



Banking Act 1987

1987 CHAPTER 22

PART I

REGULATION OF DEPOSIT-TAKING BUSINESS

Investigations

41 Investigations on behalf of the Bank

- (1) If it appears to the Bank desirable to do so in the interests of the depositors or potential depositors of an authorised institution the Bank may appoint one or more competent persons to investigate and report to the Bank on—
- (a) the nature, conduct or state of the institution's business or any particular aspect of it; or
 - (b) the ownership or control of the institution;
- and the Bank shall give written notice of any such appointment to the institution concerned.
- (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, subsidiary or related company of the institution under investigation;
 - (b) a subsidiary or related company of a holding company of that institution;
 - (c) a holding company of a subsidiary of that institution; or
 - (d) a body corporate in the case of which a shareholder controller of that institution, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, more than 20 per cent. of the voting power at a general meeting;
- or the business of any partnership of which that institution is or has at any relevant time been a member.

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- (3) If a person appointed under subsection (1) above thinks it necessary for the purposes of his investigation in the case of an authorised institution which is a partnership ("the authorised partnership") he may also investigate the business of—
- (a) any other partnership having a member in common with the authorised partnership;
 - (b) any body corporate which is or has at any relevant time been a member of the authorised partnership;
 - (c) any body corporate in the case of which the partners in the authorised partnership hold more than 20 per cent. of the shares or any partner in the authorised partnership, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, more than 20 per cent. of the voting power at a general meeting; or
 - (d) any subsidiary, related company or holding company of any such body corporate as is mentioned in paragraph (b) or (c) above or any holding company of any such subsidiary.
- (4) Where a person appointed under subsection (1) above decides to investigate the business of any body by virtue of subsection (2) or (3) above he shall give it written notice to that effect.
- (5) It shall be the duty of every person who is or was a director, controller, manager, employee, agent, banker, auditor or solicitor of a body which is under investigation (whether by virtue of subsection (1), (2) or (3) above), any person appointed to make a report in respect of that body under section 8(5) or 39(1)(b) above and anyone who is a significant shareholder in relation to that body within the meaning of section 37 above—
- (a) to produce to the persons appointed under subsection (1) above, within such time and at such place as they may require, all documents relating to the body concerned which are in his custody or power;
 - (b) to attend before the persons so appointed at such time and place as they may require; and
 - (c) otherwise to give those persons all assistance in connection with the investigation which he is reasonably able to give;
- and those persons may take copies of or extracts from any documents produced to them under paragraph (a) above.
- (6) The foregoing provisions of this section shall apply to a former authorised institution as they apply to an authorised institution.
- (7) For the purpose of exercising his powers under this section a person appointed under subsection (1) above may enter any premises occupied by a body which is being investigated by him under this section; but he shall not do so without prior notice in writing unless he has reasonable cause to believe that if such a notice were given any documents whose production could be required under this section would be removed, tampered with or destroyed.
- (8) A person exercising powers by virtue of an appointment under this section shall, if so required, produce evidence of his authority.
- (9) Any person who—
- (a) without reasonable excuse fails to produce any documents which it is his duty to produce under subsection (5) above;

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- (b) without reasonable excuse fails to attend before the persons appointed under subsection (1) above when required to do so;
- (c) without reasonable excuse fails to answer any question which is put to him by persons so appointed with respect to an institution which is under investigation or a body which is being investigated by virtue of subsection (2) or (3) above; or
- (d) intentionally obstructs a person in the exercise of the rights conferred by subsection (7) above,

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.

- (10) A statement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him.
- (11) 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.

42 Investigation of suspected contraventions

- (1) Where the Bank has reasonable grounds for suspecting that a person is guilty of contravening section 3 or 35 above the Bank or any duly authorised officer, servant or agent of the Bank may by notice in writing require that or any other person—
 - (a) to provide, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such information as the Bank may reasonably require for the purpose of investigating the suspected contravention;
 - (b) to produce, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required by the Bank for that purpose;
 - (c) to attend at such place and time as may be specified in the notice and answer questions relevant for determining whether such a contravention has occurred.
- (2) The Bank or a duly authorised officer, servant or agent of the Bank may take copies of or extracts from any documents produced under this section.
- (3) 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 subsection (1) above for the purpose of obtaining there the information or documents required by the notice, putting the questions referred to in paragraph (c) of that subsection or exercising the powers conferred by subsection (2) above.
- (4) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section or intentionally obstructs a person in the exercise of the rights conferred by subsection (3) above 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.
- (5) A statement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him.

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- (6) 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.

43 Powers of entry in cases of suspected contraventions

- (1) A justice of the peace may issue a warrant under this section if satisfied on information on oath laid by an officer or servant of the Bank or laid under the Bank's authority that there are reasonable grounds for suspecting that a person is guilty of such a contravention as is mentioned in section 42 above and—
- (a) that that person has failed to comply with a notice served on him under that section; or
 - (b) that there are reasonable grounds for suspecting the completeness of any information provided or documents produced by him in response to such a notice; or
 - (c) that there are reasonable grounds for suspecting that if a notice were served on him under that section it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed.
- (2) A warrant under this section shall authorise any constable, together with any other person named in the warrant and any other constables—
- (a) to enter any premises occupied by the person mentioned in subsection (1) above which are specified in the warrant, Using such force as is reasonably necessary for the purpose;
 - (b) to search the premises and take possession of any documents appearing to be such documents as are mentioned in subsection (1)(c) above or to take, in relation to any such documents, any other steps which may appear to be necessary for preserving them or preventing interference with them;
 - (c) to take copies of or extracts from any such documents;
 - (d) to require any person named in the warrant to answer questions relevant for determining whether that person is guilty of any such contravention as is mentioned in section 42 above.
- (3) A warrant under this section shall continue in force until the end of the period of one month beginning with the day on which it is issued.
- (4) Any documents of which possession is taken under this section may be retained—
- (a) for a period of three months; or
 - (b) if within that period proceedings to which the documents are relevant are commenced against any person for any such contravention as is mentioned in section 42 above, until the conclusion of those proceedings.
- (5) Any person who intentionally obstructs the exercise of any right conferred by a warrant issued under this section or fails without reasonable excuse to comply with any requirement imposed in accordance with subsection (2)(d) above shall be guilty of an offence and liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
 - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

- (6) A statement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him.
- (7) In the application of subsection (1) above to Scotland, the reference to a justice of the peace includes a reference to a sheriff and for the reference to information on oath there shall be substituted a reference to evidence on oath; and in the application of that subsection to Northern Ireland for the reference to laying an information on oath there shall be substituted a reference to making a complaint on oath.

44 Obstruction of investigations

- (1) A person who knows or suspects that an investigation is being or is likely to be carried out—
 - (a) under section 41 above; or
 - (b) into a suspected contravention of section 3 or 35 above,shall be guilty of an offence if he falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which he knows or suspects are or would be relevant to such an investigation unless he proves that he had no intention of concealing facts disclosed by the documents from persons carrying out such an investigation.
- (2) A person guilty of an offence under this section shall be liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
 - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.