



Building Societies Act 1997

1997 CHAPTER 32

PART II

POWERS OF CONTROL OF COMMISSION

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 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 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;
 - (f) to agree to the requisite transfer resolutions submitted to the members in pursuance of subsection (5) or (6) above; or

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- (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).