
STATUTORY INSTRUMENTS

1991 No. 702

BUILDING SOCIETIES

**The Building Societies (Designated Capital Resources)
(Permanent Interest Bearing Shares) Order 1991**

<i>Made</i>	- - - -	<i>18th March 1991</i>
<i>Laid before Parliament</i>		<i>19th March 1991</i>
<i>Coming into force</i>	- -	<i>1st June 1991</i>

The Building Societies Commission, with the consent of the Treasury, in exercise of the powers conferred upon it by section 45(5) of the Building Societies Act 1986⁽¹⁾, hereby makes the following Order:—

Citation and commencement

1. This Order may be cited as the Building Societies (Designated Capital Resources) (Permanent Interest Bearing Shares) Order 1991 and shall come into force on 1st June 1991.

Interpretation

2.—(1) In this Order—

“the Act” means the Building Societies Act 1986;

“the applicable provisions” means section 97 of the Act and the other applicable provisions as therein described;

“the authorised sum” means such sum as is equal to the amount of payments which a society may accept by way of subscription for deferred shares without authorisation being required as may be from time to time permitted by section 9 (initial authorisation to raise funds and borrow money);

“crediting” in relation to interest shall not include the issue, in lieu of interest, of permanent interest bearing shares credited as fully paid by the application of reserves;

“creditors” in relation to a society extends to members holding shares in the society, other than deferred shares, as regards the principal of those shares and all interest due thereon in accordance with their terms;

“the first criterion” means the first criterion in section 45(3) (the criteria for prudent management) of the Act;

“issue terms” in relation to an issue of deferred shares means the provisions of a document which sets out or of a connected series of documents which set out the rights and obligations of a building society and of shareholders in respect of those shares;

“new deferred shares” means shares issued by a building society on or before the day on which this order comes into operation which are deferred shares as defined by the Building Societies (Deferred Shares) Order 1989(2);

“old deferred shares” means shares issued by a building society on or before 31st December 1986 on the terms set out in paragraph 2 of Schedule 1 to the previous regulations;

“permanent interest bearing shares” has the meaning assigned by article 4below;

“the prescribed terms” means the terms specified in Schedule 1 hereto and “the disqualifying terms” means the terms specified in Schedule 2 hereto;

“the previous regulations” means the Building Societies (Authorisation) Regulations 1981(3) or the Building Societies (Authorisation) Regulations (Northern Ireland) 1982(4);

“rate” in relation to interest means the rate per annum and “fixed rate”, “floating rate”, “market rate” and “stepped rate” have the respective meanings assigned by article 4(4);

“society” in relation to an issue of deferred shares means a society which proposes to issue, or as the case may be, has issued such shares;

“specified” means specified by issue terms; and

“subordinated debt”, in relation to a successor company to which a building society transfers the whole of its business in accordance with the applicable provisions, means a sum in respect of which

- (a) no repayment will be made to the creditor within a period not less than five years from the date of the transfer except with the consent of the Bank of England or in the winding up of the company, and
- (b) no repayment will be made to the creditor in the winding up of the company except where at least all sums due from the company to other creditors claiming in the winding up of the company are paid to those creditors in full but for this purpose account need not be taken of debts to other creditors being debts which pursuant to any stipulation rank for payment only after debts which are not subject to any such stipulation.

(2) For the purposes of this Order a return on a share or deposit means the interest, dividend or combination of interest and dividend in respect of that share or deposit.

Capital resources which may be aggregated with reserves

3. Where a society has issued old deferred shares or new deferred shares and those shares remain in issue on the date on which this Order comes into force and the terms thereof would continue to be in compliance with the previous regulations or, as the case may be the Building Societies (Deferred Shares) Order 1989, those shares may for the purposes of the first criterion be aggregated with reserves but only so far as the nominal value of the shares so aggregated does not exceed £250,000.

4.—(1) Where a society has issued permanent interest bearing shares denominated in sterling, the amount paid up on those shares, or credited as paid up thereon by the application of reserves,

(2) S.I.1989/207 revoked by the Building Societies (Deferred Shares) Order 1991 (S.I. 1991/701)

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

(4) S.R. (NI) 1982 No. 155, revoked by the Building Societies Act 1986.

may, subject to paragraph (2) of this article and to articles 5 and 6 below, for the purposes of the first criterion be aggregated with reserves.

(2) In the case of a society which is not authorised, the amount paid up on permanent interest bearing shares aggregated with reserves for those purposes shall not when taken together with any shares aggregated pursuant to Article 3 above exceed the authorised sum.

(3) In this article “permanent interest bearing shares” means shares which are –

- (a) shares of a class defined by the Building Societies (Deferred Shares) Order 1991⁽⁵⁾ as a class of shares defined as deferred shares for the purposes of section 119 of the Act;
- (b) issued upon issue terms which provide for payment, subject to terms which have the effect of the prescribed terms, in respect of such periods as may be specified in the issue terms, of interest at a rate so specified which shall be
 - (i) a fixed rate;
 - (ii) a stepped rate; or
 - (iii) a floating rate

but which shall not be ascertained by reference to the profits of the society or any other factor other than a market rate;

- (c) issued upon issue terms which have the effect of the prescribed terms without other terms or with only such other terms as are not inconsistent with the prescribed terms, and
- (d) are not issued upon issue terms which have the effect of either of the disqualifying terms.

(4) In this article–

“a fixed rate” means a rate of interest which remains the same for so long as the shares remain outstanding;

“a stepped rate” means a rate of interest which increases or reduces from time to time by steps specified in time and amount;

“a floating rate” means a rate of interest which is ascertained by reference to a specified market rate or by reference to a specified market rate varied by a specified margin;

“a market rate” means

- (a) a rate being one of, or an average of, any published rates of interest applicable from time to time for the purpose of calculating interest on debt or other financial obligation arising from transactions between institutions which are authorised for the purposes of the Banking Act 1987;
- (b) a rate one of, or an average of, any published rates of interest applicable from time to time for the purpose of calculating interest payable on any class of securities issued in the United Kingdom by Her Majesty’s Government;
- (c) the rate of interest payable on such interest bearing shares in the society as have from time to time the lowest rate of interest; or
- (d) the rate of interest payable on such interest bearing shares in the society as have from time to time the highest rate of interest.

Other shares not to be written down

5. The amount paid up on deferred shares shall not be aggregated with reserves for the foregoing purposes at any time at which the terms on which shares in the society other than deferred shares are held, whether contained in the society’s rules or otherwise, enable those shares to be written down.

(5) S.I. 1991/701.

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Effect of Commission consent to repayment

6. Where the Commission has given relevant consent for the purposes mentioned in the Schedule to the Building Societies (Deferred Shares) Order 1991, the principal money to which such consent relates shall cease to be aggregated for the foregoing purposes when such consent is notified by the Commission to the society whether or not those principal moneys are repaid pursuant to such consent.

Revocation

7. The Building Societies (Designated Capital Resources) (Deferred Shares) Order 1989(6) is hereby revoked.

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 14th March 1991.

Norman Digance
Secretary to the Commission

We consent to this Order.

Thomas Sackville
Irvine Patnick
Two of the Lords Commissioners of Her
Majesty's Treasury

18th March 1991

SCHEDULE 1

Article 2

THE PRESCRIBED TERMS FOR PERMANANT INTEREST BEARING SHARES

The prescribed terms are terms which have effect so as

- (a) to prohibit the payment or crediting of interest on the shares in respect of any financial year or part of a year (hereinafter called “the interest period”) if the society has cancelled the interest or dividend upon

- (i) other shares of any class (other than deferred shares), or
 - (ii) deposits with the society

which falls, in accordance with the terms applying to that class of share or those deposits, to be paid or credited at any time before the end of the interest period and for the purposes of this term interest shall, if the society has deferred or suspended payment thereof, for so long as it remains outstanding be taken to have been cancelled, and interest upon shares or deposits shall be taken to fall to be paid or credited if it would have so fallen but for any provisions relating thereto entitling the society to cancel defer or suspend payment.

- (b) to prohibit the payment or crediting of interest on the shares for any specified period if the board of directors of the society are of opinion that

- (i) there has been a failure by the society to satisfy the first criterion and such failure is then continuing, or
 - (ii) the payment or crediting of that interest or, as the case may be, payment or crediting in full of that interest, would cause or contribute to such a failure by the society,

and in such case passes a resolution cancelling such interest or as the case may require reducing it to such extent as may be necessary to secure that there will be no such failure and upon the passing whereof the shareholder in respect of those shares shall cease to have any right to the interest for that period so cancelled or, as the case may be, any interest other than the reduced amount payable in accordance with that resolution;

- (c) to require that on amalgamation with another society under section 93 (amalgamations) of and Schedule 16 (Mergers : Supplementary provisions) to the Act or transfer of its engagements to any extent to another society under section 94 (Transfer of Engagements) of and Schedule 16 to the Act the relevant shares shall be shares in the transferee society without alteration in their terms;
- (d) to require that on a transfer of the whole of the society’s business to its successor in accordance with the applicable provisions the liability assumed by the successor in respect of relevant shares pursuant to section 100(2)(a) of the Act shall be taken, as between the member of the society in respect of those shares and the successor, to be a liability as in respect of subordinated debt, but so that nothing in the issue terms of relevant shares which is limited to the effect of this term (d) shall be taken to be a disqualifying term.

SCHEDULE 2

Article 2.1

THE DISQUALIFYING TERMS FOR PERMANENT INTEREST BEARING SHARES

1. The disqualifying terms are

- (a) any term which has effect so as to prohibit, restrict or impose any sanction against the taking by the society of any steps towards
 - (i) amalgamation with another society under section 93 of and Schedule 16 to the Act;

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- (ii) transfer of its engagements to any extent to another society in accordance with section 94 of and Schedule 16 to the Act; or
 - (iii) transfer of the whole of its business to a company in accordance with the applicable provisions.
- (b) any term which has the effect that the rate of interest, or as the case may be, margin, specified in respect of the shares is increased by more than
- (i) 0.75% in a single step;
 - (ii) 0,75% in aggregate by a number of steps in any period of 5 years; or
 - (iii) 1.5% in aggregate by a number of steps without limit of time,
- ascertained in accordance with paragraph 2 below.

2.—(1) The increase of the rate of interest for the purposes of an issue of permanent interest bearing shares the issue terms whereof specify a stepped rate, is to be ascertained—

- (a) for the purposes of paragraph 1(b)(i) above, by deducting from the rate of interest specified for the period immediately after the increase the rate of interest specified for the period immediately before the increase;
- (b) for the purposes of paragraph 1(b)(ii) above, by deducting from the highest rate of interest specified for any part of any period of five years, the lowest rate of interest specified for any other part of that period;
- (c) for the purposes of paragraph 1(b)(iii) above, by deducting from the highest rate of interest specified for any period, the lowest rate of interest specified for any other period.

(2) The increase of the margin for the purposes of an issue of permanent bearing shares the issue terms whereof specify a floating rate, being a market rate varied by a margin, is to be ascertained in the manner set out in subparagraph (1) above, save that references to the rate of interest specified shall be read as references to the margin specified.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under section 45(5) of the Building Societies Act 1986 which permits the Building Societies Commission with the consent of the Treasury to specify descriptions of capital resources which may be aggregated with reserves for the purpose of the first criterion of prudent management in section 45(3) of the Act, the maintenance of adequate reserves and other designated capital resources.

It designates, by article 4(1), as capital resources the amount paid up in sterling on Permanent Interest Bearing Shares (“PIBS”) that is to say shares which comply with the following requirements—

- they are shares which are deferred shares as defined by the Building Societies (Deferred Shares) Order 1991 (under which principal is in general, only repayable on winding up of the society after all creditors and holders of other shares have been paid in full), (article 4(3)(2))
- in respect of which interest is payable, which may be at a fixed or variable rate, but which is not ascertained by reference to the society’s profits (article 4(3)(b))

which are issued upon terms which prohibit the payment or crediting of interest (which is non-cumulative) in respect of any interest period in which the society has cancelled deferred or suspended the interest on the society's deposits or shares other than deferred shares, (article 4(3)(c) and Schedule 1 paragraph (a))

which prohibit the payment or crediting of interest where there is a failure or prospective failure by the society to satisfy the first criterion of prudent management (article 4(3)(c) and Schedule 1 paragraph (b))

they are issued upon terms that on a merger of the society with another society they will continue as PIBS in the transferee society (article 4(3)(c) and Schedule 1 paragraph (c)) and

upon the transfer of the society's business to a commercial company the shares will be converted to subordinated debt (article 4(3)(c) and Schedule 1 paragraph (d)).

Shares do not comply with the specification of PIBS if they are issued upon terms which have any effect so as to prohibit or restrict amalgamation with another society or the transfer of its business to a company of if there are terms as to interest which cause the interest to rise by more than a specified percentage (article 4(3) (b) and (4) and Schedule 2).

The capital of PIBS is not aggregable if the rules of the society permit any shares other than deferred shares to be written down. If the Commission gives consent to repayment of PIBS under the Building Societies (Deferred Shares) Order 1991 the capital thereupon ceases to be aggregable.

A society which has not yet been authorised under section 9 of the Act to raise money from members or accept deposits may only count the capital of PIBS up to the amount which it is permitted to issue by that section in advance of authorisation, taking into account also any deferred shares which it has in issue under a previous Order and Regulations (article 4(2)).

The Building Societies (Designated Capital Resources) (Deferred Shares) Order 1989 is revoked (article 7) but any deferred shares to which that Order applied may still be aggregated with reserves up to the limit to which they were previously permitted to be aggregated (article 3). And an unauthorised society may count the capital of such shares along with any PIBS up to the limit permitted by section 9 (article 4(2)).

The Order gives effect, in respect of PIBS issued by building societies, to the provision of the European Communities Council Directive on the own funds of Credit Institutions (89/299/EEC) (OJ No L142, 5.5.89 p.16) that paid up capital of a credit institution may be counted, to any extent, as own funds for solvency and prudential purposes.