
STATUTORY INSTRUMENTS

1992 No. 650

BUILDING SOCIETIES

The Building Societies (Designation of Qualifying Bodies) (No. 2) Order 1992

<i>Made</i>	- - - -	<i>9th March 1992</i>
<i>Laid before Parliament</i>		<i>11th March 1992</i>
<i>Coming into force</i>	- -	<i>1st June 1992</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) (No. 2) Order 1992 and shall come into force on 1st June 1992.

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 of the 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 of a description specified in the 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.

Status: This is the original version (as it was originally made).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

- (a) the corresponding item in column 2 specifies, 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 that the appropriate vehicle is designated as suitable for investment and support,
 - (c) the corresponding item 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 in column 5 specifies the condition 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.

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 5th March 1992.

L.S.

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

9th March 1992

SCHEDULE

Articles 2 and 3

Part I

DESCRIPTION OF BODY CORPORATE DESIGNATE

Item	Column 1 Specified description	Column 2 Specified definition	Column 3 Specified relevant power	Column 4 Specified purposes	Column 5 Specified condition
1.	Appropriate holding vehicle	A specified type of body corporate (not being one excluded by the particular restrictions for appropriate holding vehicles) which is a wholly-owned subsidiary of the society and formed for the purposes of, or the objects of which include, investment and support in one or more corporate bodies which the society has power to invest in and support, or support.	Investment and support	Enabling the appropriate vehicle to carry on the activities of investment and support referred to in column 2 of this item.	The group interest provision.

Part II

INTERPRETATION

Meaning of specified type of body corporate

1. In this Schedule “specified type of 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,

Status: This is the original version (as it was originally made).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

- (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), or
- (iv) a body corporate formed in any of the following countries:
Austria, Iceland, Norway, Sweden, Switzerland, Finland and Liechtenstein.

Meaning of group interest provision

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

- (a) where a society becomes aware that a subordinate organisation of an appropriate vehicle is within the prohibited range, the society shall dispose of its shares or corresponding membership rights, as the case may be, in that appropriate vehicle and shall do so as soon as it is conveniently practicable to do so without undue loss, and
- (b) a society shall within four months of the end of each financial year of an appropriate vehicle seek to obtain a group income certificate in relation to that appropriate vehicle, and, if no such certificate as is required by this paragraph is so obtained by the society for two successive financial years of that appropriate vehicle, 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 sub-paragraph (ii) below applies to it,
 - (ii) as soon as it is conveniently practicable to do so without undue loss, dispose of its shares or corresponding membership rights, as the case may be, in that appropriate vehicle, and
 - (iii) within 14 days following that cessation, notify the Commission in writing thereof.

(2) For the purposes of sub-paragraph (1)(a) above, a subordinate organisation comes within the prohibited range where it comes within a description in paragraph 3(2)(a), (b), or (c) below (or would do if it were a vehicle subject to the provisions of sub-paragraph (2) of paragraph 3 below).

(3) For the purposes of this paragraph—

- (a) “group income certificate”, in relation to an appropriate vehicle, means a certificate signed by a director of the appropriate vehicle (and adequately supported by a report of its auditors) stating that at least 60% of the consolidated gross income of the appropriate vehicle and its subordinate organisations for the financial year to which the certificate relates was derived, subject to sub-paragraph (4) below, from carrying on qualifying activities, and
- (b) “qualifying activities” means activities for which purpose a society has power to invest in and support, or support a body corporate.

(4) For the purposes of sub-paragraph (3)(a) above—

- (a) in calculating the consolidated gross income of the appropriate vehicle and its subordinate organisations derived from carrying on qualifying activities, any income derived by such a subordinate organisation, or by any particular body designated under section 18 of the Act, or any body corporate designated by description under this Order or another Order under section 18 of the Act, 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 an appropriate vehicle 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 appropriate 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
- (iii) they consider that there is no significant likelihood that the certificate is untrue in any material particular.

Specifications of particular restrictions for appropriate holding vehicles

3.—(1) In this Schedule “the particular restrictions for appropriate holding vehicles” means the provisions set out in sub-paragraph (2) below.

- (2) A body corporate is not an appropriate vehicle 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(2), or
 - (c) its business includes activities in the range from which the society is restricted.

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

4.—(1) For the purposes of paragraph 3 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 either a restriction derived from the Act or any instrument under the Act or a restriction assumed by the society.

(2) Notwithstanding sub-paragraph (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 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.

Other definitions

- 5.** In this Schedule, except where the context otherwise requires—
- “company limited by shares” has the meaning which it bears for the purposes of the Companies Act 1985(3) or the Companies (Northern Ireland) Order 1986(4);
 - “estate agency work” has the meaning which it bears in the Estate Agents Act 1979(5);
 - “investment” in the definition of “market maker” has the meaning which it bears in section 1 (investment business) of the Financial Services Act 1986(6).
 - “market maker” means—
 - (a) in relation to the United Kingdom, a market maker in securities of a particular kind,

(2) 1987 c. 22.

(3) 1985 c. 6.

(4) S.I.1986/1032 (N.I. 6).

(5) 1979 c. 38; section 1 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), Schedule 1, Part I, paragraph 40.

(6) 1986 c. 60.

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

- (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;

“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⁽⁷⁾, is so described in section 69(7) (depository receipts: supplementary) of that Act;

“subordinate organisation” means, in relation to a body corporate, another body corporate of which the first owns directly or indirectly 5% 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⁽⁸⁾, 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.

“wholly-owned subsidiary” means a body corporate which has no members except the society and persons acting on behalf of that society, and shall include bodies corporate which have no members except any of the following: the society, wholly-owned subsidiaries of that society, and persons acting on behalf of that society.

EXPLANATORY NOTE

(This note is not part of the Order)

1. This Order designates a description of bodies corporate as suitable for investment and support by building societies under section 18 of the Building Societies Act 1986, so as to add “appropriate holding vehicle” as a further type of designated body.

2. An appropriate holding vehicle is a body corporate which is a wholly-owned subsidiary of the society (not being one excluded by the particular restrictions for appropriate holding vehicles) formed for the purposes of, or the objects of which include, investment and support in one or more corporate bodies which the society has power to invest in and support or support under section 18 of the Act. The particular restrictions for appropriate holding vehicles are that a body corporate is not an appropriate holding vehicle for a society where: it is a market maker, its business requires it to be authorised for the purposes of the Banking Act 1987; its business includes activities 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.

3. Investment is defined by section 18 of the Act as acquiring and holding shares or corresponding membership rights in and forming or taking part in forming, bodies corporate. Support is defined by that section as provision of loans, grants, guarantees, services or property to bodies corporate.

⁽⁷⁾ 1986 c. 41.

⁽⁸⁾ 1988 c. 1.

Document Generated: 2023-05-19

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