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

DRAFT STATUTORY INSTRUMENTS

2008 No.

BUILDING SOCIETIES

The Building Societies (Financial Assistance) Order 2008

Made - - - -	**** 2008*
Coming into force - -	**** 2008*

This Order is made in exercise of the powers conferred by sections 11, 12(1) and (2) and 13(2) of the Banking (Special Provisions) Act 2008(**1**).

A draft of this Order has been laid before Parliament in accordance with section 13(3) of that Act 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 2008.

(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(**2**);

"the Authority" means the Financial Services Authority(**3**);

"member" and "officer" have the same meaning as in the 1986 Act(**4**);

"relevant building society" means any building society which—

(a) receives relevant financial assistance(**5**) from the Bank of England,

(**1**) 2008 c.2.
(**2**) 1986 c.53.
(**3**) See section 1 of the Financial Services and Markets Act 2000 (c.8)
(**4**) See section 119(1) of, and paragraph 5 of Schedule 2 to, the Building Societies Act 1986. The definition of "member" in section 119(1) was substituted by the Building Societies Act 1997 (c.32), section 43 and Schedule 7, paragraph 53(1)(j). Paragraph 5 of Schedule 2 was amended by the Building Societies Act 1997, section 2(1) and (2).
(**5**) See sections 11(2) and 15(1) of the Banking (Special Provisions) Act 2008.

(b) has entered into an agreement with the Bank of England under which it may receive relevant financial assistance from the Bank of England, or

(c) has received an offer of such an agreement, or of relevant financial assistance, from the Bank of England;

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

(2) References in this Order to the Bank of England include—

(a) any person acting for or on behalf of the Bank of England;

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

Purpose or principal purpose of building societies

3.—(1) Section 5 of the 1986 Act (establishment, constitution and powers)(**6**) 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 relevant financial assistance it receives from the Bank of England.

(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 relevant financial assistance if, but for the relevant 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)(**7**) shall not apply in relation to a relevant building society for the relevant period where—

(a) the society receives relevant financial assistance from the Bank of England,

(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).

(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.

(**6**) 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), but at the time this Order was laid before Parliament in draft those amendments were not in force.

(**7**) 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.

(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)(**8**) applies to a relevant building society with the following modification.

(2) There shall be disregarded for the purposes of section 7(2) any relevant financial assistance the society receives from the Bank of England.

Raising funds and borrowing

6. Section 8(1)(c) of the 1986 Act (raising funds and borrowing)(**9**) shall not apply to a relevant building society in relation to any relevant financial assistance the society receives from, or is offered by, the Bank of England.

Restriction on creation of floating charges

7.—(1) Section 9B(1) of the 1986 Act (restriction on creation of floating charges)(**10**) 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 the Bank of England in connection with any relevant financial assistance the society receives from the Bank of England.

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)(**11**) shall have effect as if, after sub-paragraph (4), there were inserted—

> "(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—

(**8**) 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), but at the time this Order was laid before Parliament in draft those amendments were not in force.

(**9**) 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.

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

(**11**) 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.

(a) receiving any relevant financial assistance from the Bank of England, or

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

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

(3) Paragraph 3 (the rules)(**12**) 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 relevant financial assistance from the Bank of England, or

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

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

(4) References to the Bank of England in paragraphs 2(4A) and 3(2A) as inserted by paragraphs (2) and (3) above include—

(a) any person acting for or on behalf of the Bank of England, and

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

(5) No member of a building society may bring proceedings under paragraph 16(2) (capacity of society not limited by its memorandum)(**13**) to restrain the doing of any act by a building society for or in connection with the receipt of relevant financial assistance from the Bank of England.

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

(a) require the directors to observe any limitations on their powers flowing from the society's memorandum which would, apart from this article, prevent them entering into any transaction for or in connection with the receipt of relevant financial assistance by the society from the Bank of England, or

(b) require any such action by the directors which, but for paragraph 16(1), would be beyond the society's capacity, to be ratified by the society by special resolution.

Application of companies winding up legislation to building societies

9.—(1) Schedule 15 to the 1986 Act (application of companies winding up legislation to building societies) applies in relation to a relevant building society with the following modifications.

(2) In paragraph 3(2)(**14**), omit paragraph (b).

(3) In paragraph 33, for "subsections (2) and (4) to (6)" substitute "subsections (2), (5) and (6)".

(4) In paragraph 55E(**15**), for "paragraphs (2) and (4) to (6)" substitute "paragraphs (2), (5) and (6)".

(**12**) 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.
(**13**) Paragraph 16 was substituted by the Building Societies Act 1997, section 3(2) and Schedule 1.
(**14**) Paragraph 3(2)(b) was substituted by the Building Societies Act 1997, section 43 and Schedule 7, paragraph 65.
(**15**) Paragraph 55E was substituted, together with paragraphs 34 to 55D, by S.I. 1989/2405 (N.I. 19).