



Banking Act 1987 (repealed)

1987 CHAPTER 22

PART I

REGULATION OF DEPOSIT-TAKING BUSINESS

Restriction on acceptance of deposits

3 Restriction on acceptance of deposits.

- (1) Subject to section 4 below, no person shall in the United Kingdom accept a deposit in the course of carrying on (whether there or elsewhere) a business which for the purposes of this Act is a deposit-taking business unless that person is an institution for the time being authorised by the [^{F1}Authority] under the following provisions of this Part of this Act.
- (2) Any person who contravenes this section 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.
- (3) The fact that a deposit has been taken in contravention of this section shall not affect any civil liability arising in respect of the deposit or the money deposited.

Textual Amendments

F1 Word in s. 3(1) substituted (1.6.1998) by 1998 c. 11, s. 23, Sch. 5 Pt. I Ch. I para. 3; S. I. 1998/1120, art.2

Modifications etc. (not altering text)

C1 S. 3 restricted (1.1.1993) by S.I. 1992/3218, reg. 5(1)(a).

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4 Exempted persons and exempted transactions.

- (1) Section 3 above shall not apply to the acceptance of a deposit by the Bank or by a person for the time being specified in Schedule 2 to this Act.
- (2) The exemption of a person specified in that Schedule shall be subject to any restriction there specified in the case of that person.
- (3) The Treasury may after consultation with the [F²Authority] by order amend that Schedule—
 - (a) by adding any person or relaxing any restriction; or
 - (b) by removing any person for the time being specified in it or imposing or extending any restriction.
- (4) Section 3 above shall not apply to any transaction prescribed for the purposes of this subsection by regulations made by the Treasury.
- (5) Regulations under subsection (4) 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—
 - (a) the amount of the deposit;
 - (b) the total liability of the person accepting the deposit to his depositors or to any other creditors;
 - (c) the circumstances in which or the purpose for which the deposit is made;
 - (d) the identity of the person by whom the deposit is made or accepted, including his membership of a class whose membership is determined otherwise than by the Treasury;
 - (e) the number of, or the amount involved in, transactions of any particular description carried out by the person accepting the deposit or the frequency with which he carries out transactions of any particular description.
- (6) Regulations under subsection (4) above may make any exemption for which they provide subject to compliance with specified conditions or requirements.
- (7) Any order under subsection (3)(a) above and any regulations under subsection (4) above shall be subject to annulment in pursuance of a resolution of either House of Parliament, and no order shall be made under subsection (3)(b) above unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

Textual Amendments

F2 Word in s. 4(3) substituted (1.6.1998) by 1998 c. 11, s. 23, **Sch. 5 Pt. I Ch. I para. 3**; S.I. 1998/1120, **art. 2**

5 Meaning of “deposit”.

- (1) Subject to the provisions of this section, in this Act “deposit” means a sum of money [F³(whether denominated in a currency or in ecus)] 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 the giving of security;

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

[^{F4}(1A) In subsection (1) above 'ecu' means—

- (a) the European currency unit as defined in Article 1 of Council Regulation No. 3320/94/EC^{F5}
- (b) any other unit of account which is defined by reference to the European currency unit as so defined.]

(2) For the purposes of subsection (1)(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 under a contract for the sale, hire or other provision of property or services, and is repayable only in the event that the property or services is not or are not in fact sold, hired or otherwise provided;
- (b) it is paid by way of security for the performance of a contract or by way of security in respect of loss which may result from the non-performance of a contract; or
- (c) without prejudice to paragraph (b) above, 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.

(3) Except so far as any provision of this Act otherwise provides, in this Act “deposit” does not include—

- (a) a sum paid by the Bank or an authorised institution;
- (b) a sum paid by a person for the time being specified in Schedule 2 to this Act;
- (c) a sum paid by a person, other than a person within paragraph (a) or (b) above, in the course of carrying on a business consisting wholly or mainly of lending money;
- (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 the same individual is a majority or principal shareholder controller of both of them; or
- (e) a sum which is paid by a person who, at the time when it is paid, is a close relative of the person receiving it or who is, or is a close relative of, a director, controller or manager of that person.

(4) In the application of paragraph (e) of subsection (3) above to a sum paid by a partnership that paragraph shall have effect as if for the reference to the person paying the sum there were substituted a reference to each of the partners.

(5) In subsection (3)(e) above “close relative”, in relation to any person, means—

- (a) his spouse;
- (b) his children and step-children, his parents and step-parents, his brothers and sisters and step-brothers and step-sisters; and
- (c) the spouse of any person within paragraph (b) above.

Textual Amendments

F3 Words in s. 5(1) inserted (1.7.1995) by S.I. 1995/1442, regs. 45(1), 54(2)

F4 S. 5(1A) inserted (1.7.1995) by S.I. 1995/1442, regs. 45(2), 54(2)

F5 O.J. L350, 31.12.94, page 1.

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Modifications etc. (not altering text)

- C2** S. 5 modified (31.07.1991) by S.I. 1991/1776, art. 2(1)(2)
C3 S. 5 amended (1.1.1993) by S.I. 1992/3218, reg. 47, Sch. 8 para. 4.

6 Meaning of “deposit-taking business”.

- (1) Subject to the provisions of this section, 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.
- (2) Notwithstanding that paragraph (a) or (b) of subsection (1) above applies to a business, it is not a deposit-taking business for the purposes of this Act if—
 - (a) the person carrying it on does not hold himself out as accepting 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.
- (3) For the purposes of subsection (1) above all the activities which a person carries on by way of business shall be regarded as a single business carried on by him.
- (4) In determining for the purposes of subsection (2)(b) above whether deposits are accepted only on particular occasions regard shall be had to the frequency of those occasions and to any characteristics distinguishing them from each other.
- (5) For the purposes of subsection (2) above there shall be disregarded any deposit in respect of the acceptance of which the person in question is exempt from the prohibition in section 3 above and any money received by way of deposit which is not used in the manner described in subsection (1) above.

7 Power to amend definitions.

- (1) The Treasury may after consultation with the [^{F6}Authority] by order amend the meaning of deposit or deposit-taking business for the purposes of all or any provisions of this Act.
- (2) Without prejudice to the generality of the power conferred by subsection (1) above, an order under that subsection amending the meaning of deposit-taking business may provide for taking into account as activities of an institution the activities of any person who is connected with it in such manner as is specified in the order.
- (3) Any order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) An order under this section may contain such transitional provisions as the Treasury think necessary or expedient and may exclude or modify the effect of the order on any other enactment which is expressed to have effect in relation to a deposit or a deposit-taking business within the meaning of this Act.

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Textual Amendments

F6 Word in s. 7 substituted (1.6.1998) by 1998 c. 11, s. 23, **Sch. 5 Pt. I Ch. I para.4**; S.I. 1998/1120, **art. 2**

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