

1988 No. 22

BUILDING SOCIETIES

**The Building Societies (Designated Capital Resources)
Order 1988**

<i>Made</i> - - - -	<i>12th January 1988</i>
<i>Laid before Parliament</i>	<i>18th January 1988</i>
<i>Coming into force</i>	<i>8th February 1988</i>

The Building Societies Commission, with the consent of the Treasury and in exercise of the powers conferred on it by section 45(5) of the Building Societies Act 1986(a), hereby makes the following Order:-

Citation and commencement

1. This Order may be cited as the Building Societies (Designated Capital Resources) Order 1988 and shall come into force on 8th February 1988.

Interpretation

2. (1) In this Order-

“the Act” means the Building Societies Act 1986;

“authorised institution” means an institution which is an authorised institution for the purposes of the Banking Act 1987(b);

“creditors”, in relation to a society, includes members holding shares in the society as regards the principal of their shares and any interest due in respect of those shares;

“shares” means shares which are not deferred shares within the meaning of section 119 of the Act or Schedule 1 to the Building Societies (Authorisation) Regulations 1981(c) or Schedule 1 to the Building Societies (Authorisation) Regulations (Northern Ireland) 1982(d);

“society” means a building society;

“subordinated debt” means a sum in sterling borrowed on terms which have the effect that no repayment will be made to the lender following the commencement of the winding up of the borrower until any sums due from the borrower to other creditors (apart from any sums due in respect of other subordinated debts) have been paid to those creditors in full.

(2) Any reference in this Order to the borrower in respect of any debt shall be interpreted as meaning the person to whom the sum due was advanced, or, where some other person has succeeded to the rights and obligations of the recipient of the advance, that other person, and any reference to the lender shall, subject to paragraph (3) below, be interpreted similarly as meaning the person by whom the sum due was advanced or his successor.

(a) 1986 c.53.

(b) 1987 c.22.

(c) S.I. 1981 1488, revoked by the Building Societies Act 1986.

(d) S.R.(N.I.) 1982 No. 155, revoked by the Building Societies Act 1986.

(3) In circumstances where a debt is evidenced by a negotiable instrument and the right to enforce the debt is exercisable by a trustee for creditors rather than the holder of the instrument, the holder of the instrument and not the trustee shall be regarded as the lender in respect of the debt.

Capital resources which may be aggregated with reserves

3. Subject to articles 4 and 5 below, the principal amount outstanding of any subordinated debt due from a society shall be aggregated with the society's reserves for the purpose of the first criterion in section 45(3) of the Act (criteria of prudent management).

4. A subordinated debt shall be aggregated under article 3 above only if, under the terms of the instrument governing the debt

- (a) all payments due from the borrower are to be made in sterling; and
- (b) the debt is only repayable

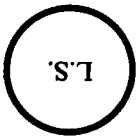
- (i) after a specified term of not less than 5 years and one day, or
- (ii) in the case of a debt for which no term is specified, after notice of not less than 5 years and one day by either party,

except (if the instrument so provides) where the Building Societies Commission, or, where an authorised institution has succeeded to the debt, the Bank of England, has agreed to earlier repayment.

5. (1) Where the repayment of any subordinated debt is due to be completed within five years, only the applicable portion of the principal amount outstanding shall be aggregated under article 3 above.

(2) For the purposes of paragraph (1) above, the applicable portion is a fraction of the amount outstanding corresponding to the number of days remaining in the term of the loan expressed as a fraction of the number of days in the last five years of the term. (3) The total amount of subordinated debt aggregated with a society's reserves under article 3 above shall not exceed 50 per cent. of the amount of the society's reserves, as shown in the society's latest balance sheet, and for this purpose "reserves" means (a) where there is no revaluation reserve shown therein, the total reserves, and (b) where a revaluation reserve is shown therein, the total reserves less that revaluation reserve.

In witness whereof the common seal of the Building Societies Commission is hereunto fixed, and is authenticated by me, a person authorised under paragraph 14 of Schedule 1 to the Building Societies Act 1986, on 29th December 1987.



D. B. Severn
Secretary to the Commission

We consent to this Order.

12th January 1988
Two of the Lords Commissioners of Her Majesty's Treasury
Tony Durant
Mark Lennox-Boyd

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides that building societies can count as part of their capital subordinated debt which meets certain conditions specified in the Order.

The first criterion of prudent management to be satisfied by any building society, set out in section 45 of the Building Societies Act 1986, requires maintenance of adequate reserves and other designated capital resources. Section 45(5) provides that the Commission, with the consent of the Treasury, may by Order specify descriptions of capital resources of building societies. The Commission may specify the extent to which capital resources may be aggregated with reserves and may attach conditions.

Debt is treated under this Order as subordinated where the creditor's right to repayment in the event of a winding up is subordinated to the rights of other creditors, including the shareholders in the society as respects the principal of their shares and interest due on them.

The other conditions which the debt must meet are that the debt has an initial maturity of at least five years and one day (or is repayable on notice of at least that period) and that it must be denominated in sterling.

The limits on the extent to which such debt can be counted are:

- (i) that the amount counted must not exceed 50 per cent of a society's reserves;
and
- (ii) from the time when the residual maturity falls to five years, the amount to be counted is progressively reduced to zero over that five years.