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HOUSE OF LORDS

HL Bill 63 of 2023–24

Building Societies Act 1986 (Amendment) Bill

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The Building Societies Act 1986 (Amendment) Bill is a private member's ballot bill which was introduced on 6 December 2023 by Julie Elliott (Labour MP for Sunderland Central). It is being sponsored in the House of Lords by Lord Kennedy of Southwark (opposition chief whip). The bill largely mirrors proposals set out in a government consultation launched in December 2021.

People who have mortgages or savings accounts with building societies are 'members'. Members mutually own the building society. Building societies must get at least 50% of their funding from member deposits, ensuring members remain the primary owners. This is known as the funding limit calculation.

The bill would insert new provisions into the Building Societies Act 1986 that would ultimately enable building societies to exclude certain funds from their funding limit calculation. This is to create a more "level playing field", according to the explanatory notes, for building societies and banks in terms of raising funds.

The bill would also allow for annual general meetings to take place with virtual participation and voting. In addition, it would modernise certain other corporate processes to align with the requirements for other companies, including banks, in the Companies Act 2006.

The government supports the bill, with the Treasury providing explanatory notes and an impact assessment. Some of the changes would need to be enacted by secondary legislation following the bill coming into law. The government has said that it is committed to doing so “as soon as possible”.

The bill has cross-party and industry support. The bill completed its House of Commons stages on 19 April 2024, receiving one amendment during report stage which was agreed without division. It is due to receive second reading in the House of Lords on 10 May 2024.

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1. The building societies sector

Building societies provide financial products, with a focus on savings, mortgages and loans for customers.[1] Unlike banks, which are usually owned by shareholders, building societies are mutually owned by the people who have mortgages or savings accounts with them, known as members.[2]

Building Societies Association (BSA) figures published in November 2023 list 42 building societies in the UK, with combined total assets of £502bn.[3] They have a combined total membership of over 26 million people.[4]

The Building Societies Act 1986 sets out the operating model and legal requirements for building societies. One of the requirements is that 75% of a building society's assets must be in the form of loans and mortgages for residential properties.[5]

The BSA reported that for the period January to September 2023, building societies accounted for over a quarter of all new mortgage lending in the UK.[6] This included 70,300 mortgages for first-time buyers.

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[1] Alex Hasty, 'What is a building society and how do they work?', Compare the Market, 18 May 2023.

[2] Explanatory notes for House of Commons stages, p 3.

[3] Building Societies Association, 'Sector information', 21 November 2023.

[4] As above.

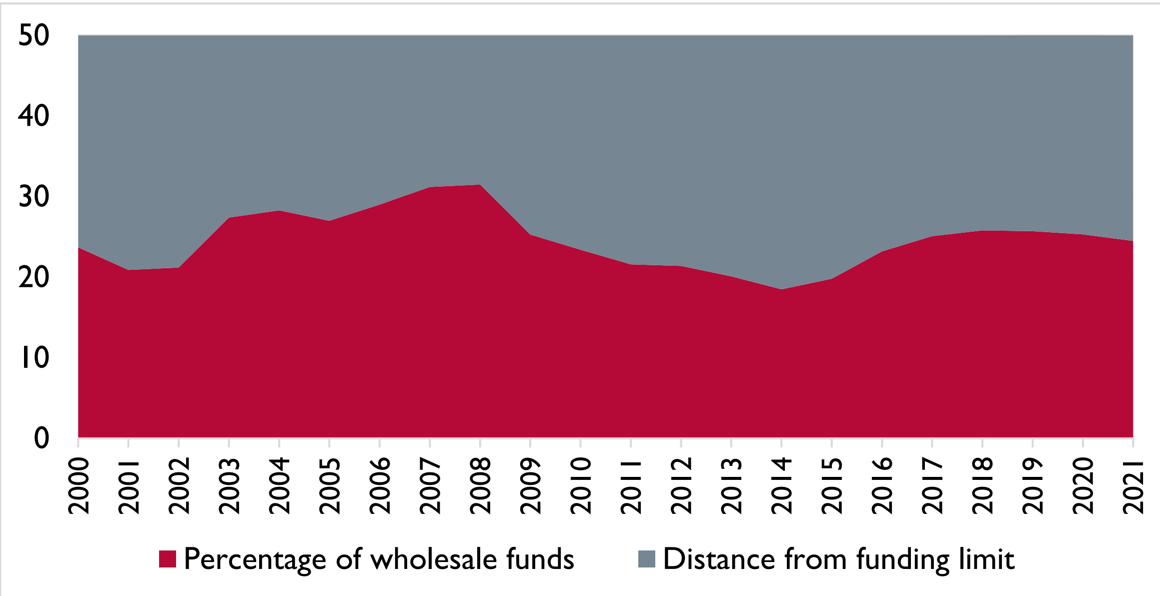
[5] Building Societies Association, 'The Building Societies Act 1986: A BSA summary sixth edition', 5 December 2013.

[6] Building Societies Association, 'Building societies trading update: January–September 2023', 27 November 2023.

The 1986 act also includes a requirement that building societies obtain at least 50% of their funding from member deposits, ensuring members are the primary owners. This is known as the funding limit calculation. When the funding limit was first established building societies had to obtain 80% of their funding from member deposits, but this has changed over time.[7]

Funding from other sources, such as bonds, is known as wholesale funding. In practice, wholesale funding has stayed well below 50%. The closest it came in recent years was 31.5% in 2008.

Figure 1. Wholesale funds as a percentage of shares, deposits and loans[8]



Further statistics on building societies, including market share of

[7] House of Commons Library, '[Building Societies Act 1986 (Amendment) Bill 2023–24: Progress of the bill](#)', 2 April 2024, p 10.

[8] Building Societies Association, '[Sector information](#)', 21 November 2023. Years in the graph run from 1 February in that year to 31 January in the following year. Some years exclude certain building societies.

savings and mortgages, are available in the House of Commons Library briefing for the bill.[9]

2. Government consultation and plans to legislate

In December 2021, the Treasury launched a consultation on potential amendments to the Building Societies Act 1986.[10] The government said that while the 1986 act "broadly remains fit for purpose", updates would "allow building societies to compete on a more level playing field with banks" and would promote competition in the sector.[11]

The consultation proposed:[12]

- Excluding certain types of funding from the funding limit calculation. This would allow building societies to acquire more funding without fear of breaching the funding limit.
- Explicitly allowing real-time virtual member participation in general meetings.
- Removing the requirement for building societies to affix a seal when executing a deed.
- Requiring one director to sign the balance sheet rather than two directors and the CEO.

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[9] House of Commons Library, 'Building Societies Act 1986 (Amendment) Bill 2023–24: Progress of the bill', 2 April 2024.
[10] HM Treasury, 'Amendments to the Building Societies Act 1986: Consultation', 6 December 2021.
[11] As above, p 6.
[12] As above, pp 9–10 and 12–13.

The suggested changes to operating processes were intended to align with the requirements for banks in the Companies Act 2006.

The consultation received five responses, with most building societies responding through their trade body, the BSA. All responses welcomed the proposals.

Some respondents raised other issues, including:

- The 1986 act currently sets a retirement age of 70 for directors of building societies. Removing the retirement age from the act would bring it into line with the Companies Act 2006, and make it compliant with age discrimination rules in the Equality Act 2010. In the government's consultation response, it said it would legislate to remove the retirement age.[13]
- There has been a rise in people using online platforms that offer a range of savings products which aggregate funds from individuals. Funding from these deposit aggregators or 'intermediated savings platforms' is currently not considered in the total of member deposits. The sector argues that as the money does originally come from individual customer deposits it should not count towards the limit. The government committed to revisit this.[14]

Chancellor Jeremy Hunt subsequently committed to changes to building society operating models when announcing the Edinburgh reforms in 2022, a set of reforms intended to "drive growth and

[13] HM Treasury, 'Consultation: Amendments to the Building Societies Act 1986: Call for evidence—response', 9 December 2022, p 9.
[14] As above, p 6.

competitiveness in the financial services sector".[15] This included legislating, in line with the consultation outcomes, to "give building societies in the UK greater flexibility to raise wholesale funds, enabling them to grow and compete on a more level playing field with retail banks".[16]

On 15 December 2022, Baroness Penn, then Lords Treasury minister, said in response to a written question that the building society reforms would be delivered through secondary legislation.[17] On 21 September 2023, Baroness Penn corrected her original statement, explaining that while some of the building society reforms could be implemented through secondary legislation (amending the Building Societies Act 1986), further primary legislation would be required to implement the remainder.[18] However, a government bill on building society reforms was not included in the November 2023 King's Speech.[19]

3. What would the bill do?

The Building Societies Act 1986 (Amendment) Bill is a private member's ballot bill, introduced on 6 December 2023 by Julie Elliott (Labour MP for Sunderland Central). The bill largely mirrors the proposals in the government consultation, which the industry supported.

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[15] HM Treasury, 'Financial services: The Edinburgh reforms', 9 December 2022.
[16] House of Commons, 'Written statement: Financial services (HCWS425)', 9 December 2022.
[17] House of Lords, 'Written question: Financial services: Regulation (HL4237)', 15 December 2022.
[18] House of Lords, 'Written statement: Correction to PQ HL 4237 (HLWS1040)', 21 September 2023.
[19] Prime Minister's Office, 'The King's Speech 2023', 7 November 2023.

The government is supporting the bill, with the Treasury providing explanatory notes.[20] The BSA has also announced its support for the bill.[21]

The explanatory notes set out the purpose of the bill:

> This bill is about putting building societies on a more level playing field with other retail deposit-takers (ie 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.[22]

To achieve this, the bill would insert new provisions into the Building Societies Act 1986.

Clause 1 would amend section 7 of the Building Societies Act 1986, which sets the funding limit. It would enable the Treasury to make secondary legislation, subject to the affirmative procedure, that would allow the wholesale funding limit to not apply to certain types of funds. The funds disapplied would be:

- **Amounts drawn by the society from a specified liquidity insurance facility provided by the Bank of England**. This is a facility provided by the Bank of England enabling a building society to borrow cash or

[20] Explanatory notes for House of Commons stages.
[21] Building Societies Association, 'BSA welcomes changes that help to level the playing field between building societies and banks', 18 January 2024
[22] Explanatory notes for House of Commons stages, p 2.

other relatively liquid assets in exchange for collateral. Responses to the government's consultation noted that excluding this funding from the limit would mean that access was not constrained, helping building societies to access liquidity during a stress scenario.[23]

- **Debt instruments raised to meet the minimum requirement for own funds and eligible liabilities (known as MREL)**. Building societies above a certain size must maintain funds and liabilities which can absorb losses. They are 'non-preferred debt instruments', meaning that they are low priority to be paid back if a building society is liquidated. 'Preferred debt' is paid back as the priority. The Bank of England says "MREL ensures that investors and shareholders—and not the taxpayer—absorb losses when a firm fails".[24]
- **Sums received by the society under a sale and repurchase agreement entered into by the society with a view to complying with a specified Prudential Regulation Authority rule**. Building societies are required to hold sufficient stock of high-quality liquid assets, like cash or assets that can quickly be turned into cash, such as gilts (government bonds). Building societies sell these assets, then repurchase them at a later date to test the liquidity of their portfolios. The Treasury explains that "when societies undertake a repurchase agreement for these assets, they receive cash. However, as the assets will be repurchased later, the high-quality liquid asset remains on their balance sheet. This means the society records additional funding,

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[23] HM Treasury, 'Consultation: Amendments to the Building Societies Act 1986: Call for evidence—response', 9 December 2022, p 5.
[24] Bank of England, 'Interim and end-state minimum requirements for own funds and eligible liabilities (MRELs)', 27 March 2024.

> which counts towards the wholesale funding limit, while no extra source of funding was created”.[25]

Clause 1 would also allow the Treasury, through secondary legislation, to specify named funds, descriptions of funds and Prudential Regulation Authority rules relevant to the sums received under sale and repurchase agreements.

Clause 2 would explicitly allow for building society meetings to be attended virtually, with members able to speak and vote. It sets out that the only restrictions should be proportionate measures necessary to ensure the identity of attendees and the security of the meeting. These provisions match those in the Companies Act 2006. The Corporate Insolvency and Governance Act 2020 had temporarily allowed virtual participation in building society meetings in the context of the Covid-19 pandemic, but this expired in March 2021.

Clause 3 would extend the power in section 104 of the 1986 act enabling the Treasury to modify the act to match up with other company law using the statutory instrument affirmative procedure, but only in reference to common seals and the execution of documents. The Companies Act 2006 requires companies to either affix a seal or obtain the signature of directors to execute a deed, but the Building Societies Act 1986 requires a seal. This clause would give the Treasury the opportunity to change the requirements for building societies to match company law in this area.[26]

Clause 4 sets out that the bill would extend to England and Wales,

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[25] HM Treasury, ‘Amendments to the Building Societies Act 1986: Consultation’, 6 December 2021, p 9.

[26] As above, p 13.

Scotland and Northern Ireland. It would come into force two months after it is passed.

The Treasury has assessed that the financial impact of the bill on the building societies sector is likely to be zero because the bill would not place new obligations on building societies or mandate any operating changes. Instead, it provides "flexibility for building societies to update their practices by choice".[27]

4. What happened in the House of Commons?

4.1 Second reading

Julie Elliott opened the second reading debate on 19 January 2024, describing the intended outcomes of the bill:

> Although it will not solve all of the issues in the broken housing market, it could free up and make available more money to lend in mortgages, and because building societies lend more in percentage terms to first-time buyers, it should enable more first-time buyers to get on to the housing ladder. […] I hope it will support first-time buyers and more community-based banking, in the interests of working people.[28]

Ms Elliott argued that the bill has the potential "to unlock billions of pounds in additional lending capacity".[29] She said the changes to the funding limits would not dilute the ownership model, and the funding types to be excluded from the funding limit would be "effective tools

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[27] Explanatory notes for House of Commons stages, p 6.
[28] HC Hansard, 19 January 2024, col 1131.
[29] HC Hansard, 19 January 2024, col 1136.

at a time of national economic crisis to ensure that building societies remain comfortably solvent and active in the interests of their members".[30]

Tulip Siddiq, shadow Treasury minister, confirmed that Labour supported the bill.[31] Ms Siddiq praised the building societies sector for directing a "greater proportion of their lending to first-time buyers than any other part of the financial services sector" and said the bill would "empower societies across the UK to raise more funds and help our vulnerable constituents".

MPs across the House generally supported the bill, with many commenting on the importance of local building societies in their constituencies. However, some noted aspects of the legislation that could go further or concerns about holding virtual meetings.

For example, Jo Gideon (Conservative MP for Stoke-on-Trent Central) called the bill "an important starting point", but also called for further secondary legislation to "ensure that the legal framework is up to date".[32] She gave the example of making retirement age requirements in the 1986 act compliant with the Equalities Act 2010.

Natalie Elphicke (Conservative MP for Dover and a former director of Principality building society) also supported the bill. Considering the ability to hold virtual meetings, she noted the in-person engagement she had benefitted from at annual general meetings

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[30] HC Hansard, 19 January 2024, col 1135.
[31] HC Hansard, 19 January 2024, cols 1157–9,
[32] HC Hansard, 19 January 2024, col 1144.

(AGMs) and said:

> It will be important to consider how a decision to use hybrid arrangements will be made, and who will make it. For example, will members be consulted? Will it be the sole decision of the chief executive, or will it be a decision for the whole board?
>
> It will be important to ensure that a decision to proceed with virtual arrangements does not diminish effective participation, and that the decision is not made for other reasons, such as to cut costs or to hold an AGM somewhere more difficult for members to get to, on the basis that they can participate virtually.[33]

Ms Elphicke also said that she hoped the bill committee would consider further expansion of mutual funding structures, as well as increasing the protection of customer deposits under the Financial Services Compensation Scheme:

> Alongside today's amendments, I hope the bill committee will consider the operation of the Financial Services Compensation Scheme [FSCS] to level the playing field for building societies, including increasing the deposit protection amount from £85,000 to £100,000 to capture more accounts, given the role of building societies in having savers; to provide better and separate protection for small and medium-sized businesses, which should be funded by those who provide SME banking services; and to provide faster access for customers in getting hold of their compensation when there is a failure, by funding it

[33] HC Hansard, 19 January 2024, cols 1145–6.

> from the Bank of England, with recovery to follow either from the failed entity or, if necessary, the FSCS levies.[34]

Financial Secretary to the Treasury Nigel Huddleston set out the government's support for the bill, and its intention to progress secondary legislation to deliver on the Edinburgh reforms, concluding:

> The government's goal, and the goal of this bill, is to modernise the Building Societies Act 1986, so that building societies are able to scale, grow and succeed into the future. For those reasons, the bill has the government's wholehearted support.[35]

4.2 Committee stage

No amendments were tabled at committee on 7 February 2024. Opening committee stage, Ms Elliott thanked the BSA for its support on the detail of the bill and restated the bill's aims.[36]

Bim Afolami, economic secretary to the Treasury, said the bill delivers on "key asks from the sector".[37] Mr Afolami also restated the government's intention to bring forward secondary legislation to deliver on the aims of the bill:

> Overall, the bill will help to deliver important amendments to the Building Societies Act 1986 by modernising the legislation so that building societies can compete with retail banks, better

[34] HC Hansard, 19 January 2024, cols 1150–1.
[35] HC Hansard, 19 January 2024, col 1162.
[36] HC Hansard, 7 February 2024, cols 3–4.
[37] HC Hansard, 7 February 2024, col 6.

> serve their members and, to be perfectly frank, better serve the communities they are set up to support. The government are fully committed to ensuring that all subsequent secondary legislation, which will be subject to parliamentary timetabling, is enacted as soon as possible.[38]

4.3 Report stage

House of Commons report stage took place on 19 April 2024, with one amendment being made to the bill.

Tabled by the bill's sponsor, Julie Elliott, the amendment changed the parliamentary process to be used for statutory instruments making changes to section 7 of the Building Societies Act 1986, as set out in clause 1 of the bill. It changed the process from the negative procedure to the affirmative procedure. Julie Elliott explained that the amendment was tabled following discussions with colleagues across the House and that it would allow "closer scrutiny of the potential changes that could be made via secondary legislation under the bill".[39]

The amendment was agreed without a vote.

4.4 Third reading

Third reading immediately followed report stage.

Julie Elliott thanked members across the House for their support for

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[38] HC Hansard, 7 February 2024, col 8.
[39] HC Hansard, 19 April 2024, col 576.

the bill and set out her belief that the legislation would "level the playing field" between building societies and banks and would help the sector.[40] She also again highlighted how building societies support their members and those seeking mortgages.

The government and Labour reiterated their support for the bill, with both agreeing the measures were important to drive growth in the building society sector.[41]

The bill passed third reading without a vote.

5. Read more

- House of Commons Library, 'Building Societies Act 1986 (Amendment) Bill 2023–24: Progress of the bill', 2 April 2024
- Building Societies Association, 'BSA welcomes changes that help to level the playing field between building societies and banks', 18 January 2024
- Momodou Musa Touray, 'Industry welcomes proposed reforms to Building Societies Act', Mortgage Strategy,18 January 2024
- Robin Fieth, 'Keeping building society legislation relevant for the 21st century', The House, 22 March 2022

40 HC Hansard, 19 April 2024, cols 577–8.
41 HC Hansard, 19 April 2024, cols 581–5.

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