

2008 No. 1427

BUILDING SOCIETIES

The Building Societies (Financial Assistance) Order 2008

Made - - - - *4th June 2008*

Coming into force - - *5th June 2008*

This Order is made in exercise of the powers conferred by sections 11, 12(1) and (2) and 13(2) of the Banking (Special Provisions) Act 2008(a).

A draft of this Order has been laid before Parliament in accordance with section 13(3) of that Act and approved by a resolution of each House of Parliament.

Accordingly, the Treasury make the following Order:

Citation and commencement

- 1.—(1) This Order may be cited as the Building Societies (Financial Assistance) Order 2008.
- (2) It comes into force on the day after the day on which it is made.

Interpretation

- 2.—(1) In this Order—
 - “the 1986 Act” means the Building Societies Act 1986(b);
 - “the Authority” means the Financial Services Authority(c);
 - “member” and “officer” have the same meaning as in the 1986 Act(d);
 - “relevant building society” means any building society which—
 - (a) receives relevant financial assistance(e) from the Bank of England,
 - (b) has entered into an agreement with the Bank of England under which it may receive relevant financial assistance from the Bank of England, or
 - (c) has received an offer of such an agreement, or of relevant financial assistance, from the Bank of England;
 - (d) “section 1(1)(a) function” means the function of the Authority set out in section 1(1)(a) of the 1986 Act.

(a) 2008 c.2.
(b) 1986 c.53.
(c) See section 1 of the Financial Services and Markets Act 2000 (c.8)
(d) See section 119(1) of, and paragraph 5 of Schedule 2 to, the Building Societies Act 1986. The definition of “member” in section 119(1) was substituted by the Building Societies Act 1997 (c.32), section 43 and Schedule 7, paragraph 53(1)(j). Paragraph 5 of Schedule 2 was amended by the Building Societies Act 1997, section 2(1) and (2).
(e) See sections 11(2) and 15(1) of the Banking (Special Provisions) Act 2008.

- (2) References in this Order to the Bank of England include—
- (a) any person acting for or on behalf of the Bank of England;
 - (b) any person providing, offering, or entering into an agreement for the provision of, relevant financial assistance to a building society, who does so on the basis of relevant financial assistance that person receives from the Bank of England for that purpose.

Purpose or principal purpose of building societies

3.—(1) Section 5 of the 1986 Act (establishment, constitution and powers)(a) applies in relation to a relevant building society with the following modification.

(2) No relevant building society shall be regarded as failing to comply with section 5(1)(a) (purpose or principal purpose) by virtue of any relevant financial assistance it receives from the Bank of England.

(3) The powers conferred on the Authority by sections 36 and 37 of the 1986 Act (power to direct restructuring of business etc and powers to petition for winding up etc) shall not become exercisable in relation to a building society which receives relevant financial assistance if, but for the relevant financial assistance, they would not have become exercisable.

(4) Sections 5(4A), 36(1) and 37(1) shall be construed accordingly.

(5) The Authority shall disregard, for the purposes of its section 1(1)(a) function, a building society to which paragraph (3) applies.

The lending limit

4.—(1) Section 6(1) of the 1986 Act (the lending limit)(b) shall not apply in relation to a relevant building society for the relevant period where—

- (a) the society receives relevant financial assistance from the Bank of England,
- (b) as a consequence of the financial assistance, the society transfers, assigns or otherwise disposes of any of its assets, and
- (c) that transfer, assignment or other disposal would, apart from this article, put the society in breach of section 6(1).

(2) No building society within paragraph (1) shall be regarded as failing to comply with section 5(1)(a) of the 1986 Act in the relevant period by virtue of the matters referred to in paragraph (1).

(3) The powers conferred on the Authority by sections 36 and 37 of the 1986 Act shall not become exercisable in relation to a building society within paragraph (1) in respect of the relevant period.

(4) Sections 5(4A), 36(1) and 37(1) shall be construed accordingly.

(5) In the relevant period the Authority shall disregard, for the purposes of its section 1(1)(a) function, a building society within paragraph (1).

(6) In this article “the relevant period” is the period commencing on the date on which paragraph (1) is first satisfied in relation to the society and ending—

- (a) one year after that date, or
- (b) if later, on the date on which the financial assistance referred to in paragraph (1) is no longer provided.

(a) Section 5 was amended by the Building Societies Act 1997, sections 1 and 3, and by S.I. 2001/2617. The Building Societies (Funding) and Mutual Societies (Transfers) Act 2007 (c. 26), section 1(2), inserts section 5(11) to (14), but at the time this Order was laid before Parliament in draft those amendments were not in force.

(b) Section 6 was substituted by the Building Societies Act 1997, section 4, and amended by S.I. 2001/2617, 2001/3649, and 2004/3380. Section 6(2) was modified in its application to assets of subsidiary undertakings by S.I. 2004/3200.

The funding limit

5.—(1) Section 7 of the 1986 Act (the funding limit)(a) applies to a relevant building society with the following modification.

(2) There shall be disregarded for the purposes of section 7(2) any relevant financial assistance the society receives from the Bank of England.

Raising funds and borrowing

6. Section 8(1)(c) of the 1986 Act (raising funds and borrowing)(b) shall not apply to a relevant building society in relation to any relevant financial assistance the society receives from, or is offered by, the Bank of England.

Restriction on creation of floating charges

7.—(1) Section 9B(1) of the 1986 Act (restriction on creation of floating charges)(c) shall not apply to a relevant building society in relation to any relevant floating charge.

(2) Section 9B(2) shall not apply to any relevant floating charge.

(3) In this article a “relevant floating charge” is a floating charge created by a relevant building society in favour of the Bank of England in connection with any relevant financial assistance the society receives from the Bank of England.

Memorandum and rules

8.—(1) Schedule 2 to the 1986 Act (establishment, incorporation and constitution of building societies) applies in relation to a relevant building society with the following modifications.

(2) Paragraph 2 (the memorandum)(d) shall have effect as if, after sub-paragraph (4), there were inserted—

“(4A) However, no provision of the memorandum of a building society shall be binding on any member or officer of the society, or on any person claiming on account of a member or under the rules, to the extent that it would prevent the society (whether acting through its officers or otherwise) from—

(a) receiving any relevant financial assistance from the Bank of England, or

(b) entering into any transaction connected with the receipt of such financial assistance,

and sub-paragraph (4) shall be construed accordingly.”.

(3) Paragraph 3 (the rules)(e) shall have effect as if, after sub-paragraph (2), there were inserted—

“(2A) However, nothing in the rules of a building society shall be binding on any member or officer of the society, or on any person claiming on account of a member or under the

(a) Section 7 was substituted by the Building Societies Act 1997, section 8, and amended by S.I. 2001/2617. Section 7(2) was modified in its application to liabilities of subsidiary undertakings by S.I. 2004/3200; section 7(2) and (3) were modified in their application to eligible debt securities by S.I. 2003/1633, and in their application to the liabilities of EEA subsidiary undertakings by S.I. 2007/860. The Building Societies (Funding) and Mutual Societies (Transfers) Act 2007, section 1(1), inserts section 7(6A) to (6C) and (8A), but at the time this Order was laid before Parliament in draft those amendments were not in force.

(b) Section 8 was substituted by the Building Societies Act 1997, section 9, and amended by S.I. 2001/2617. It was modified, in its application to eligible debt securities, by S.I. 2003/1633. Section 8(9) was amended by the Income Tax Act 2007 (c.3), section 1027 and Schedule 1 paragraph 273.

(c) Section 9B was inserted by the Building Societies Act 1997, section 11.

(d) Paragraph 2(1) and (2) of Schedule 2 were substituted, for paragraphs (1) to (3) as originally enacted, by the Building Societies Act 1997, section 43 and Schedule 7, paragraph 56(3). Paragraph 2(5) was repealed by the Building Societies Act 1997, sections 43 and 46(2), Schedule 7 paragraph 56(4), and Schedule 9.

(e) Paragraph 3(3) was amended by S.I. 2001/2617. Paragraph 3(4) was amended by the Building Societies Act 1997, section 43 and Schedule 7, paragraph 56(5). Paragraph 3(5) was inserted by S.I. 2003/404.

rules, to the extent that it would prevent the society (whether acting through its officers or otherwise) from—

- (a) receiving any relevant financial assistance from the Bank of England, or
- (b) entering into any transaction connected with the receipt of such financial assistance,

and sub-paragraph (2) shall be construed accordingly.”.

(4) References to the Bank of England in paragraphs 2(4A) and 3(2A) as inserted by paragraphs (2) and (3) above include—

- (a) any person acting for or on behalf of the Bank of England, and
- (b) any person providing, offering, or entering into an agreement for the provision of, relevant financial assistance to a building society, who does so on the basis of relevant financial assistance that person receives from the Bank of England for that purpose.

(5) No member of a building society may bring proceedings under paragraph 16(2) (capacity of society not limited by its memorandum)(a) to restrain the doing of any act by a building society for or in connection with the receipt of relevant financial assistance from the Bank of England.

(6) Paragraph 16(3) shall not operate so as to—

- (a) require the directors to observe any limitations on their powers flowing from the society’s memorandum which would, apart from this article, prevent them entering into any transaction for or in connection with the receipt of relevant financial assistance by the society from the Bank of England, or
- (b) require any such action by the directors which, but for paragraph 16(1), would be beyond the society’s capacity, to be ratified by the society by special resolution.

Application of companies winding up legislation to building societies

9.—(1) Schedule 15 to the 1986 Act (application of companies winding up legislation to building societies) applies in relation to a relevant building society with the following modifications.

(2) In paragraph 3(2)(b), omit paragraph (b).

(3) In paragraph 33, for “subsections (2) and (4) to (6)” substitute “subsections (2), (5) and (6)”.

(4) In paragraph 55E(c), for “paragraphs (2) and (4) to (6)” substitute “paragraphs (2), (5) and (6)”.

Application of other companies insolvency legislation to building societies

10. Section 90A of the 1986 Act (application of other companies insolvency legislation to building societies)(d) applies in relation to a relevant building society as if—

- (a) after “England and Wales” in paragraph (c) there were inserted “, Scotland”;
- (b) after “receivers and managers” in that paragraph there were inserted “, receivers or administrative receivers”.

11.—(1) Schedule 15A to the 1986 Act (application of other companies insolvency legislation to building societies)(e) applies in relation to a relevant building society with the following modifications.

(2) In paragraph 1(2)(a)(f), for “Chapter I of Part III” substitute “Chapters I, II and III of Part III”.

(a) Paragraph 16 was substituted by the Building Societies Act 1997, section 3(2) and Schedule 1.

(b) Paragraph 3(2)(b) was substituted by the Building Societies Act 1997, section 43 and Schedule 7, paragraph 65.

(c) Paragraph 55E was substituted, together with paragraphs 34 to 55D, by S.I. 1989/2405 (N.I. 19).

(d) Section 90A was inserted by the Building Societies Act 1997, section 39(1).

(e) Schedule 15A was inserted by the Building Societies Act 1997, section 39(2) and Schedule 6.

(f) Paragraph 1(2)(a) was amended by the Insolvency Act 2000 (c. 39), section 2(b) and Schedule 2, paragraph 14.

- (3) In paragraph 2(2), omit paragraph (b).
- (4) In paragraph 11(a)—
 - (a) in sub-paragraph (2), for “is a reference to the Authority” substitute “includes a reference to the Authority”;
 - (b) omit sub-paragraph (3).
- (5) Omit paragraphs 12, 13, 18 and 20.
- (6) For paragraph 27, substitute—

“**27.**—(1) Subsection (3) of section 40 of the Act (payment of debts out of assets subject to floating charge) as applied to a building society has effect as if the reference to general creditors included a reference to holders of shares in the society.

(2) Subsection (3) of section 59 of the Act (priority of debts) as applied to a building society has effect as if the reference to ordinary creditors included a reference to holders of shares in the society.

27A. Subsection (1) of section 46 of the Act (information to be given by administrative receiver) or subsection (1) of 65 of the Act (information to be given by receiver) as applied to a building society has effect as if the reference to all the creditors of the society included a reference to all the holders of shares in the society.

27B. Subsection (2) of section 47 of the Act (statement of affairs to be submitted) or subsection (2) of section 66 of the Act (building society’s statement of affairs) as applied to a building society has effect as if the reference to its creditors included a reference to all holders of shares in the society.

27C. Section 48 of the Act (report by administrative receiver) or section 67 of the Act (report by receiver) as applied to a building society has effect as if—

- (a) the reference in subsection (1) to the Authority included a reference to the scheme manager;
- (b) the reference in subsection (1)(d) to other creditors included a reference to holders of shares in the society;
- (c) the references in paragraphs (a) and (b) of subsection (2) to unsecured creditors of the society included references to holders of shares in the society; and
- (d) the reference in subsection (2) to a meeting of the society’s unsecured creditors included a reference to a meeting of holders of shares in the society.

27D. Subsection (1) of section 49 or 68 of the Act (committee of creditors) as applied to a building society has effect as if the reference to a meeting of creditors included a reference to a meeting of holders of shares in the society.”.

- (7) In paragraph 33(b)—
 - (a) in sub-paragraph (2), for “is a reference to the Authority” substitute “includes a reference to the Authority”;
 - (b) omit sub-paragraph (3).
- (8) Omit paragraphs 34, 35, 40 and 42.
- (9) For paragraph 49, substitute—

“**49.** Paragraph (3) of Article 50 of the Order (payment of debts out of assets subject to floating charge) as applied to a building society has effect as if the reference to general creditors included a reference to holders of shares in the society.

(a) Paragraph 11 was amended by S.I. 2001/2617.
(b) Paragraph 33 was amended by S.I. 2001/2617.

49A. Paragraph (1) of Article 56 of the Order (information to be given by administrative receiver) as applied to a building society has effect as if the reference to all the creditors of a society included a reference to all the holders of shares in the society.

49B. Paragraph (2) of Article 57 of the Order (statement of affairs to be submitted) as applied to a building society has effect as if the reference to its creditors included a reference to all holders of shares in the society.

49C. Article 58 of the Order (report by administrative receiver) as applied to a building society has effect as if—

- (a) the reference in paragraph (1) to the Authority included a reference to the scheme manager;
- (b) the reference in paragraph (1)(d) to other creditors included a reference to holders of shares in the society;
- (c) the references in sub-paragraphs (a) and (b) of paragraph (2) to unsecured creditors of the society included references to holders of shares in the society; and
- (d) the reference in paragraph (2) to a meeting of the society’s unsecured creditors included a reference to a meeting of holders of shares in the society.

49D. Paragraph (1) of article 59 of the Order (committee of creditors) as applied to a building society has effect as if the reference to a meeting of creditors included a reference to a meeting of holders of shares in the society.”

Consequential and supplementary provision

12. Regulation 14 of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999(a) applies in relation to a relevant building society as if—

- (a) the references in paragraphs (5) and (6) to paragraph 99(3) of Schedule B1 to the Insolvency Act 1986(b) were references to section 19(4) of that Act;
- (b) the references in those paragraphs to paragraph 100(3) of Schedule B1 to the Insolvency (Northern Ireland) Order 1989(c) were references to Article 31(4) of that Order.

Claire Ward

Frank Roy

4th June 2008

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order modifies the application of the Building Societies Act 1986 (c. 53) (“the 1986 Act”), in specified circumstances, to facilitate the provision of “relevant financial assistance” by the Bank of England to building societies. “Relevant financial assistance” is any financial assistance provided for the purpose of maintaining the stability of the financial system in the United Kingdom (see sections 11(2) and 15(1) of the Banking (Special Provisions) Act 2008 (c. 2)).

(a) S.I. 1999/2979; paragraphs (5) and (6) of regulation 14 were amended by S.I. 2003/2096, 2006/50 and 2007/832.

(b) 1986 c. 45; Schedule B1 was inserted by the Enterprise Act 2002 (c. 40), section 248.

(c) S.I. 1989/2405 (N.I. 19); Schedule B1 was inserted by S.I. 2005/1455 (N.I. 10).

Article 2 defines terms used in the Order and provides that references to the Bank of England include any person acting for or on behalf of the Bank or providing relevant financial assistance to a building society on the basis of relevant financial assistance from the Bank. This could include another institution which provides relevant financial assistance to a building society on the basis of, for example, an indemnity or guarantee from the Bank, provided the conditions in article 2(2)(b) are met.

Article 3 modifies the application of section 5 of the 1986 Act so that no building society shall be regarded, by virtue of any relevant financial assistance it receives from the Bank of England, as failing to comply with the requirement that its purpose or principal purpose is that of making loans which are secured on residential property and funded substantially by its members.

Article 4 disapplies section 6 of the 1986 Act where, as a consequence of any financial assistance received from the Bank of England, a building society has transferred, assigned or otherwise disposed of any of its assets, and the society would otherwise be in breach of the lending limit in section 6.

Article 5 modifies the application of section 7 of the 1986 Act, so that any financial assistance a society receives from the Bank of England is disregarded for the purposes of the funding limit in that section.

Article 6 disapplies section 8(1)(c) of the 1986 Act, so that the restriction in that section on raising funds from a body corporate does not apply in relation to relevant financial assistance from the Bank of England.

Article 7 disapplies section 9B of the 1986 Act, so that a building society may create a floating charge in favour of the Bank of England in connection with relevant financial assistance received from it.

Article 8 makes various modifications to the application of Schedule 2 to the 1986 Act, to remove any restrictions on the receipt of relevant financial assistance arising from the memorandum or rules of a building society.

Articles 9, 10 and 11 make various modifications to the application of section 90A of, and Schedules 15 and 15A to, the 1986 Act. These ensure that the relevant law on administrative receivers applies, with the appropriate modifications, in relation to any administrative receiver appointed by the Bank under the terms of a loan secured by a floating charge. Schedule 15A already provides that references in the applicable insolvency legislation to “company” and “the registrar of companies” have effect as references to “building society” and “the Financial Services Authority” respectively: see paragraph 2(1) of Schedule 15A.

Article 12 makes a consequential modification to the application of regulation 14 of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979). This is necessary as the administration provisions in Part II of the Insolvency Act 1986 (1986 c. 45) and Part III of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), rather than the provisions in Schedule B1 to that Act and to that Order, apply in relation to a building society.

A regulatory impact assessment of the effect that this instrument will have on the costs of business is available from the Banking Reform team at HM Treasury, 1 Horse Guards Road, London SW1A 2HQ, or e-mail banking.reform@hm-treasury.x.gsi.gov.uk, and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website (www.opsi.gov.uk).

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