



Building Societies Act 1986

1986 CHAPTER 53

PART III

ADVANCES, LOANS AND OTHER ASSETS

Class 1 advances and class 2 advances secured on land

10 Advances secured on land

- (1) A building society may make advances to members (in this Act referred to as "advances secured on land") secured by—
 - (a) a mortgage of a legal estate or, as provided under subsection (6) below, an equitable interest in land in England and Wales or Northern Ireland, or
 - (b) a heritable security over land in Scotland,and for that purpose may (in England and Wales or Northern Ireland) hold land with the right of foreclosure.
- (2) Advances secured on land may, in accordance with sections 11 and 12—
 - (a) be fully or partly secured by a mortgage of the legal estate or equitable interest in land in England and Wales or Northern Ireland, or
 - (b) be fully secured by a heritable security over land in Scotland,and in this Part "the basic security" means the security constituted by the legal estate in or heritable security over the land or, in a case where an equitable interest in land in England and Wales or Northern Ireland is or is also taken as security by virtue of this section, that constituted by that security or, as the case may be, the combined securities; and a reference to the land which is to secure an advance or on which an advance is secured is a reference to the estate or interest or the heritable security which constitutes or will constitute the basic security.
- (3) The power to make an advance secured on land includes power, subject to the restriction imposed by subsection (4) below, to make, as a separate advance, an advance which is to be applied in or towards payment of the deposit for the purchase of the land (in this Part referred to as "an advance for a deposit for the purchase of land.")

Status: This is the original version (as it was originally enacted).

- (4) The restriction referred to is that an advance for a deposit for the purchase of land must not exceed 10 per cent, of the total amount to be paid for the purchase of the land.
- (5) An advance shall be treated for the purposes of this Act as secured by a mortgage of a legal estate in registered land in England and Wales or Northern Ireland notwithstanding that the advance is made before the borrower is registered as proprietor of the estate.
- (6) A building society may advance money on the security of an equitable interest in land in England and Wales or Northern Ireland if the equitable interest is an equitable interest in land of a description and is created in circumstances prescribed in an order made by the Commission with the consent of the Treasury under this subsection and any conditions prescribed in the order are complied with.
- (7) Any powers conferred on building societies by an order under subsection (6) above may be conferred on building societies of a description specified in the order or all building societies other than those of a description so specified.
- (8) The power to make an order under subsection (6) above includes power—
- (a) to prescribe the circumstances in which the power conferred by section 17(10) on building societies of the description specified therein is to be available to them ; and
 - (b) to make such incidental, supplementary and transitional provision as the Commission considers necessary or expedient.
- (9) An instrument containing an order under subsection (6) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) The power to make advances secured on land includes power to make them on terms that include provision as respects the capital element in the mortgage debt (with or without similar provision as respects the interest element)—
- (a) that the amount due to the society may be adjusted from time to time by reference to such public index of prices other than housing prices as is specified in the mortgage;
 - (b) that the amount due to the society may be adjusted from time to time by reference to such public index of housing prices as is specified in the mortgage;
 - (c) that the amount due to the society at any time shall be determined by reference to a share, specified or referred to in the mortgage, in the open market value of the property at that time;
- and, in cases where the amount due to the society in respect of capital exceeds the amount advanced, references in this Act to the repayment of an advance include references to payment of the excess.
- (11) Advances secured on land shall be classified for the purposes of the requirements of this Part for the structure of commercial assets into—
- (a) class 1 advances, and
 - (b) class 2 advances ;
- and in this Act " advances fully secured on land " means advances which are class 1 or class 2 advances, and any reference to " fully secured " shall be construed accordingly.
- (12) Nothing in this section or section 11 or 12 is to be taken as precluding a society from taking other security for an advance secured on land than such security as is required

for an advance to be a class 1 or class 2 advance under those sections; but the value of the other security shall be disregarded for the purpose of classifying the advance as a class 1 or class 2 advance.

11 Class 1 and class 2 advances

- (1) The provisions of this section and section 12 define what is a class 1 advance and what is a class 2 advance for the purpose of the requirements of this Part for the structure of commercial assets and when an advance may, for those purposes, be treated partly as a class 1 advance and partly as a class 2 advance.
- (2) Class 1 advances are advances as to which the society when it makes the advance is satisfied that the advance is an advance secured on land and that—
 - (a) the borrower is an individual;
 - (b) the land is for the residential use of the borrower or a dependant of his of a prescribed description ;
 - (c) the amount advanced will not exceed the value of the basic security (after deducting from that value any mortgage debt of the borrower to the society outstanding under a mortgage of the land); 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 ;and which are not made on terms as respects the capital element of the mortgage debt authorised by section 10(10)(b) or (c).
- (3) Subject to any order made under section 12(1), the requirement in subsection (2)(b) above shall be treated as satisfied if no less than 40 per cent, of the area of the land is used for residential purposes by the borrower or a dependant of his of a prescribed description.
- (4) Class 2 advances are advances as to which the society when it makes the advance—
 - (a) either is not satisfied that the requirements for the time being of subsection (2) above are fulfilled or is satisfied that any of them is not fulfilled, but
 - (b) is satisfied that the advance is an advance secured on land, and
 - (c) is satisfied, where the amount advanced will exceed the value of the basic security (after deducting from that value any mortgage debt of the borrower outstanding under a mortgage of the land), that the excess will be secured by the taking of security of a prescribed description in addition to the basic security, 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.
- (5) The requirement in subsection (2)(d) and (4)(d) above shall be treated as satisfied if the advance is made on terms that the other mortgage is redeemed or postponed to the basic security.
- (6) An advance for a deposit for the purchase of land is also a class 1 or class 2 advance according as it is made with a view to the making of a class 1 or class 2 advance secured on the land.
- (7) Advances which would be class 2, and not class 1, advances by reason only that the extent of the residential use of the land is not such as to satisfy the requirement in subsection (2)(b) above shall be treated as class 1 advances if and to the extent prescribed by an order under section 12(5).

Status: This is the original version (as it was originally enacted).

- (8) For the purposes of the requirements of this Part for the structure of commercial assets—
- (a) class 1 advances constitute class 1 assets, and
 - (b) class 2 advances constitute class 2 assets,
- and accordingly the aggregate amount of mortgage debts outstanding in respect of class 2 advances counts in accordance with section 20 towards the limit applicable to class 2 assets under that section.
- (9) For the purposes of subsections (2) and (4) above, where a building society makes an advance by instalments, any reference to the time when the society makes the advance is a reference to the time when it pays the first of the instalments, disregarding for this purpose any instalment which is to be applied towards payment of the deposit in respect of the purchase of the land which is to secure the advance.
- (10) Subject to subsection (11) below, any land to which a building society becomes absolutely entitled by foreclosure or by release or other extinguishment of a right of redemption—
- (a) shall as soon as may be conveniently practicable be sold or converted into money; and
 - (b) shall, until the sale or conversion, constitute a class 1 asset if the advance secured on the land was a class 1 advance and a class 2 asset if it was a class 2 advance.
- (11) Where a building society which has for the time being adopted the powers conferred by section 17 becomes entitled to land as mentioned in subsection (10) above, and the land is land that may be held under that section, then, if the society—
- (a) elects to hold the land under that section, or
 - (b) without such an election, retains the land after the expiry of the period of twelve months immediately following the date on which it so becomes entitled to the land,
- the society shall be taken to hold the land under that section.
- (12) An election under subsection (11) above shall be made by resolution of the board of directors and shall be irrevocable.
- (13) If a building society contravenes subsection (10) above the society shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale and so shall any officer who is also guilty of the offence.
- (14) For the purposes of this Act, the mortgage debt at any time, in relation to an advance secured on land, is the total amount outstanding at that time in respect of—
- (a) the principal of the advance;
 - (b) interest on the advance; and
 - (c) any other sum which the borrower is obliged to pay the society under the terms of the advance.
- (15) The reference in subsection (10) above to land to which a building society becomes absolutely entitled by foreclosure includes a reference to land which a building society has acquired by virtue of a decree of foreclosure under section 28 of the Conveyancing and Feudal Reform (Scotland) Act 1970.

12 Class 1 and class 2 advances: supplementary provisions

- (1) The Commission, by order in a statutory instrument, may as respects class 1 advances—
 - (a) specify the circumstances in which land is for a person's residential use,
 - (b) specify who are to be a person's dependants, and
 - (c) make such other incidental and supplementary and such transitional provision as the Commission considers necessary or expedient,for the purposes of section 11 (2); and in that subsection " prescribed " means prescribed in an order under this subsection.
- (2) Without prejudice to the generality of subsection (1)(c) above, an order may prescribe evidence on which a building society is to be entitled to be satisfied (in the absence of evidence to the contrary) that the requirements of section 11(2) are fulfilled as respects an advance secured on land.
- (3) The Commission, by order in a statutory instrument, may as respects class 2 advances—
 - (a) specify descriptions of security falling within this subsection which, for the purposes of paragraph (c) of section 11(4), may be taken for class 2 advances in addition to the basic security; and
 - (b) make such other incidental or supplementary and such transitional provision as it considers necessary or expedient for the purposes of paragraph (c) or (d) of that subsection;and in that subsection " prescribed " means prescribed in an order under this subsection.
- (4) The descriptions of additional security which fall within subsection (3)(a) above are guarantees, indemnities or other contractual promises made by virtue of, or by a public body established by or under, any enactment for the time being in force.
- (5) The Commission, by order in a statutory instrument, may, as respects advances to be secured on land which is to any extent to be used for the residential use of borrowers or persons who are dependants of theirs for the purposes of section 11(2)—
 - (a) require so much of the amount to be advanced as is determined by or under the order to be treated as a class 1 advance;
 - (b) specify the circumstances in which and the conditions subject to which advances are to be so treated; and
 - (c) make such incidental, supplementary and transitional provision as the Commission considers necessary or expedient.
- (6) The Commission shall not make an order under this section, except with the consent of the Treasury.
- (7) An instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) For the purpose of facilitating the repayment to a building society of a class 1 advance or a class 2 advance, the society may make to the borrower, by way of addition to the advance, a further advance of or towards the cost of a single premium payable in respect of an appropriate policy of life assurance; and a sum added to an advance under this subsection shall be treated as not forming part of the advance for the purpose of determining whether the requirements of section 11 (2) or (4) are satisfied with respect to the advance.

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- (9) Where an advance secured on land in England and Wales or Northern Ireland is made, then, for the purpose of determining whether the land is subject to a prior mortgage for the purposes of section 11(2)(d) or (4)(d) above, any outstanding charge over the land which is registered—
- (a) in the case of land in England and Wales, in the appropriate local land charges register, and
 - (b) in the case of land in Northern Ireland, in the statutory charges register under section 87 of, and Schedule 11 to, the Land Registration Act (Northern Ireland) 1970,
- shall be disregarded.
- (10) If at any time when a class 1 advance or a class 2 advance secured on land is outstanding the building society—
- (a) is satisfied on a revaluation that the value of the basic security has changed,
 - (b) is satisfied that so much of the mortgage debt as represents the principal of the advance has changed,
 - (c) is satisfied on notice given to it by the borrower that there has been a change in the use of the land, or
 - (d) agrees to a change in the relative priority of the mortgage on which the advance is secured,
- and is satisfied that the change is such that, if it were to make an advance equal to the mortgage debt at that time, the advance would instead be a class 2 advance or a class 1 advance, as the case may be, the advance shall be reclassified as from that time.
- (11) Nothing in subsection (10) above requires a building society to revalue its securities from time to time.
- (12) Every building society shall establish and maintain a system to ensure the safe custody of all documents relating to property mortgaged to the society.
- (13) In this section "appropriate policy of life assurance", with reference to an advance, means a policy of insurance which satisfies the following requirements, that is to say—
- (a) the life assured is that of the person to whom the advance is made or his spouse, his son or his daughter, and
 - (b) it provides, in the event of the death, before the advance has been repaid, of the person on whose life the policy is effected, for payment of a sum not exceeding the amount sufficient to defray the sums which are, at and after the time of the death, payable to the society in respect of the advance and any addition made in respect of the premium.

13 Security for advances: valuation and supplementary and related provisions

- (1) It shall be the duty of every director of a building society to satisfy himself that the arrangements made for assessing the adequacy of the security for any advance to be fully secured on land which is to be made by the society are such as may reasonably be expected to ensure that—
- (a) an assessment will be made on the occasion of each advance whether or not any previous assessment was made with a view to further advances or re-advances;

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- (b) each assessment will be made by a person holding office in or employed by the society who is competent to make the assessment and is not disqualified under this section from making it;
- (c) each person making the assessment will have furnished to him a written report on the value of the land and any factors likely materially to affect its value made by a person who is competent to value, and is not disqualified under this section from making a report on, the land in question ;

but the arrangements need not require each report to be made with a view to a particular assessment so long as it is adequate for the purpose of making the assessment.

- (2) In relation to any land which is to secure an advance, the following persons are disqualified from making a report on its value, that is to say—
 - (a) the directors and any other 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;
 - (b) where the society has made, or undertaken to make, to any person a payment for introducing to it an applicant for the advance, that person ;
 - (c) where the advance is to be made following a disposition of the land, any person having a financial interest in the disposition of the land and any director, other officer or employee of his or of an associated employer ; and
 - (d) where the advance is to be made following a disposition of the land, any person receiving a commission for introducing the parties to the transaction involving the disposition and any director, other officer or employee of his.
- (3) In relation to any land which is to secure an advance where the advance is to be made following a disposition of the land, the following persons are disqualified from making an assessment of the security or authorising the making of the advance, that is to say—
 - (a) any person, other than the building society making the advance, having a financial interest in the disposition of the land and any director, other officer or employee of his or of an associated employer; and
 - (b) any person receiving a commission for introducing the parties to the transaction involving the disposition and any director, other officer or employee of his.
- (4) Any person who, being disqualified from doing so—
 - (a) makes a report on any land which is to secure an advance,
 - (b) makes an assessment of the adequacy of the security for an advance, or
 - (c) authorises the making of an advance,and in the case of a person making a report does so knowing or having reason to believe that the report will be used or is likely to be used for the purposes of the advance, shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (5) For the purposes of this section, any two employers are associated if one is a body corporate of which the other (directly or indirectly) has control or if both are bodies corporate of which a third person directly or indirectly has control; and the expression " associated employer " shall be construed accordingly.
- (6) In this section " commission " includes any gift, bonus or benefit and, for its purposes, a person shall be taken to have a financial interest in the disposition of any land if, but only if, he would, on a disposition of that land, be entitled (whether directly or indirectly, and whether in possession or not) to the whole or part of the proceeds of the disposition.

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- (7) Schedule 4 to this Act, which contains supplementary provisions as to mortgages, shall have effect.