



# Banking Act 1979

## 1979 CHAPTER 37

### PART IV

#### MISCELLANEOUS AND GENERAL

#### **38 Amendments of Consumer Credit Act 1974**

- (1) In section 74 of the Consumer Credit Act 1974 (certain agreements excluded from Part V of that Act) after subsection (3) (certain overdraft agreements excluded only where the Director General of Fair Trading makes a determination) there shall be inserted the following subsection: —

“(3A) Notwithstanding anything in subsection (3)(b) above, in relation to a debtor-creditor agreement under which the creditor is the Bank of England or a bank within the meaning of the Bankers' Books Evidence Act 1879, the Director shall make a determination that subsection (1)(b) above applies unless he considers that it would be against the public interest to do so”;

and in subsection (4) of that section (certain agreements in writing falling within subsection (1)(b) or (c) subject to regulations as to form and content) for “ (1)(b) or (c)”, in each place where it occurs, there shall be substituted “ (1)(c) ”.

- (2) Nothing in sections 114 to 122 of the Consumer Credit Act 1974 (pledges) shall be taken to apply to bearer bonds and, accordingly, in paragraph (a) of subsection (3) of section 114 of that Act (exclusion of pledges of documents of title) after the word “ title” there shall be inserted the words “ or of bearer bonds ”.
- (3) In section 185(2) of the Consumer Credit Act 1974 (which relates to dispensing notices given by one of two or more debtors to whom running-account credit is provided) at the end of the proviso there shall be added the following paragraph: —
- “(c) a dispensing notice which is operative in relation to an agreement shall be operative also in relation to any subsequent agreement which, in relation to the earlier agreement, is a modifying agreement”.

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### **39 Fraudulent inducement to make a deposit**

- (1) Any person who, on or after the appointed day, by any statement, promise or forecast which he knows to be misleading, false or deceptive, or by any dishonest concealment of material facts, or by the reckless making (dishonestly or otherwise) of any statement, promise or forecast which is misleading, false or deceptive, induces or attempts to induce another person—
  - (a) to make a deposit with him or with any other person, or
  - (b) to enter into or offer to enter into any agreement for that purpose,shall be liable on conviction on indictment to imprisonment for a term not exceeding seven years or to a fine or both.
- (2) In subsection (1) above " deposit " does not include a loan made to an institution upon terms involving the issue of debentures or other securities but, subject to that, in its application to subsection (1) above, subsection (5) of section 1 of this Act shall have effect with the omission of paragraphs (b) to (e).
- (3) Nothing in this section shall be construed as empowering a court in Scotland, other than the High Court of Justiciary, to pass for any offence under this section a sentence of imprisonment for a term exceeding two years.
- (4) Subsections (1) to (3) above have effect in substitution for subsections (1) and (2) of section 1 of the Protection of Depositors Act 1963 or, in Northern Ireland, section 1 of the Protection of Depositors Act (Northern Ireland) 1964; and nothing in this Act shall affect any liability of any person under either of those sections in respect of anything done or omitted to be done before the appointed day.

### **40 Representative offices of overseas deposit-taking institutions**

- (1) If, on or after the appointed day, a representative office is established in the United Kingdom by an overseas institution which does not carry on a deposit-taking business there, then, within the period of one month beginning with the date on which that office is established, the institution shall give notice in writing to the Bank of the establishment of the office.
- (2) If, before the appointed day, a representative office has been established in the United Kingdom by an overseas institution which does not carry on a deposit-taking business there, then, within the period of six months beginning with the appointed day, the institution shall give notice in writing to the Bank of the existence of the office.
- (3) Any reference in this section to an overseas institution is a reference to an institution which carries on a deposit-taking business in a country or territory outside the United Kingdom and which is either—
  - (a) a body corporate formed under the law of such a country or territory, or
  - (b) any other description of institution of which the principal place of business is in such a country or territory,and in relation to such an institution any reference in this section to a representative office is a reference to premises from which the deposit-taking business of the institution or any other activity of the institution which falls within paragraph 2(2) of Schedule 2 to this Act is promoted or assisted in any way.
- (4) Where the Bank has received notice from an institution under subsection (1) or subsection (2) above, the Bank may by notice in writing given to the institution require

it to furnish to the Bank, within the period of one month beginning with the date on which the notice is given,—

- (a) in the case of an institution which is required in connection with the establishment of a representative office in Great Britain after the appointed day to deliver certain documents to the Registrar of Companies under section 407(1) of the Companies Act 1948. copies of those documents; and
  - (b) in the case of an institution which is not so obliged, or which has a representative office established before the appointed day, the like information as would be contained in the documents which the institution would be required to deliver as mentioned in paragraph (a) above if it were a company to which the said section 407(1) applied and had established a place of business within Great Britain immediately before the notice was given to it under this subsection.
- (5) If at any time an overseas institution which has been required to furnish information or documents under subsection (4) above—
- (a) is required to deliver a return to the Registrar of Companies under section 409 of the Companies Act 1948 containing particulars of an alteration in the matters referred to in that section (alterations of memorandum, directors, persons authorised to accept service etc.), or
  - (b) is required, in connection with ceasing to have a representative office in Great Britain, to give notice to the Registrar under subsection (2) of section 413 of that Act of the fact that it has ceased to have a place of business in either part of Great Britain,
- the institution shall deliver a copy of the return, or, as the case may be, shall also give notice, to the Bank; and if at any time such an institution would be required to deliver such a return or give such a notice as is mentioned in paragraph (a) or paragraph (b) above if it were a company to which the said section or subsection applied and its representative office were a place of business, it shall make such a return or give such a notice to the Bank.
- (6) Subsections (4) and (5) above shall apply in the case of a representative office established in Northern Ireland—
- (a) with the substitution for the references in those subsections to Great Britain of references to Northern Ireland, and
  - (b) with the substitution for the references in those subsections to subsection (1) of section 407, section 409 and subsection (2) of section 413 of the Companies Act 1948 of references to, respectively, sections 356, 358 and 362 of the Companies Act (Northern Ireland) 1960.
- (7) An institution which fails to comply with any provision of this section shall be liable on summary conviction to a fine not exceeding £1,000.

## 41 Offences

- (1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

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- (2) Where the affairs of a body corporate are managed by its members, subsection (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (3) In any proceedings for an offence under this Act it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control.
- (4) Without prejudice to subsection (3) above, in any proceedings for an offence under section 34 or section 36 above committed by the publication of an advertisement it shall be a defence for the person charged to prove that he is a person whose business is to publish or arrange for the publication of advertisements and that he received the advertisement for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to such an offence.
- (5) No proceedings for an offence under this Act shall be instituted—
  - (a) in England and Wales, except by or with the consent of the Director of Public Prosecutions or the Bank; or
  - (b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland or the Bank.
- (6) Summary proceedings for any offence under this Act may, without prejudice to any jurisdiction exercisable apart from this subsection, be taken against an institution, including an unincorporated institution, at any place at which it has a place of business, and against an individual at any place at which he is for the time being.

#### **42 Offences committed by unincorporated institutions**

- (1) Proceedings for an offence alleged to have been committed under this Act by an unincorporated institution shall be brought in the name of that institution (and not in that of any of its members) and, for the purposes of any such proceedings, any rules of court relating to the service of documents shall have effect as if the institution were a corporation.
- (2) A fine imposed on an unincorporated institution on its conviction of an offence under this Act shall be paid out of the funds of the institution.
- (3) Section 33 of the Criminal Justice Act 1925 and Schedule 2 to the Magistrates' Courts Act 1952 (procedure on charge of offence against a corporation) shall have effect in a case in which an unincorporated institution is charged in England or Wales with an offence under this Act in like manner as they have effect in the case of a corporation so charged.
- (4) In relation to any proceedings on indictment in Scotland for an offence alleged to have been committed under this Act by an unincorporated institution, section 74 of the Criminal Procedure (Scotland) Act 1975 (proceedings on indictment against bodies corporate) shall have effect as if the institution were a body corporate.
- (5) Section 18 of the Criminal Justice Act (Northern Ireland) 1945 and Schedule 5 to the Magistrates' Courts Act (Northern Ireland) 1964 (procedure on charge of offence against a corporation) shall have effect in a case in which an unincorporated institution is charged in Northern Ireland with an offence under this Act in like manner as they have effect in the case of a corporation so charged.

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

### **43 Exclusion of certain provisions relating to rehabilitation of offenders**

- (1) Section 4(2) of the Rehabilitation of Offenders Act 1974 (questions relating to previous convictions which have become spent) shall not apply in relation to any question put to any person with respect to the previous convictions, offences, conduct or circumstances of an individual if—
  - (a) the question is put by or on behalf of the Bank and the individual is a director, controller or manager of an institution which is recognised or licensed or which has made an application for recognition or a licence which has not been disposed of; or
  - (b) the question is put by or on behalf of a recognised or licensed institution or an institution which has made an application for recognition or a licence which has not yet been disposed of and the individual is, or is seeking to become, a director, controller or manager of the institution.
- (2) Section 4(3)(b) of the Rehabilitation of Offenders Act 1974 (spent convictions not to be ground for dismissal etc. from offices, professions, occupations or employment) shall not—
  - (a) prevent the Bank from refusing to grant a licence to an institution or from revoking a licence held by an institution on the ground that, by reason of a previous conviction, an individual is not a fit and proper person to be a director, controller or manager of title institution ; or
  - (b) apply in relation to the dismissal or exclusion of an individual from being a director, controller or manager of an institution which is recognised or licensed or which has made an application for recognition or a licence which has not yet been disposed of.
- (3) For the purposes of subsections (1) and (2) above, an application by an institution is not disposed of until the decision of the Bank on the application is communicated to the institution.
- (4) In section 7(2) of the Rehabilitation of Offenders Act 1974 (exclusion of certain proceedings from the effect of rehabilitation set out in section 4(1) of that Act) at the end of paragraph (f) there shall be added the words “or,
  - (g) in any proceedings arising out of any such decision of the Bank of England as is referred to in section 11(1) of the Banking Act 1979, including proceedings on appeal to any court”.
- (5) In the application of subsections (1) and (2) above to Northern Ireland, for the references to sections 4(2) and 4(3)(b) of the Rehabilitation of Offenders Act 1974

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there shall be substituted references to Articles 5(2) and 5 (3)(b) of the Rehabilitation of Offenders (Northern Ireland) Order 1978, respectively.

- (6) In Article 8(2) of the Rehabilitation of Offenders (Northern Ireland) Order 1978 (exclusion of certain proceedings from the effect of rehabilitation set out in Article 5(1) of that Order) at the end of sub-paragraph (e) there shall be added the words “or,
- (f) in any proceedings arising out of any such decision of the Bank of England as is referred to in section 11(1) of the Banking Act 1979, including proceedings on appeal to any court.”.

#### **44 Evidence**

In any proceedings, a certificate purporting to be signed by the Chief Cashier or a Deputy Chief Cashier of the Bank and certifying—

- (a) that a particular institution is or is not recognised or licensed or was or was not recognised or licensed at a particular time, or
- (b) the date on which recognition or a licence was granted to a particular institution, or
- (c) the date on which an institution ceased to be recognised or to hold a licence, or a licence of a particular description, or
- (d) the nature of the licence held by a particular institution at any time and, in the case of a conditional or transitional licence, the date of its expiry,

shall be admissible in evidence and, in Scotland, shall be sufficient evidence of the facts stated in the certificate.

#### **45 Service of notices**

- (1) This section has effect in relation to any notice, directions or other document required or authorised by or under this Act to be given to or served on any person other than the Bank.
- (2) Any such document may be given to or served on the person in question—
  - (a) by delivering it to him; or
  - (b) by leaving it at his proper address ; or
  - (c) by sending it by post to him at that address.
- (3) Any such document may,—
  - (a) in the case of a body corporate, be given to or served on the secretary or clerk of that body ; and
  - (b) in the case of any other description of institution, be given to or served on a controller of the institution.
- (4) For the purposes of this section and section 7 of the Interpretation Act 1978 (service of documents by post) in its application to this section, the proper address of any person to or on whom a document is to be given or served shall be his last known address, except that—
  - (a) in the case of a body corporate or its secretary or clerk, it shall be the address of the registered or principal office of that body in the United Kingdom; and
  - (b) in the case of any other description of institution or a person having the control or management of its business, it shall be that of the principal office of the institution in the United Kingdom.

- (5) If the person to or on whom any document mentioned in subsection (1) above is to be given or served has specified an address within the United Kingdom, other than his proper address within the meaning of subsection (4) above, as the one at which he or someone on his behalf will accept documents of the same description as that document, that address shall also be treated for the purposes of this section and section 7 of the Interpretation Act 1978 as his proper address.

#### **46 Repeal of certain enactments relating to banks and banking**

The following enactments are hereby repealed: —

- (a) section 21 of the Bank Charter Act 1844 and section 13 of the Bank Notes (Scotland) Act 1845 (which require banks to make a return to the Commissioners of Inland Revenue of the names of their principals and places of business);
- (b) in section 4(2) of the Limited Partnerships Act 1907 (which provides that a partnership registered under that Act may not have more than a certain number of partners), the words " in the case of a partnership carrying on the business of banking, of more than ten persons, and, in the case of any other partnership " ;
- (c) in section 155 of the Companies Act 1948 and section 149 of the Companies Act (Northern Ireland) 1960 (which lay down requirements as to the signature of the balance sheet of a registered company), subsection (2) (which lays down special requirements for banking companies);
- (d) section 429 of the said Act of 1948 and section 377 of the said Act of 1960 (which, subject to certain exceptions, prohibit the formation otherwise than as a registered company of a company, association or partnership of more than ten persons for the purpose of carrying on the business of banking);
- (e) section 430 of the said Act of 1948 and section 378 of the said Act of 1960 (which require banking companies proposing to become registered with limited liability to give notice to all persons having an account with them);
- (f) section 431 of the said Act of 1948 and section 379 of the said Act of 1960 (which exclude liabilities in respect of notes issued by a bank in the United Kingdom from the principle of limited liability); and
- (g) in subsection (1) of section 433 of the said Act of 1948 and section 381 of the said Act of 1960 (which require certain companies to post up in their business premises a bi-annual statement of their financial position), the words " a limited banking company or " .

#### **47 Defence of contributory negligence**

In any circumstances in which proof of absence of negligence on the part of a banker would be a defence in proceedings by reason of section 4 of the Cheques Act 1957, a defence of contributory negligence shall also be available to the banker notwithstanding the provisions of section 11(1) of the Torts (Interference with Goods) Act 1977.

#### **48 Municipal banks**

- (1) References in this Act to a municipal bank are to a company within the meaning of the Companies Act 1948 which—
- (a) carries on a deposit-taking business,

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- (b) is connected with a local authority as mentioned in subsection (2) below, and
  - (c) has its deposits guaranteed by that local authority in accordance with subsection (5) below.
- (2) The connection referred to in paragraph (b) of subsection (1) above between a company and a local authority is that—
- (a) the company's articles of association provide that the shares in the company are to be held only by members of the local authority ; and
  - (b) substantially all the funds lent by the company are lent to the local authority.
- (3) Where on 9th November 1978 a company, or its predecessor,—
- (a) was carrying on a deposit-taking business, and
  - (b) was connected with a local authority as mentioned in subsection (2) above,
- that local authority or its successor may for the purposes of this Act resolve to guarantee deposits with the company.
- (4) A resolution passed by a local authority under subsection (3) above may not be rescinded.
- (5) Where a local authority has passed a resolution under subsection (3) above, that local authority and any local authority which is its successor shall be liable, if the company concerned defaults in payment, to make good to a depositor the principal and interest owing in respect of any deposit with the company, whether made before or after the passing of the resolution.
- (6) For the purposes of this section—
- (a) one company is the predecessor of another if that other succeeds to its obligations in respect of its deposit-taking business; and
  - (b) one local authority is the successor of another if, as a result of, or in connection with, an order under Part IV of the Local Government Act 1972 or Part II of the Local Government (Scotland) Act 1973 (change of local government area), it becomes connected as mentioned in subsection (2) above with a company formerly so connected with that other local authority.
- (7) In the Scotland Act 1978, at the end of Part III of Schedule 10 (matters dealt with by certain enactments to be included, to the extent specified, in the groups of devolved matters) there shall be added the following entry—

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“The Banking Act 1979 section 48(3) to   Included.”

(6).

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#### **49    Meaning of " director ", " controller " and " manager "**

- (1) Except in section 41 above, in this Act the expressions " director ", " controller " and " manager ", in relation to an institution, shall be construed in accordance with the provisions of this section.
- (2) " Director ", in relation to an institution, includes—
- (a) any person who occupies the position of a director, by whatever name called ; and
  - (b) in the case of an institution established in a country or territory outside the United Kingdom, any person, including a member of a managing board, who



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occupies a position appearing to the Bank to be analogous to that of a director of a company registered under the Companies Act 1948;

and in the case of a partnership the expression " director ", where it is used in subsections (4) and (5) below, includes a partner.

- (3) " Controller ", in relation to an institution, means—
- (a) a managing director of the institution or of another institution of which it is a subsidiary or, in the case of an institution which is a partnership, a partner;
  - (b) a chief executive of the institution or of another institution of which it is a subsidiary;
  - (c) a person in accordance with whose directions or instructions the directors of the institution or of another institution of which it is a subsidiary (or any of them) are accustomed to act; and
  - (d) a person who, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, fifteen per cent, or more of the voting power at any general meeting of the institution or of another institution of which it is a subsidiary.
- (4) " Manager ", in relation to an institution, means a person (other than the chief executive) employed by the institution who, under the immediate authority of a director or chief executive of the institution—
- (a) exercises managerial functions; or
  - (b) is responsible for maintaining accounts or other records of the institution.
- (5) In this section " chief executive ". in relation to an institution, means a person who is employed by the institution and who either alone or jointly with one or more other persons, is or will be responsible under the immediate authority of the directors for the conduct of the business of the institution.
- (6) Without prejudice to subsection (5) above, in relation to an institution whose principal place of business is in a country or territory outside the United Kingdom, the expression " chief executive " also includes a person who is employed by the institution and who, either alone or jointly with one or more other persons, is or will be responsible for the conduct of its deposit-taking business in the United Kingdom.
- (7) In this section " associate ", in relation to any person, means—
- (a) the wife or husband or son or daughter of that person;
  - (b) any company of which that person is a director ;
  - (c) any person who is an employee or partner of that person; and
  - (d) if that person is a company—
    - (i) any director of that company;
    - (ii) any subsidiary of that company ; and
    - (iii) any director or employee of any such subsidiary ;
- and for the purposes of this section " son " includes step-son and " daughter " includes step-daughter.

## **50 Interpretation**

- (1) In this Act—

" the appointed day ", and similar expressions, shall be construed in accordance with section 52(4) below;

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" the Bank " means the Bank of England ;

" conditional licence " shall be construed in accordance with section 10 of this Act;

" contributory institution " has the meaning assigned to it by section 23 of this Act;

" debenture " has the same meaning as in the Companies Act 1948;

" deposit " and " deposit-taking business " shall be construed in accordance with section 1 of this Act;

" enactment " includes an enactment of the Parliament of Northern Ireland and a Measure of the Northern Ireland Assembly;

" full licence " means a licence granted under section 3(2) of this Act;

" institution ", except in the expression " unincorporated institution ", means a body corporate or a partnership or any other association of two or more persons formed under the law of another member State and, accordingly, except in the expression " licensed institution ", includes a recognised bank ;

" licence " means a full licence, a conditional licence or a transitional licence and " licensed institution " shall be construed accordingly;

" local authority " means—

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

" municipal bank " shall be construed in accordance with section 48 above;

" penny savings bank " has the same meaning as in section 16 of the National Savings Bank Act 1971;

" recognition " means recognition as a bank for the purposes of this Act and any reference to a recognised bank or institution shall be construed accordingly ;

" statutory maximum ", in relation to a fine on summary conviction, means—

- (a) in England and Wales and Northern Ireland, the prescribed sum, within the meaning of section 28 of the Criminal Law Act 1977 (at the passing of this Act £1,000); and
- (b) in Scotland, the prescribed sum, within the meaning of section 289B of the Criminal Procedure (Scotland) Act 1975 (at the passing of this Act £1,000);

and for the purposes of the application of this definition in Northern Ireland the provisions of the Criminal Law Act 1977 which relate to the sum mentioned in paragraph (a) above shall extend to Northern Ireland;

" subsidiary " shall be construed in accordance with section 154 of the Companies Act 1948 or section 148 of the Companies Act (Northern Ireland) 1960 ;

" transitional licence " means a licence granted under paragraph 1 of Schedule 3 to this Act;

" trustee savings bank " has the meaning assigned to it by section 3 of the Trustee Savings Banks Act 1969 ; and " unincorporated institution " means

a partnership or any other association of two or more persons which is not a body corporate.

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

## **51 Consequential amendments and repeals**

- (1) The amendments in Part I of Schedule 6 to this Act being amendments consequential on the provisions of this Act, shall have effect, subject to the savings in Part II of that Schedule.
- (2) The enactments mentioned in Schedule 7 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

## **52 Short title, commencement and extent**

- (1) This Act may be cited as the Banking Act 1979.
- (2) This Act extends to Northern Ireland.
- (3) This Act shall come into operation on such day as the Treasury may appoint by order made by statutory instrument; and different days may be so appointed for different provisions of this Act and for such different purposes of the same provision as may be specified in the order.
- (4) Any reference in any provision of this Act to " the appointed day " shall be construed as a reference to the day appointed for the purposes of that provision; and any reference in this Act to the day appointed for the purposes of any provision of this Act—
  - (a) shall be construed as a reference to the day appointed under this section for the coming into operation of that provision; and
  - (b) where different days are appointed for different purposes of that provision, shall be construed, unless an order under this section otherwise provides, as a reference to the first day so appointed.