
STATUTORY INSTRUMENTS

1990 No. 1434

BUILDING SOCIETIES

**The Building Societies (Designation
of Qualifying Bodies) Order 1990**

<i>Made</i>	- - - -	<i>2nd July 1990</i>
<i>Laid before Parliament</i>		<i>17th July 1990</i>
<i>Coming into force</i>	- -	<i>1st September 1990</i>

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⁽¹⁾, 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 1990 and shall come into force on 1st September 1990.

Interpretation

2. In this Order, except where the context otherwise requires—
- “the Act” means the Building Societies Act 1986;
 - “appropriate vehicle” means a body corporate individually specified or of a description specified in column 1 of Part I of the Schedule to this Order;
 - “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.

Designation of bodies corporate

3.—(1) Each appropriate vehicle individually specified or of a description specified in an 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—

(1) 1986 c. 53.

- (a) the corresponding item in column 2 specifies, where that appropriate vehicle is individually so specified, the number under which it is registered under the Companies Act 1985⁽²⁾ or the state in which it is registered or incorporated together with (if any) its number of registration or incorporation in that state or, 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, subject to article 4 below, whether that appropriate vehicle is designated—
 - (i) as suitable for investment and support or support, or
 - (ii) as suitable for investment and support (and accordingly not for support in the absence of investment),
 - (c) the corresponding item (if any) 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 (if any) in column 5 specifies the provision (if any) for different descriptions of societies in relation to which, the limits (if any) on the extent to which, and the condition (if any) 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.

Transitional provision

4. Nothing in this Order shall take away the power of a society to continue to support, in consequence of a resolution under section 18(9) of the Act (linking by resolution) in force at the time when this Order comes into force, any body corporate designated by any of the Orders revoked in article 5 below.

Revocation and savings

5.—(1) The Building Societies (Designation of Qualifying Bodies) Order 1988⁽³⁾, the Building Societies (Designation of Qualifying Bodies) (Amendment) Order 1988⁽⁴⁾, The Building Societies (Designation of Qualifying Bodies) (Amendment) Order 1989⁽⁵⁾, The Building Societies (Designation of Qualifying Bodies) (Amendment) (No. 2) Order 1989⁽⁶⁾, The Building Societies (Designation of Qualifying Bodies) (Amendment) Order 1990⁽⁷⁾, The Building Societies (Designation of Qualifying Bodies) (Amendment) (No. 2) Order 1990⁽⁸⁾, The Building Societies (Designation of Qualifying Bodies) (Amendment) (No. 3) Order 1990⁽⁹⁾ and the Building Societies (Designation of Qualifying Bodies) (Amendment) (No. 4) Order 1990⁽¹⁰⁾ are hereby revoked.

(2) Anything begun under or for the purposes of any Order revoked by this Order may be continued under, or as the case may be, for the purpose of the corresponding provision of this Order.

(2) 1985 c. 6.
 (3) S.I.1988/1196.
 (4) S.I. 1988/1393.
 (5) S.I. 1989/215.
 (6) S.I. 1989/1816.
 (7) S.I. 1990/351.
 (8) S.I. 1990/352.
 (9) S.I. 1990/514.
 (10) S.I. 1990/1089.

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 28th June 1990.

L.S.

Norman Digance
Secretary to the Commission

We consent to this Order

David Lightbown
Thomas Sackville
Two of the Lords Commissioners of Her
Majesty's Treasury

2nd July 1990

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SCHEDULE

Articles 2 and 3

PART 1

BODIES CORPORATE, AND DESCRIPTIONS
OF BODIES CORPORATE, DESIGNATED

Item	1 <i>Specified name or description</i>	2 <i>Specific registration number or definition</i>	3 <i>Specified relevant power</i>	4 <i>Specified purposes (if any)</i>	5 <i>Specified limits and conditions (if any)</i>
1.	Electronic Funds Transfer Limited	1762109	Investment and support, or support.	—	—
2.	Funds Transfer Sharing Limited	1850222	Investment and support, or support.	—	—
3.	LINK Interchange Network Limited	2012106	Investment and support, or support.	—	—
4.	APACS (Administration) Limited	1935025	Investment and support, or support.	Facilitating the provision of banking services by the society or any associated body of the society.	—
5.	BACS Ltd	1023742	Investment and support, or support.	Facilitating the provision of banking services by the society or any associated body of the society.	—
6.	CHAPS and Town Clearing Company Limited	1962902	Investment and support, or support.	Facilitating the provision of banking services by the society or any associated	—

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				body of the society.	
6A.	S.W.I.F.T. (U.K.) Limited	1249842	Investment and support, or support.	Facilitating the provision of banking services by the society or any associated body of the society.	
6B.	Switch Card Services Limited	2182853	Investment and support, or support.	(F)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.	The standard asset provision.
6C.	Eurocard International S.A.	Registered in Belgium, RCB number 333262	Investment and support, or support.	(F)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.	The standard asset provision.

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6D.	MasterCard International Incorporated	Registered in the State of Delaware, United States of America	Investment and support, or support.	(1) 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.	The standard asset provision.
6E.	Society for Worldwide Interbank Financial Telecommunications SC (also known as “S.W.I.F.T SC”)	Registered in Belgium, Formule I/B 51367	Investment and support, or support.	Facilitating the provision of banking services by the society or any associated body of the society.	—
6F.	County Court Users Association	A company having as its principal purpose the representation of the interests of all persons who regularly issue proceedings out of the County Courts in England and Wales	Investment and support, or support.	Facilitating the representation of the society’s interest, as a person regularly issuing proceedings out of the County Courts in England and Wales, in improving the service to the society of such courts including the making of representations	—

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				as to court procedures and changes in the law in relation thereto which affect the society.	
7.	Cheque and Credit Clearing Company Limited	1962903	Investment and support, or support.	Facilitating the provision of banking services by the society or any associated body of the society.	—
8.	EftPos UK Limited	1952127	Investment and support, or support.	(F)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.	The standard asset provision, except in the case of the purpose specified in paragraph (1) in column 4 of this item.
9.	The Joint Credit Card Company Limited	1001425	Investment and support, or support.	(F)Facilitating the provision of banking services by the society or any associated body of the society. (2)Enabling or facilitating the operation of facility	The standard asset provision.

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				accounts by the society or any associated body of the society.	
10.	Visa International Service Association	FC9816	Investment and support, or support.	(1) 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.	The standard asset provision.
10A.	Girobank plc	1950000	Investment and support, or support.	The specified purposes in relation to Girobank plc.	(1) The standard asset provision. (2) The condition for investment in Girobank plc. (a) as if Girobank plc were an appropriate mortgage company and, (b) as if paragraphs 6A(2) (b) and (c) of

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Item	1	2	3	4	5
	<i>Specified name or description</i>	<i>Specific registration number or definition</i>	<i>Specified relevant power</i>	<i>Specified purposes (if any)</i>	<i>Specified limits and conditions (if any)</i>

Part II of the Schedule did not apply—

- (i) to the making of any loan which a building society which holds shares in Girobank plc at the time when the loan is made would have power to make otherwise than as an advance secured on land; or,
- (ii) to the

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					making of any loan which, by virtue of paragraph 8(2) (b) of Part II of the Schedule, would not constitute an activity of Girobank plc falling within the range of activities from which a society is restricted.
11.	European lending company	A company with the objects of carrying on in a member state other than the United Kingdom business	Investment and support.	Enabling the company to carry on the businesses referred to in (and not excluded by) column 2 of this item.	(1) The standard asset provision. (2) The group interest provision.

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		which consist wholly or mainly in lending money on the security of land but do not (where that is not the whole business) include lending on land in the United Kingdom.			
12.	Housing Association	A body corporate within the meaning of “housing association” in section 1 of the Housing Associations Act 1985 ⁽¹¹⁾ or article 114 of the Housing (Northern Ireland) Order 1981 ⁽¹²⁾ .	(1) Where the housing association is a one tier organisation, investment and support.	—	(1) The standard asset provision. (2) The group interest provision.
13.	Housing trust	A body corporate within the meaning of “housing trust” in section 2 of the Housing Associations Act 1985 or article 114 of the Housing (Northern	(1) Where the housing trust is a one tier organisation, investment and support.	—	(1) The standard asset provision. (2) The group interest provision.

⁽¹¹⁾ 1985 c. 69.

⁽¹²⁾ S.I. 1981/156 (N.I. 3).

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		Ireland) Order 1981.			
14.	Pension vehicle	A type A body corporate formed for the purpose of, or the objects of which include, the carrying on of the business of acting as trustee in respect of pension schemes or descriptions of them.	(1) Where the pension vehicle is a one tier organisation, investment and support or support. (2) otherwise, investment and support.	Enabling the pension vehicle to act as trustee in respect of a pension scheme, other than one which requires the investment of any of the funds within the scheme in shares in or deposits with a society of which the pension vehicle which acts as trustee in respect of the scheme is a subsidiary.	The group interest provision.
15.	Appropriate financial service vehicle	A type a body corporate (not being one excluded by the particular restrictions for financial service vehicles) formed for the purpose of, or the objects of which include, the carrying on of investment business within the meaning of section 1 (investments and	(1) Where the appropriate financial services vehicle is a one tier organisation, investment and support or support. (2) otherwise, investment and support.	(1) Enabling the financial service vehicle to carry on relevant investment business. (2) Facilitating the provision of investment services by the society or any associated body of the society.	(1) The standard asset provision. (2) The group interest provision.

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16.	Appropriate life insurance vehicle	investment business) of the Financial Services Act 1986(13). A type a body corporate (not being one excluded, by the particular restrictions for life insurance vehicles) formed for the purpose of, or the objects of which include, the carrying on of insurance business of a class specified in Schedule 1 (long term business) to the Insurance Companies Act 1982(14).	(1) Where the appropriate life insurance vehicle is a one tier organisation, investment and support or support. (2) otherwise, investment and support.	(1) Enabling the life insurance vehicle to carry on the business referred to in column 2 of this item (notwithstanding that the lending of money to members of the public on the security of land by loans corresponding to advances secured on land may be carried on in connection with that business). (2) Facilitating the provision of insurance services by the society or any associated body of the society.	(1) The standard asset provision. (2) The group interest provision.
17.	Appropriate general insurance company.	A company (not being one excluded by the particular restrictions for general	Investment and support.	(1) Enabling the general insurance company to carry on the business	(1) The standard asset provision. (2) The investment and

(13) 1986 c. 60; Schedule 1 was amended by S.I. 1988/318, 496 and 803.

(14) 1982 c. 50.

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		insurance companies) the objects of which include the carrying on of insurance business of a class or classes specified in Part I of Schedule 2 (general business) to the Insurance Companies Act 1982(15).		referred to support limit in column 2 for general of this item insurance (notwithstanding companies. that the lending of money to members of the public on the security of land by loans corresponding to advances secured on land may be carried on in connection with that business). (E)ncouraging the provision of insurance services by the society or any associated body of the society.	
18.	Appropriate estate agency vehicle	A type B body corporate (not being one excluded by the particular restrictions for estate agency vehicles) formed for the purpose of, or the objects of which include, the carrying on of estate agency work.	Investment and support.	(1)Enabling the vehicle to carry on estate agency work together with other activities so far as those other activities do not extend to activities within the scope of the particular restrictions for estate agency vehicles.	(1) The group interest provision. (2) The business percentage certification condition for estate agency vehicles.

(15) 1982 c. 50; Part I of Schedule 2 was amended by S.I. 1987/2130.

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				(Facilitating the provision of land services by the society or any associated body of the society.	
19.	Appropriate mortgage company	A company limited by shares (not being one excluded by the particular restrictions for appropriate mortgage companies) which is a one tier organisation formed for the purpose of, or the objects of which include, the carrying on of one or both of the following activities— (a) acquiring, holding and disposing of debts which are secured on land in the United Kingdom or in any country or territory for the	Investment and support.	Enabling the company to carry on the activities referred to in (and not excluded by) column 2 of this item (notwithstanding that the lending of money to members of the public on the security of land by loans corresponding to advances secured on land may be carried out in connection those activities).	The mortgage business certification condition for appropriate mortgage companies.

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20.	Appropriate territorial corporation	<p>time being designated by order under section 14 (power to make advances secured on land overseas) of the Act; and</p> <p>(b) lending money on the security of such land.</p> <p>A body corporate (not being one excluded by the particular restrictions for appropriate territorial corporations) incorporated in the specified territory which is a one tier organisation formed for the purpose of, or the objects of which include, the carrying on of one or more of the following activities—</p> <p>(i) lending money on the</p>	Investment and support.	Enabling the corporation to carry on the activities referred to in (and not excluded by) column 2 of this item (notwithstanding that the lending of money to members of the public on the security of land by loans corresponding to advances secured on land may be carried on in connection with those activities.	<p>(1) The standard asset provision.</p> <p>(2) The mortgage business certification condition for appropriate mortgage companies modified so as to—</p> <p>(a) omit the requirement in subparagraph (2)</p> <p>(c) (i) of that condition;</p> <p>(b) have effect</p>

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		security of land in the specified territory; (ii) acquiring, holding and disposing of debts which are secured on such land; (iii) carrying on in the specified territory or elsewhere (but not in the United Kingdom) a business which if it were carried on in the United Kingdom would constitute a deposit taking business for the purposes of the Banking Act 1987(16); and do not (where the			as if an appropriate territorial corporation were an appropriate mortgage company and as if, where a society holds corresponding membership rights as defined by section 18 of the act in an appropriate territorial corporation, it held shares therein; (c) have effect as if any loan on the security of land were

(16) 1987 c. 22.

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		foregoing activities are not the whole business) include lending on land, or acquiring or holding debts secured on land, elsewhere than in the specified territory, or carrying on in the United Kingdom a business which is a deposit taking business for the purposes of the Banking Act 1987.			a mortgage.

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 type A and type B body corporate

2. In this Schedule—
 - (a) “type A body corporate” means a body corporate which is—
 - (i) a company or an industrial and provident society, or
 - (ii) a body corporate formed in a member state other than the United Kingdom, and
 - (b) “type B body corporate” means a body corporate which is—

- (i) a company or an industrial and provident society,
- (ii) a body corporate formed in a member state other than the United Kingdom, or
- (iii) a body corporate formed in a relevant British overseas territory (within the meaning of section 14 (power to make advances secured on land overseas) of the Act).

Meaning of one tier organisation

3. 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

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

- (a) where a society holds shares or corresponding membership rights 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 those shares or corresponding membership rights as soon as it is conveniently practicable to do so without undue loss, and
- (b) where a society has 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) below (or would do if it were a vehicle subject to the provisions of subparagraph 7(2) below).

(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 10 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

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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.

Meaning of investment and support limit for general insurance companies

5. In this Schedule “the investment and support limit for general insurance companies” means—
- (a) that the power to invest in an appropriate general insurance company may be exercised only to the extent that the aggregate shareholding of the society and of its associated bodies and subordinate organisations in that company will not thereby equal or exceed 15 per cent of the equity share capital of that company or otherwise cause the society, or the society and its associated bodies and subordinate organisations in combination, to be a controller of that company for the purposes of the Insurance Companies Act 1982⁽¹⁷⁾, and
 - (b) that the power to support an appropriate general insurance company does not include the power to guarantee the discharge of any of its liabilities.

Meaning of business percentage certification condition for estate agency vehicles

6.—(1) In this Schedule “the business percentage certification condition for estate agency vehicles” means a condition to the effect that where a society holds shares or corresponding membership rights in an appropriate estate agency vehicle—

- (a) the society shall for each financial year of the vehicle ending more than 18 months after the acquisition of such shares or rights seek to obtain within four months after the end of that year a certificate signed by a director of the vehicle (and adequately supported by a report of its auditors) stating that at least 40 per cent of the gross income of the vehicle (or, where the vehicle has subordinate organisations, of the consolidated gross income of the vehicle and those subordinate organisations) for that year was derived from the carrying on of estate agency work carried on in countries in which the society, at any time in that year, carried on the business of making advances secured on land, and

(17) 1982 c. 50.

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- (b) if no such certificate is obtained by the society for two successive financial years of the estate agency vehicle, the society shall dispose of its shares or corresponding membership rights in that vehicle as soon as it is conveniently practicable to do so without undue loss.
- (2) For the purposes of subparagraph (1) above a certificate is adequately supported by a report of the auditors of an estate agency vehicle where the auditors have reported at least to the effect that—
 - (a) they have examined the certificate,
 - (b) they have inquired into the affairs of the vehicle, 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
 - (c) they consider that there is no significant likelihood that the certificate is untrue in any material particular.

Meaning of mortgage business certification condition for appropriate mortgage companies

6A.—(1) In this Schedule “the mortgage business certification condition for appropriate mortgage companies” means a condition to the effect that where a society holds shares in an appropriate mortgage company—

- (a) the society shall for each financial year of the company ending more than 18 months after the acquisition of such shares seek to obtain within four months after the end of that year a certificate signed by a director of the company stating that throughout that year the company complied with the determined requirements, and
- (b) if no such certificate is so obtained by the society for two successive financial years of the appropriate mortgage company, the society shall dispose of its shares in that company as soon as it is conveniently practicable to do so without undue loss.
- (2) In subparagraph (1) above “the determined requirements” means the following requirements—
 - (a) a requirement that the company shall maintain or make arrangements for the maintenance of a system for ensuring the safe custody of all documents relating to property mortgaged to the company;
 - (b) a requirement that the arrangements made for assessing the adequacy of the security for any loan to be secured on land which is to be made by the company shall be such as may reasonably be expected to ensure that—
 - (i) an assessment will be made on the occasion of each loan;
 - (ii) each assessment will be made by a person holding office in or employed by the company who is competent to make the assessment and is not a person disqualified from assessment;
 - (iii) each person making the assessment will have furnished to him a written report on the value of the land and any factors likely materially to affect its value made by a person who is competent to value the land in question and who is not a person disqualified from valuation; and
 - (iv) no authorisation of any loan will be made by a person disqualified from assessment; and
 - (c) a requirement that the company shall make arrangements such as may reasonably be expected to ensure that—
 - (i) it will not make any loan secured on land by a mortgage unless the rights and duties of the company as mortgage under the mortgage may be transferred to any other person without the consent of the mortgagor; and

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- (ii) it will not lend money on the security of land in circumstances where, if the borrower were a member of the society, the society itself would be unable to make the loan.
- (3) For the purposes of subparagraph (2)(b) above—
- (a) in relation to any land which is to secure a loan where the loan is to be made following a disposition of the land, the following persons are persons disqualified from assessment, that is to say—
 - (i) any person, other than the company making the loan, having a financial interest in the disposition of the land and any director, other officer or employee of his or of an associated employer; and
 - (ii) any person receiving a commission for introducing the parties to the transaction involving the disposition and any director, other officer or employee of his; and
 - (b) in relation to any land which is to secure a loan, the following persons are persons disqualified from valuation, that is to say—
 - (i) the directors and any other officer or employee of the company who makes assessments of the adequacy of securities for loans by the company or who authorises the making of such loans;
 - (ii) where the company has made, or undertaken to make, to any person a payment for introducing to it an applicant for the loan, that person;
 - (iii) where the loan is to be made following a disposition of the land, any person having a financial interest in the disposition of the land and any director, other officer or employee of his or of an associated employer; and
 - (iv) where the loan is to be made following a disposition of the land, any person receiving a commission for introducing the parties to the transaction involving the disposition and any director, other officer or employee of his.
- (4) For the purposes of subparagraph (3) above—
- (a) any two employers are associated if one is a body corporate of which the other (directly or indirectly) has control or if both are bodies corporate of which a third person directly or indirectly has control; and the expression “associated employer” shall be construed accordingly;
 - (b) “commission” includes any gift, bonus or benefit; and
 - (c) a person shall be taken to have a financial interest in the disposition of any land if, but only if, he would, on a disposition of that land, be entitled (whether directly or indirectly, and whether in possession or not) to the whole or part of the proceeds of the disposition.

Meaning of the specified purposes in relation to Girobank plc

6B. In this Schedule “the specified purposes in relation to Girobank plc” means any of or all the following purposes—

(1) Facilitating the provision of banking services by the society, by Girobank plc or any other associated body of the society including in the case of Girobank plc the lending of money to the public on the security of land by loans corresponding to advances secured on land and the acceptance of deposits of money in the course of deposit-taking business.

(2) Enabling Girobank plc to perform its obligations and to discharge its functions under any agreement entered into between the Secretary of State, the Post Office and Girobank plc in relation to the Universal Postal Union established on 10th July 1964 or any agreement or instrument made by and pursuant to that Union.

(3) Enabling Girobank plc to acquire and hold liquid assets in accordance with the Building Societies (Liquid Asset) Regulations 1987(18) but with the word “deposit” in those regulations having the meaning in section 5 of the Banking Act 1987(19) which it would have for the purposes of that Act were not section 5(3)(a) and (c) (which excludes sums paid by banks and lending businesses) included therein.

Meaning of the condition for investment in Girobank plc

6C.—(1) In this Schedule “the condition for investment in Girobank plc” means a condition to the effect that a society shall not acquire shares in Girobank plc where the society is aware, and shall dispose of such shares in Girobank plc as it holds as soon as it is conveniently practicable to do so without undue loss where the society becomes aware, that Girobank plc:

- (a) has a subordinate organisation which is not within the prescribed range,
- (b) is a market maker, or
- (c) is conducting business which includes activities in the range from which the society is restricted.

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

- (a) a body corporate individually specified in column 1 of Part I of this Schedule,
- (b) a body corporate of a description specified in column 1 of Part I of this Schedule which is a one tier organisation, or
- (c) The Office of the Banking Ombudsman.

Specification of particular restrictions

7.—(1) In this Schedule “the particular restrictions for financial service vehicles” means the provisions set out in subparagraph (2) below, “the particular restrictions for life insurance vehicles” means the provisions set out in subparagraph (3) below, “the particular restrictions for general insurance companies” means the provisions set out in subparagraph (4) below, “the particular restrictions for estate agency vehicles” means the provisions set out in subparagraph (5) below, “the particular restrictions for appropriate mortgage companies” means the provisions set out in subparagraph (6) below, and “the particular restrictions for appropriate territorial corporations” means the provisions set out in subparagraph (7) below.

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

- (a) the body is not an exempted person under the Financial Services Act 1986(20) and is neither an authorised person under that Act nor a candidate for authorisation under that Act,
- (b) it is a market maker,
- (c) its business includes lending money, secured or unsecured, on its own account, save insofar 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,
- (d) it is an authorised institution, or its business requires it to be authorised, for the purposes of the Banking Act 1987(21), or
- (e) its business includes activities in the range from which the society is restricted.

(18) S.I. 1987/1499 amended by S.I. 1989/1701.

(19) 1987 c. 22.

(20) 1986 c. 60.

(21) 1987 c. 22

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- (3) A body corporate is not an appropriate life insurance vehicle for a society where—
- (a) the body is neither authorised under section 3 (authorisation by Secretary of State) or by section 4 (existing insurance companies) of the Insurance Companies Act 1982⁽²²⁾ nor a candidate for authorisation under section 3 of that Act to carry on insurance business of any class specified in Schedule 1 to that Act,
 - (b) it is a market maker, or
 - (c) the body or any subordinate organisation of the body comes within the description of an appropriate general insurance company as specified in this Schedule.
- (4) A company is not an appropriate general insurance company for a society where—
- (a) the company is not authorised under section 3 or by section 4 of the Insurance Companies Act 1982⁽²³⁾ to carry on insurance business including business of a class or classes specified in Part I of Schedule 2 to the Act, or
 - (b) the company is not a company limited by shares.
- (5) A body corporate is not an appropriate estate agency vehicle for a society where—
- (a) the business of the body corporate includes the lending of money, secured or unsecured, on its own account,
 - (b) it is a market maker,
 - (c) it is an authorised institution, or its business requires it to be authorised, for the purposes of the Banking Act 1987⁽²⁴⁾, or
 - (d) its business includes activities in the range from which the society is restricted.
- (6) A company is not an appropriate mortgage company for a society where—
- (a) it is a market maker,
 - (b) it is an authorised institution, or its business requires it to be authorised, for the purposes of the Banking Act 1987,
 - (c) its business includes activities in the range from which the society is restricted, or
 - (d) any of its employees performs any service for a subsidiary or other associated body of the society being a subsidiary or other associated body which carries on estate agency work.
- (7) A body corporate is not an appropriate territorial corporation for a society where—
- (a) it is a market maker,
 - (b) its business includes the carrying on of estate agency work,
 - (c) its business includes activities in the range from which the society is restricted,
 - (d) any of its employees performs any service for a subsidiary or other associated body of the society being a subsidiary or other associated body which carries on estate agency work, or
 - (e) its business includes lending money secured upon land in the specified territory other than by
 - (i) a form of security which is specified as the form of security which may be taken for advances under section 14 of the Act (power to make advances secured on land overseas) by an Order designating the specified territory for the purposes of that section, or
 - (ii) otherwise than in the circumstances specified by that Order.

⁽²²⁾ 1982 c. 50.

⁽²³⁾ 1982 c. 50; Part I of Schedule 2 was amended by S.I. 1987/2130.

⁽²⁴⁾ 1987 c. 22.

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

8.—(1) For the purposes of paragraphs 6C(1)(c) and 7 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—
 - (i) in the case of an appropriate financial service vehicle, an appropriate mortgage company, an appropriate territorial corporation, or Girobank plc, either a restriction derived from the Act or any instrument under the Act or a restriction assumed by the society; or
 - (ii) in the case of an appropriate estate agency vehicle, either a restriction specified in Part III of Schedule 8 to the Act and relating to a power to provide a financial service within the meaning of section 34(11) of 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—

- (a) except in the case of Girobank plc, 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; or
- (b) in the case of Girobank plc—
 - (i) holding shares in The Office of the Banking Ombudsman,
 - (ii) holding, within the period of twelve months beginning with the date of association, any debt arising under an agreement corresponding to a facility agreement made between an individual and Girobank plc, before the date of association, where the limit corresponding to the facility limit under that agreement exceeds the limit for the time being specified under section 16 of the Act, provided that no increase is made in the limit allowed under that agreement after that date,
 - (iii) holding any debt owed by a local authority in Great Britain arising from a loan (other than a loan corresponding to an advance secured on land) made before the date of association,
 - (iv) holding, within the period of twelve months beginning with the date of association, any debt arising from a loan (other than a loan corresponding to an advance secured on land or a loan made under an agreement corresponding to a facility agreement) made to a person other than an individual before the date of association,
 - (v) holding, within the period of twelve months beginning with the date of association, any debt arising under an agreement which was entered into before the date of association and which relates to the acceptance of bills of exchange or to the issue of letters of credit, and performing, within the period of twelve months beginning with the date of association, any obligation arising under such an agreement,
 - (vi) performing, within the period of six months beginning with the date of association, any contract of a prescribed description within the meaning of section 23 of the Act which was entered into before the date of association for a purpose other than that specified in that section, or

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(vii) investing and supporting or supporting, during the first fifteen months following the date of association Society for Worldwide Interbank Financial Telecommunication S.C., Eurocard International S.A. and MasterCard International Incorporated.

(3) In this paragraph “the date of association”, in relation to a society, means the date on which Girobank plc first became associated with that society.

Meaning of candidate

9. For the purposes of this Schedule—

- (a) a body corporate is “a candidate for authorisation” in respect of the carrying on of any business if it has been formed with a view to being authorised in that respect and is applying, or is taking steps to apply, for authorisation in that respect, and
- (b) a scheme is “a candidate for approval” under or for the purposes of any enactment if it has been prepared with a view to obtaining approval under or, as the case may be, for the purposes of that enactment and steps are being taken towards obtaining that approval.

Other definitions

10. 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⁽²⁵⁾ or the Companies (Northern Ireland) Order 1986⁽²⁶⁾;

“equity share capital” has the meaning which it bears for the purposes of the Companies Act 1985 or the Companies (Northern Ireland) Order 1986;

“estate agency work” has the meaning which it bears in the Estate Agents Act 1979⁽²⁷⁾

“facility account”, “facility agreement” and “facility limit” have the meanings which they respectively bear in the Building Societies (Limited Credit Facilities) Order (1987⁽²⁸⁾);

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

“investment”, in respect of the expressions “the subscription for or the purchase or sale of investments”, “investment business” and “relevant investment business”, and in the definition of the last expression and of “market maker”, has the meaning which it bears in section 1 (investment business) of the Financial Services Act 1986⁽²⁹⁾;

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

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

“local authority in Great Britain” has the meaning which it bears in Schedule 8 to the Act;

“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;

⁽²⁵⁾ 1985 c. 6.

⁽²⁶⁾ S.I. 1986/1032 (N.I.6).

⁽²⁷⁾ 1979 c. 38; section 1 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), Schedule 1, Part I, paragraph 40.

⁽²⁸⁾ S.I. 1987/1975, amended by S.I. 1988/1141.

⁽²⁹⁾ 1986 c. 60.

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“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⁽³⁰⁾, is so described in section 68(7) (depository receipts: supplementary) of that Act;

“pension scheme” means—

- (a) a retirement benefits scheme within the meaning of, and which is approved or a candidate for approval by the Commissioners of Inland Revenue for the purposes of, Chapter I of Part XIV of the Income and Corporation Taxes Act 1988⁽³¹⁾ (retirement benefit schemes), or
- (b) a personal pension scheme within the meaning of, and which is approved or a candidate for approval by the Commissioners of Inland Revenue under, Chapter IV (personal pension schemes) of that Part of that Act;

“relevant investment business” means investment business relating to investments falling within—

- (a) any paragraph other than paragraph 10 (long term insurance contracts) or 11 (rights and interests in investments) of Part I of Schedule 1 to the Financial Services Act 1986, or
- (b) paragraph 11 of that Part of that Schedule so far as it is not related to paragraph 10 of that Part of that Schedule; and

“the specified territory” means in relation to an appropriate territorial corporation that one of the British overseas territories, designated by the Building Societies (Isle of Man) Order 1987⁽³²⁾ the Building Societies (Jersey) Order 1987⁽³³⁾ or the Building Societies (Guernsey and Alderney) Order 1988⁽³⁴⁾ in which it is incorporated;

“subordinate organisation” means, in relation to a body corporate, another body corporate of which the first owns directly or indirectly 5 per cent 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, and
- (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.

EXPLANATORY NOTE

(This note is not part of the Order)

The Order consolidates the Orders revoked by article 5 and makes provision as to the bodies corporate which a building society may invest in or support under section 18 of the Building Societies Act 1986.

⁽³⁰⁾ 1986 c. 41.

⁽³¹⁾ 1988 c. 1.

⁽³²⁾ S.I. 1987/1498.

⁽³³⁾ S.I. 1987/1872.

⁽³⁴⁾ S.I. 1988/1394.

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Article 3 designates for the purposes of that section those corporate bodies or types of corporate body specified in columns 1 and 2 of Part I of the Schedule.

The types of body which are designated are those which the Order terms appropriate financial service vehicles, appropriate life insurance vehicles, appropriate general insurance companies, appropriate estate agency vehicles, appropriate mortgage companies, and appropriate territorial corporations.

An appropriate financial service vehicle is a body corporate carrying on investment business which is an exempted or authorised person under the Financial Services Act 1986 or a candidate for authorisation under that Act and does not engage in specified activities such as market making, lending money and general deposit-taking (article 3(1)(a) and Schedule, Part I, item 15, and Part II, paragraph 7(2)).

An appropriate life insurance vehicle is a body corporate the objects of which include, and which is authorised or a candidate for authorisation to conduct, long term insurance business under the Insurance Companies Act 1982 (article 3(1)(a) and Schedule, Part I, item 16, and Part II, paragraph 7(3)).

An appropriate general insurance company is a company limited by shares the objects of which include, and which is authorised to conduct, general insurance business under the Insurance Companies Act 1982. A building society may not hold 15 per cent or more of the equity share capital of an appropriate general insurance company (article 3(1)(a) and Schedule, Part I, item 17, and Part II, paragraphs 5 and 7(4)).

An appropriate estate agency vehicle is a body corporate the objects of which include the carrying on of estate agency work and which does not engage in market making, lending money or general deposit-taking. It is a requirement that at least 40 per cent of its gross income is, and continues to be, derived from estate agency work in a country in which the society is carrying on the business of making advances secured on land (article 3(1)(a) and Schedule, Part I, item 18, and Part II, paragraphs 6 and 7(5)).

An appropriate mortgage company is a company limited by shares, which is a one tier organisation, (that is it does not have the capacity to have subordinate organisations) and which is formed for, or whose objects include, carrying on one or both of the activities of:

- (a) acquiring, holding and disposing of existing mortgage debts, and
- (b) lending money on mortgage,

and which does not engage in activities such as market making and general deposit-taking (article 3 and Schedule Part I, item 19 and Part II, paragraph 7).

In relation to secured loans which it makes, there is a requirement that the company maintains systems similar to those required of building societies for the safe custody of documents and for assessing the adequacy of security. Secured loans by the company are required to be transferable without the consent of the borrower, and must be loans which the society itself would have had power to make had the borrower been a member of the society (article 3 and Schedule Part I, item 19 and Part II, paragraph 6A(2)(c)).

An appropriate territorial corporation is a body corporate formed in a specified territory, that is to say respectively the Isle of Man, Jersey, and Guernsey and Alderney (article 3(1) and Schedule, Part I, item 20, and Part II, paragraph 10). The corporation must be formed for, or its objects must include, carrying on one or more of the activities of:

- (a) lending money on mortgage on land in the territory in which it is incorporated;
- (b) acquiring, holding and disposing of existing mortgage debts, similarly secured;
- (c) taking deposits anywhere other than in the United Kingdom.

It may not engage in activities such as market making and estate agency work (article 3 and Schedule, Part II, paragraph 7), and it does not have the capacity to have subordinate organisations.

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In relation to secured loans which it makes, there is a requirement that the corporation maintains systems similar to those required of building societies for the safe custody of documents and for assessing the adequacy of security. Secured loans by the corporation must be loans which the society itself would have had power to make had the society itself carried on business in the specified territory, pursuant to the power conferred by section 14 of the Act (power to make advances secured on land overseas) as applied to the specified territory by the relevant order referred to in the definition of “specified territory” in paragraph 10 of Part II of the Schedule.

Particular companies designated in the Order are Electronic Funds Transfer Limited, Funds Transfer Sharing Limited, LINK Interchange Network Limited, APACS (Administration) Limited, BACS Limited, CHAPS and Town Clearing Company Limited, SWIFT UK Limited, Switch Card Services Limited, Eurocard International SA, MasterCard International Incorporated, Society for Worldwide Interbank Financial Telecommunication SC, County Court Users Association, Cheque and Credit Clearing Company Limited, EftPos UK Limited, the Joint Credit Card Company Limited, Visa International Service Association and Girobank plc.

The designation of Girobank plc is subject to the conditions set out in column 5 of item 10A of Part I of the Schedule to the Order and further described in Part II of the Schedule.

Girobank plc is not suitable for investment or support by a building society if Girobank has a subordinate organisation outside a prescribed range. The prescribed range comprises The Office of the Banking Ombudsman, bodies corporate individually designated in the Order, and bodies corporate designated by description in the Order which do not have the capacity to have subordinate organisations. A subordinate organisation is one in which a designated body has an interest of at least 5 per cent.

The power for a society to invest in or support Girobank plc is not available if Girobank plc engages in market making or, apart from the exceptions specified in paragraph 8 of Part II of the Schedule, if its business includes activities which 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. The exceptions include the continuation, for a limited transitional period, of overdrafts in excess of £10,000 per individual arranged before the date Girobank plc becomes associated with the society, provided that there is no increase in the limits allowed on such overdrafts, and of corporate loans (other than secured loans and overdrafts), debts relating to acceptances of bills of exchange and letters of credit, and forward rate agreements arranged before that date.

The power for a society to invest in or support Girobank plc is further subject to the condition that, in relation to loans secured on land which it makes, Girobank plc must maintain systems similar to those required of building societies for the safe custody of documents and for assessing the adequacy of security. Such secured loans are required to be transferable without the consent of the borrower, and must be loans which the society itself would have had power to make had the borrower been a member of the society.

The Order also repeats the designation as qualifying bodies of United Kingdom companies doing in other member states business corresponding to building society mortgage business, housing associations, housing trusts and pension vehicles.

Qualifying bodies are categorised by column 3 of Part I of the Schedule as suitable for investment and support or support alone, or as suitable for investment and support but not support in the absence of investment. Investment is defined by section 18 of the 1986 Act as acquiring and holding shares or corresponding membership rights and forming, or taking part in forming, bodies corporate. Support is defined by that section to comprise the provision of loans, grants, guarantees, services or property to bodies corporate in which a society is investing or which it has resolved to support.

Column 4 of Part I of the Schedule specifies the purposes for which (in addition to the purposes permitted by section 18(4)) a society may invest in or support a qualifying body. Column 5 prescribes further limits and conditions on the power to invest in and support certain of the qualifying bodies.

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In relation to the bodies numbered 6B, 6C, 6D, 9, 10, 10A, 11 to 13 and 15, 16, 17 and 20 in Part I the power is only available to building societies with a qualifying asset holding (referred to as the “standard asset provision”). A building society has a qualifying asset holding where the aggregate value of its total commercial assets is not less than £100 million (1986 Act, section 118).

The provisions of paragraph 4 of Part II of the Schedule constitute a condition which applies to corporate bodies (other than general insurance companies) designated by description which have subordinate organisations (that is to say organisations in which the designated body has at least a 5 per cent interest). The condition imposes two duties on a society investing in such a designated body.

First, if the society discovers that any subordinate organisation of the designated body is conducting business in the “prohibited range” (as defined in paragraph 4(2)), the society must dispose of its interest in the designated body as soon as conveniently practicable without undue loss. Business in this prohibited range is market making, lending money (except by a stockbroker in the ordinary course of buying or selling investments as agents), taking deposits in a manner requiring authorisation under the Banking Act 1987, and activities which the society itself cannot undertake because it has not adopted the necessary power or because the activities would contravene a restriction on the extent of a power, which it has adopted.

Secondly, except where the designated body is a company in which the society has an interest of less than 15 per cent, the society must seek to obtain a certificate for each financial year of the designated body to the effect that at least 60 per cent of the consolidated gross income of the designated body and its subordinate organisations was derived from carrying on activities for which the society has power to provide investment or support. If no such certificate is obtained for two successive financial years, the society must cease having an interest in the designated body (or reduce its interest to less than 15 per cent if the designated body is a company).