

SCHEDULE

PART II

INTERPRETATION

Meaning of standard asset provision

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

Meaning of one tier organisation

2. 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

- 3.—(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 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 subparagraph (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 subparagraph (1)(a) above, a subordinate organisation comes within the prohibited range where it comes within a description in paragraph 7(2)(b), (c), (d) or (e) of Part II of the Schedule to the 1990 Order (or would do if it were a vehicle subject to the provisions of subparagraph 7(2) of Part II of that Order).
- (3) For the purposes of subparagraph (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

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definition of “subordinate organisation” in paragraph 7 below) of 15 per cent or more of the ordinary share capital (as defined within that definition) of that company.

(4) For the purposes of subparagraph (1)(b) above, “relevant body corporate” means an appropriate vehicle 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 per cent 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 subparagraph (6) below, from carrying on qualifying activities, and
- (b) “qualifying activities” means activities the purpose of enabling a qualifying body to carry on which is a purpose for which the society has power to invest in or support a qualifying body.

(6) For the purposes of subparagraph (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 an appropriate vehicle 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.

Specification of particular restrictions for payments services vehicles

4.—(1) In this Schedule “the particular restrictions for payments services vehicles” means, subject to subparagraph (3) below, the provisions set out in subparagraph (2) below.

(2) A body corporate is not an appropriate payments services vehicle for a society where—

- (a) it is a market maker,
- (b) its business includes lending money, secured or unsecured, on its own account, save in so far 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,
- (c) it is an authorised institution, or its business requires it to be authorised, for the purposes of the Banking Act 1987(1),
- (d) its business includes activities in the range from which the society is restricted, or
- (e) it has a subordinate organisation which is not within the prescribed range.

(1) 1987 c. 22.

(3) For the purposes of subparagraph (1) above, a subordinate organisation comes within the prescribed range where it is—

- (a) a particular body designated by Order under section 18 of the Act,
- (b) a body corporate of a description designated by this Order or another Order under section 18 of the Act, which is a one tier organisation, or
- (c) a body corporate, being a one tier organisation, whose objects do not include the carrying on of activities which, by virtue of section 18(4), the society could not invest in or support it so as to enable it to carry them on.

(4) The restriction subparagraph (2) will not apply where there is no relevant holding of the society in the appropriate payments services vehicle.

Meaning of “relevant holding”

5. A “relevant holding” for purposes of paragraphs 3 and 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 7 below) of 2% or more of the issued ordinary share capital (as defined within the definition of “subordinate organisation” in paragraph 7 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.

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

6.—(1) For the purposes of paragraph 4 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 in the case of an appropriate payments services vehicle, either a restriction derived from the Act or any instrument under the Act or a restriction assumed by the society.

(2) Notwithstanding subparagraph (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

7. In this Schedule, except where the context otherwise requires—

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

“company limited by shares” has the meaning which it bears for the purposes of the Companies Act 1985(2) or the Companies (Northern Ireland) Order 1986(3);

(2) 1985 c. 6.

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

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“facility account” has the meaning which it bears in the Building Societies (Limited Credit Facilities) Order 1987⁽⁴⁾;

“investment”, in respect of the expressions “the subscription for or the purchase or sale of investments” and in the definition of “market maker”, has the meaning which it bears in section 1 (investment business) of the Financial Services Act 1986⁽⁵⁾;

“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 purposes of subsection (4) of section 67 (depository receipts) of the Finance Act 1986⁽⁶⁾, 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⁽⁷⁾, 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.

⁽⁴⁾ S.I. 1987/1975, amended by S.I. 1988/1141.

⁽⁵⁾ 1986 c. 60.

⁽⁶⁾ 1986 c. 41.

⁽⁷⁾ 1988 c. 1.