



# Banking Act 1987 (repealed)

## 1987 CHAPTER 22

### PART I

#### REGULATION OF DEPOSIT-TAKING BUSINESS

##### *The Bank of England and the Board of Banking Supervision*

#### **1 Functions and duties of the Bank of England.**

- (1) The Bank of England (in this Act referred to as “the Bank”) shall have the powers conferred on it by this Act and the duty generally to supervise the institutions authorised by it in the exercise of those powers.
- (2) It shall also be the duty of the Bank to keep under review the operation of this Act and developments in the field of banking which appear to it to be relevant to the exercise of its powers and the discharge of its duties.
- (3) The Bank shall, as soon as practicable after the end of each of its financial years, make to the Chancellor of the Exchequer and publish in such manner as it thinks appropriate a report on its activities under this Act in that year; and the Chancellor of the Exchequer shall lay copies of every such report before Parliament.
- (4) Neither the Bank nor any person who is a member of its Court of Directors or who is, or is acting as, an officer or servant of the Bank shall be liable in damages for anything done or omitted in the discharge or purported discharge of the functions of the Bank under this Act unless it is shown that the act or omission was in bad faith.

#### **Modifications etc. (not altering text)**

C1 S. 1 amended (1.1.1993) by S.I. 1992/3218, reg. 47, Sch. 8 para. 2(a)(b).

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*Changes to legislation: There are currently no known outstanding effects for the Banking Act 1987 (repealed), Part I. (See end of Document for details)*

## 2 The Board of Banking Supervision.

- (1) As soon as practicable after the coming into force of this section the Bank shall establish a committee to be known as the Board of Banking Supervision.
- (2) The Board shall consist of—
  - (a) three ex officio members, namely, the Governor of the Bank for the time being, who shall be the chairman of the Board, the Deputy Governor of the Bank for the time being and the executive director of the Bank for the time being responsible for the supervision of institutions authorised under this Act; and
  - (b) six independent members, that is to say, members appointed jointly by the Chancellor of the Exchequer and the Governor, being persons having no executive responsibility in the Bank.
- (3) It shall be the duty of the independent members to give such advice as they think fit to the ex officio members—
  - (a) on the exercise by the Bank of its functions under this Act, either generally or in any particular respect or in relation to a particular institution or institutions; and
  - (b) on any matter relating to or arising out of the exercise of those functions.
- (4) The Bank shall make regular reports to the Board on matters which the Bank considers relevant to the discharge by the independent members of their duty under subsection (3) above and shall provide them with such other information as they may reasonably require.
- (5) The ex officio members shall give written notice to the Chancellor of the Exchequer in any case in which it is decided that the advice of the independent members should not be followed and the independent members shall be entitled to place before the Chancellor the reasons for their advice.
- (6) The Board shall prepare an annual report on its activities and that report shall be included in the report made by the Bank under section 1(3) above for the financial year in question.
- (7) Section 1(4) above shall apply to an act or omission by a member of the Board in the discharge or purported discharge of his functions under this section as it applies to an act or omission of a person there mentioned in the discharge or purported discharge of the functions of the Bank.
- (8) Schedule 1 to this Act shall have effect with respect to the Board.

**Modifications etc. (not altering text)**

**C2** S. 2 amended (1.1.1993) by S.I. 1992/3218, reg. 47, Sch. 8 para.3.

*Restriction on acceptance of deposits*

## 3 Restriction on acceptance of deposits.

- (1) Subject to section 4 below, no person shall in the United Kingdom accept a deposit in the course of carrying on (whether there or elsewhere) a business which for the purposes of this Act is a deposit-taking business unless that person is an institution

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for the time being authorised by the Bank under the following provisions of this Part of this Act.

- (2) Any person who contravenes this section 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 six months or to a fine not exceeding the statutory maximum or to both.
- (3) The fact that a deposit has been taken in contravention of this section shall not affect any civil liability arising in respect of the deposit or the money deposited.

**Modifications etc. (not altering text)**

**C3** S. 3 restricted (1.1.1993) by [S.I. 1992/3218, reg. 5\(1\)\(a\)](#).

**4 Exempted persons and exempted transactions.**

- (1) Section 3 above shall not apply to the acceptance of a deposit by the Bank or by a person for the time being specified in Schedule 2 to this Act.
- (2) The exemption of a person specified in that Schedule shall be subject to any restriction there specified in the case of that person.
- (3) The Treasury may after consultation with the Bank by order amend that Schedule—
  - (a) by adding any person or relaxing any restriction; or
  - (b) by removing any person for the time being specified in it or imposing or extending any restriction.
- (4) Section 3 above shall not apply to any transaction prescribed for the purposes of this subsection by regulations made by the Treasury.
- (5) Regulations under subsection (4) above may prescribe transactions by reference to any factors appearing to the Treasury to be appropriate and, in particular, by reference to all or any of the following—
  - (a) the amount of the deposit;
  - (b) the total liability of the person accepting the deposit to his depositors or to any other creditors;
  - (c) the circumstances in which or the purpose for which the deposit is made;
  - (d) the identity of the person by whom the deposit is made or accepted, including his membership of a class whose membership is determined otherwise than by the Treasury;
  - (e) the number of, or the amount involved in, transactions of any particular description carried out by the person accepting the deposit or the frequency with which he carries out transactions of any particular description.
- (6) Regulations under subsection (4) above may make any exemption for which they provide subject to compliance with specified conditions or requirements.
- (7) Any order under subsection (3)(a) above and any regulations under subsection (4) above shall be subject to annulment in pursuance of a resolution of either House of Parliament, and no order shall be made under subsection (3)(b) above unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

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## 5 Meaning of “deposit”.

- (1) Subject to the provisions of this section, in this Act “deposit” means a sum of money paid on terms—
  - (a) under which it will be repaid, with or without interest or a premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it; and
  - (b) which are not referable to the provision of property or services or the giving of security;and references in this Act to money deposited and to the making of a deposit shall be construed accordingly.
- (2) For the purposes of subsection (1)(b) above, money is paid on terms which are referable to the provision of property or services or to the giving of security if, and only if—
  - (a) it is paid by way of advance or part payment under a contract for the sale, hire or other provision of property or services, and is repayable only in the event that the property or services is not or are not in fact sold, hired or otherwise provided;
  - (b) it is paid by way of security for the performance of a contract or by way of security in respect of loss which may result from the non-performance of a contract; or
  - (c) without prejudice to paragraph (b) above, it is paid by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise.
- (3) Except so far as any provision of this Act otherwise provides, in this Act “deposit” does not include—
  - (a) a sum paid by the Bank or an authorised institution;
  - (b) a sum paid by a person for the time being specified in Schedule 2 to this Act;
  - (c) a sum paid by a person, other than a person within paragraph (a) or (b) above, in the course of carrying on a business consisting wholly or mainly of lending money;
  - (d) a sum which is paid by one company to another at a time when one is a subsidiary of the other or both are subsidiaries of another company or the same individual is a majority or principal shareholder controller of both of them; or
  - (e) a sum which is paid by a person who, at the time when it is paid, is a close relative of the person receiving it or who is, or is a close relative of, a director, controller or manager of that person.
- (4) In the application of paragraph (e) of subsection (3) above to a sum paid by a partnership that paragraph shall have effect as if for the reference to the person paying the sum there were substituted a reference to each of the partners.
- (5) In subsection (3)(e) above “close relative”, in relation to any person, means—
  - (a) his spouse;
  - (b) his children and step-children, his parents and step-parents, his brothers and sisters and step-brothers and step-sisters; and
  - (c) the spouse of any person within paragraph (b) above.

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**Modifications etc. (not altering text)**

- C4 S. 5 modified (31.07.1991) by S.I. 1991/1776, art. 2(1)(2)  
C5 S. 5 amended (1.1.1993) by S.I. 1992/3218, reg. 47, Sch. 8 para.4.

**6 Meaning of “deposit-taking business”.**

- (1) Subject to the provisions of this section, a business is a deposit-taking business for the purposes of this Act if—
  - (a) in the course of the business money received by way of deposit is lent to others; or
  - (b) any other activity of the business is financed, wholly or to any material extent, out of the capital of or the interest on money received by way of deposit.
- (2) Notwithstanding that paragraph (a) or (b) of subsection (1) above applies to a business, it is not a deposit-taking business for the purposes of this Act if—
  - (a) the person carrying it on does not hold himself out as accepting deposits on a day to day basis; and
  - (b) any deposits which are accepted are accepted only on particular occasions, whether or not involving the issue of debentures or other securities.
- (3) For the purposes of subsection (1) above all the activities which a person carries on by way of business shall be regarded as a single business carried on by him.
- (4) In determining for the purposes of subsection (2)(b) above whether deposits are accepted only on particular occasions regard shall be had to the frequency of those occasions and to any characteristics distinguishing them from each other.
- (5) For the purposes of subsection (2) above there shall be disregarded any deposit in respect of the acceptance of which the person in question is exempt from the prohibition in section 3 above and any money received by way of deposit which is not used in the manner described in subsection (1) above.

**7 Power to amend definitions.**

- (1) The Treasury may after consultation with the Bank by order amend the meaning of deposit or deposit-taking business for the purposes of all or any provisions of this Act.
- (2) Without prejudice to the generality of the power conferred by subsection (1) above, an order under that subsection amending the meaning of deposit-taking business may provide for taking into account as activities of an institution the activities of any person who is connected with it in such manner as is specified in the order.
- (3) Any order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) An order under this section may contain such transitional provisions as the Treasury think necessary or expedient and may exclude or modify the effect of the order on any other enactment which is expressed to have effect in relation to a deposit or a deposit-taking business within the meaning of this Act.

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## Authorisations

### 8 Applications for authorisation.

- (1) Any institution may make an application for authorisation to the Bank.
- (2) Any such application—
  - (a) shall be made in such manner as the Bank may direct; and
  - (b) shall be accompanied by—
    - (i) a statement setting out the nature and scale of the deposit-taking business which the applicant intends to carry on, any plans of the applicant for the future development of that business and particulars of the applicant's arrangements for the management of that business; and
    - (ii) such other information or documents as the Bank may reasonably require for the purpose of determining the application.
- (3) At any time after receiving an application and before determining it the Bank may by written notice require the applicant or any person who is or is to be a director, controller or manager of the applicant to provide additional information or documents.
- (4) The directions and requirements given or imposed under subsections (2) and (3) above may differ as between different applications.
- (5) Any information or statement to be provided to the Bank under this section shall be in such form as the Bank may specify; and the Bank may by written notice require the applicant or any such person as is mentioned in subsection (3) above to provide a report by an accountant or other qualified person approved by the Bank on such aspects of that information as may be specified by the Bank.
- (6) An application may be withdrawn by written notice to the Bank at any time before it is granted or refused.

### 9 Grant and refusal of authorisation.

- (1) The Bank may, on an application duly made in accordance with section 8 above and after being provided with all such information, documents and reports as it may require under that section, grant or refuse the application.
- (2) The Bank shall not grant an application unless satisfied that the criteria specified in Schedule 3 to this Act are fulfilled with respect to the applicant.
- (3) In the case of an application by an applicant whose principal place of business is in a country or territory outside the United Kingdom the Bank may regard itself as satisfied that the criteria specified in paragraphs 1, 4 and 5 of that Schedule are fulfilled if—
  - (a) the relevant supervisory authority in that country or territory informs the Bank that it is satisfied with respect to the prudent management and overall financial soundness of the applicant; and
  - (b) the Bank is satisfied as to the nature and scope of the supervision exercised by that authority.
- (4) In determining whether to grant or refuse an application the Bank may take into account any matters relating—

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- (a) to any person who is or will be employed by or associated with the applicant for the purposes of the applicant's deposit-taking business; and
  - (b) if the applicant is a body corporate, to any other body corporate in the same group or to any director or controller of any such other body.
- (5) No authorisation shall be granted to a partnership or unincorporated association if the whole of the assets available to it are owned by a single individual.
- (6) An authorisation granted to a partnership shall be granted in the partnership name and, without prejudice to sections 11 and 12 below, shall not be affected by any change in the partners.

## **10 Notice of grant or refusal.**

- (1) Where the Bank grants an application for authorisation it shall give written notice of that fact to the applicant.
- (2) Where the Bank proposes to refuse an application for authorisation it shall give the applicant written notice of its intention to do so, stating the grounds on which it proposes to act and giving particulars of the applicant's rights under subsection (4) below.
- (3) Where the ground or a ground for the proposed refusal is that the Bank is not satisfied that the criterion in paragraph 1 of Schedule 3 to this Act is fulfilled in the case of any such person as is there mentioned, the Bank shall give that person a copy of the notice mentioned in subsection (2) above, together with a statement of his rights under subsection (4) below.
- (4) An applicant who is given a notice under subsection (2) above and a person who is given a copy of it under subsection (3) above may within such period (not being less than twenty-eight days) as is specified in the notice make written representations to the Bank; and where such representations are made the Bank shall take them into account before reaching a decision on the application.
- (5) Where the Bank refuses an application it shall give written notice of that fact to the applicant and to any such person as is mentioned in subsection (3) above, stating the reasons for the refusal and giving particulars of the rights conferred by section 27 below.
- (6) Any notice under subsection (5) above shall be given before the end of the period of six months beginning with the day on which the application was received by the Bank or, where the Bank has under section 8 above required additional information or documents in connection with the application, before the end of whichever of the following first expires—
- (a) the period of six months beginning with the day on which the additional information or documents are provided;
  - (b) the period of twelve months beginning with the day on which the application was received.
- (7) The Bank may omit from the copy given to a person under subsection (3) above and from a notice given to him under subsection (5) above any matter which does not relate to him.

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## 11 Revocation of authorisation.

- (1) The Bank may revoke the authorisation of an institution if it appears to the Bank that—
  - (a) any of the criteria specified in Schedule 3 to this Act is not or has not been fulfilled, or may not be or may not have been fulfilled, in respect of the institution;
  - (b) the institution has failed to comply with any obligation imposed on it by or under this Act;
  - (c) a person has become a controller of the institution in contravention of section 21 below or has become or remains a controller after being given a notice of objection under section 22, 23 or 24 below;
  - (d) the Bank has been provided with false, misleading or inaccurate information by or on behalf of the institution or, in connection with an application for authorisation, by or on behalf of a person who is or is to be a director, controller or manager of the institution; or
  - (e) the interests of depositors or potential depositors of the institution are in any other way threatened, whether by the manner in which the institution is conducting or proposes to conduct its affairs or for any other reason.
- (2) The Bank may revoke the authorisation of an institution if it appears to the Bank that the institution—
  - (a) has not accepted a deposit in the United Kingdom in the course of carrying on a deposit-taking business (whether there or elsewhere) within the period of twelve months beginning with the day on which it was authorised; or
  - (b) having accepted a deposit or deposits as aforesaid, has subsequently not done so for any period of more than six months.
- (3) If in the case of an authorised institution whose principal place of business is in a country or territory outside the United Kingdom it appears to the Bank that the relevant supervisory authority in that country or territory has withdrawn from the institution an authorisation corresponding to that conferred by the Bank under this Part of this Act, the Bank may revoke the authorisation and shall do so if that country or territory is a member State.
- (4) In the case of an authorised institution which is an authorised person under the <sup>M1</sup>Financial Services Act 1986 or holds a consumer credit licence under the <sup>M2</sup>Consumer Credit Act 1974 the Bank may revoke the authorisation if it appears to the Bank that the institution has ceased to be an authorised person under the said Act of 1986 (otherwise than at the request or with the consent of the institution) or that the licence under the said Act of 1974 has been revoked.
- (5) The Treasury may after consultation with the Bank by order make provision corresponding to subsection (4) above in relation to any authorisation or licence granted under such other enactments as may appear to the Treasury to be appropriate; but any such order shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) If in the case of an authorised institution wherever incorporated it appears to the Bank that—
  - (a) a winding-up order has been made against it in the United Kingdom; or
  - (b) a resolution for its voluntary winding up in the United Kingdom has been passed,



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the Bank shall revoke the authorisation; and the Bank may revoke the authorisation of any authorised institution incorporated outside the United Kingdom if it appears to the Bank that an event has occurred in respect of it outside the United Kingdom which corresponds as nearly as may be to either of those mentioned in paragraphs (a) and (b) above.

(7) The Bank may revoke the authorisation of an authorised institution incorporated in the United Kingdom if it appears to the Bank that—

- (a) a composition or arrangement with creditors has been made in respect of the institution;
- (b) a receiver or manager of the institution's undertaking has been appointed; or
- (c) possession has been taken, by or on behalf of the holders of any debenture secured by a charge, of any property of the institution comprised in or subject to the charge;

or, in the case of an authorised institution incorporated elsewhere, that an event has occurred in respect of it which corresponds as nearly as may be to any of those mentioned in paragraphs (a), (b) and (c) above.

(8) The Bank may revoke the authorisation of an authorised institution if it appears to the Bank that an administration order has been made in relation to the institution under section 8 of the <sup>M3</sup>Insolvency Act 1986 [<sup>F1</sup>or under Article 21 of the Insolvency (Northern Ireland) Order 1989].

(9) The Bank shall revoke the authorisation of an unincorporated institution if it appears to the Bank that a winding-up order has been made against it in the United Kingdom and may revoke the authorisation of such an institution if it appears to the Bank that—

- (a) the institution has been dissolved; or
- (b) a bankruptcy order, an award of sequestration, an order of adjudication of bankruptcy or a composition or arrangement with creditors has been made or a trust deed for creditors granted in respect of that institution or any of its members; or
- (c) any event corresponding as nearly as may be to any of those mentioned in paragraph (b) above or in subsection (6)(a) or (b) or (7)(b) or (c) above has occurred in respect of that institution or any of its members; or
- (d) the whole of the assets available to the institution have passed into the ownership of a single individual.

#### Textual Amendments

**F1** Words in s. 11(8) inserted (01.10.1991) by S.I. 1989/2405 (N.I. 19), art. 381(2), **Sch. 9 Pt. II**, para. 49; S.R. 1991/411, **art.2**

#### Marginal Citations

**M1** 1986 c. 60.

**M2** 1974 c. 39.

**M3** 1986 c. 45.

## 12 Restriction of authorisation.

(1) Where it appears to the Bank—

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- (a) that there are grounds on which the Bank's power to revoke an institution's authorisation are exercisable; but
  - (b) that the circumstances are not such as to justify revocation, the Bank may restrict the authorisation instead of revoking it.
- (2) An authorisation may be restricted—
  - (a) by imposing such limit on its duration as the Bank thinks fit;
  - (b) by imposing such conditions as it thinks desirable for the protection of the institution's depositors or potential depositors; or
  - (c) by the imposition both of such a limit and of such conditions.
- (3) A limit on the duration of an authorisation shall not be such as to allow the authorisation to continue in force for more than three years from the date on which it is imposed; and such a limit may, in particular, be imposed in a case in which the Bank considers that an institution should be allowed time to repay its depositors in an orderly manner.
- (4) The conditions imposed under this section may in particular—
  - (a) require the institution to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way;
  - (b) impose limitations on the acceptance of deposits, the granting of credit or the making of investments;
  - (c) prohibit the institution from soliciting deposits, either generally or from persons who are not already depositors;
  - (d) prohibit it from entering into any other transaction or class of transactions;
  - (e) require the removal of any director, controller or manager;
  - (f) specify requirements to be fulfilled otherwise than by action taken by the institution.
- (5) Any condition imposed under this section may be varied or withdrawn by the Bank; and any limit imposed under this section on the duration of an authorisation may be varied but not so as to allow the authorisation to continue in force for longer than the period mentioned in subsection (3) above from the date on which the limit was first imposed.
- (6) An institution which fails to comply with any requirement or contravenes any prohibition imposed on it by a condition under this section shall be guilty of an offence and liable—
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (7) The fact that a condition imposed under this section has not been complied with (whether or not constituting an offence under subsection (6) above) shall be a ground for the revocation of the authorisation in question but shall not invalidate any transaction.
- (8) An institution whose authorisation is restricted by the imposition of a limit on its duration may apply under section 8 above for a new authorisation and, if that authorisation is granted, the restricted authorisation shall cease to have effect.

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#### Modifications etc. (not altering text)

- C6 S. 12(4) applied (1.1.1993) by S.I. 1992/3218, reg. 10(4).  
S. 12(4) applied (1.1.1993) by S.I. 1992/3218, reg. 23(3).

VALID FROM 01/01/1993

#### [<sup>F2</sup>12A Revocation or restriction on information from supervisory authority.

- (1) This section applies where, in the case of an authorised institution which is a credit institution incorporated in or formed under the law of any part of the United Kingdom, the Bank is informed by a supervisory authority in another member State that the institution is failing to comply with an obligation imposed by or under any rule of law in force in that State for purposes connected with the implementation of the Second Council Directive.
- (2) The Bank shall as soon as practicable send a copy of the information received by it to every other authority which it knows is a connected UK authority.
- (3) The Bank shall also—
  - (a) consider whether to exercise its powers under section 11 or 12 above; and
  - (b) notify its decision, and any action which it has taken or intends to take, to the supervisory authority and to every other authority which it knows is a connected UK authority.]

#### Textual Amendments

- F2 S. 12A inserted (1.1.1993) by S.I. 1992/3218, reg.29.

### 13 Notice of revocation or restriction.

- (1) Subject to section 14 below where the Bank proposes—
  - (a) to revoke an authorisation; or
  - (b) to restrict an authorisation; or
  - (c) to vary the restrictions imposed on an authorisation otherwise than with the agreement of the institution concerned,the Bank shall give to the institution concerned written notice of its intention to do so.
- (2) If the proposed action is within paragraph (b) or (c) of subsection (1) above the notice under that subsection shall specify the proposed restrictions or, as the case may be, the proposed variation.
- (3) A notice under subsection (1) above shall state the grounds on which the Bank proposes to act and give particulars of the institution's rights under subsection (5) below.
- (4) Where—
  - (a) the ground or a ground for a proposed revocation or for a proposal to impose or vary a restriction is that it appears to the Bank that the criterion in paragraph

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- 1 of Schedule 3 to this Act is not or has not been fulfilled, or may not be or may not have been fulfilled, in the case of any person; or
- (b) a proposed restriction consists of or includes a condition requiring the removal of any person as director, controller or manager,
- the Bank shall give that person a copy of the notice mentioned in subsection (1) above, together with a statement of his rights under subsection (5) below.
- (5) An institution which is given a notice under subsection (1) above and a person who is given a copy of it under subsection (4) above may within the period of fourteen days beginning with the day on which the notice was given make representations to the Bank.
- (6) After giving a notice under subsection (1) above and taking into account any representations made under subsection (5) above the Bank shall decide whether—
- (a) to proceed with the action proposed in the notice;
  - (b) to take no further action;
  - (c) if the proposed action was to revoke the institution's authorisation, to restrict its authorisation instead;
  - (d) if the proposed action was to restrict the institution's authorisation or to vary the restrictions on an authorisation, to restrict it or to vary the restrictions in a different manner.
- (7) The Bank shall give the institution and any such person as is mentioned in subsection (4) above written notice of its decision and, except where the decision is to take no further action, the notice shall state the reasons for the decision and give particulars of the rights conferred by subsection (9) and section 27 below.
- (8) A notice under subsection (7) above of a decision to revoke or restrict an authorisation or to vary the restrictions on an authorisation shall, subject to section 27(4) below, have the effect of revoking the authorisation or, as the case may be, restricting the authorisation or varying the restrictions in the manner specified in the notice.
- (9) Where the decision notified under subsection (7) above is to restrict the authorisation or to vary the restrictions on an authorisation otherwise than as stated in the notice given under subsection (1) above the institution may within the period of seven days beginning with the day on which the notice was given under subsection (7) above make written representations to the Bank with respect to the restrictions and the Bank may, after taking those representations into account, alter the restrictions.
- (10) A notice under subsection (7) above shall be given within the period of twenty-eight days beginning with the day on which the notice under subsection (1) above was given; and if no notice under subsection (7) is given within that period the Bank shall be treated as having at the end of that period given a notice under that subsection to the effect that no further action is to be taken.
- (11) Where the Bank varies a restriction on an institution's authorisation with its agreement or withdraws a restriction consisting of a condition the variation or withdrawal shall be effected by written notice to the institution.
- (12) The Bank may omit from the copy given to a person under subsection (4) above and from a notice given to him under subsection (7) above any matter which does not relate to him.

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#### **14 Mandatory revocation and restriction in cases of urgency.**

- (1) No notice need be given under section 13 above in respect of—
  - (a) the revocation of an institution’s authorisation in any case in which revocation is mandatory under section 11 above; or
  - (b) the imposition or variation of a restriction on an institution’s authorisation in any case in which the Bank considers that the restriction should be imposed or varied as a matter of urgency.
- (2) In any such case the Bank may by written notice to the institution revoke the authorisation or impose or vary the restriction.
- (3) Any such notice shall state the reasons for which the Bank has acted and, in the case of a notice imposing or varying a restriction, particulars of the rights conferred by subsection (5) and by section 27 below.
- (4) Subsection (4) of section 13 above shall apply to a notice under subsection (2) above imposing or varying a restriction as it applies to a notice under subsection (1) of that section in respect of a proposal to impose or vary a restriction; but the Bank may omit from a copy given to a person by virtue of this subsection any matter which does not relate to him.
- (5) An institution to which a notice is given under this section of the imposition or variation of a restriction and a person who is given a copy of it by virtue of subsection (4) above may within the period of fourteen days beginning with the day on which the notice was given make representations to the Bank.
- (6) After giving a notice under subsection (2) above imposing or varying a restriction and taking into account any representations made in accordance with subsection (5) above the Bank shall decide whether—
  - (a) to confirm or rescind its original decision; or
  - (b) to impose a different restriction or to vary the restriction in a different manner.
- (7) The Bank shall within the period of twenty-eight days beginning with the day on which the notice was given under subsection (2) above give the institution concerned written notice of its decision under subsection (6) above and, except where the decision is to rescind the original decision, the notice shall state the reasons for the decision.
- (8) Where the notice under subsection (7) above is of a decision to take the action specified in subsection (6) (b) above the notice under subsection (7) shall have the effect of imposing the restriction or making the variation specified in the notice and with effect from the date on which it is given.
- (9) Where a notice of the proposed revocation of an institution’s authorisation under section 13 above is followed by a notice revoking its authorisation under this section the latter notice shall have the effect of terminating any right to make representations in respect of the proposed revocation and any pending appeal proceedings in respect of a decision implementing that proposal.

#### **15 Surrender of authorisation.**

- (1) An authorised institution may surrender its authorisation by written notice to the Bank.
- (2) A surrender shall take effect on the giving of the notice or, if a later date is specified in it, on that date; and where a later date is specified in the notice the institution may

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by a further written notice to the Bank substitute an earlier date, not being earlier than that on which the first notice was given.

- (3) The surrender of an authorisation shall be irrevocable unless it is expressed to take effect on a later date and before that date the Bank by notice in writing to the institution allows it to be withdrawn.

## 16 Statement of principles.

- (1) The Bank shall, as soon as practicable after the coming into force of this section, publish in such manner as it thinks appropriate a statement of the principles in accordance with which it is acting or proposing to act—
- (a) in interpreting the criteria specified in Schedule 3 to this Act and the grounds for revocation specified in section 11 above; and
  - (b) in exercising its power to grant, revoke or restrict an authorisation.
- (2) If in the course of a financial year of the Bank it makes a material change in the principles in accordance with which it is acting or proposing to act as mentioned in subsection (1) above it shall include a statement of the change in the report made by it for that year under section 1(3) above; and the Bank may, at any time, publish in such manner as it thinks appropriate a statement of the principles in accordance with which it is acting or proposing to act as mentioned in that subsection.

### Modifications etc. (not altering text)

- C7 S. 16(2) applied (1.1.1993) by S.I. 1992/3218, reg. 9(7), Sch. 3 para. 5(2).  
S. 16(2) applied (1.1.1993) by S.I. 1992/3218, reg. 23(7), Sch. 7 para. 6(2)

## 17 Information as to authorised institutions.

- (1) Every report made by the Bank under section 1(3) above shall contain a list of the institutions which are authorised under this Act at the end of the financial year to which the report relates.
- (2) The Bank shall make available to any person on request and on payment of such fee, if any, as the Bank may reasonably require a list of the institutions which are authorised either at the date of the request or at such earlier date, being not more than one month earlier, as may be specified in the list.
- (3) The Bank may give public notice of the fact that an institution has ceased to be authorised.

### Modifications etc. (not altering text)

- C8 S. 17 amended (1.1.1993) by S.I. 1992/3218, reg. 47, Sch. 8 para.5.

## 18 False statements as to authorised status.

- (1) No person other than an authorised institution shall—
- (a) describe himself as an authorised institution; or

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- (b) so hold himself out as to indicate or be reasonably understood to indicate that he is an authorised institution.
- (2) No person shall falsely state, or do anything which falsely indicates, that he is entitled although not an authorised institution to accept a deposit in the course of carrying on a business which for the purposes of this Act is a deposit-taking business.
- (3) Any person who contravenes this section 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 six months or to a fine not exceeding the statutory maximum or to both.

**Modifications etc. (not altering text)**

**C9** S. 18 amended (1.1.1993) by S.I. 1992/3218, reg. 47, **Sch. 8 para.6.**

*Directions*

**19 Directions to institutions.**

- (1) The Bank may give an institution directions under this section—
- (a) when giving it notice that the Bank proposes to revoke its authorisation;
  - (b) at any time after such a notice has been given to the institution (whether before or after its authorisation is revoked);
  - (c) when giving the institution a notice of revocation under section 14(2) above by virtue of section 11(6)(b) above in the case of a members' voluntary winding up;
  - (d) at any time after the institution has served a notice surrendering its authorisation, whether with immediate effect or with effect from a later date specified in the notice;
  - (e) at or at any time after the expiry (otherwise than by virtue of section 12(8) above) of a restricted authorisation of the institution;
  - (f) at any time after a disqualification notice has been served on the institution under section 183 of the <sup>M4</sup>Financial Services Act 1986.
- (2) Directions under this section shall be such as appear to the Bank to be desirable in the interests of the institution's depositors or potential depositors, whether for the purpose of safeguarding its assets or otherwise, and may in particular—
- (a) require the institution to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way;
  - (b) impose limitations on the acceptance of deposits, the granting of credit or the making of investments;
  - (c) prohibit the institution from soliciting deposits either generally or from persons who are not already depositors;
  - (d) prohibit it from entering into any other transaction or class of transactions;
  - (e) require the removal of any director, controller or manager.

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- (3) No direction shall be given by virtue of paragraph (a) or (b) of subsection (1) above, and any direction given by virtue of either of those paragraphs shall cease to have effect, if the Bank gives the institution notice that it is not proposing to take any further action pursuant to the notice mentioned in that paragraph or if the Bank's decision to revoke the institution's authorisation is reversed on appeal.
- (4) No direction shall be given by virtue of paragraph (d) of subsection (1) above, and any direction given by virtue of that paragraph shall cease to have effect, if the Bank allows the institution to withdraw the surrender of its authorisation.
- (5) No direction shall be given to an institution under this section after it has ceased to have any liability in respect of deposits for which it had a liability at a time when it was authorised; and any such direction which is in force with respect to an institution shall cease to have effect when the institution ceases to have any such liability.
- (6) An institution which fails to comply with any requirement or contravenes any prohibition imposed on it by a direction under this section shall be guilty of an offence and liable—
  - (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (7) A contravention of a prohibition imposed under this section shall not invalidate any transaction.

#### Marginal Citations

M4 1986 c. 60.

## 20 Notification and confirmation of directions.

- (1) A direction under section 19 above shall be given by notice in writing and may be varied by a further direction; and a direction may be revoked by the Bank by a notice in writing to the institution concerned.
- (2) A direction under that section, except one varying a previous direction with the agreement of the institution concerned—
  - (a) shall state the reasons for which it is given and give particulars of the institution's rights under subsection (4) and section 27 below; and
  - (b) without prejudice to section 19(3), (4) and (5) above, shall cease to have effect at the end of the period of twenty-eight days beginning with the day in which it is given unless before the end of that period it is confirmed by a further written notice given by the Bank to the institution concerned.
- (3) Where a direction requires the removal of a person as director, controller or manager of an institution the Bank shall give that person a copy of the direction (together with a statement of his rights under subsection (4) below) and, if the direction is confirmed, a copy of the notice mentioned in subsection (2)(b) above.
- (4) An institution to which a direction is given which requires confirmation under subsection (2) above and a person who is given a copy of it under subsection (3) above may, within the period of fourteen days beginning with the day on which the direction is given, make written representations to the Bank; and the Bank shall take any such representations into account in deciding whether to confirm the direction.



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- (5) The Bank may omit from the copies given to a person under subsection (3) above any matter which does not relate to him.

### *Objections to controllers*

## **21 Notification of new or increased control.**

- (1) No person shall become a minority, majority or principal shareholder controller or an indirect controller of an authorised institution incorporated in the United Kingdom unless—
- (a) he has served on the Bank a written notice stating that he intends to become such a controller of the institution; and
  - (b) either the Bank has, before the end of the period of three months beginning with the date of service of that notice, notified him in writing that there is no objection to his becoming such a controller of the institution or that period has elapsed without the Bank having served on him under section 22 or 23 below a written notice of objection to his becoming such a controller of the institution.
- (2) Subsection (1) above applies also in relation to a person becoming a partner in an authorised institution which is a partnership formed under the law of any part of the United Kingdom.
- (3) A notice under paragraph (a) of subsection (1) above shall contain such information as the Bank may direct and the Bank may, after receiving such a notice from any person, by notice in writing require him to provide such additional information or documents as the Bank may reasonably require for deciding whether to serve a notice of objection.
- (4) Where additional information or documents are required from any person by a notice under subsection (3) above the time between the giving of the notice and the receipt of the information or documents shall be added to the period mentioned in subsection (1) (b) above.
- (5) A notice served by a person under paragraph (a) of subsection (1) above shall not be regarded as a compliance with that paragraph except as respects his becoming a controller of the institution in question within the period of one year beginning—
- (a) in a case where the Bank has notified him that there is no objection to his becoming such a controller, with the date of that notification;
  - (b) in a case where the period mentioned in paragraph (b) of that subsection has elapsed without any such notification and without his having been served with a written notice of objection, with the expiration of that period;
  - (c) in a case in which he has been served with a notice of objection which has been quashed on appeal, with the date on which it is quashed.

## **22 Objection to new or increased control.**

- (1) The Bank may serve a notice of objection under this section on a person who has given a notice under section 21 above unless it is satisfied—
- (a) that the person concerned is a fit and proper person to become a controller of the description in question of the institution;

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- (b) that the interests of depositors and potential depositors of the institution would not be in any other manner threatened by that person becoming a controller of that description of the institution; and
  - (c) without prejudice to paragraphs (a) and (b) above, that, having regard to that person's likely influence on the institution as a controller of the description in question the criteria in Schedule 3 to this Act would continue to be fulfilled in the case of the institution or, if any of those criteria is not fulfilled, that that person is likely to undertake adequate remedial action.
- (2) Before serving a notice of objection under this section the Bank shall serve the person concerned with a preliminary written notice stating that the Bank is considering the service on that person of a notice of objection; and that notice—
- (a) shall specify which of the matters mentioned in subsection (1) above the Bank is not satisfied about and, subject to subsection (5) below, the reasons for which it is not satisfied; and
  - (b) shall give particulars of the rights conferred by subsection (3) below.
- (3) A person served with a notice under subsection (2) above may, within the period of one month beginning with the day on which the notice is served, make written representations to the Bank; and where such representations are made the Bank shall take them into account in deciding whether to serve a notice of objection.
- (4) A notice of objection under this section shall—
- (a) specify which of the matters mentioned in subsection (1) above the Bank is not satisfied about and, subject to subsection (5) below, the reasons for which it is not satisfied; and
  - (b) give particulars of the rights conferred by section 27 below.
- (5) Subsections (2)(a) and (4)(a) above shall not require the Bank to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.
- (6) Where a person required to give a notice under section 21 above in relation to his becoming a controller of any description becomes a controller of that description without having given the notice the Bank may serve him with a notice of objection under this section at any time within three months after becoming aware of his having done so and may, for the purpose of deciding whether to serve him with such a notice, require him by notice in writing to provide such information or documents as the Bank may reasonably require.
- (7) The period mentioned in section 21(1)(b) above (with any extension under subsection (4) of that section) and the period mentioned in subsection (6) above shall not expire, if it would otherwise do so, until fourteen days after the end of the period within which representations can be made under subsection (3) above.

## **23 Objection by direction of the Treasury.**

- (1) The Treasury may direct the Bank to serve a notice of objection under this section on a person—
- (a) who has given notice under section 21 above of his intention to become a shareholder controller of any description of an institution; or
  - (b) who has become such a controller without giving the required notice under that section,

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if it appears to the Treasury that, in the event of his becoming or, as the case may be, as a result of his having become, such a controller, a notice could be served on the institution by the Treasury under section 183 of the <sup>M5</sup>Financial Services Act 1986 (disqualification or restriction of persons connected with overseas countries which do not afford reciprocal facilities for financial business).

- (2) No direction shall be given in a case within subsection (1)(b) above more than three months after the Treasury becomes aware of the fact that the person concerned has become a controller of the relevant description.
- (3) Any notice of objection served by virtue of a direction under this section shall state the grounds on which it is served.

#### Marginal Citations

M5 1986 c. 60.

## 24 Objection to existing shareholder controller.

- (1) Where it appears to the Bank that a person who is a shareholder controller of any description of an authorised institution incorporated in the United Kingdom is not or is no longer a fit and proper person to be such a controller of the institution it may serve him with a written notice of objection to his being such a controller of the institution.
- (2) Before serving a notice of objection under this section the Bank shall serve the person concerned with a preliminary written notice stating that the Bank is considering the service on that person of a notice of objection; and that notice shall—
  - (a) subject to subsection (5) below, specify the reasons for which it appears to the Bank that the person in question is not or is no longer a fit and proper person as mentioned in subsection (1) above; and
  - (b) give particulars of the rights conferred by subsection (3) below.
- (3) A person served with a notice under subsection (2) above may, within the period of one month beginning with the day on which the notice is served, make written representations to the Bank; and where such representations are made the Bank shall take them into account in deciding whether to serve a notice of objection.
- (4) A notice of objection under this section shall—
  - (a) subject to subsection (5) below, specify the reasons for which it appears to the Bank that the person in question is not or is no longer a fit and proper person as mentioned in subsection (1) above; and
  - (b) give particulars of the rights conferred by section 27 below.
- (5) Subsections (2)(a) and (4)(a) above shall not require the Bank to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.

## 25 Contraventions by controller.

- (1) Subject to subsection (2) below, any person who contravenes section 21 above by—
  - (a) failing to give the notice required by paragraph (a) of subsection (1) of that section; or

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- (b) becoming a controller of any description to which that section applies before the end of the period mentioned in paragraph (b) of that subsection in a case where the Bank has not served him with a preliminary notice under section 22(2) above,  
shall be guilty of an offence.
- (2) A person shall not be guilty of an offence under subsection (1) above if he shows that he did not know of the acts or circumstances by virtue of which he became a controller of the relevant description; but where any person becomes a controller of any such description without such knowledge and subsequently becomes aware of the fact that he has become such a controller he shall be guilty of an offence unless he gives the Bank written notice of the fact that he has become such a controller within fourteen days of becoming aware of that fact.
- (3) Any person who—
  - (a) before the end of the period mentioned in paragraph (b) of subsection (1) of section 21 above becomes a controller of any description to which that subsection applies after being served with a preliminary notice under section 22(2) above;
  - (b) contravenes section 21 above by becoming a controller of any description after being served with a notice of objection to his becoming a controller of that description; or
  - (c) having become a controller of any description in contravention of that section (whether before or after being served with such a notice of objection) continues to be such a controller after such a notice has been served on him,  
shall be guilty of an offence.
- (4) A person guilty of an offence under subsection (1) or (2) above shall be liable on summary conviction to a fine not exceeding the fifth level on the standard scale.
- (5) A person guilty of an offence under subsection (3) above 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 and, in respect of an offence under paragraph (c) of that subsection, to a fine not exceeding one tenth of the statutory maximum for each day on which the offence has continued.

## **26 Restrictions on and sale of shares.**

- (1) The powers conferred by this section shall be exercisable where a person—
  - (a) has contravened section 21 above by becoming a shareholder controller of any description after being served with a notice of objection to his becoming a controller of that description; or
  - (b) having become a shareholder controller of any description in contravention of that section continues to be one after such a notice has been served on him; or
  - (c) continues to be a shareholder controller of any description after being served under section 24 above with a notice of objection to his being a controller of that description.

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- (2) The Bank may by notice in writing served on the person concerned direct that any specified shares to which this section applies shall, until further notice, be subject to one or more of the following restrictions—
  - (a) any transfer of, or agreement to transfer, those shares or, in the case of unissued shares, any transfer of or agreement to transfer the right to be issued with them shall be void;
  - (b) no voting rights shall be exercisable in respect of the shares;
  - (c) no further shares shall be issued in right of them or in pursuance of any offer made to their holder;
  - (d) except in a liquidation, no payment shall be made of any sums due from the institution on the shares, whether in respect of capital or otherwise.
- (3) The court may, on the application of the Bank, order the sale of any specified shares to which this section applies and, if they are for the time being subject to any restrictions under subsection (2) above, that they shall cease to be subject to those restrictions.
- (4) No order shall be made under subsection (3) above in a case where the notice of objection was served under section 22 or 24 above—
  - (a) until the end of the period within which an appeal can be brought against the notice of objection; and
  - (b) if such an appeal is brought, until it has been determined or withdrawn.
- (5) Where an order has been made under subsection (3) above the court may, on the application of the Bank, make such further order relating to the sale or transfer of the shares as it thinks fit.
- (6) Where shares are sold in pursuance of an order under this section the proceeds of sale, less the costs of the sale, shall be paid into court for the benefit of the persons beneficially interested in them; and any such person may apply to the court for the whole or part of the proceeds to be paid to him.
- (7) This section applies—
  - (a) to all the shares in the institution of which the person in question is a controller of the relevant description which are held by him or any associate of his and were not so held immediately before he became such a controller of the institution; and
  - (b) where the person in question became a controller of the relevant description of an institution as a result of the acquisition by him or any associate of his of shares in another company, to all the shares in that company which are held by him or any associate of his and were not so held before he became such a controller of that institution.
- (8) A copy of the notice served on the person concerned under subsection (2) above shall be served on the institution or company to whose shares it relates and, if it relates to shares held by an associate of that person, on that associate.
- (9) The jurisdiction conferred by this section shall be exercisable by the High Court and the Court of Session.

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## *Appeals*

### **27 Rights of appeal.**

- (1) An institution which is aggrieved by a decision of the Bank—
- (a) to refuse an application by the institution for authorisation;
  - (b) to revoke its authorisation otherwise than in a case in which revocation is mandatory under section 11 above;
  - (c) to restrict its authorisation, to restrict it in a particular manner or to vary any restrictions of its authorisation; or
  - (d) to give it a direction under section 19 above or to vary a direction given to it under that section,

may appeal against the decision to a tribunal constituted in accordance with section 28 below.

- (2) Where—
- (a) the ground or a ground for a decision within paragraph (a), (b) or (c) of subsection (1) above is that mentioned in section 10(3) or 13(4)(a) above; or
  - (b) the effect of a decision within paragraph (c) or (d) of that subsection is to require the removal of a person as director, controller or manager of an institution,

the person to whom the ground relates or whose removal is required may appeal to a tribunal constituted as aforesaid against the finding that there is such a ground for the decision or, as the case may be, against the decision to require his removal.

- (3) Any person on whom a notice of objection is served under section 22 or 24 above may appeal to a tribunal constituted as aforesaid against the decision of the Bank to serve the notice; but this subsection does not apply to a person in any case in which he has failed to give a notice or become or continued to be a controller in circumstances in which his doing so constitutes an offence under section 25(1), (2) or (3) above.
- (4) The revocation of an institution's authorisation pursuant to a decision against which there is a right of appeal under this section shall not have effect—
- (a) until the end of the period within which an appeal can be brought; and
  - (b) if such an appeal is brought, until it is determined or withdrawn.
- (5) The Tribunal may suspend the operation of a restriction or direction or a variation of a restriction or direction pending the determination of an appeal in respect of the decision imposing or varying the restriction or giving or varying the direction.

### **28 Constitution of tribunals.**

- (1) Where an appeal is brought under section 27 above a tribunal to determine the appeal shall be constituted in accordance with subsection (2) below.
- (2) The tribunal shall consist of—
- (a) a chairman appointed by the Lord Chancellor or, in a case where the institution concerned is a company registered in Scotland or has its principal or prospective principal place of business in the United Kingdom in Scotland, by the Lord Chancellor in consultation with the Lord Advocate; and
  - (b) two other members appointed by the Chancellor of the Exchequer.

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- (3) The chairman shall be
- [<sup>F3</sup>(a) person who has a seven year general qualification, within the meaning of section 71 of the Courts and Legal Services Act 1990;
  - (b) an advocate or solicitor in Scotland of at least seven years' standing; or
  - (c) a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least seven years' standing];
- and the other two members shall be persons appearing to the Chancellor of the Exchequer to have respectively experience of accountancy and experience of banking.
- (4) The Treasury may out of money provided by Parliament pay to the persons appointed as members of a tribunal under this section such fees and allowances in respect of expenses as the Treasury may determine and may also out of such money defray any other expenses of a tribunal.

#### Textual Amendments

- F3** S. 28(3)(a)(b)(c) substituted by [Courts and Legal Services Act 1990 \(c. 41, SIF 37\)](#), s. 71(2), [Sch. 10 para. 69](#)

## 29 Determination of appeals.

- (1) On an appeal under section 27(1) or (3) above the question for the determination of the tribunal shall be whether, for the reasons adduced by the appellant, the decision was unlawful or not justified by the evidence on which it was based.
- (2) On any such appeal the tribunal may confirm or reverse the decision which is the subject of the appeal but shall not have power to vary it except that—
- (a) where the decision was to revoke an authorisation the tribunal may direct the Bank to restrict it instead;
  - (b) where the decision was to impose or vary any restrictions the tribunal may direct the Bank to impose different restrictions or to vary them in a different way; or
  - (c) where the decision was to give or vary a direction the tribunal may direct the Bank to give a different direction or to vary it in a different way.
- (3) Where the tribunal gives a direction to the Bank under subsection (2)(a), (b) or (c) above it shall be for the Bank to decide what restrictions should be imposed or how they should be varied or, as the case may be, what direction should be given or how a direction should be varied; and—
- (a) the Bank shall by notice in writing to the institution concerned impose the restrictions, give the direction or make the variation on which it has decided;
  - (b) the institution may appeal to the tribunal against the Bank's decision,
- and on any such appeal the tribunal may confirm the decision or give a further direction under paragraph (b) or (c) of subsection (2) above and, if it gives such a further direction, this subsection shall continue to apply until the Bank's decision is confirmed by the tribunal or accepted by the institution.
- (4) Where the tribunal reverses a decision of the Bank to refuse an application for authorisation it shall direct the Bank to grant it.

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- (5) On an appeal under section 27(2)(a) above the question for the determination of the tribunal shall be whether, for the reasons adduced by the appellant, the finding of the Bank was not justified by the evidence on which it was based; and on an appeal under section 27(2)(b) above the question for the determination of the tribunal shall be whether, for the reasons adduced by the appellant, the decision requiring the appellant's removal was unlawful or not justified by the evidence on which it was based.
- (6) A decision by the tribunal on an appeal under section 27(2)(a) above that a finding in respect of the appellant was not justified shall not affect any refusal, revocation or restriction wholly or partly based on that finding; but on an appeal under section 27(2)(b) above the tribunal may confirm or reverse the decision to require the removal of the appellant.
- (7) Notice of a tribunal's determination, together with a statement of its reasons, shall be given to the appellant and to the Bank; and, unless the tribunal otherwise directs, the determination shall come into operation when the notice is given to the appellant and to the Bank.
- (8) Notice of a tribunal's determination of an appeal under section 27(2) above shall also be given to the institution concerned and, where the determination is to reverse a decision to require the removal of the appellant as director, controller or manager of an institution, the determination shall not come into operation until notice of the determination has been given to that institution.

**Modifications etc. (not altering text)**

- C10** S. 29 amended (1.1.1993) by S.I. 1992/3218, reg. 22(6), **Sch. 6**, para. 8(2).  
 S. 29 amended (1.1.1993) by S.I. 1992/3218, reg. 9(7), **Sch. 3 para. 4(2)(3)**.

**30 Costs, procedure and evidence.**

- (1) A tribunal may give such directions as it thinks fit for the payment of costs or expenses by any party to the appeal.
- (2) On an appeal under section 27(2) above the institution concerned shall be entitled to be heard.
- (3) Subject to subsection (4) below, the Treasury may, after consultation with the Council on Tribunals, make regulations with respect to appeals under this Part of this Act; and those regulations may in particular make provision—
  - (a) as to the period within which and the manner in which such appeals are to be brought;
  - (b) as to the manner in which such appeals are to be conducted, including provision for any hearing to be held in private, as to the persons entitled to appear on behalf of the parties and for enabling appeals to be heard notwithstanding the absence of a member of the tribunal other than the chairman;
  - (c) as to the procedure to be adopted where appeals are brought both by an institution and a person who is or is to be a director, controller or manager of the institution, including provision for hearing the appeals together and for the mutual disclosure of information;



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- (d) for requiring an appellant or the Bank to disclose or allow the inspection of documents in his or its custody or under his or its control;
  - (e) for requiring any person, on tender of the necessary expenses of his attendance, to attend and give evidence or produce documents in his custody or under his control and for authorising the administration of oaths to witnesses;
  - (f) for enabling an appellant to withdraw an appeal or the Bank to withdraw its opposition to an appeal and for the consequences of any such withdrawal;
  - (g) for taxing or otherwise settling any costs or expenses which the tribunal directs to be paid and for the enforcement of any such direction;
  - (h) for enabling any preliminary or incidental functions in relation to an appeal to be discharged by the chairman of a tribunal; and
  - (j) as to any other matter connected with such appeals.
- (4) Regulations under this section with respect to appeals where the institution concerned—
- (a) is a company registered in Scotland; or
  - (b) has its principal or prospective principal place of business in the United Kingdom in Scotland,
- shall be made by the Lord Advocate after consultation with the Council on Tribunals which shall consult its Scottish Committee.
- (5) A person who, having been required in accordance with regulations under this section to attend and give evidence, fails without reasonable excuse to attend or give evidence, shall be liable on summary conviction to a fine not exceeding the fifth level on the standard scale.
- (6) A person who without reasonable excuse alters, suppresses, conceals, destroys or refuses to produce any document which he has been required to produce in accordance with regulations under this section, or which he is liable to be so required to produce, 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 a fine not exceeding the statutory maximum.
- (7) Any regulations made under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### **31 Further appeals on points of law.**

- (1) An institution or other person who has appealed to a tribunal may appeal to the court on any question of law arising from the decision of the appeal by the tribunal and an appeal on any such question shall also lie at the instance of the Bank; and if the court is of opinion that the decision was erroneous in point of law, it shall remit the matter to the tribunal for re-hearing and determination by it.
- (2) In subsection (1) above “the court” means the High Court, the Court of Session or the High Court in Northern Ireland according to whether—
- (a) if the institution concerned is a company registered in the United Kingdom, it is registered in England and Wales, Scotland or Northern Ireland;

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- (b) in the case of any other institution, its principal or prospective principal place of business in the United Kingdom is situated in England and Wales, Scotland or Northern Ireland.
- (3) No appeal to the Court of Appeal or to the Court of Appeal in Northern Ireland shall be brought from a decision under subsection (1) above except with the leave of that court or of the court or judge from whose decision the appeal is brought.
- (4) An appeal shall lie, with the leave of the Court of Session or the House of Lords, from any decision of the Court of Session under this section, and such leave may be given on such terms as to costs, expenses or otherwise as the Court of Session or the House of Lords may determine.

#### *Invitations to make deposits*

### **32 Advertisement regulations.**

- (1) The Treasury may after consultation with the Bank and the Building Societies Commission make regulations for regulating the issue, form and content of deposit advertisements.
- (2) Regulations under this section may make different provision for different cases and, without prejudice to the generality of subsection (1) above, may in particular—
  - (a) prohibit the issue of advertisements of any description (whether by reference to their contents, to the persons by whom they are issued or otherwise);
  - (b) make provision with respect to matters which must be, as well as matters which may not be, included in advertisements;
  - (c) provide for exemptions from any prohibition or requirement imposed by the regulations, including exemptions by reference to a person’s membership of a class whose membership is determined otherwise than by the Treasury.
- (3) Subject to subsection (4) below, any person who issues or causes to be issued in the United Kingdom an advertisement the issue of which is prohibited by regulations under this section or which does not comply with any requirements imposed by those regulations 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 six months or to a fine not exceeding the statutory maximum or to both.
- (4) A person whose business it is to publish or arrange for the publication of advertisements shall not be guilty of an offence under this section if he proves that he received the advertisement for publication in the ordinary course of his business, that the matters contained in the advertisement were not (wholly or in part) devised or selected by him or by any person under his direction or control and that he did not know and had no reason for believing that publication of the advertisement would constitute an offence.
- (5) In this section “a deposit advertisement” means any advertisement containing—
  - (a) an invitation to make a deposit; or
  - (b) information which is intended or might reasonably be presumed to be intended to lead directly or indirectly to the making of a deposit;

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and for the purposes of this section an advertisement includes any means of bringing such an invitation or such information to the notice of the person or persons to whom it is addressed and references to the issue of an advertisement shall be construed accordingly.

- (6) For the purposes of this section—
- (a) an advertisement issued or caused to be issued by any person by way of display or exhibition in a public place shall be treated as issued or caused to be issued by him on every day on which he causes or permits it to be displayed or exhibited;
  - (b) an advertisement inviting deposits with a person specified in the advertisement shall be presumed, unless the contrary is proved, to have been issued to the order of that person.
- (7) For the purposes of this section an advertisement issued outside the United Kingdom shall be treated as issued in the United Kingdom if it is directed to persons in the United Kingdom or is made available to them otherwise than in a newspaper, journal, magazine or other periodical publication published and circulating principally outside the United Kingdom or in a sound or television broadcast transmitted principally for reception outside the United Kingdom.
- (8) Regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### **33 Advertisement directions.**

- (1) If the Bank considers that any deposit advertisement issued or proposed to be issued by or on behalf of an authorised institution is misleading, the Bank may by notice in writing give the institution a direction under this section.
- (2) A direction under this section may contain all or any of the following prohibitions or requirements—
- (a) a prohibition on the issue of advertisements of a specified kind;
  - (b) a requirement that advertisements of a particular description shall be modified in a specified manner;
  - (c) a prohibition on the issue of any advertisements which are, wholly or substantially, repetitions of an advertisement which has been issued and which is identified in the direction;
  - (d) a requirement to take all practical steps to withdraw from display in any place any advertisements or any advertisements of a particular description specified in the direction.
- (3) Not less than seven days before giving a direction under this section the Bank shall give the institution concerned notice in writing of its intention to give the direction stating the reasons for the proposed direction and giving particulars of the rights conferred by subsection (4) below.
- (4) An institution to which a notice is given under subsection (3) above may within the period of seven days beginning with the day on which the notice was given make written representations to the Bank; and the Bank shall take any such representation into account in deciding whether to give the direction.
- (5) A direction under this section may be varied by a further direction; and a direction may be revoked by the Bank by a notice in writing to the institution concerned.

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- (6) Any person who issues or causes to be issued an advertisement the issue of which is prohibited by a direction under this section or which does not comply with any requirements imposed by such a direction 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 six months or to a fine not exceeding the statutory maximum or to both.
- (7) In this section “deposit advertisement” has the same meaning as in section 32 above and subsections (4) and (6) of that section shall apply also for the purposes of this section.

**Modifications etc. (not altering text)**

C11 S. 33 amended (1.1. 1993) by S.I. 1992/3218, reg. 47, Sch. 8 para. 7

**34 Unsolicited calls.**

- (1) The Treasury may after consultation with the Bank and the Building Societies Commission make regulations for regulating the making of unsolicited calls—
- (a) on persons in the United Kingdom; or
  - (b) from the United Kingdom on persons elsewhere,
- with a view to procuring the making of deposits.
- (2) Regulations under this section may make different provision for different cases and, without prejudice to the generality of subsection (1) above, may in particular—
- (a) prohibit the soliciting of deposits from, and the making of agreements with a view to the acceptance of deposits from, persons on whom unsolicited calls are made and prohibit the procuring of such persons to make deposits or to enter into such agreements;
  - (b) specify persons by whom or circumstances in which unsolicited calls may be made;
  - (c) require specified information to be disclosed to persons on whom unsolicited calls are made.
- (3) Any person who contravenes regulations made under this section 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 six months or to a fine not exceeding the statutory maximum or to both.
- (4) In this section “unsolicited call” means a personal visit or oral communication made without express invitation.
- (5) Regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**35 Fraudulent inducement to make a deposit.**

- (1) Any person who—

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- (a) makes a statement, promise or forecast which he knows to be misleading, false or deceptive, or dishonestly conceals any material facts; or
  - (b) recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive,
- is guilty of an offence if he makes the statement, promise or forecast or conceals the facts for the purpose of inducing, or is reckless as to whether it may induce, another person (whether or not the person to whom the statement, promise or forecast is made or from whom the facts are concealed)—
- (i) to make, or refrain from making, a deposit with him or any other person; or
  - (ii) to enter, or refrain from entering, into an agreement for the purpose of making such a deposit.
- (2) This section does not apply unless—
- (a) the statement, promise or forecast is made in or from, or the facts are concealed in or from, the United Kingdom or arrangements are made in or from the United Kingdom for the statement, promise or forecast to be made or the facts to be concealed;
  - (b) the person on whom the inducement is intended to or may have effect is in the United Kingdom; or
  - (c) the deposit is or would be made, or the agreement is or would be entered into, in the United Kingdom.
- (3) A person guilty of an offence under this section shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine or to both;
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.
- (4) For the purposes of this section the definition of deposit in section 5 above shall be treated as including any sum that would be otherwise excluded by subsection (3) of that section.

### *Information*

#### **36 Notification of change of director, controller or manager.**

- (1) Subject to subsection (3) below, an authorised institution shall give written notice to the Bank of the fact that any person has become or ceased to be a director, controller or manager of the institution.
- (2) A notice required to be given under subsection (1) above shall be given before the end of the period of fourteen days beginning with the day on which the institution becomes aware of the relevant facts.
- (3) The Bank may by a notice in writing wholly or partly dispense from the obligation imposed by subsection (1) above any authorised institution whose principal place of business is outside the United Kingdom.
- (4) An institution which fails to give a notice required by this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding the fifth level on the standard scale.

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### **37 Notification of acquisition of significant shareholding.**

- (1) A person who becomes a significant shareholder in relation to an authorised institution incorporated in the United Kingdom shall within seven days give written notice of that fact to the Bank.
- (2) For the purposes of this section “a significant shareholder”, in relation to an institution, means a person who, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, 5 per cent. or more but less than 15 per cent. of the voting power at any general meeting of the institution or of another institution of which it is a subsidiary.
- (3) Subject to subsection (4) below, any person who contravenes subsection (1) above shall be guilty of an offence.
- (4) A person shall not be guilty of an offence under subsection (3) above if he shows that he did not know of the acts or circumstances by virtue of which he became a significant shareholder in relation to the institution; but where any person becomes such a shareholder without such knowledge and subsequently becomes aware of the fact that he has become such a shareholder he shall be guilty of an offence unless he gives the Bank written notice of the fact that he has become such a shareholder within fourteen days of becoming aware of that fact.
- (5) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding the fifth level on the standard scale.

### **38 Reports of large exposures.**

- (1) An authorised institution, other than one whose principal place of business is outside the United Kingdom, shall make a report to the Bank if—
  - (a) it has entered into a transaction or transactions relating to any one person as a result of which it is exposed to the risk of incurring losses in excess of 10 per cent. of its available capital resources; or
  - (b) it proposes to enter into a transaction or transactions relating to any one person which, either alone or together with a previous transaction or previous transactions entered into by it in relation to that person, would result in its being exposed to the risk of incurring losses in excess of 25 per cent. of those resources.
- (2) Subsection (1) above applies also where the transaction or transactions relate to different persons if they are connected in such a way that the financial soundness of any of them may affect the financial soundness of the other or others or the same factors may affect the financial soundness of both or all of them.
- (3) If an authorised institution to which subsection (1) above applies has one or more subsidiaries which are not authorised institutions the Bank may by notice in writing to that institution direct that that subsection shall apply to it as if the transactions and available capital resources of the subsidiary or subsidiaries, or such of them as are specified in the notice, were included in those of the institution.
- (4) The reports required to be made by an institution under subsection (1) above shall be made, in a case within paragraph (a) of that subsection, in respect of such period or periods and, in a case within paragraph (b) of that subsection, at such time before the transaction or transactions are entered into, as may be specified by notice in writing

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given to the institution by the Bank; and those reports shall be in such form and contain such particulars as the Bank may reasonably require.

(5) For the purposes of this section a transaction entered into by an institution relates to a person if it is—

- (a) a transaction under which that person incurs an obligation to the institution or as a result of which he may incur such an obligation;
- (b) a transaction under which the institution will incur, or as a result of which it may incur, an obligation in the event of that person defaulting on an obligation to a third party; or
- (c) a transaction under which the institution acquires or incurs an obligation to acquire, or as a result of which it may incur an obligation to acquire, an asset the value of which depends wholly or mainly on that person performing his obligations or otherwise on his financial soundness;

and the risk of loss attributable to a transaction is, in a case within paragraph (a) or (b) above, the risk of the person concerned defaulting on the obligation there mentioned and, in a case within paragraph (c) above, the risk of the person concerned defaulting on the obligations there mentioned or of a deterioration in his financial soundness.

(6) Any question whether an institution is or would be exposed to risk as mentioned in subsection (1) above (or in that subsection as extended by subsection (2)) shall be determined in accordance with principles published by the Bank or notified by it to the institution concerned; and those principles may in particular make provision for determining the amount at risk in particular circumstances or the extent to which any such amount is to be taken into account for the purposes of this section.

(7) For the purposes of this section the available capital resources of an institution (or, in a case within subsection (3) above, of an institution and its relevant subsidiary or subsidiaries) and the value of those resources at any time shall be determined by the Bank and notified by it to the institution by notice in writing; and any such determination, which may be varied from time to time, shall be made by the Bank after consultation with the institution concerned and in accordance with principles published by the Bank.

(8) The principles referred to in subsections (6) and (7) above may make different provision for different cases and those referred to in subsection (6) may, in particular, exclude from consideration, either wholly or in part, risks resulting from transactions of a particular description or entered into in particular circumstances or with persons of particular descriptions.

(9) An institution which fails to make a report as required by this section shall be guilty of an offence; but where an institution shows that at the time when the report was required to be made it did not know that the facts were such as to require the making of the report it shall not be guilty of an offence by reason of its failure to make a report at that time but shall be guilty of an offence unless it makes the report within seven days of becoming aware of those facts.

(10) An institution guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding the fifth level on the standard scale.

(11) The Treasury may after consultation with the Bank by order—

- (a) amend subsection (1) above so as to substitute for either of the percentages for the time being specified in that subsection such other percentage as may be specified in the order;

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- (b) make provision, whether by amending subsection (5) above or otherwise, with respect to the transactions and risks to be taken into account for the purposes of this section,

but any such order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

- (12) For the avoidance of doubt it is hereby declared that references in this section to “one person” include references to a partnership.

### **39 Power to obtain information and require production of documents.**

- (1) The Bank may by notice in writing served on an authorised institution—
  - (a) require the institution to provide the Bank, at such time or times or at such intervals or in respect of such period or periods as may be specified in the notice, with such information as the Bank may reasonably require for the performance of its functions under this Act;
  - (b) require the institution to provide the Bank with a report by an accountant or other person with relevant professional skill on, or on any aspect of, any matter about which the Bank has required or could require the institution to provide information under paragraph (a) above.
- (2) The accountant or other person appointed by an institution to make any report required under subsection (1)(b) above shall be a person nominated or approved by the Bank; and the Bank may require his report to be in such form as is specified in the notice.
- (3) The Bank may—
  - (a) by notice in writing served on an authorised institution require it to produce, within such time and at such place as may be specified in the notice, such document or documents of such description as may be so specified;
  - (b) authorise an officer, servant or agent of the Bank, on producing evidence of his authority, to require any such institution to provide him forthwith with such information, or to produce to him forthwith such documents, as he may specify,

being such information or documents as the Bank may reasonably require for the performance of its functions under this Act.
- (4) Where, by virtue of subsection (3) above, the Bank or any officer, servant or agent of the Bank has power to require the production of any documents from an authorised institution, the Bank or that officer, servant or agent shall have the like power to require the production of those documents from any person who appears to be in possession of them; but where any person from whom such production is required claims a lien on documents produced by him, the production shall be without prejudice to the lien.
- (5) The power under this section to require an institution or other person to produce any documents includes power—
  - (a) if the documents are produced, to take copies of them or extracts from them and to require that institution or person, or any other person who is a present or past director, controller or manager of, or is or was at any time employed by or acting as an employee of, the institution in question, to provide an explanation of any of them; and
  - (b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.



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- (6) If it appears to the Bank to be desirable in the interests of the depositors or potential depositors of an authorised institution to do so, it may also exercise the powers conferred by subsections (1) and (3) above in relation to any body corporate which is or has at any relevant time been—
- (a) a holding company, subsidiary or related company of that institution;
  - (b) a subsidiary of a holding company of that institution;
  - (c) a holding company of a subsidiary of that institution; or
  - (d) a body corporate in the case of which a shareholder controller of that institution, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, more than 50 per cent. of the voting power at a general meeting;
- or in relation to any partnership of which that institution is or has at any relevant time been a member.
- (7) If it appears to the Bank to be desirable to do so in the interests of the depositors or potential depositors of an authorised institution which is a partnership (“the authorised partnership”) it may also exercise the powers conferred by subsections (1) and (3) above in relation to—
- (a) any other partnership having a member in common with the authorised partnership;
  - (b) any body corporate which is or has at any relevant time been a member of the authorised partnership;
  - (c) any body corporate in the case of which the partners in the authorised partnership hold more than 20 per cent. of the shares or any partner in the authorised partnership, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, more than 50 per cent. of the voting power at a general meeting; or
  - (d) any subsidiary or holding company of any such body corporate as is mentioned in paragraph (b) or (c) above or any holding company of any such subsidiary.
- (8) The foregoing provisions of this section shall apply to a former authorised institution as they apply to an authorised institution.
- (9) The Bank may by notice in writing served on any person who is or is to be a director, controller or manager of an authorised institution require him to provide the Bank, within such time as may be specified in the notice, with such information or documents as the Bank may reasonably require for determining whether he is a fit and proper person to hold the particular position which he holds or is to hold.
- (10) The Bank may exercise the powers conferred by subsections (1) and (3) above in relation to any person who is a significant shareholder of an authorised institution within the meaning of section 37 above if the Bank considers that the exercise of those powers is desirable in the interests of the depositors or potential depositors of that institution.
- (11) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the fifth level on the standard scale or to both.
- (12) A statement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him.

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- (13) Nothing in this section shall compel the production by a barrister, advocate or solicitor of a document containing a privileged communication made by him or to him in that capacity.

#### **40 Right of entry to obtain information and documents.**

- (1) Any officer, servant or agent of the Bank may, on producing if required evidence of his authority, enter any premises occupied by a person on whom a notice has been served under section 39 above for the purpose of obtaining there the information or documents required by that notice and of exercising the powers conferred by subsection (5) of that section.
- (2) Any officer, servant or agent of the Bank may, on producing if required evidence of his authority, enter any premises occupied by any person on whom a notice could be served under section 39 above for the purpose of obtaining there such information or documents as are specified in the authority, being information or documents that could have been required by such a notice; but the Bank shall not authorise any person to act under this subsection unless it has reasonable cause to believe that if such a notice were served it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed.
- (3) Any person who intentionally obstructs a person exercising rights conferred by this section shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the fifth level on the standard scale or to both.

#### **Modifications etc. (not altering text)**

**C12** S. 40 amended (1.1.1993) by S.I. 1992/3218, reg. 47, **Sch. 8 para. 9**.

### *Investigations*

#### **41 Investigations on behalf of the Bank.**

- (1) If it appears to the Bank desirable to do so in the interests of the depositors or potential depositors of an authorised institution the Bank may appoint one or more competent persons to investigate and report to the Bank on—
- (a) the nature, conduct or state of the institution's business or any particular aspect of it; or
  - (b) the ownership or control of the institution;
- and the Bank shall give written notice of any such appointment to the institution concerned.
- (2) If a person appointed under subsection (1) above thinks it necessary for the purposes of his investigation, he may also investigate the business of any body corporate which is or has at any relevant time been—
- (a) a holding company, subsidiary or related company of the institution under investigation;
  - (b) a subsidiary or related company of a holding company of that institution;
  - (c) a holding company of a subsidiary of that institution; or

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- (d) a body corporate in the case of which a shareholder controller of that institution, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, more than 20 per cent. of the voting power at a general meeting;
- or the business of any partnership of which that institution is or has at any relevant time been a member.
- (3) If a person appointed under subsection (1) above thinks it necessary for the purposes of his investigation in the case of an authorised institution which is a partnership (“the authorised partnership”) he may also investigate the business of—
    - (a) any other partnership having a member in common with the authorised partnership;
    - (b) any body corporate which is or has at any relevant time been a member of the authorised partnership;
    - (c) any body corporate in the case of which the partners in the authorised partnership hold more than 20 per cent. of the shares or any partner in the authorised partnership, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, more than 20 per cent. of the voting power at a general meeting; or
    - (d) any subsidiary, related company or holding company of any such body corporate as is mentioned in paragraph (b) or (c) above or any holding company of any such subsidiary.
  - (4) Where a person appointed under subsection (1) above decides to investigate the business of any body by virtue of subsection (2) or (3) above he shall give it written notice to that effect.
  - (5) It shall be the duty of every person who is or was a director, controller, manager, employee, agent, banker, auditor or solicitor of a body which is under investigation (whether by virtue of subsection (1), (2) or (3) above), any person appointed to make a report in respect of that body under section 8(5) or 39(1)(b) above and anyone who is a significant shareholder in relation to that body within the meaning of section 37 above—
    - (a) to produce to the persons appointed under subsection (1) above, within such time and at such place as they may require, all documents relating to the body concerned which are in his custody or power;
    - (b) to attend before the persons so appointed at such time and place as they may require; and
    - (c) otherwise to give those persons all assistance in connection with the investigation which he is reasonably able to give;and those persons may take copies of or extracts from any documents produced to them under paragraph (a) above.
  - (6) The foregoing provisions of this section shall apply to a former authorised institution as they apply to an authorised institution.
  - (7) For the purpose of exercising his powers under this section a person appointed under subsection (1) above may enter any premises occupied by a body which is being investigated by him under this section; but he shall not do so without prior notice in writing unless he has reasonable cause to believe that if such a notice were given any documents whose production could be required under this section would be removed, tampered with or destroyed.

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- (8) A person exercising powers by virtue of an appointment under this section shall, if so required, produce evidence of his authority.
- (9) Any person who—
- (a) without reasonable excuse fails to produce any documents which it is his duty to produce under subsection (5) above;
  - (b) without reasonable excuse fails to attend before the persons appointed under subsection (1) above when required to do so;
  - (c) without reasonable excuse fails to answer any question which is put to him by persons so appointed with respect to an institution which is under investigation or a body which is being investigated by virtue of subsection (2) or (3) above; or
  - (d) intentionally obstructs a person in the exercise of the rights conferred by subsection (7) above,
- shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the fifth level on the standard scale or to both.
- (10) A statement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him.
- (11) Nothing in this section shall compel the production by a barrister, advocate or solicitor of a document containing a privileged communication made by him or to him in that capacity.

#### **42 Investigation of suspected contraventions.**

- (1) Where the Bank has reasonable grounds for suspecting that a person is guilty of contravening section 3 or 35 above the Bank or any duly authorised officer, servant or agent of the Bank may by notice in writing require that or any other person—
- (a) to provide, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such information as the Bank may reasonably require for the purpose of investigating the suspected contravention;
  - (b) to produce, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required by the Bank for that purpose;
  - (c) to attend at such place and time as may be specified in the notice and answer questions relevant for determining whether such a contravention has occurred.
- (2) The Bank or a duly authorised officer, servant or agent of the Bank may take copies of or extracts from any documents produced under this section.
- (3) Any officer, servant or agent of the Bank may, on producing if required evidence of his authority, enter any premises occupied by a person on whom a notice has been served under subsection (1) above for the purpose of obtaining there the information or documents required by the notice, putting the questions referred to in paragraph (c) of that subsection or exercising the powers conferred by subsection (2) above.
- (4) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section or intentionally obstructs a person in the exercise of the rights conferred by subsection (3) above shall be guilty of an offence and liable

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on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the fifth level on the standard scale or to both.

- (5) A statement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him.
- (6) Nothing in this section shall compel the production by a barrister, advocate or solicitor of a document containing a privileged communication made by him or to him in that capacity.

#### **43 Powers of entry in cases of suspected contraventions.**

- (1) A justice of the peace may issue a warrant under this section if satisfied on information on oath laid by an officer or servant of the Bank or laid under the Bank's authority that there are reasonable grounds for suspecting that a person is guilty of such a contravention as is mentioned in section 42 above and—
  - (a) that that person has failed to comply with a notice served on him under that section; or
  - (b) that there are reasonable grounds for suspecting the completeness of any information provided or documents produced by him in response to such a notice; or
  - (c) that there are reasonable grounds for suspecting that if a notice were served on him under that section it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed.
- (2) A warrant under this section shall authorise any constable, together with any other person named in the warrant and any other constables—
  - (a) to enter any premises occupied by the person mentioned in subsection (1) above which are specified in the warrant, using such force as is reasonably necessary for the purpose;
  - (b) to search the premises and take possession of any documents appearing to be such documents as are mentioned in subsection (1)(c) above or to take, in relation to any such documents, any other steps which may appear to be necessary for preserving them or preventing interference with them;
  - (c) to take copies of or extracts from any such documents;
  - (d) to require any person named in the warrant to answer questions relevant for determining whether that person is guilty of any such contravention as is mentioned in section 42 above.
- (3) A warrant under this section shall continue in force until the end of the period of one month beginning with the day on which it is issued.
- (4) Any documents of which possession is taken under this section may be retained—
  - (a) for a period of three months; or
  - (b) if within that period proceedings to which the documents are relevant are commenced against any person for any such contravention as is mentioned in section 42 above, until the conclusion of those proceedings.
- (5) Any person who intentionally obstructs the exercise of any right conferred by a warrant issued under this section or fails without reasonable excuse to comply with any requirement imposed in accordance with subsection (2)(d) above shall be guilty of an offence and liable—

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- (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 six months or to a fine not exceeding the statutory maximum or to both.
- (6) A statement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him.
- (7) In the application of subsection (1) above to Scotland, the reference to a justice of the peace includes a reference to a sheriff and for the reference to information on oath there shall be substituted a reference to evidence on oath; and in the application of that subsection to Northern Ireland for the reference to laying an information on oath there shall be substituted a reference to making a complaint on oath.

#### **44 Obstruction of investigations.**

- (1) A person who knows or suspects that an investigation is being or is likely to be carried out—
- (a) under section 41 above; or
  - (b) into a suspected contravention of section 3 or 35 above,
- shall be guilty of an offence if he falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which he knows or suspects are or would be relevant to such an investigation unless he proves that he had no intention of concealing facts disclosed by the documents from persons carrying out such an investigation.
- (2) A person guilty of an offence under this section 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 imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

#### *Accounts and auditors*

#### **45 Audited accounts to be open to inspection.**

- (1) An authorised institution shall at each of its offices in the United Kingdom at which it holds itself out as accepting deposits—
- (a) keep a copy of its most recent audited accounts; and
  - (b) during normal business hours make that copy available for inspection by any person on request.
- (2) An institution which fails to comply with paragraph (a) of subsection (1) above or with any request made in accordance with paragraph (b) of that subsection shall be guilty of an offence and liable on summary conviction to a fine not exceeding the fifth level on the standard scale.
- (3) In the case of an institution incorporated in the United Kingdom the accounts referred to in subsection (1) above include the auditors' report on the accounts and, in the case of any other institution whose accounts are audited, the report of the auditors.

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#### Modifications etc. (not altering text)

- C13** S. 45 modified (02.12.1991) by S.I. 1991/2704, reg. 5(4)  
**C14** S. 45 amended (1.1.1993) by S.I. 1992/3218, reg. 47, Sch. 8 para.11.

## 46 Notification in respect of auditors.

- (1) An authorised institution incorporated in the United Kingdom shall forthwith give written notice to the Bank if the institution—
  - (a) proposes to give special notice to its shareholders of an ordinary resolution removing an auditor before the expiration of his term of office; or
  - (b) gives notice to its shareholders of an ordinary resolution replacing an auditor at the expiration of his term of office with a different auditor,or if a person ceases to be an auditor of the institution otherwise than in consequence of such a resolution.
- (2) An auditor of an authorised institution [<sup>F4</sup>appointed under Chapter V of Part XI] of the <sup>M6</sup>Companies Act 1985 shall forthwith give written notice to the Bank if he—
  - (a) resigns before the expiration of his term of office;
  - (b) does not seek to be re-appointed; or
  - (c) decides to include in his report on the institution’s accounts any qualification as to a matter mentioned in [<sup>F5</sup>section 235(2)] or any statement pursuant to [<sup>F5</sup>section 235(3) or section 237] of that Act.
- (3) The foregoing provisions of this section shall apply to a former authorised institution as they apply to an authorised institution.
- (4) In the application of subsection (2) above to Northern Ireland for the references to [<sup>F6</sup>Chapter V of Part XI and sections][<sup>F7</sup>235(2) and 235(3) and 237] of the Companies Act 1985 there shall be substituted references to [<sup>F8</sup>[<sup>F9</sup>Articles 392][<sup>F9</sup>Chapter V of Part XII and Articles], 243(2), 243(3) and 245] of the Companies (Northern Ireland) Order 1986.
- (5) An institution or auditor who fails to comply with this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding the fifth level on the standard scale.

#### Textual Amendments

- F4** Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 119(3) (the substitution being in force 1.4.1990 subject to transitional and saving provisions referred to in art. 4(a) of S.I. 1990/355)
- F5** Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 23, Sch. 10 para. 37(2)
- F6** Words substituted (1.4.1990 subject to the transitional and saving provisions referred to in art. 4(a) of S.I. 1990/355) for the words “sections 384” by Companies Act 1989 (c. 40, SIF 27), s. 119(3)
- F7** Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 23, Sch. 10 para. 37(2)
- F8** Words substituted by S.I. 1990/593 (N.I. 5), art. 25, Sch. 10 Pt. II para. 29 (subject to the savings and transitional provisions referred to in S.R. 1990/246art. 4)
- F9** Words beginning “Chapter V” substituted (*prosp.*) for “Articles 392” by S.I. 1990/1504 (N.I. 10), art. 54(3)

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#### Marginal Citations

M6 1985 c. 6.

#### 47 Communication by auditor etc. with the Bank.

- (1) No duty to which—
  - (a) an auditor of an authorised institution; or
  - (b) a person appointed to make a report under section 8(5) or 39(1)(b) above, may be subject shall be regarded as contravened by reason of his communicating in good faith to the Bank, whether or not in response to a request made by it, any information or opinion on a matter to which this section applies and which is relevant to any function of the Bank under this Act.
- (2) In relation to an auditor of an authorised institution this section applies to any matter of which he becomes aware in his capacity as auditor and which relates to the business or affairs of the institution or any associated body.
- (3) In relation to a person appointed to make a report under section 8(5) or 39(1)(b) above this section applies to any matter of which he becomes aware in his capacity as the person making the report and which—
  - (a) relates to the business of affairs of the institution in relation to which his report is made or any associated body of that institution; or
  - (b) if by virtue of section 39(6) or (7) above the report relates to an associated body of an institution, to the business or affairs of that body.
- (4) In this section “associated body”, in relation to an institution, means any such body as is mentioned in section 39(6) or (7) above.
- (5) If it appears to the Treasury that any accountants or class of accountants who are persons to whom subsection (1) above applies are not subject to satisfactory rules made or guidance issued by a professional body specifying circumstances in which matters are to be communicated to the Bank as mentioned in that subsection the Treasury may, after consultation with the Bank and such bodies as appear to the Treasury to represent the interests of accountants and authorised institutions, make regulations applying to those accountants and specifying such circumstances; and it shall be the duty of an accountant to whom the regulations apply to communicate a matter to the Bank in the circumstances specified by the regulations.
- (6) Regulations under this section may make different provision for different cases and no such regulations shall be made unless a draft of them has been laid before and approved by a resolution of each House of Parliament.
- (7) This section applies to the auditor of a former authorised institution as it applies to the auditor of an authorised institution.

#### Modifications etc. (not altering text)

C15 S. 47 amended (1.1.1993) by S.I. 1992/3218, reg. 47, Sch. 8 para.12.



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### *Unauthorised acceptance of deposits*

#### **48 Repayment of unauthorised deposits.**

- (1) If on the application of the Bank it appears to the court that a person has accepted deposits in contravention of section 3 above the court may—
  - (a) order him and any other person who appears to the court to have been knowingly concerned in the contravention to repay the deposits forthwith or at such time as the court may direct; or
  - (b) except in Scotland, appoint a receiver to recover those deposits;but in deciding whether and, if so, on what terms to make an order under this section the court shall have regard to the effect that repayment in accordance with the order would have on the solvency of the person concerned or otherwise on his ability to carry on his business in a manner satisfactory to his creditors.
- (2) The jurisdiction conferred by this section shall be exercisable by the High Court and the Court of Session.

#### **Modifications etc. (not altering text)**

**C16** S. 48(1) restricted by S.I. 1965/1776, **rule 23** (as added by S.I. 1988/298, **rule 13**)

**C17** S. 48(1) restricted (1.11.1992) (N.I) by S.R. 1992/399, r. 8(3).

#### **49 Profits from unauthorised deposits.**

- (1) If on the application of the Bank the court is satisfied that profits have accrued to a person as a result of deposits having been accepted in contravention of section 3 above the court may order him to pay into court or, except in Scotland, appoint a receiver to recover from him, such sum as appears to the court to be just having regard to the profits appearing to the court to have accrued to him.
- (2) In deciding whether, and if so, on what terms to make an order under this section the court shall have regard to the effect that payment in accordance with the order would have on the solvency of the person concerned or otherwise on his ability to carry on his business in a manner satisfactory to his creditors.
- (3) Any amount paid into court or recovered from a person in pursuance of an order under this section shall be paid out to such person or distributed among such persons as the court may direct, being a person or persons appearing to the court to have made the deposits as a result of which the profits mentioned in subsection (1) above have accrued or such other person or persons as the court thinks just.
- (4) On an application under this section the court may require the person concerned to furnish it with such accounts or other information as it may require for determining whether any and if so, what profits have accrued to him as mentioned in subsection (1) above and for determining how any amounts are to be paid or distributed under subsection (3) above; and the court may require any such accounts or other information to be verified in such manner as it may direct.
- (5) The jurisdiction conferred by this section shall be exercisable by the High Court and the Court of Session.

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