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DRAFT STATUTORY INSTRUMENTS

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**2010 No.**

**The Building Societies (Financial Assistance) Order 2010**

**Memorandum and rules**

**8.**—(1) Schedule 2 to the 1986 Act (establishment, incorporation and constitution of building societies) applies in relation to a relevant building society with the following modifications.

(2) Paragraph 2 (the memorandum)(1) shall have effect as if, after sub-paragraph (4), there were inserted—

“(4A) However, no provision of the memorandum of a building society shall be binding on any member or officer of the society, or on any person claiming on account of a member or under the rules, to the extent that it would prevent the society (whether acting through its officers or otherwise) from—

- (a) receiving any financial assistance from a qualifying institution, or
- (b) entering into any transaction connected with the receipt of such financial assistance,

and sub-paragraph (4) shall be construed accordingly.

(4B) In sub-paragraph (4A)—

- (a) “financial assistance” has the same meaning as in section 251 of the Banking Act 2009(2) and “qualifying institution” means the Treasury, the Bank of England, another central bank of a Member State of the European Economic Area or the European Central Bank; and
- (b) references to a qualifying institution include—
  - (i) any person acting for or on behalf of that institution, and
  - (ii) any person providing, offering, or entering into an agreement for the provision of, financial assistance to a building society, who does so on the basis of financial assistance that person receives from the qualifying institution for that purpose.”.

(3) Paragraph 3 (the rules)(3) shall have effect as if, after sub-paragraph (2), there were inserted—

“(2A) However, nothing in the rules of a building society shall be binding on any member or officer of the society, or on any person claiming on account of a member or under the rules, to the extent that it would prevent the society (whether acting through its officers or otherwise) from—

- (a) receiving any financial assistance from a qualifying institution, or
- (b) entering into any transaction connected with the receipt of such financial assistance,

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(1) Paragraph 2(1) and (2) of Schedule 2 were substituted, for paragraphs (1) to (3) as originally enacted, by the Building Societies Act 1997, section 43 and Schedule 7, paragraph 56(3). Paragraph 2(5) was repealed by the Building Societies Act 1997, sections 43 and 46(2), Schedule 7 paragraph 56(4), and Schedule 9.

(2) 2009 c.1. See in particular sections 251(8) and 257(1) of the Banking Act 2009.

(3) Paragraph 3(3) was amended by S.I. 2001/2617. Paragraph 3(4) was amended by the Building Societies Act 1997, section 43 and Schedule 7, paragraph 56(5). Paragraph 3(5) was inserted by S.I. 2003/404.

and sub-paragraph (2) shall be construed accordingly.

(2B) In sub-paragraph (2A)—

- (a) “financial assistance” and “qualifying institution” have the same meanings as in paragraph 2(4A) (see paragraph 2(4B)); and
- (b) references to a qualifying institution include—
  - (i) any person acting for or on behalf of that institution, and
  - (ii) any person providing, offering, or entering into an agreement for the provision of, financial assistance to a building society, who does so on the basis of financial assistance that person receives from the qualifying institution for that purpose.”.

(4) No member of a building society may bring proceedings under paragraph 16(2) (capacity of society not limited by its memorandum)(4) to restrain the doing of any act by a building society for or in connection with the receipt of financial assistance from a qualifying institution.

(5) Paragraph 16(3) shall not operate so as to—

- (a) require the directors to observe any limitations on their powers flowing from the society’s memorandum which would, apart from this article, prevent them entering into any transaction for or in connection with the receipt of financial assistance by the society from a qualifying institution, or
- (b) require any such action by the directors which, but for paragraph 16(1), would be beyond the society’s capacity, to be ratified by the society by special resolution.

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(4) Paragraph 16 was substituted by the Building Societies Act 1997, section 3(2) and Schedule 1.