

1999 No. 2094

BANKS AND BANKING

The Banking (Gibraltar) Regulations 1999

<i>Made - - - -</i>	<i>22nd July 1999</i>
<i>Laid before Parliament</i>	<i>27th July 1999</i>
<i>Coming into force</i>	<i>20th August 1999</i>

Whereas the Treasury are a government department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to credit and financial institutions and to the taking of deposits or other repayable funds from the public;

Now, therefore, the Treasury, in exercise of the powers conferred on them by that section, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Banking (Gibraltar) Regulations 1999, and shall come into force on 20th August 1999.

Amendment of 1992 Regulations

2.—(1) The Banking Coordination (Second Council Directive) Regulations 1992(c) are amended as follows.

(2) In regulation 2(1)—

- (a) in the definition of “commencement date”, after the word “except” there is inserted “(a)”, and at the end there is inserted “and
- (b) as provided by regulation 2B(2) below in relation to Gibraltar;”;
- (b) in the definition of “home-regulated activity”, for “regulation 3(7) or” there is substituted “regulation 2B(3), 3(7) or”;
- (c) in the definition of “home-regulated investment business”, after “means” there is inserted “(subject to regulation 2B(3) below)”.

(3) The following regulations are inserted after regulation 2A:

“Gibraltar

2B.—(1) Except as otherwise provided by regulation 2C below, these Regulations shall apply as if Gibraltar were another member State.

(a) S.I. 1990/1304.

(b) 1972 c. 68.

(c) S.I. 1992/3218, amended by S.I. 1993/3225, S.I. 1995/1217, S.I. 1995/1442, S.I. 1996/1669 and Chapter II of Part I of Schedule 5 to the Bank of England Act 1998 (c. 11).

(2) In relation to—

- (a) the carrying on by credit institutions and financial institutions incorporated in or formed under the law of Gibraltar (referred to in this regulation and regulation 2C below as “Gibraltar institutions”) of listed activities in the United Kingdom; and
- (b) the carrying on by credit institutions and financial institutions incorporated in or formed under the law of the United Kingdom of listed activities in Gibraltar,

any reference in these Regulations to “the commencement date” shall be taken to be a reference to 20th August 1999.

(3) In these Regulations—

- (a) “home-regulated activity”, in relation to a Gibraltar institution, means any listed activity falling within items 1 to 6 in the Annex to the Second Council Directive which that institution is authorised by the relevant supervisory authority in Gibraltar to carry on in the United Kingdom;
- (b) “home-regulated investment business”, in relation to such an institution, means investment business which consists in carrying on one or more listed activities falling within items 1 to 6 in the Annex to the Second Council Directive—
 - (i) in relation to which a supervisory authority in Gibraltar has regulatory functions; and
 - (ii) which, in the case of a Gibraltar institution which is a European subsidiary, it is carrying on in Gibraltar; and
- (c) any reference to a listed activity which a European institution is authorised or permitted to carry on in its home state shall be treated, in relation to a Gibraltar institution, as a reference to any such listed activity as is mentioned in subparagraph (a) above.

(4) Regulations 11(5) and 17(5) shall each have effect, in relation to Gibraltar institutions, as if the words “and the European Commission” were omitted.

Gibraltar – requirements as respects European institutions

2C.—(1) Except in their application to a Gibraltar institution, Part II of, and Schedule 2 to, these Regulations shall apply as if Gibraltar were part of the United Kingdom.

(2) In the case of an institution other than a Gibraltar institution, the requirements of paragraph 1 or 4 of Schedule 2 to these Regulations shall be taken to have been complied with in respect of an activity or branch if corresponding requirements under the law of Gibraltar have been complied with in respect of that activity or branch.

(3) Where, in the case of an institution other than a Gibraltar institution, the Authority receives from the relevant supervisory authority in the institution’s home State a notice given in accordance with paragraph 3 of Schedule 2 to these Regulations, if either—

- (a) the notice states that the institution intends to establish a place of business in Gibraltar; or
- (b) the notice states that the institution intends to carry on home-regulated activities by the provision of services in the United Kingdom or Gibraltar,

the Authority shall send a copy of the notice to the supervisory authority in Gibraltar.

(4) Where, in the case of an institution other than a Gibraltar institution, the Authority receives from the relevant supervisory authority in the institution’s home State a notice given in accordance with paragraph 4 of Schedule 2 to these Regulations in respect of a place of business established in Gibraltar, the Authority shall send a copy of the notice to the supervisory authority in Gibraltar.”.

(4) At the beginning of regulation 3(7) there is inserted “Subject to regulation 2B(3) above,”.

(5) In regulation 4(1), after “European authorised institution” there is inserted “(other than one incorporated in or formed under the law of Gibraltar)”.

(6) In regulation 4(2), after “European subsidiary” there is inserted “(other than one incorporated in or formed under the law of Gibraltar)”.

Penalties

3. A person who is guilty of an offence under any of the following provisions, namely–
- (a) subsection (11) of section 39 of the Banking Act 1987(**a**) (power to obtain information and require production of documents), as modified by paragraph 8 of Schedule 8 to the Banking Coordination (Second Council Directive) Regulations 1992(**b**),
 - (b) subsection (3) of section 40 of that Act (right of entry to obtain information and documents), as modified by paragraph 9 of that Schedule, or
 - (c) subsection (9) of section 41 of that Act (investigations on behalf of the Financial Services Authority), as modified by paragraph 10 of that Schedule,

by virtue of regulation 2 above shall not be liable to imprisonment for a term exceeding three months.

Amendment of the 1995 Regulations

4. In regulation 2 of the Credit Institutions (Protection of Depositors) Regulations 1995(**c**) at the end there is inserted the following paragraph–

“(3) These Regulations shall apply as if Gibraltar were an EEA State other than the United Kingdom.”.

Amendment of the Banking Act 1987

5. In section 52 of the Banking Act 1987(**d**), at the end there is inserted the following subsection–

“(8) This Part of this Act shall apply as if Gibraltar were an EEA State other than the United Kingdom.”.

Amendment of the Building Societies Act 1986

6. In section 24 of the Building Societies Act 1986(**e**), at the end there is inserted the following subsection–

“(5) The protective scheme provisions shall apply as if Gibraltar were an EEA State other than the United Kingdom.”.

22nd July 1999

Jane Kennedy
Jim Dowd
Two of the Lords Commissioners of Her
Majesty’s Treasury

(a) 1987 c. 22. Section 39 was amended by regulation 36 of S.I. 1992/3218, subject to regulation 46(a). Section 41 was amended by regulation 37 of S.I. 1992/3218, subject to regulation 46(a). Sections 39, 40 and 41 were also amended by paragraph 11 of Schedule 5 to the Bank of England Act 1998 (c. 11).

(b) Paragraphs 8, 9 and 10 of Schedule 8 were amended by section 70(1) of the Criminal Justice Act 1993 (c. 36).

(c) S.I. 1995/1442, amended by S.I. 1998/1129, Schedule 1, paragraph 19.

(d) 1987 c. 22. Section 52 was amended by S.I. 1995/1442, regulation 27(5).

(e) 1986 c. 53. Section 24 was amended by S.I. 1995/1442, regulation 36(3) and by section 43 of, and paragraph 4 of Schedule 7 to, the Building Societies Act 1997 (c. 32).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Banking Coordination (Second Council Directive) Regulations 1992, which give effect to the Second Council Directive 89/646/EEC on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (OJ No. L386, 30.12.89, p. 1), and to certain provisions of Council Directive 77/780/EEC (OJ No. L322, 17.12.77, p. 30), which is amended by the Second Council Directive. These Regulations make provision concerning the recognition in the United Kingdom of certain credit institutions and subsidiaries authorised in Gibraltar. They also make provision concerning the carrying on by UK institutions of certain activities in Gibraltar. They do so by providing for Gibraltar to be treated in the same way as another State with the European Economic Area (“the EEA”), subject to the modifications contained in the new regulation 2B inserted by regulation 2(3).

Similarly, these Regulations provide that, for the purposes of the Credit Institutions (Protection of Depositors) Regulations 1995, and those provisions of the Banking Act 1987 and the Building Societies Act 1986 relating to the protection of depositors, Gibraltar is to be treated in the same way as another EEA State.

The new regulation 2C inserted into the 1992 Regulations by regulation 2(3) of these Regulations provides that, in the case of an institution in another Member State (but not Gibraltar) wishing to carry on listed activities in either the United Kingdom or Gibraltar, certain notices required by the Regulations may be given to the supervisory authority in either the United Kingdom or Gibraltar.

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