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STATUTORY INSTRUMENTS

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**1991 No. 357**

**BUILDING SOCIETIES**

**The Building Societies (Designation  
of Qualifying Bodies) Order 1991.**

*Made* - - - - 26th February 1991  
*laid before Parliament* 28th February 1991  
*Coming into force* - - 1st April 1991

The Building Societies Commission, with the consent of the Treasury, in exercise of the powers conferred on it by section 18(2)(c) of the Building Societies Act 1986<sup>(1)</sup>, and of all other powers enabling it in that behalf, hereby makes the following Order:

**Title and commencement**

1. This Order may be cited as the Building Societies (Designation of Qualifying Bodies) Order 1991 and shall come into force on 1st April 1991.

**Interpretation**

2. In this Order, except where the context otherwise requires—

“the Act” means the Building Societies Act 1986;

“the 1990 Order” means the Building Societies (Designation of Qualifying Bodies) Order 1990<sup>(2)</sup>;

“appropriate vehicle” means a body corporate of a description specified in column 1 of Part I of the Schedule to this Order or a particular body designated, or a body corporate of description designated, by Order under section 18 of the Act;

“the relevant power”, in relation to an appropriate vehicle, means the power for the exercise of which, as specified in column 3 of Part I of the Schedule to this Order, that appropriate vehicle is designated as suitable; and

“society” means a building society.

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(1) 1986 c. 53.  
(2) S.I.1990/1434.

### **Designation of bodies corporate**

3.—(1) Each appropriate vehicle of a description specified in the item in column 1 of Part I of the Schedule hereto is designated for the purposes of section 18 of the Act (power to invest in subsidiaries and other associated bodies) and within that Part of that Schedule—

- (a) the corresponding item in column 2 specifies, where that appropriate vehicle comes within a description so specified, the meaning of that description for the purposes of this Order,
  - (b) the corresponding item in column 3 specifies that the appropriate vehicle is designated as suitable for investment and support or support,
  - (c) the corresponding item in column 4 specifies the purposes for which (in addition to the purposes permitted by section 18(4) of the Act) the exercise of the relevant power by a society is permitted in relation to that appropriate vehicle, and
  - (d) the corresponding item in column 5 specifies the provision for different descriptions of societies in relation to which, the limits on the extent to which, and the condition subject to which, the exercise of the relevant power by a society is permitted in relation to that appropriate vehicle.
- (2) Part II of the Schedule to this Order shall have effect—
- (a) so as to supplement Part I thereof, and
  - (b) in respect of the interpretation of that Schedule.

In witness whereof the common seal of the Building Societies Commission is hereto fixed, and is authenticated by me, a person authorised under paragraph 14 of Schedule 1 to the Building Societies Act 1986, on 14th February 1991.

*Norman Digance*  
Secretary to the Commission

We consent to this Order,

*Thomas Sackville*  
*Sydney Chapman*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

26th February 1991

SCHEDULE

Articles 2 and 3

PART I

DESCRIPTIONS OF BODIES CORPORATE DESIGNATED

Item	Column 1 Specified description	Column 2 Specified definition	Column 3 Specified relevant power	Column 4 Specified purposes	Column 5 Specified limits and conditions
1.	Appropriate payments services vehicle	A body corporate (not being one excluded by the particular restrictions for payments services vehicles) formed for the purpose of, or the objects of which include the carrying on of banking services including money transmission services.	Investment and support, or support.	(Facilitating the provision of banking services by the society or any associated body of the society. (2)Enabling or facilitating the operation of facility accounts by the society or any associated body of the society.	(1) The standard asset provision for the purposes of item (2) in column 4 (2) The group interest provision.

PART II

INTERPRETATION

**Meaning of standard asset provision**

1. In this Schedule “the standard asset provision” means a provision to the effect that—
  - (a) the relevant power is not available to a society which does not for the time being have a qualifying asset holding, but
  - (b) the cessation of its availability does not require the disposal of any property or rights.

**Meaning of one tier organisation**

2. In this Schedule “one tier organisation” means a body corporate which does not have the capacity to have subordinate organisations.

**Meaning of group interest provision**

- 3.—(1) In this Schedule “the group interest provision” means a condition to the effect that—

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- (a) where a society has a relevant holding in an appropriate vehicle and becomes aware that a subordinate organisation of that appropriate vehicle is within the prohibited range, the society shall dispose of sufficient shares or corresponding membership rights as the case may be that it ceases to have a relevant holding, and shall do so as soon as it is conveniently practicable to do so without undue loss, and
  - (b) where a society has a relevant holding amounting to a relevant interest in a relevant body corporate, the society shall, within four months of the end of each financial year of that relevant body corporate at which year end the society has such an interest, seek to obtain a group income certificate in relation to that relevant body corporate, and, if no such certificate as is required by this paragraph is so obtained by the society for two successive financial years of the relevant body corporate, the society shall—
    - (i) notify the Commission in writing, within 14 days of the end of the four months following the end of the second such financial year, that subparagraph (ii) below applies to it,
    - (ii) as soon as it is conveniently practicable to do so without undue loss, dispose of sufficient shares or corresponding membership rights that it ceases to have a relevant interest in that body corporate, and
    - (iii) within 14 days following that cessation, notify the Commission in writing thereof.
- (2) For the purposes of subparagraph (1)(a) above, a subordinate organisation comes within the prohibited range where it comes within a description in paragraph 7(2)(b), (c), (d) or (e) of Part II of the Schedule to the 1990 Order (or would do if it were a vehicle subject to the provisions of subparagraph 7(2) of Part II of that Order).
- (3) For the purposes of subparagraph (1)(b) above, “relevant interest” means—
- (a) shares or corresponding membership rights in a body corporate which is not a company limited by shares, or
  - (b) sufficient shares in a body corporate which is a company limited by shares to give the society direct ownership or direct and indirect ownership (determined as specified in the definition of “subordinate organisation” in paragraph 7 below) of 15 per cent or more of the ordinary share capital (as defined within that definition) of that company.
- (4) For the purposes of subparagraph (1)(b) above, “relevant body corporate” means an appropriate vehicle which has any subordinate organisation which is not an associated body of the society.
- (5) For the purposes of this paragraph—
- (a) “group income certificate”, in relation to a relevant body corporate, means a certificate signed by a director of the relevant body corporate (and adequately supported by a report of its auditors) stating that at least 60 per cent of the consolidated gross income of the relevant body corporate and its subordinate organisations for the financial year to which the certificate relates was derived, subject to subparagraph (6) below, from carrying on qualifying activities, and
  - (b) “qualifying activities” means activities the purpose of enabling a qualifying body to carry on which is a purpose for which the society has power to invest in or support a qualifying body.
- (6) For the purposes of subparagraph (5)(a) above—
- (a) in calculating the consolidated gross income of the relevant body corporate and its subordinate organisations derived from carrying on qualifying activities, any income derived by such a subordinate organisation, or by an appropriate vehicle other than an appropriate estate agency vehicle, from activities which are qualifying activities only if

- they are undertaken together with estate agency work, shall be deemed to be derived from carrying on activities which are not qualifying activities, and
- (b) a certificate is adequately supported by a report of the auditors of a relevant body corporate where the auditors have reported at least to the effect that—
    - (i) they have examined the certificate,
    - (ii) they have inquired into the affairs of the relevant body corporate, and obtained information from the society, to an extent necessary to consider whether there is any significant likelihood that the certificate is untrue in any material particular, and
    - (iii) they consider that there is no significant likelihood that the certificate is untrue in any material particular.

### **Specification of particular restrictions for payments services vehicles**

4.—(1) In this Schedule “the particular restrictions for payments services vehicles” means, subject to subparagraph (3) below, the provisions set out in subparagraph (2) below.

(2) A body corporate is not an appropriate payments services vehicle for a society where—

- (a) it is a market maker,
- (b) its business includes lending money, secured or unsecured, on its own account, save in so far as the subscription for or the purchase or sale of investments on behalf of any other person, in advance of being put in funds by or on behalf of that other person to complete that transaction, comprises or gives rise to such lending,
- (c) it is an authorised institution, or its business requires it to be authorised, for the purposes of the Banking Act 1987(3),
- (d) its business includes activities in the range from which the society is restricted, or
- (e) it has a subordinate organisation which is not within the prescribed range.

(3) For the purposes of subparagraph (1) above, a subordinate organisation comes within the prescribed range where it is—

- (a) a particular body designated by Order under section 18 of the Act,
- (b) a body corporate of a description designated by this Order or another Order under section 18 of the Act, which is a one tier organisation, or
- (c) a body corporate, being a one tier organisation, whose objects do not include the carrying on of activities which, by virtue of section 18(4), the society could not invest in or support it so as to enable it to carry them on.

(4) The restriction subparagraph (2) will not apply where there is no relevant holding of the society in the appropriate payments services vehicle.

### **Meaning of “relevant holding”**

5. A “relevant holding” for purposes of paragraphs 3 and 4 means:

- (a) in the case of a company limited by shares sufficient shares to result in the society having direct ownership or direct and indirect ownership (determined as specified in the definition of “subordinate organisation” in paragraph 7 below) of 2% or more of the issued ordinary share capital (as defined within the definition of “subordinate organisation” in paragraph 7 below) of the company; or
- (b) in the case of any other body corporate, 2% or more of the issued shares or corresponding membership rights in the body corporate.

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(3) 1987 c. 22.

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### Meaning of activities in the range from which a society is restricted

6.—(1) For the purposes of paragraph 4 above an activity of a body corporate is an activity in the range from which a society is restricted where it is an activity which the society could not undertake by reason of the fact that—

- (a) it has not adopted a particular adoptable power, whether because the power is not available to it or for any other reason, or
- (b) the activity would be in contravention of a restriction upon the extent of a power the society has adopted, being in the case of an appropriate payments services vehicle, either a restriction derived from the Act or any instrument under the Act or a restriction assumed by the society.

(2) Notwithstanding subparagraph (1) above, an activity of a body corporate is not an activity within the range from which a society is restricted where it is an activity which comprises the continuation, during the first fifteen months following the date on which the body corporate first became associated with the society, of any activity carried on as part of the business of that body corporate immediately before that date.

### Other definitions

7. In this Schedule, except where the context otherwise requires—

“banking services” has the meaning which it bears in Schedule 8 to the Act;

“company limited by shares” has the meaning which it bears for the purposes of the Companies Act 1985(4) or the Companies (Northern Ireland) Order 1986(5);

“facility account” has the meaning which it bears in the Building Societies (Limited Credit Facilities) Order 1987(6);

“investment”, in respect of the expressions “the subscription for or the purchase or sale of investments” and in the definition of “market maker”, has the meaning which it bears in section 1 (investment business) of the Financial Services Act 1986(7);

“market maker” means—

- (a) in relation to the United Kingdom, a market maker in securities of a particular kind,
- (b) in relation to any country or territory outside the United Kingdom, a person who holds himself out at all normal times as willing to buy and sell at a price specified by him investments of a particular kind which are traded on any exchange in that country or territory;

“market maker in securities of a particular kind” means a person who, for the purposes of subsection (4) of section 67 (depository receipts) of the Finance Act 1986(8), is so described in section 69(7) (depository receipts: supplementary) of that Act;

“subordinate organisation” means, in relation to a body corporate, another body corporate of which the first owns directly or indirectly 5% or more of the ordinary share capital, and for this purpose—

- (a) “ordinary share capital” shall have the meaning which it has in section 832 (interpretation) of the Income and Corporation Taxes Act 1988(9), and

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(4) 1985 c. 6.

(5) S.I. 1986/1032 (N.I. 6).

(6) S.I. 1987/1975, amended by S.I. 1988/1141.

(7) 1986 c. 60.

(8) 1986 c. 41.

(9) 1988 c. 1.

- (b) direct and indirect ownership shall be determined in accordance with methods the same as those set out in section 838 (subsidiaries) of that Act for determining whether a body corporate is a class of subsidiary of another.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

1. This Order designates a description of bodies corporate as suitable for investment or support by building societies under section 18 of the Building Societies Act 1986, so as to add “appropriate payment services vehicle” as a further type of designated body.

2. An appropriate payment services vehicle is a body corporate (not being one excluded by the particular restrictions for payment services vehicles) formed for the purpose of, or the objects of which include the carrying on of banking services including money transmission services. The particular restrictions for payment services vehicles, except where societies hold less than 2% of the issued shares or corresponding membership rights, are that a body corporate is not an appropriate payment services vehicle for a society where: it is a market maker; its business includes lending money, secured or unsecured on its own account, save in narrow circumstances provided for in the Order; its business requires it to be authorised for the purposes of the Banking Act 1987; its business includes activities the society itself has no power to undertake either because the society has not adopted the necessary adoptable power or because the activities would contravene a restriction on the extent of a power which the society has adopted; or it has a subordinate organisation which is not within the prescribed range, that is bodies which a society may invest in or support under section 18, but as regards bodies designated by description providing they are one tier organisations.

3. Investment is defined by section 18 of the Act as acquiring and holding shares in and forming, or taking part in forming, bodies corporate. Support is defined by that section as provision of loans, grants, guarantees, services or property to bodies corporate.