



Building Societies Act 1986

1986 CHAPTER 53

[^{F1}PART III

ADVANCES, LOANS AND OTHER ASSETS]

Class 1 advances and class 2 advances secured on land

[^{F1}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) [^{F2}where the advance is not an advance secured on third party land,]the land is for the residential use of the borrower or a dependant of his of a prescribed description;
 - [where the advance is an advance secured on third party land—
 - ^{F3}(ba) (i) the borrower intends that the advance will be used for the purpose of acquiring land for the residential use of himself or a dependant of his of a prescribed description; and
 - (ii) the land on which the advance is secured is for the residential use of the mortgagor 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 [^{F4}outstanding amount secured by a mortgage of the land in favour of the society]); 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;

Status: Point in time view as at 01/12/1997.

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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),
- ^{F5}(a) [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 the residential purposes by the borrower or a dependant of his of a prescribed description;
 - ^{F6}(b) [the requirement in subsection (2)(ba)(i) above shall be treated as satisfied if the borrower intends that no less than 40 per cent. of the area of the land will be for the residential use of himself or a dependant of his of a prescribed description; and
 - (c) the requirement in subsection (2)(ba)(ii) 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 mortgagor 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 [^{F7}outstanding amount secured by 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) [^{F8}or (2)(ba)(i) or (ii)] above shall be treated as class 1 advances if and to the extent prescribed by an order under section 12(5).
- (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.

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- (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 ^{MI}Conveyancing and Feudal Reform (Scotland) Act 1970.]

Textual Amendments

- F1** Pt. III (ss. 10-23) repealed (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. 12(1)(a), 46(2), 47(3), **Sch. 9**; S.I. 1997/2668, art. 2, Sch. Pts. I(b), **II(j)**
- F2** Words in s. 11(2)(b) inserted (3.1.1995) by 1994 c. 40, ss. **16(3)(a)**, 82(2)(a)
- F3** S. 11(2)(ba) inserted (3.1.1995) by 1994 c. 40, ss. **16(3)(b)**, 82(2)(a)
- F4** Words in s. 11(2)(c) substituted (3.1.1995) by 1994 c. 40, ss. **16(3)(c)**, 82(2)(a)
- F5** Words in s. 11(3) renumbered as s. 11(3)(a) (3.1.1995) by 1994 c. 40, ss. **16(4)**, 82(2)(a)
- F6** S. 11(3)(b)(c) inserted (3.1.1995) by 1994 c. 40, ss. **16(4)**, 82(2)(a)
- F7** Words in s. 11(4)(c) substituted (3.1.1995) by 1994 c. 40, ss. **16(5)**, 82(2)(a)
- F8** Words in s. 11(7) inserted (3.1.1995) by 1994 c. 40, ss. 39, 82(2)(e), **Sch. 11 para. 7(3)**

Modifications etc. (not altering text)

- C1** S. 11(1)(2)(4)–(7)(9)–(13)(15) excluded by S.I. 1987/1498, art. 7, **Sch. 2 para. 2**

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- C2** S. 11(1)-(7), (9)-(13)(15) restricted (1. 7. 1992) by S.I. 1992/1547, arts. 5, 6, **Sch. 2**
C3 S. 11(2)(b) extended by S.I. 1986/2169, **art. 5(2)**
C4 S. 11(3) excluded by S.I. 1986/2169, **art. 5(2)** and by S.I. 1987/1498, art. 7, **Sch. 2 para. 2**
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Marginal Citations

- M1** 1970 c. 35.

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