EXPLANATORY MEMORANDUM TO

THE BUILDING SOCIETIES ACT 1986 (MODIFICATIONS) ORDER 2024

2024 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 Tulip Siddiq 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 Please contact buildingsocietiesact@hmtreasury.gov.uk with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This Order amends sections 60 and 61 of the Building Societies Act 1986 ("the 1986 Act") (c. 53) to remove all references to the normal retirement age or the compulsory retirement age for directors, as stated in the 1986 Act. This will update the 1986 Act in line with the Companies Act 2006 (c.46) ("the 2006 Act"), where there are no longer corresponding restrictions for company directors following the repeal of sections 293 and 294 of the Companies Act 1985 (c.6) by section 1295 of and Schedule 16 to the 2006 Act. The Companies (Northern Ireland) Order 1986 which contained parallel restrictions on Northern Ireland company directors was repealed by the 2006 Act. Company law is now UK-wide.

4.2 This Order also amends section 80(1) of the 1986 Act so that the current requirement for the balance sheet of a building society to be signed by two directors and the CEO is changed to allow one director to sign the balance sheet on behalf of the board. This amendment will modernise the 1986 Act, aligning the provisions with section 414(1) of the 2006 Act. This would reduce a small but unnecessary burden for building societies, providing building societies with the equivalent accounts sign-off procedures as to companies.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument is to England, Scotland, Wales, and Northern Ireland.

4.4 The territorial application of this instrument is to England, Scotland, Wales, and Northern Ireland.

5. Policy Context

What is being done and why?

5.1 Building societies are providers of mortgage and savings products, mutually owned by their members (the depositors/borrowers). According to the latest Building Societies Association (BSA) data, building societies serve around 26 million members and have total assets of over £515 billion.

5.2 The Building Societies Act 1986 sets out building societies' distinctive model and other legal requirements. Whilst the Government believes the 1986 Act broadly remains fit for purpose, it recognises that there is interest and rationale in making further updates to the 1986 Act. This would allow building societies to compete more effectively with retail banks operating under the Companies Act 2006, promoting competition within the financial services sector.

5.3 This Order will help to modernise the 1986 Act by deleting the relevant provisions in sections 60 and 61 of the Act, which currently impose a normal retirement age of 70 (above which, eligibility for election is conditional upon board approval and notification of members entitled to vote) and which also currently enable building societies to provide a compulsory retirement age for directors in their rules. Removing these provisions will provide building societies with equal flexibility to companies under the Companies Act 2006 in appointing directors and ends a blanket age-based restriction which is an outlier following the Equality Act 2010.

5.4 This Order will also alter the requirement for building societies' balance sheets to be signed by two directors and the CEO in section 80 of the 1986 Act to allow one director to sign the balance sheet on behalf of the board. This will reduce a small but unnecessary burden for building societies, modernising building societies' requirements in line with companies, who only require one director to sign their accounts.

What was the previous policy, how is this different?

5.5 Currently, the 1986 Act requires persons above the normal retirement age of 70 (or such lower age as is provided in building societies' rules), who wish to be elected or re-elected as directors, to be approved by board resolution as eligible and have their age notified to each person entitled to vote in the election. Also, a building society may under its rules impose a compulsory retirement age for directors at which they are ineligible for re-election of less than or greater than 70. An upper age limit of 70 for the directors of public companies (subject to approval in general meeting) contained in section 293 of the Companies Act 1985 was repealed by the Companies Act 2006.

5.6 Moreover, the current requirement for the balance sheet of a building society to be signed by two directors on behalf of the board of directors and the CEO no longer aligns with the parallel provisions in the Companies Act 2006 (section 414(1)), which replaced section 233 of the Companies Act 1985 as inserted by section 7 of the Companies Act 1989 (which in turn replaced section 238 of the Companies Act 1985 requiring balance sheet signature by two directors).

6. Legislative and Legal Context

How has the law changed?

6.1 The Building Societies Act 1986 has not been updated in line with the modernisations made earlier in the Companies Act 2006 and thus contains outdated provisions as is especially apparent following the Equality Act 2010.

Why was this approach taken to change the law?

6.2 The Treasury will make this Order in exercise of the power conferred by section 104(1) and (2)(b) and (c) of the Building Societies Act 1986 to align certain provisions of the Act with modifications to company law by statutory instrument subject to the affirmative resolution procedure where it appears to the Treasury to be expedient.

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 Government launched a consultation into several amendments to the 1986 Act on 6 December 2021.[1]

7.2 The consultation proposed excluding some sources of funding from the building society funding limit calculation and updating building society corporate governance requirements in line with modernisations made to company law by the Companies Act 2006.

7.3 The Government published a response to this consultation as part of the Edinburgh Reforms in December 2022. All respondents supported the range of proposals outlined in the consultation. The Government received five individual responses with most societies responding through the Building Societies Association. The removal of age restrictions on building society directors was not proposed in the consultation but was suggested by the Building Societies Association and a large building society. The Government agreed to remove the normal retirement age provisions in its response to the consultation. It is also necessary to remove the compulsory retirement age provisions to ensure parity of treatment with company directors.

7.4 The Government has also laid the Building Societies Act 1986 (Amendment of Small Business Turnover Limit) Order 2024 which will relax the definition of a small business to increase the number of deposits by SMEs to be excluded from the wholesale funding limit for building societies. The Building Societies Act 1986 (Amendment) Act 2024 gives effect to the remaining changes proposed in the consultation on funding limit exclusions and corporate governance. The Act allows for real-time virtual member participation at building society general meetings and provides HM Treasury with the powers (exercisable by statutory instrument) to exclude three specified sources of funding from the wholesale funding limit and remove the requirements for building societies to affix a seal when executing a deed.

8. Applicable Guidance

8.1 This Order does not implement or require guidance.

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[1] https://www.gov.uk/government/consultations/consultation-amendments-to-the-building-societies-act-1986#:~:text=This%20consultation%20requests%20views%20on

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 costs to the sector in implementing the relevant changes are expected to be minimal. A De Minimis Impact Assessment is published alongside this Memorandum on the legislation.gov.uk website.

9.2 The De Minimis Impact Assessment concludes that there will be minimal costs to the sector in implementing these changes. The Building Societies Association removed references to normal and compulsory retirement ages for directors from the BSA Model Rules in 2011 in anticipation of the removal of the normal and compulsory retirement age provisions for directors from the 1986 Act. Therefore, 41 out of the current 42 building societies in the UK will not be impacted by this amendment. For the building society which will be required to change its rules to remove reference to the normal or compulsory retirement age, this is expected to be a minimal, one-off cost. This change is expected to benefit building societies by reducing additional recruitment and training costs as well as through attracting a wider pool of talent for election as directors.

9.3 Moreover, it is not expected that the altering of the requirements for signing the balance sheet will have any cost to businesses to implement and will subsequently help reduce some administrative burdens.

Impact on businesses, charities and voluntary bodies

9.4 The impact on business, charities or voluntary bodies is minimal. This Order only impacts upon building societies, whose corporate government requirements will be modernised in line with retail banks, removing unnecessary burdens from the sector.

9.5 The legislation will have minimal impact on small or micro businesses.

9.6 There is no impact on the public sector because this Order will only impact building societies and will involve a minor change to their corporate governance requirements.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 HM Treasury will continue to work with the sector and regulators to ensure it continues to meet the needs and specificities of building societies.

10.2 The instrument does not include a statutory review clause.

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 our view the provisions of the Building Societies Act 1986 (Modifications) Order 2024 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").