

# **BUILDING SOCIETIES ACT 1986 (AMENDMENT) BILL**

## **EXPLANATORY NOTES**

### **What these notes do**

These Explanatory Notes relate to the Building Societies Act 1986 (Amendment) Bill as brought from the House of Commons on 22 April 2024 (HL Bill 63).

- These Explanatory Notes have been prepared by HM Treasury with the consent of Lord Kennedy of Southwark, the Member introducing the Private Member's Bill in the House of Lords, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

# Table of Contents

Subject	Page of these Notes
<b>Overview of the Bill</b>	<b>2</b>
<b>Policy background</b>	<b>2</b>
Introduction to building societies and the existing legislation	2
Government consultation	2
Policy objective	3
<b>Legal background</b>	<b>3</b>
<b>Territorial extent and application</b>	<b>4</b>
<b>Commentary on provisions of Bill</b>	<b>4</b>
Clause 1: The funding limit: funds to be disregarded	4
Clause 2: Attendance at meetings by electronic means	4
Clause 3: Power to assimilate with company law: common seals and execution of documents	5
Clause 4: Extent, commencement, transitional provision and short title	5
<b>Commencement</b>	<b>5</b>
<b>Financial implications of the Bill</b>	<b>5</b>
<b>Parliamentary approval for financial costs or for charges imposed</b>	<b>6</b>
<b>Compatibility with the European Convention on Human Rights</b>	<b>6</b>
<b>Environment Act 2021 section 20 statement</b>	<b>6</b>
<b>Related documents</b>	<b>6</b>
<b>Annex A – Territorial extent and application in the United Kingdom</b>	<b>7</b>
Subject matter and legislative competence of devolved legislatures	7

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## Overview of the Bill

- 1 This Bill is about putting building societies on a more level playing field with other retail deposit-takers (i.e. banks) in relation to their capital raising and corporate governance requirements, so that they can compete more effectively in the financial services sector and better support their members. This will help deliver key asks from the building society sector. This Bill thus amends the Building Societies Act 1986 (“the 1986 Act”) and also provides HM Treasury with the powers to make specific secondary legislation.
- 2 To enable this, the Bill makes provisions in three areas:
  - Funds that can be disregarded by a building society for the purpose of calculating its wholesale funding limit;
  - Real-time virtual member participation in building society meetings; and
  - The execution of deeds and other documents
- 3 The aim is to support building societies to grow, scale and compete with retail banks, creating competition in the UK financial services sector.

## Policy background

### Introduction to building societies and the existing legislation

- 4 Building societies are providers of mortgage and savings products, mutually owned by their members (the depositors/borrowers). The 42 building societies in the UK make a valuable contribution to the UK financial services industry. According to the latest Building Societies Association (BSA) data, building societies collectively serve over 25.8 million members and hold over £352 billion of mortgage assets and £313 billion of savings from individuals<sup>1</sup>.
- 5 The Building Societies Act 1986 sets out building societies’ distinctive model and other legal requirements. Under this Act, building societies are required to obtain at least 50% of their funding from individual retail (member) deposits, ensuring the members are the primary owners (“the funding limit calculation”). This is a key feature of the building society’s unique ownership model. Whilst the 1986 Act broadly remains fit for purpose, 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 operating as Companies Act 2006 companies, promoting competition within the financial services sector.
- 6 Additionally, the separate legal frameworks for companies and building societies have not always been updated at the same time.
- 7 The policy aim is therefore to modernise the legislation to better align with the framework under which companies operate, while still maintaining the building society mutual ownership model.

### Government consultation

- 8 Following from engagement with the building society sector, the Prudential Regulatory Authority (PRA) and the Financial Conduct Authority (FCA), on 6 December 2021, the

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<sup>1</sup> BSA latest stats and figures [Sector information \(bsa.org.uk\)](https://www.bsa.org.uk)

government launched a consultation on several amendments to the 1986 Act<sup>2</sup>. The consultation proposed excluding some sources of funding from the building societies wholesale funding limit calculation and updating building society constitutional and corporate governance requirements in line with modernisations made to company law by the Companies Act 2006.

- 9 The Government published a response to this consultation as part of the Edinburgh Reforms in December 2022<sup>3</sup>. All respondents supported the range of proposals outlined in the consultation<sup>4</sup>.

## Policy objective

- 10 This Bill will amend the 1986 Act and also provide HM Treasury with the powers to make specific secondary legislation.
- 11 It amends section 7 of the 1986 Act to enable the exclusion of the following sources of funding (as further specified by the Treasury in regulations) from the building society wholesale funding limit calculation: Bank of England liquidity insurance facilities, debt instruments raised to meet MREL requirements, and sums received under a repurchase agreement with a view to complying with a specified PRA rule. Without reducing financial stability or diluting the unique ownership model of building societies, this will enable building societies to raise additional wholesale capital, which they will be able to use to grow and compete with retail banks on a level footing, and which societies may then put towards supporting their members.
- 12 The Bill also amends the 1986 Act to explicitly allow the option of real-time virtual member participation in building societies' meetings, and will provide HM Treasury with the powers to make secondary legislation to further align the constitutional provisions in Part 2 of the 1986 Act concerning common seals and the execution of documents with modifications to company law. Both of these changes will help modernise the 1986 Act, providing building societies with the same modern governance flexibilities as companies and help to reduce some burdens on the sector should they choose to adopt these changes.

## Legal background

- 13 The principal legal framework for building societies is the Building Societies Act 1986. It has been amended on numerous occasions and was substantively revised by the Building Societies Act 1997, by the Financial Services and Markets Act 2000 and by the Financial Services Act 2012 (which also amended the 2000 Act).
- 14 The Building Societies Act 1986 will continue to be the main Act governing building societies, and this Bill inserts new provisions into the 1986 Act.
- 15 It amends section 7(3) of the 1986 Act and provides HM Treasury with a power to make secondary legislation subject to the affirmative resolution procedure to enable the wholesale

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<sup>2</sup> Amendments to the Building Societies Act 1986- Consultation [Consultation - Amendments to the Building Societies Act 1986 .pdf](#) ([publishing.service.gov.uk](https://publishing.service.gov.uk))

<sup>3</sup> Financial Services: The Edinburgh Reforms [Financial Services: The Edinburgh Reforms - GOV.UK \(www.gov.uk\)](#)

<sup>4</sup> Consultation: Amendments to the Building Societies Act 1986: Call for Evidence- Response [Sensitive 091222 FINAL Response to Consultation - Amendments to Building Societies Act 1986 final .pdf](#) ([publishing.service.gov.uk](https://publishing.service.gov.uk))

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funding limit to be disapplied to certain descriptions of funds to be held for prudential purposes as specified by the Treasury. The Bill amends section 104(2) of the 1986 Act to extend the current power to amend certain Parts of the 1986 Act by order made by affirmative resolution statutory instrument to assimilate it to modifications to company law to include the power to amend the constitutional provisions in Part 2 of the 1986 Act concerning common seals and the execution of documents. The Bill amends paragraph 34 of Schedule 2 to the 1986 Act to explicitly allow real-time virtual member participation in building societies' meetings.

## Territorial extent and application

16 This Bill extends and applies to England, Scotland, Wales, and Northern Ireland.

## Commentary on provisions of Bill

### Clause 1: The funding limit: funds to be disregarded

- 17 This section amends section 7(3) of the 1986 Act to add further sources of funds that a building society can disregard for the purpose of calculating its wholesale funding limit.
- 18 It describes the types of funds to be exempted from the building society wholesale funding limit calculation: Bank of England liquidity insurance facilities, debt instruments raised to meet the minimum requirement for own funds and eligible liabilities (MREL) requirements, and sums received under a repurchase agreement with a view to complying with a specified Prudential Regulation Authority (PRA) rule. It also inserts a new subsection (9A) into section 7 of the Act which defines some of the key expressions contained in the new sources of funding added to section 7(3).
- 19 This section also adds three new subsections (9B), (9C) and (9D) to section 7 of the 1986 Act, which give HM Treasury the power to specify named funds, or descriptions of funds, and PRA rules (including by means of ambulatory references) through secondary legislation subject to the affirmative resolution procedure. The Government set out further detail in the Edinburgh Reforms on the funds that will be specified in regulations<sup>5</sup>.

### Clause 2: Attendance at meetings by electronic means

- 20 This section amends the 1986 Act to explicitly allow the option for building societies to hold meetings and votes so as to enable virtual attendance and voting resulting in hybrid in person/online meetings. Subsection (1) confirms that nothing in Part III of Schedule 2 to the 1986 Act precludes the holding and conducting of building society meetings in a way which allows people who are not present together in the same place to attend, speak and vote by electronic means. The provision is the same as that set out for companies in the Companies Act 2006.
- 21 Subsection (2) makes provision to limit requirements and restrictions on electronic participation in meetings to those which are necessary and proportionate to ensure identification of those attending or to ensure that the electronic communication is secure. The purpose of subsection (2) is to ensure the use of electronic means is only subject to necessary

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<sup>5</sup> Consultation: Amendments to the Building Societies Act 1986 Call for Evidence- Response  
[Sensitive 091222 FINAL Response to Consultation - Amendments to Building Societies Act 1986 final .pdf](#)  
([publishing.service.gov.uk](http://publishing.service.gov.uk))

and proportionate requirements to ensure the identification of those attending the meeting and the security of electronic communication. This is the same position as for companies in the Companies Act 2006.

### Clause 3: Power to assimilate with company law: common seals and execution of documents

- 22 This section extends the power in section 104(1) of the 1986 Act which enables HM Treasury to modify certain parts of the 1986 Act for the purpose of assimilating company law by making regulations subject to the affirmative resolution procedure. The section inserts a new paragraph (aa) into section 104(2) to bring Part 2 of the Act into the scope of the power, but the insertion of a new subsection (3A) ensures that the new power is only exercisable in so far as it relates to the assimilation of company law in relation to common seals and the execution of documents.

### Clause 4: Extent, commencement, transitional provision and short title

- 23 This Bill extends to England, Wales, Scotland and Northern Ireland.
- 24 Section 4(2) provides that the Bill comes into force at the end of the period of two months from the date on which it was passed.
- 25 Section 4(3) is a transitional provision so that when HM Treasury exercises the power in section 104 of the 1986 Act for the purpose of assimilating to companies law for the use of common seals and the execution of documents, it may do so to assimilate modifications to companies law statutory provisions in force in Great Britain and Northern Ireland whether made before or after the coming into force of the Bill.

## Commencement

- 26 This Bill comes into force at the end of the period of two months beginning with the day on which it is passed.
- 27 The amendments made by section 3 extending the power in section 104(1) apply in relation to modifications of statutory provisions relating to companies whether made before or after the coming into force of this Bill.

## Financial implications of the Bill

- 28 As this Bill makes some changes to primary legislation, the Government has prepared an Impact Assessment, which will be published. As the amendments do not place new obligations or mandate building societies to change any operations, and instead provide flexibility for building societies to update their practices by choice, the impact has been assessed as de minimis and the estimated equivalent annual net direct cost to building societies per year as £0. Further assessments of impact will be brought forward when the government introduces secondary legislation to further specify the specific sources of funding which may be excluded from the funding limit calculation, and remove the requirement to have a seal and update the provisions on execution of documents in line with company law. HM Treasury will continue to work with the sector and regulators to ensure the regulations are appropriately adapted to the needs and specificities of building societies.
- 29 The Bill has no implications for public funds.

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## Parliamentary approval for financial costs or for charges imposed

30 The Bill does not contain any provisions which require a money resolution or ways and means resolution.

## Compatibility with the European Convention on Human Rights

31 This is a Private Member's Bill and the Government is not required to give a statement of compatibility with the European Convention of Human Rights (ECHR) in accordance with section 19(1)(a) of the Human Rights Act 1998. HM Treasury has, nevertheless, considered the question of compatibility and has concluded that the Bill is compatible with the ECHR.

## Environment Act 2021 section 20 statement

32 This a Private Member's Bill and the Government is not required to give a statement that the Bill, if enacted, contains provision which would be environmental law for the purposes of section 20 of the Environment Act 2021. HM Treasury has, nevertheless, considered the question and has concluded that the Bill does not contain provision which is environmental law.

## Related documents

33 The following documents are relevant to the Bill and can be read at the stated locations:

- BSA latest stats and figures: <https://www.bsa.org.uk/statistics/sector-info-performance/sector-information>
- Amendments to the Building Societies Act 1986 - Consultation: [https://assets.publishing.service.gov.uk/media/61ade3f8d3bf7f05539de5b4/Consultation - Amendments to the Building Societies Act 1986 .pdf](https://assets.publishing.service.gov.uk/media/61ade3f8d3bf7f05539de5b4/Consultation_-_Amendments_to_the_Building_Societies_Act_1986_.pdf)
- Consultation: Amendments to the Building Societies Act 1986 Call for Evidence – Response: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1122465/Sensitive\\_091222\\_FINAL\\_Response\\_to\\_Consultation - Amendments to Building Societies Act 1986 final .pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1122465/Sensitive_091222_FINAL_Response_to_Consultation_-_Amendments_to_Building_Societies_Act_1986_final_.pdf)
- Financial Services: The Edinburgh Reforms: <https://www.gov.uk/government/collections/financial-services-the-edinburgh-reforms>

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# Annex A – Territorial extent and application in the United Kingdom

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Section 1	Yes	Yes	N/A	Yes	N/A	Yes	N/A
Section 2	Yes	Yes	N/A	Yes	N/A	Yes	N/A
Section 3	Yes	Yes	N/A	Yes	N/A	Yes	N/A
Section 4	Yes	Yes	N/A	Yes	N/A	Yes	N/A

## Subject matter and legislative competence of devolved legislatures

- 34 The provisions in the Bill relate to reserved matters under all of the Acts conferring legislative competence on the devolved legislatures (law relating to financial services and business associations). These Acts are the Scotland Act 1998, the Northern Ireland Act 1998 and the Government of Wales Act 2006 as amended by the Wales Act 2017.



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