



HM Treasury Consultation

Amendments to the Building Societies Act 1986

The government is consulting on a number of welcome changes regarding building societies' corporate framework requirements and funding models.

The corporate framework

A number of modernising proposals are suggested, with the aim of allowing building societies to enjoy flexibilities equivalent to those which already apply to companies:

- The 1986 Act should be amended to explicitly allow virtual member participation in general meetings. This would be a welcome clarification. However, a more controversial question may be whether a building society should be allowed to hold a purely virtual general meeting (with no option for members to turn up in person to a physical meeting). In our view, there is no clear legal answer to this question in the case of companies, and the point is similarly not addressed for building societies in this consultation.
- Amend the 1986 Act to allow just one director to sign the balance sheet on behalf of the board. This would be administratively easier than the current requirement for two directors and the CEO to sign.
- Allow building societies flexibility in relation to signing deeds, similar to that enjoyed by companies under the Companies Act 2006 (CA 2006). Few details are provided, but equivalent provisions to those under CA 2006 would allow for execution under seal, or by two directors, or by one director in the presence of a witness who attests the signature, or by one director and the society secretary. This proposal is long overdue and particularly welcome. Current deed execution requirements for building societies (requiring execution under seal or via attorneys appointed by way of a deed executed under seal) are unduly archaic and cumbersome.

The funding limit

The limit on wholesale funding (which arises from the requirement for building societies to raise at least 50% of their funding from members' deposits in savings accounts) creates certain challenges for building societies which other financial institutions do not face.

The government proposes to address this by:

- Excluding Bank of England liquidity insurance facilities under the Sterling Monetary Framework from the funding limit calculation (classifying these as wholesale funding can limit building societies' ability to access these facilities when required).
- Excluding cash received from repurchases of level 1 High-Quality Liquid Assets (HQLAs) from the funding limit calculation. Regulatory liquidity obligations require building societies hold HQLAs, either as cash or assets which can easily be turned into cash. HQLA repurchases take place to test liquidity and also avoid negative signalling in a stress scenario. But this results in additional funding counting towards the wholesale funding limit with no extra source of funding actually being created. The government considers exempting all repurchase agreements could go against the principle of the funding limit, and so proposes that only cash received from repurchase agreements of level 1 HQLA be excluded. This is intended to provide extra flexibility without significantly changing the funding structure of building societies.

- Excluding senior non-preferred debt instruments held for MREL (the minimum requirement for own funds and eligible liabilities) purposes from the funding limit. This would bring the MREL position into line with the approach taken for the rest of the capital portfolio.
- Excluding deposits from SME businesses with a turnover of up to £6.5 million from the funding limit calculation, while retaining the threshold of exempted deposits as up to 10% of total funding. This is intended to help establish greater parity with ring-fenced banks and promote competition in the SME market.

The government also welcomes more general comments about any other concerns building societies may have about the future operation of the funding limit. This is an opportunity some societies may wish to take up if they have other specific concerns with the current funding limit regime.

The consultation is open until 28 February 2022.

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