

1990 No. 2363

BUILDING SOCIETIES

**The Building Societies (Non-Retail Funds and Deposits)
Order 1990**

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| <i>Made</i> - - - - | <i>26th November 1990</i> |
| <i>Laid before Parliament</i> | <i>29th November 1990</i> |
| <i>Coming into force</i> <i>for the purposes of articles 3(2) and 4</i> | <i>31st December 1991</i> |
| <i>for all other purposes</i> | <i>31st December 1990</i> |

The Building Societies Commission, with the consent of the Treasury, in exercise of the powers conferred on it by section 7(9) of the Building Societies Act 1986(a) hereby makes the following Order.

Citation and commencement

1. This Order may be cited as the Building Societies (Non-Retail Funds and Deposits) Order 1990.

2. The Order shall come into force for the purposes of articles 3(2) and 4 on 31st December 1991 and for all other purposes on 31st December 1990.

Amendment of section 7 of the Building Societies Act 1986

3.—(1) This article amends section 7 of the Building Societies Act 1986(b) (which empowers building societies to raise funds and borrow money) as follows.

(2) In subsection (4)—

(a) paragraph (b) shall be deleted;

(b) the letter “(b)” shall be deleted from paragraphs (c) and (d) where it appears between “(aa)” and “(bb)”

and in subsection (19) the definition of “qualifying time deposit” shall be deleted.

(3) In subsection (4)—

(a) there shall be inserted in paragraph (bb) after the words “excepting circumstances” the words “or in furtherance of a savings scheme”;

(b) there shall be inserted in paragraph (c)(ii) after the figures “1970” the words “otherwise than in furtherance of a savings scheme”.

(4) In subsection (19)—

(a) there shall be inserted between the definitions of “excepting circumstances” and “personal equity plan”, the following definition:

“intermediary” means—

(a) 1986 c. 53.

(b) Section 7 of the Building Societies Act 1986 was amended by S.I. 1987/378 and S.I. 1987/1670.

- (i) as regards the interpretation of a savings scheme in connection with paragraph (bb) of subsection (4), an institution which is within the ambit of that paragraph; or
 - (ii) as regards the interpretation of a savings scheme in connection with subparagraph (ii) of paragraph (c) of subsection (4), a friendly society which is within the ambit of that subparagraph.”
- (b) there shall be inserted between the definitions of “retirement benefits scheme” and “transferable bearer instrument” the following definition:
- “savings scheme” means a scheme under which—
- (a) shares in or rights of a depositor with the society represent sums of money placed with an intermediary by an individual under a contract under which—
 - (i) those sums were to be invested by the intermediary in shares of or deposited with the society, and no other society; and
 - (ii) those sums were not to be withdrawn from the society by the intermediary except, either—
 - (aa) on maturity of the contract by reason of the death of the individual, or the effluxion of a period of time specified in the contract, or
 - (bb) at the written request of the individual or any assignee of that individual’s rights under the contract and within one month of the receipt by the intermediary of such request, or within a maximum of six months of such receipt if under the contract the intermediary has the right to defer for that period the withdrawal of funds placed with the intermediary for investment in or deposit with the society, or
 - (cc) where the intermediary has the right to deduct an amount from the investment with the society to cover charges specified in the contract and amounts surplus to the requirements of the contract;
 - (b) the intermediary is obliged to produce, when requested to do so by the society, and on a date nominated by the society,
 - (i) a statement of the total sums invested or deposited with that society by the intermediary in furtherance of contracts made under the terms of the scheme set out in subparagraphs (i) and (ii) of paragraph (a) above, together with a certificate signed by the auditor of the intermediary confirming that the statement constitutes a true account;
 - (ii) any written request mentioned in subparagraph (ii) of paragraph (a) above;”

Effect of provisions as amended

4. Subsections (4) and (19) of section 7 of the Building Societies Act 1986, as amended by this Order, shall respectively have effect as set out in Parts I and II of the Schedule to this Order.

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 22nd November 1990.



Norman Digance
Secretary to the Commission

We consent to this Order,

26th November 1990

John Taylor
Sydney Chapman
Two of the Lords Commissioners of Her Majesty’s Treasury

PART I

SECTION 7(4) OF THE BUILDING SOCIETIES ACT 1986, AS AMENDED BY THIS ORDER

(4) For the purposes of subsection (3) above, a building society's liabilities in respect of its non-retail funds and deposits are, subject to subsections (5) and (9) below, its liabilities in respect of the principal of and interest payable on or under—

- (a) transferable bearer instruments
- (aa) transferable non-bearer instruments
- (b) deleted
- (bb) sums deposited otherwise than in excepting circumstances or in furtherance of a savings scheme with the society by, or by a trustee for, an institution which is—
 - (i) an authorised institution, for the purposes of, or
 - (ii) an overseas institution for the purposes of Part IV of, the Banking Act 1987(a);
- (c) shares in the society held by, or by a trustee for, and (to the extent the liabilities do not fall within (a), (aa), or (bb) above) sums deposited with the society by, or by a trustee for—
 - (i) any body corporate, otherwise than in excepting circumstances,
 - (ii) a friendly society registered under the Friendly Societies Act 1974(b) or the Friendly Societies Act (Northern Ireland) 1970(c), otherwise than in furtherance of a savings scheme,
 - (iii) a trade union (within the meaning of the Trade Union and Labour Relations Act 1974(d)).
- (d) shares in the society (to the extent the liabilities do not fall within (c) above) held by, and (to the extent the liabilities do not fall within (a), (aa), (bb) or (c) above) sums deposited with the society by—
 - (i) a body of persons or trust established for charitable purposes only,
 - (ii) the administrator of an approved retirement benefits scheme,
 - (iii) the manager or trustee of an appropriate personal pension scheme, or
 - (iv) the plan manager of a personal equity plan.

PART II

SECTION 7(19) OF THE BUILDING SOCIETIES ACT 1986, AS AMENDED BY THIS ORDER

(19) In this section—

“appropriate personal pension scheme” means a personal pension scheme within the meaning of the Social Security Act 1986(e) in respect of which an appropriate scheme certificate under section 2 thereof (appropriate schemes) is for the time being in force;

“excepting circumstances” means circumstances in which shares or rights of a depositor—

- (i) are held by the holder as nominee on behalf only of an individual, a Scottish partnership, or a combination of individuals, of such partnerships, or of both;
- (ii) are subject to a relevant trust in the income of which no person who is neither an individual nor a Scottish partnership has any interest; or
- (iii) were held by an individual as beneficial owner at the time of his death (or represent investments so held or dividends or interest thereon) and the holder is acting as personal representative of that individual;

“intermediary” means—

- (i) as regards the interpretation of a savings scheme in connection with paragraph (bb) of subsection (4), an institution which is within the ambit of that paragraph, or
- (ii) as regards the interpretation of a savings scheme in connection with subparagraph (ii) of paragraph (c) of subsection (4), a friendly society which is within the ambit of that subparagraph”;

(a) 1987 c. 22.
 (b) 1974 c. 46.
 (c) 1970 c. 31 (N.I.).
 (d) 1974 c. 52.
 (e) 1986 c. 50.

“personal equity plan” means a plan the operation of which is subject to conditions set out in the regulations for time being in force under Schedule 8 to the Finance Act 1986(a) (personal equity plans);

“relevant trust” means a trust which is neither a trust established for charitable purposes only nor a trust of shares held or sums deposited by—

- (i) the administrator of an approved retirement benefits scheme,
- (ii) the manager or trustee of an appropriate personal pension scheme, or
- (iii) the plan manager of a personal equity plan;

“retirement benefits scheme” means a retirement benefits scheme within the meaning of Chapter II of Part II of the Finance Act 1970(b) (occupational pension schemes) and “approved” means approved for the time being by the Commissioners of Inland Revenue for the purposes of that chapter;

“savings scheme” means a scheme under which—

- (a) shares in or rights of a depositor with the society represent sums of money placed with an intermediary by an individual under a contract under which—
 - (i) those sums were to be invested by the intermediary in shares of or deposited with the society, and no other society; and
 - (ii) those sums were not to be withdrawn from the society by the intermediary except either—
 - (aa) on maturity of the contract by reason of the death of the individual, or the effluxion of a period of time specified in the contract, or
 - (bb) at the written request of the individual or any assignee of that individual’s rights under the contract and within one month of the receipt by the intermediary of such request, or within a maximum of six months of such receipt if under the contract the intermediary has the right to defer for that period the withdrawal of funds placed with the intermediary for investment in or deposit with the society, or
 - (cc) where the intermediary has the right to deduct an amount from the investment with the society to cover charges specified in the contract and amounts surplus to the requirements of the contract;
- (b) the intermediary is obliged to produce, when requested to do so by the society, and on a date nominated by the society,
 - (i) a statement of the total sums invested or deposited with that society by the intermediary in furtherance of contracts made under the terms of the scheme set out in subparagraphs (i) and (ii) of paragraph (a) above, together with a certificate signed by the auditor of the intermediary confirming that the statement constitutes a true account;
 - (ii) any written request mentioned in subparagraph (ii) of paragraph (a) above;

“transferable bearer instrument” means an instrument which embodies a right, transferable by delivery of the instrument, to receive an amount referable to a deposit with the society; and

“transferable non-bearer instrument” means an instrument which embodies a right—

- (i) which may, under the terms of the instrument, be held by any person, or by any person other than a person of a description specified in the instrument,
- (ii) express provision for the transfer of which is included in the instrument, and
- (iii) the transfer of which, under the terms of the instrument, does not require the consent of any person,

to receive an amount referable to a deposit with the society.

(a) 1986 c. 41.
(b) 1970 c. 24.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends section 7 of the Building Societies Act 1986, which empowers a building society to raise funds and borrow money and places a limit on non-retail funds and borrowing. This Order removes with effect from 31st December 1991 certain time deposits from the category of non-retail funds. It creates with effect from 31st December 1990 a new category of retail funds, that is to say shares held and sums deposited under savings schemes by intermediaries which are authorised banking institutions or friendly societies.

A savings scheme is defined as a scheme under which an individual contracts with an intermediary to invest a sum of money which will be directed to a specific building society; the intermediary will not be able to withdraw the money except at the specific request of the individual or in furtherance of certain specific terms of its contract with the individual.