



Building Societies Act 1986

1986 CHAPTER 53

PART VI

POWERS OF CONTROL OF THE COMMISSION

[^{F1}Powers in relation to principal purpose and nature limits]

Textual Amendments

- F1** S. 36 and cross-heading substituted (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. 13(1), 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(k)

[^{F2}36 Power to direct restructuring of business etc.

- (1) The provisions of this section have effect where, by reason of a building society's failure to comply with—
- the requirement imposed by section 5(1)(a) or (b) (purpose or principal purpose and principal office);
 - the requirement imposed by section 6(1) (the lending limit); or
 - the requirement imposed by section 7(1) (the funding limit),
- the powers conferred by this section become exercisable by the [^{F3}Authority] in relation to the society (the requirements referred to in paragraphs (a), (b) and (c) above being referred to in this section as “the relevant statutory requirements”).
- (2) The [^{F3}Authority] may give the society a direction under subsection (3), (5) or (6) below.
- (3) A direction by the [^{F3}Authority] 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—

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- (a) that the society will, by the end of a specified period, comply with the relevant statutory requirements as applied at the last day of that period, and
 - (b) that it will not thereafter fail to comply with those requirements.
- (4) For the purpose of applying the relevant statutory requirements as directed by subsection (3)(a) above—
- (a) in the case of a requirement which operates by reference to a quarter day, the day as at which the requirements are to be applied shall be treated as such a day; 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 [F3Authority] within the period of three months beginning with that day;
- and subsection (4) of section 81 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 [F3Authority] under this subsection is a direction requiring the society—
- (a) within a specified period, to submit to its members for their approval at a meeting the requisite transfer resolutions for a transfer of the business of the society to a company under section 97; and
 - (b) to notify the [F3Authority] of the result of the meeting.
- (6) A direction by the [Authority] 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 a specified period, to submit to its members for their approval at a meeting 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 [F3Authority] of the option it has decided to pursue.
- (7) Where the [F3Authority] gives a direction under subsection (3), (5) or (6) above, it may also give a direction under this subsection—
- (a) imposing limitations on the issue of shares, the acceptance of deposits or the making of loans;
 - (b) requiring the society within a specified period to take certain steps, or to refrain from adopting or pursuing a particular course of action, or to restrict the scope of its business in a particular way;
 - (c) requiring the society within a specified period to take steps with regard to the conduct of the business of any connected undertaking of the society;
 - (d) requiring within a specified period the removal of any director or other officer.
- (8) Where a restructuring plan is submitted by a society to the [F3Authority] under subsection (3) or (6) above then—
- (a) if it appears to the [F3Authority] that the plan is reasonably likely to secure its purposes, the [F3Authority] 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 [F3Authority] and the society agree on appropriate modifications within the period of 21 days from the date on which the [F3Authority] notifies the society of the modifications it proposes for the

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society's agreement, the [F3Authority] shall approve the plan as modified and direct the society to carry it out;

but otherwise it shall reject the plan.

(9) Where a meeting 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 [F3Authority] 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 [F3Authority] of that fact as soon as it is practicable to do so.

(10) In the event of the [F3Authority] receiving a notice from a society under subsection (9) (b) above, it may, if it thinks fit, serve on the society a direction requiring it, within a specified period, to submit to the [F3Authority] for its approval a restructuring plan; and if the [F3Authority] does so, subsection (8) above shall apply as if the plan had been submitted under subsection (3) above.

(11) The [Authority] 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.

(12) If a building society which has been directed under subsection (8) above to carry out a restructuring plan fails, within the period allowed to it under the foregoing provisions of this section, to secure the purpose of the plan specified in subsection (3)(a) above, the powers conferred on the [F3Authority] by section 36A shall become exercisable in relation to the society.

(13) 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) or (10) 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 given a direction under subsection (7) above, to comply with any requirement imposed by the direction;
- (e) where it has been directed under subsection (8) above to carry out a restructuring plan, to secure the purpose of the plan specified in subsection (3) (a) above;
- (f) to agree to the requisite transfer resolutions submitted to the members in pursuance of subsection (5) or (6) above; or
- (g) 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 [F3Authority] rejects a restructuring plan under subsection (8) above, the powers conferred on the [F3Authority] by section 37 shall become exercisable in relation to the society.

^{F4}(14)

(15) In this section—

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“confirmation”, “the requisite transfer resolutions” and “transfer” have the same meaning as in section 97;

“quarter day” has the same meaning as in sections 6 and 7.

- (16) Nothing in this section implies that it is improper for the [^{F3}Authority] to give to a building society or building societies generally an indication of the action it might or might not take in relation to any proposed activity of theirs.]

Textual Amendments

- F2** S. 36 and cross-heading substituted (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. 13(1), 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(k)
- F3** Words in s. 36(14) substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. II, para. 141(a) (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2(1)
- F4** S. 36(14) repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), Sch. 4 (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2(1)

[^{F5}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 [^{F6}Authority may] 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.
- (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 [^{F7}Authority] 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.

[If the Authority proposes to issue a prohibition order under this section it must give ^{F8}(5) the society a warning notice.

- (5A) If the Authority decides to issue a prohibition order under this section it must give the society a decision notice, and may issue the order at the same time as or after giving the decision notice.
- (5B) A warning notice or decision notice about a prohibition order under this section must set out the terms of the order which the Authority proposes (or has decided) to make, including any saving or transitional provisions to be included in it.

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- (5C) Part XXVI of the Financial Services and Markets Act 2000 (notices) is to be treated as applying in respect of warning notices and decision notices given under this section as it applies in respect of warning notices and decision notices given under that Act, subject to subsection (5D) below.
- (5D) In the application of Part XXVI of that Act in respect of warning notices and decision notices given under this section—
- (a) section 388(1)(e) is to be omitted,
 - (b) section 388(2) (which makes provision for the type of action to which a decision notice may relate if it was preceded by a warning notice) is to be read as if, for the word “Part”, there were substituted the word “ section ”,
 - (c) section 390 (final notices) is to be omitted, and
 - (d) for the purposes of section 391 (publication) a decision notice given under this section is to be treated as if it were a final notice rather than a decision notice.]
- [If the Authority issues a prohibition order under this section it shall serve the order on ^{F9}(6) the society, and shall keep a copy of the order in the public file of the society.]
- (7) A prohibition order so ^{F10} . . . 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 [^{F11}Authority].
- (11) The [^{F11}Authority] 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 [^{F11}Authority] by section 37(1) shall become exercisable in relation to the society; and
 - (b) the [^{F11}Authority] 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
 - (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.

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- (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

- F5** 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(1)
- F6** Words in s. 36A(1) substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. II, para. 142(a) (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2(1)
- F7** Words in s. 36A(4) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. II para. 142(b) (with art. 13(3), Sch. 5)
- F8** S. 36A(5)-(5D) substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) for s. 36A(5) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. II, para. 142(c) (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2(1)
- F9** S. 36A(6) substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. II, para. 142(d) (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2(1)
- F10** Words in s. 36A(7) repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), Sch. 4 (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2(1)
- F11** Words in s. 36A(10)-(12) substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), Sch. 3 Pt. II para. 142(f) (with art. 13(3), Sch. 5); S.I. 2001/3538, art. 2(1)

Modifications etc. (not altering text)

- C1** S. 36A(5) extended (1.12.2001) by S.I. 2001/3592, art. 37(1)(b) (with art. 23(2))

[^{F12}37 Powers to petition for winding up etc.

(1) Where—

- (a) by virtue of section 36(13) the powers conferred by this section become exercisable in relation to a building society;
- (b) by virtue of section 36A(12) the power conferred by this subsection becomes so exercisable; or
- (c) the [^{F13}Authority] has reason to believe that a building society has ceased to comply with the requirement imposed by section 5(1)(a) (purpose or principal purpose),

the [^{F13}Authority] may present a petition to the High Court for the winding up of the society under the applicable winding up legislation; and the power conferred by this subsection is available to the [^{F13}Authority] whether or not it has previously presented a petition.

- (2) Where by virtue of section 36(13) the powers conferred by this section become exercisable in relation to a building society, the [^{F13}Authority] may make an application to the High Court for an order giving directions to the society under subsection (3) below; and the power conferred by this subsection is available to the [^{F13}Authority] whether or not it has previously made an application for such an order.
- (3) An order under this subsection is an order directing the society to comply with a direction under subsection (3), (5), (6), (7) or (10) of section 36 as directed in the order, or to carry out a restructuring plan as so directed.

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- (4) Where the High Court makes an order under subsection (3) above, the [^{F13}Authority] shall [^{F14}keep a copy of the order] 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)(c) above unless it is satisfied that the society has ceased to comply with the requirement imposed by section 5(1)(a).
- (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.]

Textual Amendments

- F12** S. 37 substituted (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. 15**, 47(3); S.I. 1997/2668, art. 2, **Sch. Pt. II(m)**
- F13** Words in s. 37 substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II**, para. 143(a) (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**
- F14** Words in s. 37(4) substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II**, para. 143(b) (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(1)**

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