
STATUTORY INSTRUMENTS

1996 No. 1669

BANKING

**The Financial Institutions (Prudential
Supervision) Regulations 1996**

<i>Made</i>	- - - -	<i>27th June 1996</i>
<i>Laid before Parliament</i>		<i>27th June 1996</i>
<i>Coming into force</i>	- -	<i>18th July 1996</i>

The Treasury, being designated⁽¹⁾ for the purposes of, and in exercise of the powers conferred by, section 2(2) of the European Communities Act 1972⁽²⁾ and of all other powers enabling them in that behalf, hereby make the following Regulations:—

PART I
GENERAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Financial Institutions (Prudential Supervision) Regulations 1996.

(2) These Regulations shall come into force on 18th July 1996.

(3) In these Regulations—

“the Banking Act” means the Banking Act 1987⁽³⁾;

“the Building Societies Act” means the Building Societies Act 1986⁽⁴⁾;

“the Financial Services Act” means the Financial Services Act 1986⁽⁵⁾;

(1) See S.I. 1990/1304.

(2) 1972 c. 68. By virtue of the amendment of section 1(2) of the European Communities Act 1972 by section 1 of the European Economic Area Act 1993 (c. 51), regulations may be made under section 2(2) of the European Communities Act to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed at Brussels on 17th March 1993 (Cm 2183).

(3) 1987 c. 22.

(4) 1986 c. 53.

(5) 1986 c. 60.

- “the Friendly Societies Act” means the Friendly Societies Act 1992⁽⁶⁾;
- “the Insurance Companies Act” means the Insurance Companies Act 1982⁽⁷⁾;
- “the Bank” means the Bank of England;
- “the Board” means The Securities and Investments Board;
- “EEA State” means a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on 2nd May 1992⁽⁸⁾ as adjusted by the Protocol signed at Brussels on 17th March 1993⁽⁹⁾;
- “the Prudential Supervision Directive” means the European Parliament and Council Directive of 29th June 1995 amending—
- (a) Directives [77/780/EEC](#) and [89/646/EEC](#) in the field of credit institutions,
 - (b) Directives [72/239/EEC](#) and [92/49/EEC](#) in the field of non-life insurance,
 - (c) Directives [79/267/EEC](#) and [92/96/EEC](#) in the field of life assurance,
 - (d) Directive [93/22/EEC](#) in the field of investment firms, and
 - (e) Directive [85/611/EEC](#) in the field of undertakings for collective investment in transferable securities (UCITS),
- with a view to reinforcing prudential supervision (No. 95/26/EC)⁽¹⁰⁾;
- “undertaking” has the same meaning as in Part VII of the Companies Act 1985⁽¹¹⁾.
- (4) Any reference in these Regulations—
- (a) to an undertaking being closely linked with any person, or being closely linked with any person by control; or
 - (b) to an undertaking’s close links with any person, shall be construed in accordance with regulation 2 below.

Meaning of “closely linked” etc.

2.—(1) This regulation has effect for the purposes of these Regulations and the following Acts, namely—

- (a) the Banking Act;
- (b) the Building Societies Act;
- (c) the Friendly Societies Act; and
- (d) the Insurance Companies Act;

and subject to the modifications referred to in paragraph (3) below, expressions used in paragraph (2) below which are also used in Part VII of the Companies Act 1985 have the same meanings as in that Part.

- (2) An undertaking is closely linked with—
- (a) any person who is or, if he were an undertaking, would be its parent undertaking;
 - (b) any undertaking which is its subsidiary undertaking;
 - (c) any undertaking which is or, if any person falling within sub-paragraph (a) above were an undertaking, would be a fellow subsidiary undertaking; and

(6) 1992 c. 40.

(7) 1982 c. 50.

(8) Cm 2073.

(9) Cm 2183.

(10) O.J. No. L.168, 18.7.95, p.7.

(11) 1985 c. 6.

- (d) any person in accordance with whose directions or instructions its directors are accustomed to act;

and any reference to an undertaking's close links with any person shall be construed accordingly.

(3) For the purpose of determining any question arising under paragraph (2) above, sections 258 to 260 of and Schedule 10A to the Companies Act 1985 shall have effect with the modifications specified in Schedule 1 to these Regulations.

(4) An undertaking which is closely linked with any person is closely linked with that person by control if, and only if, it would still be closely linked with that person if subsection (4) of section 258 of the Companies Act 1985, and paragraph 3 of Schedule 1 to these Regulations, were omitted.

PART II

BANKING INSTITUTIONS

Refusal and revocation of authorisation by Bank

3.—(1) After subsection (3) of section 9 of the Banking Act (grant and refusal of authorisation) there shall be inserted the following subsection—

“(3A) The Bank shall refuse an application made by a credit institution if it appears to the Bank that—

- (a) the institution is an undertaking which is closely linked with any person; and
- (b) the institution's close links with that person, or any matters relating to any non-EEA laws or administrative provisions to which that person is subject, are such as would prevent the effective exercise by the Bank of its supervisory functions in relation to the institution;

and in this subsection and subsection (1B) of section 11 below 'non-EEA laws' means laws of a country or territory which is not a contracting party to the agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993, and “non-EEA administrative provisions” shall be construed accordingly.”

(2) After subsection (1A) of section 11 of that Act (revocation of authorisation) there shall be inserted the following subsection—

“(1B) The Bank may revoke the authorisation of a credit institution if it appears to the Bank that—

- (a) the institution is an undertaking which is closely linked with any person; and
- (b) the institution's close links with that person, or any matters relating to any non-EEA laws or administrative provisions to which that person is subject, are such as to prevent the effective exercise by the Bank of its supervisory functions in relation to the institution.”

Communication by auditor etc. with Bank

4.—(1) In subsection (1) of section 47 of the Banking Act (communication by auditor etc. with Bank), after paragraph (b) there shall be inserted the words “or

- (c) an auditor of a body with which an authorised institution which is a credit institution is closely linked by control who is also either—
 - (i) an auditor of the institution; or

(ii) a person appointed to make a report under section 8(5) or 39(1)(b) above in respect of the institution,”

(2) After subsection (3) of that section there shall be inserted the following subsection—

“(3A) In relation to an auditor of a body with which an authorised institution which is a credit institution is closely linked by control, this section applies to any matter of which he becomes aware in his capacity as auditor of the body and which relates to the business or affairs of the institution.”

Disclosure of information by Bank

5.—(1) In subsection (1) of section 83 of the Banking Act (disclosure for facilitating discharge of functions of Bank)—

- (a) the word “or” immediately following paragraph (b) shall be omitted; and
- (b) after paragraph (c) there shall be inserted the words “or
 - (d) its functions as a supervisor of systems for the transfer of funds between credit institutions and their customers.”

(2) In the Table in subsection (1) of section 84 of that Act (disclosure for facilitating discharge of functions by other supervisory authorities)—

- (a) in entry 11, in the first column, the words “recognised clearing house” shall be omitted and, in the second column, for the words “exchange or clearing house” there shall be substituted the words “or exchange”;
- (b) after entry 11 there shall be inserted the following entries—

<p>11A A recognised clearing house (within the meaning of the Financial Services Act 1986).</p>	<p>Functions in its capacity as a clearing house under the Financial Services Act 1986 so far as they are exercisable in relation to defaults or potential defaults by market participants.</p>
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<p>11B A person approved under the Uncertificated Securities Regulations 1995 as an operator of a relevant system (within the meaning of those Regulations).</p>	<p>Functions as a person so approved so far as they are exercisable in relation to defaults or potential defaults by market participants.</p>
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<p>11C A recognised supervisory body (within the meaning of Part II of the Companies Act 1989).</p>	<p>Functions in its capacity as such a body under that Part or functions in relation to disciplinary proceedings against auditors.”</p>
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- (c) in entry 12, at the end of the second column there shall be inserted the words “or functions in relation to disciplinary proceedings against insolvency practitioners (within the meaning of that Act)”;
- (d) in entry 19, at the end of the second column there shall be inserted the words “or functions in relation to disciplinary proceedings against insolvency practitioners (within the meaning of that Order)”;
- (e) after that entry there shall be inserted the following entry—

<p>20 A recognised supervisory body (within the meaning of Part III of the Companies (Northern Ireland) Order 1990).</p>	<p>Functions in its capacity as such a body under that Part, or functions in relation to disciplinary proceedings against auditors.”</p>
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(3) In subsection (6) of that section, the word “or” immediately following paragraph (b) shall be omitted and after paragraph (c) there shall be inserted the words “or

(d) in the case of a supervisory authority in another EEA State, its functions as a supervisor of systems for the transfer of funds between credit institutions and their customers.”

(4) At the beginning of subsection (10) of that section there shall be inserted the words “Subject to subsection (11) below,” and after that subsection there shall be inserted the following subsections—

“(11) Subsection (10) above shall not apply in relation to references to enabling or assisting the discharge or exercise of the following functions, namely—

- (a) functions of the Secretary of State under Part XIV of the Companies Act 1985, Part XIII of the Insolvency Act 1986 or Part II of the Companies Act 1989 or, so far as relating to the breach of any law relating to companies, under section 83 of the Companies Act 1989;
- (b) functions of an inspector under Part XIV of the Companies Act 1985 or, so far as relating to offences involving securities of a company, under section 177 of the Financial Services Act 1986;
- (b) functions of a person authorised to exercise powers under section 84 of the Companies Act 1989, so far as relating to the breach of any law relating to companies;
- (d) functions of a recognised clearing house (within the meaning of the Financial Services Act 1986);
- (e) functions of a person approved under the Uncertificated Securities Regulations 1995 as an operator of a relevant system (within the meaning of those Regulations);
- (f) functions of a recognised supervisory body (within the meaning of Part II of the Companies Act 1989);
- (g) functions of a recognised professional body (within the meaning of section 391 of the Insolvency Act 1986);
- (h) functions of the Department of Economic Development in Northern Ireland under Part XV of the Companies (Northern Ireland) Order 1986, Part XII of the Insolvency (Northern Ireland) Order 1989 or Part III of the Companies (Northern Ireland) Order 1990;
- (i) functions of an inspector under Part XV of the Companies (Northern Ireland) Order 1986;
- (j) functions of a recognised professional body (within the meaning of Article 350 of the Insolvency (Northern Ireland) Order 1989);
- (k) functions of a recognised supervisory body (within the meaning of Part III of the Companies (Northern Ireland) Order 1990);
- (l) functions of a supervisory authority in another EEA State in its capacity as a supervisor of systems for the transfer of funds between credit institutions and their customers.

(12) In this section ‘another EEA State’ means a State other than the United Kingdom which is a contracting party to the agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993.”

(5) After subsection (4) of section 86 of the Banking Act (information supplied to Bank by relevant overseas authority etc.) there shall be inserted the following subsection—

“(4A) Before the Bank discloses information to any person under subsection (3) above, it shall notify the relevant supervisory authority which supplied the information of the name and responsibilities of that person.”

- (6) In relation to information relating to the business or other affairs of institutions which—
- (a) are authorised institutions within the meaning of the Banking Act; but
 - (b) are not credit institutions within the meaning of that Act,
- sections 83, 84 and 86 of that Act shall have effect without the amendments made by this regulation.

PART III

BUILDING SOCIETIES

Refusal and revocation of authorisation by Commission

6.—(1) After subsection (3) of section 9 of the Building Societies Act (initial authorisation to raise funds and borrow money) there shall be inserted the following subsection—

“(3A) The Commission shall not grant authorisation to a society if it appears to the Commission that—

- (a) the society is closely linked with any person; and
- (b) the society’s close links with that person, or any matters relating to any non-EEA laws or administrative provisions to which that person is subject, are such as would prevent the effective exercise by the Commission of its supervisory functions in relation to the society;

and in this Act ‘non-EEA laws’ means laws of a country or territory outside the European Economic Area and “non-EEA administrative provisions” shall be construed accordingly.”

(2) After subsection (5) of section 41 of that Act (power to direct application to renew authorisation), there shall be inserted the following subsection—

“(5A) The Commission shall not grant renewed authorisation to a society if it appears to the Commission that—

- (a) the society is closely linked with any person; and
- (b) the society’s close links with that person, or any matters relating to any non-EEA laws or administrative provisions to which that person is subject, are such as would prevent the effective exercise by the Commission of its supervisory functions in relation to the society.”

(3) After paragraph (c) of subsection (3) of section 43 of that Act (revocation of authorisation), there shall be inserted the following paragraph—

“(cc) it appears to the Commission that—

- (i) the society is closely linked with any person; and
- (ii) the society’s close links with that person, or any matters relating to any non-EEA laws or administrative provisions to which that person is subject, are such as would prevent the effective exercise by the Commission of its supervisory functions in relation to the society;”

(4) After subsection (3) of section 44 of that Act (reauthorisation) there shall be inserted the following subsection—

“(3A) The Commission shall not grant reauthorisation to a society if it appears to the Commission that—

- (a) the society is closely linked with any person; and
- (b) the society’s close links with that person, or any matters relating to any non-EEA laws or administrative provisions to which that person is subject, are such

as would prevent the effective exercise by the Commission of its supervisory functions in relation to the society.”

(5) In subsection (1) of section 119 of that Act (interpretation), after the definition of “mortgage debt” there shall be inserted the following definitions—

““non-EEA laws” has the meaning given by section 9(3A) and “non-EEA administrative provisions” shall be construed accordingly;”.

Disclosure of information by Commission

7.—(1) In subsection (5) of section 53 of the Building Societies Act (confidentiality of certain information obtained by Commission), for paragraph (b) there shall be substituted the following paragraph—

“(b) by the Bank, of any of the following functions, namely—

- (i) its functions under the Banking Act 1987;
- (ii) its functions as a monetary authority;
- (iii) its functions as a supervisor of money market and gilt market institutions; and
- (iv) its functions as a supervisor of systems for the transfer of funds between credit institutions and their customers.”

(2) In subsection (7) of that section—

(a) for paragraph (b) there shall be substituted the following paragraph—

“(b) by the Secretary of State, of any functions of his under the Insurance Companies Act 1982, Part XIV of the Companies Act 1985, Part XIII of the Insolvency Act 1986, the Financial Services Act 1986 or Part II, III or VII of the Companies Act 1989;”and

(b) in paragraph (c), after the word “documents)” there shall be inserted the words “Part XII of the Insolvency (Northern Ireland) Order 1989;”.

(3) After subsection (12) of that section there shall be inserted the following subsection—

“(12A) Nothing in subsection (1) above prohibits the disclosure of information to the persons specified in the first column of the following Table if, in the opinion of the Commission, it is desirable or expedient that the information should be disclosed with a view to facilitating the discharge—

- (a) by the Commission, of any of its functions under this Act; or
- (b) by that person of the functions specified in relation to him in the second column of that Table.

TABLE

<i>Person</i>	<i>Function</i>
1 An inspector appointed under Part XIV of the Companies Act 1985 or Part XV of the Companies (Northern Ireland) Order 1986 or, so far as relating to offences involving securities of a company, section 177 of the Financial Services Act 1986.	Functions under that Part or, so far as so relating, that section.

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

<i>Person</i>	<i>Function</i>
2 A person authorised to exercise powers under section 84 of the Companies Act 1989.	Functions under that section, so far as relating to the breach of any law relating to companies.
3 A recognised clearing house (within the meaning of the Financial Services Act 1986).	Functions in its capacity as a clearing house recognised under the Financial Services Act 1986 so far as they are exercisable in relation to defaults or potential defaults by market participants.
4 A person approved under the Uncertificated Securities Regulations 1995 as an operator of a relevant system (within the meaning of those Regulations).	Functions as a person so approved so far as they are exercisable in relation to defaults or potential defaults by market participants.
5 A recognised supervisory body (within the meaning of Part II of the Companies Act 1989 or Part III of the Companies (Northern Ireland) Order 1990).	Functions in its capacity as such a body under that Part, or functions in relation to disciplinary proceedings against auditors.
6 A recognised professional body (within the meaning of section 391 of the Insolvency Act 1986 or Article 350 of the Insolvency (Northern Ireland) Order 1989).	Functions in its capacity as such a body under that Act or Order or functions in relation to disciplinary proceedings against insolvency practitioners (within the meaning of that Act or Order).
7 A supervisory authority in another EEA State.	Functions in its capacity as a supervisor of systems for the transfer of funds between credit institutions and their customers.””

(4) In subsection (14) of that section, after the definition of “authority” there shall be inserted the following definition—

“‘EEA State’ means a State other than the United Kingdom which is a contracting party to the agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993;”

(5) At the beginning of subsection (15) of that section, there shall be inserted the words “Subject to subsection (15A) below,”.

(6) After that subsection there shall be inserted the following subsection—

“(15A) Subsection (15) above shall not apply to disclosures made by virtue of subsection (12A) above, or to disclosures made with a view to facilitating the discharge of any of the following functions, namely—

- (a) functions of the Secretary of State under Part XIV of the Companies Act 1985, Part XIII of the Insolvency Act 1986 or Part II of the Companies Act 1989 or, so far as relating to the breach of any law relating to companies, under section 83 of the Companies Act 1989; or
- (b) functions of the Department of Economic Development in Northern Ireland under Part XV of the Companies (Northern Ireland) Order 1986, Part XII of the Insolvency (Northern Ireland) Order 1989 or Part III of the Companies (Northern Ireland) Order 1990.”.

(7) After subsection (3B) of section 54 of the Building Societies Act (information disclosed to Commission from other sources) there shall be inserted the following subsection—

“(3C) Before the Commission discloses information to any person under subsection (3B) (b)(i) above, it shall notify the relevant supervisory authority which disclosed the information to the Commission of the name and responsibilities of that person.”

Communication by auditor etc. with Commission

8.—(1) In subsection (8) of section 82 of the Building Societies Act (auditor’s duties to Commission), for the words “The auditors of a building society” there shall be substituted the words “The following, namely—

- (a) the auditors of a building society;
 - (b) an accountant appointed by a building society to make a report under section 52(5)(d) above; and
 - (c) (i) they are also the auditors of the society; or
(ii) one of them is an accountant appointed by the society to make a report under section 52(5)(d) above.”
- (2) In subsection (9) of that section—
- (a) for the words “the auditors of building societies” there shall be substituted the words “such persons” as are mentioned in paragraph (a), (b) or (c) of subsection (8) above; and
 - (b) for the words “any auditor” there shall be substituted the words “any such person”.

PART IV

FINANCIAL SERVICES

Grant and refusal of authorisation

9.—(1) Section 27 of the Financial Services Act (grant and refusal of authorisation) shall have effect as if it included provision that the Board shall refuse an application made by a UK investment firm which is not a UK authorised institution if it appears to the Board that—

- (a) the firm is an undertaking which is closely linked with any person; and
- (b) the firm’s close links with that person, or any matters relating to any non-EEA laws or administrative provisions to which that person is subject, are such as would prevent the effective exercise by the Board of its supervisory functions in relation to the firm.

(2) Section 28 of that Act (withdrawal and suspension of authorisation) shall have effect as if it included provision that the Board may withdraw or suspend any authorisation held by a UK investment firm which is not a UK authorised institution if it appears to the Board that—

- (a) the firm is an undertaking which is closely linked with any person; and
- (b) the firm’s close links with that person, or any matters relating to any non-EEA laws or administrative provisions to which that person is subject, are such as to prevent the effective exercise by the Board of its supervisory functions in relation to the firm.

(3) Section 43 of that Act (listed money market institutions) shall have effect as if it included provision that the conditions and arrangements mentioned in subsection (2) shall be such that no UK investment firm which is not a UK authorised institution shall be admitted to the list, and any such firm may be removed from the list, if it appears to the Bank that—

- (a) the firm is an undertaking which is closely linked with any person; and

- (b) the firm’s close links with that person, or any matters relating to any non-EEA laws or administrative provisions to which that person is subject, are such as to prevent the effective exercise by the Bank of its supervisory functions in relation to the firm.

(4) Paragraph 2 of Schedule 2 to that Act (requirements for recognition of self-regulating organisation) shall have effect as if it included provision that the rules and practices there mentioned shall be such that no UK investment firm which is not a UK authorised institution shall be admitted to membership of the organisation, and any such firm may be expelled from such membership, if it appears to the organisation that—

- (a) the firm is an undertaking which is closely linked with any person; and
- (b) the firm’s close links with that person, or any matters relating to any non-EEA laws or administrative provisions to which that person is subject, are such as to prevent the effective exercise by the organisation of its supervisory functions in relation to the firm.

(5) In this regulation—

“non-EEA laws” means laws of a country or territory outside the European Economic Area, and “non-EEA administrative provision” shall be construed accordingly;

“UK authorised institution” and “UK investment firm” have the same meanings as in the Investment Services Regulations 1995(12).

Communication by auditor with supervisory bodies

10.—(1) Section 109 of the Financial Services Act (communication by auditor with supervisory bodies) shall have effect as if—

- (a) the reference in subsection (1) to an auditor of an authorised person included—
 - (i) a reference to an auditor of a body with which a qualifying person is closely linked by control who is also an auditor of that person; and
 - (ii) a reference to an auditor of a qualifying undertaking;
- (b) the second reference in that subsection to the authorised person, and the reference in subsection (3) to that person, included a reference to such a body or undertaking.

(2) In this regulation—

“qualifying person” means a UK investment firm, or a trustee or manager of a qualifying undertaking;

“qualifying undertaking” means an undertaking to which the UCITS Directive applies and which is, within the meaning of that Directive, situated in the United Kingdom;

“trustee” means—

- (a) in relation to a qualifying undertaking which is a unit trust scheme, means the person holding the property in question on trust for the participants;
- (b) in relation to any other qualifying undertaking, means any person who (whether or not under a trust) is entrusted with the custody of the property in question;

“the UCITS Directive” means the Council Directive of 20th December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (No. 85/611/EEC);

“UK investment firm” has the same meaning as in the Investment Services Regulations 1995;

and other expressions which are also used in the Financial Services Act have the same meanings as in that Act.

Disclosure of information: investment services

11.—(1) In paragraph (3) of regulation 48 of the Investment Services Regulations 1995, for the words “the Investment Services Directive, the text of which” there shall be substituted the words “the Investment Services Directive (as amended by the Prudential Supervision Directive), the text of which (as so amended)”.

(2) After paragraph (9) of that regulation there shall be inserted the following paragraph—

“(10) In this regulation “the Prudential Supervision Directive” has the same meaning as in the Financial Institutions (Prudential Supervision) Regulations 1996.”

(3) In Schedule 8 to those Regulations (text of article 25 of the Investment Services Directive), for paragraph 6 there shall be substituted the paragraphs set out in Schedule 2 to these Regulations.

Disclosure of information: UCITS

12.—(1) This paragraph applies to any confidential information which—

- (a) any person who works or has worked for any person designated by the United Kingdom as a competent authority for the purposes of Article 49 of the UCITS Directive; or
- (b) any auditor or expert instructed by such an authority,

has received in the course of discharging his duties as such a person, auditor or expert in relation to an undertaking to which the UCITS Directive applies and which is, within the meaning of that Directive, situated in an EEA State.

(2) Section 179 of the Financial Services Act shall not apply to information to which paragraph (1) above applies.

(3) Information to which paragraph (1) above applies shall not be disclosed by any person referred to in sub-paragraph (a) or (b) of that paragraph, or by any person receiving it directly or indirectly from such a person, except in any of the circumstances specified in paragraphs 2 to 11 of Article 50 of the UCITS Directive (as inserted by the Prudential Supervision Directive), the text of which (as so inserted) is set out in Schedule 3 to these Regulations.

(4) For the purposes of paragraph (3) above information to which paragraph (1) above applies may, subject to the provisions of paragraph (6) below, be disclosed in the circumstances described in Article 50.11 of the UCITS Directive.

(5) Information received under Article 50.3 of the UCITS Directive may not be communicated in the circumstances referred to in Article 50.10 of that Directive without the express consent of the supervisory authority from whom it was obtained.

(6) Information of the kind described in the third paragraph of Article 50.11 of the UCITS Directive may not be disclosed in the cases referred to in Article 50.11 except with the express consent of whichever is relevant of the authorities mentioned in the third paragraph of Article 50.11.

(7) Any person who contravenes any provision of this regulation shall be guilty of an offence and liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
- (b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum or to both.

(8) Proceedings in respect of an offence under this Regulation shall not be instituted—

- (a) in England and Wales, except by or with the consent of the Secretary of State or the Director of Public Prosecutions; or
- (b) in Northern Ireland, except by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.

(9) In proceedings brought against any person for an offence under this regulation, it shall be a defence for him to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(10) In this regulation “the UCITS Directive” has the same meaning as in regulation 10 above.

The Board’s functions under the Regulations

13. The functions of the Board under these Regulations shall be treated for the purposes of the Financial Services Act and the Transfer of Functions (Financial Services) Order 1992(**13**) as if they were functions under Chapter VI of Part I of that Act which—

- (a) had been functions of the Secretary of State; and
- (b) had been transferred to the Board by the Financial Services Act 1986 (Delegation) Order 1987(**14**).

PART V

FRIENDLY SOCIETIES

Registration and cancellation of registration

14.—(1) In subsection (2) of section 26 of the Friendly Societies Act (cancellation of registration), after paragraph (b) there shall be inserted “or

- (c) in the case of a society to which section 37(2) or (3) below applies, that the principal place of business of the society is outside the United Kingdom,”

(2) After sub-paragraph (4) of paragraph 1 of Schedule 3 to that Act (establishment, incorporation and constitution of incorporated friendly societies) there shall be inserted the following sub-paragraph—

- “(5) The central office shall not register a society which, if it were registered and authorised, would be a society to which section 37(2) or (3) above applies if the central office is satisfied that the principal place of business of the society is to be situated outside the United Kingdom; and in this sub-paragraph “authorised” has the same meaning as in Part IV of this Act.”

(3) In sub-paragraph (2) of paragraph 2 of that Schedule—

- (a) the word “and” at the end of paragraph (b) shall be omitted; and
- (b) after paragraph (c) there shall be inserted

“and

- (d) in the case of a society to which section 37(2) or (3) above applies, the principal place of business of the society is situated in the United Kingdom.”

(4) After paragraph (c) of section 91(1) of the Friendly Societies Act 1974(**15**) (cancellation and suspension of registration) there shall be inserted the following paragraph—

- “(d) in the case of a society to which section 37(2) or (3) of the 1992 Act applies, if he is satisfied that the principal place of business of the society is outside the British Islands.”

(13) S.I. 1992/1315.

(14) S.I. 1987/942.

(15) 1974 c. 46.

Refusal of authorisation by Commission

15.—(1) After subsection (1) of section 34 of the Friendly Societies Act (grant of unconditional or conditional authorisation) there shall be inserted the following subsections—

“(1A) The Commission shall refuse to grant authorisation to a society which is or, if authorisation were granted, would be a society to which section 37(2) or (3) below applies if it appears to the Commission that the principal place of business of the society is outside the United Kingdom.

(1B) The Commission shall also refuse to grant authorisation to a society which is or, if authorisation were granted, would be a society to which section 37(2) or (3) below applies if it appears to the Commission that—

- (a) the society is an undertaking which is closely linked with any person; and
- (b) the society’s close links with that person, or any matters relating to any non-EEA laws or administrative provisions to which that person is subject, are such as would prevent the effective exercise by the Commission of its functions under this Act in relation to the society;

and in this subsection “non-EEA laws” means laws of a country or territory outside the European Economic Area and “non-EEA administrative provisions” shall be construed accordingly.”and at the beginning of each of subsections (2) and (4) of that section there shall be inserted the words “Subject to subsections (1A) and (1B) above,”.

(2) In each of subsections (8) and (9) of that section, for the words “Subsections (2) to (7) above” there shall be substituted the words “Subsections (1A) to (7) above”.

Disclosure of information by Commission

16.—(1) For the purpose of facilitating references to them, the entries in the Table in subsection (5) of section 64 of the Friendly Societies Act (exceptions from restrictions on disclosure) shall be numbered 1 to 16.

(2) In that Table—

- (a) for entry 10 there shall be substituted the following entry—

“**10** A recognised supervisory or qualifying Functions as such a body or functions in body (within the meaning of Part II of relation to disciplinary proceedings against the Companies Act 1989 or Part III of the auditors.”
Companies (Northern Ireland) Order 1990).

- (b) for entry 14 there shall be substituted the following entry—

“**14** A recognised professional body (within Functions in its capacity as such a body under the meaning of section 391 of the Insolvency that Act or that Order or functions in relation Act 1986 or Article 350 of the Insolvency to disciplinary proceedings against insolvency practitioners (within the meaning of that Act or (Northern Ireland) Order 1989). that Order).”;

and

- (c) after entry 16 there shall be inserted the following entries—

“**17** An actuary exercising functions under Those functions.
this Act.

18 The Institute of Actuaries or the Faculty of Actuaries. Supervisory functions in relation to actuaries exercising functions under this Act.”

(3) In relation to information relating to the business or other affairs of friendly societies to which neither subsection (2) nor (3) of section 37 of the Friendly Societies Act applies, section 64 of that Act shall have effect without the amendments made by paragraph (2) above.

Communication by auditor etc. with Commission

17.—(1) In subsection (8) of section 79 of the Friendly Societies Act (auditors' duties to Commission and related rights), for the words “The auditors of a friendly society” there shall be substituted the words

“The following, namely—

- (a) the auditors of a friendly society;
- (b) an accountant appointed to make a report under section 62(3)(d) above by a friendly society to which section 37(2) or (3) above applies; and
- (c) (i) they are also the auditors of the society; or
(ii) one of them is an accountant appointed by the society to make a report under section 62(3)(d) above.”.

(2) In subsection (9) of that section—

- (a) for the words “the auditors of friendly societies” there shall be substituted the words “such persons as are mentioned in paragraph (a), (b) or (c) of subsection (8) above”; and
- (b) for the words “any auditor” there shall be substituted the words “any such person”.

PART VI

INSURANCE COMPANIES

Restrictions on issue of authorisation by Secretary of State

18.—(1) After subsection (1A) of section 5 of the Insurance Companies Act (submission of proposals etc.) there shall be inserted the following subsections—

“(1B) The Secretary of State shall not issue an authorisation under section 3 above to an applicant which is a UK or non-EEA company if it appears to him that—

- (a) the applicant is an undertaking which is closely linked with any person; and
- (b) the applicant’s close links with that person, or any matters relating to any non-EEA laws or administrative provisions to which that person is subject, are such as would prevent the effective exercise by the Secretary of State of his functions under this Act in relation to the applicant;

and in this subsection “non-EEA laws” means laws of a country or territory outside the European Economic Area and “non-EEA administrative provisions” shall be construed accordingly.

(1C) The Secretary of State shall not issue an authorisation under section 3 above to an applicant—

- (a) which is incorporated in the United Kingdom;
- (b) whose head office is outside the United Kingdom;

- (b) whose business is not restricted to business to which subsection (5) below applies; and
 - (d) which is not excluded from each Directive mentioned in that subsection by Article 3 of that Directive.”
- (2) In the following provisions, namely—
- (a) subsection (2)(b) of section 11 of that Act (withdrawal of authorisation in respect of new business); and
 - (b) subsection (2)(e) of section 37 of that Act (grounds on which powers are exercisable),
- for the words “section 7, 8 or 9” there shall be substituted the words “section 5(1B) or (1C), 7, 8 or 9”.

Communication by auditor with Secretary of State

19. For subsection (1) of section 21A of the Insurance Companies Act (communication by auditor with Secretary of State) there shall be substituted the following subsection—

“(1) No duty to which—

- (a) an auditor of an insurance company to which this Part of this Act applies; or
- (b) an auditor of any body with which a UK or non-EC company is closely linked by control who is also an auditor of the insurance company,

may be subject shall be regarded as contravened by reason of his communicating in good faith to the Secretary of State, whether or not in response to a request from him, any information or opinion on a matter of which the auditor has become aware in his capacity as auditor of that company or body and which is relevant to any functions of the Secretary of State under this Act”.

Disclosure of information by Secretary of State

20.—(1) In the Table in sub-paragraph (1) of paragraph 3 of Schedule 2B to the Insurance Companies Act (disclosure for facilitating discharge of functions by other regulatory authorities), for entry 25 there shall be substituted the following entries—

“**25** An auditor appointed under section 21 above, section 384 of the Companies Act 1985 or section 107 of the Financial Services Act 1986 or a person approved under section 108 of the Financial Services Act 1986. All functions.

26 A recognised supervisory body (within the meaning of Part II of the Companies Act 1989 or Part III of the Companies (Northern Ireland) Order 1990). Functions in its capacity as such a body under that Part, or functions in relation to disciplinary proceedings against auditors.

27 A recognised professional body (within the meaning of section 391 of the Insolvency Act 1986 or Article 350 of the Insolvency (Northern Ireland) Order 1989). Functions in its capacity as such a body under that Act or that Order, or functions in relation to disciplinary proceedings against insolvency practitioners (within the meaning of that Act or that Order).

28 An actuary exercising functions under this Act. Those functions.

29 The Institute of Actuaries or the Supervisory functions in relation to an actuary Faculty of Actuaries. exercising functions under this Act.”

(2) At the beginning of sub-paragraph (9) of that paragraph there shall be inserted the words “Subject to sub-paragraph (10) below,” and after that sub-paragraph there shall be inserted the following sub-paragraph—

“(10) Sub-paragraph (9) above shall not apply in relation to references to enabling or assisting the discharge or exercise of the following functions, namely—

- (a) functions of the Secretary of State under Part XIV of the Companies Act 1985, Part XIII of the Insolvency Act 1986 or Part II of the Companies Act 1989 or, so far as relating to the breach of any law relating to companies, under section 83 of the Companies Act 1989;
- (b) functions of an inspector under Part XIV of the Companies Act 1985 or, so far as relating to offences involving securities of a company, under section 177 of the Financial Services Act 1986;
- (b) functions of a person authorised to exercise powers under section 84 of the Companies Act 1989, so far as relating to the breach of any law relating to companies;
- (d) functions of the Department of Economic Development in Northern Ireland under Part XV of the Companies (Northern Ireland) Order 1986, Part XII of the Insolvency (Northern Ireland) Order 1989 or Part III of the Companies (Northern Ireland) Order 1990;
- (e) functions of an inspector under Part XV of the Companies (Northern Ireland) Order 1986;
- (f) functions of a recognised professional body (within the meaning of section 391 of the Insolvency Act 1986 or Article 350 of the Insolvency (Northern Ireland) Order 1989);
- (g) functions of a recognised supervisory body (within the meaning of Part II of the Companies Act 1989 or Part III of the Companies (Northern Ireland) Order 1990).”

(3) After sub-paragraph (4) of paragraph 5 of that Schedule (information supplied by a supervisory authority) there shall be inserted the following sub-paragraph—

“(4A) Before the Secretary of State discloses information to any person under sub-paragraph (3) above, he shall notify the supervisory authority which supplied the information of the name and responsibilities of that person.”

(4) In relation to information relating to the business or other affairs of companies which are neither UK nor non-EC companies within the meaning of the Insurance Companies Act, paragraph 3 of Schedule 2B to that Act shall have effect without the amendments made by paragraphs (1) and (2) above.

Duty to notify close links to Secretary of State

21.—(1) This regulation applies where on any day—

- (a) a UK or non-EC company becomes closely linked with any person; and
- (b) that person does not also become its controller (within the meaning of the Insurance Companies Act).

(2) Within 30 days of that day, the company shall give written notice to the Secretary of State stating that it has become so linked.

- (3) A notice under paragraph (2) above shall also state—
 - (a) the name of the person with whom it is closely linked;
 - (b) the nature of its close links with that person; and
 - (c) the requisite particulars of that person.
- (4) The requisite particulars of any person are as follows—
 - (a) where that person is a body corporate, the country or territory in which it is incorporated and, if it is registered, its registered number;
 - (b) where that person is an individual, the date and place of his birth; and
 - (c) where that person is a partnership, the particulars mentioned in paragraph (a) or (b) above in respect of each partner.
- (5) Any person who makes default in complying with this regulation shall be liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (6) Where a UK or non-EC company has become closely linked with any person before the day on which these Regulations come into force, these Regulations shall have effect as if the company had become closely linked with that person on that day.
- (7) In this regulation “UK company” and “non-EC company” have the same meanings as in the Insurance Companies Act.

PART VII

MISCELLANEOUS AND SUPPLEMENTAL

Subordinate legislation relating to auditors and accountants

22. Schedule 4 to these Regulations (which makes transitory amendments of certain subordinate legislation relating to auditors and accountants) shall have effect.

Minor and consequential amendments

23. The enactments specified in Schedule 5 to these Regulations shall have effect subject to the amendments there specified (being minor amendments or amendments consequential on the foregoing provisions of these Regulations).

Transitory provisions

24.—(1) This regulation applies if in any EEA State which is not a member State (“the defaulting State”) the Prudential Supervision Directive is not fully or substantially implemented before 18th July 1996.

- (2) Until such date as that Directive is fully or substantially implemented in the defaulting State—
 - (a) the amendments made by regulations 3, 6, 9, 15 and 18 above shall have effect as if that State were a country or territory outside the European Economic Area; and
 - (b) the amendments made by regulations 5(3) and (4) and 7(3) above, and the provisions made by regulation 12 above, shall have effect as if that State were not an EEA State.

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27th June 1996

Bowen Wells
Simon Burns
Two of the Lords Commissioners of Her
Majesty's Treasury

SCHEDULE 1

Regulation 2(3).

MEANING OF “CLOSELY LINKED”: MODIFICATIONS OF COMPANIES ACT PROVISIONS

Preliminary

1. The modifications of sections 258 to 260 of and Schedule 10A to the Companies Act 1985 which are referred to in regulation 2(3) above are as follows.

Ability to appoint majority of directors

2.—(1) After subsection (2) of section 258 the insertion of the following subsection—

“(2A) An undertaking is also a parent undertaking in relation to another undertaking, a subsidiary undertaking, if—

(a) it is a member of the undertaking and, at all times since the beginning of the undertaking’s immediately preceding financial year, a majority of the undertaking’s board of directors have been directors who were appointed solely as a result of the exercise of its voting rights, and

(b) no other person is the undertaking’s parent undertaking by virtue of paragraph (a), (b) or (c) of subsection (2).”

(2) In subsection (3) of that section, after the words “subsection (2)” the insertion of the words “or (2A)”.

Participation without control

3.—(1) After subsection (3) of section 258 the insertion of the following subsections—

“(3A) Subject to subsection (3B) below, an undertaking is also a parent undertaking in relation to another undertaking, a subsidiary undertaking, if it has a participating interest in the undertaking which—

(a) entitles it to 20 per cent or more of the voting rights in the undertaking, or

(b) comprises 20 per cent or more of the shares of the undertaking.

(3B) For the purpose of determining whether a person has a participating interest in an undertaking which is a building society (within the meaning of the Building Societies Act 1986), subsection (3A) above shall have effect as if the reference in paragraph (b) to shares were a reference to deferred shares (within the meaning of that Act).”

(2) After subsection (5) of that section the insertion of the following subsection—

“(5A) An undertaking (“A”) shall not be treated as a parent undertaking of an undertaking (“B”) by reason only that another undertaking which is A’s subsidiary undertaking by virtue of subsection (3A) is a parent undertaking of B.”

(3) After subsection (4) of section 259 the insertion of the following subsection—

“(4A) Two subsidiary undertakings of the same parent undertaking shall not be fellow subsidiary undertakings if either of them is a subsidiary undertaking by virtue of section 258(3A).”

(4) In subsection (5) of section 260, for the words “section 258(4)” the substitution of the words “section 258(3A) or (4)”.

(5) In paragraph 2(1) of Schedule 10A, after the words “section 258(2)(a) and (d)” the insertion of the words “and (3A)(a)”.

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SCHEDULE 2

Regulation 11(3).

PARAGRAPHS SUBSTITUTED FOR PARAGRAPH 6 OF ARTICLE 25 OF THE INVESTMENT SERVICES DIRECTIVE

5a. Notwithstanding paragraphs 1 to 4, Member States may authorize exchanges of information between the competent authorities and:

- the authorities responsible for overseeing the bodies involved in the liquidation and bankruptcy of financial undertakings and other similar procedures, or
- the authorities responsible for overseeing persons charged with carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment firms and other financial institutions.

Member States which have recourse to the option provided for in the first sub-paragraph shall require at least that the following conditions are met:

- the information shall be for the purpose of performing the task of overseeing referred to in the first sub-paragraph.
- information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 1,
- where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Member States shall communicate to the Commission and to the other Member States the names of the authorities which may receive information pursuant to this paragraph.

5b. Notwithstanding paragraphs 1 to 4, Member States may, with the aim of strengthening the stability, including integrity, of the financial system, authorise the exchange of information between the competent authorities and the authorities or bodies responsible under the law for the detection and investigation of breaches of company law.

Member States which have recourse to the option provided for in the first sub-paragraph shall require at least that the following conditions are met:

- the information shall be for the purpose of performing the task referred to in the first sub-paragraph,
- information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 1,
- where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Where, in a Member State, the authorities or bodies referred to in the first sub-paragraph perform their task of detection or investigation with the aid, in view of their specific competence, of persons appointed for that purpose and not employed in the public sector, the possibility of exchanging information provided for in the first sub-paragraph may be extended to such persons under the conditions stipulated in the second sub-paragraph.

In order to implement the final indent of the second sub-paragraph, the authorities or bodies referred to in the first sub-paragraph shall communicate to the competent authorities which have disclosed the information, the names and precise responsibilities of the persons to whom it is to be sent.

Member States shall communicate to the Commission and to the other Member States the names of the authorities or bodies which may receive information pursuant to this paragraph.

Before 31 December 2000, the Commission shall draw up a report on the application of the provisions of this paragraph.

6. This Article shall not prevent a competent authority from transmitting:
 - to central banks and other bodies with a similar function in their capacity as monetary authorities,
 - where appropriate, to other public authorities responsible for overseeing payment systems,

information intended for the performance of their task, nor shall it prevent such authorities or bodies from communicating to the competent authorities such information as they may need for the purposes of paragraph 4. Information received in this context shall be subject to the conditions of professional secrecy imposed in this Article.

SCHEDULE 3

Regulation 12(3).

PARAGRAPHS INSERTED AS PARAGRAPHS 2 TO 11 OF ARTICLE 50 OF THE UCITS DIRECTIVE

2. Member States shall provide that all persons who work or who have worked for the competent authorities, as well as auditors and experts instructed by the competent authorities, shall be bound by the obligation of professional secrecy. Such secrecy implies that no confidential information which they may receive in the course of their duties may be divulged to any person or authority whatsoever, save in summary or aggregate form such that UCITS and management companies and depositaries (hereinafter referred to as undertakings contributing towards their business activity) cannot be individually identified, without prejudice to cases covered by criminal law.

Nevertheless, when an UCITS or an undertaking contributing towards its business activity has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in rescue attempts may be divulged in civil or commercial proceedings.

3. Paragraph 2 shall not prevent the competent authorities of the various Member States from exchanging information in accordance with this Directive or other Directives applicable to UCITS or to undertakings contributing towards their business activity. That information shall be subject to the conditions of professional secrecy imposed in paragraph 2.

4. Member States may conclude cooperation agreements providing for exchanges of information with the competent authorities of third countries only if the information communicated is covered by guarantees of professional secrecy at least equivalent to those provided for in this Article.

5. Competent authorities receiving confidential information under paragraphs 2 or 3 may use it only in the course of their duties:

- to check that the conditions governing the taking-up of the business of UCITS or of undertakings contributing towards their business activity are met and to facilitate the monitoring of the conduct of that business, administrative and accounting procedures and internal-control mechanisms,
- to impose sanctions,
- in administrative appeals against decisions by the competent authorities, or
- in court proceedings initiated under Article 51(2).

6. Paragraphs 2 and 5 shall not preclude the exchange of information:

- (a) within a member State, where there are two or more competent authorities; or

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- (b) within a Member State or between Member States, between competent authorities; and
- authorities with public responsibility for the supervision of credit institutions, investment undertakings, insurance undertakings and other financial organisations and the authorities responsible for the supervision of financial markets,
 - bodies involved in the liquidation or bankruptcy of UCITS and other similar procedures and of undertakings contributing towards their business activity,
 - persons responsible for carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment undertakings and other financial institutions, in the performance of their supervisory functions, or the disclosure to bodies which administer compensation schemes of information necessary for the performance of their functions. Such information shall be subject to the conditions of professional secrecy imposed in paragraph 2.

7. Notwithstanding paragraphs 2 to 5, Member States may authorise exchanges of information between the competent authorities and:

- the authorities responsible for overseeing the bodies involved in the liquidation and bankruptcy of financial undertakings and other similar procedures, or
- the authorities responsible for overseeing persons charged with carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment firms and other financial institutions.

Member States which have recourse to the option provided for in the first sub-paragraph shall require at least that the following conditions are met:

- the information shall be for the purpose of performing the task of overseeing referred to in the first sub-paragraph,
- information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 2,
- where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Member States shall communicate to the Commission and to the other Member States the names of the authorities which may receive information pursuant to this paragraph.

8. Notwithstanding paragraphs 2 to 5, Member States may, with the aim of strengthening the stability, including integrity, of the financial system, authorise the exchange of information between the competent authorities and the authorities or bodies responsible under the law for the detection and investigation of breaches of company law.

Member States which have recourse to the option provided for in the first subparagraph shall require at least that the following conditions are met:

- the information shall be for the purpose of performing the task referred to in the first subparagraph,
- information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 2,
- where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Where, in a Member State, the authorities or bodies referred to in the first sub-paragraph perform their task of detection or investigation with the aid, in view of their specific competence, of persons appointed for that purpose and not employed in the public sector the possibility of exchanging

information provided for in the first sub-paragraph may be extended to such persons under the conditions stipulated in the second sub-paragraph.

In order to implement the final indent of the second sub-paragraph, the authorities or bodies referred to in the first sub-paragraph shall communicate to the competent authorities which have disclosed the information the names and precise responsibilities of the persons to whom it is to be sent.

Member States shall communicate to the Commission and to the other Member States the names of the authorities or bodies which may receive information pursuant to this paragraph.

Before 31 December 2000, the Commission shall draw up a report on the application of this paragraph.

9. This Article shall not prevent a competent authority from transmitting to central banks and other bodies with a similar function in their capacity as monetary authorities information intended for the performance of their tasks, nor shall it prevent such authorities or bodies from communicating to the competent authorities such information as they may need for the purposes of paragraph 5. Information received in this context shall be subject to the conditions of professional secrecy imposed in this Article.

10. This Article shall not prevent the competent authorities from communicating the information referred to in paragraphs 2 to 5 to a clearing house or other similar body recognised under national law for the provision of clearing or settlement services for one of their Member State's markets if they consider that it is necessary to communicate the information in order to ensure the proper functioning of those bodies in relation to defaults or potential defaults by market participants. The information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 2. Member States shall, however, ensure that information received under paragraph 3 may not be disclosed in the circumstances referred to in this paragraph without the express consent of the competent authorities which disclosed it.

11. In addition, notwithstanding the provisions referred to in paragraphs 2 and 5, Member States may, by virtue of provisions laid down by law, authorise the disclosure of certain information to other departments of their central government administrations responsible for legislation on the supervision of UCITS and of undertakings contributing towards their business activity, credit institutions, financial institutions, investment undertakings and insurance undertakings and to inspectors instructed by those departments.

Such disclosures may, however, be made only where necessary for reasons of prudential control.

Member States shall, however, provide that information received under paragraphs 3 and 6 may never be disclosed in the circumstances referred to in this paragraph except with the express agreement of the competent authorities which disclosed the information.

SCHEDULE 4

Regulation 22.

SUBORDINATE LEGISLATION RELATING TO AUDITORS AND ACCOUNTANTS

Accountants (Banking Act 1987) Regulations 1994

1.—(1) In relation to any time before they are varied or revoked by regulations made under subsection (5) of section 47 of the Banking Act, the Accountants (Banking Act 1987) Regulations 1994⁽¹⁶⁾ shall have effect as if they were amended as follows.

(2) In regulation 2—

(16) S.I. 1994/524.

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- (a) for the definition of “auditor” there shall be substituted the following definition—
- “‘auditor’ means an accountant who—
- (a) is an auditor of an authorised institution; or
 - (b) is an auditor of a body with which an authorised institution which is a credit institution is closely linked by control, and is also either an auditor of the institution or a person appointed to make a report under section 8(5) or 39(1)(b) of the Act in respect of the institution;”
- (b) after the definition of “the Bank” there shall be inserted the following definitions—
- “‘contravention’, in relation to any provision of the Act, includes any failure to comply with that provision;
- ‘the institution concerned’ means—
- (a) in relation to an auditor of an authorised institution, that institution;
 - (b) in relation to an auditor of a body with which a credit institution is closely linked by control, that institution;
 - (c) in relation to a reporting accountant, the institution or authorised institution in relation to which his report is made;
- ‘of material significance’ means of material significance for the exercise of the Bank’s functions under the Act or under the Regulations;”
- (3) In paragraph (1) of regulation 3, for the words “paragraph (2)” there shall be substituted the words “paragraph (1A) or (2)”.
- (4) After that paragraph there shall be inserted the following paragraph—
- “(1A) Where the institution concerned is a credit institution, the circumstances referred to in paragraph (1) above are circumstances in which the matters are such as—
- (a) to give the auditor or reporting accountant reasonable cause to believe, as regards the institution concerned—
 - (i) that its authorisation could be revoked under section 11 of the Act otherwise than by virtue of subsection (1)(a) of that section;
 - (ii) that there is or has been, or may be or may have been, a failure to fulfil any of the criteria specified in Schedule 3 to the Act and that the failure is likely to be of material significance;
 - (iii) that there is or has been, or may be or may have been, a contravention of any provision of the Act and that the contravention is likely to be of material significance; or
 - (iv) that its continuous functioning may be affected; or
 - (b) in the case of the auditor of the institution concerned, to preclude him from stating in his report that its annual accounts have been properly prepared in accordance with the Companies Act 1985.”
- (5) In paragraph (2) of that regulation—
- (a) there shall be inserted at the beginning the words “Where the institution concerned is not a credit institution,”;
 - (b) in sub-paragraph (a), for the words from “the authorised institution” to the end there shall be substituted the words “the institution concerned”; and
 - (c) in sub-paragraph (b), the words “for the exercise” to the end shall be omitted.

Building Societies (Auditors) Order 1994

2.—(1) In relation to any time before it is varied or revoked by an order made under subsection (9) of section 82 of the Building Societies Act, the Building Societies (Auditors) Order 1994⁽¹⁷⁾ shall have effect as if it were amended as follows.

(2) In article 2—

(a) for the definition of “auditor” there shall be substituted the following definition—

“‘auditor’ means—

- (a) an auditor of a building society; or
- (b) an auditor of a body with which a building society is closely linked by control where he is also either an auditor of the society or an accountant appointed by the society to make a report under section 52(5)(d) of the Act.”.

(b) after that definition there shall be inserted the following definitions—

“‘contravention’, in relation to any provision of the Act, includes any failure to comply with that provision;

‘of material significance’ means of material significance for the exercise of the Commission’s functions under the Act or under the Regulations;”

(c) for the definition of “the Regulations” there shall be substituted the following definition—

“‘reporting accountant’ means an accountant appointed to make a report under section 52(5)(d) of the Act;”

(d) for the word “and” immediately following the definition of “society” there shall be substituted the following definition—

“‘the society concerned’ means—

- (a) in relation to an auditor of a society, that society;
- (b) in relation to an auditor of a body with which a society is closely linked by control, that society;
- (c) in relation to a reporting accountant, the society in relation to which his report is made;”.

(3) In paragraph (1) of article 3, after the words “the auditor” there shall be inserted the words “or reporting accountant”.

(4) For paragraph (2) of that article there shall be substituted the following paragraph—

“(2) The circumstances referred to in paragraph (1) above are circumstances in which the information of the description prescribed by paragraph (3) below is such as—

- (a) to give the auditor or reporting accountant reasonable cause to believe, as regards the society concerned—
 - (i) that its authorisation could be revoked under section 43 of the Act otherwise than by virtue of section 45 of the Act;
 - (ii) that there is or has been, or may be or may have been, a failure to satisfy any of the criteria of prudent management in section 45(3) of the Act and that the failure is likely to be of material significance;
 - (iii) that there is or has been, or may be or may have been, a contravention of any provision of the Act and that the contravention is likely to be of material significance; or

(17) S.I. 1994/525.

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- (iv) that its continuous functioning may be affected; or
- (b) in the case of the auditor of the society concerned, to preclude him from stating in his report that its annual accounts have been prepared—
 - (i) so as to conform with the requirements of Part VIII of the Act and regulations made under it; or
 - (ii) so as to give a true and fair view of the matters specified in section 78(4) of the Act.”
- (5) In paragraph (3) of that article—
 - (a) after the words “the auditor”, in the first place where they occur, there shall be inserted the words “or reporting accountant”; and
 - (b) for the words “the society of which he is the auditor” there shall be substituted the words “the society concerned”.

Auditors (Financial Services Act 1986) Rules 1994

3.—(1) In relation to any time before they are varied or revoked by rules made under subsection (2) of section 109 of the Financial Services Act, the Auditors (Financial Services Act 1986) Rules 1994⁽¹⁸⁾ shall have effect as if they were amended as follows.

- (2) In rule 2—
 - (a) for the definition of “auditor” there shall be substituted the following definition—
 - “‘auditor’ means—
 - (a) an auditor of an authorised person;
 - (b) an auditor of a body with which a qualifying person is closely linked by control who is also an auditor of that person; or
 - (c) an auditor of qualifying undertaking;”
 - (b) after that definition there shall be inserted the following definitions—
 - “‘closely linked by control’, in relation to a UK investment firm, shall be construed in accordance with regulation 2 of the Financial Institutions (Prudential Supervision) Regulations 1996;
 - ‘contravene’, in relation to any provision of the Act or any rules or regulations made under it, includes fail to comply with the provision, rules or regulations;”
 - (c) after the definition of “disciplinary action” there shall be inserted the following definition—
 - “‘of material significance’ means of material significance for determining either—
 - (a) whether a person is a fit and proper person to carry on investment business; or
 - (b) whether disciplinary action should be taken, or powers of intervention exercised, in order to protect investors from a significant risk of loss;”
 - (d) after the definition of “matter” there shall be inserted the following definition—
 - “‘the person concerned’ means—
 - (a) in relation to an auditor of an authorised person, that person;
 - (b) in relation to an auditor of a body with which a qualifying person is closely linked by control, that person;
 - (c) in relation to an auditor of a qualifying undertaking, that undertaking;”

⁽¹⁸⁾ S.I. 1994/526.

- (e) after the definition of “powers of intervention” there shall be inserted the following definitions—
- “‘qualifying person’ means a UK investment firm, or a trustee or manager of a qualifying undertaking;
 - ‘qualifying undertaking’ means an undertaking to which the UCITS Directive applies and which is, within the meaning of that Directive, situated in the United Kingdom;”; and
- (f) after the definition of “the relevant regulator” there shall be inserted the following definitions—
- “‘the relevant requirements’ means the requirements of such of the following as are applicable, namely—
 - (a) the Companies Act 1985;
 - (b) regulations made under section 81, 107 or 107A of the Act; and
 - (c) the rules of a recognised self-regulating organisation; - ‘the UCITS Directive’ means the Council Directive of 20th December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (No. 85/611/EEC);”
- (3) In paragraph (1) of rule 3, for the words “paragraph (2)” there shall be substituted the words “paragraph (1A) or (2)”.
- (4) After that paragraph there shall be inserted the following paragraphs—
- “(1A) Where the person concerned is a qualifying person or a qualifying undertaking, the circumstances referred to in paragraph (1) above are circumstances in which the matters are such as—
 - (a) to give the auditor reasonable cause to believe, as regards the person or undertaking—
 - (i) that there is or has been, or may be or may have been, a contravention of any provision of the Act or any rules or regulations made under it and that the contravention is likely to be of material significance;
 - (ii) that, in purported compliance with any such provision, he or it has furnished the Board with false, inaccurate or misleading information;
 - (iii) that there is or has been, or may be or may have been, a contravention of any prohibition or requirement imposed under the Act and that the contravention is likely to be of material significance; or
 - (iv) that his or its continuous functioning may be affected; or - (b) to preclude the auditor from stating in his report that the annual accounts of the person or undertaking have been properly prepared in accordance with the relevant requirements. - (1B) The rules, prohibitions and requirements referred to in paragraph (1A) above include—
 - (a) where the person concerned is a member of a recognised self-regulating organisation, the rules of that organisation and any prohibition or requirement imposed by virtue of those rules;
 - (b) where that person is a person certified by a recognised professional body, the rules of that body which regulate the carrying on by that person of investment business and any prohibition or requirement imposed by virtue of those rules.”
- (5) In paragraph (2) of that rule—

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- (a) there shall be inserted at the beginning the words “Where the person concerned is neither a qualifying person nor a qualifying undertaking,”; and
- (b) the words from “for determining” to the end shall be omitted.

Friendly Societies (Auditors) Order 1994

4.—(1) In relation to any time before it is varied or revoked by an order made under subsection (9) of section 79 of the Friendly Societies Act, the Friendly Societies (Auditors) Order 1994(19) shall have effect as if it were amended as follows.

(2) In article 2—

- (a) for the definition of “auditor” there shall be substituted the following definition—
 - “‘auditor’ means—
 - (a) an auditor of a society; or
 - (b) an auditor of a body with which a society to which section 37(2) or (3) of the Act applies is closely linked by control where he is also either an auditor of the society or an accountant appointed by the society to make a report under section 62(3)(d) of the Act;”
- (b) after that definition there shall be inserted the following definitions—
 - “‘contravention’, in relation to any provision of the Act, includes any failure to comply with that provision;
 - ‘of material significance’ means of material significance for the exercise of the Commission’s functions;”
- (c) after the definition of “relevant information” there shall be inserted the following definition—
 - “‘reporting accountant’ means an accountant appointed to make a report under section 62(3)(d) of the Act by a friendly society to which section 37(2) or (3) of the Act applies;”
- (d) for the word “and” immediately following the definition of “society” there shall be substituted the following definition—
 - “‘the society concerned’ means—
 - (a) in relation to an auditor of a society, that society;
 - (b) in relation to an auditor of a body with which a society to which section 37(2) or (3) of the Act applies is closely linked by control, that society;
 - (c) in relation to a reporting accountant, the society in relation to which his report is made;”.

(3) In paragraph (1) of article 3—

- (a) after the words “The auditor” there shall be inserted the words “or reporting accountant”; and
- (b) for the words “paragraph (2) below” there shall be substituted the words “paragraph (1A) or (2) below”.

(4) After that paragraph there shall be inserted the following paragraph—

“(1A) Where the society concerned is one to which section 37(2) or (3) of the Act applies, the circumstances referred to in paragraph (1) above are circumstances in which the information of the description prescribed in paragraph (3) below is such as—

- (a) to give the auditor or reporting accountant reasonable cause to believe, as regards the society concerned—
 - (i) that its authorisation could be withdrawn under section 40(3) of the Act;
 - (ii) that there is or has been, or may be or may have been, a failure to satisfy any of the criteria of prudent management in section 50(3) of the Act and that the failure is likely to be of material significance;
 - (iii) that there is or has been, or may be or may have been, a contravention of any provision of the Act and that the contravention is likely to be of material significance; or
 - (iv) that its continuous functioning may be affected; or
 - (b) in the case of the auditor of the society concerned, to preclude him from stating in his report that its annual accounts have been prepared—
 - (i) so as to conform with the requirements of Part VI of the Act and regulations made under it; or
 - (ii) so as to give a true and fair view of the matters specified in section 73(5) of the Act.”
- (5) In paragraph (2) of that article—
- (a) there shall be inserted at the beginning the words “Where the institution concerned is not one to which section 37(2) or (3) of the Act applies,”;
 - (b) for the words “an auditor” there shall be substituted the words “the auditor”;
 - (c) in sub-paragraph (a), for the words “the society of which he is the auditor” there shall be substituted the words “the society concerned”; and
 - (d) in sub-paragraph (b), the words from “for the exercise” to the end shall be omitted.
- (6) In paragraph (3) of that article—
- (a) after the words “the auditor”, in the first place where they occur, there shall be inserted the words “or reporting accountant”; and
 - (b) for the words “the society of which he is the auditor” there shall be substituted the words “the society concerned”.

Auditors (Insurance Companies Act 1982) Regulations 1994

5.—(1) In relation to any time before they are varied or revoked by regulations made under subsection (2) of section 21A of the Insurance Companies Act, the Auditors (Insurance Companies Act 1982) Regulations 1994(20) shall have effect as if they were amended as follows.

- (2) In regulation 2—
- (a) for the definition of “auditor”, there shall be substituted the following definitions—
 - “‘auditor’ means—
 - (a) auditor of an insurance company to which Part II of the Act applies; or
 - (b) auditor of a body with which a UK or non-EC company is closely linked by control who is also auditor of the company;
- ‘of material significance’ means of material significance for determining whether any of the powers of intervention conferred on the Secretary of State by sections 38 to 45 of the Act should be exercised;”
- (b) after that definition there shall be inserted the following definitions—

(20) S.I. 1994/449.

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- “the company concerned’ means—
- (a) in relation to an auditor of an insurance company to which Part II of the Act applies, that company;
 - (b) in relation to an auditor of a body with which a UK or non-EC company is closely linked by control, that company;
- ‘contravention’, in relation to any provision of the Act, includes any failure to comply with that provision;”;
- (c) in the definition of “matters”, after the word “applies” there shall be inserted the words “, or of a body with which a UK or non-EC company is closely linked by control,”.
- (3) In paragraph (1) of regulation 3, for the words “paragraph (2)” there shall be substituted the words “paragraph (1A) or (2)”.
- (4) After that paragraph there shall be inserted the following paragraph—
- “(1A) Where the company concerned is a UK or non-EC company, the circumstances referred to in paragraph (1) above are circumstances in which the matters are such as—
- (a) to give the auditor reasonable cause to believe, as regards the company concerned—
 - (i) that its authorisation could be withdrawn under section 11 of the Act otherwise than by virtue of subsection (2)(ab) of that section;
 - (ii) that there is or has been, or may be or may have been, a failure to fulfil any of the criteria of sound and prudent management and that the failure is likely to be of material significance;
 - (iii) that there is or has been, or may be or may have been, a contravention of any provision of the Act and that the contravention is likely to be of material significance; or
 - (iv) that its continuous functioning may be affected; or
 - (b) in the case of the auditor of the company concerned, to preclude him from stating in his report that its annual accounts have been properly prepared in accordance with the Companies Act 1985 or section 17 of the Act.”
- (5) In paragraph (2) of that regulation—
- (a) there shall be inserted at the beginning the words “Where the company concerned is not a UK or non-EC company,”; and
 - (b) the words from “for determining” to the end shall be omitted.

SCHEDULE 5

Regulation 23.

MINOR AND CONSEQUENTIAL AMENDMENTS

Banking Act

- 1.** In the Table in subsection (1) of section 84 of the Banking Act (disclosure for facilitating discharge of functions by other supervisory authorities)—
- (a) the entry relating to the Friendly Societies Commission shall be numbered 5A; and
 - (b) in entry 15, the words “or section 84 of the Companies Act 1989” and the words “or section” shall be omitted.

2. After subsection (2A) of section 106 of the Banking Act (interpretation) there shall be inserted the following subsections—

“(2B) Any reference in this Act to the First Council Directive or the Second Council Directive is a reference to that Directive as amended by the Prudential Supervision Directive (within the meaning of the Financial Institutions (Prudential Supervision) Regulations 1996).

(2C) Any reference in this Act—

(a) to an undertaking being closely linked with any person, or being closely linked with any person by control; or

(b) to an undertaking’s close links with any person,

shall be construed in accordance with regulation 2 of those Regulations.”

Building Societies Act

3. In subsection (10) of section 31 of the Building Societies Act (voluntary schemes), for the words “section 26(1)” there shall be substituted the words “section 25A”.

4. In subsections (13A) and (15) of section 53 of the Building Societies Act (confidentiality of information obtained by Commission), for the words “facilitating or assisting”, in each place where they occur, there shall be substituted the words “enabling, facilitating or assisting”.

5. After subsection (2A) of section 119 of the Building Societies Act (interpretation) there shall be inserted the following subsections—

“(2B) Any reference in this Act to the First Council Directive or the Second Council Directive is a reference to that Directive as amended by the Prudential Supervision Directive (within the meaning of the Financial Institutions (Prudential Supervision) Regulations 1996).

(2C) Any reference in this Act—

(a) to an undertaking being closely linked with any person, or being closely linked with any person by control; or

(b) to an undertaking’s close links with any person,

shall be construed in accordance with regulation 2 of those Regulations.”

Friendly Societies Act

6. After subsection (1) of section 119 of the Friendly Societies Act (general interpretation) there shall be inserted the following subsections—

“(1A) References in this Act to the first or third general insurance Directive, or to the first or third life Directive, are references to that Directive as amended by the Prudential Supervision Directive (within the meaning of the Financial Institutions (Prudential Supervision) Regulations 1996).

(1B) References in this Act—

(a) to an undertaking being closely linked with any person, or being closely linked with any person by control; or

(b) to an undertaking’s close links with any person,

shall be construed in accordance with regulation 2 of those Regulations.”

Insurance Companies Act

7. After subsection (3) of section 96 of the Insurance Companies Act (general interpretation) there shall be inserted the following subsection—

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“(2B) Any reference in this Act—

- (a) to an undertaking being closely linked with any person, or being closely linked with any person by control; or
- (b) to an undertaking’s close links with any person,

shall be construed in accordance with regulation 2 of the Financial Institutions (Prudential Supervision) Regulations 1996.”

8. After subsection (1B) of section 96A of the Insurance Companies Act (interpretation of expressions derived from insurance Directives) there shall be inserted the following subsection—

“(1C) Any reference in this Act to the first or third general insurance Directive, or to the first or third long term insurance Directive, is a reference to that Directive as amended by the Prudential Supervision Directive (within the meaning of the Financial Institutions (Prudential Supervision) Regulations 1996).”

9. In the Table in paragraph 3(1) of Schedule 2B to the Insurance Companies Act (disclosure for facilitating discharge of functions by other regulatory authorities), in entry 14, the words “or section 84 of the Companies Act 1989” and the words “or section” shall be omitted.

Banking Coordination (Second Council Directive) Regulations 1992

10. After paragraph (1) of regulation 2 of the Banking Coordination (Second Council Directive) Regulations 1992(21) (interpretation: general) there shall be inserted the following paragraph—

“(2B) Any reference in these Regulations to the First Council Directive or the Second Council Directive is a reference to that Directive as amended by the Prudential Supervision Directive (within the meaning of the Financial Institutions (Prudential Supervision) Regulations 1996).”

Investment Services Regulations 1995

11. After paragraph (1) of regulation 2 of the Investment Services Regulations 1995(22) (interpretation: general) there shall be inserted the following paragraph—

“(2B) Any reference in these Regulations to the First Council Directive or the Second Council Directive is a reference to that Directive as amended by the Prudential Supervision Directive (within the meaning of the Financial Institutions (Prudential Supervision) Regulations 1996).”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations give effect to European Parliament and Council Directive [95/26/EC](#) (OJ No. L168, 18.7.95, p.7) amending Directives [77/780/EEC](#) and [89/646/EEC](#) in the field of credit institutions, Directives [73/239/EEC](#) and [92/49/EEC](#) in the field of non-life insurance, Directives [79/267/EEC](#) and [92/96/EEC](#) in the field of life assurance, Directive [93/22/EEC](#) in the field of

(21) S.I. [1992/3218](#).

(22) S.I. [1995/3275](#).

investment firms and Directive [85/611/EEC](#) in the field of undertakings for collective investment in transferable securities (UCITS) with a view to reinforcing prudential supervision.

Part I of the Regulations, together with Schedule 1, defines various words and phrases, including “closely linked”, for the purposes of the Regulations.

Part II of the Regulations makes provision for banking institutions. It amends sections 9 and 11 of the Banking Act [1987 \(c. 22\)](#) so that the Bank of England must refuse an application for authorisation (and may revoke authorisation) where a credit institution is closely linked to another person and where those close links would prevent the effective exercise of the Bank’s supervisory functions in relation to the institution. The protection given by section 47 of the Banking Act to certain auditors is extended. Part V of the Banking Act is amended so as to permit the disclosure of information in certain circumstances.

Part III of the Regulations makes provision for building societies. Amendments are made to the Building Societies Act [1986 \(c. 53\)](#) which broadly correspond to those made to the Banking Act.

Part IV of and Schedules 2 and 3 to the Regulations make provision in relation to financial services. Sections 27, 28 and 43 of, and paragraph 2 of Schedule 2 to the Financial Services Act [1986 \(c. 60\)](#) are to have effect in such a way as to reflect the requirements of the Directive in relation to the grant and revocation of authorisation of investment firms and other authorised institutions, and the recognition of self-regulating organisations. The protection given by section 109 of the Act to certain auditors is extended. Provision is made for the disclosure of information in relation to investment firms and UCITS.

Part V of the Regulations makes provision for friendly societies to which section 37(2) or (3) of the Friendly Societies Act [1992 \(c. 40\)](#) applies (“Directive societies”). Amendments are made to the Friendly Societies Act 1992 which broadly correspond to those made to the Banking Act. Directive societies are required to have their principal place of business situated in the United Kingdom or, in the case of those Directive societies registered under the Friendly Societies Act [1974 \(c. 46\)](#), in the British Islands.

Part VI of the Regulations makes provision for insurance companies. Amendments are made to the Insurance Companies Act [1982 \(c. 50\)](#) which broadly correspond to those made to the Banking Act. In addition, Part VI imposes a duty on certain insurance companies to notify the Secretary of State if they become closely linked to another person.

Part VII of the Regulations deals with miscellaneous and supplemental matters, including transitory provisions for States which are parties to the European Economic Area Agreement but which may not have implemented the Directive fully before the coming into force of the Regulations.

Schedule 4 to the Regulations amends statutory instruments made in 1994 dealing with the duties of auditors of banks and other institutions to which the Directive applies.

Schedule 5 to the Regulations makes minor and consequential amendments to the Banking Act 1987, the Building Societies Act 1986, the Friendly Societies Act 1992 and the Insurance Companies Act 1982, the [Banking Coordination \(Second Council Directive\) Regulations 1992 \(SI 1992 No. 3218\)](#) and the [Investment Services Regulations 1995 \(SI 1995 No. 3275\)](#).