



# Building Societies Act 1986

## 1986 CHAPTER 53

### PART VII

#### MANAGEMENT OF BUILDING SOCIETIES

##### *Directors and other officers*

#### **58 Directors: number.**

- (1) Every building society shall have at least two directors.
- (2) One of the directors shall be appointed to be chairman of the board of directors.

#### **59 Chief executive and secretary.**

- (1) Every building society shall have a chief executive, that is to say, a person who is employed by the society and who either alone or jointly with one or more other persons, is or will be responsible under the immediate authority of the directors for the conduct of the business of the society.
- (2) Every building society shall have a secretary.
- (3) The offices of chief executive and secretary of a building society may be held by the same person.
- (4) The chief executive and the secretary of a building society shall be appointed by the directors of the society.
- (5) The directors of a building society shall, as regards the appointment of the secretary or the chief executive of the society, take all reasonable steps to secure that the person appointed is a person who has the requisite knowledge and experience to discharge the functions of his office.
- (6) Where a person becomes or ceases to be the chief executive of a building society, the society shall within one month give notice of that fact to the central office, stating

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the person's full name and address and the date on which he became, or ceased to be, chief executive; and the central office shall record the person's name and the date on which he began to hold, or, as the case may be, ceased to hold office, in the public file of the society.

- (7) Anything required or authorised to be done by or to the secretary or chief executive of a building society may, if the office is vacant or there is for any other reason no secretary or chief executive capable of acting, be done by or to any assistant or deputy secretary or assistant or deputy chief executive, as the case may be, or, if there is no assistant or deputy capable of acting, by or to any officer of the society authorised generally or specially for that purpose by the directors.

## **60 Directors: elections and retirements.**

- (1) Except in so far as they may be co-opted by virtue of subsection (13) below, the directors of a building society must be elected to office, either—
- (a) at the annual general meeting of the society, or
  - (b) by postal ballot of the members conducted during that part of the financial year of the society which precedes the date on which the annual general meeting is held,

as the rules provide.

- (2) The persons entitled to vote in an election of directors of a building society are those members of the society who, on the voting date, are entitled to vote on an ordinary resolution of the society.
- (3) A person entitled to vote in an election of directors of a building society shall have one vote for every vacancy which is to be filled by the election but cannot be required to cast all or any of his votes.
- (4) Subject to subsections (6), (7) and (9) below and to paragraph 5(3) of Schedule 2 to this Act, any person is eligible to be elected a director of a building society.
- (5) The rules of a building society may require its directors to retire at a prescribed age without eligibility for re-election or reappointment; and, if the age so prescribed is no greater than the age which is the normal retirement age for the purposes of this section, subsection (7) below shall have no application to the directors of the society.
- (6) If the rules of a building society make the provision authorised by subsection (5) above, a person who has attained the age so prescribed shall not be eligible to be elected as a director of the society.
- (7) Except in a case where the operation of this subsection is excluded by subsection (5) above, if a person has attained the normal retirement age for directors, he shall not be eligible to be elected a director of a building society unless—
- (a) he has been approved as eligible for election by resolution of the board of directors, and
  - (b) his age and the reasons for the board's approval of his eligibility have been notified to every person entitled to vote at the election.
- (8) In this section "the normal retirement age", in relation to the directors of a building society, means 70 years or such lesser age as the rules of the society prescribe as the normal retirement age for its directors; and "the compulsory retirement age", for a

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society whose rules make the provision authorised by subsection (5) above, means the age so prescribed in its rules.

- (9) The rules of a building society may impose, as a condition of a person's eligibility to be or to remain a director of the society, a requirement that he shall hold beneficially shares in the society not less in value than the amount prescribed by the rules, but the minimum holding to be required shall not exceed £1,000 or such other amount as may be substituted for it by order of the Commission under this subsection.
- (10) The rules of a building society may impose, as conditions of the validity of a person's nomination for election as a director, requirements as to—
- (a) the minimum number of members who must join in nominating him,
  - (b) their qualifications as respects length of membership of and the value of shares held in the society, and
  - (c) the depositing of money with the society in connection with his candidature, but no other requirements; and rules made by virtue of this subsection must comply with section 61.
- (11) A director of a building society shall retire from office—
- (a) in any case not provided for by paragraph (b) below, subsection (12) below or rules under section 61(10), at the third annual general meeting of the society following the date of his election, and
  - (b) in a case where he had attained the normal retirement age at his election, at the next annual general meeting following that date;
- subject (in either case) to any provision for his earlier retirement on the grounds of ceasing to hold the requisite shares in the society contained in the rules of the society.
- (12) A director of a building society attaining the normal retirement age or, as the case may be, the compulsory retirement age shall, subject to any provision of the rules for earlier retirement, retire from office at the next annual general meeting of the society.
- (13) If the rules of a building society so provide, the directors for the time being may appoint as additional directors or to fill any vacancy on the board of directors any person who—
- (a) has not attained—
    - (i) the normal retirement age, or
    - (ii) the compulsory retirement age (where that age is less than the normal retirement age), and
  - (b) appears to them to be fit and proper to be a director.

not being a person who, having been nominated for election as a director at any election held within the preceding twelve months, was not elected as a director.

- (14) A person who is co-opted under subsection (13) above shall cease to hold office at the end of the permitted period unless he is elected as a director of the society in accordance with this section within that period.
- (15) A person who holds office as, or is to his knowledge nominated for election or proposed for appointment under subsection (13) above as, a director of a building society shall, not later than 28 days before he attains the normal retirement age or, as the case may be, the compulsory retirement age for directors of the society, give the society notice of the date on which he will attain that age; and if he fails to do so he shall be liable on summary conviction—

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- (a) to a fine not exceeding level 3 on the standard scale; and
  - (b) in the case of a continuing offence, to an additional fine not exceeding £40 for every week during which the offence continues.
- (16) The power of the Commission to make an order under subsection (9) above—
- (a) includes power to make such transitional provision as it considers necessary or expedient, and
  - (b) shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (17) In this section—
- “ordinary resolution” means a resolution which will be effective without being passed as a special resolution or borrowing members’ resolution;
  - “permitted period”, in relation to a co-opted director, has the meaning given by section 61(12); and
  - “the voting date” means—
- (a) in the case of an election at a meeting, the date of the meeting, except where paragraph (c) below applies;
  - (b) in the case of an election conducted by postal ballot, the date which the society specifies as the final date for the receipt of completed ballot papers;
  - (c) in a case where a member appoints a proxy to vote at the meeting for him, the date which the society specifies as the final date for receipt of instruments appointing proxies to vote at the election;
- and, for the purposes of this Act, the date of a person’s election to office as a director of a building society, in a case where the rules provide for election by postal ballot, is the date of the meeting at which the declaration of the result of the ballot is made.

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

**C1** Ss. 60(1)(2)(3)(9)(10), 61 excluded (*temp.*) by S.I. 1986/2168, art. 3(1)(3)

**61 Directors: supplementary provisions as to elections, etc.**

- (1) Rules made under section 60(10)(a), in order to comply with this section, must not require—
- (a) in the case of a society with a qualifying asset holding, more than fifty members, and
  - (b) in the case of any other society, more than ten members,
- to join in nominating a person for election as a director.
- (2) Rules under section 60(10)(b), in order to comply with this section, must not require a nominating member to have been a member for more than two years before the date of the nomination or to hold, or have at any time during that period held, shares in the society to a value greater than £100.
- (3) Rules made under section 60(10)(c), in order to comply with this section—
- (a) must not require more than £250 to be deposited with the society;
  - (b) must not require the money to be deposited before the date which, under the rules, is the closing date for the nomination of candidates for the election; and

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- (c) must provide for the return of the deposit to the candidate in the event of his securing—
  - (i) not less than 5 per cent. of the total number of votes cast for all the candidates in the election; or
  - (ii) not less than 20 per cent. of the number of votes cast for the candidate who is elected with the smallest number of votes.
- (4) The Commission may, by order, amend subsection (1), (2) or (3)(a) or (c) above so as to substitute for the number, the maximum value of shares, the maximum amount of the deposit or the percentage of votes required to be secured respectively such other number, value, amount or percentage as it thinks appropriate.
- (5) The power to make orders under subsection (4) above—
  - (a) includes power to make such transitional provision as the Commission considers necessary or expedient, and
  - (b) is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) If a building society, in a case where the board of directors has approved as eligible for election a person who has attained the normal retirement age, fails to notify every person entitled to vote at the election as required by section 60(7), the society shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale and so shall any officer who is also guilty of the offence; but no such failure shall invalidate the election.
- (7) If a duly nominated candidate for election as a director of a building society furnishes the society with an election address of not more than 200 words before the closing date for nominations, then, subject to subsection (8) below—
  - (a) it shall be the duty of the society to send a copy of the address to each member of the society who is entitled to vote in the election;
  - (b) each member's copy shall be sent in the same manner and, so far as practicable, at the same time as the notice of the meeting at which the election is to be conducted or the ballot papers are sent out, as the case may be, or as soon as is practicable thereafter; and
  - (c) if the building society fails to comply with the requirements of this subsection the society shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale and so shall any officer who is also liable for the offence;but no such failure shall invalidate the election.
- (8) Subsection (7) above does not require a building society to send copies of an address to members of the society in any case where—
  - (a) publicity for the address would be likely to diminish substantially the confidence in the society of investing members of the public, or
  - (b) the rights conferred by that subsection are being abused to seek needless publicity for defamatory matter or for frivolous or vexatious purposes;

and that subsection shall not be taken to confer any rights on members, or to impose any duties on a building society, in respect of an address which does not relate directly to the affairs of the society.

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- (9) The Commission shall hear and determine any dispute arising under subsection (8)(a) above, whether on the application of the society or of any other person who claims to be aggrieved.
- (10) The rules of a building society, if they provide for the retirement by rotation of its directors, may provide that a person elected to fill a vacant seat on the board must retire at the annual general meeting at which, in accordance with the rules for retirement by rotation, the seat is to fall vacant.
- (11) Subsection (10) above applies to any vacancy arising when an elected director ceases to hold office for any reason before the annual general meeting at which (disregarding his age) the seat is due to fall vacant under section 60(11)(a).
- (12) For the purposes of section 60(17) “the permitted period”, with reference to the tenure of office of co-opted directors, is the period beginning with the date of the co-opted director’s appointment and ending with whichever of the following first occurs, that is to say—
- (i) in the case of a building society which elects its directors at its annual general meeting, the conclusion of the next such meeting following his appointment;
  - (ii) in the case of a building society which elects its directors by postal ballot, the declaration at its annual general meeting of the result of the next such ballot conducted after his appointment;
  - (iii) the expiration of the period of sixteen months beginning with the date of his appointment;
- but a general meeting or postal ballot shall be disregarded for the purposes of this paragraph if the closing date for the nomination of candidates falls before the date of the co-opted director’s appointment.
- (13) Where a person becomes or ceases to be a director of a building society, the society shall within one month give notice of that fact to the central office, stating the person’s full name and address and the date on which he became, or ceased to be, a director; and the central office shall record the person’s name and the date on which he began to hold, or, as the case may be, ceased to hold office, in the public file of the society.
- (14) If a building society fails to comply with subsection (13) above the society shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale and so shall any officer who is also guilty of the offence.

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

**C2** Ss. 60(1)(2)(3)(9)(10), 61 excluded (*temp.*) by S.I. 1986/2168, art. 3(1)(3)

*Dealings with directors*

**62 Prohibition of tax-free payments to directors.**

- (1) A building society shall not pay a director remuneration (whether as director or otherwise) free of income tax, or otherwise calculated by reference to or varying with the amount of his income tax, or to or with any rate of income tax.

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- (2) Any rule of a building society and any provision of any contract, or in any resolution of a building society, for payment to a director of remuneration falling within subsection (1) above has effect as if it provided for payment, as a gross sum subject to income tax, of the net sum for which the rule, contract or resolution actually provides.

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

- C3** S. 62 modified (13.1.1993 for certain purposes only and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 27, **Sch. 11 Pt. II para. 9(1)(a)(2)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.1**; S.I. 1993/2213, art. 2, **Sch.5**.

**63 Directors to disclose interests in contracts and other transactions.**

- (1) It is the duty of a director of a building society who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the society to declare the nature of his interest to the board of directors of the society in accordance with this section.
- (2) In the case of a proposed contract, the declaration shall be made—
  - (a) at the meeting of the directors at which the question of entering into the contract is first taken into consideration; or
  - (b) if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he became so interested.
- (3) Where the director becomes interested in a contract after it is made, the declaration shall be made at the first meeting of the directors held after he becomes interested in the contract.
- (4) For the purposes of this section, a general notice given to the directors of a building society by a director to the effect that—
  - (a) he is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm, or
  - (b) he is to be regarded as interested in any contract which may, after the date of the notice, be made with a specified person who is connected with him,is a sufficient declaration of interest in relation to any contract made after that date with that company, firm or person.
- (5) A director need not make a declaration or give a notice under this section by attending in person at a meeting of the directors if he takes reasonable steps to secure that the declaration or notice is brought up and read at the meeting.
- (6) The foregoing provisions of this section apply in relation to any transaction or arrangement as they apply in relation to a contract and, for the purposes of this section, a transaction or arrangement of a kind described in section 65 made by a society for a director of the society or a person connected with a director of the society is to be treated (if it would not otherwise be so treated, and whether or not it is prohibited by that section) as a transaction or arrangement in which that director is interested.
- (7) A director who fails to comply with this section shall be guilty of an offence and liable—
  - (a) on conviction on indictment, to a fine; or

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- (b) on summary conviction, to a fine not exceeding the statutory maximum.

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

- C4** S. 63 modified (13.1.1993 for certain purposes only and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 27, **Sch. 11 Pt. II para. 9(1)(b)(2)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.1**; S.I. 1993/2213, art. 2, **Sch.5**.

**64 Substantial property transactions involving directors and connected persons.**

- (1) A building society shall not enter into an arrangement—
- (a) whereby a director of the society, or a person connected with a director of the society, acquires or is to acquire one or more non-cash assets of the requisite value from the society; or
  - (b) whereby the society acquires or is to acquire one or more non-cash assets of the requisite value from a director of the society or a person connected with a director of the society,
- unless the arrangement is first approved by a resolution of the society passed at a general meeting.
- (2) For this purpose a non-cash asset is of the requisite value if at the time the arrangement in question is entered into its value is—
- (a) except in a case falling within paragraph (b) below, not less than [<sup>F1</sup>£100,000]; and
  - (b) where the last balance sheet of the society showed reserves amounting to less than £500,000, not less than the higher of £1,000 or the amount which represents 10 per cent. of the reserves so shown.
- (3) The Commission may, by order made with the consent of the Treasury, amend subsection (2) above so as to substitute for any of the amounts for the time being specified in paragraphs (a) and (b) of that subsection such other amount as it thinks appropriate.
- (4) The power to make an order under subsection (3) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) In this section “non-cash asset” means any property or interest in property other than cash and a reference to the acquisition of a non-cash asset includes the creation or extinction of an estate or interest in, or a right over, any property and also the discharge of any person’s liability, other than a liability for a liquidated sum.
- (6) An arrangement entered into by a building society in contravention of this section, and any transaction entered into in pursuance of the arrangement (whether by the society or any other person) is voidable at the instance of the society unless—
- (a) restitution of any money or other asset which is the subject matter of the arrangement or transaction is no longer possible or the society has been indemnified in pursuance of subsection (7)(b) below for the loss or damage suffered by it, or
  - (b) any rights acquired in good faith, for value and without actual notice of the contravention by any person who is not a party to the arrangement or transaction would be affected by its avoidance, or



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- (c) the arrangement is affirmed by the society at a general meeting held not later than the next annual general meeting after the entry into the arrangement.
- (7) Where an arrangement or transaction is entered into with a building society by a director of the society or a person connected with him in contravention of this section then, without prejudice to any other liability but subject to subsections (8) and (9) below, that director and the person so connected, and any other director of the society who authorised the arrangement of any transaction entered into in pursuance of such an arrangement, is liable—
- (a) to account to the society for any gain which he has made directly or indirectly by the arrangement or transaction, and
  - (b) (jointly and severally with any other person liable under this subsection) to indemnify the society for any loss or damage resulting from the arrangement or transaction.
- (8) Where an arrangement or transaction is entered into by a building society and a person connected with a director of the society in contravention of this section, that director is not liable under subsection (7) above if he shows that he took all reasonable steps to secure the society's compliance with this section.
- (9) In any case, a person so connected and any such other director as is mentioned in subsection (7) above is not so liable if he shows that, at the time the arrangement was entered into, he did not know the circumstances constituting the contravention.

#### Textual Amendments

**F1** Words in s. 64(2)(a) substituted (1.9.1995) by S.I. 1995/1872, art. 2

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

**C5** S. 64 modified (13.1.1993 for certain purposes only and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 27, Sch. 11 Pt. II para. 9(1)(c)(2) (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, Sch. 1; S.I. 1993/2213, art. 2, Sch. 5.

## 65 Restriction on loans, etc. to directors and persons connected with them.

- (1) Subject to the following provisions of this section, a building society shall not—
- (a) make an advance or other loan to a director or a person connected with a director of the society; or
  - (b) dispose of property by way of lease or hire to a director or a person connected with a director of the society; or
  - (c) make a payment on behalf of a director or a person connected with a director of the society in connection with the provision of any services for the time being specified in Part I of Schedule 8 to this Act; or
  - (d) enter into a guarantee or provide any security which is incidental to or connected with any such loan, disposal of property or payment; or
  - (e) take part in any arrangement whereby—
    - (i) another person enters into a transaction which, if it had been entered into by the society, would have contravened any of paragraphs (a) to (d) above; and
    - (ii) that other person, in pursuance of the arrangement, has obtained or is to obtain any benefit from the society or a subsidiary of the society.

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- (2) Subsection (1)(a) above does not apply to—
- (a) any loan of an amount which, when aggregated with any other relevant loans, does not exceed [<sup>F2</sup>£5,000];
  - (b) any loan made in the ordinary course of the society's business and of an amount not greater and made on other terms not more favourable than it is reasonable to expect the society to have offered to a person of the same financial standing but unconnected with the society; or
  - (c) any loan, the amount of which, when aggregated with any other relevant loans, does not exceed [<sup>F2</sup>£100,000], made for or towards the purchase or improvement of a dwelling-house used or to be used as the director's only or main residence if he is an executive director and loans of that description and on similar terms are ordinarily made by the society to its employees.
- (3) Subsection (1)(b) above does not apply to—
- (a) any lease or hiring of property the value of which, when aggregated with the value of any other relevant leases or hirings, does not exceed [<sup>F2</sup>£10,000]; or
  - (b) any lease or hiring made in the ordinary course of the society's business and on terms not more favourable than it is reasonable to expect the society to have offered to a person unconnected with the society.
- (4) Subsection (1)(c) above does not apply to—
- (a) any payment amounting, when aggregated with any other relevant payment, to no more than [<sup>F2</sup>£5,000] in respect of which the person on whose behalf it is made is under an obligation to reimburse the society within a period not exceeding two months beginning with the date of the paymentX; or
  - (b) any payment of an amount not greater and on other terms not more favourable than it is reasonable to expect the society to have offered to a person of the same financial standing but unconnected with the society.
- (5) Subject to compliance with the requirements of subsection (6) below, subsection (1) above does not preclude a building society from doing anything to provide a director with funds to meet expenditure incurred or to be incurred by him for the purposes of the society or for the purpose of enabling him properly to perform his duties as a director of the society nor does it preclude the society from doing anything to enable a director to avoid incurring such expenditure.
- (6) The following are the requirements referred to in subsection (5) above—
- (a) the things must either be done with the prior approval of the society given at a general meeting at which the requisite matters are disclosed or be done on condition that, if the approval of the society is not so given at the next annual general meeting, the loan is to be repaid, or any other liability arising under the transaction is to be discharged, within six months from the conclusion of that meeting; and
  - (b) the amount provided, when aggregated with any other relevant provision of funds, does not exceed [<sup>F2</sup>£20,000].
- (7) The following are the requisite matters which must be disclosed for the purposes of subsection (6) above—
- (a) the purpose of the expenditure incurred or to be incurred, or which would otherwise be incurred, by the director;
  - (b) the amount of the funds to be provided by the society; and

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- (c) the extent of the society's liability under any transaction which is or is connected with the thing in question.
- (8) The Commission may by order in a statutory instrument made with the consent of the Treasury substitute for any sum specified in this section a larger sum specified in the order.
- (9) An order under subsection (8) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) In this section—
- “authorising provision” and “authorised”, in relation to a transaction of a description falling within paragraph (a), (b) or (c) of subsection (1) above, mean respectively any provision of subsection (2), (3) or (4) or constituted by subsection (5) above and any transaction or thing done to which that paragraph does not apply or which is not precluded from being done by virtue of that provision;
- “outstanding”, in relation to loans, means outstanding in respect of principal and interest and, in relation to the provision of funds subject to a condition for repayment or discharge of any other liability, means unpaid or undischarged to any extent;
- “provision of funds” includes anything else which, by virtue of subsection (5) above, a society is not precluded from doing by subsection (1) above; and
- “relevant”, in relation to a transaction of a description falling within paragraph (a), (b) or (c) of subsection (1) above, means an outstanding or, in the case of a lease or hiring, current transaction of that description (whether entered into by, or by arrangement with, the society) not being one authorised by any other authorising provision.
- (11) Section 70 has effect for the interpretation, in the subsequent provisions of this Part, of references to transactions or arrangements contravening this section and to such transactions or arrangements being made “for” a person.

#### Textual Amendments

**F2** Words in s. 65 substituted (1.9.1995) by S.I. 1995/1872, art. 3, Sch.

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

**C6** S. 65 modified (13.1.1993 for certain purposes only and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 27, Sch. 11 Pt. II para. 9(1)(d)(3) (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, Sch. 1; S.I. 1993/2213, art. 2, Sch. 5.

## 66 Sanctions for breach of s. 65.

- (1) If a building society enters into a transaction or arrangement contravening section 65, the transaction or arrangement is voidable at the instance of the society unless—
- (a) restitution of any money or any other assets which is the subject matter of the arrangement or transaction is no longer possible, or the society has been indemnified in pursuance of subsection (2)(b) below for the loss or damage suffered by it, or

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- (b) any rights acquired in good faith, for value and without actual notice of the contravention by a person other than the person for whom the transaction or arrangement was made would be affected by its avoidance.
- (2) Where a transaction or arrangement contravening section 65 is made by a building society for a director of the society or a person connected with a director of the society then, without prejudice to any other liability but subject to subsections (3) and (4) below, that director and the person so connected and any other director of the society who authorised the transaction or arrangement (whether or not it has been avoided in pursuance of subsection (1) above) is liable—
  - (a) to account to the society for any gain which he has made directly or indirectly by the transaction or arrangement; and
  - (b) (jointly and severally with any other person liable under this subsection) to indemnify the society for any loss or damage resulting from the transaction or arrangement.
- (3) Where a transaction or arrangement contravening section 65 is entered into by a building society and a person connected with a director of the society, that director is not liable under subsection (2) above if he shows that he took all reasonable steps to secure the society's compliance with that section.
- (4) In any case, a person so connected and any such other director as is mentioned in subsection (2) above is not so liable if he shows that, at the time the transaction or arrangement was entered into, he did not know the circumstances constituting the contravention.
- (5) A director of a building society who authorises or permits the society to enter into a transaction or arrangement knowing or having reasonable cause to believe that the society was thereby contravening section 65 is guilty of an offence.
- (6) A building society which enters into a transaction or arrangement contravening section 65 for one of its directors is guilty of an offence unless it shows that, at the time the transaction or arrangement was entered into, it did not know the circumstances constituting the contravention.
- (7) A person who procures a building society to enter into a transaction or arrangement knowing or having reasonable cause to believe that the society was thereby contravening section 65 is guilty of an offence.
- (8) A person other than a building society who commits an offence under this section shall be liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both; or
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or both.
- (9) A building society which commits an offence under this section shall be liable on conviction on indictment or on summary conviction to a fine which, on summary conviction, shall not exceed the statutory maximum.

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

- C7 S. 66 modified (13.1.1993 for certain purposes only and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 27, **Sch. 11 Pt. II para.9(1)(e)(2)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.1**; S.I. 1993/2213, art. 2, **Sch.5**.

VALID FROM 01/12/1997

**[<sup>F3</sup>66A Transactions with directors and persons connected with them.**

- (1) This section applies where a building society enters into a transaction the parties to which include—
  - (a) a director of the society; or
  - (b) a person connected with such a director,and the board of directors, in connection with the transaction, exceed any limitation on their powers by reason of anything included in the society's constitution, that is to say, its memorandum and rules.
- (2) The transaction is voidable at the instance of the society.
- (3) Whether or not it is avoided, any such party to the transaction as is mentioned in subsection (1)(a) or (b) above, and any director of the society who authorised the transaction, is liable—
  - (a) to account to the society for any gain which he has made directly or indirectly by the transaction, and
  - (b) to indemnify the society for any loss or damage resulting from the transaction.
- (4) Nothing in the above provisions shall be construed as excluding the operation of any other enactment or rule of law by virtue of which the transaction may be called in question or any liability to the society may arise.
- (5) The transaction ceases to be voidable if—
  - (a) restitution of any money or other asset which was the subject-matter of the transaction is no longer possible, or
  - (b) the society is indemnified for any loss or damage resulting from the transaction, or
  - (c) rights acquired bona fide for value and without actual notice of the directors' exceeding their powers by a person who is not party to the transaction would be affected by the avoidance, or
  - (d) the transaction is ratified by the society in general meeting, by ordinary or special resolution or otherwise as the case may require.
- (6) A person other than a director of the society is not liable under subsection (3) above if he shows that at the time the transaction was entered into he did not know that the directors were exceeding their powers.
- (7) This section does not affect the operation of sub-paragraph (1) of paragraph 17 of Schedule 2 in relation to any party to the transaction not within subsection (1)(a) or (b) above.

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But where a transaction is voidable by virtue of this section and valid by virtue of that sub-paragraph in favour of such a person, the court may, on the application of that person or of the society, make such order affirming, severing or setting aside the transaction, on such terms, as appear to the court to be just.

- (8) In this section “transaction” includes any act; and the reference in subsection (1) above to limitations under the society’s constitution includes limitations deriving—
- (a) from a resolution of the society passed at a general or special meeting or on a postal ballot; or
  - (b) from any agreement between the members of the society.]

#### Textual Amendments

- F3** S. 66A 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. 38, 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(v)

#### 67 Directors, etc, not to accept commissions in connection with loans.

- (1) This section applies to any person who holds office in or is employed by a building society as director, secretary, chief executive, manager, solicitor, surveyor or valuer or in connection with the assessment of the adequacy of securities for advances secured on land.
- (2) No person to whom this section applies shall (in addition to the remuneration prescribed or authorised by the rules or any resolution of the society) accept from any other person any commission for or in connection with any loan made by the society.
- (3) If a person to whom this section applies accepts a commission in contravention of subsection (2) above—
  - (a) both he and, subject to subsection (4) below, the person who paid it shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale; and
  - (b) if, having been convicted of an offence under paragraph (a) above, the person accepting the commission fails to pay over to the society the amount or value of the commission, as and when directed to do so by the court which convicted him, he shall be guilty of an offence under this paragraph and liable on summary conviction to imprisonment for a term not exceeding six months.
- (4) No offence under paragraph (a) of subsection (3) above is committed by the person who paid the commission unless he did so knowing the circumstances that constituted the offence under that paragraph on the part of the person who accepted it from him.
- (5) Where—
  - (a) a charge upon a policy of life assurance is given as additional security for an advance made by a building society, or
  - (b) a building society makes an additional advance to enable payment to be made of a premium on a policy of insurance, or
  - (c) any policy of insurance is taken out so as to comply with the terms on which an advance is made by a building society, whether by way of insuring the property given as security for the advance or otherwise,

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and the policy is effected through the building society, or the society nominates or selects a person by whom the policy is to be issued, it shall be unlawful for any person to whom this section applies, in connection with the effecting of the policy, to receive any commission from a person by or through whom the policy is issued.

(6) A person who pays, and a person who accepts, any commission which subsection (5) above makes it unlawful to receive shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(7) In this section—

“charge upon a policy of life assurance”, in relation to an advance secured on land in Scotland, means an assignation in security in respect of such a policy;

“commission” includes any gift, bonus or benefit;

“solicitor”, in relation to England and Wales, includes licensed conveyancer.

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

C8 S. 67(1)(7) amended (E.W.) (01.01.1992) by S.I. 1991/2684, arts. 2(1), 4 Sch.1

**68 Records of loans, etc. for directors falling within s. 65.**

(1) A building society shall maintain a register containing a copy of every subsisting transaction or arrangement (other than an excepted transaction or arrangement) falling within section 65(1) made for a director or a person connected with a director of the society during the current financial year or any of the preceding ten financial years.

(2) In the case of a transaction or arrangement which is not in writing, there shall be kept in the register a written memorandum setting out its terms.

(3) A building society shall make available for inspection by members—

(a) at its principal office during the period of 15 days expiring with the date of its annual general meeting, and

(b) at the annual general meeting,

a statement containing the requisite particulars of the transactions and arrangements falling within section 65(1) which were included in the register under subsection (1) above at any time during the last complete financial year preceding the meeting.

(4) The requisite particulars are those specified in Schedule 9 to this Act.

(5) Two copies of the statement required to be so made available to members shall be sent by the society to the Commission on the date on which the statement is required to be first made available to members and the central office shall keep one of them in the public file of the society.

(6) A copy of the statement required to be so made available shall also be sent, on demand and on payment of the prescribed fee, to any member of the society.

(7) There are excepted from the obligations imposed by this section on a building society with respect to a financial year all transactions or arrangements made or subsisting during that year for a person who was at any time during that year a director of the



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society or was connected with a director of the society if the aggregate of the values of each transaction or arrangement made for that person, less the amount (if any) by which the value of those transactions or arrangements has been reduced, did not exceed £1,000 at any time during that year

- (8) There are also excepted from the obligations imposed by this section on a building society with respect to a financial year all transactions or arrangements falling within paragraphs (b), (d) or (e) of section 65(1) made during that year for a person who was at any time during that year a director of the society or was connected with a director of the society if the aggregate of the values of each such transaction or arrangement so made for that director or any person connected with him, less the amount (if any) by which the value of those transactions or arrangements has been reduced, did not exceed £5,000 at any time during that year.
- (9) The Commission may, by order made with the consent of the Treasury, amend subsection (7) or (8) above so as to substitute for the amount for the time being specified in that subsection such other amount as it thinks appropriate.
- (10) The power to make an order under subsection (9) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (11) If a building society fails to comply with any provision of this section (or Schedule 9) 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 so shall any officer who is also guilty of the offence.

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

- C9** S. 68 modified (13.1.1993 for certain purposes only and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 27, **Sch. 11 Pt. II para.9(1)(f)(2)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.1**; S.I. 1993/2213, art. 2, **Sch.5**.

*Disclosure and record of related businesses*

**69 Disclosure and record of income of related businesses.**

- (1) Where, at any time during a financial year of a building society, a person both is a director or other officer of a building society and is, or is a director of or partner in, a business associate of the society, this section shall apply, as respects that year, to that person in relation to the business of the business associate.
- (2) A person is a “business associate” of a building society in any financial year of the society if that person—
- (a) carries on a business which consists of or includes the provision of relevant services,
  - (b) provides relevant services during that year to, or to other persons in connection with advances secured on land made by, the society and
  - (c) is neither a subsidiary of nor a body associated with the society (within the meaning of section 18);

and “associated” has a corresponding meaning.



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- (3) The following are relevant services—
- (a) conveyancing services provided by a solicitor;
  - (b) surveying and valuing land or other property;
  - (c) accountancy services;
  - (d) arranging for the provision of insurance against loss of or damage to property or on human life;
  - (e) any other services designated as relevant services.
- (4) Where a business associate of a building society provides the society with services which are relevant services by virtue of subsection (3) above, any administrative services provided to the society by the business associate are also relevant services.
- (5) The Commission may by order in a statutory instrument—
- (a) designate as relevant services services of any description specified in the order which are normally provided to building societies; and
  - (b) make such incidental, supplementary or transitional provision as it considers necessary or expedient;
- and in subsection (3)(e) above “designated” means designated by an order under this subsection.
- (6) Where this section applies, as respects a financial year of a building society, to a person as a director or other officer of the society in relation to the business of a business associate, that person shall furnish the society with the requisite particulars of that business.
- (7) The requisite particulars of the business of a business associate of a building society are—
- (a) except where an election under paragraph (b) below is in force, those specified in Part I of Schedule 10 to this Act;
  - (b) if a building society elects to adopt Part II of that Schedule for its directors as respects a financial year, those specified in Part II of that Schedule; and
  - (c) as regards relevant services designated by an order under subsection (5) above, such particulars as are specified in the order;
- and Part III of the Schedule has effect to supplement Parts I and II and includes a definition of “the volume of the business” for the purposes of this section.
- (8) An election by a building society to adopt Part II of Schedule 10 as regards the requisite particulars to be furnished by its directors must be made in writing to the Commission before the beginning of the financial year as respects which it is made and the requisite particulars must be furnished in writing within the period of six weeks beginning with the end of the financial year for which they are required.
- (9) For the purpose of enabling him to furnish the requisite particulars of the business of a business associate of a building society the person who is under the obligation to furnish them to the society may require any person who is a member of or partner in, or holds any office or employment with, the business associate to furnish him with such information relating to its business as he may reasonably require for that purpose.
- (10) Any person who, without reasonable excuse—

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- (a) fails to furnish the particulars required by subsection (6) above or furnishes particulars which are false or misleading in a material particular or, in the case of particulars under Part II to Schedule 10, are not a justified estimate, or
- (b) fails to furnish any information lawfully required of him under subsection (9) above or furnishes information which is false or misleading in a material particular,

shall be liable on conviction on indictment or on summary conviction to a fine not exceeding, on summary conviction, the statutory maximum.

(11) Subject to subsection (12) below, a building society shall maintain at its principal office a register containing the particulars furnished to it under subsection (6) above as respects the last financial year and each of the ten financial years preceding that year.

(12) No particulars of the business of a business associate of a building society need be kept in the register provided for by subsection (11) above as respects any financial year of the society in which the volume of the business of which the requisite particulars are required did not exceed £5,000 or such other sum as may be substituted for it by order of the Commission in a statutory instrument under this subsection.

(13) A building society shall make available for inspection by members—

- (a) at its principal office during the period of 15 days expiring with the date of its annual general meeting, and
- (b) at the annual general meeting,

a statement containing the particulars required to be kept in the register under subsection (11) above as respects the last financial year.

(14) Two copies of the statement required to be so made available to members shall be sent by the society to the Commission on the date on which the statement is required to be first made available to members and the central office shall keep one of them in the public file of the society.

(15) A copy of the statement required to be so made available shall also be sent, on demand and on payment of the prescribed fee, to any member of the society.

(16) The power to make an order under subsection (5) or (12) above shall not be exercised except with the consent of the Treasury and any statutory instrument containing such an order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(17) In this section—

“administrative services” means services necessary or incidental to the conduct of the society’s business;

“conveyancing services” in relation to—

- (a) land in England and Wales or Northern Ireland, has the same meaning as it has in paragraph 1(3) of Schedule 21 to this Act with the modification, in relation to land in Northern Ireland, that “disposition” does not include any disposition in the case of such a lease as is expected, by section 4 of the <sup>M1</sup>Landlord and Tenant Law Amendment Act (Ireland) 1860, from the requirements of that section, and
- (b) heritable property in Scotland, includes drafting all writs relating to such property and negotiating and concluding missives for its purchase, sale, transfer, lease and sublease; and

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“solicitor”, in relation to England and Wales, includes licensed conveyancer, that is to say, a person who holds a licence under Part II of the <sup>M2</sup>Administration of Justice Act 1985.

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

- C10** S. 69 modified by S.I. 1987/1498, art. 7, **Sch. 2 para. 6**
- C11** S. 69 modified (13.1.1993 for certain purposes only and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 27, **Sch. 11 Pt. II para. 9(1)(g)(2)(4)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch. 1**; S.I. 1993/2213, art. 2, **Sch.5**.
- C12** S. 69 modified (1. 7. 1992) by S.I. 1992/1547, arts. 5, 6, **Sch.2**
- C13** S. 69(3)(a)(17) amended (E.W.) (01.01.1992) by S.I. 1991/2684, arts. 2(1), 4, **Sch.1**
- C14** S. 69(6) excluded by S.I. 1986/2169, **art. 9(1)**
- C15** S. 69(8) modified by S.I. 1986/2169, **art. 9(2)**

#### Marginal Citations

- M1** 1860 c. 154.
- M2** 1985 c. 61.

### Interpretation

#### 70 Interpretation of this Part.

- (1) The following provisions apply for the interpretation of this Part.
- (2) A person is “connected with” a director of a building society if, but only if, he (not being himself a director of it) is—
- (a) that director’s spouse, child or step-child; or
  - (b) a body corporate with which the director is associated; or
  - (c) a person acting in his capacity as trustee of any trust the beneficiaries of which include—
    - (i) the director, his spouse or any children or step-children of his, or
    - (ii) a body corporate with which he is associated, or of a trust whose terms confer a power on the trustees that may be exercised for the benefit of the director, his spouse, or any children or step-children of his or any such body corporate; or
  - (d) a person acting in his capacity as partner of that director or of any person who, by virtue of paragraph (a), (b) or (c) of this subsection, is connected with that director;
  - (e) a Scottish firm in which—
    - (i) that director is a partner,
    - (ii) a partner is a person who, by virtue of paragraph (a), (b) or (c) above, is connected with that director, or
    - (iii) a partner is a Scottish firm in which that director is a partner or in which there is a partner who, by virtue of paragraph (a), (b) or (c) above, is connected with that director.
- (3) In subsection (2)—

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- (a) a reference to a child or step-child of any person includes an illegitimate child of his, and
  - (b) paragraph (c) does not apply to a person acting in his capacity as trustee under an employees' share scheme or a pension scheme.
- (4) A director is "associated" with a body corporate if he, his spouse, his child or step-child or a person acting in his capacity as trustee of any trust the beneficiaries of which include the director, his spouse, child or step-child between them, either—
- (a) own at least one-fifth of that body's equity share capital (within the meaning of the <sup>M3</sup>Companies Act 1985), or
  - (b) are entitled to exercise or control the exercise of more than one-fifth of the voting power of that body at any general meeting.
- (5) As regards transactions or arrangements falling within section 65, a "transaction contravening section 65" means a transaction to which subsection (1)(a), (b), (c) or (d) of that section applies and an "arrangement contravening section 65" means an arrangement to which subsection (1)(e) of that section applies and such a transaction or arrangement is made "for" a person if—
- (a) in the case of a loan, disposal or payment within paragraph (a), (b) or (c), it is made, in the case of paragraph (a) or (b), to him or, in the case of paragraph (c) on his behalf;
  - (b) in the case of a guarantee or security within paragraph (d), it is made as an incident of or in connection with a loan or disposal to him or a payment on his behalf; and
  - (c) in the case of an arrangement within paragraph (e), the transaction to which the arrangement relates was made for him.

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

**C16** S. 70 modified (13.1.1993 for certain purposes only and 1.1.1994 for all remaining purposes) by Friendly Societies Act 1992 (c. 40), s. 27, **Sch. 11 Pt. II para. 9(1)(h)(2)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.1**; S.I. 1993/2213, art. 2, **Sch. 5**.

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**Marginal Citations**

**M3** 1985 c. 6.

**Status:**

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