STATUTORY INSTRUMENTS

1989 No. 215

BUILDING SOCIETIES

The Building Societies (Designation of Qualifying Bodies) (Amendment) Order 1989

Made - - - -	*17th February 1989*
Laid before Parliament	*22nd February 1989*
Coming into force	*1st July 1989*

The Building Societies Commission, with the consent of the Treasury, in exercise of the powers conferred on it by section 18(2)(c) of the Building Societies Act 1986**(a)**, and of all other powers enabling it in that behalf, hereby makes the following Order:

Title and commencement

1. This Order may be cited as the Building Societies (Designation of Qualifying Bodies) (Amendment) Order 1989 and shall come into force on 1st July 1989.

Amendment of previous Order

2. The Building Societies (Designation of Qualifying Bodies) Order 1988**(b)** shall have effect subject to the amendments set out in the Schedule to this Order.

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 16th February 1989.

P. H. Gevers
Secretary to the Commission

We consent to this Order

Kenneth Carlisle
Alan Howarth
Two of the Lords Commissioners
of Her Majesty's Treasury

17th February 1989

(a) 1986 c.53.
(b) S.I. 1988/1196, amended by S.I. 1988/1393.

SCHEDULE

Article 2

AMENDMENTS TO THE BUILDING SOCIETIES (DESIGNATION OF QUALIFYING BODIES) ORDER 1988

1. To Part I of the Schedule (bodies corporate, and descriptions of bodies corporate, designated) there shall be added after the item numbered 18 an item numbered "19" comprising the following entries in the columns of that Part

(a) in column 1 (specified name or description),

"Appropriate mortgage company",

(b) in column 2 (specified registration number or definition),

"A company limited by shares (not being one excluded by the particular restrictions for appropriate mortgage companies) which is a one tier organisation formed for the purpose of, or the objects of which include, the carrying on of one or both of the following activities

(a) acquiring, holding and disposing of debts which are 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; and

(b) lending money on the security of such land.",

(c) in column 3 (specified relevant power),

"Investment and support.",

(d) in column 4 (specified purposes (if any)),

"Enabling the company to carry on the activities referred to in (and not excluded by) column 2 of this item (notwithstanding that the lending of money to members of the public on the security of land by loans corresponding to advances secured on land may be carried on in connection with those activities).", and

(e) in column 5 (specified limits and conditions (if any)),

"The mortgage business certification condition for appropriate mortgage companies.".

2. In Part II of the Schedule, after paragraph 6 (meaning of business percentage certification condition for estate agency vehicles) there shall be inserted the following heading and paragraph–

"Meaning of mortgage business certification condition for appropriate mortgage companies

6A.—(1) In this Schedule "the mortgage business certification condition for appropriate mortgage companies" means a condition to the effect that where a society holds shares in an appropriate mortgage company–

(a) the society shall for each financial year of the company ending more than 18 months after the acquisition of such shares seek to obtain within four months after the end of that year a certificate signed by a director of the company stating that throughout that year the company complied with the determined requirements, and

(b) if no such certificate is so obtained by the society for two successive financial years of the appropriate mortgage company, the society shall dispose of its shares in that company as soon as it is conveniently practicable to do so without undue loss.

(2) In subparagraph (1) above "the determined requirements" means the following requirements–

(a) a requirement that the company shall maintain or make arrangements for the maintenance of a system for ensuring the safe custody of all documents relating to property mortgaged to the company;

(b) a requirement that the arrangements made for assessing the adequacy of the security for any loan to be secured on land which is to be made by the company shall be such as may reasonably be expected to ensure that–

(i) an assessment will be made on the occasion of each loan;

(ii) each assessment will be made by a person holding office in or employed by the company who is competent to make the assessment and is not a person disqualified from assessment;

(iii) each person making the assessment will have furnished to him a written report on the value of the land and any factors likely materially to affect its value made by a person who is competent to value the land in question and who is not a person disqualified from valuation; and

(iv) no authorisation of any loan will be made by a person disqualified from assessment; and

(c) a requirement that the company shall make arrangements such as may reasonably be expected to ensure that–

(i) it will not make any loan secured on land by a mortgage unless the rights and duties of the company as mortgagee under the mortgage may be transferred to any other person without the consent of the mortgagor; and

(ii) it will not lend money on the security of land in circumstances where, if the borrower were a member of the society, the society itself would be unable to make the loan.

(3) For the purposes of subparagraph (2)(b) above–

(a) in relation to any land which is to secure a loan where the loan is to be made following a disposition of the land, the following persons are persons disqualified from assessment, that is to say–

(i) any person, other than the company making the loan, having a financial interest in the disposition of the land and any director, other officer or employee of his or of an associated employer; and

(ii) any person receiving a commission for introducing the parties to the transaction involving the disposition and any director, other officer or employee of his; and

(b) in relation to any land which is to secure a loan, the following persons are persons disqualified from valuation, that is to say–

(i) the directors and any other officer or employee of the company who makes assessments of the adequacy of securities for loans by the company or who authorises the making of such loans;

(ii) where the company has made, or undertaken to make, to any person a payment for introducing to it an applicant for the loan, that person;

(iii) where the loan is to be made following a disposition of the land, any person having a financial interest in the disposition of the land and any director, other officer or employee of his or of an associated employer; and

(iv) where the loan is to be made following a disposition of the land, any person receiving a commission for introducing the parties to the transaction involving the disposition and any director, other officer or employee of his.

(4) For the purposes of subparagraph (3) above–

(a) any two employers are associated if one is a body corporate of which the other (directly or indirectly) has control or if both are bodies corporate of which a third person directly or indirectly has control; and the expression "associated employer" shall be construed accordingly;

(b) "commission" includes any gift, bonus or benefit; and

(c) a person shall be taken to have a financial interest in the disposition of any land if, but only if, he would, on a disposition of that land, be entitled (whether directly or indirectly, and whether in possession or not) to the whole or part of the proceeds of the disposition.".

3. In Part II of the Schedule (interpretation), in paragraph 7 (specification of particular restrictions)–

(a) for subparagraph (1) there shall be substituted the following subparagraph–

"(1) In this Schedule "the particular restrictions for financial service vehicles" means the provisions set out in subparagraph (2) below, "the particular restrictions for life insurance vehicles" means the provisions set out in subparagraph (3) below, "the particular restrictions for general insurance companies" means the provisions set out in subparagraph (4) below, "the particular restrictions for estate agency vehicles" means the provisions set out in subparagraph (5) below and "the particular restrictions for appropriate mortgage companies" means the provisions set out in subparagraph (6) below.", and

(b) after subparagraph (5) there shall be inserted the following subparagraph–

"(6) A company is not an appropriate mortgage company for a society where–

(a) it is a market maker,

(b) it is an authorised institution, or its business requires it to be authorised, for the purposes of the Banking Act 1987(a),

(c) its business includes the carrying on of estate agency work,

(a) 1987 c.22.

(d) its business includes activities in the range from which the society is restricted, or

(e) any of its employees performs any service for a subsidiary or other associated body of the society being a subsidiary or other associated body which carries on estate agency work.".

4. In Part II of the Schedule, in paragraph 8 (meaning of activities in the range from which a society is restricted), in subparagraph (b)(i), after the word "vehicle" there shall be inserted the words "or an appropriate mortgage company".

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Building Societies (Designation of Qualifying Bodies) Order 1988, which designates corporate bodies and types of corporate body as suitable for investment or support by building societies under section 18 of the Building Societies Act 1986, so as to add "appropriate mortgage company" as a further type of designated body.

An appropriate mortgage company is a company limited by shares which is formed for, or whose objects include, carrying on one or both of the activities of:

(a) acquiring, holding and disposing of existing mortgage debts, and

(b) lending money on mortgage,

and which does not engage in activities such as market making, general deposit-taking and estate agency work (article 2 and Schedule, paragraphs 1(b), 3 and 4). It does not have the capacity to have subordinate organisations and is designated as suitable for investment and support by a building society, but not for support in the absence of investment (article 2 and Schedule, paragraph 1(b) and (c)). Investment is defined by section 18 of the Act as acquiring and holding shares in and forming, or taking part in forming, bodies corporate. Support is defined by that section as the provision of loans, grants, guarantees, services or property to bodies corporate.

In relation to secured loans which it makes, there is a requirement that the company maintains systems similar to those required of building societies for the safe custody of documents and for assessing the adequacy of security. Secured loans by the company are required to be transferable without the consent of the borrower, and must be loans which the society itself would have had power to make had the borrower been a member of the society (article 2 and Schedule, paragraphs 1(e) and 2).

85p net

ISBN 0 11 096215 X

Printed in the United Kingdom for Her Majesty's Stationery Office 762/5753 WO 0281 C15 2/89 452/2 3840 PS8250675