



# Building Societies Act 1986

## 1986 CHAPTER 53

### PART II

#### CONSTITUTION OF BUILDING SOCIETIES

##### *Raising funds and borrowing*

#### [<sup>F17</sup> **The funding limit.**

- (1) A building society shall secure that the difference between—
- (a) the value of X on any quarter day; and
  - (b) the value of Y on that day or the value of Y on the immediately preceding quarter day, whichever is the greater,
- does not exceed 50 per cent of that value of X.

- (2) For the purposes of subsection (1) above—

X = the aggregate of the following, namely—

- (a) the principal value of, and interest accrued on, shares in the society;
- (b) the principal of, and interest accrued on, sums deposited with the society or any subsidiary undertaking of the society; and
- (c) the principal value of, and interest accrued under, bills of exchange, instruments or agreements creating or acknowledging indebtedness and accepted, made, issued or entered into by the society or any such undertaking; and

Y = the principal value of, and interest accrued on, shares in the society held by individuals otherwise than as bare trustees (or, in Scotland, simple trustees) for bodies corporate or for persons who include bodies corporate.

- (3) The following shall be disregarded for the purposes of subsection (2) above, namely—
- (a) any sums or amounts which are own funds; and

*Status: Point in time view as at 07/04/2010.*

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- (b) to the extent that they are not included in the total liabilities of the society and any subsidiary undertakings of the society as shown in the society's accounts—
  - (i) any sums deposited with the society or any such undertaking; and
  - (ii) any indebtedness created or acknowledged by bills of exchange, instruments or agreements accepted, made, issued or entered into by the society or any such undertaking.
- (4) The reference in subsection (3) above to anything being shown in a society's accounts shall be construed—
  - (a) in relation to a quarter day on which a financial year of the society ends, as a reference to its being shown in the accounts prepared by the society for that year;
  - (b) in relation to any other quarter day, as a reference to its being shown in the accounts which would have been prepared by the society for the year ending on that day if that year were a financial year of the society.
- (5) If a building society fails to comply with the requirement imposed by subsection (1) above—
  - (a) the powers conferred on the [F<sup>2</sup>Authority] by section 36 shall become exercisable in relation to the society; but
  - (b) the failure shall not affect the validity of any transaction or other act.
- (6) Where an individual declares that he is acquiring any shares in a building society otherwise than as a bare trustee (or, in Scotland, a simple trustee) for a body corporate, or for persons who include a body corporate, he shall, unless the contrary is shown, be conclusively presumed for the purposes of this section to hold the shares otherwise than as such a trustee.
- (7) The [F<sup>3</sup>Treasury may], by order—
  - (a) modify subsections (2) and (3) above in their application to liabilities of subsidiary undertakings;
  - (b) apply those subsections to corresponding liabilities of associated undertakings; or
  - (c) modify those subsections in their application to such liabilities.
- (8) An order under subsection (7) above may make—
  - (a) different provision for different circumstances;
  - (b) provision for particular liabilities of undertakings to be disregarded; and
  - (c) such supplementary, transitional and saving provision as appears to the [F<sup>4</sup>Treasury] to be necessary or expedient.
- (9) The power to make an order under subsection (7) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

#### **Textual Amendments**

- F1** S. 7 substituted (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. 8, 47(3); S.I. 1997/2668, art. 2, Sch. Pt. II(g)

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- F2** Words in S. 7 (5)(a) substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3, Pt. II para. 136(a)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(a)**
- F3** Words in s. 7(7) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. I para. 136(b)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(a)**
- F4** Word in s. 7(8)(c) substituted (17.8.2001 for certain purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II para. 136(c)** (with art. 13(3), Sch. 4); S.I. 2001/3538, **art. 2(a)**

**Modifications etc. (not altering text)**

- C1** S. 7 applied (with modifications) (5.6.2008) by **The Building Societies (Financial Assistance) Order 2008** (S.I. 2008/1427), arts. 1(2), **5(1)**
- C2** S. 7 applied (with modifications) (7.4.2010) by **The Building Societies (Financial Assistance) Order 2010** (S.I. 2010/1188), arts. 1(2), **5**
- C3** S. 7(2) modified (1.1.2005) by **The Building Societies Act 1986 (Modification of the Lending Limit and Funding Limit Calculations) Order 2004** (S.I. 2004/3200), arts. 1(2), **4**
- C4** S. 7(2)(3) modified (6.4.2007) by **The Building Societies Act 1986 (Substitution of Specified Amounts and Modification of the Funding Limit Calculation) Order 2007** (S.I. 2007/860), arts. 1, **3**
- C5** S. 7(2)(c) extended (24.6.2003) by **The Uncertificated Securities (Amendment) (Eligible Debt Securities) Regulations 2003** (S.I. 2003/1633), reg. 1(1), **Sch. 2 para. 11(a)**
- C6** S. 7(3)(b)(ii) extended (24.6.2003) by **The Uncertificated Securities (Amendment) (Eligible Debt Securities) Regulations 2003** (S.I. 2003/1633), reg. 1(1), **Sch. 2 para. 11(b)**
- C7** S. 7(7)(8): Functions of the Building Societies Commission transferred (1.12.2001) to the Treasury by S.I. 2001/2617, art. 2(b), 4(1), **Sch. 1 Pt. III**; S.I. 2001/3538, **art. 2(a)**

**[<sup>F5</sup>8 Raising funds and borrowing.**

- (1) Subject to subsection (2) below, a building society shall not do any of the following things, namely—
- accept a deposit from an individual;
  - raise funds from an individual otherwise than by the issue of shares; and
  - raise funds from a body corporate, or from a bare trustee (or, in Scotland, a simple trustee) for a body corporate or for persons who include a body corporate, otherwise than by the issue of deferred shares.
- (2) Nothing in subsection (1)(a) above shall apply in relation to—
- the maintenance on behalf of an individual of a current account, or a deposit account which contains in its title the word “client” or the word “trust” or “trustee”;
  - the issue to an individual of a transferable instrument;
  - the acceptance from an individual of a qualifying time deposit or an overseas deposit; or
  - in the case of a building society which has announced publicly that it intends, in accordance with section 97 and the other applicable provisions of this Act, to transfer the whole of its business to a company, anything done by the society during the period of two years beginning with the date of the announcement.
- (3) The [<sup>F6</sup>Authority] may, if it thinks fit, extend or further extend the period mentioned in subsection (2)(d) above if written application is made to it before the expiry of that period or that period as extended; and a direction under this subsection—

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- (a) shall be in writing;
  - (b) may be given subject to such limitations or conditions as the [<sup>F6</sup>Authority] may think fit.
- (4) A contravention of subsection (1) above shall not invalidate any transaction or other act.
- (5) The power of a building society to raise funds by the issue of shares is a power—
- (a) to issue shares of one or more denominations, whether in sterling or another currency; and
  - (b) to issue them either as shares paid up in full or as shares to be paid by periodical or other payments, and (in either case) with accumulating or other interest;
- and funds so raised may be repaid when they are no longer required for the purposes of the society.
- (6) In the case of deferred shares, the power of a building society to raise funds by the issue of shares includes the issue of shares at a premium.
- (7) 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.
- (8) For the purposes of this section the acceptance of deposits (including the issue of debt securities) shall not constitute the raising of funds.
- (9) In this section, in relation to a building society—
- “overseas deposit” means a deposit which is accepted by a branch or agency of the society in a country or territory outside the United Kingdom and is repayable in such a country or territory;
  - “qualifying time deposit” has the meaning given by section [<sup>F7</sup> 866(2) and (3) of the Income Tax Act 2007 ] ;
  - “raise funds” means, subject to subsection (8) above, raise funds by the issue of shares or other securities;
  - “transferable instrument” means an instrument which embodies a transferable right to receive an amount referable to a deposit with the society.
- (10) A right is transferable for the purposes of the definition of “transferable instrument” in subsection (9) above if it is transferable by delivery of the instrument, or it is a right—
- (a) 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;
  - (b) express provision for the transfer of which is included in the instrument; and
  - (c) the transfer of which, under the terms of the instrument, does not require the consent of any person.
- (11) Where an individual declares that he is acquiring any shares in a building society otherwise than as a bare trustee (or, in Scotland, a simple trustee) for a body corporate, or for persons who include a body corporate, he shall, unless the contrary is shown, be conclusively presumed for the purposes of this section to hold the shares otherwise than as such a trustee.
- (12) The [<sup>F8</sup>Treasury may] by order vary subsections (2), (9) and (10) above by adding to or deleting from them any provision or by varying any provision contained in them; and

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an order under this subsection may make such supplementary, transitional and saving provision as appears to the [F<sup>8</sup>Treasury] to be necessary or expedient.

- (13) The power to make an order under subsection (12) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

- F5** S. 8 substituted (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. 9, 47(3) (with s. 46(1), Sch. 8 para. 9); S.I. 1997/2668, art. 2, **Sch. Pt. II(h)**
- F6** Words in s. 8(3) substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II para. 137(a)** (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(a)**
- F7** Words in s. 8(9) substituted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 273** (with Sch. 2)
- F8** Words in s. 8(12) substituted (17.8.2001 for specified purposes and otherwise 1.12.2001) by S.I. 2001/2617, arts. 2, 8, 13(1), **Sch. 3 Pt. II para. 137(b)(i)(ii)**, (with art. 13(3), Sch. 5); S.I. 2001/3538, **art. 2(a)**

#### Modifications etc. (not altering text)

- C8** S. 8 extended (24.6.2003) by The Uncertificated Securities (Amendment) (Eligible Debt Securities) Regulations 2003 (S.I. 2003/1633), reg. 1(1), **Sch. 2 para. 11(c)**
- C9** S. 8(1)(c) excluded (5.6.2008) by The Building Societies (Financial Assistance) Order 2008 (S.I. 2008/1427), arts. 1(2), **6**
- C10** S. 8(1)(c) excluded (7.4.2010) by The Building Societies (Financial Assistance) Order 2010 (S.I. 2010/1188), arts. 1(2), **6**
- C11** S. 8(12): Functions of Building Societies Commission transferred (1.12.2001) to the Treasury by S.I. 2001/2617, **arts. 1(2)(b), 4(1)**, Sch. 1 Pt. III; S.I. 2001/3538, **art. 2(a)**

**F9** .....

#### Textual Amendments

- F9** S. 9 repealed (1.12.2001) by 2000 c. 8, ss. 334, 336, 338, 432(3), Sch. 18 Pt. III para. 17, **Sch. 22**; S.I. 2001/3538, **art. 2**

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