



# Banking Act 1979

## 1979 CHAPTER 37

### PART III

#### ADVERTISEMENTS AND BANKING NAMES

##### *Advertisements for deposits*

#### **34 Control of advertisements for deposits**

- (1) After consultation with the Bank, the Treasury may by regulations made by statutory instrument regulate the issue, form and content of advertisements inviting the making of deposits.
- (2) Regulations under this section may make different provision with respect to different descriptions of advertisement and different descriptions of advertisers and, in particular,—
  - (a) may prohibit the issue of advertisements of, or by persons of, particular descriptions ; and
  - (b) may make provision for the exclusion from all or any of the provisions of the regulations of advertisements of particular descriptions or advertisements issued by persons of particular descriptions ; and
  - (c) may make provision with respect to matters which must be, as well as to matters which may not be, included in advertisements.
- (3) Any person who issues an advertisement in contravention of regulations under this section shall be liable—
  - (a) on summary conviction to a fine not exceeding the statutory maximum; and
  - (b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both.
- (4) In this section " advertisement" includes every form of advertising, whether in a publication, by the display of notices, signs, labels, showcards or goods, by distribution of samples, by means of circulars, catalogues, price lists or other documents, by an exhibition of photographic or cinematographic films, or of pictures

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or models, by way of sound broadcasting or television, or in any other manner; and references to the issue of an advertisement shall be construed accordingly.

- (5) For the purposes of this section—
- (a) an advertisement issued by any person by way of display or exhibition in a public place shall be treated as issued by him on every day on which he causes or permits it to be displayed or exhibited;
  - (b) an advertisement which contains information which is intended or might reasonably be presumed to be intended to lead directly or indirectly to the making of deposits shall be treated as an advertisement inviting deposits;
  - (c) an advertisement issued by any person on behalf of or to the order of another person shall be treated as an advertisement issued by that other person; and
  - (d) an advertisement inviting deposits with a person specified in the advertisement shall be presumed, unless the contrary is proved, to have been issued by that person.
- (6) A statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### **35 Specific prohibitions etc. directed at licensed institutions**

- (1) Subject to subsections (3) and (4) below, if the Bank considers that an advertisement for deposits issued or proposed to be issued by a licensed institution is misleading, the Bank may give the institution concerned a direction under this section.
- (2) A direction under this section shall be in writing and may contain all or any of the following, namely,—
  - (a) a prohibition on the issue Of advertisements of a specified kind;
  - (b) a requirement that advertisements of a particular description shall be modified in a specified manner;
  - (c) a prohibition on the issue of any advertisements which are, wholly or substantially, repetitions of an advertisement which has been issued and which is identified in the direction ; and
  - (d) a requirement to take all practical steps to withdraw from display in any place any advertisements or any advertisements of a particular description specified in the direction.
- (3) Not less than seven days before giving a direction under this section, the Bank shall give the institution concerned notice in writing of its intention, specifying the reasons why it proposes to act
- (4) In any case where—
  - (a) the Bank has given notice under subsection (3) above, and
  - (b) within the period of seven days beginning on the date on which the notice was given, written representations are made to the Bank by or on behalf of the institution concerned,

the Bank shall take those representations into account in deciding whether or not to proceed to give the direction.
- (5) A direction under this section—
  - (a) may be revoked or varied by a further direction under this section; and

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- (b) may be revoked by the Bank by notice in writing given to the institution concerned.
- (6) Subsections (4) and (5) of section 34 above shall apply in relation to this section as they apply in relation to that.
- (7) Any person who fails to comply with a direction under this section shall be liable—
  - (a) on summary conviction to a fine not exceeding the statutory maximum; and
  - (b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both.

### *Banking names and descriptions*

## **36 Restriction on use of certain names and descriptions**

- (1) Subject to the provisions of this section and section 37 below, no person carrying on a business of any description in the United Kingdom, other than—
  - (a) the Bank,
  - (b) the central bank of a member State other than the United Kingdom.
  - (c) a recognised bank,
  - (d) a trustee savings bank,
  - (e) the Central Trustee Savings Bank Limited, and
  - (f) the Post Office, in the exercise of its powers to provide banking services,may use any name or in any other way so describe himself or hold himself out as to indicate, or reasonably be understood to indicate, that he is a bank or banker or is carrying on a banking business.
- (2) Nothing in this Part of this Act or in the preceding Parts of this Act affects the determination of any question whether a licensed institution or other person is a bank or banker for purposes other than those of this Act, and accordingly nothing in subsection (1) above shall prohibit a person who is not a recognised bank from using the expression " bank " or " banker " or a similar expression with reference to himself in any case where—
  - (a) he wishes to comply with or take advantage of any relevant provision of law or custom ; and
  - (b) it is necessary for him to use that expression in order to be able to assert that he is complying with or entitled to take advantage of that provision.
- (3) In subsection (2) above " relevant provision of law or custom " means any enactment, any instrument made under an enactment, any international agreement, any rule of law or any commercial usage or practice which confers any benefit on, or otherwise has effect only in relation to, a person by virtue of his being a bank or banker.
- (4) Without prejudice to any provision made by virtue of section 34 above, nothing in subsection (1) above shall prohibit a licensed institution which provides at least two of the services specified in paragraph 2(2) of Schedule 2 to this Act from using the expression " banking services " in relation to any of the services provided by it except—
  - (a) where the use is in such immediate conjunction with the name of the institution that the expression might reasonably be thought to form part of its name ; or

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- (b) where the expression appears on any notice or sign or in other writing which is for the time being so displayed as to be visible to persons frequenting any place or building to which the public has access.
- (5) Subsection (1) above does not prohibit the use by—
- (a) a savings bank specified in subsection (6) below, or
  - (b) a municipal bank, or
  - (c) a body of persons certified as a school bank by either a trustee savings bank or the National Savings Bank, or a recognised bank,
- of a name or description if the name contains an indication, or when the description is used it is accompanied by a statement, that the bank or body concerned is a savings bank, a municipal bank or, as the case may be, a school bank.
- (6) The savings banks referred to in subsection (5)(a) above are—
- (a) the National Savings Bank ;
  - (b) any penny savings bank ;
  - (c) any savings bank established before 28th July 1863 under an Act passed in the fifty-ninth year of King George the Third intituled an Act for the Protection of Banks for Savings in Scotland, which has not since become a trustee savings bank ; and
  - (d) the British Railways Savings Bank established under section 32 of the British Railways Act 1966.
- (7) Subsection (1) above does not prohibit the use by—
- (a) licensed institution which is a wholly owned subsidiary (within the meaning of section 150(4) of the Companies Act 1948) of a recognised bank, or
  - (b) a company which has a wholly owned subsidiary (within the meaning of that section) which is a recognised bank,
- of a name which includes the name of that recognised bank for the purpose of indicating the connection between the two companies.
- (8) Subsection (1) above does not prohibit the use by a licensed institution which has its principal place of business in a country or territory outside the United Kingdom of the name under which the institution carries on business in that country or territory if the name is used in immediate conjunction with the description "licensed deposit-taker" and, where the name appears in writing, if that description is at least as prominent as the name.
- (9) Subsection (1) above does not prohibit the use by a person who carries on business at a representative office of an overseas institution of a name under which the overseas institution carries on a deposit-taking business in a country or territory outside the United Kingdom if the name is used in immediate conjunction with the description "representative office " and, where the name appears in writing, if that description is at least as prominent as the name; and in this subsection " overseas institution" and " representative office " have the same meaning as in section 40 below.
- (10) Where on an application for—
- (a) registration of a name under the Registration of Business Names Act 1916, or
  - (b) the first registration of a company, or the registration of a company by a new name, under the Companies Act 1948 or the Companies Act (Northern Ireland) 1960,

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it appears to the registrar concerned that the use of the name by the person seeking to register it would contravene subsection (1) above, the registration shall not be made.

- (11) A person who contravenes subsection (1) above shall be liable on summary conviction to a fine not exceeding £1,000; and where the contravention involves a public display or exhibition of the offending name, description or other matter, there shall be a fresh contravention of the subsection on each day on which that person causes or permits the display or exhibition to continue.

### **37 Transitory exceptions from section 36(1)**

- (1) If on the appointed day an institution is carrying on a deposit-taking business in the United Kingdom, nothing in section 36(1) above shall apply to the institution at any time when, by virtue of section 2(4) above, it is not prohibited by section 1(1) above from accepting a deposit.
- (2) For a period of twelve months beginning on the appointed day, nothing in section 36(1) above shall apply to a person who on that day is carrying on in the United Kingdom a business other than a deposit-taking business.
- (3) Notwithstanding anything in section 36 above, if an institution ceases (otherwise than on becoming a recognised bank) to be entitled to the benefit of subsection (1) above, the institution shall be entitled—
- (a) to continue to use any existing registered business or company name for a period of twelve months, and
  - (b) to continue to use any other description for a period of six months,
- each period beginning on the date on which the institution ceased to benefit from subsection (1) above.
- (4) If, at any time when an institution or other person is entitled to use a registered business or company name by virtue only of the preceding provisions of this section, that name is changed so as to avoid any contravention of section 36(1) above, then—
- (a) throughout the period or, as the case may be, the remainder of the period of twelve months specified in subsection (2) or, as the case may be, subsection (3) above, and
  - (b) for a further period of twelve months,
- the institution or other person shall be entitled, in any context where it uses the new name, to include a reference to the name by which it was formerly known, together with some indication that that name is no longer in use.
- (5) Notwithstanding anything in section 36 above, if an institution ceases to be a recognised bank, the institution shall be entitled to continue to use any existing registered business or company name or any other description for a period of six months beginning on the date when it ceases to be a recognised bank.