

1988 No. 646

BANKS AND BANKING

**The Banking Act 1987 (Exempt Transactions)
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 4(4) and (5) of the Banking Act 1987(a) 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(b) specified in these Regulations, the corresponding provisions of the Companies (Northern Ireland) Order 1986(c);

“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(d) or under the Industrial and Provident Societies Act (Northern Ireland) 1969(e) but does not include a credit union within the meaning of the Credit Unions Act 1979(f) or the Credit Unions (Northern Ireland) Order 1985(g);

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

(a) 1987 c.22.

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

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

(d) 1965 c.12.

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

(f) 1979 c.34.

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

(h) 1986 c.60.

“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(a) is an exempt transaction.

(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(b) 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

(a) 1958 No. 1.

(b) 1960 c.xxiii.

section 33 of the Restrictive Trade Practices Act 1976(a) 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 are registered within the meaning of the Friendly Societies Act 1974(b) or are registered or deemed to be registered under the Friendly Societies Act (Northern Ireland) 1970(c).

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- (a) 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.
 - (b) 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).
 - (c) 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).

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(a), article 4 of the Solicitors (Northern Ireland) Order 1976(b) or section 4 of the Solicitors (Scotland) Act 1980(c), 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(d), 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 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

(a) 1974 c.47.
(b) S.I. 1976/582 (N.I.12).
(c) 1980 c.46.
(d) 1979 c.38.

- (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(a), 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;
- (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

(a) 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.

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(a) (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
- (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(b) and the Banking Act 1979 (Exempt Transactions) (Amendment) Regulations 1987(c) are hereby revoked.

29th March 1988

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

(a) 1986 c.60.
(b) S.I. 1986/1712.
(c) S.I. 1987/65.

DEED ESTABLISHING THE CO-OPERATIVE DEPOSIT PROTECTION SCHEME

THIS DEED is made the 29th day of February 1980 between CO-OPERATIVE UNION LIMITED of Holyoake House Hanover Street Manchester (hereinafter called 'the Union') of the one part and CO-OPERATIVE BANK LIMITED of New Century House Corporation Street Manchester (hereinafter called 'the Bank') of the other part

WHEREAS:

- (a) It is the purpose of this Deed to set up a scheme to grant certain protection on the terms and conditions and subject to the limitations hereinafter contained to a depositor with a co-operative society in membership of the Union against the consequences of the insolvency of that society
- (b) The Treasury is empowered by Section 2(1) of the Banking Act 1979 to make regulations prescribing for the purpose of that Section certain transactions
- (c) It is intended that a co-operative society so in membership which has elected to join the Scheme established by this Deed shall be able to have its taking of deposits so prescribed by the Treasury.

NOW THIS DEED WITNESSETH AND IT IS HEREBY DECLARED as follows:

1. This Scheme hereby constituted shall be known as the "Co-operative Deposit Protection Scheme".

2.—(1) Subject to sub-paragraphs (2) and (3) below, in this Deed "Deposit" shall mean a sum of money paid on terms

- (i) under which it will be repaid in full, 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
- (ii) which are not referable to the provision of property or services or the giving of security;

(2) "Deposit" shall not however include:

- (a) withdrawable share capital; or
- (b) interest unless compounded and added to capital; or
- (c) deposits whether or not secured, having an original term to maturity of more than 5 years; or
- (d) any sum paid to a co-operative society so in membership by a person who at the time it is paid is a director, controller or manager of the society or the wife, husband, son or daughter of such a person;

(3) For the purpose of sub-paragraph 2(1)(ii) 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—

- (i) 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
- (ii) 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
- (iii) 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

(4) In this Deed "a Participating Society" shall mean a co-operative society which (a) has joined the Scheme by (i) resolution of its governing body adopting and agreeing to the Scheme established by this Deed (ii) paying a joining contribution in accordance with clause 5(2) hereof and (iii) executing and delivering to the Union a Deed of Participation in the Scheme to which Deed the Bank and the Union are parties in the form set out in the Schedule to this Scheme; and (b) has not ceased in accordance with clause 10(1) hereof to be a Participating Society.

(5) In this Deed "Founding Date" shall mean the date of coming into operation of the statutory instrument prescribing for the purposes of the Banking Act 1979 transactions undertaken by Participating Societies.

(6) In this Deed—

"director" shall mean any person who occupies the position of a director by whatever named called;

“controller” shall mean a managing director chief executive or a person in accordance with whose directions or instructions the directors of the co-operative society are accustomed to act; and

“manager” shall mean a person, other than the chief executive, employed by a co-operative society who, under the immediate authority of a director or chief executive of the co-operative society, exercises managerial functions or is responsible for maintaining accounts or other records of the co-operative society.

3.—(1) The Union and the Bank hereby agree and declare that, subject as is by this Deed provided, they will hold manage and apply in accordance with the provisions of this Deed the Fund as hereinafter defined (hereinafter called “the Fund”);

(2) The Fund and any investments money or other assets for the time being comprised therein may in the absolute discretion of the Union and the Bank be held in the sole name of the Bank;

(3) Any real property for the time being forming part of the Fund shall be held upon trust for sale;

(4) The Union and the Bank delegate to the Union the duty of administering the Scheme in accordance with the provisions of this Deed;

(5) The Union and the Bank delegate to the Bank the investment of the Fund;

(6) The banking administrative and management expenses of the Union and/or the Bank shall be defrayed out of the Fund.

4.—(1) The Fund shall consist of

(a) joining and supplementary contributions as hereafter mentioned;

(b) monies borrowed for the purposes of the Fund;

(c) interest and dividends from investments;

(d) dividends recovered in any liquidation;

(e) the investments, property and other assets representing from time to time the above or any of them.

(2) There shall be chargeable to the fund:

(a) payments to meet the banking administrative and management expenses of the Union and/or the Bank in accordance with subclause 3(6) above and clause 14 hereof;

(b) refunds to Participating Societies as hereinafter provided;

(c) moneys required for the repayment of borrowings and any interest thereon;

(d) payments to depositors in respect of protected deposits as hereinafter provided.

5.—(1) Societies which are or are seeking to be Participating Societies shall make 2 classes of contribution, namely

(i) joining contributions, and

(ii) supplementary contributions.

(2) At the Founding Date or on joining the Scheme Societies shall make a joining contribution of an amount prescribed by the Union being (a) 0.5 per cent of the deposit base of the Society at that time, such deposit base being the aggregate amount of the deposits recorded in the then most recent annual return of the Society made to the Union provided that (i) such annual return shall not be in respect of a period ending earlier than 2 years before the Founding Date or joining the Scheme as the case may be and (ii) such percentage joining contribution shall be not less than £100 nor greater than £12,000, or, if the amount under (a) above is not calculable or not readily calculable, (b) such amount as the Union shall determine, being an amount (so far as the Union can estimate) equal to or greater than such percentage joining contribution would have been.

(3) The Union shall maintain the net assets of the Fund at such an amount, not being less than £200,000 at any time, as the Union and the Bank shall in their absolute discretion consider to be not less than reasonable so as to afford protection to Deposits to the extent provided for in this Scheme and for this purpose the Union may at any time (including on the Founding Date and on joining the Scheme) require Participating Societies to make supplementary contributions of such an amount and on such occasions and in such manner as the Union may determine, it being the intention that the Union (whilst not being required or bound so to do) should exercise its power to require supplementary contributions by fixing the amount of such contributions in proportion to the deposit base (calculated in such manner as the Union shall in its discretion consider reasonable) for each of the Participating Societies subject to a minimum and maximum payment.

6.—(1) A Participating Society shall for the purpose of this Deed and the Scheme hereby constituted become insolvent

- (i) on the making of a winding up order against it; or
- (ii) on the passing of a resolution for a creditors' voluntary winding up.

(2) Subject to the provisions of this Deed, if at any time a Participating Society becomes insolvent or is to be treated as insolvent by virtue of Clauses 10(1) and 12(2) hereof the Union shall as soon as practicable pay out of the Fund to a depositor who has a protected Deposit with that Society an amount equal to three-quarters of the protected Deposit, but so that such amount shall in no case exceed £7,500;

(3) Subject to the provisions of this Deed, a reference to a depositor's protected Deposit is a reference to the total liability of the Participating Society to him, but limited in any event to a maximum of £10,000, in respect of the principal amounts of Deposits made to the Participating Society

PROVIDED THAT

- (i) any such Deposit was not made after such society had ceased to be a Participating Society;
- (ii) the principal amounts of Deposits shall only include any interest or premium which has been credited to the Deposit in question if such interest or premium has been so credited at the time such Society becomes insolvent so as to constitute an accretion to the principal;
- (iii) in determining the total liability of such Society to a depositor for the purposes of this and the previous subclause, there shall be deducted the amount of any liability of the depositor to such Society—
 - (a) in respect of which a right of set-off or counter-claim against the Deposit (including in Scotland a right of retention or compensation) existed immediately before such Society became insolvent; or
 - (b) in respect of which such a right would then have existed if the Deposit in question had been repayable on demand and the liability in question had fallen due; and
- (iv) the Union may in its absolute discretion decline to make any payment under this Scheme in respect of a Deposit to a person who, in the opinion of the Union, had any responsibility for, or may have profited directly or indirectly from, the circumstances, or some of the circumstances, giving rise to the financial difficulties of the Participating Society which had become insolvent.

7.—(1) For the purposes of clauses 6 and 8 hereof where any persons are entitled to a Deposit as trustees, then, unless the Deposit is held on trust for a person absolutely entitled to it as against the trustees, the trustees shall be treated as a single and continuing body of persons, distinct from the persons who may from time to time be the trustees, and if the same persons are entitled as trustees to different deposits under different trusts or, in Scotland, trust purposes, they shall be treated as a separate and distinct body with respect to each of those trusts or, in Scotland, trust purposes.

(2) For the purposes of this clause a Deposit is held on trust for a person absolutely entitled to it as against the trustees where the person has the exclusive right (subject only to satisfying any outstanding charge, lien or other right of the trustees to resort to the Deposit for payment of duty, taxes, costs or other outgoings) to direct how the Deposit shall be dealt with.

(3) Any reference in sub-clauses (1) and (2) above to a person absolutely entitled to a Deposit as against the trustees includes a reference to two or more persons who are so entitled jointly; and in the application of sub-clause (2) above to Scotland the words in parenthesis from "subject" to "outgoings" shall be omitted.

(4) For the purposes of Clause 6 above and the following provisions of this clause, where a Deposit is held on trust for any person absolutely entitled to it or, as the case may be, for two or more persons so entitled jointly, that person or, as the case may be, those persons jointly shall be treated as entitled to the Deposit without the intervention of any trust.

(5) For the purpose of Clause 6 above where two or more persons are jointly entitled to a Deposit and sub-clause 7(1) above does not apply, each of them shall be treated as having a separate Deposit of an amount produced by dividing the amount of the Deposit to which they are jointly entitled by the number of persons who are so entitled.

(6) The Union may decline to make any payment under clause 6 above in respect of a Deposit until the person claiming to be entitled to it informs the Union of the capacity in which he is entitled to the Deposit; and if it appears to the Union

- (a) that the persons entitled to a Deposit are so entitled as trustees, or
- (b) that sub-clause 7(4) above applies to a Deposit, or
- (c) that two or more persons are jointly entitled to a Deposit otherwise than as trustees,

the Union may decline to make any payment in respect of the Deposit until the Union is satisfied that it has sufficient information to enable it to determine what payment (if any) should be made and to whom.

(7) In this clause "jointly entitled" means—

- (a) in England and Wales and Northern Ireland, beneficially entitled as joint tenants, tenants in common or as coparceners; and
- (b) in Scotland, beneficially entitled as joint owners or owners in common.

8.—(1) Where a Society has become insolvent or is by virtue of clauses 10(1) or 12(2) hereof to be treated as insolvent and any payment is or should be made under this Scheme in respect of a Deposit, the Bank (on behalf of itself and the Union) shall seek to recover all dividends compositions or payments made or to be made in respect of the Deposit (not limited to three quarters thereof or otherwise howsoever) and as between the Bank and the depositor the Bank (without prejudice to additional rights arising by virtue by subrogation) shall be entitled to all dividends, compositions and payments up to the amount of the payment made or to be made by the Union under this Scheme and the depositor shall not be entitled to any of such dividends compositions or payments until the whole of the payment made or to be made by the Union under this Scheme shall first have been equalled.

(2) Where a Society has become insolvent or is by virtue of clauses 10(1) or 12(2) hereof to be treated as insolvent, then if and whenever requested by the Bank, the depositor shall be an assignment or, in Scotland, an assignation, in writing assign to the Bank his rights and/or execute a declaration of trust in favour of the Bank in respect of his rights to all or any of such dividends, compositions and payments and the Bank shall hold the rights so assigned or in respect of which a declaration of trust has been executed first in trust to pay to itself such dividends compositions and payments as it shall be entitled to under the previous sub-clause, and second in trust for the depositor or as he may direct, and the Bank may as attorney for and on behalf of the depositor execute any such assignment assignation or declaration of trust as aforesaid;

(3) Without prejudice to the generality of its rights hereunder the Union and/or the Bank may stipulate as a pre-condition of any payment in respect of a Deposit under the Scheme that an assignment or, in Scotland, an assignation, to it and/or a declaration of trust should be made as aforesaid;

(4) Where a Society has become insolvent or is by virtue of clauses 10(1) or 12(2) hereof to be treated as insolvent it shall be the duty of the Bank and also of the depositor to inform the Liquidator, or where it is treated as insolvent the Society, of the Bank's rights hereunder as soon as possible with a view to the preservation for the Bank of all such dividends compositions and payments and the depositor shall authorise the Liquidator, or where it is treated as insolvent the Society, to provide on request all relevant information to the Bank.

(5) The Union and/or the Bank shall be entitled for the purposes of the Scheme to have access to and copy such of the books records files and other documents of, and to obtain such information from, any body corporate which is or has been a Participating Society as the Union and/or the Bank (as the case may be) shall in their or its discretion consider necessary or helpful in order to carry the provision of the Scheme into effect.

9. It is the duty of the Union to maintain the net assets of the Fund at such an amount, not being less than £200,000 at any time, as the Union and the Bank shall in their absolute discretion consider to be not less than reasonable so as to afford protection to Deposits to the extent provided for in this Scheme, but subject as aforesaid the Union and the Bank may during the continuance of this Scheme make such refunds out of the Fund to Participating Societies as they shall consider proper, and such refunds shall be made to such Participating Societies and calculated in such manner as the Union shall in its absolute discretion determine.

10.—(1) Any Participating Society may apply to leave the Scheme by sending written notice to that effect to the Union, and shall, save under the protection of Part II of the Banking Act 1979 cease to accept new Deposits, and shall within the period of 9 months from the receipt by the Union of such written notice either (i) repay all Deposits held by it or (ii) secure protection for those Deposits under Part II of the Banking Act 1979. Upon the due performance of (i) or (ii) above the Society shall cease to be a Participating Society, and upon such due performance as above within the said period of 9 months there shall be repaid to such Society out of the Fund such sum (if any) as the Union shall in its absolute discretion consider appropriate. Without prejudice to the application of clause 6 hereof (and the provisions of clauses 7 and 8) in the case of a Participating Society which becomes insolvent during the said period of 9 months, if such Society shall not have duly performed (i) and (ii) above within the said period of 9 months, clause 6 hereof (and the provisions of clauses 7 and 8 so far as applicable) shall apply to the depositors of such Society who have not had their Deposits so repaid or secured as if that Society had become

insolvent, but so that any payment thereunder shall be made within 6 months after the end of the said 9 months' period.

(2) Without prejudice to the generality of the foregoing, the following shall rank among the circumstances to be considered by the Union in respect of any such repayment to a society—

- (a) The amount of the Fund;
- (b) the income generated by the Fund since its inception;
- (c) The expenses borne by the Fund since its inception; and
- (d) Payments out of the Fund in respect of Deposits.

11.—(1) The Scheme shall continue in force, unless earlier terminated, for an initial period of 10 years.

(2) Subject to sub-clause (3) below, the Scheme may be

- (a) terminated during such initial period, or
- (b) continued in force after the initial period or
- (c) altered at any time,

by a qualifying resolution or resolutions (as hereinafter provided).

(3) The perpetuity period applicable in respect of the Scheme shall be the period of eighty years commencing on the founding Date, and the Scheme shall not be capable of being continued, or of being altered so as to be continued, beyond that period.

(4) A qualifying resolution may be moved by—

- (a) the Union; or
- (b) the Bank; or
- (c) any Participating Society,

and it shall be moved by giving at least 28 days' clear notice to the Union, the Bank and all Participating Societies of (a) the business to be transacted and (b) the date time and place of the meeting.

(5) Such notice shall be given in writing and sent by post to the last known address of the person or body so to be notified, but the accidental omission to give one or more notices shall not invalidate the meeting or any resolution passed thereat.

(6) A qualifying resolution shall be duly passed and valid if adopted by Participating Societies at such meeting holding between them 75% of the Deposits held at the date of the resolution by Participating Societies and afforded protection by this Scheme (and so that such percentage shall be calculated by reference to the full amount of such Deposits).

12.—(1) Upon termination of the Scheme and in any event at the expiration of the period of 78 years less 1 day from the Founding Date (from which time no new Deposits shall, save under the protection of Part II of the Banking Act 1979, be accepted by Participating Societies), all the then Participating Societies shall within the period of 9 months thereafter either

- (i) repay all their Deposits, or
- (ii) secure protection for those Deposits under Part II of the Banking Act 1979.

(2) If any Participating Society (hereinafter called "a Defaulting Society") shall not in respect of the Deposits taken by it have either

- (i) repaid them, or
- (ii) secured protection for them under Part II of the Banking Act 1979, within the period of 9 months from
 - (a) such termination or
 - (b) the expiration of the said period of 78 years less 1 day whichever is the sooner,

clause 6 hereof (and the provisions of clauses 7 and 8 hereof so far as applicable) shall apply to the depositors of that Defaulting Society who have not had their Deposits so repaid or secured as if that Defaulting Society had become insolvent but so that any payment thereunder shall be made within 6 months after the end of the said 9 months period.

(3) Subject to any payments required to be made under this Scheme (including under sub-clause (2) above) and subject to the payment or provision of all proper charges for banking and of all the expenses of administering, managing and winding up this Scheme, the Union shall within 15 months after the expiration of the 9 months' period referred to in the preceding sub-clause (2) distribute the Fund among the Participating Societies other than Defaulting Societies in such amounts and in such manner as it shall in its absolute discretion determine but with a view to making repayments in proportion to their respective contributions.

(4) Clause 6 hereof (and the provisions of clauses 7 and 8) shall apply in the case of a

Participating Society which becomes insolvent during the said period of 9 months referred to in sub-clause (2) of this clause. Any payment under the said clause 6 whether made under the present sub-clause or otherwise shall be made not later than 6 months after the end of the said 9 months' period.

(5) If by reason of an amalgamation or transfer of engagements (hereinafter called "a merger") a co-operative society (hereinafter called "the Merged Society") becomes possessed of or entitled to Deposits some of which are protected under this Scheme and some of which are not so protected the following provisions shall apply:

- (a) Forthwith upon the merger's becoming effective the Merged Society shall marshal its Deposits into two classes namely
 - (i) the Protected Class, being Deposits taken in circumstances such that they were protected by the Scheme; and
 - (ii) the Unprotected Class, being Deposits not so protected.
- (b) To the Protected Class the Scheme shall continue to give protection subject to its terms and conditions for which purpose the Merged Society shall be treated as a Participating Society.
- (c) The Merged Society shall within a period of three months from the Merger's becoming effective by joining the Scheme arrange protection under the Scheme for the Unprotected Class.
- (d) If the Merged Society shall have failed within the said period by joining the Scheme to obtain protection for all of the Unprotected Class it shall be deemed to have given notice under clause 10(1) hereof as at the expiration of the said period of 3 months.

(6) If by reason of a merger a Merged Society becomes entitled to or possessed of Deposits all of which were taken in the circumstances such that they were protected under the Scheme the Merged Society shall forthwith upon the merger's becoming effective join the Scheme under clause 2(4)(a) but shall be relieved of a joining contribution, and if it shall fail to join the Scheme within the period of 3 months from the merger's becoming effective it shall be deemed to have given notice under clause 10(1) hereof.

13.—(1) All monies in the Fund shall be held by the Bank and unless and until otherwise invested the Bank shall pay to the Fund interest thereon at the published rate for 7 day deposits

(2) The Fund may be invested in any one or more of the following:—

- (i) monies held by or deposited with the Bank at interest as aforesaid;
- (ii) Treasury bills payable not more than 91 days from the date of issue;
- (iii) Deposits with or withdrawable share capital of a building society designated under section 1 of the House Purchase and Housing Act 1959(a),
- (iv) Deposits with the National Savings Bank and National Girobank;
- (v) Deposits with any institution which is recognised as a bank under the Banking Act 1979.

14.—(1) The Bank act as bankers to this Scheme and to the Fund and may make advances or loans to the Fund upon the usual terms as to interest and charges in the ordinary course of the Bank's business and share stockbroker's commission and generally act as a banker may in relation to his customer and without accounting for any profit so made, and without prejudice to the generality of the foregoing the Bank shall be entitled to charge and recover from the Fund all proper charges for banking, administration and management (including investment management) provided to the Fund or in respect of this Scheme.

(2) The Union shall be entitled to charge and recover from the Fund all proper charges for administration and management provided to the Fund or in respect of this Scheme.

IN WITNESS whereof this Deed has been executed by the parties the day and year first before written

SEALED by Co-operative Union Limited
in the presence of:

J. H. Perrow, Chairman
D. L. Wilkinson, General Secretary

SEALED by Co-operative Bank Limited
in the presence of:

L. Lee, Director
G. J. Melmoth, Secretary

(a) 1959 c.33.

THE SCHEDULE BEFORE REFERRED TO

This Deed is made the day of 19 BETWEEN CO-OPERATIVE UNION LIMITED of Holyoake House Hanover Street, Manchester (hereinafter called "the Union") of the first part CO-OPERATIVE BANK LIMITED of New Century House Corporation Street Manchester (hereinafter called "the Bank") of the second part and LIMITED of (hereinafter called "the Society") of the third part

WHEREAS

- A. This Deed is supplemental to a Deed dated and made between the Union and the Bank establishing a Scheme (hereinafter called "the Scheme") which is called the Co-operative Deposit Protection Scheme.
- B. The purpose of the Scheme is to provide certain protection to Deposits with Participating Societies.
- C. The Society is an Industrial and Provident Society and is a member of the Union.
- D. The Society has by resolution of its governing body elected to participate in the Scheme and has by such resolution undertaken to adopt and agree to the Scheme.
- E. The Society has paid a joining contribution in accordance with clause 5(2) of the said Deed.
- F. The Union has approved by admission of the Society to the Scheme as a Participating Society.

NOW THIS DEED WITNESSETH that the Society hereby adopts and agrees to the provisions of the Scheme to the intent that it may become a Participating Society as defined in the Scheme and be bound thereby and undertakes to procure that the Scheme's provisions are incorporated in documents issued by the Society securing Deposits and bind the holders of those Deposits.

IN WITNESS whereof the parties have executed this Deed.

THE COMMON SEAL OF CO-OPERATIVE UNION LIMITED was hereunto fixed in the presence of:-

Chairman

General Secretary

THE COMMON SEAL OF CO-OPERATIVE BANK LIMITED was hereunto affixed in the presence of:-

Director

Secretary

THE COMMON SEAL OF SOCIETY LIMITED was hereunto affixed in the presence of:-

Director

Secretary

SCHEDULE 2

BODIES REFERRED TO IN REGULATION 10

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

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(b), or section 2(1) of the New Towns (Scotland) Act 1968(c).

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.

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

(b) 1981 c.64.

(c) 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.