



Banking Act 1987

1987 CHAPTER 22

PART I

REGULATION OF DEPOSIT-TAKING BUSINESS

Objections to controllers

21 Notification of new or increased control

- (1) No person shall become a minority, majority or principal shareholder controller or an indirect controller of an authorised institution incorporated in the United Kingdom unless—
 - (a) he has served on the Bank a written notice stating that he intends to become such a controller of the institution; and
 - (b) either the Bank has, before the end of the period of three months beginning with the date of service of that notice, notified him in writing that there is no objection to his becoming such a controller of the institution or that period has elapsed without the Bank having served on him under section 22 or 23 below a written notice of objection to his becoming such a controller of the institution.
- (2) Subsection (1) above applies also in relation to a person becoming a partner in an authorised institution which is a partnership formed under the law of any part of the United Kingdom.
- (3) A notice under paragraph (a) of subsection (1) above shall contain such information as the Bank may direct and the Bank may, after receiving such a notice from any person, by notice in writing require him to provide such additional information or documents as the Bank may reasonably require for deciding whether to serve a notice of objection.
- (4) Where additional information or documents are required from any person by a notice under subsection (3) above the time between the giving of the notice and the receipt of the information or documents shall be added to the period mentioned in subsection (1) (b) above.

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- (5) A notice served by a person under paragraph (a) of subsection (1) above shall not be regarded as a compliance with that paragraph except as respects his becoming a controller of the institution in question within the period of one year beginning—
- (a) in a case where the Bank has notified him that there is no objection to his becoming such a controller, with the date of that notification;
 - (b) in a case where the period mentioned in paragraph (b) of that subsection has elapsed without any such notification and without his having been served with a written notice of objection, with the expiration of that period;
 - (c) in a case in which he has been served with a notice of objection which has been quashed on appeal, with the date on which it is quashed.

22 Objection to new or increased control

- (1) The Bank may serve a notice of objection under this section on a person who has given a notice under section 21 above unless it is satisfied—
- (a) that the person concerned is a fit and proper person to become a controller of the description in question of the institution;
 - (b) that the interests of depositors and potential depositors of the institution would not be in any other manner threatened by that person becoming a controller of that description of the institution; and
 - (c) without prejudice to paragraphs (a) and (b) above, that, having regard to that person's likely influence on the institution as a controller of the description in question the criteria in Schedule 3 to this Act would continue to be fulfilled in the case of the institution or, if any of those criteria is not fulfilled, that that person is likely to undertake adequate remedial action.
- (2) Before serving a notice of objection under this section the Bank shall serve the person concerned with a preliminary written notice stating that the Bank is considering the service on that person of a notice of objection; and that notice—
- (a) shall specify which of the matters mentioned in subsection (1) above the Bank is not satisfied about and, subject to subsection (5) below, the reasons for which it is not satisfied; and
 - (b) shall give particulars of the rights conferred by subsection (3) below.
- (3) A person served with a notice under subsection (2) above may, within the period of one month beginning with the day on which the notice is served, make written representations to the Bank; and where such representations are made the Bank shall take them into account in deciding whether to serve a notice of objection.
- (4) A notice of objection under this section shall—
- (a) specify which of the matters mentioned in subsection (1) above the Bank is not satisfied about and, subject to subsection (5) below, the reasons for which it is not satisfied; and
 - (b) give particulars of the rights conferred by section 27 below.
- (5) Subsections (2)(a) and (4)(a) above shall not require the Bank to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.
- (6) Where a person required to give a notice under section 21 above in relation to his becoming a controller of any description becomes a controller of that description without having given the notice the Bank may serve him with a notice of objection

under this section at any time within three months after becoming aware of his having done so and may, for the purpose of deciding whether to serve him with such a notice, require him by notice in writing to provide such information or documents as the Bank may reasonably require.

- (7) The period mentioned in section 21(1)(b) above (with any extension under subsection (4) of that section) and the period mentioned in subsection (6) above shall not expire, if it would otherwise do so, until fourteen days after the end of the period within which representations can be made under subsection (3) above.

23 Objection by direction of the Treasury

- (1) The Treasury may direct the Bank to serve a notice of objection under this section on a person—
- (a) who has given notice under section 21 above of his intention to become a shareholder controller of any description of an institution: or
 - (b) who has become such a controller without giving the required notice under that section,

if it appears to the Treasury that, in the event of his becoming or, as the case may be, as a result of his having become, such a controller, a notice could be served on the institution by the Treasury under section 183 of the Financial Services Act 1986 (disqualification or restriction of persons connected with overseas countries which do not afford reciprocal facilities for financial business).

- (2) No direction shall be given in a case within subsection (1)(b) above more than three months after the Treasury becomes aware of the fact that the person concerned has become a controller of the relevant description.
- (3) Any notice of objection served by virtue of a direction under this section shall state the grounds on which it is served.

24 Objection to existing shareholder controller

- (1) Where it appears to the Bank that a person who is a shareholder controller of" any description of an authorised institution incorporated in the United Kingdom is not or is no longer a fit and proper person to be such a controller of the institution it may serve him with a written notice of objection to his being such a controller of the institution.
- (2) Before serving a notice of objection under this section the Bank shall serve the person concerned with a preliminary written notice stating that the Bank is considering the service on that person of a notice of objection; and that notice shall—
- (a) subject to subsection (5) below, specify the reasons for which it appears to the Bank that the person in question is not or is no longer a fit and proper person as mentioned in subsection (1) above; and
 - (b) give particulars of the rights conferred by subsection (3) below.
- (3) A person served with a notice under subsection (2) above may, within the period of one month beginning with the day on which the notice is served, make written representations to the Bank; and where such representations are made the Bank shall take them into account in deciding whether to serve a notice of objection.
- (4) A notice of objection under this section shall—

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- (a) subject to subsection (5) below, specify the reasons for which it appears to the Bank that the person in question is not or is no longer a fit and proper person as mentioned in subsection (1) above; and
 - (b) give particulars of the rights conferred by section 27 below.
- (5) Subsections (2)(a) and (4)(a) above shall not require the Bank to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.

25 Contraventions by controller

- (1) Subject to subsection (2) below, any person who contravenes section 21 above by—
- (a) failing to give the notice required by paragraph (a) of subsection (1) of that section; or
 - (b) becoming a controller of any description to which that section applies before the end of the period mentioned in paragraph (b) of that subsection in a case where the Bank has not served him with a preliminary notice under section 22(2) above.
- shall be guilty of an offence.
- (2) A person shall not be guilty of an offence under subsection (1) above if he shows that he did not know of the acts or circumstances by virtue of which he became a controller of the relevant description; but where any person becomes a controller of any such description without such knowledge and subsequently becomes aware of the fact that he has become such a controller he shall be guilty of an offence unless he gives the Bank written notice of the fact that he has become such a controller within fourteen days of becoming aware of that fact.
- (3) Any person who—
- (a) before the end of the period mentioned in paragraph (b) of subsection (1) of section 21 above becomes a controller of any description to which that subsection applies after being served with a preliminary notice under section 22(2) above;
 - (b) contravenes section 21 above by becoming a controller of any description after being served with a notice of objection to his becoming a controller of that description; or
 - (c) having become a controller of any description in contravention of that section (whether before or after being served with such a notice of objection) continues to be such a controller after such a notice has been served on him,
- shall be guilty of an offence.
- (4) A person guilty of an offence under subsection (1) or (2) above shall be liable on summary conviction to a fine not exceeding the fifth level on the standard scale.
- (5) A person guilty of an offence under subsection (3) above 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 a fine not exceeding the statutory maximum and, in respect of an offence under paragraph (c) of that subsection, to a fine not exceeding one tenth of the statutory maximum for each day on which the offence has continued.

26 Restrictions on and sale of shares

- (1) The powers conferred by this section shall be exercisable where a person—
 - (a) has contravened section 21 above by becoming a shareholder controller of any description after being served with a notice of objection to his becoming a controller of that description; or
 - (b) having become a shareholder controller of any description in contravention of that section continues to be one after such a notice has been served on him; or
 - (c) continues to be a shareholder controller of any description after being served under section 24 above with a notice of objection to his being a controller of that description.
- (2) The Bank may by notice in writing served on the person concerned direct that any specified shares to which this section applies shall, until further notice, be subject to one or more of the following restrictions—
 - (a) any transfer of, or agreement to transfer, those shares or, in the case of unissued shares, any transfer of or agreement to transfer the right to be issued with them shall be void;
 - (b) no voting rights shall be exercisable in respect of the shares;
 - (c) no further shares shall be issued in right of them or in pursuance of any offer made to their holder;
 - (d) except in a liquidation, no payment shall be made of any sums due from the institution on the shares, whether in respect of capital or otherwise.
- (3) The court may, on the application of the Bank, order the sale of any specified shares to which this section applies and, if they are for the time being subject to any restrictions under subsection (2) above, that they shall cease to be subject to those restrictions.
- (4) No order shall be made under subsection (3) above in a case where the notice of objection was served under section 22 or 24 above—
 - (a) until the end of the period within which an appeal can be brought against the notice of objection; and
 - (b) if such an appeal is brought, until it has been determined or withdrawn.
- (5) Where an order has been made under subsection (3) above the court may, on the application of the Bank, make such further order relating to the sale or transfer of the shares as it thinks fit.
- (6) Where shares are sold in pursuance of an order under this section the proceeds of sale, less the costs of the sale, shall be paid into court for the benefit of the persons beneficially interested in them; and any such person may apply to the court for the whole or part of the proceeds to be paid to him.
- (7) This section applies—
 - (a) to all the shares in the institution of which the person in question is a controller of the relevant description which are held by him or any associate of his and were not so held immediately before he became such a controller of the institution; and
 - (b) where the person in question became a controller of the relevant description of an institution as a result of the acquisition by him or any associate of his of shares in another company, to all the shares in that company which are held by him or any associate of his and were not so held before he became such a controller of that institution.

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- (8) A copy of the notice served on the person concerned under subsection (2) above shall be served on the institution or company to whose shares it relates and, if it relates to shares held by an associate of that person, on that associate.
- (9) The jurisdiction conferred by this section shall be exercisable by the High Court and the Court of Session.