

BUILDING SOCIETIES AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill makes miscellaneous amendments to the Building Societies Act 1965.

Clause 1 relates to the Short Title.

Clause 2: Subclause (1) extends the definition of "land" to include a licensee's interest under a deferred payment licence within the meaning of the Land Act 1948. This amendment is for the purpose of removing a doubt about the authority of societies to advance money on the security of such a licence.

Subclause (2) inserts in section 2 (1) of the principal Act a definition of "New Zealand Government securities". This term is used in sections 55 (1) (a) (investment of surplus funds) and 57 (7) (holdings in relation to savings bank deposits) of the principal Act, and also in *clause 4* of the Bill.

Clause 3: Under section 47 of the principal Act, a society may not advance money on a second or subsequent mortgage unless the amount of the advance added to all principal sums secured by the prior mortgages does not exceed the aggregate of two-thirds of the value of the land plus the amount of any advance on collateral security.

Subclause (1) of this clause inserts in section 47 a new subsection under which this restriction will not apply where the society itself holds the prior mortgage or mortgages.

Subclause (2) is a drafting amendment.

Subclause (3) removes some words that were left in section 47 (3) on the passing of the principal Act, but which are redundant as a result of the striking out in Committee of a subclause that was in the original Bill of 1965.

Clause 4 inserts in the principal Act a new section 55A, under which building societies may be required, by Order in Council, to hold in Government securities an amount equal to such percentage of their deposits as may be prescribed, but not exceeding 25 percent. For the purposes of the new section, "deposit" includes any sum paid to a society in consideration of the issue of a debenture, etc., an appropriation in trust, and a sum paid for any class or kind of share specified in any such Order in Council. It does not include a savings bank deposit held by an authorised society under section 57 of the principal Act. Government securities held by an authorised society pursuant to section 57 (7) of the principal Act are not to be taken into account for the purposes of the new requirements, and vice versa.

Clause 5: Section 57 of the principal Act forbids the acceptance of savings bank deposits by building societies, other than those named in the Fourth Schedule to the principal Act as "authorised societies", and places certain restrictions and limits on the acceptance by authorised societies of savings bank deposits. It also requires every authorised society to hold in Government securities an amount equal to 30 percent of its savings bank deposits.

This clause adds to section 57 a subsection making it an offence for a society to contravene these provisions.

Clause 6: Under section 109 of the principal Act, where a society's rules direct that disputes between a member and the society are to be referred to arbitration, such disputes are referred to at least 3 arbitrators chosen by ballot from a panel elected in accordance with the rules or at the first general meeting.

Subclause (1) of this clause repeals that section, and substitutes a new section under which the reference of the dispute is to be to a sole arbitrator agreed on by the parties to the dispute or, if they do not agree on a sole arbitrator, to 2 arbitrators of whom one is to be appointed by each party with power to the arbitrators to appoint an umpire. Subsection (3) of the substituted section re-enacts the existing provision under which no arbitrator may be beneficially interested in the funds of the society, and extends this provision also to the umpire. Subsection (4) authorises the Registrar, if he thinks fit, to accept appointment as an arbitrator or umpire. Subsection (5) applies the Arbitration Act 1908.

Subclause (2) provides that any arbitration commenced but not completed before the passing of the Bill may be continued and completed under the existing law, and not under the new section.

The effect of *subclause (3)* is that, until a society's rules are altered, arbitration provisions in them that are inconsistent with the new section 109 will not have effect; and those provisions are to be revoked by the society by 31 December 1971.

Clause 7: Under section 110 of the principal Act, disputes between members and a society are to be referred to the Registrar (who is deemed to be an arbitrator) where the parties so agree, or where the society's rules so direct, or where the dispute is under section 75 of the Act.

Subclause (1) of this clause repeals section 110. The result will be that disputes will be referred either to arbitrators under the new section 109 (*clause 6*) or, in certain cases, to the Court under section 111.

Subclause (2) consequentially amends certain other sections of the principal Act relating to disputes, by omitting the references to the Registrar.

Subclause (3) provides that disputes referred to the Registrar and not determined before the passing of the Bill may be dealt with and determined under the existing law.

The effect of *subclause (4)* is that, until a society's rules are altered, provisions in them for the reference of disputes to the Registrar are to be read as provisions for their reference to arbitration; and the society's rules are to be altered, by 31 December 1971, so as to provide for the settlement of disputes either by the Court or by arbitration.

Clause 8 removes some words that were left in section 127 (3) on the passing of the principal Act, but are redundant as a result of the striking out in Committee of a clause (108) that was in the original Bill of 1965.

Hon. Mr Muldoon

BUILDING SOCIETIES AMENDMENT

ANALYSIS

Title	4. Societies to hold Government securities
1. Short Title	5. Restrictions on savings bank deposits
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3. Restrictions on second or subsequent mortgages	7. Repeal of provision for determination of disputes by Registrar
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A BILL INTITULED

An Act to amend the Building Societies Act 1965

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,
5 as follows:

1. **Short Title**—This Act may be cited as the Building Societies Amendment Act 1970, and shall be read together with and deemed part of the Building Societies Act 1965* (hereinafter referred to as the principal Act).

10 2. **Interpretation**—(1) Section 2 of the principal Act is hereby amended by adding to the definition of the term “land”, in subsection (1), the words “or under a deferred payment licence within the meaning of the Land Act 1948”.

*1965, No. 22

No. 85—1

(2) The said section 2 is hereby further amended by inserting in subsection (1), after the definition of the term “Minister”, the following definition:

“New Zealand Government securities” means securities issued by the Government of New Zealand that are registered in a register kept in New Zealand pursuant to the New Zealand Loans Act 1953:” 5

3. Restrictions on second or subsequent mortgages—

(1) Section 47 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection: 10

“(1A) Subsection (1) of this section shall not apply in any case where all the prior mortgages at the time of the making of the advance are in favour of the society.”

(2) The said section 47 is hereby further amended by omitting from subsection (1) the words “a prior mortgage”, and substituting the words “any prior mortgage or mortgages”. 15

(3) The said section 47 is hereby further amended by omitting from subsection (2) the words “or of the terms or conditions of any exemption granted thereunder”.

4. Societies to hold Government securities—The principal Act is hereby amended by inserting in Part IV, after section 55, the following section: 20

“55A. (1) For the purposes of this section, unless the context otherwise requires, the term ‘deposit’ means any money deposited with a society; and includes any sum— 25

“(a) Paid to a society in consideration of the issue of any debenture, deposit note, or other document acknowledging the indebtedness of a society to the holder; or

“(b) Appropriated by a society to any person, or to which any person has become entitled, whether by way of loan or otherwise, as a result of any ballot, tender, auction, or application, and for the time being retained by the society either under any provision of its rules, or under any arrangement with the person, by virtue of which the society pays or credits, or is required to pay or credit, to the person any amount by way of interest or dividend or any sum in lieu of interest or dividend; or 30 35

“(c) Paid to a society for any share in the society of any class or kind for the time being specified in any Order in Council under this section— 40

but does not include any savings bank deposit, within the meaning of section 57 of this Act, held by an authorised society within the meaning of that section.

5 “(2) The Governor-General may from time to time, by Order in Council, require every society to hold in New Zealand Government securities, during such periods or at such times as may be prescribed in the order, an amount at least equal to such percentage of its deposits as may be prescribed by the order, but not exceeding 25 percent.

10 “(3) Without limiting the generality of the foregoing provisions of this section, any such Order in Council may—

“(a) Prescribe different percentages in respect of different periods or times, or in respect of different classes of deposits, or in different circumstances:

15 “(b) Declare that any sum paid to a society for a share of any class or kind specified in the order shall be deemed to be a deposit for the purposes of the order:

20 “(c) Exempt any society or class or classes of society, wholly or partially, from all or any of the provisions of the order, or provide for the granting, refusal, and revocation of any such exemption; and prescribe, or authorise the prescribing, variation, or revocation of, conditions subject to which any such exemption is to apply:

25 “(d) Be so made as to apply to deposits generally or to any specified class or classes or portion or portions of deposits, or to different classes or portions of deposits at different times or in different circumstances:

30 “(e) Be so made as to apply to deposits held by a society at the commencement of the order or at any time thereafter:

35 “(f) Provide for the furnishing by societies of returns or certificates or other information in respect of deposits and holdings of New Zealand Government securities, and in respect of matters necessary for the purpose of ensuring compliance with the order; and for the verification of such returns, certificates, and information:

40 “Provided that no society shall be required to supply any information with respect to the identity or affairs of any particular person from whom or for whose benefit the society has accepted or holds
45 any deposit:

“(g) Authorise the Registrar to exercise any discretionary power or authority for the purposes of the order.

“(4) Securities held by a society pursuant to subsection (7) of section 57 of this Act shall not be deemed to be securities held in compliance with any Order in Council under this section; and securities held pursuant to any such order shall not be deemed to be securities held in compliance with the said subsection (7).” 5

“(5) If a society contravenes any provision of any Order in Council under this section that is applicable to it, the society, and every officer of the society who is in default, shall be guilty of an offence against this Act.” 10

5. Restrictions on savings bank deposits—Section 57 of the principal Act is hereby amended by adding the following subsection: 15

“(12) If a society contravenes any of the provisions of subsections (3) to (7) of this section, the society, and every officer of the society who is in default, shall be guilty of an offence against this Act.”

6. Determination of disputes by arbitration—(1) The principal Act is hereby amended by repealing section 109, and substituting the following section: 20

“109. (1) This section shall have effect where a society’s rules direct that disputes shall be referred to arbitration.

“(2) Every such reference to arbitration shall be— 25

“(a) To a sole arbitrator agreed on by the parties to the dispute; or

“(b) If the parties do not agree on a sole arbitrator, to 2 arbitrators, one to be appointed by each party to the dispute, with power to the 2 arbitrators to 30 appoint an umpire.

“(3) No such arbitrator or umpire shall be beneficially interested, whether directly or indirectly, in the funds of the society.

“(4) The Registrar may, if he thinks fit, accept appointment under this section as a sole arbitrator, or as one of 2 arbitrators or as an umpire. 35

“(5) For the purposes of any such arbitration, this section shall be deemed to be a submission within the meaning of the Arbitration Act 1908, and the provisions of that Act, so far as they are applicable, shall apply accordingly.” 40

(2) Section 109 of the principal Act, as substituted by subsection (1) of this section, shall not affect any arbitration that has been commenced, but not completed, before the passing of this Act, and any such arbitration may be continued and completed as if this Act had not been passed.

(3) Where at the passing of this Act the rules of any society direct that any disputes shall be referred to arbitration, the following provisions shall apply:

10 (a) Subject to subsection (2) of this section, until the rules are altered, any provision in them that is inconsistent with section 109 of the principal Act (as substituted by subsection (1) of this section) shall have no effect:

15 (b) Not later than the 31st day of December 1971, the society shall alter its rules by revoking any provision that is inconsistent with the said section 109 (as so substituted).

7. Repeal of provision for determination of disputes by Registrar—(1) Section 110 of the principal Act is hereby

20 repealed.

(2) The principal Act is hereby consequentially amended—

(a) By omitting from paragraph (p) of subsection (1) of section 17 the words “or to the Registrar”:

25 (b) By omitting from subsection (3) of section 108 the words “or by the Registrar”:

(c) By omitting from section 112 the words “or by the Registrar”, and also the words “the Registrar” where they secondly appear:

30 (d) By omitting from subsection (1) of section 113 the words “or the Registrar where the dispute is referred to him”.

(3) The repeal by subsection (1) of this section of section 110 of the principal Act, and the amendments made by subsection (2) of this section, shall not affect any dispute that has been referred to the Registrar, but not determined, under the said section 110 before the passing of this Act, and any such dispute may be dealt with and determined as if this Act had not been passed.

(4) Where at the passing of this Act the rules of any society direct that any disputes shall be referred to the Registrar, the following provisions shall apply:

- (a) Subject to subsection (3) of this section, until the rules are altered, they shall be deemed to direct that those disputes shall be referred to arbitration, and not to the Registrar: 5
- (b) Not later than the 31st day of December 1971, the society shall alter its rules by revoking every provision for the reference of disputes to the Registrar and making such other provision for the settlement of disputes as is authorised by paragraph (p) of subsection (1) of section 17 of the principal Act (as amended by paragraph (a) of subsection (2) of this section). 10 15

8. Provisions as to shares held jointly—Section 127 of the principal Act is hereby amended by omitting from the proviso to subsection (3) the words “or of the annual return”.