

EXPLANATORY MEMORANDUM TO

THE

**BUILDING SOCIETIES ACT 1986 (SUBSTITUTION OF SPECIFIED AMOUNTS
AND MODIFICATION OF THE FUNDING LIMIT CALCULATION) ORDER 2007**

2007 No. [XXXX]

1. This explanatory memorandum has been prepared by Her Majesty's Treasury ("HMT") and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 This Order amends various financial limits specified in the Building Societies Act 1986 concerning the election of a building society's directors, arrangements between a building society and their directors or connected persons, loans between a society and its directors, disclosure and records of certain business entered into by a director and the deposit required for requisitioning a special meeting of a building society.
 - 2.2 Building societies are constrained in their business operations by the statutory requirement that they raise at least 50% of their funds in the form of shares held by individual members of their society. This Order requires individual deposits held by a building society's offshore subsidiary to be disregarded for calculation of this percentage up to a limit of 10% of the total liabilities of that society.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Background**
 - 4.1 The Building Societies Act 1986 provides the legal framework for Building Societies in the UK. The Act was substantively revised by the Building Societies Act 1997 and by and under the Financial Services and Markets Act 2000 ("FSMA 2000").
 - 4.2 Some of the financial limits amended by the Order were previously amended by the Building Societies (Limits on Transactions with Directors) Order 1995 (S.I. 1995/1872). Others are being amended by this Order for the first time.
 - 4.3 The power in section 7(7) to modify the application of the funding limit rules to liabilities of subsidiary undertakings was also used by the Building Societies Act 1986 (Modification of the Lending Limit and Funding Limit Calculations) Order 2004 (S.I. 2004/3200).

5. Territorial Extent and Application

5.1 This Order applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Economic Secretary to the Treasury (Ed Balls) has made the following statement regarding Human Rights.

“In my view the provisions of the Building Societies Act 1986 (Substitution of Specified Amounts and Modification of the Funding Limit Order 2007) are compatible with the convention rights.”

7. Policy background

Policy

7.1 Building societies are organisations, owned by their members, which pay interest on deposits and lend money on the security of property to enable members to buy their own homes. There are 60 building societies in the UK with total assets of over £305 billion. About 15 million adults have building society savings accounts and over 2¾ million adults are currently buying their own homes with the help of building society loans.

7.2 Building societies have diversified in recent years and a number now offer, among other services, current accounts, credit cards, cash machines, travel money, unsecured loans, various types of insurance and estate agency services. The Building Societies Association is the trade association for all the UK’s building societies and they are registered and regulated by the Financial Services Authority (“FSA”).

7.3 A number of financial thresholds under the BS Act 1986 were last reviewed in 1999. They include restrictions on loans to directors and other transactions, and disclosure and record of such loans and related businesses. This Order updates these limits, to reflect current commercial realities and to make them comparable with equivalent requirements in companies legislation.

7.4 With regards to the funding limits, a number of building societies have offshore deposit-taking subsidiaries. For some societies these deposits can be quite substantial. Currently deposits by individuals in the societies offshore subsidiaries are treated as wholesale¹ funding in measuring compliance with their funding limits.

7.5 There is however in practice little difference between the economic characteristics of deposits of individuals with an offshore deposit-taking subsidiary and these of deposits of members held in the form of shares in the society. Both funds are retail² in nature.

¹ The Financial Services Authority describes wholesale funding as: Credit institutions (as defined in Article 1 of Directive 2000/12/EC); supranational institutions, national governments, central administrative authorities and large corporates.

² For building societies retail funding means deposits received from their members who are individuals.

- 7.6 A change in the basis of the calculation will benefit consumers. It will allow societies greater access to wholesale funds (as a result of offshore deposits being disregarded) facilitating the provision of cheaper mortgages to members. Taking this step will also relieve pressure on societies who are close to their funding limits.

Consultation

- 7.7 HMT held a 12-week public consultation from 9 November 2006 to 1 February 2007. Over 300 copies of the consultation documents were issued to stakeholders in the UK and a copy posted on the HMT public website. There were 28 responses, all of which supported the proposals to amend the funding limit calculation as described as well as certain financial limits specified in the BS Act 1986.
- 7.8 As part of this consultation HMT informed and discussed with other Government departments and agencies including the Department of Trade & Industry, Small Business Service, Companies House, and Office of Fair Trading. HMT also consulted with the FSA and informed the Scottish Executive, Welsh and Northern Ireland Assemblies.
- 7.9 A summary of the consultation responses is available on the HM Treasury public website at www.hm-treasury.gov.uk

8. Impact

- 8.1 A Regulatory Impact Assessment is attached to this explanatory memorandum and will be available on the HMT public website alongside a copy of the consultation document and summary of responses.

9. Contact

- 9.1 For further information or queries regarding this Order please contact:

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