
STATUTORY INSTRUMENTS

1990 No. 2362

BUILDING SOCIETIES

The Building Societies (Aggregation) Rules 1990

Made - - - - 26th November 1990
Laid before Parliament 29th November 1990
Coming into force - - 31st December 1990

The Building Societies Commission, with the consent of the Treasury, in exercise of the powers conferred on it by sections 7(10), 8(3) and 20(9) of the Building Societies Act 1986((1)), and of all other powers enabling it in that behalf, hereby makes the following Rules:

Title and commencement

1. These Rules may be cited as the Building Societies (Aggregation) Rules 1990 and shall come into force on 31st December 1990.

Interpretation

2. In these Rules—

“the Act” means the Building Societies Act 1986;

“adequately supported by a report of the auditors” has the meaning given by rule 13;

“associated body” means an associated body of a society and as such has the same meaning as in section 18(17) of the Act;

“board” means board of directors;

“debts secured on land” means debts which are secured by—

- (a) a mortgage of a legal estate in land in England and Wales or Northern Ireland;
- (b) an equitable interest in land of a description and created in circumstances prescribed under section 10(6) of the Act;
- (c) a heritable security over land in Scotland; or
- (d) a form of security on land in a country or territory for the time being designated by order under section 14 (power to make advances secured on land overseas) of the Act, which is a form specified in the order or orders designating that country or territory;

(1) 1986 c. 53. Schedule 8 was amended by the Banking Act 1987 (c. 22), Schedule 6, paragraph 26(8) and varied by S.I. 1988/1141 and 1989/839.

“deposit liabilities” means liabilities in respect of deposits and, in relation to the deposit liabilities of an associated body, “relevant deposit liabilities” means deposit liabilities, in respect of principal and interest payable thereon, which are neither represented by assets of the society nor incurred in the course of providing a service for the time being specified in Part I of Schedule 8 (powers to provide services) to the Act other than a banking service undertaken as such;

“mortgage debts” means debts secured on land, and the amount of a mortgage debt at any time is the total amount outstanding at that time in respect of—

- (a) the principal of the loan which gave rise to the debt;
- (b) interest on that loan; and
- (c) any other sum which the debtor is obliged to pay to the lender under the terms of that loan;

“non-retail liabilities” in relation to a society means liabilities in respect of its non-retail funds and deposits;

“retail liabilities” in relation to a society means liabilities, other than non-retail liabilities, in respect of shares in or money deposited with it;

“signed by the board” means signed by two directors on behalf of the board; and

“society” means a building society.

Determination and Attribution to the society of assets and liabilities of associated bodies

3. Where a society has one or more associated bodies, the determination and attribution to a society of retail liabilities, non-retail liabilities, of deposits and of assets of an associated body and the aggregation of those liabilities, of those deposits and of those assets with the respective liabilities, deposits and assets of the society for the purposes of sections 7(3), 8(1) and 20 of the Act respectively shall, subject to rules 11 and 12, be in accordance with rules 4, 5, 6 and 10.

Attribution and aggregation of deposit liabilities of associated bodies and determination of society liabilities

4. Where an associated body has deposit liabilities, then—

- (a) in determining the liabilities of the society for the purposes of section 7(3) of the Act (limits on percentage of non-retail funds and deposits) the relevant deposit liabilities of the associated body, which were they liabilities of the society would be retail liabilities or non-retail liabilities of the society, shall be attributed to the society to be aggregated to the retail liabilities or non-retail liabilities of the society according as they would, if they were liabilities of the society, be retail liabilities or non-retail liabilities respectively of the society,
- (b) in determining the liabilities of the society in respect of deposits for the purposes of section 8(1) of the Act (limits on percentage of deposits) the relevant deposit liabilities of the associated body shall be attributed to the society to be aggregated to the liabilities in respect of deposits of the society, and
- (c) in making the determination under rule 3, liabilities of the society which are represented by assets of the associated body shall be disregarded to the extent that they are in amount equal to or less than the aggregate of—
 - (i) the amount of relevant deposit liabilities of the associated body attributed to the society under this Rule, and
 - (ii) the amount of liabilities of the associated body which are represented by assets of the society.

Attribution and aggregation of assets of associated bodies other than mortgage debts

5. Where an associated body has assets not being mortgage debts which, were they assets of the society, would be class 3 assets, then, in determining for the purposes of section 20 (limits on percentages of classes of assets) of the Act the asset holding of the society, those assets of the associated body shall be attributed to the society to be aggregated to the class 3 assets of the society.

Attribution and aggregation of mortgage debts of associated bodies

6. Where an associated body has mortgage debts, in determining for the purposes of section 20 (limits on percentages of classes of assets) of the Act the amount of the asset holding of the society—

- (a) the mortgage debts may be attributed to the society to be aggregated to the class 1 or class 2 assets of the society in accordance with rule 7 below, and
- (b) the mortgage debts, which are not attributed to the society to be aggregated to the class 1 or class 2 assets of the society in accordance with rule 7 below, shall be attributed to the society to be aggregated to the class 3 assets of the society.

7. Subject to rules 8 and 9 below, the mortgage debts of an associated body may be attributed to the society to be aggregated to the class 1 or class 2 assets of the society, where the society has obtained certificates—

- (a) to the satisfaction of the board of the society, signed by the board of the associated body adequately supported by a report of the auditors of that body that the relevant mortgage debts may be aggregated to the class 1 assets of the society on grounds that—
 - (i) the making of the relevant advance would be within the present powers of the society to make such advance on the same terms to the borrower; and,
 - (ii) had the society made such an advance when it was made using present powers it would be a class 1 advance within the meaning of sections 10 to 12 of the Act or that the relevant mortgage debts may be aggregated to the class 2 assets of the society on corresponding grounds that the advance would be a class 2 advance; or
- (b) to the satisfaction of the board of the society and of the associated body, signed by the board of the original lender to the borrower, adequately supported by a report of the auditors of that lender to the effect that the relevant mortgage debts may be aggregated to the class 1 assets of the society on the same grounds as in (a) above or to the class 2 assets on the corresponding grounds in (a) above; or
- (c) to the satisfaction of the board of the society and of the associated body, signed by the board of the original lender to the borrower, adequately supported by a report of the auditors of that lender, for the purposes of aggregating the mortgage debts to which the certificate relates to the Class 1 assets of the society, to the effect that—
 - (i) it was the lender's policy to ensure that all borrowers stated in their respective applications that the land to be the subject of the relevant basic security, was for the residential use of the borrower or a dependant of his;
 - (ii) the lender, where aware that the land upon which an advance was secured had ceased to be used by the borrower for his residential use or that of his dependants, had excluded the relevant mortgage debt from the amount of mortgage debt to which the certificate relates;
 - (iii) the amount advanced did not exceed the value of the basic security (after deducting from that value any mortgage debt of the borrower to the lender outstanding under a mortgage of the land);

- (iv) any advance was made on the terms that any other mortgage was redeemed or postponed to the basic security or that no other mortgage of the land which secures the advance was outstanding in favour of a person other than the lender; and,
 - (v) that the land is in the United Kingdom; and,
- for the purposes of aggregating the amount of mortgage debts to class 2 assets of the society, to the effect that the circumstances in (iii), (iv) and (v) above prevail.

Limit on attribution of mortgage debts as class 1 assets

8. The mortgage debts of an associated body which would otherwise be attributed to the society to be aggregated to its class 1 assets in accordance with rule 6 above, shall not be so attributed to the extent that the amount of the mortgage debts of associated bodies to be so attributed would exceed 15 per cent of the total commercial assets held by the society as determined by aggregating the assets of the associated bodies to those of the society for the purposes of section 20 of the Act, and the excess amount of such mortgage debts shall instead be attributed to the society to be aggregated to the class 2 assets of the society.

Exception to attribution of mortgage debts

9.—(1) The mortgage debts of an associated body, other than a subsidiary, shall not be available for attribution under these rules other than the amount of mortgage debts of the associated body bearing the same proportion to the totality of the mortgage debts of the associated body as the shareholding of the society or its subsidiary bears to the total shareholding by all the members of the associated body.

(2) The amount of mortgage debts held by an associated body which would otherwise be attributed to the society to be aggregated to the class 2 or 3 assets of the society in accordance with rules 6 and 7 above, shall not be so attributed to the extent that they are represented by liabilities of the society.

Disregard of class 2 and class 3 assets of a society

10.—(1) Class 3 assets of a society which are represented by liabilities (including reserves) of the associated body shall be disregarded to the extent that the amount of those assets is equal to or is less than the aggregate of the amount of the assets attributed to the society under rule 5, if any, together with the aggregate of the amounts of the assets attributable under paragraphs (a) and (b) of rule 6, if any, and

(2) Class 2 assets of a society which are represented by liabilities of the associated body shall be disregarded to the extent that the amount of those assets is equal to or is less than the amount left after taking the aggregate of the amounts of the assets attributed to the society under rule 5, if any, and paragraphs (a) and (b) of rule 6, if any, and subtracting from that aggregate any amount of class 3 assets of the society disregarded under paragraph (1) above.

Exceptions to Rules 4, 5, 6 and 10

11. Nothing in rule 4, 5, 6 or 10 above shall apply in the case of an associated body where that associated body is a body within the description in section 18(2)(b) (corresponding European bodies) of the Act or is a body individually designated by name in items numbered 1 to 10 in Part I of the Schedule to the Building Societies (Designation of Qualifying Bodies) Order 1990((2)) or which meets the description of a European lending company, pension vehicle, appropriate life insurance vehicle or appropriate general insurance company in that Part.

Exception to Rules 5, 6 and 10

12. Nothing in rule 5, 6 or 10 above shall apply in the case of an associated body where that associated body meets the description of an appropriate financial service vehicle in Part I of the Schedule to the Building Societies (Designation of Qualifying Bodies) Order 1990.

Meaning of adequately supported by a report of auditors

13. For the purposes of rule 7 above, a certificate is adequately supported by a report of the auditors where the auditors have reported at least to the effect that—

- (a) they have examined the certificate,
- (b) they have inquired into the affairs of the body in respect of which the certificate is given, to an extent necessary to consider whether there is any significant likelihood that the certificate is untrue in any material particular, and
- (c) they consider that there is no significant likelihood that the certificate is untrue in any material particular.

Revocation of previous Order

14. The Building Societies (Aggregation) Rules 1987((3)) are hereby revoked.

In witness whereof the common seal of the Building Societies Commission is hereunto fixed, and is authenticated by me, a person authorised under paragraph 14 of Schedule 1 to the Building Societies Act 1986, on 22nd November 1990.

L.S.

Norman Digance
Secretary to the Commission

We consent to these Rules,

John Taylor
Sydney Chapman
Two of the Lords Commissioners of Her
Majesty's Treasury

26th November 1990

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EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules provide for the aggregation of assets and liabilities of subsidiaries and other associated bodies of a building society with those of the society for the purposes of the limits in sections 7, 8 and 20 of the Building Societies Act 1986.

Under section 7 of the Act no more than 40 per cent of the total share and deposit liabilities of a society may be non-retail, that is to say generally liabilities to persons other than individuals. A society's liabilities in respect of its non-retail funds and deposits are defined in section 7(4) of the Act. Section 8 requires that no more than 50 per cent of the total share and deposit liabilities of a society may be represented by deposits. Section 119 of the Act provides that deposits includes loans for the purposes of the Act and so of these Rules.

The commercial assets of a building society are classified as class 1, 2 or 3. Class 1 assets are advances secured on residential land, class 2 assets are generally advances secured on other land and class 3 assets are generally unsecured loans to individuals, residential land and interests in bodies corporate. Under section 20 the aggregate of the class 2 and class 3 assets of a society may not exceed 17½ per cent of the total commercial assets of the society, and its class 3 assets may not exceed 7½ per cent of its total commercial assets. The Building Societies (Limits on Commercial Assets) Order 1988 (S.I.1988/1142) provides for these limits to be increased to 20 per cent and 10 per cent respectively on 1st January 1991, and further on 1st January 1993.

In order to determine the assets and liabilities of a building society for the purposes of these statutory limits, these Rules provide for the attribution to the society of assets and liabilities of associated bodies corresponding to assets and liabilities of the society. To avoid double counting, in certain circumstances assets of a society which represent liabilities of an associated body are disregarded, as are liabilities of a society which represent assets of an associated body.

Under section 18 a society which adopts appropriate powers may invest in or support associated bodies including those designated for the purpose by order. One such associated body may be an "appropriate mortgage company" which is a company limited by shares and whose objects include acquiring, holding and disposing of existing mortgage debts and lending money on mortgage. These Rules provide for the attribution to a society of the mortgage debts of its associated body as class 1 or class 2 assets of the society. Such an attribution may be made, if the society so desires and if it can obtain certificates establishing that those mortgage debts correspond to class 1 or class 2 advances by the society. Other mortgage debts held by an associated body are to be attributed to the society as class 3 assets. Rule 9(1) provides for the proportional attribution of mortgage debts when the associated body is not a subsidiary of the society. Rule 9(2) prevents mortgage debts held by an associated body which are represented by liabilities of the parent society being attributed to the society, and rule 10 provides for assets of the society to be disregarded where they are represented by liabilities of an associated body.

Rule 8 limits the extent to which mortgage debts held by an associated body may be attributed to the society as class 1 assets under these Rules to a maximum of 15 per cent of the total commercial assets of the group. Any excess would be attributed to the society as class 2 assets.

Rules 11 and 12 specify some associated bodies whose assets and liabilities do not need to be aggregated. These include bodies established in other European Community member states to lend on the security of land, pension companies, life and general insurance companies and certain named bodies providing services to societies such as clearing houses and credit card companies.

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