
STATUTORY INSTRUMENTS

1992 No. 3218

The Banking Coordination (Second Council Directive) Regulations 1992

PART IV

AMENDMENTS OF BANKING ACT

Authorisations

Applications for authorisation

25. At the end of section 8(1) of the Banking Act⁽¹⁾ (applications for authorisation) there shall be inserted the words

“other than—

- (a) a credit institution incorporated in or formed under the law of any part of the United Kingdom whose principal place of business is outside the United Kingdom; and
- (b) a credit institution incorporated in or formed under the law of another member State”.

Grant and refusal of authorisation

26. After subsection (6) of section 9 of the Banking Act (grant and refusal of authorisation) there shall be inserted the following subsection—

“(7) Before granting an authorisation to a credit institution incorporated in or formed under the law of any part of the United Kingdom which is—

- (a) a subsidiary undertaking;
- (b) a subsidiary undertaking of the parent undertaking; or
- (c) controlled by the parent controller,

of a credit institution which is for the time being authorised to act as such an institution by the relevant supervisory authority in another member State, the Bank shall consult that authority.”

Minimum criteria for authorisation

27.—(1) In sub-paragraph (2) of paragraph 4 (business to be conducted in a prudent manner) of Schedule 3 to the Banking Act (minimum criteria for authorisation), for the words “net assets” there shall be substituted the words “own funds”.

(2) For sub-paragraph (3) of that paragraph there shall be substituted the following sub-paragraphs—

“(3) The particular factors referred to above are—

- (a) the nature and scale of the institution's operations; and
- (b) the risks inherent in those operations and in the operations of any other undertaking in the same group so far as capable of affecting the institution.

(3A) An institution shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain own funds which amount to not less than ecu 5 million (or an amount of equal value denominated wholly or partly in another unit of account)."

(3) For sub-paragraph (10) of that paragraph there shall be substituted the following sub-paragraph—

"(10) In this paragraph 'ecu' and 'own funds' have the same meanings as in the Banking Coordination (Second Council Directive) Regulations 1992."

(4) For paragraph 6 of that Schedule there shall be substituted the following paragraph—

"6.—(1) The institution will at the time when authorisation is granted to it have initial capital amounting to not less than ecu 5 million (or an amount of equal value denominated wholly or partly in another unit of account).

(2) In this paragraph 'ecu' and 'initial capital' have the same meanings as in the Banking Coordination (Second Council Directive) Regulations 1992."

Revocation of authorisation

28.—(1) After subsection (1) of section 11 of the Banking Act(2) (revocation of authorisation) there shall be inserted the following subsection—

"(1A) The Bank may revoke the authorisation of a credit institution incorporated in or formed under the law of any part of the United Kingdom if—

- (a) it appears to the Bank that the institution's principal place of business is or may be outside the United Kingdom;
- (b) it appears to the Bank that the institution has carried on in the United Kingdom or elsewhere a listed activity (other than the acceptance of deposits from the public) without having given prior notice to the Bank of its intention to do so;
- (c) the Bank is informed by The Securities and Investments Board, or a connected UK authority having regulatory functions in relation to the provision of financial services, that the institution—
 - (i) has contravened any provision of the Financial Services Act 1986 or any rules or regulations made under it;
 - (ii) in purported compliance with any such provision, has furnished that Board or authority with false, misleading or inaccurate information;
 - (iii) has contravened any prohibition or requirement imposed under that Act; or
 - (iv) has failed to comply with any statement of principle issued under that Act;
- (d) the Bank is informed by the Director General of Fair Trading that the institution, or any of the institution's employees, agents or associates (whether past or present) or, where the institution is a body corporate, any controller of the institution or an associate of any such controller, has done any of the things specified in paragraphs (a) to (d) of section 25(2) of the Consumer Credit Act 1974;

- (e) it appears to the Bank that the institution has failed to comply with any obligation imposed on it by the Banking Coordination (Second Council Directive) Regulations 1992; or
 - (f) the Bank is informed by a supervisory authority in another member State that the institution has failed to comply with any obligation imposed on it by or under any rule of law in force in that State for purposes connected with the implementation of the Second Council Directive.”
- (2) After subsection (3) of that section there shall be inserted the following subsection—
- “(3A) In relation to a credit institution incorporated in or formed under the law of any part of the United Kingdom, subsection (3) above shall have effect as if the words 'and shall do so if that country or territory is a member State' were omitted.”
- (3) After subsection (9) of that section there shall be inserted the following subsection—
- “(10) The rules and prohibitions referred to in subsection (1A)(c) above include the rules of any recognised self-regulating organisation of which the institution is a member and any prohibition imposed by virtue of those rules; and in subsection (1A)(d) above—
- 'associate' has the same meaning as in section 25(2) of the Consumer Credit Act 1974;
 - 'controller' has the meaning given by section 189(1) of that Act.”

Revocation or restriction on information from supervisory authority

29. After section 12 of the Banking Act there shall be inserted the following section—

“Revocation or restriction on information from supervisory authority.

12A.—(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.”

Notice of revocation, restriction or surrender

- 30.—(1) After subsection (3) of section 13 of the Banking Act (notice of revocation or restriction) there shall be inserted the following subsection—

“(3A) Where the Bank gives a notice under subsection (1) above to a credit institution incorporated in or formed under the law of any part of the United Kingdom, it shall give a copy of that notice to every other authority which the Bank knows is—

- (a) a connected UK authority; or
- (b) a supervisory authority in another member State in which the institution is carrying on a listed activity.”

(2) After subsection (3) of section 15 of that Act (surrender of authorisation) there shall be inserted the following subsection—

“(4) Where the Bank receives a notice of surrender under subsection (1) above from a credit institution incorporated in or formed under the law of any part of the United Kingdom, it shall give a copy of that notice to every other authority which the Bank knows is—

- (a) a connected UK authority; or
- (b) a supervisory authority in another member State in which the institution is carrying on a listed activity.”

Objections to controllers

Objections to controllers

31.—(1) In subsection (1) of section 21 of the Banking Act (notification of new or increased control), for the words from the beginning to “unless” there shall be substituted the words “No person shall become a minority, 10 per cent., 20 per cent., 33 per cent., majority or principal shareholder controller, a parent controller or an indirect controller of an authorised institution unless”.

(2) After subsection (1) of section 22 of that Act (objection to new or increased control) there shall be inserted the following subsection—

“(1A) Before deciding whether or not to serve a notice of objection under this section in any case where—

- (a) the person concerned is, or is a parent controller of, a credit institution which is for the time being authorised to act as such an institution by the relevant supervisory authority in another member State; and
- (b) the notice under section 21 above stated an intention to become a parent controller, the Bank shall consult that authority.”

Implementation of certain EC decisions

Implementation of certain EC decisions

32.—(1) After section 26 of the Banking Act there shall be inserted the following section—

“Implementation of certain EC decisions

Treasury directions for implementing decisions.

26A.—(1) In this section ‘relevant decision’ means any decision of the Council or Commission of the Communities under article 9(4) of the Second Council Directive (relations with third countries: limitation or suspension of decisions regarding applications for authorisations).

- (2) For the purpose of implementing a relevant decision, the Treasury may direct the Bank—
- (a) to refuse an application for authorisation made by a credit institution incorporated in or formed under the law of any part of the United Kingdom;
 - (b) to defer its decision on such an application either indefinitely or for such period as may be specified in the direction; or
 - (c) to serve a notice of objection on a person—

- (i) who has given notice under section 21 above of his intention to become a parent controller of any description of such an institution; or
 - (ii) who has become such a controller without giving the required notice under that section.
- (3) A direction to the Bank may relate to a particular institution or a class of institution and may be given before the application in question or, as the case may be, any notice under section 21 above is received.
- (4) Any notice of objection served by virtue of a direction falling within subsection (2)(c) above shall state the grounds on which it is served.
- (5) A direction under this section may be revoked at any time by the Treasury, but such revocation shall not affect anything done in accordance with the direction before it was revoked.”
- (2) In consequence of the provision made by paragraph (1) above—
- (a) in section 10(5) of that Act (notice of grant or refusal), after the words “refusal and” there shall be inserted the words “(except in the case of a refusal in pursuance of a direction under section 26A below)”;
 - (b) in section 23(1)(a) of that Act (objection by direction of the Treasury), after the word “institution” there shall be inserted the words “which is not a credit institution”; and
 - (c) at the end of section 27(1)(a) of that Act (rights of appeal) there shall inserted the words “otherwise than in a case in which the refusal is in pursuance of a direction under section 26A above”.

Information and investigations

Notification of controllers

33. After section 36 of the Banking Act(3) there shall be inserted the following section—

“Annual notification of shareholder controllers.

36A.—(1) An authorised institution which is a credit institution incorporated in or formed under the law of any part of the United Kingdom shall at least once in each year give to the Bank written notice of the name of each person who, to the institution’s knowledge, is a shareholder controller of the institution at the date of the notice.

(2) A notice under subsection (1) above shall also, in relation to each such person, state to best of the institution’s knowledge—

- (a) whether he is a minority, 10 per cent., 20 per cent., 33 per cent. or 50 per cent. shareholder controller;
- (b) what percentage of the shares of the institution he holds either alone or with any associate or associates; and
- (c) what percentage of the voting power at a general meeting of the institution he is entitled to exercise, or control the exercise of, either alone or with any associate or associates;

and in this subsection 'share' has the same meaning as in Part VII of the Companies Act 1985(4) or Part VIII of the Companies (Northern Ireland) Order 1986(5).

(3) 1987 c. 22.

(4) 1985 c. 6; section 258 was inserted by the Companies Act 1989 (c. 40), section 21(2), and section 259 was inserted by section 22 of the Companies Act 1989.

(3) 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.”

Notification of acquisition of significant shareholding

34. For subsection (2) of section 37 of the Banking Act (notification of significant shareholding) there shall be substituted the following subsection—

“(2) For the purposes of this section 'a significant shareholder', in relation to an institution, means a person who is not a shareholder controller but who, either alone or with any associate or associates—

- (a) holds 5 per cent. or more of the shares in the institution or another institution of which it is a subsidiary undertaking; or
- (b) is entitled to exercise, or control the exercise of, 5 per cent. or more of the voting power at any general meeting of the institution or of another institution of which it is such an undertaking;

and in this subsection 'share' has the same meaning as in Part VII of the Companies Act 1985 or Part VIII of the Companies (Northern Ireland) Order 1986.”

Prior notification of ceasing to be a relevant controller

35. After section 37 of the Banking Act there shall be inserted the following section—

“Prior notification of ceasing to be a relevant controller.

37A.—(1) A person shall not cease to be a minority, 10 per cent., 20 per cent., 33 per cent. or 50 per cent. shareholder controller or a parent controller of an authorised institution which is a credit institution incorporated in or formed under the law of any part of the United Kingdom unless he has first given to the Bank written notice of his intention to cease to be such a controller of the institution.

(2) If, after ceasing to be such a controller of such an institution, a person will, either alone or with any associate or associates—

- (a) still hold 10 per cent. or more of the shares in the institution or another institution of which it is a subsidiary undertaking;
- (b) still be entitled to exercise or control the exercise of 10 per cent. or more of the voting power at any general meeting of the institution or of another institution of which it is such an undertaking; or
- (c) still be able to exercise a significant influence over the management of the institution or another institution of which it is such an undertaking by virtue of—
 - (i) a holding of shares in; or
 - (ii) an entitlement to exercise, or control the exercise of, the voting power at any general meeting of,

the institution or, as the case may be, the other institution concerned,

his notice under subsection (1) above shall state the percentage of the shares or voting power which he will (alone or with any associate or associates) hold or be entitled to exercise or control; and in this subsection 'share' has the same meaning as in Part VII of the Companies Act 1985 or Part VIII of the Companies (Northern Ireland) Order 1986.

(5) S.I.1986/1032 (N.I.6); Article 266 was inserted by the Companies (Northern Ireland) Order 1990 (S.I. 1990/593 (N.I.5)), Article 23(1), and Article 267 was inserted by Article 24 of the Companies (Northern Ireland) Order 1990.

(3) Subject to subsection (4) below, any person who contravenes subsection (1) or (2) above shall be guilty of an offence.

(4) Subject to subsection (5) below, 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 ceased to be a controller of the relevant description in sufficient time to enable him to comply with subsection (1) above.

(5) Notwithstanding anything in subsection (4) above, a person who ceases to be a controller of a relevant description without having complied with subsection (1) above shall be guilty of an offence if, within fourteen days of becoming aware of the fact that he has ceased to be such a controller—

- (a) he fails to give the Bank written notice of that fact; or
- (b) he gives the Bank such a notice but the notice fails to comply with subsection (2) above.

(6) 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.”

Information and production of documents

36. For subsections (6) and (7) of section 39 of the Banking Act (information and production of documents) there shall be substituted the following subsections—

“(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 undertaking which is or has at any relevant time been—

- (a) a parent undertaking, subsidiary undertaking or related company of that institution;
- (b) a subsidiary undertaking of a parent undertaking of that institution;
- (c) a parent undertaking of a subsidiary undertaking of that institution; or
- (d) an undertaking in the case of which a shareholder controller of that institution, either alone or with any associate or associates, holds 50 per cent. or more of the shares or 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 undertaking which is or has at any time been a member of the authorised partnership;
- (c) any undertaking in the case of which the partners in the authorised partnership, either alone or with any associate or associates, hold 20 per cent. or more of the shares or are 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 undertaking or parent undertaking of any such undertaking as is mentioned in paragraph (b) or (c) above or any parent undertaking of any such subsidiary undertaking.

(7A) In subsections (6) and (7) above "share" has the same meaning as in Part VII of the Companies Act 1985 or Part VIII of the Companies (Northern Ireland) Order 1986."

Investigations on behalf of the Bank

37. For subsections (2) and (3) of section 41 of the Banking Act (investigations on behalf of the Bank) there shall be substituted the following subsections—

"(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 undertaking which is or has at any relevant time been—

- (a) a parent undertaking, subsidiary undertaking or related company of the institution under investigation;
- (b) a subsidiary undertaking or related company of a parent undertaking of that institution;
- (c) a parent undertaking of a subsidiary undertaking of that institution; or
- (d) an undertaking in the case of which a shareholder controller of that institution, either alone or with any associate or associates, holds 20 per cent. or more of the shares or 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 undertaking which is or has at any time been a member of the authorised partnership;
- (c) any undertaking in the case of which the partners in the authorised partnership, either alone or with any associate or associates, hold 20 per cent. or more of the shares or are 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 undertaking, related company or parent undertaking of any such undertaking as is mentioned in paragraph (b) or (c) above or any parent undertaking of any such subsidiary undertaking.

(3A) In subsections (2) and (3) above "share" has the same meaning as in Part VII of the Companies Act 1985 or Part VIII of the Companies (Northern Ireland) Order 1986."

Restrictions on disclosure of information

Disclosure for facilitating discharge of functions by the Bank

38. In subsection (1) of section 83 of the Banking Act (disclosure for facilitating discharge of functions by the Bank), for the words "its functions under this Act" there shall be substituted the following paragraphs—

- “(a) its function as a monetary authority; or
- (b) its functions as a monetary authority; or
- (c) its functions as a supervisor of money market and gilt market institutions”.

Disclosure for facilitating discharge of functions by other supervisory bodies

39.—(1) For the purpose of facilitating references to them, the entries in the Table in subsection (1) of section 84 of the Banking Act(6) (disclosure for facilitating discharge of functions by other supervisory bodies) shall be numbered 1 to 19.

(2) For subsection (5) of that section there shall be substituted the following subsections—

“(5) Section 82 above does not preclude the disclosure by the Bank of information to the Treasury if disclosure appears to the Bank to be—

- (a) desirable or expedient in the interests of depositors; or
- (b) in the public interest,

and (in either case) in accordance with article 12(7) of the First Council Directive(7).

(5A) Section 82 above does not preclude the disclosure by the Bank of information to the Secretary of State for purposes other than those specified in relation to him in subsection (1) above if the disclosure is made with the consent of the Treasury and—

- (a) the information relates to an authorised institution or former authorised institution and does not enable the financial affairs of any other identifiable person to be ascertained and disclosure appears to the Bank to be necessary in the interests of depositors or in the public interest; or
- (b) in any other case, disclosure appears to the Bank to be necessary in the interests of depositors;

and (in either case) disclosure appears to the Bank to be in accordance with article 12(7) of the First Council Directive.”

(3) In subsection (6)(a) of that section, at the end of sub-paragraph (i) there shall be inserted the words “or the Banking Coordination (Second Council Directive) Regulations 1992”.

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

“(7) Subsection (6) above does not apply in relation to disclosures to an authority which is not a supervisory authority in another member State unless the Bank is satisfied that the authority is subject to restrictions on further disclosures at least equivalent to those imposed by this Part of this Act.

(8) Information which is disclosed to a person in pursuance of subsection (1), (4) or (6) above shall not be used otherwise than for the purpose mentioned in that subsection.

(9) Any person who uses information in contravention of subsection (8) above shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding the fifth level on the standard scale or to both.

(10) Any reference in this section to enabling or assisting any person to discharge or exercise any functions is a reference to enabling or assisting that person to discharge or exercise those functions in relation to—

(6) The Panel on Take Overs was added to the table in subsection (1) by S.I. 1987/1292; the table was amended by the Companies Act 1989 (c. 40), sections 81 and 171(7), and repealed in part (entry relating to the Financial Services Act 1986, sections 94, 106 and 107) by section 212 of and Schedule 24 to the Companies Act 1989; other relevant amending instruments are S.I. 1989/2405 (N.I.19) and 1990/1504 (N.I.10.).

(7) Council Directive 77/780/EEC (OJNo. L322, 17.12.77, p.30); article 12 was substituted by article 16 of Council Directive 89/646/EEC (OJ No. L386, 30.12.89, p.1).

- (a) a financial market; or
- (b) persons carrying on the business of banking or insurance, Consumer Credit Act businesses or the business of providing other financial services;

and in this subsection 'Consumer Credit Act business' has the same meaning as in the Banking Coordination (Second Council Directive) Regulations 1992.”

Other permitted disclosures

40.—(1) In subsection (1) of section 85 of the Banking Act(8) (other permitted disclosures), paragraph (g) shall be omitted.

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

“(1A) The disclosures permitted by subsection (1)(f) above do not include the disclosure of information relating to a person who (not being a director, controller or manager of the institution) is or has been, to the knowledge of the person making the disclosure, involved in an attempt to secure the survival of the institution as a going concern.”

Information supplied to Bank by relevant overseas authority etc.

41. For section 86 of the Banking Act there shall be substituted the following section—

“86 Information supplied to Bank by relevant overseas authority etc.

(1) Section 82 above applies also to information which—

- (a) has been supplied to the Bank for the purposes of any relevant functions by the relevant supervisory authority in a country or territory outside the United Kingdom; or
- (b) has been obtained for those purposes by the Bank, or by a person acting on its behalf, in another member State.

(2) Subject to subsections (3) and (4) below, information supplied or obtained as mentioned in subsection (1)(a) or (b) above shall not be disclosed except as provided by section 82 above or—

- (a) for the purpose of enabling or assisting the Bank to discharge any relevant functions; or
- (b) with a view to the institution of, or otherwise for the purposes of, criminal proceedings, whether under this Act or otherwise.

(3) Information supplied to the Bank for the purposes of any relevant functions by the relevant supervisory authority in another member State may be disclosed—

- (a) to a relevant recipient, if the authority consents to its disclosure and the case is one in which information to which section 82 above applies could be so disclosed by virtue of section 84(1) or (2) above; or
- (b) to the Treasury or the Secretary of State, if the authority consents to its disclosure and the case is one in which information to which section 82 above applies could be so disclosed by virtue of section 84(5) or (5A) above.

(4) Information obtained as mentioned in subsection (1)(b) above may be disclosed—

- (a) to a relevant recipient, if the relevant supervisory authority in the member State concerned consents to its disclosure and the case is one in which information to

which section 82 above applies could be so disclosed by virtue of section 84(1) or (2) above; or

- (b) to the Treasury or the Secretary of State, if that authority consents to its disclosure and the case is one in which information to which section 82 above applies could be so disclosed by virtue of section 84(5) or (5A) above.

- (5) In this section—

'relevant functions', in relation to the Bank, means its functions under this Act, its functions as a monetary authority and its functions as a supervisor of money market and gilt market institutions;

'relevant recipient' means a person specified in any of entries 1 to 8, 13 to 15 and 17 in the Table in section 84(1) above."

Disclosure of information obtained under other Acts

42. After subsection (3) of section 87 of the Banking Act (disclosure of information obtained under other Acts) there shall be inserted the following subsection—

“(3A) Information disclosed by the Building Societies Commission to the Bank for the purpose of enabling or assisting it to discharge any relevant functions may be disclosed—

- (a) to a relevant recipient, if the Commission consents to its disclosure and the case is one in which information to which section 82 above applies could be so disclosed by virtue of section 84(1) or (2) above; or
- (b) to the Treasury or the Secretary of State, if the Commission consents to its disclosure and the case is one in which information to which section 82 above applies could be so disclosed by virtue of section 84(5)(a) or (5A) above;

and in this subsection 'relevant functions' has the same meaning as in section 86 above and 'relevant recipient' means a person specified in any of entries 1 to 8, 13 to 15 and 17 in the Table in section 84(1) above.”

Interpretation

Meaning of “controller” and “associate”

43.—(1) In paragraph (c) of subsection (3) of section 105 of the Banking Act (meaning of “director, controller” etc.), for the words from “either alone” to the end there shall be substituted the words “satisfies the requirements of this paragraph”; and at the end of that subsection there shall be inserted the words “and

- (e) a person who is, or would be if he were an undertaking, a parent undertaking of the institution.”

- (2) For subsection (4) of that section there shall be substituted the following subsections—

“(3A) A person satisfies the requirements of subsection (3)(c) above in relation to an institution if, either alone or with any associate or associates—

- (a) he holds 10 per cent. or more of the shares in the institution or another institution of which it is a subsidiary undertaking;
- (b) he is entitled to exercise, or control the exercise of, 10 per cent. or more of the voting power at any general meeting of the institution or another institution of which it is such an undertaking; or
- (c) he is able to exercise a significant influence over the management of the institution or another institution of which it is such an undertaking by virtue of—

- (i) a holding of shares in; or
- (ii) an entitlement to exercise, or control the exercise of, the voting power at any general meeting of,

the institution or, as the case may be, the other institution concerned;

and in this subsection 'share' has the same meaning as in Part VII of the Companies Act 1985 or Part VIII of the Companies (Northern Ireland) Order 1986.

(4) A person who is a controller of an institution by virtue of subsection (3)(c) above is in this Act referred to as a 'shareholder controller' of the institution; and in this Act—

- (a) a 'minority shareholder controller' means a shareholder controller not falling within paragraph (a) or (b) of subsection (3A) above;
- (b) a '10 per cent. shareholder controller' means a shareholder controller in whose case the percentage referred to in the relevant paragraph is 10 or more but less than 20;
- (c) a '20 per cent. shareholder controller' means a shareholder controller in whose case that percentage is 20 or more but less than 33;
- (d) a '33 per cent. shareholder controller' means a shareholder controller in whose case that percentage is 33 or more but less than 50;
- (e) a '50 per cent. shareholder controller' means a shareholder controller in whose case that percentage is 50 or more;
- (f) a 'majority shareholder controller' means a shareholder controller in whose case that percentage is 50 or more but less than 75; and
- (g) a 'principal shareholder controller' means a shareholder in whose case that percentage is 75 or more;

and in this subsection 'the relevant paragraph', in relation to a shareholder controller, means whichever one of paragraphs (a) and (b) of subsection (3A) above gives the greater percentage in his case.”

(3) After subsection (5) of that section there shall be inserted the following subsection—

“(5A) A person who is a controller of an institution by virtue of subsection (3)(e) above is in this Act referred to as a 'parent controller' of the institution.”

(4) For subsections (9) and (10) of that section there shall be substituted the following subsections—

“(9) In this Act 'associate', in relation to a person entitled to exercise or control the exercise of voting power in relation to, or holding shares in, an undertaking, means—

- (a) the wife or husband or son or daughter of that person;
- (b) the trustees of any settlement under which that person has a life interest in possession or, in Scotland, a life interest;
- (c) any company of which that person is a director;
- (d) any person who is an employee or partner of that person;
- (e) if that person is a company—
 - (i) any director of that company;
 - (ii) any subsidiary undertaking of that company; and
 - (iii) any director or employee of any such subsidiary undertaking; and
- (f) if that person has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in that

undertaking or body corporate or under which they undertake to act together in exercising their voting power in relation to it, that other person.

(10) For the purposes of subsection (9) above—

'son' includes stepson and 'daughter' includes stepdaughter;

'settlement' includes any disposition or arrangement under which property is held in trust.”

Meaning of “related company”

44.—(1) For subsection (1) of section 105A of the Banking Act⁽⁹⁾ (meaning of “related company”) there shall be substituted the following subsection—

“(1) In this Act a 'related company', in relation to an institution or the parent undertaking of an institution, means a body corporate (other than a subsidiary undertaking) in which the institution or parent undertaking holds a qualifying capital interest.”

(2) In subsection (2) of that section, for the words “holding company” there shall be substituted the words “parent undertaking”.

Other interpretation of Banking Act

45.—(1) In subsection (1) of section 106 of the Banking Act (interpretation)—

(a) after the definition of “municipal bank” there shall be inserted the following definition—

“parent controller' has the meaning given in section 105(5A) above;”;

(b) for the definition of “relevant supervisory authority” there shall be substituted the following definition—

“relevant supervisory authority'—

(a) in relation to another member State, has the meaning given in regulation 2 of the Banking Coordination (Second Council Directive) Regulations 1992;

(b) in relation to any other country or territory outside the United Kingdom, means the authority discharging in that country or territory functions corresponding to those of the Bank under this Act;”;

(c) for the definition of “shareholder controller” and related definitions there shall be substituted the following definitions—

“shareholder controller', 'minority shareholder controller', '10 per cent. shareholder controller', '20 per cent. shareholder controller', '33 per cent. shareholder controller', '50 per cent. shareholder controller', 'majority shareholder controller' and 'principal shareholder controller' have the meanings given in section 105(4) above”.

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

“(2A) In this Act the following expressions, namely—

another member State;

connected UK authority;

credit institution;

European authorised institution;

the First Council Directive;

home State;

(9) 1987 c. 22; section 105A was inserted by the Companies Act 1989 (c. 40), section 23, Schedule 10, Part II, paragraph 37(3).

listed activity;
parent undertaking;
recognised self-regulating organisation;
relevant supervisory authority;
the Second Council Directive;
subsidiary undertaking;
supervisory authority;
undertaking,

have the same meanings as in the Banking Coordination (Second Council Directive) Regulations 1992.”

Miscellaneous

Savings for certain institutions

- 46.** The Banking Act(10) shall have effect—
- (a) in relation to institutions which are not credit institutions incorporated in or formed under the law of a part of the United Kingdom, without the amendments made by regulations 27, 31(1), 34, 36, 37 and 43 to 45 above; and
 - (b) in relation to information relating to the business or other affairs of institutions which are authorised institutions within the meaning of that Act but are not credit institutions, without the amendments made by regulations 38, 39(2) to (4) and 40 to 42 above.

Other amendments of Banking Act

47. The provisions of the Banking Act which are mentioned in Schedule 8 to these Regulations shall have effect subject to the amendments there specified.