



Building Societies Act 1997

1997 CHAPTER 32

PART II

POWERS OF CONTROL OF COMMISSION

13 Power to direct restructuring of business etc.

(1) For section 36 of the 1986 Act there shall be substituted the following section—

“ Powers in relation to principal purpose and nature limits

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—
- (a) the requirement imposed by section 5(1)(a) or (b) (purpose or principal purpose and principal office);
 - (b) the requirement imposed by section 6(1) (the lending limit); or
 - (c) the requirement imposed by section 7(1) (the funding limit),
- the powers conferred by this section become exercisable by the Commission 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”).
- (2) The Commission may give the society a direction under subsection (3), (5) or (6) below.
- (3) A direction by the Commission 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—

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- (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 Commission 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 Commission 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 Commission of the result of the meeting.
- (6) A direction by the Commission 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 Commission of the option it has decided to pursue.
- (7) Where the Commission 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.
- (8) Where a restructuring plan is submitted by a society to the Commission under subsection (3) or (6) above then—

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- (a) if it appears to the Commission that the plan is reasonably likely to secure its purposes, the Commission 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 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 the society's agreement, the Commission 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 Commission 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 Commission of that fact as soon as it is practicable to do so.
- (10) In the event of the Commission 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 Commission for its approval a restructuring plan; and if the Commission does so, subsection (8) above shall apply as if the plan had been submitted under subsection (3) above.
- (11) 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.
- (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 Commission 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;
 - (f) to agree to the requisite transfer resolutions submitted to the members in pursuance of subsection (5) or (6) above; or

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- (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 Commission rejects a restructuring plan under subsection (8) above, the powers conferred on the Commission by section 37 shall become exercisable in relation to the society.
- (14) The provisions of Schedule 7A to this Act regulating the giving of directions apply in relation to directions under subsection (3), (5), (6), (7) or (10) above.
- (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 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.”
- (2) After Schedule 7 to the 1986 Act there shall be inserted, as Schedule 7A, the provisions set out in Schedule 3 to this Act (supplementary provisions as to directions).

Commencement Information

- II** S. 13 in force at 1.12.1997 by S.I. 1997/2668, art. 2, **Sch. Pt. II** (subject as mentioned in art. 2(2)-(5) of that S.I.)

14 Power to make prohibition orders.

After section 36 of the 1986 Act there shall be inserted the following section—

“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 Commission may 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—
(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 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 Commission to be just having regard to—
(a) the interests of shareholders of and depositors with the society; and

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- (b) the interests of other persons who will be affected by the order.
- (5) A notice under subsection (1) above of the Commission's intention to issue a prohibition order shall—
- (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; and
 - (c) inform the society of its right to make representations to the Commission, not less than 7 days before the date specified in the order, as to the provisions to be included in the order.
- (6) After considering any representations made by the society, the Commission may make the prohibition order with such saving and transitional provisions (if any) as it thinks just; and where it does so, the Commission—
- (a) shall issue the order by causing it to be served on the society; and
 - (b) shall direct the central office to keep a copy of it in the public file of the society.
- (7) A prohibition order so made and 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 and the non-receipt of a copy by a director or the chief executive does not affect the validity of the order.
- (10) Subject to subsection (11) below, a prohibition order shall remain in force until revoked by the Commission.
- (11) 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.
- (12) If a society contravenes a prohibition order issued against it under this section—
- (a) the power conferred on the Commission by section 37(1) shall become exercisable in relation to the society; and
 - (b) the Commission 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

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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.”

Commencement Information

I2 S. 14 in force at 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pt. II (subject as mentioned in art. 2(2)-(5) of that S.I.)

15 Powers to petition for winding up etc.

For section 37 of the 1986 Act there shall be substituted the following section—

“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 Commission 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 Commission 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 Commission 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 Commission 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 Commission 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.
- (4) Where the High Court makes an order under subsection (3) above, the Commission shall give a copy of it to the central office and the central office shall keep the copy 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).

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- (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.”

Commencement Information

- I3** S. 15 in force at 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pt. II (subject as mentioned in art. 2(2)-(5) of that S.I.)

F116

Textual Amendments

- F1** S. 16 shall cease to have effect (17.8.2001 for specified purposes and otherwise 1.12.2001) by virtue of S.I. 2001/2617, arts. 2(a), 13(1), Sch. 3 Pt. II para. 213(a) and is repealed (1.12.2001) by S.I. 2001/2617, art. 13(2), Sch. 4; S.I. 2001/3538, art. 2(1)

17 Power to direct transfers of engagements or business.

- (1) After section 42A of the 1986 Act there shall be inserted the following section—

“42B Power to direct transfers of engagements or business.

- (1) If, with respect to a building society for which an authorisation is in force, the Commission 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; or
 - (b) direct the society, within a specified period, to transfer its business to an existing company under section 97.
- (2) Failure by a society to comply with a direction given under subsection (1) shall render it liable to have its authorisation revoked under section 43(1).
- (3) Where the Commission—
- (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 Commission 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 Commission—
- (a) gives a building society a direction under subsection (1)(b) above; or

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- (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 under section 97,
- the Commission 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 Commission 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.
- (6) Section 45 has effect for the purpose of any determination whether or not it is expedient to exercise the powers conferred by this section.
- (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 Commission, with the consent of the 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.”
- (2) Immediately before Schedule 9 to the 1986 Act there shall be inserted, as Schedule 8A, the provisions set out in Schedule 4 to this Act (transfer directions: modifications of Part X).

18 Notification and confirmation of transfer directions.

After section 42B of the 1986 Act there shall be inserted the following section—

“42C Notification and confirmation of transfer directions.

- (1) A direction under section 42B(1) shall be given by notice in writing and may be varied by a further direction; and a direction may be revoked by the Commission by a notice in writing to the building society concerned.

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- (2) A direction under section 42B(1), except one varying a previous direction with the agreement of the building society concerned—
- (a) shall state the reasons for which it is given and give particulars of the society’s rights under subsection (3) below and section 46; and
 - (b) shall cease to have effect at the end of the period of 28 days beginning with the day on which it is given unless before the end of that period it is confirmed by a further written notice given by the Commission to the society concerned.
- (3) A building society to which a direction is given which requires confirmation under subsection (2) above may, within the period of 14 days beginning with the day on which the direction is given, make written representations to the Commission; and the Commission shall take any such representations into account in deciding whether to confirm the direction.”

F2¹⁹

Textual Amendments

F2 S. 19 shall cease to have effect (17.8.2001 for specified purposes and otherwise 1.12.2001) by virtue of S.I. 2001/2617, arts. 2(a), 13(1), **Sch. 3 Pt. II para. 213(b)** and is repealed (1.12.2001) by S.I. 2001/2617, art. 13(2), **Sch. 4**; S.I. 2001/3538, **art. 2(1)**

F3²⁰

Textual Amendments

F3 S. 20 shall cease to have effect (17.8.2001 for specified purposes and otherwise 1.12.2001) by virtue of S.I. 2001/2617, arts. 2(a), 13(1), **Sch. 3 Pt. II para. 213(b)** and is repealed (1.12.2001) by S.I. 2001/2617, art. 13(2), **Sch. 4**; S.I. 2001/3538, **art. 2(1)**

F4²¹

Textual Amendments

F4 S. 21 shall cease to have effect (17.8.2001 for specified purposes and otherwise 1.12.2001) by virtue of S.I. 2001/2617, arts. 2(a), 13(1), **Sch. 3 Pt. II para. 213(b)** and is repealed (1.12.2001) by S.I. 2001/2617, art. 13(2), **Sch. 4**; S.I. 2001/3538, **art. 2(1)**

F5²²

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Textual Amendments

F5 S. 22 shall cease to have effect (17.8.2001 for specified purposes and otherwise 1.12.2001) by virtue of S.I. 2001/2617, arts. 2(a), 13(1), **Sch. 3 Pt. II para. 213(b)** and is repealed (1.12.2001) by S.I. 2001/2617, art. 13(2), **Sch. 4**; S.I. 2001/3538, **art. 2(1)**

F6²³

Textual Amendments

F6 S. 23 shall cease to have effect (17.8.2001 for specified purposes and otherwise 1.12.2001) by virtue of S.I. 2001/2617, arts. 2(a), 13(1), **Sch. 3 Pt. II para. 213(b)** and is repealed (1.12.2001) by S.I. 2001/2617, art. 13(2), **Sch. 4**; S.I. 2001/3538, **art. 2(1)**

F7²⁴

Textual Amendments

F7 S. 24 shall cease to have effect (17.8.2001 for specified purposes and otherwise 1.12.2001) by virtue of S.I. 2001/2617, arts. 2(a), 13(1), **Sch. 3 Pt. II para. 213(b)** and is repealed (1.12.2001) by S.I. 2001/2617, art. 13(2), **Sch. 4**; S.I. 2001/3538, **art. 2(1)**

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Changes to legislation:

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