



Building Societies Act 1986

1986 CHAPTER 53

PART II

CONSTITUTION OF BUILDING SOCIETIES

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—
 - (a) raise funds by the issue of shares to members, or
 - (b) 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.
 - (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.
 - (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 instruments,
 - (b) qualifying time deposits,
 - (c) shares in the society held by, or by a trustee for, and (to the extent the liabilities do not fall within (a) or (b) above) sums deposited with the society by, or by a trustee for—

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- (i) any body corporate,
 - (ii) a friendly society registered under the Friendly Societies Act 1974 or the Friendly Societies Act (Northern Ireland) 1970,
 - (iii) a trade union (within the meaning of the Trade Union and Labour Relations Act 1974),
- (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), (b) or (c) above) sums deposited with the society by—
 - (i) a body of persons or trust established for charitable purposes only, or
 - (ii) the administrator of an approved retirement benefits scheme.
- (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 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

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- (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 £50,000 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.
- (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.
- (19) In this section—
- "qualifying time deposit" means a deposit in sterling made with the society as to which the following conditions are satisfied, that is to say—
 - (i) the amount of the deposit is or exceeds £50,000;
 - (ii) the deposit is repayable at the end of a specified period which expires before the end of the period of 12 months beginning on the date on which the deposit is made ; and
 - (iii) the right to repayment is not assignable ;
 - "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; and
 - "transferable 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.

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.

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—

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- (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 1/2 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; 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 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 so 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.

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- (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;
- 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 £100,000 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 ; and

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" 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.

- (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.