



# Building Societies Act 1986

## 1986 CHAPTER 53

### PART VI

#### POWERS OF CONTROL OF THE COMMISSION

##### *Powers in relation to authorisation*

#### **41 Power to direct application to renew authorisation**

- (1) If, with respect to a building society for which an authorisation is in force, the Commission has reason to believe that the society's business is or may be being conducted in a way that may not adequately protect the investments of shareholders and depositors then, subject to subsections (2) and (3) below, it may by notice direct the society to make an application under this section to renew its authorisation.
- (2) The power conferred on the Commission by this section is not exercisable more than once during any period of five years during the whole of which the society has held a current authorisation except where, during that period, the society has, under section 94, undertaken to fulfil the engagements of another society.
- (3) A notice under subsection (1) above shall require the society to make the application for renewal within such period as is specified in the notice, being a period not shorter than three nor longer than six months beginning with the date of the notice, but the Commission may, on representations being made to it, extend or further extend the period within which the application is to be made.
- (4) A notice under subsection (1) shall indicate the grounds on which the Commission has decided to give a direction under this section.
- (5) Authorisation, if renewed under this section, shall be granted unconditionally or subject to conditions as provided by subsection (6) or (7) below.
- (6) Subject to subsection (11) below, the Commission, on an application duly made for renewal of authorisation under this section, shall grant unconditional authorisation to the society if it is satisfied that—

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- (a) the society has qualifying capital of an amount which is not less than the prescribed minimum ;
  - (b) the society has adequate reserves and other designated capital resources;
  - (c) the chairman of the board of directors and any executive directors, the chief executive, the secretary and the managers (if any) are each fit and proper persons to hold their respective offices in the society ;
  - (d) the board of directors, with the chief executive and secretary, have the capacity and intention to direct the affairs of the society in accordance with the criteria of prudent management and have secured that those criteria are being satisfied ; and
  - (e) the investments of shareholders and depositors will be adequately protected without the imposition of conditions.
- (7) If the Commission, on an application so made, is not satisfied of the matters specified in subsection (6) above in relation to the society, it shall, subject to subsection (10) below—
- (a) if it is satisfied that the imposition of conditions would secure the protection of the investments of shareholders and depositors, grant authorisation subject to such conditions to be complied with by the society (whether or not they correspond to any conditions in force as respects the current authorisation) as the Commission thinks fit to impose to secure that purpose ; or
  - (b) if not so satisfied, refuse to grant the authorisation;
- and if it refuses to grant authorisation under this section the authorisation current under section 9 shall expire on the date specified by the Commission in the notice of its refusal except where section 46(4) applies.
- (8) If the Commission refuses to grant authorisation to a building society under this section it shall inform the central office of the fact and the date on which the current authorisation of the society expires; and the central office shall record that date in the public file of the society.
- (9) Subsections (6) and (7) of section 9 apply as respects the imposition of conditions on the renewal of authorisation under this section as they apply as respects the imposition of conditions under that section.
- (10) The provisions of Schedule 3 to this Act regulating—
- (a) the making and determination of applications for authorisation,
  - (b) the furnishing of information or additional information in connection with such applications, and
  - (c) the imposition of conditions of authorisation,
- apply in relation to authorisation under this section.
- (11) The making of an application under this section at the direction of the Commission shall not preclude the Commission, at any time while the application is pending, from imposing conditions on the society's authorisation under section 42 or revoking the society's authorisation under section 43 ; but if it revokes the authorisation the proceedings under this section shall abate.
- (12) An authorisation granted under this section shall be treated for the purposes of this Act as an authorisation granted under section 9 and in particular subsection (9) of that section shall apply as if any conditions had been imposed under subsection (5) of that section.

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- (13) Any expression used in this section to which a meaning is given by section 9(13) has that meaning in this section.
- (14) This section shall expire at the end of the period of 5 years beginning with the date on which this Act is passed unless continued in force by an order under subsection (15) below.
- (15) The Treasury may from time to time by order provide that this section shall continue in force for a period not exceeding 5 years from the coming into operation of the order.
- (16) The power to make an order under subsection (15) above is exercisable by statutory instrument but no such order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (17) Section 45 applies for the interpretation of "adequate reserves" and "designated capital resources" in subsection (6) above.

#### **42 Imposition of conditions on current authorisation**

- (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, subject to subsection (7) below, impose conditions to be complied with by the society.
- (2) Section 45 has effect for the purpose of any determination whether or not it is expedient to exercise the powers conferred by this section.
- (3) Failure by a society to comply with conditions imposed under this section shall render it liable, if other conditions are not imposed on it under this section, to have its authorisation revoked under section 43(1).
- (4) The conditions that may be imposed by the Commission under this section may—
  - (a) relate to any activities of the society, whether or not those for which authorisation is required; and
  - (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.
- (5) Without prejudice to the generality of subsection (4) above, conditions imposed under this section may—
  - (a) impose limitations on the issue of shares, the acceptance of deposits or the making of advances or other loans;
  - (b) require the society to take steps with regard to the conduct of the business of any subsidiary or other associated body; and
  - (c) require the removal of any director or other officer.
- (6) The Commission may impose conditions under this section where it proceeded under section 41 or where it proceeded under section 43 with a view to revoking the society's authorisation.
- (7) The Commission shall not impose conditions under this section except in accordance with the provisions of Part III or, where applicable, Part IV of Schedule 3 to this Act; and the other provisions of that Part shall have effect in relation to the imposition of conditions under this section.

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- (8) Conditions imposed under this section—
- (a) may be varied from time to time (and notwithstanding any pending appeal) by agreement between the Commission and the society ; and
  - (b) may be revoked at any time by the Commission if it is satisfied that the investments of shareholders and depositors will be adequately protected without the conditions.
- (9) Any expression used in this section to which a meaning is given by section 9(13) has that meaning in this section.

### **43 Revocation of authorisation**

- (1) The Commission may, subject to subsection (4) below, revoke a building society's authorisation if—
- (a) it appears to the Commission that at no time during a financial year of the society which began and ended during the currency of the authorisation did the society raise funds or accept deposits of money in pursuance of the authorisation;
  - (b) it appears to the Commission that a period of six months has elapsed since the end of a financial year of the society without the society's having sent to it the annual accounts for that year as required by section 81(2);
  - (c) the Commission is satisfied that, where the society's authorisation is subject to conditions, a condition has not been complied with by the society ; or
  - (d) the Commission considers it expedient to do so in order to protect the investments of shareholders or depositors.
- (2) Section 45 has effect for the purposes of any determination whether or not it is expedient to exercise the power conferred by subsection (1)(d) above.
- (3) The Commission shall revoke a building society's authorisation if—
- (a) the society has requested it to revoke its authorisation;
  - (b) the society has requested the central office to cancel its registration;
  - (c) the society has failed, when directed to do so under section 41, to make an application for the renewal of its authorisation within the period allowed under that section;
  - (d) the society has, under section 93 or 94 amalgamated with or transferred all its engagements to another building society; or
  - (e) the requisite initial step has been taken to wind up or dissolve the society.
- (4) The Commission shall not revoke a society's authorisation under subsection (1) above except in accordance with the provisions of Part IV of Schedule 3 to this Act; and the other provisions of that Part shall also have effect in relation to revocation under this section or the imposition of conditions under section 42 instead of revocation under this section.
- (5) Where a society's authorisation is revoked under subsection (1) or (3) above the provisions of subsections (6), (7) and (8) below shall have effect.
- (6) Subject to subsection (7) below, any obligation to make a payment to the society which, by virtue of section 9(1), the society is prohibited from accepting shall be wholly rescinded.

- (7) If, when a society's authorisation is revoked, a member is under an obligation to make payments to the society which represent instalments of the amount due by way of subscription for a share in the society and which, by virtue of section 9(1) the society is prohibited from accepting, the obligation shall (subject to anything in the rules of the society or any agreement between the society and the member) be suspended in respect of each instalment for the period during which no authorisation is in force; and accordingly, if reauthorisation is granted, the sum due shall again become payable by instalments.
- (8) It shall be the duty of the society to make reasonable arrangements for using the funds of the society to meet applications by depositors with or holders of shares in the society (being applications made in accordance with the rules of the society) for repayment of the money deposited or subscribed by them.
- (9) Where a society's authorisation is revoked under this section, the Commission shall inform the central office of the fact and the date on which the revocation takes effect and the central office shall record that date in the public file of the society.
- (10) In this section " the requisite initial step ", with reference to the winding up or dissolution of a building society, means the following—
  - (i) in the case of a winding up by the court, the making of the winding-up order;
  - (ii) in the case of a voluntary winding up, the passing of the resolution for voluntary winding up ;
  - (iii) in the case of dissolution by consent of the members, the execution of the instrument of dissolution.

#### **44 Reauthorisation**

- (1) Where the authorisation of a building society has expired under section 41(7) or been revoked under section 43(1), or (3)(c), the Commission may, on an application duly made for the purpose, grant reauthorisation to the society under this section.
- (2) Reauthorisation is authorisation to raise funds or accept deposits of money to the extent authorisation to do so is required by section 9(1).
- (3) Reauthorisation under this section shall, if granted, be granted unconditionally or subject to conditions as provided by subsection (4) or (5) below.
- (4) The Commission shall grant unconditional reauthorisation to the building society if it is satisfied that—
  - (a) the society has qualifying capital of an amount which is not less than the prescribed minimum ;
  - (b) the society has adequate reserves and other designated capital resources;
  - (c) the chairman of the board of directors and any executive directors, the chief executive, the secretary and the managers (if any) are each fit and proper persons to hold their respective offices in the society ;
  - (d) the board of directors, with the chief executive and secretary, have the capacity and intention to direct the affairs of the society in accordance with the criteria of prudent management and, in so far as those criteria fell to be satisfied before the date of the application, have secured that they are being satisfied ; and
  - (e) the investments of shareholders and depositors will be adequately protected without the imposition of conditions.

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- (5) If the Commission is not satisfied of the matters specified in subsection (4) above in relation to the society it shall—
- (a) if those matters are or include the matters specified in paragraphs (a) and (c), refuse to grant authorisation ;
  - (b) in any other case, if it satisfied that the imposition of conditions would secure the protection of the investments of shareholders and depositors, grant reauthorisation subject to such conditions to be complied with by the society as the Commission thinks fit to impose to secure that purpose ; or
  - (c) if not so satisfied, refuse to grant reauthorisation.
- (6) Subsections (6) and (7) of section 9 apply as respects the imposition of conditions on reauthorisation as they apply as respects the imposition of conditions under that section.
- (7) The provisions of Schedule 3 to this Act regulating—
- (a) the making and determination of applications for authorisation,
  - (b) the furnishing of information or additional information in connection with such applications, and
  - (c) the imposition of conditions of authorisation,
- apply in relation to reauthorisation under this section.
- (8) Reauthorisation granted under this section shall be treated for the purposes of this Act as authorisation granted under section 9 and in particular subsection (9) of that section shall apply as if any conditions had been imposed under subsection (5) of that section.
- (9) On granting reauthorisation under this section, the Commission shall inform the central office and the central office shall record that fact, and the date on which the reauthorisation was granted, in the public file of the society.
- (10) Section 45 applies for the interpretation of "adequate reserves " and " designated capital resources " in subsection (4) above.

#### **45 The criteria for 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 its powers—
- (a) under section 42, to impose conditions on a society's authorisation, and
  - (b) under section 43, to revoke a society's authorisation,
- by reference to its expedience for the protection of the investments of shareholders or depositors.
- (3) For the purposes of this Act, the criteria of prudent management are—
1. Maintenance of adequate reserves and other designated capital resources.
  2. Maintenance of a structure of commercial assets which satisfies the requirements of Part III.
  3. Maintenance of adequate assets in liquid form.

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4. Maintenance of the requisite arrangements for assessing the adequacy of securities for advances secured on land.
  5. Maintenance of the requisite accounting records and systems of control of business and of inspection and report.
  6. 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.
  7. 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) The Commission, with the consent of the Treasury, may, by order in a statutory instrument, specify descriptions of capital resources of building societies which, for the purpose of the first criterion in subsection (3) above, are to be aggregated with reserves for that purpose, to the extent and subject to any conditions specified in the order.
- (6) An instrument containing an order under subsection (5) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) A failure to satisfy any of the first five 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.
- (8) 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.
- (9) Any carrying on by a building society or its subsidiary of an activity which has been determined, whether by the Commission under section 38 or by any court, to have been beyond the powers of the society 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.
- (10) 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 is required by section 21(1) and "liquid form", in relation to assets, means assets which are of an authorised character for the purposes of that subsection;
  - "business" includes business the society proposes to carry on and references to the business of the society include, where other bodies are associated with it, references to the business of those associated bodies;
  - "requisite", with reference to the arrangements for assessing the adequacy of securities, means such as are required by section 13;
  - "requisite", with reference to accounting records and systems of control, means such as are required by section 71;

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"sufficient", with reference to the number of directors and officers, means sufficient having regard to the range and scale of the society's business.