



Banking Act 1987

1987 CHAPTER 22

PART I

REGULATION OF DEPOSIT-TAKING BUSINESS

Appeals

27 Rights of appeal

- (1) An institution which is aggrieved by a decision of the Bank—
- to refuse an application by the institution for authorisation;
 - to revoke its authorisation otherwise than in a case in which revocation is mandatory under section 11 above;
 - to restrict its authorisation, to restrict it in a particular manner or to vary any restrictions of its authorisation; or
 - to give it a direction under section 19 above or to vary a direction given to it under that section,

may appeal against the decision to a tribunal constituted in accordance with section 28 below.

- (2) Where—
- the ground or a ground for a decision within paragraph (a), (b) or (c) of subsection (1) above is that mentioned in section 10(3) or 13(4)(a) above; or
 - the effect of a decision within paragraph (c) or (d) of that subsection is to require the removal of a person as director, controller or manager of an institution,

the person to whom the ground relates or whose removal is required may appeal to a tribunal constituted as aforesaid against the finding that there is such a ground for the decision or, as the case may be, against the decision to require his removal.

- (3) Any person on whom a notice of objection is served under section 22 or 24 above may appeal to a tribunal constituted as aforesaid against the decision of the Bank to serve the notice; but this subsection does not apply to a person in any case in which he has

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failed to give a notice or become or continued to be a controller in circumstances in which his doing so constitutes an offence under section 25(1), (2) or (3) above.

- (4) The revocation of an institution's authorisation pursuant to a decision against which there is a right of appeal under this section shall not have effect—
 - (a) until the end of the period within which an appeal can be brought; and
 - (b) if such an appeal is brought, until it is determined or withdrawn.
- (5) The Tribunal may suspend the operation of a restriction or direction or a variation of a restriction or direction pending the determination of an appeal in respect of the decision imposing or varying the restriction or giving or varying the direction.

28 Constitution of tribunals

- (1) Where an appeal is brought under section 27 above a tribunal to determine the appeal shall be constituted in accordance with subsection (2) below.
- (2) The tribunal shall consist of—
 - (a) a chairman appointed by the Lord Chancellor or, in a case where the institution concerned is a company registered in Scotland or has its principal or prospective principal place of business in the United Kingdom in Scotland, by the Lord Chancellor in consultation with the Lord Advocate; and
 - (b) two other members appointed by the Chancellor of the Exchequer.
- (3) The chairman shall be a barrister, solicitor or advocate of at least seven years' standing; and the other two members shall be persons appearing to the Chancellor of the Exchequer to have respectively experience of accountancy and experience of banking.
- (4) The Treasury may out of money provided by Parliament pay to the persons appointed as members of a tribunal under this section such fees and allowances in respect of expenses as the Treasury may determine and may also out of such money defray any other expenses of a tribunal.

29 Determination of appeals

- (1) On an appeal under section 27(1) or (3) above the question for the determination of the tribunal shall be whether, for the reasons adduced by the appellant, the decision was unlawful or not justified by the evidence on which it was based.
- (2) On any such appeal the tribunal may confirm or reverse the decision which is the subject of the appeal but shall not have power to vary it except that—
 - (a) where the decision was to revoke an authorisation the tribunal may direct the Bank to restrict it instead;
 - (b) where the decision was to impose or vary any restrictions the tribunal may direct the Bank to impose different restrictions or to vary them in a different way; or
 - (c) where the decision was to give or vary a direction the tribunal may direct the Bank to give a different direction or to vary it in a different way.
- (3) Where the tribunal gives a direction to the Bank under subsection (2)(a), (b) or (c) above it shall be for the Bank to decide what restrictions should be imposed or how they should be varied or, as the case may be, what direction should be given or how a direction should be varied; and—

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- (a) the Bank shall by notice in writing to the institution concerned impose the restrictions, give the direction or make the variation on which it has decided;
 - (b) the institution may appeal to the tribunal against the Bank's decision,
- and on any such appeal the tribunal may confirm the decision or give a further direction under paragraph (b) or (c) of subsection (2) above and, if it gives such a further direction, this subsection shall continue to apply until the Bank's decision is confirmed by the tribunal or accepted by the institution.
- (4) Where the tribunal reverses a decision of the Bank to refuse an application for authorisation it shall direct the Bank to grant it.
 - (5) On an appeal under section 27(2)(a) above the question for the determination of the tribunal shall be whether, for the reasons adduced by the appellant, the finding of the Bank was not justified by the evidence on which it was based; and on an appeal under section 27(2)(b) above the question for the determination of the tribunal shall be whether, for the reasons adduced by the appellant, the decision requiring the appellant's removal was unlawful or not justified by the evidence on which it was based.
 - (6) A decision by the tribunal on an appeal under section 27(2)(a) above that a finding in respect of the appellant was not justified shall not affect any refusal, revocation or restriction wholly or partly based on that finding; but on an appeal under section 27(2)(b) above the tribunal may confirm or reverse the decision to require the removal of the appellant.
 - (7) Notice of a tribunal's determination, together with a statement of its reasons, shall be given to the appellant and to the Bank; and, unless the tribunal otherwise directs, the determination shall come into operation when the notice is given to the appellant and to the Bank.
 - (8) Notice of a tribunal's determination of an appeal under section 27(2) above shall also be given to the institution concerned and, where the determination is to reverse a decision to require the removal of the appellant as director, controller or manager of an institution, the determination shall not come into operation until notice of the determination has been given to that institution.

30 Costs, procedure and evidence

- (1) A tribunal may give such directions as it thinks fit for the payment of costs or expenses by any party to the appeal.
- (2) On an appeal under section 27(2) above the institution concerned shall be entitled to be heard.
- (3) Subject to subsection (4) below, the Treasury may, after consultation with the Council on Tribunals, make regulations with respect to appeals under this Part of this Act; and those regulations may in particular make provision—
 - (a) as to the period within which and the manner in which such appeals are to be brought;
 - (b) as to the manner in which such appeals are to be conducted, including provision for any hearing to be held in private, as to the persons entitled to appear on behalf of the parties and for enabling appeals to be heard notwithstanding the absence of a member of the tribunal other than the chairman;

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- (c) as to the procedure to be adopted where appeals are brought both by an institution and a person who is or is to be a director, controller or manager of the institution, including provision for hearing the appeals together and for the mutual disclosure of information;
 - (d) for requiring an appellant or the Bank to disclose or allow the inspection of documents in his or its custody or under his or its control;
 - (e) 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 and for authorising the administration of oaths to witnesses;
 - (f) for enabling an appellant to withdraw an appeal or the Bank to withdraw its opposition to an appeal and for the consequences of any such withdrawal;
 - (g) for taxing or otherwise settling any costs or expenses which the tribunal directs to be paid and for the enforcement of any such direction;
 - (h) for enabling any preliminary or incidental functions in relation to an appeal to be discharged by the chairman of a tribunal; and
 - (j) as to any other matter connected with such appeals.
- (4) Regulations under this section with respect to 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 its Scottish Committee.
- (5) 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 the fifth level on the standard scale.
- (6) A person who without reasonable excuse 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 guilty of an offence and liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (7) Any regulations made under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

31 Further appeals on points of law

- (1) An institution or other person who has appealed to a tribunal may appeal to the court on any question of law arising from the decision of the appeal by the tribunal and an appeal on any such question shall also lie at the instance of the Bank; and if the court is of opinion that the decision was erroneous in point of law, it shall remit the matter to the tribunal for re-hearing and determination by it.
- (2) In subsection (1) above "the court" means the High Court, the Court of Session or the High Court in Northern Ireland according to whether—

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- (a) if the institution concerned is a company registered in the United Kingdom, it is registered in England, and Wales, Scotland or Northern Ireland;
 - (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.