



Building Societies Act 1986

1986 CHAPTER 53

PART II

CONSTITUTION OF BUILDING SOCIETIES

Establishment

5 Establishment, constitution and powers.

- (1) A society may be established under this Act if its purpose or principal purpose is that of raising, primarily by the subscriptions of the members, a stock or fund for making to them advances secured on land for their residential useAt the end of subsection (1) of section 5 of the Building Societies Acts [^{F1}and its principal office is in the United Kingdom].
- (2) A society is established under this Act on compliance by the persons establishing it with the scheduled requirements and is incorporated under this Act as from the date of registration by the central office.
- (3) A society incorporated under this Act is referred to in this Act as a “building society”.
- (4) A society incorporated under the repealed enactments whose principal office, as registered with the central office immediately before the commencement of this section, was in the United Kingdom, shall be deemed to be registered (and accordingly as incorporated) under this Act.
- (5) A building society shall have the powers conferred on building societies by or under the subsequent provisions of this Act subject, however, to—
 - (a) any specified restriction assumed by the society;
 - (b) the operation of any provision by virtue of which a power is not available to a building society;
 - (c) compliance with any requirement that, for a power to be exercisable by a building society, it must be adopted by the society; and

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- (d) the exercise by the Commission of any of its functions by virtue of which the society is precluded from exercising or is subject to restrictions on the exercise of any of its powers.
- (6) Powers are adopted by a building society for the purposes of this Act by its compliance with the scheduled requirements and, subject to any provision of this Act to the contrary, may be adopted to any specified extent.
- (7) Restrictions on its powers are assumed by a building society for the purposes of this Act by its compliance with the scheduled requirements.
- (8) Schedule 2 to this Act has effect as respects the constitution, powers, and regulation of building societies and in that Schedule—
 - (a) Part I makes provision with respect to the constitution, memorandum, rules and certain incidents of membership;
 - (b) Part II makes provision for the purpose of precluding a society from anticipating the adoption of powers; and
 - (c) Part III makes provision with respect to meetings, postal ballots and resolutions;

and in this section “scheduled”, with reference to requirements for establishment or for the adoption of powers or the assumption of restrictions on powers, means contained in that Schedule and “specified”, with reference to the adoption of powers or the assumption of restrictions on powers, means specified in the memorandum.

- (9) Any obligation imposed by this Act or the rules of a building society to give or send notices or other documents to members is subject to paragraph 14 of that Schedule.
- (10) In this Act, except sections 10 to 13, “land”, in the expression “advance secured on land”, means land in the United Kingdom, and, in so far as land in other countries or territories is, under any provision of this Act, land on which advances may be secured, land in that other country or territory.

Textual Amendments

F1 Words in s. 5(1) inserted (1. 1. 1993) by S.I. 1992/3218, reg.67

Modifications etc. (not altering text)

C1 S. 5(8)(c) excluded (*temp.*) by S.I. 1986/2168, art. 3(1)(2)

6 Power to hold land etc. for purposes of its business.

- (1) A building society may acquire and hold premises for the purpose of conducting its business.
- (2) A building society may, otherwise than by acquisition, provide itself with premises for the purpose of conducting its business.
- (3) A building society which has subsidiaries or other associated bodies, in addition to exercising the powers conferred by subsections (1) and (2) above as regards premises from which the society’s business is to be conducted by a subsidiary or associated body, may exercise corresponding powers for the purpose of enabling a subsidiary or other associated body to conduct the business of that body from the premises.

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- (4) A building society may exercise the powers conferred by subsections (1) and (2) above as regards premises situated outside, as well as premises situated within, the United Kingdom.
- (5) If the acquisition or provision of any premises is necessary for the purpose of the conduct of the business of a building society or a subsidiary or other associated body, the society may acquire or otherwise provide itself with and hold the premises under this section notwithstanding that part only of the premises is or will be required for that purpose.
- (6) A building society—
 - (a) may dispose of property held under this section; and
 - (b) in the event that no part of the premises comes to be or, as the case may be, is any longer occupied for the conduct of the business of the society or a subsidiary or associated body, shall, subject to subsection (7) below, sell its estate or interest in the premises as soon as it is conveniently practicable to do so without undue loss.
- (7) Subsection (6)(b) above does not require a building society to sell any property if the society may hold the property under section 17 and elects to do so by a resolution of the board of directors.

VALID FROM 01/12/1997

[^{F2}Making loans]

Textual Amendments

- F2** S. 6 and cross-heading substituted for s. 6 (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. 4, 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(d)

[^{F3}6A Loans secured on land.

- (1) For the purposes of this Act a loan is secured on land if it is secured by—
 - (a) a mortgage of a legal estate in land in England and Wales or Northern Ireland;
 - (b) a heritable security over land in Scotland; or
 - (c) a qualifying security over land in an EEA country or territory other than the United Kingdom.
- (2) For the purposes of this Act a loan is also secured on land if—
 - (a) it is secured by a mortgage of an equitable interest in land in England and Wales or Northern Ireland;
 - (b) 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; and
 - (c) any conditions prescribed in the order are complied with;and an order under this subsection may apply in relation to securities held by or on behalf of building societies or connected undertakings of a description specified in

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the order, or securities held by or on behalf of all such societies or undertakings other than those of a description so specified.

- (3) For the purposes of this Act—
- (a) a loan shall be treated as secured by a mortgage of a legal estate in registered land in England and Wales or Northern Ireland notwithstanding that the loan is made before the mortgagor is registered as proprietor of the estate; and
 - (b) a loan shall be treated as secured by a heritable security over land in Scotland notwithstanding that the loan is made before title to that land has been transferred to the debtor in the heritable security.
- (4) The Commission may, with the consent of the Treasury, by order provide for any provisions of this Act to have effect in relation to loans secured on land outside the European Economic Area with such modifications as appear to the Commission to be appropriate.
- (5) An order under subsection (2) or (4) above may make such incidental, supplementary and transitional provision as appears to the Commission to be necessary or expedient.
- (6) The power to make an order under subsection (2) or (4) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In this section and section 6B—
- “EEA country or territory” means a country or territory in the European Economic Area;
- “qualifying security”, in relation to land in an EEA country or territory other than the United Kingdom and a loan, means a security over the land which—
- (a) acknowledges, and requires repayment of, the loan; and
 - (b) secures repayment of the loan on the land;
- and for the purposes of this section and that section, the Channel Islands, the Isle of Man and Gibraltar shall be treated as included in the European Economic Area.
- (8) In this Act “land”, in the expression “loan secured on land”, means—
- (a) land in an EEA country or territory; and
 - (b) in so far as land in any other country or territory is, under any provision of this Act, land on which loans may be secured, land in that other country or territory.]

Textual Amendments

- F3** S. 6A inserted (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. 5, 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(e)

[^{F4}6B Loans fully secured on land.

- (1) For the purposes of this Act a loan which is owed to a building society or a subsidiary undertaking of a building society and is secured on residential property or other land is fully secured on the land if—

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- (a) the principal of, and interest accrued on, the loan does not exceed the value of the requisite security; and
 - (b) no, or no more than one, mortgage of the land which has priority over the society's or undertaking's mortgage is outstanding in favour of an outside person.
- (2) Where a mortgage of the residential property or other land which has priority over the society's or undertaking's mortgage is outstanding, the principal of the loan secured or, in the case of a loan by instalments, intended to be secured by that mortgage shall be deducted from the value of the requisite security for the purposes of subsection (1) (a) above.
- (3) Where the loan is secured on residential property or other land in the United Kingdom, any outstanding charge over the land which—
 - (a) in the case of land in England and Wales, is registered in the appropriate local land charges register;
 - (b) in the case of land in Scotland, is recorded in the Register of Sasines, or registered in the Land Register, under section 108 of the^{M1}Civic Government (Scotland) Act 1982 or Schedule 9 to the^{M2}Housing (Scotland) Act 1987;
 - (c) in the case of land in Northern Ireland, is registered in the statutory charges register under section 87 of, and Schedule 11 to, the^{M3}Land Registration Act (Northern Ireland) 1970,shall be disregarded for the purposes of subsections (1)(b) and (2) above.
- (4) Where, on the occasion on which a building society or a subsidiary undertaking of a building society makes or acquires a loan which is secured on land, the society or undertaking is satisfied that the loan is—
 - (a) a loan which is fully secured on residential property;
 - (b) a loan which is not so secured but is fully secured on land; or
 - (c) a loan which is not fully secured on land,the loan shall be treated as such a loan for the purposes of this Act until such time (if any) as subsection (7) below applies.
- (5) Subsection (4) above shall have effect in relation to a loan which the society or undertaking makes by two or more payments on different dates as if—
 - (a) the reference to the occasion on which the society or undertaking makes the loan were a reference to the occasion on which it makes the first of the payments;
 - (b) other references to the loan were references to it in its intended maximum amount; and
 - (c) the value of any security for the loan were its expected maximum value.
- (6) Where a building society or a subsidiary undertaking of a building society makes or acquires a loan which is secured on land, the society or undertaking shall be deemed to be satisfied as mentioned in paragraph (c) of subsection (4) above until such time (if any) as it is satisfied as mentioned in paragraph (a) or (b) of that subsection.
- (7) Where at any time, in the case of a loan treated as falling within paragraph (a), (b) or (c) of subsection (4) above, the society or undertaking—
 - (a) is satisfied—
 - (i) on a revaluation that the value of the requisite security has changed;

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- (ii) on notice given to it by the borrower that there has been a change in the use of the land;
- (iii) that so much of the mortgage debt as represents the principal of the loan has changed;
- (iv) that the principal of the loan secured by a prior mortgage has changed or has been repaid; or
- (v) that the relative priority of the mortgage of the land on which the loan is secured has changed;
- (b) is also satisfied that the change or repayment is such that, if it were to make a loan equal to the mortgage debt at that time, the loan would instead be a loan falling within another of those paragraphs; and
- (c) in a case falling within paragraph (a)(i) above, elects that this subsection shall apply,

the loan shall be treated as such a loan for the purposes of this Act until such time (if any) as this subsection again applies.

(8) In this section—

“outside person”, in relation to a building society or a subsidiary undertaking of a building society, means any person other than the following, namely—

- (a) the society;
- (b) a subsidiary undertaking of the society;
- (c) a lending syndicate of which the society or such an undertaking is a member; and
- (d) trustees of a trust under which the society or such an undertaking is a beneficiary;

“the requisite security”, in relation to a loan secured on residential property or other land, means—

- (a) the security constituted by the legal estate in, or the heritable or qualifying security over, the land; or
- (b) in a case where an equitable interest in land in England and Wales or Northern Ireland is or is also taken as security, that constituted by that security or, as the case may be, the combined securities;

“trust” includes arrangements—

- (a) which have effect under the law of a country or territory outside the United Kingdom; and
- (b) under which persons acting in a fiduciary capacity hold and administer property on behalf of other persons,

and “beneficiary” and “trustees”, in relation to such arrangements, shall be construed accordingly.

(9) In the application of subsections (1), (2) and (7) above to residential property or other land in Scotland or an EEA country or territory other than the United Kingdom, references to a mortgage of the land shall be construed as references to a heritable or, as the case may require, qualifying security over the land.]

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Textual Amendments

- F4** S. 6B inserted (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. 6, 47(3); S.I. 1997/2668, art. 2, **Sch. Pt. II(f)**

Modifications etc. (not altering text)

- C2** S. 6B(4)(a) modified (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. 46(1), 47(3), **Sch. 8 para. 6(1)(a)(b)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(y)(aa)(iii)**
- C3** S. 6B(4)(b) modified (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. 46(1), 47(3), **Sch. 8 para. 6(1)(c)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(y)(aa)(iii)**
- C4** S. 6B(4)(c) modified (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. 46(1), 47(3), **Sch. 8 para. 6(1)(d)**; S.I. 1997/2668, art. 2, **Sch. Pt. II(y)(aa)(iii)**

Marginal Citations

- M1** 1982 c.45.
M2 1987 c.26.
M3 1970 c.18 (N.I.).

[^{F5}6C Discharge of mortgages.

Schedule 2A to this Act, which contains supplementary provisions as to the discharge of mortgages, shall have effect.]

Textual Amendments

- F5** S. 6C inserted (1.12.1997) by 1997 c. 32, s. 7(1); S.I. 1997/2668, art. 2, **Sch. Pt. I(a)**

Raising funds and borrowing

7 Power to raise funds and borrow money and limit on non-retail funds and borrowing.

- (1) Subject to the provisions of this section and sections 8 and 9, a building society may—
- raise funds by the issue of shares to members, or
 - borrow money and accordingly receive deposits from any person,

to be applied for the purposes of the society.

- (2) The power to raise funds by the issue of shares is a power to issue shares of one or more denominations, either as shares paid up in full or as shares to be paid by periodical or other subscriptions, and with or without accumulating interest; and funds so raised may be repaid when they are no longer required for the purposes of the society.

[^{F6}(2A) In the case of deferred shares, the power to raise funds by the issue of shares includes the issue of shares at a premium.

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- (2B) If a building society issues deferred shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to the society's reserves.]
- (3) Subject to subsection (14) below, the liabilities of a building society in respect of its non-retail funds and deposits shall not exceed at any time the prescribed percentage of the society's total liabilities at that time in respect of shares in or money deposited with the society.
- [^{F7}(4) For the purposes of subsection (3) above, a building society's liabilities in respect of its non-retail funds and deposits are, subject to subsections (5) and (9) below, its liabilities in respect of the principal of and interest payable on or under—
- (a) transferable bearer instruments
 - (aa) transferable non-bearer instruments
 - (b)^{F7}
 - (bb) sums deposited otherwise than in excepting circumstances or in furtherance of a savings scheme with the society by, or by a trustee for, an institution which is—
 - (i) an authorised institution, for the purposes of, or
 - (ii) an overseas institution for the purposes of Part IV of, the Banking Act 1987;
 - (c) shares in the society held by, or by a trustee for, and (to the extent the liabilities do not fall within (a), (aa), or (bb) above) sums deposited with the society by, or by a trustee for—
 - (i) any body corporate, otherwise than in excepting circumstances,
 - (ii) a friendly society registered under the Friendly Societies Act 1974^{F8} . . . , otherwise than in furtherance of a savings scheme,
 - (iii) a trade union (within the meaning of the [^{F9}Trade Union and Labour Relations (Consolidation) Act 1992]).
 - (d) shares in the society (to the extent the liabilities do not fall within (c) above) held by, and (to the extent the liabilities do not fall within (a), (aa), (bb) or (c) above) sums deposited with the society by—
 - (i) a body of persons or trust established for charitable purposes only,
 - (ii) the administrator of an approved retirement benefits scheme,
 - (iii) the manager or trustee of an appropriate personal pension scheme, or
 - (iv) the plan manager of a personal equity plan.]
- (5) If a building society so elects with respect to any financial year its liabilities in respect of shares or deposits falling within paragraphs (c) or (d) (but no other provision) of subsection (4) above shall, subject to subsections (6) and (7) below, not be counted towards the limit in force under subsection (3) above.
- (6) The liabilities of the society to any person shall not, by virtue of an election under subsection (5) above, be disregarded at any time during the financial year to which the election relates if at that time the liabilities to that person exceed the prescribed amount; and in that event all the society's liabilities to that person shall count towards the limit in force under subsection (3) above.
- (7) To be effective for the purposes of subsection (5) above, an election must apply to the society's liabilities in respect of all its shareholders and depositors who fall within

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- subsection (4)(c) and (d) above and notice of it must be given to the Commission before the beginning of the financial year to which it relates.
- (8) A copy of the notice shall also be sent to the central office and the central office shall keep the copy in the public file of the society.
- (9) The Commission may by order made with the consent of the Treasury amend subsection (4) above by adding to or deleting from it any description of property or right or by varying any description of property or right for the time being specified in it and an order under this subsection may—
- (a) define property or rights by reference to any criteria including the description of person who holds the property or rights,
 - (b) make any consequential amendment or repeal in that subsection, subsections (5) to (8) above or subsection (19) below, and
 - (c) make such supplementary, transitional and saving provision as appears to the Commission to be necessary or expedient.
- (10) In determining for the purposes of subsection (3) above the liabilities of a building society with which another body corporate is associated there shall, subject to subsection (13) below, be attributed to the society, in accordance with aggregation rules made by the Commission with the consent of the Treasury under this subsection, the whole or part of the liabilities of whatever description of the associated body, as provided in the rules and subject to any exceptions provided in the rules.
- (11) The power to make aggregation rules under subsection (10) above includes power to make—
- (a) different rules for different circumstances,
 - (b) provision for liabilities of societies to be disregarded; and
 - (c) such supplementary, transitional and saving provision as appears to the Commission to be necessary or expedient.
- (12) The power to make aggregation rules under subsection (10) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (13) The Commission may, on the application of a building society, approve rules to be applied for the purposes of subsection (3) above for the attribution to the society of liabilities of bodies associated with the society; and so long as the rules continue to be approved by the Commission they, and not the aggregation rules in force under subsection (10) above, shall apply for the attribution of liabilities for the purposes of subsection (3) above.
- (14) Where money is lent to a building society by another such society in accordance with an authority given by the Commission under section 33 the liabilities in respect of the loan shall be disregarded for the purposes of subsection (3) above.
- (15) The prescribed percentage for the purposes of subsection (3) above is 20 per cent. or such other percentage not exceeding 40 per cent. as is for the time being substituted for it by order of the Commission made with the consent of the Treasury.
- (16) The prescribed amount for the purposes of subsection (6) above is [^{F10}£100,000] or such other amount as is for the time being substituted for it by order of the Commission made with the consent of the Treasury.

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- (17) The power to make an order under subsection (9), (15) or (16) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (18) If the liabilities of a building society to which subsection (3) above applies exceed at any time the limit in force under that subsection the powers conferred on the Commission by section 36 shall become exercisable in relation to the society, but exceeding the limit shall not affect the validity of transactions effected in excess of it.

[^{F11}(19) In this section—

“appropriate personal pension scheme” means a personal pension scheme within the meaning of the Social Security Act 1986 in respect of which an appropriate scheme certificate under section 2 thereof (appropriate schemes) is for the time being in force;

“excepting circumstances” means circumstances in which shares or rights of a depositor—

- (i) are held by the holder as nominee on behalf only of an individual, a Scottish partnership, or a combination of individuals, of such partnerships, or of both;
- (ii) are subject to a relevant trust in the income of which no person who is neither an individual nor a Scottish partnership has any interest; or
- (iii) were held by an individual as beneficial owner at the time of his death (or represent investments so held or dividends or interest thereon) and the holder is acting as personal representative of that individual;

“intermediary” means—

- (i) as regards the interpretation of a savings scheme in connection with paragraph (bb) of subsection (4), an institution which is within the ambit of that paragraph, or
- (ii) as regards the interpretation of a savings scheme in connection with subparagraph (ii) of paragraph (c) of subsection (4), a friendly society which is within the ambit of that subparagraph;

“personal equity plan” means a plan the operation of which is subject to conditions set out in the regulations for time being in force under Schedule 8 to the Finance Act 1986 (personal equity plans);

“relevant trust” means a trust which is neither a trust established for charitable purposes only nor a trust of shares held or sums deposited by—

- (i) the administrator of an approved retirement benefits scheme,
- (ii) the manager or trustee of an appropriate personal pension scheme, or
- (iii) the plan manager of a personal equity plan;

“retirement benefits scheme” means a retirement benefits scheme within the meaning of Chapter II of Part II of the Finance Act 1970 (occupational pension schemes) and “approved” means approved for the time being by the Commissioners of Inland Revenue for the purposes of that chapter;

“savings scheme” means a scheme under which—

- (a) shares in or rights of a depositor with the society represent sums of money placed with an intermediary by an individual under a contract under which—
 - (i) those sums were to be invested by the intermediary in shares of or deposited with the society, and no other society; and
 - (ii) those sums not to be withdrawn from the society by the intermediary except either—

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- (aa) on maturity of the contract by reason of the death of the individual, or the effluxion of a period of time specified in the contract, or
 - (bb) at the written request of the individual or any assignee of that individual's rights under the contract and within one month of the receipt by the intermediary of such request, or within a maximum of six months of such receipt if under the contract the intermediary has the right to defer for that period the withdrawal of funds placed with the intermediary for investment in or deposit with the society, or
 - (cc) where the intermediary has the right to deduct an amount from the investment with the society to cover charges specified in the contract and amounts surplus to the requirements of the contract;
- (b) the intermediary is obliged to produce, when requested to do so by the society, and on a date nominated by the society,
- (i) a statement of the total sums invested or deposited with that society by the intermediary in furtherance of contracts made under the terms of the scheme set out in subparagraphs (i) and (ii) of paragraph (a) above, together with a certificate signed by the auditor of the intermediary confirming that the statement constitutes a true account;
 - (ii) any written request mentioned in subparagraph (ii) of paragraph (a) above;
- “transferable bearer instrument” means an instrument which embodies a right, transferable by delivery of the instrument, to receive an amount referable to a deposit with the society; and
- “transferable non-bearer instrument” means an instrument which embodies a right—
- (i) which may, under the terms of the instrument, be held by any person, or by any person other than a person of a description specified in the instrument,
 - (ii) express provision for the transfer of which is included in the instrument, and
 - (iii) the transfer of which, under the terms of the instrument, does not require the consent of any person,
- to receive an amount referable to a deposit with the society.]

Textual Amendments

- F6** S. 7(2A)(2B) inserted (3.1.1995) by 1994 c. 40, **ss. 15, 82(2)(a)**
- F7** S. 7(4) amended by S.I. 1990/2363, **arts. 3(2), 3(3)** and has effect as set out in Part I of the Schedule to that S.I.
- F8** Words in s. 7(4)(c)(ii) repealed (1.1.1994) by Friendly Societies Act 1992 (c. 40), s. 120(2), **Sch. 22 Pt. I** (with ss. 7(5), 93(4)); S.I. 1993/3226, art. 2, **Sch. 2**.
- F9** Words in s. 7(4)(c)(iii) substituted (16. 10. 1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), ss. 300(2), 302, **Sch. 2 para. 35**
- F10** S. 7(16): words substituted (1.9.1995) for the purposes of s. 7(6) by S.I. 1995/1873, **art. 2**
- F11** S. 7(19) amended by S.I. 1990/2363, **art. 3(4)** and has effect as set out in Part II of the Schedule to that S.I.

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Modifications etc. (not altering text)

- C5** S. 7(3) modified (*temp.*) by S.I. 1986/2168, **art. 8(1)**
- C6** S. 7(3) excluded by S.I. 1986/2169, **art. 7(3)**
- C7** S. 7(4) extended (1.1.1993) by S. I. 1992/3218, reg. 82(1), **Sch. 10 Pt. I para. 22(a)**
- C8** S. 7(4) amended by S.I. 1990/2363, **arts. 3(2), 3(3)**
- C9** S. 7(7) modified by S.I. 1986/2169, **art. 7(1)**
- C10** S. 7(19) amended by S.I. 1990/2363, **art. 3(4)**

8 Proportion of liabilities to be in form of shares.

- (1) Subject to subsection (2) below, a building society shall secure that the amount of the principal of, and interest payable on, sums deposited with the society does not at any time exceed 50 per cent. of the aggregate of that amount and the principal value of, and interest payable on, shares in the society.
- (2) The following liabilities shall be disregarded for the purposes of this section—
 - (a) deposits of such descriptions as may be prescribed for those purposes by the Commission by order made with the consent of the Treasury,
 - (b) deferred shares, and
 - (c) loans made to the society in accordance with an authority given by the Commission under section 33.
- (3) In determining for the purposes of subsection (1) above the liabilities in respect of deposits of a building society with which another body corporate is associated there shall, subject to subsection (5) below, be attributed to the society, in accordance with aggregation rules made by the Commission with the consent of the Treasury under this subsection, the whole or part of the liabilities of whatever description of the associated body, as provided in the rules and subject to any exception provided in the rules.
- (4) The power to make aggregation rules under subsection (3) above includes power to make—
 - (a) different rules for different circumstances,
 - (b) provision for liabilities of societies to be disregarded, and
 - (c) such supplementary, transitional and saving provision as appears to the Commission to be necessary or expedient.
- (5) The Commission may, on the application of a building society, approve rules to be applied for the purposes of subsection (1) above for the attribution to the society of liabilities of bodies associated with the society; and so long as the rules continue to be approved by the Commission they, and not the aggregation rules in force under subsection (3) above, shall apply for the attribution of liabilities for the purposes of subsection (1) above.
- (6) If a building society receives deposits in excess of the limit permitted under this section the powers conferred on the Commission by section 36 shall become exercisable in relation to the society, but exceeding the limit shall not affect the validity of transactions effected in excess of it.
- (7) The power to make an order under subsection (2)(a) or rules under subsection (3) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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Modifications etc. (not altering text)

C11 S. 8(1) modified (*temp.*) by S.I. 1986/2168, art. 8(2)

9 Initial authorisation to raise funds and borrow money.

- (1) Except to the extent permitted by subsection (3) below, a building society shall not raise money from members or accept deposits of money unless there is in force an authorisation of the Commission granted under this section or treated as granted under this section by any provisions of this Act.
- (2) Authorisation under this section shall, if granted, be granted unconditionally or subject to conditions as provided by subsection (4) or (5) below.
- (3) Authorisation is not required for—
 - (a) the acceptance of payments by way of subscription for deferred shares unless the aggregate of the payments exceeds the amount produced by multiplying the prescribed minimum for qualifying capital by the factor of 2 or such other factor as may be substituted for it by order of the Commission made with the consent of the Treasury;
 - (b) the acceptance of payments for amounts due in respect of shares which represent interest on, or the repayment of, advances made to the holders of shares;
 - (c) borrowing from a banking or finance company, or from a director or other officer of the society, if the society has obtained the consent in writing of the Commission; or
 - (d) borrowing under section 33.
- (4) The Commission, on an application duly made for authorisation under this section, shall grant unconditional authorisation to the building society if it is satisfied that—
 - (a) the society has qualifying capital of an amount which is not less than the prescribed minimum;
 - (b) the chairman of the board of directors and any executive directors, the chief executive, the secretary and the managers (if any) are each fit and proper persons to hold their respective offices in the society;
 - (c) the board of directors, with the chief executive and secretary, have the capacity and intention to direct the affairs of the society in accordance with the criteria of prudent management and, in so far as those criteria fell to be satisfied before the date of the application, have secured that they were satisfied; ^{F12} . . .
[^{F13}(cc) each of the persons who, either alone or with any associate or associates, has a qualifying holding in the society is a fit and proper person to have such a holding; and]
 - (d) the investments of shareholders and depositors will be adequately protected without the imposition of conditions.
- (5) If the Commission, on an application so made, is not satisfied of the matters specified in subsection (4) above in relation to the society, it shall—
 - (a) if those matters are or include the matters specified in paragraphs (a) and (b), refuse to grant authorisation;
 - (b) in any other case, if it is satisfied that the imposition of conditions would secure the protection of the investments of shareholders and depositors, grant

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- authorisation subject to such conditions to be complied with by the society as the Commission thinks fit to impose to secure that purpose; or
- (c) if not satisfied, refuse to grant authorisation.
- (6) The conditions that may be imposed under subsection (5) above on granting authorisation to a society may—
- (a) relate to any activities of the society, whether or not those referred to in subsection (1) above; and
 - (b) require the society to take certain steps or to refrain from adopting a particular course of action or to restrict the scope of its business in a particular way.
- (7) Without prejudice to the generality of subsection (6) above, conditions imposed under subsection (5) above may—
- (a) impose limitations on the issue of shares, acceptance of deposits or the making of advances or other loans;
 - (b) require the society to take steps with regard to the conduct of the business of any subsidiary or associated body; and
 - (c) require the removal of any director or other officer.
- (8) The provisions of Schedule 3 to this Act regulating—
- (a) the making and determination of applications for authorisation,
 - (b) the furnishing of information or additional information in connection with such applications, and
 - (c) the imposition of conditions of authorisation,
- apply in relation to authorisation under this section.
- (9) Conditions imposed under subsection (5) above—
- (a) may be varied from time to time (and notwithstanding any pending appeal) by agreement between the Commission and the society; and
 - (b) may be revoked at any time by the Commission if it is satisfied that the investments of shareholders and depositors will be adequately protected without the conditions;
- but paragraph (b) above is without prejudice to the power of the Commission, under Part VI, to impose other conditions.
- (10) On granting authorisation to a building society under this section the Commission shall inform the central office of the fact and the central office shall record that fact, and the date on which the authorisation was granted, in the public file of the society.
- (11) If, in contravention of subsection (1) above, a building society raises money from members or accepts deposits of money, then—
- (a) the society shall be liable on conviction on indictment or on summary conviction to a fine not exceeding, on summary conviction, the statutory maximum; and
 - (b) any officer of the society who is also guilty of the offence shall be liable—
 - (i) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both, and
 - (ii) on summary conviction, to a fine not exceeding the statutory maximum;

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but such a contravention does not affect any civil liability arising in respect of the acceptance or of the money accepted.

(12) Failure by a society to comply with conditions imposed under this section on granting authorisation to the society shall render it liable, if other conditions are not imposed on it under Part VI, to have its authorisation revoked under that Part.

(13) For the purposes of this section, in relation to a building society—

“business” includes business the society proposes to carry on;

“the prescribed minimum”, in relation to qualifying capital, is [^{F14}ecu 1 million (or an amount of equal value denominated wholly or partly in another unit of account)] or such other sum as the Commission may specify by order made with the consent of the Treasury;

“qualifying capital”, in relation to a building society applying for authorisation, means,

- (a) the aggregate of the nominal value of the qualifying deferred shares issued at the date of the application and the amount of the reserves as shown in the last balance sheet of the society less any accumulated deficit as so shown; or
- (b) where there is no balance sheet of the society, the nominal value of the qualifying deferred shares issued at the date of application; ^{F15} . . .

“qualifying deferred shares” means deferred shares other than deferred shares which, by virtue of regulations under section 45(5), are not included in capital resources aggregated with reserves for the purposes of the first criterion in subsection (3) of that section.

[^{F16}‘qualifying holding’, in relation to a building society, means a holding of deferred shares in the society which—

- (a) represents 10 per cent. or more of the qualifying deferred shares in the society;
- (b) entitles the holder to exercise or control the exercise of 10 per cent. or more of the voting power at any general meeting of the society; or
- (c) enables the holder to exercise a significant influence over the management of the society.]

(14) Any power of the Commission to make an order under this section is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

F12 Word in s. 9(4) immediately following paragraph (c) repealed (1. 1. 1993) by S.I. 1992/3218, reg.68(1)

F13 S. 9(4)(cc) inserted (1. 1. 1993), by S.I. 1992/3218, reg.68(1)

F14 Words in s. 9(13) substituted (1. 1. 1993) by S. I. 1992/3218, reg. 68(2)(a)

F15 Word in s. 9(13) preceding the definition of “qualifying deferred shares” omitted (1. 1. 1993) by virtue of S.I. 1992/3218, reg. 68(2)(b)

F16 Definition in s. 9(13) inserted (1. 1. 1993) by S.I. 1992/3218, reg. 68(2)(b)

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VALID FROM 09/06/1997

[^{F17X1}Restrictions on powers]

Editorial Information

- X1** Cross-heading ("Restrictions on powers") is prospectively inserted with ss. 9A, 9B by 1997 c. 32, ss. 10, 47(3); This cross-heading is dated 9.6.1997 to provide a heading for s. 9B which is commenced 9.6.1997 by S.I. 1997/1427, art. 2; S. 9A and the cross-heading are commenced 1.12.1997 by S.I. 1997/2668, art. 2, Sch. Pt. II(i)

Textual Amendments

- F17** S. 9A and cross-heading inserted (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. 10, 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(i)

VALID FROM 01/12/1997

[^{F18}9A Restrictions on certain transactions.

- (1) Subject to subsections (2) to (4) below, a building society shall not do, and shall secure that each of its subsidiary undertakings does not do, any of the following things, namely—
- (a) act as a market maker in securities, commodities or currencies;
 - (b) trade in commodities or currencies; and
 - (c) enter into any transaction involving derivative investments;
- but a contravention of this subsection shall not invalidate any transaction or other act.
- (2) No transaction entered into by a building society, or a subsidiary undertaking of a building society, shall be taken into account for the purposes of subsection (1) (a) above if—
- (a) it relates only to securities or currencies or both and the amount or value of the consideration given by the society or undertaking does not exceed £100,000; or
 - (b) it is entered into in the society's or undertaking's capacity as the manager of a collective investment scheme.
- (3) No transaction so entered into shall be taken into account for the purposes of subsection (1)(b) above if—
- (a) it relates only to currencies and the amount or value of the consideration given by the society or undertaking does not exceed £100,000; or
 - (b) it is ancillary or incidental to another transaction entered into by the society or undertaking.
- (4) Nothing in subsection (1)(c) above shall apply in relation to any transaction entered into by a building society, or a subsidiary undertaking of a building society, if—

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- (a) it is entered into in the society's or undertaking's capacity as the manager of a collective investment scheme;
 - (b) it is entered into for the purpose of limiting the extent to which the society, or a connected undertaking of the society, will be affected by changes in any of the following factors, namely—
 - (i) interest rates;
 - (ii) exchange rates;
 - (iii) any index of retail prices;
 - (iv) any index of residential property prices; and
 - (v) any index of the prices of securities; or
 - (c) it involves a derivative investment falling within paragraph (d) of the definition in subsection (9) below and it is entered into for the purpose of limiting the extent to which any person will be affected by changes in any interest or exchange rate applicable to—
 - (i) a loan owed by him to;
 - (ii) shares held by him in; or
 - (iii) a deposit of his with,the society, or a connected undertaking of the society.
- (5) Nothing in subsection (1)(c) above shall apply in relation to any transaction entered into by a subsidiary undertaking of a building society, if it is entered into in the undertaking's capacity—
- (a) as a body authorised under section 3 or 4 of the ^{M4}Insurance Companies Act 1982 (authorised insurance companies) to carry on insurance business of a class specified in Schedule 1 to that Act (classes of long term business); or
 - (b) as an EC company which is authorised under Article 6 of the first long term insurance Directive;
- and in this subsection expressions which are also used in that Act have the same meanings as in that Act.
- (6) A building society shall also do all that is reasonably practicable to secure that neither it nor any of its subsidiary undertakings (either alone or with any or any others of those undertakings)—
- (a) holds at any time more than 5 per cent of the issued share capital; or
 - (b) is at any time entitled to exercise, or to control the exercise of, more than 5 per cent of the voting power at any general meeting,
- of an undertaking which is, at that time, doing any of the things which the society is prohibited from doing by subsection (1) above, or an undertaking whose subsidiary undertaking is, at that time, doing any of those things.
- (7) The monetary limit in subsection (2) or (3) above refers to the time when the transaction is entered into; and where the amount or value of the consideration there referred to is not in sterling, it shall be converted at the rate of exchange prevailing at that time.
- (8) For the purposes of subsection (2) or (3) above, two or more transactions which form part of a larger transaction or series of transactions shall be treated as a single transaction.
- (9) In this section—

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“collective investment scheme” has the same meaning as in the ^{M5}Financial Services Act 1986;

“commodity” means any produce of agriculture, forestry or fisheries, or any mineral, either in its natural state or having undergone only such processes as are necessary or customary to prepare the produce or mineral for the market;

“derivative investment” means any investment of a description falling within one or more of the following paragraphs of Part I of Schedule 1 to the Financial Services Act 1986, namely—

- (a) paragraph 4 (instruments entitling to shares or securities);
- (b) paragraph 7 (options);
- (c) paragraph 8 (futures); and
- (d) paragraph 9 (contracts for differences etc);

“market maker” means, subject to subsection (10) below, a person who holds himself out as willing at all normal times to buy or sell at a price specified by him securities, commodities or currencies of a particular description;

“securities” means shares, stock, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme and other securities of any description.

- (10) A building society, or subsidiary undertaking of a building society, shall not by reason of holding itself out as willing to issue its own securities be regarded for the purposes of this section as acting as a market maker in such securities.
- (11) The Treasury may by order vary subsections (1) to (10) above by adding to or deleting from them any provision or by varying any provision contained in them.
- (12) The Commission may, with the consent of the Treasury, by order—
 - (a) substitute for the amount specified in subsection (2) or (3) above, or for the percentage specified in subsection (6) above, such other amount or percentage as it thinks appropriate; or
 - (b) vary subsection (4)(b) above by adding to or deleting from it any reference to a factor or by varying any reference to a factor contained in it.
- (13) An order under subsection (11) or (12) above may make—
 - (a) different provision for different cases or purposes; and
 - (b) such supplementary, transitional and saving provision as appears to the Treasury or, as the case may be, the Commission to be necessary or expedient;

and the power to make such an order is exercisable by statutory instrument.
- (14) No order shall be made under subsection (11) above unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (15) A statutory instrument containing an order under subsection (12) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

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Textual Amendments

F18 S. 9A and cross-heading inserted (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. 10, 47(3); S.I. 1997/2668, art. 2, **Sch. Pt. II(i)**

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Marginal Citations

M4 1982 c.50.
M5 1986 c.60.

[^{F19}9B Restriction on creation of floating charges.

- (1) A building society shall not create a floating charge on the whole or part of its undertaking or property.
- (2) A floating charge created in contravention of this section shall be void.]

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Textual Amendments

F19 S. 9B inserted (9.6.1997) by 1997 c. 32, s. 11; S.I. 1997/1427, art. 2

Status:

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