



Building Societies Act 1997

1997 CHAPTER 32

PART II

POWERS OF CONTROL OF COMMISSION

VALID FROM 01/12/1997

13 Power to direct restructuring of business etc.

(1) For section 36 of the 1986 Act there shall be substituted the following section—

“ Powers in relation to principal purpose and nature limits

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—
- (a) the requirement imposed by section 5(1)(a) or (b) (purpose or principal purpose and principal office);
 - (b) the requirement imposed by section 6(1) (the lending limit); or
 - (c) the requirement imposed by section 7(1) (the funding limit),
- the powers conferred by this section become exercisable by the Commission 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 Commission may give the society a direction under subsection (3), (5) or (6) below.
- (3) A direction by the Commission under this subsection is a direction requiring the society, within a specified period, to submit for its approval a plan (in this

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section referred to as a “restructuring plan”) designed to secure the following purposes, that is to say—

- (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 Commission 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 Commission 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 Commission of the result of the meeting.
- (6) A direction by the Commission under this subsection is a direction requiring the society, at its option, either—
- (a) within a specified period, to submit for approval a restructuring plan; or
 - (b) within 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 Commission of the option it has decided to pursue.
- (7) Where the Commission 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 Commission under subsection (3) or (6) above then—

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- (a) if it appears to the Commission that the plan is reasonably likely to secure its purposes, the Commission shall approve it and direct the society to carry it out;
 - (b) if it appears to it that the plan is, with modifications, likely to secure its purposes and the Commission and the society agree on appropriate modifications within the period of 21 days from the date on which the Commission notifies the society of the modifications it proposes for the society's agreement, the Commission shall approve the plan as modified and direct the society to carry it out;
- but otherwise it shall reject the plan.
- (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 Commission is obtained, the society shall proceed under section 97 to transfer its business to a successor company;
 - (b) if either resolution is disagreed to, the society shall notify the Commission of that fact as soon as it is practicable to do so.
- (10) In the event of the Commission 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 Commission for its approval a restructuring plan; and if the Commission does so, subsection (8) above shall apply as if the plan had been submitted under subsection (3) above.
- (11) The Commission may, if it thinks fit, extend or further extend any period during which a building society is to take any steps required of it under any of the foregoing provisions of this section and may do so whether or not application is made to it before the expiry of the period in question.
- (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 Commission 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;

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- (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 Commission rejects a restructuring plan under subsection (8) above, the powers conferred on the Commission by section 37 shall become exercisable in relation to the society.
- (14) The provisions of Schedule 7A to this Act regulating the giving of directions apply in relation to directions under subsection (3), (5), (6), (7) or (10) above.
- (15) In this section—
“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 Commission 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.”
- (2) After Schedule 7 to the 1986 Act there shall be inserted, as Schedule 7A, the provisions set out in Schedule 3 to this Act (supplementary provisions as to directions).

Commencement Information

- II** [S. 13](#) in force at 1.12.1997 by [S.I. 1997/2668](#), [art. 2](#), [Sch. Pt. II](#) (subject as mentioned in [art. 2\(2\)-\(5\)](#) of that S.I.)

VALID FROM 01/12/1997

14 Power to make prohibition orders.

After section 36 of the 1986 Act there shall be inserted the following section—

“36A Power to make prohibition orders.

- (1) Where by virtue of section 36(12) the powers conferred by this section become exercisable in relation to a building society, the Commission may serve on the society a notice of the Commission’s intention to issue a prohibition order directed to the society.
- (2) A prohibition order under this section is an order—
 - (a) prohibiting, subject to the saving or transitional provisions of the order, the continuance or, as the case may be, the carrying on of the activity specified in the order after a date so specified, either absolutely or unless conditions so specified are complied with; and

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- (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 Commission to be just having regard to—
 - (a) the interests of shareholders of and depositors with the society; and
 - (b) the interests of other persons who will be affected by the order.
- (5) A notice under subsection (1) above of the Commission's intention to issue a prohibition order shall—
 - (a) specify the date on which the order is to be issued, being a date not earlier than the end of the period of 21 days beginning with the date of the notice;
 - (b) specify the terms of the order, including any saving or transitional provisions proposed to be included in it; and
 - (c) inform the society of its right to make representations to the Commission, not less than 7 days before the date specified in the order, as to the provisions to be included in the order.
- (6) After considering any representations made by the society, the Commission may make the prohibition order with such saving and transitional provisions (if any) as it thinks just; and where it does so, the Commission—
 - (a) shall issue the order by causing it to be served on the society; and
 - (b) shall direct the central office to keep a copy of it in the public file of the society.
- (7) A prohibition order so made and issued shall, subject to subsection (11) below, take effect on the date specified in the order.
- (8) A copy of any order issued under subsection (6) above shall also be served on each director and on the chief executive of the society.
- (9) The requirement of subsection (8) above, so far as it relates to directors, is satisfied by serving a copy on each director whose appointment has been officially notified and the non-receipt of a copy by a director or the chief executive does not affect the validity of the order.
- (10) Subject to subsection (11) below, a prohibition order shall remain in force until revoked by the Commission.
- (11) The Commission may suspend or revoke a prohibition order so far as it relates to an asset the disposal of which appears to it, on the application of the society, to be impracticable.
- (12) If a society contravenes a prohibition order issued against it under this section—
 - (a) the power conferred on the Commission by section 37(1) shall become exercisable in relation to the society; and

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(b) the Commission may exercise that power or certify the contravention in writing to the High Court, or do both of those things;

but the contravention shall not invalidate any transaction or other act.

(13) On receiving such a certification, the High Court—

(a) may inquire into the case; and

(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.”

Commencement Information

I2 S. 14 in force at 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pt. II (subject as mentioned in art. 2(2)-(5) of that S.I.)

VALID FROM 01/12/1997

15 Powers to petition for winding up etc.

For section 37 of the 1986 Act there shall be substituted the following section—

“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 Commission 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 Commission 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 Commission 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 Commission may

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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 Commission 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.
- (4) Where the High Court makes an order under subsection (3) above, the Commission shall give a copy of it to the central office and the central office shall keep the copy in the public file of the society.
- (5) The High Court shall not make an order winding up the society on an application under subsection (1)(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.”

Commencement Information

- I3** S. 15 in force at 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pt. II (subject as mentioned in art. 2(2)-(5) of that S.I.)

16 Imposition or variation of conditions in urgent cases.

After section 42 of the 1986 Act there shall be inserted the following section—

“42A Imposition or variation of conditions in urgent cases.

- (1) No notice need be given under Part III or Part IV of Schedule 3 to this Act in respect of the imposition of conditions under section 42 in any case in which the Commission considers that the conditions should be imposed as a matter of urgency.
- (2) Conditions imposed under section 42 may be varied by the Commission without the agreement of the building society concerned in any case in which the Commission considers that the conditions should be varied as a matter of urgency.
- (3) In any such case the Commission may by written notice to the building society concerned impose or vary the conditions.
- (4) Any such notice shall state the reasons for which the Commission has acted and particulars of the rights conferred by subsection (6) below and by section 46.
- (5) If conditions as imposed or varied by a notice under subsection (3) above include a requirement for the removal from office of any person who is an officer of the society, the Commission shall give that person—
 - (a) a copy of that notice; and
 - (b) a statement of his rights under subsection (6) below;

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but the Commission may omit from a copy notice given to a person by virtue of this subsection any matter which does not relate to him.

- (6) A building society to which a notice is given under subsection (3) above of the imposition or variation of conditions, and a person who is given a copy of it by virtue of subsection (5) above, may within the period of 14 days beginning with the day on which the notice was given make representations to the Commission.
- (7) After giving a notice under subsection (3) above imposing or varying conditions and taking into account any representations made in accordance with subsection (6) above the Commission shall decide whether—
 - (a) to confirm or rescind its original decision; or
 - (b) to impose different conditions or to vary the conditions in a different manner.
- (8) The Commission shall within the period of 28 days beginning with the day on which the notice was given under subsection (3) above give the building society concerned written notice of its decision under subsection (7) above and, except where the decision is to rescind the original decision, the notice shall state the reasons for the decision.
- (9) Where the notice under subsection (8) above is of a decision to take the action specified in subsection (7) (b) above the notice under subsection (8) shall have the effect of imposing the conditions specified in the notice, or varying the conditions in the manner so specified, with effect from the date on which the notice is given.”

17 Power to direct transfers of engagements or business.

- (1) After section 42A of the 1986 Act there shall be inserted the following section—

“42B Power to direct transfers of engagements or business.

- (1) If, with respect to a building society for which an authorisation is in force, the Commission considers it expedient to do so in order to protect the investments of shareholders or depositors, it may either—
 - (a) direct the society, within a specified period, to transfer all its engagements to one or more other building societies under section 94; or
 - (b) direct the society, within a specified period, to transfer its business to an existing company under section 97.
- (2) Failure by a society to comply with a direction given under subsection (1) shall render it liable to have its authorisation revoked under section 43(1).
- (3) Where the Commission—
 - (a) gives a building society a direction under subsection (1)(a) above; or
 - (b) does not give a building society such a direction solely because the society is already seeking to transfer all its engagements to one or more other building societies under section 94,
 the Commission may, if it considers it expedient to do so in order to protect the investments of shareholders or depositors, direct that, instead of resolving to transfer its engagements by the two resolutions required by section 94(2) (with

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or without the additional resolution required by section 94(3)), the society may resolve to do so by a resolution of the board of directors.

- (4) Where the Commission—
- (a) gives a building society a direction under subsection (1)(b) above; or
 - (b) does not give a building society such a direction solely because the society is already seeking to transfer its business to an existing company under section 97,

the Commission may, if it considers it expedient to do so in order to protect the investments of shareholders or depositors, direct that, instead of approving the transfer and the terms of the transfer by the two resolutions required by section 97(4)(c), the society may approve the transfer and those terms by a resolution of the board of directors.

- (5) A direction under subsection (3) or (4) above—
- (a) shall be in writing;
 - (b) may be given subject to such limitations or conditions as the Commission may think fit; and
 - (c) unless renewed by a further direction, shall cease to have effect at the end of the period of 90 days beginning with the day on which it is given.

- (6) Section 45 has effect for the purpose of any determination whether or not it is expedient to exercise the powers conferred by this section.

- (7) In Schedule 8A to this Act—
- (a) Part I (which contains provisions modifying sections 94 to 96 and Schedule 16 to this Act) shall apply where a direction is given under subsection (3) above; and
 - (b) Part II (which contains provisions modifying sections 97 to 100 and Schedule 17 to this Act) shall apply where a direction is given under subsection (4) above.

- (8) The Commission, with the consent of the Treasury, may make regulations for the purpose of specifying, as prescribed matters—

- (a) the matters of which statements under paragraph 3 of Schedule 8A to this Act are to give particulars; and
- (b) the matters of which statements under paragraph 9 of that Schedule are to give particulars.

- (9) The power to make regulations under this section is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

- (2) Immediately before Schedule 9 to the 1986 Act there shall be inserted, as Schedule 8A, the provisions set out in Schedule 4 to this Act (transfer directions: modifications of Part X).

18 Notification and confirmation of transfer directions.

After section 42B of the 1986 Act there shall be inserted the following section—

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“42C Notification and confirmation of transfer directions.

- (1) A direction under section 42B(1) shall be given by notice in writing and may be varied by a further direction; and a direction may be revoked by the Commission by a notice in writing to the building society concerned.
- (2) A direction under section 42B(1), except one varying a previous direction with the agreement of the building society concerned—
 - (a) shall state the reasons for which it is given and give particulars of the society’s rights under subsection (3) below and section 46; and
 - (b) shall cease to have effect at the end of the period of 28 days beginning with the day on which it is given unless before the end of that period it is confirmed by a further written notice given by the Commission to the society concerned.
- (3) A building society to which a direction is given which requires confirmation under subsection (2) above may, within the period of 14 days beginning with the day on which the direction is given, make written representations to the Commission; and the Commission shall take any such representations into account in deciding whether to confirm the direction.”

19 Revocation: supplementary directions.

After section 43 of the 1986 Act there shall be inserted the following section—

“43A Revocation: supplementary directions.

- (1) The Commission may give a building society directions under this section—
 - (a) when giving it notice that the Commission proposes to revoke its authorisation;
 - (b) at any time after such a notice has been given to the society (whether before or after its authorisation is revoked);
 - (c) when giving the society a notice of revocation under subsection (3)(e) of section 43 where the requisite initial step (within the meaning of that section) is the passing of a resolution for voluntary winding up or the execution of an instrument of dissolution; or
 - (d) at any time after the society has requested the Commission to revoke its authorisation or the central office to cancel its registration.
- (2) Directions under this section—
 - (a) shall be such as appear to the Commission to be desirable in the interests of the society’s shareholders or depositors, whether for the purpose of safeguarding its assets or otherwise; and
 - (b) may relate to any activities of the society, whether or not those for which an authorisation is required.
- (3) Directions under this section may in particular—
 - (a) impose limitations on the issue of shares, the acceptance of deposits or the making of loans;

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- (b) require the society 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) require the society to take steps with regard to the conduct of the business of any connected undertaking of the society;
 - (d) require the removal of any director or other officer.
- (4) No direction shall be given by virtue of paragraph (a) or (b) of subsection (1) above, and any direction given by virtue of either of those paragraphs shall cease to have effect, if—
- (a) the Commission gives the building society notice that it is not proposing to take any further action pursuant to the notice mentioned in that paragraph; or
 - (b) the Commission’s decision to revoke the society’s authorisation is reversed on appeal.
- (5) No direction shall be given by virtue of paragraph (d) of subsection (1) above, and any direction given by virtue of that paragraph shall cease to have effect, if the society’s request to the Commission to revoke its authorisation, or to the central office to cancel its registration, is withdrawn.
- (6) No direction shall be given to a building society under this section after it has ceased to have any liability in respect of shares or deposits for which it had a liability at a time when it was authorised; and any such direction which is in force with respect to a building society shall cease to have effect when the society ceases to have any such liability.
- (7) A building society which fails to comply with any requirement or contravenes any prohibition imposed on it by a direction under this section shall be guilty of an offence and liable—
- (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (8) A contravention of a prohibition imposed under this section shall not invalidate any transaction or other act.”

20 Notification and confirmation of supplementary directions.

After section 43A of the 1986 Act there shall be inserted the following section—

“43B Notification and confirmation of supplementary directions.

- (1) A direction under section 43A shall be given by notice in writing and may be varied by a further direction; and a direction may be revoked by the Commission by a notice in writing to the building society concerned.
- (2) A direction under that section, except one varying a previous direction with the agreement of the building society concerned—
 - (a) shall state the reasons for which it is given and give particulars of the society’s rights under subsection (4) below and section 46; and
 - (b) without prejudice to section 43A(4), (5) and (6), shall cease to have effect at the end of the period of 28 days beginning with the day on

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which it is given unless before the end of that period it is confirmed by a further written notice given by the Commission to the society concerned.

- (3) Where a direction requires the removal of a person as director or other officer of a building society, the Commission shall give that person a copy of the direction (together with a statement of his rights under subsection (4) below) and, if the direction is confirmed, a copy of the notice mentioned in subsection (2)(b) above.
- (4) A building society to which a direction is given which requires confirmation under subsection (2) above and a person who is given a copy of it under subsection (3) above may, within the period of 14 days beginning with the day on which the direction is given, make written representations to the Commission; and the Commission shall take any such representations into account in deciding whether to confirm the direction.
- (5) The Commission may omit from the copies given to a person under subsection (3) above any matter which does not relate to him.”

VALID FROM 01/12/1997

21 The criteria of prudent management.

For section 45 of the 1986 Act there shall be substituted the following section—

“45 The criteria of prudent management.

- (1) If it appears to the Commission that there has been or is, on the part of a building society or its directors, a failure to satisfy any one or more of the following criteria of prudent management, it shall be entitled to assume for the purposes of its relevant prudential powers that the failure is such as to prejudice the security of the investments of shareholders or depositors.
- (2) The prudential powers relevant for the purposes of this section are the Commission’s powers—
 - (a) under section 42, to impose conditions on a society’s authorisation,
 - (b) under section 42B, to direct a society to transfer all its engagements or its business, and
 - (c) under section 43, to revoke a society’s authorisation,
 by reference to the expedience of the imposition, direction or revocation for the protection of the investments of shareholders or depositors.
- (3) For the purposes of this Act, the criteria of prudent management are—
 - (1) Compliance with the requirements imposed by sections 5(1), 6(1) and 7(1), and the restrictions on powers imposed by section 9A(1).
 - (2) Maintenance of—
 - (a) adequate reserves and other capital resources; and
 - (b) own funds which amount to not less than the sum which, for the purposes of section 9, is the prescribed minimum in relation to qualifying capital.

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- (3) Maintenance of adequate assets in liquid form.
 - (4) Maintenance of a system for managing and containing risks to the net worth of the business, and risks to its net income, whether arising from fluctuations in interest or exchange rates or from other factors.
 - (5) Maintenance of the requisite arrangements—
 - (a) for assessing the adequacy of securities for loans which are to be made or acquired by the society or subsidiary undertakings of the society, and are to be substantially secured on land; and
 - (b) for assessing the willingness and ability of borrowers to repay such loans.
 - (6) Maintenance of the requisite accounting records and systems of control of business and of inspection and report.
 - (7) Direction and management—
 - (a) by a sufficient number of persons who are fit and proper to be directors or, as the case may be, officers, in their respective positions,
 - (b) conducted by them with prudence and integrity.
 - (8) Conduct of the business with adequate professional skills.
- (4) Nothing in this section implies that it is improper for a determination for any purpose of the Commission's relevant prudential powers to take account of other factors than the criteria in subsection (3) above.
- (5) A failure to satisfy any of the first six criteria in subsection (3) above shall be treated, for the purposes of this section, as a failure on the part of a society's directors prudently to conduct the affairs of the society.
- (6) A failure on the part of the society to comply with the conditions to which its authorisation is subject shall be treated, for the purposes of this section, as a failure on the part of the society's directors prudently to conduct the affairs of the society.
- (7) The following provisions apply for the interpretation of the list of criteria in subsection (3) above in their application to a building society, that is to say—
- “adequate”, except with reference to liquidity, means adequate having regard to the range and scale of the society's business;
 - “adequate”, with reference to liquidity, means of such proportion and composition as will at all times enable the society to meet its liabilities as they arise and “liquid form”, in relation to assets, shall be construed accordingly;
 - “business” includes business the society proposes to carry on and references to the business of the society include, where it has connected undertakings, references to the business of those undertakings;
 - “requisite”, with reference to the arrangements for assessing the adequacy of securities, means such as may reasonably be expected to ensure—
 - (i) that any person who assesses the adequacy of any security for a loan to be secured on land will have furnished to him a written report on the value of the land; and

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Changes to legislation: There are currently no known outstanding effects for the Building Societies Act 1997, Part II. (See end of Document for details)

- (ii) that any person who assesses the adequacy of any security, or reports on the value of any land, will be competent to perform that task, and will not be subject to any conflict of interest or potential conflict of interest;
- “requisite”, with reference to the arrangements for assessing the ability of borrowers to repay loans, means such as may reasonably be expected to ensure that any person who assesses the ability of any borrower to repay a loan—
- (i) will be competent to perform that task; and
- (ii) will not be subject to any conflict of interest or potential conflict of interest;
- “requisite”, with reference to accounting records and systems of control, means such as are required by section 71;
- “sufficient”, with reference to the number of directors and officers, means sufficient having regard to the range and scale of the society’s business.
- (8) In determining for the purposes of the seventh criterion in subsection (3) above whether a person is a fit and proper person to hold any particular position, regard shall be had, in particular—
- (a) to his probity;
- (b) to his competence and soundness of judgement for fulfilling the responsibilities of that position;
- (c) to the diligence with which he is fulfilling or likely to fulfil those responsibilities; and
- (d) to whether the interests of shareholders or depositors of the society are, or are likely to be, in any way threatened by his holding that position.
- (9) The Treasury may by order vary subsections (3) to (8) above by adding to or deleting from them any provision or by varying any provision contained in them; and an order under this subsection may make—
- (a) different provisions for different descriptions of building societies; and
- (b) such incidental, supplementary and transitional provision as appears to the Treasury to be necessary or expedient.
- (10) The power to make an order under subsection (9) above is exercisable by statutory instrument; but no order shall be made under that subsection unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (11) Nothing in this section shall give rise to any claim against a building society or its directors, or afford a defence to any claim made by a building society.”

Commencement Information

I4 S. 21 in force at 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pt. II (subject as mentioned in art. 2(2)-(5) of that S.I.)

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VALID FROM 01/12/1997

22 Statements of principles etc. by Commission.

After section 45 of the 1986 Act there shall be inserted the following section—

“ General functions of Commission

45AA Statements of principles etc. by Commission.

- (1) The Commission shall, as soon as practicable after the coming into force of this section, publish in such manner and in such detail as it thinks appropriate a statement of the principles in accordance with which it is acting or proposing to act—
 - (a) in exercising its powers of control; and
 - (b) in interpreting the criteria of prudent management.
- (2) If in the course of a financial year the Commission makes a material change in the principles in accordance with which it is acting or proposing to act as mentioned in subsection (1) above, the Commission shall include in the report made by it for that year under section 4 a statement of the change in such detail as it thinks appropriate.
- (3) The Commission may, at any time, publish in such manner and in such detail as it thinks appropriate, either or both of the following, namely—
 - (a) a statement of the principles in accordance with which it is acting or proposing to act as mentioned in subsection (1) above; and
 - (b) a statement containing additional guidance as to the exercise of its powers of control and its interpretation of the criteria of prudent management.
- (4) In this section “powers of control”, in relation to the Commission, means—
 - (a) the powers conferred on it by sections 36, 36A and 37; and
 - (b) its powers to grant or revoke an authorisation, to impose conditions on an authorisation or to direct the making of an application under section 41.”

23 Rights of appeal.

For section 46 of the 1986 Act there shall be substituted the following section—

“46 Rights of appeal.

- (1) A building society which is aggrieved by a decision of the Commission—
 - (a) to refuse to grant authorisation;
 - (b) to revoke authorisation;
 - (c) to impose or vary conditions or as to the conditions imposed or varied;
 - or
 - (d) to give a direction,

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may appeal against the decision to a tribunal constituted in accordance with section 47.

- (2) Any person in relation to whom the Commission, in deciding to refuse to grant or to revoke authorisation, to impose or vary conditions or to give a direction, makes a determination that a person is not a fit and proper person to hold, or as the case may be, to remain in an office in the society or imposes a requirement that he be removed from an office in the society, may appeal against the decision so far as it relates to that determination or requirement.
- (3) The revocation of a society's authorisation, or a direction under section 36(3), (5), (6), (7) or (10), shall not have effect until—
 - (a) the end of the period within which an appeal can be brought against the Commission's decision to revoke the authorisation or give the direction; and
 - (b) if such an appeal is brought, until it is determined or withdrawn.
- (4) Subsection (3) above applies in relation to the expiry of a society's authorisation on a refusal to grant authorisation under section 41 as it applies to the revocation of a society's authorisation.
- (5) Subject to subsection (3) above and any order of the tribunal made under section 47(5), an appeal under subsection (1)(c) or (d) or (2) above shall not affect the operation, pending the determination of the appeal, of any condition or direction which is the subject of the appeal; and no determination of an appeal by any person under subsection (2) above shall affect the revocation or direction for the purposes of which the Commission made its determination or requirement in relation to that person.
- (6) In this section and section 47—

“conditions” means conditions to be complied with by a building society and imposed on the grant of authorisation under section 9, on the renewal of authorisation under section 41, on reauthorisation under section 44, or under section 42, or imposed or varied under section 42A;

“direction” means a direction under section 36(3), (5), (6), (7) or (10), section 42B(1) or section 43A;

“grant” includes renew;

“revoke” means revoke under section 43(1).”

Commencement Information

- I5** S. 23 partly in force; s. 23 not in force at Royal Assent see s. 47(3); s. 23 in force for certain purposes at 9.6.1997 by S.I. 1997/1427, art. 2; S. 23 in force at 1.12.1997 by S.I. 1997/2668, art. 2, **Sch. Pt. II** (subject as mentioned in art. 2(2)-(5) of that S.I.)

24 Determination of appeals.

- (1) For subsections (5) to (8) of section 47 of the 1986 Act (determination of appeals) there shall be substituted the following subsections—
 - “(5) The tribunal may, on the application of the building society concerned, order that the operation of—

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- (a) any condition or variation of a condition; or
- (b) any direction under section 36(3), (5), (6), (7) or (10), section 42B(1) or section 43A,

which is the subject of an appeal by the society be suspended pending the determination of the appeal.

- (6) The tribunal may confirm or reverse the decision which is the subject of the appeal but shall not have power to vary it except by directing the Commission—

- (a) in the case of an appeal against a decision to refuse to grant authorisation, to determine the conditions to which the grant of authorisation is to be subject;
- (b) in the case of an appeal against a decision to revoke authorisation, to determine the conditions or different conditions subject to which the authorisation is to continue in force, as the case may be;
- (c) in the case of an appeal against the imposition of conditions or as to the conditions imposed by the decision, to determine different conditions subject to which the authorisation is to be granted or is to continue, as the case may be;
- (d) in the case of an appeal against the variation of conditions or as to the variation imposed by the decision, to determine different variations of the conditions subject to which the authorisation is to continue;
- (e) in the case of an appeal against the giving of a direction under section 36(3), to give a direction under section 36(5) or (6);
- (f) in the case of an appeal against the giving of a direction under section 36(5), to give a direction under section 36(3) or (6);
- (g) in the case of an appeal against the giving of a direction under section 36(7), section 42B(1) or section 43A, to give a direction imposing different requirements.

- (7) Where by virtue of subsection (6) above the tribunal directs the Commission to determine conditions or different conditions or to determine different variations of conditions—

- (a) the Commission shall by notice to the society concerned impose such conditions, or such variations of conditions, to be complied with by the society as it considers expedient in order to protect the investments of shareholders or depositors;
- (b) Part III of Schedule 3 to this Act shall apply subject to the modifications made by paragraph 9 of that Schedule; and
- (c) the society concerned may appeal to the tribunal against any of those conditions or variations;

and on any such appeal the tribunal may confirm or reverse the Commission's decision with respect to the conditions or variations which are the subject of the appeal or may direct the Commission to determine different conditions or variations.

- (7A) Where by virtue of subsection (6) above the tribunal directs the Commission to give a different direction under section 36—

- (a) the Commission shall by notice to the society concerned give such direction as it considers expedient in order to ensure compliance with the relevant statutory requirements within the meaning of that section;

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- (b) paragraphs 2 and 3 of Schedule 7A to this Act shall apply subject to the modifications made by paragraph 4 of that Schedule; and
- (c) the society concerned may appeal to the tribunal against that direction;

and on any such appeal the tribunal may confirm or reverse the Commission's decision with respect to the direction which is the subject of the appeal or may direct the Commission to give a different direction.

(7B) Where by virtue of subsection (6) above the tribunal directs the Commission to give a different direction under section 43A—

- (a) the Commission shall by notice to the society concerned give such direction as it considers desirable in the interests of shareholders or depositors; and
- (b) the society concerned may appeal to the tribunal against that direction;

and on any such appeal the tribunal may confirm or reverse the Commission's decision with respect to the direction which is the subject of the appeal or may direct the Commission to give a different direction.

(8) Where by virtue of subsection (7), (7A) or (7B) above the tribunal, on an appeal against any conditions or variations of conditions or any direction, directs the Commission—

- (a) to determine different conditions or variations; or
- (b) to give a different direction,

the other provisions of that subsection shall apply as they apply where the tribunal gives such a direction by virtue of subsection (6) above.”

(2) In subsection (10) of that section, for the word “conditions” there shall be substituted the words “ conditions, variations or directions ”.

Commencement Information

I6 S. 24 partly in force; s. 24 not in force at Royal Assent see s. 47(3); s. 24 in force for certain purposes at 9.6.1997 by S.I. 1997/1427, art. 2; S. 24 in force at 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pt. II (subject as mentioned in art. 2(2)-(5) of that S.I.)

Status:

Point in time view as at 09/06/1997. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation:

There are currently no known outstanding effects for the Building Societies Act 1997, Part II.