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STATUTORY INSTRUMENTS

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**1995 No. 1006**

**BUILDING SOCIETIES**

**The Building Societies (Commercial Assets) Order 1995**

*Made* - - - - - *5th April 1995*

*Coming into force* - - - - - *7th April 1995*

The Treasury, in exercise of the powers conferred on them by section 19(1), (2), (3), (5) and (6) of the Building Societies Act 1986<sup>(1)</sup>, hereby make the following Order, a draft of which has been laid before and approved by resolution of each House of Parliament:

**Title and commencement**

1. This Order may be cited as the Building Societies (Commercial Assets) Order 1995 and shall come into force on 7th April 1995.

**Interpretation**

2. In this Order “the Act” means the Building Societies Act 1986.

**Class 3 assets**

3.—(1) A building society may acquire, hold and dispose of the following forms of property as class 3 assets, namely—

- (a) relevant debts, and
- (b) permitted investments.

(2) For the purposes of paragraph (1) above—

- (a) “acquire”, in relation to a relevant debt created by way of loan, includes making the loan;
- (b) “relevant debts” means debts which—
  - (i) are owed by a body of persons corporate or unincorporate, or a corporation sole, incorporated or established or having a place of business in a member State or the Channel Islands, the Isle of Man, Gibraltar, Iceland, Liechtenstein, Norway or Switzerland, and
  - (ii) are not excluded by paragraph (5) below, and equitable interests in such debts; and

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(1) 1986 c. 53.

- (c) “permitted investments” means shares or corresponding membership rights, or rights in or to shares or corresponding membership rights, issued by a body corporate formed in a member State or the Channel Islands, the Isle of Man, Gibraltar, Iceland, Liechtenstein, Norway or Switzerland, which is the borrower under a loan owed to the society (alone or in a syndicate), or by a parent undertaking of such a borrower or a subsidiary undertaking of such a borrower or of such a parent undertaking, where either—
- (i) the shares or rights are issued as partial consideration for granting the loan, and the amount paid (or treated as paid) for the shares or rights does not exceed 5 per cent. of the initial amount of the loan, or
  - (ii) the shares or rights are issued in consideration of the release of the borrower from liability to pay all or part of the amount due under the loan (whether principal, interest or otherwise), following default on the part of the borrower under the loan or pursuant to a compromise of the rights of the society and the borrower under the loan, and the amount paid (or treated as paid) for the shares or rights does not exceed the amount released.

(3) In paragraph (2)(c) above, “the initial amount of a loan”, in the case of a loan which may be advanced or drawn down in more than one instalment, means the maximum amount of principal that may be advanced or drawn down on the date the borrower first receives funds under the loan.

(4) A relevant debt acquired or held by a building society may be owed to the society alone or in a syndicate.

(5) A debt which is an advance fully secured on land or a class 3 asset (otherwise than by virtue of paragraph (2) above) is not a relevant debt unless paragraph (6) below applies and the debt is treated as a relevant debt pursuant to that paragraph.

(6) Where the society has entered into an arrangement which it could have entered into either under the power conferred by paragraph (1)(a) above or under one of the following powers, namely—

- (i) the power conferred by section 10 of the Act to make advances fully secured on land, and
- (ii) the power conferred by the Building Societies (Money Transmission Services) Order 1989(2),

the society shall record the power under which the arrangement is to be treated as having been entered into and it shall be so treated.

(7) The powers conferred by paragraph (1) above are available to a building society only while it has a qualifying asset holding or is treated as having one under paragraph (8) below, but if they cease to be available the society does not have to dispose of any property or rights.

(8) For the purposes of paragraph (7) above a society is treated as having a qualifying asset holding if it is a successor to two or more societies which have amalgamated, at least one of which had a qualifying asset holding immediately before the specified date referred to in section 93(3)(b) of the Act, and the amalgamated society does not have a qualifying asset holding by reason only of not having the annual accounts referred to in section 118(2) of the Act.

(9) For the purpose of section 19(4) of the Act, the power to acquire, hold and dispose of relevant debts and the power to acquire, hold and dispose of permitted investments are separate powers.

### **Amendment of the Act**

**4.** In subsection (8) of section 18 of the Act (power to invest in subsidiaries and other associated bodies), after paragraph (c) there shall be inserted the following words—

“and that subsection shall not prevent a building society from investing in a qualifying body if the shares or corresponding membership rights in that body would, by virtue of an order under section 19, constitute class 3 assets in the hands of the society.”.

### **Aggregation of relevant debts and permitted investments**

**5.** For the purposes of section 20 of the Act (commercial asset structure requirements for building societies)—

- (a) the aggregate value of a relevant debt within the meaning of article 3 above shall comprise the aggregate of the amounts outstanding in respect of—
  - (i) the principal amount of the debt,
  - (ii) any interest on that principal amount, and
  - (iii) any other amounts required to be paid to the society under the terms of the loan or other arrangement under which the debt is owed; and
- (b) the aggregate value of a permitted investment within the meaning of article 3 above shall be determined in accordance with subsection (8) of that section.

### **Amendment of earlier Orders**

**6.—(1)** For article 4 of the Building Societies (Limited Credit Facilities) Order 1987<sup>(3)</sup> and article 4 of the Building Societies (Money Transmission Services) Order 1989 (which specify the societies to which the relevant powers are available) there shall be substituted the following—

“**4.—(1)** The powers conferred by this Order are available to a building society only while it has a qualifying asset holding or is treated as having one under paragraph (2) below, but if they cease to be available the society does not have to dispose of any property or rights.

(2) For the purposes of paragraph (1) above a society is treated as having a qualifying asset holding if it is a successor to two or more societies which have amalgamated, at least one of which had a qualifying asset holding immediately before the specified date referred to in section 93(3)(b) of the Act, and the amalgamated society does not have a qualifying asset holding by reason only of not having the annual accounts referred to in section 118(2) of the Act.”.

(2) For paragraph 2(d) of Section A of Part III of Schedule 1 to the Building Societies (Commercial Assets and Services) Order 1988<sup>(4)</sup> (definition of “leasable chattels”) there shall be substituted the following—

- “(d) “leasable chattels”, in relation to a society, means chattels the property in which is vested in the society which are, or are to be, subject to bailment in return for periodical payments under an agreement which may but need not contain provision (or be part of a series of agreements containing provision) for the property in those chattels to become vested in the bailee.”.

(3) For paragraph 1 of Section B of that Part of that Schedule (societies to which power available) there shall be substituted the following—

“**1.—(1)** The powers conferred by this Part of this Schedule are available to a building society only while it has a qualifying asset holding or is treated as having one under subparagraph (2) below, but if they cease to be available the society does not have to dispose of any property or rights.

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<sup>(3)</sup> S.I. 1987/1975, amended by S.I.s 1988/1141 and 1989/730.

<sup>(4)</sup> S.I. 1988/1141.

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

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(2) For the purposes of sub-paragraph (1) above a society is treated as having a qualifying asset holding if it is a successor to two or more societies which have amalgamated, at least one of which had a qualifying asset holding immediately before the specified date referred to in section 93(3)(b) of the Act, and the amalgamated society does not have a qualifying asset holding by reason only of not having the annual accounts referred to in section 118(2) of the Act.”.

5th April 1995

*Derek Conway*  
*Andrew Mitchell*  
Two of the Lords Commissioners of Her  
Majesty’s Treasury

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## EXPLANATORY NOTE

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

This Order extends the forms of property which building societies have power to acquire, hold and dispose of as class 3 assets (assets not secured on land).

The additional forms of property are (a) debts due from bodies corporate and unincorporate, and (b) shares and equivalent rights acquired in connection with loans either at the time the loan is advanced (up to a maximum value of 5% of the loan) or following a default or compromise.

The Order also amends section 18(8) of the Building Societies Act 1986 so as to provide that the restriction in section 18(6) does not apply to investment permitted by this Order and amends the Building Societies (Commercial Assets and Services) Order 1988 by substituting a definition of “leasable chattels” which is not restricted to individuals. It makes certain other technical amendments to that Order and to the Building Societies (Limited Credit Facilities) Order 1987 and the Building Societies (Money Transmission Services) Order 1989.

A review of the cost of compliance with this Order has been undertaken and the resulting compliance cost assessment may be purchased from H.M. Treasury, Parliament Street, London SW1P 3AG.