

SCHEDULE 5

Article 5

THE PARTS OF SCHEDULE 8 TO THE BUILDING SOCIETIES ACT 1986, AS VARIED BY THIS ORDER

PART 1

THE SERVICES

1. Banking services.
2. Investment services.
3. Insurance services.
4. Trusteeship.
5. Executorship.
6. Land services.

PART II

GENERAL RESTRICTIONS ON SERVICES

1. Subject to paragraphs 2, 3, 4 and 5 below, no power conferred on a building society to provide a service of a description specified in Part 1 of this Schedule of itself confers power—

- (a) to perform the activities of—
 - (i) taking deposits in circumstances which require authorisation under the Banking Act 1987(1)(or would require authorisation were the taker not a building society),
 - (ii) making advances or loans of any description,
 - (iii) acquiring the right to be paid any sum owing to another person arising out of any arrangement under which money is borrowed or goods or services are provided on credit,
 - (iv) acquiring land,
 - (v) acquiring or holding any asset the power to acquire or hold which is derived from section 19 of this Act by virtue of an order made under, or partly under, that section,
 - (vi) acquiring or holding relevant investments, or
 - (vii) underwriting risks of any description, or
- (b) to maintain a place of business in any country or territory outside the United Kingdom for the purpose of providing that service unless the society also conducts the principal business of a building society in that country or territory, but nothing in this paragraph prohibits performance of any activity performance of which is within the capacity of a building society by virtue of any power arising otherwise than under this Schedule.

2. Paragraph 1 above shall not be taken to prevent—

- (a) the power to provide banking services from conferring the power—
 - (i) to arrange the taking of deposits,
 - (ii) to arrange the lending of money, and

(1) 1987 c. 22

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- (iii) to arrange the bailment of leasable chattels,
- (b) the power to provide investment services from conferring the power to arrange the acquisition or holding of relevant investments, or
- (c) the power to provide insurance services from conferring the power to arrange the provision of insurance of any description.

3. Where, as part of the power to provide banking services, a building society becomes guarantor of the discharge of liabilities of another person and is required to pay sums which that other person is obliged to pay, the right to recover those sums from that other person (with or without interest on them) shall not be treated as excluded by paragraph 1 above.

4. The power to permit occasional overdrawing on an account with a building society shall be treated as part of the power to provide banking-services and accordingly the right to recover sums overdrawn (with or without interest on them) shall not be treated as excluded by paragraph 1 above.

5. Acquiring or holding relevant investments shall not be treated as excluded by paragraph 1 above where it arises out of—

- (a) any element of investment services comprising—
 - (i) acquiring or holding relevant investments as a nominee,
 - (ii) establishment and management of pension schemes,
 - (iii) establishment and management of personal equity plans, or
 - (iv) establishment and management of collective investment schemes,
- (b) the service of trusteeship, or
- (c) the service of executorship.

PART III

RESTRICTIONS IN RELATION TO CERTAIN SERVICES

Banking services

1. In relation to the power to provide banking services—
 - (a) arranging the taking of deposits is restricted to the taking of deposits from individuals,
 - (b) arranging the lending of money is restricted (where it is not within subparagraph (a) above) to lending to individuals except where the lending is on security and the security comprises or includes land,
 - (c) arranging the bailment of leasable chattels is restricted to their bailment to individuals,
 - (d) provision of guarantees, except where it arises for the purpose of or in the course of the provision of money transmission services, is restricted to guarantees of the discharge of liabilities of individuals,
 - (e) arranging the provision of guarantees is restricted, subject to the exception in subparagraph (d) above, to guarantees of the discharge of liabilities of individuals,
 - (f) provision of foreign exchange services, except where it arises for the purpose of or in the course of the provision of money transmission services, is restricted, save in excepted transactions, to their provision to individuals,
 - (g) arranging the provision of foreign exchange services is, subject to the exception in subparagraph (f) above, restricted, save in excepted transactions, to their provision to individuals, and

- (h) administration of the issue of shares or corresponding membership rights by bodies corporate or of transferable instruments and registration of the transfer or cancellation of such shares, rights or instruments is restricted to administration and registration by a building society which has a qualifying asset holding.

Investment services

- 2. In relation to the power to provide investment services—
 - (a) managing investments (except in relation to management of pension schemes) is restricted to managing by a building society which has a qualifying asset holding,
 - (b) acquiring and holding relevant investments as a nominee is restricted to acquisition and holding by a building society which has a qualifying asset holding,
 - (c) establishment and management of pension schemes is restricted to schemes which do not include provisions requiring the investment of any of the funds within the scheme in shares in or deposits with a building society of which the trustee or manager of the scheme is a subsidiary,
 - (d) establishment of personal equity plans is restricted to establishment by a building society which has a qualifying asset holding, and
 - (e) establishment of collective investment schemes is restricted to establishment by a building society which has a qualifying asset holding.

Trusteeship

- 3. The power of a building society to provide the service of trusteeship is restricted to—
 - (a) express trusts where the majority of the beneficiaries are individuals, or
 - (b) charitable trusts,

which do not include, where the trust is a trust of funds in a pension scheme, provisions requiring the investment of any of those funds in shares in or deposits with a building society of which the trustee is a subsidiary.

Land services

- 4. In relation to the power to provide land services—
 - (a) the carrying on of estate agency work is restricted to carrying on by a subsidiary or other associated body of a building society,
 - (b) removal and storage of furniture is restricted to removal and storage by a subsidiary or other associated body of a building society which society has a qualifying asset holding,
 - (c) management of land is restricted to management by a building society which has a qualifying asset holding,
 - (d) management of land is restricted to land which is or is to be used primarily for residential purposes or for purposes incidental to the use of adjoining land under the same management which is or is to be used primarily for residential purposes,
 - (e) arranging the management of land is restricted to land which is or is to be used primarily for residential purposes or for purposes incidental to the use of adjoining land under the same management which is or is to be used primarily for residential purposes,
 - (f) development of land is restricted to development by a building society which has a qualifying asset holding,

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- (g) development of land is restricted to land which is to be used primarily for residential purposes or for purposes incidental to the use of adjoining land developed by the developer which is or is to be used primarily for residential purposes,
 - (h) development of land is restricted to land of a local authority in Great Britain or of a development corporation or land which is charged in favour of the developer of the land to secure repayment of the costs of development, and
 - (i) arranging the development of land is restricted to land which is to be used primarily for residential purposes or for purposes incidental to the use of adjoining land developed by the developer which is or is to be used primarily for residential purposes.
5. No employee of a building society, a subsidiary or other associated body of which carries on estate agency work, whose duties include—
- (a) making a report on the value of land which is to secure an advance,
 - (b) making an assessment of the adequacy of the security of an advance to be secured on land, or
 - (c) authorising the making of an advance to be secured on land, shall perform any service on behalf of that subsidiary or other associated body.

PART IV SUPPLEMENTARY

Powers—general

1. Any power derived from this Schedule to perform any activity includes the power to arrange its performance but a restriction in Part III of this Schedule on the power to perform any activity does not imply an equivalent restriction on the power to arrange its performance.

Powers—specific services

2. Without prejudice to the general scope of any service specified in Part I of this Schedule—
- (a) the power to provide banking services includes power,
 - (i) to administer the issue of, and payments in respect of, shares or corresponding membership rights in bodies corporate or transferable instruments and to register the transfer or cancellation of such shares, rights or instruments, and
 - (ii) to provide advice on taxation and financial planning,
 - (b) the power to provide investment services includes power to provide advice on taxation and financial planning,
 - (c) the power to provide the service of executorship includes power—
 - (i) to act as administrator of the estates of deceased persons, and
 - (ii) to assist in the making of wills, and
 - (d) the power to provide land services includes power to carry out the removal and storage of furniture.

Banking-particular provisions

3.—(1) A building society shall, so far as regards the carrying on of an activity which comprises provision of a banking service for the purposes of this Schedule, be treated for all purposes as a bank

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and a banker and as carrying on the business of banking or a banking undertaking whether or not it would be so treated apart from this paragraph.

(2) This paragraph does not affect the determination of any question as to the status of a building society as a bank or banker for other purposes.

4. Where an account of a person with a building society has, by virtue of the provision of banking services under this Schedule, become overdrawn, it shall be the duty of the building society to take all reasonable steps to recover as soon as practicable from that person the amount due to it on the overdrawn account.

5.—(1) For the purposes of paragraph 1(f) and (g) of Part III of this Schedule, a transaction consisting in the provision of foreign exchange services is an excepted transaction where the value of the transaction is less than £10,000.

(2) For the purposes of subparagraph (1) above the value of a transaction consisting in the provision of foreign exchange services is, where the building society is selling foreign currency, the sum paid to it and, where the building society is purchasing foreign currency, the sum paid by it.

Land services-sanction

6. If a person performs any service in contravention of paragraph 5 of Part III of this Schedule he shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Interpretation

7. This Schedule is to be construed as relating only to the capacity of building societies to provide the services for the time being specified in it and not as making lawful any activity, whether of a building society or a subsidiary or other associated body of a building society, which would not be lawful apart from this Schedule.

8. In this Schedule—

“arranging”, in relation to the performance of any activity, includes—

- (a) arranging its performance on behalf of the person in respect of whom the activity is performed as well as the person who performs the activity, and
- (b) acting as agent on behalf of either such person;

“collective investment scheme” has the meaning which it bears in section 75 of the Financial Services Act 1986⁽²⁾;

“corresponding membership right” has the meaning which it bears in section 18(17) of this Act;

“development corporation” means any of the following bodies:

- (a) in England, a development corporation within the meaning of the New Towns Act 1981⁽³⁾;
- (b) in Wales, the Development Board for Rural Wales established by section 1 of the Development of Rural Wales Act 1976⁽⁴⁾ and the Welsh Development Agency established by section 1 of the Welsh Development Agency Act 1975⁽⁵⁾;
- (c) in Scotland, a development corporation within the meaning of the New Towns (Scotland) Act 1968⁽⁶⁾;

(2) 1986 c. 60; section 75 was amended by S.I. 1988/496 and 803 and Schedule 1 was amended by S.I. 1988/318, 496 and 803.

(3) 1981 c. 64

(4) 1976 c. 75

(5) 1975 c. 70

(6) 1968 c. 16

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(d) in Northern Ireland, the Department of the Environment for Northern Ireland and the Northern Ireland Housing Executive referred to in article 3 of the Housing (Northern Ireland) Order 1981⁽⁷⁾;

“estate agency work” has the same meaning as in the Estate Agents Act 1979⁽⁸⁾;

“land services” means services relating to the acquisition, management, development or disposal of land;

“leasable chattel” has the meaning which it bears in the Building Societies (Commercial Assets and Services) Order 1988, and “bailment” shall be construed accordingly;

“local authority in Great Britain” means any of the following authorities:

(a) in England and Wales, a county council, a district council, a London borough council, a parish or community council, the Common Council of the City of London, and the Council of the Isles of Scilly;

(b) in Scotland, a local authority within the meaning of section 235 of the Local Government (Scotland) Act 1973⁽⁹⁾;

“managing investments” means activity of the kind specified in paragraph 14 of Part II (activities constituting investment business) of Schedule 1 to the Financial Services Act 1986;

“pension scheme” means—

(a) a retirement benefits scheme within the meaning of, and which is approved or a candidate for approval by the Commissioners of Inland Revenue for the purposes of, Chapter I of Part XIV of the Income and Corporation Taxes Act 1988⁽¹⁰⁾(retirement benefit schemes), or

(b) a personal pension scheme within the meaning of, and which is approved or a candidate for approval by the Commissioners of Inland Revenue under, Chapter IV (personal pension schemes) of that Part of that Act, and for the purposes of this definition a scheme is a candidate for approval for the purposes of the first or, as the case may be, under the second of those Chapters if it has been prepared with a view to being so approved and steps are being taken towards obtaining that approval;

“personal equity plan” means a plan for the purposes of section 333 (personal equity plans) of the Income and Corporation Taxes Act 1988;

“the principal business of a building society” means the business of raising funds (whether by the issue of shares or receiving deposits) for the purposes of the society or of making advances secured on land;

“relevant investment” means—

(a) any share or corresponding membership right in a body corporate, and

(b) any other asset, right or interest falling within any paragraph of Part I (investments) of Schedule 1 to the Financial Services Act 1986; and

“transferable instrument” means—

(a) where the issuer of the instrument is a building society, an instrument which is a transferable bearer instrument or a transferable non-bearer instrument for the purposes of section 7 of this Act, and

(b) in any other case, an instrument which would, were the issuer a building society, be such a transferable bearer instrument or transferable non-bearer instrument.

(7) S.I. 1981/156 (N.I. 3).

(8) 1979 c. 38; section 1 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), Schedule 1, Part I, paragraph 40.

(9) 1973 c. 65

(10) 1988 c. 1

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