
STATUTORY INSTRUMENTS

1992 No. 3218

The Banking Coordination (Second Council Directive) Regulations 1992

PART I
GENERAL

Citation and commencement

1.—(1) These Regulations may be cited as the Banking Coordination (Second Council Directive) Regulations 1992.

(2) These Regulations shall come into force on 1st January 1993.

Interpretation: general

2.—(1) In these Regulations—

“the Banking Act” means the Banking Act 1987(1);

“the Building Societies Act” means the Building Societies Act 1986(2);

“the Consumer Credit Act” means the Consumer Credit Act 1974(3);

“the Financial Services Act” means the Financial Services Act 1986(4);

“the Insurance Companies Act” means the Insurance Companies Act 1982(5);

“another member State” means a member State other than the United Kingdom;

“appointed representative” has the same meaning as in the Financial Services Act;

“authorised or permitted”, in relation to the carrying on of a listed activity, shall be construed in accordance with regulation 4 or, as the case may be, regulation 21 below;

“the Bank” means the Bank of England;

“the Board” means The Securities and Investments Board(6);

“branch” means one or more places of business established or proposed to be established in the same member State for the purpose of carrying on home-regulated activities;

“the commencement date” means 1st January 1993;

(1) 1987 c. 22.

(2) 1986 c. 53.

(3) 1974 c. 39.

(4) 1986 c. 60; various functions of the Secretary of State under the Financial Services Act 1986 have been transferred to the Treasury by the Transfer of Functions (Financial Services) Order 1992 (S.I.1992/1315).

(5) 1982 c. 50.

(6) Various functions under the Financial Services Act 1986 have been transferred to the Securities and Investments Board by the Financial Services Act 1986 (Delegation) Order 1987 (S.I. 1987/942), the Financial Services Act 1986 (Delegation) (No.2) Order 1988 (S.I. 1988/738), the Companies (Commencement No.3, Transitional Provisions and Transfer of Functions under the Financial Services Act 1986) Order 1990 (S.I. 1990/354), the Financial Services Act 1986 (Delegation) Order 1991 (S.I. 1991/200) and the Financial Services Act 1986 (Delegation) (No.2) Order 1991 (S.I. 1991/256).

“the Commission” means the Building Societies Commission;

“connected UK authority”, in relation to a credit or financial institution carrying on or proposing to carry on a listed activity in the United Kingdom, means an authority in the United Kingdom which has regulatory functions in relation to that activity;

“constituent instrument”, in relation to an institution, includes any memorandum or articles of the institution;

“Consumer Credit Act business” means consumer credit business, consumer hire business or ancillary credit business;

“consumer credit business”, “consumer hire business” and “ancillary credit business” have the same meanings as in the Consumer Credit Act;

“credit institution” means a credit institution as defined in article 1 of the First Council Directive, that is to say, an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account;

“delegation order” and “designated agency” have the same meanings as in the Financial Services Act;

“deposit” has the same meaning as in the Banking Act;

“the Director” means the Director General of Fair Trading;

“ecu” means the European currency unit as defined in Article 1 of Council Regulation No. 3180/78/EEC(7);

“establish”, in relation to a branch, means establish the place of business or, as the case may be, the first place of business which constitutes the branch;

“the European Commission” means the Commission of the Communities;

“European institution”, “European authorised institution” and “European subsidiary” have the meanings given by regulation 3 below;

“financial institution” means a financial institution as defined in article 1 of the Second Council Directive, that is to say, an undertaking other than a credit institution the principal activity of which is to acquire holdings or to carry on one or more of the activities listed in points 2 to 12 in the Annex (the text of which is set out in Schedule 1 to these Regulations);

“the First Council Directive” means the First Council Directive on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (No. [77/780/EEC](#))(8);

“home-regulated activity” shall be construed in accordance with regulation 3(7) or, as the case may be, regulation 20(6) below;

“home-regulated investment business”, in relation to a European institution or quasi-European authorised institution, means investment business which consists in carrying on one or more listed activities—

(a) in relation to which a supervisory authority in its home State has regulatory functions; and

(b) which, in the case of a European subsidiary, it is carrying on its home State;

“home State”, in relation to an institution incorporated in or formed under the law of another member State, means that State;

(7) OJ No. L379, 30.12.78; the relevant amending instrument is Council Regulation ([EEC](#)) No. [1971/89](#), OJ No. L189, 4.7.89 p.1.

(8) OJ No. L322, 17.12.77, p.30, as amended by Council Directive [86/524/EEC](#) (OJ No. L309, 4.11.86, p.15), and by Council Directive No. [89/646/EEC](#) (OJ No. L386, 30.12.89, p.1.).

“initial capital” means capital as defined in points 1 and 2 of article 2(1) of the Council Directive on the own funds of credit institutions (No. [89/299/EEC](#))(**9**);

“investment business” has the same meaning as in the Financial Services Act;

“listed activity” means an activity listed in the Annex to the Second Council Directive (list of activities subject to mutual recognition), the text of which is set out in Schedule 1 to these Regulations;

“member” and “rules”, in relation to a recognised self-regulating organisation, have the same meanings as in the Financial Services Act;

“own funds” means own funds as defined in the Council Directive on the own funds of credit institutions (No. [89/299/EEC](#));

“principal”, in relation to an appointed representative, has the same meaning as in the Financial Services Act;

“quasi-European institution”, “quasi-European authorised institution” and “quasiEuropean subsidiary” have the meanings given by regulation 3(4) below;

“recognised self-regulating organisation” has the same meaning as in the Financial Services Act;

“the relevant supervisory authority”, in relation to another member State, means the authority in that State which has regulatory functions in relation to the acceptance of deposits from the public, whether or not it also has such functions in relation to one or more other listed activities;

“requisite details”, in relation to a branch in the United Kingdom or another member State (whether established or proposed to be established), means—

- (a) particulars of the programme of operations of the business to be carried on from the branch, including a description of the particular home-regulated activities to be carried on and of the structural organisation of the branch;
- (b) the name under which the business is to be carried on and the address in the member State from which information about the business may be obtained; and
- (c) the names of the managers of the business;

“the Second Council Directive” means the Second Council Directive on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions and amending the First Council Directive (No. [89/646/EEC](#))(**10**);

“the Solvency Ratio Directive” means the Council Directive on a solvency ratio for credit institutions (No. [89/647/EEC](#))(**11**);

“supervisory authority”, in relation to another member State, means an authority in that State which has regulatory functions in relation to one or more listed activities;

“the UK authority”, “UK institution”, “UK authorised institution” and “UK subsidiary” have the meanings given by regulation 20 below;

“voting rights”, in relation to an undertaking, shall be construed in accordance with paragraph 2 of Schedule 10A to the Companies Act 1985(**12**) or paragraph 2 of Schedule 10A to the Companies (Northern Ireland) Order 1986(**13**).

(9) OJ No. L124, 5.5.89, p.16, as amended by Council Directives [91/633/EEC](#) (OJ No. L339, 11.12.91, p.33) and [92/16/EEC](#) (OJ No. L75, 21.3.92, p.48).

(10) OJ No. L386, 30.12.89, p.1.

(11) OJ No. L386, 30.12.89, p.14, as amended by Commission Directive [91/31/EEC](#) (OJ No. L17, 23.1.91, p.20).

(12) [1985 c. 6](#); Schedule 10A was inserted by the Companies Act [1989 \(c. 40\)](#), section 21(2).

(13) S.I. [1986/1032 \(N.I.6\)](#); Schedule 10A was inserted by the Companies (Northern Ireland) Order 1990 (S.I. [1990/593 \(N.I.5\)](#)), Article 23(2).

(2) In these Regulations “parent undertaking”, “share”, “subsidiary undertaking” and “undertaking” have the same meanings as in Part VII of the Companies Act 1985(14) or Part VIII of the Companies (Northern Ireland) Order 1986(15) except that—

- (a) “subsidiary undertaking” also includes, in relation to an institution incorporated in or formed under the law of another member State, any undertaking which is a subsidiary undertaking within the meaning of any rule of law in force in that State for purposes connected with the implementation of the Seventh Company Law Directive based on article 54(3)(g) of the Treaty on consolidated accounts (No. 83/349/EEC)(16); and
- (b) “parent undertaking” shall be construed accordingly.

(3) For the purposes of these Regulations a subsidiary undertaking of an institution is a 90 per cent. subsidiary undertaking of the institution if the institution holds 90 per cent. or more of the voting rights in the subsidiary undertaking.

(4) Any reference in these Regulations to the carrying on of home-regulated investment business in the United Kingdom—

- (a) is a reference to the carrying on of such business in reliance on regulation 5(1)(b) below; and
- (b) shall be construed in accordance with section 1(3) of the Financial Services Act.

PART II

RECOGNITION OF EUROPEAN INSTITUTIONS

Preliminary

European institutions

3.—(1) In these Regulations “European institution” means a European authorised institution or a European subsidiary.

(2) A credit institution is a European authorised institution for the purposes of these Regulations if—

- (a) it is incorporated in or formed under the law of another member State;
- (b) its principal place of business is in that State;
- (c) it is for the time being authorised to act as a credit institution by the relevant supervisory authority in that State; and
- (d) the requirements of paragraph 1 of Schedule 2 to these Regulations have been complied with in relation to its carrying on of an activity or its establishment of a branch.

(3) A financial institution is a European subsidiary for the purposes of these Regulations if—

- (a) it is incorporated in or formed under the law of another member State;
- (b) it is a 90 per cent. subsidiary undertaking of a credit institution which—
 - (i) is incorporated in or formed under the law of that State; and
 - (ii) is a European authorised institution or a quasi-European authorised institution;

(14) Section 258 was inserted by the Companies Act 1989 (c. 40), section 21(1), and section 259 was inserted by section 22 of the Companies Act 1989.

(15) 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.

(16) OJ No. L193, 18.7.83, p.1; the relevant amending instrument is Council Directive 90/605/EEC (OJ No. L316, 16.11.90, p.60).

- (c) the conditions mentioned in paragraph (6) below are fulfilled in relation to it; and
- (d) the requirements of paragraph 1 of Schedule 2 to these Regulations have been (and continue to be) complied with in relation to its carrying on of an activity or its establishment of a branch.

(4) In these Regulations “quasi-European institution” means an institution—

- (a) which is not a European institution; but
- (b) which would be such an institution if the requirements of paragraph 1 of Schedule 2 to these Regulations had been (and continued to be) complied with in relation to its carrying on of an activity or its establishment of a branch;

and “quasi-European authorised institution” and “quasi-European subsidiary” shall be construed accordingly.

(5) For the purposes of paragraph (3)(b) above, any two or more European authorised institutions or quasi-European authorised institutions which—

- (a) are incorporated in or formed under the law of the same member State; and
- (b) hold voting rights in the same undertaking,

shall be regarded as a single institution; and in these Regulations “parent undertaking”, in relation to an institution which is a European subsidiary or quasi-European subsidiary by virtue of this paragraph, shall be construed accordingly.

(6) The conditions referred to in paragraph (3)(c) above are—

- (a) that each home-regulated activity stated in the institution’s recognition notice is carried on by it in its home State;
- (b) that the constituent instrument of the institution permits it to carry on each such activity;
- (c) that the consolidated supervision of the institution’s parent undertaking or, if more than one, any of them effectively includes supervision of the institution; and
- (d) that the institution’s parent undertaking has guaranteed or, if more than one, they have jointly and severally guaranteed, with the consent of the relevant supervisory authority in its or their home State, the institution’s obligations;

and in this paragraph “recognition notice”, in relation to an institution, means a notice given by it in accordance with paragraph 2 of Schedule 2 to these Regulations.

(7) In these Regulations “home-regulated activity”, in relation to a European institution or quasi-European authorised institution, means any listed activity—

- (a) in relation to which a supervisory authority in its home State has regulatory functions; and
- (b) which, in the case of a European subsidiary, it is carrying on its home State.

(8) Schedule 2 to these Regulations (which contains requirements to be complied with by or in relation to European institutions) shall have effect.

Authorised and permitted activities

4.—(1) For the purposes of these Regulations a European authorised institution is authorised to carry on in its home State any listed activity which its authorisation as a credit institution authorises it to carry on.

(2) For the purposes of these Regulations a European subsidiary is permitted to carry on in its home State any listed activity which it is lawful for it to carry on, and it is carrying on, in that State.

Effect of recognition

Authorisations and licences not required

- 5.—(1) Subject to paragraph (2) below, nothing in the following enactments, namely—
- (a) section 3 of the Banking Act (restriction on acceptance of deposits);
 - (b) sections 3 and 4 of the Financial Services Act (restrictions on carrying on investment business);
 - (c) sections 21, 39(1) and 147(1) of the Consumer Credit Act (Consumer Credit Act businesses needing a licence); and
 - (d) section 2 of the Insurance Companies Act⁽¹⁷⁾ (restriction on carrying on insurance business),

shall prevent a European institution from carrying on in the United Kingdom any listed activity which it is authorised or permitted to carry on in its home State.

(2) In relation to a European institution in respect of which a prohibition under these Regulations is in force—

- (a) paragraph (1)(a) above shall not apply if the prohibition is under regulation 9 below;
- (b) paragraph (1)(b) above shall not apply if the prohibition is under regulation 15 below; and
- (c) paragraph (1)(c) above shall not apply if the prohibition is under regulation 18 below.

Procedural requirements for carrying on listed activities

6.—(1) A European institution shall not—

- (a) carry on in the United Kingdom by the provision of services any home-regulated activity;
- or

(b) establish a branch in the United Kingdom for the purpose of carrying on such an activity, unless the requirements of paragraph 1 of Schedule 2 to these Regulations have been (and, in the case of a European subsidiary, continue to be) complied with in relation to its carrying on of the activity or, as the case may be, its establishment of the branch.

(2) A European institution shall not change the requisite details of a branch established by it in the United Kingdom unless the requirements of paragraph 4 of Schedule 2 to these Regulations have been complied with in relation to its making of the change.

(3) An institution which contravenes paragraph (1) or (2) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale; but such a contravention shall not invalidate any transaction.

(4) In proceedings brought against an institution for an offence under paragraph (3) above it shall be a defence for the institution to show that it took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Effect of non-recognition

Prohibition on carrying on certain listed activities

7.—(1) A quasi-European authorised institution shall not—

- (a) carry on in the United Kingdom by the provision of services any home-regulated activity;
- or

(17) 1982 c. 50; section 2 has been amended by S.I. 1987/2130.

(b) establish a branch in the United Kingdom for the purpose of carrying on such an activity.

(2) An institution which contravenes paragraph (1) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale; but such a contravention shall not invalidate any transaction.

(3) In proceedings brought against an institution for an offence under paragraph (2) above it shall be a defence for the institution to show that it took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Functions of Bank

Duty to prepare for supervision

8.—(1) In any case where—

(a) the Bank receives from the relevant supervisory authority in an institution's home State a notice given in accordance with paragraph 3 of Schedule 2 to these Regulations; and

(b) the notice states that the institution intends to establish a branch in the United Kingdom, the Bank shall, before the expiry of the period of two months beginning with the day on which it received the notice, draw to the attention of the institution such provisions of these Regulations, the relevant Acts or regulations or rules made under those Acts as, having regard to the activities mentioned in the notice, the Bank considers appropriate.

(2) In any case where the Bank receives from the relevant supervisory authority in an institution's home State such a notice as is mentioned in paragraph (1) above—

(a) the Bank shall also, before the expiry of the said period of two months, consider whether the situation as respects the institution is such that the powers conferred by paragraph (2) of regulation 9 below are likely to become exercisable; and

(b) if it considers that the situation is such as is mentioned in sub-paragraph (a) above, the Bank may impose, as soon as the requirements of paragraph 1 of Schedule 2 to these Regulations have been complied with in relation to the institution, such restriction under regulation 10 below as appears to it desirable.

(3) In any case where the Bank receives from an institution a notice given in accordance with paragraph 4 of Schedule 2 to these Regulations, the Bank shall, before the expiry of the period of one month beginning with the day on which it received the notice, draw to the attention of the institution such provisions of these Regulations, the relevant Acts or regulations or rules made under those Acts as, having regard to the proposed change mentioned in the notice, the Bank considers appropriate.

(4) Nothing in this regulation shall require the Bank to draw to the attention of an institution any provision which, in connection with the same notice, has been or will be drawn to its attention under regulation 14 below.

(5) In this regulation and regulation 9 below "the relevant Acts" means the Banking Act(18), the Financial Services Act(19), the Consumer Credit Act(20) and the Insurance Companies Act(21).

Power to prohibit the acceptance of deposits

9.—(1) In this regulation "prohibition" means a prohibition on accepting deposits in the United Kingdom.

(18) 1987 c. 22.

(19) 1986 c. 53.

(20) 1974 c. 39.

(21) 1982 c. 50.

(2) Subject to paragraph (3) and regulation 11 below, the Bank may impose a prohibition on a European institution if—

- (a) the institution is a European authorised institution which has established a branch in the United Kingdom and it appears to the Bank that the branch is not or may not be maintaining or, as the case may be, will not or may not maintain adequate liquidity;
- (b) the Bank is informed by the relevant supervisory authority in the institution's home State that it has failed to take any or sufficient steps to cover risks arising from its open positions on financial markets in the United Kingdom;
- (c) it appears to the Bank that the institution has failed to comply with any obligation imposed on it by these Regulations or by or under any of the relevant Acts;
- (d) the Bank is informed by a supervisory authority in the institution's home State that it 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⁽²²⁾;
- (e) it appears to the Bank that it has been provided with false, misleading or inaccurate information by or on behalf of the institution or by or on behalf of a person who is or is to be a director, controller or manager of the institution; or
- (f) it appears to the Bank that the situation as respects the institution is such that, if it were authorised by the Bank under the Banking Act, the Bank could revoke the authorisation.

(3) The Bank may not impose a prohibition on a European institution on the ground mentioned in paragraph (2)(f) above unless—

- (a) the Bank has requested the relevant supervisory authority in the institution's home State to take all appropriate measures for the purpose of securing that the institution remedies the situation; and
- (b) the Bank is satisfied either—
 - (i) that that authority has failed or refused to take measures for that purpose; or
 - (ii) that the measures taken by that authority have proved inadequate for that purpose.

(4) Any prohibition imposed under this regulation may be withdrawn by written notice served by the Bank on the institution concerned; and any such notice shall take effect on such date as is specified in the notice.

(5) In the case of a European institution which is a member of a self-regulating organisation, the reference in paragraph (2)(c) above to any obligation imposed by or under the relevant Acts shall be taken to include a reference to any obligation imposed by the rules of that organisation.

(6) In this regulation “controller”, “director” and “manager” have the same meanings as in the Banking Act.

(7) Schedule 3 to these Regulations (which makes supplemental provision with respect to prohibitions imposed under this regulation and restrictions imposed under regulation 10 below) shall have effect.

Power to restrict listed activities

10.—(1) In this regulation “restriction” means a direction that a European institution or former European institution—

- (a) may not carry on in the United Kingdom any home-regulated activity (other than the acceptance of deposits) which is specified in the direction; or

(22) Council Directive [89/646/EEC](#) (OJ No. L386, 30.12.89).

- (b) may not carry on in the United Kingdom, otherwise than in accordance with such condition or conditions as may be specified in the direction, any homeregulated activity which is so specified.

(2) Where it appears to the Bank that the situation as respects a European institution is such that the powers conferred by paragraph (2) of regulation 9 above are exercisable, the Bank may, instead of or as well as imposing a prohibition, impose such restriction as appears to it desirable.

(3) Where it appears to the Bank that the situation as respects a former European authorised institution is such that the powers conferred by paragraph (2) of regulation 9 above would be exercisable if the institution were still a European authorised institution, the Bank may impose such restriction as appears to it desirable.

(4) Subsection (4) of section 12 of the Banking Act (examples of conditions that may be imposed) applies for the purposes of this regulation as it applies for the purposes of that section.

(5) Any restriction imposed under this regulation—

- (a) may be withdrawn; or
- (b) may be varied with the agreement of the institution concerned,

by written notice served by the Bank on the institution; and any such notice shall take effect on such date as is specified in the notice.

(6) An institution which fails to comply with a restriction 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 restriction has not been complied with (whether or not constituting an offence under paragraph (6) above) shall not invalidate any transaction but, in the case of a European institution, shall be a ground for the imposition of a prohibition under regulation 9 above.

(8) In this regulation “former European authorised institution” means an institution which was formerly a European authorised institution and continues to have a liability in respect of any deposit for which it had a liability when it was a European authorised institution.

Limitations on Bank’s powers

11.—(1) This regulation applies where it appears to the Bank that the situation as respects a European institution is such that the Bank’s power—

- (a) to impose a prohibition or restriction on the institution; or
- (b) to vary otherwise than with the agreement of the institution any restriction imposed on the institution,

is exercisable by virtue of regulation 9(2)(a) above, or by virtue of any failure to comply with a requirement imposed under section 39 of the Banking Act (information and production of documents) for statistical purposes.

(2) The Bank shall require the institution in writing to remedy the situation.

(3) If the institution fails to comply with the requirement under paragraph (2) above within a reasonable time, the Bank shall give a notice to that effect to the relevant supervisory authority in the institution’s home State requesting that authority—

- (a) to take all appropriate measures for the purpose of ensuring that the institution remedies the situation; and
- (b) to inform the Bank of the measures it proposes to take or has taken or the reasons for not taking any such measures.

(4) Subject to paragraph (5) below, the Bank shall not take any steps to impose a prohibition or restriction on a European institution, or to vary otherwise than with the agreement of a European institution any restriction imposed on the institution, unless it is satisfied—

- (a) that the relevant supervisory authority has failed or refused to take measures for the purpose mentioned in sub-paragraph (a) of paragraph (3) above; or
- (b) that the measures taken by that authority have proved inadequate for that purpose.

(5) Where the Bank considers that the prohibition, restriction or variation should be imposed as a matter of urgency, it may take steps to impose the prohibition, restriction or variation—

- (a) before complying with paragraphs (2) and (3) above; or
- (b) where it has complied with those paragraphs, without being satisfied as mentioned in paragraph (4) above;

but in such a case the Bank shall, at the earliest opportunity, inform the relevant supervisory authority in the institution's home State and the European Commission of the steps taken.

(6) In any case where—

- (a) by virtue of paragraph (5) above, the Bank has imposed a prohibition or restriction on a European institution, or varied a restriction imposed on such an institution, before complying with paragraphs (2) and (3) above or, as the case may be, before it is satisfied as mentioned in paragraph (4) above; and
- (b) the European Commission decides under the Second Council Directive that the Bank must withdraw or vary the prohibition, restriction or variation,

the Bank shall in accordance with the decision withdraw or vary the prohibition, restriction or variation.

(7) In any case where—

- (a) the Bank has given notice to a European institution under paragraph 2 of Schedule 3 to these Regulations of a proposal to impose a prohibition or restriction or vary a restriction;
- (b) the prohibition, restriction or variation has not taken effect; and
- (c) the European Commission decides under the Second Council Directive that the Bank must withdraw or vary the notice,

the Bank shall in accordance with the decision withdraw or vary the notice.

(8) This regulation shall not apply—

- (a) as respects the imposition of a restriction in pursuance of regulation 8(2) above; or
- (b) in any case where regulation 12 below applies.

Prohibition or restriction on information from supervisory authority

12.—(1) This regulation applies where in the case of a European institution—

- (a) the Bank is informed by the relevant supervisory authority in the institution's home State that it has failed to take any or sufficient steps to cover risks arising from its open positions on financial markets in the United Kingdom; or
- (b) the Bank is informed by a supervisory authority in that 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 regulation 9 or 10 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.

Obligation of Bank where institution ceases to be a European institution etc.

13. Where the Bank is informed that—

- (a) an institution has ceased to be a European institution; or
- (b) a European institution has ceased to carry on any particular home-regulated activity in the United Kingdom,

the Bank shall inform every other authority which it knows is a connected UK authority of that fact.

Functions of Board

Duty to prepare for supervision

14.—(1) In any case where—

- (a) the Board receives from the Bank under paragraph 3 of Schedule 2 to these Regulations a copy of a notice given in accordance with that paragraph; and
- (b) the notice states that the institution concerned intends to establish a branch in the United Kingdom for the purpose of carrying on a home-regulated activity appearing to the Board to constitute investment business,

the Board shall, before the expiry of the period of two months beginning with the day on which the Bank received the notice, draw to the attention of the institution such provisions of these Regulations, the Financial Services Act or rules or regulations made under that Act as, having regard to the activities mentioned in the notice, it considers appropriate.

(2) In any case where—

- (a) the Board receives from the Bank under paragraph 4 of Schedule 2 to these Regulations a copy of a notice given in accordance with that paragraph; and
- (b) the institution concerned is, or as a result of the proposed change mentioned in the notice will be, carrying on in the United Kingdom a home-regulated activity appearing to the Board to constitute investment business,

the Board shall, before the expiry of the period of one month beginning with the day on which the Bank received the notice, draw to the attention of the institution such provisions of these Regulations, the Financial Services Act or rules or regulations made under that Act as, having regard to the proposed change mentioned in the notice, it considers appropriate.

Power to prohibit the carrying on of investment business

15.—(1) If it appears to the Board that a European institution—

- (a) has contravened or is likely to contravene any provision of the Financial Services Act(23) or any rules or regulations made under it;
- (b) in purported compliance with any such provision, has furnished it with false, inaccurate or misleading information;

- (c) has contravened or is likely to contravene any prohibition or requirement imposed under that Act; or
- (d) has failed to comply with any statement of principle issued under that Act,

it may impose on the institution a prohibition under this regulation, that is to say, a prohibition on carrying on, or purporting to carry on, home-regulated investment business in the United Kingdom.

- (2) Where the institution is a member of a recognised self-regulating organisation—
 - (a) the reference in paragraph (1) above to rules made under the Financial Services Act shall be taken to include a reference to the rules of that organisation; and
 - (b) the reference in that paragraph to any prohibition or requirement imposed under that Act shall be taken to include a reference to any prohibition or requirement imposed by virtue of the rules of that organisation.
- (3) A prohibition under this regulation—
 - (a) may be absolute; or
 - (b) may be limited, that is to say, imposed for a specified period or until the occurrence of a specified event or until specified conditions are complied with;

and any period, event or conditions specified in the case of a limited prohibition may be varied by the Board on the application of the institution concerned.

(4) Any prohibition imposed under this regulation may be withdrawn by written notice served by the Board on the institution concerned; and any such notice shall take effect on such date as is specified in the notice.

(5) Schedule 4 to these Regulations (which makes supplemental provision with respect to prohibitions imposed under this regulation) shall have effect.

Power to restrict the carrying on of investment business

16.—(1) Where it appears to the Board that the situation as respects a European institution carrying on home-regulated investment business in the United Kingdom is such that the power conferred by regulation 15(1) above is exercisable, the Board may, instead of or as well as imposing a prohibition, exercise—

- (a) in relation to the institution; or
- (b) except in the case of the power conferred by section 65 of that Act, in relation to any appointed representative of the institution,

the powers conferred on the Board by Chapter VI of Part I of the Financial Services Act.

(2) Except where they are required to be exercised by virtue of section 128C of that Act⁽²⁴⁾ (enforcement in support of overseas regulatory authority), the powers conferred by that Chapter shall not, subject to paragraph (3) below, be exercisable in relation to—

- (a) a European institution carrying on home-regulated investment business in the United Kingdom which is a member of a recognised self-regulating organisation and is subject to the rules of such an organisation in carrying on all the homeregulated investment business carried on by it; or
- (b) an appointed representative whose principal or, in the case of such a representative with more than one principal, each of whose principals is—
 - (i) a member of a recognised self-regulating organisation; and

⁽²⁴⁾ Section 128C is amended by paragraph 36 of Schedule 9 to these Regulations.

(ii) subject to the rules of such an organisation in carrying on the home-regulated investment business in respect of which it has accepted responsibility for the appointed representative's activities.

(3) The powers conferred by section 67(1)(b) of the Financial Services Act may on any of the grounds specified in regulation 15(1) above be exercised in relation to a person mentioned in paragraph (2) above at the request of any recognised self-regulating organisation of which he or, in the case of an appointed representative, any of his principals is a member.

Limitations on Board's powers

17.—(1) This regulation applies where it appears to the Board that the situation is such that its power—

- (a) to impose a prohibition under regulation 15 above;
- (b) to publish a statement with respect to a European institution under section 60 of the Financial Services Act;
- (c) to make an application with respect to such an institution under section 61(1) of that Act;
- (d) to impose a prohibition or requirement on such an institution under Chapter VI of Part I of that Act;
- (e) to vary a prohibition or requirement imposed on such an institution under that Chapter; or
- (f) to refuse an application for the variation or rescission of such a prohibition or requirement,

is exercisable by virtue of any contravention of a requirement to furnish information for statistical purposes imposed under that Act.

(2) The Board shall require the institution in writing to remedy the situation.

(3) If the institution fails to comply with the requirement under paragraph (2) above within a reasonable time, the Board shall give a notice to that effect to the relevant supervisory authority in the institution's home State requesting that authority—

- (a) to take all appropriate measures for the purpose of ensuring that the institution concerned remedies the situation which has given rise to the issue of the notice; and
- (b) to inform the Board of the measures it proposes to take or has taken or the reasons for not taking such measures.

(4) Subject to paragraph (5) below, the Board shall not take any such action as is mentioned in sub-paragraphs (a) to (f) of paragraph (1) above with respect to a European institution unless it is satisfied—

- (a) that the relevant supervisory authority has failed or refused to take measures for the purpose mentioned in sub-paragraph (a) of paragraph (3) above; or
- (b) that the measures taken by that authority have proved inadequate for that purpose.

(5) Where the Board decides that it should take action as mentioned in any of subparagraphs (a) to (e) of paragraph (1) above with respect to a European institution as a matter of urgency in order to protect the interests of investors, it may take that action—

- (a) before complying with paragraphs (2) and (3) above; or
- (b) where it has complied with those requirements, before it is satisfied as mentioned in paragraph (4) above;

but in such a case it shall, at the earliest opportunity, inform the relevant supervisory authority in the institution's home State and the European Commission of the action taken.

(6) In any case where—

- (a) by virtue of paragraph (5) above, the Board has—

- (i) imposed a prohibition under regulation 15 above;
- (ii) published a statement with respect to a European institution under section 60 of the Financial Services Act;
- (iii) made an application under section 61(1) of that Act with respect to such an institution;
- (iv) imposed on such an institution a prohibition or requirement under Chapter VI of Part I of that Act; or
- (v) varied a prohibition or requirement imposed on such an institution under that Chapter,

before complying with paragraphs (2) and (3) above or, as the case may be, before it is satisfied as mentioned in paragraph (4) above; and

- (b) the European Commission decides under the Second Council Directive that the Board must withdraw or amend the statement, withdraw the application, or rescind or vary the prohibition or requirement,

the Board shall in accordance with the decision withdraw or amend the statement, withdraw the application, or rescind or vary the prohibition or requirement.

(7) For the purposes of paragraph (6)(b) above the Board shall be taken to withdraw or amend a statement if it publishes a further statement retracting or, as the case may be, correcting it; and the Board shall after publication of the further statement send a copy of it to any person to whom a copy of the previous statement was sent under section 60(5) of the Financial Services Act.

(8) In any case where—

- (a) the Board has, by virtue of sub-paragraph (5) above, given notice to a European institution under subsection (2) of section 60 of the Financial Services Act before complying with paragraphs (2) and (3) above or, as the case may be, before it is satisfied as mentioned in paragraph (4) above;
- (b) the statement to which the notice relates has not been published; and
- (c) the European Commission decides under the Second Council Directive that the Board must not publish the statement, or must publish a different statement under that section,

the Board shall in accordance with the decision withdraw the notice or give a different notice in substitution.

Functions of Director

Power to prohibit the carrying on of Consumer Credit Act business

18.—(1) If it appears to the Director that paragraph (2) below has been or is likely to be contravened as respects a European institution, he may impose on the institution a prohibition under this regulation, that is to say, a prohibition on carrying on, or purporting to carry on, in the United Kingdom any Consumer Credit Act business which consists of or includes carrying on one or more home-regulated activities.

(2) This paragraph is contravened as respects a European institution if—

- (a) the institution or any of the institution's employees, agents or associates (whether past or present); or
- (b) where the institution is a body corporate, any controller of the institution or an associate of any such controller,

does any of the things specified in paragraphs (a) to (d) of section 25(2) of the Consumer Credit Act(25).

(3) A prohibition under this regulation may be absolute or may be imposed for a specified period or until the occurrence of a specified event or until specified conditions are complied with; and any period, event or conditions specified in the case of a prohibition may be varied by the Director on the application of the institution concerned.

(4) Any prohibition imposed under this regulation may be withdrawn by written notice served by the Director on the institution concerned; and any such notice shall take effect on such date as is specified in the notice.

(5) In this regulation “associate” has the same meaning as in section 25(2) of the Consumer Credit Act and “controller” has the meaning given by section 189(1) of that Act.

(6) Schedule 5 to these Regulations (which makes supplemental provision with respect to prohibitions imposed under this regulation and restrictions imposed under regulation 19 below) shall have effect.

Power to restrict the carrying on of Consumer Credit Act business

19.—(1) In this regulation “restriction” means a direction that a European institution may not carry on in the United Kingdom, otherwise than in accordance with such condition or conditions as may be specified in the direction, any Consumer Credit Act business which—

- (a) consists of or includes carrying on one or more home-regulated activities; and
- (b) is specified in the direction.

(2) Where it appears to the Director that the situation as respects a European institution is such that the powers conferred by paragraph (1) of regulation 18 above are exercisable, the Director may, instead of imposing a prohibition, impose such restriction as appears to him desirable.

(3) Any restriction imposed under this regulation—

- (a) may be withdrawn; or
- (b) may be varied with the agreement of the institution concerned,

by written notice served by the Director on the institution; and any such notice shall take effect on such date as is specified in the notice.

(4) An institution which contravenes or fails to comply with a restriction 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.

(5) The fact that a restriction has not been complied with (whether or not constituting an offence under paragraph (4) above) shall be a ground for the imposition of a prohibition under regulation 18 above.

PART III

RECOGNITION IN OTHER MEMBER STATES OF UK INSTITUTIONS

Preliminary

UK institutions etc.

20.—(1) In these Regulations “UK institution” means a UK authorised institution or a UK subsidiary.

- (2) A credit institution is a UK authorised institution for the purposes of these Regulations if—
- (a) it is incorporated in or formed under the law of any part of the United Kingdom;
 - (b) its principal place of business is in the United Kingdom; and
 - (c) it is for the time being authorised by the Bank under the Banking Act(26) or by the Commission under the Building Societies Act(27).
- (3) A financial institution is a UK subsidiary for the purposes of these Regulations if—
- (a) it is incorporated in or formed under the law of any part of the United Kingdom;
 - (b) it is a 90 per cent. subsidiary undertaking of a UK authorised institution; and
 - (c) the conditions mentioned in paragraph (5) below are fulfilled in relation to it.

(4) For the purposes of paragraph (3)(b) above, any two or more UK authorised institutions which hold voting rights in the same undertaking shall be regarded as a single institution; and in these Regulations “parent undertaking”, in relation to an institution which is a UK subsidiary by virtue of this paragraph, shall be construed accordingly.

- (5) The conditions referred to in paragraph (3)(c) above are—
- (a) that each listed activity stated in the institution’s recognition notice is carried on by it in the United Kingdom;
 - (b) that the constituent instrument of the institution permits it to carry on each such activity;
 - (c) that the consolidated supervision of the institution’s parent undertaking or, if more than one, any of them effectively includes supervision of the institution; and
 - (d) that the institution’s parent undertaking has guaranteed or, if more than one, they have each jointly and severally guaranteed, with the consent of the UK authority, the institution’s obligations;

and in this paragraph and regulation 23(1) below “recognition notice”, in relation to an institution, means a notice given by it in accordance with paragraph 2 of Schedule 6 to these Regulations.

- (6) In these Regulations “home-regulated activity”—
- (a) in relation to a UK authorised institution, means any listed activity;
 - (b) in relation to a UK subsidiary, means any listed activity which it is carrying on in the United Kingdom.
- (7) In these Regulations “the UK authority”—
- (a) in relation to a UK authorised institution which is authorised by the Bank under the Banking Act or a UK subsidiary whose parent undertaking (or each of whose parent undertakings) is so authorised, means the Bank;

(26) 1987 c. 22.

(27) 1986 c. 53.

- (b) in relation to a UK authorised institution which is authorised by the Commission under the Building Societies Act or a UK subsidiary whose parent undertaking (or each of whose parent undertakings) is so authorised, means the Commission;
 - (c) in relation to a UK subsidiary of whose parent undertakings one is authorised by the Bank under the Banking Act and another is authorised by the Commission under the Building Societies Act, means such one of the Bank and the Commission as may be agreed between them.
- (8) An agreement made for the purposes of sub-paragraph (c) of paragraph (7) above—
- (a) may relate to particular UK subsidiaries or to UK subsidiaries of particular descriptions; and
 - (b) shall provide that the UK authority in relation to any UK subsidiary falling within that sub-paragraph shall keep the other party informed of anything done by it in relation to that subsidiary.
- (9) In the case of a UK authorised institution which is authorised by the Commission under the Building Societies Act, the power conferred by section 18(1)(b) of that Act to guarantee the discharge of the liabilities of the bodies corporate there mentioned includes power, with the consent of the Commission, to guarantee their obligations for the purposes of this regulation.

Authorised and permitted activities

21.—(1) For the purposes of these Regulations a UK authorised institution is authorised to carry on in the United Kingdom any listed activity which it is lawful for it to carry on in the United Kingdom.

(2) For the purposes of these Regulations a UK subsidiary is permitted to carry on in the United Kingdom any listed activity which it is lawful for it to carry on, and it is carrying on, in the United Kingdom.

Procedural requirements

Procedural requirements for carrying on certain listed activities

- 22.**—(1) Subject to paragraph (2) below, a UK institution shall not—
- (a) carry on in another member State by the provision of services any listed activity which it is authorised or permitted to carry on in the United Kingdom; or
 - (b) establish a branch in another member State for the purpose of carrying on such an activity, unless the requirements of paragraph 1 of Schedule 6 to these Regulations have been (and, in the case of a UK subsidiary, continue to be) complied with in relation to its carrying on of the activity or, as the case may be, its establishment of the branch.
- (2) Paragraph (1) above shall not apply in relation to a UK subsidiary if—
- (a) there has been no compliance with the requirements of paragraph 1 of Schedule 6 to these Regulations in relation to its carrying on of an activity or its establishment of a branch; or
 - (b) each such compliance has ceased to have effect.
- (3) A UK institution shall not change the requisite details of a branch established by it in another member State unless the requirements of paragraph 5 of Schedule 6 to these Regulations have been complied with in relation to its making of the change.
- (4) An institution which contravenes paragraph (1) or (3) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) In proceedings brought against an institution for an offence under paragraph (4) above it shall be a defence for the institution to show that it took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(6) Schedule 6 to these Regulations (which contains requirements to be complied with by or in relation to UK institutions) shall have effect.

Regulation of UK subsidiaries for recognition purposes

Restriction on activities of UK subsidiaries

23.—(1) In this regulation “restriction” means a direction that a UK subsidiary to which section 22(1) above applies—

- (a) may not carry on in the United Kingdom any listed activity stated in its recognition notice which is specified in the direction; or
- (b) may not carry on in the United Kingdom, otherwise than in accordance with such condition or conditions as may be specified in the direction, any such activity which is so specified.

(2) Where it appears to the UK authority that the situation as respects a UK subsidiary is such that, if it were authorised by the Bank under the Banking Act, the Bank could revoke its authorisation on the ground specified in section 11(1)(a) of that Act, the UK authority may impose on the institution such restriction as appears to it desirable.

(3) Subsection (4) of section 12 of the Banking Act (examples of conditions that may be imposed) applies for the purposes of this regulation as it applies for the purposes of that section; and Schedule 3 to that Act (minimum criteria for authorisation) as applied by this regulation shall have effect as if—

- (a) paragraph 6 (minimum initial capital) were omitted; and
- (b) where the Commission is the UK authority, the reference to that Act in paragraph 4(8) were a reference to the Building Societies Act.

(4) Any restriction imposed under this regulation—

- (a) may be withdrawn; or
- (b) may be varied with the agreement of the institution concerned,

by written notice served by the UK authority on the institution; and any such notice shall take effect on such date as is specified in the notice.

(5) An institution which contravenes or fails to comply with a restriction 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.

(6) The fact that a restriction has not been complied with (whether or not constituting an offence under paragraph (5) above) shall not invalidate any transaction.

(7) Schedule 7 to these Regulations (which makes supplemental provision with respect to restrictions imposed under this regulation) shall have effect.

Restriction on information from supervisory authority

24.—(1) This regulation applies where in the case of a UK subsidiary the UK authority 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 UK authority 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 UK authority shall also—

- (a) consider whether to exercise its powers under regulation 23 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.

PART IV

AMENDMENTS OF BANKING ACT

Authorisations

Applications for authorisation

25. At the end of section 8(1) of the Banking Act(28) (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(29) (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

(29) 1987 c. 22.

- (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(30) 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(31) or Part VIII of the Companies (Northern Ireland) Order 1986(32).

(30) 1987 c. 22.

(31) 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.

(32) 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) 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.

(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(33) (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(34).

(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—

- (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.”

(33) 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).

(34) Council Directive 77/780/EEC (OJ No. 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).

Other permitted disclosures

40.—(1) In subsection (1) of section 85 of the Banking Act(35) (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(36) (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;

listed activity;

parent undertaking;

recognised self-regulating organisation;

relevant supervisory authority;

the Second Council Directive;

subsidiary undertaking;

(36) 1987 c. 22; section 105A was inserted by the Companies Act 1989 (c. 40), section 23, Schedule 10, Part II, paragraph 37(3).

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⁽³⁷⁾ 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.

PART V

AMENDMENTS OF FINANCIAL SERVICES ACT

Authorisation by membership of recognised self-regulating organisations

48.—(1) Section 7 of the Financial Services Act (authorisation by membership of recognised self-regulating organisation) shall have effect as if it included provision that an institution which—

- (a) is a European institution or quasi-European authorised institution; and
- (b) is a member of a recognised self-regulating organisation,

is not, by virtue of its membership of that organisation, an authorised person as respects any home-regulated investment business.

(2) Paragraph 2 of Schedule 2 to that Act⁽³⁸⁾ (requirements for recognition of self-regulating organisations) shall have effect as if it included provision that the rules and practices of the organisation must be such as to secure that where—

- (a) a UK authorised institution applies for admission as a member of the organisation; and
- (b) the institution states in its application that it proposes to carry on investment business which consists of or includes a listed activity,

the institution shall not be admitted as a member unless the UK authority has notified the organisation that, were the institution so admitted, the UK authority would not by reason of that proposal exercise any of its relevant powers.

- (3) In this regulation “relevant powers” means—

⁽³⁷⁾ 1987 c. 22.

⁽³⁸⁾ 1986 c. 60; Schedule 2 has been amended by sections 203, 204 and 206 of, and Schedule 23 to, the Companies Act 1989 (c. 40).

- (a) in relation to the Bank, the powers conferred on it by section 11 or 12 of the Banking Act (power to revoke or restrict authorisations);
- (b) in relation to the Commission, the powers conferred on it by section 42 or 43 of the Building Societies Act (power to impose conditions on or revoke authorisations).

Applications for authorisation

49. Section 26 of the Financial Services Act (applications for authorisation) shall have effect as if it included provision that an application for authorisation in respect of any home-regulated investment business may not be made by—

- (a) a European authorised institution or quasi-European authorised institution; or
- (b) a European subsidiary which has not applied for a direction under paragraph 5 of Schedule 2 to these Regulations.

Grant and refusal of authorisation

50.—(1) Section 27 of the Financial Services Act (grant and refusal of authorisation) shall have effect as if it included provision that—

- (a) where a European institution or quasi-European authorised institution holds an authorisation granted under that section, the institution is not by virtue of that authorisation an authorised person as respects any home-regulated investment business;
- (b) where an application for authorisation in respect of any home-regulated investment business is made by a European subsidiary which has applied for a direction under paragraph 5 of Schedule 2 of these Regulations, the Secretary of State shall not grant the application unless he is satisfied that the institution will cease to be a European subsidiary on or before the date when the authorisation takes effect; and
- (c) for the purposes of determining whether to grant or refuse an application in respect of any other investment business made by a European subsidiary, the fact that the subsidiary is subject to supervision pursuant to article 18(2) of the Second Council Directive shall be taken into account.

(2) That section shall also have effect as if it included provision that where—

- (a) a UK authorised institution applies for authorisation; and
- (b) the institution states in its application that it proposes to carry on investment business which consists of or includes a listed activity,

the Board shall not grant the authorisation unless the UK authority has notified the Board that, were the authorisation granted, the UK authority would not by reason of that proposal exercise any of its relevant powers.

(3) In this regulation “relevant powers” has the same meaning as in regulation 48 above.

Authorisation in other member State

51. Section 31 of the Financial Services Act (authorisation in other member State) shall have effect as if it included provision that an institution to which that section applies and which is a European institution or quasi-European authorised institution is not, by virtue of that section, an authorised person as respects any home-regulated investment business.

Exempted persons

52.—(1) Section 43 of the Financial Services Act (listed money market institutions) shall have effect as if it included provision that an institution which—

(a) is a European institution or quasi-European authorised institution; and
 (b) is for the time being included in a list maintained for the purposes of that section,
 is not, by virtue of its inclusion in that list, an exempted person as respects any homeregulated investment business.

(2) That section shall also have effect as if it included provision that the conditions and arrangements referred to in subsection (2) must be such as to secure that no European institution, other than one on which an absolute prohibition has been imposed under regulation 15 of these Regulations, is refused admission to the list, or removed from it, for reasons relating to—

- (a) the fitness of the institution to be included in the list;
- (b) the financial standing of the institution; or
- (c) any other matter for which, under the Second Council Directive, responsibility is reserved to a supervisory authority in the institution's home State.

Reciprocal facilities for banking business

53.—(1) No notice shall be served under section 183 of the Financial Services Act (reciprocal facilities for financial business) on a credit institution incorporated in or formed under the law of any part of the United Kingdom which—

- (a) appears to the Secretary of State or the Treasury to be a subsidiary undertaking of a person connected with a country outside the United Kingdom; and
- (b) is carrying on, or appears to the Secretary of State or the Treasury to intend to carry on, any investment, insurance or banking business in, or in relation to, the United Kingdom,

if the sole ground for giving that notice is the ground specified in paragraph (2) below.

(2) The ground referred to in paragraph (1) above is that it appears to the Secretary of State or the Treasury that by reason of—

- (a) the law of the country concerned; or
- (b) any action taken by, or the practices of, the government or any other authority or body in that country,

credit institutions connected with the United Kingdom are unable to carry on banking business in, or in relation to, that country on terms as favourable as those on which credit institutions connected with that country are able to carry on such business in, or in relation to, the United Kingdom.

The Board's functions under the Regulations

54. The functions of the Board under these Regulations shall be treated for the purposes of the Financial Services Act and the Transfer of Functions (Financial Services) Order 1992⁽³⁹⁾ as if they were functions under Chapter VI of Part I of that Act which—

- (a) had been functions of the Secretary of State; and
- (b) had been transferred to the Board by the Financial Services Act 1986 (Delegation) Order 1987⁽⁴⁰⁾.

Other amendments of Financial Services Act

55. The provisions of the Financial Services Act which are mentioned in Schedule 9 to these Regulations shall have effect subject to the amendments there specified.

⁽³⁹⁾ S.I. 1992/1315.

⁽⁴⁰⁾ S.I. 1987/942.

Construction of Part V

56.—(1) In this Part of these Regulations “authorised person” has the same meaning as in the Financial Services Act.

(2) If and to the extent that a European institution is an authorised person, nothing in this Part of these Regulations, except regulations 48(1), 50(1) and 51 and paragraphs 5, 6, 11(2), 20 and 30 of Schedule 9, shall affect the operation of the Financial Services Act in relation to it.

PART VI

AMENDMENTS OF CONSUMER CREDIT ACT

Effect of standard licence

57.—(1) Section 22 of the Consumer Credit Act⁽⁴¹⁾ (standard and group licences) shall have effect as if it included provision that a standard licence held by a European institution or quasi-European authorised institution does not cover the carrying on by that institution of any home-regulated activities.

(2) In this regulation and regulation 58 below “standard licence” has the meaning given by section 22(1)(a) of the Consumer Credit Act.

Grant of standard licence

58.—(1) Section 25 of the Consumer Credit Act (licensee to be a fit person) shall have effect as if—

- (a) it included provision that a standard licence shall not be issued to a European institution or quasi-European authorised institution in respect of any homeregulated activities; and
- (b) the reference in subsection (2)(b) to any provision made by or under that Act, or by or under any enactment regulating the provision of credit to individuals or other transactions with individuals, included a reference to any corresponding provision in force in another member State.

(2) That section shall also have effect as if it included provision that where—

- (a) a UK authorised institution applies for a standard licence; and
- (b) the institution states in its application that it proposes to carry on a Consumer Credit Act business which consists of or includes one or more listed activities, the Director shall not grant the licence unless the UK authority has notified the Director that, were the licence granted, the UK authority would not by reason of that proposal exercise any of its relevant powers.

(3) In paragraph (2) above “relevant powers” means—

- (a) in relation to the Bank, the powers conferred on it by section 11 or 12 of the Banking Act (power to revoke or restrict authorisations);
- (b) in relation to the Commission, the powers conferred on it by section 42 or 43 of the Building Societies Act (power to impose conditions on or revoke authorisations).

(41) 1974 c. 39.

Conduct of business

59.—(1) Section 26 of the Consumer Credit Act (conduct of business), and any existing regulations made otherwise than by virtue of section 54 of that Act, shall have effect as if any reference to a licensee included a reference to a European institution carrying on a Consumer Credit Act business.

(2) Section 54 of that Act (conduct of business regulations), and any existing regulations made by virtue of that section, shall have effect as if any reference to a licensee who carries on a consumer credit business, a consumer hire business or a business of credit brokerage, debt-adjusting or debt-counselling included a reference to a European institution who carries on such a business.

(3) In this regulation “existing regulations” means regulations made under section 26 of that Act before the commencement date.

The register

60. Section 35 of the Consumer Credit Act (the register) shall have effect as if the particulars to be included in the register included—

- (a) particulars of information received by the Director under regulation 13 above;
- (b) particulars of prohibitions and restrictions imposed by him under regulation 18 or 19 above;
- (c) such particulars of documents received by him under paragraph 3(3), 4(3) or 5(4) of Schedule 2 to these Regulations as he thinks fit; and
- (d) particulars of such other matters (if any) arising under these Regulations as he thinks fit.

Enforcement of agreements

61.—(1) Section 40 of the Consumer Credit Act (enforcement of agreements by unlicensed trader) shall have effect as if the reference in subsection (1) to a regulated agreement, other than a non-commercial agreement, made when the creditor or owner was unlicensed did not include a reference to such an agreement made when the creditor or owner was a relevant institution.

(2) Section 148 of that Act (enforcement of agreement for services of unlicensed trader) shall have effect as if the reference in subsection (1) to an agreement for the services of a person carrying on an ancillary credit business made when that person was unlicensed did not include a reference to such an agreement made when that person was a relevant institution.

(3) Section 149 of that Act (enforcement of regulated agreements made on the introduction of an unlicensed credit-broker) shall have effect as if references in subsections (1) and (2) to introductions by an unlicensed credit-broker did not include references to introductions by a credit-broker who was a relevant institution.

(4) In this regulation “relevant institution” means a European institution—

- (a) to which regulation 5(1)(c) above applies; and
- (b) which is not precluded from making the agreement or introductions in question by a restriction imposed under regulation 19 above.

Restrictions on disclosure of information

62. Section 174 of the Consumer Credit Act(42) (restrictions on disclosure of information) shall have effect as if in subsection (3A)—

(42) Section 174(3A) was inserted by section 87(1) of the Banking Act 1987 (c. 22).

- (a) the reference to the Bank’s functions under the Banking Act included a reference to its functions under these Regulations; and
- (b) the reference to the Director’s functions under the Consumer Credit Act included a reference to his functions under these Regulations.

Power to modify subordinate legislation in relation to European institutions

63.—(1) If the Secretary of State is satisfied that it is necessary to do so for the purpose of implementing the Second Council Directive so far as relating to any particular European institution, he may, on the application or with the consent of the institution, by order direct that all or any of the provisions of—

- (a) any regulations made under section 26 of the Consumer Credit Act(43); or
- (b) any regulations or orders made under Parts IV to VIII of that Act(44),

shall not apply to the institution or shall apply to it with such modifications as may be specified in the order.

(2) An order under this regulation may be subject to conditions.

(3) An order under this regulation may be revoked at any time by the Secretary of State; and the Secretary of State may at any time vary any such order on the application or with the consent of the European institution to which it applies.

PART VII

AMENDMENTS OF INSURANCE COMPANIES ACT

Withdrawal of authorisation

64. Section 13 of the Insurance Companies Act(45) (final withdrawal of authorisation) shall have effect as if it included provision that, where a European subsidiary is authorised under section 3 of that Act to carry on insurance business of any class, the Secretary of State may, on the application of that institution, direct that it shall cease to be authorised to carry on business of that class.

Application of Part II of Act

65. Part II of the Insurance Companies Act (regulation of insurance companies) shall not apply to a European institution by reason only that it carries on in the United Kingdom a listed activity which it is authorised or permitted to carry on in its home State.

Meaning of “insurance business”

66. For the purposes of section 95 of the Insurance Companies Act (insurance business), a European institution carrying on a listed activity which it is authorised or permitted to carry on in its home State shall be treated as if it were carrying on a banking business.

(43) 1974 c. 39; regulations made to date are the Consumer Credit (Conduct of Business) (Credit References) Regulations 1977 (S.I. 1977/330) and the Consumer Credit (Conduct of Business) (Pawn Records) Regulations 1983 (S.I. 1983/1565).

(44) The principal regulations and orders (some of which have been amended) are: the Consumer Credit (Total Charge for Credit) Regulations 1980 (S.I. 1980/51); the Consumer Credit (Agreements) Regulations 1983 (S.I. 1983/1553); the Consumer Credit (Prescribed Periods for Giving Information) Regulations 1983 (S.I. 1983/1569); the Consumer Credit (Increase of Monetary Limits) Order 1983 (S.I. 1983/1878); the Consumer Credit (Advertisements) Regulations 1989 (S.I. 1989/1125); and the Consumer Credit (Quotations) Regulations 1989 (S.I. 1989/1126). A complete and up to date list of relevant regulations and orders can be obtained from the Department of Trade and Industry or the Director General of Fair Trading.

(45) 1982 c. 50; sections 13(2A) and 13(2B) were inserted by section 129 of, and paragraph 7(2) of Schedule 10 to, the Financial Services Act 1986 (c. 60).

PART VIII

AMENDMENTS OF BUILDING SOCIETIES ACT

Constitution

Establishment of building societies

67. At the end of subsection (1) of section 5 of the Building Societies Act⁽⁴⁶⁾ (establishment, constitution and powers) there shall be inserted the words “and its principal office is in the United Kingdom”.

Initial authorisation to raise funds and borrow money

68.—(1) In subsection (4) of section 9 of the Building Societies Act (initial authorisation to raise funds and borrow money), the word “and” immediately following paragraph (c) shall be omitted and after that paragraph there shall be inserted the following paragraph—

“(cc) each of the persons who, either alone or with any associate or associates, has a qualifying holding in the society is a fit and proper person to have such a holding; and”.

(2) In subsection (13) of that section—

- (a) in the definition of “the prescribed minimum”, for the words “£100,000” there shall be substituted the words “ecu 1 million (or an amount of equal value denominated wholly or partly in another unit of account)”; and
- (b) the word “and” immediately preceding the definition of “qualifying deferred shares” shall be omitted and after that definition there shall be inserted the following definition—

“‘qualifying holding’, in relation to a building society, means a holding of deferred shares in the society which—

- (a) represents 10 per cent. or more of the qualifying deferred shares in the society;
- (b) entitles the holder to exercise or control the exercise of 10 per cent. or more of the voting power at any general meeting of the society; or
- (c) enables the holder to exercise a significant influence over the management of the society.”

Powers of control of Commission

Power to direct application to renew authorisation

69. In subsection (6) of section 41 of the Building Societies Act⁽⁴⁷⁾ (power to direct application to renew authorisation), the word “and” immediately following paragraph (d) shall be omitted and after that paragraph there shall be inserted the following paragraph—

“(dd) each of the persons who, either alone or with any associate or associates, has a qualifying holding in the society is a fit and proper person to have such a holding; and”.

⁽⁴⁶⁾ 1986 c. 53.

⁽⁴⁷⁾ 1986 c. 53; section 41 was continued in force by S.I. 1991/1518.

Imposition of conditions on current authorisation

70. In subsection (5) of section 42 of the Building Societies Act (imposition of conditions on current authorisation), the word “and” immediately before paragraph (c) shall be omitted and after that paragraph there shall be inserted the words “and

- (d) require any person who, either alone or with any associate or associates, has a qualifying holding in the society so to reduce that holding that it ceases to be such a holding.”

Revocation of authorisation

71.—(1) After subsection (1) of section 43 of the Building Societies Act (revocation of authorisation) there shall be inserted the following subsection—

“(1A) The Commission may, subject to subsection (4) below, revoke a building society’s authorisation if—

- (a) it appears to the Commission that the society’s principal place of business is or may be outside the United Kingdom;
- (b) it appears to the Commission that the society has carried on in the United Kingdom or elsewhere a listed activity (other than the acceptance of deposits or other repayable funds from the public) without having given prior notice to the Commission of its intention to do so;
- (c) the Commission 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 society—
 - (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 Commission is informed by the Director General of Fair Trading that the society, or any of the society’s employees, agents or associates (whether past or present), 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 Commission that the society has failed to comply with any obligation imposed on it by the Banking Coordination (Second Council Directive) Regulations 1992; or
- (f) the Commission is informed by a supervisory authority in another member State that the society 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) In subsection (4) of that section, for the words “subsection (1)” there shall be substituted the words “subsection (1) or (1A)”.

(3) In subsection (5) of that section, for the words “subsection (1) or (3)” there shall be substituted the words “subsection (1), (1A) or (3)”.

(4) After subsection (9) of that section there shall be inserted the following subsection—

“(9A) The rules and prohibitions referred to in subsection (1A)(c) above include the rules of any recognised self-regulating organisation of which the society 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.”

Reauthorisation

72.—(1) In subsection (4) of section 44 of the Building Societies Act (reauthorisation), the word “and” immediately following paragraph (d) shall be omitted and after that paragraph there shall be inserted the following paragraph—

“(dd) each of the persons who, either alone or with any associate or associates, has a qualifying holding in the society is a fit and proper person to have such a holding; and”.

(2) After subsection (9) of that section there shall be inserted the following subsection—

“(9A) Any expression used in this section to which a meaning is given by section 9(13) has that meaning in this section.”

Criteria for prudent management

73. In subsection (3) of section 45 of the Building Societies Act (criteria for prudent management), for the first criterion there shall be substituted the following criterion—

“1. Maintenance of—

- (a) adequate reserves and other designated capital resources; and
- (b) own funds which amount to not less than the sum which, for the purposes of section 9, is the prescribed minimum in relation to qualifying capital.”

Exercise of powers on information from supervisory authority

74. After section 45 of the Building Societies Act there shall be inserted the following section—

“**Exercise of powers on information from supervisory authority.**

45A.—(1) This section applies where, in the case of a building society for which an authorisation is in force, the Commission is informed by a supervisory authority in another member State that the society 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 Commission 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 Commission shall also—

- (a) consider whether to exercise its powers—
 - (i) under section 42, to impose conditions on the society’s authorisation, or
 - (ii) under section 43, to revoke the society’s authorisation; 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.”

Information

Power of Commission to obtain information and documents etc.

75. In subsection (1) of section 52 of the Building Societies Act (powers to obtain information and documents etc.), for the words from “any of its functions” to the end there shall be substituted the following paragraphs—

- “(a) any of its functions under Part I, section 9, the foregoing sections of this Part, Part X and sections 107 and 108; and
- (b) any of its functions under the Banking Coordination (Second Council Directive) Regulations 1992.”

Confidentiality of certain information obtained by Commission

76.—(1) In subsection (2) of section 53 of the Building Societies Act (confidentiality of certain information obtained by Commission), paragraph (g) shall be omitted.

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

“(2A) As regards the disclosure of information with a view to the institution of, or otherwise for the purposes of, any proceedings in respect of the society under the Bankruptcy (Scotland) Act 1985⁽⁴⁸⁾ or the Insolvency Act 1986⁽⁴⁹⁾, the disclosures permitted by subsection (2)(b) above do not include the disclosure of information relating to a person who (not being a director or other officer of the society) is or has been, to the knowledge of the Commission, involved in an attempt to secure the survival of the society as a going concern.”

(3) In subsection (4)(a) of that section, after sub-paragraph (ii) there shall be inserted the words “and (in either case) the disclosure would, in its opinion, be in accordance with article 12(7) of the First Council Directive”.

(4) In subsection (5) of that section⁽⁵⁰⁾, for paragraph (b) there shall be substituted the following paragraph—

“(b) by the Bank, of any of its functions under the Banking Act 1987 or as a monetary authority or supervisor of money market and gilt market institutions;”.

(5) In subsection (6) of that section, for the words from “it is desirable” to the end there shall be substituted the following paragraphs—

- “(a) it is desirable or expedient that the information should be disclosed in the interests of shareholders or depositors or, in the case of information for the Secretary of State, in the public interest; and
- (b) disclosure is in accordance with article 12(7) of the First Council Directive.”

(6) At the end of subsection (7) of that section there shall be inserted the words “if the disclosure is made with a view to facilitating the discharge of any of the functions mentioned in paragraph (b) or, as the case may be, paragraph (c) above”.

(7) At the end of subsection (8) of that section there shall be inserted the words “if the disclosure is made with a view to facilitating the discharge of any prescribed functions of the authority”.

(8) In subsection (9)(a) of that section, for the words “the functions” there shall be substituted the words “the supervisory functions”.

(9) After subsection (11) of that section there shall be inserted the following subsection—

⁽⁴⁸⁾ 1985 c. 66.

⁽⁴⁹⁾ 1986 c. 45.

⁽⁵⁰⁾ 1986 c. 53; section 53(5) has been amended by paragraph 26(4) of Schedule 6 to the Banking Act 1987 (c. 22).

“(11A) Subsection (11) above does not apply in relation to disclosures to an overseas regulatory authority which is not a supervisory authority in another member State unless the Commission is satisfied that the authority is subject to restrictions on further disclosures at least equivalent to those imposed by this section and section 54.”

(10) After subsection (13) of that section there shall be inserted the following subsections—

“(13A) Information which is disclosed to a person with a view to facilitating or assisting the discharge of any functions shall not be used otherwise than with a view to facilitating or assisting the discharge of those functions.

(13B) Any person who uses information in contravention of subsection (13A) above shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both.”

(11) After subsection (14) of that section there shall be inserted the following subsections—

“(15) Any reference in this section to facilitating or assisting the discharge of any functions is a reference to facilitating or assisting the discharge of those functions in relation to—

- (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.

(16) Any reference in this section or section 54 to the Commission's functions under this Act includes a reference to its functions under those Regulations.”

Information disclosed to Commission from other sources

77.—(1) After subsection (3) section 54 of the Building Societies Act(51) (information disclosed to Commission from other sources) there shall be inserted the following subsections—

“(3A) If information is disclosed by the Bank of England to the Commission for the purpose of enabling it better to discharge its functions under this Act—

- (a) subsection (1) of section 53 applies to that information as it applies to information obtained or furnished under or for the purposes of this Act; but
- (b) the references in subsections (2) to (11) of that section to the disclosure of information do not extend to the disclosure of that information unless—
 - (i) the Bank of England consents to the disclosure; and
 - (ii) the disclosure is for the purpose of enabling the Commission better to discharge its functions under this Act.

(3B) If information is disclosed to the Commission by the relevant supervisory authority in another member State, or is obtained by the Commission, or by a person acting on its behalf, in another member State—

- (a) subsection (1) of section 53 applies to that information as it applies to information obtained or furnished under or for the purposes of this Act; but
- (b) the references in subsections (2) to (11) of that section to the disclosure of information do not extend to the disclosure of that information unless—

(51) 1986 c. 53; subsections (4) and (5) of section 54 were omitted by paragraph 26(5) of Schedule 6 to the Banking Act 1987 (c. 22).

- (i) in the case of information disclosed to the Commission by the relevant supervisory authority in another member State, that authority consents to its disclosure; or
- (ii) in the case of information obtained by the Commission, or by a person acting on its behalf, in another member State, the relevant supervisory authority in that State consents to its disclosure.”

(2) In subsection (6) of that section, after the words “overseas regulatory authority” there shall be inserted the words “which is not the relevant supervisory authority in another member State”.

Accounts and audit

Accounting records and systems of business control etc.

78. After subsection (10) of section 71 of the Building Societies Act(52) (accounting records and systems of business control etc.) there shall be inserted the following subsection—

“(10A) The Commission may, for the purpose of implementing the Council Directive on the supervision of credit institutions on a consolidated basis (No. 92/30/EEC)(53), direct that subsection (10) above shall have effect in relation to any building society specified in the direction as if any associated body of the society so specified were linked to it by resolution.”

Miscellaneous and supplemental

Service of notices

79. After subsection (1) of section 115 of the Building Societies Act (service of notices) there shall be inserted the following subsection—

“**1A)** This section also has effect in relation to any notice or other document required or authorised by or under any provision of the Banking Coordination (Second Council Directive) Regulations 1992 to be served on any person by the Commission.”

Meaning of “associate”

80. After section 118 of the Building Societies Act there shall be inserted the following section—

“Associates.

118A.—(1) In this Act 'associate', in relation to a person holding deferred shares in, or entitled to exercise or control the exercise of voting power in relation to, a building society, 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—

(52) 1986 c. 53; section 71 was amended by S.I. 1991/1729.

(53) OJ No. L110, 28.4.92, p.52.

- (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 deferred shares in that society or under which they undertake to act together in exercising their voting power in relation to it, that other person.
- (2) For the purposes of this section—
- 'son' includes stepson and "daughter" includes stepdaughter;
 - 'settlement' includes any disposition or arrangement under which property is held in trust."

Other interpretation of Building Societies Act

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

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

- another member State;
- connected UK authority;
- ecu;
- the First Council Directive;
- listed activity;
- own funds;
- recognised self-regulating organisation;
- relevant supervisory authority;
- the Second Council Directive;
- supervisory authority,

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

PART IX

SUPPLEMENTAL

Minor and consequential amendments

82.—(1) The provisions mentioned in Schedule 10 to these Regulations shall have effect subject to the amendments there specified, being minor amendments or amendments consequential on the provisions of these Regulations.

(2) Any deed, contract or other instrument made before the commencement date shall have effect, unless the context otherwise requires, as if any reference to an institution authorised by the Bank under the Banking Act (however expressed) included a reference to a European deposit-taker.

(3) In this regulation and Schedule 10 to these Regulations “European deposit-taker” means a European authorised institution which has lawfully established a branch in the United Kingdom for the purpose of accepting deposits.

Transitional provisions and savings

83. Schedule 11 to these Regulations shall have effect with respect to the transitional and other matters there mentioned.

16th December 1992

Irvine Patnick
Gregory Knight
Two of the Lords Commissioners of Her
Majesty's Treasury