

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT BUILDING SOCIETIES (FLOATING  
CHARGES AND OTHER PROVISIONS) ORDER 2016

*Tuesday 14 June 2016*

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**The Committee consisted of the following Members:**

*Chair:* Ms KAREN BUCK

† Argar, Edward (*Charnwood*) (Con)  
 † Baldwin, Harriett (*Economic Secretary to the Treasury*)  
 † Burns, Conor (*Bournemouth West*) (Con)  
 † Campbell, Mr Alan (*Tynemouth*) (Lab)  
 Cooper, Julie (*Burnley*) (Lab)  
 † Cruddas, Jon (*Dagenham and Rainham*) (Lab)  
 Fysh, Marcus (*Yeovil*) (Con)  
 † Jayawardena, Mr Ranil (*North East Hampshire*) (Con)  
 Jones, Mr Kevan (*North Durham*) (Lab)

† Kennedy, Seema (*South Ribble*) (Con)  
 † Kirby, Simon (*Brighton, Kemptown*) (Con)  
 † Long Bailey, Rebecca (*Salford and Eccles*) (Lab)  
 Lucas, Ian C. (*Wrexham*) (Lab)  
 † Malthouse, Kit (*North West Hampshire*) (Con)  
 † Mann, Scott (*North Cornwall*) (Con)  
 † Mullin, Roger (*Kirkcaldy and Cowdenbeath*) (SNP)  
 † Thomas, Derek (*St Ives*) (Con)

Marek Kubala, *Committee Clerk*

† **attended the Committee**

## Fourth Delegated Legislation Committee

Tuesday 14 June 2016

[MS KAREN BUCK *in the Chair*]

### Draft Building Societies (Floating Charges and Other Provisions) Order 2016

2.30 pm

**The Economic Secretary to the Treasury (Harriett Baldwin):** I beg to move,

That the Committee has considered the draft Building Societies (Floating Charges and Other Provisions) Order 2016.

It is a pleasure to serve under your chairmanship, Ms Buck. We all want to see a healthy and competitive banking sector that delivers for consumers. For many years now, building societies have been strong competitors to the major banks, particularly in the mortgage market, and we want to see that kind of competition not only continue but grow further. In 2012, the Government launched a consultation to look at how we could level the playing field between banks and building societies. We wanted to maintain the distinctiveness of the building society sector but remove any unnecessary barriers that were getting in the way of their success. One key thing that building societies told us was that they found it difficult to compete because, unlike banks, they could only create fixed charges over their assets and not floating charges.

It may be helpful at this point if I explain briefly what floating charges are and how they are used. In short, they are securities over an undefined set of assets—for example, a building society's mortgage book—that fluctuates in the course of business. That is in contrast with a fixed charge, which is over a fixed, defined asset such as a building or a specified set of loans. Floating charges allow financial institutions to borrow money and use their mortgage book as collateral, while still being able to exchange and dispose of any individual mortgages during normal trading activity. However, the Building Societies Act 1986 created a restriction that building societies could not use such charges. Banks therefore denied building societies access to certain transactions, because of the risk that a court could ultimately reclassify a fixed charge on a building society's assets to a floating charge and make the security void.

Secured funding is an accepted and flexible funding tool that is far more commonplace and necessary now than when the restriction was introduced. That is why the Government made an order last year under the Financial Services (Banking Reform) Act 2013 that repealed the restriction and allowed building societies to create floating charges. Initial estimates indicate that the change will save the sector around £2 million a year by allowing building societies to enter into such transactions with banks.

The draft order will make further provisions in relation to the repeal of the floating charges restriction. It will amend the Building Societies Act to apply companies insolvency legislation if the building society were to go

into receivership. Therefore, in the unlikely event that it becomes necessary to enforce the security, a floating charge holder can appoint a receiver to enforce the terms of a floating charge. The draft order is uncontroversial, and it will help to provide legal certainty and ensure the effectiveness of the repeal of the restriction made last year.

The draft order proposes a technical change that will allow us to continue our work to support building societies by allowing them to compete with banks on a level playing field. That will be not only good for the market by helping to boost competition, but help to create better products and services for the people who use them. I therefore commend the draft order to the Committee.

2.33 pm

**Rebecca Long Bailey** (Salford and Eccles) (Lab): It is a pleasure to serve under your chairmanship, Ms Buck, and to debate with the Minister for the first time, especially on such an important issue. I share her sentiment that the draft order is technical and uncontroversial. I understand that our counterparts in the Lords spent only 13 minutes discussing it. She will be pleased to hear that I do not propose to take much longer.

As the Minister eloquently stated, the draft order is simply required as a result of the Financial Services (Banking Reform) Act 2013, which repealed the restriction on building societies to create floating charges. That came directly as a result of changes in insolvency law by virtue of the Enterprise Act 2002, which removed the ability of a creditor to appoint an administrative receiver pursuant to a floating charge. There were exceptions, of course—for example, certain large financial transactions and holders of floating charges created before the relevant sections of the 2002 Act came into effect.

The previous position for building societies was, as the Building Societies Association has stated, “contrary to the mutual model of ownership”,

as it would allow an administrative receiver to be appointed over the whole or a substantial part of a company's property should a floating charge be enforced. A receiver is usually appointed to enforce the terms of a floating charge only, and as such has limited access to any other assets held by the relevant company. The draft order will therefore allow the appointment of a receiver in relation to a floating charge if enforcement becomes necessary, so ensuring, as we have heard, uniform provision about receivers for banks, building societies and other companies.

The Building Societies Association informs us that the changes we are discussing recognise the landscape and reality that building societies are operating in and that secured funding is an accepted and flexible funding tool that is far more commonplace and necessary now than when the Building Societies Act 1986 was passed. However, it has confirmed that it is interested in seeing further changes to the 1986 Act. First, it suggests an increase, reflecting inflation, in the payment amount a society can make from a deceased person's savings account, subject to evidence and a statutory declaration that the person claiming funds is entitled to do so. Secondly, it suggests an amendment in the requirement for mutuals to produce a strategic report as part of their annual report, so that those are exempt from Financial

Conduct Authority promotion rules. It has raised those matters with the Treasury directly, and I would therefore be grateful if the Minister updated the Committee.

To conclude, as the Minister has illustrated, the changes proposed in the draft order complement the Government's commitment to ensuring that mutual bodies are enabled to compete on a level playing field with banks. That is something the Opposition certainly support and that my hon. Friend the Member for Wolverhampton South West (Rob Marris) raised when we discussed the appropriate clause on diversity in financial services during the consideration of the Bank of England and Financial Services Act 2016. We look forward to returning to such matters in the near future, particularly upon final publication of the Competition and Markets Authority's report into retail banking this summer. However, for the moment, we will contain our excitement and support the draft order.

2.36 pm

**Roger Mullin** (Kirkcaldy and Cowdenbeath) (SNP):

It is a pleasure to serve under your chairmanship for the first time, Ms Buck. At one time in my life, I was an athlete and always keen to set records. I have never set one before; I think that I will try this time by saying that I support the draft order.

2.37 pm

**Harriett Baldwin:** I congratulate the hon. Member for Salford and Eccles on the expertise with which she addressed the draft order. I do not know whether hers is a permanent or temporary substitution on the Opposition Front Bench, but she has acquitted herself with great excellence, and I am glad that her colleague from the Whips Office, the right hon. Member for Tynemouth, is

here to observe her. I welcome her support for the measure and her enthusiasm for potential further deregulation in the building society sector.

The hon. Lady is absolutely right that we put competition in the banking sector right at the heart of what we are trying to do. I welcome the fact that eight new banking licences were awarded in the UK in the last Parliament and that five have been awarded so far in this Parliament. The Prudential Regulation Authority has set up a new bank unit, which might welcome—although this is unlikely—new building societies to the fold. Competition is something that we think is helpful and beneficial for consumers, and something that we back wholeheartedly. We, too, are looking forward to the final report from the CMA later this year and its recommendations.

One thing I will share with the hon. Lady is that, when bringing such measures to a Committee of the House, I try to bunch them together as much as possible, so it is perhaps unfortunate that we have such a short discussion today. She asked about deceased investors in building societies. She is right that representations have been made and are being considered by the Treasury on that matter. She is also right that further representations have been made about some of the reporting requirements. It is incumbent on us, as we have done in this instance, always to look for opportunities to simplify or clarify regulations on behalf of the sector.

In the interests of potentially beating the record for the length of consideration of such a technical change, I commend the draft order to the Committee and hope that it will be widely welcomed and accepted.

*Question put and agreed to.*

2.40 pm

*Committee rose.*





