



HM Treasury

Amendments to the Building Societies Act 1986: Consultation

OFFICIAL SENSITIVE



Amendments to the Building Societies Act 1986: Consultation

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Chapter 1

Introduction

- 1.1 The government wants the UK's financial services industry to be the most competitive and innovative in the world, delivering greater choice and value for consumers and businesses. The mutuals sector, with their focus on serving their members and their local communities, can play an important role in promoting this and provide valuable diversity within the financial services sector.
- 1.2 Specifically, building societies make a valuable contribution to the UK financial services industry. Building societies hold over £352bn of mortgage assets and £313bn of savings from individuals. Collectively, building societies serve over 25 million members, and operate approximately 1,350 branches¹.
- 1.3 In 2012, the coalition government published a discussion paper titled "The Future of Building Societies"². This paper set out that the legislative framework for building societies should ensure they can compete effectively with other financial services firms whilst maintaining their distinctive approach as mutually owned mortgage providers.
- 1.4 The coalition government also requested views in the 2012 discussion paper on updates to the Building Societies Act 1986 ("the 1986 Act"), the legislation which governs building societies. The coalition government received responses and subsequently made a number of updates to the 1986 Act through the Financial Services (Banking Reform) Act 2013. These changes amended the 1986 Act to allow building societies to take deposits from Small to Medium-sized Enterprises (SME's) with turnover of up to £1 million, without these deposits counting as wholesale funding, up to a 10% overall funding limit. The changes also removed restrictions on the creation of floating charges and updated some corporate governance requirements.
- 1.5 Whilst this 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 to allow building societies to compete on a more level playing field with banks and to promote competition within the financial services sector. To ensure the government's ambition for a competitive financial services sector is upheld, we are seeking views on several amendments being considered to support these objectives.
- 1.6 The structure of this consultation document is as follows:
 - Chapter 2 sets out the legislative requirements for the funding structure of a building society and asks for views on several amendments being considered by the government relating to this.

¹ [Building Societies Association \(BSA\) 2021-2022 sector performance data](#)

²

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/81426/condoc_future_building_societies.pdf

- Chapter 3 sets out considerations being made to update the 1986 Act in line with more modern flexibilities provided to companies.
 - Chapter 4 provides a summary of views requested and sets out how to respond to this consultation.
- 1.7 We welcome contributions from UK financial services organisations with a particular interest in, or those who are impacted by, these proposals. This includes, but is not limited to:
- Building Societies
 - Industry bodies/ Trade associations with an interest in building societies
 - Policy makers and regulatory bodies
 - Industry experts

Chapter 2

The funding limit

- 2.1 Part of the 1986 Act³ sets out restrictions on a building society's funding activity. Subject to some exemptions, such as own funds, building societies are required to raise at least 50% of their funding from their members' deposits in savings accounts, with funding from other sources called wholesale funding. This is known as "the funding limit".
- 2.2 The funding limit restriction is an important feature of the building society model. It preserves the mutual status of building societies by ensuring they are at least 50% owned by their customers and complements other financial regulation by ensuring societies are mainly funded by the longer-term savings of their customers, not short-term wholesale funding. The government believes that the minimum 50% requirement for funding from member deposits remains appropriate and has no plans to change this level.
- 2.3 However, the government recognises that the funding limit may create challenges for building societies that other financial institutions like banks do not have.

Bank of England Sterling Monetary Framework Liquidity Insurance Facilities

- 2.4 As part of the Sterling Monetary Framework (SMF), a set of market operations and facilities designed to help the Bank of England (BoE) achieve its monetary policy and financial stability objectives, there are several liquidity insurance facilities available for banks and building societies to access funding, subject to certain eligibility criteria⁴. Currently these include the Discount Window Facility (DWF), the Indexed Long-Term Repo (ILTR) and the Contingent Term Repo Facility (CTRF).
- 2.5 The funding from these operations may be in the form of cash or assets which can be easily monetised to provide liquidity. Funding from these facilities is neither a retail deposit nor regulatory capital. It is therefore classified as wholesale funding for the purposes of the funding limit.
- 2.6 The government recognises that classifying BoE liquidity insurance facilities as wholesale funding can present the challenge of limiting building societies' ability to access the liquidity insurance facilities when required. Building societies can only raise up to 50% of their funds through wholesale funding, and the 1986 Act gives the Prudential Regulation Authority (PRA) various powers to act if a society breaches the funding limit.
- 2.7 Therefore, classifying these liquidity insurance facilities as wholesale funding places a restriction on using them if the society is close to the 50% limit. This restriction is unlikely to materialise given all societies currently hold much less in wholesale

³ Section 7

⁴ [Bank of England Market Operations: Our tools](#)

funding than the permitted 50%, allowing sufficient headroom to raise wholesale funding in a stress scenario. However, any limitation on a society's ability to access the Bank of England's liquidity insurance facilities places them at a disadvantage in comparison to banks and could restrict efforts to reduce financial stress, which could have wider market implications

- 2.8 Given the issues set out above, the government proposes excluding funding from liquidity insurance facilities within the SMF from counting towards the funding limit calculation.

Question:

1. **Should the Bank of England liquidity insurance facilities under the SMF be excluded from the funding limit calculation?**

Repurchase agreements for High Quality Liquid Assets

- 2.9 After the financial crisis, several reforms were introduced to banking regulation to ensure financial institutions could stand up under a stress scenario. These include the Liquidity Coverage Ratio, which requires firms to hold sufficient liquidity to cover all total net cash outflows for 30 days; and the Net Stable Funding Ratio, which requires firms to hold enough stable funding to cover the duration of their long-term assets, typically defined as one year.
- 2.10 To meet their regulatory liquidity obligations, building societies must hold sufficient stock of High-Quality Liquid Assets (HQLA), held either as cash or assets which can be easily turned into cash, such as gilts. Where a society holds these assets, a monetisation process may take place through repurchase agreements (repos), where a society exchanges the asset for cash, but repurchases it at a later date, sometimes at a higher price. This process is undertaken by societies in order to test the liquidity of their portfolio and avoid negative signalling during a stress scenario.
- 2.11 When societies undertake a repurchase agreement for these assets, they receive cash. However, as the assets will be repurchased later, the HQLA remains on their balance sheet. This means the society records additional funding, which counts towards the wholesale funding limit, while no extra source of funding was created.
- 2.12 The government recognises that classifying HQLA repo transactions as wholesale funding may present an unintended challenge, given building societies regularly undertake these transactions to provide positive signals to markets and to maintain sufficient cash reserves.
- 2.13 The government also notes that exempting all repurchase agreements could lead to a wider increase in the wholesale funding of building societies, which would go against the principle of the funding limit.
- 2.14 Therefore, the government proposes that cash received from repurchase agreements of level 1 HQLA, as defined in the PRA rulebook⁵, be excluded from the

⁵ This definition currently sits in the LCR Delegated Act (Commission Delegated Regulation (EU) 2015/61) but will be moving into the PRA rulebook from 1 January 2022.

funding limit calculation. We believe that this will help provide societies with greater flexibility of managing their liquidity without being concerned about breaching the statutory funding limit. As the amount of funding societies obtain from repo activity is relatively small, we anticipate that this change would not significantly change the funding structure of societies but would provide extra flexibility when necessary.

Question:

2. Should funding from level 1 HQLA repurchase agreements be excluded from the funding limit calculation?

Senior non preferred debt instruments

- 2.15 As previously highlighted, funding that societies are required to hold as own funds is excluded from the funding limit calculation.
- 2.16 Separate from own funds is the Minimum Required Eligible Own Funds and Liabilities (MREL). The larger societies may choose to hold senior non-preferred debt instruments for MREL purposes, which can be used to recapitalise the society if needed, reducing risks to public funds.
- 2.17 These instruments are not excluded from the funding limit calculation. This is inconsistent with the approach taken for the rest of the capital portfolio and provides an additional cost for societies that hold them.
- 2.18 To help societies ensure they can meet their regulatory requirements without undue concern about reaching the statutory funding limit, the government proposes that the senior non-preferred debt instruments held for MREL purposes are also excluded from the funding limit. As these are a relatively small amount of a society's funding in comparison to their total assets, we would not expect this to significantly change the funding composition of a society.

Question:

3. Should senior non preferred debt instruments held for MREL purposes be excluded from the funding limit calculation?

Deposits from Small and Medium Enterprises (SME's)

- 2.19 As highlighted earlier in this chapter, the Financial Services (Banking Reform) Act 2013 allowed building societies to hold deposits from businesses with a turnover of up to £1 million without counting them as wholesale funding, up to 10% of overall funding. This has helped promote competition in the growing SME deposit market by giving societies greater freedom to take business deposits and compete with retail banks, with several building societies offering business savings accounts.
- 2.20 Part of the government's aspirations for the sector include ensuring that building societies have a supportive legislative framework which allows them to compete effectively with banks when needed. Since the introduction of ringfencing, which separated the core retail banking function of a bank from the investment banking

function following the financial crisis, only deposits from qualifying businesses can be held in the ringfenced retail bank⁶. One of the criteria for qualification is having a turnover limit of less than £6.5 million.

- 2.21 Given this, the government recognises that the £1 million SME turnover limit may no longer be appropriate for building societies and may place them at a disadvantage when competing with ringfenced banks for deposits from the wider SME market. Instead, the government proposes raising the SME turnover limit for building societies from £1 million to £6.5 million to help to establish greater parity with ring-fenced banks and promote competition in the SME market.
- 2.22 The government intends to keep the threshold of exempted deposits as up to 10% of total funding, ensuring any rise in the proportion of wholesale funding held resulting from this change will be low. The government believes this is appropriate to protect the mutual ethos of building societies.

Question:

4. Should deposits from businesses with a turnover of up to £6.5 million be excluded from the funding limit calculation, up to 10% of a building society's overall funding?

Future trends

- 2.23 It is important that building societies have a legislative framework which supports their mission as mutually owned organisations.
- 2.24 The government believes that the funding limit provides the greatest protection for building societies' mutual model and does not intend to fundamentally change the nature of the limit. It also wants to ensure a strong, stable and competitive financial system. Therefore, the government wants to look ahead and consider future trends that may impact building societies, particularly around the funding limit.
- 2.25 The government therefore welcomes views on technological developments in the near future where there is evidence that these may interact with the funding limit and hinder a building society's ability to compete with other financial service providers.
- 2.26 The government also welcomes more general views on other considerations building societies may have in regard to the funding limit in the future.

Questions:

5. Will the outlined changes continue to support the mutual model of building societies? If not, please provide reasoning.
6. Are there future trends that respondents see as having potential to cause future funding difficulties for building societies in the next 4-5 years? If so, please describe the trends and rationale.
7. How can the government best help building societies overcome these difficulties?

⁶ [The Financial Services and Markets Act 2000 \(Ring-fenced Bodies and Core Activities\) Order 2014](#)

Chapter 3

The corporate framework

- 3.1 Building societies operate under a separate legal framework to companies, which recognises societies' member ownership model. However, the separate frameworks have not always been modernised at the same time. In some places in the 1986 Act, building societies have legislative requirements which may place extra burdens on them in relation to companies.
- 3.2 The below highlights areas where modernisation may reduce burdens on the sector and better align their corporate frameworks with that of companies.

Virtual participation at member meetings

- 3.3 Unlike banks, the mutual model of building societies means that those holding savings accounts are given voting rights on resolutions at general meetings and have a say in the running of the society. Building societies are required to hold an annual general meeting (AGM) with members in each financial year.
- 3.4 Member participation in the decision-making process is an important part of the mutual model and supports building societies' distinct approach from other financial services providers. The Building Societies Act 1986 (Electronic Communications) Order 2003 provided greater flexibility for electronic communications and electronic ballots on resolutions where postal ballots were also permitted at meetings.
- 3.5 However, the 1986 Act is not explicit about the permissibility of real-time virtual member participation at meetings, whereas it is explicitly allowed for companies.
- 3.6 In 2020, the government passed the Corporate Insolvency and Governance Act. This explicitly allowed real-time virtual participation during the AGMs of building societies on a temporary basis, regardless of the society's rules or the 1986 Act. The temporary provisions in the Corporate Insolvency and Governance Act 2020 relating to AGMs expired on 30 March 2021.
- 3.7 As government restrictions limited the viability of in-person meetings, this ensured members continued to have a say in the running of their building society. Technological developments have meant it is easier to allow for virtual, or a combination of virtual and in-person, meeting participation, providing wider participation than if the meeting is only held physically.
- 3.8 The government recognises the value of allowing virtual participation in general meetings and is looking to encourage further member participation. Allowing real-time virtual participation at member meetings will allow building society members who have busy working lives or may live across the country to take part in general meetings. Feedback from the building societies sector has also highlighted the value of virtual participation in such meetings. Therefore, the government proposes that the 1986 Act explicitly allows for real-time virtual member participation at general

meetings to promote member engagement and bring building societies into line with companies.

Question:

8. Should the 1986 Act be amended to explicitly allow virtual member participation in general meetings for building societies?

Other updates

- 3.9 On top of this, there are other small but valuable changes which would be desirable to make in order to bring building societies' corporate governance structures onto a more level playing field with that of companies.
- 3.10 Firstly, the government proposes altering the requirement for the balance sheet to be signed by two directors and the CEO to allowing one director to sign the balance sheet on behalf of the board. As companies also only require one director to sign their accounts, this would reduce a small but unnecessary burden for building societies.
- 3.11 Secondly, the government proposes that the requirement to affix a seal to execute deeds is updated in line with companies. The Companies Act 2006 states that to execute a deed, companies may either affix a seal or obtain the signatures of directors. However, building societies are not afforded the same flexibility and must affix a seal. Updating this would provide societies with equal flexibility as companies and other mutual societies such as co-operatives with little risk.

Questions:

9. Should the 1986 Act be updated to allow for just one director to sign the balance sheet on behalf of the board?
10. Should building societies be allowed to either affix a seal or obtain the signatures of directors to execute a deed, bringing building societies' corporate framework more in line with companies?

Chapter 4

Responding to this consultation and next steps

- 4.1 The government is using this consultation to inform considerations about amendments to the Building Societies Act 1986.
- 4.2 Following this consultation, the government will publish a summary of responses and its proposed next steps, including on whether legislation will be brought forward on the proposals set out.

Summary of views requested

- 4.3 The Government is seeking views on the questions listed below.
 1. Should the Bank of England liquidity insurance facilities under the SMF be excluded from the funding limit calculation?
 2. Should funding from level 1 HQLA repurchase agreements be excluded from the funding limit calculation?
 3. Should senior non preferred debt instruments held for MREL purposes be excluded from the funding limit calculation?
 4. Should deposits from businesses with a turnover of up to £6.5 million be excluded from the funding limit calculation, up to 10% of a building society's overall funding?
 5. Will the outlined changes continue to support the mutual model of building societies? If not, please provide reasoning.
 6. Are there future trends that respondents see as having potential to cause future funding difficulties for building societies in the next 4-5 years? If so, please describe the trends and rationale.
 7. How can the government best help building societies overcome these difficulties?
 8. Should the 1986 Act be amended to explicitly allow virtual member participation in general meetings for building societies?
 9. Should the 1986 Act should be updated to allow for just one director to sign the balance sheet on behalf of the board?
 10. Should building societies be allowed to either affix a seal or obtain the signatures of directors to execute a deed, bringing building societies' corporate framework more in line with companies?

When and how to respond to this consultation

- 4.4 This consultation will be open for 12 weeks and will close at 11:45pm on 28 February 2022.
- 4.5 Responses to this consultation should be emailed to BuildingSocietiesAct@hmtreasury.gov.uk
- 4.6 Alternatively, responses can be submitted to:

Building Societies Act Consultation
Banking and Credit Team
HM Treasury
1 Horse Guards Road
SW1A 2HQ

HM Treasury consultation on amendments to the Building Societies Act 1986 – processing of personal data

4.7 This notice sets out how HM Treasury will use your personal data for the purposes of HM Treasury’s consultation on amendments to the Building Societies Act 1986 and explains your rights under the General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018 (DPA).

Your data (Data Subject Categories)

4.8 The personal information relates to you as either a member of the public, parliamentarians, and representatives of organisations or companies.

The data we collect (Data Categories)

4.9 Information may include your name, address, email address, job title, and employer of the correspondent, as well as your opinions. It is possible that you will volunteer additional identifying information about yourself or third parties.

Legal basis of processing

4.10 The processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in HM Treasury.

4.11 For the purpose of this consultation the task is consulting on departmental policies or proposals or obtaining opinion data in order to develop good effective Government policies.

Special categories data

4.12 Any of the categories of special category data may be processed if such data is volunteered by the respondent.

Legal basis for processing special category data

4.13 Where special category data is volunteered by you (the data subject), the legal basis relied upon for processing it is: the processing is necessary for reasons of substantial public interest for the exercise of a function of the Crown, a Minister of the Crown, or a Government department.

4.14 This function is consulting on departmental policies or proposals, or obtaining opinion data, to develop good effective policies.

Purpose

4.15 The personal information is processed for the purpose of obtaining the opinions of members of the public and representatives of organisations and companies, about departmental policies and proposals.

Who we share your responses with

4.16 Information provided in response to a consultation may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004 (EIR).

4.17 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence.

4.18 In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Treasury.

4.19 Where someone submits special category personal data or personal data about third parties, we will endeavour to delete that data before publication takes place.

4.20 Where information about respondents is not published, it may be shared with officials within other public bodies involved in this consultation process to assist us in developing the policies to which it relates. Examples of these public bodies appear at: <https://www.gov.uk/Government/organisations>

4.21 As the personal information is stored on our IT infrastructure, it will be accessible to our IT contractor, NTT. NTT will only process this data for our purposes and in fulfilment with the contractual obligations they have with us.

How long we will hold your data (Retention)

4.22 Personal information in responses to consultations will generally be published and therefore retained indefinitely as a historic record under the Public Records Act 1958.

4.23 Personal information in responses that is not published will be retained for three calendar years after the consultation has concluded.

Your Rights

4.24 You have the right to request information about how your personal data are processed and to request a copy of that personal data.

- 4.25 You have the right to request that any inaccuracies in your personal data are rectified without delay.
- 4.26 You have the right to request that your personal data are erased if there is no longer a justification for them to be processed.
- 4.27 You have the right, in certain circumstances (for example, where accuracy is contested), to request that the processing of your personal data is restricted.
- 4.28 You have the right to object to the processing of your personal data where it is processed for direct marketing purposes.
- 4.29 You have the right to data portability, which allows your data to be copied or transferred from one IT environment to another.

How to submit a Data Subject Access Request (DSAR)

- 4.30 To request access to personal data that HM Treasury holds about you, contact: HM Treasury Data Protection Unit G11 Orange 1 Horse Guards Road London SW1A 2HQ dsar@hmtreasury.gov.uk.

Complaints

- 4.31 If you have any concerns about the use of your personal data, please contact us via this mailbox: privacy@hmtreasury.gov.uk
- 4.32 If we are unable to address your concerns to your satisfaction, you can make a complaint to the Information Commissioner, the UK's independent regulator for data protection. The Information Commissioner can be contacted at:
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
0303 123 1113
casework@ico.org.uk
- 4.33 Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

HM Treasury contacts

This document can be downloaded from www.gov.uk

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