

1989 No. 1817

**BUILDING SOCIETIES**

**The Building Societies (Gibraltar) Order 1989**

*Made - - - - 4th October 1989*

*Laid before Parliament 5th October 1989*

*Coming into force 15th November 1989*

The Building Societies Commission, with the consent of the Treasury, in exercise of the powers conferred on it by section 14 of the Building Societies Act 1986(a), and of all other powers enabling it in that behalf, hereby makes the following Order:—

**Citation and commencement**

1. This Order may be cited as the Building Societies (Gibraltar) Order 1989 and shall come into force on 15th November 1989.

**Interpretation**

2.—(1) In this Order—

“the Act” means the Building Societies Act 1986;

“Gibraltar” means the City of Gibraltar;

“relevant form of security” means the form of security to which paragraph 1 of Schedule 1 to this Order refers;

“relevant provision” means a provision of the Act which applies or has effect in relation to advances secured on land;

“society” means a building society; and

“territory advance” means an advance which, by virtue of this Order, a society may make.

(2) For the purposes of this Order, a provision of the Act which applies or has effect in relation to advances fully secured on land shall be treated as one which applies or has effect in relation to advances secured on land.

**Designation of Gibraltar**

3.—(1) Subject to paragraph (2) below, Gibraltar is designated as a territory as respects which advances under section 14 of the Act (power to make advances secured on land overseas) may be made secured on land.

(2) Schedule 1 to this Order shall have effect in respect of—

(a) the forms of security on land which may be taken for such advances,

(b) the circumstances in which such forms of security may be taken,

(c) the conditions subject to which such forms of security may be taken, and

(d) the classification of territory advances (and accordingly of the mortgage debts) as class 1 advances or class 2 advances for the purposes of the requirements of Part III of the Act for the structure of commercial assets,

in relation to Gibraltar, and a society shall not have power to make advances secured on land in Gibraltar except in accordance with Schedule 1 to this Order.

**Availability of power**

4. The power conferred by this Order 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.

**Exercise of power without adoption**

5. The power conferred by this Order shall not require adoption by a society in order to be exercisable by it.

**Other security**

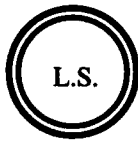
6. Nothing in this Order is to be taken as precluding a society from taking other security for an advance classified as specified in article 3(2)(d) above, but the value of the other security shall be disregarded for the purpose of that classification.

**Application of relevant provisions**

7. Subject to Schedule 2 to this Order, the relevant provisions shall apply or, as the case may be, have effect in relation to territory advances as they apply or have effect in relation to other advances secured on land and in any relevant provision—

- (a) any reference to a mortgage shall be construed as including a reference to the relevant form of security, and
- (b) any reference to a mortgage debt shall be construed accordingly.

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 28th September 1989.



*P. H. Gevers*  
Secretary to the Commission

We consent to this Order.

*David Lightbown*  
*Stephen Dorrell*  
Two of the Lords Commissioners  
of Her Majesty's Treasury

4th October 1989

## RELEVANT FORM OF SECURITY

1. The form of security which may be taken for a territory advance is the form (known in Gibraltar as a mortgage)–

- (a) acknowledging a mortgage debt and obliging the borrower to pay it, and
- (b) securing payment of that mortgage debt on land in Gibraltar,

in respect of which the following provisions of this Schedule are satisfied.

2. Circumstances in which the relevant form of security may be taken for an advance–

- (a) do not, subject to Article 6 above, include circumstances in which payment of the mortgage debt is to be secured on any equitable interest in land; and
- (b) do not include circumstances in which provision is included as respects either the capital or the interest element in the mortgage debt that the amount due to the society may be adjusted by reference to any index of prices (whether housing prices or other prices) or to a share in the open market value of the land.

3.—(1) A territory advance shall be classified as a class 1 advance for the purposes of the requirements of Part III of the Act for the structure of commercial assets where the society at the time when it makes the advance is satisfied that–

- (a) the borrower is an individual;
- (b) the land comprising the security is exclusively for the residential use of–
  - (i) the borrower, or
  - (ii) the borrower and any person residing with the borrower;
- (c) the amount advanced will not exceed the value of the land comprising the security (after deducting from that value any mortgage debt of the borrower to the society outstanding under a relevant form of security relating to that land);
- (d) the land comprising the security will not be security for any advance other than an advance by the society (except where that other advance is postponed to the society's advance); and
- (e) any right of the spouse (if any) of the borrower relating to the land comprising the security will be subject to the rights of the society under the relevant form of security taken for the advance.

(2) For the purposes of subparagraph (1) above and paragraph 4 below, where a society makes an advance by instalments, the reference to the time when the society makes the advance is a reference to the time when it pays the first of the instalments.

4. A territory advance shall be classified as a class 2 advance for the purposes of the requirements of Part III of the Act for the structure of commercial assets where the society at the time when it makes the advance is satisfied that the requirements of paragraph 3(1)(c), (d) and (where applicable) (e) above are satisfied but is not satisfied that the requirements of paragraph 3(1)(a) and (b) above are satisfied.

5. If at any time when an advance treated by virtue of this Order as a class 1 advance or a class 2 advance for the purposes specified in paragraphs 3 and 4 above is outstanding the society is satisfied, on notice given to it by the borrower, that there has been a change in the use of the land comprising the security and is satisfied that, had the use been so changed before the making of the advance, the advance would instead have been a class 2 advance or a class 1 advance, as the case may be, for those purposes, the advance shall be reclassified accordingly as from that time.

6. The relevant form of security may only be taken for an advance under section 14 of the Act in circumstances in which the advance is classifiable as a class 1 advance under paragraph 3 above or a class 2 advance under paragraph 4 above.

**EXCLUSION OR MODIFICATION OF RELEVANT PROVISIONS**

1. Section 10 of the Act (power to make advances secured on land) shall not apply to territory advances.
  2. Subsections (1) to (7), (9) to (13) and (15) of section 11 of the Act shall not apply to territory advances.
  3. Subsections (1) to (11) and (13) of section 12 of the Act (supplementary provisions) shall not apply to territory advances.
  4. Section 13(7) of, and Schedule 4 to, the Act (sale of mortgaged property and discharge of mortgages) shall not apply to territory advances.
  5. Section 18 of the Act (power to invest in associated bodies) shall have the effect in relation to territory advances so as to treat them, for the purposes of subsection (4) thereof, as if they were advances secured on land in the United Kingdom.
  6. Section 69 of the Act (disclosure and record of income of related businesses) shall have effect in relation to territory advances as if, in subsection (17) thereof—
    - (a) the definition of “conveyancing services” related additionally to land in Gibraltar and included the preparation of conveyances, contracts and other documents in connection with, and other services ancillary to, the disposition or acquisition of interests in that land, and
    - (b) the definition of “solicitor” included, in relation to Gibraltar, a barrister or solicitor: approved, admitted and enrolled in the Supreme Court of Gibraltar.
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**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order empowers building societies with commercial assets of at least £100 million to make advances on the security of land in Gibraltar, and provides for the classification of those advances within the asset classification provisions of the Building Societies Act 1986. By virtue of article 5 of this Order, the power to make such an advance does not require adoption by a special resolution of a society in order to be exercisable by it.

This Order provides (article 7 and Schedule 2) for the general treatment of those advances under the Building Societies Act 1986 to correspond to the treatment, under the Act, of advances secured on land in the United Kingdom.

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