

EXPLANATORY MEMORANDUM TO
THE BUILDING SOCIETIES (RESTRICTED TRANSACTIONS) (AMENDMENT
TO THE LIMIT ON THE TRADE IN CURRENCIES) ORDER 2017

2017 No. 1307

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends section 9A of the Building Societies Act and increases the limit at which building societies can convert currency from £100,000 to £3 million.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 Section 9A (restrictions on certain transactions) of the Building Societies Act 1986 was inserted by section 10 (restrictions on certain transactions) of the Building Societies Act 1997. Section 9A of the 1986 Act restricts the type of transactions that building societies and their subsidiaries can undertake. This instrument amends one of those restrictions.

4.2 The Building Societies Act (Restricted Transactions) (Amendment to the Prohibition on Entering into Derivatives Transactions) Order 2018, which is laid in draft alongside this instrument, will amend another of the restrictions in Section 9A of the 1986 Act, subject to the approval of Parliament.

5. Extent and Territorial Application

5.1 The extent of this instrument includes Scotland and Northern Ireland.

5.2 The territorial application of this instrument includes Scotland and Northern Ireland.

6. European Convention on Human Rights

6.1 The Economic Secretary to the Treasury has made the following statement regarding Human Rights:

“In my view the provisions of the Building Societies Act (Restricted Transactions) (Amendment to the Limit on the Trade in Currencies) Order 2017 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 This instrument amends section 9A of the Building Societies Act (1986) and will help ensure that the restrictions in section 9A are reflective of the modern housing market and will help level the playing field between building societies and banks by reducing their reliance on third party providers, helping them provide the best quality services to their members, whilst maintaining the characteristics of the mutual model.
- 7.2 The Instrument increases the maximum amount of currency that building societies can convert. The legislation currently limits building societies to only undertaking currency conversions below £100,000. This was introduced to prevent building societies trading significant volumes of currency or securities that would alter the market rates. Building societies are currently forced to use third-party banks to process any currency conversions over £100,000, something which happens relatively frequently due to foreign purchasers of UK property or vice versa.
- 7.3 This limit has become out of step with inflation and does not reflect the increasing international nature of the UK property market. This means that building societies are not being able to meet their members' needs without reliance on third party providers.
- 7.4 This instrument will enable building societies to compete on a level playing field with banks who do not face such restrictions and ensure that the legislation is up to date, reflecting changes in the housing market over the last two decades.
- 7.5 There is a further amendment to one of the prohibitions in section 9A of the 1986 Act, made by the Building Societies (Restricted Transactions) (Amendment to the Prohibition on Entering into Derivatives Transactions) Order 2018, which has been laid in draft alongside this instrument.

Consolidation

- 7.6 HM Treasury does not propose to consolidate any legislation in consequence of amendments made to primary legislation in these Orders.

8. Consultation outcome

- 8.1 The Government has consulted with the largest building societies that would stand to benefit from this changes, as well as the sector trade body. These discussions focused on how the change would benefit the sector and place building societies on a level playing field with banks.
- 8.2 The Government has also consulted with the Prudential Regulation Authority (PRA) in developing this proposal. They had no prudential concerns about the change.

9. Guidance

- 9.1 The PRA will be updating existing guidance once this change has been enacted.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies will be positive. These changes will provide building societies with the increased flexibility to enter into certain transactions/arrangements that will benefit their members. There is no direct cost or benefit to the sector from this change as it will allow societies to make a commercial

decision as to whether clear currency at a higher value, breaking away from their current outsourcing arrangements or become a member of a clearing house.

- 10.2 The impact on the public sector is minimal. There will be a small, short-term impact on public sector resources as the PRA will update their guidance and rulebook as a result of this change.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses. However, it is expected that only the largest building societies will have the capacity to take advantage of these changes. Therefore, we do not expect this to impact on any small businesses.

12. Monitoring & review

- 12.1 This instrument does not provide for a review of the amendments it makes. This is because a review would be disproportionate taking into account the economic impact of the instruments.
- 12.2 While no specific review is planned for this instrument, the change will be reviewed as part of any future policy review regarding co-operatives and community benefit societies.
- 12.3 The Economic Secretary to Her Majesty's Treasury has made the following statement regarding the appropriateness of a legislative provision for review of this instrument:
"It is not appropriate to make legislative provision for review of the Building Societies (Restricted Transactions) (Amendment to the Limit on the Trade in Currencies) Order 2017. The Order does not impose any requirements, restriction, condition or standards in relation to business activity. The instrument amends one of the restrictions on the type of transactions that building societies and their subsidiaries can undertake. These restrictions are set in primary legislation, and the powers under which this Order is made do not provide for the restrictions to be reversed. It is more appropriate to review the effect of the amendment to the restrictions as part of any future policy review regarding co-operatives and community benefit societies."

13. Contact

- 13.1 Kat Lyness at HM Treasury telephone: 020 7270 2467 or email: katharine.lyness@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.