



# Building Societies Act 1986

## 1986 CHAPTER 53

### PART VI

#### POWERS OF CONTROL OF THE COMMISSION

*[<sup>F1</sup>Powers in relation to principal purpose and nature limits]*

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

- (1) Where by virtue of section 36(12) the powers conferred by this section become exercisable in relation to a building society, the [<sup>F2</sup>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 [<sup>F3</sup>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 <sup>F4</sup>(5) the society a warning notice.

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*Status: Point in time view as at 28/08/2007. This version of this provision has been superseded.*

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- (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.
- (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 <sup>F5</sup>(6) the society, and shall keep a copy of the order in the public file of the society.]
- (7) A prohibition order so <sup>F6</sup>. . . 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 [<sup>F7</sup>Authority].
- (11) The [<sup>F7</sup>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 [<sup>F7</sup>Authority] by section 37(1) shall become exercisable in relation to the society; and
  - (b) the [<sup>F7</sup>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

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- (b) after hearing any witnesses who may be produced against or on behalf of the society and after hearing any statement which may be offered in defence, may punish the society in like manner as if it had been guilty of contempt of the court.
- (14) Where a contravention of a prohibition order which is so certified is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the society he, as well as the society, may be punished in like manner as if he had been guilty of contempt of the court.
- (15) In the application of this section to a building society whose principal office is in Scotland, references to the High Court shall be read as references to the Court of Session.]

#### Textual Amendments

- F1** S. 36A inserted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)(3)(5) of S.I. 1997/2668) by 1997 c. 32, **ss. 14, 47(3)**; S.I. 1997/2668, **art. 2, Sch. Pt. II(I)**
- F2** 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)**
- F3** 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)
- F4** 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)**
- F5** 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)**
- F6** 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)**
- F7** 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))

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