



# Building Societies Act 1986

## 1986 CHAPTER 53

### PART VI

#### POWERS OF CONTROL OF THE COMMISSION

##### *Appeals*

VALID FROM 17/08/2001

#### **[<sup>F1</sup>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,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.

*Status: Point in time view as at 01/02/1991. This version of this cross heading contains provisions that are not valid for this point in time.*

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- (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**

**F1** 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)**

**C1** S. 46A(1) extended (1.12.2001) by S.I. 2001/3592, **arts. 36(2), 38(1)** (with art. 23(2))

**C2** S. 46A(8)(d)(i) excluded (1.12.2001) by S.I. 2001/3592, **arts. 36(3), 38(2)** (with art. 23(2))

## **46 Rights of appeal.**

- (1) A building society which is aggrieved by a decision of the Commission—
- (a) to refuse to grant authorisation,
  - (b) to revoke authorisation, or
  - (c) to impose conditions or as to the conditions imposed,

may appeal against the decision to a tribunal constituted in accordance with section 47.

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- (2) Any person in relation to whom the Commission, in deciding to refuse to grant or to revoke authorisation or to impose conditions, 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 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 it; 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 any order of the tribunal made under section 47 (5), an appeal under subsection (1)(c) or (2) above shall not affect the operation, pending the determination of the appeal, of any condition which is the subject of the appeal; and no determination of an appeal by any person under subsection (2) above shall affect the revocation 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;

“grant” includes renew; and

“revoke” means revoke under section 43(1).

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

C3 S. 46(1)(2) extended (1.12.2001) by S.I. 2001/3592, art. 126(2)(c) (with art. 23(2))

**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
  - [<sup>F2</sup>(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;]

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; 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.

- (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 appellants, the decision was unlawful or not justified by the evidence on which it was based.
- (5) The tribunal may, on the application of the building society concerned, order that the operation of any condition 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—
  - (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 the conditions or different conditions subject to which the authorisation is to be granted or is to continue, as the case may be.
- (7) Where by virtue of subsection (6) above the tribunal directs the Commission to determine conditions or different conditions, the Commission shall by notice to the society concerned impose such conditions to be complied with by the society as it considers expedient in order to protect the investments of shareholders or depositors and —
  - (a) Part III of Schedule 3 to this Act shall apply subject to the modifications made by paragraph 9 of that Schedule; but
  - (b) the society concerned may appeal to the tribunal against any of those conditions;

and on any such appeal the tribunal may confirm or reverse the Commission's decision with respect to the conditions which are the subject of the appeal or may direct the Commission to determine different conditions.
- (8) Where by virtue of subsection (7) above the tribunal, on an appeal against any conditions, directs the Commission to determine different conditions, 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 appellants and to the Commission; and unless the tribunal has directed the Commission to determine conditions or, in any other case, the tribunal directs otherwise, the determination shall come into operation when the notice is given to the appellants.

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- (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

**F2** Words substituted by [Courts and Legal Services Act 1990 \(c. 41, SIF 37\)](#), s. 71(2), **Sch. 10 para. 68**

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

**C4** [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)**

## 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, after consultation with the Council on Tribunals, make regulations with respect to appeals under section 46; and those regulations may in particular make provision—
- as to the period within which and the manner in which such appeals are to be brought;
  - as to the manner in which such appeals are to be conducted, including provision for any hearing to be held in private;
  - 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;
  - 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;
  - 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;
  - for taxing or otherwise settling any costs or expenses directed to be paid by the tribunal and for the enforcement of any such direction;
  - for enabling any functions in relation to an appeal to be discharged by the chairman of the tribunal; and
  - 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.

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- (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.

### <sup>F3</sup>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

**F3** 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)

**C5** S. 49 applied (with modifications) by S.I. 2001/3592, **art. 127** (with art. 23(2))

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