



Building Societies Act 1986

1986 CHAPTER 53

PART II

CONSTITUTION OF BUILDING SOCIETIES

Establishment

5 Establishment, constitution and powers.

^{F1}[(1) A society may be established under this Act if (and only if) it complies with the following requirements, namely—

- (a) its purpose or principal purpose is that of making loans which are secured on residential property and are funded substantially by its members; and
- (b) its principal office is in the United Kingdom.]

(2) A society is established under this Act on compliance by the persons establishing it with the scheduled requirements and is incorporated under this Act as from the date of registration by the [^{F2}Authority].

(3) A society incorporated under this Act is referred to in this Act as a “building society”.

(4) A society incorporated under the repealed enactments whose principal office, as registered with the central office immediately before the commencement of this section, was in the United Kingdom, shall be deemed to be registered (and accordingly as incorporated) under this Act.

^{F3}[(4A) If, after its establishment, a building society fails to comply with the requirements imposed by subsection (1)(a) or (b) above—

- (a) the powers conferred on the [^{F2}Authority]] by section 36 or 37 shall become exercisable in relation to the society; but
- (b) the failure shall not affect the validity of any transaction or other act.

^{F4}[(5) Subject to the provisions of this Act, a building society shall have the powers conferred on it by its memorandum.]

Status: Point in time view as at 07/04/2010.

Changes to legislation: Building Societies Act 1986, Part II is up to date with all changes known to be in force on or before 30 April 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (8) Schedule 2 to this Act has effect as respects the constitution, powers, and regulation of building societies and in that Schedule—
- (a) Part I makes provision with respect to the constitution, memorandum, rules and certain incidents of membership;
 - ^{F5}[(b) Part II makes provision with respect to the capacity of a society and the powers of its directors to bind it; and]
 - (c) Part III makes provision with respect to meetings, postal ballots and resolutions;
- ^{F6}[and in this section “scheduled”, with reference to requirements for establishment, means contained in that Schedule]
- (9) Any obligation imposed by this Act or the rules of a building society to give or send notices or other documents to members is subject to paragraph 14 of that Schedule.
- ^{F7}[(10) In this Act “residential property” means land at least 40 per cent of which—
- (a) is normally used as, or in connection with, one or more dwellings; or
 - (b) has been, is being or is to be developed or adapted for such use;
- and for the purposes of this subsection, the area of any land which comprises a building or other structure containing two or more storeys shall be taken to be the aggregate of the floor areas of each of those storeys.]

Textual Amendments

- F1** S. 5(1) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)-(5) of S.I. 1997/2668) by 1997 c. 32, **ss. 1(1)**, 47(3); S.I. 1997/2668, **art. 2, Sch. Pt. II(a)**
- F2** Words in s. 5(2)(4A)(a) substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) by S.I. 2001/2617, **arts. 2, 13(1)** Sch. 3, Pt. II para. 133(a)(b) (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(a)**
- F3** S. 5(4A) inserted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)-(5) of S.I. 1997/2668) by 1997 c. 32, **ss. 1(2)**, 47(3); S.I. 1997/2668, **art. 2, Sch. Pt. II(a)**
- F4** S. 5(5) substituted for s. 5(5)-(7) (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)-(5) of S.I. 1997/2668) by 1997 c. 32, **ss. 1(3)**, 47(3); S.I. 1997/2668, **art. 2, Sch. Pt. II(a)**
- F5** S. 5(8)(b) substituted (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. 3(1)(a)**, 47(3); S.I. 1997/2668, **art. 2, Sch. Pt. II(c)**
- F6** Words in s. 5(8) substituted (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. 3(1)(b)**, 47(3); S.I. 1997/2668, **art. 2, Sch. Pt. II(c)**
- F7** S. 5(10) substituted (1.12.1997 in specified cases and for specified purposes and otherwise in accordance with art. 2(2)-(5) of S.I. 1997/2668) by 1997 c. 32, **ss. 1(4)**, 47(3); S.I. 1997/2668, **art. 2, Sch. Pt. II(a)**

Modifications etc. (not altering text)

- C1** S. 5 applied (with modifications) (5.6.2008) by [The Building Societies \(Financial Assistance\) Order 2008 \(S.I. 2008/1427\)](#), **arts. 1(2), 3(1)(2)**
- C2** S. 5 applied (with modifications) (7.4.2010) by [The Building Societies \(Financial Assistance\) Order 2010 \(S.I. 2010/1188\)](#), **arts. 1(2), 3(1)(2)**
- C3** S. 5(4A) modified (7.4.2010) by [The Building Societies \(Financial Assistance\) Order 2010 \(S.I. 2010/1188\)](#), **arts. 1(2), 3(4), 4(4)**

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C4 S. 5(8)(c) excluded (*temp.*) by S.I. 1986/2168, **art. 3(1)(2)**

^{F8}[Making loans]

Textual Amendments

F8 S. 6 and cross-heading substituted for s. 6 (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. 4, 47(3)**; S.I. 1997/2668, **art. 2, Sch. Pt. II(d)**

6 ^{F9}[The lending limit.]

- (1) A building society shall secure that the difference between—
- (a) the value of X on any quarter day; and
 - (b) the value of Y on that day or the value of Y on the immediately preceding quarter day, whichever is the greater,
- does not exceed 25 per cent of that value of X.

- (2) For the purposes of subsection (1) above—

X = the difference between the total assets of the society and any subsidiary undertakings of the society as shown in the society's accounts and the aggregate of—

- (a) the liquid assets of the society and any such undertakings as shown in those accounts ^{F10} ...;
- (b) the fixed assets of the society and any such undertakings as so shown; and
- (c) where any such undertakings are [^{F11}effecting or carrying out contracts of insurance], such of their assets as shown in those accounts as represent long term insurance funds; and

Y = the principal of, and interest accrued on, loans which are owed to the society or any subsidiary undertaking of the society and are fully secured on residential property;

and for the purposes of this subsection the total assets of a society and any subsidiary undertakings of the society shall be taken to be increased by the amount of any provision made for bad or doubtful debts of the society or any such undertaking.

- (3) Any loans owed to the society or any subsidiary undertaking of the society shall be disregarded for the purposes of the definition of “Y” in subsection (2) above to the extent that they are not included in the total assets of the society and any such undertakings as shown in the society's accounts.
- (4) Any reference in subsection (2) or (3) above to anything being shown in a society's accounts shall be construed—
- (a) in relation to a quarter day on which a financial year of the society ends, as a reference to its being shown in the accounts prepared by the society for that year;
 - (b) in relation to any other quarter day, as a reference to its being shown in the accounts which would have been prepared by the society for the year ending on that day if that year were a financial year of the society.

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- (5) If a building society fails to comply with the requirement imposed by subsection (1) above—
- (a) the powers conferred on the [^{F12}Authority] by section 36 shall become exercisable in relation to the society; but
 - (b) the failure shall not affect the validity of any transaction or other act.
- (6) The Treasury may by order substitute for the percentage specified in subsection (1) above such greater percentage (not greater than 40 per cent) as appears to them to be appropriate; and an order under this subsection may make such supplementary, transitional and saving provision as appears to the Treasury to be necessary or expedient.
- (7) The [^{F13}Treasury may], by order—
- (a) modify subsections (2) and (3) above in their application to assets of subsidiary undertakings;
 - (b) apply those subsections to corresponding assets of associated undertakings; or
 - (c) modify those subsections in their application to such assets.
- (8) An order under subsection (7) above may make—
- (a) different provision for different circumstances;
 - (b) provision for particular assets of undertakings to be disregarded; and
 - (c) such supplementary, transitional and saving provision as appears to the [^{F14}Treasury] to be necessary or expedient.
- (9) The power to make an order under subsection (6) or (7) above is exercisable by statutory instrument.
- (10) No order shall be made under subsection (6) above unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (11) A statutory instrument containing an order under subsection (7) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- [^{F15}(12) In this section “long term insurance funds”, in relation to an undertaking effecting or carrying out contracts of insurance, means funds maintained by it—
- (a) in accordance with asset identification rules (within the meaning of section 142(2) of the Financial Services and Markets Act 2000) in respect of its business in effecting or carrying out contracts of long term insurance; or
 - (b) where it is incorporated in a country or territory outside the United Kingdom, under the corresponding provisions of the law of that country or territory.]

^{F16}[(12A) The definition of X in subsection (2) and subsection (12) must be read with—

 - (a) section 22 of the Financial Services and Markets Act 2000;
 - (b) any relevant order under that section; and
 - (c) Schedule 2 to that Act.]

(13) Where a loan is owed to a lending syndicate of which a building society or connected undertaking of a building society is a member, so much of the loan as is referable to the society’s or undertaking’s participation in the syndicate shall be treated for the purposes of this section and sections 6A and 6B as a loan owed to the society or undertaking.

(14) In this section and section 7—

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“accounts”—

- (a) in relation to a building society without subsidiary undertakings, means individual accounts^{F17} ...;
- (b) in relation to such a society with such undertakings, means group accounts^{F17} ...;

“quarter day”, in relation to a building society, means a day on which a financial year of the society ends, or a day which is three months, six months or nine months after such a day;

and references to any value on a quarter day are references to that value at the close of business on that day.

- (15) If an agreement between the [^{F18}Authority] and a building society so provides, the definition of “quarter day” in subsection (14) above shall have effect in relation to the society as if for any reference to a number of months there were substituted a reference to a number of days specified in the agreement.

- [^{F19}(16) In this section, in the case of societies which produce IAS individual accounts or IAS group accounts;

“fixed assets” means—

- (a) land and buildings;
- (b) plant and machinery;
- (c) equipment, fixtures, fittings and vehicles;
- (d) payments on account and assets in the course of construction; and
- (e) intangible fixed assets.

“liquid assets” means—

- (a) cash and cash equivalents;
- (b) treasury bills and similar securities;
- (c) loans and advances to credit institutions; and
- (d) debt securities and other fixed income securities.]

Textual Amendments

- F9** S. 6 and cross-heading substituted for s. 6 (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. 4, 47(3); S.I. 1997/2668, art. 2, **Sch. Pt. II(d)**
- F10** Words in s. 6(2) omitted (22.12.2004) (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of **The Building Societies Act 1986 (International Accounting Standards and Other Accounting Amendments) Order 2004** (S.I. 2004/3380), art. 1, **Sch. para. 2(2)**
- F11** S. 6(2): Words in para. (c) of the definition of “X” substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 194(2)**
- F12** Words in s. 6(5)(a) 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. 134(a) (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(a)**
- F13** Words in s. 6(7) 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. 134(b)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(a)**
- F14** Word in s. 6(8)(c) 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. 134(c)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(a)**
- F15** S. 6(12) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 194(3)**

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- F16** S. 6(12A) inserted (1.12.2001) by S.I. 2001/3649, **arts. 1, 194(4)**
- F17** Words in s. 6(14) omitted (22.12.2004) (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of [The Building Societies Act 1986 \(International Accounting Standards and Other Accounting Amendments\) Order 2004 \(S.I. 2004/3380\)](#), art. 1, **Sch. para. 2(3)**
- F18** Word in s. 6(15) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, art. 2, 8, 13(1), **Sch. 3 Pt. II para. 134(d)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(a)**
- F19** S. 6(16) inserted (22.12.2004) (with effect in accordance with art. 1(2) of the amending S.I.) by [The Building Societies Act 1986 \(International Accounting Standards and Other Accounting Amendments\) Order 2004 \(S.I. 2004/3380\)](#), art. 1, **Sch. para. 2(4)**

Modifications etc. (not altering text)

- C5** S. 6(1) excluded (5.6.2008) by [The Building Societies \(Financial Assistance\) Order 2008 \(S.I. 2008/1427\)](#), arts. 1(2), **4(1)**
- C6** S. 6(1) excluded (7.4.2010) by [The Building Societies \(Financial Assistance\) Order 2010 \(S.I. 2010/1188\)](#), arts. 1(2), **4**
- C7** S. 6(2) modified (1.1.2005) by [The Building Societies Act 1986 \(Modification of the Lending Limit and Funding Limit Calculations\) Order 2004 \(S.I. 2004/3200\)](#), arts. 1(2), **3**
- C8** S. 6(7)(8): Functions of Building Societies Commission transferred (1.12.2001) to the Treasury by S.I. 2001/2617, arts. 2(b), 4(1), **Sch. 1 Pt. III**; S.I. 2001/3538, **art. 2(a)**

[^{F20}6A Loans secured on land.

- (1) For the purposes of this Act a loan is secured on land if it is secured by—
- (a) a mortgage of a legal estate in land in England and Wales or Northern Ireland;
 - (b) a heritable security over land in Scotland; or
 - (c) a qualifying security over land in an EEA country or territory other than the United Kingdom.
- (2) For the purposes of this Act a loan is also secured on land if—
- (a) it is secured by a mortgage of an equitable interest in land in England and Wales or Northern Ireland;
 - (b) the equitable interest is an equitable interest in land of a description, and is created in circumstances, prescribed in an order made by the ^{F21} . . . Treasury; and
 - (c) any conditions prescribed in the order are complied with;
- and an order under this subsection may apply in relation to securities held by or on behalf of building societies or connected undertakings of a description specified in the order, or securities held by or on behalf of all such societies or undertakings other than those of a description so specified.
- (3) For the purposes of this Act—
- (a) a loan shall be treated as secured by a mortgage of a legal estate in registered land in England and Wales or Northern Ireland notwithstanding that the loan is made before the mortgagor is registered as proprietor of the estate; and
 - (b) a loan shall be treated as secured by a heritable security over land in Scotland notwithstanding that the loan is made before title to that land has been transferred to the debtor in the heritable security.

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- (4) The [^{F22}Treasury may], by order provide for any provisions of this Act to have effect in relation to loans secured on land outside the European Economic Area with such modifications as appear to [^{F23}them] to be appropriate.
- (5) An order under subsection (2) or (4) above may make such incidental, supplementary and transitional provision as appears to the [^{F24}Treasury] to be necessary or expedient.
- (6) The power to make an order under subsection (2) or (4) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In this section and section 6B—
- “EEA country or territory” means a country or territory in the European Economic Area;
- “qualifying security”, in relation to land in an EEA country or territory other than the United Kingdom and a loan, means a security over the land which—
- (a) acknowledges, and requires repayment of, the loan; and
- (b) secures repayment of the loan on the land;
- and for the purposes of this section and that section, the Channel Islands, the Isle of Man and Gibraltar shall be treated as included in the European Economic Area.
- (8) In this Act “land”, in the expression “loan secured on land”, means—
- (a) land in an EEA country or territory; and
- (b) in so far as land in any other country or territory is, under any provision of this Act, land on which loans may be secured, land in that other country or territory.]

Textual Amendments

- F20** S. 6A 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. 5, 47(3); S.I. 1997/2668, art. 2, **Sch. Pt. II(e)**
- F21** Words in s. 6A(2)(b) repealed (1.12.2001) by S.I. 2001/2617, arts. 2(b), 13(2), **Sch. 4** (with art. 13(3), **Sch. 5** and with saving in S.I. 2001/2967, **arts. 1(2), 9(1)(c)**); S.I. 2001/3538, **art. 2(1)**
- F22** Words in s. 6A(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. 135(b)(i)** (with art. 13(3), **Sch. 5**); S.I. 2001/3538, **art. 2(a)**
- F23** Word in s. 6(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. 135(b)(ii)** (with art. 13(3), **Sch. 5**); S.I. 2001/3538, **art. 2(a)**
- F24** Word in s. 6(5) 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. 135(c)** (with art. 13(3), **Sch. 5**); S.I. 2001/3538, **art. 2(a)**

Modifications etc. (not altering text)

- C9** S. 6A(2)(b)(4)(5): Functions of Building Societies Commission transferred (1.12.2001) by S.I. 2001/2617, arts. 2(b), 4(1), **Sch. 1 Pt. III**; S.I. 2001/3538, **art. 2(a)**

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[^{F25}6B Loans fully secured on land.

- (1) For the purposes of this Act a loan which is owed to a building society or a subsidiary undertaking of a building society and is secured on residential property or other land is fully secured on the land if—
 - (a) the principal of, and interest accrued on, the loan does not exceed the value of the requisite security; and
 - (b) no, or no more than one, mortgage of the land which has priority over the society's or undertaking's mortgage is outstanding in favour of an outside person.
- (2) Where a mortgage of the residential property or other land which has priority over the society's or undertaking's mortgage is outstanding, the principal of the loan secured or, in the case of a loan by instalments, intended to be secured by that mortgage shall be deducted from the value of the requisite security for the purposes of subsection (1) (a) above.
- (3) Where the loan is secured on residential property or other land in the United Kingdom, any outstanding charge over the land which—
 - (a) in the case of land in England and Wales, is registered in the appropriate local land charges register;
 - (b) in the case of land in Scotland, is recorded in the Register of Sasines, or registered in the Land Register, under section 108 of the ^{M1}Civic Government (Scotland) Act 1982 or Schedule 9 to the ^{M2}Housing (Scotland) Act 1987;
 - (c) in the case of land in Northern Ireland, is registered in the statutory charges register under section 87 of, and Schedule 11 to, the ^{M3}Land Registration Act (Northern Ireland) 1970,
 shall be disregarded for the purposes of subsections (1)(b) and (2) above.
- (4) Where, on the occasion on which a building society or a subsidiary undertaking of a building society makes or acquires a loan which is secured on land, the society or undertaking is satisfied that the loan is—
 - (a) a loan which is fully secured on residential property;
 - (b) a loan which is not so secured but is fully secured on land; or
 - (c) a loan which is not fully secured on land,
 the loan shall be treated as such a loan for the purposes of this Act until such time (if any) as subsection (7) below applies.
- (5) Subsection (4) above shall have effect in relation to a loan which the society or undertaking makes by two or more payments on different dates as if—
 - (a) the reference to the occasion on which the society or undertaking makes the loan were a reference to the occasion on which it makes the first of the payments;
 - (b) other references to the loan were references to it in its intended maximum amount; and
 - (c) the value of any security for the loan were its expected maximum value.
- (6) Where a building society or a subsidiary undertaking of a building society makes or acquires a loan which is secured on land, the society or undertaking shall be deemed to be satisfied as mentioned in paragraph (c) of subsection (4) above until such time (if any) as it is satisfied as mentioned in paragraph (a) or (b) of that subsection.

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(7) Where at any time, in the case of a loan treated as falling within paragraph (a), (b) or (c) of subsection (4) above, the society or undertaking—

- (a) is satisfied—
 - (i) on a revaluation that the value of the requisite security has changed;
 - (ii) on notice given to it by the borrower that there has been a change in the use of the land;
 - (iii) that so much of the mortgage debt as represents the principal of the loan has changed;
 - (iv) that the principal of the loan secured by a prior mortgage has changed or has been repaid; or
 - (v) that the relative priority of the mortgage of the land on which the loan is secured has changed;
- (b) is also satisfied that the change or repayment is such that, if it were to make a loan equal to the mortgage debt at that time, the loan would instead be a loan falling within another of those paragraphs; and
- (c) in a case falling within paragraph (a)(i) above, elects that this subsection shall apply,

the loan shall be treated as such a loan for the purposes of this Act until such time (if any) as this subsection again applies.

(8) In this section—

“outside person”, in relation to a building society or a subsidiary undertaking of a building society, means any person other than the following, namely—

- (a) the society;
- (b) a subsidiary undertaking of the society;
- (c) a lending syndicate of which the society or such an undertaking is a member; and
- (d) trustees of a trust under which the society or such an undertaking is a beneficiary;

“the requisite security”, in relation to a loan secured on residential property or other land, means—

- (a) the security constituted by the legal estate in, or the heritable or qualifying security over, the land; or
- (b) in a case where an equitable interest in land in England and Wales or Northern Ireland is or is also taken as security, that constituted by that security or, as the case may be, the combined securities;

“trust” includes arrangements—

- (a) which have effect under the law of a country or territory outside the United Kingdom; and
- (b) under which persons acting in a fiduciary capacity hold and administer property on behalf of other persons,

and “beneficiary” and “trustees”, in relation to such arrangements, shall be construed accordingly.

(9) In the application of subsections (1), (2) and (7) above to residential property or other land in Scotland or an EEA country or territory other than the United Kingdom, references to a mortgage of the land shall be construed as references to a heritable or, as the case may require, qualifying security over the land.]

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Textual Amendments

F25 S. 6B 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. 6, 47(3); S.I. 1997/2668, art. 2, **Sch. Pt. II(f)**

Modifications etc. (not altering text)

C10 S. 6B(4)(a) modified (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. 46(1), 47(3), **Sch. 8 para. 6(1)(a)(b)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(y)(aa)(iii)**

C11 S. 6B(4)(b) modified (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. 46(1), 47(3), **Sch. 8 para. 6(1)(c)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(y)(aa)(iii)**

C12 S. 6B(4)(c) modified (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. 46(1), 47(3), **Sch. 8 para. 6(1)(d)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(y)(aa)(iii)**

Marginal Citations

M1 1982 c.45.

M2 1987 c.26.

M3 1970 c.18 (N.I.).

[^{F26}6C Discharge of mortgages.

Schedule 2A to this Act, which contains supplementary provisions as to the discharge of mortgages, shall have effect.]

Textual Amendments

F26 S. 6C inserted (1.12.1997) by 1997 c. 32, s. 7(1); S.I. 1997/2668, art. 2, **Sch. Pt. I(a)**

Raising funds and borrowing

[^{F27} The funding limit.

- (1) A building society shall secure that the difference between—
- (a) the value of X on any quarter day; and
 - (b) the value of Y on that day or the value of Y on the immediately preceding quarter day, whichever is the greater,
- does not exceed 50 per cent of that value of X.

- (2) For the purposes of subsection (1) above—

X = the aggregate of the following, namely—

- (a) the principal value of, and interest accrued on, shares in the society;
- (b) the principal of, and interest accrued on, sums deposited with the society or any subsidiary undertaking of the society; and
- (c) the principal value of, and interest accrued under, bills of exchange, instruments or agreements creating or acknowledging indebtedness and

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accepted, made, issued or entered into by the society or any such undertaking;
and

Y = the principal value of, and interest accrued on, shares in the society held by individuals otherwise than as bare trustees (or, in Scotland, simple trustees) for bodies corporate or for persons who include bodies corporate.

- (3) The following shall be disregarded for the purposes of subsection (2) above, namely—
- (a) any sums or amounts which are own funds; and
 - (b) to the extent that they are not included in the total liabilities of the society and any subsidiary undertakings of the society as shown in the society's accounts—
 - (i) any sums deposited with the society or any such undertaking; and
 - (ii) any indebtedness created or acknowledged by bills of exchange, instruments or agreements accepted, made, issued or entered into by the society or any such undertaking.
- (4) The reference in subsection (3) above to anything being shown in a society's accounts shall be construed—
- (a) in relation to a quarter day on which a financial year of the society ends, as a reference to its being shown in the accounts prepared by the society for that year;
 - (b) in relation to any other quarter day, as a reference to its being shown in the accounts which would have been prepared by the society for the year ending on that day if that year were a financial year of the society.
- (5) If a building society fails to comply with the requirement imposed by subsection (1) above—
- (a) the powers conferred on the [^{F28}Authority] by section 36 shall become exercisable in relation to the society; but
 - (b) the failure shall not affect the validity of any transaction or other act.
- (6) Where an individual declares that he is acquiring any shares in a building society otherwise than as a bare trustee (or, in Scotland, a simple trustee) for a body corporate, or for persons who include a body corporate, he shall, unless the contrary is shown, be conclusively presumed for the purposes of this section to hold the shares otherwise than as such a trustee.
- (7) The [^{F29}Treasury may], by order—
- (a) modify subsections (2) and (3) above in their application to liabilities of subsidiary undertakings;
 - (b) apply those subsections to corresponding liabilities of associated undertakings; or
 - (c) modify those subsections in their application to such liabilities.
- (8) An order under subsection (7) above may make—
- (a) different provision for different circumstances;
 - (b) provision for particular liabilities of undertakings to be disregarded; and
 - (c) such supplementary, transitional and saving provision as appears to the [^{F30}Treasury] to be necessary or expedient.

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- (9) The power to make an order under subsection (7) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

Textual Amendments

- F27** S. 7 substituted (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. 8, 47(3)**; S.I. 1997/2668, **art. 2, Sch. Pt. II(g)**
- F28** Words in S. 7 (5)(a) 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. 136(a)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(a)**
- F29** Words in s. 7(7) 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. I para. 136(b)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(a)**
- F30** Word in s. 7(8)(c) 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. 136(c)** (with art. 13(3), Sch. 4); S.I. 2001/3538, **art. 2(a)**

Modifications etc. (not altering text)

- C13** S. 7 applied (with modifications) (5.6.2008) by *The Building Societies (Financial Assistance) Order 2008* (S.I. 2008/1427), **arts. 1(2), 5(1)**
- C14** S. 7 applied (with modifications) (7.4.2010) by *The Building Societies (Financial Assistance) Order 2010* (S.I. 2010/1188), **arts. 1(2), 5**
- C15** S. 7(2) modified (1.1.2005) by *The Building Societies Act 1986 (Modification of the Lending Limit and Funding Limit Calculations) Order 2004* (S.I. 2004/3200), **arts. 1(2), 4**
- C16** S. 7(2)(3) modified (6.4.2007) by *The Building Societies Act 1986 (Substitution of Specified Amounts and Modification of the Funding Limit Calculation) Order 2007* (S.I. 2007/860), **arts. 1, 3**
- C17** S. 7(2)(c) extended (24.6.2003) by *The Uncertificated Securities (Amendment) (Eligible Debt Securities) Regulations 2003* (S.I. 2003/1633), **reg. 1(1), Sch. 2 para. 11(a)**
- C18** S. 7(3)(b)(ii) extended (24.6.2003) by *The Uncertificated Securities (Amendment) (Eligible Debt Securities) Regulations 2003* (S.I. 2003/1633), **reg. 1(1), Sch. 2 para. 11(b)**
- C19** S. 7(7)(8): Functions of the Building Societies Commission transferred (1.12.2001) to the Treasury by S.I. 2001/2617, **art. 2(b), 4(1), Sch. 1 Pt. III**; S.I. 2001/3538, **art. 2(a)**

[^{F318} **Raising funds and borrowing.**

- (1) Subject to subsection (2) below, a building society shall not do any of the following things, namely—
- (a) accept a deposit from an individual;
 - (b) raise funds from an individual otherwise than by the issue of shares; and
 - (c) raise funds from a body corporate, or from a bare trustee (or, in Scotland, a simple trustee) for a body corporate or for persons who include a body corporate, otherwise than by the issue of deferred shares.
- (2) Nothing in subsection (1)(a) above shall apply in relation to—
- (a) the maintenance on behalf of an individual of a current account, or a deposit account which contains in its title the word “client” or the word “trust” or “trustee”;
 - (b) the issue to an individual of a transferable instrument;

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- (c) the acceptance from an individual of a qualifying time deposit or an overseas deposit; or
 - (d) in the case of a building society which has announced publicly that it intends, in accordance with section 97 and the other applicable provisions of this Act, to transfer the whole of its business to a company, anything done by the society during the period of two years beginning with the date of the announcement.
- (3) The [^{F32}Authority] may, if it thinks fit, extend or further extend the period mentioned in subsection (2)(d) above if written application is made to it before the expiry of that period or that period as extended; and a direction under this subsection—
 - (a) shall be in writing;
 - (b) may be given subject to such limitations or conditions as the [^{F32}Authority] may think fit.
- (4) A contravention of subsection (1) above shall not invalidate any transaction or other act.
- (5) The power of a building society to raise funds by the issue of shares is a power—
 - (a) to issue shares of one or more denominations, whether in sterling or another currency; and
 - (b) to issue them either as shares paid up in full or as shares to be paid by periodical or other payments, and (in either case) with accumulating or other interest;and funds so raised may be repaid when they are no longer required for the purposes of the society.
- (6) In the case of deferred shares, the power of a building society to raise funds by the issue of shares includes the issue of shares at a premium.
- (7) If a building society issues deferred shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to the society's reserves.
- (8) For the purposes of this section the acceptance of deposits (including the issue of debt securities) shall not constitute the raising of funds.
- (9) In this section, in relation to a building society—
 - “overseas deposit” means a deposit which is accepted by a branch or agency of the society in a country or territory outside the United Kingdom and is repayable in such a country or territory;
 - “qualifying time deposit” has the meaning given by section [^{F33} 866(2) and (3) of the Income Tax Act 2007] ;
 - “raise funds” means, subject to subsection (8) above, raise funds by the issue of shares or other securities;
 - “transferable instrument” means an instrument which embodies a transferable right to receive an amount referable to a deposit with the society.
- (10) A right is transferable for the purposes of the definition of “transferable instrument” in subsection (9) above if it is transferable by delivery of the instrument, or it is a right—
 - (a) which may, under the terms of the instrument, be held by any person, or by any person other than a person of a description specified in the instrument;
 - (b) express provision for the transfer of which is included in the instrument; and

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- (c) the transfer of which, under the terms of the instrument, does not require the consent of any person.
- (11) Where an individual declares that he is acquiring any shares in a building society otherwise than as a bare trustee (or, in Scotland, a simple trustee) for a body corporate, or for persons who include a body corporate, he shall, unless the contrary is shown, be conclusively presumed for the purposes of this section to hold the shares otherwise than as such a trustee.
- (12) The [^{F34}Treasury may] by order vary subsections (2), (9) and (10) 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 such supplementary, transitional and saving provision as appears to the [^{F34}Treasury] to be necessary or expedient.
- (13) The power to make an order under subsection (12) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

Textual Amendments

- F31** S. 8 substituted (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. 9, 47(3) (with s. 46(1), Sch. 8 para. 9); S.I. 1997/2668, art. 2, **Sch. Pt. II(h)**
- F32** Words in s. 8(3) 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. 137(a)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(a)**
- F33** Words in s. 8(9) substituted (6.4.2007) by **Income Tax Act 2007 (c. 3), s. 1034(1), Sch. 1 para. 273** (with Sch. 2)
- F34** Words in s. 8(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. 137(b)(i)(ii)**, (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(a)**

Modifications etc. (not altering text)

- C20** S. 8 extended (24.6.2003) by **The Uncertificated Securities (Amendment) (Eligible Debt Securities) Regulations 2003 (S.I. 2003/1633), reg. 1(1), Sch. 2 para. 11(c)**
- C21** S. 8(1)(c) excluded (5.6.2008) by **The Building Societies (Financial Assistance) Order 2008 (S.I. 2008/1427), arts. 1(2), 6**
- C22** S. 8(1)(c) excluded (7.4.2010) by **The Building Societies (Financial Assistance) Order 2010 (S.I. 2010/1188), arts. 1(2), 6**
- C23** S. 8(12): Functions of Building Societies Commission transferred (1.12.2001) to the Treasury by S.I. 2001/2617, **arts. 1(2)(b), 4(1)**, Sch. 1 Pt. III; S.I. 2001/3538, **art. 2(a)**

^{F35}9

Textual Amendments

- F35** S. 9 repealed (1.12.2001) by 2000 c. 8, ss. 334, 336, 338, 432(3), Sch. 18 Pt. III para. 17, **Sch. 22**; S.I. 2001/3538, **art. 2**

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^{F36}[Restrictions on powers]

Textual Amendments

F36 S. 9A and cross-heading 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. 10, 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(i)

^{F37}9A Restrictions on certain transactions.

- (1) Subject to subsections (2) to (4) below, a building society shall not do, and shall secure that each of its subsidiary undertakings does not do, any of the following things, namely—
 - (a) act as a market maker in securities, commodities or currencies;
 - (b) trade in commodities or currencies; and
 - (c) enter into any transaction involving derivative investments;but a contravention of this subsection shall not invalidate any transaction or other act.
- (2) No transaction entered into by a building society, or a subsidiary undertaking of a building society, shall be taken into account for the purposes of subsection (1)(a) above if—
 - (a) it relates only to securities or currencies or both and the amount or value of the consideration given by the society or undertaking does not exceed £100,000; or
 - (b) it is entered into in the society's or undertaking's capacity as the manager of a collective investment scheme.
- (3) No transaction so entered into shall be taken into account for the purposes of subsection (1)(b) above if—
 - (a) it relates only to currencies and the amount or value of the consideration given by the society or undertaking does not exceed £100,000; or
 - (b) it is ancillary or incidental to another transaction entered into by the society or undertaking.
- (4) Nothing in subsection (1)(c) above shall apply in relation to any transaction entered into by a building society, or a subsidiary undertaking of a building society, if—
 - (a) it is entered into in the society's or undertaking's capacity as the manager of a collective investment scheme;
 - (b) it is entered into for the purpose of limiting the extent to which the society, or a connected undertaking of the society, will be affected by changes in any of the following factors, namely—
 - (i) interest rates;
 - (ii) exchange rates;
 - (iii) any index of retail prices;
 - (iv) any index of residential property prices; ^{F38} . . .
 - (v) any index of the prices of securities; ^{F39} and
 - (vi) the ability or willingness of one or more persons to pay or repay a sum or sums owing at law or in equity to the society or a connected undertaking of the society; or]

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- (c) it involves a derivative investment falling within paragraph (d) of the definition in subsection (9) below and it is entered into for the purpose of limiting the extent to which any person will be affected by changes in any interest or exchange rate applicable to—
- (i) a loan owed by him to;
 - (ii) shares held by him in; or
 - (iii) a deposit of his with,
- the society, or a connected undertaking of the society.
- (5) Nothing in subsection (1)(c) above shall apply in relation to any transaction entered into by a subsidiary undertaking of a building society, if it is entered into in the undertaking's capacity—
- [as a person who has permission under Part IV of the Financial Services and Markets Act 2000 to effect or carry out contracts of long-term insurance, or
- ^{F40}(a) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of long-term insurance.]
- ...
- (6) A building society shall also do all that is reasonably practicable to secure that neither it nor any of its subsidiary undertakings (either alone or with any or any others of those undertakings)—
- (a) holds at any time more than 5 per cent of the issued share capital; or
 - (b) is at any time entitled to exercise, or to control the exercise of, more than 5 per cent of the voting power at any general meeting,
- of an undertaking which is, at that time, doing any of the things which the society is prohibited from doing by subsection (1) above, or an undertaking whose subsidiary undertaking is, at that time, doing any of those things.
- (7) The monetary limit in subsection (2) or (3) above refers to the time when the transaction is entered into; and where the amount or value of the consideration there referred to is not in sterling, it shall be converted at the rate of exchange prevailing at that time.
- (8) For the purposes of subsection (2) or (3) above, two or more transactions which form part of a larger transaction or series of transactions shall be treated as a single transaction.
- (9) In this section—
- “collective investment scheme” has the same meaning as in the [^{F41}Financial Services and Markets Act 2000];
- “commodity” means any produce of agriculture, forestry or fisheries, or any mineral, either in its natural state or having undergone only such processes as are necessary or customary to prepare the produce or mineral for the market;
- [^{F42}“derivative investment” means an investment of the following kinds—
- (a) instruments giving entitlements to investments;
 - (b) options;
 - (c) futures;
 - (d) contracts for differences;]

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“market maker” means, subject to subsection (10) below, a person who holds himself out as willing at all normal times to buy or sell at a price specified by him securities, commodities or currencies of a particular description;

“securities” means shares, stock, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme and other securities of any description.

[Subsection (5) and the definition of “derivative investment” in subsection (9) must^{F43}(9A) be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act;]

(10) A building society, or subsidiary undertaking of a building society, shall not by reason of holding itself out as willing to issue its own securities be regarded for the purposes of this section as acting as a market maker in such securities.

(11) The Treasury may by order vary subsections (1) to (10) above by adding to or deleting from them any provision or by varying any provision contained in them.

(12) [^{F44}The Treasury may] by order—

- (a) substitute for the amount specified in subsection (2) or (3) above, or for the percentage specified in subsection (6) above, such other amount or percentage as they think appropriate; or
- (b) vary subsection (4)(b) above by adding to or deleting from it any reference to a factor or by varying any reference to a factor contained in it.

(13) An order under subsection (11) or (12) above may make—

- (a) different provision for different cases or purposes; and
- (b) such supplementary, transitional and saving provision as appears to the Treasury^{F45} . . . to be necessary or expedient;

and the power to make such an order is exercisable by statutory instrument.

(14) No order shall be made under subsection (11) above unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.

(15) A statutory instrument containing an order under subsection (12) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

Textual Amendments

F37 S. 9A and cross-heading 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. 10, 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(i)

F38 Word in s. 9A(4) omitted (1.7.2001) by virtue of S.I. 2001/1826, art. 2(a)

F39 S. 9A(4)(b)(vi) and the word "and" immediately preceding inserted (1.7.2001) by S.I. 2001/1826, art. 2(b)

F40 . 9A(5)(a)(b) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 195(2)(a)

F41 Words in the definition of "collective investment scheme" in s. 9A(9) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 195(3)(a)

F42 Definition of "derivative investment" in s. 9A(9) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 195(3)(b)

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- F43** S. 9A(9A) inserted (1.12.2001) by S.I. 2001/3649, **arts. 1, 195(4)**
- F44** Words in s. 9A(12) substituted (17.8.2001 for certain purposes and otherwise prosp.) by S.I. 2001/2617, **arts. 2(a), 8, 13(1), Sch. 3 Pt. II, para. 138 (a)(i)(ii)** (with art. 13(3), Sch. 5)
- F45** Words in s. 9A(13)(b) repealed (1.12.2001) by S.I. 2001/2617, **arts. 2, 13(2), Sch. 4** (with art. 13(3), Sch. 5); S.I.2001/3538, art. 2(a)

Modifications etc. (not altering text)

- C24** S. 9A(12): Functions of Building Societies Commission transferred (1.12.2001) to the Treasury by S.I. 2001/2617, **arts. 2(b), 4(1), Sch. 1 Pt. III; S.I. 2001/3538, art. 2(a)**

^{F46}9B Restriction on creation of floating charges.

- (1) A building society shall not create a floating charge on the whole or part of its undertaking or property.
- (2) A floating charge created in contravention of this section shall be void.]

Textual Amendments

- F46** S. 9B inserted (9.6.1997) by 1997 c. 32, **s. 11; S.I. 1997/1427, art. 2**

Modifications etc. (not altering text)

- C25** S. 9B(1) excluded (5.6.2008) by **The Building Societies (Financial Assistance) Order 2008 (S.I. 2008/1427), arts. 1(2), 7(1)**
- C26** S. 9B(1) excluded (7.4.2010) by **The Building Societies (Financial Assistance) Order 2010 (S.I. 2010/1188), arts. 1(2), 7(1)**
- C27** S. 9B(2) excluded (5.6.2008) by **The Building Societies (Financial Assistance) Order 2008 (S.I. 2008/1427), arts. 1(2), 7(2)**
- C28** S. 9B(2) excluded (7.4.2010) by **The Building Societies (Financial Assistance) Order 2010 (S.I. 2010/1188), arts. 1(2), 7(2)**

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