

**EXPLANATORY MEMORANDUM TO**  
**THE BUILDING SOCIETIES ACT 1986 (AMENDMENT OF SMALL BUSINESS**  
**TURNOVER LIMIT) ORDER 2024**

**2024 No. 1024**

**1. Introduction**

1.1 This Explanatory Memorandum has been prepared by HM Treasury and is laid before Parliament by Command of His Majesty.

**2. Declaration**

2.1 Tulip Siddiq MP, Economic Secretary to the Treasury, confirms that this Explanatory Memorandum meets the required standard.

2.2 Alanna Barber, Deputy Director for Banking and Credit at HM Treasury, confirms that this Explanatory Memorandum meets the required standard.

**3. Contact**

3.1 Please contact [buildingsocietiesact@hmtreasury.gov.uk](mailto:buildingsocietiesact@hmtreasury.gov.uk) with any queries regarding the instrument.

**Part One: Explanation, and context, of the Instrument**

**4. Overview of the Instrument**

*What does the legislation do?*

4.1 This Order amends section 7(10) and (11) of the Building Societies Act 1986 (c.53) (“the 1986 Act”) by increasing the turnover limit in a relevant financial year for the definition of a small business in section 7(10) of the Act from £1 million to £6.5 million. It also makes a corresponding amendment to the reference to the equivalent limit in any other currency in subsection (11) (c).

4.2 Under section 7(1) and (2) of the 1986 Act, subject to some exclusions, building societies are required to raise at least 50 per cent of their funding from members’ deposits; the rest can be raised from other sources, known as wholesale funding. Deposits by small businesses with a society, or any subsidiary undertaking of the society, are excluded from the wholesale funding limit by section 7(3)(aa). By amending the definition of a small business in section 7(10) of the 1986 Act, this Order will exclude a larger range of deposits with building societies by small businesses from the funding limit, thereby providing building societies with greater flexibility in their funding sources. This amendment will also help building societies complete more effectively with ring-fenced retail banks for deposits from small businesses. The proposed new small business turnover limit of £6.5 million is already used to classify the smaller businesses whose deposits must be held within the ring-fence.

*Where does the legislation extend to, and apply?*

4.3 This instrument extends to England, Scotland, Wales, and Northern Ireland.

4.4 This instrument applies to England, Scotland, Wales, and Northern Ireland.

## 5. Policy Context

### *What is being done and why?*

- 5.1 Building societies are providers of mortgage and savings products, mutually owned by their members (the depositors/borrowers). This is their distinctive model, which sets them apart from retail banks. The 42 building societies in the UK make a valuable contribution to the UK financial services industry. According to the latest Building Societies Association (BSA) data, building societies serve around 26 million members and have total assets of over £515 billion.
- 5.2 The Building Societies Act 1986 sets out building societies' distinctive model and other legal requirements. Whilst the Government believes the 1986 Act broadly remains fit for purpose, it recognises that there is interest and rationale in making further updates to the 1986 Act.
- 5.3 The funding limit calculation, which requires at least 50 percent of building society funding to come from retail deposits, is an important feature of building societies' mutual model and helps preserve societies' mutual status. The remaining funding may come from other sources, called wholesale funding. The Government recognises that the funding limit calculation limits the amount of wholesale funding building societies may raise, which may create challenges that non-mutual retail banks do not have.
- 5.4 Following engagement with the building society sector and the financial regulators, the Government launched a consultation into several amendments to the 1986 Act on 6 December 2021.<sup>1</sup> This Order implements one proposal from that consultation to allow building societies to exclude deposits from small businesses with a turnover of up to £6.5 million from the funding limit calculation, so as to align the position for building societies with that of non-mutual ring-fenced retail banks, which can also accept deposits from small businesses with a turnover of up to £6.5 million.
- 5.5 By bringing the small business turnover limit in line with that applying to deposits with ring-fenced banks, building societies will have greater flexibility over the treatment of SME deposits. The Order will therefore help building societies to compete more effectively with retail banks.
- 5.6 The ceiling for exempted small business deposits will remain as it currently stands, which is up to 10 percent of a building societies' total funding. This is to protect the mutual ethos of building societies.

### *What was the previous policy, how is this different?*

- 5.7 Currently, building societies are permitted to hold deposits from SMEs with a turnover of up to £1 million, up to 10 percent of total funding, without this counting towards their wholesale funding limit. However, following the introduction of ringfencing, one of the qualifying criteria for business deposits to be held in a ringfenced retail bank is that a business has a turnover limit of less than £6.5 million. As such, the current £1 million SME funding turnover limit is no longer appropriate for building societies as it may place them at a disadvantage when competing with ringfenced banks for deposits from the wider SME market.

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<sup>1</sup> <https://www.gov.uk/government/consultations/consultation-amendments-to-the-building-societies-act-1986#:~:text=This%20consultation%20requests%20views%20on>

## **6. Legislative and Legal Context**

### *How has the law changed?*

- 6.1 As part of the Financial Services (Banking Reform) Act 2013 (“the 2013 Act”), the Government amended the 1986 Act to allow building societies to take deposits from SMEs with a turnover of up to £1 million, without these deposits counting as wholesale funding, up to a 10 percent overall funding limit.
- 6.2 This Order amends the 1986 Act to increase this business turnover limit in a relevant financial year for the definition of a small business in section 7(10) of the Act from £1,000,000 to £6,500,000.
- 6.3 Section 7(12) provides that HM Treasury may, by order made by statutory instrument, amend the figure for the time being specified in section 7(10) and (11) (c) (currently £1,000,000). Section 7(13) provides that a statutory instrument under section 7(12) is subject to annulment by resolution of either House of Parliament (i.e. the negative resolution procedure).

### *Why was this approach taken to change the law?*

- 6.4 To change the small business turnover limit, it is necessary to amend the existing law in the 1986 Act. By virtue of the 2013 Act, Parliament provided the Treasury with the power to vary the amount of £1 million by statutory instrument subject to the negative resolution procedure.

## **7. Consultation**

### *Summary of consultation outcome and methodology*

- 7.1 Following engagement with the building society sector, the Prudential Regulatory Authority (PRA) and the Financial Conduct Authority (FCA), on 6 December 2021, the Government launched a consultation on several amendments to the 1986 Act. The consultation proposed excluding some sources of funding from the building society funding limit calculation and updating some building society corporate governance requirements in line with modernisations made to company law by the Companies Act 2006.
- 7.2 The Government published a response to this consultation as part of the Edinburgh Reforms in December 2022. The Government received five individual responses, with most building societies responding through the Building Societies Association. All respondents supported the range of proposals outlined in the consultation.
- 7.3 The Government intend to bring forward secondary legislation shortly, subject to parliamentary time, to give effect to the proposal from the December 2021 consultation to align building societies’ corporate governance provisions on balance sheet signature with that of companies under the Companies Act 2006, and also to remove restrictions on the retirement age of directors. The Building Societies Act 1986 (Amendment) Act 2024 gives effect to the remaining proposals from the consultation on funding limit exclusions and corporate governance. The Act allows for real-time virtual member participation at building society general meetings and provides HM Treasury with the powers (exercisable by statutory instrument) to exclude three specified sources of funding from the wholesale funding limit and remove the requirements for building societies to affix a seal when executing a deed.

## **8. Applicable Guidance**

- 8.1 This legislation does not implement or require guidance.

### **Part Two: Impact and the Better Regulation Framework**

## **9. Impact Assessment**

- 9.1 A full Impact Assessment has not been prepared for this instrument because the costs to the sector to implement these changes are expected to be minimal. A De Minimis Impact Assessment is published alongside this Memorandum on the [legislation.gov.uk](https://www.legislation.gov.uk) website.
- 9.2 The De Minimis Impact Assessment concludes that there will be minimal costs to the sector in implementing this change. It also notes a small benefit to some building societies in providing slightly greater headroom and flexibility for their lending activities.

### *Impact on businesses, charities and voluntary bodies*

- 9.3 The legislation will have minimal impact on business, charities or voluntary bodies as it will only make a small change to the legislation governing building societies, as outlined within the Impact Assessment.
- 9.4 The legislation will have minimal impact on small or micro businesses.
- 9.5 There is no impact on the public sector because this Order will only make a small change to the legislation governing building societies.

## **10. Monitoring and review**

### *What is the approach to monitoring and reviewing this legislation?*

- 10.1 HM Treasury will continue to work with the sector and regulators to ensure it continues to meet the needs and specificities of building societies.
- 10.2 The instrument does not include a statutory review clause.

### **Part Three: Statements and Matters of Particular Interest to Parliament**

## **11. Matters of special interest to Parliament**

- 11.1 None.

## **12. European Convention on Human Rights**

- 12.1 The Economic Secretary has made the following statement regarding Human Rights: “In our view the provisions of the Building Societies Act 1986 (Amendment of Small Business Turnover Limit) Order 2024 are compatible with the Convention rights.”

## **13. The Relevant European Union Acts**

- 13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).