



# Banking Act 1979

## 1979 CHAPTER 37

### PART I

#### CONTROL OF DEPOSIT-TAKING

*Ambit of control*

##### 1 Control of deposit-taking and meaning of "deposit"

- (1) Except as provided by section 2 below, no person may accept a deposit in the course of carrying on a business which is a deposit-taking business for the purposes of this Act.
- (2) Subject to subsection (3) below, 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.
- (3) Notwithstanding that paragraph (a) or paragraph (b) of subsection (2) above applies to a business, it is not a deposit-taking business for the purposes of this Act if, in the normal course of the business.—
  - (a) the person carrying it on does not hold himself out to accept 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.
- (4) Subject to subsection (5) below, in this Act "deposit" means a sum of money 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 to the giving of security ;

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

- (5) Except in so far as any provision of this Act otherwise provides, in this Act " deposit " does not include—
  - (a) a loan made by the Bank, a recognised bank or a licensed institution; or
  - (b) a loan made by a person for the time being specified in Schedule 1 to this Act; or
  - (c) a loan made by a person, other than a person falling within paragraph (a) or paragraph (b) above, in the course of a business of lending money carried on by him; or
  - (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
  - (e) a sum which is paid to an institution by a person who at the time it is paid is a director, controller or manager of the institution or the wife, husband, son or daughter of such a person.
- (6) For the purposes of subsection (4)(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 for the sale, hire or other provision of property or services of any kind and is repayable only in the event that the property or services is or are not in fact sold, hired or otherwise provided; or
  - (b) it is paid by way of security for payment for the provision of property or services of any kind provided or to be provided by the person by whom or on whose behalf the money is accepted; or
  - (c) 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.
- (7) Any person who accepts a deposit in contravention of subsection (1) above 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 both.
- (8) The fact that a deposit is taken in contravention of this section shall not affect any civil liability arising in respect of the deposit or the money deposited.

## **2 Exceptions from prohibition in section 1(1)**

- (1) The prohibition in section 1(1) above on the acceptance of a deposit does not apply to—
  - (a) the Bank; or
  - (b) a recognised bank; or
  - (c) a licensed institution; or
  - (d) a person for the time being specified in Schedule 1 to this Act;

and does not apply to a transaction prescribed for the purposes of this section by regulations made by the Treasury.
- (2) The Treasury may from time to time by order made by statutory instruments—
  - (a) add a person to the list set out in Schedule 1 to this Act, or

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- (b) remove a person from that list (whether that person was included in the list as originally enacted or was added to it by virtue of this subsection).
- (3) A statutory instrument containing an order under paragraph (a) of subsection (2) above shall be subject to annulment in pursuance of a resolution of either House of Parliament and no order under paragraph (b) of that subsection shall be made unless a draft of it has been laid before Parliament and approved by a resolution of each House.
- (4) In the case of a body which on the appointed day was carrying on a deposit-taking business in the United Kingdom, the prohibition in section 1(1) above on the acceptance of a deposit does not apply—
  - (a) at any time during the period of six months beginning on that day; nor
  - (b) if within that period the body makes an application for recognition or a licence, at any time after the end of that period and before the date on which the body is granted recognition or, as the case may be, a licence or on which the Bank notifies the body of its decision to refuse to grant it recognition or a licence.
- (5) Regulations under subsection (1) 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, namely.—
  - (a) the amount of the deposit;
  - (b) the total liability of the body concerned to its depositors;
  - (c) the circumstances in which or the purpose for which the deposit is made ; and
  - (d) the identity of the person by whom the deposit is made or accepted.
- (6) The power to make regulations under subsection (1) above shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

*The system of recognition and licensing by the Bank*

### **3 Recognition and licences**

- (1) Recognition as a bank for the purposes of this Act may be granted by the Bank on an application in that behalf by the institution concerned.
- (2) A full licence to carry on a deposit-taking business may be granted to an institution by the Bank on an application in that behalf or on an application for recognition or on the revocation of the institution's recognition.
- (3) Subject to subsection (5) below.—
  - (a) the Bank shall not grant to an institution recognition as a bank unless it is satisfied that the criteria in Part I of Schedule 2 to this Act are fulfilled with respect to the institution; and
  - (b) the Bank shall not grant a full licence to an institution unless it is satisfied that the criteria in Part II of that Schedule are fulfilled with respect to the institution.
- (4) The Bank shall grant neither recognition nor a licence to an institution which is not a body corporate if the whole of the assets available to the institution are owned by a single individual.

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- (5) In the case of an institution whose principal place of business is in a country or territory outside the United Kingdom, the Bank may regard itself as satisfied that the criteria in paragraphs 3 and 6 of Schedule 2 to this Act or, as the case may be, paragraphs 7 and 10 of that Schedule are fulfilled if—
  - (a) the relevant supervisory authorities inform the Bank that they are satisfied with respect to the management of the institution and its overall financial soundness; and
  - (b) the Bank is satisfied as to the nature and scope of the supervision exercised by those authorities.
- (6) In subsection (5) above "the relevant supervisory authorities" in relation to an institution whose principal place of business is in a country or territory outside the United Kingdom means the authorities which exercise functions corresponding to those of the Bank under this Act in the country or territory where the institution's principal place of business is.
- (7) A grant of recognition and a full licence shall remain in force until—
  - (a) it is surrendered by notice in writing given by the institution concerned to the Bank; or
  - (b) it is revoked in accordance with the following provisions of this Act.
- (8) The provisions of Part I of Schedule 3 to this Act shall have effect with regard to transitional licences and the provisions of Part II of that Schedule shall have effect with respect to the grant of recognition to certain corporate institutions which were in existence on 9th November 1978.

#### **4 Annual report and list of recognised and licensed institutions**

- (1) The Bank shall, as soon as practicable after the end of each of its financial years, make a report to the Chancellor of the Exchequer on its activities in that year in the exercise of the functions conferred on it by this Act
- (2) Every report under this section shall contain a list of the institutions which are recognised or licensed under this Act at the end of the financial year of the Bank to which the report relates.
- (3) Every report under this section shall set out the principles on which the Bank is acting, at the end of the financial year of the Bank to which the report relates, with respect to—
  - (a) the interpretation and application of the criteria to be fulfilled by institutions applying for recognition or a licence; and
  - (b) the interpretation and application of the grounds for revocation of recognition or a licence;

and shall specify any material change in those principles which was made in the course of the year in question or is proposed to be made in the following year.
- (4) The Chancellor of the Exchequer shall lay a copy of every report made by the Bank under this section before each House of Parliament and the Bank shall arrange for the publication of every such report in such manner as it thinks appropriate.
- (5) Any reference in this section to a financial year of the Bank is a reference to a period of twelve months ending on the last day of February.

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- (6) The Bank shall make available to any person, on request and on payment of such charge (if any) as the Bank may reasonably demand to cover the cost of preparation, a list of all the institutions which are recognised or licensed under this Act either at the date of the request or at such earlier date, being not more than one month earlier, as may be specified in the list.

## **5 Recognition and licences: procedure on applications**

- (1) An application for recognition or for a full licence—
- (a) shall be made in such manner as the Bank may specify, either generally or in any particular case; and
  - (b) shall be accompanied by such information as the Bank may reasonably require, either generally or in any particular case, in order to reach a decision on the application.
- (2) If required to do so by notice in writing from the Bank given at any time after an application falling within subsection (1) above has been made and before a decision has been reached on the application, the applicant shall furnish to the Bank such additional information as the Bank may reasonably require in order to reach a decision.
- (3) Any person who knowingly or recklessly furnishes any information which is false or misleading in a material particular in connection with an application falling within subsection (1) above 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 both.
- (4) If, on an application falling within subsection (1) above, the Bank proposes to refuse to grant recognition or, in the case of an application for a licence, to refuse to grant the licence applied for, the Bank—
- (a) shall give notice in writing to the applicant of the action it proposes to take with respect to the application and of the reasons for that proposed action; and
  - (b) in the notice under paragraph (a) above shall also inform the applicant of the right to make representations in writing with respect to the proposed action of the Bank within such period of not less than twenty-eight days as may be specified in the notice; and
  - (c) before reaching a decision on the application shall take account of any representations made as mentioned in paragraph (b) above.
- (5) If, on an application falling within subsection (1) above, the Bank refuses to grant recognition or, as the case may be, the licence applied for, then, subject to subsection (6) below, the Bank shall give notice in writing to the applicant of its decision and the reasons for it before the expiry of the period of six months beginning with the date on which the application was received by the Bank.
- (6) In any case where, under subsection (2) above, the Bank requires additional information with respect to an application, the latest time for the giving of a notice under subsection (5) above with respect to that application shall be the expiry of whichever of the following periods first expires, namely—
- (a) the period of six months beginning on the date on which the additional information is furnished to the Bank; and

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- (b) the period of twelve months beginning on the date on which the application was received by the Bank.

*Revocation of recognition or licence*

## 6      **Grounds for revocation of recognition or licence**

- (1) The powers of the Bank under section 7 below to revoke recognition or a licence shall become exercisable with respect to an institution if it appears to the Bank that—
  - (a) any of the information required to be furnished by the institution in connection with its application was false or misleading in a material particular; or
  - (b) the institution has not carried on any deposit-taking business within the period of twelve months beginning on the date on which it was granted recognition or, as the case may be, on which the licence took effect, or has ceased to carry on any such business for a period of more than six months; or
  - (c) any of the criteria in Part I or Part II of Schedule 2 to this Act which is applicable to the institution is not being or has not been fulfilled with respect to it; or
  - (d) in the case of an institution whose principal place of business is in a country or territory outside the United Kingdom, the authorities which exercise in that country or territory functions corresponding to those of the Bank under this Act have withdrawn from the institution the authority which in that country or territory corresponds to the authority conferred in the United Kingdom by recognition or a licence; or
  - (e) the institution is a body corporate and any of the events referred to in subsection (2) below has occurred with respect to it; or
  - (f) the institution is a partnership and any of the events referred to in subsection (3) below has occurred with respect to it; or
  - (g) the institution is an unincorporated institution other than a partnership and is formed under the law of another member State and an event has occurred with respect to it which, in that member State, appears to the Bank to correspond, as near as may be, with any of the events specified in paragraphs (a) to (d) of subsection (2) or paragraphs (a) to (f) of subsection (3) below; or
  - (h) the institution has failed to comply with any obligation imposed by this Act; or
  - (i) the institution has in any other way so conducted its affairs as to threaten the interests of its depositors.

- (2) The events referred to in subsection (1)(e) above are—

- (a) the making of a winding-up order;
- (b) the passing of a resolution for voluntary winding up;
- (c) the appointment of a receiver or manager of the body's undertaking; and
- (d) the taking of possession, by or on behalf of the holders of any debenture secured by a floating charge, of any property of the body comprised in or subject to the charge;

and also, in the case of a body corporate formed under the law of a country or territory outside the United Kingdom, any event which appears to the Bank to correspond under that law with any of the events specified above.

- (3) The events referred to in subsection (1)(f) above are—

- (a) the dissolution of the partnership ;

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- (b) 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);
- (c) if one of the partners is a body corporate, the occurrence with respect to that partner of one of the events specified in subsection (2) above;
- (d) in England and Wales, the making of a receiving order against the firm or against one of the partners or one of the partners executing an instrument to which the Deeds of Arrangement Act 1914 applies ;
- (e) in Scotland, the making of an award of sequestration on the estate of the partnership or one of the partners, or the partnership or one of the partners executing a trust deed for creditors or entering into a composition contract; and
- (f) in Northern Ireland, the making of an order of adjudication of bankruptcy against one of the partners or one of the partners making a composition or arrangement with his creditors;

and also, in the case of a partnership whose principal place of business is in a country or territory outside the United Kingdom, any event which appears to the Bank to correspond in that country or territory with any of the events specified above.

- (4) It shall be a ground for revoking a full licence held by an institution that the Bank proposes to grant recognition to the institution with effect from the time of the revocation of the licence.
- (5) It shall be a ground for revoking a conditional licence held by an institution that the Bank proposes to grant a full licence to the institution with effect from the time of the revocation of the conditional licence.

## 7 Revocation: powers and procedure

- (1) Where the powers of the Bank under this section have become exercisable with respect to an institution, the Bank may—
  - (a) revoke the recognition or licence of the institution and take such action as it considers appropriate under section 8 below ; or
  - (b) revoke the recognition or licence of the institution and grant it a conditional licence or, if the institution is already the holder of such a licence, grant it another conditional licence subject to different conditions.
- (2) Where the powers of the Bank under this section have become exercisable with respect to a recognised bank but it appears to the Bank that the circumstances are not such as to justify proceedings under subsection (1) above, the Bank may revoke the institution's recognition and grant it a full licence.
- (3) Subject to subsection (4) below, where the Bank proposes to act under subsection (1) or subsection (2) above.—
  - (a) the Bank shall give the institution concerned notice in writing of its intention specifying the reasons why it proposes to act; and
  - (b) the provisions of Part I of Schedule 4 to this Act shall apply.
- (4) In any case where—
  - (a) the powers of the Bank under this section have become exercisable with respect to an institution, and
  - (b) the Bank considers that urgent action is necessary,

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the Bank may, without prior notice under subsection (3) above, by notice in writing given to the institution concerned exercise its powers under paragraph (b) of subsection (1) above; and Where the Bank exercises those powers by virtue of this subsection, the provisions of Part II of Schedule 4 to this Act shall apply instead of the provisions of Part I of that Schedule.

- (5) In Schedule 4 to this Act " the principal section " means this section and—
  - (a) in Part I of that Schedule a "notice of intention to act" means a notice given under subsection (3)(a) above; and
  - (b) in Part II of that Schedule an " immediate revocation notice" means a notice given under subsection (4) above.
- (6) The power of the Bank to revoke a licence by virtue of subsection (4) or subsection (5) of section 6 above shall be exercisable by notice in writing given to the institution concerned.

## **8 Power to give directions in connection with termination of deposit-taking authority**

- (1) Subject to sections 9 and 11(5) below, the Bank may give directions under this section to an institution—
  - (a) at the same time as the Bank gives the institution notice under subsection (3) of section 7 above of its intention to take action under subsection (1)(a) of that section; or
  - (b) at any time after such a notice has been given to the institution (whether before or after its recognition or licence is revoked); or
  - (c) at any time after the institution has surrendered its recognition or licence.
- (2) Directions under this section shall be such as appear to the Bank to be desirable in the interests of depositors, whether for the purpose of safeguarding the assets of the institution or otherwise, and a direction under this section may do all or any of the following, namely—
  - (a) prohibit the institution from dealing with or disposing of its assets in any manner specified in the direction;
  - (b) prohibit it from entering into any transaction or class of transaction so specified;
  - (c) prohibit it from soliciting deposits either generally or from persons who are not already depositors; and
  - (d) require it to take certain steps or pursue a particular course of action.
- (3) A direction under this section shall be in writing and shall specify the reasons why the Bank considers it should be given.
- (4) The power of the Bank to give a direction under this section includes power to vary such a direction by a further direction; and a direction under this section may be revoked by a notice in writing (which may be contained in a later direction) given to the institution concerned by the Bank.
- (5) Any person who fails to comply with a direction for the time being in force 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 both.

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## 9 Duration of directions and direction-making power

- (1) A direction under section 8 above shall cease to have effect at the expiry of the period of twenty-eight days beginning on the day on which it was given unless, before the expiry of that period, the Bank gives notice in writing to the institution concerned confirming the direction.
- (2) In deciding whether to give a notice under subsection (1) above confirming a direction, the Bank shall take into account any written representations made by or on behalf of the institution concerned within the period of fourteen days beginning with the date on which the direction was given.
- (3) In any case where—
  - (a) the Bank has given an institution notice under subsection (3)(a) of section 7 above of its intention to take action under subsection (1)(a) of that section, and
  - (b) subsequently the Bank gives notice to the institution under paragraph 2 of Schedule 4 to this Act of a decision to take no further action or to take some other course of action,any direction under section 8 above previously given to the institution shall cease to have effect on the giving of the notice referred to in paragraph (b) above and no further direction may be given to the institution under that section in reliance on the notice mentioned in paragraph (a) above having been given.
- (4) No direction may be given to an institution under section 8 above after it has ceased to have any liability in respect of deposits for which it had a liability at a time when it was recognised or licensed; and any such direction which is in force with respect to an institution shall cease to have effect when the institution ceases to have any such liability.

## 10 Conditional licences

- (1) A conditional licence is a licence which, subject to section 11(3) below, is granted to an institution by the Bank in the exercise of its powers under section 7(1)(b) above and gives the institution authority to carry on a deposit-taking business conditionally upon its complying with conditions imposed by the Bank and set out in the licence.
- (2) The conditions of a conditional licence granted to an institution—
  - (a) shall be such as the Bank considers necessary in order to secure the protection of the depositors of that institution ; and
  - (b) may require the institution to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way; and
  - (c) may be varied from time to time by agreement between the Bank and the institution.
- (3) Without prejudice to the generality of subsection (2)(b) above, the conditions of a conditional licence may—
  - (a) impose limitations on the acceptance of deposits, the granting of credit or the making of investments;
  - (b) prohibit the soliciting of deposits, either generally or from persons who are not already depositors ; and
  - (c) require the removal of any director, controller or manager.

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- (4) In the case of an institution holding a conditional licence, a failure to comply with any of the conditions of the licence shall be treated for the purposes of this Act as a failure by the institution to comply with such an obligation as is referred to in section 6(1) (h) above.
- (5) A conditional licence may be surrendered by notice in writing given by the institution concerned to the Bank.
- (6) Unless previously revoked or surrendered, a conditional licence shall expire at the end of the period of one year beginning on the date on which it was granted or on such earlier date as may be specified in the licence.

#### *Appeals*

### **11 Appeals from decisions of the Bank**

- (1) Any institution which is aggrieved by a decision of the Bank—
  - (a) to refuse to grant recognition or a licence to it, or
  - (b) to grant a licence to it on an application for recognition, or
  - (c) to revoke its recognition or licence, or
  - (d) to give it a direction under section 8 above,
 may appeal against the decision to the Chancellor of the Exchequer who, in accordance with regulations under section 12 below, shall refer the matter for a hearing before persons appointed for the purpose.
- (2) If the Bank revokes recognition or a licence in the exercise of its powers under section 7(1)(b) above, then, on an appeal against the decision to revoke, the appellant institution may challenge any of the conditions of the conditional licence granted to it, whether or not it also challenges the decision itself.
- (3) On the determination of an appeal under this section, the Chancellor of the Exchequer may confirm, vary or reverse the decision appealed against, and may—
  - (a) take any action which the Bank could have taken at the time it took the decision appealed against; and
  - (b) give such directions as he thinks just for the payment of costs or expenses by any party to the appeal.
- (4) Notice of the Chancellor of the Exchequer's decision on the appeal together with a statement of his reasons for the decision shall be given to the appellant and to the Bank and, unless the Chancellor otherwise directs, the decision shall come into operation on such notice being given to the appellant.
- (5) Where an institution is successful in an appeal to the Chancellor of the Exchequer against a decision of the Bank to revoke all authority of the institution to carry on a deposit-taking business and, prior to that decision, the Bank gave such a notice as is referred to in subsection (1)(a) of section 8 above, then, on the Chancellor's decision coming into operation—
  - (a) any directions previously given to the institution under that section shall cease to have effect; and
  - (b) no further direction may be given to the institution under that section in reliance on that notice having been given.

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## 12 Regulations with respect to appeals

- (1) Provision may be made by regulations with respect to appeals under section 11 above—
  - (a) as to the period within which and the manner in which such appeals are to be brought;
  - (b) as to the persons (in this subsection referred to as " appointed persons ") by whom such appeals are to be heard on behalf of the Chancellor of the Exchequer ;
  - (c) as to the manner in which such appeals are to be conducted, including provision for any hearing before appointed persons to be held in private;
  - (d) for requiring any person, on tender of the necessary expenses of his attendance, to attend and give evidence or produce documents in his custody or under his control;
  - (e) for taxing or otherwise settling any costs or expenses directed to be paid under section 11(3)(b) above and for the enforcement of any such direction; and
  - (f) as to any other matter connected with such appeals.
- (2) Subject to subsection (3) below, regulations under this section shall be made by the Treasury after consultation with the Council on Tribunals and shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Regulations under this section with respect to Scottish appeals, that is to say, appeals where the institution concerned—
  - (a) is a company registered in Scotland, or
  - (b) has its principal or prospective principal place of business in the United Kingdom in Scotland,shall be made by the Lord Advocate after consultation with the Council on Tribunals which shall consult with its Scottish Committee.
- (4) A person who, having been required in accordance with regulations under this section to attend and give evidence, fails without reasonable excuse to attend or give evidence shall be liable on summary conviction to a fine not exceeding £1,000.
- (5) A person who intentionally alters, suppresses, conceals, destroys or refuses to produce any document which he has been required to produce in accordance with regulations under this section, or which he is liable to be so required to produce, 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 both.
- (6) The Treasury may, out of money provided by Parliament, pay to any persons appointed as mentioned in paragraph (b) of subsection (1) above such fees and make good to them such expenses as the Treasury may determine.

## 13 Further appeal on points of law

- (1) An appeal shall lie to the Court at the instance of the institution concerned or of the Bank on any question of law arising from any decision of the Chancellor of the Exchequer on an appeal under section 11 above; and if the Court is of opinion that the decision appealed against was erroneous in point of law, it shall remit the matter to the Chancellor with the opinion of the Court for re-hearing and determination by him.

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- (2) In subsection (1) above "the Court" means the High Court, the Court of Session or a judge of the High Court in Northern Ireland according to whether—
  - (a) if the institution concerned is a company registered in the United Kingdom, it is registered in England and Wales, Scotland or Northern Ireland ; and
  - (b) in the case of any other institution, its principal or prospective principal place of business in the United Kingdom is situated in England and Wales, Scotland or Northern Ireland.
- (3) No appeal to the Court of Appeal or to the Court of Appeal in Northern Ireland shall be brought from a decision under subsection (1) above except with the leave of that court or of the court or judge from whose decision the appeal is brought.
- (4) An appeal shall lie, with the leave of the Court of Session or the House of Lords, from any decision of the Court of Session under this section, and such leave may be given on such terms as to costs, expenses or otherwise as the Court of Session or the House of Lords may determine.

*Duties of licensed institutions*

**14 Duty to notify changes of directors etc.**

- (1) A licensed institution shall give written notice to the Bank of the fact that any person has become or ceased to be a director, controller or manager of the institution.
- (2) A notice required to be given by subsection (1) above shall be given before the expiry of the period of twenty-one days beginning with the day next following that on which the relevant fact comes to the knowledge of the institution.
- (3) Any institution which fails to give a notice required by this section shall be liable on summary conviction to a fine not exceeding £1,000.

**15 Audited accounts of licensed institutions to be open to inspection**

- (1) At each place within the United Kingdom at which it holds itself out to accept deposits, a licensed institution shall keep a copy of its most recent audited accounts; and during normal business hours that copy shall be made available for inspection by any person on request.
- (2) If an institution fails to comply with subsection (1) above, then, for each occasion on which it so fails, it shall be liable on summary conviction to a fine not exceeding £500.

*Powers of the Bank*

**16 Powers to obtain information and require production of documents**

- (1) The Bank may by notice in writing served on a licensed institution—
  - (a) require the institution to furnish to the Bank, at such time or times as may be specified in the notice, such information as the Bank may reasonably require about the nature and conduct of the institution's business and its plans for future development; and
  - (b) require the institution to furnish to the Bank, together with the information required under paragraph (a) above, a report by an accountant approved by

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the Bank on that information or on such aspects of it as may be specified in the notice.

- (2) The Bank may by notice in writing served on a licensed institution require the institution to produce, within such time and at such place as may be specified in the notice, such books or papers as may be so specified, being books or papers which the Bank may reasonably require for the purpose of obtaining information falling within paragraph (a) of subsection (1) above.
- (3) Where, by virtue of subsection (2) above, the Bank has power to require the production of any books or papers from a licensed institution, the Bank shall have the like power to require production of those books or papers from any person who appears to the Bank to be in possession of them; but where any person from whom such production is required claims a lien on books or papers produced by him, the production shall be without prejudice to the lien.
- (4) Where, by virtue of subsection (2) or subsection (3) above, the Bank requires the production by a licensed institution or any other person of books or papers, the Bank may—
  - (a) if the books or papers are produced, take copies of them or extracts from them and require that person, or any other person who is a present or past director, controller or manager of, or is or was at any time employed by, the institution, to provide an explanation of any of them; and
  - (b) if the books or papers are not produced, require the person who was required to produce them to state, to the best of his knowledge and belief, where the books or papers are.
- (5) If and so long as an institution which was formerly a recognised bank or licensed institution—
  - (a) is neither recognised nor licensed, but
  - (b) continues to have any liability in respect of any deposit for which it had a liability at a time when it was recognised or licensed,the provisions of this section shall apply in relation to it as if it were a licensed institution.
- (6) Any person who, when required to do so under this section, fails without reasonable excuse to furnish any information or accountant's report, to produce any books or papers, or to provide any explanation or make any statement, shall be liable on summary conviction to a fine not exceeding £1,000.
- (7) Any person who, in purported compliance with a requirement under this section, furnishes any information, provides any explanation or makes any statement which he knows or has reasonable cause to believe to be false or misleading in a material particular, 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 both.
- (8) Nothing in this section or in section 17 below shall compel the production by a solicitor of a document containing a privileged communication made by him or to him in that capacity.

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## 17 Investigations on behalf of the Bank

- (1) If it appears to the Bank desirable to do so in the interests of the depositors of a recognised bank or licensed institution, the Bank may appoint one or more competent persons to investigate and report to the Bank on the state and conduct of the business of the bank or institution concerned, or any particular aspect of that business.
- (2) If a person appointed under subsection (1) above thinks it necessary for the purposes of\* his investigation, he may also investigate the business of any body corporate which is or has at any relevant time been—
  - (a) a holding company or subsidiary of the body whose business is under investigation ;
  - (b) a subsidiary of a holding company of that body; or
  - (c) a holding company of a subsidiary of that body.
- (3) It shall be the duty of every director, controller, manager and agent of a body whose business is under investigation (whether by virtue of subsection (1) or subsection (2) above)—
  - (a) to produce to the persons appointed under subsection (1) above all books and papers relating to the body concerned which are in his custody or power; and
  - (b) to attend before the persons so appointed when required to do so; and
  - (c) otherwise to give to those persons all assistance in connection with the investigation which he is reasonably able to give.
- (4) Any director, controller, manager or agent of a body who—
  - (a) without reasonable excuse fails to produce any books or papers which it is his duty to produce under subsection (3) above, or
  - (b) without reasonable excuse fails to attend before the persons appointed under subsection (1) above when required to do so, or
  - (c) without reasonable excuse fails to answer any question which is put to him by persons so appointed with respect to a business which is under investigation or to the business of any body corporate which is being investigated by virtue of subsection (2) above,
 shall be liable on summary conviction to a fine not exceeding £1,000.
- (5) Any director, controller, manager or agent of a body who knowingly or recklessly furnishes to any person appointed under subsection (1) above any information which is false or misleading in a material particular, 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 both.
- (6) In this section—
  - (a) "holding company" shall be construed in accordance with section 154 of the Companies Act 1948 or section 148 of the Companies Act (Northern Ireland) 1960;
  - (b) any reference to a director, controller, manager or agent of a body includes a reference to a person who has been but no longer is a director, controller, manager or agent of that body; and
  - (c) "agent", in relation to a body whose business is under investigation, includes its bankers and solicitors and any persons, whether officers of the body or not, who are employed as its auditors.

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## **18 Winding up on petition from the Bank**

- (1) On a petition presented by the Bank by virtue of this section, the court having jurisdiction under the Companies Act 1948 may wind up a recognised bank or licensed institution under that Act if—
  - (a) the institution is unable to pay sums due and payable to its depositors or is able to pay such sums only by defaulting in its obligations to its other creditors; or
  - (b) the value of the institution's assets is less than the amount of its liabilities.
- (2) If a petition is presented by the Bank by virtue of this section for the winding up of a recognised bank or licensed institution which, apart from this subsection, would be excluded from being an unregistered company for the purposes of Part IX of the Companies Act 1948 by virtue of—
  - (a) paragraph (c) of section 398 of that Act (exclusion of partnerships etc. having less than eight members), or
  - (b) paragraph (d) of that section (exclusion of limited partnerships registered in England and Wales or Northern Ireland),the court shall have jurisdiction, and the Companies Act 1948 shall have effect, as if the institution concerned were an unregistered company within the meaning of Part IX of that Act
- (3) If and so long as an institution which was formerly a recognised bank or licensed institution—
  - (a) is neither recognised nor licensed, but
  - (b) continues to have any liability in respect of any deposit for which it had a liability at a time when it was recognised or licensed,the provisions of this section shall apply in relation to it as if it were a licensed institution.
- (4) In its application to Northern Ireland, this section shall have effect—
  - (a) with the substitution of a reference to the Companies Act (Northern Ireland) 1960 for any reference to the Companies Act 1948;
  - (b) with the substitution of a reference to paragraph (d) of section 348 of the Companies Act (Northern Ireland) 1960 for the reference in paragraph (a) of subsection (2) above to paragraph (c) of section 398 of the Companies Act 1948; and
  - (c) with the omission of paragraph (b) of subsection (2) above.

## **19 Confidentiality of information obtained by the Bank**

- (1) Subject to the provisions of this section and section 20 below, no information obtained under or for the purposes of this Act and relating to the business or other affairs of any person may be disclosed (otherwise than to an officer or employee of the Bank) except—
  - (a) with the consent of the person to whom the information relates; or
  - (b) to the extent that it is information which is at the time of the disclosure, or has previously been, available to the public from other sources; or
  - (c) in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.
- (2) Nothing in subsection (1) above prohibits the disclosure of information—

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- (a) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings, whether under this Act or otherwise;
  - (b) in connection with any other proceedings arising out of this Act; or
  - (c) in order to enable the Bank to comply with any obligation imposed on it by or under this Act.
- (3) If, in order to enable the Bank properly to discharge any of its functions under this Act, the Bank considers it necessary to seek advice from any qualified person on any matter of law, accountancy, valuation or other matter requiring the exercise of professional skill, nothing in subsection (1) above prohibits the disclosure to that person of such information as may appear to the Bank to be necessary to ensure that he is properly informed with respect to the matters on which his advice is sought.
- (4) Nothing in subsection (1) above prohibits the disclosure of information—
- (a) to the Treasury in circumstances where, in the opinion of the Bank, it is desirable or expedient that the information should be so disclosed in the interest of depositors or in the public interest; or
  - (b) to the Deposit Protection Board established under Part II of this Act in order to enable that Board to perform any of their functions under that Part.
- (5) Nothing in subsection (1) above prohibits the disclosure to the Secretary of State of information relating to a body corporate to which section 165 or section 172 of the Companies Act 1948 applies if it appears to the Bank that there may be circumstances relating to the body corporate in which the Secretary of State might wish to appoint inspectors under—
- (a) sub-paragraph (i) or sub-paragraph (ii) of paragraph (b) of the said section 165 (investigation of cases of fraud, etc.); or
  - (b) the said section 172 (investigation of ownership of company, etc.).
- (6) Nothing in subsection (1) above prohibits the disclosure to the authorities which exercise in a country or territory outside the United Kingdom functions corresponding to those of the Bank under this Act of information which was furnished by or relates to a recognised bank or licensed institution which—
- (a) carries on or proposes to carry on a deposit-taking business in that country or territory, whether directly, through a subsidiary or otherwise, or
  - (b) has or proposes to acquire an interest in an institution which carries on or proposes to carry on a deposit-taking business in that country or territory, or
  - (c) is a subsidiary of, or appears to the Bank to be otherwise associated with, an institution which is established under the law of that country or territory or whose principal place of business is, or is proposed to be, in that country or territory,
- if it appears to the Bank that the disclosure of the information would assist those authorities in the exercise of those functions.
- (7) Any person who discloses information in contravention of subsection (1) above 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 both.
- (8) In the application of this section to Northern Ireland,—

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- (a) for any reference in subsection (5) above to section 165 or section 172 of the Companies Act 1948 there shall be substituted respectively a reference to section 159 or section 165A of the Companies Act (Northern Ireland) 1960 ; and
- (b) for any reference in that subsection to the Secretary of State there shall be substituted a reference to the Department of Commerce for Northern Ireland.

## **20 Information disclosed to the Bank from other sources**

- (1) If and so far as it appears to the Secretary of State that the disclosure of any information will enable the Bank better to discharge its functions under this Act (but not otherwise).—
  - (a) information obtained by the Secretary of State under section 109 or section 110 of the Companies Act 1967 (inspection of companies' books and papers) may be disclosed to the Bank, notwithstanding the provision as to security of information contained in section 111 of that Act; and
  - (b) where the information is contained in a report made by inspectors appointed under section 164, section 165 or section 172 of the Companies Act 1948 (investigation of affairs or ownership of companies and certain other bodies corporate) the Secretary of State may furnish a copy of the report to the Bank.
- (2) If and so far as it appears to the Department of Commerce for Northern Ireland that the disclosure of any information will enable the Bank better to discharge its functions under this Act (but not otherwise).—
  - (a) information obtained by the Department under Article 107 or Article 108 of the Companies (Northern Ireland) Order 1978 (inspection of companies' books and papers) may be disclosed to the Bank, notwithstanding the provision as to security of information contained in Article 109 of that Order; and
  - (b) where the information is contained in a report made by inspectors under section 158, section 159 or section 165A of the Companies Act (Northern Ireland) 1960 (investigation of affairs or ownership of companies and certain other bodies corporate) the Department may furnish a copy of the report to the Bank.
- (3) Subsection (1) of section 19 above does not apply to information which has been disclosed to the Bank by virtue of subsection (1) or subsection (2) above, but—
  - (a) except as provided by paragraph (b) below, nothing in this Act authorises any further disclosure of that information in contravention of section 111 of the Companies Act 1967 or, as the case may require, Article 109 of the Companies (Northern Ireland) Order 1978; and
  - (b) with respect to that information the references in subsections (3) to (6) of section 19 above to subsection (1) of that section shall be construed as including a reference to the said section 111 or, as the case may require, Article 109.
- (4) If information is disclosed to the Bank by the authorities which exercise, in a country or territory outside the United Kingdom, functions corresponding to those of the Bank under this Act.—
  - (a) subsection (1) of section 19 above applies to that information as it applies to information obtained under or for the purposes of this Act; but

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- (b) the references in subsections (4) to (6) of that section to the disclosure of information do not extend to the disclosure of that information.