



Building Societies Act 1986

1986 CHAPTER 53

PART II

CONSTITUTION OF BUILDING SOCIETIES

[^{F1}Making loans]

Textual Amendments

- F1** 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)

^{F26} 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 in pursuance of regulations under section 73(7);
- (b) the fixed assets of the society and any such undertakings as so shown; and
- (c) where any such undertakings are insurance companies within the meaning of the ^{M1}Insurance Companies Act 1982, such of their assets as shown in those accounts as represent long term insurance funds; and

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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.
- (5) If a building society fails to comply with the requirement imposed by subsection (1) above—
 - (a) the powers conferred on the Commission 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 Commission may, with the consent of the Treasury, 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 Commission 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.

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- (12) In this section “long term insurance funds”, in relation to an insurance company within the meaning of the ^{M2}Insurance Companies Act 1982, means funds maintained by it—
- (a) under section 28(1)(b) of that Act (assets attributable to long term business); 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.
- (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—
- “accounts”—
- (a) in relation to a building society without subsidiary undertakings, means individual accounts under subsection (1) of section 72;
 - (b) in relation to such a society with such undertakings, means group accounts under subsection (2) of that section;
- “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 Commission 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.]

Textual Amendments

- F2** 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)

Marginal Citations

- M1** 1982 c.50.
M2 1982 c.50.

[^{F3}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;

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- (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 Commission with the consent of the 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.
- (4) The Commission may, with the consent of the Treasury, 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 the Commission to be appropriate.
- (5) An order under subsection (2) or (4) above may make such incidental, supplementary and transitional provision as appears to the Commission 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

- F3** [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\(e\)](#)

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[^{F4}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 ^{M3}Civic Government (Scotland) Act 1982 or Schedule 9 to the ^{M4}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 ^{M5}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

- F4** 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)

- C1** 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)
- C2** 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)
- C3** 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

- M3** 1982 c.45.
M4 1987 c.26.
M5 1970 c.18 (N.I.).

[^{F5}6C Discharge of mortgages.

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

Textual Amendments

- F5** S. 6C inserted (1.12.1997) by 1997 c. 32, s. 7(1); S.I. 1997/2668, art. 2, Sch. Pt. I(a)

Status:

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