

EXPLANATORY MEMORANDUM TO

THE BUILDING SOCIETIES (FINANCIAL ASSISTANCE) ORDER 2008

1. This explanatory memorandum has been prepared by Her Majesty's Treasury and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Building Societies (Financial Assistance) Order 2008 ("the Order") modifies the law applying to building societies to make it easier for the Bank of England to provide "relevant financial assistance" to building societies, by removing certain restrictions which would otherwise apply. "Relevant financial assistance" is financial assistance provided for the purpose of maintaining the stability of the financial system in the United Kingdom (see sections 11(2) and 15(1) of the Banking (Special Provisions) Act 2008).

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 The Order is the first order made under section 11 of the Banking (Special Provisions) Act 2008 ("the Act"). This is in line with the Government's intention as set out in the Memorandum from HM Treasury to the Lords Delegated Powers and Regulatory Reform Committee, to make an order under Section 11 as soon as possible after the Act was passed. (See Delegated Powers and Regulatory Reform Committee, 5th report of session 2007-8" appendix 1, paragraph 62).

4.2 The Order is being made because the Treasury consider it expedient, at this time, to remove certain legislative barriers which could restrict building societies' ability to receive financial assistance from the Bank of England and the Bank's flexibility to give financial assistance to building societies.

4.3 For example, the Order modifies the application of section 7 of the Building Societies Act 1986, to ensure that "relevant financial assistance" from the Bank is not taken into account for the purposes of the 50% limit on building societies' non-member funding. Without this modification, a building society accepting significant financial assistance could be in breach of its obligations under the Building Societies Act 1986.

4.4 The Order also allows building societies to create floating charges over their assets in favour of the Bank, and applies insolvency law provisions on administrative receivers, to make it possible for the Bank to appoint an administrative receiver under a floating charge.

4.5 The Order only relates to financial assistance provided “for the purpose of maintaining the stability of the financial system in the United Kingdom” (see section 11(2) of the Act).

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Chancellor of the Exchequer has made the following statement regarding Human Rights:

In my view the provisions of the Building Societies (Financial Assistance) Order 2008 are compatible with the Convention rights.

7. Policy background

7.1 The purpose of the Act is to enable the Government to act to secure the continued stability of the UK financial system and to protect the public interest where financial assistance has been provided to a UK deposit-taker.

7.2 This instrument contributes to that purpose by ensuring that building societies have sufficient flexibility to receive financial assistance from the Bank of England, where the financial assistance is provided to maintain the stability of the UK financial system.

7.3 It also ensures that the Bank is able to take a floating charge over a building society’s assets as security for any such financial assistance, should it consider it appropriate to do so to protect the public’s interest in such financial assistance.

7.4 In the current climate, the Government considers it prudent to ensure that any barriers to financial assistance from the Bank of England are removed, so that it can be provided if necessary. The Government made it clear in the Memorandum from HM Treasury to the Lords Delegated Powers and Regulatory Reform Committee on the Banking (Special Provisions) Bill that it intended to make this Order as soon as possible.

7.5 There was no public consultation on the Order. The Government decided that, as an important contingency measure, the Order should be introduced as soon as possible, and any consultation would have delayed its introduction significantly. The Government intends to bring forward legislation later in the current parliamentary session to strengthen the framework for depositor protection and financial stability. In preparation for that the Government is undertaking a consultation on questions including the provision of financial assistance to building societies from the Bank of England, and in light of that process may review the measures in this Order.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

9. Contact

9.1 Banking Reform team at HM Treasury, 1 Horse Guards Road, London SW1A 2HQ, or e-mail: banking.reform@hm-treasury.gsi.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency: HM Treasury	Title: Impact Assessment of the Building Societies (Financial Assistance) Order	
Stage: Implementation	Version: 1	Date: 2 April 2008
Related Publications: The Banking (Special Provisions) Bill 2008, the Chancellor's statement on Northern Rock plc, 18 February 2008, House of Commons Hansard column 21		

Available to view or download at:

<http://www.hm-treasury.gov.uk>

Contact for enquiries:

Telephone:

What is the problem under consideration? Why is government intervention necessary?

The Bank of England's ability to provide financial assistance to a building society is currently more restricted (under the terms of the 1986 Building Societies Act) compared with what it can provide for banks. Given turbulence in financial markets at this time, important to bring forward this contingency measure, for the purposes of maintaining stability in the UK financial system.

What are the policy objectives and the intended effects?

To promote financial stability; to protect consumers and depositors; and to protect the interests of the taxpayer. These measures remove legal impediments or constraints on the manner in which, and the extent to which, the Bank of England can provide financial assistance to Building Societies.

What policy options have been considered? Please justify any preferred option.

Building societies can already get financial assistance from the Bank by the sale and repurchase of debt securities that qualify as eligible collateral. But they need to be able to access financial assistance by the full range of methods available to banks, in particular in the form of loans secured by a floating charge over their assets. And the amount of financial assistance that can be provided needs to be set free from the statutory constraints on societies' balance sheet composition.

The measures in the 1986 Act were included to safeguard the distinctive nature of building societies, and to protect the interests of members of building societies, including to protect members from the risk that secured lenders might exercise an inordinate degree of control over the management of that society, and it is desirable that these measures are retained in relation to the general business activities of societies.

However, for the purposes of maintaining financial stability it is important that the Bank of England can provide a fuller range, and potentially larger amounts, of financial assistance to building societies free of the effect of these statutory restrictions

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the

desired effects?

The Government intends to bring forward legislation later in the current parliamentary session, to strengthen the framework for depositor protection and financial stability. As part of this process, Government is undertaking a consultation including on questions of the provision of financial assistance to building societies from the Bank of England. As required, Government will review the measures in this Order at that time.

Ministerial Sign-off For statutory instrument Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the measures.

Signed by the responsible Minister:

.....Date: 2 April 2008

Summary: Analysis & Evidence

Policy Option: Building Societies (Financial Assistance) Order	Description: See the evidence base for the analysis of the costs and benefits of the measures
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by ‘main affected groups’	
	One-off (Transition) Yrs		
	£ NA		
	Average Annual Cost (excluding one-off)		
	£ NA	Total Cost (PV)	£ NA
Other key non-monetised costs by ‘main affected groups’ N/A – see evidence base			

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by ‘main affected groups’	
	One-off Yrs		
	£ N/A		
	Average Annual Benefit (excluding one-off)		
	£ N/A	Total Benefit (PV)	£ N/A
Other key non-monetised benefits by ‘main affected groups’ N/A – see evidence base			

Key Assumptions/Sensitivities/Risks

N/A - See evidence base

Price Base Year	Time Period Years	Net Benefit Range (NPV) £ NA	NET BENEFIT (NPV Best estimate) £ NA
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What is the geographic coverage of the policy/option?	UK
On what date will the policy be implemented?	Once Order is made
Which organisation(s) will enforce the policy?	HM Treasury,
What is the total annual cost of enforcement for these organisations?	£ NA
Does enforcement comply with Hampton principles?	Yes

Will implementation go beyond minimum EU requirements?		NA		
What is the value of the proposed offsetting measure per year?		£ NA		
What is the value of changes in greenhouse gas emissions?		£ NA		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro N/A	Small N/A	Medium N/A	Large N/A
Are any of these organisations exempt?	N/A	N/A	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of £ N/A	Decrease of £ N/A	Net Impact	£ N/A

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

EVIDENCE BASE

The order modifies the application of the Building Societies Act 1986, in specified circumstances, to facilitate the provision of “relevant financial assistance” by the Bank of England to building societies. “Relevant financial assistance” is any financial assistance provided for the purpose of maintaining the stability of the financial system in the United Kingdom (section 11(2) of the Banking (Special Provisions) Act 2008 (c. 2)).

It also allows the Bank of England to grant financial assistance to a building society in a timely and effective manner against the security of a floating charge. As such, it improves both depositor confidence and market confidence. It seeks to protect taxpayers’ interests by liquidity assistance being secured by an effective charge against assets.

Benefits: There are no immediate and significant one-off benefits associated with these measures though there would be significant benefits to customers of building societies, and to the economy as a whole if the Bank of England averted financial instability through the provision of financial assistance to a building society. There may also be some immediate benefit to building societies if both consumers, and the wholesale money markets, perceive that societies’ improved access to such financial assistance is a positive feature.

Quantification: Negligible

Costs: There are no significant ongoing or one-off direct costs associated with these measures, though there could be significant costs to the economy and customers of building societies if financial assistance by the Bank of England remained on the current restricted basis and financial instability followed.

Quantification: Negligible

Groups affected

Directly: building societies receiving liquidity from the Bank of England; **Indirectly:** depositors of the building society, who may benefit if this action prevents a failure. Other lenders to building societies, as indicated above, may also take a more positive view.

Competition assessment

These measures should have a positive impact on competition, as they would allow building societies to receive relevant financial assistance from the Bank of England in a similar way to banks.

Risks

There is a theoretical risk that these measures could be considered adversely to affect the position of building society members though this should be limited to the extent that the modification of these provisions is limited to security or borrowing in favour of the Bank of England. So this risk could only arise if financial assistance were in contemplation, which is by definition where the building society and its depositors face an enhanced risk of failure which the financial assistance seeks to mitigate. Similarly, any theoretical risk to other lenders to building societies could also only arise where financial assistance were to be provided, not under normal conditions.

