



Banking Act 1987 (repealed)

1987 CHAPTER 22

PART VI

MISCELLANEOUS AND SUPPLEMENTARY

88 Exclusion of authorised institution's agreements from Consumer Credit Act 1974.

- (1) The Consumer Credit Act 1974 shall be amended as follows.
- (2) In section 16(1) (consumer credit agreements with certain bodies exempt from regulation) after paragraph (g) there shall be inserted “, or
 - (h) an authorised institution or wholly-owned subsidiary (within the meaning of the Companies Act 1985) of such an institution.”.
- (3) In section 16(3) (Secretary of State's duty to consult before making orders) after paragraph (e) there shall be inserted “or
 - (f) under subsection (1)(h) without consulting the Treasury and the Bank of England.”.
- (4) In section 189(1) (definitions) after the definition of “association” there shall be inserted—

““authorised institution” means an institution authorised under the Banking Act 1987;”.

89 Electronic transfer of funds.

After section 187(3) of the ^{M1}Consumer Credit Act 1974 (arrangements to be disregarded in determining whether a consumer credit agreement is to be treated as entered into in accordance with prior or in contemplation of future arrangements between creditor and supplier) there shall be inserted—

- “(3A) Arrangements shall also be disregarded for the purposes of subsections (1) and (2) if they are arrangements for the electronic transfer of funds from a current

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account at a bank within the meaning of the Bankers' Books Evidence Act 1879.”

Marginal Citations

M1 1974 c. 39.

90 Disclosure of transactions by authorised institutions with chief executives and managers.

[^{F1}(1) For section 233(3) of the Companies Act 1985 there shall be substituted—

“(3) Subsections (1) and (2) do not apply in relation to any transaction, arrangement or agreement made by an authorised institution for any officer of the institution or for any officer of its holding company unless the officer is a chief executive or manager within the meaning of the Banking Act 1987; and references to officers in Part II of Schedule 6 shall be construed accordingly.”]

[^{F2}(2) For Article 241(3) of the ^{M2}Companies (Northern Ireland) Order 1986 there shall be substituted—

“(3) Paragraphs (1) and (2) do not apply in relation to any transaction, arrangement or agreement made by an authorised institution for any officer of the institution or for any officer of its holding company unless that officer is a chief executive or manager within the meaning of the Banking Act 1987; and references to officers in Part II of Schedule 6 shall be construed accordingly.”]

Textual Amendments

F1 S. 90(1) repealed (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 212, 215(2), Sch. 24

F2 S. 90(2) repealed (*prosp.*) by S.I. 1990/593 (N.I. 5), arts. 1(1), 26, Sch. 15 Pt. I

Marginal Citations

M2 S.I. 1986/1032 N.I. 6

91 Powers for securing reciprocal facilities for banking and other financial business.1986 c. 60.

For the avoidance of doubt it is hereby declared that a notice 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) may be served on any person connected with the country in question who is carrying on or appears to the Secretary of State or the Treasury to intend to carry on in, or in relation to, the United Kingdom business of any of the descriptions specified in subsection (1) of that section whether or not it is of the same description as that affected by the less favourable terms which are the occasion for the service of the notice.

92 Winding up on petition from the [^{F3}Authority].

(1) On a petition presented by the [^{F3}Authority] by virtue of this section the court having jurisdiction under the ^{M3}Insolvency Act 1986 may wind up an authorised institution or former authorised institution if—

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- (a) the institution is unable to pay its debts within the meaning of section 123 or, as the case may be, section 221 of that Act; or
- (b) the court is of the opinion that it is just and equitable that the institution should be wound up;

and for the purposes of such a petition an institution which defaults in an obligation to pay any sum due and payable in respect of a deposit shall be deemed to be unable to pay its debts as mentioned in paragraph (a) above.

(2) Where a petition is presented under subsection (1) above for the winding up of a partnership on the ground mentioned in paragraph (b) of that subsection or, in Scotland, on the ground mentioned in paragraph (a) or (b) of that subsection, the court shall have jurisdiction and the ^{M4}Insolvency Act 1986 shall have effect as if the partnership were an unregistered company within the meaning of section 220 of that Act.

(3) On a petition presented by the [^{F3}Authority] by virtue of this section the High Court in Northern Ireland may wind up an authorised institution if—

- (a) the institution is unable to pay its debts within the meaning of [^{F4}Article 103 or, as the case may be, Article 185 of the Insolvency (Northern Ireland) Order 1989]; or
- (b) the court is of the opinion that it is just and equitable that the institution should be wound up;

and for the purposes of such a petition an institution which defaults in an obligation to pay any sum due and payable in respect of a deposit shall be deemed to be unable to pay its debts as mentioned in paragraph (a) above.

(4) Where a petition is presented under subsection (3) above for the winding up of a partnership on the ground mentioned in paragraph (b) of that subsection, the court shall have jurisdiction and the said Order of [^{F5}1989] shall have effect as if the partnership were an unregistered company within the meaning of [^{F5}Article 184] of that Order.

(5) For the purposes of this section the definition of deposit in section 5 above shall be treated as including any sum that would otherwise be excluded by subsection (3)(a), (b) or (c) of that section.

(6) This section applies to a company or partnership which has contravened section 3 above as it applies to an authorised institution.

Textual Amendments

- F3** Words in s. 92 substituted (1.6.1998) by 1998 c. 11, s. 23, **Sch. 5 Pt. I Ch. I para. 18**; S.I. 1998/1120, **art. 2**
- F4** Words in s. 92(3)(a) substituted (01.10.1991) by S.I. 1989/2405 (N.I. 19), art. 381(2), **Sch. 9 Pt. II, para. 56(a)**; S.R. 1991/411, **art. 2**
- F5** Words in s. 92(4) substituted (01.10.1991) by S.I. 1989/2405 (N.I. 19), art. 381(2), **Sch. 9 Pt. II, para. 56(b)(i)(ii)**; S.R. 1991/411, **art. 2**

Marginal Citations

- M3** 1986 c. 45.
- M4** 1986 c. 45.

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93 Injunctions.

- (1) If on the application of the [^{F6}Authority], the Director of Public Prosecutions, the Lord Advocate or the Director of Public Prosecutions for Northern Ireland the court is satisfied—
- (a) that there is a reasonable likelihood that a person will contravene section 3, 18, 35, 67, 69, 71, or 77 above, a direction under section 19 above or regulations under section 32, 34, or 80 above; or
 - (b) that any person has been guilty of any such contravention and that there is a reasonable likelihood that the contravention will continue or be repeated,
- the court may grant an injunction restraining, or in Scotland an interdict prohibiting, the contravention.
- (2) If on the application of the [^{F6}Authority], the Director of Public Prosecutions, the Lord Advocate or the Director of Public Prosecutions for Northern Ireland it appears to the court that a person may have been guilty of such a contravention as is mentioned in subsection (1) above the court may grant an injunction restraining, or in Scotland an interdict prohibiting, him from disposing of or otherwise dealing with any of his assets while the suspected contravention is investigated.
- (3) The jurisdiction conferred by this section shall be exercisable by the High Court and the Court of Session.

Textual Amendments

F6 Words in s. 93 substituted (1.6.1998) by 1998 c. 11, s. 23, **Sch. 5 Pt. I Ch. I para. 18**; S.I. 1998/1120, **art. 2**

Modifications etc. (not altering text)

C1 S. 93 amended (1.1.1993) by S.I. 1992/3218, reg. 47, **Sch. 8 para. 27**.

94 False and misleading information.

- (1) Any person who knowingly or recklessly provides the [^{F7}Authority] or any other person with information which is false or misleading in a material particular shall be guilty of an offence if the information is provided—
- (a) in purported compliance with a requirement imposed by or under this Act; or
 - (b) otherwise than as mentioned in paragraph (a) above but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that the information would be used by the [^{F7}Authority] for the purpose of exercising its functions under this Act.
- (2) Any person who knowingly or recklessly provides the [^{F7}Authority] or any other person with information which is false or misleading in a material particular shall be guilty of an offence if the information is provided in connection with an application for authorisation under this Act.
- (3) An authorised institution or former authorised institution shall be guilty of an offence if it fails to provide the [^{F7}Authority] with any information in its possession knowing or having reasonable cause to believe—
- (a) that the information is relevant to the exercise by the [^{F7}Authority] of its functions under this Act in relation to the institution; and

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- (b) that the withholding of the information is likely to result in the [^{F7}Authority] being misled as to any matter which is relevant to and of material significance for the exercise of those functions in relation to the institution.
- (4) Any person who knowingly or recklessly provides any person appointed under section 41 above with information which is false or misleading in a material particular shall be guilty of an offence.
- (5) Any 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.

Textual Amendments

F7 Words in s. 94 substituted (1.6.1998) by 1998 c. 11, s. 23, **Sch. 5 Pt. I Ch. I para. 18**; S.I. 1998/1120, **art. 2**

Modifications etc. (not altering text)

C2 S. 94 amended (1.1.1993) by S.I. 1992/3218, reg. 47, **Sch. 8 para. 28**.

95 Restriction of Rehabilitation of Offenders Act 1974.

- (1) The Rehabilitation of Offenders Act 1974 shall have effect subject to the provisions of this section in cases where the spent conviction is for—
 - (a) an offence involving fraud or other dishonesty; or
 - (b) an offence under legislation (whether or not of the United Kingdom) relating to companies (including insider dealing), building societies, industrial and provident societies, credit unions, friendly societies, insurance, banking or other financial services, insolvency, consumer credit or consumer protection.
- (2) Nothing in section 4(1) (restriction on evidence as to spent convictions in proceedings) shall prevent the determination in any proceeding arising out of any such decision of the [^{F8}Authority] as is mentioned in section 27(1) or (3) above (including proceedings on appeal to any court) of any issue, or prevent the admission or requirement in any such proceedings of any evidence, relating to a person's previous convictions for any such offence as is mentioned in subsection (1) above or the circumstances ancillary thereto.
- (3) A conviction for such an offence as is mentioned in subsection (1) above shall not be regarded as spent for the purposes of section 4(2) (questions relating to an individual's previous convictions) if—
 - (a) the question is put by or on behalf of the [^{F8}Authority] and the individual is a person who is or is seeking to become a director, controller or manager of an authorised institution, a former authorised institution or an institution which has made an application for authorisation which has not been disposed of; or
 - (b) the question is put by or on behalf of any such institution and the individual is or is seeking to become a director, controller or manager of that institution, and the person questioned is informed that by virtue of this section convictions for any such offence are to be disclosed.

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- (4) Section 4(3)(b) (spent conviction not to be ground for excluding person from office, occupation etc.) shall not—
- (a) prevent the [^{F8}Authority] from refusing to grant or revoking an authorisation on the ground that an individual is not a fit and proper person to be a director, controller or manager of the institution in question or from imposing a restriction or giving a direction requiring the removal of an individual as director, controller or manager of an institution; or
 - (b) prevent an authorised institution, a former authorised institution or an institution which has made an application for authorisation which has not yet been disposed of from dismissing or excluding an individual from being a director, controller or manager of the institution,
- by reason, or partly by reason, of a spent conviction of that individual for such an offence as is mentioned in subsection (1) above or any circumstances ancillary to such a conviction or of a failure (whether or not by that individual) to disclose such a conviction or any such circumstances.
- (5) For the purposes of subsections (3) and (4) above an application by an institution is not disposed of until the decision of the [^{F8}Authority] on the application is communicated to the institution.
- (6) This section shall apply to Northern Ireland with the substitution for the references to the said Act of 1974 and section 4(1), (2) and (3)(b) of that Act of references to the Rehabilitation of Offenders (Northern Ireland) Order 1978 and Article 5(1), (2) and (3)(b) of that Order.

Textual Amendments

F8 Words in s. 95 substituted (1.6.1998) by 1998 c. 11, s. 23, **Sch. 5 Pt. I Ch. I para. 18**; S.I. 1998/1120, **art. 2**

Modifications etc. (not altering text)

C3 S. 95 amended (1.1.1993) by S.I. 1992/3218, reg. 47, **Sch. 8 para. 29**.
S. 95 amended (3.9.2001) (*temp.* until 30.11.2001) by S.I. 2001/2659, **art. 5(1)**; S.I. 2001/3658, **art. 2(1)**
S. 95 continued (with modifications) (S.) (1.12.2001) (*temp.*) by S.I. 2001/3640, **arts. 1(2), 2**
S. 95 continued (1.12.2001) by S.I. 2001/3650, **art. 16(1)(b)**

96 Offences.

- (1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (3) In the case of a person who by virtue of subsection (1) or (2) above or section 98(6) or (7) below is guilty of an offence under section 12(6) or 19(6) above the penalty

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that can be imposed on conviction on indictment shall be imprisonment for a term not exceeding two years or a fine or both.

- (4) In any proceedings for an offence under this Act it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control.
- (5) No proceedings for an offence under this Act shall be instituted—
 - (a) in England and Wales, except by or with the consent of the Director of Public Prosecutions or the [^{F9}Authority]; or
 - (b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland or the [^{F9}Authority].
- (6) In relation to proceedings against a building society incorporated (or deemed to be incorporated) under the ^{M5}Building Societies Act 1986 subsection (5) above shall have effect with the substitution for references to the [^{F9}Authority] of references to the Building Societies Commission.
- (7) In relation to proceedings against a friendly society within the meaning of section 7(1) (a) of the ^{M6}Friendly Societies Act 1974 the reference in paragraph (a) of subsection (5) above to the [^{F9}Authority] shall include a reference to the Chief Registrar of friendly societies; ^{F10} . . .

Textual Amendments

- F9** Words in s. 96 substituted (1.6.1998) by 1998 c. 11, s. 23, **Sch. 5 Pt. I Ch. I para. 18**; S.I. 1998/1120, **art. 2**
- F10** Words in s. 96(7) repealed (1.1.1994) by **Friendly Societies Act 1992 (c. 40)**, s. 120(2), **Sch. 22 Pt. I** (with ss. 7(5), 93(4)); S.I. 1993/3226, **art. 2**, **Sch. 2** appendix.

Marginal Citations

- M5** 1986 c. 53.
- M6** 1974 c. 46.

97 Summary proceedings.

- (1) Summary proceedings for any offence under this Act may, without prejudice to any jurisdiction exercisable apart from this subsection, be taken against an institution, including an unincorporated institution, at any place at which it has a place of business, and against an individual at any place at which he is for the time being.
- (2) Notwithstanding anything in section 127(1) of the ^{M7}Magistrates' Courts Act 1980, any information relating to an offence under this Act which is triable by a magistrates' court in England and Wales may be so tried if it is laid at any time within three years after the commission of the offence and within six months after the relevant date.
- (3) Notwithstanding anything in [^{F11}section 136 of the Criminal Procedure (Scotland) Act 1995], summary proceedings for such an offence may be commenced in Scotland at any time within three years after the commission of the offence and within six months after the relevant date; and subsection (3) of that section shall apply for the purposes of this subsection as it applies for the purposes of that section.
- (4) Notwithstanding anything in Article 19(1) of the Magistrates' ^{M8}Courts (Northern Ireland) Order 1981, a complaint relating to such an offence which is triable by a court

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of summary jurisdiction in Northern Ireland may be so tried if it is made at any time within three years after the commission of the offence and within six months after the relevant date.

(5) In this section—

“the relevant date” means the date on which evidence sufficient in the opinion of the prosecuting authority to justify proceedings comes to its knowledge; and

“the prosecuting authority” means the authority by or with whose consent the proceedings are instituted in accordance with section 96 above or, in Scotland, the Lord Advocate.

(6) For the purposes of subsection (5) above, a certificate of any prosecuting authority as to the date on which such evidence as is there mentioned came to its knowledge shall be conclusive evidence of that fact.

Textual Amendments

F11 Words in s. 97(3) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), Sch. 4 para. 67(2)

Marginal Citations

M7 1980 c. 43.

M8 S.I. 1981/1675 (N.I. 26)

98 Offences committed by unincorporated associations.

- (1) Proceedings for an offence alleged to have been committed under this Act by an unincorporated association shall be brought in the name of that association (and not in that of any of its members) and, for the purposes of any such proceedings, any rules of court relating to the service of documents shall have effect as if the association were a corporation.
- (2) A fine imposed on an unincorporated association on its conviction of an offence under this Act shall be paid out of the funds of the association.
- (3) Section 33 of the ^{M9}Criminal Justice Act 1925 and Schedule 3 to the ^{M10}Magistrates' Courts Act 1980 (procedure on charge of offence against a corporation) shall have effect in a case in which an unincorporated association is charged in England or Wales with an offence under this Act in like manner as they have effect in the case of a corporation so charged.
- (4) In relation to any proceedings on indictment in Scotland for an offence alleged to have been committed under this Act by an unincorporated association, [^{F12}section 70 of the Criminal Procedure (Scotland) Act 1995] (proceedings on indictment against bodies corporate) shall have effect as if the association were a body corporate.
- (5) Section 18 of the ^{M11}Criminal Justice Act (Northern Ireland) 1945 and Schedule 4 to the ^{M12}Magistrates' Courts (Northern Ireland) Order 1981 (procedure on charge of offence against a corporation) shall have effect in a case in which an unincorporated association is charged in Northern Ireland with an offence under this Act in like manner as they have effect in the case of a corporation so charged.
- (6) Where a partnership is guilty of an offence under this Act, every partner, other than a partner who is proved to have been ignorant of, or to have attempted to prevent

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the commission of the offence, shall also be guilty of that offence and be liable to be proceeded against and punished accordingly.

- (7) Where any other unincorporated association is guilty of an offence under this Act, every officer of the association who is bound to fulfil any duty whereof the offence is a breach, or if there is no such officer then every member of the committee or other similar governing body, other than a member who is proved to have been ignorant of, or to have attempted to prevent the commission of the offence, shall also be guilty of that offence and be liable to be proceeded against and punished accordingly.

Textual Amendments

F12 Words in s. 98(4) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 67(3)**

Marginal Citations

M9 1925 c. 86.

M10 1980 c. 43.

M11 1945 c. 15.

M12 S.I. 1981/1675 (N.I. 26)

99 Service of notices on the [^{F13}Authority].

- (1) No notice required by this Act to be given to or served on the [^{F13}Authority] shall be regarded as given or served until it is received.
- (2) Subject to subsection (1) above, any such notice may be given or served by telex or other similar means which produce a document containing the text of the communication.

Textual Amendments

F13 Words in s. 99 substituted (1.6.1998) by 1998 c. 11, s. 23, **Sch. 5 Pt. I Ch. I para. 18**; S.I. 1998/1120, **art. 2**

Modifications etc. (not altering text)

C4 S. 99 amended (1.1.1993) by S.I. 1992/3218, reg. 47, **Sch. 8 para. 30**.

100 Service of other notices.

- (1) This section has effect in relation to any notice, direction or other document required or authorised by or under this Act to be given to or served on any person other than the [^{F14}Authority].
- (2) Any such document may be given to or served on the person in question—
- by delivering it to him; or
 - by leaving it at his proper address; or
 - by sending it by post to him at that address; or
 - by sending it to him at that address by telex or other similar means which produce a document containing the text of the communication.
- (3) Any such document may—

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- (a) in the case of a body corporate, be given to or served on the secretary or clerk of that body; and
 - (b) in the case of any other description of institution, be given to or served on a controller of the institution.
- (4) For the purposes of this section and section 7 of the ^{M13}Interpretation Act 1978 (service of documents by post) in its application to this section, the proper address of any person to or on whom a document is to be given or served shall be his last known address, except that—
- (a) in the case of a body corporate or its secretary or clerk, it shall be the address of the registered or principal office of that body in the United Kingdom; and
 - (b) in the case of any other description of institution or a person having control or management of its business, it shall be that of the principal office of the institution in the United Kingdom.
- (5) If the person to or on whom any document mentioned in subsection (1) above is to be given or served has notified the [^{F14}Authority] of an address within the United Kingdom, other than his proper address within the meaning of subsection (4) above, as the one at which he or someone on his behalf will accept documents of the same description as that document, that address shall also be treated for the purposes of this section and section 7 of the Interpretation Act 1978 as his proper address.

Textual Amendments

F14 Words in s. 100 substituted (1.6.1998) by 1998 c. 11, s. 23, **Sch. 5 Pt. I Ch. I para. 18**; s.I. 1998/1120, art. 2

Modifications etc. (not altering text)

C5 S. 100 amended (1.1.1993) by S.I. 1992/3218, reg. 47, **Sch. 8 para. 31**.

Marginal Citations

M13 1978 c. 30.

101 Evidence.

- (1) In any proceedings, a certificate purporting to be signed on behalf of the [^{F15}Authority] and certifying—
- (a) that a particular person is or is not an authorised institution or was or was not such an institution at a particular time;
 - (b) the date on which a particular institution became or ceased to be authorised;
 - (c) whether or not a particular institution's authorisation is or was restricted;
 - (d) the date on which a restricted authorisation expires; or
 - (e) the date on which a particular institution became or ceased to be a recognised bank or licensed institution under the ^{M14}Banking Act 1979,
- shall be admissible in evidence and, in Scotland, shall be sufficient evidence of the facts stated in the certificate.
- (2) A certificate purporting to be signed as mentioned in subsection (1) above shall be deemed to have been duly signed unless the contrary is shown.

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Textual Amendments

F15 Word in **s. 101** substituted (1.6.1998) by 1998 c. 11, s. 23, **Sch. 5 Pt. I Ch. I para. 18**; S.I. 1998/1120, **art. 2**

Modifications etc. (not altering text)

C6 **S. 101** amended (1.1.1993) by S.I. 1992/3218, reg. 47, **Sch. 8 para. 32**.

Marginal Citations

M14 1979 c. 37.

102 Powers for securing reciprocal facilities for banking and other financial business.

Any power of the Treasury to make orders or regulations under this Act shall be exercisable by statutory instrument.

103 Municipal banks.

- (1) References in this Act to a municipal bank are to a company within the meaning of the ^{M15}Companies Act 1985 which—
 - (a) carries on a deposit-taking business,
 - (b) is connected with a local authority as mentioned in subsection (2) below, and
 - (c) has its deposits guaranteed by that local authority in accordance with subsection (5) below.
- (2) The connection referred to in paragraph (b) of subsection (1) above between a company and a local authority is that—
 - (a) the company's articles of association provide that the shares in the company are to be held only by members of the local authority; and
 - (b) substantially all the funds lent by the company are lent to the local authority.
- (3) Where on 9th November 1978 a company or its predecessor—
 - (a) was carrying on a deposit-taking business, and
 - (b) was connected with a local authority as mentioned in subsection (2) above, that local authority or its successor may for the purposes of this Act resolve to guarantee deposits with the company.
- (4) A resolution passed by a local authority under subsection (3) above may not be rescinded.
- (5) Where a local authority has passed a resolution under subsection (3) above or under section 48(3) of the ^{M16}Banking Act 1979, that local authority and any local authority which is its successor shall be liable, if the company concerned defaults in payment, to make good to a depositor the principal and interest owing in respect of any deposit with the company, whether made before or after the passing of the resolution.
- (6) For the purposes of this section—
 - (a) one company is the predecessor of another if that other succeeds to its obligations in respect of its deposit-taking business; and

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- (b) one local authority is the successor of another if, as a result of, or in connection with, an order under Part IV of the ^{M17}Local Government Act 1972 [^{F16}^{F17}Part II of the Local Government Act 1992 or Part II of the Local Government and Rating Act 1997] or under Part II] of the ^{M18}Local Government (Scotland) Act 1973 (change of local government area), it becomes connected as mentioned in subsection (2) above with a company formerly so connected with that other local authority.

Textual Amendments

- F16** Words in s. 103(6)(b) substituted (E.W.S.) (31.10.1992) by [Local Government Act 1992 \(c. 19\), s. 27, Sch. 3 para. 22](#); S.I. 1992/2371, [art. 2](#).
- F17** Words in s. 103(6)(b) substituted (19.5.1997) by [1997 c. 29, ss. 33\(1\), 34\(2\), Sch. 3 para. 21](#)

Marginal Citations

- M15** 1985 c. 6.
- M16** 1979 c. 37.
- M17** 1972 c. 70.
- M18** 1973 c. 65.

104 Scottish 1819 savings banks.

- (1) This section applies to any savings bank established before 28th July 1863 under an Act passed in the 59th year of King George III entitled an Act for the Protection of Banks for Savings in Scotland.
- (2) For the purposes of Part II of this Act a savings bank to which this section applies becomes insolvent on the making of a winding-up order against it under Part V of the ^{M19}Insolvency Act 1986 or on the making of an award of sequestration on the estate of the bank.
- (3) A savings bank to which this section applies shall be regarded as a relevant savings bank for the purposes of sections 68 and 69 above.

Marginal Citations

- M19** 1986 c. 45.

105 Meaning of “director”, “controller”, “manager”, and “associate”.

- (1) In the provisions of this Act other than section 96 “director”, “controller”, “manager” and “associate” shall be construed in accordance with the provisions of this section.
- (2) “Director”, in relation to an institution, includes—
- (a) any person who occupies the position of a director, by whatever name called; and
 - (b) in the case of an institution established in a country or territory outside the United Kingdom, any person, including a member of a managing board, who occupies a position appearing to the [^{F18}Authority] to be analogous to that of a director of a company registered under the ^{M20}Companies Act 1985;

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and in the case of a partnership “director”, where it is used in subsections (6) and (7) below, includes a partner.

- (3) “Controller”, in relation to an institution, means—
- (a) a managing director of the institution or of another institution of which it is a subsidiary or, in the case of an institution which is a partnership, a partner;
 - (b) a chief executive of the institution or of another institution of which it is a subsidiary;
 - (c) a person who, ^[F19]satisfies the requirements of this paragraph]
 - (d) a person in accordance with whose directions or instructions the directors of the institution or of another institution of which it is a subsidiary or persons who are controllers of the institution by virtue of paragraph (c) above (or any of them) are accustomed to act.

^[F19]and

- (e) a person who is, or would be if he were an undertaking, a parent undertaking of the institution.]

^[F20](3A) A person satisfies the requirements of subsection (3)(c) above in relation to an institution if, either alone or with any associate or associates—

- (a) he holds 10 per cent. or more of the shares in the institution or another institution of which it is a subsidiary undertaking;
- (b) he is entitled to exercise, or control the exercise of, 10 per cent. or more of the voting power at any general meeting of the institution or another institution of which it is such an undertaking; or
- (c) he is able to exercise a significant influence over the management of the institution or another institution of which it is such an undertaking by virtue of—
 - (i) a holding of shares in; or
 - (ii) an entitlement to exercise, or control the exercise of, the voting power at any general meeting of,the institution or, as the case may be, the other institution concerned;

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.

- (4) A person who is a controller of an institution by virtue of subsection (3)(c) above is in this Act referred to as a ‘shareholder controller’ of the institution; and in this Act—
- (a) a ‘minority shareholder controller’ means a shareholder controller not falling within paragraph (a) or (b) of subsection (3A) above;
 - (b) a ‘10 per cent. shareholder controller’ means a shareholder controller in whose case the percentage referred to in the relevant paragraph is 10 or more but less than 20;
 - (c) a ‘20 per cent. shareholder controller’ means a shareholder controller in whose case that percentage is 20 or more but less than 33;
 - (d) a ‘33 per cent. shareholder controller’ means a shareholder controller in whose case that percentage is 33 or more but less than 50;
 - (e) a ‘50 per cent. shareholder controller’ means a shareholder controller in whose case that percentage is 50 or more;
 - (f) a ‘majority shareholder controller’ means a shareholder controller in whose case that percentage is 50 or more but less than 75; and

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- (g) a 'principal shareholder controller' means a shareholder in whose case that percentage is 75 or more;
and in this subsection 'the relevant paragraph', in relation to a shareholder controller, means whichever one of paragraphs (a) and (b) of subsection (3A) above gives the greater percentage in his case.]
- (5) A person who is a controller of an institution by virtue of subsection (3)(d) above is in this Act referred to as "an indirect controller" of the institution.
- [^{F21}(5A) A person who is a controller of an institution by virtue of subsection (3)(e) above is in this Act referred to as a 'parent controller' of the institution.]
- (6) "Manager", in relation to an institution, means a person (other than a chief executive) who, under the immediate authority of a director or chief executive of the institution—
- (a) exercises managerial functions; or
 - (b) is responsible for maintaining accounts or other records of the institution.
- (7) In this section "chief executive", in relation to an institution, means a person who, either alone or jointly with one or more other persons, is responsible under the immediate authority of the directors for the conduct of the business of the institution.
- (8) Without prejudice to subsection (7) above, in relation to an institution whose principal place of business is in a country or territory outside the United Kingdom, "chief executive" also includes a person who, either alone or jointly with one or more other persons, is responsible for the conduct of its business in the United Kingdom.
- [^{F22}(9) In this Act 'associate', in relation to a person entitled to exercise or control the exercise of voting power in relation to, or holding shares in, an undertaking, means—
- (a) the wife or husband or son or daughter of that person;
 - (b) the trustees of any settlement under which that person has a life interest in possession or, in Scotland, a life interest;
 - (c) any company of which that person is a director;
 - (d) any person who is an employee or partner of that person;
 - (e) if that person is a company—
 - (i) any director of that company;
 - (ii) any subsidiary undertaking of that company; and
 - (iii) any director or employee of any such subsidiary undertaking; and
 - (f) if that person has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in that undertaking or body corporate or under which they undertake to act together in exercising their voting power in relation to it, that other person.
- (10) For the purposes of subsection (9) above—
- 'son' includes stepson and 'daughter' includes stepdaughter;
- 'settlement' includes any disposition or arrangement under which property is held in trust.]

Textual Amendments

F18 Word in s. 105 substituted (1.6.1998) by 1998 c. 11, s. 23, Sch. 5 Pt. I Ch. I para. 18; S.I. 1998/1120, art. 2

Status: Point in time view as at 01/06/1998.

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- F19** Words in s. 105(3)(c) substituted (1.1.1993) by S.I. 1992/3218, **reg. 43(1)** (with savings in reg. 46(a)).
S. 105(3)(e) inserted (1.1.1993) by S.I. 1992/3218, **reg. 43(1)** (with savings in reg. 46(a))
- F20** S. 105(3A)(4) substituted (1.1.1993) for s. 105(4) by S.I. 1992/3218, **reg. 43(2)** (with savings in reg. 46(a)).
- F21** S. 105(5A) inserted (1.1.1993) by S.I. 1992/3218, **reg. 43(3)** (with savings in reg. 46(a)).
- F22** S. 105(9)(10) substituted (1.1.1993) by S.I. 1992/3218, **reg. 43(4)** (with savings in reg. 46(a)).

Marginal Citations

M20 1985 c. 6.

[^{F23}105A Meaning of related company.

- [In this Act a 'related company', in relation to an institution or the parent undertaking of
- ^{F24}(1) an institution, means a body corporate (other than a subsidiary undertaking) in which the institution or parent undertaking holds a qualifying capital interest.]
- (2) A qualifying capital interest means an interest in relevant shares of the body corporate which the institution or [^{F25}parent undertaking] holds on a long-term basis for the purpose of securing a contribution to its own activities by the exercise of control or influence arising from that interest.
- (3) Relevant shares means shares comprised in the equity share capital of the body corporate of a class carrying rights to vote in all circumstances at general meetings of the body.
- (4) A holding of 20 per cent. or more of the nominal value of the relevant shares of a body corporate shall be presumed to be a qualifying capital interest unless the contrary is shown.
- (5) In this paragraph "equity share capital" has the same meaning as in the Companies Act 1985 and the Companies (Northern Ireland) Order 1986.]

Textual Amendments

- F23** S. 105A inserted by Companies Act 1989 (c. 40, SIF 27), s. 23, **Sch. 10 para. 37(3)**
- F24** S. 105A(1), substituted (1.1.1993) by S.I. 1992/3218, **reg. 44(1)** (with savings in reg. 46(a)).
- F25** Words in s. 105A(2) substituted (1.1.1993) by S.I. 1992/3218, **reg. 44(2)** (with savings in reg. 46(a)).

106 Interpretation.

- (1) In this Act—
- “associate” has the meaning given in section 105(9) above;
- “authorisation” means authorisation granted by the [^{F26}Authority] under this Act and “authorised” shall be construed accordingly;
- [^{F27}“the Authority” means the Financial Services Authority;]
- “the Bank” means the Bank of England;
- “bare trustee”, in relation to a deposit, means a person holding the deposit on trust for another person who has the exclusive right to direct how it shall be dealt with subject only to satisfying any outstanding charge, lien or other right of the trustee to resort to it for the payment of duty, taxes, costs or other outgoings;

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“controller” has the meaning given in section 105(3) above;

“director” has the meaning given in section 105(2) above;

“debenture” has the same meaning as in the ^{M21}Companies Act 1985;

“deposit” and “deposit-taking business” have the meaning given in sections 5 and 6 above but subject to any order under section 7 above;

“documents” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

“former authorised institution” means an institution which was formerly an authorised institution or a recognised bank or licensed institution under the ^{M22}Banking Act 1979 and continues to have a liability in respect of any deposit for which it had a liability at a time when it was an authorised institution, recognised bank or licensed institution;

“group”, in relation to a body corporate, means that body corporate, any other body corporate which is its holding company or subsidiary and any other body corporate which is a subsidiary of that holding company;

“indirect controller” has the meaning given in section 105(5) above;

“institution”, except in the expression “overseas institution” means—

- (a) a body corporate wherever incorporated;
- (b) a partnership formed under the law of any part of the United Kingdom;
- (c) a partnership or other unincorporated association of two or more persons formed under the law of a member State other than the United Kingdom; or
- (d) a savings bank to which section 104 above applies;

“liquidator”, in relation to a partnership having its principal place of business in Scotland, includes a trustee appointed on the sequestrated estate of the partnership under the ^{M23}Bankruptcy (Scotland) Act 1985;

“local authority” means—

- (a) in England and Wales, a local authority within the meaning of the ^{M24}Local Government Act 1972, the Common Council of the City of London or the Council of the Isles of Scilly;
- (b) in Scotland, a local authority within the meaning of the ^{M25}Local Government (Scotland) Act 1973; and
- (c) in Northern Ireland, a district council within the meaning of the ^{M26}Local Government Act (Northern Ireland) 1972;

“manager” has the meaning given in section 105(6) above;

“municipal bank” has the meaning given in section 103 above;

[^{F28}‘parent controller’ has the meaning given in section 105(5A) above;]

“penny savings bank” has the same meaning as in the ^{M27}National Savings Bank Act 1971;

[^{F29}‘related company’ has the meaning given by section 105A above;]

[^{F30}‘relevant supervisory authority’—

- (a) in relation to another member State, has the meaning given in regulation 2 of the Banking Coordination (Second Council Directive) Regulations 1992;
- (b) in relation to any other country or territory outside the United Kingdom, means the authority discharging in that country or territory functions corresponding to those of the [^{F31}Authority] under this Act;]

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[^{F32}shareholder controller', 'minority shareholder controller', '10 per cent. shareholder controller', '20 per cent. shareholder controller', '33 per cent. shareholder controller', '50 per cent. shareholder controller', 'majority shareholder controller' and 'principal shareholder controller' have the meanings given in section 105(4) above]

(2) Section 736 of the Companies Act 1985 (meaning of subsidiary and holding company) shall apply for the purposes of this Act.

[^{F33}(2A) In this Act the following expressions, namely—

another member State;

connected UK authority;

credit institution;

European authorised institution;

the First Council Directive;

home State;

listed activity;

parent undertaking;

recognised self-regulating organisation;

relevant supervisory authority;

the Second Council Directive;

subsidiary undertaking;

supervisory authority;

undertaking,

have the same meanings as in the Banking Coordination (Second Council Directive) Regulations 1992.]

[^{F34}(2B) Any reference in this Act to the First Council Directive or the Second Council Directive is a reference to that Directive as amended by the Prudential Supervision Directive (within the meaning of the Financial Institutions (Prudential Supervision) Regulations 1996).

(2C) Any reference in this Act—

(a) to an undertaking being closely linked with any person, or being closely linked with any person by control; or

(b) to an undertaking's close links with any person,

shall be construed in accordance with regulation 2 of those Regulations.]

(3) Any reference in this Act to any provision of Northern Ireland legislation within the meaning of section 24 of the ^{M28}Interpretation Act 1978 includes a reference to any subsequent provision of that legislation which, with or without modification, re-enacts the provision referred to in this Act.

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Textual Amendments

- F26** Word in s. 106(1) substituted (1.6.1998) by 1998 c. 11, s. 23, **Sch. 5 Pt. I Chapter I para. 19(a)**; S.I. 1998/1120, **art. 2**
- F27** S. 106(1) definition inserted (1.6.1998) by 1998 c. 11, s. 23, **Sch. 5 Pt. I Chapter I para. 19(b)**; S.I. 1998/1120, **art. 2**
- F28** Definitions in s. 106(1) inserted (1.1.1993) by S.I. 1992/3218, **reg. 45(1)(a)** (with savings in reg. 46(a)).
- F29** Definition substituted by **Companies Act 1989** (c. 40, SIF 27), s. 23, **Sch. 10 para. 37(4)**
- F30** Definitions in s. 106(1) substituted (1.1.1993) by S.I. 1992/3218, **reg. 45(1)(b)** (with savings in reg. 46(a))
- F31** Word in s. 106(1) definition substituted (1.6.1998) by 1998 c. 11, s. 23, **Sch. 5 Pt. I Chapter I para. 19(c)**; S.I. 1998/1120, **art. 2**
- F32** Definitions in 106(1) substituted (1.1.1993) by S.I. 1992/3218, **reg. 45(1)(c)** (with savings in reg. 46(a)).
- F33** S. 106(2A) inserted (1.1.1993) by S.I. 1992/3218, **reg. 45(2)** (with savings in reg. 46(a)).
- F34** S. 106(2B)(2C) inserted (18.7.1996) by S.I. 1996/1669, reg. 23, **Sch. 5 para. 2**

Modifications etc. (not altering text)

- C7** S. 106 amended (1.1.1993) by S.I. 1992/3218, reg. 47, **Sch. 8 para. 33**.

Marginal Citations

- M21** 1985 c. 6.
M22 1979 c. 37.
M23 1985 c. 66.
M24 1972 c. 70.
M25 1973 c. 65.
M26 1972 c. 9.
M27 1971 c. 29.
M28 1978 c. 30.

107 Transitional provisions.

Schedule 5 to this Act shall have effect with respect to the transitional matters there mentioned.

108 Minor and consequential amendments, repeals and revocations.

- (1) The enactments mentioned in Schedule 6 to this Act, shall have effect with the amendments there specified, being minor amendments and amendments consequential on the provisions of this Act, but subject to any savings there mentioned.
- (2) The enactments mentioned in Part I of Schedule 7 to this Act and the instruments mentioned in Part II of that Schedule are hereby repealed or revoked to the extent specified in the third column of those Parts.

109 Northern Ireland.

- (1) This Act extends to Northern Ireland.
- (2) Subject to any Order made after the passing of this Act by virtue of subsection (1)(a) of section 3 of the ^{M29}Northern Ireland Constitution Act 1973, the regulation of banking

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shall not be a transferred matter for the purposes of that Act but shall for the purposes of subsection (2) of that section be treated as specified in Schedule 3 to that Act.

Marginal Citations

M29 1973 c. 36.

110 Short title and commencement.

- (1) This Act may be cited as the Banking Act 1987.
- (2) Section 91 above shall come into force on the passing of this Act and the other provisions of this Act shall come into force on such day as the Treasury may by order appoint; and different days may be appointed for different provisions or different purposes.

Modifications etc. (not altering text)

C8 Power of appointment conferred by s. 110(2) fully exercised: [S.I. 1987/1189](#), 1664, 1988/502, 644

Status:

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Changes to legislation:

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