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STATUTORY INSTRUMENTS

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**1994 No. 2457**

**BUILDING SOCIETIES**

**The Building Societies (Designation of  
Qualifying Bodies) (Amendment) Order 1994**

*Made* - - - - - *28th September 1994*  
*Laid before Parliament* *3rd October 1994*  
*Coming into force* - - - *1st November 1994*

The Building Societies Commission, with the consent of the Treasury, in exercise of the powers conferred on it by section 18(2)(c) and (3) of the Building Societies Act 1986<sup>(1)</sup>, hereby makes the following Order:

**Title and commencement**

1. This Order may be cited as the Building Societies (Designation of Qualifying Bodies) (Amendment) Order 1994 and shall come into force on 1st November 1994.

**Amendment of principal Orders**

2.—(1) After article 3(1) of the Building Societies (Designation of Qualifying Bodies) Order 1993 (“the No. 1 Order”)(2) there shall be inserted the following paragraph—

“(1A) In addition to the purposes specified in column 4, the exercise of the relevant power by the society is also permitted for the purpose of enabling the body to carry on any additional activities which it is within the power of that body to carry on under its memorandum and articles of association (or equivalent constitutional document), provided that those activities—

- (a) do not extend to activities referred to in paragraph 4(2) of Part II of that Schedule which would prevent a body corporate from being a body (as defined in article 2 above); and
- (b) are carried on together with activities mentioned in column 4 in relation to that body.”.

(2) In column 5 of Part I of Schedule 1 to the No. 1 Order there shall be added after “The standard asset condition.” the words “The qualifying activities condition.”.

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(1) 1986 c. 53.

(2) 1993/985, amended by S.I.1993/2706.

(3) After paragraph 2 of Part II of that Schedule there shall be inserted the following paragraph—

**“Meaning of qualifying activities condition**

**2A.—**(1) In this Schedule “the qualifying activities condition” means a condition to the effect that—

- (a) where a society holds 5% or more of the issued shares or corresponding membership rights in a body and becomes aware that any subordinate organisation of that body is, for the time being, within the prohibited range, the society shall, as soon as it is conveniently practicable to do so without undue loss, dispose of sufficient of its shares or corresponding membership rights so that it ceases to hold 5% or more of the issued shares or corresponding membership rights in that body,
- (b) within four months after the end of each financial year of a body in which the society, at such financial year end, holds 15% or more of the issued shares or corresponding membership rights, the society shall satisfy itself whether, for such financial year, at least 60% of the gross income of that body, or if the body has any subordinate organisations, at least 60% of the consolidated gross income of the body and such subordinate organisations, is derived from carrying on qualifying activities, and
- (c) if, for two successive financial years of a body less than 60% of the gross income (or, if appropriate, consolidated gross income) is derived from carrying on qualifying activities, the society shall, as soon as it is conveniently practicable to do so without undue loss, dispose of sufficient of its shares or corresponding membership rights so that it ceases to hold 15% or more of the issued shares or corresponding membership rights in that body.

(2) For the purposes of sub-paragraph (1)(a) above, a body corporate comes within the prohibited range where it comes within a description in paragraph 4(2)(a) or (b) below.

(3) For the purposes of this paragraph—

- (a) “qualifying activities” means activities for the purpose of which a society has power to invest in or support a qualifying body; however “additional activities” of the kind mentioned in article 3(1A) above shall not be qualifying activities; and
- (b) “subordinate organisation” means a body corporate in which another body corporate holds, directly or indirectly, 5% or more of the issued shares or corresponding membership rights where—
  - (i) “holds directly or indirectly” means that a body corporate holds shares or corresponding membership rights in another body corporate either directly or through another body corporate (or bodies corporate), or partly directly and partly through another body corporate (or bodies corporate);
  - (ii) methods the same as those set out in section 838 (subsidiaries) of the Income and Corporation Taxes Act 1988(3) shall be used to determine an indirect holding as if references to “own” in that section are references to “hold”, and other derivatives of “own” shall be construed accordingly; and
  - (iii) references to “ordinary share capital” in section 838 of the Income and Corporation Taxes Act 1988 shall be read as references to shares, or as the case may be, corresponding membership rights in a body corporate.”.

(4) Paragraphs 4(2)(c) and 5 of that Part of that Schedule (which relate to activities in the range from which a society is restricted) shall be deleted.

(5) After article 3(1) of the Building Societies (Designation of Qualifying Bodies) (No. 3) Order 1993 (“the No. 3 Order”)(4) there shall be inserted the following paragraph—

“(1A) In the case of any body (other than an estate agency body, a housing association or a housing trust) to which the “qualifying activities condition” (defined in paragraph 4 of Part II of the Schedule to this Order) is stated in column 5 to apply, the exercise of the relevant power by the society is permitted, in addition to the purposes specified in column 4, also for the purpose of enabling the body to carry on any additional activities which it is within the power of that body to carry on under its memorandum and articles of association (or equivalent constitutional document), provided that those activities—

- (a) do not extend to activities referred to in paragraph 6(2) of Part II of that Schedule which would prevent a body corporate from being a body (as defined in article 2 above); and
- (b) are carried on together with activities mentioned in column 4 in relation to that body.”.

(6) In paragraph (3)(b)(ii) of column 5 of item 1 in Part I of the Schedule to the No. 3 Order (which relates to Girobank plc) the words “paragraph 11(4)(c)” shall be substituted for the words “paragraph 7(2)(c)”.

(7) In Part I of the Schedule to the No. 3 Order there shall be added in column 5 of item 5 (general insurance body) a third condition, namely—

“(3) The qualifying activities condition.”.

(8) Paragraph 4(3) of Part II of the Schedule to the No. 3 Order (which relates to the meaning of “qualifying activities”) shall be amended by inserting after the word “However” the words ““additional activities” of the kind mentioned in article 3(1A) above shall not be qualifying activities and”

(9) Paragraphs 6(2)(c) and 7 of Part II of the Schedule to the No. 3 Order (which relate to activities in the range from which the society is restricted) shall be deleted and in paragraph 6(3) of that Part the words “or (c)” shall be deleted.

(10) In paragraph 11(1)(c) of Part II of the Schedule to the No. 3 Order (which relates to Girobank plc) the words “sub-paragraphs (3) and (4) below” shall be substituted for the words “paragraph 7 above” and after sub-paragraph (2) of that paragraph there shall be inserted the following—

“(3) For the purposes of sub-paragraph (1) above an activity of Girobank plc 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 either a restriction derived from the Act or any instrument under the Act or a restriction assumed by the society.

(4) Notwithstanding sub-paragraph (3) above, an activity of Girobank plc is not an activity within the range from which the society is restricted where it is an activity which comprises—

- (a) simply investment in and support, or support, of another body corporate;
- (b) holding shares in the office of the Banking Ombudsman, or
- (c) 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 Girobank plc became an associated body of the society.”.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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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

L.S.

8th September 1994.

*J. Dennis*  
Secretary to the Commission

We consent to this Order.

28th September 1994

*Derek Conway*  
*Tim Wood*  
Two of the Lords Commissioners of Her Majesty's Treasury

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## EXPLANATORY NOTE

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

This Order amends the Building Societies (Designation of Qualifying Bodies) Order 1993 and the Building Societies (Designation of Qualifying Bodies) (No. 3) Order 1993. Firstly, the No. 1 order, which designates funding bodies, is amended to make funding bodies subject to a “qualifying activities condition”, in the same terms as in paragraph 4 of Part II of the Schedule to the No. 3 Order. The No. 3 Order is amended to make general insurance bodies subject to that condition also. Secondly, in both Orders, the purposes for which a society may invest in a body subject to the “qualifying activities condition” are extended to include enabling the body to carry on (alongside the activities currently mentioned in column 4 of Part I of the relevant Schedule) any activity which is within the powers of the body, but the additional activities will not count as qualifying activities for the purposes of the “qualifying activities condition” (so that not more than 40% of the society’s consolidated gross income can be derived from them).

Thirdly, paragraph 5 of Part I of Schedule 1 to the No. 1 Order and paragraph 7 of Part II of the Schedule to the No. 3 Order (which restrict a body from engaging in “activities in the range from which the society is restricted”) have been deleted. In relation to Girobank plc, the applicable provisions of paragraph 7 have been re-enacted in paragraph 11, but the meaning of “activities in the range from which a society is restricted” is amended to exclude simple investment in and support, or support of another body corporate.

A review of the cost of compliance with this Order has been undertaken and the resulting compliance cost assessment may be purchased from the Secretary, Building Societies Commission, 15 Great Marlborough Street, London W1V 2AX.