
STATUTORY INSTRUMENTS

1988 No. 645

BANKS AND BANKING

The Banking Act 1987 (Advertisements) Regulations 1988

<i>Made</i>	- - - -	<i>29th March 1988</i>
<i>Laid before Parliament</i>		<i>30th March 1988</i>
<i>Coming into force</i>	- -	<i>29th April 1988</i>

The Treasury, in exercise of the powers conferred upon them by section 32(1) and (2) of the Banking Act 1987(1) and all other powers enabling them in that behalf, and after consultation with the Bank of England and the Building Societies Commission, hereby make the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Banking Act 1987 (Advertisements) Regulations 1988.

(2) These Regulations shall come into force on 29th April 1988.

(3) In these Regulations, unless the context otherwise requires—

“controlled advertisement” means a deposit advertisement to which, in accordance with regulation 2 below, these Regulations apply;

“deposit-taker” means the person with whom the deposits which are invited by a deposit advertisement are to be made;

“full name” in respect of any person means the name under which that person carries on business and, if different and if that person is a body corporate, its corporate name;

“liabilities” includes provisions where such provisions have not been deducted from the value of assets;

(4) A reference in these Regulations to the payment of interest in respect of a deposit includes a reference to the payment of any premium in respect of a deposit, and to the crediting of interest to the deposit so as to constitute an accretion to the principal.

(5) For the purposes of these Regulations a deposit advertisement which contains information which is intended or might reasonably be presumed to be intended to lead directly or indirectly to the making of a deposit shall be treated as if it contained an invitation to make such deposit, and references to an invitation to make a deposit shall be construed accordingly.

Application of Regulations

2.—(1) Subject to paragraphs (2) to (5) of this regulation these Regulations apply to a deposit advertisement unless it contains an invitation to make deposits only with offices of the deposit-taker in the United Kingdom or another member State.

(2) These Regulations do not apply to a deposit advertisement which does not indicate the offices with which the deposits are invited to be made if the deposit-taker carries on a deposit-taking business in the United Kingdom or another member State.

(3) These Regulations do not apply to a deposit advertisement which invites the making of deposits with an institution or unincorporated institution which is a body for the time being authorised under section 3 or 4 of the Insurance Companies Act 1982⁽²⁾ to carry on insurance business of a class specified in Schedule 1 or 2 to that Act.

(4) These Regulations do not apply—

- (a) in relation to any issue of a prospectus to which section 56 of the Companies Act 1985⁽³⁾ applies or would apply if not excluded by paragraph (a) or (b) of subsection (5) of that section;
- (b) in relation to any issue of a prospectus to which section 72 of that Act applies or would apply if not excluded by paragraph (a) or (b) of subsection (6) of that section or by section 76 of that Act;
- (c) in relation to any issue of a form of application for shares in, or debentures of, a company, together with—
 - (i) a prospectus which complies with the requirements of the said section 56, or is not required to comply therewith because excluded by paragraph (a) or (b) of subsection (5) of that section, or
 - (ii) a prospectus which complies with the requirements of Chapter II of Part III of the said Act relating to prospectuses;
- (d) in relation to any issue of a form of application for shares in, or debentures of, a company where the form of application was issued either—
 - (i) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or
 - (ii) in relation to shares or debentures which were not offered to the public;
- (e) in relation to any issue of a form of application for any securities, if such form is issued with a document which either sets out the approved listing particulars for the purposes of any listing rules made pursuant to section 142(6) of the Financial Services Act 1986⁽⁴⁾ or indicates where such particulars can be obtained or inspected;
- (f) in relation to any issue of documents to which the corresponding Northern Ireland legislation applies (or would apply if not excluded by that legislation).

(5) These Regulations do not apply to a deposit advertisement which invites the making of deposits on terms involving the issue by the deposit-taker of debt securities which have been admitted to official listing within a member State other than the United Kingdom.

(6) These Regulations do not apply to a deposit advertisement which is an investment business advertisement regulated by rules (made by the appropriate authority or a recognised organisation) of the kind described in section 48(2)(e) of the Financial Services Act 1986 (rules as to the form and content of advertisements in respect of investment business).

(7) For the purposes of this regulation—

(2) 1982 c. 50.
(3) 1985 c. 6.
(4) 1986 c. 60.

- (a) “company” means—
- (i) any company which is a company within the meaning of section 735(1) of the Companies Act 1985,
 - (ii) any body corporate to which the prospectus and allotment provisions of that Act are applied by regulations made under section 718 of that Act,
 - (iii) any company of a kind described in section 72 of that Act, or
 - (iv) any company or body corporate in respect of which the corresponding Northern Ireland legislation has effect;
- (b) “investment business advertisement” means an advertisement—
- (i) which is issued or caused to be issued by or on behalf of a person authorised under Chapter III of Part I of the Financial Services Act 1986 or an appointed representative within the meaning of section 44 of that Act,
 - (ii) which contains an invitation to make a deposit which will be accepted by the deposit-taker in the course of or for the purpose of engaging in any permitted dealing activity with or on behalf of the person by whom or on whose behalf the deposit is made or in any permitted service activity on behalf of that person, and
 - (iii) which contains no other invitation to make a deposit;
- (c) “dealing activity” means an activity falling within paragraph 12 of Schedule 1 to the Financial Services Act 1986 construed without reference to Parts III and IV of that Schedule;
- (d) “service activity” means an activity falling within paragraph 13, 14 or 16 of Schedule 1 to the Financial Services Act 1986 construed without reference to Parts III and IV of that Schedule;
- (e) “permitted” in relation to a dealing activity or a service activity means an activity in which the deposit-taker may engage without any contravention occurring of—
- (i) any rules (made by the appropriate authority or a recognised organisation) of the kind described in section 48(2)(a) and (b) of that Act (rules as to the type of business carried on or the persons in relation to whom business is carried on), or
 - (ii) any prohibition of the kind described in section 65 of that Act;
- (f) “appropriate authority” means the Secretary of State, a designated agency within the meaning of section 114(3) of the Financial Services Act 1986, the Chief Registrar of friendly societies, the Registrar of Friendly Societies for Northern Ireland or a transferee body within the meaning of paragraph 28(4) of Schedule 11 to that Act; and
- (g) “recognised organisation” means a body which is a recognised professional body, a recognised self-regulating organisation or a recognised self-regulating organisation for friendly societies within the meaning of section 207(1) of the Financial Services Act 1986.
- (8) In this regulation references to rules made by a recognised organisation include rules (whether or not laid down by the organisation itself) which the organisation has power to enforce.
- (9) In this regulation “the corresponding Northern Ireland legislation” means those provisions of the Companies (Northern Ireland) Order 1986(5) which correspond to any of the provisions of the Companies Act 1985 specified in this regulation.

Control of advertisements

3. No controlled advertisement shall be issued unless it complies with the following provisions of these Regulations.

General requirements for advertisements

4. Every controlled advertisement shall state—
- (a) the full name of the deposit-taker,
 - (b) the country or territory in which the deposit-taker's principal place of business is situated, described as such, and
 - (c) if the deposit-taker is a body corporate, the country or territory in which it is incorporated, described as such, unless this is the same as the country or territory referred to in subparagraph (b).

Assets and liabilities

5.—(1) Every controlled advertisement shall state the amount of the paid-up capital and reserves, described as such, of the deposit-taker (if a body corporate) or the amount of the total assets less liabilities, described as such, of the deposit-taker (if a person other than a body corporate).

(2) Where a controlled advertisement contains any reference to the amount of the assets of the deposit-taker it shall state with equal prominence the amount of the deposit-taker's liabilities, described as such.

(3) Paragraphs (1) and (2) of this regulation shall be treated as complied with if the advertisement states that the amount of any assets or paid-up capital and reserves required to be stated exceeds an amount specified in the advertisement or that the amount of any liabilities required to be stated does not exceed an amount so specified.

(4) A controlled advertisement shall not contain any reference to the assets or liabilities of any person other than the deposit-taker.

Deposit protection arrangements

6.—(1) Every controlled advertisement shall indicate the country or territory in which the offices of the institution with which deposits are invited to be made are situated, described as such, and shall, unless the deposit-taker is an authorised building society within the meaning of the Building Societies Act 1986⁽⁶⁾, contain a statement of the following terms, there being inserted where indicated respectively the name of the deposit-taker and the name of the country or territory outside the United Kingdom where the deposits are invited to be made—

“Deposits made with offices of [name of deposit-taker] in [name of country or territory] are not covered by the Deposit Protection Scheme under the Banking Act 1987.”

(2) The statement referred to in paragraph (1) of this regulation shall (except in the case of advertisements which are in spoken form) appear in the advertisement in a conspicuous position.

(3) A controlled advertisement shall not state or imply that the deposits which are invited or their repayment, or interest or the payment of interest in respect of them, will be guaranteed, secured, insured or the subject of any other form of protection unless it states—

- (a) the form of the protection,
- (b) the extent of the protection, and

(6) 1986 c. 53.

- (c) the full name of the person who will be liable to meet any claim by the depositor by virtue of the arrangements conferring the protection.

Interest

7.—(1) This regulation applies to a controlled advertisement which specifies the rate at which interest will be payable in respect of the deposits which are invited.

(2) Every advertisement to which this regulation applies shall state—

- (a) the minimum amount, if any, which must be deposited to earn that rate of interest,
- (b) the period of time, if any, during which no interest will be payable,
- (c) the minimum period of time, if any, during which a deposit must be retained by the depositor in order to earn that rate of interest,
- (d) the minimum period of notice, if any, which must be given before repayment may be required of a deposit earning that rate of interest, and
- (e) the intervals at which the interest will be paid.

(3) If the rate of interest which is specified is not an annual rate of simple interest, the advertisement shall state the basis on which the rate will be calculated.

(4) If the rate of interest which is specified may be varied during the period for which the deposit will be held this shall be stated in the advertisement.

(5) If interest will or may not be paid in full at the rate which is specified, this shall be stated in the advertisement, and the advertisement shall state the nature and the amount of or rate of any deductions which will or may be made from the interest before payment.

(6) If the rate of interest which is specified is or may not be the rate at which interest will be payable in respect of the deposits on the date on which the advertisement is issued this shall be stated in the advertisement, and the advertisement shall state the date on which interest was payable at the rate which is specified, such date being as close as reasonably practicable to the date on which the advertisement is issued.

(7) If an advertisement specifies more than one rate of interest payable in respect of deposits of a particular amount the advertisement shall contain the information required by any of the foregoing paragraphs of this regulation in relation to each such rate.

(8) Where different rates of interest apply to deposits of different amounts, the advertisement shall contain the information required by any of the foregoing paragraphs of this regulation in relation to each such rate.

Currency

8. Every controlled advertisement shall state the currency in which the deposits are to be made.

Supplementary provisions

9.—(1) Subject to paragraph (2) of this regulation, the matters required by these Regulations to be included in an advertisement shall be shown clearly and legibly or, in the case of an advertisement by way of sound broadcasting, spoken clearly.

(2) In the case of an advertisement by way of television or exhibition or cinematographic film, the matters required by these Regulations to be included shall be shown clearly and legibly or spoken clearly.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Revocation of earlier Regulations

10. The Banking Act 1979 (Advertisements) Regulations 1985(7) and the Banking Act 1979 (Advertisements)(Amendment) Regulations 1987(8) are hereby revoked.

29th March 1988

Peter Lloyd
David Lightbown
Two of the Lords Commissioners of Her
Majesty's Treasury

(7) S.I. 1985/220.
(8) S.I. 1987/64.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations re-enact the Banking Act 1979 (Advertisements) Regulations 1985 (S.I. 1985/220, amended by S.I. 1987/64). They apply to deposit advertisements (which are defined in section 32(5) of the Banking Act 1987 (c. 22)) subject to the exclusions specified in regulation 2. In particular, the Regulations do not apply where the deposits are to be made only with offices in the United Kingdom or another member State of the European Communities, or, if there is no indication of the offices with which the deposits are to be made, if the deposit-taker carries on business there. The one change of substance from the previous Regulations is that these Regulations exclude advertisements which invite only such deposits as are incidental to investment business and which are regulated by rules made in the context of the Financial Services Act 1986. In addition there are minor and drafting amendments.

The Regulations specify matters which must and matters which must not be included in advertisements to which the Regulations apply, and in particular require the inclusion of particulars about the person taking the deposit, and contain provisions in connection with references to the deposit-taker's assets and liabilities, deposit protection arrangements, interest on deposits and the currency in which deposits will be made.

The Banking Act 1979 (Advertisements) Regulations 1985 are revoked.