



# Building Societies Act 1997

## 1997 CHAPTER 32

### PART I

#### CONSTITUTION AND POWERS

#### **1 Principal purpose and powers.**

(1) For subsection (1) of section 5 (establishment, constitution and powers) of the <sup>M1</sup>Building Societies Act 1986 (“the 1986 Act”) there shall be substituted the following subsection—

“(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) After subsection (4) of that section there shall be inserted the following subsection—

“(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 Commission 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.”

(3) For subsections (5) to (7) of that section there shall be substituted the following subsection—

“(5) Subject to the provisions of this Act, a building society shall have the powers conferred on it by its memorandum.”

(4) For subsection (10) of that section there shall be substituted the following subsection—

“(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

*Status: Point in time view as at 01/12/1997.*

*Changes to legislation: There are currently no known outstanding effects for the Building Societies Act 1997, Part 1. (See end of Document for details)*

(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.”

#### Commencement Information

**II** S. 1 in force at 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pt. II (subject as mentioned in art. 2(2)-(5) of that S.I.)

#### Marginal Citations

**M1** 1986 c.53.

## 2 Membership and liability of members.

(1) In paragraph 5 of Schedule 2 to the 1986 Act (membership), for sub-paragraphs (1) and (2) there shall be substituted the following sub-paragraphs—

“(1) The rules of a building society shall provide that no person shall be a member of the society unless he is a shareholding member or a borrowing member or both.

(2) In this Act, in relation to a building society—

“borrowing member” means, subject to sub-paragraphs (2A) and (2B) and paragraph 29(2) below, an individual who is indebted to the society—

- (a) in respect of a loan which is fully secured on land; or
- (b) if the rules of the society so provide, in respect of a loan which is (within the meaning of the rules) substantially secured on land;

“shareholding member” means a person who holds a share in the society.

(2A) If the rules of a building society so provide, an individual shall cease to be a borrowing member at any time if at that time the society—

- (a) takes possession of, or exercises its power of sale in relation to, the whole or any part of the land on which the loan is secured; or
- (b) obtains an order for foreclosure absolute or, in Scotland, foreclosure in respect of the whole or any part of that land.

(2B) Unless the rules of a building society so provide, an individual shall not be a borrowing member at any time if at that time the loan is owed to the society in equity rather than at law.”

(2) In sub-paragraph (3) of that paragraph—

- (a) in paragraph (b), after the words “may not” there shall be inserted the words “propose a resolution, ”; and
- (b) in paragraph (c), after the words “may not” there shall be inserted the words “join in requisitioning a special meeting or ”.

(3) For paragraph 6 of that Schedule there shall be substituted the following paragraph—

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- “6 (1) The liability at any time of a shareholding member of a building society shall be limited to the amount which, at that time, has been actually paid, or is in arrear, on his shares in the society.
- (2) The liability at any time of a borrowing member of a building society shall be limited to the amount which, at that time, is payable under the mortgage or other security by which his indebtedness to the society in respect of the loan is secured.”
- (4) For sub-paragraph (2) of paragraph 29 of that Schedule (borrowing members’ resolutions) there shall be substituted the following sub-paragraph—
- “(2) For the purposes of this Part of this Schedule, an individual who is indebted to a building society in respect of a loan fully secured on land is not a borrowing member of the society at any time if at that time the amount of his mortgage debt is less than the prescribed amount.”

#### Commencement Information

- I2** S. 2 in force at 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pt. II (subject as mentioned in art. 2(2)-(5) of that S.I.)

### 3 Capacity etc.

- (1) In subsection (8) of section 5 of the 1986 Act—
- (a) for paragraph (b) there shall be substituted the following paragraph—
- “(b) Part II makes provision with respect to the capacity of a society and the powers of its directors to bind it; and”;
- (b) for the words from “and in this section” to the end there shall be substituted the words “ and in this section “scheduled”, with reference to requirements for establishment, means contained in that Schedule ”.
- (2) For Part II of Schedule 2 to the 1986 Act there shall be substituted the provisions set out in Schedule 1 to this Act (capacity of society and power of directors to bind it).

#### Commencement Information

- I3** S. 3 in force at 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pt. II (subject as mentioned in art. 2(2)-(5) of that S.I.)

### 4 The lending limit.

For section 6 of the 1986 Act there shall be substituted the following section—

*“ Making loans*

#### 6 The lending limit.

- (1) A building society shall secure that the difference between—

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- (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 <sup>M2</sup>Insurance Companies Act 1982, 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.
- (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—

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- (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.
- (12) In this section “long term insurance funds”, in relation to an insurance company within the meaning of the <sup>M3</sup>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.”

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*Changes to legislation: There are currently no known outstanding effects for the Building Societies Act 1997, Part 1. (See end of Document for details)*

#### Commencement Information

**I4** S. 4 in force at 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pt. II (subject as mentioned in art. 2(2)-(5) of that S.I.)

#### Marginal Citations

**M2** 1982 c.50.

**M3** 1982 c.50.

## 5 Loans secured on land.

After section 6 of the 1986 Act there shall be inserted the following section—

### “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 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.

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- (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.”

#### Commencement Information

**I5** S. 5 in force at 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pt. II (subject as mentioned in art. 2(2)-(5) of that S.I.)

## 6 Loans fully secured on land.

After section 6A of the 1986 Act there shall be inserted the following section—

### “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—

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- (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 <sup>M4</sup>Civic Government (Scotland) Act 1982 or Schedule 9 to the <sup>M5</sup>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 <sup>M6</sup>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.

- (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



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(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.”

#### Commencement Information

**I6** S. 6 in force at 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pt. II (subject as mentioned in art. 2(2)-(5) of that S.I.)

#### Marginal Citations

**M4** 1982 c.45.  
**M5** 1987 c.26.  
**M6** 1970 c.18 (N.I.).

## 7 Discharge of mortgages.

(1) After section 6B of the 1986 Act there shall be inserted the following section—

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

*Changes to legislation: There are currently no known outstanding effects for the Building Societies Act 1997, Part 1. (See end of Document for details)*

**“6C Discharge of mortgages.**

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

- (2) After Schedule 2 to the 1986 Act there shall be inserted, as Schedule 2A, the provisions set out in Schedule 2 to this Act (supplementary provisions as to the discharge of mortgages).

**8 The funding limit.**

For section 7 of the 1986 Act there shall be substituted the following section—

**“7 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 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—

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

*Changes to legislation: There are currently no known outstanding effects for the Building Societies Act 1997, Part I. (See end of Document for details)*

- (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) 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 Commission may, with the consent of the Treasury, 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 Commission to be necessary or expedient.
- (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.”

#### **Commencement Information**

**I7** S. 8 in force at 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pt. II (subject as mentioned in art. 2(2)-(5) of that S.I.)

## **9 Raising funds and borrowing.**

For section 8 of the 1986 Act there shall be substituted the following section—

### **“8 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;

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*Changes to legislation: There are currently no known outstanding effects for the Building Societies Act 1997, Part 1. (See end of Document for details)*

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- (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;
  - (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 Commission 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 Commission 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—

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“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 482(6) of the <sup>M7</sup>Income and Corporation Taxes Act 1988;

“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
  - (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 Commission may, with the consent of the Treasury, 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 Commission 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.”

#### Commencement Information

**I8** S. 9 in force at 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pt. II (subject as mentioned in art. 2(2)-(5) of that S.I.)

#### Marginal Citations

**M7** 1988 c.1.

## 10 Restrictions on certain transactions.

After section 9 of the 1986 Act there shall be inserted the following section—

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

*Changes to legislation: There are currently no known outstanding effects for the Building Societies Act 1997, Part 1. (See end of Document for details)*

*“ Restrictions on powers*

**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; and
    - (v) any index of the prices of securities; or
  - (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,

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

*Changes to legislation: There are currently no known outstanding effects for the Building Societies Act 1997, Part 1. (See end of Document for details)*

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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—

- (a) as a body authorised under section 3 or 4 of the <sup>M8</sup>Insurance Companies Act 1982 (authorised insurance companies) to carry on insurance business of a class specified in Schedule 1 to that Act (classes of long term business); or
- (b) as an EC company which is authorised under Article 6 of the first long term insurance Directive;

and in this subsection expressions which are also used in that Act have the same meanings as in that Act.

(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 <sup>M9</sup>Financial Services Act 1986;

“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;

“derivative investment” means any investment of a description falling within one or more of the following paragraphs of Part I of Schedule 1 to the Financial Services Act 1986, namely—

- (a) paragraph 4 (instruments entitling to shares or securities);
- (b) paragraph 7 (options);
- (c) paragraph 8 (futures); and
- (d) paragraph 9 (contracts for differences etc);

“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;

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

*Changes to legislation: There are currently no known outstanding effects for the Building Societies Act 1997, Part 1. (See end of Document for details)*

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

- (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) The Commission may, with the consent of the Treasury, 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 it thinks 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 or, as the case may be, the Commission 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.”

#### Commencement Information

**I9** S. 10 in force at 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pt. II (subject as mentioned in art. 2(2)-(5) of that S.I.)

#### Marginal Citations

**M8** 1982 c.50.

**M9** 1986 c.60.

## 11 Restriction on creation of floating charges.

After section 9A of the 1986 Act there shall be inserted the following section—

### “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.”



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

*Changes to legislation: There are currently no known outstanding effects for the Building Societies Act 1997, Part I. (See end of Document for details)*

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## **12 Superseded provisions of 1986 Act.**

- (1) The following provisions of the 1986 Act (which are superseded by the foregoing provisions of this Part and this section) shall cease to have effect, namely—
  - (a) Part III (advances, loans and other assets);
  - (b) section 33 (assistance to other building societies);
  - (c) Part V (powers to provide services); and
  - (d) sections 38 to 40 (power to determine extent of building society powers).
- (2) In relation to any time after Schedule 4 to the 1986 Act ceases to have effect by virtue of subsection (1) above, any rule of law requiring a mortgagee to take reasonable care to obtain a proper price or true market value shall have effect as if paragraph 1(1)(a) of that Schedule (duty to take reasonable care to ensure best price that can reasonably be obtained), and corresponding earlier enactments, had not been enacted.
- (3) In so far as a building society is carrying on any activity comprised in the provision of a banking service, it shall be treated for all purposes—
  - (a) as a bank and a banker; and
  - (b) as carrying on the business of banking or a banking undertaking,whether or not it would be so treated apart from this subsection.
- (4) In this section “mortgagee”, as respects Scotland, has the meaning given by section 119(2) of the 1986 Act.

### **Commencement Information**

**I10** S. 12 partly in force; S. 12 not in force at Royal Assent see s. 47(3); s. 12(1)(a) partly in force and 12(2)(4) wholly in force at 1.12.1997 by S.I. 1997/2668, art. 2 Sch. Pt. I; S. 12 in force at 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pt. II (subject as mentioned in art. 2(2)-(5) of that S.I.)

**Status:**

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

**Changes to legislation:**

There are currently no known outstanding effects for the Building Societies Act 1997, Part I.