



Building Societies Act 1986

1986 CHAPTER 53

PART II

CONSTITUTION OF BUILDING SOCIETIES

^{F1}*[Restrictions on powers]*

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)

^{F2}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—
- 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.
- (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—
- 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
 - it is entered into in the society's or undertaking's capacity as the manager of a collective investment scheme.

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Changes to legislation: *Building Societies Act 1986, Cross Heading: Restrictions on powers is up to date with all changes known to be in force on or before 16 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (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;^{F3} . . .
 - (v) any index of the prices of securities; [^{F4}and
 - (vi) the ability or willingness of one or more persons to pay or repay a sum or sums owing at law or in equity to the society or a connected undertaking of the society; 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—
- [as a person who has permission under [^{F6}Part 4A] of the Financial Services and
 - ^{F5}(a) Markets Act 2000 to effect or carry out contracts of long-term insurance, or
 - (b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of long-term insurance.]
- . . .
- (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,

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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 [^{F7}Financial Services and Markets Act 2000];

“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;

[^{F8}“derivative investment” means an investment of the following kinds—

- (a) instruments giving entitlements to investments;
- (b) options;
- (c) futures;
- (d) contracts for differences;]

“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.

[Subsection (5) and the definition of “derivative investment” in subsection (9) must ^{F9}(9A) be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act;]

- (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) [^{F10}The Treasury may] 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 they think 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—

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- (a) different provision for different cases or purposes; and
 - (b) such supplementary, transitional and saving provision as appears to the Treasury^{F11} . . . 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)**
- F3** Word in s. 9A(4) omitted (1.7.2001) by virtue of S.I. 2001/1826, **art. 2(a)**
- F4** S. 9A(4)(b)(vi) and the word "and" immediately preceding inserted (1.7.2001) by S.I. 2001/1826, **art. 2(b)**
- F5** . 9A(5)(a)(b) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 195(2)(a)**
- F6** Words in s. 9A(5)(a) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 8 para. 8** (with Sch. 12)
- F7** Words in the definition of "collective investment scheme" in s. 9A(9) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 195(3)(a)**
- F8** Definition of "derivative investment" in s. 9A(9) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 195(3)(b)**
- F9** S. 9A(9A) inserted (1.12.2001) by S.I. 2001/3649, **arts. 1, 195(4)**
- F10** Words in s. 9A(12) substituted (17.8.2001 for certain purposes and otherwise prosp.) by S.I. 2001/2617, **arts. 2(a), 8, 13(1), Sch. 3 Pt. II, para. 138 (a)(i)(ii)** (with art. 13(3), Sch. 5)
- F11** Words in s. 9A(13)(b) repealed (1.12.2001) by S.I. 2001/2617, **arts. 2, 13(2), Sch. 4** (with art. 13(3), Sch. 5); S.I.2001/3538, art. 2(a)

Modifications etc. (not altering text)

- C1** S. 9A(12): Functions of Building Societies Commission transferred (1.12.2001) to the Treasury by S.I. 2001/2617, **arts. 2(b), 4(1), Sch. 1 Pt. III**; S.I. 2001/3538, **art. 2(a)**

[^{F12}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 [^{F13}unless it complies with the requirements in subsection (1A)] .
- [The requirements are that the floating charge—
- ^{F14}(1A) (a) is created in favour of a participant in a system, and
- (b) is created for the purpose of securing any rights and obligations that may arise in connection with participation in that system.]
- (2) A floating charge created in contravention of this section shall be void.]
- [^{F15}(3) In this section “participant” and “system” have the meaning given by Article 2 of Directive 98/26/EC of the European Parliament and of the Council of 19th May 1998

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on settlement finality in payment and securities settlement systems (as amended by Directives [2009/44/EC](#) and [2010/78/EU](#).)]

Textual Amendments

- F12** S. 9B inserted (9.6.1997) by [1997 c. 32, s. 11](#); S.I. 1997/1427, [art. 2](#)
- F13** Words in [s. 9B\(1\)](#) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), ss. 55\(2\), 122\(3\)](#) (with [Sch. 20](#)); S.I. 2013/423, [art. 3, Sch.](#)
- F14** [S. 9B\(1A\)](#) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), ss. 55\(3\), 122\(3\)](#) (with [Sch. 20](#)); S.I. 2013/423, [art. 3, Sch.](#)
- F15** [S. 9B\(3\)](#) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), ss. 55\(4\), 122\(3\)](#) (with [Sch. 20](#)); S.I. 2013/423, [art. 3, Sch.](#)

Modifications etc. (not altering text)

- C2** [S. 9B\(1\)](#) excluded (7.4.2010) by [The Building Societies \(Financial Assistance\) Order 2010 \(S.I. 2010/1188\), arts. 1\(2\), 7\(1\)](#)
- C3** [S. 9B\(2\)](#) excluded (7.4.2010) by [The Building Societies \(Financial Assistance\) Order 2010 \(S.I. 2010/1188\), arts. 1\(2\), 7\(2\)](#)

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