Building Societies (Joint Account Holders) Bill

[Bill 104 of 1994/ 95]

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The *Building Societies (Joint Account Holders) Bill* (Bill 104) started as a Ten Minute Rule Bill, introduced by Douglas French (the member for Gloucester) on 17 January 1995. The Bill, as amended by the Lords, returns to the House on 28 April. It amends a provision of the *Building Societies Act 1986* which can discriminate against a person who is named second in a joint building society account. Under the Act, payments to building society members in the event of a takeover or merger can only be made if the account has been open and unchanged for two years. Where an account is in a joint name, the first named account holder only is entitled to the payment. If the first account name changes for any reason during the two year period, then the account is no longer entitled to benefit from a payout. Among those particularly affected by this provision have been widows, named second on an account, whose husbands have died during a two year qualifying period prior to a merger or takeover payout.

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I Introduction

The *Building Societies (Joint Account Holders) Bill* (Bill 104 of 1994/95) started as a Ten Minute Rule Bill, introduced by Douglas French (the member for Gloucester) on 17 January 1995. It amends a provision of the *Building Societies Act 1986* which discriminates against the person who is named second in a joint building society account. Under the Act payments to building society members in the event of a merger or a takeover of the society can only be made if an account has been open and unchanged for two years prior to the qualifying day. Where an account is in a joint name, the Act states that the first named account holder is treated as the member for when it comes to deciding whether the account qualifies for a payout. If the first name on the account in the society's records has changed at any time during the two year qualifying period, then the account is no longer entitled to benefit from any payout. This is because the account is deemed to have changed; when the first name is altered the two year qualifying period has to start all over again.

This two year rule was designed to prevent people from moving funds into building societies in the hope that the society might merge or be taken over. To discourage such speculation, and to stop the building society sector from being subject to volatile flows of capital moving in search of merger bonuses, a two year qualifying period was set up. Although the history of building societies this century is one of mergers and consolidation amongst societies, the procedures set up by the Act, especially those which allowed societies to convert into or be taken over by limited companies were untried.

The problems of second named account holders first surfaced in the late 1980s when the Abbey National became the first society to use the new powers available to it under the Act and become a bank and float its shares on the stock market. Both borrowers and investors were entitled to 100 free shares when the society floated, subject to various conditions. One of these was that the account had to have had at least £100 in it on 31 December 1988. The flotation took place in July 1989, and holders of accounts where the first name changed during this period were ineligible for the free shares. Most of those affected by this provision were widows whose husbands had died between 1 January 1989 and the float; their deaths meant that the account names had to be changed, and so the accounts lost their entitlement to the free shares. Although the problem was recognised at the time, it was not addressed, perhaps because no other society chose to follow the Abbey National on the route to becoming a limited company.

The issue of joint account holders was revived, however, when on 21 April 1994 Lloyds Bank and the Cheltenham & Gloucester Building Society announced that the society would be acquired by the Bank, subject to the approval of the members. As a mutual the C & G belongs to its members, so the sum which Lloyds was paying to acquire it was going to be distributed as cash to qualifying members on the completion of the takeover. Exactly who was a 'qualifying member' for the purpose of a payout hence became of importance. The terms of the C & G offer were tested in the High Court, but several groups nevertheless found themselves disqualified from receiving a payment. These included any account where the first account name had changed during a two year qualifying period - among this group were many

recently bereaved widows. Also barred are those who have switched between types of account during the two year period, and there are also difficulties where an account has been held by trustees.

The Bill addresses the predicament of second named account holders only. It inserts a new section in the *Building Societies Act 1986* which provides that shares in accounts where the first name has changed during a two year qualifying period will be treated as having belonged throughout the two year period to the individual who was named second in the account, so long as no one else still has a prior claim over the second named individual. If one of the account holders dies during a two year period, then for the purposes of a distribution, that person is treated as never having held shares in the account. The Bill applies to any case where the vesting date (the official date that the society merges or is taken over) occurs after the Bill has gained Royal Assent. The Bill is permissive: whether its provisions affect a particular transaction depends on the terms which the society or societies agree.

This last point is relevant to the C & G takeover. The members of the society voted on 31 March 1995 to accept the proposed transfer of their society to a subsidiary company of Lloyds Bank. The terms which they voted on had provided for the possibility of making a bonus payment to widows if a Bill were to be passed before vesting date which would permit such a payment. No provision was made for accounts which had altered for other reasons (separation, divorce, majority and so on), so although this Bill would permit bonus payments to be made to others who are barred by the *Building Societies Act 1986*, in the C & G affair it is only cases where the first named holder has died who will benefit from this Bill. If this Bill is not passed by 31 July 1995 then up to 5,000 widows and others will not be able to receive a bonus payment of at least £500 each.

Although the Bill is therefore of immediate relevance to certain members of the Cheltenham & Gloucester, the issue of joint account holders will also be important for future developments in the sector. On 25 November 1994 the Halifax and the Leeds Permanent, respectively the largest and fifth largest societies in the UK, announced their plan to merge and subsequently float on the stock market. When those shares are distributed - at an as yet unknown date - the account names will again be relevant. Other societies have also been linked as merger and takeover partners, including most recently the Abbey National's interest in acquiring the National & Provincial Building Society[1].

This paper describes the background to the present Bill, and explains the Bill's provisions. It also discusses other recent developments in the building society sector which provide a wider context for this Bill.

The *Building Societies (Joint Account Holders) Bill* passed all its Commons stages without debate on 10 February 1995, before moving to the Lords where its wording was completely revised although its intended effect remains unchanged. The Lords amendments, to be debated

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[1] 'Abbey seeks takeover talks with National & Provincial', *Financial Times*, 25 April 1995

on 28 April 1995, will therefore provide the first opportunity for the House to debate the issues behind the Bill.

II Background: The Cheltenham & Gloucester takeover

On 21 April 1994 Lloyds Bank and the Cheltenham & Gloucester Building Society announced a deal whereby, subject to the approval of their respective shareholders, members and borrowers the C & G would be acquired by a subsidiary company of Lloyds Bank, Chambers & Remington, and then become a public limited company. The society thus became only the second to take advantage of the powers contained in the *Building Societies Act 1986* which allow a mutual building society (owned by its members) to become a company (owned by its shareholders). The Act contains stringent voting requirements to ensure that a substantial majority of the society agrees to such a change. For the takeover to proceed, the deal required a 75 per cent 'yes' vote by members of the C & G (and an absolute majority of eligible voters had to vote in favour). There also has to be a simple majority vote in favour by the borrowers.

It is important to understand the difference between the various classes of building society customer. The class to which an individual belongs will dictate the benefits that he or she will receive from any takeover, but the distinction between these classes is not widely appreciated. The main division is between savers and borrowers. There are two types of savers: **investors** and **depositors**. The distinction is mostly technical: some types of accounts are share or investment accounts; others are deposit accounts. Someone with a **share or investment account** is a member of the society, and owns a share of the society. With this membership comes the right to vote on society business, and to take a small part in the way the society is run. Those savers who have a **deposit account** are not members of the society. They cannot vote on society business, and take no part in its affairs. Theirs is a purely commercial relationship with the society. Although there is very little real difference between an investment account and a deposit account, the fact that investors have rights that depositors do not is an aspect of building society structure which has gained a much higher profile, as a result of the present merger and takeover activity. **Borrowers** have a mortgage account. These loans are long term, so although borrowers are not members of the society, their interest in the future of the society is recognised by their separate ballot on a takeover.

The terms of the original C & G offer:

Who gets what

Investors, share accounts†.....£500 and 10% of balance
Mortgage borrowers‡.....£500 per property
PIBS holders‡.....£500
Savers, deposit accounts‡.....10% of balance
Permanent members of C&G staff‡.....£500
C&G pensioners‡.....£500

† £500 paid to investors with accounts on December 31, 1993. Then 10 per cent of the lower of the two balances held on December 31, 1993, or March 31, 1994.
‡ On completion day.

[*Guardian*, 23 April 1994]

The terms originally offered by the Cheltenham & Gloucester were changed after a High Court challenge which was brought by the Building Societies Commission. The case questioned the legality of the society's interpretation of those sections of the *Building Societies Act 1986* which relate to the transfer of building society assets to an existing company (sections 97 to 102).

Part of the protection of societies from takeovers is the requirement that very large proportions of the societies' memberships must vote and approve any proposed transfer of business to an existing company. There is a separate section in the Act (s. 100(9)) which limits cash payments, in such a transfer, to members who have held a share in the society for at least two years prior to the qualifying day. Its rationale is to protect the building society sector from destabilising flows of short-term cash moving from society to society in the hope of benefiting from windfall payments. Section 100(9) would have prevented some 27 per cent of shareholders in the C & G from receiving payments, and it was feared that the size of this block was so great that non-payment to them might have threatened a favourable vote for the whole deal.

In order to overcome the hurdle of the voting requirement, and at the same time to avoid the two year qualifying period, the society argued that the two year qualifying period did not apply in its case. The basis for this argument was that the successor company, in the words of the Act, was to be a subsidiary of Lloyds Bank, Chambers and Remington Ltd. The payments, however, were to originate from Lloyds Bank, a third party. Giving judgment on June 8 1994, Sir Donald Nicholls held that the bar on payments in section 100(9) applied just as much to the parent company of a successor company as to the successor company itself. The two year period had to apply to all share accounts. The intention of the Cheltenham & Gloucester to pay a bonus to depositors was also challenged by the Building Societies Commission, but in this instance the High Court found in favour of the society. Sir Donald Nicholls judged that it would be lawful to make payment to non-members:

> '"They have no votes. They have no say in whether the transfer agreement will be approved. In principle, therefore, if the members are prepared to approve terms whereby part of the cash on offer will be paid to employees and pensioners and depositors, that is a matter for them"."[2]

The terms of the Cheltenham & Gloucester's second offer:

As a result of the verdict, the Cheltenham & Gloucester revised its terms. In so doing it moved the date since which share accounts needed to have been continuously open back from 31 December 1993 to 31 December 1992. This meant that many more accounts were

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[2]'C & G takeover in virgin territory', *Financial Times*, 9 June 1994

disqualified as a result of the two year rule, which served to highlight the problems not only of joint account holders, but also those who had switched between types of account during the period. Borrowers were also removed from the payout: under the new offer they receive nothing. Children, however, did become eligible for a payment.

INVESTORS	
Account opened before 31 December 1992	£500 per account; plus c. 13 % of balances. Children's accounts included
Balance below £100 on 31 December 1994	13% of balance only (no £500)
Account opened after 31 December 1992	Nothing
DEPOSITORS	
Account opened before 31 March 1994	£500 per account; plus c. 13% of balances
Balance less than £100 on 31 March 1994	13 % of balance (no £500)
BORROWERS	
All mortgage holders	Nothing

(Source: *Guardian*, 13 August 1994)

Joint accounts

As described earlier, the first named account holder in a joint account is treated by the society as the account holder. If the name of the account changes, then the account is considered to have changed. This results in an anomalous situation in a number of situations, notably when one of the joint account holders dies. If the second account holder dies, then because the first named holder will remain the same, the account itself is considered to be unchanged, and therefore eligible for a bonus payment. If, however, the first named account holder dies, then when the account is altered to the name of the surviving account holder, the account is deemed to have changed. In the case of the C & G, if this change occurred after 31 December 1992 the surviving account holder will not qualify for any bonus payment, despite the fact that the account is in essence the same account.

This provision has come in for criticism because it appears to prejudice especially widows. Husbands are frequently named as the first name, often because the society's records use the form 'Mr and Mrs...'. Then, if the husband predeceases his wife, and the wife becomes the first named account holder, she is not be eligible for any payment if the society is involved in a takeover within two years of the name change. Although the problem of widows with joint accounts has received most attention, the same principle applies when *for any other*

reason the second named holder has become the first named holder at any point since 31 December 1992.

The situation derives from the *Building Societies Act 1986*. Schedule 2 of the Act makes provision for the first named account holder to be treated as the 'representative joint holder' (Sch.2 para.7(2)). For such matters as voting rights at meetings the representative joint holder counts as the sole holder of the shares. Paragraph 7(5) explicitly extends this definition to those sections of the main Act which deal with takeovers:

> (5) For the purposes of sections 87 and 93 to 102 the shares shall be treated as held by the representative joint holder alone; and accordingly a person who is a member of the society by reason only of being a joint holder of those shares (other than the representative joint holder) shall not be regarded as a member of the society for the purposes of those sections.

[*Building Societies Act 1986* Sch. 2, para. 7(5)]

The rationale for this is probably simply to make sure that there is no confusion about the number of votes or the entitlement to receive payments. In the Act, these sections on takeovers and mergers use such phrases as 'each qualifying member of the society', and it is clearly necessary to make sure that joint accounts do not carry twice as many rights as ordinary accounts. Yet the present wording is manifestly unfair in cases where one of the partners dies and the account name has to be changed. Joint account holders are, incidentally, entitled to decide who is to be named first (Sch.2, para. 7(8)), so there is no explicit assumption that the representative joint holder should be the husband.

The full paragraph setting out the treatment of joint accounts reads:

Joint shareholders

> 7.— (1) Two or more persons may jointly hold shares in a building society and the following provisions of this paragraph shall apply to any shares so held.
>
> (2) In this paragraph, in relation to any shares jointly held, "representative joint holder" means that one of the joint holders who is named first in the records of the society.
>
> (3) Except where the rules of the society otherwise provide, any notice or other document may be given or sent by the society to the joint holders by being given or sent to the representative joint holder; but this sub-paragraph shall not prevent any of the joint holders from exercising the rights under this Act of a member of a building society to obtain from the society on demand a copy of the summary financial statement, the annual accounts and the annual business statement.

(4) For the purpose of determining—

(a) who is entitled to vote in an election of directors of the society;

(b) who is qualified to vote on a resolution of the society, and

(c) where it is relevant, the number of votes a person may then give,

the shares shall be treated as held by the representative joint holder alone; and accordingly a person who is a member of the society by reason only of being a joint holder of those shares (other than the representative joint holder) shall not be entitled to vote in any such election or qualified to vote on any such resolution.

(5) For the purposes of sections 87 and 93 to 102 the shares shall be treated as held by the representative joint holder alone; and accordingly a person who is a member of the society by reason only of being a joint holder of these shares (other than the representative joint holder) shall not be regarded as a member of the society for the purposes of those sections.

(6) The representative joint holder (but none of the other joint holders) shall have the right to join in making an application under section 56 and any reference in that section to the total membership of a building society shall be construed accordingly.

(7) In the register to be maintained under paragraph 13 below the entry of that one of the joint holders who is the representative joint holder shall indicate that fact.

(8) The joint holders shall be entitled to choose the order in which they are named in the records of the society.

[*Building Societies Act 1986*, Sch.2, para 7]

Since the incidence of this provision might be expected to affect women more than men, it has been suggested that the *Sex Discrimination Act* might be relevant. Part III of the *Sex Discrimination Act 1975* applies to discrimination in goods, facilities, services and premises. Under section 29(2)(c) 'facilities by way of banking or insurance or for grants, loans, credit or finance' are mentioned specifically as areas where it is unlawful for discrimination to be applied. Although it seemed possible that the effect of the *Building Societies Act 1986* might be considered as indirect discrimination in the provision of goods, facilities, services and premises, the Equal Opportunities Commission was advised that a legal challenge on this basis would not be certain of success. They were told that the society might be able to claim objective justification for its discrimination, since it was obliged to obey the *Building Societies Act 1986*. Moreover, as a later Act, the *Building Societies Act 1986* might be interpreted as having impliedly repealed the *Sex Discrimination Act 1975* insofar as was necessary to comply with its own provisions. They also identified some other reservations

about the possibility of a successful legal challenge, and instead urged the Government to resolve the issue.[3]

III The Bill

The *Building Societies (Joint Account Holders) Bill 1994/95*, allows for widows to benefit from a payout during a takeover by allowing the second named holder to be treated as the first named holder in the event of the death of the first named holder.

The Bill would also benefit other account holders who have altered the order of names on their accounts for some reason during the two year qualifying period, provided that the person has held the account continuously over the two year period. This provision is designed to benefit joint account holders who have decided to change the account order perhaps for tax purposes, or any other reason. It also benefits individuals who have moved in or out of joint accounts within the two year period, but remained an investor for the full period. This might apply to individuals who have become partners, or separated. It does not benefit those who have switched between deposit and investment accounts.

The Bill was originally introduced under the Ten Minute Rule by Douglas French in the Commons, and had its First Reading on 17 January 1995. A Bill with similar aims had earlier been introduced in the Lords by Lord Dubs, the *Building Societies (Joint Accounts) Bill* [HL Bill 17], but he withdrew it on 27 February 1995. Moving for leave to introduce the Bill, Mr French said:

> The Bill addresses the problem which arises whenever there is a takeover or merger by a building society which involves a bonus payout to members. It applies currently in the case of the takeover of the Cheltenham and Gloucester building society by Lloyd's bank. It will apply in respect of the proposed merger of the Halifax building society and the Leeds Permanent, and any others that may follow.
>
> The combined effect of schedule 2(7) and section 100(9) of the Building Societies Act 1986, is that any distribution of bonus to savers who have investment accounts— that is, members who hold shares in the society— can be made only to a sole account holder or to the first-named person of a joint account, and in both cases only to those who have invested continuously for two years.
>
> The requirement to have invested continuously for two years is a very wise provision, because it seeks to reward loyalty for long-term saving and not to reward those who open accounts in anticipation of a takeover and a windfall cash distribution.

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[3]EOC press release 'Widows lose cash in building society takeover' and EOC briefing, 25 January 1995

The restriction to first-named joint account holders, however, discriminates against categories of saver who ought to be entitled to benefit. The most unfairly treated category of all is widows who have had a joint account with their husbands and whose husbands die during the qualifying period.

The husband's name may be deleted from the existing account, or the balance may be transferred to a new account in the widow's name only. Either way, the counting of the two-year qualifying period has to begin all over again. It makes no difference how many years previously the wife has contributed to the account: she gets no credit for it, because it is deemed to be in her husband's name.

The problem is well illustrated by my constituent Mrs. Wiltshire, of 52 Mayfield drive, Hucclecote, Gloucester. As long ago as 1964, she opened an account with the Cheltenham and Gloucester in her first married name of Mrs. Wellington. In 1966, her first husband having died, she remarried, and her account was amended to the name of Mr. and Mrs. Wiltshire.

Sadly, Mr. Wiltshire died in 1993, and the account was referred back to Mrs. Wiltshire's sole name. She is therefore a continuous saver of more than 30 years' standing, but she does not qualify for a cash distribution under the C and G takeover, because she was not the first named account holder for two years prior to the qualifying date— in this case, 31 December 1994.

The same problem arises with newly marrieds. A single woman who has a building society investment account may on marriage choose to redesignate the account jointly in the name of her new husband and herself. By doing so, she loses the rights that may have accrued to her when the account was in her own name. Her new husband must begin the two-year qualifying period in his name alone. A similar disadvantage can arise in cases of divorce, when a woman must reopen an account in her name alone.

Those examples show that the 1986 Act unwittingly enshrined a degree of sex discrimination. It is virtually always the woman, whether a widow or newly-wed, who suffers, because the normal convention in the English language is to designate an account Mr. and Mrs. To open an account using Mrs. and Mr. would be thought rather odd. Consequently, the woman is invariably the second-named account holder and cannot accrue any rights in relation to a two-year qualifying period while she remains the second-named person.

That problem has been much in the news recently, but it is not new. It was identified as early as 1988, when the Abbey National building society decided to convert to plc status. In making share allocations, the Abbey National found that it was precluded from conferring any benefit on second-named account holders. Six years later, that problem remains unresolved.

My hon. Friend the Minister of State, Treasury, is well aware of the problem, and I pay tribute to him for the time and trouble he has taken to consider possible solutions. He is currently engaged in a full review of building societies' powers, and hopes to present a range of measures in due course.

The trouble is, as my right hon. Friend pointed out in his letter to me of 14 December 1994, that he sees little possibility of bringing forward any legislation before 1996 — and even then, the 1986 Act's takeover provisions are not his prime concern. My Bill singles out for earlier treatment one point that must surely be perceived as an injustice by whoever considers it.

The Bill does not attempt to tackle every related problem. For example, individuals who switch from a deposit account to a share account during the qualifying period also exclude themselves from any entitlement— but that is a more complex matter, which falls outside the Bill's scope.

In my opinion, the flaw in the 1986 Act was to assume that eligibility for bonus payments must be based exclusively on voting rights. Second and subsequent joint account holders were not given voting rights, because members could then have exercised multiple votes simply by adding extra names to joint accounts. That is why only one vote attaches to one account. However, exclusion from voting need not in every case be accompanied by exclusion from bonus entitlement. One bonus payout should attach to each account where either the first named account holder or a second or subsequent account holder meets the two-year qualifying period for continuous saving.

If my Bill becomes law, it will be for the Cheltenham and Gloucester to decide whether to take advantage of the legislation to benefit its members. A vote on the takeover's current terms is due at the end of March, and the two-year qualifying period ended on 31 December 1994. It would be open to the C and G to make the operative date later. It has already postponed it once, and could do so again. I hope that the society will so decide. In any event, the Bill protects against a similar problem arising in future takeovers.

The Bill does not attempt to change the two-year qualifying period or to give joint account holders more than their fair share or to alter voting rights. All it does, by two small amendments to the Building Societies Act, is give credit for the savings record of the second-named account holder, and by so doing, fairness and justice to thousands of people. I commend it to the House.

[HC Deb. 17 January 1995, cc. 585 - 587]

Douglas French's Bill passed all its Commons stages without debate on 10 February 1995. The previous Friday its passage had been blocked by objectors, which led to critical press coverage of the behaviour of the objectors.[4] It was introduced in the Lords by Lord Hayhoe on 13 February 1995 and it was read for a second time on 27 February 1995. Lord Henley, for the Government, indicated his support for the Bill and promised assistance with drafting. He also warned against extending the scope of the Bill to cover other flaws in the *Building Societies Act 1986*, since such changes might jeopardise the Bill's chance of passing in time to help the C & G widows.[5] His warning on this point echoed that of Lord Hayhoe.

The Committee Stage was taken on 15 March. Lord Henley introduced two amendments, one of which replaced the main clause of the Bill with a new clause. He described the effects of his amendments as follows:

> In moving Amendment No. 1, I should like to speak also to Amendment No. 2— in fact, to all the amendments! As my noble friend Lord Hayhoe explained on Second Reading, this measure has a limited purpose. It is to deal with a number of specific inequities in the Building Societies Act 1986 which affect the eligibility to receive a payment of second-named account holders — such as widows and newly married couples— when their society converts to a plc or is taken over by a company from outside the sector. It could not be, and is not intended to be, a comprehensive measure dealing with every possible problem, nor does it seek to address any matters affecting voting rights.
>
> I should advise the Committee that any attempt to widen the scope of the Bill could put its survival at risk when it returns to another place for consideration of your Lordships' amendments. The Government support the Bill but we also accept the bounds within which it is set. In the time available it is much better to achieve a limited degree of success than to strive for much more and end up with nothing.
>
> I appreciate that the two amendments, which stand in the names of my noble friend and myself, appear somewhat draconian, in that they strike out some 90 per cent. of the Bill only to replace it with a new version. If I may, I shall explain— possibly at some length— that the amendments are, in effect, mere drafting amendments. They are designed to ensure that the Bill achieves the stated aims of my noble friend.
>
> I believe that all sides of the Committee would agree that the Bill should permit second-named (or former second-named) holders to participate in distributions following the death of the first-named holder (the so-called "widow's problem"); on the creation of a joint account (for example, on marriage); on the division of a joint account (for example, on divorce or separation); or when there has been a change in the order of names within an account. But it is not the intention of the measure to enable individuals to claim two distributions by manipulating their accounts, for example by splitting them up.
>
> I should like briefly to give an outline of the amendments which stand in my name and that of my noble friend and which are spelt out in full in the wording laid before your Lordships. In brief, we propose to insert a new Section 102A into the Building Societies Act 1986, which will replace Clause I of the Bill as it came to the House.
>
> Subsection (1) of the new section explains that the measures apply where a transfer or conversion involves a distribution of cash or share rights.
>
> Subsection (2) then looks at someone— called "A" in the text— who is presently disqualified from receiving a distribution by the two-year rule in the current Act. Four conditions have to be satisfied before A can benefit in future. First, A must have held shares for what is called the "requisite period" which must always exceed two years; secondly, the shares must have been held jointly; thirdly, A must have been second-named holder; and, finally, no one who, in the words of the section, "has priority over A", may have held shares for the requisite period. I shall come back to that last requirement, from subsection (2) (d), in a moment.

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[4]See, for example, 'Labour objectors kill off C & G Bill', *The Times*, 4 February 1995; 'Speedy move on society bill urged', *Financial Times*, 7 February 1995

[5]HL Deb. 27 February 1995, cc. 1366

If all those conditions are satisfied, then A will be able to qualify for a distribution. So those widows and others who are excluded by the existing legislation from receiving a distribution will, in future, be eligible for one.

In subsection (3), the wording may be complex but the effect is clear. First-named account holders take priority over second-named holders, and a later holder of the same degree takes priority over an earlier one. Let us take the example of a widow. As her husband will not have held shares for the requisite period, the test in subsection (2) (d) will be satisfied, and the widow will be able to benefit.

Let me give some other illustrations. Paragraph (a) of subsection (3) deals with situations where A has never been first-named holder of the jointly held shares. An example— case 1— is where A marries. She closes her sole account and opens a joint one with her husband, "H". If H is the first-named holder, he will be,
"a person who has priority over A".

If he holds shares throughout the requisite period, then he will get any distribution. But if he does not, then A will.

Let us take a different example. If another couple divorce and split their joint account, A will benefit if H takes his money away from the society, but if H retains a share account with the society for the requisite period, he will benefit from any distribution, not A. So a couple who split their account during the requisite period will not be able to obtain a double benefit. Both those examples are likely to be frequent occurrences.

The second case deals with a much rarer situation, but one example is where a husband, wife and son, named in that order, have a joint account. When the son reaches 18, the order of names is changed and he becomes second-named holder, with his mother becoming third-named. If the father dies and the account is split the mother and the son will each have been second-named holder for part of the time. The rule then is that the son, as the later second-named holder, will be entitled to any distribution.

Paragraph (b) deals with the situation where A has been the first-named holder for part of the period. That could occur where a husband and wife change round the names on their account. Both will at some stage have been second-named holder, but under paragraph (b) the one who is first-named for the later part has priority.

Subsection (4) defines expressions used in the new section. A key definition here is "the requisite period". This runs from two years before the "qualifying day" to immediately before the "vesting date".

Finally, subsection (2) of the new clause amends paragraph 7 of Schedule 2 to the Act to make sub-paragraph (5), which limits rights under Section 100 to representative joint account holders, subject to the new section.

Amendment No. 2 simply adds a provision to Clause 2 stating that the Bill applies in cases where the vesting date falls after it is passed. It will come into force on receiving Royal Assent.

[HL Deb. 15 March 1995, cc. 915 - 917]

The amendments were endorsed by Lords Hayhoe, Eatwell and Dubs.

At Report Stage a further amendment was introduced by Lord Inglewood to address the case of a multiple account held by, for example, a mother, father and son where both parents die. The amendment has the effect that, where an account holder dies, the subsequent account holder moves up the scale. The amendment does <u>not</u> deal with the position of third and subsequent named account holders in situations <u>other than death.</u> However, it would address the case of where both parents die and would allow the child to qualify for distribution.[6] The Report Stage was taken on 29 March; and the Third Reading on 18 April.

[6]HL Deb. 29 March 1995, cc. 1691 - 92

IV Appendices: Other relevant developments

A Treasury Review of the *Building Societies Act 1986*

The Treasury has been conducting a two stage review of the *Building Societies Act 1986*. The review was initiated by Anthony Nelson on 20 January 1994, with a brief to review the working of the Act, including examining deregulatory measures which had been proposed by the Deregulation task forces, and exploring "the scope for a further liberalisation of building societies' legislation. In considering the issues, we shall pay particular attention to the interests and security of societies' members and investors".[7] The results of the first stage were announced in a written answer on 6 July 1994.[8] Some specific measures were announced, including allowing societies: to increase the percentage of funds which they are allowed to raise on the wholesale markets from 40 per cent to 50 per cent; to make loans which are not secured on land through subsidiaries to companies; and to own an insurance company which writes buildings and contents and mortgage protection policies. A second review was also announced with the wider aims of investigating how to encourage evolutionary change in the sector; improving the accountability of directors to members; considering whether the current prescriptive style of the legislation could be altered into a permissive regime; and other specific changes. As part of the review a consultation document was issued by the Treasury in September 1994.[9]

The results of the second stage review were announced in a written answer on 24 February 1995. Among the proposed changes was the abolition of the distinction between investors and depositors. The text of the answer follows:

Mr. Nelson: The Government have now completed the second and final stage of their review of the Building Societies Act 1986. A consultation document was issued last autumn, seeking views, in particular, on societies' accountability and powers. The Government are grateful to those organisations and individuals— some 72 in all— who responded. Their comments have helped to shape the outcome of the review. The Government have also taken careful note of the report on the building society sector, published by the Treasury and Civil Service Committee on 19 December. The outcome of the review is broadly in line with many of the Committee's conclusions.

The Government place great importance on the role of building societies as a safe haven for people's savings and the major source of housing finance in the United Kingdom. At the forefront of our minds has been the objective of creating more competition and accountability in the provision of retail financial services. In drawing conclusions from the review, we have sought to:

> enable societies to expand the range of services they offer, while retaining their primary focus as providers of housing finance;
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> improve societies' accountability to their members; and
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> maintain a sound prudential framework.

On accountability, the Government considers that, although societies' present constitutional arrangements are, by and large 'satisfactory' more should be done to improve the information given to members and to bring greater transparency and fairness to the process of electing directors. So the Government will be bringing forward a 15-point

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[7]'Economic Secretary announces review of *Building Societies Act 1986*', Treasury press release, 20 January 1994

[8]HC Deb. 6 July 1994, cc.213 - 5w

[9]*Review of the Building Societies Act 1986*, Treasury, September 1994

package of measures, the most important of which will:

> improve the information given to members about their rights as shareholders on first joining a society; the state of their society, in the summary financial statements they receive each year, the duties of directors; and the nomination and election procedures, should they wish to stand for the board;
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> remove the distinction between shareholders and retail depositors;
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> give borrowing members wider voting rights;
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> require elections to be held, even when the number of candidates equals the number of vacancies on the board, and the election results to be posted in all branches;
>
> require societies to seek the approval of their members before entering into a new area of business by making significant use of an existing power. T'he Government will, however, be giving further consideration to the possibility of permitting societies to adopt powers by board resolution once this new requirement takes effect.

The Government have decided not to proceed with a proposal put forward by the financial services deregulation task force as a candidate for enactment under the general power in the Deregulation and Contracting Out Act 1994. The proposal would have removed the requirement for societies to send notices of meetings and summary financial statements to all members. Although it would have brought cost savings, it was widely criticised in the consultation process, as being inconsistent with the objective of increasing societies' accountability to their members. So we have decided to drop the measure.

However, the Government has accepted another task force proposal: to increase, from one to five per cent. of the total assets of a building society, the maximum bonus which can be paid to its members in the event of a merger with a larger society, without having to have a vote by the members of the latter. This change will be implemented through secondary legislation made by the Building Societies Commission.

We will now begin discussions with the building society sector on how the main parts of the accountability package can best be implemented. In the first instance, the Government favour avoluntary code or charter, which could be introduced quickly and amended in the light of experience. When a legislative opportunity arises, the more important provisions can be put on a statutory basis.

In order to allow building societies to develop and play their full part in the competitive provision of financial services, the Government believe that the current prescriptive legislative framework governing their powers should be replaced by a more permissive regime. The new approach would give societies the freedom— within their principal purpose— to pursue any activities set out in their memorandum, subject only to overall limits on assets and liabilities, and the prudential control of the Building Societies Commission. To retain their distinctive character as mutual housing finance institutions, the Government consider that societies should raise no more than 50 per cent. of their funds from the wholesale market, and that they should have at least 75 per cent. of their lending secured on residential property— mortgage loans to individuals, housing associations and private landlords. Further flexibility would be built into the new legislation to allow the 75 per cent. limit to be reviewed in future, if circumstances warranted it, but societies' housing-related business should continue to account for a clear majority of their assets. The additional statutory restrictions placed on the activities of small societies under the 1986 Act will be removed.

The Government will bring forward legislation to amend the Building Societies Act when a suitable opportunity arises. In the meantime, we will continue to implement, by secondary legislation, the changes announced last July. These will: allow societies to lend to incorporated businesses; raise the wholesale funding limit to 50 per cent. and permit societies to own general insurance companies writing buildings and contents policies and mortgage protection plans. These measures, *inter alia,* will facilitate the provision of funding for small and medium-sized businesses and encourage the growth of private mortgage paymentsprotectioninsurance— bothkeyobjectives of Government policy.

Finally, we have decided to bring the limits on dealings between societies and their directors into line with those applying under section 338 of the Companies Act 1985, as amended by section 138 of the Companies Act 1989; and to increase the limit above which certain shares and deposits must count as wholesale funding. These changes will also be implemented through secondary legislation.

I have issued a press statement today, giving full details of the review. I have also responded to the TCSC report of 19 December. Copies of the press notice and the response have been placed in the Libraries of both Houses.

[HC Deb. 24 February 1995]

B *Building Societies (Switched Accounts) Bill* [HL Bill 50 1994/95]

In the C & G offer, if an account holder has moved from a deposit account to a share account, then they may lose out. This is especially unfortunate because if these ex-depositors had remained as depositors they would have been entitled to a payout under the terms of the C & G's revised offer. Instead they fall between two stools, finding themselves as members, but members who have not held their account for a sufficiently long period to qualify for the generous terms of the payout. Some of them maintain that they were advised by the society to move between the different types of account, however the society argues that it has been careful never to give advice. Instead, it says, it provides information on new types of accounts. This is a subtle distinction, but it looks as though many savers have changed accounts, believing that this was encouraged by the society. Some of those who are excluded from the terms of the payout in this way have been customers of the society for many years, and feel resentful at their exclusion.

The *Building Societies (Joint Account Holders) Bill 1994/95* does not remedy such cases. Because the C & G is paying depositors a bonus (outside the scope of the Act), the treatment of depositors who remain depositors in this case is generous. However, Lord Dubs of Battersea has introduced a Bill in the Lords which would amend the *Building Societies Act 1986* to cover another scenario in which former share account holders have switched within the two year period to a deposit account. The *Building Societies (Switched Accounts) Bill* [HL Bill 50] had its Second Reading in the Lords on 18 April 1995. If passed the Bill would permit payment to such account holders so long as they had maintained an account throughout the two year period. As drafted, this Bill is unlikely to help the C & G members. Former share account holders who became depositors already qualify for an extra-statutory payout under the offer; but the Bill could help those who started the two year qualifying period with a share account, switched to a deposit account and subsequently switched back to a share account. Since there was no provision for a payment to such individuals in the C & G's Transfer Document, however, this proposal would have to be put to C & G members .

As part of the Review, mentioned above, the Treasury has announced a plan to abolish the distinction between investor and depositor accounts, so the aims of this Bill are in tune with Government thinking, although it does not have Government support.[10]

C Halifax/ Leeds Permanent merger

On 25 November 1994 the boards of the Halifax and Leeds Permanent building societies announced proposals to merge the two societies. If the merger is approved by the members, then the new merged society plans to convert to a Bank and float on the stock market at a later date. At the time of the flotation, a distribution of free shares will be made to borrowers and members. The merger is due to take place on 1 August 1995. The process is different from the Cheltenham & Gloucester because there is no initial distribution and no initial

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[10]HL Deb. 18 April 1995, cc.454 - 460

takeover. The planned terms, however, were subject to a High Court challenge. The relevant section of the *Building Societies Act 1986* was s.100(8):[11]

> **100 (8)** Where, in connection with any transfer, rights are to be conferred on members of the society to acquire shares in priority to other subscribers, the right shall be restricted to those of its members who held shares in the society throughout the period of two years which expired with the qualifying day; and it is unlawful for any right in relation to shares to be conferred in contravention of this subsection.

At issue was the interpretation of 'other subscribers'. The deal was permitted on the grounds that no one who was not a member of the society would be allowed to subscribe. Within this group, all investing members and borrowing members will be eligible for free shares if they had more than £100 in their accounts at midnight on 25 November 1994. This includes those investing members whose accounts have been open for less than two years prior to this qualifying date. The requirement that only two year members should have priority, is satisfied by such members qualifying also for an additional variable distribution based on the value of the funds which they hold with the societies. Depositors will not receive free shares.

With regard to cases where the first named account holder dies, the Halifax's merger document, circulated to members, states:

> The boards of the Halifax and the Leeds support the aims of the Bill but until it becomes law are unable to determine its likely effect on the proposed conversion scheme. Both boards intend, subject to the constraints of existing and future legislation, that the conversion scheme should, so far as is practicable, preserve benefits for these accounts.....Further details will be announced nearer the time of conversion.
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> [*The Merger of the Halifax and the Leeds,* pp. 34-35]

It is not clear at this stage whether the entitlements of members who have altered their account names for other reasons will be affected by this Bill. The Bill would appear to allow such accounts to be treated as two year old qualifying accounts, which might bring such accounts within the scope of the variable distributions which the new society will pay on top of the basic distribution of free shares.

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[11]The C & G judgment dealt with s.100(9), which limits cash distributions by acquiring companies to those who have had an account for 2 years. Because the Halifax/ Leeds deal involves a distribution of shares instead, s.100(8) applies.

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