

Draft Order laid before Parliament under section 9A(14) of the Building Societies Act 1986, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2018 No.

BUILDING SOCIETIES

**The Building Societies (Restricted Transactions)
(Amendment to the Prohibition on Entering
into Derivatives Transactions) Order 2018**

Made - - - - *****
Coming into force - - *6th April 2018*

In accordance with section 9A(14) of the Building Societies Act 1986(1), a draft of this Order has been laid before Parliament and approved by a resolution of each House of Parliament.

The Treasury, in exercise of the powers conferred by section 9A(11) of the Building Societies Act 1986, makes the following Order.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Building Societies (Restricted Transactions) (Amendment to the Prohibition on Entering into Derivatives Transactions) Order 2018.

(2) This Order comes into force on 6th April 2018.

(3) In this Order, “the Act” means the Building Societies Act 1986.

Amendment of section 9A of the Act

2. Subsection (4) of section 9A of the Act is amended as follows—

(a) at the end of paragraph (b)(vi) omit “or”;

(b) at the end of paragraph (c) insert “; or”;

(c) after paragraph (c) insert—

“(d) it is entered into in order to comply with an obligation imposed by a recognised clearing house or an EEA central counterparty pursuant to Article 37 of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories(2).”.

(1) 1986 c. 53; section 9A was inserted by section 10 of the Building Societies Act 1997 (c. 32).

(2) OJ No. L 201 27.07.12, p. 35.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Building Societies (Restricted Transactions) (Amendment to the Prohibition on Entering into Derivatives Transactions) Order 2018 No. 314*

3. Subsection (9) of section 9A of the Act is amended as follows—

(a) after the definition of “derivative instrument” insert—

““EEA central counterparty” has the meaning given in section 285(1)(c) of the Financial Services and Markets Act 2000(3);”and

(b) after the definition of “market maker” insert—

““recognised clearing house” has the meaning given in section 285(1)(b) of the Financial Services and Markets Act 2000;”.

Date

Name
Name
Two of the Lords Commissioners of Her
Majesty’s Treasury

(3) 2000 c. 8. Section 285(1)(b)-(d) was substituted for section 285(1)(b) by regulation 3(3)(a) of the Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013/504.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the prohibition in section 9A(1)(c) of the Building Societies Act 1986 (c.53) (“the Act”) on building societies, or subsidiary undertakings of building societies, from entering into any transaction involving derivative investments. Article 2 of this Order inserts a new paragraph (d) into section 9A(4) enabling building societies, and subsidiary undertakings of building societies, to enter into transactions involving derivative investments where they are required to do so in order to comply with obligations imposed by Article 37 of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJNo. L 201 27.07.12, p.35). Under Article 37 a central counterparty can impose a requirement on clearing house members to bid on the portfolio of another member’s derivatives, in the event of that member defaulting. The amendment made to the prohibition in section 9A(1)(c) of the Act will enable building societies, and subsidiary undertakings of building societies, to be members of clearing houses where such a requirement exists.

A full regulatory impact assessment has not been produced for this instrument as no significant impact on the private or voluntary sector is foreseen.