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LEGISLATIVE CHANGES TO THE BS ACT 1986 -A SUMMARY OF CONSULTATION RESPONSES

1.1 There were a total of 28 responses to the consultation on making legislative changes to the BS Act 1986. The majority of the responses were from building societies, one from a private individual member of a building society and the Financial Services Authority (FSA).

1.2 Over 300 copies of the consultation document were mailed out to UK building societies, stakeholders and other government departments (OGD). Copies were also posted on the HM Treasury public website. A full list of the consultation respondents is provided at Annex A of this document.

1.3 The respondents were unanimous in welcoming the consultation. All the building societies including the Building Societies Association (BSA) expressed strong support for the proposed changes.

1.4 Some of the respondents however raised a number of cautionary points.

- A private individual member of a building society was concerned that elements of the proposed changes could have a detrimental effect on democracy within the societies. The member was concerned that the proposal to increase the nominating shareholding or mortgage debt of a member from £100 to £200 would disenfranchise members from being able to nominate a member for election.
- A building society suggested that the proposed treatment of offshore deposits should be extended to incorporate the activities of any deposit-taking subsidiary company of a building society irrespective of its location. They explained that they considered such individual deposits as having similar characteristics to offshore deposits i.e. retail in nature.
- A building society also cautioned that currently only the largest building societies had offshore deposit-taking subsidiaries. They suggested that the proposed change relating to offshore deposits would only benefit such societies.

Government Response

1.5 The Government welcomes the unanimous support given by respondents to the consultation process and is encouraged that the majority of respondents are in agreement with the proposals. Government also recognises the concerns raised but considers that on balance societies would be best served by the proposals.

1.6 In response to the cautionary points raised by respondents, the Government view is that the increase in a private member's shareholding (deposits or mortgage balance) from £100 to £200 should hardly serve to disenfranchise members. This figure has not been uprated since 1986 and reflects the inflation increase since that date.

1.7 The Government does not agree that deposits held by a UK subsidiary of a building society (onshore) should be treated as similar to deposits from an offshore deposit-taking subsidiary. Although both funds may ostensibly have characteristics similar to retail funds, their tax treatments are different.

1.8 In relation to the third point about the proposed treatment of funds in an offshore deposit-taking subsidiary favouring the largest societies, it is the Government's contention that this measure will apply to the whole sector. It will be applicable to any building society, which may have an offshore deposit-taking subsidiary irrespective of size. It is therefore up to the individual building society whether to include offshore deposit taking as part of their corporate strategy.

1.9 HM Treasury proposes to introduce these changes by way of Statutory Instruments using the negative resolution procedure and will aim to bring them into force on 6 April 2007.

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SPECIFIC COMMENTS

2.1 This consultation sought consultees views on a number of issues relating to building societies' offshore deposits, summary financial statements, directors' reports and annual business statements and certain financial amounts specified in the BS Act 1986.

QUESTIONS RELATING TO OFFSHORE DEPOSITS

1. Do you agree that a percentage of individual's deposits held by a building society 's offshore deposit –taking subsidiaries should be excluded from the funding limit calculations?
2. Do you agree that for the purposes of the funding limit calculations, there is in practice little difference between the economic characteristics of individuals' deposits with a building society's offshore deposit-taking subsidiary and members' deposits with a building society held in the form of shares?
3. If yes, what percentage of total deposits must offshore deposits not exceed in order that they should be disregarded for the funding limit calculations? (a) 5% (b) 10% (c) Other –please state.

2.2 The majority of consultees agreed that deposits held by individuals in a building society's offshore deposit-taking subsidiary had similar characteristics to retail funds and it would therefore be more appropriate to exclude them from the funding limit calculations. Consultees unanimously suggested that a cap of 10% would be an appropriate level.

2.3 The overall opinion from societies was that a redefinition of the basis of the funding ratio calculations would allow societies to operate more flexibly and therefore more competitively, without breaching the overall “principal purpose” of a building society, that of making loans which are secured on residential property and are funded substantially by its members.

The Government Response

2.4 The Government concurs with the respondents' views and will provide the appropriate legislation to implement this measure.

QUESTIONS RELATING TO SUMMARY FINANCIAL STATEMENTS, DIRECTORS' REPORTS AND ANNUAL BUSINESS STATEMENTS

4. Do you agree with the proposal that HMT should make legislation to implement the preparation of SFS, DR and ABS by building societies that prepare accounts in accordance with IAS or would you prefer the BSA to issue guidance?
5. Do you envisage any costs arising out of the proposed changes to the building societies legislation?

2.5 Consultees were unanimous that it would be preferable for HMT (and not informally via the BSA) to provide legislation to facilitate the preparation of SFS, DR and ABS by building societies that prepare accounts in accordance with IAS. While the BSA could – and did in 2006 – issue guidance on SFS to societies such guidance is optional and cannot be enforced by the BSA. Furthermore it would be anomalous for those societies that prepare their annual accounts under UK accounting standards to have to follow legislation on SFS while IAS societies did not.

2.6 The majority of respondents did not consider that the proposals would result in significant extra costs. Such costs would mainly be administrative in nature. It was argued that rather than incur significant financial costs, the proposal to change the funding limit calculation for example would bring economic benefits, by allowing greater access to cheaper wholesale funding. Some societies estimated that there was likely to be a net difference of about 0.3% between the cost of marginal retail funds versus additional wholesale funding. Societies would as a consequence be able to deliver better customer value by way of cheaper mortgages, higher savings rates and improved service levels to their members.

2.7 It was unanimously agreed that the changes to SFS, DR and ABS for IAS societies would make it easier for members of building societies and other interested parties to make comparative assessments of performance between societies.

The Government Response

2.8 The Government notes the additional benefits identified by the respondents and is content to provide appropriate legislation. The UK Accounting Standards Board (ASB) intends to achieve convergence between IAS and UK Generally Accepted Accounting Practice (UK GAAP) in the near future and as such this proposal is timely. Government will seek to ensure that there are no disproportionate regulatory burdens imposed as a result of this measure.

6. Do you agree that the financial limits and thresholds for societies should be updated in line with the proposals suggested in Annexe B of the consultation document?

7. Please specify if there are any proposals for these financial limits or thresholds you are not in agreement with and reasons why.

2.9 With the exception of the sole building society member who gave qualified support to this proposal, building societies were unanimous that the financial limits and thresholds required updating as per the consultation document.

2.10 Respondents were however not happy that the probate limit set in schedule 7 of the BS Act 1986 had not been updated from the current £5000 since 1986. This is the figure that a society may pay in respect of a deceased investor in advance of an estate being settled, while retaining legal protection. Societies were of the view that this low level limit of £5000 placed undue distress on relatives of the deceased anxious to pay for immediate expenses in advance of the estate being legally settled. Societies suggest that

with the rising cost of goods and services, a figure of at least £10,000 was required and argued that this restrictive limit does not apply to banks to the same extent.

The Government Response

2.11 Government is encouraged that the majority of respondents were in agreement with the proposed financial limits and thresholds. Government however did not include the probate limits in this consultation because it was not feasible within the time constraints preceding the consultation. Such a review of the probate limit would in addition have a knock-on impact on other legislation such as the Administration of Estates (Small Payments) Act 1965. It would also require significant input from other government departments with policy responsibility such as the Department of Constitutional Affairs (DCA). The Government will include this subject in the much wider review of the mutuals legislation scheduled for this year.

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LIST OF CONSULTATION RESPONDENTS

- Building Societies Association
- Britannia Building Society
- Chelsea Building Society
- Coventry Building Society
- Darlington Building Society
- Derbyshire Building Society
- Dunfermline Building society
- Financial Services Authority
- Hanley Building Society
- Hinckley & Rugby Building Society
- Holmesdale Building Society
- Leeds Building society
- Leek Building Society
- Loughborough Building society
- Marsden Building Society
- Market Harborough Building Society
- National Counties Building Society
- Nationwide Building Society
- Norwich & Peterborough Building Society
- Nottingham Building Society
- Principality Building Society
- Saffron Building Society
- Scarborough Building Society
- Skipton Building Society
- Stroud & Swindon Building Society
- Teachers Building Society
- Tipton & Coseley Building Society
- Yorkshire Building Society
- Private Individual