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Building Societies Act 1986

1986 CHAPTER 53

PART II **U.K.**

CONSTITUTION OF BUILDING SOCIETIES

[^{FIX1}Restrictions on powers]

Editorial Information

X1 Cross-heading ("Restrictions on powers") is prospectively inserted with ss. 9A, 9B by 1997 c. 32, ss. 10, 47(3); This cross-heading is dated 9.6.1997 to provide a heading for s. 9B which is commenced 9.6.1997 by S.I. 1997/1427, art. 2; S. 9A and the cross-heading are commenced 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pt. II(i)

Textual Amendments

F1 S. 9A and cross-heading inserted (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. 10, 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(i)

VALID FROM 01/12/1997

[^{F2}9A Restrictions on certain transactions. **U.K.**

- (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—
- act as a market maker in securities, commodities or currencies;
 - trade in commodities or currencies; and
 - enter into any transaction involving derivative investments;
- but a contravention of this subsection shall not invalidate any transaction or other act.

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- (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,
 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 ^{M1}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.

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- (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 ^{M2}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;
 - “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

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- (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.]

Textual Amendments

F2 S. 9A and cross-heading inserted (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. 10, 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(i)

Marginal Citations

M1 1982 c.50.
M2 1986 c.60.

[^{F3}9B Restriction on creation of floating charges. U.K.]

- (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.]

Textual Amendments

F3 S. 9B inserted (9.6.1997) by 1997 c. 32, s. 11; S.I. 1997/1427, art. 2

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