

EXPLANATORY MEMORANDUM TO
THE BUILDING SOCIETIES (FINANCIAL ASSISTANCE) ORDER 2010
2010 No. [DRAFT]

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

2. **Purpose of the instrument**

2.1 The Building Societies (Financial Assistance) Order 2010 (“the Order”) modifies the law applying to building societies to make it easier for a qualifying institution (the Treasury, the Bank of England, the European Central Bank or another central bank in the European Economic Area) to provide financial assistance to building societies.

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

3.1 None.

4. **Legislative Context**

4.1 The Order is the first order made under section 251 of the Banking Act 2009 (c.1). It modifies the application of the Building Societies Act 1986 (c. 53) (“the 1986 Act”), in specified circumstances, to facilitate the provision of financial assistance by a qualifying institution to building societies.

5. **Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

6. **European Convention on Human Rights**

The Financial Services Secretary to the Treasury, Lord Myners, has made the following statement regarding Human Rights:

In my view the provisions of the Building Societies (Financial Assistance) Order 2010 are compatible with the Convention rights.

7. **Policy background**

- *What is being done and why*

7.1 The Order replaces the Building Societies (Financial Assistance) Order 2008 (S.I. 2008/1427) (“the 2008 Order”), which was made under Banking (Special Provisions) Act 2008 (c.2) (BSPA). Like that Order, it removes certain legislative barriers which could restrict building societies’ ability to receive financial assistance.

7.2 In most respects, this Order replicates the provisions of the 2008 Order. In particular:

- 7.2.1 it modifies the application of section 7 of the 1986 Act, 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; and
- 7.2.2 it disapplies section 9B of the 1986 Act (restriction on creation of floating charges) and applies insolvency law provisions on administrative receivers, to make it possible for the Bank to appoint an administrative receiver under a floating charge.

7.3 However, this Order makes wider provision than the 2008 Order in two respects:

- 7.3.1 whereas the 2008 Order only applied to financial assistance offered or provided by the Bank of England, this Order will apply in respect of financial assistance offered or provided by the Treasury, the Bank of England, another central bank of a Member State of the European Economic Area or the European Central Bank; and
- 7.3.2 whereas the 2008 Order only allowed floating charges to be granted where to financial assistance is provided “for the purpose of maintaining the stability of the financial system in the United Kingdom” (see section 11(2) of the BSPA), this Order will allow floating charges to be granted where financial assistance is provided for any purpose.

- ***Consolidation***

7.4 None. The Order is the first order made under section 251 of the Banking Act 2009.

8. Consultation outcome

8.1 The Treasury consulted in July 2009 on a draft Order that would:

- allow building societies to grant floating charges to a central bank in connection with financial assistance provided by the bank; and
- allow them to grant floating charges in favour of payment and settlement systems to help them take advantage of financial assistance.

8.2 This consultation closed on 31 October 2009. Respondents to the consultation expressed the view that both of these provisions would be useful for the purposes of accessing financial assistance.

8.3 However, in light of further consideration, the Treasury have decided that it is appropriate to make an Order which is more limited in scope. This Order therefore puts in place the first of these two provisions only.

9. Guidance

9.1 The Treasury do not intend to publish guidance in relation to this instrument.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument. An impact assessment was included in the consultation document (“Special resolution regime: the Building Societies (Insolvency and Special Administration) Order 2009 and related insolvency rules, and financial assistance to building societies”) which is available on the Treasury website (www.hm-treasury.gov.uk).

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Treasury will keep the Order under review, and has established an experts group to look issues affecting the building society sector more widely.

13. Contact

Christopher Moore at the Treasury Tel: 020 7270 4819 or email: christopher.moore@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.