

1989 No. 839

BUILDING SOCIETIES

**The Building Societies (Provision of Services) Order
1989**

<i>Made</i> - - - -	<i>28th April 1989</i>
<i>Laid before Parliament</i>	<i>22nd May 1989</i>
<i>Coming into force</i> -	<i>1st July 1989</i>

The Building Societies Commission, in exercise of the powers conferred on it by section 34(2) and (8) of the Building Societies Act 1986(a) and of all other powers enabling it in that behalf, hereby makes the following Order:

Citation and commencement

1. This Order may be cited as the Building Societies (Provision of Services) Order 1989 and shall come into force on 1st July 1989.

Interpretation

2. In this Order, "the Act" means the Building Societies Act 1986.

Amendment of Schedule 8 to the Act

3. This article amends Schedule 8 (powers to provide services) to the Act as follows:

(a) In Part II of Schedule 8, for paragraph 4 there shall be substituted the following paragraph—

"4. The right to recover any sum overdrawn (with or without interest on it) on an unauthorised overdraft on an account with a building society shall not be treated as excluded by paragraph 1 above.";

(b) To Part II of Schedule 8 there shall be added, after paragraph 5, the following paragraph—

"6. Paragraph 1 above shall not be taken to prevent the power to provide the service of trusteeship or the power to provide the service of executorship from conferring the power on a building society acting in the capacity of trustee or personal representative—

(i) to make advances or loans of any description, or

(ii) to acquire land.";

(c) Part III of Schedule 8 shall be varied by the deletion of paragraphs 1(b) and (c);

(d) In Part III of Schedule 8, for paragraph 3 there shall be substituted the following paragraph—

"3. In relation to the power to provide the service of trusteeship—

(a) 1986 c.53. Schedule 8 was amended by the Banking Act 1987 (c.22), Schedule 6, paragraph 26(8), and varied by S.I. 1988/1141.

- (a) a building society may not accept trusteeship of a prohibited trust, and
- (b) a building society which becomes aware that a trust of which it is trustee has become a prohibited trust shall retire as trustee of that trust as soon as it is practicable to do so.”;
- (e) In Part IV of Schedule 8, in paragraph 8 (interpretation), after the definition of “arranging” there shall be inserted the following definitions—
 - “bailment”, in relation to Scotland, means “hire”;
 - “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;”;
- (f) In Part IV of Schedule 8, in paragraph 8, for the definition of “leasable chattel” there shall be substituted the following definition—
 - “leasable chattels” means chattels which are, or are to be, subject to bailment to a person in return for periodical payments by that person 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 person;”;
- (g) In Part IV of Schedule 8, in paragraph 8, after the definition of “the principal business of a building society” there shall be inserted the following definition—
 - “prohibited trust” means a trust which is either—
 - (a) a trust under which the majority in number of the beneficiaries who are for the time being ascertained are non-charitable corporate bodies, or
 - (b) a trust of funds in a pension scheme which includes 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.”.

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 28th April 1989.



P. H. Gevers
Secretary to the Commission

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends Schedule 8 to the Building Societies Act 1986, as varied by S.I. 1988/1141.

The power of a society to provide banking services does not of itself confer any power to permit overdrafts, but this does not prevent a building society recovering sums due on unauthorised overdrafts. This is clarified by an amendment to Schedule 8, Part II, paragraph 4 (article 3(a)). Power to provide overdraft facilities to individuals is provided for in section 16 of the Act, and to persons other than individuals in the course of providing money transmission services in the Building Societies (Money Transmission Services) Order 1989 (S.I. 1989/730).

The Order amends Schedule 8, Part II to remove doubt about the power of a building

society, when exercising the power to provide the service of trusteeship or executorship, to make loans or acquire land in the capacity of trustee or personal representative (article 3(b)). The restrictions in Schedule 8, Part III on the power of a society to provide the service of trusteeship are revised. In place of the previous restriction which specified that a society may act as trustee only of express trusts where the majority of the beneficiaries were individuals or of charitable trusts, there is now a prohibition on a society accepting trusteeship of any trust under which the majority in number of the beneficiaries are non-charitable corporate bodies (article 3(d) and (g)).

The Order also removes those restrictions on the provision of banking services by building societies which limited societies, in both the arranging of unsecured loans and the arranging of leases of personal property, to making arrangements for individuals only (article 3(c), (e) and (f)).