



# Banking Act 1979

## 1979 CHAPTER 37

### PART I

#### CONTROL OF DEPOSIT-TAKING

##### *Ambit of control*

#### **1 Control of deposit-taking and meaning of " deposit"**

- (1) Except as provided by section 2 below, no person may accept a deposit in the course of carrying on a business which is a deposit-taking business for the purposes of this Act.
- (2) Subject to subsection (3) below, a business is a deposit-taking business for the purposes of this Act if—
  - (a) in the course of the business money received by way of deposit is lent to others, or
  - (b) any other activity of the business is financed, wholly or to any material extent, out of the capital of or the interest on money received by way of deposit.
- (3) Notwithstanding that paragraph (a) or paragraph (b) of subsection (2) above applies to a business, it is not a deposit-taking business for the purposes of this Act if, in the normal course of the business.—
  - (a) the person carrying it on does not hold himself out to accept deposits on a day to day basis; and
  - (b) any deposits which are accepted are accepted only on particular occasions, whether or not involving the issue of debentures or other securities.
- (4) Subject to subsection (5) below, in this Act "deposit" means a sum of money paid on terms—
  - (a) under which it will be repaid, with or without interest or a premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it; and
  - (b) which are not referable to the provision of property or services or to the giving of security ;

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and references in this Act to money deposited and to the making of deposits shall be construed accordingly.

- (5) Except in so far as any provision of this Act otherwise provides, in this Act " deposit " does not include—
- (a) a loan made by the Bank, a recognised bank or a licensed institution; or
  - (b) a loan made by a person for the time being specified in Schedule 1 to this Act; or
  - (c) a loan made by a person, other than a person falling within paragraph (a) or paragraph (b) above, in the course of a business of lending money carried on by him; or
  - (d) a sum which is paid by one company to another at a time when one is a subsidiary of the other or both are subsidiaries of another company ; or
  - (e) a sum which is paid to an institution by a person who at the time it is paid is a director, controller or manager of the institution or the wife, husband, son or daughter of such a person.
- (6) For the purposes of subsection (4)(b) above, money is paid on terms which are referable to the provision of property or services or to the giving of security if, and only if.—
- (a) it is paid by way of advance or part payment for the sale, hire or other provision of property or services of any kind and is repayable only in the event that the property or services is or are not in fact sold, hired or otherwise provided; or
  - (b) it is paid by way of security for payment for the provision of property or services of any kind provided or to be provided by the person by whom or on whose behalf the money is accepted; or
  - (c) it is paid by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise.
- (7) Any person who accepts a deposit in contravention of subsection (1) above shall be liable—
- (a) on summary conviction to a fine not exceeding the statutory maximum; and
  - (b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or both.
- (8) The fact that a deposit is taken in contravention of this section shall not affect any civil liability arising in respect of the deposit or the money deposited.

## **2 Exceptions from prohibition in section 1(1)**

- (1) The prohibition in section 1(1) above on the acceptance of a deposit does not apply to—
- (a) the Bank; or
  - (b) a recognised bank; or
  - (c) a licensed institution; or
  - (d) a person for the time being specified in Schedule 1 to this Act;
- and does not apply to a transaction prescribed for the purposes of this section by regulations made by the Treasury.
- (2) The Treasury may from time to time by order made by statutory instruments—
- (a) add a person to the list set out in Schedule 1 to this Act, or

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- (b) remove a person from that list (whether that person was included in the list as originally enacted or was added to it by virtue of this subsection).
- (3) A statutory instrument containing an order under paragraph (a) of subsection (2) above shall be subject to annulment in pursuance of a resolution of either House of Parliament and no order under paragraph (b) of that subsection shall be made unless a draft of it has been laid before Parliament and approved by a resolution of each House.
- (4) In the case of a body which on the appointed day was carrying on a deposit-taking business in the United Kingdom, the prohibition in section 1(1) above on the acceptance of a deposit does not apply—
  - (a) at any time during the period of six months beginning on that day; nor
  - (b) if within that period the body makes an application for recognition or a licence, at any time after the end of that period and before the date on which the body is granted recognition or, as the case may be, a licence or on which the Bank notifies the body of its decision to refuse to grant it recognition or a licence.
- (5) Regulations under subsection (1) above may prescribe transactions by reference to any factors appearing to the Treasury to be appropriate and, in particular, by reference to all or any of the following, namely.—
  - (a) the amount of the deposit;
  - (b) the total liability of the body concerned to its depositors;
  - (c) the circumstances in which or the purpose for which the deposit is made ; and
  - (d) the identity of the person by whom the deposit is made or accepted.
- (6) The power to make regulations under subsection (1) above shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

*The system of recognition and licensing by the Bank*

### **3 Recognition and licences**

- (1) Recognition as a bank for the purposes of this Act may be granted by the Bank on an application in that behalf by the institution concerned.
- (2) A full licence to carry on a deposit-taking business may be granted to an institution by the Bank on an application in that behalf or on an application for recognition or on the revocation of the institution's recognition.
- (3) Subject to subsection (5) below.—
  - (a) the Bank shall not grant to an institution recognition as a bank unless it is satisfied that the criteria in Part I of Schedule 2 to this Act are fulfilled with respect to the institution; and
  - (b) the Bank shall not grant a full licence to an institution unless it is satisfied that the criteria in Part II of that Schedule are fulfilled with respect to the institution.
- (4) The Bank shall grant neither recognition nor a licence to an institution which is not a body corporate if the whole of the assets available to the institution are owned by a single individual.

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- (5) In the case of an institution whose principal place of business is in a country or territory outside the United Kingdom, the Bank may regard itself as satisfied that the criteria in paragraphs 3 and 6 of Schedule 2 to this Act or, as the case may be, paragraphs 7 and 10 of that Schedule are fulfilled if—
- (a) the relevant supervisory authorities inform the Bank that they are satisfied with respect to the management of the institution and its overall financial soundness; and
  - (b) the Bank is satisfied as to the nature and scope of the supervision exercised by those authorities.
- (6) In subsection (5) above "the relevant supervisory authorities" in relation to an institution whose principal place of business is in a country or territory outside the United Kingdom means the authorities which exercise functions corresponding to those of the Bank under this Act in the country or territory where the institution's principal place of business is.
- (7) A grant of recognition and a full licence shall remain in force until—
- (a) it is surrendered by notice in writing given by the institution concerned to the Bank; or
  - (b) it is revoked in accordance with the following provisions of this Act.
- (8) The provisions of Part I of Schedule 3 to this Act shall have effect with regard to transitional licences and the provisions of Part II of that Schedule shall have effect with respect to the grant of recognition to certain corporate institutions which were in existence on 9th November 1978.

#### **4 Annual report and list of recognised and licensed institutions**

- (1) The Bank shall, as soon as practicable after the end of each of its financial years, make a report to the Chancellor of the Exchequer on its activities in that year in the exercise of the functions conferred on it by this Act
- (2) Every report under this section shall contain a list of the institutions which are recognised or licensed under this Act at the end of the financial year of the Bank to which the report relates.
- (3) Every report under this section shall set out the principles on which the Bank is acting, at the end of the financial year of the Bank to which the report relates, with respect to—
- (a) the interpretation and application of the criteria to be fulfilled by institutions applying for recognition or a licence; and
  - (b) the interpretation and application of the grounds for revocation of recognition or a licence ;
- and shall specify any material change in those principles which was made in the course of the year in question or is proposed to be made in the following year.
- (4) The Chancellor of the Exchequer shall lay a copy of every report made by the Bank under this section before each House of Parliament and the Bank shall arrange for the publication of every such report in such manner as it thinks appropriate.
- (5) Any reference in this section to a financial year of the Bank is a reference to a period of twelve months ending on the last day of February.

- (6) The Bank shall make available to any person, on request and on payment of such charge (if any) as the Bank may reasonably demand to cover the cost of preparation, a list of all the institutions which are recognised or licensed under this Act either at the date of the request or at such earlier date, being not more than one month earlier, as may be specified in the list.

## **5 Recognition and licences: procedure on applications**

- (1) An application for recognition or for a full licence—
- (a) shall be made in such manner as the Bank may specify, either generally or in any particular case; and
  - (b) shall be accompanied by such information as the Bank may reasonably require, either generally or in any particular case, in order to reach a decision on the application.
- (2) If required to do so by notice in writing from the Bank given at any time after an application falling within subsection (1) above has been made and before a decision has been reached on the application, the applicant shall furnish to the Bank such additional information as the Bank may reasonably require in order to reach a decision.
- (3) Any person who knowingly or recklessly furnishes any information which is false or misleading in a material particular in connection with an application falling within subsection (1) above shall be liable—
- (a) on summary conviction to a fine not exceeding the statutory maximum; and
  - (b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or both.
- (4) If, on an application falling within subsection (1) above, the Bank proposes to refuse to grant recognition or, in the case of an application for a licence, to refuse to grant the licence applied for, the Bank—
- (a) shall give notice in writing to the applicant of the action it proposes to take with respect to the application and of the reasons for that proposed action; and
  - (b) in the notice under paragraph (a) above shall also inform the applicant of the right to make representations in writing with respect to the proposed action of the Bank within such period of not less than twenty-eight days as may be specified in the notice; and
  - (c) before reaching a decision on the application shall take account of any representations made as mentioned in paragraph (b) above.
- (5) If, on an application falling within subsection (1) above, the Bank refuses to grant recognition or, as the case may be, the licence applied for, then, subject to subsection (6) below, the Bank shall give notice in writing to the applicant of its decision and the reasons for it before the expiry of the period of six months beginning with the date on which the application was received by the Bank.
- (6) In any case where, under subsection (2) above, the Bank requires additional information with respect to an application, the latest time for the giving of a notice under subsection (5) above with respect to that application shall be the expiry of whichever of the following periods first expires, namely.—
- (a) the period of six months beginning on the date on which the additional information is furnished to the Bank; and

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- (b) the period of twelve months beginning on the date on which the application was received by the Bank.

*Revocation of recognition or licence*

**6 Grounds for revocation of recognition or licence**

- (1) The powers of the Bank under section 7 below to revoke recognition or a licence shall become exercisable with respect to an institution if it appears to the Bank that—
  - (a) any of the information required to be furnished by the institution in connection with its application was false or misleading in a material particular; or
  - (b) the institution has not carried on any deposit-taking business within the period of twelve months beginning on the date on which it was granted recognition or, as the case may be, on which the licence took effect, or has ceased to carry on any such business for a period of more than six months; or
  - (c) any of the criteria in Part I or Part II of Schedule 2 to this Act which is applicable to the institution is not being or has not been fulfilled with respect to it; or
  - (d) in the case of an institution whose principal place of business is in a country or territory outside the United Kingdom, the authorities which exercise in that country or territory functions corresponding to those of the Bank under this Act have withdrawn from the institution the authority which in that country or territory corresponds to the authority conferred in the United Kingdom by recognition or a licence; or
  - (e) the institution is a body corporate and any of the events referred to in subsection (2) below has occurred with respect to it; or
  - (f) the institution is a partnership and any of the events referred to in subsection (3) below has occurred with respect to it; or
  - (g) the institution is an unincorporated institution other than a partnership and is formed under the law of another member State and an event has occurred with respect to it which, in that member State, appears to the Bank to correspond, as near as may be, with any of the events specified in paragraphs (a) to (d) of subsection (2) or paragraphs (a) to (f) of subsection (3) below; or
  - (h) the institution has failed to comply with any obligation imposed by this Act; or
  - (i) the institution has in any other way so conducted its affairs as to threaten the interests of its depositors.
- (2) The events referred to in subsection (1)(e) above are—
  - (a) the making of a winding-up order;
  - (b) the passing of a resolution for voluntary winding up;
  - (c) the appointment of a receiver or manager of the body's undertaking; and
  - (d) the taking of possession, by or on behalf of the holders of any debenture secured by a floating charge, of any property of the body comprised in or subject to the charge;

and also, in the case of a body corporate formed under the law of a country or territory outside the United Kingdom, any event which appears to the Bank to correspond under that law with any of the events specified above.
- (3) The events referred to in subsection (1)(f) above are—
  - (a) the dissolution of the partnership ;

- (b) the making of a winding-up order against the firm under Part IX of the Companies Act 1948 or the Companies Act (Northern Ireland) 1960 (unregistered companies);
- (c) if one of the partners is a body corporate, the occurrence with respect to that partner of one of the events specified in subsection (2) above;
- (d) in England and Wales, the making of a receiving order against the firm or against one of the partners or one of the partners executing an instrument to which the Deeds of Arrangement Act 1914 applies ;
- (e) in Scotland, the making of an award of sequestration on the estate of the partnership or one of the partners, or the partnership or one of the partners executing a trust deed for creditors or entering into a composition contract; and
- (f) in Northern Ireland, the making of an order of adjudication of bankruptcy against one of the partners or one of the partners making a composition or arrangement with his creditors;

and also, in the case of a partnership whose principal place of business is in a country or territory outside the United Kingdom, any event which appears to the Bank to correspond in that country or territory with any of the events specified above.

- (4) It shall be a ground for revoking a full licence held by an institution that the Bank proposes to grant recognition to the institution with effect from the time of the revocation of the licence.
- (5) It shall be a ground for revoking a conditional licence held by an institution that the Bank proposes to grant a full licence to the institution with effect from the time of the revocation of the conditional licence.

## **7 Revocation: powers and procedure**

- (1) Where the powers of the Bank under this section have become exercisable with respect to an institution, the Bank may—
  - (a) revoke the recognition or licence of the institution and take such action as it considers appropriate under section 8 below ; or
  - (b) revoke the recognition or licence of the institution and grant it a conditional licence or, if the institution is already the holder of such a licence, grant it another conditional licence subject to different conditions.
- (2) Where the powers of the Bank under this section have become exercisable with respect to a recognised bank but it appears to the Bank that the circumstances are not such as to justify proceedings under subsection (1) above, the Bank may revoke the institution's recognition and grant it a full licence.
- (3) Subject to subsection (4) below, where the Bank proposes to act under subsection (1) or subsection (2) above.—
  - (a) the Bank shall give the institution concerned notice in writing of its intention specifying the reasons why it proposes to act; and
  - (b) the provisions of Part I of Schedule 4 to this Act shall apply.
- (4) In any case where—
  - (a) the powers of the Bank under this section have become exercisable with respect to an institution, and
  - (b) the Bank considers that urgent action is necessary,

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the Bank may, without prior notice under subsection (3) above, by notice in writing given to the institution concerned exercise its powers under paragraph (b) of subsection (1) above; and Where the Bank exercises those powers by virtue of this subsection, the provisions of Part II of Schedule 4 to this Act shall apply instead of the provisions of Part I of that Schedule.

- (5) In Schedule 4 to this Act " the principal section " means this section and—
- (a) in Part I of that Schedule a "notice of intention to act" means a notice given under subsection (3)(a) above; and
  - (b) in Part II of that Schedule an " immediate revocation notice" means a notice given under subsection (4) above.
- (6) The power of the Bank to revoke a licence by virtue of subsection (4) or subsection (5) of section 6 above shall be exercisable by notice in writing given to the institution concerned.

## **8 Power to give directions in connection with termination of deposit-taking authority**

- (1) Subject to sections 9 and 11(5) below, the Bank may give directions under this section to an institution—
- (a) at the same time as the Bank gives the institution notice under subsection (3) (a) of section 7 above of its intention to take action under subsection (1)(a) of that section; or
  - (b) at any time after such a notice has been given to the institution (whether before or after its recognition or licence is revoked); or
  - (c) at any time after the institution has surrendered its recognition or licence.
- (2) Directions under this section shall be such as appear to the Bank to be desirable in the interests of depositors, whether for the purpose of safeguarding the assets of the institution or otherwise, and a direction under this section may do all or any of the following, namely.—
- (a) prohibit the institution from dealing with or disposing of its assets in any manner specified in the direction;
  - (b) prohibit it from entering into any transaction or class of transaction so specified;
  - (c) prohibit it from soliciting deposits either generally or from persons who are not already depositors; and
  - (d) require it to take certain steps or pursue a particular course of action.
- (3) A direction under this section shall be in writing and shall specify the reasons why the Bank considers it should be given.
- (4) The power of the Bank to give a direction under this section includes power to vary such a direction by a further direction; and a direction under this section may be revoked by a notice in writing (which may be contained in a later direction) given to the institution concerned by the Bank.
- (5) Any person who fails to comply with a direction for the time being in force under this section shall be liable—
- (a) on summary conviction to a fine not exceeding the statutory maximum; and
  - (b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or both.



## **9 Duration of directions and direction-making power**

- (1) A direction under section 8 above shall cease to have effect at the expiry of the period of twenty-eight days beginning on the day on which it was given unless, before the expiry of that period, the Bank gives notice in writing to the institution concerned confirming the direction.
- (2) In deciding whether to give a notice under subsection (1) above confirming a direction, the Bank shall take into account any written representations made by or on behalf of the institution concerned within the period of fourteen days beginning with the date on which the direction was given.
- (3) In any case where—
  - (a) the Bank has given an institution notice under subsection (3)(a) of section 7 above of its intention to take action under subsection (1)(a) of that section, and
  - (b) subsequently the Bank gives notice to the institution under paragraph 2 of Schedule 4 to this Act of a decision to take no further action or to take some other course of action,any direction under section 8 above previously given to the institution shall cease to have effect on the giving of the notice referred to in paragraph (b) above and no further direction may be given to the institution under that section in reliance on the notice mentioned in paragraph (a) above having been given.
- (4) No direction may be given to an institution under section 8 above after it has ceased to have any liability in respect of deposits for which it had a liability at a time when it was recognised or licensed; and any such direction which is in force with respect to an institution shall cease to have effect when the institution ceases to have any such liability.

## **10 Conditional licences**

- (1) A conditional licence is a licence which, subject to section 11(3) below, is granted to an institution by the Bank in the exercise of its powers under section 7(1)(b) above and gives the institution authority to carry on a deposit-taking business conditionally upon its complying with conditions imposed by the Bank and set out in the licence.
- (2) The conditions of a conditional licence granted to an institution—
  - (a) shall be such as the Bank considers necessary in order to secure the protection of the depositors of that institution ; and
  - (b) may require the institution to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way; and
  - (c) may be varied from time to time by agreement between the Bank and the institution.
- (3) Without prejudice to the generality of subsection (2)(b) above, the conditions of a conditional licence may—
  - (a) impose limitations on the acceptance of deposits, the granting of credit or the making of investments;
  - (b) prohibit the soliciting of deposits, either generally or from persons who are not already depositors ; and
  - (c) require the removal of any director, controller or manager.

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- (4) In the case of an institution holding a conditional licence, a failure to comply with any of the conditions of the licence shall be treated for the purposes of this Act as a failure by the institution to comply with such an obligation as is referred to in section 6(1)(h) above.
- (5) A conditional licence may be surrendered by notice in writing given by the institution concerned to the Bank.
- (6) Unless previously revoked or surrendered, a conditional licence shall expire at the end of the period of one year beginning on the date on which it was granted or on such earlier date as may be specified in the licence.

### *Appeals*

## **11 Appeals from decisions of the Bank**

- (1) Any institution which is aggrieved by a decision of the Bank—
  - (a) to refuse to grant recognition or a licence to it, or
  - (b) to grant a licence to it on an application for recognition, or
  - (c) to revoke its recognition or licence, or
  - (d) to give it a direction under section 8 above,may appeal against the decision to the Chancellor of the Exchequer who, in accordance with regulations under section 12 below, shall refer the matter for a hearing before persons appointed for the purpose.
- (2) If the Bank revokes recognition or a licence in the exercise of its powers under section 7(1)(b) above, then, on an appeal against the decision to revoke, the appellant institution may challenge any of the conditions of the conditional licence granted to it, whether or not it also challenges the decision itself.
- (3) On the determination of an appeal under this section, the Chancellor of the Exchequer may confirm, vary or reverse the decision appealed against, and may—
  - (a) take any action which the Bank could have taken at the time it took the decision appealed against; and
  - (b) give such directions as he thinks just for the payment of costs or expenses by any party to the appeal.
- (4) Notice of the Chancellor of the Exchequer's decision on the appeal together with a statement of his reasons for the decision shall be given to the appellant and to the Bank and, unless the Chancellor otherwise directs, the decision shall come into operation on such notice being given to the appellant.
- (5) Where an institution is successful in an appeal to the Chancellor of the Exchequer against a decision of the Bank to revoke all authority of the institution to carry on a deposit-taking business and, prior to that decision, the Bank gave such a notice as is referred to in subsection (1)(a) of section 8 above, then, on the Chancellor's decision coming into operation.—
  - (a) any directions previously given to the institution under that section shall cease to have effect; and
  - (b) no further direction may be given to the institution under that section in reliance on that notice having been given.

## **12 Regulations with respect to appeals**

- (1) Provision may be made by regulations with respect to appeals under section 11 above—
  - (a) as to the period within which and the manner in which such appeals are to be brought;
  - (b) as to the persons (in this subsection referred to as "appointed persons") by whom such appeals are to be heard on behalf of the Chancellor of the Exchequer ;
  - (c) as to the manner in which such appeals are to be conducted, including provision for any hearing before appointed persons to be held in private;
  - (d) for requiring any person, on tender of the necessary expenses of his attendance, to attend and give evidence or produce documents in his custody or under his control;
  - (e) for taxing or otherwise settling any costs or expenses directed to be paid under section 11(3)(b) above and for the enforcement of any such direction; and
  - (f) as to any other matter connected with such appeals.
- (2) Subject to subsection (3) below, regulations under this section shall be made by the Treasury after consultation with the Council on Tribunals and shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Regulations under this section with respect to Scottish appeals, that is to say, appeals where the institution concerned—
  - (a) is a company registered in Scotland, or
  - (b) has its principal or prospective principal place of business in the United Kingdom in Scotland,shall be made by the Lord Advocate after consultation with the Council on Tribunals which shall consult with its Scottish Committee.
- (4) A person who, having been required in accordance with regulations under this section to attend and give evidence, fails without reasonable excuse to attend or give evidence shall be liable on summary conviction to a fine not exceeding £1,000.
- (5) A person who intentionally alters, suppresses, conceals, destroys or refuses to produce any document which he has been required to produce in accordance with regulations under this section, or which he is liable to be so required to produce, shall be liable—
  - (a) on summary conviction to a fine not exceeding the statutory maximum; and
  - (b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or both.
- (6) The Treasury may, out of money provided by Parliament, pay to any persons appointed as mentioned in paragraph (b) of subsection (1) above such fees and make good to them such expenses as the Treasury may determine.

## **13 Further appeal on points of law**

- (1) An appeal shall lie to the Court at the instance of the institution concerned or of the Bank on any question of law arising from any decision of the Chancellor of the Exchequer on an appeal under section 11 above; and if the Court is of opinion that the decision appealed against was erroneous in point of law, it shall remit the matter to the Chancellor with the opinion of the Court for re-hearing and determination by him.

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

#### *Duties of licensed institutions*

### **14 Duty to notify changes of directors etc.**

- (1) A licensed institution shall give written notice to the Bank of the fact that any person has become or ceased to be a director, controller or manager of the institution.
- (2) A notice required to be given by subsection (1) above shall be given before the expiry of the period of twenty-one days beginning with the day next following that on which the relevant fact comes to the knowledge of the institution.
- (3) Any institution which fails to give a notice required by this section shall be liable on summary conviction to a fine not exceeding £1,000.

### **15 Audited accounts of licensed institutions to be open to inspection**

- (1) At each place within the United Kingdom at which it holds itself out to accept deposits, a licensed institution shall keep a copy of its most recent audited accounts; and during normal business hours that copy shall be made available for inspection by any person on request.
- (2) If an institution fails to comply with subsection (1) above, then, for each occasion on which it so fails, it shall be liable on summary conviction to a fine not exceeding £500.

#### *Powers of the Bank*

### **16 Powers to obtain information and require production of documents**

- (1) The Bank may by notice in writing served on a licensed institution—
- (a) require the institution to furnish to the Bank, at such time or times as may be specified in the notice, such information as the Bank may reasonably require about the nature and conduct of the institution's business and its plans for future development; and
  - (b) require the institution to furnish to the Bank, together with the information required under paragraph (a) above, a report by an accountant approved by

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the Bank on that information or on such aspects of it as may be specified in the notice.

- (2) The Bank may by notice in writing served on a licensed institution require the institution to produce, within such time and at such place as may be specified in the notice, such books or papers as may be so specified, being books or papers which the Bank may reasonably require for the purpose of obtaining information falling within paragraph (a) of subsection (1) above.
- (3) Where, by virtue of subsection (2) above, the Bank has power to require the production of any books or papers from a licensed institution, the Bank shall have the like power to require production of those books or papers from any person who appears to the Bank to be in possession of them; but where any person from whom such production is required claims a lien on books or papers produced by him, the production shall be without prejudice to the lien.
- (4) Where, by virtue of subsection (2) or subsection (3) above, the Bank requires the production by a licensed institution or any other person of books or papers, the Bank may—
  - (a) if the books or papers are produced, take copies of them or extracts from them and require that person, or any other person who is a present or past director, controller or manager of, or is or was at any time employed by, the institution, to provide an explanation of any of them; and
  - (b) if the books or papers are not produced, require the person who was required to produce them to state, to the best of his knowledge and belief, where the books or papers are.
- (5) If and so long as an institution which was formerly a recognised bank or licensed institution—
  - (a) is neither recognised nor licensed, but
  - (b) continues to have any liability in respect of any deposit for which it had a liability at a time when it was recognised or licensed,the provisions of this section shall apply in relation to it as if it were a licensed institution.
- (6) Any person who, when required to do so under this section, fails without reasonable excuse to furnish any information or accountant's report, to produce any books or papers, or to provide any explanation or make any statement, shall be liable on summary conviction to a fine not exceeding £1,000.
- (7) Any person who, in purported compliance with a requirement under this section, furnishes any information, provides any explanation or makes any statement which he knows or has reasonable cause to believe to be false or misleading in a material particular, shall be liable—
  - (a) on summary conviction to a fine not exceeding the statutory maximum; and
  - (b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or both.
- (8) Nothing in this section or in section 17 below shall compel the production by a solicitor of a document containing a privileged communication made by him or to him in that capacity.

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## 17 Investigations on behalf of the Bank

- (1) If it appears to the Bank desirable to do so in the interests of the depositors of a recognised bank or licensed institution, the Bank may appoint one or more competent persons to investigate and report to the Bank on the state and conduct of the business of the bank or institution concerned, or any particular aspect of that business.
- (2) If a person appointed under subsection (1) above thinks it necessary for the purposes of\* his investigation, he may also investigate the business of any body corporate which is or has at any relevant time been—
  - (a) a holding company or subsidiary of the body whose business is under investigation ;
  - (b) a subsidiary of a holding company of that body; or
  - (c) a holding company of a subsidiary of that body.
- (3) It shall be the duty of every director, controller, manager and agent of a body whose business is under investigation (whether by virtue of subsection (1) or subsection (2) above)—
  - (a) to produce to the persons appointed under subsection (1) above all books and papers relating to the body concerned which are in his custody or power; and
  - (b) to attend before the persons so appointed when required to do so; and
  - (c) otherwise to give to those persons all assistance in connection with the investigation which he is reasonably able to give.
- (4) Any director, controller, manager or agent of a body who—
  - (a) without reasonable excuse fails to produce any books or papers which it is his duty to produce under subsection (3) above, or
  - (b) without reasonable excuse fails to attend before the persons appointed under subsection (1) above when required to do so, or
  - (c) without reasonable excuse fails to answer any question which is put to him by persons so appointed with respect to a business which is under investigation or to the business of any body corporate which is being investigated by virtue of subsection (2) above,shall be liable on summary conviction to a fine not exceeding £1,000.
- (5) Any director, controller, manager or agent of a body who knowingly or recklessly furnishes to any person appointed under subsection (1) above any information which is false or misleading in a material particular, shall be liable—
  - (a) on summary conviction to a fine not exceeding the statutory maximum; and
  - (b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or both.
- (6) In this section—
  - (a) " holding company" shall be construed in accordance with section 154 of the Companies Act 1948 or section 148 of the Companies Act (Northern Ireland) 1960;
  - (b) any reference to a director, controller, manager or agent of a body includes a reference to a person who has been but no longer is a director, controller, manager or agent of that body; and
  - (c) " agent", in relation to a body whose business is under investigation, includes its bankers and solicitors and any persons, whether officers of the body or not, who are employed as its auditors.

## **18 Winding up on petition from the Bank**

- (1) On a petition presented by the Bank by virtue of this section, the court having jurisdiction under the Companies Act 1948 may wind up a recognised bank or licensed institution under that Act if—
  - (a) the institution is unable to pay sums due and payable to its depositors or is able to pay such sums only by defaulting in its obligations to its other creditors; or
  - (b) the value of the institution's assets is less than the amount of its liabilities.
- (2) If a petition is presented by the Bank by virtue of this section for the winding up of a recognised bank or licensed institution which, apart from this subsection, would be excluded from being an unregistered company for the purposes of Part IX of the Companies Act 1948 by virtue of—
  - (a) paragraph (c) of section 398 of that Act (exclusion of partnerships etc. having less than eight members), or
  - (b) paragraph (d) of that section (exclusion of limited partnerships registered in England and Wales or Northern Ireland),the court shall have jurisdiction, and the Companies Act 1948 shall have effect, as if the institution concerned were an unregistered company within the meaning of Part IX of that Act
- (3) If and so long as an institution which was formerly a recognised bank or licensed institution—
  - (a) is neither recognised nor licensed, but
  - (b) continues to have any liability in respect of any deposit for which it had a liability at a time when it was recognised or licensed,the provisions of this section shall apply in relation to it as if it were a licensed institution.
- (4) In its application to Northern Ireland, this section shall have effect—
  - (a) with the substitution of a reference to the Companies Act (Northern Ireland) 1960 for any reference to the Companies Act 1948;
  - (b) with the substitution of a reference to paragraph (d) of section 348 of the Companies Act (Northern Ireland) 1960 for the reference in paragraph (a) of subsection (2) above to paragraph (c) of section 398 of the Companies Act 1948; and
  - (c) with the omission of paragraph (b) of subsection (2) above.

## **19 Confidentiality of information obtained by the Bank**

- (1) Subject to the provisions of this section and section 20 below, no information obtained under or for the purposes of this Act and relating to the business or other affairs of any person may be disclosed (otherwise than to an officer or employee of the Bank) except—
  - (a) with the consent of the person to whom the information relates; or
  - (b) to the extent that it is information which is at the time of the disclosure, or has previously been, available to the public from other sources; or
  - (c) in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.
- (2) Nothing in subsection (1) above prohibits the disclosure of information—

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- (a) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings, whether under this Act or otherwise;
  - (b) in connection with any other proceedings arising out of this Act; or
  - (c) in order to enable the Bank to comply with any obligation imposed on it by or under this Act.
- (3) If, in order to enable the Bank properly to discharge any of its functions under this Act, the Bank considers it necessary to seek advice from any qualified person on any matter of law, accountancy, valuation or other matter requiring the exercise of professional skill, nothing in subsection (1) above prohibits the disclosure to that person of such information as may appear to the Bank to be necessary to ensure that he is properly informed with respect to the matters on which his advice is sought.
- (4) Nothing in subsection (1) above prohibits the disclosure of information—
  - (a) to the Treasury in circumstances where, in the opinion of the Bank, it is desirable or expedient that the information should be so disclosed in the interest of depositors or in the public interest; or
  - (b) to the Deposit Protection Board established under Part II of this Act in order to enable that Board to perform any of their functions under that Part.
- (5) Nothing in subsection (1) above prohibits the disclosure to the Secretary of State of information relating to a body corporate to which section 165 or section 172 of the Companies Act 1948 applies if it appears to the Bank that there may be circumstances relating to the body corporate in which the Secretary of State might wish to appoint inspectors under—
  - (a) sub-paragraph (i) or sub-paragraph (ii) of paragraph (b) of the said section 165 (investigation of cases of fraud, etc.); or
  - (b) the said section 172 (investigation of ownership of company, etc.).
- (6) Nothing in subsection (1) above prohibits the disclosure to the authorities which exercise in a country or territory outside the United Kingdom functions corresponding to those of the Bank under this Act of information which was furnished by or relates to a recognised bank or licensed institution which—
  - (a) carries on or proposes to carry on a deposit-taking business in that country or territory, whether directly, through a subsidiary or otherwise, or
  - (b) has or proposes to acquire an interest in an institution which carries on or proposes to carry on a deposit-taking business in that country or territory, or
  - (c) is a subsidiary of, or appears to the Bank to be otherwise associated with, an institution which is established under the law of that country or territory or whose principal place of business is, or is proposed to be, in that country or territory,if it appears to the Bank that the disclosure of the information would assist those authorities in the exercise of those functions.
- (7) Any person who discloses information in contravention of subsection (1) above shall be liable—
  - (a) on summary conviction to a fine not exceeding the statutory maximum; and
  - (b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or both.
- (8) In the application of this section to Northern Ireland,—



- (a) for any reference in subsection (5) above to section 165 or section 172 of the Companies Act 1948 there shall be substituted respectively a reference to section 159 or section 165A of the Companies Act (Northern Ireland) 1960 ; and
- (b) for any reference in that subsection to the Secretary of State there shall be substituted a reference to the Department of Commerce for Northern Ireland.

## **20 Information disclosed to the Bank from other sources**

- (1) If and so far as it appears to the Secretary of State that the disclosure of any information will enable the Bank better to discharge its functions under this Act (but not otherwise).
  - (a) information obtained by the Secretary of State under section 109 or section 110 of the Companies Act 1967 (inspection of companies' books and papers) may be disclosed to the Bank, notwithstanding the provision as to security of information contained in section 111 of that Act; and
  - (b) where the information is contained in a report made by inspectors appointed under section 164, section 165 or section 172 of the Companies Act 1948 (investigation of affairs or ownership of companies and certain other bodies corporate) the Secretary of State may furnish a copy of the report to the Bank.
- (2) If and so far as it appears to the Department of Commerce for Northern Ireland that the disclosure of any information will enable the Bank better to discharge its functions under this Act (but not otherwise).—
  - (a) information obtained by the Department under Article 107 or Article 108 of the Companies (Northern Ireland) Order 1978 (inspection of companies' books and papers) may be disclosed to the Bank, notwithstanding the provision as to security of information contained in Article 109 of that Order; and
  - (b) where the information is contained in a report made by inspectors under section 158, section 159 or section 165A of the Companies Act (Northern Ireland) 1960 (investigation of affairs or ownership of companies and certain other bodies corporate) the Department may furnish a copy of the report to the Bank.
- (3) Subsection (1) of section 19 above does not apply to information which has been disclosed to the Bank by virtue of subsection (1) or subsection (2) above, but—
  - (a) except as provided by paragraph (b) below, nothing in this Act authorises any further disclosure of that information in contravention of section 111 of the Companies Act 1967 or, as the case may require, Article 109 of the Companies (Northern Ireland) Order 1978; and
  - (b) with respect to that information the references in subsections (3) to (6) of section 19 above to subsection (1) of that section shall be construed as including a reference to the said section 111 or, as the case may require, Article 109.
- (4) If information is disclosed to the Bank by the authorities which exercise, in a country or territory outside the United Kingdom, functions corresponding to those of the Bank under this Act.—
  - (a) subsection (1) of section 19 above applies to that information as it applies to information obtained under or for the purposes of this Act; but

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- (b) the references in subsections (4) to (6) of that section to the disclosure of information do not extend to the disclosure of that information.

## PART II

### THE DEPOSIT PROTECTION SCHEME

#### *The Board and the Fund*

#### **21 The Deposit Protection Board**

- (1) There shall be a body corporate to be known as the Deposit Protection Board (in this Part of this Act referred to as " the Board ") which—
- (a) shall hold, manage and apply in accordance with the following provisions of this Part of this Act, a fund to be known as the Deposit Protection Fund (in this Part of this Act referred to as " the Fund "); and
  - (b) shall levy contributions for the Fund, in accordance with the following provisions of this Part of this Act, from recognised banks and licensed institutions; and
  - (c) shall have such other functions as are conferred on the Board by those provisions.
- (2) The provisions of Schedule 5 to this Act shall have effect with respect to the Board.

#### **22 The Deposit Protection Fund**

- (1) The Fund shall consist of—
- (a) initial, further and special contributions levied by the Board under sections 24 to 26 below;
  - (b) moneys borrowed by the Board under section 26(3) below;
  - (c) moneys credited to the Fund in accordance with subsection (1) or subsection (5) of section 32 below; and
  - (d) income credited to the Fund in accordance with subsection (3) below.
- (2) The moneys constituting the Fund shall be placed by the Board in an account with the Bank.
- (3) So far as possible, the Bank shall invest moneys placed with it under subsection (2) above in Treasury bills payable not more than ninety-one days from the date of issue; and any income from moneys so invested shall be credited to the Fund.
- (4) The administrative expenses of the Board shall be defrayed out of the Fund.
- (5) There shall be chargeable to the Fund—
- (a) payments to meet administrative expenses of the Board in accordance with subsection (4) above;
  - (b) repayments of special contributions under section 26(2) below;
  - (c) moneys required for the repayment of the Board's borrowings under section 26(3) below; and
  - (d) payments under section 28 below.

### *Contributions to the Fund*

#### **23 Contributory institutions and general provisions as to contributions**

- (1) All recognised banks and licensed institutions which are not excluded by an order under subsection (2) below shall be liable to contribute to the Fund and are in this Act referred to as " contributory institutions " .
- (2) The Treasury may by order exclude from subsection (1) above—
  - (a) a body corporate formed under the law of a country or territory outside the United Kingdom, or
  - (b) any other description of institution of which the principal place of business is in a country or territory outside the United Kingdom,if they are satisfied, after consultation with the Board, that, under the law of that country or territory or by virtue of arrangements which are in force there, sterling deposits with the United Kingdom offices of that institution are as well protected as they would be under this Part of this Act.
- (3) The power to make an order under subsection (2) above shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Contributions to the Fund shall be levied on a contributory institution by the Board by service on the institution of a notice specifying the amount due, which shall be paid by the institution not later than twenty-one days after the date on which the notice is served.
- (5) Subject to section 27 below, on each occasion on which contributions are to be levied from contributory institutions (other than the occasion of the levy of an initial contribution from a particular institution under subsection (2) of section 24 below),—
  - (a) a contribution shall be levied from each of the contributory institutions; and
  - (b) the amount of the contribution of each institution shall be ascertained by applying to the institution's deposit base the percentage determined by the Board for the purpose of the contributions levied on that occasion.
- (6) In relation to any contribution, the deposit base of an institution is the amount which the Board determine as representing the average, over such period preceding the levying of the contribution as appears to the Board to be appropriate, of sterling deposits with the United Kingdom offices of that institution, other than—
  - (a) secured deposits;
  - (b) deposits which had an original term to maturity of more than five years ; and
  - (c) deposits in respect of which the institution has in the United Kingdom issued a sterling certificate of deposit.
- (7) In its application to this section, subsection (5) of section 1 of this Act shall have effect with the omission of paragraphs (b) and (c).

#### **24 Initial contributions**

- (1) On or as soon as possible after the appointed day the Board shall levy from all institutions which on that day are contributory institutions initial contributions which produce in the aggregate a total of not less than £5 million and not more than £6 million.

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- (2) Subject to subsection (5) below, where an institution becomes a contributory institution after the appointed day, the Board shall levy from it, on or as soon as possible after the day on which it becomes a contributory institution, an initial contribution of an amount determined in accordance with subsection (3) or subsection (4) below.
- (3) Where the institution concerned has a deposit base, then, subject to subsection (1) of section 27 below, the amount of an initial contribution levied under subsection (2) above shall be such percentage of the deposit base as the Board consider appropriate to put the institution on a basis of equality with the other contributory institutions, having regard to—
  - (a) the initial contributions levied under subsection (1) above, and
  - (b) so far as they are attributable to an increase in the size of the Fund resulting from an order under subsection (2) of section 25 below, further contributions levied under that section.
- (4) Where the institution concerned has no deposit base, the amount of an initial contribution levied under subsection (2) above shall be the minimum amount for the time being provided for in section 27(1) below.
- (5) The Board may waive an initial contribution under subsection (2) above if it appears to them that the institution concerned is to carry on substantially the same business as that previously carried on by one or more institutions which are or were contributory institutions.

## **25 Further contributions**

- (1) If at the end of any financial year of the Board the amount standing to the credit of the Fund is less than £3 million, the Board may, with the approval of the Treasury, levy further contributions from contributory institutions so as to restore the amount standing to the credit of the Fund to a minimum of £5 million and a maximum of £6 million.
- (2) If at any time it appears to the Treasury to be desirable in the interest of depositors to increase the size of the Fund, the Treasury may, after consultation with the Board, by order made by statutory instrument amend subsection (1) above so as to substitute for the sums for the time being specified in that subsection such larger sums as may be specified in the order; but no such order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (3) An order under subsection (2) above may authorise the Board forthwith to levy further contributions from contributory institutions so as to raise the amount standing to the credit of the Fund to a figure between the new minimum and maximum amounts provided for by the order.

## **26 Special contributions and power to borrow**

- (1) If it appears to the Board that payments in any financial year of the Board under section 28 below are likely to exhaust the Fund, the Board may, with the approval of the Treasury, levy special contributions from contributory institutions to meet the Fund's commitments in the year.

- (2) Where, at the end of any financial year of the Board in the course of which special contributions were levied, moneys representing the whole or part of those contributions remain in the Fund, those moneys shall be repaid by the Board to the institutions from which they were levied pro rata according to the amount of the special contribution made by each of them.
- (3) If in the course of operating the Fund it appears to the Board desirable to do so, the Board may borrow for temporary purposes up to a total outstanding at any time of £10 million or such larger sum as, after consultation with the Board, the Treasury may from time to time prescribe by order made by statutory instrument.
- (4) A statutory instrument made under subsection (3) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Any amount borrowed by virtue of subsection (3) above shall be disregarded in ascertaining whether the amount standing to the credit of the Fund is such that the Board may exercise their power to levy further contributions under subsection (1) of section 25 above.

## **27 Maximum and minimum contributions**

- (1) Subject to subsection (5) below, the amount of the initial contribution levied from a contributory institution shall be not less than £2,500.
- (2) Subject to subsection (5) below, the amount of the initial contribution or any further contribution levied from a contributory institution shall not exceed £300,000.
- (3) No contributory institution shall be required to pay a further or special contribution if, or to the extent that, the amount of that contribution, together with previous initial, further and special contributions made by the institution, after allowing for any repayments made to it under section 26(2) above or section 32 below, amounts to more than 0.3 per cent, of the institution's deposit base as ascertained for the purpose of the contribution in question.
- (4) Nothing in subsection (3) above—
  - (a) shall entitle an institution to repayment of any contribution previously made; or
  - (b) shall prevent the Board from proceeding to levy contributions from other contributory institutions in whose case the limit in that subsection has not been reached.
- (5) The Treasury may from time to time, after consultation with the Board, by order made by statutory instrument amend subsection (1) or subsection (2) above so as to substitute for the sum for the time being specified in that subsection such other sum as may be specified in the order.
- (6) No order shall be made under subsection (5) above unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

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### *Payments out of the Fund*

#### **28 Payments to depositors when institution becomes insolvent**

(1) Subject to the provisions of this section, if at any time an institution becomes insolvent and at that time—

- (a) it is a recognised bank or licensed institution which is not excluded from being a contributory institution by an order under section 23(2) above; or
- (b) it is neither recognised nor licensed but is an institution which was formerly a recognised bank or licensed institution and, at the time when it ceased to have either recognition or a licence, was not excluded as mentioned in paragraph (a) above ;

the Board shall as soon as practicable pay out of the Fund to a depositor who has a protected deposit with that institution an amount equal to three-quarters of his protected deposit.

(2) The Board may decline to make any payment under subsection (1) above to a person who, in the opinion of the Board, had any responsibility for, or may have profited directly or indirectly from, the circumstances giving rise to the institution's financial difficulties.

(3) For the purposes of this Part of this Act, a body corporate becomes insolvent—

- (a) on the making of a winding-up order against it; or
- (b) on the passing of a resolution for a creditors' voluntary winding up;

or, in the case of a body corporate formed under the law of a country or territory outside the United Kingdom, on the occurrence of an event which appears to the Board to correspond under that law with either of the events specified above.

(4) For the purposes of this Part of this Act, a partnership becomes insolvent—

- (a) on the making of a winding-up order against the firm under Part IX of the Companies Act 1948 or the Companies Act (Northern Ireland) 1960 (unregistered companies) ; or
- (b) in England and Wales, on the making of a receiving order against the firm; or
- (c) in Scotland, on the making of an award of sequestration on the estate of the partnership; or
- (d) in Northern Ireland, on the making of an order of adjudication of bankruptcy against any of the partners ;

or, in the case of a partnership whose principal place of business is in a country or territory outside the United Kingdom, on the occurrence of an event which appears to the Board to correspond under the law of that country or territory with any of the events specified above.

(5) For the purposes of this Part of this Act, an unincorporated institution which is formed under the law of another member State and is not a partnership becomes insolvent on the occurrence of an event which, under the law of that member State, appears to the Board to correspond, as near as may be, with any of the events specified in paragraphs (a) and (b) of subsection (3) or paragraphs (a) to (d) of subsection (4) above.

(6) Notwithstanding that the Board may not yet have made or become liable to make a payment under this section, in relation to an institution falling within subsection (1) above.—

- (a) the Board shall at all times be entitled to receive any notice or other document required to be sent to a creditor of the institution whose debt has been proved ; and
- (b) a duly authorised representative of the Board shall be entitled—
  - (i) to attend any meeting of creditors of the institution;
  - (ii) to be a member of any committee of inspection appointed under section 20 of the Bankruptcy Act 1914;
  - (iii) to be a commissioner under section 72 of the Bankruptcy (Scotland) Act 1913 ; and
  - (iv) to be a member of any committee of inspection appointed by virtue of Part V or Part IX of the Companies Act 1948 or the Companies Act (Northern Ireland) 1960;

but where a representative of the Board exercises the right to be a member of a committee of inspection or to be a commissioner by virtue of paragraph (b) above, he may not be removed except with the consent of the Board and, for the purposes of any provision made by or under any enactment or Northern Ireland legislation which specifies a minimum or maximum number of members of such committee or such commission, his appointment hereunder shall be disregarded.

- (7) In relation to an insolvent institution which is a partnership, any reference in this Part of this Act to the liquidator shall be construed, where the case so requires, as a reference—
- (a) to the trustee in bankruptcy or, in Northern Ireland, the official assignee in bankruptcy; or
  - (b) in England and Wales, where no adjudication of bankruptcy occurs, to any trustee appointed in pursuance of a composition or scheme of arrangement to administer the firm's property or manage its business or distribute the composition and, where an adjudication of bankruptcy is annulled under subsection (2) of section 21 of the Bankruptcy Act 1914, to any person in whom the property of the firm is vested under that subsection; or
  - (c) in Scotland, where the sequestration is declared at an end by a competent court, to any trustee or other person appointed to administer the firm's property or manage its business or distribute a composition in pursuance of any deed of arrangement or other settlement or arrangement by way of composition between the firm and its creditors.

## **29 Protected deposits**

- (1) Subject to the provisions of this section, in relation to an institution falling within subsection (1) of section 28 above, any reference in this Act to a depositor's protected deposit is a reference to the total liability of the institution to him, limited to a maximum of £10,000, in respect of the principal amounts of sterling deposits made with United Kingdom offices of the institution.
- (2) For the purposes of subsection (1) above, no account shall be taken of any liability unless proof of the debt which gives rise to it has been lodged with the liquidator of the insolvent institution or, in the case of an institution which is—
- (a) a body corporate formed under the law of a country or territory outside the United Kingdom,
  - (b) a partnership whose principal place of business is in such a country or territory,
- or

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- (c) any other unincorporated institution formed under the law of another member State,
- unless an act has been done which appears to the Board to correspond under the law of that country or territory or, as the case may be, under the law of that member State with the lodging of such a proof with the liquidator of the institution.
- (3) The Treasury, after consultation with the Board, may by order made by statutory instrument amend subsection (1) above so as to substitute for the sum for the time being specified in that subsection such larger sum as may be specified in the order; and no such order shall be made unless a draft of it has been laid before Parliament and approved by a resolution of each House.
- (4) The reference in subsection (1) above to the principal amount of a sterling deposit includes any interest or premium which has been so credited to the deposit in question as to constitute an accretion to the principal.
- (5) In determining the total liability of an institution to a depositor for the purposes of subsection (1) above, no account shall be taken of any liability in respect of a deposit if—
- (a) it is a secured deposit; or
  - (b) it is a deposit which had an original term to maturity of more than five years ;  
or
  - (c) the institution is no longer recognised or licensed and the deposit was made after it ceased to be either recognised or licensed, unless, at the time the deposit was made, the depositor did not know and could not reasonably be expected to have known that the institution was no longer recognised or licensed.
- (6) Unless the Board otherwise direct in any particular case, in determining the total liability of an institution to a depositor for the purposes of subsection (1) above, there shall be deducted the amount of any liability of the depositor to the institution—
- (a) in respect of which a right of set-off existed immediately before the institution became insolvent against any such sterling deposit as is referred to in subsection (1) above, or
  - (b) in respect of which such a right would then have existed if the deposit in question had been repayable on demand and the liability in question had fallen due.
- (7) In its application to this section and sections 30 and 31 below, subsection (5) of section 1 of this Act shall have effect—
- (a) with the omission of paragraphs (b) and (c), and
  - (b) as if the reference in paragraph (a) to a loan made by the Bank, a recognised bank or a licensed institution did not include a loan made by any of those bodies as trustees,
- and any reference in this Part of this Act to a protected deposit or, in the context of such a deposit, to a depositor shall be construed accordingly.

### **30 Trustee deposits and joint deposits**

- (1) For the purposes of sections 28 and 29 above, where any persons are entitled to a deposit as trustees, then, unless the deposit is held on trust for a person absolutely entitled to it as against the trustees, the trustees shall be treated as a single and continuing body of persons, distinct from the persons who may from time to time be



the trustees and if the same persons are entitled as trustees to different deposits under different trusts, they shall be treated as a separate and distinct body with respect to each of those trusts.

- (2) For the purpose of this section, a deposit is held on trust for a person absolutely entitled to it as against the trustees where that person has the exclusive right, subject only to satisfying any outstanding charge, lien or other right of the trustees to resort to the deposit for payment of duty, taxes, costs or other outgoings, to direct how the deposit shall be dealt with.
- (3) Any reference in subsection (1) or subsection (2) above to a person absolutely entitled to a deposit as against the trustees includes a reference to two or more persons who are so entitled jointly; and in the application of subsection (2) above to Scotland the words from "subject" to "outgoings" shall be omitted.
- (4) For the purposes of sections 28 and 29 above and the following provisions of this section, where a deposit is held on trust for any person absolutely entitled to it or, as the case may be, for two or more persons so entitled jointly, that person or, as the case may be, those persons jointly shall be treated as entitled to the deposit without the intervention of any trust.
- (5) For the purposes of sections 28 and 29 above, where two or more persons are jointly entitled to a deposit and subsection (1) above does not apply, each of them shall be treated as having a separate deposit of an amount produced by dividing the amount of the deposit to which they are jointly entitled by the number of persons who are so entitled.
- (6) The Board may decline to make any payment under section 28 above in respect of a deposit until the person claiming to be entitled to it informs the Board of the capacity in which he is entitled to the deposit; and if it appears to the Board—
  - (a) that the persons entitled to a deposit are so entitled as trustees, or
  - (b) that subsection (4) above applies to a deposit, or
  - (c) that two or more persons are jointly entitled to a deposit otherwise than as trustees,the Board may decline to make any payment under that section in respect of the deposit until sufficient information has been disclosed to them to enable them to determine what payment (if any) should be made under that section and to whom.

- (7) In this section " jointly entitled " means—
  - (a) in England and Wales and Northern Ireland, beneficially entitled as joint tenants, tenants in common or as coparceners; and
  - (b) in Scotland, beneficially entitled as joint owners or owners in common.

### **31 Liability of insolvent institutions in respect of payments made by the Board**

- (1) This section applies where—
  - (a) an institution is insolvent; and
  - (b) the Board have made, or are under a liability to make, a payment under section 28 above by virtue of the institution becoming insolvent;and in the following provisions of this section a payment falling within paragraph (b) above is referred to as an " insolvency payment" and the person to whom such a payment has been or is to be made is referred to as " the depositor ".

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- (2) Where this section applies—
- (a) the institution concerned shall become liable to the Board, as in respect of a contractual debt incurred immediately before the institution became insolvent, for an amount equal to the amount of the insolvency payment;
  - (b) the liability of the institution to the depositor in respect of any deposit or deposits of his (in this section referred to as " the liability to the depositor ") shall be reduced by an amount equal to the insolvency payment made or to be made to him by the Board; and
  - (c) the duty of the liquidator of the insolvent institution to make payments to the Board on account of the liability referred to in paragraph (a) above (in this section referred to as " the liability to the Board ") and to the depositor on account of the liability to him (after taking account of paragraph (b) above) shall be varied in accordance with subsection (3) below.
- (3) The variation referred to in subsection (2)(c) above is as follows: —
- (a) in the first instance the liquidator shall pay to the Board instead of to the depositor any amount which, apart from this section, would be payable on account of the liability to the depositor, except in so far as that liability • relates to a secured deposit or a deposit which had an original term to maturity of more than five years or a deposit which is not a sterling deposit; and
  - (b) if at any time the total amount paid to the Board by virtue of paragraph (a) above and in respect of the liability to the Board equals the amount of the insolvency payment made to the depositor, the liquidator shall thereafter pay to the depositor instead of to the Board any amount which, apart from this section, would be payable to the Board in respect of the liability to the Board.
- (4) In the case of a deposit which, for the purposes of section 30 above, is held on trust for a person absolutely entitled to it as against the trustees or, as the case may be, for two or more persons so entitled jointly, any reference in the preceding provisions of this section to the liability to the depositor shall be construed as a reference to the liability of the institution concerned to the trustees.
- (5) The Board may by notice in writing served on the liquidator of an insolvent institution require him, at such time or times and at such place as may be specified in the notice.—
- (a) to furnish to the Board such information, and
  - (b) to produce to the Board such books or papers specified in the notice,
- as the Board may reasonably require to enable them to carry out their functions under this Part of this Act.
- (6) Where, as a result of an institution having become insolvent, any books or papers have come into the possession of the Official Receiver or, in Northern Ireland, the official assignee for company liquidations or in bankruptcy, he shall permit any person duly authorised by the Board to inspect the books or papers for the purpose of establishing—
- (a) the identity of those of the institution's depositors to whom the Board are liable to make a payment under section 28 above ; and
  - (b) the amount of the protected deposit held by each of those depositors.
- (7) Rules may be made—
- (a) for England and Wales, under section 365 of the Companies Act 1948 and section 132 of the Bankruptcy Act 1914;

- (b) for Scotland, under section 365 of the Companies Act 1948 and section 32 of the Sheriff Courts (Scotland) Act 1971; and
  - (c) for Northern Ireland, under section 317 of the Companies Act (Northern Ireland) 1960 and section 55 of the Judicature (Northern Ireland) Act 1978 ;
- for the purpose of integrating the procedure provided for in this section into the general procedure on winding-up or bankruptcy.

*Repayments in respect of contributions*

**32 Repayments in respect of contributions**

- (1) Any moneys received by the Board under section 31 above shall not form part of the Fund but, for the remainder of the financial year of the Board in which they are received, shall be retained and, so far as appears to the Board appropriate, shall be invested in Treasury bills payable not more than ninety-one days from the date of issue; and any income arising from moneys so invested during the remainder of the year shall be credited to the Fund.
- (2) The Board shall prepare a scheme for the making of repayments to institutions out of moneys falling within subsection (1) above in respect of—
  - (a) special contributions, and
  - (b) so far as they are not attributable to an increase in the size of the Fund resulting from an order under subsection (2) of section 25 above, further contributions levied under that section,which have been made in the financial year of the Board in which the moneys were received or in any previous such financial year.
- (3) A scheme under subsection (2) above—
  - (a) shall provide for the making of repayments first in respect of special contributions and then, if those contributions can be repaid in full (taking into account any previous repayments under this section and under section 26(2) above), in respect of further contributions ;
  - (b) may make provision for repayments in respect of contributions made by an institution which has ceased to be a contributory institution to be made to a contributory institution which, in the opinion of the Board, is its successor ; and
  - (c) subject to paragraph (b) above, may exclude from the scheme further contributions levied from institutions which have ceased to be contributory institutions.
- (4) As soon as practicable after the end of the financial year of the Board in which any moneys are received by them as mentioned in subsection (1) above, the Board shall make out of those moneys the payments required by the scheme under subsection (2) above.
- (5) If in any financial year of the Board the payments made under subsection (4) above (in that and any previous years) in pursuance of a scheme or schemes under subsection (2) above are sufficient to provide for repayment in full of all the contributions to which the scheme or, as the case may be, the schemes related, any balance remaining of the moneys received by the Board as mentioned in subsection (1) above shall be credited to the Fund.

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### 33 Tax treatment of contributions and repayments

In computing for the purposes of the Tax Acts the profits or gains arising from the trade carried on by a contributory institution.—

- (a) to the extent that it would not be deductible apart from this subsection, any sum expended by the institution in paying a contribution to the Fund may be deducted as an expense; and
- (b) any payment which is made to the institution by the Board under section 26(2) above or pursuant to a scheme under section 32(2) above shall be treated as a trading receipt.

## PART III

### ADVERTISEMENTS AND BANKING NAMES

#### *Advertisements for deposits*

### 34 Control of advertisements for deposits

- (1) After consultation with the Bank, the Treasury may by regulations made by statutory instrument regulate the issue, form and content of advertisements inviting the making of deposits.
- (2) Regulations under this section may make different provision with respect to different descriptions of advertisement and different descriptions of advertisers and, in particular,—
  - (a) may prohibit the issue of advertisements of, or by persons of, particular descriptions ; and
  - (b) may make provision for the exclusion from all or any of the provisions of the regulations of advertisements of particular descriptions or advertisements issued by persons of particular descriptions ; and
  - (c) may make provision with respect to matters which must be, as well as to matters which may not be, included in advertisements.
- (3) Any person who issues an advertisement in contravention of regulations under this section shall be liable—
  - (a) on summary conviction to a fine not exceeding the statutory maximum; and
  - (b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both.
- (4) In this section " advertisement " includes every form of advertising, whether in a publication, by the display of notices, signs, labels, showcards or goods, by distribution of samples, by means of circulars, catalogues, price lists or other documents, by an exhibition of photographic or cinematographic films, or of pictures or models, by way of sound broadcasting or television, or in any other manner; and references to the issue of an advertisement shall be construed accordingly.
- (5) For the purposes of this section—
  - (a) an advertisement issued by any person by way of display or exhibition in a public place shall be treated as issued by him on every day on which he causes or permits it to be displayed or exhibited;

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- (b) an advertisement which contains information which is intended or might reasonably be presumed to be intended to lead directly or indirectly to the making of deposits shall be treated as an advertisement inviting deposits;
  - (c) an advertisement issued by any person on behalf of or to the order of another person shall be treated as an advertisement issued by that other person; and
  - (d) an advertisement inviting deposits with a person specified in the advertisement shall be presumed, unless the contrary is proved, to have been issued by that person.
- (6) A statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### **35 Specific prohibitions etc. directed at licensed institutions**

- (1) Subject to subsections (3) and (4) below, if the Bank considers that an advertisement for deposits issued or proposed to be issued by a licensed institution is misleading, the Bank may give the institution concerned a direction under this section.
- (2) A direction under this section shall be in writing and may contain all or any of the following, namely,—
- (a) a prohibition on the issue Of advertisements of a specified kind;
  - (b) a requirement that advertisements of a particular description shall be modified in a specified manner;
  - (c) a prohibition on the issue of any advertisements which are, wholly or substantially, repetitions of an advertisement which has been issued and which is identified in the direction ; and
  - (d) a requirement to take all practical steps to withdraw from display in any place any advertisements or any advertisements of a particular description specified in the direction.
- (3) Not less than seven days before giving a direction under this section, the Bank shall give the institution concerned notice in writing of its intention, specifying the reasons why it proposes to act
- (4) In any case where—
- (a) the Bank has given notice under subsection (3) above, and
  - (b) within the period of seven days beginning on the date on which the notice was given, written representations are made to the Bank by or on behalf of the institution concerned,
- the Bank shall take those representations into account in deciding whether or not to proceed to give the direction.
- (5) A direction under this section—
- (a) may be revoked or varied by a further direction under this section; and
  - (b) may be revoked by the Bank by notice in writing given to the institution concerned.
- (6) Subsections (4) and (5) of section 34 above shall apply in relation to this section as they apply in relation to that.
- (7) Any person who fails to comply with a direction under this section shall be liable—
- (a) on summary conviction to a fine not exceeding the statutory maximum; and

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- (b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both.

*Banking names and descriptions*

**36 Restriction on use of certain names and descriptions**

- (1) Subject to the provisions of this section and section 37 below, no person carrying on a business of any description in the United Kingdom, other than—
  - (a) the Bank,
  - (b) the central bank of a member State other than the United Kingdom.
  - (c) a recognised bank,
  - (d) a trustee savings bank,
  - (e) the Central Trustee Savings Bank Limited, and
  - (f) the Post Office, in the exercise of its powers to provide banking services,
 may use any name or in any other way so describe himself or hold himself out as to indicate, or reasonably be understood to indicate, that he is a bank or banker or is carrying on a banking business.
- (2) Nothing in this Part of this Act or in the preceding Parts of this Act affects the determination of any question whether a licensed institution or other person is a bank or banker for purposes other than those of this Act, and accordingly nothing in subsection (1) above shall prohibit a person who is not a recognised bank from using the expression " bank " or " banker " or a similar expression with reference to himself in any case where—
  - (a) he wishes to comply with or take advantage of any relevant provision of law or custom ; and
  - (b) it is necessary for him to use that expression in order to be able to assert that he is complying with or entitled to take advantage of that provision.
- (3) In subsection (2) above " relevant provision of law or custom " means any enactment, any instrument made under an enactment, any international agreement, any rule of law or any commercial usage or practice which confers any benefit on, or otherwise has effect only in relation to, a person by virtue of his being a bank or banker.
- (4) Without prejudice to any provision made by virtue of section 34 above, nothing in subsection (1) above shall prohibit a licensed institution which provides at least two of the services specified in paragraph 2(2) of Schedule 2 to this Act from using the expression " banking services " in relation to any of the services provided by it except—
  - (a) where the use is in such immediate conjunction with the name of the institution that the expression might reasonably be thought to form part of its name ; or
  - (b) where the expression appears on any notice or sign or in other writing which is for the time being so displayed as to be visible to persons frequenting any place or building to which the public has access.
- (5) Subsection (1) above does not prohibit the use by—
  - (a) a savings bank specified in subsection (6) below, or
  - (b) a municipal bank, or
  - (c) a body of persons certified as a school bank by either a trustee savings bank or the National Savings Bank, or a recognised bank,

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of a name or description if the name contains an indication, or when the description is used it is accompanied by a statement, that the bank or body concerned is a savings bank, a municipal bank or, as the case may be, a school bank.

- (6) The savings banks referred to in subsection (5)(a) above are—
- (a) the National Savings Bank ;
  - (b) any penny savings bank ;
  - (c) any savings bank established before 28th July 1863 under an Act passed in the fifty-ninth year of King George the Third intituled an Act for the Protection of Banks for Savings in Scotland, which has not since become a trustee savings bank ; and
  - (d) the British Railways Savings Bank established under section 32 of the British Railways Act 1966.
- (7) Subsection (1) above does not prohibit the use by—
- (a) licensed institution which is a wholly owned subsidiary (within the meaning of section 150(4) of the Companies Act 1948) of a recognised bank, or
  - (b) a company which has a wholly owned subsidiary (within the meaning of that section) which is a recognised bank,
- of a name which includes the name of that recognised bank for the purpose of indicating the connection between the two companies.
- (8) Subsection (1) above does not prohibit the use by a licensed institution which has its principal place of business in a country or territory outside the United Kingdom of the name under which the institution carries on business in that country or territory if the name is used in immediate conjunction with the description "licensed deposit-taker" and, where the name appears in writing, if that description is at least as prominent as the name.
- (9) Subsection (1) above does not prohibit the use by a person who carries on business at a representative office of an overseas institution of a name under which the overseas institution carries on a deposit-taking business in a country or territory outside the United Kingdom if the name is used in immediate conjunction with the description "representative office " and, where the name appears in writing, if that description is at least as prominent as the name; and in this subsection " overseas institution" and " representative office " have the same meaning as in section 40 below.
- (10) Where on an application for—
- (a) registration of a name under the Registration of Business Names Act 1916, or
  - (b) the first registration of a company, or the registration of a company by a new name, under the Companies Act 1948 or the Companies Act (Northern Ireland) 1960,
- it appears to the registrar concerned that the use of the name by the person seeking to register it would contravene subsection (1) above, the registration shall not be made.
- (11) A person who contravenes subsection (1) above shall be liable on summary conviction to a fine not exceeding £1,000; and where the contravention involves a public display or exhibition of the offending name, description or other matter, there shall be a fresh contravention of the subsection on each day on which that person causes or permits the display or exhibition to continue.

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### **37 Transitory exceptions from section 36(1)**

- (1) If on the appointed day an institution is carrying on a deposit-taking business in the United Kingdom, nothing in section 36(1) above shall apply to the institution at any time when, by virtue of section 2(4) above, it is not prohibited by section 1(1) above from accepting a deposit.
- (2) For a period of twelve months beginning on the appointed day, nothing in section 36(1) above shall apply to a person who on that day is carrying on in the United Kingdom a business other than a deposit-taking business.
- (3) Notwithstanding anything in section 36 above, if an institution ceases (otherwise than on becoming a recognised bank) to be entitled to the benefit of subsection (1) above, the institution shall be entitled—
  - (a) to continue to use any existing registered business or company name for a period of twelve months, and
  - (b) to continue to use any other description for a period of six months,
 each period beginning on the date on which the institution ceased to benefit from subsection (1) above.
- (4) If, at any time when an institution or other person is entitled to use a registered business or company name by virtue only of the preceding provisions of this section, that name is changed so as to avoid any contravention of section 36(1) above, then—
  - (a) throughout the period or, as the case may be, the remainder of the period of twelve months specified in subsection (2) or, as the case may be, subsection (3) above, and
  - (b) for a further period of twelve months,
 the institution or other person shall be entitled, in any context where it uses the new name, to include a reference to the name by which it was formerly known, together with some indication that that name is no longer in use.
- (5) Notwithstanding anything in section 36 above, if an institution ceases to be a recognised bank, the institution shall be entitled to continue to use any existing registered business or company name or any other description for a period of six months beginning on the date when it ceases to be a recognised bank.

## **PART IV**

### **MISCELLANEOUS AND GENERAL**

### **38 Amendments of Consumer Credit Act 1974**

- (1) In section 74 of the Consumer Credit Act 1974 (certain agreements excluded from Part V of that Act) after subsection (3) (certain overdraft agreements excluded only where the Director General of Fair Trading makes a determination) there shall be inserted the following subsection: —
  - “(3A) Notwithstanding anything in subsection (3)(b) above, in relation to a debtor-creditor agreement under which the creditor is the Bank of England or a bank within the meaning of the Bankers' Books Evidence Act 1879, the Director shall make a determination that subsection (1)(b) above applies unless he considers that it would be against the public interest to do so”;



and in subsection (4) of that section (certain agreements in writing falling within subsection (1)(b) or (c) subject to regulations as to form and content) for " (1)(b) or (c)", in each place where it occurs, there shall be substituted " (1)(c) ".

- (2) Nothing in sections 114 to 122 of the Consumer Credit Act 1974 (pledges) shall be taken to apply to bearer bonds and, accordingly, in paragraph (a) of subsection (3) of section 114 of that Act (exclusion of pledges of documents of title) after the word " title" there shall be inserted the words " or of bearer bonds ".
- (3) In section 185(2) of the Consumer Credit Act 1974 (which relates to dispensing notices given by one of two or more debtors to whom running-account credit is provided) at the end of the proviso there shall be added the following paragraph: —
  - “(c) a dispensing notice which is operative in relation to an agreement shall be operative also in relation to any subsequent agreement which, in relation to the earlier agreement, is a modifying agreement”.

### **39 Fraudulent inducement to make a deposit**

- (1) Any person who, on or after the appointed day, by any statement, promise or forecast which he knows to be misleading, false or deceptive, or by any dishonest concealment of material facts, or by the reckless making (dishonestly or otherwise) of any statement, promise or forecast which is misleading, false or deceptive, induces or attempts to induce another person—
  - (a) to make a deposit with him or with any other person, or
  - (b) to enter into or offer to enter into any agreement for that purpose,shall be liable on conviction on indictment to imprisonment for a term not exceeding seven years or to a fine or both.
- (2) In subsection (1) above " deposit " does not include a loan made to an institution upon terms involving the issue of debentures or other securities but, subject to that, in its application to subsection (1) above, subsection (5) of section 1 of this Act shall have effect with the omission of paragraphs (b) to (e).
- (3) Nothing in this section shall be construed as empowering a court in Scotland, other than the High Court of Justiciary, to pass for any offence under this section a sentence of imprisonment for a term exceeding two years.
- (4) Subsections (1) to (3) above have effect in substitution for subsections (1) and (2) of section 1 of the Protection of Depositors Act 1963 or, in Northern Ireland, section 1 of the Protection of Depositors Act (Northern Ireland) 1964; and nothing in this Act shall affect any liability of any person under either of those sections in respect of anything done or omitted to be done before the appointed day.

### **40 Representative offices of overseas deposit-taking institutions**

- (1) If, on or after the appointed day, a representative office is established in the United Kingdom by an overseas institution which does not carry on a deposit-taking business there, then, within the period of one month beginning with the date on which that office is established, the institution shall give notice in writing to the Bank of the establishment of the office.
- (2) If, before the appointed day, a representative office has been established in the United Kingdom by an overseas institution which does not carry on a deposit-taking business

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there, then, within the period of six months beginning with the appointed day, the institution shall give notice in writing to the Bank of the existence of the office.

(3) Any reference in this section to an overseas institution is a reference to an institution which carries on a deposit-taking business in a country or territory outside the United Kingdom and which is either—

- (a) a body corporate formed under the law of such a country or territory, or
- (b) any other description of institution of which the principal place of business is in such a country or territory,

and in relation to such an institution any reference in this section to a representative office is a reference to premises from which the deposit-taking business of the institution or any other activity of the institution which falls within paragraph 2(2) of Schedule 2 to this Act is promoted or assisted in any way.

(4) Where the Bank has received notice from an institution under subsection (1) or subsection (2) above, the Bank may by notice in writing given to the institution require it to furnish to the Bank, within the period of one month beginning with the date on which the notice is given,—

- (a) in the case of an institution which is required in connection with the establishment of a representative office in Great Britain after the appointed day to deliver certain documents to the Registrar of Companies under section 407(1) of the Companies Act 1948. copies of those documents; and
- (b) in the case of an institution which is not so obliged, or which has a representative office established before the appointed day, the like information as would be contained in the documents which the institution would be required to deliver as mentioned in paragraph (a) above if it were a company to which the said section 407(1) applied and had established a place of business within Great Britain immediately before the notice was given to it under this subsection.

(5) If at any time an overseas institution which has been required to furnish information or documents under subsection (4) above—

- (a) is required to deliver a return to the Registrar of Companies under section 409 of the Companies Act 1948 containing particulars of an alteration in the matters referred to in that section (alterations of memorandum, directors, persons authorised to accept service etc.), or
- (b) is required, in connection with ceasing to have a representative office in Great Britain, to give notice to the Registrar under subsection (2) of section 413 of that Act of the fact that it has ceased to have a place of business in either part of Great Britain,

the institution shall deliver a copy of the return, or, as the case may be, shall also give notice, to the Bank; and if at any time such an institution would be required to deliver such a return or give such a notice as is mentioned in paragraph (a) or paragraph (b) above if it were a company to which the said section or subsection applied and its representative office were a place of business, it shall make such a return or give such a notice to the Bank.

(6) Subsections (4) and (5) above shall apply in the case of a representative office established in Northern Ireland—

- (a) with the substitution for the references in those subsections to Great Britain of references to Northern Ireland, and

- (b) with the substitution for the references in those subsections to subsection (1) of section 407, section 409 and subsection (2) of section 413 of the Companies Act 1948 of references to, respectively, sections 356, 358 and 362 of the Companies Act (Northern Ireland) 1960.
- (7) An institution which fails to comply with any provision of this section shall be liable on summary conviction to a fine not exceeding £1,000.

#### **41 Offences**

- (1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (3) In any proceedings for an offence under this Act it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control.
- (4) Without prejudice to subsection (3) above, in any proceedings for an offence under section 34 or section 36 above committed by the publication of an advertisement it shall be a defence for the person charged to prove that he is a person whose business is to publish or arrange for the publication of advertisements and that he received the advertisement for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to such an offence.
- (5) No proceedings for an offence under this Act shall be instituted—
  - (a) in England and Wales, except by or with the consent of the Director of Public Prosecutions or the Bank; or
  - (b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland or the Bank.
- (6) Summary proceedings for any offence under this Act may, without prejudice to any jurisdiction exercisable apart from this subsection, be taken against an institution, including an unincorporated institution, at any place at which it has a place of business, and against an individual at any place at which he is for the time being.

#### **42 Offences committed by unincorporated institutions**

- (1) Proceedings for an offence alleged to have been committed under this Act by an unincorporated institution shall be brought in the name of that institution (and not in that of any of its members) and, for the purposes of any such proceedings, any rules of court relating to the service of documents shall have effect as if the institution were a corporation.
- (2) A fine imposed on an unincorporated institution on its conviction of an offence under this Act shall be paid out of the funds of the institution.

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- (3) Section 33 of the Criminal Justice Act 1925 and Schedule 2 to the Magistrates' Courts Act 1952 (procedure on charge of offence against a corporation) shall have effect in a case in which an unincorporated institution is charged in England or Wales with an offence under this Act in like manner as they have effect in the case of a corporation so charged.
- (4) In relation to any proceedings on indictment in Scotland for an offence alleged to have been committed under this Act by an unincorporated institution, section 74 of the Criminal Procedure (Scotland) Act 1975 (proceedings on indictment against bodies corporate) shall have effect as if the institution were a body corporate.
- (5) Section 18 of the Criminal Justice Act (Northern Ireland) 1945 and Schedule 5 to the Magistrates' Courts Act (Northern Ireland) 1964 (procedure on charge of offence against a corporation) shall have effect in a case in which an unincorporated institution is charged in Northern Ireland with an offence under this Act in like manner as they have effect in the case of a corporation so charged.
- (6) Where a partnership is guilty of an offence under this Act, every partner, other than a partner who is proved to have been ignorant of or to have attempted to prevent the commission of the offence, shall also be guilty of that offence and be liable to be proceeded against and punished accordingly.
- (7) Where any other unincorporated institution is guilty of an offence under this Act, every officer of the institution who is bound to fulfil any duty whereof the offence is a breach, or if there is no such officer then every member of the committee or other similar governing body, other than a member who is proved to have been ignorant of or to have attempted to prevent the commission of the offence, shall also be guilty of that offence and be liable to be proceeded against and punished accordingly.

#### **43 Exclusion of certain provisions relating to rehabilitation of offenders**

- (1) Section 4(2) of the Rehabilitation of Offenders Act 1974 (questions relating to previous convictions which have become spent) shall not apply in relation to any question put to any person with respect to the previous convictions, offences, conduct or circumstances of an individual if—
  - (a) the question is put by or on behalf of the Bank and the individual is a director, controller or manager of an institution which is recognised or licensed or which has made an application for recognition or a licence which has not been disposed of; or
  - (b) the question is put by or on behalf of a recognised or licensed institution or an institution which has made an application for recognition or a licence which has not yet been disposed of and the individual is, or is seeking to become, a director, controller or manager of the institution.
- (2) Section 4(3)(b) of the Rehabilitation of Offenders Act 1974 (spent convictions not to be ground for dismissal etc. from offices, professions, occupations or employment) shall not—
  - (a) prevent the Bank from refusing to grant a licence to an institution or from revoking a licence held by an institution on the ground that, by reason of a previous conviction, an individual is not a fit and proper person to be a director, controller or manager of the institution; or
  - (b) apply in relation to the dismissal or exclusion of an individual from being a director, controller or manager of an institution which is recognised or

licensed or which has made an application for recognition or a licence which has not yet been disposed of.

- (3) For the purposes of subsections (1) and (2) above, an application by an institution is not disposed of until the decision of the Bank on the application is communicated to the institution.
- (4) In section 7(2) of the Rehabilitation of Offenders Act 1974 (exclusion of certain proceedings from the effect of rehabilitation set out in section 4(1) of that Act) at the end of paragraph (f) there shall be added the words “or,
  - (g) in any proceedings arising out of any such decision of the Bank of England as is referred to in section 11(1) of the Banking Act 1979, including proceedings on appeal to any court”.
- (5) In the application of subsections (1) and (2) above to Northern Ireland, for the references to sections 4(2) and 4(3)(b) of the Rehabilitation of Offenders Act 1974 there shall be substituted references to Articles 5(2) and 5 (3)(b) of the Rehabilitation of Offenders (Northern Ireland) Order 1978, respectively.
- (6) In Article 8(2) of the Rehabilitation of Offenders (Northern Ireland) Order 1978 (exclusion of certain proceedings from the effect of rehabilitation set out in Article 5(1) of that Order) at the end of sub-paragraph (e) there shall be added the words “or,
  - (f) in any proceedings arising out of any such decision of the Bank of England as is referred to in section 11(1) of the Banking Act 1979, including proceedings on appeal to any court.”.

#### **44 Evidence**

In any proceedings, a certificate purporting to be signed by the Chief Cashier or a Deputy Chief Cashier of the Bank and certifying—

- (a) that a particular institution is or is not recognised or licensed or was or was not recognised or licensed at a particular time, or
- (b) the date on which recognition or a licence was granted to a particular institution, or
- (c) the date on which an institution ceased to be recognised or to hold a licence, or a licence of a particular description, or
- (d) the nature of the licence held by a particular institution at any time and, in the case of a conditional or transitional licence, the date of its expiry,

shall be admissible in evidence and, in Scotland, shall be sufficient evidence of the facts stated in the certificate.

#### **45 Service of notices**

- (1) This section has effect in relation to any notice, directions or other document required or authorised by or under this Act to be given to or served on any person other than the Bank.
- (2) Any such document may be given to or served on the person in question—
  - (a) by delivering it to him; or
  - (b) by leaving it at his proper address ; or
  - (c) by sending it by post to him at that address.
- (3) Any such document may,—

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- (a) in the case of a body corporate, be given to or served on the secretary or clerk of that body ; and
  - (b) in the case of any other description of institution, be given to or served on a controller of the institution.
- (4) For the purposes of this section and section 7 of the Interpretation Act 1978 (service of documents by post) in its application to this section, the proper address of any person to or on whom a document is to be given or served shall be his last known address, except that—
- (a) in the case of a body corporate or its secretary or clerk, it shall be the address of the registered or principal office of that body in the United Kingdom; and
  - (b) in the case of any other description of institution or a person having the control or management of its business, it shall be that of the principal office of the institution in the United Kingdom.
- (5) If the person to or on whom any document mentioned in subsection (1) above is to be given or served has specified an address within the United Kingdom, other than his proper address within the meaning of subsection (4) above, as the one at which he or someone on his behalf will accept documents of the same description as that document, that address shall also be treated for the purposes of this section and section 7 of the Interpretation Act 1978 as his proper address.

#### **46 Repeal of certain enactments relating to banks and banking**

The following enactments are hereby repealed: —

- (a) section 21 of the Bank Charter Act 1844 and section 13 of the Bank Notes (Scotland) Act 1845 (which require banks to make a return to the Commissioners of Inland Revenue of the names of their principals and places of business);
- (b) in section 4(2) of the Limited Partnerships Act 1907 (which provides that a partnership registered under that Act may not have more than a certain number of partners), the words " in the case of a partnership carrying on the business of banking, of more than ten persons, and, in the case of any other partnership " ;
- (c) in section 155 of the Companies Act 1948 and section 149 of the Companies Act (Northern Ireland) 1960 (which lay down requirements as to the signature of the balance sheet of a registered company), subsection (2) (which lays down special requirements for banking companies);
- (d) section 429 of the said Act of 1948 and section 377 of the said Act of 1960 (which, subject to certain exceptions, prohibit the formation otherwise than as a registered company of a company, association or partnership of more than ten persons for the purpose of carrying on the business of banking);
- (e) section 430 of the said Act of 1948 and section 378 of the said Act of 1960 (which require banking companies proposing to become registered with limited liability to give notice to all persons having an account with them);
- (f) section 431 of the said Act of 1948 and section 379 of the said Act of 1960 (which exclude liabilities in respect of notes issued by a bank in the United Kingdom from the principle of limited liability); and
- (g) in subsection (1) of section 433 of the said Act of 1948 and section 381 of the said Act of 1960 (which require certain companies to post up in their business premises a bi-annual statement of their financial position), the words " a limited banking company or " .

#### **47 Defence of contributory negligence**

In any circumstances in which proof of absence of negligence on the part of a banker would be a defence in proceedings by reason of section 4 of the Cheques Act 1957, a defence of contributory negligence shall also be available to the banker notwithstanding the provisions of section 11(1) of the Torts (Interference with Goods) Act 1977.

#### **48 Municipal banks**

- (1) References in this Act to a municipal bank are to a company within the meaning of the Companies Act 1948 which—
  - (a) carries on a deposit-taking business,
  - (b) is connected with a local authority as mentioned in subsection (2) below, and
  - (c) has its deposits guaranteed by that local authority in accordance with subsection (5) below.
- (2) The connection referred to in paragraph (b) of subsection (1) above between a company and a local authority is that—
  - (a) the company's articles of association provide that the shares in the company are to be held only by members of the local authority ; and
  - (b) substantially all the funds lent by the company are lent to the local authority.
- (3) Where on 9th November 1978 a company, or its predecessor,—
  - (a) was carrying on a deposit-taking business, and
  - (b) was connected with a local authority as mentioned in subsection (2) above,that local authority or its successor may for the purposes of this Act resolve to guarantee deposits with the company.
- (4) A resolution passed by a local authority under subsection (3) above may not be rescinded.
- (5) Where a local authority has passed a resolution under subsection (3) above, that local authority and any local authority which is its successor shall be liable, if the company concerned defaults in payment, to make good to a depositor the principal and interest owing in respect of any deposit with the company, whether made before or after the passing of the resolution.
- (6) For the purposes of this section—
  - (a) one company is the predecessor of another if that other succeeds to its obligations in respect of its deposit-taking business; and
  - (b) one local authority is the successor of another if, as a result of, or in connection with, an order under Part IV of the Local Government Act 1972 or Part II of the Local Government (Scotland) Act 1973 (change of local government area), it becomes connected as mentioned in subsection (2) above with a company formerly so connected with that other local authority.
- (7) In the Scotland Act 1978, at the end of Part III of Schedule 10 (matters dealt with by certain enactments to be included, to the extent specified, in the groups of devolved matters) there shall be added the following entry—

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“The Banking Act 1979 section 48(3) to Included.”

(6).

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#### **49 Meaning of "director", "controller" and "manager"**

- (1) Except in section 41 above, in this Act the expressions "director", "controller" and "manager", in relation to an institution, shall be construed in accordance with the provisions of this section.
- (2) "Director", in relation to an institution, includes—
  - (a) any person who occupies the position of a director, by whatever name called ; and
  - (b) in the case of an institution established in a country or territory outside the United Kingdom, any person, including a member of a managing board, who occupies a position appearing to the Bank to be analogous to that of a director of a company registered under the Companies Act 1948;and in the case of a partnership the expression "director", where it is used in subsections (4) and (5) below, includes a partner.
- (3) "Controller", in relation to an institution, means—
  - (a) a managing director of the institution or of another institution of which it is a subsidiary or, in the case of an institution which is a partnership, a partner;
  - (b) a chief executive of the institution or of another institution of which it is a subsidiary;
  - (c) a person in accordance with whose directions or instructions the directors of the institution or of another institution of which it is a subsidiary (or any of them) are accustomed to act; and
  - (d) a person who, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, fifteen per cent, or more of the voting power at any general meeting of the institution or of another institution of which it is a subsidiary.
- (4) "Manager", in relation to an institution, means a person (other than the chief executive) employed by the institution who, under the immediate authority of a director or chief executive of the institution—
  - (a) exercises managerial functions; or
  - (b) is responsible for maintaining accounts or other records of the institution.
- (5) In this section "chief executive". in relation to an institution, means a person who is employed by the institution and who either alone or jointly with one or more other persons, is or will be responsible under the immediate authority of the directors for the conduct of the business of the institution.
- (6) Without prejudice to subsection (5) above, in relation to an institution whose principal place of business is in a country or territory outside the United Kingdom, the expression "chief executive" also includes a person who is employed by the institution and who, either alone or jointly with one or more other persons, is or will be responsible for the conduct of its deposit-taking business in the United Kingdom.
- (7) In this section "associate", in relation to any person, means—
  - (a) the wife or husband or son or daughter of that person;
  - (b) any company of which that person is a director ;
  - (c) any person who is an employee or partner of that person; and
  - (d) if that person is a company—
    - (i) any director of that company;
    - (ii) any subsidiary of that company ; and



(iii) any director or employee of any such subsidiary ;  
and for the purposes of this section " son " includes step-son and " daughter " includes step-daughter.

## 50 Interpretation

(1) In this Act—

" the appointed day ", and similar expressions, shall be construed in accordance with section 52(4) below;

" the Bank " means the Bank of England ;

" conditional licence " shall be construed in accordance with section 10 of this Act;

" contributory institution " has the meaning assigned to it by section 23 of this Act;

" debenture " has the same meaning as in the Companies Act 1948;

" deposit " and " deposit-taking business " shall be construed in accordance with section 1 of this Act;

" enactment " includes an enactment of the Parliament of Northern Ireland and a Measure of the Northern Ireland Assembly;

" full licence " means a licence granted under section 3(2) of this Act;

" institution ", except in the expression " unincorporated institution ", means a body corporate or a partnership or any other association of two or more persons formed under the law of another member State and, accordingly, except in the expression " licensed institution ", includes a recognised bank ;

" licence " means a full licence, a conditional licence or a transitional licence and " licensed institution " shall be construed accordingly;

" local authority " means—

(a) in England and Wales, a local authority within the meaning of the Local Government Act 1972, the Common Council of the City of London or the Council of the Isles of Stilly ;

(b) in Scotland, a local authority within the meaning of the Local Government (Scotland) Act 1973; and

(c) in Northern Ireland, a district council within the meaning of the Local Government Act (Northern Ireland) 1972;

" municipal bank " shall be construed in accordance with section 48 above;

" penny savings bank " has the same meaning as in section 16 of the National Savings Bank Act 1971;

" recognition " means recognition as a bank for the purposes of this Act and any reference to a recognised bank or institution shall be construed accordingly ;

" statutory maximum ", in relation to a fine on summary conviction, means—

(a) in England and Wales and Northern Ireland, the prescribed sum, within the meaning of section 28 of the Criminal Law Act 1977 (at the passing of this Act £1,000); and

(b) in Scotland, the prescribed sum, within the meaning of section 289B of the Criminal Procedure (Scotland) Act 1975 (at the passing of this Act £1,000);

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and for the purposes of the application of this definition in Northern Ireland the provisions of the Criminal Law Act 1977 which relate to the sum mentioned in paragraph (a) above shall extend to Northern Ireland;

" subsidiary " shall be construed in accordance with section 154 of the Companies Act 1948 or section 148 of the Companies Act (Northern Ireland) 1960 ;

" transitional licence " means a licence granted under paragraph 1 of Schedule 3 to this Act;

" trustee savings bank " has the meaning assigned to it by section 3 of the Trustee Savings Banks Act 1969 ; and " unincorporated institution " means a partnership or any other association of two or more persons which is not a body corporate.

- (2) Any reference in this Act to any provision of Northern Ireland legislation, within the meaning of section 24 of the Interpretation Act 1978, includes a reference to any subsequent provision of that legislation which, with or without modification, re-enacts the provision referred to in this Act.

## **51 Consequential amendments and repeals**

- (1) The amendments in Part I of Schedule 6 to this Act being amendments consequential on the provisions of this Act, shall have effect, subject to the savings in Part II of that Schedule.
- (2) The enactments mentioned in Schedule 7 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

## **52 Short title, commencement and extent**

- (1) This Act may be cited as the Banking Act 1979.
- (2) This Act extends to Northern Ireland.
- (3) This Act shall come into operation on such day as the Treasury may appoint by order made by statutory instrument; and different days may be so appointed for different provisions of this Act and for such different purposes of the same provision as may be specified in the order.
- (4) Any reference in any provision of this Act to " the appointed day " shall be construed as a reference to the day appointed for the purposes of that provision; and any reference in this Act to the day appointed for the purposes of any provision of this Act—
- (a) shall be construed as a reference to the day appointed under this section for the coming into operation of that provision; and
  - (b) where different days are appointed for different purposes of that provision, shall be construed, unless an order under this section otherwise provides, as a reference to the first day so appointed.