



Banking Act 1987 (repealed)

1987 CHAPTER 22

PART I

REGULATION OF DEPOSIT-TAKING BUSINESS

Information

36 Notification of change of director, controller or manager.

- (1) Subject to subsection (3) below, an authorised 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 under subsection (1) above shall be given before the end of the period of fourteen days beginning with the day on which the institution becomes aware of the relevant facts.
- (3) The Bank may by a notice in writing wholly or partly dispense from the obligation imposed by subsection (1) above any authorised institution whose principal place of business is outside the United Kingdom.
- (4) An institution which fails to give a notice required by this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding the fifth level on the standard scale.

37 Notification of acquisition of significant shareholding.

- (1) A person who becomes a significant shareholder in relation to an authorised institution incorporated in the United Kingdom shall within seven days give written notice of that fact to the Bank.
- [^{F1}(2) For the purposes of this section “a significant shareholder”, in relation to an institution, means a person who is not a shareholder controller but who, either alone or with any associate or associates—

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

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

- (3) Subject to subsection (4) below, any person who contravenes subsection (1) above shall be guilty of an offence.
- (4) A person shall not be guilty of an offence under subsection (3) above if he shows that he did not know of the acts or circumstances by virtue of which he became a significant shareholder in relation to the institution; but where any person becomes such a shareholder without such knowledge and subsequently becomes aware of the fact that he has become such a shareholder he shall be guilty of an offence unless he gives the Bank written notice of the fact that he has become such a shareholder within fourteen days of becoming aware of that fact.
- (5) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding the fifth level on the standard scale.

Textual Amendments

F1 S. 37(2) substituted (1.1.1993) by S.I. 1992/3218, reg.34(with savings in reg. 46(a)).

38 Reports of large exposures.

- (1) An authorised institution, other than one whose principal place of business is outside the United Kingdom, shall make a report to the Bank if—
 - (a) it has entered into a transaction or transactions relating to any one person as a result of which it is exposed to the risk of incurring losses in excess of 10 per cent. of its available capital resources; or
 - (b) it proposes to enter into a transaction or transactions relating to any one person which, either alone or together with a previous transaction or previous transactions entered into by it in relation to that person, would result in its being exposed to the risk of incurring losses in excess of 25 per cent. of those resources.
- (2) Subsection (1) above applies also where the transaction or transactions relate to different persons if they are connected in such a way that the financial soundness of any of them may affect the financial soundness of the other or others or the same factors may affect the financial soundness of both or all of them.
- (3) If an authorised institution to which subsection (1) above applies has one or more subsidiaries which are not authorised institutions the Bank may by notice in writing to that institution direct that that subsection shall apply to it as if the transactions and available capital resources of the subsidiary or subsidiaries, or such of them as are specified in the notice, were included in those of the institution.
- (4) The reports required to be made by an institution under subsection (1) above shall be made, in a case within paragraph (a) of that subsection, in respect of such period or periods and, in a case within paragraph (b) of that subsection, at such time before the

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transaction or transactions are entered into, as may be specified by notice in writing given to the institution by the Bank; and those reports shall be in such form and contain such particulars as the Bank may reasonably require.

- (5) For the purposes of this section a transaction entered into by an institution relates to a person if it is—
- (a) a transaction under which that person incurs an obligation to the institution or as a result of which he may incur such an obligation;
 - (b) a transaction under which the institution will incur, or as a result of which it may incur, an obligation in the event of that person defaulting on an obligation to a third party; or
 - (c) a transaction under which the institution acquires or incurs an obligation to acquire, or as a result of which it may incur an obligation to acquire, an asset the value of which depends wholly or mainly on that person performing his obligations or otherwise on his financial soundness;
- and the risk of loss attributable to a transaction is, in a case within paragraph (a) or (b) above, the risk of the person concerned defaulting on the obligation there mentioned and, in a case within paragraph (c) above, the risk of the person concerned defaulting on the obligations there mentioned or of a deterioration in his financial soundness.
- (6) Any question whether an institution is or would be exposed to risk as mentioned in subsection (1) above (or in that subsection as extended by subsection (2)) shall be determined in accordance with principles published by the Bank or notified by it to the institution concerned; and those principles may in particular make provision for determining the amount at risk in particular circumstances or the extent to which any such amount is to be taken into account for the purposes of this section.
- (7) For the purposes of this section the available capital resources of an institution (or, in a case within subsection (3) above, of an institution and its relevant subsidiary or subsidiaries) and the value of those resources at any time shall be determined by the Bank and notified by it to the institution by notice in writing; and any such determination, which may be varied from time to time, shall be made by the Bank after consultation with the institution concerned and in accordance with principles published by the Bank.
- (8) The principles referred to in subsections (6) and (7) above may make different provision for different cases and those referred to in subsection (6) may, in particular, exclude from consideration, either wholly or in part, risks resulting from transactions of a particular description or entered into in particular circumstances or with persons of particular descriptions.
- (9) An institution which fails to make a report as required by this section shall be guilty of an offence; but where an institution shows that at the time when the report was required to be made it did not know that the facts were such as to require the making of the report it shall not be guilty of an offence by reason of its failure to make a report at that time but shall be guilty of an offence unless it makes the report within seven days of becoming aware of those facts.
- (10) An institution guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding the fifth level on the standard scale.
- (11) The Treasury may after consultation with the Bank by order—

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- (a) amend subsection (1) above so as to substitute for either of the percentages for the time being specified in that subsection such other percentage as may be specified in the order;
- (b) make provision, whether by amending subsection (5) above or otherwise, with respect to the transactions and risks to be taken into account for the purposes of this section,

but any such order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

- (12) For the avoidance of doubt it is hereby declared that references in this section to “one person” include references to a partnership.

39 Power to obtain information and require production of documents.

- (1) The Bank may by notice in writing served on an authorised institution—
- (a) require the institution to provide the Bank, at such time or times or at such intervals or in respect of such period or periods as may be specified in the notice, with such information as the Bank may reasonably require for the performance of its functions under this Act;
 - (b) require the institution to provide the Bank with a report by an accountant or other person with relevant professional skill on, or on any aspect of, any matter about which the Bank has required or could require the institution to provide information under paragraph (a) above.
- (2) The accountant or other person appointed by an institution to make any report required under subsection (1)(b) above shall be a person nominated or approved by the Bank; and the Bank may require his report to be in such form as is specified in the notice.
- (3) The Bank may—
- (a) by notice in writing served on an authorised institution require it to produce, within such time and at such place as may be specified in the notice, such document or documents of such description as may be so specified;
 - (b) authorise an officer, servant or agent of the Bank, on producing evidence of his authority, to require any such institution to provide him forthwith with such information, or to produce to him forthwith such documents, as he may specify,
- being such information or documents as the Bank may reasonably require for the performance of its functions under this Act.
- (4) Where, by virtue of subsection (3) above, the Bank or any officer, servant or agent of the Bank has power to require the production of any documents from an authorised institution, the Bank or that officer, servant or agent shall have the like power to require the production of those documents from any person who appears to be in possession of them; but where any person from whom such production is required claims a lien on documents produced by him, the production shall be without prejudice to the lien.
- (5) The power under this section to require an institution or other person to produce any documents includes power—
- (a) if the documents are produced, to take copies of them or extracts from them and to require that institution or 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 or acting as an employee of, the institution in question, to provide an explanation of any of them; and

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- (b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.
- [^{F2}(6) If it appears to the Bank to be desirable in the interests of the depositors or potential depositors of an authorised institution to do so, it may also exercise the powers conferred by subsections (1) and (3) above in relation to any undertaking which is or has at any relevant time been—
- (a) a parent undertaking, subsidiary undertaking or related company of that institution;
 - (b) a subsidiary undertaking of a parent undertaking of that institution;
 - (c) a parent undertaking of a subsidiary undertaking of that institution; or
 - (d) an undertaking in the case of which a shareholder controller of that institution, either alone or with any associate or associates, holds 50 per cent. or more of the shares or is entitled to exercise, or control the exercise of, more than 50 per cent. of the voting power at a general meeting;
- or in relation to any partnership of which that institution is or has at any relevant time been a member.
- [^{F2}(7) If it appears to the Bank to be desirable to do so in the interests of the depositors or potential depositors of an authorised institution which is a partnership ('the authorised partnership'), it may also exercise the powers conferred by subsections (1) and (3) above in relation to—
- (a) any other partnership having a member in common with the authorised partnership;
 - (b) any undertaking which is or has at any time been a member of the authorised partnership;
 - (c) any undertaking in the case of which the partners in the authorised partnership, either alone or with any associate or associates, hold 20 per cent. or more of the shares or are entitled to exercise, or control the exercise of, more than 50 per cent. of the voting power at a general meeting; or
 - (d) any subsidiary undertaking or parent undertaking of any such undertaking as is mentioned in paragraph (b) or (c) above or any parent undertaking of any such subsidiary undertaking.
- [^{F2}(7A) In subsections (6) and (7) above 'share' has the same meaning as in Part VII of the Companies Act 1985 or Part VIII of the Companies (Northern Ireland) Order 1986.]
- (8) The foregoing provisions of this section shall apply to a former authorised institution as they apply to an authorised institution.
- (9) The Bank may by notice in writing served on any person who is or is to be a director, controller or manager of an authorised institution require him to provide the Bank, within such time as may be specified in the notice, with such information or documents as the Bank may reasonably require for determining whether he is a fit and proper person to hold the particular position which he holds or is to hold.
- (10) The Bank may exercise the powers conferred by subsections (1) and (3) above in relation to any person who is a significant shareholder of an authorised institution within the meaning of section 37 above if the Bank considers that the exercise of those powers is desirable in the interests of the depositors or potential depositors of that institution.

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- (11) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the fifth level on the standard scale or to both.
- (12) A statement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him.
- (13) Nothing in this section shall compel the production by a barrister, advocate or solicitor of a document containing a privileged communication made by him or to him in that capacity.

Textual Amendments

F2 S. 39(6)(7)(7A) substituted (1.1.1993) for s. 39(6)(7) by S.I. 1992/3218, reg 36 (with savings in reg. 46(a)).

Modifications etc. (not altering text)

C1 S. 39 amended (1.1.1993) by S.I. 1992/3218, reg. 47, Sch. 8 para. 8.

40 Right of entry to obtain information and documents.

- (1) Any officer, servant or agent of the Bank may, on producing if required evidence of his authority, enter any premises occupied by a person on whom a notice has been served under section 39 above for the purpose of obtaining there the information or documents required by that notice and of exercising the powers conferred by subsection (5) of that section.
- (2) Any officer, servant or agent of the Bank may, on producing if required evidence of his authority, enter any premises occupied by any person on whom a notice could be served under section 39 above for the purpose of obtaining there such information or documents as are specified in the authority, being information or documents that could have been required by such a notice; but the Bank shall not authorise any person to act under this subsection unless it has reasonable cause to believe that if such a notice were served it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed.
- (3) Any person who intentionally obstructs a person exercising rights conferred by this section shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the fifth level on the standard scale or to both.

Modifications etc. (not altering text)

C2 S. 40 amended (1.1.1993) by S.I. 1992/3218, reg. 47, Sch. 8 para. 9.

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