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# 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.

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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

**[<sup>F1</sup>36A Power to make prohibition orders.**

- (1) Where by virtue of section 36(12) the powers conferred by this section become exercisable in relation to a building society, the 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.

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

**C1** [S. 37\(1\)](#) modified by [S.I. 1986/2168](#), [art. 11](#)

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