

1989 No. 207

BUILDING SOCIETIES

The Building Societies (Deferred Shares) Order 1989

<i>Made</i> - - - -	<i>14th February 1989</i>
<i>Laid before Parliament</i>	<i>20th February 1989</i>
<i>Coming into force</i>	<i>1st April 1989</i>

The Building Societies Commission, with the consent of the Treasury and in exercise of the powers conferred on it by section 119(1) 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 (Deferred Shares) Order 1989 and shall come into force on 1st April 1989.

Interpretation

2.—(1) In this Order—

“the Act” means the Building Societies Act 1986;

“approved”, in relation to a resolution of the directors of the society means approved by the Commission prior to the passing thereof;

“dividend” means any distribution in respect of shares in the society other than interest or return of capital;

“society” in relation to deferred shares means a building society which proposes to issue or, as the case may be, has issued shares of a class which complies with article 3 below;

“the specified shares” means shares of a class which complies with article 3 below and “other shares” means shares issued by the society of a class which does not comply with article 3 below.

“subordinated debt” has the meaning assigned to that expression in paragraph 4 of Part III of the Schedule to the Building Societies (Supplementary Capital) Order 1988(b).

(2) For the purposes of this Order—

(a) a return on a share means the interest, dividend or combination of interest and dividend in respect of that share,

(b) the rate of return in relation to a share, means the percentage of the principal amount of that share represented by the return on it; and

(c) the return on a share in respect of a period shall be taken to accrue from day to day during that period.

Deferred Shares

3.—(1) Shares issued fully paid by a society upon terms which either—

(a) have the effect of the key terms, or

(a) 1986 c.53.

(b) S.I. 1988/777.

- (b) have the effect of the key terms subject to an exception which does not extend beyond the permitted exception,

and are shares which are issued to persons each of whom has given notice to the board of directors of the society in writing that he is aware of the terms upon which those shares are to be issued and is prepared to subscribe for shares to such an amount as is specified in such notice upon those terms shall be shares of a class defined as deferred shares for the purposes of section 119(1) of the Act.

(2) In this article—

- (a) “the key terms” means the terms specified in paragraph 1 of the Schedule hereto, and
(b) “the permitted exception” means the term specified in paragraph 2 of the Schedule hereto.

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 10th February 1989.



P. H. Gevers
Secretary to the Commission

We consent to this Order.

David Lightbown
Stephen Dorrell
Two of the Lords Commissioners
of Her Majesty's Treasury

14th February 1989

THE KEY TERMS AND THE PERMITTED EXCEPTION

1. The key terms are terms which have effect so as—

- (a) to prohibit the payment or crediting of a return on the specified shares for any financial year until all returns on other shares of any class in respect of that financial year or any previous financial year in accordance with the terms applying to that class, have been duly paid or credited;
- (b) to prohibit the payment or crediting of a return on the specified shares in respect of any period save to the extent that the rate of return on those shares for that period does not exceed the rate of return accruing during that period on other shares which for the time being have the lowest rate of return of all classes of shares for the time being in issue;
- (c) to prohibit the payment or crediting of a return on the specified shares for any financial year if the board of directors of the society are of opinion that on or after the payment or crediting of that return, or, as the case may be, payment or crediting in full of that return there would be a failure by the society to satisfy the first criterion of prudent management (maintenance of adequate reserves and other designated capital resources) set out in section 45(3) of the Act and in such case passes a resolution cancelling such return or as the case may require reducing it to such extent as may be necessary to secure that there will be no such failure;
- (d) to require, where shares in the society fall to be used in order to contribute to the losses of the society, the specified shares and all returns on them to be so used in full before recourse is had to any other shares or returns on those other shares;
- (e) to prohibit the repayment of any principal to the shareholders in respect of the specified shares except on the winding up or dissolution of the society in circumstances where all the principal of all other shares and the principal of all subordinated debt due from the society is repaid in full together with all returns credited or accrued thereon;
- (f) to prevent the specified shares from participating in profits of the society on the winding up or dissolution of the society save where there is no class of other shares the participation of which is lower than the participation of the specified shares proportionately to the value of these shares and the specified shares respectively; and
- (g) to prohibit the transfer of specified shares save—
 - (i) a transfer by operation of law; or
 - (ii) a transfer in accordance with a resolution of the board of directors of the society to their transfer to a person who has given notice to the board in writing that he is aware of the terms upon which those shares are held and is prepared to take a transfer of shares of such an amount as is specified in the notice upon those terms.

2. The permitted exception is a term which, notwithstanding the foregoing restrictions on returns and repayments of principal, permits the directors of the society, if they are satisfied that the capital of the society is adequate for its present and foreseeable needs without counting any capital representing the specified shares, to pass an approved resolution—

- (a) authorising payment, in excess of the return permitted by paragraph 1 above, of a special rate of interest or a special dividend on the specified shares at such rate or amount being such a rate or amount as may be reasonable in the circumstances and for such period and upon such conditions as may be specified therein, or
- (b) authorising the repayment in full or in part of principal to holders of the specified shares.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under section 119(1) of the Building Societies Act 1986 which provides that "deferred shares" means shares of a class defined by order. Definition of such a class has two primary effects. Before a society is authorised under section 9 of the Act to raise funds and borrow money it may nevertheless accept payments by way of subscription for deferred shares up to limits specified in section 9. By virtue of section 27(8) of the Act deferred shares are not to count as protected investments for the purposes of the investor protection fund set up under Part IV of the Act.

In addition to these effects the definition has a relation to section 45 which sets out criteria of prudent management for building societies the first of which is maintenance of adequate reserves and other designated capital resources. A separate order made under that section will designate deferred shares as capital resources which may be aggregated with reserves for the purposes of this criterion up to certain limits and to that extent the deferred shares will also be "qualifying deferred shares" for the purposes of granting an authorisation under section 9.

This Order defines a class of shares to be deferred shares within the meaning of section 119(1) if they are issued fully paid upon terms to the effect of the key terms set out in paragraph 1 of the Schedule to the Order, or to that effect subject to the permitted exception set out in paragraph 2 of the Schedule.

The key terms are to the effect that the deferred shares shall have no greater rate of return than the lowest rate of return on any other class of shares issued by the same society and rank behind all other shares for payment of the return and payment of capital is only permitted, apart from the permitted exception mentioned below, on a dissolution of the society, ranking after all other classes of shares and creditors in respect of debts subordinated to other shareholders.

The return on the deferred shares may be cancelled if the board of directors of the society are not satisfied that the criterion of prudent management mentioned above is satisfied and that a return can be paid or credited without prejudicing that criterion and pass a resolution for cancellation or reduction of the return.

The permitted exception allows the board of directors of the society with the prior approval of the Building Societies Commission to pay a special rate of interest or a special dividend on the specified shares if they are satisfied that the capital of the society is adequate for its present and foreseeable needs without counting the capital representing the deferred shares.

The shares can only be issued as deferred shares if the subscribers for them give written notice to the directors of the society stating that they are aware of the terms and accept them (article 3(1)). Similarly the shares cannot be transferred unless the transferee gives a written notice that he knows of the terms and accepts them (paragraph 1(g) of the Schedule).

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