



Building Societies Act 1986

1986 CHAPTER 53

[^{F1}PART III

ADVANCES, LOANS AND OTHER ASSETS]

Class 1 advances and class 2 advances secured on land

[^{F1}10 Advances secured on land.

- (1) A building society may make advances to members (in this Act referred to as “advances secured on land”) secured by—
 - (a) a mortgage of a legal estate or, as provided under subsection (6) below, an equitable interest in land in England and Wales or Northern Ireland, or
 - (b) a heritable security over land in Scotland,and for that purpose may (in England and Wales or Northern Ireland) hold land with the right of foreclosure.
- (2) Advances secured on land may, in accordance with sections 11 and 12—
 - (a) be fully or partly secured by a mortgage of the legal estate or equitable interest in land in England and Wales or Northern Ireland, or
 - (b) be fully secured by a heritable security over land in Scotland,

and in this Part “the basic security” means the security constituted by the legal estate in or heritable security over the land or, in a case where an equitable interest in land in England and Wales or Northern Ireland is or is also taken as security by virtue of this section, that constituted by that security or, as the case may be, the combined securities; and a reference to the land which is to secure an advance or on which an advance is secured is a reference to the estate or interest or the heritable security which constitutes or will constitute the basic security.

- (3) The power to make an advance secured on land includes power, subject to the restriction imposed by subsection (4) below, to make, as a separate advance, an advance which is to be applied in or towards payment of the deposit for the purchase of the land (in this Part referred to as “an advance for a deposit for the purchase of land.”)

Status: Point in time view as at 01/12/1997.

Changes to legislation: Building Societies Act 1986, Section 10 is up to date with all changes known to be in force on or before 13 August 2023. 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)

- (4) The restriction referred to is that an advance for a deposit for the purchase of land must not exceed 10 per cent. of the total amount to be paid for the purchase of the land.
- [The power to make an advance secured on land includes power to make an advance
^{F2}(4A) which is secured as mentioned in subsection (1) above by virtue of security granted otherwise than by the borrower (in this Act referred to as “an advance secured on third party land”).]
- (5) An advance shall be treated for the purposes of this Act as secured by a mortgage of a legal estate in registered land in England and Wales or Northern Ireland notwithstanding that the advance is made before the [^{F3}mortgagor] is registered as proprietor of the estate.
- (6) A building society may advance money on the security of an equitable interest in land in England and Wales or Northern Ireland if 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 under this subsection and any conditions prescribed in the order are complied with.
- (7) Any powers conferred on building societies by an order under subsection (6) above may be conferred on building societies of a description specified in the order or all building societies other than those of a description so specified.
- (8) The power to make an order under subsection (6) above includes power—
- (a) to prescribe the circumstances in which the power conferred by section 17(10) on building societies of the description specified therein is to be available to them; and
 - (b) to make such incidental, supplementary and transitional provision as the Commission considers necessary or expedient.
- (9) An instrument containing an order under subsection (6) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) The power to make advances secured on land includes power to make them on terms that include provision as respects the capital element in the mortgage debt (with or without similar provision as respects the interest element)—
- (a) that the amount due to the society may be adjusted from time to time by reference to such public index of prices other than housing prices as is specified in the mortgage;
 - (b) that the amount due to the society may be adjusted from time to time by reference to such public index of housing prices as is specified in the mortgage;
 - (c) that the amount due to the society at any time shall be determined by reference to a share, specified or referred to in the mortgage, in the open market value of the property at that time;
- and, in cases where the amount due to the society in respect of capital exceeds the amount advanced, references in this Act to the repayment of an advance include references to payment of the excess.
- (11) Advances secured on land shall be classified for the purposes of the requirements of this Part for the structure of commercial assets into—
- (a) class 1 advances, and
 - (b) class 2 advances;

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and in this Act “advances fully secured on land” means advances which are class 1 or class 2 advances, and any reference to “fully secured” shall be construed accordingly.

- (12) Nothing in this section or section 11 or 12 is to be taken as precluding a society from taking other security for an advance secured on land than such security as is required for an advance to be a class 1 or class 2 advance under those sections; but the value of the other security shall be disregarded for the purpose of classifying the advance as a class 1 or class 2 advance.]

Textual Amendments

- F1** Pt. III (ss. 10-23) repealed (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. 12(1)(a), 46(2), 47(3), **Sch. 9**; S.I. 1997/2668, art. 2, Sch. Pts. I(b), II(j)
- F2** S. 10(4A) inserted (3.1.1995) by 1994 c. 40, ss. 16(2), 82(2)(a)
- F3** Word in s. 10(5) substituted (3.1.1995) by 1994 c. 40, ss. 39, 82(2)(e), **Sch. 11 para. 7(2)**

Modifications etc. (not altering text)

- C1** S. 10 restricted (1. 7. 1992) by S.I. 1992/1547, arts. 5, 6, **Sch. 2**
- C2** S. 10 excluded by S.I. 1987/1498, art. 7, **Sch. 2 para. 1**

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