

The Building Societies (Floating Charges and Other Provisions) Order 2016

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Introduction

The Building Societies (Floating Charges and Other Provisions) Order 2016 makes a series of consequential changes to ensure the Building Societies Act is up to date and reflects current legislation and the operating environment for building societies.

Why is the Order needed?

The draft statutory instrument makes a series of consequential technical changes, all of which are important and necessary in relation to the main policy measure, which is the repeal of the prohibition on floating charges in section 9B of the Building Societies Act. The repeal within the Building Societies Act itself was amended by Schedule 9 to the Financial Services (Banking Reform) Act 2013. The consequential changes focus particularly on the application of insolvency legislation.

The logic for repealing section 9B was the recognition that secured funding is an accepted and flexible funding tool, which is far more commonplace and necessary now than when section 9B was introduced. Building societies will therefore be on a level playing field with banks in this regard, enabling them to compete effectively but safely. This has no impact on the nature of limits in the act, which require societies to raise 50% of their funds from retail depositors. In practice this level is nearer 80%.

The particular rationale for the section 9B prohibition has also fallen away; that is the ability to appoint an administrative receiver under a floating charge no longer exists following the Enterprise Act. Prior to this, the level of control an administrative receiver could have exercised over a society's assets was contrary to the mutual model of ownership.

Why do we support these changes?

These changes now recognise the landscape and reality that building societies are operating in and the recent legislative changes.

In the future we would like to see additional changes to the Building Societies Act, including:

- An increase (reflecting inflation) in the payment amount a society make from a deceased person's savings account on receipt of satisfactory evidence of death and a statutory declaration that the person claiming the funds is entitled to do so
- Amending the requirement for mutuals to produce a Strategic Report as part of their Annual Report, so that these are exempt from FCA financial promotion rules (as PLC Strategic Reports are).

We are pursuing these matters with the Treasury.