EXPLANATORY MEMORANDUM TO

THE BUILDING SOCIETIES ACT 1986 (ASSIMILATION TO COMPANY LAW AND CHANGES TO FUNDING LIMIT) ORDER 2026

2026 No. [XXXX]

1. Introduction

1.1 This Explanatory Memorandum has been prepared by HM Treasury and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Rachel Blake MP, Economic Secretary to the Treasury, confirms that this Explanatory Memorandum meets the required standard.

2.2 Alanna Barber, Deputy Director for Banking and Credit at HM Treasury, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Lee O'Rourke at HM Treasury can be contacted by email at the following address with any queries regarding the instrument: lee.orourke@hmtreasury.gov.uk.

3.2

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This Order amends the Building Societies Act 1986 ("the Act") in order to assimilate provisions for building societies on the use of common seals and the execution of documents to equivalent provisions in the Companies Act 2006 ("the Companies Act"). This will enable building societies to choose whether to execute documents through the use of a common seal or to execute documents by certain authorised signatories. The changes will bring requirements applying to the execution of documents into line with the less restrictive and more proportionate requirements that apply to companies in general.

4.2 The Order also makes provision in relation to the wholesale funding limit for building societies in section 7 of the Act. Section 7(9B) permits the Treasury to make regulations which specify certain sources of funding which are to be excluded from the wholesale funding limit calculation. The Order specifies that funding received from the following sources will be excluded from the wholesale funding limit calculation: liquidity facilities which form part of the Bank of England's Sterling Monetary Framework; debt instruments issued by building societies to meet Bank of England Minimum Requirements for Own Funds and Eligible Liabilities (MREL); and sale and repurchase agreements entered into by building societies using High Quality Liquid Assets (HQLA) held to meet the Prudential Regulation Authority's (PRA) Liquidity Coverage Requirement (LCR). These changes to the funding limit calculation will ensure that building societies are not disincentivised from practices which support prudent management of liquidity and that instruments issued to meet MREL requirements are treated appropriately, in accordance with other instruments of regulatory capital that are excluded from the calculation.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland, and Northern Ireland.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland, and Northern Ireland.

5. Policy Context

What is being done and why?

5.1 The Building Societies Act 1986 provides the legislative foundation for the distinctive business model of building societies, which are mutually owned by their members (societies' depositors and borrowers). The government is committed to ensuring that the Act remains fit for purpose, supporting the important contribution that building societies make to financial services provision and the UK economy. This Order implements the latest measures in a programme of updates that the government has been making to the Act to ensure it continues to operate effectively.

5.2 The Act contains requirements which apply to the governance and administration of societies, which the government has been working to update to ensure that, wherever appropriate, they remain consistent with equivalent requirements in companies legislation. This will ensure that building societies are not operating at a disadvantage compared to financial services firms which are conventional companies, such as banks. This Order updates the Act's requirements for use of a common seal and the execution of documents, aligning them with equivalent requirements in companies legislation. Building societies will no longer be required to execute documents through the physical affixing of a common seal. Societies will be able to choose between executing documents by affixing a common seal or by having the documents signed by certain authorised signatories. This will allow building societies to modernise and streamline their internal processes for the execution of documents.

5.3 The Act is also being updated to ensure the wholesale funding limit calculation operates appropriately in relation to relevant Bank of England liquidity facilities and certain elements of prudential regulation applying to building societies. The requirement for building societies to limit their wholesale funding to 50% of total funding will remain in place and is central to the legislative framework which preserves the distinctive mutual ownership model of building societies. But it is inappropriate, and inconsistent with UK financial stability and prudential regulation policy objectives, to treat certain prudent liquidity practices and instruments issued to meet prudential regulation requirements as wholesale funding for the purpose of the funding limit calculation.

What was the previous policy, how is this different?

5.4 Under common law, a corporation executes a deed through sealing and delivery. This currently includes building societies, which therefore must execute documents by affixing a society's common seal. Under Schedule 2 to the Act, the common seal of a building society must bear the society's registered name. Compared to the changes made by this Order, building societies currently have no choice in the method used to execute documents, which must be done in a way which is often regarded as outdated and burdensome.

5.5 Section 7 of the Act sets the wholesale funding limit for building societies, which requires that wholesale funding should not exceed 50% of a society's total funding.

Wholesale funding is funding which is not derived from deposits that a building society's members have made with the society. Section 7 specifies certain sources of funding which should not be treated as wholesale funding and which are therefore excluded from the funding limit calculation. This includes own funds, the regulatory capital that banks and building societies must hold to meet prudential regulation requirements. Section 7 also provides for the following funding sources to be excluded from the funding limit calculation: funding from specified Bank of England liquidity facilities; funding from specified debt instruments issued to meet Minimum Requirements for Own Funds and Eligible Liabilities (MREL) requirements; and funding from sale and repurchase agreements entered into for compliance with a specified PRA rule. But these sources of funding are only excluded if they have been specified in regulations made by the Treasury. Until now, the Treasury has not specified these sources of funding and so they have not been excluded from the funding limit calculation.

6. Legislative and Legal Context

How has the law changed?

6.1 This Order inserts new paragraphs 19A to 19F of Schedule 2 to the Act to give building societies more flexibility over the use of common seals and executing documents in line with provisions applicable to companies under the Companies Act 2006. It replaces the common law requirement for building societies to execute documents by affixing their common seal.

- Under paragraph 19A building societies may decide whether to use a common seal. A society with a common seal must ensure that its name is engraved in legible characters on the seal. Failure to do so is a criminal offence. If an officer of a society or other person acting on behalf of a society uses, or authorises the use of, a common seal that does not bear the society's name in legible characters, the officer or person commits a criminal offence. Paragraph 19A applies to common seals under the law of England and Wales and Northern Ireland and makes similar provision to section 45 of the Companies Act 2006.
- New paragraph 19B provides that a document is executed by a building society if its common seal is affixed or the document is signed by two "authorised signatories" or a director of the society. Among other things, paragraph 19B specifies who the "authorised signatories" are. New paragraph 19C makes provision in connection with the execution of deeds for the purposes of section 1(2)(b) of the Law of Property (Miscellaneous Provisions) Act 1989. New paragraph 19D enables a building society to empower a person as its attorney to execute deeds or other document on its behalf. Paragraphs 19B to 19D are part of the laws of England and Wales and Northern Ireland and make similar provision to sections 44, 46 and 47 of the Companies Act 2006.
- New paragraph 19E clarifies that building societies in Scotland need not have a common seal and makes related provision. Paragraph 19E is only part of the law of Scotland and corresponds to section 48 of the Companies Act 2006.
- New Paragraph 19F enables building societies with a common seal to have an official seal for use outside the United Kingdom. It makes similar provision to section 49 of the Companies Act 2006.

6.2 The Order also makes provision in relation to the funding limit in section 7 of the Act. The core requirements of the wholesale funding limit calculation are not changing. Building societies must continue to ensure that wholesale funding accounts for no

more than 50% of their total funding, in accordance with section 7 of the Act. But the Order makes an adjustment to the calculation, in accordance with section 7(9B) of the Act, by specifying certain sources of funding which are excluded from wholesale funding for the purposes of the funding limit calculation. Those sources of funding are:

- funding from liquidity facilities available to building societies as part of the Bank of England's Sterling Monetary Framework;
- funding from debt instruments issued by building societies to meet the Bank of England's Minimum Requirements for Own Funds and Eligible Liabilities (MREL); and
- sale and repurchase agreements entered into by building societies using Level 1 High Quality Liquid Assets (HQLA) that societies must hold to meet the PRA's Liquidity Coverage Requirement (LCR).

6.3 The Treasury must review the measures contained in this Order and publish a report setting out the review's conclusions by the end of 2031. Subsequent reviews must be carried out every 5 years.

Why was this approach taken to change the law?

6.4 From its introduction, the Act was designed to ensure that certain provisions of the Act could be updated in order to keep pace with relevant changes made to companies legislation. Section 104 of the Act facilitates this approach by conferring an order-making power on the Treasury to modernise certain provisions in the Act, so that the law for companies and the law for building societies is assimilated. The Act's requirements in relation to the use of common seals and the execution of documents are currently inconsistent with, and more burdensome than, the equivalent requirements set out in the Companies Act. The government is therefore using the order-making power in section 104 of the Act for its intended purpose – to assimilate the law for building societies and companies in relation to the use of common seals and the execution of documents. This will allow building societies to modernise and streamline their internal processes for the execution of documents.[1]

6.5 The Building Societies (Amendment) Act 2024 amended section 7 of the Act to achieve a similar purpose – to provide that the operation of the funding limit calculation could be adjusted to keep pace with relevant developments in regulation. Section 7 was amended to enable the Treasury to specify certain sources of funding which should be excluded from the wholesale funding limit calculation. The government is now using the power for its intended purpose – to exclude specific sources of funding related to societies' prudent management of liquidity and debt instruments societies must issue to comply with prudential regulation requirements.

6.6 It is inappropriate, and inconsistent with the UK's approach to financial stability and prudential regulation, to treat prudent liquidity practices and instruments issued to meet prudential regulation requirements as wholesale funding for the purpose of the funding limit calculation.

6.7 Treating these sources of funding as wholesale can result in double counting of funding which distorts the calculation. For example, when a building society deposits eligible collateral with the Bank of England in order to obtain liquidity, the collateral assets remain on the society's balance sheet while the liquidity obtained is added to the balance sheet. In reality the society has not increased its wholesale funding, it has

[1] See also sections 3 and 4(3) of the Building Societies Act 1986 (Amendment) Act 2024.

exchanged one form for another, but both are counted when calculating the wholesale funding limit. The same problem occurs when a society enters into a sale and repurchase agreement using certain assets which are held to meet the PRA's LCR. Both the assets and the cash they are exchanged for count toward the wholesale funding limit, distorting the real picture of a building society's wholesale funding.

6.8 Treating these sources of funding as wholesale has the potential to disincentivise a society from using the Bank of England's liquidity facilities or from testing the liquidity of its assets by entering into sale and repurchase agreements. The government considers that it is inconsistent with financial stability objectives to apply the wholesale funding limit calculation in ways which disincentivise prudent liquidity management by societies.

6.9 Assets that building societies must hold to meet the Bank of England's MREL requirements (which are designed to ensure that, in the event of failure, a bank or building society holds assets which will facilitate orderly resolution) are also currently counted as wholesale funding for the purposes of the funding limit calculation. The government considers this to be inconsistent with the established policy that regulatory capital should not be treated as wholesale funding for the purposes of the calculation.

7. Consultation

Summary of consultation outcome and methodology

7.1 Following engagement with the building society sector, the Prudential Regulatory Authority (PRA) and Financial Conduct Authority (FCA), the previous government launched a consultation in December 2021, setting out a range of proposals to update the Act. The proposals included the changes made by this Order.

7.2 The previous government published a response to this consultation in December 2022.[2] All respondents to the consultation supported the proposals to align the Act's provisions on the use of common seals and the execution of documents with equivalent provisions in companies legislation. All respondents also supported the proposal to exclude specific sources of funding, related to liquidity management and compliance with certain prudential regulation requirements, from the wholesale funding limit calculation.

8. Applicable Guidance

8.1 There is no applicable guidance.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the direct cost and benefit to affected businesses are estimated to be below £10 million per annum. A de minimis Impact Assessment has been prepared and will be published alongside this Explanatory Memorandum on the legislation.gov.uk website.

Impact on businesses, charities and voluntary bodies

9.2 There is no material impact on businesses, charities or voluntary bodies.

[2] https://www.gov.uk/government/consultations/consultation-amendments-to-the-building-societies-act-1986

9.3 The legislation does not impact small or micro businesses.

9.4 There is no impact on the public sector because the legislation does not apply to public bodies and does not change how the financial services regulators regulate and supervise building societies.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 A statutory review clause is included in the instrument. Under article 4 of this Order, the Treasury must review the measures contained in this Order and publish a report setting out the review's conclusions by the end of 2031. Subsequent reviews must be carried out every 5 years consistently with sections 28 to 30 of the Small Business, Enterprise and Employment Act 2015.

10.2 While this Order simplifies the formalities for the execution by building societies of documents, it also creates two criminal offences.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None

12. European Convention on Human Rights

12.1 The Economic Secretary to the Treasury has made the following statement regarding Human Rights:

"In my view the provisions of the Building Societies Act 1986 (Assimilation to Company Law and Changes to Funding Limit) Order 2026 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").

13.2 It does not relate to the withdrawal of the United Kingdom from the European Union.