
STATUTORY INSTRUMENTS

1992 No. 652

BUILDING SOCIETIES

The Building Societies (Designation of Qualifying Bodies) (No. 4) 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. 4) 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.

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- (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, or 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 conditions 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.

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

DESCRIPTIONS OF BODIES CORPORATE, DESIGNATED

1 Specified description	2 Specified definition	3 Specified relevant power	4 Specified purposes	5 Specified limits and conditions
1. Appropriate European financial service vehicle	A specified type of body corporate (not being one excluded by the particular restrictions for European financial service vehicles) formed for the purposes of, or the objects of which include, the carrying on of investment business in any member State and/or in any country or territory listed in paragraph 2(iii) of Part II of the Schedule hereto.	(1) Where the appropriate financial service vehicle is a one tier organisation, investment support	(1) Enabling the appropriate European financial service vehicle to carry relevant investment or business. (2) Facilitating the provision of investment services by the society or any associated body of the society.	(1) The standard asset provision. (2) The group interest provision.

PART II

INTERPRETATION

Meaning of standard asset provision

1. In this Schedule “the standard asset provision” means a condition to the effect that—
- the relevant power is not available to a society which does not for the time being have a qualifying asset holding, but
 - the cessation of its availability does not require the disposal of any property or rights.

Meaning of specified type of body corporate

2. In this Schedule “specified type of body corporate” means a body corporate which is—
- a company or an industrial and provident society,
 - a body corporate formed in a member State other than the United Kingdom, or
 - a body corporate formed in any of the following countries:

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Austria, Iceland, Norway, Sweden, Switzerland, Finland and Liechtenstein.

Meaning of one tier organisation

3. In this Schedule “one tier organisation” means a body corporate which does not have the capacity to have subordinate organisations.

Meaning of group interest provision

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

- (a) where a society has a relevant holding in an appropriate vehicle and becomes aware that a subordinate organisation of that appropriate vehicle is within the prohibited range, the society shall dispose of sufficient shares or corresponding membership rights, as the case may be, that it ceases to have a relevant holding, and shall do so as soon as it is conveniently practicable to do so without undue loss, and
- (b) where a society holds 2% or more of shares or corresponding membership rights in an appropriate vehicle and by virtue of that investment in that appropriate vehicle has a relevant holding amounting to a relevant interest in a relevant body corporate, the society shall, within four months of the end of each financial year of that relevant body corporate at which year end the society has such an interest, seek to obtain a group income certificate in relation to that relevant body corporate, and, if no such certificate as is required by this paragraph is so obtained by the society for two successive financial years of the relevant body corporate, 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 sufficient shares or corresponding membership rights that it ceases to have a relevant interest in that body corporate, 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 6(2)(b), (c), (d) or (e) below (or would do if it were a vehicle subject to the provisions of paragraph 6(2) below).

(3) For the purposes of sub-paragraph (1)(b) above, “relevant interest” means—

- (a) shares or corresponding membership rights in a body corporate which is not a company limited by shares, or
- (b) sufficient shares in a body corporate which is a company limited by shares to give the society direct ownership or direct and indirect ownership (determined as specified in the definition of “subordinate organisation” in paragraph 9 below) of 15% or more of the ordinary share capital (as defined within that definition) of that company.

(4) For the purposes of sub-paragraph (1)(b) above, “relevant body corporate” means a particular body designated under section 18 of the Act or any body corporate designated by description under this or another Order under section 18 of the Act, which has any subordinate organisation which is not an associated body of the society.

(5) For the purposes of this paragraph—

- (a) “group income certificate”, in relation to a relevant body corporate, means a certificate signed by a director of the relevant body corporate (and adequately supported by a report of its auditors) stating that at least 60% of the consolidated gross income of the relevant body corporate and its subordinate organisations for the financial year to which the certificate

relates was derived, subject to sub-paragraph (6) 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 qualifying body.
- (6) For the purposes of sub-paragraph (5)(a) above—
- (a) in calculating the consolidated gross income of the relevant body corporate 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 a relevant body corporate 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 relevant body corporate, 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.

Meaning of “relevant holding”

5. A “relevant holding” for the purposes of paragraph 4 means:
- (a) in the case of a company limited by shares sufficient shares to result in the society having direct ownership or direct and indirect ownership (determined as specified in the definition of “subordinate organisation” in paragraph 9 below) of 2% or more of the issued ordinary share capital (as defined within the definition of “subordinate organisation” in paragraph 9 below) of the company; or
 - (b) in the case of any other body corporate, 2% or more of the issued shares or corresponding membership rights in the body corporate.

Specification of particular restrictions

6.—(1) In this Schedule “the particular restrictions for European financial service vehicles” means the provisions set out in sub-paragraph (2) below.

- (2) A body corporate is not an appropriate European financial service vehicle for a society where—
- (a) the body corporate is not an exempted person under the Financial Services Act 1986(2), nor an authorised person under that Act, nor a candidate for authorisation under that Act, nor authorised nor otherwise entitled, nor a candidate for authorisation (where applicable) to carry on investment business in any member State other than in the United Kingdom, nor authorised nor otherwise entitled, nor a candidate for authorisation (where applicable) to carry on investment business in any country which is listed in paragraph 2(iii) above,
 - (b) it is a market maker,

(2) 1986 c. 60.

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- (c) its business includes lending money, secured or unsecured, on its own account, save insofar as the subscription for or the purchase or sale of investments on behalf of any other person, in advance of being put in funds by or on behalf of that other person to complete that transaction, comprises or gives rise to such lending,
- (d) it is an authorised institution, or its business requires it to be authorised, for the purposes of the Banking Act 1987(3), or
- (e) 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

7.—(1) For the purposes of paragraph 6 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.

Meaning of candidate

8. For the purposes of this Schedule a body corporate is “a candidate for authorisation” in respect of the carrying on of any business if it has been formed with a view to being authorised in that respect and is applying, or is taking steps to apply, for authorisation in that respect.

Other definitions

9. 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(4) or the Companies (Northern Ireland) Order 1986(5);

“estate agency work” has the meaning which it bears in the Estate Agents Act 1979(6);

“equity share capital” has the meaning which it bears for the purposes of the Companies Act 1985 or the Companies (Northern Ireland) Order 1986;

“investment”, in respect of the expressions “the subscription for or the purchase or sale of investments”, “investment business” and “relevant investment business”, and in the definition of the last expression and of “market maker”, means any asset, right or interest falling within any paragraph in Part I of Schedule 1 to the Financial Services Act 1986(7);

(3) 1987 c. 22.

(4) 1985 c. 6.

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

(6) 1979 c. 38; section 1 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), Schedule 1, Part I, paragraph 40.

(7) 1986 c. 60; Schedule 1 was amended by S.I. 1988/318, 496, 803; the Broadcasting Act 1990 (c. 42), Schedule 20; S.I. 1990/349, 1990/1493, and 1990/1104.

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“investment business” means the business of engaging in one or more of the activities which fall within the paragraphs in Part II of Schedule 1 to the Financial Services Act 1986 and are not excluded by Part III of that Schedule;

“investment services” has the meaning which it bears in Schedule 8 to the Act;

“market maker” means—

- (a) in relation to the United Kingdom, a market maker in securities of a particular kind,
- (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 purpose of subsection (4) of section 67 (depository receipts) of the Finance Act 1986⁽⁸⁾, is so described in section 69(7) (depository receipts: supplementary) of that Act;

“relevant investment business” means investment business relating to investments falling within—

- (a) any paragraph other than paragraph 10 (long term insurance contracts) or 11 (rights and interests in investments) of Part I of Schedule 1 to the Financial Services Act 1986, or
- (b) paragraph 11 of that Part of that Schedule so far as it is not related to paragraph 10 of that Part of that Schedule; and

“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⁽⁹⁾, 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.

EXPLANATORY NOTE

(This note is not part of the Order)

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

2. An appropriate European financial service vehicle is a body corporate which is authorised or otherwise entitled, or is a candidate for authorisation (where applicable) to conduct investment business in any member State of the European Community or in any of the following countries: Austria, Denmark, Finland, Iceland, Liechtenstein, Sweden and Switzerland. Investment business is

⁽⁸⁾ 1986 c. 41.

⁽⁹⁾ 1988 c. 1.

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defined to mean engaging in one or more of the activities which fall within the paragraphs in Part II of Schedule 1 to the Financial Services Act 1986 and are not excluded by Part III of that Schedule.

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