



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.