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Building Societies Act 1986

1986 CHAPTER 53

PART VII

MANAGEMENT OF BUILDING SOCIETIES

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.
- (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)

- C1** 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—

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

Modifications etc. (not altering text)

C2 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,

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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 £50,000; 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
 - (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.

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- (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.

Modifications etc. (not altering text)

- C3** 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.
- (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 £2,500;
 - (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 £50,000, 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 £5,000; 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—

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- (a) any payment amounting, when aggregated with any other relevant payment, to no more than £1,000 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 £10,000.
- (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
 - (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

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“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.

Modifications etc. (not altering text)

C4 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
 - (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.

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- (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.

Modifications etc. (not altering text)

- C5** 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

[^{F1}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.

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- (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.

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

F1 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

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- (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,
- 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)

C6 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

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- (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 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)

C7 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**.

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