

---

STATUTORY INSTRUMENTS

---

**1995 No. 1188**

**BUILDING SOCIETIES**

**The Building Societies (Designation  
of Qualifying Bodies) Order 1995**

<i>Made</i>	- - - -	<i>2nd May 1995</i>
<i>Laid before Parliament</i>		<i>4th May 1995</i>
<i>Coming into force</i>	- -	<i>1st June 1995</i>

The Building Societies Commission, with the consent of the Treasury, in exercise of the powers conferred on it by section 18(2)(c) and (3) of the Building Societies Act 1986(1), hereby makes the following Order:

**Title and commencement**

1. This Order may be cited as the Building Societies (Designation of Qualifying Bodies) Order 1995 and shall come into force on 1st June 1995.

**Interpretation**

2. In this Order—

“the Act” means the Building Societies Act 1986;

“body” means a body corporate of the description specified in column 1 of Part I of the Schedule;

“the relevant power” means the power of investment or investment and support;

“the Schedule” means the Schedule to this Order; and

“society” means a building society.

**Designation of bodies corporate**

3.—(1) Any body corporate of the description specified in column 1 of Part I of the Schedule 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 the Schedule—

- (a) the corresponding item in column 2 specifies the meaning of that description for the purposes of this Order,
  - (b) the corresponding item in column 3 specifies what the body is designated as suitable for,
  - (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 and paragraph (2) below) the exercise of the relevant power by a society is permitted in relation to that body, 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 body.
- (2) In addition to the purposes specified in column 4, the exercise of the relevant power by the society is also permitted for the purpose of enabling the body to carry on any additional activities which it is within the power of that body to carry on under its memorandum and articles of association (or equivalent constitutional document), provided that those activities—
- (a) do not extend to activities referred to in paragraph 2(2) of Part II of the Schedule which would prevent a body corporate from being a body (as defined in article 2 above), and
  - (b) are carried on together with activities mentioned in column 4 in relation to that body.
- (3) Part II of the Schedule shall have effect—
- (a) so as to supplement Part I thereof, and
  - (b) in respect of the interpretation of the Schedule.

#### **Amendment of earlier Orders**

- 4.—(1) The Building Societies (Designation of Qualifying Bodies) Order 1993(2) shall be amended—
- (a) in paragraph 1 of Part II of Schedule 1 (meaning of “specified type of body corporate”) by the insertion after sub-paragraph (a) of the following sub-paragraph—
    - “(aa) a company or industrial and provident society,”;
  - (b) by the substitution for paragraph 4(2)(b) of that Part of that Schedule (which currently restricts a funding body from carrying on a deposit-taking business in the United Kingdom) of the words “it carries on the business of trading in derivatives”; and
  - (c) by the substitution for paragraph 6 of that Part of that Schedule (definitions) of the following—

#### **“Other definitions**

#### **6. In this Schedule—**

“market maker” means—

- (a) in relation to the United Kingdom, a person who—
  - (i) holds himself out at all normal times in compliance with the rules of the Stock Exchange as willing to buy and sell securities of a particular kind at a price specified by him, and
  - (ii) is recognised as doing so by the Council of the Stock Exchange; or
- (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 securities of a particular kind which are traded on any exchange in that country or territory;

---

(2) S.I.1993/985, amended by S.I.s 1993/2706 and 1994/2457.

“the Stock Exchange” means The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited; and

“trading in derivatives” means trading as principal in any investment of a description falling within one or more of paragraphs 4 (instruments entitling to shares or securities), 7 (options), 8 (futures) and 9 (contracts for differences) of Part I of Schedule 1 to the Financial Services Act 1986<sup>(3)</sup>.”.

(2) The Building Societies (Designation of Qualifying Bodies) (No. 3) Order 1993<sup>(4)</sup> shall be amended—

- (a) in column 4 of item 9 of Part I of the Schedule (purposes for which investment and support of a lending body is permitted) by the insertion of the words “and to accept deposits” after the words “this item”;
- (b) by the substitution for paragraph 6(2)(b) of Part II of the Schedule (which currently restricts designated bodies from carrying on a deposit-taking business in the United Kingdom) of the words “it carries on the business of trading in derivatives”; and
- (c) in paragraph 14 of the Schedule—
  - (i) by the deletion of the definitions of “investment” and “market maker in securities of a particular kind”;
  - (ii) by the substitution for the definition of “market maker” of the following—

““market maker” means—

    - (a) in relation to the United Kingdom, a person who—
      - (i) holds himself out at all normal times in compliance with the rules of the Stock Exchange as willing to buy and sell securities of a particular kind at a price specified by him, and
      - (ii) is recognised as doing so by the Council of the Stock Exchange; or
    - (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 securities of a particular kind which are traded on any exchange in that country or territory.”;
  - (iii) by the insertion after the definition of “relevant investment business” of the following definition—

““the Stock Exchange” means The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited;”; and
  - (iv) by the insertion after the definition of “subsidiary” and “subsidiary undertaking” of the following further definition—

““trading in derivatives” means trading as principal in any investment of a description falling within one or more of paragraphs 4 (instruments entitling to shares or securities), 7 (options), 8 (futures) and 9 (contracts for differences) of Part I of Schedule 1 to the Financial Services Act 1986.”.

---

<sup>(3)</sup> 1986 c. 41, Part I of Schedule 1 was amended by S.I.s 1988/496, 1990/349 and 1991/1104.

<sup>(4)</sup> S.I. 1993/2706, amended by S.I. 1994/2457.

---

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

---

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 25th April 1995.

*J. Dennis*  
Secretary to the Commission

We consent to this Order,

*D. Conway*  
*T. Wood*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

2nd May 1995

THE SCHEDULE

Article 3

PART I

description of designated body corporate

<i>Column 1</i> Specified description	<i>Column 2</i> Specified definition	<i>Column 3</i> Specified relevant power	<i>Column 4</i> Specified purposes	<i>Column 5</i> Specified conditions
Financing body.	A specified type of body corporate (not being one excluded by the particular restrictions for financing bodies), formed for the purposes of, or the objects of which include, acquiring, holding and disposing of relevant debts and permitted investments.	Investment or investment and support (but not for support only).	Enabling the body to carry on any of the activities which are described in column 2 and to accept deposits.	(1) The standard asset condition. (2) The qualifying activities condition.

PART II

interpretation

**Meaning of “specified type of body corporate”**

1. In this Schedule “specified type of body corporate” means a body corporate which is—
  - (a) a company or an industrial and provident society,
  - (b) a body corporate formed in a member State other than the United Kingdom,
  - (c) a body corporate formed in any of the following territories and countries: the Channel Islands, the Isle of Man, Gibraltar, Iceland, Liechtenstein, Norway and Switzerland.

**Meaning of “particular restrictions for financing bodies”**

- 2.—(1) In this Schedule “the particular restrictions for financing bodies” means the provisions set out in sub-paragraph (2) below.
  - (2) A body corporate is not a financing body for a society where—
    - (a) it is a market maker, or
    - (b) it carries on the business of trading in derivatives.
  - (3) For the purposes of this paragraph—
 “market maker” means—

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

- (a) in relation to the United Kingdom, a person who—
  - (i) holds himself out at all normal times in compliance with the rules of the Stock Exchange as willing to buy and sell securities of a particular kind at a price specified by him, and
  - (ii) is recognised as doing so by the Council of the Stock Exchange; or
- (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 securities of a particular kind which are traded on any exchange in that country or territory;

“the Stock Exchange” means The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited; and

“trading in derivatives” means trading as principal in any investment of a description falling within one or more of paragraphs 4 (instruments entitling to shares or securities), 7 (options), 8 (futures) and 9 (contracts for differences) of Part I of Schedule 1 to the Financial Services Act 1986<sup>(5)</sup>.

(4) The restrictions in sub-paragraph (2) above do not apply to any body corporate in which the society holds less than 5 per cent. of the issued shares or corresponding membership rights.

(5) If a society becomes aware that a body corporate in which the society directly holds 5 per cent. or more of the issued shares or corresponding membership rights is for the time being excluded from being a body by the restrictions in sub-paragraph (2) above, the society shall, as soon as it is conveniently practicable to do so without undue loss, dispose of sufficient of its shares or corresponding membership rights so that it ceases to hold 5 per cent. or more of the issued shares or corresponding membership rights in that body corporate.

### Meaning of “acquiring”

3. In this Schedule “acquiring”, in the case of a relevant debt, includes making a loan.

### Meaning of “relevant debts” and treatment of similar arrangements

4.—(1) In this Schedule “relevant debts” means debts which—

- (a) 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
- (b) are not excluded by paragraph (3) below,

and equitable interests in such debts.

(2) A relevant debt may be owed to a body alone or in a syndicate.

(3) A debt which is an advance fully secured on land or a class 3 asset (otherwise than by virtue of the Building Societies (Commercial Assets) Order 1995<sup>(6)</sup>) is not a relevant debt unless paragraph (4) below applies and the debt is treated as a relevant debt pursuant to that paragraph.

(4) Where a body has entered into an arrangement which could constitute the acquisition or holding of a relevant debt or one of the following, namely—

- (i) the making of an advance fully secured on land, and

<sup>(5)</sup> 1986 c. 41, Part I of Schedule 1 was amended by S.I. 1988/496, 1990/349 and 1991/1104.

<sup>(6)</sup> S.I. 1995/1006.

(ii) the acquisition or holding of a money transmission service debt (within the meaning of the Building Societies (Money Transmission Services) Order 1989(7)),  
the body shall record which of the above the arrangement is to be treated as constituting and it shall be so treated.

### **Meaning of “permitted investments”**

5.—(1) In this Schedule “permitted investments” means shares or corresponding membership rights, or rights in or to shares or corresponding membership rights, issued by a relevant borrower or by a parent undertaking of a relevant borrower or a subsidiary undertaking of a relevant borrower or of such a parent undertaking, where either—

- (a) 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
  - (b) the shares or rights are issued in consideration of the release of the relevant 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 relevant borrower under the loan or pursuant to a compromise of the rights of the body or society and the relevant borrower under the loan, and the amount paid (or treated as paid) for the shares or rights does not exceed the amount released.
- (2) For the purposes of this paragraph—
- (a) “relevant borrower” means 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 body or to the society exercising the relevant power (whether owed to the body or society alone or in a syndicate); and
  - (b) “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.

### **Meaning of “standard asset condition”**

6. In this Schedule “the standard asset condition” means a condition 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, unless the society is one to which sub-paragraph (b) below applies;
  - (b) the society is a successor to two or more societies which have amalgamated and that society does not have a qualifying asset holding by reason only that it does not have any annual accounts as referred to in section 118(2) of the Act, provided that at least one society to which the amalgamated society is a successor had a qualifying asset holding immediately before the specified date referred to in section 93(3)(b) of the Act;
  - (c) the cessation of the availability of the relevant power to such a society as is referred to in sub-paragraph (a) or (b) above because that society no longer has a qualifying asset holding does not require the disposal of any property or rights.

### **Meaning of “qualifying activities condition”**

7.—(1) In this Schedule “the qualifying activities condition” means a condition to the effect that—

---

(7) S.I. 1989/730.

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

- (a) where a society holds 5 per cent. or more of the shares or corresponding membership rights in a body and becomes aware that any subordinate organisation of that body is, for the time being, excluded by the particular restrictions for financing bodies, the society shall, as soon as it is conveniently practicable to do so without undue loss, dispose of sufficient of its shares or corresponding membership rights so that it ceases to hold 5 per cent. or more of the issued shares or corresponding membership rights in that body,
  - (b) within four months after the end of each financial year of a body in which the society, at such financial year end, holds 15 per cent. or more of the issued shares or corresponding membership rights, the society shall satisfy itself whether, for such financial year, at least 60 per cent. of the gross income of that body, or if that body has any subordinate organisations, at least 60 per cent. of the consolidated gross income of the body and such subordinate organisations, is derived from carrying on qualifying activities, and
  - (c) if, for two successive financial years of a body less than 60 per cent. of the gross income (or, if appropriate, consolidated gross income) is derived from carrying on qualifying activities, the society shall, as soon as it is conveniently practicable to do so without undue loss, dispose of sufficient of its shares or corresponding membership rights so that it ceases to hold 15 per cent. or more of the issued shares or corresponding membership rights in that body.
- (2) For the purposes of this paragraph—
- (a) “qualifying activities” means activities for the purpose of which a society has power to invest in or support a qualifying body; however “additional activities” of the kind mentioned in article 3(2) above shall not be qualifying activities, and
  - (b) “subordinate organisation” means a body corporate in which another body corporate holds, directly or indirectly, 5 per cent. or more of the issued shares or corresponding membership rights where—
    - (i) “holds directly or indirectly” means that a body corporate holds shares or corresponding membership rights in another body corporate either directly or through another body corporate (or bodies corporate), or partly directly and partly through another body corporate (or bodies corporate);
    - (ii) methods the same as those set out in section 838 (subsidiaries) of the Income and Corporation Taxes Act 1988<sup>(8)</sup> shall be used to determine an indirect holding as if references to “own” in that section were references to “hold”, and other derivatives of “own” shall be construed accordingly; and
    - (iii) references to “ordinary share capital” in section 838 of the Income and Corporation Taxes Act 1988 shall be read as references to shares, or as the case may be, corresponding membership rights in a body corporate.

---

<sup>(8)</sup> 1988 c. 1.



---

## EXPLANATORY NOTE

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

This Order designates a “financing body” as a description of body corporate designated as suitable for investment and support (but not for support only) by building societies under section 18 of the Building Societies Act 1986.

A financing body is a company or industrial and provident society, or a body corporate formed in any member State (other than the United Kingdom), the Channel Islands, the Isle of Man, Gibraltar, Iceland, Liechtenstein, Norway or Switzerland. The purposes for which it may be formed include acquiring, holding and disposing of (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. As well as for these purposes, a building society may invest in and support a financing body for the purpose of enabling it to take deposits.

This Order also amends the Building Societies (Designation of Qualifying Bodies) Order 1993 and the Building Societies (Designation of Qualifying Bodies) (No. 3) Order 1993 to remove the restrictions on designated bodies carrying on a deposit-taking business in the United Kingdom, to add a restriction on designated bodies carrying on the business of trading in derivatives and to substitute a new definition of “market maker” (which has the same effect as the existing definition, based on provisions of the Finance Act 1986 (c. 41) which are prospectively repealed by the Finance Act 1990 (c. 29)). The Building Societies (Designation of Qualifying Bodies) Order 1993 is also amended to add companies and industrial and provident societies to the types of body which a building society may invest in and support under that Order.

A review of the cost of compliance with this Order has been undertaken and the resulting compliance cost assessment may be purchased from the Secretary, Building Societies Commission, 15 Great Marlborough Street, London W1V 2LL.