
STATUTORY INSTRUMENTS

1988 No. 646

BANKS AND BANKING

The Banking Act 1987 (Exempt Transactions) Regulations 1988

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| <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 4(4) and (5) of the Banking Act 1987(1) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Banking Act 1987 (Exempt Transactions) Regulations 1988, and shall come into force on 29th April 1988.

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

“the Act” means the Banking Act 1987;

“company” means a body corporate, including a body corporate constituted under the law of a country or territory outside the United Kingdom;

“the corresponding Northern Ireland legislation” means, in relation to any of the provisions of the Companies Act 1985(2) specified in these Regulations, the corresponding provisions of the Companies (Northern Ireland) Order 1986(3);

“the Council” means the Council of The Stock Exchange;

“debt security” includes bonds, notes, debentures and debenture stock;

“deposit”, except in the expressions “pre-contract deposit” and “deposit fund”, shall be construed in accordance with section 5 of the Act;

“exempt transaction” shall be construed in accordance with regulation 2 of these Regulations;

“industrial and provident society” means a society registered or deemed to be registered under the Industrial and Provident Societies Act 1965(4) or under the Industrial and Provident

(1) 1987 c. 22.

(2) 1985 c. 6, relevant amendments to which are noted below.

(3) S.I.1986/1032 (N.I.6).

(4) 1965 c. 12.

Societies Act (Northern Ireland) 1969⁽⁵⁾ but does not include a credit union within the meaning of the Credit Unions Act 1979⁽⁶⁾ or the Credit Unions (Northern Ireland) Order 1985⁽⁷⁾;

“the listing rules” means any rules made pursuant to section 142(6) of the Financial Services Act 1986⁽⁸⁾;

“net assets” has the meaning ascribed to it by section 264(2) of the Companies Act 1985;

“the Official List” means the Official List of The Stock Exchange;

“redemption value”, in relation to any debt security, means the amount of the principal which is payable upon redemption of that security;

“sterling commercial paper” means a sterling debt security which may not be redeemed in whole or in part until after seven days beginning with the date of issue but which must be redeemed within one year beginning with the date of issue;

“sterling debt security” means a debt security in relation to which the principal, interest and subscription moneys are payable solely in sterling;

“The Stock Exchange” means The International Stock Exchange of the United Kingdom and Republic of Ireland Limited;

“subsidiary” and “wholly-owned subsidiary” shall be construed in accordance with section 736 of the Companies Act 1985;

“successor to the British Steel Corporation” means any company in which property, rights and liabilities of the British Steel Corporation shall have become vested by virtue of an Act; and

“the Unlisted Securities Market” means the Unlisted Securities Market of The Stock Exchange.

Exempt transactions

2. The transactions referred to in the following regulations are prescribed for the purposes of section 4(4) of the Act as transactions to which the prohibition in section 3 of the Act on the acceptance of a deposit does not apply. Such transactions are referred to in these Regulations as “exempt transactions”.

Charities

3.—(1) The acceptance by a charity of a deposit is an exempt transaction if—

- (a) the deposit is made by another charity, or
- (b) there is payable in respect of the deposit neither interest nor a premium.

(2) In this regulation “charity” means any institution, trust or undertaking, whether corporate or not, which is established solely for charitable purposes, and in the application of this regulation to Scotland “charitable” shall be construed in the same way as in the Income Tax Acts.

Church deposit funds

4.—(1) The acceptance by the Central Board of Finance of the Church of England of a deposit in the course of administering a deposit fund within the meaning of paragraph 1 of the scheme contained in the Schedule to the Church Funds Investment Measure 1958⁽⁹⁾ is an exempt transaction.

(5) 1969 c. 24 (N.I.).

(6) 1979 c. 34.

(7) S.I. 1985/1205 (N.I.12).

(8) 1986 c. 60.

(9) 1958 No. 1.

(2) The acceptance by the Central Finance Board of the Methodist Church of a deposit in the course of administering a deposit fund within the meaning of paragraph 1 of the scheme contained in the First Schedule to the Methodist Church Funds Act 1960⁽¹⁰⁾ is an exempt transaction.

Industrial and provident societies

5. The acceptance by an industrial and provident society of a deposit in the form of a withdrawable share capital is an exempt transaction.

Agricultural, forestry and fisheries associations

6.—(1) Without prejudice to regulation 5, the acceptance by an association to which section 33 of the Restrictive Trade Practices Act 1976⁽¹¹⁾ applies of a deposit by a member of that association is an exempt transaction.

(2) The reference in paragraph (1) of this regulation to a member of an association to which section 33 of the Restrictive Trade Practices Act 1976 applies includes a reference to—

- (a) a member of any such association which is a member of that association, and
- (b) a prospective member, provided that the deposit is made in order to qualify him for membership of the association.

Retail and other co-operative societies

7.—(1) Without prejudice to regulation 5, the acceptance by a co-operative society of a deposit is an exempt transaction if the society fulfils the requirements of paragraph (2) of this regulation and the deposit is not taken in breach of the society's obligations under the Scheme.

(2) The requirements of this paragraph are—

- (a) that the society is an industrial and provident society,
- (b) that either—
 - (i) the principal business of the society is the sale by retail of goods for the domestic or personal use of individuals dealing with the society, or the provision of services for such individuals, or
 - (ii) at least seventy-five per cent. of the votes which may be cast to determine the conduct of the society's affairs and at least ninety per cent. of its shares by reference to their nominal value are held by qualifying shareholders, and
- (c) the society participates in the Scheme and accordingly is a Participating Society within the meaning of clause 2(4) thereof.

(3) In this regulation—

- (a) references to the Scheme are to the Scheme constituted by deed dated the 29th February 1980 between the Co-operative Union Limited of the one part and the Co-operative Bank Limited of the other part the provisions of which are set out in Schedule 1 to these Regulations, and such references do not include references to the Scheme as amended or varied;
- (b) the reference to qualifying shareholders is to industrial and provident societies which have the principal business described in paragraph 2(b)(i) of this regulation and societies which

(10) 1960 c.xxiii.

(11) 1976 c. 34; section 33 was amended by Schedule 2 to the Companies Consolidation (Consequential Provisions) Act 1985 (c. 9) and by Part II of Schedule 1 to the Companies Consolidation (Consequential Provisions) Act 1985 (c. 9) and by Part II of Schedule 1 to the Companies Consolidation (Consequential Provisions) (Northern Ireland) Order 1986 (S.I. 1986/1035 (N.I.9)) and by virtue of article 2 of and Schedule 1 to the Transfer of Functions (Wales) (No. 1) Order 1978 (S.I. 1978/272) certain functions of the Minister of Agriculture, Fisheries and Food under section 33 were transferred to the Secretary of State.

are registered within the meaning of the Friendly Societies Act 1974⁽¹²⁾ or are registered or deemed to be registered under the Friendly Societies Act (Northern Ireland) 1970⁽¹³⁾.

Solicitors

8.—(1) The acceptance by a practising solicitor in the course of his profession of a deposit is an exempt transaction.

(2) In this regulation “practising solicitor” means a solicitor who is qualified to act as such under section 1 of the Solicitors Act 1974⁽¹⁴⁾, article 4 of the Solicitors (Northern Ireland) Order 1976⁽¹⁵⁾ or section 4 of the Solicitors (Scotland) Act 1980⁽¹⁶⁾, and in Scotland includes a firm of practising solicitors.

Deposits accepted in the course of estate agency work

9.—(1) The acceptance in the course of estate agency work of a deposit which is a pre-contract deposit is an exempt transaction.

(2) In this regulation “estate agency work” has the meaning assigned to it by section 1(1) of the Estate Agents Act 1979⁽¹⁷⁾, and “pre-contract deposit” has the meaning assigned to it by section 12(3) of that Act.

Certain public undertakings

10.—(1) Subject to paragraph (2) of this regulation, the acceptance by a body listed in Schedule 2 to these Regulations of a deposit made by another such body is an exempt transaction.

(2) Paragraph (1) shall apply to a successor to the British Steel Corporation only so long as each of its issued shares is held by, or by a nominee of, the Treasury or the Secretary of State.

The National Children’s Charities Fund

11. The acceptance by The National Children’s Charities Fund of a deposit is an exempt transaction if the deposit is accepted on terms that no interest or premium shall be payable in respect thereof unless the total amount of deposits by that person with The National Children’s Charities Fund exceeds £10,000.

Sterling debt securities

12. The acceptance by a company of a deposit on terms involving the issue of any sterling debt security is an exempt transaction if—

(a) either—

(i) the company has issued shares which have either been admitted to the Official List (and are not the subject of a Council notice cancelling or suspending the listing or suspending dealings) or are dealt in on the Unlisted Securities Market (and are not the subject of a Council notice cancelling or suspending dealings), and the company at the time that it accepts the deposit is in compliance with its obligations in respect

⁽¹²⁾ 1974 c. 46; section 7 (societies which may be registered) was amended by Part I of Schedule 9 to the Finance (No. 2) Act 1975 (c. 45), section 57(2) of the Finance Act 1980 (c. 48) and section 41(4) of and Part V of Schedule 27 to the Finance Act 1985 (c. 54).

⁽¹³⁾ 1970 c. 31 (N.I.); section 1 (societies which may be registered) was amended by Part II of Schedule 9 to the Finance (No. 2) Act 1975 (c. 45), section 57(2) of the Finance Act 1980 (c. 48) and Part V of Schedule 27 to the Finance Act 1985 (c. 54).

⁽¹⁴⁾ 1974 c. 47.

⁽¹⁵⁾ S.I. 1976/582 (N.I.12).

⁽¹⁶⁾ 1980 c. 46.

⁽¹⁷⁾ 1979 c. 38.

- of such shares under the listing rules or (as the case may be) under any undertaking given to The Stock Exchange pursuant to which its shares are dealt in on the Unlisted Securities Market, or
- (ii) the company is a wholly-owned subsidiary of a company which satisfies the condition set out in sub-paragraph (a)(i) of this paragraph and the latter company has guaranteed to the holder of the sterling debt security the repayment of the principal and the payment of any interest or premium in connection with that sterling debt security;
- (b) the deposit is an amount of not less than £100,000 and in consideration of the deposit a single sterling debt security is issued the whole or any part of which—
- (i) may not be redeemed for at least one year from the date of issue, and
 - (ii) may be transferred only if the aggregate redemption value of sterling debt securities being transferred is not less than £100,000; and
- (c) either—
- (i) application has been made for admission of the sterling debt security to the Official List in accordance with the listing rules and the Council has approved the applicable listing particulars, and the company at the time that it accepts the deposit is in compliance with its obligations under the listing rules in respect of such security, or
 - (ii) the sterling debt security is offered by a prospectus which contains the information specified in sections 56(1) and 63 of the Companies Act 1985⁽¹⁸⁾, or which, in the case of a company of a kind described in section 72 of that Act, contains the information specified in subsections (2) and (3) of that section, or which complies with the requirements of the corresponding Northern Ireland legislation.

Sterling commercial paper

13. The acceptance by a company of a deposit on terms involving the issue of any sterling commercial paper is an exempt transaction if—

- (a) either—
 - (i) the company has issued shares which have been admitted to the Official List (and are not the subject of a Council notice cancelling or suspending the listing or suspending dealings), or
 - (ii) the company is a wholly-owned subsidiary of a company which, at the time of acceptance of the deposit, satisfies the condition set out in sub-paragraph (a)(i) of this paragraph and the latter company has guaranteed to the holder of the sterling commercial paper the repayment of the principal and the payment of any interest or premium in connection therewith;
- (b) the net assets of the company accepting the deposit or, if sub-paragraph (a)(ii) of this paragraph applies, of the guarantor company were shown in its last audited individual or group accounts (as the case may be) to be not less than £50 million;
- (c) in consideration of the deposit a single debt security is issued, in the form of sterling commercial paper, which has a redemption value of not less than £500,000, the whole or part of which may be transferred only if the aggregate redemption value of sterling commercial paper being transferred is not less than £500,000;

⁽¹⁸⁾ 1985 c. 6; Part III (capital issues) is repealed by Part I of Schedule 2 to the Financial Services Act 1986 (c. 60) with effect from a day to be appointed.

- (d) except as provided in sub-paragraph (a)(ii) of this paragraph, repayment of the principal and payment of any interest or premium in connection with the sterling commercial paper (if guaranteed) is guaranteed only by an authorised institution; and
- (e) the sterling commercial paper—
 - (i) bears the rubric
 - “sterling commercial paper issued in accordance with regulations made under section 4 of the Banking Act 1987”,
 - (ii) either states that repayment of the principal and the payment of any interest or premium in connection with the sterling commercial paper have not been guaranteed by an authorised institution, or, if they have been so guaranteed, states that this is the case and the name of the guarantor, and
 - (iii) unless it is offered by a prospectus to which section 56 or 72 of the Companies Act 1985 or the corresponding Northern Ireland legislation applies, includes a statement made by the company accepting the deposit, or, if sub-paragraph (a)(ii) of this regulation applies, the guarantor company, that the relevant company is in compliance with its obligations under the listing rules in respect of its listed shares and that, since the last publication in compliance with the listing rules of information about the relevant company, the relevant company, having made all reasonable enquiries, has not become aware of any change in the circumstances of the company which could reasonably be regarded as significantly and adversely affecting the company’s ability to meet its obligations in respect of the sterling commercial paper as they fall due.

Authorised and exempted persons under the Financial Services Act 1986

14.—(1) Subject to paragraphs (2) and (3) below, the acceptance of a deposit by a person who is an authorised person or an exempted person under the Financial Services Act 1986⁽¹⁹⁾ (in this regulation called “an authorised person” and “an exempted person” respectively) is an exempt transaction if the deposit is accepted in the course of or for the purpose of engaging in any dealing activity with or on behalf of the person by whom or on whose behalf the deposit is made or any service activity on behalf of that person.

(2) Paragraph (1) applies to an authorised person only if the activity is one in which he may engage without contravening any rules (made by the appropriate authority or a recognised organisation) of the kind described in section 48(2)(a) and (b) of the Financial Services Act 1986 (rules as to the type of business carried on or the persons in relation to whom business is carried on) or any prohibition of the kind described in section 65 of that Act.

(3) Paragraph (1) applies to an exempted person only if the activity is one in respect of which he is exempt under the Financial Services Act 1986.

(4) In this regulation—

- (a) “appropriate authority” means the Secretary of State or a designated agency within the meaning of section 114(3) of the Financial Services Act 1986;
- (b) “dealing activity” means an activity falling within paragraph 12 of Schedule 1 to that Act, construed without reference to Parts III and IV of that Schedule;
- (c) “recognised organisation” means a body which is a recognised professional body or a recognised self-regulating organisation within the meaning of section 207(1) of that Act and 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; and

(19) 1986 c. 60.

- (d) “service activity” means an activity falling within paragraph 13, 14 or 16 of Schedule 1 to that Act, construed without reference to Parts III and IV of that Schedule.

Revocation

15. The Banking Act 1979 (Exempt Transactions) Regulations 1986⁽²⁰⁾ and the Banking Act 1979 (Exempt Transactions) (Amendment) Regulations 1987⁽²¹⁾ are hereby revoked.

29th March 1988

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

⁽²⁰⁾ S.I. 1986/1712.
⁽²¹⁾ S.I. 1987/65.

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

SCHEDULE 1

Regulation 7

DEED ESTABLISHING THE CO-OPERATIVE DEPOSIT PROTECTION SCHEME

SCHEDULE 2

BODIES REFERRED TO IN REGULATION 10

An Area Board within the meaning of section 1(3) of the Electricity Act 1947⁽²²⁾.

The British Broadcasting Corporation.

The British Coal Corporation.

The British Railways Board.

British Shipbuilders.

The British Steel Corporation.

Any successor to the British Steel Corporation.

The British Waterways Board.

The Central Electricity Generating Board.

The Civil Aviation Authority.

The Commission for the New Towns.

A development corporation established for the purposes of a new town by an order made, or having effect as if made, under 3(1) of the New Towns Act 1981⁽²³⁾, or section 2(1) of the New Towns (Scotland) Act 1968⁽²⁴⁾.

The Electricity Council.

The Housing Corporation.

The National Bus Company.

The North of Scotland Hydro-Electric Board.

The Northern Ireland Electricity Service.

The Northern Ireland Housing Executive.

The Northern Ireland Transport Holding Company.

The Scottish Transport Group.

The South of Scotland Electricity Board.

⁽²²⁾ 1947 c. 54, to which there are amendments not relevant to these Regulations.

⁽²³⁾ 1981 c. 64.

⁽²⁴⁾ 1968 c. 16.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe certain transactions as transactions to which the prohibition on deposit-taking imposed by section 3 of the Banking Act 1987 does not apply. They re-enact the Banking Act 1979 (Exempt Transactions) Regulations 1986 with amendments. In addition to minor and drafting amendments they make the following three changes of substance.

First, regulation 10 and Schedule 2 (public undertakings) no longer refer to British Gas plc, British Airways Plc and BAA plc as these are no longer wholly owned by the Crown. Schedule 2 has been extended to include any company which succeeds the British Steel Corporation, so long as its shares are wholly owned by the Crown.

Secondly, a new regulation 14 exempts from the prohibition on deposit-taking the acceptance of deposits in certain circumstances by authorised or exempted persons under the Financial Services Act 1986. This replaces a similar provision formerly contained in section 193 of that Act which was repealed by the Banking Act 1987. It also replaces the exemption for members of The Stock Exchange which was contained in regulation 13 of the previous Regulations.

Thirdly, the exemption for commodity brokers, and clearing houses, which was contained in regulation 12 of the previous Regulations, has been deleted.