



# Building Societies Act 1986

## 1986 CHAPTER 53

### PART VI

#### POWERS OF CONTROL OF THE <sup>F1</sup>APPROPRIATE AUTHORITY]

##### Textual Amendments

- F1** Words in Pt. 6 heading substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), [Sch. 8 para. 9](#) (with Sch. 12)

#### <sup>F2</sup>*[Powers in relation to principal purpose and nature limits]*

##### Textual Amendments

- F2** S. 36 and cross-heading substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of [S.I. 1997/2668](#)) by [1997 c. 32](#), [ss. 13\(1\)](#), 47(3); [S.I. 1997/2668](#), art. 2, [Sch. Pt. II\(k\)](#)

#### <sup>F3</sup>36 **Power to direct restructuring of business etc.**

- (1) The provisions of this section have effect where, by reason of a building society's failure to comply with—
- the requirement imposed by section 5(1)(a) or (b) (purpose or principal purpose and principal office);
  - the requirement imposed by section 6(1) (the lending limit); or
  - the requirement imposed by section 7(1) (the funding limit),
- the powers conferred by this section become exercisable by the <sup>F4</sup>appropriate authority] in relation to the society (the requirements referred to in paragraphs (a), (b) and (c) above being referred to in this section as “the relevant statutory requirements”).

*Status: Point in time view as at 31/12/2020.*

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- (2) The [<sup>F4</sup>appropriate authority] may give the society a direction under subsection (3), (5) or (6) below.
- (3) A direction by the [<sup>F4</sup>appropriate authority] under this subsection is a direction requiring the society, within a specified period, to submit for its approval a plan (in this section referred to as a “restructuring plan”) designed to secure the following purposes, that is to say—
- (a) that the society will, by the end of a specified period, comply with the relevant statutory requirements as applied at the last day of that period, and
  - (b) that it will not thereafter fail to comply with those requirements.
- (4) For the purpose of applying the relevant statutory requirements as directed by subsection (3)(a) above—
- (a) in the case of a requirement which operates by reference to a quarter day, the day as at which the requirements are to be applied shall be treated as such a day; and
  - (b) the assets and liabilities of the society shall be determined by reference to a balance sheet prepared by the directors by reference to that day and sent to the [<sup>F4</sup>appropriate authority] within the period of three months beginning with that day;
- and subsection (4) of section 81 shall apply in the event of a default in complying with this provision as it applies in the event of a default in complying with subsection (2) of that section.
- (5) A direction by the [<sup>F4</sup>appropriate authority] under this subsection is a direction requiring the society—
- (a) within a specified period, to submit to its members for their approval at a meeting the requisite transfer resolutions for a transfer of the business of the society to a company under section 97; and
  - (b) to notify the [<sup>F4</sup>appropriate authority][<sup>F5</sup>and, if the appropriate authority is the PRA, the FCA] of the result of the meeting.
- (6) A direction by the [<sup>F4</sup>appropriate authority] under this subsection is a direction requiring the society, at its option, either—
- (a) within a specified period, to submit for approval a restructuring plan; or
  - (b) within a specified period, to submit to its members for their approval at a meeting the requisite transfer resolutions for a transfer of the business of the society to a company under section 97;
- and, within a specified period, to notify the [<sup>F4</sup>appropriate authority][<sup>F6</sup>and, if the appropriate authority is the PRA, the FCA] of the option it has decided to pursue.
- (7) Where the [<sup>F4</sup>appropriate authority] gives a direction under subsection (3), (5) or (6) above, it may also give a direction under this subsection—
- (a) imposing limitations on the issue of shares, the acceptance of deposits or the making of loans;
  - (b) requiring the society within a specified period to take certain steps, or to refrain from adopting or pursuing a particular course of action, or to restrict the scope of its business in a particular way;
  - (c) requiring the society within a specified period to take steps with regard to the conduct of the business of any connected undertaking of the society;
  - (d) requiring within a specified period the removal of any director or other officer.

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- (8) Where a restructuring plan is submitted by a society to the [F<sup>4</sup>appropriate authority] under subsection (3) or (6) above then—
- (a) if it appears to the [F<sup>4</sup>appropriate authority] that the plan is reasonably likely to secure its purposes, the [F<sup>4</sup>appropriate authority] shall approve it and direct the society to carry it out;
  - (b) if it appears to it that the plan is, with modifications, likely to secure its purposes and the [F<sup>4</sup>appropriate authority] and the society agree on appropriate modifications within the period of 21 days from the date on which the [F<sup>4</sup>appropriate authority] notifies the society of the modifications it proposes for the society's agreement, the [F<sup>4</sup>appropriate authority] shall approve the plan as modified and direct the society to carry it out;
- but otherwise it shall reject the plan.
- (9) Where a meeting is held, in pursuance of a direction under subsection (5) or (6) above, for the purpose of voting on the requisite transfer resolutions, then—
- (a) if the resolutions are agreed to and the confirmation of the transfer by the [F<sup>4</sup>appropriate authority] is obtained, the society shall proceed under section 97 to transfer its business to a successor company;
  - (b) if either resolution is disagreed to, the society shall notify the [F<sup>4</sup>appropriate authority] of that fact as soon as it is practicable to do so.
- (10) In the event of the [F<sup>4</sup>appropriate authority] receiving a notice from a society under subsection (9)(b) above, it may, if it thinks fit, serve on the society a direction requiring it, within a specified period, to submit to the [F<sup>4</sup>appropriate authority] for its approval a restructuring plan; and if the [F<sup>4</sup>appropriate authority] does so, subsection (8) above shall apply as if the plan had been submitted under subsection (3) above.
- (11) The [F<sup>4</sup>appropriate authority] may, if it thinks fit, extend or further extend any period during which a building society is to take any steps required of it under any of the foregoing provisions of this section and may do so whether or not application is made to it before the expiry of the period in question.
- (12) If a building society which has been directed under subsection (8) above to carry out a restructuring plan fails, within the period allowed to it under the foregoing provisions of this section, to secure the purpose of the plan specified in subsection (3)(a) above, the powers conferred on the [F<sup>4</sup>appropriate authority] by section 36A shall become exercisable in relation to the society.
- (13) If a building society fails, within the period allowed to it under the foregoing provisions of this section—
- (a) where it has been given a direction under subsection (3) or (10) above, to submit a restructuring plan;
  - (b) where it has been given a direction under subsection (5) above, to submit to members the requisite transfer resolutions;
  - (c) where it has been given a direction under subsection (6) above, to either submit a restructuring plan or submit to members the requisite transfer resolutions;
  - (d) where it has been given a direction under subsection (7) above, to comply with any requirement imposed by the direction;
  - (e) where it has been directed under subsection (8) above to carry out a restructuring plan, to secure the purpose of the plan specified in subsection (3) (a) above;

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- (f) to agree to the requisite transfer resolutions submitted to the members in pursuance of subsection (5) or (6) above; or
  - (g) where it has agreed to the requisite transfer resolutions, to proceed under section 97 to transfer its business to the successor company,
- or if the [<sup>F4</sup>appropriate authority] rejects a restructuring plan under subsection (8) above, the powers conferred on the [<sup>F4</sup>appropriate authority] by section 37 shall become exercisable in relation to the society.

<sup>F7</sup>(14) .....

(15) In this section—

“confirmation”, “the requisite transfer resolutions” and “transfer” have the same meaning as in section 97;

“quarter day” has the same meaning as in sections 6 and 7.

(16) Nothing in this section implies that it is improper for the [<sup>F4</sup>appropriate authority] to give to a building society or building societies generally an indication of the action it might or might not take in relation to any proposed activity of theirs.]

[<sup>F8</sup>(17) The PRA must consult the FCA before issuing a direction under this section.]

#### Textual Amendments

- F3** S. 36 and cross-heading substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, **ss. 13(1)**, 47(3); S.I. 1997/2668, **art. 2**, **Sch. Pt. II(k)**
- F4** Words in s. 36 substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), **art. 1(1)**, **Sch. 8 para. 10(2)** (with Sch. 12)
- F5** Words in s. 36(5)(b) inserted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), **art. 1(1)**, **Sch. 8 para. 10(3)** (with Sch. 12)
- F6** Words in s. 36(6) inserted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), **art. 1(1)**, **Sch. 8 para. 10(4)** (with Sch. 12)
- F7** S. 36(14) repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F8** S. 36(17) inserted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), **art. 1(1)**, **Sch. 8 para. 10(5)** (with Sch. 12)

#### Modifications etc. (not altering text)

- C1** S. 36 restricted (7.4.2010) by [The Building Societies \(Financial Assistance\) Order 2010 \(S.I. 2010/1188\)](#), arts. 1(2), **3(3)**, 4(3)
- C2** S. 36(1) modified (7.4.2010) by [The Building Societies \(Financial Assistance\) Order 2010 \(S.I. 2010/1188\)](#), arts. 1(2), **3(4)**, 4(4)

### [<sup>F9</sup>36A Power to make prohibition orders.

- (1) Where by virtue of section 36(12) the powers conferred by this section become exercisable in relation to a building society, the [<sup>F10</sup>[<sup>F11</sup>appropriate authority] may] issue a prohibition order directed to the society.
- (2) A prohibition order under this section is an order—
  - (a) prohibiting, subject to the saving or transitional provisions of the order, the continuance or, as the case may be, the carrying on of the activity specified

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- in the order after a date so specified, either absolutely or unless conditions so specified are complied with; and
- (b) requiring, subject to the saving or transitional provisions of the order, the disposal within a period specified in the order of all assets acquired or otherwise in its possession by virtue of the activity.
- (3) A disposal of assets in pursuance of a prohibition order shall vest the assets in the transferee but without prejudice to any claim against the society by a person who had an interest in the assets.
- (4) The saving or transitional provisions which may be included in a prohibition order shall be such as appear to the [F11 appropriate authority] to be just having regard to—
- (a) the interests of shareholders of and depositors with the society; and
- (b) the interests of other persons who will be affected by the order.
- [ If the [F11 appropriate authority] proposes to issue a prohibition order under this section F12(5) it must give the society a warning notice.
- (5A) If the [F11 appropriate authority] decides to issue a prohibition order under this section it must give the society a decision notice, and may issue the order at the same time as or after giving the decision notice.
- (5B) A warning notice or decision notice about a prohibition order under this section must set out the terms of the order which the [F11 appropriate authority] proposes (or has decided) to make, including any saving or transitional provisions to be included in it.
- (5C) Part XXVI of the Financial Services and Markets Act 2000 (notices) is to be treated as applying in respect of warning notices and decision notices given under this section as it applies in respect of warning notices and decision notices given under that Act, subject to subsection (5D) below.
- (5D) In the application of Part XXVI of that Act in respect of warning notices and decision notices given under this section—
- (a) section 388(1)(e) is to be omitted,
- (b) section 388(2) (which makes provision for the type of action to which a decision notice may relate if it was preceded by a warning notice) is to be read as if, for the word “Part”, there were substituted the word “ section ”,
- (c) section 390 (final notices) is to be omitted, and
- (d) for the purposes of section 391 (publication) a decision notice given under this section is to be treated as if it were a final notice rather than a decision notice.]
- [ The PRA must consult the FCA about the terms of the prohibition order in question F13(5E) before giving a warning notice or a decision notice under this section.]
- F14 [ If the [F11 appropriate authority] issues a prohibition order under this section it shall (6) serve the order on the society F15 ....]
- (7) A prohibition order so F16 . . . issued shall, subject to subsection (11) below, take effect on the date specified in the order.
- (8) A copy of any order issued under subsection (6) above shall also be served on each director and on the chief executive of the society.
- (9) The requirement of subsection (8) above, so far as it relates to directors, is satisfied by serving a copy on each director whose appointment has been officially notified

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and the non-receipt of a copy by a director or the chief executive does not affect the validity of the order.

- <sup>F17</sup>(9A) [ The PRA must give the FCA a copy of any order issued under this section.
- (9B) The FCA must keep a copy of any order issued under this section in the public file of the society.]
- (10) Subject to subsection (11) below, a prohibition order shall remain in force until revoked by the [<sup>F11</sup>appropriate authority] .
- (11) The [<sup>F11</sup>appropriate authority] may suspend or revoke a prohibition order so far as it relates to an asset the disposal of which appears to it, on the application of the society, to be impracticable.
- (12) If a society contravenes a prohibition order issued against it under this section—
- (a) the power conferred on the [<sup>F11</sup>appropriate authority] by section 37(1) shall become exercisable in relation to the society; and
  - (b) the [<sup>F11</sup>appropriate authority] may exercise that power or certify the contravention in writing to the High Court, or do both of those things;
- but the contravention shall not invalidate any transaction or other act.
- (13) On receiving such a certification, the High Court—
- (a) may inquire into the case; and
  - (b) after hearing any witnesses who may be produced against or on behalf of the society and after hearing any statement which may be offered in defence, may punish the society in like manner as if it had been guilty of contempt of the court.
- (14) Where a contravention of a prohibition order which is so certified is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the society he, as well as the society, may be punished in like manner as if he had been guilty of contempt of the court.
- (15) In the application of this section to a building society whose principal office is in Scotland, references to the High Court shall be read as references to the Court of Session.]

#### Textual Amendments

- F9** S. 36A inserted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 14, 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(1)
- F10** Words in s. 36A(1) substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. II, para. 142(a) (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2(1)
- F11** Words in s. 36A substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), Sch. 8 para. 11(2) (with Sch. 12)
- F12** S. 36A(5)-(5D) substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) for s. 36A(5) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. II, para. 142(c) (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2(1)
- F13** S. 36A(5E) inserted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), Sch. 8 para. 11(3) (with Sch. 12)

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- F14** S. 36A(6) substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II**, para. 142(d) (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F15** Words in s. 36A(6) omitted (1.4.2013) by virtue of The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 11(4)** (with Sch. 12)
- F16** Words in s. 36A(7) repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F17** S. 36A(9A)(9B) inserted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 11(5)** (with Sch. 12)

**Modifications etc. (not altering text)**

- C3** S. 36A(5) extended (1.12.2001) by S.I. 2001/3592, **art. 37(1)(b)** (with art. 23(2))

**[<sup>F18</sup>37 Powers to petition for winding up etc.**

(1) Where—

- (a) by virtue of section 36(13) the powers conferred by this section become exercisable in relation to a building society;
- (b) by virtue of section 36A(12) the power conferred by this subsection becomes so exercisable; or
- (c) the [<sup>F19</sup>appropriate authority] has reason to believe that a building society has ceased to comply with the requirement imposed by section 5(1)(a) (purpose or principal purpose),

the [<sup>F19</sup>appropriate authority] may present a petition to the High Court for the winding up of the society under the applicable winding up legislation; and the power conferred by this subsection is available to the [<sup>F19</sup>appropriate authority] whether or not it has previously presented a petition.

(2) Where by virtue of section 36(13) the powers conferred by this section become exercisable in relation to a building society, the [<sup>F19</sup>appropriate authority] may make an application to the High Court for an order giving directions to the society under subsection (3) below; and the power conferred by this subsection is available to the [<sup>F19</sup>appropriate authority] whether or not it has previously made an application for such an order.

(3) An order under this subsection is an order directing the society to comply with a direction under subsection (3), (5), (6), (7) or (10) of section 36 as directed in the order, or to carry out a restructuring plan as so directed.

[<sup>F20</sup>(4) Where the High Court makes an order under subsection (3)—

- (a) if the appropriate authority is the PRA, it must give a copy of the order to the FCA; and
- (b) in any case, the FCA must keep a copy of the order in the public file of the society.]

(5) The High Court shall not make an order winding up the society on an application under subsection (1)(c) above unless it is satisfied that the society has ceased to comply with the requirement imposed by section 5(1)(a).

(6) In the application of this section to a building society whose principal office is in Scotland, references to the High Court shall be read as references to the Court of Session.]

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#### **Textual Amendments**

- F18** S. 37 substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, **ss. 15**, 47(3); S.I. 1997/2668, art. 2, **Sch. Pt. II(m)**
- F19** Word in s. 37(1)(2) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), **Sch. 8 para. 12(2)** (with Sch. 12)
- F20** S. 37(4) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), **Sch. 8 para. 12(3)** (with Sch. 12)

#### **Modifications etc. (not altering text)**

- C4** S. 37 restricted (7.4.2010) by [The Building Societies \(Financial Assistance\) Order 2010 \(S.I. 2010/1188\)](#), arts. 1(2), **3(3)**, 4(3)
- C5** S. 37(1) modified (7.4.2010) by [The Building Societies \(Financial Assistance\) Order 2010 \(S.I. 2010/1188\)](#), arts. 1(2), **3(4)**, 4(4)

### *Power to determine extent of building society powers*

#### **[<sup>F21</sup>38 Power to determine building society's powers.**

- (1) The Commission shall have power to determine whether a particular activity of a building society or its subsidiary is or is not within the existing powers of the society and may, if it thinks fit, take such professional advice as it considers it needs to enable it to make the determination.
- (2) A determination may be made under this section in relation to an activity which is proposed to be carried on as well as in relation to one which is being carried on.
- (3) The powers of the Commission in relation to a building society are exercisable—
  - (a) on an application made by the society, requesting the Commission to make the determination,
  - (b) on an application made by the society at the direction of the central office under Part II of Schedule 2 to this Act, or
  - (c) on the Commission's own motion or on an application made by the society at its direction,

as provided in subsection (4), (5), (6) or (8) below.

- (4) A building society may at any time, on complying with the following provisions of this section, make an application to the Commission for a determination under this section whether an activity specified in the application is or is not within its powers if the directors of the society are of the opinion that there is a doubt about the existence or extent of the powers to carry on the activity which requires to be resolved in the interests of the society.
- (5) A building society which has been directed by the central office under Part II of Schedule 2 to this Act to make an application to the Commission under this section shall, in accordance with the direction, make an application to the Commission for a determination whether the activity specified in the application is or is not within its powers.



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- (6) If it appears to the Commission at any time that a building society or its subsidiary is carrying on or is about to carry on an activity which is or may be outside the existing powers of the society, the Commission may, by notice to the society specifying the activity and its opinion, direct it to make an application for a determination under this section whether the activity is or is not within its powers and it shall be the duty of the society to comply with the direction.
- (7) A direction under subsection (6) shall require the application to be made within the period of 21 days beginning with the date on which the notice is given, but the Commission may extend or further extend the period within which the application is to be made.
- (8) If a building society fails, within the time allowed by or under subsection (7) above, to make an application as directed under subsection (6) above, the Commission may, of its own motion, proceed to make a determination under this section as if an application had been made by the society.
- (9) An application by a building society under subsection (4), (5) or (6) above shall be made in writing, signed by the secretary as such an application, and shall comprise—
- (a) a statement of the question for determination, specifying the activity and the powers in question, the nature of the doubt and (except in the case of an application under subsection (6)) the arguments for and against the activity being within those powers, as they appear to the society, and
  - (b) such documents or draft documents and such other information as are necessary to enable the determination to be made.
- (10) The statement of the question for determination may, with the agreement of the Commission, be amended at any time before the determination is made and in that event further documents and other information may be included in the application.
- (11) The Commission may, by notice to the society, require a society making an application under subsection (4), (5) or (6) above to amend the statement of the question for determination or to furnish such further documents or other information or such explanations of the statement, documents or information as appear to it to be necessary to enable the determination of the question to be made; and the Commission may allow or require the explanations to be made orally instead of in writing.
- (12) In this section and sections 39 and 40—
- “activity” includes the exercise, or purported exercise, of any power under this Act, including the holding of any property or rights;
  - “existing”, with reference to powers, means existing at the relevant date and, in relation to a building society, “existing powers” denotes the powers it has, or has adopted, under this Act, with any restrictions it has assumed, as at that date but disregarding anything done by the Commission and then in force (otherwise than under section 39 or 40) by virtue of which the society is precluded from exercising, or is subject to restrictions on the exercise of, its powers;
  - “the relevant date”, in relation to a building society, means—
- (a) in a case where the Commission decides to proceed of its own motion, the date when the Commission so decides;
  - (b) in a case where the society makes the application at the direction of the central office, the date specified in the direction; and
  - (c) in any other case, the date on which the society makes the application.

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- (13) Nothing in this section or section 39 or 40 implies that it is improper for the Commission to give to a building society or building societies generally an indication of the action it might or might not take in relation to any proposed activity of theirs; and if any determination comes to be made in relation to the activity the proceedings shall not be liable to be set aside by reason of the indication having been given.]

#### Textual Amendments

**F21** Ss. 38-40 repealed (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 12(1)(d), 46(2), **Sch. 9**; S.I. 1997/2668, art. 2, **Sch. Pt. II(j)(y)(cc)(v)**

#### [<sup>F22</sup>39 **The determination: notification, effect, appeal.**

- (1) A determination of the Commission under section 38 shall be in writing and, as soon as practicable after it is made, the Commission shall notify the society of the determination and the reasons for it.
- (2) On receiving notice of the determination the society shall, if it is a determination that the activity in question was outside its powers, forthwith send a copy of it to every person who the society has reason to believe will or may be affected by it other than a person whose only interest is as a shareholder in, or depositor with, the society.
- (3) Subject to subsection (4) below, the Commission shall, within the period of one month beginning with the date of the notice to the society under subsection (1) above, publish the determination in such manner as it thinks appropriate.
- (4) Where the determination is made on an application made by the society under section 38(4), the Commission may, on the application of the society, postpone the publication of the determination for such period as it thinks fit, not exceeding the period of six months beginning with the date of the notice to the society under subsection (1) above, if it appears to the Commission that it is just to do so.
- (5) A determination under section 38 shall bind all persons, whether or not (in the case of an application) they were parties to it and, subject to any appeal under subsection (8) below, shall be final and conclusive for all purposes.
- (6) Where the activity in question was at the relevant date being carried on by the society and the determination is that the activity is outside the powers of the society the directors of the society shall be personally liable, jointly and severally, for any loss or expense to the society consequent on the activity's being outside its powers (including, if a prohibition order under section 40 is made, any loss or expense consequent on the order).
- (7) If it appears to the Commission that proceedings under subsection (6) above have not been, but ought in the interests of the society to be, brought, the Commission may bring such proceedings in the name and on behalf of the society; and if it does so the Commission may indemnify the society against the costs or expenses incurred by the society in, or in connection with, proceedings brought by virtue of this subsection.
- (8) Any person affected by a determination under section 38 shall be entitled within the period of six weeks beginning with the date of the notice under subsection (1) above or such further period as the Court may allow, to appeal to the High Court against the

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determination in accordance with rules of court on the ground that it is erroneous in law and the Commission shall be made respondent on the appeal.

- (9) On any appeal to the High Court under subsection (8) above the High Court may confirm, reverse or vary the determination appealed from.
- (10) In the application of this section to a building society whose principal office is in Scotland, references to the High Court shall be read as references to the Court of Session.
- (11) The Commission may, if it thinks fit, require a building society in whose case it has made a determination under section 38 to pay such fee as the Commission directs.]

#### Textual Amendments

**F22** Ss. 38-40 repealed (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 12(1)(d), 46(2), **Sch. 9**; S.I. 1997/2668, art. 2, **Sch. Pt. II(j)(y)(cc)(v)**

#### [<sup>F23</sup>40 Power to make prohibition orders.

- (1) On or at any time after making a determination under section 38 that a specified activity is outside the powers of a building society, the Commission shall, if it appears to it—
  - (a) that the activity is being carried on by the society, or
  - (b) that the activity has not been but, unless a prohibition order is made under this section, may be carried on by the society.

serve on the society a notice of the Commission's intention to issue a prohibition order directed to the society.

- (2) A prohibition order under this section is an order prohibiting, subject to the saving or transitional provisions of the order, the continuance or, as the case may be, the carrying on of the activity specified in the order, either absolutely or unless conditions specified in the order are complied with, after a date specified in the order and requiring, subject to the saving or transitional provisions of the order, the disposal within a specified period of all assets acquired or otherwise in its possession by virtue of the activity.
- (3) A disposal of assets in pursuance of a prohibition order shall vest the assets in the transferee but without prejudice to any claim against the society by a person who had an interest in the assets.
- (4) The saving or transitional provisions which may be included in a prohibition order shall be such as appear to the Commission to be just having regard to the interests of shareholders of and the depositors with the society and the interests of other persons who will be affected by the order; but the provisions shall not in any respect suspend the operation of the order beyond the period of one year.
- (5) A prohibition order may include a direction for treating assets of any description as assets of the class specified in the direction for the purposes of the requirements of Part III for the structure of commercial assets.
- (6) A notice under subsection (1) above of the Commission's intention to issue a prohibition order shall—

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- (a) specify the date on which the order is to be issued, being a date not earlier than the end of the period of 21 days beginning with the date of the notice;
  - (b) specify the terms of the order, including any saving or transitional provisions proposed to be included in it;
  - (c) inform the society of its right to make representations to the Commission before the order is issued as to the saving or transitional provisions to be included in the order; and
  - (d) inform the society of its duty under subsection (7) below.
- (7) On receiving a notice under subsection (1) above the society shall forthwith send a copy of it to every other person whom it has reason to believe will or may be affected by the determination under section 38 on which the order will be founded.
- (8) Any person who may be affected by the determination under section 38 on which the order will be founded may, at any time before the order is made, make representations to the Commission as to the inclusion in it of saving or transitional provisions affecting his interests and they may be made orally or in writing.
- (9) After considering any representations made under subsection (8) above the Commission shall make the prohibition order with such saving and transitional provisions (if any) as it thinks just, shall issue the order by causing it to be served on the society and shall direct the central office to keep a copy of it in the public file of the society.
- (10) A prohibition order so made and issued shall, subject to subsection (15) below, take effect on the date specified in the order.
- (11) A copy of any order issued under subsection (9) above shall also be served on each director and on the chief executive of the society.
- (12) The requirement of subsection (11) above, so far as it relates to directors, is satisfied by serving a copy on each director whose appointment has been officially notified and the non-receipt of a copy by a director or the chief executive does not affect the validity of the direction.
- (13) Subject to subsection (14) below, a prohibition order shall remain in force until revoked by the Commission.
- (14) The Commission may suspend or revoke a prohibition order so far as it relates to an asset the disposal of which appears to it, on the application of the society, to be impracticable.
- (15) If, when a prohibition order has been made, an appeal is pending before the High Court under section 39(8) against the determination on which the order is founded the High Court may, on application made to it, order that the operation of the prohibition order be stayed until the determination of the appeal; but it shall not do so unless it is satisfied that it is in the public interest that it be stayed.
- (16) If a society contravenes a prohibition order issued against it under this section the Commission may certify the contravention in writing to the High Court; and the Court may thereupon inquire into the case and, after hearing any witnesses who may be produced against or on behalf of the society and after hearing any statement which may be offered in defence, may punish the society in like manner as if it had been guilty of contempt of the court.

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(17) In the application of this section to a building society whose principal office is in Scotland, references to the High Court shall be read as references to the Court of Session and references to staying shall be read as references to sisting.]

**Textual Amendments**

**F23** Ss. 38-40 repealed (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 12(1)(d), 46(2), **Sch. 9**; S.I. 1997/2668, art. 2, **Sch. Pt. II(j)(y)(cc)(v)**

*Powers in relation to authorisation*

**F24** **41** .....

**Textual Amendments**

**F24** S. 41 repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4**, (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

**F25** **42** .....

**Textual Amendments**

**F25** S. 42 repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

**F26** **42A** .....

**Textual Amendments**

**F26** S. 42A repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

**[<sup>F27</sup>42B Power to direct transfers of engagements or business.**

(1) If, with respect to a building society [<sup>F28</sup>which has a permission under [<sup>F29</sup>Part 4A] of the Financial Services and Markets Act 2000 to accept deposits, the [<sup>F30</sup>appropriate authority]] considers it expedient to do so in order to protect the investments of shareholders or depositors, it may either—

(a) direct the society, within a specified period, to transfer all its engagements to one or more other building societies under section 94;

[<sup>F31</sup>(aa) direct the society, within a specified period, to transfer its business under section 97 to an existing or specially formed company that is a subsidiary of another mutual society by a transfer to which provision made by order

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under section 3 of the 2007 Act (transfers to subsidiaries of other mutuals) applies;]or

- (b) direct the society, within a specified period, to transfer its business [<sup>F32</sup>under section 97 to an existing company that is not a subsidiary of another mutual society] .

[ In this section—

- <sup>F33</sup>(1A) (a) “the 2007 Act” means the Building Societies (Funding) and Mutual Societies (Transfers) Act 2007;
- (b) “mutual society” has the same meaning as in section 3 of that Act.]

[ If it appears to the [<sup>F30</sup>appropriate authority] that a society has failed to comply with <sup>F34</sup>(2) a direction under subsection (1), the [<sup>F30</sup>appropriate authority] may exercise its power under [<sup>F35</sup>section 55J (variation or cancellation on initiative of regulator), section 55L (imposition of requirements by FCA) or section 55M (imposition of requirements by PRA)] of the Financial Services and Markets Act 2000 in relation to the society <sup>F36</sup>....

(2A) Subsection (2) does not affect the [<sup>F30</sup>appropriate authority] ’s ability to exercise that power, in relation to the society, on any other ground.]

(3) Where the [<sup>F30</sup>appropriate authority] —

- (a) gives a building society a direction under subsection (1)(a) above; or
- (b) does not give a building society such a direction solely because the society is already seeking to transfer all its engagements to one or more other building societies under section 94,

the [<sup>F30</sup>appropriate authority] may, if it considers it expedient to do so in order to protect the investments of shareholders or depositors, direct that, instead of resolving to transfer its engagements by the two resolutions required by section 94(2) (with or without the additional resolution required by section 94(3)), the society may resolve to do so by a resolution of the board of directors.

(4) Where the [<sup>F30</sup>appropriate authority] —

- (a) gives a building society a direction under subsection [<sup>F37</sup>(1)(aa) or (b) ] above; or
- (b) does not give a building society such a direction solely because the society is already seeking to transfer its business to an existing company [<sup>F38</sup>, or to a specially formed company that is a subsidiary of another mutual society,] under section 97,

the [<sup>F30</sup>appropriate authority] may, if it considers it expedient to do so in order to protect the investments of shareholders or depositors, direct that, instead of approving the transfer and the terms of the transfer by the two resolutions required by section 97(4) (c), the society may approve the transfer and those terms by a resolution of the board of directors.

(5) A direction under subsection (3) or (4) above—

- (a) shall be in writing;
- (b) may be given subject to such limitations or conditions as the [<sup>F30</sup>appropriate authority] may think fit; and
- (c) unless renewed by a further direction, shall cease to have effect at the end of the period of 90 days beginning with the day on which it is given.

[ The PRA must consult the FCA before giving a direction under this section.]

<sup>F39</sup>(5A)

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- <sup>F40</sup>(6) .....
- (7) In Schedule 8A to this Act—
- (a) Part I (which contains provisions modifying sections 94 to 96 and Schedule 16 to this Act) shall apply where a direction is given under subsection (3) above; and
  - (b) Part II (which contains provisions modifying sections 97 to 100 and Schedule 17 to this Act) shall apply where a direction is given under subsection (4) above.
- (8) The [<sup>F41</sup>Treasury] may make regulations for the purpose of specifying, as prescribed matters—
- (a) the matters of which statements under paragraph 3 of Schedule 8A to this Act are to give particulars; and
  - (b) the matters of which statements under paragraph 9 of that Schedule are to give particulars.
- (9) The power to make regulations under this section is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

- F27** S. 42B inserted (9.6.1997) by 1997 c. 32, s. 17(1); S.I. 1997/1427, art. 2(c)
- F28** Words in s. 42B(1) substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II para. 145(a)** (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2(1)
- F29** Words in s. 42B(1) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 13(3)** (with Sch. 12)
- F30** Words in ss. 42B(1)-(5) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 13(2)** (with Sch. 12)
- F31** S. 42B(1)(aa) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 56(2)(a), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F32** Words in s. 42B(1)(b) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 56(2)(b), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F33** S. 42B(1A) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 56(3), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F34** S. 42B(2)(A) substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) for s. 42B(2) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II, para. 145(b)** (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2(1)
- F35** Words in s. 42B(2) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 13(4)(a)** (with Sch. 12)
- F36** Words in s. 42B(2) omitted (1.4.2013) by virtue of The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 13(4)(b)** (with Sch. 12)
- F37** Words in s. 42B(4)(a) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 56(4)(a), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F38** Words in s. 42B(4)(b) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), ss. 56(4)(b), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F39** S. 42B(5A) inserted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 13(5)** (with Sch. 12)
- F40** S. 42B(6) repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2(1)

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**F41** Word in s. 42B(8) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II para. 145(e)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

**Modifications etc. (not altering text)**

**C6** S. 42B(8): Functions of Building Societies Commission transferred (1.12.2001) to the Treasury by S.I. 2001/2617, arts. 2(b), 4(1), **Sch. 1 Pt. III**; S.I. 2001/3538, **art. 2(1)**

[<sup>F43</sup>**42C** [<sup>F42</sup>**Variation and revocation of transfer directions**]

(1) A direction under section 42B(1) <sup>F44</sup> . . . may be varied by a further direction; and a direction may be revoked by the [<sup>F45</sup>appropriate authority] by a notice in writing to the building society concerned.

[ If the appropriate authority is the PRA, it must consult the FCA before varying or <sup>F46</sup>(1A) revoking a direction.]

<sup>F47</sup>(2) . . . . .

<sup>F47</sup>(3) . . . . .]

**Textual Amendments**

**F42** Side-note to s. 42C substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) by S.I. 2001/2617, art. 2, 8, 13(1), **Sch. 3 Pt. II para. 146(a)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

**F43** S. 42C inserted (9.6.1997) by 1997 c. 32, **s. 18**; S.I. 1997/1427, **art. 2(c)**

**F44** Words in s. 42C(1) repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

**F45** Word in s. 42C(1) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 14(2)** (with Sch. 12)

**F46** S. 42C(1A) inserted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 14(3)** (with Sch. 12)

**F47** S. 42C(2)(3) repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

<sup>F48</sup>**43** . . . . .

**Textual Amendments**

**F48** Ss. 43-45A repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with art. 13(3) Sch. 5); S.I. 2001/3538, **art. 2(1)**

Ss. 43-45A continued (1.12.2001) by S.I. 2001/2657, **art. 11** (which was revoked (8.10.2001) by S.I. 2001/3083, **arts. 1(2), 23(1)**)

Ss. 43-45A continued (with modifications) (1.12.2001) by S.I. 2001/3083, **arts. 1(2), 11**; S.I. 2001/3538, **art. 2(1)**

<sup>F49</sup>**43A** . . . . .



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**Textual Amendments**

- F49** Ss. 43-45A repealed (1.12.2001) by S.I. 2001/2617, **arts. 2(b), 13(2)** Sch. 4 (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**  
Ss. 43-45A continued (1.12.2001) by S.I. 2001/2657, **art. 11** (which was revoked (8.10.2001) by S.I. 2001/3083, **art. 23(1)**)  
Ss. 43-45A continued (1.12.2001) by S.I. 2001/3083, **arts. 1(2), 11**; S.I. 2001/3538, **art. 2(1)**

<sup>F50</sup> **43B** .....

**Textual Amendments**

- F50** Ss. 43-45A repealed (1.12.2001) by S.I. 2001/2617, **arts. 2(b), 13(2), Sch. 4** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**  
Ss. 43-45A continued (1.12.2001) by S.I. 2001/2657, **art. 11** (which was revoked (8.10.2001) by S.I. 2001/3083, **art. 23(1)**)  
Ss. 43-45A continued (1.12.2001) by S.I. 2001/3083, **arts. 1(2), 11**; S.I. 2001/3538, **art. 2(1)**

<sup>F51</sup> **44** .....

**Textual Amendments**

- F51** Ss. 43-45A repealed (1.12.2001) by S.I. 2001/2617, **arts. 2(b), 13(2), Sch. 4** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

<sup>F52</sup> **45** .....

**Textual Amendments**

- F52** Ss. 43-45A repealed (1.12.2001) by S.I. 2001/2617, **arts. 2(b), 13(2), Sch. 4** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

*[<sup>F53</sup>General functions of Commission]*

**Textual Amendments**

- F53** S. 45AA and cross-heading inserted (1.12.1997) by 1997 c. 32, **s. 22**; S.I. 1997/2668, art. 2, **Sch. Pt. I(d)**

<sup>F54</sup> **45AA** .....

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**Textual Amendments**

**F54** Ss. 43-45A repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

**F55** **45A** .....

**Textual Amendments**

**F55** Ss. 43-45A repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

*[<sup>F56</sup>Notices, hearings and appeals]*

**Textual Amendments**

**F56** S. 46A and cross-heading substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) for ss. 46-49 and cross-heading by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II para. 148** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

**[<sup>F57</sup>46A Notices, hearings and appeals.**

- (1) If the [<sup>F58</sup>appropriate authority] proposes—
  - (a) to give a direction to a society under section 36(3), (5), (6), (7) or (10), or
  - (b) to give a direction to a society under section 42B(1), other than a direction varying a previous direction with the agreement of the society concerned,
 it must give the society a warning notice.
- (2) The warning notice must set out the terms of the direction which the [<sup>F58</sup>appropriate authority] proposes to give.
- (3) If the [<sup>F58</sup>appropriate authority] decides—
  - (a) to give a direction to a society under section 36(3), (5), (6), (7) or (10), or
  - (b) to give a direction to a society under section 42B(1), other than a direction varying a previous direction with the agreement of the society concerned,
 it must give the society a decision notice.
- (4) The decision notice must set out the terms of the direction which the [<sup>F58</sup>appropriate authority] has decided to give.
- (5) A society to whom a decision notice is given under this section may refer the matter to the [<sup>F59</sup>Upper Tribunal].
- (6) Part XXVI of the Financial Services and Markets Act 2000 (notices) is to be treated as applying in respect of warning notices and decision notices given under this section as it applies in respect of warning notices and decision notices given under that Act, subject to subsection (8) below.

**F60** (7) .....

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- (8) In the application of Part XXVI of that Act in respect of warning notices and decision notices given under this section—
- (a) section 388(1)(e)(i) (which requires a decision notice to indicate any right given under that Act to refer a decision to the Tribunal) is to be read as if, for the words “this Act”, there were substituted “ the Building Societies Act 1986 ”;
  - (b) section 388(2) (which makes provision for the type of action which may be proposed in a decision notice which was preceded by a warning notice) is to be read as if, for the word “Part”, there were substituted “ section ”;
  - (c) section 390(4) (which provides for the content of a final notice about an order) is to be read as if—
    - (i) for the words “an order” there were substituted “ a direction ”, and
    - (ii) for the words “the order”, in both places where they appear, there were substituted “ the direction ”; and
  - (d) section 392 (application of sections 393 (third party rights) and 394 (access to <sup>F58</sup>appropriate authority] material)) is to be read—
    - (i) as if paragraph (a) of that section contained a reference to a warning notice given under subsection (1) above, and
    - (ii) as if paragraph (b) of that section contained a reference to a decision notice given under subsection (3) above.]

**Textual Amendments**

- F57** S. 46A substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) for ss. 46-49 by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II para. 148** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F58** Words in s. 46A substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 15** (with Sch. 12)
- F59** Words in s. 46A(5) substituted (6.4.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(2)(e), **Sch. 2 para. 7(a)** (with Sch. 5)
- F60** S. 46A(7) omitted (6.4.2010) by virtue of The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(2)(e), **Sch. 2 para. 7(b)** (with Sch. 5)

**Modifications etc. (not altering text)**

- C7** S. 46A(1) extended (1.12.2001) by S.I. 2001/3592, **arts. 36(2), 38(1)** (with art. 23(2))
- C8** S. 46A(8)(d)(i) excluded (1.12.2001) by S.I. 2001/3592, **arts. 36(3), 38(2)** (with art. 23(2))

*Advertising etc.*

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### Textual Amendments

**F71** S. 50 repealed (1.12.2001) by [S.I. 2001/2617](#), arts. 2, 13(2), [Sch. 4](#) (with [art. 13\(3\)](#), [Sch. 5](#)); [S.I. 2001/3538](#), [art. 2\(1\)](#)

## [<sup>F72</sup>51 Powers to avoid apparent association with other bodies.

- (1) If, as regards a building society and another body corporate which is not an associated body by virtue of section 18, it appears to the Commission that persons who might invest in or otherwise deal with that other body may be misled into believing that there is such a business relationship between the society and that body as indicates that the society has assumed an obligation to discharge that body's liabilities in any event, the Commission may give the society a direction under subsection (2) below.
- (2) A direction under this subsection is a direction requiring the society—
  - (a) if they are available to it, to assume and make exercisable, or to make exercisable, as regards a body specified in the direction, the powers conferred by section 18; or
  - (b) to take such steps as are agreed with the Commission for the purpose of removing the appearance of a business relationship with the specified body which indicates the assumption of an obligation of the description referred to in subsection (1) above;

and, within a specified period, to notify the Commission of the course it has decided to take.
- (3) The steps that a building society may be required to take for the purpose of complying with a direction under subsection (2) above may relate to the conduct of its business or to its business relationship (if any) with the other body and, in particular, may require the removal of any person from any office in the society or that body.
- (4) A direction under subsection (2) above shall—
  - (a) specify the matters which appear to the Commission to be capable of giving rise to such a belief as is mentioned in subsection (1) above;
  - (b) specify the period within which the society must comply with the direction;
  - (c) require the society, if it decides to comply with the direction by taking steps to secure the purpose mentioned in subsection (2)(b) above, to notify the Commission of the steps it proposes to take.
- (5) Where a building society, in pursuance of subsection (2)(b) above notifies the Commission of steps which it proposes to take to secure the purpose mentioned in that paragraph then—
  - (a) if it appears to the Commission that the steps proposed are reasonably likely to secure that purpose, the Commission shall approve them and direct the society to carry them out;
  - (b) if it appears to the Commission that the steps proposed are, with modifications, likely to secure that purpose and the Commission and the society agree on appropriate modifications within the period of 21 days from the date on which the Commission notifies the society of the modifications it proposes for their agreement, the Commission shall approve the steps as modified and direct the society to carry them out;

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but otherwise the Commission shall reject the society's proposals.

- (6) If the Commission rejects a society's proposals under subsection (5) above the Commission shall direct the society, within a specified period, to take the steps specified in the direction.
- (7) Any direction under subsection (2), (5) or (6) above shall be given by the Commission by notice served on the society.
- (8) The Commission may, if it thinks fit, extend, or further extend, any period during which a building society is to take any steps required of it under any of the foregoing provisions of this section and may do so whether or not application is made to it before the expiry of the period in question.
- (9) If a building society fails, within the period allowed to it under the foregoing provisions of this section, to comply with a direction under subsection (2) or (6) above, the Commission may serve on the society an aggregation notice to take effect on such date as is specified in the notice.
- (10) An aggregation notice under subsection (9) above is a notice directing that, from the date specified in the notice until the notice is withdrawn by the Commission, the assets and liabilities of the body specified in the notice will be aggregated with those of the society for the purposes of the provisions of this Act requiring aggregation of assets or liabilities; and where such a notice is served, and whilst it remains in force, the assets and liabilities of the body specified in the notice shall for the purposes of those provisions be aggregated with those of the society in accordance with the aggregation rules in force under sections 7(10), 8(3) and 20(9).
- (11) A copy of any aggregation notice served on a building society under subsection (9) above shall, whilst in force, be kept in the public file of the society.
- (12) In this section—
  - “business relationship” includes the use of business names and the holding by one individual of offices in more than one body;
  - “specified” means specified in a direction under any provision of this section;and “the provisions of this Act requiring aggregation of assets or liabilities” are sections 7, 8 and 20.]

#### Textual Amendments

- F72** S. 51 repealed (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 46(2), 47(3), Sch. 7 para. 16, Sch. 9; S.I. 1997/2668, art. 2, Sch. Pt. II(w)(y)(z)(vii)(cc)(vi)

### Information

#### 52 Powers to obtain information and documents etc.

- (1) This section applies to information, documents or other material, or explanations of matters, which relate to the business of a building society or its plans for future development and, in relation to the obtaining under this section of information or

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explanations or the production under this section of documents or other material to which it applies “the purposes of its supervisory functions” means the purposes of the discharge by the [<sup>F73</sup>[<sup>F74</sup>FCA or the PRA of any of their respective functions] under Part I, sections 36, 36A, 37, 42B, 42C and 46A, Part X and section 107.]

- (2) Where a building society has [<sup>F75</sup>connected undertakings] this section also applies to information, documents or other material, or explanations of matters, which relate to, or also relate to, the business, or the plans for future development, of every such [<sup>F76</sup>connected undertaking].
- [<sup>F77</sup>(3) Where the Commission has grounds under section 51(1) for giving a direction to a building society under subsection (2) of that section in relation to another body corporate this section also applies to information, documents or other material, or explanations of matters, which relate to the business of that other body.]
- (4) This section does not authorise any requirement in relation to information, documents or other material to be imposed on a [<sup>F78</sup>connected undertaking of] a building society unless [<sup>F79</sup>that undertaking] carries on business in the United Kingdom; but a requirement may be imposed under this section on a building society in relation to information, documents or other material in the possession or control of a [<sup>F80</sup>connected undertaking] outside the United Kingdom.
- (5) Subject to subsection (4) above, the [<sup>F81</sup>FCA and the PRA] may by notice to a building society, [<sup>F82</sup>or connected undertaking]—
- (a) require [<sup>F83</sup>the society or undertaking] to which it is addressed to furnish to it, within a specified period or at a specified time or times, such specified information as the [<sup>F84</sup>it] considers it needs for the purposes of its supervisory functions;
  - (b) require [<sup>F83</sup>the society or undertaking] to which it is addressed to produce to it, at a specified time and place, such specified documents or other material as the [<sup>F84</sup>it] considers it needs for the purposes of its supervisory functions;
  - (c) require [<sup>F83</sup>the society or undertaking] to which it is addressed to provide to it, within specified period, such explanations of specified matters as the [<sup>F84</sup>it] considers it needs for the purposes of its supervisory functions;
  - (d) require [<sup>F83</sup>the society or undertaking] to which it is addressed to furnish to it a report by an [<sup>F85</sup>approved accountant or other person with relevant professional skill] on, or on specified aspects of, information or documents or other material furnished or produced to the [<sup>F84</sup>it] .
- [<sup>F86</sup>(5A) Subject to subsection (4) above, [<sup>F87</sup>any person authorised for the purpose by the [<sup>F88</sup>FCA or the PRA] (“an authorised officer”) may, on producing evidence of his authority,] require a building society or connected undertaking—
- (a) to furnish to him forthwith such specified information as the [<sup>F89</sup>body which authorised the person] considers it needs for the purposes of its supervisory functions;
  - (b) to produce to him forthwith such documents or other material as the [<sup>F89</sup>body which authorised the person] considers it needs for those purposes;
  - (c) to provide to him forthwith such explanations of specified matters as the [<sup>F89</sup>body which authorised the person] considers it needs for those purposes.
- (6) Where by virtue of subsection (5)(a) to (c) above the [<sup>F90</sup>FCA or the PRA has power] , or by virtue of subsection (5A) above an authorised [<sup>F91</sup>officer] has power, to require the furnishing of any information, the production of any document or material or the provision of any explanation, by a building society or connected undertaking, the

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- [<sup>F92</sup>FCA, the PRA or the authorised officer (as the case may be)] shall have the like power as regards any person who—
- (a) is or has been an officer or employee or agent of the society or undertaking; or
  - (b) in the case of documents or material, appears to the [<sup>F92</sup>FCA, the PRA or the authorised officer (as the case may be)] to have the document or material in his possession or under his control.]
- (7) Where any person from whom production of a document or material is required under subsection (6) above claims a lien on the document or material, the production of it shall be without prejudice to the lien.
- (8) Nothing in the foregoing provisions of this section shall compel the production by a [<sup>F93</sup>relevant lawyer] of a document or material containing a privileged communication made by him or to him in that capacity or the furnishing of information contained in a privileged communication so made.
- [<sup>F94</sup>(9) Where, by virtue of subsection (5), (5A) or (6) above, the [<sup>F95</sup>FCA, the PRA or an authorised officer] requires the production by a building society or connected undertaking or any other person of documents or material, the [<sup>F96</sup>FCA, the PRA or the authorised officer (as the case may be)] may—
- (a) if the documents or material are produced, take copies of or extracts from them and require the person who produced them, or any other person who is a present or past director or officer of, or is or was at any time employed by, the building society or connected undertaking concerned, to provide an explanation of the documents or material; and
  - (b) if the documents or material are not produced, require the person who was required to produce the documents or material to state, to the best of his knowledge and belief, where the documents or material are.]
- (10) Any person who, when required to do so under this section, fails without reasonable excuse to furnish any information or accountant’s report, to produce any documents or material, or to provide any explanation or make any statement, shall be liable on summary conviction—
- (a) to a fine not exceeding level 5 on the standard scale; and
  - (b) in the case of a continuing offence, to an additional fine not exceeding £200 for every day during which the offence continues.
- (11) Any building society which furnishes any information, provides any explanation or makes any statement which is false or misleading in a material particular shall be liable, on conviction on indictment or on summary conviction, to a fine which, on summary conviction, shall not exceed the statutory maximum.
- (12) Any person who knowingly or recklessly furnishes any information, provides any explanation or makes any statement which is false or misleading in a material particular shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both; and
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- [<sup>F97</sup>(13) In this section—
- “agent”, in relation to a building society or connected undertaking, includes its bankers, accountants, solicitors and auditors;

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“approved”, in relation to an accountant or other person with relevant professional skill, means approved by the [<sup>F98</sup>FCA or the PRA] ;

[<sup>F99</sup>“relevant lawyer” means a barrister, advocate, solicitor or other legal representative communications with whom may be the subject of a claim to professional privilege;]

“specified” means specified in a notice or requirement under this section.]

### Textual Amendments

- F73** Words in s. 52(1) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) for s. 52(1)(a) (b) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 para. 150(a)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F74** Words in s. 52(1) substituted (1.4.2013) by **The Financial Services Act 2012 (Mutual Societies) Order 2013** (S.I. 2013/496), art. 1(1), **Sch. 8 para. 16(2)** (with Sch. 12)
- F75** Words in s. 52(2) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 17(2)(a)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(viii)**
- F76** Words in s. 52(2) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 17(2)(b)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(viii)**
- F77** S. 52(3) repealed (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 46(2), 47(3), Sch. 7 para. 17(3), **Sch. 9**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(viii)(cc)(vii)**
- F78** Words in s. 52(4) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 17(4)(a)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(viii)**
- F79** Words in s. 52(4) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 17(4)(b)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(viii)**
- F80** Words in s. 52(4) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 17(4)(c)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(viii)**
- F81** Words in s. 52(5) substituted (1.4.2013) by **The Financial Services Act 2012 (Mutual Societies) Order 2013** (S.I. 2013/496), art. 1(1), **Sch. 8 para. 16(3)(a)** (with Sch. 12)
- F82** Words in s. 52(5) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 17(5)(a)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(viii)**
- F83** Words in s. 52(5) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 17(5)(b)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(viii)**
- F84** Word in s. 52(5)(a)-(d) substituted (1.4.2013) by **The Financial Services Act 2012 (Mutual Societies) Order 2013** (S.I. 2013/496), art. 1(1), **Sch. 8 para. 16(3)(b)** (with Sch. 12)
- F85** Words in s. 52(5)(d) substituted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 17(5)(c)**; S.I. 1997/1427, **art. 2(k)(n)(iii)**
- F86** S. 52(5A)(6) substituted for s. 52(6) (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 17(6)**; S.I. 1997/1427, **art. 2(k)(n)(iii)**
- F87** Words in s. 52(5A) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2(a)(b), 8, 13(1), **Sch. 3 para. 150(c)(i)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F88** Words in s. 52(5A) substituted (1.4.2013) by **The Financial Services Act 2012 (Mutual Societies) Order 2013** (S.I. 2013/496), art. 1(1), **Sch. 8 para. 16(4)(a)** (with Sch. 12)



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- F89** Words in s. 52(5A)(a)-(c) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 16(4)(b)** (with Sch. 12)
- F90** Words in s. 52(6) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 16(5)(a)** (with Sch. 12)
- F91** Word in s. 52(6) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2(a)(b), 8, 13(1), **Sch. 3 para. 150(d)(ii)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F92** Words in s. 52(6) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 16(5)(b)** (with Sch. 12)
- F93** Words in s. 52(8) substituted (1.1.2010) by Legal Services Act 2007 (c. 29), s. 211(2), **Sch. 21 para. 70(a)** (with ss. 29, 192, 193); S.I. 2009/3250, art. 2(h)
- F94** S. 52(9) substituted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 17(7)**; S.I. 1997/1427, **art. 2(k)(n)(iii)**
- F95** Words in s. 52(9) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 16(6)(a)** (with Sch. 12)
- F96** Words in s. 52(9) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 16(6)(b)** (with Sch. 12)
- F97** S. 52(13) substituted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 17(8)**; S.I. 1997/1427, **art. 2(k)(n)(iii)**
- F98** Words in s. 52(13) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 16(7)** (with Sch. 12)
- F99** Words in s. 52(13) inserted (1.1.2010) by Legal Services Act 2007 (c. 29), s. 211(2), **Sch. 21 para. 70(b)** (with ss. 29, 192, 193); S.I. 2009/3250, art. 2(h)

## **[<sup>F100</sup>52B Entry of premises under warrant under section 176 of the Financial Services and Markets Act 2000.**

- (1) A justice of the peace may issue a warrant under section 176 of the Financial Services and Markets Act 2000 if satisfied on information on oath given by or on behalf of the [<sup>F101</sup>FCA or the PRA], an authorised officer within the meaning of section 52(5A) above, or a person appointed as an investigator under section 55(1) below or as an inspector under section 56(1) below, that there are reasonable grounds for believing that the first or second set of conditions below is satisfied.
- (2) The first set of conditions is that—
- (a) there are on the premises specified in the warrant information, documents or other material in relation to which a requirement has been imposed on any person under section 52(5), (5A) or (6) above or section 57(3) below, or which it is the duty of any person to produce under section 55(3) or 57(2) below, and
  - (b) that person has failed (wholly or in part) to comply with the requirement or, having been requested to do so, has failed (wholly or in part) to comply with that duty.
- (3) The second set of conditions is that—
- (a) there are on the premises specified in the warrant information, documents or other material in relation to which a requirement could be imposed on any person under section 52(5), (5A) or (6) above or section 57(3) below, or which any person could be requested to produce in compliance with the duty imposed on them by section 55(3) or 57(2) below, and
  - (b) if such a requirement were imposed, or such a request made,—
    - (i) it would not be complied with, or

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- (ii) any information, documents or other material to which it related would be removed, tampered with or destroyed.]

#### Textual Amendments

- F100** S. 52B substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) for s. 52A by S.I. 2001/2617, arts. 2(a)(b), 8, 13(1), **Sch. 3 para. 151** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F101** Words in s. 52B(1) substituted (1.4.2013) by **The Financial Services Act 2012 (Mutual Societies) Order 2013** (S.I. 2013/496), art. 1(1), **Sch. 8 para. 17** (with Sch. 12)

#### [<sup>F102</sup>53A Disclosure of information.

- (1) For the purposes of sections 348 to 353 of the Financial Services and Markets Act 2000 (restrictions on disclosure of confidential information)—
- (a) information to which this section applies is to be treated as confidential information; and
  - (b) in relation to such information, each of the following is a primary recipient—
    - [<sup>F103</sup>(i) the FCA;
      - (ia) the PRA;]
      - (ii) any person who is or has been employed by the [<sup>F104</sup>FCA or the PRA]; and
      - (iii) any person appointed by the [<sup>F104</sup>FCA or the PRA] to carry out functions under this Act.
- (2) This section applies to information which—
- (a) relates to—
    - (i) the business or other affairs of a building society or other body, or its or their plans for future development; or
    - (ii) any person who is or has been, or has been appointed (or, in the case of a director, nominated or proposed as), an officer of a building society or other body;
  - (b) was received by a primary recipient (within the meaning of subsection (1)(b)) for the purposes of, or in the discharge of, any functions of the [<sup>F105</sup>FCA or the PRA] under any provision made by or under this Act; and
  - (c) is not excluded information by virtue of subsection (4).
- (3) It is immaterial for the purposes of subsection (2) whether or not the information was received—
- (a) by virtue of a requirement to provide it imposed by or under this Act;
  - (b) for other purposes as well as purposes mentioned in that subsection.
- (4) Information is excluded information if—
- (a) it has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purposes for which, disclosure is not precluded by section 348 of the Financial Services and Markets Act 2000; or
  - (b) it is in the form of a summary or collection of information so framed that it is not possible to ascertain from it information relating to any particular person.]

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#### Textual Amendments

- F102** S. 53A substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) for s. 53 by S.I. 2001/2617, arts. 2(a)(b), 8, 13(1), **Sch. 3 para. 152** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F103** S. 53A(1)(b)(i)(ia) substituted for s. 53A(1)(b)(i) (1.4.2013) by **The Financial Services Act 2012 (Mutual Societies) Order 2013** (S.I. 2013/496), art. 1(1), **Sch. 8 para. 18(2)** (with Sch. 12)
- F104** Words in s. 53A(1)(b)(ii)(iii) substituted (1.4.2013) by **The Financial Services Act 2012 (Mutual Societies) Order 2013** (S.I. 2013/496), art. 1(1), **Sch. 8 para. 18(3)** (with Sch. 12)
- F105** Words in s. 53A(2)(b) substituted (1.4.2013) by **The Financial Services Act 2012 (Mutual Societies) Order 2013** (S.I. 2013/496), art. 1(1), **Sch. 8 para. 18(4)** (with Sch. 12)

#### Modifications etc. (not altering text)

- C23** S. 53A(1) restricted (*temp.* from 3.9.2001 until 30.11.2001) by S.I. 2001/2966, **art. 6**

### 54 Information disclosed to <sup>F106</sup>[FCA or PRA] from other sources.

- (1) If and in so far as it appears to the Secretary of State that the disclosure of any information will enable the <sup>F107</sup>[FCA or the PRA] better to discharge its functions under this Act (but not otherwise),—
- (a) information obtained by the Secretary of State under section 447 or 448 of the <sup>M1</sup>Companies Act 1985 (inspection of companies' books and papers) may be disclosed to the <sup>F107</sup>[FCA or the PRA] or further disclosed, notwithstanding the provision as to security of information contained in section 449 or that Act; and
- (b) where the information is contained in a report made by inspectors appointed under section 431, 432 <sup>F108</sup>[or 442] of the Companies Act 1985 (investigation of affairs or ownership of companies and certain other bodies corporate) the Secretary of State may furnish a copy of the report to the <sup>F107</sup>[FCA or the PRA].

- <sup>F109</sup>(2) .....
- <sup>F110</sup>(3) .....
- <sup>F110</sup>(3A) .....
- <sup>F110</sup>(3B) .....
- <sup>F110</sup>(3C) .....
- <sup>F111</sup>(4) .....
- <sup>F111</sup>(5) .....
- <sup>F110</sup>(6) .....

#### Textual Amendments

- F106** Words in s. 54 heading substituted (1.4.2013) by **The Financial Services Act 2012 (Mutual Societies) Order 2013** (S.I. 2013/496), art. 1(1), **Sch. 8 para. 19(3)** (with Sch. 12)
- F107** Words in s. 54 substituted (1.4.2013) by **The Financial Services Act 2012 (Mutual Societies) Order 2013** (S.I. 2013/496), art. 1(1), **Sch. 8 para. 19(2)** (with Sch. 12)

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- F108** Words in s. 54(1)(b) substituted (1.10.2007) by [The Companies Act 2006 \(Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/2194\)](#), art. 1(3)(a), [Sch. 4 para. 47](#) (with art. 12, [Sch. 4 para. 47\(2\)](#))
- F109** S. 54(2) omitted (1.10.2009) by virtue of [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), [Sch. 1 para. 87\(2\)](#) (with art. 10)
- F110** S. 54(3)-(6) repealed (1.12.2001) by [S.I. 2001/2617](#), arts. 2(b), 13(2), [Sch. 4](#) (with art. 13(3), [Sch. 5](#)); [S.I. 2001/3538](#), [art. 2\(1\)](#)
- F111** S. 54(4)(5) repealed by [Banking Act 1987 \(c. 22, SIF 10\)](#), s. 108, [Sch. 6 para. 26\(5\)](#), [Sch. 7 Pt. I](#) and expressed to be repealed (1.12.2001) by [S.I. 2001/2617](#), arts. 2(b), 13(2), [Sch. 4](#) (with art. 13(3), [Sch. 4](#)); [S.I. 2001/3538](#), [art. 2\(a\)](#)

**Modifications etc. (not altering text)**

- C24** S.54 modified by [Companies Act 1989 \(c. 40, SIF 27\)](#), [s. 88\(3\)\(b\)\(5\)\(6\)](#)

**Marginal Citations**

- M1** [1985 c. 6.](#)

*Inspections, etc*

**55 Investigations on behalf of [<sup>F112</sup>FCA or PRA] .**

- (1) If it appears to [<sup>F113</sup>the FCA or the PRA] desirable to do so for the purposes of its supervisory functions in relation to a building society, [<sup>F114</sup>it] may appoint one or more competent persons to investigate and report to it on the state and conduct of the business of the society concerned, or any particular aspect of that business.
- (2) If a person appointed under subsection (1) above thinks it necessary for the purposes of his investigation, he may also investigate the business of any body corporate which is or has at any relevant time been [<sup>F115</sup>a connected undertaking of the building society under investigation]
- (3) It shall be the duty of every officer, employee and agent of a building society or other body which is under investigation—
  - (a) to produce to the persons appointed under subsection (1) above all records, books and papers relating to the body concerned which are in his custody or power; and
  - (b) to attend before those persons when required to do so; and
  - (c) otherwise to give to those persons all assistance in connection with the investigation which he is reasonably able to give.
- (4) Any officer, employee or agent of a building society or other body who—
  - (a) without reasonable excuse fails to produce any records, books or papers which it is his duty to produce under subsection (3) above, or
  - (b) without reasonable excuse fails to attend before the person appointed under subsection (1) above when required to do so, or
  - (c) without reasonable excuse fails to answer any question which is put to him by persons so appointed with respect to any building society or other body corporate which is under investigation,

shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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- (5) Any officer, employee or agent of a building society or other body who knowingly or recklessly furnishes to any person appointed under subsection (1) above any information which is false or misleading in a material particular, shall be liable—
- (a) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or both; and
  - (b) on summary conviction to a fine not exceeding the statutory maximum.
- (6) In this section—
- (a) “agent”, in relation to a building society or other body whose business is under investigation, includes its bankers, its accountants and solicitors and any persons, where they are not officers of the other body concerned, who are employed as its auditors;
  - (b) “the purposes of its supervisory functions”, in relation to the [F116FCA or the PRA], has the same meaning as in section 52; and
  - (c) any reference to an officer, employee or agent of a building society or other body includes a reference to a person who has been but no longer is an officer, employee or agent of that society or other body.

#### Textual Amendments

- F112** Words in s. 55 heading substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), **Sch. 8 para. 20(4)** (with Sch. 12)
- F113** Words in s. 55(1) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), **Sch. 8 para. 20(2)(a)** (with Sch. 12)
- F114** Word in s. 55(1) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), **Sch. 8 para. 20(2)(b)** (with Sch. 12)
- F115** Words in s. 55(2) substituted for s. 55(2)(a)(b) (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 21**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(x)**
- F116** Words in s. 55(6) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), **Sch. 8 para. 20(3)** (with Sch. 12)

#### Modifications etc. (not altering text)

- C25** S. 55 extended (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 para. 13(1)**; S.I. 2002/2711, art. 2 (subject to arts. 3-5)  
S. 55 extended (*prosp.*) by S.I. 2002/3152, arts. 1(2)(3), 4, **Sch. 2 para. 13(1)**
- C26** S. 55 extended (NI) (2.2.2004) by [The Insolvency \(Northern Ireland\) Order 2002 \(S.I. 2002/3152\)](#), art. 1(3), **Sch. 2 para. 13(1)**; S.R. 2003/545, art. 2 (subject to S.R. 2003/546, arts. 2-7)
- C27** S. 55(6)(a) amended (E.W.) (1.1.1992) by S.I. 1991/2684, arts. 2(1), 4, **Sch. 1**

## 56 Inspections and special meetings: general.

- (1) In the circumstances mentioned in subsection (2) below, the [F117FCA and the PRA]—
- (a) may appoint one or more competent inspectors to investigate and report on the affairs of a building society, or
  - (b) may call a special meeting of a building society to consider its affairs, or
  - (c) may (either on the same or on different occasions) both appoint an inspector or inspectors and call a special meeting for those purposes;

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and, in the circumstances mentioned in subsection (3) below, the investigation or consideration may extend to the affairs of any body corporate which is or at any relevant time has been a <sup>F118</sup>connected undertaking of] the building society.

- <sup>F119</sup>(1A) The FCA must consult the PRA before exercising the power in subsection (1).
- (1B) The PRA must consult the FCA before exercising the power in subsection (1).]
- (2) The powers conferred by subsection (1) above may be exercised either—
- (a) on the application of the requisite number of members of the society, or
  - (b) where no such application is made but the <sup>F120</sup>FCA or the PRA (as the case may be)] is of opinion that an investigation should be held into the affairs of the society, or that the affairs of the society call for consideration by a meeting of its members.
- (3) The powers conferred by subsection (1) above may be exercised in relation also to a <sup>F121</sup>connected undertaking of] a building society either—
- (a) where the application referred to in subsection (2)(a) above so requests, or
  - (b) where the application contains no such request but the <sup>F120</sup>FCA or the PRA (as the case may be)] is of the opinion that it is necessary for the purposes of the investigation into or consideration of the affairs of the building society that the affairs of the <sup>F122</sup>connected undertaking] should also be investigated or considered.
- (4) Where the inspectors are of the opinion mentioned in subsection (3)(b) above in relation to a <sup>F121</sup>connected undertaking of] a building society they may, with the consent of the <sup>F123</sup>body exercising its powers under subsection (1)] , extend their investigation to the affairs of the <sup>F122</sup>connected undertaking] and make their report accordingly.
- (5) For the purposes of subsections (1) to (3) above the requisite number of members—
- (a) in the case of a building society having more than 1,000 members, is 100, and
  - (b) in the case of any other building society, is one-tenth of the whole number of members of the society.
- (6) The following provisions shall have effect where an application is made as mentioned in subsection (2)(a) above, that is to say—
- (a) the application shall be supported by such evidence as the <sup>F124</sup>body to which the application was made] may require for the purpose of showing that the applicants have good reason for requiring an investigation by inspectors or consideration by a special meeting, as the case may be, and that the applicants are not actuated by malicious, frivolous, vexatious or scandalous motives in their application;
  - (b) such notice of the application shall be given to the building society and, in a case where the investigation is to extend to its affairs also, to the society's <sup>F125</sup>connected undertaking], as the <sup>F124</sup>body to which the application was made] may direct;
  - (c) the <sup>F124</sup>body to which the application was made] shall require the applicants to give security for payment of the costs of the investigation or meeting before the inspector is appointed or the meeting is called subject, in the case of the costs of an investigation, to an amount not exceeding the corresponding Companies Act limit; and
  - (d) as regards the expenses of or incidental to the investigation or meeting—



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- (i) in the case of an investigation (in whichever way instituted), the expenses shall be defrayed in the first instance by the [F124]body to which the application was made] but without prejudice to its rights to contribution under section 57(10);
  - (ii) in the case of a meeting, the expenses shall be defrayed by the applicants, or out of the funds of the society, or by the members or officers or former members or officers of the society, in such proportions as the [F124]body to which the application was made] may direct.
- (7) [F126]Before the FCA or the PRA exercises] its powers under subsection (1) above in a case falling within subsection (2)(b) above, [F127]it] shall inform the building society of the action which it proposes to take and the grounds for that action, and the society shall, within 14 days of receiving the information, be entitled to give [F128]the body exercising its powers under subsection (1)] an explanatory statement in writing by way of a reply.
- (8) Where the [F129]FCA or the PRA] proposes to exercise its powers under subsection (1) above in a case falling within subsection (3)(b) above, subsection (7) above shall apply in relation to the [F125]connected undertaking] as it applies in relation to the society.
- (9) Inspectors appointed under this section shall, in addition to having the powers which are necessary for or incidental to the discharge of their functions under this section, have the powers specified in section 57.
- (10) Where a special meeting is called under this section—
- (a) the [F130]body exercising its powers under subsection (1)] may direct at what time and place the meeting is to be held, and what matters are to be discussed and determined at the meeting, and may give such other directions as it thinks fit with respect to the calling, holding and conduct of the meeting;
  - (b) the [F130]body exercising its powers under subsection (1)] may appoint a person to be chairman at the meeting or, in default of such an appointment, the meeting may appoint its own chairman;
  - (c) the meeting shall have all the powers of a meeting called according to the rules of the building society;
- and the provisions of this subsection and any direction given under it shall have effect notwithstanding anything in the rules of the building society.
- (11) In this section “the corresponding Companies Act limit”, in relation to security for the payment of the costs of an investigation, is £5,000 or such other sum as is specified for the time being in an order under section 431(4) of the M2Companies Act 1985 for the purposes of that section.

#### Textual Amendments

- F117** Words in s. 56(1) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), [Sch. 8 para. 21\(2\)](#) (with [Sch. 12](#))
- F118** Words in s. 56(1) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of [S.I. 1997/2668](#)) by [1997 c. 32](#), ss. 43, 47(3), [Sch. 7 para. 22\(1\)](#); [S.I. 1997/2668](#), art. 2, [Sch. Pt. II\(w\)\(z\)\(xi\)](#)
- F119** S. 56(1A)(1B) inserted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), [Sch. 8 para. 21\(3\)](#) (with [Sch. 12](#))

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- F120** Words in s. 56(2)(3) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 21(4)** (with Sch. 12)
- F121** Words in s. 56(3)(4) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 22(2)(a)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xi)**
- F122** Words in s. 56(3)(4) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 22(2)(b)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xi)**
- F123** Words in s. 56(4) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 21(5)** (with Sch. 12)
- F124** Words in s. 56(6) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 21(6)** (with Sch. 12)
- F125** Words in s. 56(6)(8) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 22(3)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xi)**
- F126** Words in s. 56(7) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 21(7)(a)** (with Sch. 12)
- F127** Word in s. 56(7) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 21(7)(b)(i)** (with Sch. 12)
- F128** Words in s. 56(7) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 21(7)(b)(ii)** (with Sch. 12)
- F129** Words in s. 56(8) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 21(8)** (with Sch. 12)
- F130** Words in s. 56(10) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 21(9)** (with Sch. 12)

#### Marginal Citations

**M2** 1985 c. 6.

## 57 Inspections: supplementary provisions.

(1) In this section—

“the body under investigation” means the building society whose affairs or, as the case may be, the building society whose affairs, and each [<sup>F131</sup>connected undertaking of] the building society whose affairs, are the subject of the investigation;

“the inspectors” means the persons appointed <sup>F132</sup>... under section 56 to conduct the investigation;

“the investigation” means the investigation under section 56 which the inspectors have been appointed to hold;

and references to officers or to agents include past, as well as present, officers or agents (as the case may be) and “agents”, in relation to a building society or any [<sup>F131</sup>connected undertaking of] a building society, includes its bankers, its accountants and solicitors and its auditors.

(2) When the inspectors have been appointed it is the duty of all officers and agents of the body under investigation—

- (a) to produce to the inspectors all documents and material of or relating to the body under investigation which are in their custody or power;
- (b) to attend before the inspectors when required to do so, and



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- (c) otherwise to give the inspectors all assistance in connection with the investigation which they are reasonably able to give.
- (3) If the inspectors consider that a person other than an officer or agent of the body under investigation is or may be in possession of information concerning its affairs, they may require that person to produce to them any documents or material in his custody or power relating to the body under investigation, to attend before them and otherwise to give them all assistance in connection with the investigation which he is reasonably able to give; and it is that person's duty to comply with the requirement.
- (4) The inspectors may examine on oath the officers and agents of the body under investigation, and any such person as is mentioned in subsection (3) above, in relation to the affairs of the body under investigation, and may administer an oath accordingly.
- (5) An answer given by a person to a question put to him under the foregoing provisions of this section may be used in evidence against him.
- [<sup>F133</sup>(5A) However, in criminal proceedings in which that person is charged with an offence to which this subsection applies—
- (a) no evidence relating to the answer may be adduced, and
  - (b) no question relating to it may be asked,
- by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.
- (5B) Subsection (5A) above applies to any offence other than—
- (a) an offence under section 2 or 5 of the Perjury Act 1911 (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath);
  - (b) an offence under section 44(1) or (2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made on oath or otherwise than on oath); or
  - (c) an offence under Article 7 or 10 of the <sup>M3</sup>Perjury (Northern Ireland) Order 1979 (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath).]

(6) If an officer or agent of the body under investigation or any such person as is mentioned in subsection (3) above—

    - (a) refuses to produce any document or material which it is his duty under this section to produce, or
    - (b) refuses to attend before the inspectors when required to do so, or
    - (c) refuses to answer any question put to him by the inspectors with respect to the affairs of the body under investigation,

the inspectors may certify the refusal in writing to the High Court; and the court may thereupon inquire into the case and, after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, may punish the offender in like manner as if he had been guilty of contempt of the court.

(7) The inspectors may, and if so directed by the [<sup>F134</sup>body which appointed the inspectors] shall, make interim reports to the [<sup>F134</sup>body which appointed the inspectors] , but they may at any time in the course of the investigation, without making an interim report, inform the [<sup>F134</sup>body which appointed the inspectors] of matters coming to their

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knowledge as a result of the investigation tending to show that an offence has been committed.

- (8) The [<sup>F135</sup>body which appointed the inspectors] may, if it thinks fit—
- (a) send a copy of any report made by the inspectors to the body whose affairs are or were the subject of the investigation;
  - (b) furnish a copy of any such report on request <sup>F136</sup>. . . to—
    - (i) any member of the body whose affairs are or were the subject of the investigation;
    - (ii) the auditors of that body;
    - (iii) any person whose conduct is referred to in the report;
    - (iv) any other person whose financial interests appear to the [<sup>F135</sup>body which appointed the inspectors] to be affected by matters dealt with in the report, whether as creditor or otherwise; and
  - (c) cause the report to be printed and published.
- <sup>F137</sup>(8A) The [<sup>F138</sup>body which appointed the inspectors] may charge a reasonable fee for furnishing to any person a copy of a report under subsection (8)(b) above.]
- (9) A copy of a report of inspectors appointed under section 56 to hold an investigation under that section, certified by the [<sup>F139</sup>body which appointed the inspectors] to be a true copy, is admissible in any legal proceedings as evidence of the opinion of the inspectors in relation to any matter contained in the report; and a document purporting to be such a certificate shall be received in evidence and be deemed to be such a certificate, unless the contrary is proved.
- (10) The [<sup>F140</sup>body which appointed the inspectors] shall be entitled to be repaid the expenses of the investigation defrayed by it under section 56(6)(d) as provided in the following paragraphs, that is to say—
- (a) by the applicants for the investigation, to such extent (if any) as the [<sup>F140</sup>body which appointed the inspectors] may direct;
  - (c) by any person convicted of an offence in proceedings instituted as a result of the investigation, to such extent (if any) as the court by or before which he was convicted may order;
- and a person liable under any one of paragraphs (a) to (c) above is entitled to contribution from any other person liable under the same paragraph, according to the amount of their respective liabilities under it.
- (11) In the application of this section to a building society whose principal office is in Scotland, any reference to the High Court shall be read as a reference to the Court of Session.

#### Textual Amendments

- F131** Words in s. 57(1) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 23**; S.I. 1997/2668, art. 2, **Sch. Pt. II(w)(z)(xii)**
- F132** Words in s. 57(1) omitted (1.4.2013) by virtue of **The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496)**, art. 1(1), **Sch. 8 para. 22(2)** (with Sch. 12)
- F133** S. 57(5A)(5B) inserted (14.4.2000 (E.W.N.I.) and 1.1.2001 (S.)) by 1999 c. 23, ss. 59, 68(3)(4), **Sch. 3 para. 9** (with Sch. 7 paras. 3(3), 5(2)); S.I. 2000/1034, **art. 2(a)(3)**; S.S.I. 2000/445, **art. 2**

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- F134** Words in s. 57(7) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 22(3)** (with Sch. 12)
- F135** Words in s. 57(8) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 22(3)** (with Sch. 12)
- F136** Words in s. 57(8)(b) repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 8, 13(2), **Sch. 4** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F137** S. 57(8A) inserted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2(a)(b), 8, 13(1), **Sch. 3 para. 155(b)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F138** Words in s. 57(8A) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 22(3)** (with Sch. 12)
- F139** Words in s. 57(9) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 22(3)** (with Sch. 12)
- F140** Words in s. 57(10) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 22(3)** (with Sch. 12)

#### **Modifications etc. (not altering text)**

- C28** S. 57(1) amended (E.W.) (1.1.1992) by S.I. 1991/2684, arts. 2(1), 4, **Sch. 1**
- C29** S. 57(5)(5A)(5B) extended (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 para. 13(2)**; S.I. 2002/2711, **art. 2** (subject to arts. 3-5)  
S. 57(5)(5A)(5B) extended (*prosp.*) by S.I. 2002/3152, arts. 1(2)(3), 4, **Sch. 2 para. 13(2)**
- C30** S. 57(5)-(5B) applied (NI) (2.2.2004) by The Insolvency (Northern Ireland) Order 2002 (S.I. 2002/3152), art. 1(3), **Sch. 2 para. 13(2)**; S.R. 2003/545, art. 2 (subject to S.R. 2003/546, arts. 2-7)

#### **Marginal Citations**

- M3** S.I. 1979/1714 (N.I. 19).

**Status:**

Point in time view as at 31/12/2020.

**Changes to legislation:**

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