

## 1986 No. 2169

## BUILDING SOCIETIES

**The Building Societies Act 1986 (Powers and Miscellaneous Transitional Provisions) Order 1986.**

Made - - - - - 9th December 1986  
 Coming into Operation 1st January 1987

## ARRANGEMENT OF ARTICLES

*Article*

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The Treasury, in exercise of the powers conferred on them by section 121 of the Building Societies Act 1986 (a), and of all other powers enabling them in that behalf, hereby make the following Order:—

*Citation and commencement*

1. This Order may be cited as the Building Societies Act 1986 (Powers and Miscellaneous Transitional Provisions) Order 1986 and shall come into operation on 1st January 1987.

*Interpretation and effect.*

2.—(1) In this Order—

“the Act” means the Building Societies Act 1986;

“the commencement date” means 1st January 1987;

“Northern Ireland society” means a society which, prior to the commencement date, was registered in Northern Ireland;

“the previous enactments” means—

(a) except in relation to a Northern Ireland society, the Building Societies Act 1962 (b), and

(b) in relation to a Northern Ireland society, the Building Societies Act (Northern Ireland) 1967 (c);

“the registrar” means—

(a) except in relation to a Northern Ireland society, the Chief Registrar, and

(a) 1986 c.53.

(b) 1962 c.37.

(c) 1967 c.31 (N.I.).

(b) in relation to a Northern Ireland society, the officer appointed to perform the functions of registrar of building societies in Northern Ireland; and

“society” means a building society.

(2) So far as this Order saves any provision of the existing enactments (whether or not subject to modifications), this Order shall have effect notwithstanding the coming into operation of section 120(2) of the Act (dealing with repeals and revocations).

*Powers of societies*

3.—(1) So long as a society incorporated before the commencement date—

- (a) has not yet had its memorandum registered under Schedule 20 to the Act (which contains transitional provisions), or
- (b) has had its memorandum so registered but no business provision thereof has yet taken effect,

there shall be available to the society, in addition to any powers conferred on it by or under the Act, any relevant power so far as that power was available to the society immediately before the commencement date.

(2) So long as such a society has had its memorandum so registered and—

- (a) at least one business provision thereof has taken effect, but
- (b) a power therein which it has adopted has not yet taken effect,

there shall be available to the society, in addition to any powers conferred on it by or under the Act, power to carry on any activity comprised in that adopted power so far as it was available to the society immediately before the commencement date.

(3) For the purposes of this Article—

- (a) a business provision is a provision containing the purpose or principal purpose, or an adopted power, of the society; and
- (b) a relevant power is a power conferred by or under the previous enactments which, in order to be exercisable under the Act by the society, requires adoption by it.

*Applications for authorisation*

4.—(1) Where—

- (a) an application has been made by a society before the commencement date for authorisation to raise money and accept deposits under the previous regulations, and
- (b) on the commencement date there has been no withdrawal of, determination of, or service of a notice under regulation 6(3) of the previous regulations in respect of, that application,

that application shall be treated as an application under section 9 of the Act (which deals with authorisation).

(2) In this Article “the previous regulations” means—

- (a) except in relation to a Northern Ireland society, the Building Societies (Authorisation) Regulations 1981(a), and
- (b) in relation to a Northern Ireland society, the Building Societies (Authorisation) Regulations (Northern Ireland) 1982(b).

(a) S.I. 1981/1488.

(b) S.R. (N.I.) 1982 No. 155.

*Residential use and prescribed dependants*

5.—(1) This Article applies to any advance secured on land made on or after the commencement date but before any order under section 12(1) of the Act (which deals with residential use and prescribed dependants) comes into operation.

(2) Notwithstanding section 11(3) of the Act (which treats certain use as residential) an advance to which this Article applies shall be treated as satisfying the requirement in section 11(2)(b) of the Act (which requires land to be for the residential use of the borrower or a dependant of his of a prescribed description) for the classification of the advance as a class 1 advance if the society is, when it makes the advance, satisfied that any of the land is for the residential use of the borrower or a dependant relative of his.

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

- (a) a person is a dependant of the borrower if he is wholly or partly maintained by him;
- (b) a person is a relative of the borrower if he is—
  - (i) the borrower's spouse;
  - (ii) the borrower's brother, sister, ancestor or descendant;
  - (iii) the borrower's spouse's brother, sister, ancestor or descendant;  
or
  - (iv) the spouse of any person classified, by virtue of paragraph (ii) or (iii) of this subparagraph, as a relative of the borrower.

(4) As respects any advance, a society shall be entitled to be satisfied (in the absence of evidence to the contrary) for the purposes of paragraph (2) above by a statement supported by the signature of the borrower which relates to the land on which the advance is to be secured and states or necessarily implies that any of that land is for the residential use of the borrower or a dependant relative of his.

(5) So far as this Article treats dependant relatives of a borrower as if they were dependants of his of a prescribed description, this Article applies to mobile home loans as it applies to advances secured on land.

(6) In this Article—

- “ancestor” means a parent or a parent's parent;
- “brother” includes a half-brother and a step-brother;
- “child” includes a step-child;
- “descendant” means a child or a child's child;
- “parent” includes a step-parent;
- “relative” includes a relative by adoption;
- “sister” includes a half-sister and a step-sister; and
- “spouse” includes a former spouse.

*Valuation of security*

6. For the purposes of section 13 of the Act (dealing with security for advances) a report relating to land on which an advance is to be made which—

- (a) was written before the commencement date, and

(b) was an appropriate report for the purposes of section 25(1)(b) of the previous enactments (dealing with valuation of security), shall be treated as if it were a report on the value of the land and any factors likely materially to affect its value made by a person competent to value, and not disqualified by section 13 of the Act from making a report on, the land in question.

*Election in respect of non-retail funds*

7.—(1) A society may, in respect of a financial year which ends on or before 31st March 1988, for the purposes of subsection (7) of section 7 of the Act (which deals with the classification of funds) give notice of an election with respect to that financial year to the Commission at any time on or before 31st March 1987 and that notice shall be treated as an effective notice for the purposes of that subsection.

(2) Where a society has notified the Commission in writing before the commencement date that it desires to make the election referred to in paragraph (1) above, that notification shall be deemed for the purposes of this Article to be a notice under that paragraph given on the commencement date.

(3) The requirements of section 7(3) of the Act (which limits the percentage of total liabilities represented by non-retail funds) shall not apply to any society before 1st April 1987.

*Investor Protection*

8. For the purposes of the application of section 26(9) of the Act (which defines the share and deposit base of a society for the purposes of calculating its contribution to the Investor Protection Fund) to a society incorporated before the commencement date the reference therein to its latest balance sheet sent to the Commission in accordance with section 81 of the Act (which deals with furnishing of accounts) shall have effect, during the period before any such balance sheet has been so sent by the society, as if it were a reference to its latest balance sheet a copy of which has been sent to the registrar under section 83 of the previous enactments (which sets out the right to receive copies of a society's balance sheet).

*Disclosure and record of income of related businesses*

9.—(1) Where a financial year of a society includes the commencement date but begins before it, the obligation of any person under section 69(6) of the Act (which deals with disclosure and recording of the income of related businesses) to furnish requisite particulars to that society shall not apply to that financial year.

(2) Where a financial year of a society incorporated before the commencement date is its first financial year to which the obligation mentioned in paragraph (1) above applies, then, if an order under paragraph 9 of Part III of Schedule 10 to the Act (which empowers the prescription of bands) is made so as to come into operation during that financial year—

- (a) the society may, for the purposes of subsection (8) of section 69 of the Act (which deals with election for the purposes of disclosure of requisite particulars), give notice of an election with respect to that financial year at any time before the end of that financial year, and
- (b) that election shall be treated as an effective election for the purposes of that subsection.

*Notification of proposals of merger*

10. Part II of Schedule 16 to the Act (which provides for societies to notify their members of merger proposals received from another society) shall not have effect with respect to any merger proposal received by a society before the commencement date.

*Public file of societies*

11.—(1) The central office shall keep in the public file of each society, in addition to any document, copy of a document or record otherwise directed by or under any provision of the Act to be kept there, such documents, copies of documents or records of matters relating to that society held by the central office which are (or come to be) so held by virtue of—

- (a) any Order (including this Order) made under section 121 of the Act (which deals with transitional provisions), or any direction under any such Order,
- (b) the previous enactments,
- (c) other enactments previously in operation relating to societies, or
- (d) instruments made under an enactment within subparagraph (b) or (c) above,

or which otherwise relate to the transition from the existing enactments to the Act, as the central office considers should be available for inspection on reasonable notice by members of the public.

(2) Documents, copies of documents and records to which paragraph (1) above relates may be kept in a part of a society's public file (to be known as the parallel file) separate from the remainder of its public file.

(3) The registrar and the central office may agree that any document, copy of a document or record which is, or comes to be, held by the registrar by virtue of provisions or directions specified in paragraph (1) above is one to which paragraph (1) should apply, and the registrar shall pass to the central office any documents, copies of documents and records to which such an agreement relates and paragraph (1) above shall apply to them.

(4) The central office may remove from the parallel file of any society (and so from its public file) any document, copy of a document or record which—

- (a) is of a type prepared annually, and
- (b) was first held by it, or by the registrar, no less than ten years before the date on which it is to be removed.

*Tony Durant,*  
*Peter Lloyd,*  
Two of the Lords Commissioners  
of Her Majesty's Treasury.

9th December 1986.

## EXPLANATORY NOTE

*(This Note is not part of the Order.)*

This Order provides for the transition from the Building Societies Act 1962 and the Building Societies Act (Northern Ireland) 1967 to the Building Societies Act 1986 in relation to the matters set out below.

Some powers which were automatically available to societies under the previous legislation have to be adopted by societies under the 1986 Act before they can be exercised. Article 3 provides that societies may continue to exercise those powers in the interim until they have effectively adopted the relevant powers under the new Act.

Article 4 applies the 1986 Act authorisation procedures (section 9) to applications initiated before the commencement date of 1 January 1987.

Article 5 provides that, for a transitional period only, an advance may be treated as a class 1 advance if the borrower certifies that any part of the property will be used for residential purposes by himself or by a dependant relative; it also defines dependant relatives.

Article 6 enables societies to use valuation reports made before the commencement date under the previous legislation for the purposes of advances made after that date.

Societies may treat certain non-retail funds of up to £50,000 as retail funds in observing the non-retail fund limits under section 7 of the 1986 Act provided that they so elect before the start of a financial year. Article 7 permits societies so to elect at any time up to 31st March 1987 (even if it is after the start of a financial year). In addition it defers the operation of those limits until 1st April 1987.

Article 8 provides that, in calculating contributions to the Investor Protection Fund, a society's latest balance sheet under the previous legislation shall be used where none has yet been prepared under the 1986 Act.

Article 9 provides that the requirements to record and disclose the income of a related business (section 69 of the 1986 Act) shall apply only to financial years starting on or after 1st January 1987. Societies may, if they so elect before the start of a financial year, provide such information in banded form as prescribed by the Commission; Article 9 also provides that an election made after the start of the financial year in which the Commission prescribes the form of banding shall be valid for that financial year.

Article 10 releases societies from any duty to notify members of merger proposals received from other societies before 1st January 1987.

Article 11 provides for documents received under previous legislation and relating to the transition to the 1986 Act to be placed on the public file of the society kept under section 106 of the 1986 Act.



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