



Building Societies Act 1986

1986 CHAPTER 53

PART III

ADVANCES, LOANS AND OTHER ASSETS

Class 1 advances and class 2 advances secured on land

10 Advances secured on land

- (1) A building society may make advances to members (in this Act referred to as "advances secured on land") secured by—
 - (a) a mortgage of a legal estate or, as provided under subsection (6) below, an equitable interest in land in England and Wales or Northern Ireland, or
 - (b) a heritable security over land in Scotland,and for that purpose may (in England and Wales or Northern Ireland) hold land with the right of foreclosure.
- (2) Advances secured on land may, in accordance with sections 11 and 12—
 - (a) be fully or partly secured by a mortgage of the legal estate or equitable interest in land in England and Wales or Northern Ireland, or
 - (b) be fully secured by a heritable security over land in Scotland,and in this Part "the basic security" means the security constituted by the legal estate in or heritable security over the land or, in a case where an equitable interest in land in England and Wales or Northern Ireland is or is also taken as security by virtue of this section, that constituted by that security or, as the case may be, the combined securities; and a reference to the land which is to secure an advance or on which an advance is secured is a reference to the estate or interest or the heritable security which constitutes or will constitute the basic security.
- (3) The power to make an advance secured on land includes power, subject to the restriction imposed by subsection (4) below, to make, as a separate advance, an advance which is to be applied in or towards payment of the deposit for the purchase of the land (in this Part referred to as "an advance for a deposit for the purchase of land.")

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- (4) The restriction referred to is that an advance for a deposit for the purchase of land must not exceed 10 per cent, of the total amount to be paid for the purchase of the land.
- (5) An advance shall be treated for the purposes of this Act as secured by a mortgage of a legal estate in registered land in England and Wales or Northern Ireland notwithstanding that the advance is made before the borrower is registered as proprietor of the estate.
- (6) A building society may advance money on the security of an equitable interest in land in England and Wales or Northern Ireland if 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 under this subsection and any conditions prescribed in the order are complied with.
- (7) Any powers conferred on building societies by an order under subsection (6) above may be conferred on building societies of a description specified in the order or all building societies other than those of a description so specified.
- (8) The power to make an order under subsection (6) above includes power—
- (a) to prescribe the circumstances in which the power conferred by section 17(10) on building societies of the description specified therein is to be available to them ; and
 - (b) to make such incidental, supplementary and transitional provision as the Commission considers necessary or expedient.
- (9) An instrument containing an order under subsection (6) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) The power to make advances secured on land includes power to make them on terms that include provision as respects the capital element in the mortgage debt (with or without similar provision as respects the interest element)—
- (a) that the amount due to the society may be adjusted from time to time by reference to such public index of prices other than housing prices as is specified in the mortgage;
 - (b) that the amount due to the society may be adjusted from time to time by reference to such public index of housing prices as is specified in the mortgage;
 - (c) that the amount due to the society at any time shall be determined by reference to a share, specified or referred to in the mortgage, in the open market value of the property at that time;
- and, in cases where the amount due to the society in respect of capital exceeds the amount advanced, references in this Act to the repayment of an advance include references to payment of the excess.
- (11) Advances secured on land shall be classified for the purposes of the requirements of this Part for the structure of commercial assets into—
- (a) class 1 advances, and
 - (b) class 2 advances ;
- and in this Act " advances fully secured on land " means advances which are class 1 or class 2 advances, and any reference to " fully secured " shall be construed accordingly.
- (12) Nothing in this section or section 11 or 12 is to be taken as precluding a society from taking other security for an advance secured on land than such security as is required

for an advance to be a class 1 or class 2 advance under those sections; but the value of the other security shall be disregarded for the purpose of classifying the advance as a class 1 or class 2 advance.

11 Class 1 and class 2 advances

- (1) The provisions of this section and section 12 define what is a class 1 advance and what is a class 2 advance for the purpose of the requirements of this Part for the structure of commercial assets and when an advance may, for those purposes, be treated partly as a class 1 advance and partly as a class 2 advance.
- (2) Class 1 advances are advances as to which the society when it makes the advance is satisfied that the advance is an advance secured on land and that—
 - (a) the borrower is an individual;
 - (b) the land is for the residential use of the borrower or a dependant of his of a prescribed description ;
 - (c) the amount advanced will not exceed the value of the basic security (after deducting from that value any mortgage debt of the borrower to the society outstanding under a mortgage of the land); and
 - (d) subject to subsection (5) below, no other mortgage of the land which is to secure the advance is outstanding in favour of a person other than the society ;and which are not made on terms as respects the capital element of the mortgage debt authorised by section 10(10)(b) or (c).
- (3) Subject to any order made under section 12(1), the requirement in subsection (2)(b) above shall be treated as satisfied if no less than 40 per cent, of the area of the land is used for residential purposes by the borrower or a dependant of his of a prescribed description.
- (4) Class 2 advances are advances as to which the society when it makes the advance—
 - (a) either is not satisfied that the requirements for the time being of subsection (2) above are fulfilled or is satisfied that any of them is not fulfilled, but
 - (b) is satisfied that the advance is an advance secured on land, and
 - (c) is satisfied, where the amount advanced will exceed the value of the basic security (after deducting from that value any mortgage debt of the borrower outstanding under a mortgage of the land), that the excess will be secured by the taking of security of a prescribed description in addition to the basic security, and
 - (d) is satisfied that no, or no more than one, other mortgage of the land which is to secure the advance is outstanding in favour of a person other than the society.
- (5) The requirement in subsection (2)(d) and (4)(d) above shall be treated as satisfied if the advance is made on terms that the other mortgage is redeemed or postponed to the basic security.
- (6) An advance for a deposit for the purchase of land is also a class 1 or class 2 advance according as it is made with a view to the making of a class 1 or class 2 advance secured on the land.
- (7) Advances which would be class 2, and not class 1, advances by reason only that the extent of the residential use of the land is not such as to satisfy the requirement in subsection (2)(b) above shall be treated as class 1 advances if and to the extent prescribed by an order under section 12(5).

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- (8) For the purposes of the requirements of this Part for the structure of commercial assets—
- (a) class 1 advances constitute class 1 assets, and
 - (b) class 2 advances constitute class 2 assets,
- and accordingly the aggregate amount of mortgage debts outstanding in respect of class 2 advances counts in accordance with section 20 towards the limit applicable to class 2 assets under that section.
- (9) For the purposes of subsections (2) and (4) above, where a building society makes an advance by instalments, any reference to the time when the society makes the advance is a reference to the time when it pays the first of the instalments, disregarding for this purpose any instalment which is to be applied towards payment of the deposit in respect of the purchase of the land which is to secure the advance.
- (10) Subject to subsection (11) below, any land to which a building society becomes absolutely entitled by foreclosure or by release or other extinguishment of a right of redemption—
- (a) shall as soon as may be conveniently practicable be sold or converted into money; and
 - (b) shall, until the sale or conversion, constitute a class 1 asset if the advance secured on the land was a class 1 advance and a class 2 asset if it was a class 2 advance.
- (11) Where a building society which has for the time being adopted the powers conferred by section 17 becomes entitled to land as mentioned in subsection (10) above, and the land is land that may be held under that section, then, if the society—
- (a) elects to hold the land under that section, or
 - (b) without such an election, retains the land after the expiry of the period of twelve months immediately following the date on which it so becomes entitled to the land,
- the society shall be taken to hold the land under that section.
- (12) An election under subsection (11) above shall be made by resolution of the board of directors and shall be irrevocable.
- (13) If a building society contravenes subsection (10) above the society shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale and so shall any officer who is also guilty of the offence.
- (14) For the purposes of this Act, the mortgage debt at any time, in relation to an advance secured on land, is the total amount outstanding at that time in respect of—
- (a) the principal of the advance;
 - (b) interest on the advance; and
 - (c) any other sum which the borrower is obliged to pay the society under the terms of the advance.
- (15) The reference in subsection (10) above to land to which a building society becomes absolutely entitled by foreclosure includes a reference to land which a building society has acquired by virtue of a decree of foreclosure under section 28 of the Conveyancing and Feudal Reform (Scotland) Act 1970.

12 Class 1 and class 2 advances: supplementary provisions

- (1) The Commission, by order in a statutory instrument, may as respects class 1 advances—
 - (a) specify the circumstances in which land is for a person's residential use,
 - (b) specify who are to be a person's dependants, and
 - (c) make such other incidental and supplementary and such transitional provision as the Commission considers necessary or expedient,for the purposes of section 11 (2); and in that subsection " prescribed " means prescribed in an order under this subsection.
- (2) Without prejudice to the generality of subsection (1)(c) above, an order may prescribe evidence on which a building society is to be entitled to be satisfied (in the absence of evidence to the contrary) that the requirements of section 11(2) are fulfilled as respects an advance secured on land.
- (3) The Commission, by order in a statutory instrument, may as respects class 2 advances—
 - (a) specify descriptions of security falling within this subsection which, for the purposes of paragraph (c) of section 11(4), may be taken for class 2 advances in addition to the basic security; and
 - (b) make such other incidental or supplementary and such transitional provision as it considers necessary or expedient for the purposes of paragraph (c) or (d) of that subsection;and in that subsection " prescribed " means prescribed in an order under this subsection.
- (4) The descriptions of additional security which fall within subsection (3)(a) above are guarantees, indemnities or other contractual promises made by virtue of, or by a public body established by or under, any enactment for the time being in force.
- (5) The Commission, by order in a statutory instrument, may, as respects advances to be secured on land which is to any extent to be used for the residential use of borrowers or persons who are dependants of theirs for the purposes of section 11(2)—
 - (a) require so much of the amount to be advanced as is determined by or under the order to be treated as a class 1 advance;
 - (b) specify the circumstances in which and the conditions subject to which advances are to be so treated; and
 - (c) make such incidental, supplementary and transitional provision as the Commission considers necessary or expedient.
- (6) The Commission shall not make an order under this section, except with the consent of the Treasury.
- (7) An instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) For the purpose of facilitating the repayment to a building society of a class 1 advance or a class 2 advance, the society may make to the borrower, by way of addition to the advance, a further advance of or towards the cost of a single premium payable in respect of an appropriate policy of life assurance; and a sum added to an advance under this subsection shall be treated as not forming part of the advance for the purpose of determining whether the requirements of section 11 (2) or (4) are satisfied with respect to the advance.

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- (9) Where an advance secured on land in England and Wales or Northern Ireland is made, then, for the purpose of determining whether the land is subject to a prior mortgage for the purposes of section 11(2)(d) or (4)(d) above, any outstanding charge over the land which is registered—
- (a) in the case of land in England and Wales, in the appropriate local land charges register, and
 - (b) in the case of land in Northern Ireland, in the statutory charges register under section 87 of, and Schedule 11 to, the Land Registration Act (Northern Ireland) 1970,

shall be disregarded.

- (10) If at any time when a class 1 advance or a class 2 advance secured on land is outstanding the building society—
- (a) is satisfied on a revaluation that the value of the basic security has changed,
 - (b) is satisfied that so much of the mortgage debt as represents the principal of the advance has changed,
 - (c) is satisfied on notice given to it by the borrower that there has been a change in the use of the land, or
 - (d) agrees to a change in the relative priority of the mortgage on which the advance is secured,

and is satisfied that the change is such that, if it were to make an advance equal to the mortgage debt at that time, the advance would instead be a class 2 advance or a class 1 advance, as the case may be, the advance shall be reclassified as from that time.

- (11) Nothing in subsection (10) above requires a building society to revalue its securities from time to time.
- (12) Every building society shall establish and maintain a system to ensure the safe custody of all documents relating to property mortgaged to the society.
- (13) In this section "appropriate policy of life assurance", with reference to an advance, means a policy of insurance which satisfies the following requirements, that is to say—
- (a) the life assured is that of the person to whom the advance is made or his spouse, his son or his daughter, and
 - (b) it provides, in the event of the death, before the advance has been repaid, of the person on whose life the policy is effected, for payment of a sum not exceeding the amount sufficient to defray the sums which are, at and after the time of the death, payable to the society in respect of the advance and any addition made in respect of the premium.

13 Security for advances: valuation and supplementary and related provisions

- (1) It shall be the duty of every director of a building society to satisfy himself that the arrangements made for assessing the adequacy of the security for any advance to be fully secured on land which is to be made by the society are such as may reasonably be expected to ensure that—
- (a) an assessment will be made on the occasion of each advance whether or not any previous assessment was made with a view to further advances or re-advances;

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- (b) each assessment will be made by a person holding office in or employed by the society who is competent to make the assessment and is not disqualified under this section from making it;
- (c) each person making the assessment will have furnished to him a written report on the value of the land and any factors likely materially to affect its value made by a person who is competent to value, and is not disqualified under this section from making a report on, the land in question ;

but the arrangements need not require each report to be made with a view to a particular assessment so long as it is adequate for the purpose of making the assessment.

- (2) In relation to any land which is to secure an advance, the following persons are disqualified from making a report on its value, that is to say—
 - (a) the directors and any other officer or employee of the society who makes assessments of the adequacy of securities for advances secured on land or who authorises the making of such advances;
 - (b) where the society has made, or undertaken to make, to any person a payment for introducing to it an applicant for the advance, that person ;
 - (c) where the advance is to be made following a disposition of the land, any person having a financial interest in the disposition of the land and any director, other officer or employee of his or of an associated employer ; and
 - (d) where the advance is to be made following a disposition of the land, any person receiving a commission for introducing the parties to the transaction involving the disposition and any director, other officer or employee of his.
- (3) In relation to any land which is to secure an advance where the advance is to be made following a disposition of the land, the following persons are disqualified from making an assessment of the security or authorising the making of the advance, that is to say—
 - (a) any person, other than the building society making the advance, having a financial interest in the disposition of the land and any director, other officer or employee of his or of an associated employer; and
 - (b) any person receiving a commission for introducing the parties to the transaction involving the disposition and any director, other officer or employee of his.
- (4) Any person who, being disqualified from doing so—
 - (a) makes a report on any land which is to secure an advance,
 - (b) makes an assessment of the adequacy of the security for an advance, or
 - (c) authorises the making of an advance,and in the case of a person making a report does so knowing or having reason to believe that the report will be used or is likely to be used for the purposes of the advance, shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (5) For the purposes of this section, any two employers are associated if one is a body corporate of which the other (directly or indirectly) has control or if both are bodies corporate of which a third person directly or indirectly has control; and the expression " associated employer " shall be construed accordingly.
- (6) In this section " commission " includes any gift, bonus or benefit and, for its purposes, a person shall be taken to have a financial interest in the disposition of any land if, but only if, he would, on a disposition of that land, be entitled (whether directly or indirectly, and whether in possession or not) to the whole or part of the proceeds of the disposition.

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- (7) Schedule 4 to this Act, which contains supplementary provisions as to mortgages, shall have effect.

Other advances secured on land

14 Power to make advances secured on land overseas

- (1) The appropriate authority may, with a view to conferring on building societies or building societies of particular descriptions powers to make advances to members secured on land outside the United Kingdom corresponding to the powers to make advances secured on land within the United Kingdom, by order—
- (a) designate countries or territories outside the United Kingdom as countries or territories as respects which advances under this section may be made secured on the land;
 - (b) specify, or provide for the specification by direction of the Commission under the order of, the forms of security on land which may be taken for advances under this section, in any prescribed circumstances and subject to any prescribed conditions ;
 - (c) determine, or provide for the determination under the order of, the classification of the advances (and accordingly of the mortgage debts) as class 1 advances or class 2 advances for the purposes of the requirements of this Part for the structure of commercial assets;
 - (d) provide for the application of the provisions of this Part applicable to advances secured on land to advances under this section with such modifications as appear to be appropriate;
 - (e) provide for any other provisions of this Act to have effect in relation to advances under this section with such modifications as appear to be appropriate ; and
 - (f) make such incidental, supplemental or transitional provision as appears to be necessary or expedient.
- (2) Any powers conferred on building societies under this section may be conferred on building societies of a specified description or all building societies other than those of a specified description.
- (3) Where, by virtue of an order under subsection (1) above, advances are made by a building society on the security of land outside the United Kingdom, the aggregate amount of mortgage debts outstanding in respect of such of those advances as are class 2 advances under the order shall count in accordance with section 20 towards the limit applicable to class 2 assets under that section.
- (4) Subsection (3) above is subject to any provision contained in the order.
- (5) The " appropriate authority " for making an order under subsection (1) above is—
- (a) as regards the relevant British overseas territories, the Commission acting with the consent of the Treasury, and
 - (b) as regards other countries or territories, the Treasury.
- (6) An order under this section made as regards any of the relevant British overseas territories may make all or any of the powers conferred thereby exercisable by building societies without the need for adoption, but, in the absence of such a provision any

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power conferred under this section must, in order to be exercisable by a building society, be adopted by the society.

- (7) The power to make an order under subsection (1) above is exercisable by statutory instrument and, as regards the procedure applicable to such an order.—
- (a) if the instrument designates other countries or territories than any of the relevant British overseas territories, the order shall not be made unless a draft of it has been laid before and approved by resolution of each House of Parliament, and
 - (b) if the instrument designates any relevant British overseas territory and no other country or territory, the instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) In this section—
- " relevant British overseas territories " means the Channel Islands, the Isle of Man and Gibraltar ;
 - " security on land " includes any right or power in or over land to secure the payment of a debt and " secured on land " has a corresponding meaning ;
 - " specified " means specified in an order under subsection (1) above; and any reference to a provision of this Part is a reference to that provision as applied to advances under this section.

Other commercial assets

15 Loans for mobile homes

- (1) Subject to the provisions of this section, a building society may make mobile home loans to individuals, whether or not they are members of the society.
- (2) A mobile home loan is a loan made for the purchase of a mobile home and secured by such security as the Commission may, with the consent of the Treasury, prescribe by order in a statutory instrument.
- (3) No such loan shall be made unless the building society, when it makes the loan, is satisfied that—
- (a) the borrower or a dependant of his of a prescribed description is or will be entitled under an agreement to which the Mobile Homes Act 1983 applies to station the mobile home on land forming part of a protected site ;
 - (b) the mobile home is for the residential use of the borrower or a dependent of his of a prescribed description ;
 - (c) the amount lent will not exceed the amount likely to be realised on a sale of the mobile home on the open market; and
 - (d) subject to subsection (4) below, no other security prescribed under subsection (2) above which is to secure the loan is outstanding in favour of a person other than the society.
- (4) The requirement in subsection (3)(d) above shall be treated as satisfied if the loan is made on terms that the other loan is redeemed or postponed to it.
- (5) A building society shall not make a mobile home loan to an individual if the principal exceeds—
- (a) the limit for the time being imposed by or under subsection (7) below; or

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- (b) the balance remaining after deducting from that limit the aggregate of any other sums outstanding in respect of loans made under this section or section 16 by the society to that individual;
- and if two or more loans under this section or this section and section 16 are made simultaneously by the society to the same individual they shall be treated for the purposes of this subsection as a single loan of an amount equal to the aggregate of the principal of each of those loans.
- (6) Joint borrowers under this section shall be treated, for the purpose of the limit on loans under this section, as a single individual and any sums outstanding in respect of loans made under this section or section 16 by the society to any one of the joint borrowers is to be taken into account in determining the balance available for any further loan to him or to him and any joint borrower with him.
- (7) The limit on loans to any one individual under this section is £10,000 or such other sum as the Commission may, with the consent of the Treasury, specify by order in a statutory instrument.
- (8) Loans under this section constitute class 3 assets for the purposes of the requirements of this Part for the structure of commercial assets and accordingly the aggregate of the amounts outstanding in respect of—
- (a) the principal of loans under this section,
 - (b) the interest on those loans, and
 - (c) any other sums which borrowers are obliged to pay the society under the terms of those loans,
- counts in accordance with section 20 towards the limits applicable to class 3 assets under that section.
- (9) The power conferred by this section is not available to a building society which does not for the time being have a qualifying asset holding, but the cessation of its availability does not require the disposal of any property or rights.
- (10) The power conferred by this section on a building society, if available to it, must in order to be exercisable, be adopted by the society.
- (11) An instrument containing an order under subsection (2) or (7) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (12) In this section—
- " mobile home " has the same meaning as " caravan " in Part I of the Caravan Sites and Control of Development Act 1960;
 - " prescribed ", in relation to descriptions of dependants of borrowers, means such as are for the time being prescribed in an order under section 12(1) as respects class 1 advances ; and
 - " protected site " has the same meaning as in the Mobile Homes Act 1983.

16 Power to lend to individuals otherwise than by class 1 or class 2 advances etc.

- (1) Subject to the provisions of this section, a building society may, with or without security and whether or not at interest, lend money to individuals, whether or not they are members of the society.
- (2) Advances fully secured on land do not constitute loans under this section except that an advance for a deposit for the purchase of land shall, if the purchase is not completed

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within the period of six months beginning with the date of the advance, be treated after the end of that period as a loan under this section and shall accordingly cease to be a class 1 or class 2 advance.

- (3) Mobile home loans do not constitute loans under this section.
- (4) The power to lend money under this section includes power, as regards members of and depositors with the society, to lend on overdraft on such terms as the society thinks fit.
- (5) Subject to subsection (9) below a building society shall not make a loan to an individual under this section if the principal exceeds—
 - (a) the limit for the time being imposed by or under subsection (8) below; or
 - (b) the balance remaining after deducting from that limit the aggregate of any other sums outstanding in respect of loans made under this section by the society to that individual;and if two or more loans under this section or this section and section 15 are made simultaneously by the society to the same individual they shall be treated for the purposes of this subsection as, in the case of loans under this section, a single loan of an amount equal to the aggregate of the principal of each of those loans and, in the case of loans under this section and section 15, as made on different occasions such that loans under this section precede those made under that section.
- (6) Subsection (5) above shall have effect (subject to subsection (9) below) in a case where a building society has made a loan under section 15 as if it precluded a building society from making a loan to an individual under this section if the principal exceeds—
 - (a) the limit referred to in paragraph (a) of it; or
 - (b) the balance referred to in paragraph (b) of it; or
 - (c) the balance remaining after deducting from the limit imposed by or under subsection (7) of that section the aggregate of any sums outstanding in respect of loans made under that section and under this section by the society to that individual.
- (7) Joint borrowers under this section shall be treated, for the purpose of the limit on loans under this section, as a single individual and any sums outstanding in respect of loans made under this section or section 15 by the society to any one of the joint borrowers is to be taken into account in determining the balance available for any further loan to him or to him and any joint borrower with him.
- (8) The limit on loans to any one individual under this section is £5,000 or such other sum as the Commission may, with the consent of the Treasury, specify by order in a statutory instrument.
- (9) The limit on loans to any one individual under this section does not apply to an advance for a deposit for the purchase of land which has come to be treated as a loan under this section and accordingly no account shall be taken of it for the purposes of subsection (5) above.
- (10) An order under subsection (8) above may specify different sums as the limit in relation to individuals in different circumstances.
- (11) Loans under this section constitute class 3 assets for the purposes of the requirements of this Part for the structure of commercial assets and accordingly the aggregate of the amounts outstanding in respect of—
 - (a) the principal of loans under this section,

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- (b) the interest on those loans, and
- (c) any other sums which borrowers are obliged to pay the society under the terms of those loans,

counts in accordance with section 20 towards the limits applicable to class 3 assets under that section.

- (12) The power conferred by this section is not available to a building society which does not for the time being have a qualifying asset holding, but the cessation of its availability does not require the disposal of any property or rights.
- (13) The powers conferred by this section on a building society, if available to it, must, in order to be exercisable, be adopted by the society.
- (14) An instrument containing an order under subsection (8) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (15) If at any time when a loan under this section which is secured by a mortgage of any land is outstanding, the building society is satisfied—
 - (a) on a revaluation, that the value of the security has changed,
 - (b) on notice given to it by the borrower that there has been a change in the use of the land, or
 - (c) on such notice, that there has been a change in the relative priority of the mortgage,
 and that the change is such that, if it were to make a loan equal to the mortgage debt at that time and on that security, the loan would be a class 1 advance or, as the case may be, a class 2 advance, then the outstanding loan shall be reclassified as from that time.
- (16) Nothing in subsection (15) above requires a building society to revalue its securities from time to time.

17 Power to hold and develop land as commercial asset

- (1) Subject to subsections (2), (9) and (11) below, a building society may acquire, hold and dispose of land in the United Kingdom for purposes other than those for which it may acquire, hold or dispose of land under section 6 or 10.
- (2) Land may not be acquired or held or disposed of by way of lease under this section except where the land is or is to be used—
 - (a) primarily for residential purposes, or
 - (b) for purposes incidental to the use of adjoining land held or to be held by the society which is or is to be used primarily for residential purposes.
- (3) A building society may develop or participate in developing for use for residential purposes or purposes connected with the residential use of land any land it holds under this section.
- (4) If land acquired under this section ceases to be used for the purposes authorised by subsection (2) above the society shall sell its estate or interest in the land as soon as it is conveniently practicable without undue loss to the society.
- (5) Land held under this section constitutes a class 3 asset for the purposes of the requirements of this Part for the structure of commercial assets and accordingly the aggregate value of all land so held counts in accordance with section 20 towards the limits applicable to class 3 assets under that section.

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- (6) Premises held under section 6, by virtue of subsection (5) of that section, shall, in prescribed circumstances, be treated in their entirety (and regardless of their use) as land held under this section for the purposes of the requirements of this Part for the structure of commercial assets and subsection (5) above applies accordingly.
- (7) The Commission, with the consent of the Treasury, may by order made by statutory instrument make such provision for the purposes of subsection (6) above as it thinks fit and in that subsection "prescribed" means prescribed in an order under this subsection.
- (8) An instrument containing an order under subsection (7) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) Except as provided in subsection (10) below, the powers conferred by this section are not available to a building society which does not for the time being have a qualifying asset holding, but the cessation of their availability does not require the disposal of any property or rights.
- (10) A building society which does not for the time being have a qualifying asset holding may acquire, hold and dispose of land which is or is to be used for residential purposes if the purpose of the acquisition and holding of the land is to enable the society to make advances on the security of equitable interests in the land in the circumstances authorised by an order under section 10(6).
- (11) The powers conferred by this section on a building society, if available to it, must in order to be exercisable, be adopted by the society.

18 Power to invest in subsidiaries and other associated bodies

- (1) Subject to the following provisions of this section, a building society may—
 - (a) acquire and hold shares or corresponding membership rights in bodies corporate and form or take part in forming bodies corporate, and
 - (b) provide bodies corporate in which it holds shares or such rights or to which it is, for the purpose of any power under this section, linked by resolution with any of the following supporting services—
 - (i) loans of money, with or without security and whether or not at interest,
 - (ii) grants of money, whether or not repayable,
 - (iii) guarantees of the discharge of their liabilities, and
 - (iv) the use of services or property, whether or not for payment;and in this section "invest" means the exercise of any of the powers conferred by paragraph (a) and "support" means the exercise of any of the powers conferred by paragraph (b) above.
- (2) A building society may invest in or support the following bodies corporate (referred to as "qualifying bodies") but no others, that is to say—
 - (a) companies or industrial and provident societies ;
 - (b) bodies formed in another member State for the purpose of carrying on in another member State businesses which consist wholly or mainly in lending money on the security of land and do not (where that is not the whole business) include lending on land in the United Kingdom (referred to as "corresponding European bodies"), and

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- (c) bodies corporate (whether or not falling within paragraph (a) or (b) above) designated as suitable for investment and support or for support for the purposes of this section by an order (referred to as "a designation order") made by the Commission with the consent of the Treasury.
- (3) A designation order may—
- (a) designate a particular body or designate descriptions of bodies corporate,
 - (b) make different provision for different descriptions of building society,
 - (c) determine, or provide for the determination under the order of, the extent to which, the purposes for which, and the conditions subject to which, investment or support is permitted, and
 - (d) make such transitional and consequential provision as the Commission considers necessary or expedient.
- (4) Subject to subsection (5) below, a building society shall not invest in or support a qualifying body so as to enable that body on its own account, in the United Kingdom, to—
- (a) lend money to members of the public on the security of land by loans corresponding to advances secured on land,
 - (b) accept deposits of money otherwise than in such circumstances that their acceptance would not constitute its business a deposit-taking business or in the course of or for the purposes of providing a service for the time being specified in Part I of Schedule 8 to this Act;
- but, subject to that, it may invest in or support a qualifying body so as to enable that body to carry on any activity which it is within the powers of the society to carry on, but, subject to subsection (5) below, no others.
- (5) In the case of a qualifying body designated, or included in a description of bodies designated, by a designation order a building society may also invest in or support it for such purposes as are permitted by or under the designation order.
- (6) Subject to subsection (7) and (8) below, a building society shall not invest in or support a qualifying body whose objects enable it—
- (a) to carry on activities which are outside the powers of the society,
 - (b) to invest in other bodies corporate, or
 - (c) to support other bodies corporate;
- but this does not imply that it is unlawful for the society to complete the performance of any contractual obligations lawfully incurred in providing a supporting service.
- (7) Subsection (6) above shall not operate so as to restrict a building society's powers under this section in relation to a corresponding European body.
- (8) Subsection (6) above shall not prevent a building society from investing in or supporting a qualifying body—
- (a) if that body is, in relation to the society, a designated body and the investment or support is made in accordance with the designation order,
 - (b) if, not being a body whose objects enable it to carry on activities outside the powers of the society, the investment or support is made or given with the consent of the Commission and subject to any conditions specified in the instrument giving the consent, or
 - (c) for a period of three months, pending the alteration of the objects of that body.

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- (9) For the purposes of any power conferred by this section a body corporate is " linked by resolution " to a building society if the board of directors of the society has passed a resolution making that power exercisable in relation to that body and the resolution is in force.
- (10) No power to invest in or support a corresponding European body is available to a building society which does not for the time being have a qualifying asset holding, but the cessation of its availability by virtue of this subsection does not require the disposal of any property or rights.
- (11) The powers conferred by this section on a building society, if available to it, must, in order to be exercisable, be adopted by the society and must be adopted in their entirety without any restriction except a restriction with reference to the description of body corporate in relation to which the powers to invest in or support are to be exercisable.
- (12) A building society whose board of directors has passed a resolution in pursuance of subsection (9) above shall send three copies of a record of the resolution signed by the secretary of the society to the central office and paragraph 4(3), (4) and (5) of Schedule 2 to this Act shall apply as it applies to a record of the alteration of a building society's powers.
- (13) Where the board of directors of a building society passes a resolution rescinding a resolution passed in pursuance of subsection (9) above the society shall send three copies of a record of the rescinding resolution signed by the secretary of the society to the central office and paragraph 4(3), (4) and (5) of Schedule 2 to this Act shall apply as it applies to a record of the alteration of a building society's powers, but subject to subsection (14) below.
- (14) No rescinding resolution shall be registered without the consent of the Commission.
- (15) Where, by virtue of this section, property is held by a building society the property shall constitute class 3 assets for the purposes of the requirements of this Part for the structure of commercial assets and accordingly the aggregate value of the property shall count in accordance with section 20 towards the limits applicable to class 3 assets under that section.
- (16) The power to make an order under subsection (2)(c) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (17) In this section—
- " company " means a company within the meaning of the Companies Act 1985 or the Companies (Northern Ireland) Order 1986;
 - " corresponding membership rights ", in relation to a body corporate, means such rights (other than rights arising from the holding of shares) as are attributable to membership of the body;
 - " deposit " and " deposit-taking business " have the same meaning as in the Banking Act 1979 ;
 - " industrial and provident society " means a society registered under the Industrial and Provident Societies Act 1965 or, in Northern Ireland, the Industrial and Provident Societies Act (Northern Ireland) 1969 ;
 - " property " includes rights of any description;

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and in this Act " associated body ", in relation to a building society, means a body as respects which any of the following conditions is satisfied, that is to say—

- (i) the body is one in which the society holds shares or corresponding membership rights, or
- (ii) the body is one to which the society is linked by resolution, or
- (iii) the body is one in which, by virtue of subsection (8)(b) above, shares or corresponding membership rights are held by a body which falls within or above ; and " associated " shall be construed accordingly.

19 Power for Treasury to add powers to hold other descriptions of class 3 assets

- (1) The Treasury may, with a view to extending or altering, or extending to other descriptions of building societies, the forms of property which are to constitute class 3 assets in the hands of building societies or building societies of particular descriptions, by order—
 - (a) specify forms of property which a building society is to have power to acquire, hold and dispose of as assets of that class, subject to any specified conditions or restrictions ;
 - (b) without prejudice to paragraph (a) above, specify descriptions of bodies corporate shares or other interests or rights in which a building society is to have power to acquire, hold and dispose of as assets of that class, subject to any specified conditions or restrictions ;
 - (c) make any amendments of or repeals in this Act which are consequential on the exercise of its powers under paragraph (a) or (b) above ;
 - (d) make such incidental, supplemental or transitional provision as it considers necessary or expedient.
- (2) The powers conferred by subsection (1) above may be exercised so as to apply in relation to property situated or bodies incorporated within the United Kingdom or any other member State or other country or territory and so as to be exercisable for purposes other than the purposes of building societies under the powers conferred on them for the time being by or under this Act.
- (3) Any powers conferred on building societies under this section may be conferred on building societies of a specified description or all building societies other than those of a specified description.
- (4) Any power conferred on a building society under this section, if available to it, must, in order to be exercisable, be adopted by the society.
- (5) Where, by virtue of an order under subsection (1)(a) or (b) above, property is held by a building society the property shall constitute class 3 assets for the purposes of the requirements of this Part for the structure of commercial assets and accordingly the aggregate value of the property, as determined in accordance with the order, shall count in accordance with section 20 towards the limits applicable to class 3 assets under that section.
- (6) Subsection (5) above is subject to any provision contained in the order.
- (7) The power to make an order under subsection (1) above is exercisable by statutory instrument but no such order shall be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.

(8) In this section—

" property " includes rights of any description ; and

" specified " means specified in an order under subsection (1) above.

Commercial asset structure requirements

20 Commercial asset structure requirements for building societies

(1) The requirements for the structure of commercial assets applicable to building societies are the following.

(2) The class 2 assets or, if it has class 3 assets, the aggregate of the class 2 and class 3 assets held by a building society at the end of a financial year shall not exceed whichever is the greater of—

- (a) 10 per cent, of the total commercial assets held by the society at that time, or
- (b) an amount corresponding to that percentage of the total commercial assets held by the society at the end of the preceding financial year.

(3) The class 3 assets (if any) held by a building society at the end of a financial year shall not exceed whichever is the greater of—

- (a) 5 per cent of the total commercial assets held by the society at that time, or
- (b) an amount corresponding to that percentage of the total commercial assets held by the society at the end of the preceding financial year.

(4) The Treasury may by order made by statutory instrument direct that subsection (2) or (3) above shall have effect during the currency of the order as if such percentage as is specified in the order were substituted for the percentage specified in that subsection, not being a percentage greater than 25 per cent, in the case of subsection (2) and 15 per cent, in the case of subsection (3) above.

(5) An order under subsection (4) above may—

- (a) divide class 3 assets into sub-classes for the purposes of the order by reference to the provision of or made under this Part from which they arise ;
- (b) subject to subsection (6) below, prescribe different limits for different sub-classes ; and
- (c) make such transitional provision as appears to the Treasury to be necessary or expedient;

and any reference in this Act to a limit for a class of commercial assets shall, if a limit is in force under subsection (4) above for any sub-class of class 3 assets, be construed as including a reference to the limit for that sub-class.

(6) No order under subsection (4) above shall prescribe as a limit for a sub-class of class 3 assets a percentage of total commercial assets less than the percentage in force immediately before the making of the order for that sub-class or, if the subclass is created by the order, for class 3 assets generally.

(7) An order under subsection (4) above shall not be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

(8) The amount or value of the assets of any class of a building society for the purposes of this section is the amount or value as shown in the latest balance sheet or such other amount or value as the Commission determines to be the correct or, as the case

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requires, appropriate amount or value ; and where the Commission determines an amount or value under this subsection the appropriate alterations shall be noted against the annual accounts of the society kept in the public file of the society.

- (9) In determining for the purposes of this section the asset holding of a building society with which another body corporate is associated there shall, subject to subsection (12) below, be attributed to the society, in accordance with aggregation rules made by the Commission with the consent of the Treasury under this subsection, the whole or part of the assets of whatever description of the associated body, as provided in the rules and subject to any exceptions provided in the rules.
- (10) The power to make aggregation rules under subsection (9) above includes power to make—
- (a) different rules for different circumstances,
 - (b) provision for assets of societies to be disregarded,
 - (c) provision for assets to be attributed to any class of assets of societies, and
 - (d) such supplementary, transitional and saving provisions as appear to the Commission to be necessary or expedient.
- (11) The power to make aggregation rules under subsection (9) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (12) The Commission may, on the application of a building society, approve rules to be applied for the purposes of this section for the attribution to the society of assets of bodies associated with the society ; and so long as the rules continue to be approved by the Commission they, and not the aggregation rules in force under subsection (9) above, shall apply for the attribution of assets for the purposes of this section.
- (13) If the commercial assets of any class of a building society exceed the limits in force under this section the powers conferred on the Commission by section 36 shall become exercisable in relation to the society, but exceeding the limit shall not affect the validity of transactions effected in excess of it nor require the disposal of any assets.

Liquid assets

21 Liquid assets

- (1) Subject to the following provisions of this section, a building society shall secure that, of its total assets, it keeps such a proportion of them having such a composition as will at all times enable the society to meet its liabilities as they arise.
- (2) A building society may keep assets of an authorised character beyond those required for the purpose of complying with subsection (1) above.
- (3) Subject to subsections (5) and (6) below, the assets held by a building society under subsection (1) or (2) above—
- (a) shall not exceed in the aggregate a proportion of its total assets greater than 33 1/3 per cent., and
 - (b) shall be composed of assets of an authorised character and no others;
- but, subject to that, a building society, in deciding on the composition and proportion appropriate for the purpose of complying with subsection (1) above, shall have regard

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to the range and scale of its business and the composition and character of its assets and liabilities.

- (4) Subsection (3) above, in its application to a building society with which other bodies corporate are associated, is to be read as requiring the society to have regard to the range and scale of the business, and the composition and character of the assets and liabilities, of the society and the associated bodies.
- (5) The Commission may, by order made with the consent of the Treasury, direct that this section shall have effect during the currency of the order as if such percentage as is specified in the order were substituted for the percentage specified in subsection (3) above; but any order under this subsection shall expire (unless previously revoked) at the end of the period of twelve months beginning with the day on which the order came into operation.
- (6) The Commission may, at any time, by notice to a building society, direct that the limit in force under this section shall not, subject to any conditions specified in the notice, apply to the society during such period as the Commission specifies in the notice.
- (7) Regulations to be known as liquid asset regulations shall be made by the Commission, with the consent of the Treasury, for the purposes of this section and such regulations—
 - (a) shall prescribe descriptions of assets as assets of a character which societies may, in any prescribed circumstances and subject to any prescribed conditions, hold under this section for the purpose of meeting their liabilities as they arise,
 - (b) may make different provision for different descriptions of building societies, and
 - (c) may make such supplementary or incidental provision and such transitional provision as appears to the Commission to be necessary or expedient.
- (8) The power to make an order or regulations under subsection (5) or (7) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) If the assets of a building society which are kept in the form directed by subsection (1) above exceed at any time the percentage in force under this section at that time the powers conferred on the Commission by section 36 shall become exercisable in relation to the society, but exceeding the limit shall not affect the validity of transactions effected in excess of it.
- (10) In this section—
 - " authorised ", in relation to the character of assets, means authorised by regulations under subsection (7) above for the purpose specified in paragraph (a) of that subsection ;
 - " business " includes business the society proposes to carry on; and
 - " prescribed " means prescribed in regulations under subsection (7) above.

Liabilities of associated bodies

22 Obligation to meet liabilities of associated bodies

- (1) If a body corporate is linked by resolution with a building society or is a subsidiary of the society, then, subject to subsection (2) below, the building society is under an

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obligation by virtue of this section to discharge the liabilities of that associated body in so far as that body is unable to discharge them out of its own assets.

- (2) The obligation so imposed does not extend to the liabilities of the associated body to its members other than the building society with which it is associated.
- (3) Any expression used in this section and section 18 has the same meaning in this section as in that section.

Other powers

23 Power to hedge

- (1) Subject to subsections (3) and (4) below, a building society may effect contracts of a prescribed description for the purpose of reducing the risk of loss arising from changes in interest rates, currency rates or other factors of a prescribed description which affect its business.
- (2) The Commission, with the consent of the Treasury, may by order—
 - (a) specify as contracts which building societies have power to effect under this section descriptions of contract whose purpose or one of whose purposes is the reduction of the risk to businesses of loss arising from the factors specified in subsection (1) above or other similar factors, and
 - (b) regulate, or provide for the regulation of, the terms on which, the persons or descriptions of persons with whom, and the circumstances in which, contracts of a description specified under paragraph (a) above, may be effected by building societies.
- (3) Except as provided under subsection (4) below, the powers conferred by this section are not available to a building society which does not for the time being have a qualifying asset holding, but the cessation of their availability does not require the disposal of any property or rights.
- (4) The Commission, with the consent of the Treasury, may by order provide that subsection (3) above shall not have effect, as regards prescribed powers, in relation to prescribed descriptions of building societies.
- (5) The powers conferred by this section on a building society, if available to it, must, in order to be exercisable, be adopted by the society.
- (6) The power to make an order under subsection (2) or (4) above—
 - (a) includes power to make such transitional provision as the Commission considers necessary or expedient, and
 - (b) 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 " prescribed " means prescribed in an order under subsection (2) or (4) above, as the case may be.