



Housing Associations Act 1985

1985 CHAPTER 69

PART II

HOUSING ASSOCIATION FINANCE

Building society advances

63 Building society advances: certain advances not special advances but subject to their own limit

- (1) An advance to which this section applies is one made by a building society to a housing association on the security of a freehold or leasehold estate by means of a mortgage where—
- (a) immediately before the execution of the mortgage, the Housing Corporation has an interest in the same freehold or leasehold estate under a mortgage entered into by the housing association, and
 - (b) the security represented by the last-mentioned mortgage is, with the agreement of the Corporation, postponed to the building society's security under the first-mentioned mortgage.
- (2) The following advances—
- (a) an advance to which this section applies, and
 - (b) an advance which in accordance with section 21(7) of the Building Societies Act 1962 a building society is treated as having made by reason of a transfer from one housing association to another, or from a housing association to the Housing Corporation, or from the Housing Corporation to a housing association, of the mortgagor's interest under a mortgage securing an advance made by the building society,

do not constitute special advances as defined by section 21 of the Building Societies Act 1962 and shall not be brought into account under section 22(2)(b) of that Act (ordinary limits on special advances).

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- (3) A building society shall not in the first financial year in which it makes advances on the security of freehold or leasehold estate make any advances to which this section applies.
- (4) In any subsequent financial year a building society shall not, except in accordance with a permission under subsection (5), make advances to which this section applies of a total amount which exceeds 15 per cent. of the total of the advances of all descriptions made by the building society in the last preceding financial year on the security of freehold or leasehold estate.
- (5) The Chief Registrar may, if he thinks fit, grant to a building society permission in writing to make advances to which this section applies in excess of the limit imposed by subsection (4), but subject to such other limits as may be specified in the permission.
- (6) For the purposes of this section—
 - (a) " financial year " has the meaning given by section 128 of, and paragraph 11 of Schedule 8 to, the Building Societies Act 1962, subject to paragraph (b) below;
 - (b) for the purposes of subsection (4) if a financial year is shorter or longer than the last preceding financial year, a corresponding reduction or increase shall be made in the figure of 15 per cent. mentioned in that subsection ; and
 - (c) section 21(7) of the Building Societies Act 1962 (deemed advance on transfer of mortgage) applies for the purpose of ascertaining what advances a building society has made in a financial year.

64 Failure to comply with limit on advances an offence

- (1) If a building society does not comply with the requirements of section 63(3), (4) and (5) (limits on advances to which that section applies)—
 - (a) the society and
 - (b) every officer of the society who knowingly or wilfully authorises or permits the failure to comply,
 commits an offence which is triable either way.
- (2) A society which is convicted of an offence under this section is liable—
 - (a) on conviction on indictment, to a fine, and
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (3) An officer who is convicted of an offence under this section is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both ;
 - (b) on summary conviction, to imprisonment for a term not exceeding three months, or a fine not exceeding the statutory maximum, or both.
- (4) In this section " statutory maximum " has the meaning given by section 74 of the Criminal Justice Act 1982.

65 Building society advances: advances by more than one building society

A building society may make an advance to which section 63 applies by means of a mortgage under which the same freehold or leasehold estate constitutes the security

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both for that advance and for advances made to the same housing association by one or more other persons by means of the same mortgage, but only if—

- (a) every other person making an advance by means of that mortgage is another building society, and
- (b) the mortgagees in the mortgage all covenant with each other not to transfer their interests as mortgagees to a person who is not a building society.

66 Application of ss. 63 to 65 to Scotland

In the application to Scotland of sections 63 to 65 (building society advances)—

- (a) for the references to freehold or leasehold estate, substitute references to an estate or interest in land ;
- (b) for the references to an advance on the security of freehold or leasehold estate, or to an advance by means of a mortgage, and similar references, substitute references to an advance upon a heritable security ;
- (c) for the references to a mortgage, mortgagor or mortgagee substitute, respectively, references to a heritable security, a debtor in a heritable security and the creditor in a heritable security;
- (d) for the reference to an offence triable either way substitute a reference to an offence triable either summarily or on indictment.