
STATUTORY INSTRUMENTS

1995 No. 3066

BUILDING SOCIETIES

The Building Societies (Syndicated Lending) Order 1995

Made - - - - *4th December 1995*
Laid before Parliament *7th December 1995*
Coming into force - - *1st January 1996*

The Building Societies Commission, with the consent of the Treasury, in exercise of the powers conferred on it by section 14A(3) of the Building Societies Act 1986⁽¹⁾, hereby makes the following Order:

Title and commencement

1. This Order may be cited as the Building Societies (Syndicated Lending) Order 1995 and shall come into force on 1st January 1996.

Interpretation

2. In this Order—

- (a) “the Act” means the Building Societies Act 1986 and “Part III” means Part III of the Act; and
- (b) references to sections and Schedules are to sections of and Schedules to the Act.

Appropriate security

3.—(1) This article makes provision with respect to what constitutes appropriate security for the purposes of section 14A(2)(a) and (b).

(2) Where a building society participates in syndicated lending as a member of the lending syndicate, the syndicated lending is appropriately secured if it is secured by security of one or more of the kinds described below in respect of which the requirements of paragraphs (5) to (8) below are satisfied—

- (a) a mortgage of a legal estate or, as provided under section 10(6)(2), an equitable interest in land in England and Wales or Northern Ireland,
- (b) a heritable security over land in Scotland, and

(1) 1986 c. 53, section 14A was inserted by section 17(1) of the Deregulation and Contracting Out Act 1994 (c. 40).
(2) See: SI 1986/2099.

- (c) an instrument which acknowledges a debt, obliges the debtor to pay it and secures payment of the debt by means of a form of security equivalent to the kind mentioned in subparagraphs (a) and (b) above, comprising title to or an interest in or over land situated in any country or territory designated under section 14(1) (power to make advances secured on land overseas)(3).

(3) Where a building society participates in syndicated lending as a sub-participant, the society's rights as such a participant are appropriately secured if they are secured by a mortgage (or equivalent form of security) of all the right, title and interest of the participating member of the lending syndicate in and to security of the kind described in paragraph (2) above in respect of which the requirements of paragraphs (5) to (8) below are satisfied.

(4) In paragraph (3) above "the participating member of the lending syndicate" means the member of the lending syndicate with whom the society has entered into an arrangement by virtue of which it is a sub-participant.

(5) For syndicated lending or rights as a sub-participant to be appropriately secured the society must be satisfied that the security described in paragraph (2) above is sufficient, that is to say—

- (a) where all sums due to the borrower under the terms of the loan have been advanced at the time the society becomes a member of the lending syndicate or a sub-participant ("the relevant time"), the society must satisfy itself at the relevant time that the amount of the loan outstanding does not exceed the value of the security at that time;

- (b) where at the relevant time some but not all of the sums which may become due to the borrower under the terms of the loan have been advanced, the society must satisfy itself at the relevant time—

(i) that the amount of the loan outstanding does not exceed the value of the security at the relevant time; and

(ii) that the maximum amount of the loan which may be outstanding immediately after the time of the advance of the final sum due to the borrower under the terms of the loan will not exceed the expected value of the security immediately after that time; and

- (c) where at the relevant time no sum has been advanced to the borrower under the terms of the loan, the society must satisfy itself at the time when it first contributes to the sum advanced (whether it contributes directly or by payment of a corresponding amount to the participating member of the lending syndicate (as defined in paragraph (4) above))—

(i) that the amount of the loan outstanding immediately after the time of the advance of the sum to which it is contributing will not exceed the value of the security immediately after that time; and (if different)

(ii) that the maximum amount of the loan which may be outstanding immediately after the time of the advance of the final sum due to the borrower under the terms of the loan will not exceed the expected value of the security immediately after that time.

(6) In the case of a loan under the terms of which sums may be advanced to the borrower from time to time (that is to say without a specified time for the advance of a final sum under the terms of the loan), the requirements of paragraph (5)(b)(ii) or (c)(ii) above are that the maximum amount of the loan which may be outstanding at any time will not exceed the expected value of the security at that time.

(7) If paragraph (5)(b)(ii) or (c)(ii) or (6) above applies, and the society is not satisfied as to the requirements of those provisions, the society may nevertheless be satisfied that the security is sufficient for the purposes of paragraph (5) or (6) if—

(3) See: SIs [1987/1498](#), [1872](#), [1988/1394](#), [1989/1817](#), [1992/1547](#) and [1994/655](#).

- (i) the arrangements under which the society is participating in the syndicated lending provide that the society cannot be called upon to make any further contribution to the sums to be advanced to the borrower under the terms of the loan unless at the time it makes the contribution the society satisfies itself as to the requirements mentioned in sub-paragraph (ii) below; and
- (ii) at the time it makes any such contribution the society is satisfied that the amount of the loan outstanding immediately after the time of the advance of the sum to which it is contributing will not exceed the value of the security immediately after that time.

(8) Where a society is not satisfied that the value of any security is sufficient in accordance with the preceding paragraphs of this article it may, subject to article 4(3) below, be so satisfied if it is satisfied that the deficiency is secured by additional security of a description prescribed by order under section 12(3) for the purposes of section 11(4)(c), or treated as such by virtue of paragraph 13 of Schedule 20.

(9) In this article—

- (a) references to the value of the security are to the value of the security constituted by the estate or interest or heritable security or title or, as the case may be, the combined securities; and in calculating the value of any security there shall be deducted any outstanding amount secured on the same estate or interest or heritable security or title or, as the case may be, on any combination of them; and
- (b) references to the outstanding amount at any time of any loan are to the total amount outstanding at that time in respect of—
 - (a) the principal of the loan;
 - (b) interest on the loan, and
 - (c) any other sum which the borrower is obliged to pay the lender under the terms of the loan.

(10) Appropriate security within the meaning of this article may be held by the society (alone or jointly) or by a trustee for the society (as sole beneficiary or one of joint beneficiaries) and if held by the society may be held on trust for the society and others.

Classification of a society's participation in syndicated lending

4.—(1) This article makes provision with respect to the classification, for the purposes of the requirements of Part III for the structure of commercial assets, of a society's participation under section 14A in syndicated lending.

(2) An advance made by a society as a member of a lending syndicate shall be classified as Class 1 or 2 in accordance with Part III as modified by article 5 below.

(3) Where a society relies on article 3(8) above in determining whether an advance made by it as a member of a lending syndicate is appropriately secured, that advance shall be classified as a Class 2 advance.

(4) A society's rights as a sub-participant shall be classified as Class 1 or 2 according to whether the corresponding advance made by the participating member of the lending syndicate (as defined in article 3(4) above) would be classified as Class 1 or 2 under Part III (as modified by article 5 below) if it had been made by the society itself as a member of the syndicate.

(5) For the purposes of paragraph (4) above, an advance made by the participating member of the lending syndicate shall be treated as an "advance secured on land" and where any provision of Part III (as modified by article 5 below) requires a society to be satisfied in respect of any matter for the purpose of classifying an advance, the sub-participating society must be so satisfied.

Modification of Part III of the Act

5.—(1) Part III shall apply to a society’s participation under section 14A in syndicated lending with the modifications set out in this article.

(2) Section 10(4) shall have effect as if instead of subsections (1) and (2), the section provided that—

- (a) an advance made by a society by virtue of its participation in syndicated lending under section 14A were an “advance secured on land” for the purposes of Part III;
- (b) a society may (in England and Wales or Northern Ireland) hold land with the right of foreclosure, for the purpose of its participation under section 14A in syndicated lending; and
- (c) in relation to an advance made by a society by virtue of its participation in syndicated lending under section 14A a reference to the land which is to secure an advance or on which an advance is secured were a reference to the estate or interest or heritable security or title which constitutes or will constitute the appropriate security within the meaning of article 3 above.

(3) Section 11(5) shall have effect as if—

- (a) for subsection (2)(c) and (d) there were substituted—
 - “(c) the amount advanced will be appropriately secured for the purposes of section 14A(2)(a); and
 - (d) subject to subsection (5) below, no other mortgage of the land which is to secure the advance is outstanding in favour of a person other than the society (meaning the society as sole or joint mortgagee or trustee for itself and others) or a person holding it on trust for the society (as sole beneficiary or one of joint beneficiaries).”;
- (b) the reference in subsection (2) to the time when the society makes the advance were a reference to the time at which it must be satisfied in respect of the requirements of article 3(5) to (7) above;
- (c) for subsection (4)(c) and (d) there were substituted—
 - “(c) is satisfied the amount advanced will be appropriately secured for the purposes of section 14A(2)(a); and
 - (d) is satisfied that no, or no more than one, other mortgage of the land which is to secure the advance is outstanding in favour of a person other than the society (meaning the society as sole or joint mortgagee or trustee for itself and others) or a person holding it on trust for the society (as sole beneficiary or one of joint beneficiaries).”;
- (d) the reference in subsection (4) to the time when the society makes the advance were a reference to the time at which it must be satisfied in respect of the requirements of article 3(5) to (8) above;
- (e) the reference in subsection (5) to the basic security were a reference to the appropriate security within the meaning of article 3 above;
- (f) subsection (9) were omitted;
- (g) subsections (10), (11), (12) and (15) applied to land to which a society becomes entitled jointly with other lenders in a lending syndicate, or as trustee for itself and other such

(4) Section 10 was amended by section 16(2) of and paragraph 7(2) of Schedule 11 to the Deregulation and Contracting Out Act 1994.

(5) Section 11 was amended by section 16(3), (4) and (5) of and paragraph 7(3) of Schedule 11 to the Deregulation and Contracting Out Act 1994.

lenders, but subsection (10)(b) applied only in respect of a proportion of the land equal to the proportion which the sum contributed by the society bears to the total sum lent by all the lenders in the syndicate secured by the land; and

- (h) the reference in subsection (14)(c) to the society were a reference to the members of the lending syndicate (or any of them).

(4) Section 12(6) shall have effect as if—

- (a) the reference in subsection (10)(a) to the value of the basic security were a reference to the value of the security constituting the appropriate security within the meaning of article 3(9) above; and
- (b) for subsection (12) there were substituted—

“(12) Every building society shall establish and maintain a system to ensure (or shall satisfy itself that adequate arrangements exist to ensure) the safe custody of all documents relating to property mortgaged—

- (a) to the society (whether as sole or joint mortgagee or as trustee for itself and others) or to a person holding it on trust for the society (as sole beneficiary or one of joint beneficiaries); or
- (b) to the member of the lending syndicate with whom the society has entered into an arrangement by virtue of which the society is a sub-participant (whether as joint mortgagee or as trustee for himself and others and whether the legal mortgagee is the member or a trustee)

in connection with any participation by the society in syndicated lending under section 14A.”.

(5) Section 13(7) shall have effect as if—

- (a) the reference in the opening words of sub-section (1) to assessing the adequacy of the security for any advance to be fully secured on land which is to be made by the society were a reference to assessing whether the requirements of article 3(5) to (8) above are satisfied in relation to an advance to be made by the society as a member of the lending syndicate or, where the society is a sub-participant, by the participating member of the lending syndicate (as defined in article 3(4) above) and as if the other references in section 13 to an advance were references to such an advance;
- (b) the reference in subsection (1)(a) to the occasion of each advance were a reference to the time at which the society must be satisfied in respect of the requirements of article 3(5) to (8) above and the words “whether or not any previous assessment was made with a view to further advances or readvances” were omitted;
- (c) the reference in subsection (2)(a) to an officer or employee of the society who makes assessments of the adequacy of securities for advances secured on land or who authorises the making of such advances included an officer or employee who assesses whether the requirements of article 3(5) to (8) above are satisfied;
- (d) the reference in subsection (2)(b) to the society were to the society or any member of a lending syndicate in which the society is participating under section 14A directly or as a sub-participant;
- (e) the reference in the opening words of subsection (3) to making an assessment of the security were a reference to assessing whether the requirements of article 3(5) to (8) above are satisfied and, in relation to a society’s participation in syndicated lending as a sub-

(6) Section 12 was amended by section 16(6) and (7) of the Deregulation and Contracting Out Act 1994.

(7) Section 13 was amended by paragraph 7(4) and (5) of Schedule 11 to the Deregulation and Contracting Out Act 1994.

participant, as if the words “or authorising the making of the advance” were a reference to authorising the making of the society’s contribution to the advance;

- (f) the reference in subsection (3)(a) to the building society making the advance were a reference to the building society or any member of a lending syndicate in which the society is participating under section 14A directly or as a sub-participant making the advance; and
- (g) the reference in subsection (4)(b) to making an assessment of the adequacy of the security for an advance were a reference to assessing whether the requirements of article 3(5) to (8) above are satisfied.

(6) Schedule 4 shall have effect as if—

- (a) paragraph 1 applied also to land mortgaged to a building society as joint mortgagee or as trustee for itself and others, whether or not the other mortgagees or beneficiaries are building societies; and
- (b) paragraph 2 applied (in England and Wales and, subject as there stated, Northern Ireland) only to mortgages of which the legal mortgagee is or are a building society (whether or not acting as trustee) or building societies.

(7) Section 14 shall have effect as if the orders made under it did not contain the provision referred to in subsection (1)(b), (c) and (d).

(8) Sections 15 to 23 are not modified in respect of a society’s participation under section 14A in syndicated lending.

In witness whereof the common seal of the Building Societies Commission is hereto fixed, and is authenticated by me, a person authorised under paragraph 14 of Schedule 1 to the Building Societies Act 1986 on

L.S.

27th November 1995.

Joy Dennis
Secretary to the Commission

We consent to this Order

4th December 1995

S. Burns
D. Conway
Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order supplements section 14A of the Building Societies Act 1986 (inserted by section 17 of the Deregulation and Contracting Out Act 1994) which allows building societies to participate in syndicated lending. It makes provision with respect to what constitutes appropriate security where a society participates in a syndicated loan (including where it participates as a sub-participant); makes provision with respect to the classification, for the purposes of the requirements of Part III of the 1986 Act for the structure of a society's commercial assets, of a society's participation in syndicated lending; and provides for the application of that Part, with appropriate modifications, to a society's participation in syndicated lending. The provisions with respect to what constitutes appropriate security, and with respect to the classification of a society's participation in syndicated lending, broadly reflect the existing provisions of the 1986 Act with respect to building society advances secured on land.

A compliance cost assessment of the effect that this instrument would have on the cost of business may be obtained from the Secretary, Building Societies Commission, 15 Great Marlborough Street, London W1V 2LL.