
STATUTORY INSTRUMENTS

1997 No. 2693

BUILDING SOCIETIES

**The Building Societies (Prescribed
Equitable Interests) Order 1997**

Made - - - - *11th November 1997*
Laid before Parliament *13th November 1997*
Coming into force - - *5th December 1997*

The Building Societies Commission, with the consent of the Treasury, in exercise of the powers conferred upon it by section 6A(2)(b) and (c) 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 (Prescribed Equitable Interests) Order 1997 and shall come into force on 5th December 1997.

Interpretation

2. In this Order—

“the Act” means the Building Societies Act 1986;

“the first type of equitable interest” means an equitable interest of the type described in article 4 below;

“registered land” in the case of land in England and Wales has the meaning which it has in section 3 of the Land Registration Act 1925⁽²⁾ and in the case of land in Northern Ireland means land the title to which is registered under Part III of the Land Registration Act (Northern Ireland) 1970⁽³⁾;

“the second type of equitable interest” means an equitable interest of the type described in article 5 below; and

“the third type of equitable interest” means an equitable interest of the type described in article 6 below.

(1) 1986 c. 53; section 6A was inserted by section 5 of the Building Societies Act 1997 (c. 32).
(2) 1925 c. 21.
(3) 1970 c. 18 (N.I.).

Prescribed equitable interests

3.—(1) The first and second types of equitable interests and, subject to article 7 below, the third type of equitable interest, are hereby prescribed for the purposes of section 6A(2) of the Act (which provides that for the purposes of the Act a loan is secured on land if it is secured by a mortgage of a prescribed equitable interest in land in England and Wales or Northern Ireland).

(2) This Order applies to securities for loans comprising equitable interests in land of the types described in paragraph (1) above and held by or on behalf of building societies or their subsidiary undertakings.

Rights to acquire freehold or greater leasehold interest

4. The first type of equitable interest is an equitable interest in land, in which a legal leasehold estate is security for the loan, where the lease or a related instrument includes provision entitling the leaseholder to acquire a beneficial interest of any extent in the freehold or a greater leasehold interest and the right to acquire that interest is assigned as additional security.

Interests appurtenant to land

5. The second type of equitable interest is any easement, profit or like right, being merely an equitable interest and which is appurtenant to the land the legal estate in which is security for the loan.

Contracts for the development of land

6. The third type of equitable interest is an equitable interest in land arising under a contract for the development of that land which contract fulfils the following requirements—

- (a) the borrower is a body corporate having the provision of housing as its object or one of its objects;
- (b) the borrower agrees to develop the land primarily for residential purposes; and
- (c) it is a term that either—
 - (i) the borrower may upon payment of the purchase price under the contract require the vendor to convey his legal estate in the land, or grant a leasehold interest derived therefrom, to the borrower, or
 - (ii) the borrower may upon fulfilment of his obligation to develop the land or any part thereof require the vendor to convey his legal estate in the land or that part, or grant a leasehold interest derived therefrom, to the borrower or a third party.

Protection of contracts

7.—(1) In relation to the third type of equitable interest, the building society or the subsidiary undertaking must be satisfied when accepting it as security for a loan that, where the contract is a contract for the development of—

- (a) land in England and Wales, the requirements of paragraph (2) below, and
- (b) land in Northern Ireland, the requirements of paragraph (3) below,

will be satisfied in respect of that contract.

(2) The requirements of this paragraph are satisfied in respect of a contract for the development of land if—

- (a) where the land is not registered land, the contract is protected by being registered as an estate contract under the Land Charges Act 1972(4), and
 - (b) where the land is registered land, the contract is protected by registration of a notice or entry of a restriction under Part IV of the Land Registration Act 1925(5).
- (3) The requirements of this paragraph are satisfied in respect of a contract for the development of land if—
- (a) where the land is not registered land, the contract is protected by being registered in the Registry of Deeds maintained in Northern Ireland under the Registration of Deeds Act (Northern Ireland) 1970(6), and
 - (b) where the land is registered land, the contract is protected by entry of a burden under Part IV or lodgement of a caution or entry of an inhibition under Part VII of the Land Registration Act (Northern Ireland) 1970(7).

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

7th November 1997.

G. S. Johnson
Secretary to the Commission

We consent to this Order

11th November 1997

John McFall
Jon Owen Jones
Two of the Lords Commissioners of Her
Majesty's Treasury

(4) 1972 c. 61.
(5) 1925 c. 21.
(6) 1970 c. 25 (N.I.).
(7) 1970 c. 18 (N.I.).

Status: *This is the original version (as it was originally made). UK
Statutory Instruments are not carried in their revised form on this site.*

EXPLANATORY NOTE

(This note is not part of the Order)

This Order prescribes three types of equitable interest in land for the purposes of section 6A(2) of the Building Societies Act 1986. A loan secured by a mortgage of any of these types of equitable interest to a building society or its subsidiary undertaking is secured on land for the purposes of the Act.

The first type of equitable interest in land is a leaseholder's right — for example in certain types of shared ownership scheme — to buy the freehold or a greater leasehold interest. The second type is an easement, profit or similar right which belongs with land. The third type is an interest arising under a contract for the development, primarily for residential purposes, of land which includes a right for the developer to call for the legal estate to be transferred to him or to a third party.