and for an appeal by the society within a period of two months against suspension or cancellation.

Section 95 provides that a society may be wound up under the Companies Act, 1963. Part VI of that Act provides that a company may be wound up (a) by the Court, (b) by voluntary winding up by the members, or (c) by voluntary winding up by creditors. Section 213 of the Companies Act sets out the circumstances in which a company may be wound up by the Court. As some of these would not be appropriate to a building society, section 95 specifies the circumstances in which a society may be wound up by the Court. It also provides that the Registrar may petition the Court for an order for winding up and that the provisions of Part X of the Companies Act shall not apply to a society. Section 95 provides that where a society is being wound up a person to whom a loan has been made shall not be required to repay the loan except at the time set out in the mortgage or other security. Provision is also contained in the section for the disposition of the deposit maintained with the Central Bank under section 20 in the event of a society being wound up.

This section is based on Part VI of the Companies Act, 1963, and section 30 of the Central Bank Act, 1971.

Section 96 provides for the establishment by the Minister for Local Government of an Advisory Committee to advise him on any matter affecting the operation of building society business and on any other relevant matter referred to it by him. The Committee shall consist of not more than nine members, representative of the Departments of Local Government and Finance, the Registrar, the Central Bank, the Irish Building Societies Association and such other bodies as the Minister may consider appropriate.

Section 97 contains transitional and savings provisions. Their effect is generally to preserve the validity of things done (including rules, orders and regulations made, certificates issued etc.) registers kept, legal proceedings taken etc. under existing Acts; to allow Acts repealed by this Act to be construed as references to this Act; to ensure that registration and incorporation of societies under repealed Acts is not affected; and to maintain the continuity of periods of time specified in earlier Acts but which may not have expired when the Act comes into force.

The section provides exemption for a society, in specified circumstances, from the requirements of sections 20, 37 and 38.

PREVIOUS LEGISLATION

References to sections containing only citations, definitions, repeals, commencement dates, etc., are omitted.

THE BUILDING SOCIETIES ACT, 1874

Section 8 Every society, the rules of which were certified under earlier legislation, deemed to be a society under this Act and its rules to continue in force until altered or suspended. Spent.

Section 9 Every society receiving a certificate of incorporation under this Act to become a body corporate having perpetual succession and a common seal. See section 11.

Section 10 The rules of subsisting societies to be transferred to the Registrar and upon registration the societies to be entitled to certificate of incorporation. Spent.

Section 11 Any subsisting society the rules of which not transmitted in accordance with Section 10, to be entitled

to incorporation on furnishing authenticated copy of rules to the Registrar. Spent.

Section 12 Certificate of incorporation not to be given to a subsisting society except on application made to Registrar on the authority of a special general meeting of the society. Spent.

Section 13 Any number of persons to be able to establish a society, either terminating or permanent, to raise by subscription of the members a fund for making advances by way of mortgage on freehold, copyhold or leasehold estate; to have power to hold land with right of foreclosure; to raise funds by the issue of shares and to repay such funds, provided that land acquired by foreclosure or surrender to be sold as soon as practicable. See *sections 2, 8, 16 and 22.*

Section 14 The liability of a member for any share on which no advance has been made to be limited to the amount paid or in arrear on such share, and where an advance has been made, limited to the amount payable under mortgage or security or under the society's rules. See *section 17.*

Section 15 The conditions subject to which a society may borrow money including requirement that deposit books and documents have conditions inserted on them. See *sections 22 and 23.*

Section 16 The matters to be set forth in rules of a society. See *sections 10, 12, 51, 58 and 66.*

Section 17 Procedures to be adopted in making of rules, submission of rules to Registrar, issue of certificate of incorporation, prohibition on the use of name identical with another society, provision re supply of copy of rules and certificate of incorporation. See *sections 10 and 11.*

Section 18 Procedures to be adopted in altering the rules of a society. See *section 12.*

Section 19 Power to provide for forms of conveyances, mortgages etc. Not re-enacted.

Section 20 Certificate of registration or incorporation etc., signed by Registrar to be accepted as evidence without proof of signatures; copy of rules signed by secretary to be accepted as evidence of rules. See *section 89.*

Section 21 The rules of a society to be binding on members and officers of the society. See *section 10.*

Section 22 Power to change the name of a society and procedure to be adopted. See *section 13.*

Section 23 The giving of a security bond by officer having receipt or charge of money belonging to the society. See *section 39.*

Section 24 Rendering of account by officer of society, delivery of money, securities etc., in his custody, power to apply to court in case of refusal. See *section 39.*

Section 25 Powers to invest surplus funds. See *section 38.*

- Section 26 Where a trustee, in whose name any transferable stock is standing, is absent, bankrupt etc., the Registrar to have power to transfer the stock to another person as trustee. Not re-enacted.
- Section 27 Rights of action etc., and estates in any subsisting societies to vest on incorporation under this Act without conveyance. Spent.
- Section 28 Power to appoint trustees in the case of copyhold tenure or to admit a society as tenant. Not re-enacted.
- Section 29 Where a member or depositor having less than £50 invested dies intestate, the directors to have power to pay the amount in question to the person appearing to them to be entitled to receive it. See *section 23*.
- Section 30 In the case of a mortgagor dying intestate, leaving an infant heir, the society to have power to sell the mortgaged premises and to pay the administrator any money, up to £150, without having to comply with the Trustees Relief Act. Not re-enacted.
- Section 31 Penalties for fraudulently obtaining monies, securities, documents etc., or for retaining or misapplying same. See *section 92*.
- Section 32 Procedures in connection with the termination or dissolution of a society. See *section 95*. The Bill does not provide for "terminating" societies.
- Section 33 Provision relating to the union of two or more societies or the transfer of engagements from one society to another. See *sections 25 to 28*.
- Section 34 Provision relating to the determination of disputes by arbitration. See *sections 47 and 48*.
- Section 35 Provision re determination of dispute by court. See *sections 47 and 50*.
- Section 36 Provision that the determination of a dispute by arbitrators or by the Registrar or the court shall be final. See *sections 47 to 50*.
- Section 37 Powers of a society to purchase, build, hire or lease any building for conducting its business or to purchase or lease land for creating a building for conducting its business and to sell, exchange or let such building. See *section 16*.
- Section 38 Powers to admit a minor to membership where the society's rules so permit, prohibition on a minor's right to vote or to hold office. See *sections 17 and 53*.
- Section 39 That two or more persons may jointly hold a share or shares in any society; that shares held jointly in a subsisting society deemed to be lawfully held. See *section 17*. Second provision spent.
- Section 40 Provisions relating to preparation of accounts of income and expenditure, general statement of assets and liabilities, attestation by auditors, countersignature of accounts and statement by secretary or other officer, entitlement of members to obtain copy of account and statement, requirement that copy be forwarded to Registrar and that copy be displayed in society's offices. See *sections 60, 61, 63, 65, 69 and 70*.

- Section 41 Provision re exemption from stamp duty. See *section 91*.
- Section 42 Provisions relating to discharge of mortgages. See *section 84*.
- Section 43 General penalty clause. See *section 92*.
- Section 44 Powers to make regulations under the Act. See *section 5*.

BUILDING SOCIETIES ACT, 1875

- Section 2 Subsisting societies the rules of which are certified under this Act, may obtain certificate of incorporation and be a society incorporated under the Building Societies Act, 1874. Spent.

BUILDING SOCIETIES ACT, 1877

- Section 2 Any society to have powers to change its chief office in accordance with its rules or under authority of a general meeting, notice of such change to be given to the Registrar and registered by him. See *section 14*.
- Section 3 Minor amendment of section 27 of the Building Societies Act, 1874. Not re-enacted.
- Section 4 Rights of action and interest in real and personal estate held in trust for any subsisting society to vest in such society without conveyance or assignment. Spent.
- Section 5 Registration of the union of societies, or transfer of engagements to be an effectual conveyance, as at date of registration, of funds, property and assets. See *section 27*.

BUILDING SOCIETIES ACT, 1884

- Section 2 Limitation as to the meaning of the word "dispute" in the Building Societies Acts. See *section 47*.

BUILDING SOCIETIES ACT, 1894

- Section 1 Matters which may be set out in the rules of a society. Amendment and extension of section 16 of the Building Societies Act, 1874. See *section 10*.
- Section 2 Amendment and extension of section 40 of the Building Societies Act, 1874. Provisions as to the form and content of accounts, auditors' report, sending of annual accounts and statement to the Registrar. See *sections 60, 62, 65, 69 and 70*.
- Section 3 That at least one of the auditors of a society publicly carries on the business of accountant. See *section 68*.
- Section 4 The Registrar on the application of ten members to have power to appoint an inspector to inspect the books of a society and to report; provisions as to costs; the inspector to have power to make copies of documents; the Registrar to communicate the results of inspections to the applicants and to the society. See *sections 29 and 30*.
- Section 5 The Registrar, on the application of one tenth of all members or of 100 members where the total is more than 1,000 and with the consent of the Secretary of State to have power to appoint an inspector to examine and report on the affairs of the society or to call a meeting; provision as to notice and costs; powers of the inspector; calling of meeting; Registrar's powers where a society fails to make a return; Registrar to have power to

investigate affairs of a society on receipt of a statutory declaration from at least three members. See *sections 29 and 30*.

Section 6 The Registrar to have power, with the approval of the Secretary of State, to cancel or suspend the registration of a society for a period not exceeding three months and to renew such suspension for a like period; provisions re giving of notice and re appeal; the Registrar to have power to cancel the registration at the request of a society; a society whose registration is cancelled to cease to enjoy privileges under the Acts. See *section 94*.

Section 7 The Registrar to have power to dissolve a society on application of one tenth of the members, (or 100 out of a total membership of more than 1,000) where the society is unable to meet claims; the Registrar to give directions as to winding up and to give notice of dissolution. See *section 95*.

Section 8 A society to be deemed to be a company for the purposes of the Companies (Winding-up) Act, 1890. See *section 95*. Second provision spent.

Section 9 Where a society is dissolved or wound up the provisions of the Acts to apply as if the liquidators or trustees were the Board or Committee of Management. See *section 95*.

Section 10 On dissolution or winding-up, a member to whom an advance has been made not to be liable to repay except at the time and subject to the conditions in the mortgage. See *section 95*.

Section 11 On dissolution or winding-up, the liquidators to send to the Registrar an account and balance sheet, showing how the assets and liabilities have been applied; in default, the liquidators to be liable to a fine. See *section 95*.

Section 12 A society established after the passing of this Act not to be permitted to ballot for advances; a subsisting society where its rules so allowed, to have power, by a majority decision of members present at a meeting, to discontinue balloting for advances. See *section 81*.

Section 13 A society not to make an advance on property which is subject to a prior mortgage unless that is in favour of the same society; the section not to apply to a society in Scotland or Ireland where the society's rules permitted making of advance on second mortgage; the directors to be jointly and severally liable for any losses on the making of a second mortgage in contravention of the section. See *section 80*.

Section 14 That in calculating borrowing limits, the amounts secured on properties, the repayments on which are more than 12 months in arrear or on properties of which the society has been in possession for 12 months to be disregarded; provision not to affect validity of deposit or loan within the legal limits at the coming into operation of this Act. Not re-enacted.

Section 15 A society not to use a name other than its registered name or accept a deposit except on terms that not less than one month's notice of withdrawal is required. See *sections 15 and 22*.

- Section 16 A society to be enabled to deposit funds in a savings bank to a limit of £300; to invest in Government stock through a Savings Bank up to £500. See *section 38*.
- Section 17 Powers of investment under section 25 of Building Societies Act, 1874 to include investment in securities in which trustees are authorised to invest. See *section 38*.
- Section 18 Proceedings under section 31 of the Building Societies Act, 1874 to be taken at the instance of the society or authorised member or by the Board of Directors or by the Registrar. See *section 92*.
- Section 19 In the case of a union or transfer under section 33 of the Building Societies Act, 1874 the union to be valid if not less than two-thirds of all members agree. See *sections 25, 26 and 27*.
- Section 20 Arbitrators, Registrar or court not to be compelled to state a case but to have power to do so at the request of either party to a dispute. See *sections 48, 49 and 50*.
- Section 21 For failure or neglect to give notices etc., or to give information to Registrar or inspector the society and every officer to be liable on summary conviction to a fine not exceeding £20 or in case of a continuing offence, a fine not exceeding £5 for every week the offence continued. See *section 92*.
- Section 22 Any person making a false statement in document required to be sent to the Registrar, liable on summary conviction to a fine not exceeding £50. See *section 92*.
- Section 23 Prohibition of, and penalty for, giving or accepting any gift, bonus etc., in connection with any loan; the value of the gift, bonus, etc., if directed by the court, to be paid to the society; fine of £50 on summary conviction or, in default, not more than 6 months imprisonment; imprisonment for not more than 6 months for failure to comply with direction of the Court. See *section 75*.
- Section 24 In any charge involving fine or imprisonment on summary conviction the defendant and his wife to be competent witnesses. Not re-enacted.
- Section 25 Extension of section 40 of the Building Societies Act, 1874 to apply to societies certified under the Building Societies Act, 1836 and not incorporated under the 1874 Act; the Building Societies Act, 1836 to be repealed two years after coming into operation of 1894 Act in so far as societies certified after 1856 under the 1836 Act are concerned. Spent.
- Section 26 The forms to be used under this Act set out in the Third Schedule. See *section 36*.
- Section 27 The Chief Registrar to make abstract of accounts and statements and of proceedings of the Registrar and to lay them before the Secretary of State and Parliament. See *section 86*.

THE BUILDING SOCIETIES ACT, 1942

- Section 2 Amendment of section 15 of 1874 Act by the increase from two-thirds to three-quarters the amount of loans and deposits in relation to mortgages, and consequential amendment of the conditions to be inserted on deposit books. See *section 23*.

Section 3 Power to take into account the value of additional security for a loan. See *section 78*.

THE BUILDING SOCIETIES ACT, 1974

Section 2 Powers enabling the Registrar to register union of two or more societies or the transfer of engagements from one society to another where application is made to him after such a proposal has been approved by a majority of the members at general meetings convened for the purpose. See *sections 25 to 28*.

Section 3 Powers to enable the Minister for Finance to guarantee the repayment of moneys borrowed by societies between 18th October, 1973 and 30th June, 1974; the amount guaranteed limited to £6 million. See *section 87*.

*Roinn Rialtais Aitiúil,
Meitheamh, 1976.*