Draft Order laid before Parliament under section 251(6) of the Banking Act 2009 and section 13(3) of the Banking (Special Provisions) Act 2008, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2010 No.

BUILDING SOCIETIES

The Building Societies (Financial Assistance) Order 2010

Made - - - -	*2010*
Coming into force - -	*2010*

This Order is made in exercise of the powers conferred by section 251(1), (2), (3), (5) and (8) and section 259(1) of the Banking Act 2009(**1**) and by section 11 of the Banking (Special Provisions) Act 2008(**2**).

A draft of this Order has been laid before Parliament in accordance with section 251(6) of the Banking Act 2009 and section 13(3) of the Banking (Special Provisions) Act 2008 and approved by a resolution of each House of Parliament.

Accordingly, the Treasury make the following Order:

Citation and commencement

1.—(1) This Order may be cited as the Building Societies (Financial Assistance) Order 2010.

(2) It comes into force on the day after the day on which it is made.

Interpretation

2.—(1) In this Order—

"the 1986 Act" means the Building Societies Act 1986(**3**);

"the Authority" means the Financial Services Authority(**4**);

"qualifying institution" means the Treasury, the Bank of England, another central bank of a Member State of the European Economic Area or the European Central Bank;

"relevant building society" means any building society which—

(**1**) 2009 c. 1.
(**2**) 2008 c.2.
(**3**) 1986 c.53.
(**4**) See section 1 of the Financial Services and Markets Act 2000 (c.8).

(a) receives financial assistance(**5**) from a qualifying institution,

(b) has entered into an agreement with a qualifying institution under which it may receive financial assistance from that institution, or

(c) has received an offer of such an agreement, or of financial assistance, from a qualifying institution;

"section 1(1)(a) function" means the function of the Authority set out in section 1(1)(a) of the 1986 Act (functions of the Authority)(**6**).

(2) References in this Order to a qualifying institution include—

(a) any person acting for or on behalf of that qualifying institution;

(b) any person providing, offering, or entering into an agreement for the provision of, financial assistance to a building society, who does so on the basis of financial assistance that person receives from the qualifying institution in question for that purpose.

Purpose or principal purpose of building societies

3.—(1) Section 5 of the 1986 Act (establishment, constitution and powers)(**7**) applies in relation to a relevant building society with the following modification.

(2) No relevant building society shall be regarded as failing to comply with section 5(1)(a) (purpose or principal purpose) by virtue of any financial assistance it receives from a qualifying institution.

(3) The powers conferred on the Authority by sections 36 and 37 of the 1986 Act (power to direct restructuring of business etc and powers to petition for winding up etc) shall not become exercisable in relation to a building society which receives financial assistance if, but for the financial assistance, they would not have become exercisable.

(4) Sections 5(4A), 36(1) and 37(1) shall be construed accordingly.

(5) The Authority shall disregard, for the purposes of its section 1(1)(a) function, a building society to which paragraph (3) applies.

The lending limit

4.—(1) Section 6(1) of the 1986 Act (the lending limit)(**8**) shall not apply in relation to a relevant building society for the relevant period where—

(a) the society receives financial assistance from a qualifying institution,

(b) as a consequence of the financial assistance, the society transfers, assigns or otherwise disposes of any of its assets, and

(c) that transfer, assignment or other disposal would, apart from this article, put the society in breach of section 6(1).

(2) No building society within paragraph (1) shall be regarded as failing to comply with section 5(1)(a) of the 1986 Act in the relevant period by virtue of the matters referred to in paragraph (1).

(**5**) See section 257 of the Banking Act 2009.
(**6**) Section 1 was substituted by S.I. 2001/2617.
(**7**) Section 5 was amended by the Building Societies Act 1997, sections 1 and 3, and by S.I. 2001/2617. The Building Societies (Funding) and Mutual Societies (Transfers) Act 2007 (c. 26), section 1(2), inserts section 5(11) to (14), from a date to be appointed.
(**8**) Section 6 was substituted by the Building Societies Act 1997, section 4, and amended by S.I. 2001/2617, 2001/3649, and 2004/3380. Section 6(2) was modified in its application to assets of subsidiary undertakings by S.I. 2004/3200.

(3) The powers conferred on the Authority by sections 36 and 37 of the 1986 Act shall not become exercisable in relation to a building society within paragraph (1) in respect of the relevant period.

(4) Sections 5(4A), 36(1) and 37(1) shall be construed accordingly.

(5) In the relevant period the Authority shall disregard, for the purposes of its section 1(1)(a) function, a building society within paragraph (1).

(6) In this article "the relevant period" is the period commencing on the date on which paragraph (1) is first satisfied in relation to the society and ending—

(a) one year after that date, or

(b) if later, on the date on which the financial assistance referred to in paragraph (1) is no longer provided.

The funding limit

5.—(1) Section 7 of the 1986 Act (the funding limit)(**9**) applies to a relevant building society with the following modification.

(2) There shall be disregarded for the purposes of section 7(2) any financial assistance the society receives from a qualifying institution.

Raising funds and borrowing

6. Section 8(1)(c) of the 1986 Act (raising funds and borrowing)(**10**) shall not apply to a relevant building society in relation to any financial assistance the society receives from, or is offered by, a qualifying institution.

Floating charges

7.—(1) Section 9B(1) of the 1986 Act (restriction on creation of floating charges)(**11**) shall not apply to a relevant building society in relation to any relevant floating charge.

(2) Section 9B(2) shall not apply to any relevant floating charge.

(3) In this article a "relevant floating charge" is a floating charge created by a relevant building society in favour of a qualifying institution in connection with any financial assistance the society receives from that qualifying institution.

Memorandum and rules

8.—(1) Schedule 2 to the 1986 Act (establishment, incorporation and constitution of building societies) applies in relation to a relevant building society with the following modifications.

(2) Paragraph 2 (the memorandum)(**12**) shall have effect as if, after sub-paragraph (4), there were inserted—

(**9**) Section 7 was substituted by the Building Societies Act 1997, section 8, and amended by S.I. 2001/2617. Section 7(2) was modified in its application to liabilities of subsidiary undertakings by S.I. 2004/3200; section 7(2) and (3) were modified in their application to eligible debt securities by S.I. 2003/1633, and in their application to the liabilities of EEA subsidiary undertakings by S.I. 2007/860. The Building Societies (Funding) and Mutual Societies (Transfers) Act 2007, section 1(1), inserts section 7(6A) to (6C) and (8A), from a date to be appointed.

(**10**) Section 8 was substituted by the Building Societies Act 1997, section 9, and amended by S.I. 2001/2617. It was modified, in its application to eligible debt securities, by S.I. 2003/1633. Section 8(9) was amended by the Income Tax Act 2007 (c.3), section 1027 and Schedule 1 paragraph 273.

(**11**) Section 9B was inserted by the Building Societies Act 1997, section 11.

(**12**) Paragraph 2(1) and (2) of Schedule 2 were substituted, for paragraphs (1) to (3) as originally enacted, by the Building Societies Act 1997, section 43 and Schedule 7, paragraph 56(3). Paragraph 2(5) was repealed by the Building Societies Act 1997, sections 43 and 46(2), Schedule 7 paragraph 56(4), and Schedule 9.

"(4A) However, no provision of the memorandum of a building society shall be binding on any member or officer of the society, or on any person claiming on account of a member or under the rules, to the extent that it would prevent the society (whether acting through its officers or otherwise) from—

(a) receiving any financial assistance from a qualifying institution, or

(b) entering into any transaction connected with the receipt of such financial assistance,

and sub-paragraph (4) shall be construed accordingly.

(4B) In sub-paragraph (4A)—

(a) "financial assistance" has the same meaning as in section 251 of the Banking Act 2009(**13**) and "qualifying institution" means the Treasury, the Bank of England, another central bank of a Member State of the European Economic Area or the European Central Bank; and

(b) references to a qualifying institution include—

(i) any person acting for or on behalf of that institution, and

(ii) any person providing, offering, or entering into an agreement for the provision of, financial assistance to a building society, who does so on the basis of financial assistance that person receives from the qualifying institution for that purpose.".

(3) Paragraph 3 (the rules)(**14**) shall have effect as if, after sub-paragraph (2), there were inserted —

"(2A) However, nothing in the rules of a building society shall be binding on any member or officer of the society, or on any person claiming on account of a member or under the rules, to the extent that it would prevent the society (whether acting through its officers or otherwise) from—

(a) receiving any financial assistance from a qualifying institution, or

(b) entering into any transaction connected with the receipt of such financial assistance,

and sub-paragraph (2) shall be construed accordingly.

(2B) In sub-paragraph (2A)—

(a) "financial assistance" and "qualifying institution" have the same meanings as in paragraph 2(4A) (see paragraph 2(4B)); and

(b) references to a qualifying institution include—

(i) any person acting for or on behalf of that institution, and

(ii) any person providing, offering, or entering into an agreement for the provision of, financial assistance to a building society, who does so on the basis of financial assistance that person receives from the qualifying institution for that purpose.".

(4) No member of a building society may bring proceedings under paragraph 16(2) (capacity of society not limited by its memorandum)(**15**) to restrain the doing of any act by a building society for or in connection with the receipt of financial assistance from a qualifying institution.

(5) Paragraph 16(3) shall not operate so as to—

(**13**) 2009 c.1. See in particular sections 251(8) and 257(1) of the Banking Act 2009.
(**14**) Paragraph 3(3) was amended by S.I. 2001/2617. Paragraph 3(4) was amended by the Building Societies Act 1997, section 43 and Schedule 7, paragraph 56(5). Paragraph 3(5) was inserted by S.I. 2003/404.
(**15**) Paragraph 16 was substituted by the Building Societies Act 1997, section 3(2) and Schedule 1.