



Building Societies Act 1986

1986 CHAPTER 53

PART VI

POWERS OF CONTROL OF THE COMMISSION

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 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 Commission of any of its functions under Part I, section 9, the foregoing sections of this Part, Part X and sections 107 and 108.
- (2) Where a building society has subsidiaries or other associated bodies 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 subsidiary or associated body.
- (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 subsidiary of or other body associated with a building society unless that body 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 subsidiary or associated body outside the United Kingdom.

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- (5) Subject to subsection (4) above, the Commission may by notice to a building society, subsidiary or associated body—
- (a) require the body 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 Commission considers it needs for the purposes of its supervisory functions;
 - (b) require the body to which it is addressed to produce to it, at a specified time and place, such specified documents or other material as the Commission considers it needs for the purposes of its supervisory functions;
 - (c) require the body to which it is addressed to provide to it, within a specified period, such explanations of specified matters as the Commission considers it needs for the purposes of its supervisory functions;
 - (d) require the body to which it is addressed to furnish to it a report by an accountant approved by the Commission on, or on specified aspects of, information or documents or other material furnished or produced to the Commission.
- (6) Where, by virtue of subsection (5)(a), (b) or (c) above the Commission 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 other body, the Commission shall have the like power as regards any person who is or has been an officer or employee or agent of the society or other body, as the case may be, or, in the case of documents or material, appears to the Commission 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 barrister, solicitor or advocate 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.
- (9) Where, by virtue of subsection (5) or (6) above, the Commission requires the production by a building society or other body or any other person of documents or material, the Commission may—
- (a) if the documents or material are produced, take copies of or extracts from them and require that person 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 other body 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.

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- (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.
- (13) In this section "specified" means specified in a notice under this section and " agent ", in relation to a building society, or any subsidiary or other body associated with it, includes its bankers, its accountants and solicitors and its auditors.

53 Confidentiality of certain information obtained by Commission

- (1) Subject to the provisions of this section and section 54, no information obtained by or furnished to the Commission under or for the purposes of this Act and relating to the business of a building society or other body or its or their plans for future development or to 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 may be disclosed (otherwise than to an officer or employee of the recipient authority) except—
 - (a) with the consent of the body to which, or person to whom, the information relates and (if different) of the person who furnishes it to the Commission ; or
 - (b) to the extent that it is information which is at the time of the disclosure, or has previously been, available to the public from other sources ; or
 - (c) in the form of a summary or collection of information so framed as not to enable information relating to any particular body or person to be ascertained from it; or
 - (d) to the extent that it is information which is provided for the purpose, under any provision of this Act, of its being made (in whatever manner) available to the public.
- (2) Nothing in subsection (1) above prohibits the disclosure of information—
 - (a) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings, whether under this Act or otherwise;
 - (b) with a view to the institution of, or otherwise for the purposes of, any civil proceedings by or at the relation of or against the Commission or by the Investor Protection Board arising out of the discharge of their respective functions under this Act;
 - (c) in order to enable the Commission to discharge any of its functions under this Act or any Community obligation ;
 - (d) in order to enable the central office to discharge any of its functions under this Act;
 - (e) in order to enable any person appointed investigator under section 55 or inspector under section 56 to discharge his duties under that section;
 - (f) in order to enable the auditors of the society to discharge their duties to the Commission ;

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- (g) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise by a solicitor, auditor, accountant or valuer of his professional duties.
- (3) If, in order to enable the Commission properly to discharge any of its functions under this Act or any such obligation, the Commission considers it necessary to seek advice from any qualified person on any matter of law, accountancy, valuation of property or other matter requiring the exercise of professional skill, nothing in subsection (1) above prohibits the disclosure to that person of such information as may appear to the Commission to be necessary to ensure that he is properly informed with respect to the matters on which his advice is sought.
- (4) Nothing in subsection (1) above prohibits the disclosure of information—
- (a) to the Treasury in circumstances where, in the opinion of the Commission, it is desirable or expedient that the information should be disclosed—
 - (i) in the interests of shareholders or depositors or in the public interest; or
 - (ii) with a view to the exercise by the Treasury of any of its functions under this Act; or
 - (b) to the Investor Protection Board in order to enable the Board to discharge any of its functions under the protective scheme provisions of Part IV.
- (5) Nothing in subsection (1) above prohibits the disclosure of information to the Bank of England in circumstances where, in the opinion of the Commission, it is desirable or expedient that the information should be disclosed with a view to facilitating the discharge—
- (a) by the Commission, of any of its functions under this Act ; or
 - (b) by the Bank, of any of its functions, whether under the Banking Act 1979 or otherwise ;
- nor does subsection (1) above prohibit further disclosure of the information by the Bank of England with the consent of the Commission and within the limits permitted by section 19 of that Act other than subsection (4)(a) so far as it relates to disclosure in the public interest
- (6) Nothing in subsection (1) above prohibits the disclosure of information, with the consent of the Treasury, to the Secretary of State or the Department of Economic Development in circumstances where, in the opinion of the Commission, it is desirable or expedient that the information should be disclosed in the interests of shareholders or depositors or, in the case of information for the Secretary of State, in the public interest.
- (7) Nothing in subsection (1) above prohibits the disclosure of information to the Secretary of State or the Department of Economic Development in circumstances where, in the opinion of the Commission, it is desirable or expedient that the information should be disclosed with a view to facilitating the discharge—
- (a) by the Commission, of any of its functions under this Act, or
 - (b) by the Secretary of State, of any functions of his under—
 - (i) any provision of the Insurance Companies Act 1982, or
 - (ii) sections 431, 432(2), 442, 444, 446(1) or 447(2) or (3) of the Companies Act 1985 (appointment of inspectors and requirement to produce documents); or

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- (c) by the Department, of any of its functions under Articles 424, 425(2), 435, 437, 439(1) or 440(2) or (3) of the Companies (Northern Ireland) Order 1986 (appointment of investigators and requirement to produce documents);

nor does subsection (1) above prohibit further disclosure of the information by the Secretary of State or the Department with the consent of the Commission.

- (8) Subject to subsection (9) below, nothing in subsection (1) above prohibits the disclosure of information to a prescribed regulatory authority in circumstances where, in the opinion of the Commission, it is desirable or expedient that the information should be disclosed—

- (a) in the public interest, or
- (b) in the interests of shareholders or depositors, or
- (c) with a view to facilitating the discharge—
 - (i) by the Commission, of any of its functions under this Act, or
 - (ii) by the regulatory authority, of any prescribed functions of the authority;

nor does subsection (1) above prohibit further disclosure of the information by a prescribed regulatory authority in prescribed circumstances, subject to prescribed conditions and with the consent of the Commission.

- (9) The Commission, with the consent of the Treasury, may, by order designate public and other authorities as prescribed regulatory authorities for the purposes of subsection (8) above and an order under this subsection—

- (a) shall specify the functions of prescribed regulatory authorities which are prescribed functions for those purposes ;
- (b) may restrict the circumstances in which information may, by virtue of that subsection, be disclosed or further disclosed, whether by excluding any of paragraphs (a), (b) or (c) of that subsection or otherwise; and
- (c) may impose conditions subject to which the information may be disclosed or further disclosed ;

and in that subsection " prescribed " means prescribed by an order under this subsection.

- (10) The power to make an order under subsection (9) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

- (11) Nothing in subsection (1) above prohibits the disclosure to an overseas regulatory authority of information which relates to a building society which, or a building society's subsidiary or associated body which.—

- (a) carries on or proposes to carry on any business in that country or territory, or
- (b) has or proposes to acquire an interest in a body corporate which carries on or proposes to carry on in that country or territory any business corresponding to any business of a building society, or
- (c) appears to the Commission to be associated with a body incorporated under the law of that country or territory or whose principal place of business is, or is proposed to be, in that country or territory,

if it appears to the Commission that the disclosure of the information would assist that authority in the discharge of its functions or would assist the Commission in the discharge of any of its functions under this Act.

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- (12) Subsection (11) above applies in relation to the disclosure of information which relates to 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 in the case of which that subsection authorises the disclosure of information which relates to it as it applies to the disclosure of information which relates to the society or other body.
- (13) Any person who discloses information in contravention of subsection (1) above 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.
- (14) In this section—
- " authority" includes any body (corporate or unincorporate) which is charged with the regulation of the carrying on of any description of financial business or the practice of any profession to which the carrying on of such business is incidental;
- " overseas regulatory authority " means any government department or public or other authority in a country or territory outside the United Kingdom which is charged under the law of that country or territory with the regulation of the carrying on there of any business within the powers conferred on building societies or their subsidiaries by or under this Act; and
- " regulation ", in relation to any public or other authority, means regulation in the public interest or for the protection of private interests.

54 Information disclosed to Commission 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 Commission 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 Companies Act 1985 (inspection of companies' books and papers) may be disclosed to the Commission or further disclosed, notwithstanding the provision as to security of information contained in section 449 of that Act; and
 - (b) where the information is contained in a report made by inspectors appointed under section 431, 432, 442 or 446 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 Commission.
- (2) If and in so far as it appears to the Department of Economic Development that the disclosure of any information will enable the Commission better to discharge its functions under this Act (but not otherwise),—
- (a) information obtained by the Department under Article 440 or 441 of the Companies (Northern Ireland) Order 1986 (inspection of companies' books and papers) may be disclosed or further disclosed to the Commission, notwithstanding the provision as to security of information contained in Article 442 of that Order; and
 - (b) where the information is contained in a report made by inspectors under Article 424, 425, 435 or 439 of the Companies (Northern Ireland) Order 1986 (investigation of affairs or ownership of companies and certain other

bodies corporate) the Department may furnish a copy of the report to the Commission.

- (3) Subsection (1) of section 53 does not apply to information which has been disclosed to the Commission by virtue of subsection (1) or (2) above, but—
- (a) except as provided by paragraph (b) below, nothing in this Act authorises any further disclosure of that information in contravention of section 449 of the Companies Act 1985 or, as the case may require, Article 442 of the Companies (Northern Ireland) Order 1986 ; and
 - (b) with respect to that information the references in subsections (3), (4), (5), (6), (8) and (11) of section 53 to subsection (1) of that section shall be construed as including a reference to the said section 449 or, as the case may require, Article 422, but, in the case of subsections (5), (6) and (8), so far only as they relate to the discharge of the Commission's functions or the interests of shareholders and depositors.
- (4) If and in so far as it appears to the Bank of England that the disclosure of any information will enable the Commission better to discharge its functions under this Act (but not otherwise), information obtained by the Bank under or for the purposes of the Banking Act 1979 may be disclosed to the Commission and, with the Bank's consent, further disclosed by the Commission, notwithstanding the provision as to security of information contained in section 19 of that Act.
- (5) Subsection (1) of section 53 does not apply to information which has been disclosed to the Commission by virtue of subsection (4) above, but—
- (a) except as provided in paragraph (b) below, nothing in this Act authorises any further disclosure of that information in contravention of section 19 of the Banking Act 1979; and
 - (b) with respect to that information the references in subsection (3), (4), (6), (7), (8) and (11) of section 53 to subsection (1) of that section shall be construed as including a reference to the said section 19 but, in the case of subsections (6), (7) and (8), so far only as they relate to the discharge of the Commission's functions or the interests of shareholders and depositors.
- (6) If information is disclosed to the Commission by an overseas regulatory authority—
- (a) subsection (1) of section 53 applies to that information as it applies to information obtained or furnished under or for the purposes of this Act; but
 - (b) the references in subsections (4) to (11) of that section to the disclosure of information do not extend to the disclosure of that information.