



Building Societies Act 1986

1986 CHAPTER 53

PART VI

POWERS OF CONTROL OF THE COMMISSION

Powers in relation to asset or liability structure requirements

36 Powers in event of breach of limits on certain assets and liabilities

- (1) The provisions of this section have effect where, by reason of—
 - (a) its liabilities in respect of non-retail funds and deposits being in excess of the limit imposed on them by section 7(3), or
 - (b) its liabilities in respect of sums deposited with the society being in excess of the limit imposed on them by section 8(1), or
 - (c) its commercial assets of any class being in excess of the limits imposed on assets of that class by section 20(2) or (3), or
 - (d) its liquid assets being in excess of the limit imposed on them by section 21,the powers conferred by this section become exercisable by the Commission in relation to a building society (the limits referred to in paragraphs (a), (b), (c) and (d) above being referred to in this section as “the relevant statutory limits”).
- (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—
 - (a) that the assets and liabilities of the society will not, by the end of the period of 12 months beginning with the date of the direction, exceed the relevant statutory limits as applied at the last day of that period, and
 - (b) that they will not thereafter exceed the relevant statutory limits.

Status: Point in time view as at 09/06/1997. This version of this part contains provisions that are not valid for this point in time.

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- (4) For the purpose of applying the relevant statutory limits as directed by subsection (3) (a) above—

- (a) in the case of a limit which operates by reference to the end of a financial year of a society, the financial year of the society shall be treated as ending on the day as at which the limits are to be applied; 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 section 81(4) 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 the period of six months beginning with the date of the direction, to submit to its members for their approval at a meeting or by ballot 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 or ballot.

- (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 the period of six months beginning with the date of the direction, to submit to its members for their approval at a meeting or by ballot 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 a restructuring plan is submitted by a society to the Commission under subsection (3) or (6) above then—

- (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.

- (8) Where a meeting or ballot 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.

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- (9) In the event of the Commission receiving a notice from a society under subsection (8) (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 (7) above shall apply as if the plan had been submitted under subsection (3) above.
- (10) 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.
- (11) 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) 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 directed under subsection (7) above to carry out a restructuring plan, to secure the purpose of it specified in subsection (3)(a) above,
 - (e) to agree to the requisite transfer resolutions submitted to the members in pursuance of subsection (5) or (6) above, or
 - (f) 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 (7) above, the powers conferred on the Commission by section 37 shall become exercisable in relation to the society.
- (12) In this section “confirmation”, “the requisite transfer resolutions” and “transfer” have the same meaning as in section 97.

VALID FROM 01/12/1997

[^{F1}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.

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- (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
 - (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

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- (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

- F1** [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\(I\)](#)

37 Powers in event of breach of limits on assets or liabilities or abuse of purpose of building society

- (1) Where—
 - (a) by virtue of section 36(11) the powers conferred by this section become exercisable in relation to a building society, or
 - (b) the Commission has reason to believe that the purpose or principal purpose of a building society has ceased to be that required by section 5(1) for the establishment of a building society under this Act,the Commission may present a petition to the High Court for the winding up of the society under the applicable winding up legislation or make an application to the High Court for an order giving directions to the society under subsection (2) below; and the power to present a petition or to make an application for such an order is available to the Commission whether or not it has previously made an application for such an order or presented a petition, as the case may be.
- (2) An order under this subsection is an order directing the society—
 - (a) in a case where the application is made under subsection (1)(a) above, to carry out the restructuring plan as directed in the order, and
 - (b) in a case where the application is made under subsection (1)(b) above, to modify its business as directed in the order.
- (3) An order under subsection (2)(b) above may require the society to take certain steps or to refrain from pursuing a particular course of action or to restrict the scope of its business in a particular way.
- (4) Where the High Court makes an order under subsection (2) 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)(b) above unless it is satisfied that the purpose or principal purpose of

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the society has ceased to be that required by section 5(1) for the establishment of a building society under this Act.

- (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.

Modifications etc. (not altering text)

C1 S. 37(1) modified by S.I. 1986/2168, art. 11

Power to determine extent of building society powers

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.
- (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.

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- (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.
- (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.

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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 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.

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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—
- (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

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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.
- (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.

Powers in relation to authorisation

41 Power to direct application to renew authorisation.

- (1) If, with respect to a building society for which an authorisation is in force, the Commission has reason to believe that the society's business is or may be being conducted in a way that may not adequately protect the investments of shareholders and depositors then, subject to subsections (2) and (3) below, it may by notice direct the society to make an application under this section to renew its authorisation.
- (2) The power conferred on the Commission by this section is not exercisable more than once during any period of five years during the whole of which the society has held a current authorisation except where, during that period, the society has, under section 94, undertaken to fulfill the engagements of another society.

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(3) A notice under subsection (1) above shall require the society to make the application for renewal within such period as is specified in the notice, being a period not shorter than three nor longer than six months beginning with the date of the notice, but the Commission may, on representations being made to it, extend or further extend the period within which the application is to be made.

(4) A notice under subsection (1) shall indicate the grounds on which the Commission has decided to give a direction under this section.

(5) Authorisation, if renewed under this section, shall be granted unconditionally or subject to conditions as provided by subsection (6) or (7) below.

[^{F2}(5A) The Commission shall not grant renewed authorisation to a society if it appears to the Commission that—

- (a) the society is closely linked with any person; and
- (b) the society's close links with that person, or any matters relating to any non-EEA laws or administrative provisions to which that person is subject, are such as would prevent the effective exercise by the Commission of its supervisory functions in relation to the society.]

(6) Subject to subsection [^{F3}(5A) above and subsection](11) below, the Commission, on an application duly made for renewal of authorisation under this section, shall grant unconditional authorisation to the society if it is satisfied that—

- (a) the society has qualifying capital of an amount which is not less than the prescribed minimum;
- (b) the society has adequate reserves and other designated capital resources;
- (c) the chairman of the board of directors and any executive directors, the chief executive, the secretary and the managers (if any) are each fit and proper persons to hold their respective offices in the society;
- (d) the board of directors, with the chief executive and secretary, have the capacity and intention to direct the affairs of the society in accordance with the criteria of prudent management and have secured that those criteria are being satisfied; ^{F4} . . .

[^{F5}(dd) each of the persons who, either alone or with any associate or associates, has a qualifying holding in the society is a fit and proper person to have such a holding; and]

- (e) the investments of shareholders and depositors will be adequately protected without the imposition of conditions.

(7) If the Commission, on an application so made, is not satisfied of the matters specified in subsection (6) above in relation to the society, it shall, subject to subsection [^{F3}(5A) above and subsection](10) below—

[^{F6}(a) if those matters include the matter specified in paragraph (a) of that subsection, refuse to grant authorisation; or

(b) in any other case—

- (i) if it is satisfied that the imposition of conditions would secure the protection of the investments of shareholders and depositors, grant authorisation subject to such conditions to be complied with by the society (whether or not they correspond to any conditions in force as respects the current authorisation) as the Commission thinks fit to impose to secure that purpose; or

(ii) if not so satisfied, refuse to grant the authorisation;]

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and if it refuses to grant authorisation under this section the authorisation current under section 9 shall expire on the date specified by the Commission in the notice of its refusal except where section 46(4) applies.

- (8) If the Commission refuses to grant authorisation to a building society under this section it shall inform the central office of the fact and the date on which the current authorisation of the society expires; and the central office shall record that date in the public file of the society.
- (9) Subsections (6) and (7) of section 9 apply as respects the imposition of conditions on the renewal of authorisation under this section as they apply as respects the imposition of conditions under that section.
- (10) The provisions of Schedule 3 to this Act regulating—
 - (a) the making and determination of applications for authorisation,
 - (b) the furnishing of information or additional information in connection with such applications, and
 - (c) the imposition of conditions of authorisation,
 apply in relation to authorisation under this section.
- (11) The making of an application under this section at the direction of the Commission shall not preclude the Commission, at any time while the application is pending, from imposing conditions on the society's authorisation under section 42 or revoking the society's authorisation under section 43; but if it revokes the authorisation the proceedings under this section shall abate.
- (12) An authorisation granted under this section shall be treated for the purposes of this Act as an authorisation granted under section 9 and in particular subsection (9) of that section shall apply as if any conditions had been imposed under subsection (5) of that section.
- (13) Any expression used in this section to which a meaning is given by section 9(13) has that meaning in this section.
- [^{F7}(14) This section shall expire at the end of the period of 5 years beginning with the date on which this Act is passed unless continued in force by an order under subsection (15) below.]
- [^{F7}(15) The Treasury may from time to time by order provide that this section shall continue in force for a period not exceeding 5 years from the coming into operation of the order.]
- [^{F7}(16) The power to make an order under subsection (15) above is exercisable by statutory instrument but no such order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.]
- (17) Section 45 applies for the interpretation of “adequate reserves” and “designated capital resources” in subsection (6) above.

Textual Amendments

- F2** S. 41(5A) inserted (18.7.1996) by S.I. 1996/1669, reg. 6(2)
- F3** Words in s. 41(6)(7) inserted (18.7.1996) by S.I. 1996/1669, reg. 6(2)
- F4** S. 41(6): word following paragraph (d) omitted (1.1.1993) by virtue of S.I. 1992/3218, reg. 69
- F5** S. 41(6)(dd) inserted (1.1.1993) by S.I. 1992/3218, reg. 69

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F6 S. 41(7)(a)(b) substituted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 12(3)**; S.I. 1997/1427, **art. 2(k)(n)(ii)**

F7 S. 41(14)-(16) ceased to have effect (9.6.1997) by virtue of 1997 c. 32, s. 43, **Sch. 7 para. 12(1)**; S.I. 1997/1427, **art. 2(k)(n)(ii)**

Modifications etc. (not altering text)

C2 S. 41 continued for 5 years from 25.7.1991 by S.I. 1991/1518, **art. 2** (revoked by S.I. 1996/1844, **art. 3**).

S. 41 continued for 5 years from 25.7.1996 by S.I. 1996/1844, **art. 2**

S. 41 made permanent (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 12(1)**; S.I. 1997/1427, **art. 2(k)(n)(ii)**

C3 S. 41(6)(a) modified (1.1.1993) by S.I. 1992/3218, reg. 83, **Sch. 11 Pt. IV para. 18(2)(a)**

42 Imposition of conditions on current authorisation.

- (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, subject to subsection (7) below, impose conditions to be complied with by the society.
- (2) Section 45 has effect for the purpose of any determination whether or not it is expedient to exercise the powers conferred by this section.
- (3) Failure by a society to comply with conditions imposed under this section shall render it liable, if other conditions are not imposed on it under this section, to have its authorisation revoked under section 43(1).
- (4) The conditions that may be imposed by the Commission under this section may—
 - (a) relate to any activities of the society, whether or not those for which authorisation is required; and
 - (b) require the society 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.
- (5) Without prejudice to the generality of subsection (4) above, conditions imposed under this section may—
 - (a) impose limitations on the issue of shares, the acceptance of deposits or the making of advances or other loans;
 - (b) require the society to take steps with regard to the conduct of the business of any subsidiary or other associated body;^{F8} . . .
 - (c) require the removal of any director or other officer.
- [^{F9}and
- (d) require any person who, either alone or with any associate or associates, has a qualifying holding in the society so to reduce that holding that it ceases to be such a holding.]
- (6) The Commission may impose conditions under this section where it proceeded under section 41 or where it proceeded under section 43 with a view to revoking the society's authorisation.
- (7) [^{F10}Subject to section 42A]the Commission shall not impose conditions under this section except in accordance with the provisions of Part III or, where applicable, Part

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IV of Schedule 3 to this Act; and the other provisions of that Part shall have effect in relation to the imposition of conditions under this section.

- (8) Conditions imposed under this section—
- (a) may be varied from time to time (and notwithstanding any pending appeal) by agreement between the Commission and the society; and
 - (b) may be revoked at any time by the Commission if it is satisfied that the investments of shareholders and depositors will be adequately protected without the conditions.
- (9) Any expression used in this section to which a meaning is given by section 9(13) has that meaning in this section.

Textual Amendments

- F8** S. 42(5): word immediately before paragraph (c) omitted (1. 1. 1993) by virtue of S.I. 1992/3218, reg. 70
- F9** S. 42(5)(d) and word preceding it inserted (1. 1. 1993) by S.I. 1992/3218, reg. 70
- F10** Words in s. 42(7) substituted (9.6.1997) by 1997 c. 32, s. 43, Sch. 7 para. 13(2); S.I. 1997/1427, art. 2(b)

Modifications etc. (not altering text)

- C4** S. 42(1) applied (with modifications) (1.7.1995) by S.I. 1995/1442, reg. 51(1) (with transitional and transitory provisions in regs. 53(2), 54(2))

[^{F11}42A Imposition or variation of conditions in urgent cases.

- (1) No notice need be given under Part III or Part IV of Schedule 3 to this Act in respect of the imposition of conditions under section 42 in any case in which the Commission considers that the conditions should be imposed as a matter of urgency.
- (2) Conditions imposed under section 42 may be varied by the Commission without the agreement of the building society concerned in any case in which the Commission considers that the conditions should be varied as a matter of urgency.
- (3) In any such case the Commission may by written notice to the building society concerned impose or vary the conditions.
- (4) Any such notice shall state the reasons for which the Commission has acted and particulars of the rights conferred by subsection (6) below and by section 46.
- (5) If conditions as imposed or varied by a notice under subsection (3) above include a requirement for the removal from office of any person who is an officer of the society, the Commission shall give that person—
 - (a) a copy of that notice; and
 - (b) a statement of his rights under subsection (6) below;
 but the Commission may omit from a copy notice given to a person by virtue of this subsection any matter which does not relate to him.
- (6) A building society to which a notice is given under subsection (3) above of the imposition or variation of conditions, and a person who is given a copy of it by virtue of subsection (5) above, may within the period of 14 days beginning with the day on which the notice was given make representations to the Commission.

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- (7) After giving a notice under subsection (3) above imposing or varying conditions and taking into account any representations made in accordance with subsection (6) above the Commission shall decide whether—
 - (a) to confirm or rescind its original decision; or
 - (b) to impose different conditions or to vary the conditions in a different manner.
- (8) The Commission shall within the period of 28 days beginning with the day on which the notice was given under subsection (3) above give the building society concerned written notice of its decision under subsection (7) above and, except where the decision is to rescind the original decision, the notice shall state the reasons for the decision.
- (9) Where the notice under subsection (8) above is of a decision to take the action specified in subsection (7) (b) above the notice under subsection (8) shall have the effect of imposing the conditions specified in the notice, or varying the conditions in the manner so specified, with effect from the date on which the notice is given.]

Textual Amendments

F11 S. 42A inserted (9.6.1997) by 1997 c. 32, s. 16; S.I. 1997/1427, art. 2(b)

[^{F12}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
 - (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

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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.]

Textual Amendments

F12 S. 42B inserted (9.6.1997) by 1997 c. 32, s. 17(1); S.I. 1997/1427, art. 2(c)

[^{F13} 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.
- (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

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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.]

Textual Amendments

F13 S. 42C inserted (9.6.1997) by 1997 c. 32, s. 18; S.I. 1997/1427, art. 2(c)

43 Revocation of authorisation.

(1) The Commission may, subject to subsection (4) below, revoke a building society's authorisation if—

- (a) it appears to the Commission that at no time during a financial year of the society which began and ended during the currency of the authorisation did the society raise funds or accept deposits of money in pursuance of the authorisation;
- (b) it appears to the Commission that a period of six months has elapsed since the end of a financial year of the society without the society's having sent it to the annual accounts for that year as required by section 81(2);
- (c) the Commission is satisfied that, where the society's authorisation is subject to conditions, a condition has not been complied with by the society;
- ^{F14}(cc) the Commission is satisfied that a direction under section 42B(1) has not been complied with by the society;
- (cd) it appears to the Commission that—
 - (i) a composition or arrangement with creditors has been made in respect of the society;
 - (ii) a receiver or manager of the society's undertaking has been appointed;
 - (iii) possession has been taken, by or on behalf of the holders of any debenture secured by a charge, of any property of the society; or
 - (iv) an administration order has been made in relation to the society under section 8 of the ^{M1}Insolvency Act 1986; or]
- (d) the Commission considers it expedient to do so in order to protect the investments of shareholders or depositors.

^{F15}(1A) The Commission may, subject to subsection (4) below, revoke a building society's authorisation if—

- (a) it appears to the Commission that the society's principal place of business is or may be outside the United Kingdom;
- (b) it appears to the Commission that the society has carried on in the United Kingdom or elsewhere a listed activity (other than the acceptance of deposits or other repayable funds from the public) without having given prior notice to the Commission of its intention to do so;
- ^{F16}(bb) it appears to the Commission that the society has failed to comply with any obligation imposed on it by or under Part IV of this Act;]
- (c) the Commission is informed by The Securities and Investments Board, or a connected UK authority having regulatory functions in relation to the provision of financial services, that the society—
 - (i) has contravened any provision of the Financial Services Act 1986 or any rules or regulations made under it;

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- (ii) in purported compliance with any such provision, has furnished that Board or authority with false, misleading or inaccurate information;
 - (iii) has contravened any prohibition or requirement imposed under that Act; or
 - (iv) has failed to comply with any statement of principle issued under that Act;
 - (d) the Commission is informed by the Director General of Fair Trading that the society, or any of the society's employees, agents or associates (whether past or present), has done any of the things specified in paragraphs (a) to (d) of section 25(2) of the Consumer Credit Act 1974;
 - (e) it appears to the Commission that the society has failed to comply with any obligation imposed on it by the Banking Coordination (Second Council Directive) Regulations 1992 [^{F17}or the Credit Institutions (Protection of Depositors) Regulations 1995]; or
 - (f) the Commission is informed by a supervisory authority in another member State that the society has failed to comply with any obligation imposed on it by or under any rule of law in force in that State for purposes connected with the implementation of the Second Council Directive [^{F18}or Directive 94/19/EC on deposit-guarantee schemes].
- (2) Section 45 has effect for the purposes of any determination whether or not it is expedient to exercise the power conferred by subsection (1)(d) above.
- (3) The Commission shall revoke a building society's authorisation if—
- (a) the society has requested it to revoke its authorisation;
 - (b) the society has requested the central office to cancel its registration;
 - (c) the society has failed, when directed to do so under section 41, to make an application for the renewal of its authorisation within the period allowed under that section;
- [^{F19}(cc) it appears to the Commission that—
- (i) the society is closely linked with any person; and
 - (ii) the society's close links with that person, or any matters relating to any non-EEA laws or administrative provisions to which that person is subject, are such as would prevent the effective exercise by the Commission of its supervisory functions in relation to the society;]
 - (d) the society has, under sections 93 or 94 amalgamated with or transferred all its engagements to another building society; or
 - (e) the requisite initial step has been taken to wind up or dissolve the society.
- (4) The Commission shall not revoke a society's authorisation under [^{F20}subsection (1) or (1A)] above except in accordance with the provisions of Part IV of Schedule 3 to this Act; and the other provisions of that Part shall also have effect in relation to revocation under this section or the imposition of conditions under section 42 instead of revocation under this section.
- (5) Where a society's authorisation is revoked under [^{F21}subsection (1), (1A) or (3)] above the provisions of subsections (6), (7) and (8) below shall have effect.
- (6) Subject to subsection (7) below, any obligation to make a payment to the society which, by virtue of section 9(1), the society is prohibited from accepting shall be wholly rescinded.

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- (7) If, when a society's authorisation is revoked, a member is under an obligation to make payments to the society which represent instalments of the amount due by way of subscription for a share in the society and which, by virtue of section 9(1) the society is prohibited from accepting, the obligation shall (subject to anything in the rules of the society or any agreement between the society and the member) be suspended in respect of each instalment for the period during which no authorisation is in force; and accordingly, if reauthorisation is granted, the sum due shall again become payable by instalments.
- (8) It shall be the duty of the society to make reasonable arrangements for using the funds of the society to meet applications by depositors with or holders of shares in the society (being applications made in accordance with the rules of the society) for repayment of the money deposited or subscribed by them.
- (9) Where a society's authorisation is revoked under this section, the Commission shall inform the central office of the fact and the date on which the revocation takes effect and the central office shall record that date in the public file of the society.
- [^{F22}(9A) The rules and prohibitions referred to in subsection (1A)(c) above include the rules of any recognised self-regulating organisation of which the society is a member and any prohibition imposed by virtue of those rules; and in subsection (1A)(d) above associate' has the same meaning as in section 25(2) of the Consumer Credit Act 1974.]
- (10) In this section "the requisite initial step", with reference to the winding up or dissolution of a building society, means the following—
- (i) in the case of a winding up by the court, the making of the winding-up order;
 - (ii) in the case of a voluntary winding up, the passing of the resolution for voluntary winding up;
 - (iii) in the case of dissolution by consent of the members, the execution of the instrument of dissolution.

Textual Amendments

- F14** S. 43(1)(cc)(cd) substituted for word immediately following s. 43(1)(c) (9.6.1997 for certain purposes only otherwise *prosp.* by 1997 c. 32, ss. 43, 47(3), **Sch. 7 para. 14(1)**; S.I. 1997/1427, **art. 2(c)**)
- F15** S. 43(1A) inserted (1. 1. 1993) by S.I. 1992/3218, **reg. 71(1)**
- F16** S. 43(1A)(bb) inserted (1.7.1995) by S.I. 1995/1442, **reg. 51(2)(a)** (with transitional and transitory provisions in **regs. 53(2), 54(2)**)
- F17** Words in s. 43(1A)(e) inserted (1.7.1995) by S.I. 1995/1442, **reg. 51(2)(b)** (with transitional and transitory provisions in **regs. 53(2), 54(2)**)
- F18** Words in s. 43(1A)(f) inserted (1.7.1995) by S.I. 1995/1442, **reg. 51(2)(c)** (with transitional and transitory provisions in **regs. 53(2), 54(2)**)
- F19** S. 43(3)(cc) inserted (18.7.1996) by S.I. 1996/1669, **reg. 6(3)**
- F20** Words in s. 43(4) substituted (1. 1. 1993) by S.I. 1992/3218, **reg. 71(2)**
- F21** Words in s. 43(5) substituted (1. 1. 1993) by S.I. 1992/3218, **reg. 71(3)**
- F22** S. 43(9A) inserted (1. 1. 1993) by S.I. 1992/3218, **reg. 71(4)**

Modifications etc. (not altering text)

- C5** S. 43(1A)(f) amended (1.1.1996) by S.I. 1995/3275, **reg. 57, Sch. 10 Pt. I para. 5**
- C6** S. 43(6)(7) applied by S.I. 1986/2168, **art. 10(1)(c)(i)(5)(c)(i)**

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Marginal Citations

M1 1986 c.45.

[^{F23}43A Revocation: supplementary directions.

- (1) The Commission may give a building society directions under this section—
 - (a) when giving it notice that the Commission proposes to revoke its authorisation;
 - (b) at any time after such a notice has been given to the society (whether before or after its authorisation is revoked);
 - (c) when giving the society a notice of revocation under subsection (3)(e) of section 43 where the requisite initial step (within the meaning of that section) is the passing of a resolution for voluntary winding up or the execution of an instrument of dissolution; or
 - (d) at any time after the society has requested the Commission to revoke its authorisation or the central office to cancel its registration.
- (2) Directions under this section—
 - (a) shall be such as appear to the Commission to be desirable in the interests of the society's shareholders or depositors, whether for the purpose of safeguarding its assets or otherwise; and
 - (b) may relate to any activities of the society, whether or not those for which an authorisation is required.
- (3) Directions under this section may in particular—
 - (a) impose limitations on the issue of shares, the acceptance of deposits or the making of loans;
 - (b) require the society 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) require the society to take steps with regard to the conduct of the business of any connected undertaking of the society;
 - (d) require the removal of any director or other officer.
- (4) No direction shall be given by virtue of paragraph (a) or (b) of subsection (1) above, and any direction given by virtue of either of those paragraphs shall cease to have effect, if—
 - (a) the Commission gives the building society notice that it is not proposing to take any further action pursuant to the notice mentioned in that paragraph; or
 - (b) the Commission's decision to revoke the society's authorisation is reversed on appeal.
- (5) No direction shall be given by virtue of paragraph (d) of subsection (1) above, and any direction given by virtue of that paragraph shall cease to have effect, if the society's request to the Commission to revoke its authorisation, or to the central office to cancel its registration, is withdrawn.
- (6) No direction shall be given to a building society under this section after it has ceased to have any liability in respect of shares or deposits for which it had a liability at a time when it was authorised; and any such direction which is in force with respect

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to a building society shall cease to have effect when the society ceases to have any such liability.

- (7) A building society which fails to comply with any requirement or contravenes any prohibition imposed on it by a direction under this section shall be guilty of an offence and liable—
- (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (8) A contravention of a prohibition imposed under this section shall not invalidate any transaction or other act.]

Textual Amendments

F23 S. 43A inserted (9.6.1997) by 1997 c. 32, s. 19; S.I. 1997/1427, art. 2(d)

[^{F24}43B Notification and confirmation of supplementary directions.

- (1) A direction under section 43A 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.
- (2) A direction under that section, 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 (4) below and section 46; and
 - (b) without prejudice to section 43A(4), (5) and (6), 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) Where a direction requires the removal of a person as director or other officer of a building society, the Commission shall give that person a copy of the direction (together with a statement of his rights under subsection (4) below) and, if the direction is confirmed, a copy of the notice mentioned in subsection (2)(b) above.
- (4) A building society to which a direction is given which requires confirmation under subsection (2) above and a person who is given a copy of it under subsection (3) 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.
- (5) The Commission may omit from the copies given to a person under subsection (3) above any matter which does not relate to him.]

Textual Amendments

F24 S. 43B inserted (9.6.1997) by 1997 c. 32, s. 20; S.I. 1997/1427, art. 2(d)

Status: Point in time view as at 09/06/1997. This version of this part contains provisions that are not valid for this point in time.

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44 Reauthorisation.

- (1) Where the authorisation of a building society has expired under section 41(7) or been revoked under section 43(1), or (3)(c), the Commission may, on an application duly made for the purpose, grant reauthorisation to the society under this section.
- (2) Reauthorisation is authorisation to raise funds or accept deposits of money to the extent authorisation to do so is required by section 9(1).
- (3) Reauthorisation under this section shall, if granted, be granted unconditionally or subject to conditions as provided by subsection (4) or (5) below.

[^{F25}(3A) The Commission shall not grant reauthorisation to a society if it appears to the Commission that—

- (a) the society is closely linked with any person; and
- (b) the society's close links with that person, or any matters relating to any non-EEA laws or administrative provisions to which that person is subject, are such as would prevent the effective exercise by the Commission of its supervisory functions in relation to the society.]

(4) [^{F26}Subject to subsection (3A) above,]the Commission shall grant unconditional reauthorisation to the building society if it is satisfied that—

- (a) the society has qualifying capital of an amount which is not less than the prescribed minimum;
- (b) the society has adequate reserves and other designated capital resources;
- (c) the chairman of the board of directors and any executive directors, the chief executive, the secretary and the managers (if any) are each fit and proper persons to hold their respective offices in the society;
- (d) the board of directors, with the chief executive and secretary, have the capacity and intention to direct the affairs of the society in accordance with the criteria of prudent management and, in so far as those criteria fell to be satisfied before the date of the application, have secured that they are being satisfied; ^{F27}. . .
 [^{F28}(dd) each of the persons who, either alone or with any associate or associates, has a qualifying holding in the society is a fit and proper person to have such a holding; and]
- (e) the investments of shareholders and depositors will be adequately protected without the imposition of conditions.

(5) [^{F26}Subject to subsection (3A) above,]if the Commission is not satisfied of the matters specified in subsection (4) above in relation to the society it shall—

- (a) if those matters are or include the matters specified in paragraphs (a) and (c), refuse to grant authorisation;
- (b) in any other case, if itsatisfied that the imposition of conditions would secure the protection of the investments of shareholders and depositors, grant reauthorisation subject to such conditions to be compiled with by the society as the Commission thinks fit to impose to secure that purpose; or
- (c) if not so satisfied, refuse to grant reauthorisation.

(6) Subsections (6) and (7) of section 9 apply as respects the imposition of conditions on reauthorisation as they apply as respects the imposition of conditions under that section.

(7) The provisions of Schedule 3 to this Act regulating—

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- (a) the making and determination of applications for authorisation,
- (b) the furnishing of information or additional information in connection with such applications, and
- (c) the imposition of conditions of authorisation,

apply in relation to reauthorisation under this section.

(8) Reauthorisation granted under this section shall be treated for the purposes of this Act as authorisation granted under section 9 and in particular subsection (9) of that section shall apply as if any conditions had been imposed under subsection (5) of that section.

(9) On granting reauthorisation under this section, the Commission shall inform the central office and the central office shall record that fact, and the date on which the reauthorisation was granted, in the public file of the society.

[^{F29}(9A) Any expression used in this section to which a meaning is given by section 9(13) has that meaning in this section.]

(10) Section 45 applies for the interpretation of “adequate reserves” and “designated capital resources” in subsection (4) above.

Textual Amendments

F25 S. 44(3A) inserted (18.7.1996) by S.I. 1996/1669, reg. 6(4)

F26 Words in s. 44(4)(5) inserted (18.7.1996) by S.I. 1996/1669, reg. 6(4)

F27 Word following s. 44(4)(d) omitted (1. 1. 1993) by virtue of S.I. 1992/3218, reg. 72(1)

F28 S. 44(4)(dd) inserted (1. 1. 1993) by S.I. 1992/3218, reg. 72(1)

F29 S. 44(9A) inserted (1. 1. 1993) by S.I. 1992/3218, reg. 72(2)

Modifications etc. (not altering text)

C7 S. 44 applied by S.I. 1986/2168, art. 10(1)(c)(i)(5)(c)(i)

C8 S. 44(4)(a) modified (1. 1. 1993) by S.I. 1992/3218, reg. 83, Sch. 11 Pt. IV para. 18(2)(a)

45 The criteria for prudent management.

(1) If it appears to the Commission that there has been or is, on the part of a building society or its directors, a failure to satisfy any one or more of the following criteria of prudent management, it shall be entitled to assume for the purposes of its relevant prudential powers that the failure is such as to prejudice the security of the investments of shareholders or depositors.

- (2) The prudential powers relevant for the purposes of this section are its powers—
- (a) under section 42, to impose conditions on a society’s authorisation, and
 - (b) under section 43, to revoke a society’s authorisation,

by reference to its expedience for the protection of the investments of shareholders or depositors.

(3) For the purposes of this Act, the criteria of prudent management are—

[^{F30}(1) Maintenance of—

- (a) adequate reserves and other designated capital resources; and

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- (b) own funds which amount to not less than the sum which, for the purposes of section 9, is the prescribed minimum in relation to qualifying capital.]
 - (2) Maintenance of a structure of commercial assets which satisfies the requirements of Part III.
 - (3) Maintenance of adequate assets in liquid form.
 - (4) Maintenance of the requisite arrangements for assessing the adequacy of securities for advances secured on land.
 - (5) Maintenance of the requisite accounting records and systems of control of business and of inspection and report.
 - (6) Direction and management—
 - (a) by a sufficient number of persons who are fit and proper to be directors or, as the case may be, officers, in their respective positions,
 - (b) conducted by them with prudence and integrity.
 - (7) Conduct of the business with adequate professional skills.
- (4) Nothing in this section implies that it is improper for a determination for any purpose of the Commission's relevant prudential powers to take account of other factors than the criteria in subsection (3) above.
- (5) The Commission, with the consent of the Treasury, may, by order in a statutory instrument, specify descriptions of capital resources of building societies which, for the purpose of the first criterion in subsection (3) above, are to be aggregated with reserves for that purpose, to the extent and subject to any conditions specified in the order.
- (6) An instrument containing an order under subsection (5) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) A failure to satisfy any of the first five criteria in subsection (3) above shall be treated, for the purposes of this section, as a failure on the part of a society's directors prudently to conduct the affairs of the society.
- (8) A failure on the part of the society to comply with the conditions to which the authorisation is subject shall be treated, for the purposes of this section, as a failure on the part of the society's directors prudently to conduct the affairs of the society.
- (9) Any carrying on by a building society or its subsidiary of an activity which has been determined, whether by the Commission under section 38 or by any court, to have been beyond the powers of the society shall be treated, for the purposes of this section, as a failure on the part of the society's directors prudently to conduct the affairs of the society.
- (10) The following provisions apply for the interpretation of the list of criteria in subsection (3) above in their application to a building society, that is to say—
- “adequate”, except with reference to liquidity, means adequate having regard to the range and scale of the society's business;
 - “adequate”, with reference to liquidity, means of such proportion and composition as is required by section 21(1) and “liquid form”, in relation to assets, means assets which are of an authorised character for the purposes of that subsection;

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“business” includes business the society proposes to carry on and references to the business of the society include, where other bodies are associated with it, references to the business of those associated bodies;

“requisite”, with reference to the arrangements for assessing the adequacy of securities, means such as are required by section 13;

“requisite”, with reference to accounting records and systems of control, means such as are required by section 71;

“sufficient”, with reference to the number of directors and officers, means sufficient having regard to the range and scale of the society’s business.

Subordinate Legislation Made

P1 [S. 45\(5\)](#) power exercised by [S.I. 1991/702](#)

Textual Amendments

F30 [S. 45\(3\)](#): first criterion substituted (1. 1. 1993) by [S.I. 1992/3218](#), [reg.73](#)

Modifications etc. (not altering text)

C9 [S. 45](#) extended (*temp.*) by [S.I. 1986/2168](#), [art. 12\(2\)\(c\)](#)

C10 [S. 45\(3\)](#) modified (1. 1. 1993) by [S.I. 1992/3218](#), [reg. 83](#), [Sch. 11 Pt. IV para. 18\(2\)\(b\)](#)

VALID FROM 01/12/1997

[^{F31}General functions of Commission]

Textual Amendments

F31 [S. 45AA](#) and cross-heading inserted (1.12.1997) by [1997 c. 32, s. 22](#); [S.I. 1997/2668](#), [art. 2](#), [Sch. Pt. I\(d\)](#)

[^{F32}45AStatements of principles etc. by Commission.

- (1) The Commission shall, as soon as practicable after the coming into force of this section, publish in such manner and in such detail as it thinks appropriate a statement of the principles in accordance with which it is acting or proposing to act—
 - (a) in exercising its powers of control; and
 - (b) in interpreting the criteria of prudent management.
- (2) If in the course of a financial year the Commission makes a material change in the principles in accordance with which it is acting or proposing to act as mentioned in subsection (1) above, the Commission shall include in the report made by it for that year under section 4 a statement of the change in such detail as it thinks appropriate.
- (3) The Commission may, at any time, publish in such manner and in such detail as it thinks appropriate, either or both of the following, namely—
 - (a) a statement of the principles in accordance with which it is acting or proposing to act as mentioned in subsection (1) above; and
 - (b) a statement containing additional guidance as to the exercise of its powers of control and its interpretation of the criteria of prudent management.

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- (4) In this section “powers of control”, in relation to the Commission, means—
- (a) the powers conferred on it by sections 36, 36A and 37; and
 - (b) its powers to grant or revoke an authorisation, to impose conditions on an authorisation or to direct the making of an application under section 41.]

Textual Amendments

F32 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)

[45A ^{F33} Exercise of powers on information from supervisory authority.

- (1) This section applies where, in the case of a building society for which an authorisation is in force, the Commission is informed by a supervisory authority in another member State that the society is failing to comply with an obligation imposed by or under any rule of law in force in that State for purposes connected with the implementation of the Second Council Directive.
- (2) The Commission shall as soon as practicable send a copy of the information received by it to every other authority which it knows is a connected UK authority.
- (3) The Commission shall also—
 - (a) consider whether to exercise its powers—
 - (i) under section 42, to impose conditions on the society’s authorisation, or
 - (ii) under section 43, to revoke the society’s authorisation; and
 - (b) notify its decision, and any action which it has taken or intends to take, to the supervisory authority and to every other authority which it knows is a connected UK authority.]

Textual Amendments

F33 S. 45A inserted (1. 1. 1993) by S.I. 1992/3218, reg.74

Modifications etc. (not altering text)

C11 S. 45A(1) extended (1.1.1996) by S.I. 1995/3275, reg. 57, Sch. 10 Pt. I para. 6

Appeals

VALID FROM 17/08/2001

[^{F34}46A Notices, hearings and appeals.

- (1) If the 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,

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it must give the society a warning notice.

- (2) The warning notice must set out the terms of the direction which the Authority proposes to give.
- (3) If the 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 Authority has decided to give.
- (5) A society to whom a decision notice is given under this section may refer the matter to the Financial Services and Markets 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.
- (7) The provisions of Part IX of the Financial Services and Markets Act 2000 (hearings and appeals) are to be treated as applying in respect of references to the Financial Services and Markets Tribunal made under this section as they apply in respect of references made to that Tribunal under that Act.
- (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 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

- F34** 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)**

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Modifications etc. (not altering text)

C12 S. 46A(1) extended (1.12.2001) by [S.I. 2001/3592](#), [arts. 36\(2\)](#), [38\(1\)](#) (with [art. 23\(2\)](#))

C13 S. 46A(8)(d)(i) excluded (1.12.2001) by [S.I. 2001/3592](#), [arts. 36\(3\)](#), [38\(2\)](#) (with [art. 23\(2\)](#))

[^{F35}46 Rights of appeal.

- ^{F36}(1) A building society which is aggrieved by a decision of the Commission—
- (a) to refuse to grant authorisation;
 - (b) to revoke authorisation;
 - (c) to impose or vary conditions or as to the conditions imposed or varied; or
 - (d) to give a direction,
- may appeal against the decision to a tribunal constituted in accordance with section 47.
- (2) Any person in relation to whom the Commission, in deciding to refuse to grant or to revoke authorisation, to impose or vary conditions or to give a direction, makes a determination that a person is not a fit and proper person to hold, or as the case may be, to remain in an office in the society or imposes a requirement that he be removed from an office in the society, may appeal against the decision so far as it relates to that determination or requirement.
- (3) The revocation of a society's authorisation, or a direction under section 36(3), (5), (6), (7) or (10), shall not have effect until—
- (a) the end of the period within which an appeal can be brought against the Commission's decision to revoke the authorisation or give the direction; and
 - (b) if such an appeal is brought, until it is determined or withdrawn.
- (4) Subsection (3) above applies in relation to the expiry of a society's authorisation on a refusal to grant authorisation under section 41 as it applies to the revocation of a society's authorisation.
- (5) Subject to subsection (3) above and any order of the tribunal made under section 47(5), an appeal under subsection (1)(c) or (d) or (2) above shall not affect the operation, pending the determination of the appeal, of any condition or direction which is the subject of the appeal; and no determination of an appeal by any person under subsection (2) above shall affect the revocation or direction for the purposes of which the Commission made its determination or requirement in relation to that person.
- (6) In this section and section 47—
- “conditions” means conditions to be complied with by a building society and imposed on the grant of authorisation under section 9, on the renewal of authorisation under section 41, on reauthorisation under section 44, or under section 42, or imposed or varied under section 42A;
- “direction” means a direction under section 36(3), (5), (6), (7) or (10), section 42B(1) or section 43A;
- “grant” includes renew;
- “revoke” means revoke under section 43(1).]

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Textual Amendments

- F35** S. 46 substituted (9.6.1997 for certain purposes only and 1.12.1997 in so far as not already in force 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. 23, 47(3); S.I. 1997/1427, art. 2(e); S.I. 1997/2668, art. 2, Sch. Pt. II(o)
- F36** 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)

Modifications etc. (not altering text)

- C14** S. 46(1)(2) extended (1.12.2001) by S.I. 2001/3592, art. 126(2)(c) (with art. 23(2))
- C15** S. 46(1)(2) extended (1.12.2001) by S.I. 2001/3592, art. 126(2)(c) (with art. 23(2))
- C16** S. 46(5)(6) applied (with modifications) by S.I. 2001/3592, art. 127 (with art. 23(2))
- C17** S. 46(5)(6) applied (with modifications) by S.I. 2001/3592, art. 127 (with art. 23(2))

^{F37} 47 Determination of appeals.

- (1) Where an appeal is brought under section 46, a tribunal to determine the appeal shall be constituted in accordance with subsection (2) below.
- (2) The tribunal shall consist of—
 - (a) a chairman appointed by the Lord Chancellor or the Lord Advocate, and
 - (b) two other members appointed by the Chancellor of the Exchequer.
- (3) The chairman shall be
 - [^{F38}(a) a person who has a 7 year general qualification, within the meaning of section 71 of the Courts and Legal Services Act 1990;
 - (b) an advocate or solicitor in Scotland of at least 7 years' standing; or
 - (c) a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least 7 years' standing;]; and the other two members shall be persons appearing to the Chancellor of the Exchequer to have respectively experience of accountancy and experience of the business of building societies or of other financial institutions.
- [^{F39}(3A) A person shall not be appointed after the day on which he attains the age of 70 to be the chairman of a tribunal under this section.]
- (4) On any appeal against any decision of the Commission the question for the determination of the tribunal shall be whether, for the reasons adduced by the appellant, the decision was unlawful or not justified by the evidence on which it was based.
- [^{F40}(5) The tribunal may, on the application of the building society concerned, order that the operation of—
 - (a) any condition or variation of a condition; or
 - (b) any direction under section 36(3), (5), (6), (7) or (10), section 42B(1) or section 43A,which is the subject of an appeal by the society be suspended pending the determination of the appeal.
- (6) The tribunal may confirm or reverse the decision which is the subject of the appeal but shall not have power to vary it except by directing the Commission—

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- (a) in the case of an appeal against a decision to refuse to grant authorisation, to determine the conditions to which the grant of authorisation is to be subject;
- (b) in the case of an appeal against a decision to revoke authorisation, to determine the conditions or different conditions subject to which the authorisation is to continue in force, as the case may be;
- (c) in the case of an appeal against the imposition of conditions or as to the conditions imposed by the decision, to determine different conditions subject to which the authorisation is to be granted or is to continue, as the case may be;
- (d) in the case of an appeal against the variation of conditions or as to the variation imposed by the decision, to determine different variations of the conditions subject to which the authorisation is to continue;
- (e) in the case of an appeal against the giving of a direction under section 36(3), to give a direction under section 36(5) or (6);
- (f) in the case of an appeal against the giving of a direction under section 36(5), to give a direction under section 36(3) or (6);
- (g) in the case of an appeal against the giving of a direction under section 36(7), section 42B(1) or section 43A, to give a direction imposing different requirements.

(7) Where by virtue of subsection (6) above the tribunal directs the Commission to determine conditions or different conditions or to determine different variations of conditions—

- (a) the Commission shall by notice to the society concerned impose such conditions, or such variations of conditions, to be complied with by the society as it considers expedient in order to protect the investments of shareholders or depositors;
- (b) Part III of Schedule 3 to this Act shall apply subject to the modifications made by paragraph 9 of that Schedule; and
- (c) the society concerned may appeal to the tribunal against any of those conditions or variations;

and on any such appeal the tribunal may confirm or reverse the Commission's decision with respect to the conditions or variations which are the subject of the appeal or may direct the Commission to determine different conditions or variations.

(7A) Where by virtue of subsection (6) above the tribunal directs the Commission to give a different direction under section 36—

- (a) the Commission shall by notice to the society concerned give such direction as it considers expedient in order to ensure compliance with the relevant statutory requirements within the meaning of that section;
- (b) paragraphs 2 and 3 of Schedule 7A to this Act shall apply subject to the modifications made by paragraph 4 of that Schedule; and
- (c) the society concerned may appeal to the tribunal against that direction;

and on any such appeal the tribunal may confirm or reverse the Commission's decision with respect to the direction which is the subject of the appeal or may direct the Commission to give a different direction.

(7B) Where by virtue of subsection (6) above the tribunal directs the Commission to give a different direction under section 43A—

- (a) the Commission shall by notice to the society concerned give such direction as it considers desirable in the interests of shareholders or depositors; and
- (b) the society concerned may appeal to the tribunal against that direction;

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and on any such appeal the tribunal may confirm or reverse the Commission's decision with respect to the direction which is the subject of the appeal or may direct the Commission to give a different direction.

- (8) Where by virtue of subsection (7), (7A) or (7B) above the tribunal, on an appeal against any conditions or variations of conditions or any direction, directs the Commission—

- (a) to determine different conditions or variations; or
- (b) to give a different direction,

the other provisions of that subsection shall apply as they apply where the tribunal gives such a direction by virtue of subsection (6) above.]

- (9) Where the tribunal reverses a decision of the Commission to refuse to grant authorisation, it shall direct the Commission to grant it; and where the tribunal reverses a decision of the Commission to make the grant of authorisation subject to conditions, it shall direct the Commission to grant it unconditionally.

- (10) Notice of a tribunal's determination, together with a statement of its reasons, shall be given to the appellant and to the Commission; and unless the tribunal has directed the Commission to determine [^{F41}conditions, variations or directions] or, in any other case, the tribunal directs otherwise, the determination shall come into operation when the notice is given to the appellant.

- (11) The Treasury may out of money provided by Parliament pay to the persons appointed as members of a tribunal under this section such fees and allowances in respect of expenses as the Treasury may determine and any other expenses incurred for the purposes of this section.

Textual Amendments

- F37** 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\(1\)](#)
- F38** Words substituted by [Courts and Legal Services Act 1990](#) (c. 41, SIF 37), s. 71(2), [Sch. 10 para. 68](#)
- F39** S. 47(3A) inserted (31.3.1995) by [1993 c. 8, ss. 26\(10\), 31\(2\), Sch. 6 para. 64](#) (subject to s. 27 and [Sch. 7](#) as mentioned in the said s. 26(10)); [S.I. 1995/631, art. 2](#)
- F40** S. 47(5)-(8) substituted (9.6.1997 for certain purposes only and 1.12.1997 in so far as not already in force 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. 24\(1\), 47\(3\); S.I. 1997/1427, art. 2\(e\); S.I. 1997/2668, art. 2, Sch. Pt. II\(p\)](#)
- F41** Words in s. 47(10) substituted (9.6.1997 for certain purposes only and 1.12.1997 in so far as not already in force 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. 24\(2\), 47\(3\); S.I. 1997/1427, art. 2\(e\); S.I. 1997/2668, art. 2, Sch. Pt. II\(p\)](#)

Modifications etc. (not altering text)

- C18** S. 47(1)(2) applied (with modifications) by [S.I. 2001/3592, art. 127](#) (with [art. 23\(2\)](#))
- C19** S. 47: Certain functions transferred and made exercisable(1.7.1999) (S) by [S.I. 1999/1750, art. 2, Sch. 1](#)
- C20** S. 47: functions transferred (19.5.1999)(S) by [S.I. 1999/678, art. 2\(1\)](#)
- C21** S. 47 amended (1. 1. 1993) by [S.I. 1992/3218, regs. 22\(6\), 23\(7\), Sch. 6 para. 9\(2\), Sch. 7 para.5\(2\)](#)
- C22** S. 47 restricted (31.3.1995) by [1993 c. 8, ss. 26\(8\)\(e\), 31\(2\)](#) (with [Sch. 7 paras. 2\(2\), 3\(2\), 4](#)); [S.I. 1995/631, art. 2](#)
- C23** S. 47(3)(3A) applied (with modifications) by [S.I. 2001/3592, art. 127](#) (with [art. 23\(2\)](#))

Status: Point in time view as at 09/06/1997. This version of this part contains provisions that are not valid for this point in time.

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C24 S. 47(5)(11) applied (with modifications) by [S.I. 2001/3592](#), [art. 127](#) (with [art. 23\(2\)](#))

^{F42}**48 Costs, procedure and evidence.**

- (1) A tribunal may give such directions as it thinks fit for the payment of costs or expenses by any party to the appeal.
- (2) On an appeal under section 46(2) the building society in relation to which the determination was made, or upon which the requirement was imposed, shall be entitled to be heard.
- (3) The Treasury may, ^{F43} . . . , make regulations with respect to appeals under section 46; and those regulations may in particular make provision—
 - (a) as to the period within which and the manner in which such appeals are to be brought;
 - (b) as to the manner in which such appeals are to be conducted, including provision for any hearing to be held in private;
 - (c) for requiring any person, on tender of the necessary expenses of his attendance, to attend and give evidence or produce documents in his custody or under his control and for authorising the administration of oaths to witnesses;
 - (d) for granting to any person such discovery or inspection of documents or right to further particulars as might be granted by a county court in England and Wales or Northern Ireland or, in Scotland, for granting to any person such recovery or inspection of documents as might be granted by the sheriff;
 - (e) for enabling an appellant to withdraw an appeal or the Commission to withdraw its opposition to an appeal and for the consequences of any such withdrawal;
 - (f) for taxing or otherwise settling any costs or expenses directed to be paid by the tribunal and for the enforcement of any such direction;
 - (g) for enabling any functions in relation to an appeal to be discharged by the chairman of the tribunal; and
 - (h) as to any other matter connected with such appeals.
- (4) A person who, having been required in accordance with regulations under this section to attend and give evidence, fails without reasonable excuse to attend or give evidence shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) A person who intentionally alters, suppresses, conceals, destroys or refuses to produce any document which he has been required to produce in accordance with regulations under this section, or which he is liable to be so required to produce, shall be liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (6) 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.

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Textual Amendments

- F42** 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\(1\)](#)
- F43** Words in s. 48(3) repealed (1. 10. 1992) by [Tribunals and Inquiries Act 1992 \(c. 53\)](#), [ss. 18\(2\), 19\(2\)](#), [Sch.4 Pt. I](#)

Modifications etc. (not altering text)

- C25** S. 48 applied (with modifications) by [S.I. 2001/3592](#), [art. 127](#) (with [art. 23\(2\)](#))
- C26** S. 48(3) restricted (1. 10. 1992) by [Tribunals and Inquiries Act 1992 \(c. 53\)](#), [ss. 8\(2\)\(a\), 19\(2\)](#)

^{F44} 49 Further appeals on points of law.

- (1) An appeal shall lie to the High Court at the instance of the building society or other person concerned or of the Commission on any question of law arising from any decision of a tribunal under section 47; and if the court is of the opinion that the decision was erroneous in law, it shall remit the matter to the tribunal for re-hearing and determination by it.
- (2) In the application of this section to a building society whose principal office is in Scotland, references to the High Court shall be construed as references to the Court of Session.
- (3) No appeal to the Court of Appeal or to the Court of Appeal in Northern Ireland shall be brought from a decision under subsection (1) above except with the leave of that court or of the court or judge from whose decision the appeal is brought.
- (4) An appeal shall lie, with the leave of the Court of Session or the House of Lords, from any decision of the Court of Session under this section, and such leave may be given on such terms as to costs, expenses or otherwise as the Court of Session or the House of Lords may determine.

Textual Amendments

- F44** S. 46A substituted (17.8.2001 for specified purposes and otherwise 1.12.20001) 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\(1\)](#)

Modifications etc. (not altering text)

- C27** S. 49 applied (with modifications) by [S.I. 2001/3592](#), [art. 127](#) (with [art. 23\(2\)](#))

Advertising etc.

50 Powers to control advertising.

- (1) If, with respect to any building society for which an authorisation is in force, the Commission considers it expedient to do so in the interests of persons who may invest by way of shares in or deposits with the society, the Commission may give the society a direction under this section.
- (2) A direction given to a building society under this section may do all or any of the following—

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- (a) prohibit the issue by the society of advertisements of all descriptions;
- (b) prohibit the issue by the society of advertisements of any specified description;
- (c) require the society to modify advertisements of a specified description in a specified manner;
- (d) prohibit the issue by the society of any advertisements which are, or are substantially, repetitions of a specified advertisement;
- (e) require the society to take all practicable steps to withdraw any specified advertisement, or any specified description of advertisement, which is on display in any place;

and a direction under this section shall be in writing.

- (3) Not less than seven days before giving a direction under this section the Commission shall give the society and, subject to subsection (9) below, every director and the chief executive of the society notice that it proposes to give the direction and stating the grounds for the proposed direction.
- (4) In any case where—
 - (a) the Commission has given a society notice under subsection (3) above, and
 - (b) within the period of seven days beginning with the date on which the notice was given, representations (whether made in writing or orally) are made to the Commission by the society,

the Commission shall take those representations into account in deciding whether or not to proceed to give the direction.
- (5) On giving a direction under this section the Commission shall give the society and, subject to subsection (9) below, every director and the chief executive of the society, notice of the direction, stating also the grounds for giving it.
- (6) The Commission may not give a direction under this section on grounds other than those stated, or grounds included in those stated, in the notice under subsection (3) above.
- (7) A direction under this section—
 - (a) may be revoked or varied by a further direction under this section; and
 - (b) shall be revoked by notice to the society.
- (8) If a building society fails to comply with a direction under this section, then—
 - (a) the society shall be liable on conviction on indictment or on summary conviction to a fine not exceeding, on summary conviction, the statutory maximum; and
 - (b) any officer of the society who is also guilty of the offence shall be liable—
 - (i) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both; and
 - (ii) on summary conviction, to a fine not exceeding the statutory maximum.
- (9) Where any provision of this section requires notice of a direction under it to be given to every director of a building society that requirement is satisfied by giving notice to each director whose appointment has been officially notified and the non-receipt of a notice of the direction by a director or the chief executive does not affect the validity of the direction.

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(10) In this section—

“advertisement” includes every form of advertisement, [^{F45}whether—

- (a) documentary,
 - (b) by way of sound broadcasting or television or by inclusion in any programme service (within the meaning of the Broadcasting Act 1990) other than a sound or television broadcasting service, or
 - (c) by any pictorial means not falling within paragraph (a) or (b) above;
- and references] to the issue of advertisements shall be construed accordingly; and

“specified” means specified in a direction under this section.

Textual Amendments

F45 Words substituted by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), s. 203(1), [Sch. 20 para. 44](#)

Modifications etc. (not altering text)

C28 [S. 50\(7\)\(8\)](#) applied by [S.I. 1986/2168](#), [art. 10\(2\)\(b\)](#)

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.

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- (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;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.

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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
 - ^{F46}(a) any of its functions under Part I, section 9, [^{F47}Part IV,]]the foregoing sections of this Part, Part X and sections 107 and 108; and
 - (b) any of its functions under the Banking Coordination (Second Council Directive) Regulations 1992.
- (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.
- (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 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 [^{F48}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 Commission.
- ^{F49}(5A) Subject to subsection (4) above, the Commission may authorise a member, servant or agent of the Commission, on producing evidence of his authority, to require a building society or connected undertaking—
 - (a) to furnish to him forthwith such specified information as the Commission considers it needs for the purposes of its supervisory functions;

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- (b) to produce to him forthwith such documents or other material as the Commission considers it needs for those purposes;
 - (c) to provide to him forthwith such explanations of specified matters as the Commission considers it needs for those purposes.
- (6) Where by virtue of subsection (5)(a) to (c) above the Commission has power, or by virtue of subsection (5A) above an authorised person 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 Commission or authorised person 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 Commission or authorised person 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.
- [^{F50}(9) Where, by virtue of subsection (5), (5A) or (6) above, the Commission or an authorised person requires the production by a building society or connected undertaking or any other person of documents or material, the Commission or authorised person 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—

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- (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.

[^{F51}(13) In this section—

“agent”, in relation to a building society or connected undertaking, includes its bankers, accountants, solicitors and auditors;

“approved”, in relation to an accountant or other person with relevant professional skill, means approved by the Commission;

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

Textual Amendments

- F46** S. 52(1)(a)(b) substituted (1. 1. 1993) for certain words by S. I. 1992/3218, **reg. 75**
- F47** Words in s. 52(1)(a) inserted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 17(1)**; S.I. 1997/1427, **art. 2(k)(n)(i)**
- F48** 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)**
- F49** 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)**
- F50** 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)**
- F51** 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)**

[^{F52}**52A Right of entry to obtain information and documents.**

- (1) Any member, servant or agent of the Commission may, on producing if required evidence of his authority, enter any premises occupied by a person on whom a notice has been served under section 52 for the purpose of—
 - (a) obtaining there the information, documents or other material or explanations required by that notice; and
 - (b) facilitating the exercise by the Commission of the powers conferred by subsection (5) of that section.
- (2) Subject to subsection (3) below, any member, servant or agent of the Commission may, on producing if required evidence of his authority, enter any premises occupied by any person on whom a notice could be served under section 52 for the purpose of obtaining there such information, documents or other material or explanations as—
 - (a) are specified in the authority; and
 - (b) are information, documents or other material or explanations that could have been required by such a notice.
- (3) The Commission shall not authorise any person to act under subsection (2) above unless it has reasonable cause to believe that if a notice under section 52 were served it would not be complied with or that any documents or other material to which it would relate would be removed, tampered with or destroyed.
- (4) Any person who intentionally obstructs a person exercising rights conferred by this section shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or both.]

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Textual Amendments

F52 S. 52A inserted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 18**; S.I. 1997/1427, **art. 2(k)(n)(iii)**

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 the 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;
- ^{F53}(b) with a view to the institution of, or otherwise for the purposes of—
 - (i) 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; or
 - (ii) any civil proceedings in which the Commission will have or has a right to be heard;
- (c) in order to enable ^{F54}or assist]the Commission to discharge any of its functions under this Act or any Community obligation;
- (d) in order to enable ^{F54}or assist]the central office to discharge any of its functions under this Act;
- (e) in order to enable ^{F54}or assist]any person appointed investigator under section 55 or inspector under section 56 to discharge his duties under that section;
- (f) in order to enable ^{F54}or assist]the auditors of the society to discharge their duties to the Commission;

^{F55}(g)

^{F56}(2A) As regards the disclosure of information with a view to the institution of, or otherwise for the purposes of, any proceedings in respect of the society under the Bankruptcy (Scotland) Act 1985 ^{M2}or the Insolvency Act 1986 ^{M3}, the disclosures permitted by subsection (2)(b) above do not include the disclosure of information relating to a person who (not being a director or other officer of the society) is or has been, to the

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knowledge of the Commission, involved in an attempt to secure the survival of the society as a going concern.]

- (3) If, in order to enable [^{F57}or assist]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[^{F58}and (in either case) the disclosure would, in its opinion, be in accordance with article 12(7) of the First Council Directive]
 - ; 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
 - [^{F59}(b) by the Bank, of any of the following functions, namely—
 - (i) its functions under the Banking Act 1987;
 - (ii) its functions as a monetary authority;
 - (iii) its functions as a supervisor of money market and gilt market institutions; and
 - (iv) its functions as a supervisor of systems for the transfer of funds between credit institutions and their customers.]
- 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 [^{F60}Part V of that Act other than section 84(5)] 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,
- [^{F61}(a) 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; and
 - (b) disclosure is in accordance with article 12(7) of the First Council Directive.]
- (7) Nothing in subsection (1) above prohibits the disclosure of information to the Secretary of State or the Department of Economic Development in circumstances

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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
- [^{F62}(b) by the Secretary of State, of any functions of his under the Insurance Companies Act 1982, Part XIV of the Companies Act 1985, Part XIII of the Insolvency Act 1986, the Financial Services Act 1986 or Part II, III or VII of the Companies Act 1989;]
- (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 ^{M4}Companies (Northern Ireland) Order 1986 (appointment of investigators and requirement to produce documents) [^{F63}Part XII of the Insolvency (Northern Ireland) Order 1989,][^{F64}Part III of the Companies (Northern Ireland) Order 1990 or Part II or V of the Companies (No. 2) (Northern Ireland) Order 1990;];

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 [^{F65}if the disclosure is made with a view to facilitating the discharge of any of the functions mentioned in paragraph (b) or, as the case may be, paragraph (c) above.]

- (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 [^{F66}if the disclosure is made with a view to facilitating the discharge of any prescribed functions of the authority].

- (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 [^{F67}the supervisory 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.

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(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 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.

[^{F68}(11A) Subsection (11) above does not apply in relation to disclosures to an overseas regulatory authority which is not a supervisory authority in another member State unless the Commission is satisfied that the authority is subject to restrictions on further disclosures at least equivalent to those imposed by this section and section 54.]

(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.

[^{F69}(12A) Nothing in subsection (1) above prohibits the disclosure of information to the persons specified in the first column of the following Table if, 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 that person of the functions specified in relation to him in the second column of that Table.

TABLE

<i>Person</i>	<i>Function</i>
1 An inspector appointed under Part XIV of the Companies Act 1985 or Part XV of the Companies (Northern Ireland) Order 1986 or, so far as relating to offences involving securities of a company, section 177 of the Financial Services Act 1986.	Functions under that Part or, so far as so relating, that section.
2 A person authorised to exercise powers under section 84 of the Companies Act 1989.	Functions under that section, so far as relating to the breach of any law relating to companies.
3 A recognised clearing house (within the meaning of the Financial Services Act 1986).	Functions in its capacity as a clearing house recognised under the Financial Services Act 1986 so far as they are

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	exercisable in relation to defaults or potential defaults by market participants.
4 A person approved under the Uncertificated Securities Regulations 1995 as an operator of a relevant system (within the meaning of those Regulations).	Functions as a person so approved so far as they are exercisable in relation to defaults or potential defaults by market participants.
5 A recognised supervisory body (within the meaning of Part II of the Companies Act 1989 or Part III of the Companies (Northern Ireland) Order 1990).	Functions in its capacity as such a body under that Part, or functions in relation to disciplinary proceedings against auditors.
6 A recognised professional body (within the meaning of section 391 of the Insolvency Act 1986 or Article 350 of the Insolvency (Northern Ireland) Order 1989).	Functions in its capacity as such a body under that Act or Order or functions in relation to disciplinary proceedings against insolvency practitioners (within the meaning of that Act or Order).
7 A supervisory authority in another EEA State.	Functions in its capacity as a supervisor of systems for the transfer of funds between credit institutions and their customers."]
<hr/>	
(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.	
[^{F70} (13A) Information which is disclosed to a person with a view to [^{F71} enabling, facilitating or assisting] the discharge of any functions shall not be used otherwise than with a view to [^{F71} enabling, facilitating or assisting] the discharge of those functions.	
(13B) Any person who uses information in contravention of subsection (13A) above shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both.]	
(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;	
[^{F72} ‘EEA State’ means a State other than the United Kingdom which is a contracting party to the agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993;]	
“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 [^{F73} subsidiary undertakings] 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.	

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[^{F74}(15) [^{F75}Subject to subsection (15A) below,]any reference in this section to [^{F71}enabling, facilitating or assisting] the discharge of any functions is a reference to [^{F71}enabling, facilitating or assisting] the discharge of those functions in relation to—

- (a) a financial market; ^{F76} . . .
- (b) persons carrying on the business of banking or insurance, Consumer Credit Act businesses or the business of providing other financial services; [^{F77}or
- (c) persons involved in the operation of occupational pension schemes (within the meaning of the Pension Schemes Act 1993 or, in Northern Ireland, the Pension Schemes (Northern Ireland) Act 1993)]

and in this subsection 'Consumer Credit Act business' has the same meaning as in the Banking Coordination (Second Council Directive) Regulations 1992.

[Subsection (15) above shall not apply to disclosures made by virtue of ^{F78}(15A) subsection (12A) above, or to disclosures made with a view to facilitating the discharge of any of the following functions, namely—

- (a) functions of the Secretary of State under Part XIV of the Companies Act 1985, Part XIII of the Insolvency Act 1986 or Part II of the Companies Act 1989 or, so far as relating to the breach of any law relating to companies, under section 83 of the Companies Act 1989; or
- (b) functions of the Department of Economic Development in Northern Ireland under Part XV of the Companies (Northern Ireland) Order 1986, Part XII of the Insolvency (Northern Ireland) Order 1989 or Part III of the Companies (Northern Ireland) Order 1990.]

(16) Any reference in this section or section 54 to the Commission's functions under this Act includes a reference to its functions under those Regulations.]

Textual Amendments

- F53** Words in s. 53(2)(b) substituted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 19(1)(a)**; S.I. 1997/1427, **art. 2(k)(n)(iii)**
- F54** Words in s. 53(2) inserted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 19(1)(b)**; S.I. 1997/1427, **art. 2(k)(n)(iii)**
- F55** S. 53(2)(g) omitted (1. 1. 1993) by virtue of S.I. 1992/3218, **reg. 76(1)**
- F56** S. 53(2A) inserted (1. 1. 1993) by S.I. 1992/3218, **reg. 76(2)**
- F57** Words in s. 53(3) inserted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 19(2)**; S.I. 1997/1427, **art. 2(k)(n)(iii)**
- F58** Words in s. 53(4)(a) inserted (1. 1. 1993) by S.I. 1992/3218, **reg. 76(3)**
- F59** S. 53(5)(b) substituted (18.7.1996) by S.I. 1996/1669, **reg. 7(1)**
- F60** Words substituted by **Banking Act 1987** (c. 22, SIF 10), s. 108(1), **Sch. 6 para. 26(4)**
- F61** S. 53(6)(a)(b) substituted (1. 1. 1993) for certain words by S.I. 1992/3218, **reg. 76(5)**
- F62** S. 53(7)(b) substituted (18.7.1996) by S.I. 1996/1669, **reg. 7(2)(a)**
- F63** Words in s. 53(7)(c) inserted (18.7.1996) by S.I. 1996/1669, **reg. 7(2)(b)**
- F64** Words in s. 53(7)(c) added (N.I.) (11.3.1991 but 01.10.1991 to the extent that S.I. 1990/1504, **art. 24** refers to Part V of the Companies (No. 2) (N.I.) Order 1990)) by S.I. 1990/1504, **art. 24**; S.R. 1991/26, **art. 2(2)(b)**; S.R. 1991/438, **art. 2(a)**
- F65** Words in s. 53(7) inserted (1. 1. 1993) by S.I. 1992/3218, **reg. 76(6)**
- F66** Words in s. 53(8) inserted (1. 1. 1993) by S.I. 1992/3218, **reg. 76(7)**
- F67** Words in s. 53(9)(a) substituted (1. 1. 1993) by S.I. 1992/3218, **reg. 76(8)**
- F68** S. 53(11A) inserted (1. 1. 1993) by S.I. 1992/3218, **reg. 76(9)**
- F69** S. 53(12A) inserted (18.7.1996) by S.I. 1996/1669, **reg. 7(3)**

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- F70** S. 53(13A)(13B) inserted (1.1.1993) by S.I. 1992/3218, **reg. 76(10)**
- F71** Words in s. 53(13A)(15) substituted (18.7.1996) by S.I. 1996/1669, **reg. 23, Sch. 5 para. 4**
- F72** Definition in s. 53(14) inserted (18.7.1996) by S.I. 1996/1669, **reg. 7(4)**
- F73** Words in s. 53(14) substituted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 19(4); S.I. 1997/1427, art. 2(k)(n)(iii)**
- F74** S. 53(15)(16) inserted (1.1.1993) by S.I. 1992/3218, **reg. 76(11)**
- F75** Words in s. 53(15) inserted (18.7.1996) by S.I. 1996/1669, **reg. 7(5)**
- F76** Word after s. 53(15)(a) repealed (6.4.1997) by 1995 c. 26, ss. 122, 177, Sch. 3 para. 16, **Sch. 7 Pt. I** (with s. 121(5)); S.I. 1997/664, **art. 2, Sch. Pt. II**
- F77** S. 53(15)(c) and word preceding it added (6.4.1997) by 1995 c. 26, s. 122, **Sch. 3 para. 16** (with s. 121(5)); S.I. 1997/664, **art. 2, Sch. Pt. II**
- F78** S. 53(15A) inserted (18.7.1996) by S.I. 1996/1669, **reg. 7(6)**

Modifications etc. (not altering text)

- C29** S. 53 modified by **Companies Act 1989 (c. 40, SIF 27), s. 88(3)(b)(5)(6)**

Marginal Citations

- M2** 1985 c. 66
- M3** 1986 c. 45
- M4** S.I. 1986/1032 (N.I. 6).

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 ^{M5}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 or 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 or the ^{M6}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 ^{M7}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—

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- (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 ^{M8}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.

^{F79}(3A) If information is disclosed by the Bank of England to the Commission for the purpose of enabling ^{F80}[or assisting]it better to discharge its functions under this Act—

- (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 (2) to (11) of that section to the disclosure of information do not extend to the disclosure of that information unless—
 - (i) the Bank of England consents to the disclosure; and
 - (ii) the disclosure is for the purpose of enabling ^{F80}[or assisting]the Commission better to discharge its functions under this Act.

(3B) If information is disclosed to the Commission by the relevant supervisory authority in another member State, or is obtained by the Commission, or by a person acting on its behalf, in another member State—

- (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 (2) to (11) of that section to the disclosure of information do not extend to the disclosure of that information unless—
 - (i) in the case of information disclosed to the Commission by the relevant supervisory authority in another member State, that authority consents to its disclosure; or
 - (ii) in the case of information obtained by the Commission, or by a person acting on its behalf, in another member State, the relevant supervisory authority in that State consents to its disclosure.

^{F81}(3C) Before the Commission discloses information to any person under subsection (3B) (b)(i) above, it shall notify the relevant supervisory authority which disclosed the information to the Commission of the name and responsibilities of that person.]

(4) ^{F82}

(5) ^{F82}

(6) If information is disclosed to the Commission by an overseas regulatory authority ^{F83}[which is not the relevant supervisory authority in another member State]—

- (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.

Textual Amendments

F79 S. 54(3A)(3B) inserted (1. 1. 1993) by S.I. 1992/3218, reg. 77(1)

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- F80** Words in s. 54(3A) inserted (9.6.1997) by 1997 c. 32, s. 43, **Sch. 7 para. 20**; S.I. 1997/1427, **art. 2(k)(n)(iii)**
- F81** S. 54(3C) inserted (18.7.1996) by S.I. 1996/1669, **reg. 7(7)**
- F82** S. 54(4)(5) repealed by Banking Act 1987 (c. 22, SIF 10), s. 108, Sch. 6 para. 26(5), **Sch. 7 Pt. I**
- F83** Words in s. 54(6) inserted (1.1.1993) by S.I. 1992/3218, **reg. 77(2)**

Modifications etc. (not altering text)

- C30** S.54 modified by Companies Act 1989 (c. 40, SIF 27), **s. 88(3)(b)(5)(6)**

Marginal Citations

- M5** 1985 c. 6.
M6 S.I. 1986/1032. (N.I.6)
M7 S.I. 1986/1032 (N.I.6).
M8 1985 c. 6.

Inspections, etc

55 Investigations on behalf of Commission.

- (1) If it appears to the Commission desirable to do so for the purposes of its supervisory functions in relation to a building society, the Commission 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—
 - (a) a subsidiary of the building society under investigation or,
 - (b) an associated body (other than a subsidiary) of that society.
- (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 Commission, 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.

Modifications etc. (not altering text)

C31 S. 55(6)(a) amended (E.W.) (01.01.1992) 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 Commission—
- (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;
- 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 subsidiary of or body associated with the building society.
- (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 Commission 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 subsidiary of or body associated with 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 Commission 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 subsidiary or associated body should also be investigated or considered.
- (4) Where the inspectors are of the opinion mentioned in subsection (3)(b) above in relation to a subsidiary of or body associated with a building society they may, with the

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consent of the Commission, extend their investigation to the affairs of the subsidiary or associated body 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 Commission 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 subsidiary or associated body, as the Commission may direct;
 - (c) the Commission 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—
 - (i) in the case of an investigation (in whichever way instituted), the expenses shall be defrayed in the first instance by the Commission 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 Commission may direct.
- (7) Before exercising its powers under subsection (1) above in a case falling within subsection (2)(b) above, the Commission 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 the Commission an explanatory statement in writing by way of a reply.
- (8) Where the Commission 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 subsidiary or associated body 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 Commission 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 Commission may appoint a person to be chairman at the meeting or, in default of such an appointment, the meeting may appoint its own chairman;

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- (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 ^{M9}Companies Act 1985 for the purposes of that section.

Marginal Citations

M9 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 subsidiary of or body associated with the building society whose affairs, are the subject of the investigation;

“the inspectors” means the persons appointed by the Commission 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 subsidiary of or body associated with 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—
- to produce to the inspectors all documents and material of or relating to the body under investigation which are in their custody or power;
 - to attend before the inspectors when required to do so, and
 - 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.

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(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 Commission shall, make interim reports to the Commission, but they may at any time in the course of the investigation, without making an interim report, inform the Commission of matters coming to their knowledge as a result of the investigation tending to show that an offence has been committed.

(8) The Commission 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 and on payment of the prescribed fee 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 Commission 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.

(9) A copy of a report of inspectors appointed under section 56 to hold an investigation under that section, certified by the Commission 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 Commission 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 Commission 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;

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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.

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Modifications etc. (not altering text)

C32 [S. 57\(1\)](#) amended (E.W.) (01.01.1992) by [S.I. 1991/2684](#), arts. 2(1), 4, [Sch.1](#)

Status:

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