



Banking Act 1979

1979 CHAPTER 37

PART II

THE DEPOSIT PROTECTION SCHEME

The Board and the Fund

21 The Deposit Protection Board

- (1) There shall be a body corporate to be known as the Deposit Protection Board (in this Part of this Act referred to as " the Board ") which—
 - (a) shall hold, manage and apply in accordance with the following provisions of this Part of this Act, a fund to be known as the Deposit Protection Fund (in this Part of this Act referred to as " the Fund "); and
 - (b) shall levy contributions for the Fund, in accordance with the following provisions of this Part of this Act, from recognised banks and licensed institutions; and
 - (c) shall have such other functions as are conferred on the Board by those provisions.
- (2) The provisions of Schedule 5 to this Act shall have effect with respect to the Board.

22 The Deposit Protection Fund

- (1) The Fund shall consist of—
 - (a) initial, further and special contributions levied by the Board under sections 24 to 26 below;
 - (b) moneys borrowed by the Board under section 26(3) below;
 - (c) moneys credited to the Fund in accordance with subsection (1) or subsection (5) of section 32 below; and
 - (d) income credited to the Fund in accordance with subsection (3) below.

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- (2) The moneys constituting the Fund shall be placed by the Board in an account with the Bank.
- (3) So far as possible, the Bank shall invest moneys placed with it under subsection (2) above in Treasury bills payable not more than ninety-one days from the date of issue; and any income from moneys so invested shall be credited to the Fund.
- (4) The administrative expenses of the Board shall be defrayed out of the Fund.
- (5) There shall be chargeable to the Fund—
 - (a) payments to meet administrative expenses of the Board in accordance with subsection (4) above;
 - (b) repayments of special contributions under section 26(2) below;
 - (c) moneys required for the repayment of the Board's borrowings under section 26(3) below; and
 - (d) payments under section 28 below.

Contributions to the Fund

23 Contributory institutions and general provisions as to contributions

- (1) All recognised banks and licensed institutions which are not excluded by an order under subsection (2) below shall be liable to contribute to the Fund and are in this Act referred to as "contributory institutions".
- (2) The Treasury may by order exclude from subsection (1) above—
 - (a) a body corporate formed under the law of a country or territory outside the United Kingdom, or
 - (b) any other description of institution of which the principal place of business is in a country or territory outside the United Kingdom,
 if they are satisfied, after consultation with the Board, that, under the law of that country or territory or by virtue of arrangements which are in force there, sterling deposits with the United Kingdom offices of that institution are as well protected as they would be under this Part of this Act.
- (3) The power to make an order under subsection (2) above shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Contributions to the Fund shall be levied on a contributory institution by the Board by service on the institution of a notice specifying the amount due, which shall be paid by the institution not later than twenty-one days after the date on which the notice is served.
- (5) Subject to section 27 below, on each occasion on which contributions are to be levied from contributory institutions (other than the occasion of the levy of an initial contribution from a particular institution under subsection (2) of section 24 below),—
 - (a) a contribution shall be levied from each of the contributory institutions; and
 - (b) the amount of the contribution of each institution shall be ascertained by applying to the institution's deposit base the percentage determined by the Board for the purpose of the contributions levied on that occasion.

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- (6) In relation to any contribution, the deposit base of an institution is the amount which the Board determine as representing the average, over such period preceding the levying of the contribution as appears to the Board to be appropriate, of sterling deposits with the United Kingdom offices of that institution, other than—
- (a) secured deposits;
 - (b) deposits which had an original term to maturity of more than five years ; and
 - (c) deposits in respect of which the institution has in the United Kingdom issued a sterling certificate of deposit.
- (7) In its application to this section, subsection (5) of section 1 of this Act shall have effect with the omission of paragraphs (b) and (c).

24 Initial contributions

- (1) On or as soon as possible after the appointed day the Board shall levy from all institutions which on that day are contributory institutions initial contributions which produce in the aggregate a total of not less than £5 million and not more than £6 million.
- (2) Subject to subsection (5) below, where an institution becomes a contributory institution after the appointed day, the Board shall levy from it, on or as soon as possible after the day on which it becomes a contributory institution, an initial contribution of an amount determined in accordance with subsection (3) or subsection (4) below.
- (3) Where the institution concerned has a deposit base, then, subject to subsection (1) of section 27 below, the amount of an initial contribution levied under subsection (2) above shall be such percentage of the deposit base as the Board consider appropriate to put the institution on a basis of equality with the other contributory institutions, having regard to—
- (a) the initial contributions levied under subsection (1) above, and
 - (b) so far as they are attributable to an increase in the size of the Fund resulting from an order under subsection (2) of section 25 below, further contributions levied under that section.
- (4) Where the institution concerned has no deposit base, the amount of an initial contribution levied under subsection (2) above shall be the minimum amount for the time being provided for in section 27(1) below.
- (5) The Board may waive an initial contribution under subsection (2) above if it appears to them that the institution concerned is to carry on substantially the same business as that previously carried on by one or more institutions which are or were contributory institutions.

25 Further contributions

- (1) If at the end of any financial year of the Board the amount standing to the credit of the Fund is less than £3 million, the Board may, with the approval of the Treasury, levy further contributions from contributory institutions so as to restore the amount standing to the credit of the Fund to a minimum of £5 million and a maximum of £6 million.

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- (2) If at any time it appears to the Treasury to be desirable in the interest of depositors to increase the size of the Fund, the Treasury may, after consultation with the Board, by order made by statutory instrument amend subsection (1) above so as to substitute for the sums for the time being specified in that subsection such larger sums as may be specified in the order; but no such order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (3) An order under subsection (2) above may authorise the Board forthwith to levy further contributions from contributory institutions so as to raise the amount standing to the credit of the Fund to a figure between the new minimum and maximum amounts provided for by the order.

26 Special contributions and power to borrow

- (1) If it appears to the Board that payments in any financial year of the Board under section 28 below are likely to exhaust the Fund, the Board may, with the approval of the Treasury, levy special contributions from contributory institutions to meet the Fund's commitments in the year.
- (2) Where, at the end of any financial year of the Board in the course of which special contributions were levied, moneys representing the whole or part of those contributions remain in the Fund, those moneys shall be repaid by the Board to the institutions from which they were levied pro rata according to the amount of the special contribution made by each of them.
- (3) If in the course of operating the Fund it appears to the Board desirable to do so, the Board may borrow for temporary purposes up to a total outstanding at any time of £10 million or such larger sum as, after consultation with the Board, the Treasury may from time to time prescribe by order made by statutory instrument.
- (4) A statutory instrument made under subsection (3) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Any amount borrowed by virtue of subsection (3) above shall be disregarded in ascertaining whether the amount standing to the credit of the Fund is such that the Board may exercise their power to levy further contributions under subsection (1) of section 25 above.

27 Maximum and minimum contributions

- (1) Subject to subsection (5) below, the amount of the initial contribution levied from a contributory institution shall be not less than £2,500.
- (2) Subject to subsection (5) below, the amount of the initial contribution or any further contribution levied from a contributory institution shall not exceed £300,000.
- (3) No contributory institution shall be required to pay a further or special contribution if, or to the extent that, the amount of that contribution, together with previous initial, further and special contributions made by the institution, after allowing for any repayments made to it under section 26(2) above or section 32 below, amounts to more than 0.3 per cent, of the institution's deposit base as ascertained for the purpose of the contribution in question.
- (4) Nothing in subsection (3) above—

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- (a) shall entitle an institution to repayment of any contribution previously made; or
 - (b) shall prevent the Board from proceeding to levy contributions from other contributory institutions in whose case the limit in that subsection has not been reached.
- (5) The Treasury may from time to time, after consultation with the Board, by order made by statutory instrument amend subsection (1) or subsection (2) above so as to substitute for the sum for the time being specified in that subsection such other sum as may be specified in the order.
- (6) No order shall be made under subsection (5) above unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

Payments out of the Fund

28 Payments to depositors when institution becomes insolvent

- (1) Subject to the provisions of this section, if at any time an institution becomes insolvent and at that time—
- (a) it is a recognised bank or licensed institution which is not excluded from being a contributory institution by an order under section 23(2) above; or
 - (b) it is neither recognised nor licensed but is an institution which was formerly a recognised bank or licensed institution and, at the time when it ceased to have either recognition or a licence, was not excluded as mentioned in paragraph (a) above ;
- the Board shall as soon as practicable pay out of the Fund to a depositor who has a protected deposit with that institution an amount equal to three-quarters of his protected deposit.
- (2) The Board may decline to make any payment under subsection (1) above to a person who, in the opinion of the Board, had any responsibility for, or may have profited directly or indirectly from, the circumstances giving rise to the institution's financial difficulties.
- (3) For the purposes of this Part of this Act, a body corporate becomes insolvent—
- (a) on the making of a winding-up order against it; or
 - (b) on the passing of a resolution for a creditors' voluntary winding up;
- or, in the case of a body corporate formed under the law of a country or territory outside the United Kingdom, on the occurrence of an event which appears to the Board to correspond under that law with either of the events specified above.
- (4) For the purposes of this Part of this Act, a partnership becomes insolvent—
- (a) on the making of a winding-up order against the firm under Part IX of the Companies Act 1948 or the Companies Act (Northern Ireland) 1960 (unregistered companies) ; or
 - (b) in England and Wales, on the making of a receiving order against the firm; or
 - (c) in Scotland, on the making of an award of sequestration on the estate of the partnership; or
 - (d) in Northern Ireland, on the making of an order of adjudication of bankruptcy against any of the partners ;

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or, in the case of a partnership whose principal place of business is in a country or territory outside the United Kingdom, on the occurrence of an event which appears to the Board to correspond under the law of that country or territory with any of the events specified above.

- (5) For the purposes of this Part of this Act, an unincorporated institution which is formed under the law of another member State and is not a partnership becomes insolvent on the occurrence of an event which, under the law of that member State, appears to the Board to correspond, as near as may be, with any of the events specified in paragraphs (a) and (b) of subsection (3) or paragraphs (a) to (d) of subsection (4) above.
- (6) Notwithstanding that the Board may not yet have made or become liable to make a payment under this section, in relation to an institution falling within subsection (1) above.—
- (a) the Board shall at all times be entitled to receive any notice or other document required to be sent to a creditor of the institution whose debt has been proved ; and
 - (b) a duly authorised representative of the Board shall be entitled—
 - (i) to attend any meeting of creditors of the institution;
 - (ii) to be a member of any committee of inspection appointed under section 20 of the Bankruptcy Act 1914;
 - (iii) to be a commissioner under section 72 of the Bankruptcy (Scotland) Act 1913 ; and
 - (iv) to be a member of any committee of inspection appointed by virtue of Part V or Part IX of the Companies Act 1948 or the Companies Act (Northern Ireland) 1960;

but where a representative of the Board exercises the right to be a member of a committee of inspection or to be a commissioner by virtue of paragraph (b) above, he may not be removed except with the consent of the Board and, for the purposes of any provision made by or under any enactment or Northern Ireland legislation which specifies a minimum or maximum number of members of such committee or such commission, his appointment hereunder shall be disregarded.

- (7) In relation to an insolvent institution which is a partnership, any reference in this Part of this Act to the liquidator shall be construed, where the case so requires, as a reference—
- (a) to the trustee in bankruptcy or, in Northern Ireland, the official assignee in bankruptcy; or
 - (b) in England and Wales, where no adjudication of bankruptcy occurs, to any trustee appointed in pursuance of a composition or scheme of arrangement to administer the firm's property or manage its business or distribute the composition and, where an adjudication of bankruptcy is annulled under subsection (2) of section 21 of the Bankruptcy Act 1914, to any person in whom the property of the firm is vested under that subsection; or
 - (c) in Scotland, where the sequestration is declared at an end by a competent court, to any trustee or other person appointed to administer the firm's property or manage its business or distribute a composition in pursuance of any deed of arrangement or other settlement or arrangement by way of composition between the firm and its creditors.

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29 Protected deposits

- (1) Subject to the provisions of this section, in relation to an institution falling within subsection (1) of section 28 above, any reference in this Act to a depositor's protected deposit is a reference to the total liability of the institution to him, limited to a maximum of £10,000, in respect of the principal amounts of sterling deposits made with United Kingdom offices of the institution.
- (2) For the purposes of subsection (1) above, no account shall be taken of any liability unless proof of the debt which gives rise to it has been lodged with the liquidator of the insolvent institution or, in the case of an institution which is—
 - (a) a body corporate formed under the law of a country or territory outside the United Kingdom,
 - (b) a partnership whose principal place of business is in such a country or territory, or
 - (c) any other unincorporated institution formed under the law of another member State,unless an act has been done which appears to the Board to correspond under the law of that country or territory or, as the case may be, under the law of that member State with the lodging of such a proof with the liquidator of the institution.
- (3) The Treasury, after consultation with the Board, may by order made by statutory instrument amend subsection (1) above so as to substitute for the sum for the time being specified in that subsection such larger sum as may be specified in the order; and no such order shall be made unless a draft of it has been laid before Parliament and approved by a resolution of each House.
- (4) The reference in subsection (1) above to the principal amount of a sterling deposit includes any interest or premium which has been so credited to the deposit in question as to constitute an accretion to the principal.
- (5) In determining the total liability of an institution to a depositor for the purposes of subsection (1) above, no account shall be taken of any liability in respect of a deposit if—
 - (a) it is a secured deposit; or
 - (b) it is a deposit which had an original term to maturity of more than five years ; or
 - (c) the institution is no longer recognised or licensed and the deposit was made after it ceased to be either recognised or licensed, unless, at the time the deposit was made, the depositor did not know and could not reasonably be expected to have known that the institution was no longer recognised or licensed.
- (6) Unless the Board otherwise direct in any particular case, in determining the total liability of an institution to a depositor for the purposes of subsection (1) above, there shall be deducted the amount of any liability of the depositor to the institution—
 - (a) in respect of which a right of set-off existed immediately before the institution became insolvent against any such sterling deposit as is referred to in subsection (1) above, or
 - (b) in respect of which such a right would then have existed if the deposit in question had been repayable on demand and the liability in question had fallen due.
- (7) In its application to this section and sections 30 and 31 below, subsection (5) of section 1 of this Act shall have effect—

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- (a) with the omission of paragraphs (b) and (c), and
- (b) as if the reference in paragraph (a) to a loan made by the Bank, a recognised bank or a licensed institution did not include a loan made by any of those bodies as trustees,

and any reference in this Part of this Act to a protected deposit or, in the context of such a deposit, to a depositor shall be construed accordingly.

30 Trustee deposits and joint deposits

- (1) For the purposes of sections 28 and 29 above, where any persons are entitled to a deposit as trustees, then, unless the deposit is held on trust for a person absolutely entitled to it as against the trustees, the trustees shall be treated as a single and continuing body of persons, distinct from the persons who may from time to time be the trustees and if the same persons are entitled as trustees to different deposits under different trusts, they shall be treated as a separate and distinct body with respect to each of those trusts.
- (2) For the purpose of this section, a deposit is held on trust for a person absolutely entitled to it as against the trustees where that person has the exclusive right, subject only to satisfying any outstanding charge, lien or other right of the trustees to resort to the deposit for payment of duty, taxes, costs or other outgoings, to direct how the deposit shall be dealt with.
- (3) Any reference in subsection (1) or subsection (2) above to a person absolutely entitled to a deposit as against the trustees includes a reference to two or more persons who are so entitled jointly; and in the application of subsection (2) above to Scotland the words from "subject" to "outgoings" shall be omitted.
- (4) For the purposes of sections 28 and 29 above and the following provisions of this section, where a deposit is held on trust for any person absolutely entitled to it or, as the case may be, for two or more persons so entitled jointly, that person or, as the case may be, those persons jointly shall be treated as entitled to the deposit without the intervention of any trust.
- (5) For the purposes of sections 28 and 29 above, where two or more persons are jointly entitled to a deposit and subsection (1) above does not apply, each of them shall be treated as having a separate deposit of an amount produced by dividing the amount of the deposit to which they are jointly entitled by the number of persons who are so entitled.
- (6) The Board may decline to make any payment under section 28 above in respect of a deposit until the person claiming to be entitled to it informs the Board of the capacity in which he is entitled to the deposit; and if it appears to the Board—
 - (a) that the persons entitled to a deposit are so entitled as trustees, or
 - (b) that subsection (4) above applies to a deposit, or
 - (c) that two or more persons are jointly entitled to a deposit otherwise than as trustees,
 the Board may decline to make any payment under that section in respect of the deposit until sufficient information has been disclosed to them to enable them to determine what payment (if any) should be made under that section and to whom.
- (7) In this section " jointly entitled " means—

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- (a) in England and Wales and Northern Ireland, beneficially entitled as joint tenants, tenants in common or as coparceners; and
- (b) in Scotland, beneficially entitled as joint owners or owners in common.

31 Liability of insolvent institutions in respect of payments made by the Board

- (1) This section applies where—
- (a) an institution is insolvent; and
 - (b) the Board have made, or are under a liability to make, a payment under section 28 above by virtue of the institution becoming insolvent;
- and in the following provisions of this section a payment falling within paragraph (b) above is referred to as an "insolvency payment" and the person to whom such a payment has been or is to be made is referred to as "the depositor".
- (2) Where this section applies—
- (a) the institution concerned shall become liable to the Board, as in respect of a contractual debt incurred immediately before the institution became insolvent, for an amount equal to the amount of the insolvency payment;
 - (b) the liability of the institution to the depositor in respect of any deposit or deposits of his (in this section referred to as "the liability to the depositor") shall be reduced by an amount equal to the insolvency payment made or to be made to him by the Board; and
 - (c) the duty of the liquidator of the insolvent institution to make payments to the Board on account of the liability referred to in paragraph (a) above (in this section referred to as "the liability to the Board") and to the depositor on account of the liability to him (after taking account of paragraph (b) above) shall be varied in accordance with subsection (3) below.
- (3) The variation referred to in subsection (2)(c) above is as follows: —
- (a) in the first instance the liquidator shall pay to the Board instead of to the depositor any amount which, apart from this section, would be payable on account of the liability to the depositor, except in so far as that liability relates to a secured deposit or a deposit which had an original term to maturity of more than five years or a deposit which is not a sterling deposit; and
 - (b) if at any time the total amount paid to the Board by virtue of paragraph (a) above and in respect of the liability to the Board equals the amount of the insolvency payment made to the depositor, the liquidator shall thereafter pay to the depositor instead of to the Board any amount which, apart from this section, would be payable to the Board in respect of the liability to the Board.
- (4) In the case of a deposit which, for the purposes of section 30 above, is held on trust for a person absolutely entitled to it as against the trustees or, as the case may be, for two or more persons so entitled jointly, any reference in the preceding provisions of this section to the liability to the depositor shall be construed as a reference to the liability of the institution concerned to the trustees.
- (5) The Board may by notice in writing served on the liquidator of an insolvent institution require him, at such time or times and at such place as may be specified in the notice.—
- (a) to furnish to the Board such information, and
 - (b) to produce to the Board such books or papers specified in the notice,
- as the Board may reasonably require to enable them to carry out their functions under this Part of this Act.

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- (6) Where, as a result of an institution having become insolvent, any books or papers have come into the possession of the Official Receiver or, in Northern Ireland, the official assignee for company liquidations or in bankruptcy, he shall permit any person duly authorised by the Board to inspect the books or papers for the purpose of establishing—
- (a) the identity of those of the institution's depositors to whom the Board are liable to make a payment under section 28 above ; and
 - (b) the amount of the protected deposit held by each of those depositors.
- (7) Rules may be made—
- (a) for England and Wales, under section 365 of the Companies Act 1948 and section 132 of the Bankruptcy Act 1914;
 - (b) for Scotland, under section 365 of the Companies Act 1948 and section 32 of the Sheriff Courts (Scotland) Act 1971; and
 - (c) for Northern Ireland, under section 317 of the Companies Act (Northern Ireland) 1960 and section 55 of the Judicature (Northern Ireland) Act 1978 ;
- for the purpose of integrating the procedure provided for in this section into the general procedure on winding-up or bankruptcy.

Repayments in respect of contributions

32 Repayments in respect of contributions

- (1) Any moneys received by the Board under section 31 above shall not form part of the Fund but, for the remainder of the financial year of the Board in which they are received, shall be retained and, so far as appears to the Board appropriate, shall be invested in Treasury bills payable not more than ninety-one days from the date of issue; and any income arising from moneys so invested during the remainder of the year shall be credited to the Fund.
- (2) The Board shall prepare a scheme for the making of repayments to institutions out of moneys falling within subsection (1) above in respect of—
- (a) special contributions, and
 - (b) so far as they are not attributable to an increase in the size of the Fund resulting from an order under subsection (2) of section 25 above, further contributions levied under that section,
- which have been made in the financial year of the Board in which the moneys were received or in any previous such financial year.
- (3) A scheme under subsection (2) above—
- (a) shall provide for the making of repayments first in respect of special contributions and then, if those contributions can be repaid in full (taking into account any previous repayments under this section and under section 26(2) above), in respect of further contributions ;
 - (b) may make provision for repayments in respect of contributions made by an institution which has ceased to be a contributory institution to be made to a contributory institution which, in the opinion of the Board, is its successor ; and

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- (c) subject to paragraph (b) above, may exclude from the scheme further contributions levied from institutions which have ceased to be contributory institutions.
- (4) As soon as practicable after the end of the financial year of the Board in which any moneys are received by them as mentioned in subsection (1) above, the Board shall make out of those moneys the payments required by the scheme under subsection (2) above.
- (5) If in any financial year of the Board the payments made under subsection (4) above (in that and any previous years) in pursuance of a scheme or schemes under subsection (2) above are sufficient to provide for repayment in full of all the contributions to which the scheme or, as the case may be, the schemes related, any balance remaining of the moneys received by the Board as mentioned in subsection (1) above shall be credited to the Fund.

33 Tax treatment of contributions and repayments

In computing for the purposes of the Tax Acts the profits or gains arising from the trade carried on by a contributory institution.—

- (a) to the extent that it would not be deductible apart from this subsection, any sum expended by the institution in paying a contribution to the Fund may be deducted as an expense; and
- (b) any payment which is made to the institution by the Board under section 26(2) above or pursuant to a scheme under section 32(2) above shall be treated as a trading receipt.