

1988 No. 1141

BUILDING SOCIETIES

**The Building Societies (Commercial Assets and Services)
Order 1988**

Made - - - - - *30th June 1988*

Coming into force *30th August 1988*

The Treasury, in exercise of the powers conferred on them by sections 19 and 34(2), (7), (8) and (10) of the Building Societies Act 1986^(a), and of all other powers enabling them in that behalf, 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 and Services) Order 1988 and shall come into force at the expiration of the period of two months beginning with the day on which this Order is made.

Interpretation

2. In this Order, except where the context requires otherwise—
- “the Act” means the Building Societies Act 1986;
 - “the 1987 Order” means the Building Societies (Limited Credit Facilities) Order 1987^(b); and
 - “society” means a building society.

Class 3 assets

3.—(1) A society may, subject to the provisions of this Order, acquire, hold and dispose of the forms of property described in Section A of each Part of Schedule 1 below, as class 3 assets for the purposes of Part III of the Act, and for the purposes of the Act the power to acquire, hold and dispose of a description of property specified in any Part of that Schedule shall be treated as a separate power from the power to acquire, hold and dispose of a description of property specified in any other Part of that Schedule.

(2) Section B of each Part of Schedule 1 below has effect for the purpose of specifying the conditions and restrictions subject to which a society may acquire, hold and dispose of property of the description specified in Section A of that Part of that Schedule.

(3) Section C of each Part of Schedule 1 below has effect for the purpose of specifying, in relation to property of the description specified in Section A of that Part of that Schedule, how the aggregate value of that property is to be determined for the purposes

^(a) 1986 c.53; section 7 was amended by S.I. 1987/378 and 1670, sections 15 and 16 were amended by S.I. 1987/1975 and Schedule 8 was amended by the Banking Act 1987 (c.22), Schedule 6, paragraph 26(8), and by S.I. 1987/172, 1670, 1848, 1976 and 2019.

^(b) S.I. 1987/1975.

of section 20 of the Act (commercial asset structure requirements for building societies) and, in the case of Part III of that Schedule, also contains provision whereby sums in addition to that value are to be taken into account for the purposes of that section.

Amendment of legislation relating to commercial assets

4.—(1) Schedule 2 to this Order shall have effect for the purpose of amending section 15 (loans for mobile homes) of the Act.

(2) Schedule 3 to this Order shall have effect for the purpose of amending section 16 (loans to individuals) of the Act.

(3) Schedule 4 to this Order shall have effect for the purpose of amending the 1987 Order.

Variation of Schedule 8 to the Act

5. The Parts of Schedule 8 (powers to provide services) to the Act are hereby varied so as to have effect as set out in Schedule 5 below.

Transitional provision

6.—(1) Nothing in this Order shall—

- (a) require a society to dispose of any property or rights held by it immediately before this Order came into force,
- (b) take away the power of a society to complete, or do such things as are reasonably necessary to enable it to complete, the performance of existing obligations, or
- (c) take away—
 - (i) the power of a society which, at the time when this Order comes into force, has a qualifying asset holding to continue to invest in or continue to support any body corporate, or
 - (ii) the power of a society which, at the time when this Order comes into force, does not have a qualifying asset holding to continue to invest in or continue to support any body corporate other than a subsidiary formed for the purpose of exercising the power in paragraph 9 (establishment and management of unit trust schemes for the provision of pensions) of Part I of Schedule 8 to the Act as it was before this Order came into force.

(2) Nothing in this Order shall take away the power of a society, the memorandum of which empowered it before this Order came into force to provide estate agency services as specified in paragraph 13 (estate agency services) of that Part of that Schedule, to provide those services as so specified, pending the taking effect of the first alteration of the powers of the society under paragraph 4 (requirements for alteration of purpose, powers and rules) of Schedule 2 to the Act.

Consequential revocation and amendment

7.—(1) The Building Societies (Provision of Services) Order 1987(a), the Building Societies (Provision of Services) (No. 2) Order 1987(b), the Building Societies (Provision of Services) (No. 3) Order 1987(c) and the Building Societies (Provision of Services) (No. 4) Order 1987(d) are hereby revoked.

(2) The Building Societies (Banking Institutions) Order 1987(e) is hereby amended by the deletion, in article 2 thereof (which amends provisions of the Act), of paragraph (b) and of the word “; and” at the end of paragraph (a).

David Lightbown
Mark Lennox-Boyd

30th June 1988

Two of the Lords Commissioners of Her Majesty's Treasury

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- (a) S.I. 1987/172.
 - (b) S.I. 1987/1848.
 - (c) S.I. 1987/1976.
 - (d) S.I. 1987/2019.
 - (e) S.I. 1987/1670.

SCHEDULE 1

Article 3

CLASS 3 ASSETS

PART I

RESIDUAL MORTGAGE DEBTS

SECTION A

1. The description of property specified in this Part of this Schedule is that of residual mortgage debts.

2. In this Part of this Schedule "residual mortgage debts", in relation to a society, means mortgage debts which arose from lending by the society and the right to be paid which has become vested in a person other than the society.

SECTION B

1. The power to acquire, hold and dispose of residual mortgage debts is restricted to mortgage debts secured on land in the United Kingdom or in any country or territory for the time being designated by order under section 14 (power to make advances secured on land overseas) of the Act.

2. A society may acquire any residual mortgage debt only where the rights of the person referred to in paragraph 2 of Section A above in respect of the land on which that debt is secured (with or without the rights of that person in respect of other security for the debt) are also acquired by the society.

SECTION C

The aggregate value of any residual mortgage debt owed to a society shall, for the purposes of section 20 of the Act, comprise the aggregate of the amounts outstanding in respect of—

- (a) the principal of the debt,
- (b) the interest on the debt, and
- (c) any other sums which the debtor is obliged to pay the society under the terms of any agreement under which the debt was incurred.

PART II

MORTGAGE FINANCE RIGHTS

SECTION A

1. The description of property specified in this Part of this Schedule is that of mortgage finance rights.

2. In this Part of this Schedule—

- (a) "mortgage finance right" means a right derived from the terms of a document or a connected series of documents to receive sums of money from a person who assumes an obligation under those terms to pay them, which terms require the right to receive the principal element of those sums to be secured by, or by security which includes, the primary security,
- (b) "issue terms" means those terms,
- (c) "issuer" means that person,
- (d) "issue time" means the time at which he assumes that obligation,
- (e) "participant" means the issuer or a person who guarantees performance by the issuer of that obligation,
- (f) "secured right" means—
 - (i) where the mortgage finance right is one of a class to which the same issue terms relate, the right of each holder of a mortgage finance right within that class, and
 - (ii) otherwise, the right of the holder of the mortgage finance right, to receive that principal element,

- (g) "primary security" means a mortgage, or assignment by way of security, of rights of a participant as mortgagee under mortgage advances,
- (h) "mortgage advances" means advances on security where the security—
 - (i) comprises or includes relevant land, and
 - (ii) does not comprise or include other land,
- (i) "relevant land" means land in the United Kingdom or in any country or territory for the time being designated by order under section 14 of the Act, and
- (j) "supplementary security" means a mortgage, or assignment by way of security, of assets of a participant which at the issue time are assets which a society has power to acquire by virtue of this Part of this Schedule or regulations in force under section 21 (liquid assets) of the Act.

SECTION B

1. A society may acquire a mortgage finance right only where the issue terms relating to it—
 - (a) require the secured right to be secured—
 - (i) by the primary security, or
 - (ii) by a combination of the primary security and the supplementary security, whether or not additional security is also used, and
 - (b) require that, at the issue time, the total amount of principal outstanding on the mortgage advances to which the primary security relates is to be at least 90 per cent of the total amount of principal to which the secured right relates.

2. The power of a society to acquire, hold or dispose of mortgage finance rights does not of itself include power to acquire, hold or dispose of any mortgage finance right which the society is for the time being empowered to hold by virtue of regulations under section 21 of the Act, but nothing in this paragraph prohibits anything which is within the capacity of a society by virtue of that section.

SECTION C

The aggregate value of any mortgage finance right held by a society shall, for the purposes of section 20 of the Act, comprise the aggregate of the amounts outstanding in respect of—

- (a) the principal sum or sums the right to receive which is comprised in the mortgage finance right,
- (b) any interest payable to the society in respect of the mortgage finance right, and
- (c) any other sum which the society has the right to receive under the issue terms relating to the mortgage finance right.

PART III

LEASABLE CHATTELS

SECTION A

1. The description of property specified in this Part of this Schedule is that of leasable chattels.
2. In this Part of this Schedule—
 - (a) "bailment", in relation to Scotland, means "hire", and "bail" and "bailee" shall be construed accordingly.
 - (b) "chattels" means—
 - (i) in relation to England and Wales and Northern Ireland, all personal chattels other than things in action and money, and
 - (ii) in relation to Scotland, all corporeal moveables except money,
 - (c) "facility account" and "facility limit" have the meanings which they respectively bear in the 1987 Order,
 - (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 to an individual in return for periodical payments by that individual 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 that individual, and
 - (e) "leasing agreement" means an agreement under the law of England and Wales, Scotland or Northern Ireland for the bailment of leasable chattels.

SECTION B

1. The power of a society conferred by this Part of this Schedule is available only while the society has a qualifying asset holding, but the cessation of its availability does not require the disposal of any property or rights.

2.—(1) A society may, at any time, bail a leasable chattel to an individual only if the price at which the society acquired that chattel was less than x minus y where at that time—

- (a) x is—
 - (i) the limit for the time being in force under section 16(8) (loans to individuals) of the Act, or
 - (ii) if a mobile home loan to that individual is outstanding as a result of which the amount which may be lent to him under section 16 of the Act is less than that limit, that lesser amount, and
- (b) y is the aggregate of—
 - (i) sums outstanding in respect of loans made by the society under section 16 of the Act to that individual,
 - (ii) facility limits on any facility account of that individual with the society, and
 - (iii) the price at which the society acquired any leasable chattel bailed under any other current leasing agreement between the society and that individual.

(2) Joint bailees of a leasable chattel shall be treated, for the purpose of the limit on bailment under this paragraph, as a single individual and the aggregate of the following shall be taken into account in determining the maximum (in respect of the price referred to in subparagraph (1) above) available for any further leasing agreement between the society and them—

- (a) sums outstanding in respect of loans made by the society under section 16 of the Act to any one of them;
- (b) facility limits on any facility account of any one of them with the society; and
- (c) the price at which the society acquired each leasable chattel bailed under any other current leasing agreement between the society and any one of them.

SECTION C

1. For the purposes of section 20 of the Act the aggregate of the values of all leasable chattels the property in which is vested in a society shall be determined in accordance with subsection (8) of that section.

2. Where, at any time, there are, in respect of any leasable chattels bailed by a society, sums outstanding which bailees are at that time obliged to pay the society under the terms of leasing agreements, there shall be added to the aggregate of the values determined under paragraph 1 above the aggregate of those outstanding sums and the total of those two aggregates shall comprise the amount which, in respect of leasable chattels, will count in accordance with section 20 of the Act towards the limits applicable to class 3 assets under that section.

PART IV

BRIDGING DEBTS

SECTION A

1. The description of property specified in this Part of this Schedule is that of bridging debts.

2. In this Part of this Schedule—

- (a) “bridging statement” means a statement by an individual who is an applicant for a bridging loan to the effect that—
 - (i) he has a relevant interest in land,
 - (ii) he is taking steps towards disposal of that relevant interest,
 - (iii) he reasonably expects to obtain from that disposal a net receipt sum of an amount specified in the bridging statement,
 - (iv) he is taking steps towards acquisition of a relevant interest in other land,
 - (v) he is applying for a sum of money specified in the bridging statement to be lent to him under the terms of a bridging loan, which sum is no greater than the net receipt sum referred to in paragraph (iii) above, and

- (vi) for the purpose of making a key payment in relation to the acquisition referred to in paragraph (iv) above before he completes the disposal referred to in paragraph (ii) above, he requires that bridging loan to be made to him (or, where he is also applying for an advance secured on land to be made to him in respect of the land referred to in paragraph (iv) above before he completes that disposal, he requires both that bridging loan and that advance to be made to him),
- (b) "relevant interest" means—
 - (i) in relation to land in England and Wales or Northern Ireland, a legal estate, an equitable interest of a description prescribed in an order for the time being in force under section 10(6) (power to advance money on the security of equitable interests) of the Act, or a combination of the two,
 - (ii) in relation to land in Scotland, ownership, and
 - (iii) in relation to other land, an interest on which a form of security may be taken by virtue of an order for the time being in force under section 14 of the Act,
 and where the land comprises registered land in England and Wales or Northern Ireland disposal of a legal estate in it shall, for the purposes of subparagraph (a)(vi) above, be treated as completed by the delivery of a transfer of that estate by the person disposing of that estate to the person acquiring that estate, notwithstanding that the transferee is not yet registered as proprietor of that estate,
- (c) "net receipt sum", in respect of a disposal of an interest in land, means the price at which it is disposed of less the aggregate of—
 - (i) the costs incidental to disposal of that interest, and
 - (ii) the amount of any debt secured on that interest (other than the bridging debt under the bridging loan applied for) together with the costs incidental to the repayment thereof,
- (d) "bridging loan" means a loan by a person to whom a bridging statement has been made to the individual who made the bridging statement of a principal sum of money no greater than the sum referred to in subparagraph (a)(v) above on terms requiring that individual to repay that principal sum and any interest outstanding on it at the time when he completes the disposal referred to in subparagraph (a)(ii) above,
- (e) "key payment", in relation to an acquisition of an interest in land, means a payment to be applied towards (or towards the costs incidental to) any one or more of the following:
 - (i) acquisition of that interest,
 - (ii) acquisition of chattels on that land,
 - (iii) removal of chattels to that land,
 - (iv) repair of that land,
 - (v) improvement of that land, or
 - (vi) development of that land,
- (f) "chattels" means—
 - (i) in relation to England and Wales and Northern Ireland, all personal chattels other than things in action and money, and
 - (ii) in relation to Scotland, all corporeal moveables except money, and
- (g) "bridging debt" means the debt owed under a bridging loan.

SECTION B

A society may make a bridging loan or otherwise acquire or hold a bridging debt only where each relevant interest to which it relates is an interest in relation to land in a country or territory where the society has power to make advances secured on land (whether under section 10 (advances secured on land) or section 14 of the Act).

SECTION C

The aggregate value of any bridging debt owed to a society shall, for the purposes of section 20 of the Act, comprise the aggregate of the amounts outstanding in respect of—

- (a) the principal sum lent,
- (b) any interest on that principal sum, and
- (c) any other sums required to be paid to the society under the terms of the bridging loan under which the bridging debt is owed.

SCHEDULE 2

Article 4

AMENDMENT OF SECTION 15 OF THE ACT

1. At the end of section 15(5)(b) there shall be inserted the words: "and also the cost of leasable chattels bailed under any current leasing agreement between the society and that individual".

2. In section 15(6) there shall be substituted for the word "is" the words: "and also the cost of leasable chattels bailed under any current leasing agreement between the society and any one of the joint borrowers are".

3. In section 15(12), after the definition of "facility limit", the following definition shall be inserted:

"leasable chattels", "bailed" and "leasing agreement" have the meanings which they respectively bear in Part III of Schedule 1 to the Building Societies (Commercial Assets and Services) Order 1988 and "cost", in respect of any leasable chattel bailed by a building society, means the price at which it was acquired by the society;"

SCHEDULE 3

Article 4

AMENDMENT OF SECTION 16 OF THE ACT

1. At the end of section 16(3) there shall be inserted the words: "and neither do bridging loans made under Part IV of Schedule 1 to the Building Societies (Commercial Assets and Services) Order 1988".

2. At the end of section 16(5)(b) there shall be inserted the words: "and also the cost of leasable chattels bailed under any current leasing agreement between the society and that individual".

3. At the end of section 16(6)(c) there shall be inserted the words: "and also the cost of leasable chattels bailed under any current leasing agreement between the society and that individual".

4. In section 16(7) there shall be substituted for the word "is" the words: "and also the cost of leasable chattels bailed under any current leasing agreement between the society and any one of the joint borrowers are".

5. For section 16(17) the following subsection shall be substituted:

"(17) In this section—

"facility limit" has the meaning which it bears in the Building Societies (Limited Credit Facilities) Order 1987; and

"leasable chattels", "bailed" and "leasing agreement" have the meanings which they respectively bear in Part III of Schedule 1 to the Building Societies (Commercial Assets and Services) Order 1988 and "cost", in respect of any leasable chattel bailed by a building society, means the price at which it was acquired by the society."

SCHEDULE 4

Article 4

AMENDMENT OF THE 1987 ORDER

1. In article 2 (interpretation), before the definition of "society", the following definition shall be inserted:

"leasable chattels", "bailed" and "leasing agreement" have the meanings which they respectively bear in Part III of Schedule 1 to the Building Societies (Commercial Assets and Services) Order 1988 and "cost", in respect of any leasable chattel bailed by a society, means the price at which it was acquired by the society;"

2. In article 6 (limits on balances)–

- (a) at the end of paragraph (2) there shall be inserted the words: “and also the cost of leasable chattels bailed under any current leasing agreement between the society and any of them”, and
- (b) in subparagraph (b) of paragraph (4)–
 - (i) at the end of paragraph (i) the word “and” shall be deleted,
 - (ii) at the end of paragraph (ii) for the word “society.” there shall be substituted the words “society, and”, and
 - (iii) after paragraph (ii) there shall be inserted the following paragraph:
 - “(iii) the cost of leasable chattels bailed under any current leasing agreement between the society and the facility account holder.”.

3. In article 7 (class 3 asset limits), in paragraph (b), for the words “money transmission” there shall be substituted the word “banking”.

SCHEDULE 5

Article 5

THE PARTS OF SCHEDULE 8 TO THE BUILDING SOCIETIES ACT 1986, AS VARIED BY THIS ORDER

PART I

THE SERVICES

1. Banking services.
2. Investment services.
3. Insurance services.
4. Trusteeship.
5. Executorship.
6. Land services.

PART II

GENERAL RESTRICTIONS ON SERVICES

1. Subject to paragraphs 2, 3, 4 and 5 below, no power conferred on a building society to provide a service of a description specified in Part I of this Schedule of itself confers power

- (a) to perform the activities of–
 - (i) taking deposits in circumstances which require authorisation under the Banking Act 1987^(a) (or would require authorisation were the taker not a building society),
 - (ii) making advances or loans of any description,
 - (iii) acquiring the right to be paid any sum owing to another person arising out of any arrangement under which money is borrowed or goods or services are provided on credit,
 - (iv) acquiring land,
 - (v) acquiring or holding any asset the power to acquire or hold which is derived from section 19 of this Act by virtue of an order made under, or partly under, that section,
 - (vi) acquiring or holding relevant investments, or
 - (vii) underwriting risks of any description, or
- (b) to maintain a place of business in any country or territory outside the United Kingdom for the purpose of providing that service unless the society also conducts the principal business of a building society in that country or territory,

but nothing in this Schedule prohibits performance of any activity performance of which is within the capacity of a building society by virtue of any power arising otherwise than under this Schedule.

^(a) 1987 c.22.

2. Paragraph 1 above shall not be taken to prevent—

- (a) the power to provide banking services from conferring the power—
 - (i) to arrange the taking of deposits,
 - (ii) to arrange the lending of money, and
 - (iii) to arrange the bailment of leasable chattels,
- (b) the power to provide investment services from conferring the power to arrange the acquisition or holding of relevant investments, or
- (c) the power to provide insurance services from conferring the power to arrange the provision of insurance of any description.

3. Where, as part of the power to provide banking services, a building society becomes guarantor of the discharge of liabilities of another person and is required to pay sums which that other person is obliged to pay, the right to recover those sums from that other person (with or without interest on them) shall not be treated as excluded by paragraph 1 above.

4. The power to permit occasional overdrawn on an account with a building society shall be treated as part of the power to provide banking services and accordingly the right to recover sums overdrawn (with or without interest on them) shall not be treated as excluded by paragraph 1 above.

5. Acquiring or holding relevant investments shall not be treated as excluded by paragraph 1 above where it arises out of—

- (a) any element of investment services comprising—
 - (i) acquiring or holding relevant investments as a nominee,
 - (ii) establishment and management of pension schemes,
 - (iii) establishment and management of personal equity plans, or
 - (iv) establishment and management of collective investment schemes,
- (b) the service of trusteeship, or
- (c) the service of executorship.

PART III

RESTRICTIONS IN RELATION TO CERTAIN SERVICES

Banking services

1. In relation to the power to provide banking services—

- (a) arranging the taking of deposits is restricted to the taking of deposits from individuals,
- (b) arranging the lending of money is restricted (where it is not within subparagraph (a) above) to lending to individuals except where the lending is on security and the security comprises or includes land,
- (c) arranging the bailment of leasable chattels is restricted to their bailment to individuals,
- (d) provision of guarantees, except where it arises for the purpose of or in the course of the provision of money transmission services, is restricted to guarantees of the discharge of liabilities of individuals,
- (e) arranging the provision of guarantees is restricted, subject to the exception in subparagraph (d) above, to guarantees of the discharge of liabilities of individuals,
- (f) provision of foreign exchange services, except where it arises for the purpose of or in the course of the provision of money transmission services, is restricted, save in excepted transactions, to their provision to individuals,
- (g) arranging the provision of foreign exchange services is, subject to the exception in subparagraph (f) above, restricted, save in excepted transactions, to their provision to individuals, and
- (h) administration of the issue of shares or corresponding membership rights by bodies corporate or of transferable instruments and registration of the transfer or cancellation of such shares, rights or instruments is restricted to administration and registration by a building society which has a qualifying asset holding.

Investment services

2. In relation to the power to provide investment services—

- (a) managing investments (except in relation to management of pension schemes) is restricted to managing by a building society which has a qualifying asset holding,

- (b) acquiring and holding relevant investments as a nominee is restricted to acquisition and holding by a building society which has a qualifying asset holding,
- (c) establishment and management of pension schemes is restricted to schemes which do not include provisions requiring the investment of any of the funds within the scheme in shares in or deposits with a building society of which the trustee or manager of the scheme is a subsidiary,
- (d) establishment of personal equity plans is restricted to establishment by a building society which has a qualifying asset holding, and
- (e) establishment of collective investment schemes is restricted to establishment by a building society which has a qualifying asset holding.

Trusteeship

3. The power of a building society to provide the service of trusteeship is restricted to—

- (a) express trusts where the majority of the beneficiaries are individuals, or
- (b) charitable trusts,

which do not include, where the trust is a trust of funds in a pension scheme, provisions requiring the investment of any of those funds in shares in or deposits with a building society of which the trustee is a subsidiary.

Land services

4. In relation to the power to provide land services—

- (a) the carrying on of estate agency work is restricted to carrying on by a subsidiary or other associated body of a building society,
- (b) removal and storage of furniture is restricted to removal and storage by a subsidiary or other associated body of a building society which society has a qualifying asset holding,
- (c) management of land is restricted to management by a building society which has a qualifying asset holding,
- (d) management of land is restricted to land which is or is to be used primarily for residential purposes or for purposes incidental to the use of adjoining land under the same management which is or is to be used primarily for residential purposes,
- (e) arranging the management of land is restricted to land which is or is to be used primarily for residential purposes or for purposes incidental to the use of adjoining land under the same management which is or is to be used primarily for residential purposes,
- (f) development of land is restricted to development by a building society which has a qualifying asset holding,
- (g) development of land is restricted to land which is to be used primarily for residential purposes or for purposes incidental to the use of adjoining land developed by the developer which is or is to be used primarily for residential purposes,
- (h) development of land is restricted to land of a local authority in Great Britain or of a development corporation or land which is charged in favour of the developer of the land to secure repayment of the costs of development, and
- (i) arranging the development of land is restricted to land which is to be used primarily for residential purposes or for purposes incidental to the use of adjoining land developed by the developer which is or is to be used primarily for residential purposes.

5. No employee of a building society, a subsidiary or other associated body of which carries on estate agency work, whose duties include—

- (a) making a report on the value of land which is to secure an advance,
- (b) making an assessment of the adequacy of the security of an advance to be secured on land, or
- (c) authorising the making of an advance to be secured on land,

shall perform any service on behalf of that subsidiary or other associated body.

PART IV

SUPPLEMENTARY

Powers—general

1. Any power derived from this Schedule to perform any activity includes the power to arrange its performance but a restriction in Part III of this Schedule on the power to perform any activity does not imply an equivalent restriction on the power to arrange its performance.

Powers—specific services

2. Without prejudice to the general scope of any service specified in Part I of this Schedule—
- (a) the power to provide banking services includes power,
 - (i) to administer the issue of, and payments in respect of, shares or corresponding membership rights in bodies corporate or transferable instruments and to register the transfer or cancellation of such shares, rights or instruments, and
 - (ii) to provide advice on taxation and financial planning,
 - (b) the power to provide investment services includes power to provide advice on taxation and financial planning,
 - (c) the power to provide the service of executorship includes power—
 - (i) to act as administrator of the estates of deceased persons, and
 - (ii) to assist in the making of wills, and
 - (d) the power to provide land services includes power to carry out the removal and storage of furniture.

Banking—particular provisions

3.—(1) A building society shall, so far as regards the carrying on of an activity which comprises provision of a banking service for the purposes of this Schedule, be treated for all purposes as a bank and a banker and as carrying on the business of banking or a banking undertaking whether or not it would be so treated apart from this paragraph.

(2) This paragraph does not affect the determination of any question as to the status of a building society as a bank or banker for other purposes.

4. Where an account of a person with a building society has, by virtue of the provision of banking services under this Schedule, become overdrawn, it shall be the duty of the building society to take all reasonable steps to recover as soon as practicable from that person the amount due to it on the overdrawn account.

5.—(1) For the purposes of paragraph 1(f) and (g) of Part III of this Schedule, a transaction consisting in the provision of foreign exchange services is an excepted transaction where the value of the transaction is less than £10,000.

(2) For the purposes of subparagraph (1) above the value of a transaction consisting in the provision of foreign exchange services is, where the building society is selling foreign currency, the sum paid to it and, where the building society is purchasing foreign currency, the sum paid by it.

Land services—sanction

6. If a person performs any service in contravention of paragraph 5 of Part III of this Schedule he shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Interpretation

7. This Schedule is to be construed as relating only to the capacity of building societies to provide the services for the time being specified in it and not as making lawful any activity, whether of a building society or a subsidiary or other associated body of a building society, which would not be lawful apart from this Schedule.

8. In this Schedule—

“arranging”, in relation to the performance of any activity, includes—

- (a) arranging its performance on behalf of the person in respect of whom the activity is performed as well as the person who performs the activity, and
- (b) acting as agent on behalf of either such person;

“collective investment scheme” has the meaning which it bears in section 75 of the Financial Services Act 1986(a);

“corresponding membership right” has the meaning which it bears in section 18(17) of this Act;

“development corporation” means any of the following bodies:

- (a) in England, a development corporation within the meaning of the New Towns Act 1981(b);

(a) 1986 c.60; section 75 was amended by S.I. 1988/496 and 803 and Schedule 1 was amended by S.I. 1988/318, 496 and 803.

(b) 1981 c.64.

- (b) in Wales, the Development Board for Rural Wales established by section 1 of the Development of Rural Wales Act 1976(a) and the Welsh Development Agency established by section 1 of the Welsh Development Agency Act 1975(b);
- (c) in Scotland, a development corporation within the meaning of the New Towns (Scotland) Act 1968(c);
- (d) in Northern Ireland, the Department of the Environment for Northern Ireland and the Northern Ireland Housing Executive referred to in article 3 of the Housing (Northern Ireland) Order 1981(d);

“estate agency work” has the same meaning as in the Estate Agents Act 1979(e);

“land services” means services relating to the acquisition, management, development or disposal of land;

“leasable chattel” has the meaning which it bears in the Building Societies (Commercial Assets and Services) Order 1988, and “bailment” shall be construed accordingly;

“local authority in Great Britain” means any of the following authorities:

- (a) in England and Wales, a county council, a district council, a London borough council, a parish or community council, the Common Council of the City of London, and the Council of the Isles of Scilly;
- (b) in Scotland, a local authority within the meaning of section 235 of the Local Government (Scotland) Act 1973(f);

“managing investments” means activity of the kind specified in paragraph 14 of Part II (activities constituting investment business) of Schedule 1 to the Financial Services Act 1986;

“pension scheme” means—

- (a) a retirement benefits scheme within the meaning of, and which is approved or a candidate for approval by the Commissioners of Inland Revenue for the purposes of, Chapter I of Part XIV of the Income and Corporation Taxes Act 1988(g) (retirement benefit schemes), or
- (b) a personal pension scheme within the meaning of, and which is approved or a candidate for approval by the Commissioners of Inland Revenue under, Chapter IV (personal pension schemes) of that Part of that Act,

and for the purposes of this definition a scheme is a candidate for approval for the purposes of the first or, as the case may be, under the second of those Chapters if it has been prepared with a view to being so approved and steps are being taken towards obtaining that approval;

“personal equity plan” means a plan for the purposes of section 333 (personal equity plans) of the Income and Corporation Taxes Act 1988;

“the principal business of a building society” means the business of raising funds (whether by the issue of shares or receiving deposits) for the purposes of the society or of making advances secured on land;

“relevant investment” means—

- (a) any share or corresponding membership right in a body corporate, and
- (b) any other asset, right or interest falling within any paragraph of Part I (investments) of Schedule 1 to the Financial Services Act 1986; and

“transferable instrument” means—

- (a) where the issuer of the instrument is a building society, an instrument which is a transferable bearer instrument or a transferable non-bearer instrument for the purposes of section 7 of this Act, and
- (b) in any other case, an instrument which would, were the issuer a building society, be such a transferable bearer instrument or transferable non-bearer instrument.

(a) 1976 c.75.

(b) 1975 c.70.

(c) 1968 c.16.

(d) S.I. 1981/156 (N.I. 3).

(e) 1979 c.38; section 1 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), Schedule 1, Part I, paragraph 40.

(f) 1973 c.65.

(g) 1988 c.1.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order empowers building societies to acquire, hold and dispose of four additional forms of commercial asset, and varies Schedule 8 to the Building Societies Act 1986 to increase the range of services which may be provided by societies.

Article 3 of and Schedule 1 to the Order extend the forms of property which a building society may acquire, hold and dispose of as Class 3 assets for the purposes of the commercial asset structure requirements of section 20 of the Act to include residual mortgage debts (on reacquisition of mortgages previously transferred by the society), rights under instruments relating to mortgages, personal property for leasing and rights arising from lending for bridging purposes, subject in the case of each type of asset to conditions and restrictions. Article 3(3) specifies how these assets are to be valued for the purposes of section 20, and article 4 and Schedules 2, 3 and 4 make consequential amendments to take the value of such assets where relevant into account in calculating the limits on mobile home loans under section 15, loans to individuals under section 16 and accounts under the Building Societies (Limited Credit Facilities) Order 1987.

Article 5 varies Schedule 8 to the Act by replacing it with a new Schedule (Schedule 5 to the Order) which extends the range of services which building societies may provide. Part I of Schedule 8 formerly defined in more specific terms those services which societies might adopt power to provide. The services previously specified were money transmission and foreign exchange, making or receiving payments as agents, managing mortgage investments and land, arranging for services relating to the acquisition or disposal of investments, giving investment advice, arranging for the provision of units in unit trust schemes, establishing and managing personal equity plans, arranging credit agreements, establishing and managing unit trust schemes for the provision of pensions, establishing and administering pension schemes, arranging and giving advice as to insurance, providing land surveys and valuations, estate agency and conveyancing services. Part II of Schedule 8 formerly comprised the restriction repeated on the provision of services abroad, and Part III contained further restrictions on particular services.

In the revised Schedule 8 as set out in Schedule 5 to the Order, the services which may be provided are described in Part I in terms largely following section 34(11) of the Act as banking services, investment services, insurance services, trusteeship, executorship and land services. Within this framework societies may provide any service which is not specifically restricted in the Schedule. Part II confines the power to provide services within the categories in Part I to services which are outside the scope of other provisions of the Act. Thus the power to make advances and loans, which is governed by Part III of the Act and forms part of the asset classification system in that Part, is excluded from the new powers in Schedule 8. Other powers similarly excluded (or excluded to a significant extent) are deposit-taking, acquisition of land or third party debts, acquisition and holding of shares or other commercial assets permitted under section 19 (including those covered by article 3 of this Order), acquisition of other investments and underwriting risks.

Where a power exists independently of Schedule 8, and a power under Schedule 8 overlaps the existing power, restrictions contained in the Schedule do not apply to the original power. For example, section 17 allows a building society to hold and develop land as a commercial asset, subject to the conditions specified in that section. Paragraph 4(h) of Part III of the new Schedule restricts the development of land to land which belongs to a local authority or development corporation or which is charged in favour of the developer to secure repayment of the costs of development, but this restriction has no application where a society is exercising power under section 17 to develop its own land.

Part III of Schedule 5 contains restrictions on individual services or elements of them. For example, specified banking services may be provided only to individuals. Services such as the administration of share issues, managing investments, establishment of personal equity plans and collective investment schemes, removal and storage of furniture, and management or development of land may only be provided by a building society

which has a qualifying asset holding. A society has a qualifying asset holding where the aggregate value of its total commercial assets is not less than £100 million. Management or development of land is also restricted to land which is to be used primarily for residential purposes. Part IV contains supplementary provisions relating to the scope of the powers to provide services as they apply both generally and in relation to specific services.