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STATUTORY INSTRUMENTS

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**1990 No. 20**

**BANKS AND BANKING**

**The Banking Act 1987 (Exempt Transactions)  
(Amendment) Regulations 1990**

<i>Made</i>	- - - -	<i>8th January 1990</i>
<i>Laid before Parliament</i>		<i>11th January 1990</i>
<i>Coming into force</i>	- -	<i>1st February 1990</i>

The Treasury, in exercise of the powers conferred upon them by section 4(4), (5) and (6) of the Banking Act 1987<sup>(1)</sup> and of all other powers enabling them in that behalf, hereby make the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Banking Act 1987 (Exempt Transactions) (Amendment) Regulations 1990 and shall come into force on 1st February 1990.

**Interpretation**

2. In these Regulations “the principal Regulations” means the Banking Act 1987 (Exempt Transactions) Regulations 1988<sup>(2)</sup>.

**Amendment of principal Regulations**

3. The principal Regulations shall be amended as follows:

(a) by substituting for regulation 1(2) the following paragraph—

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

“the Act” means the Banking Act 1987;

“commercial paper” means a 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;

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

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(1) 1987 c. 22.

(2) S.I.1988/646, amended by S.I. 1989/465.

“the corresponding Northern Ireland legislation” means, in relation to any of the provisions of the Companies Act 1985<sup>(3)</sup> specified in these Regulations, the corresponding provisions of the Companies (Northern Ireland) Order 1986<sup>(4)</sup>;

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

“financial year” has the meaning ascribed to it by section 742 of the Companies Act 1985;

“industrial and provident society” means a society registered or deemed to be registered under the Industrial and Provident Societies Act 1965<sup>(5)</sup> or under the Industrial and Provident Societies Act (Northern Ireland) 1969<sup>(6)</sup> but does not include a credit union within the meaning of the Credit Unions Act 1979<sup>(7)</sup> or the Credit Unions (Northern Ireland) Order 1985<sup>(8)</sup>;

“the listing rules” means any rules made pursuant to section 142(6) of the Financial Services Act<sup>(9)</sup>;

“medium term note” means a debt security which may not be redeemed in whole or in part until after one year beginning with the date of issue but which must be redeemed within five years beginning with the date of issue;

“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;

“Recognised Overseas Exchange” means an exchange, market place or association for the time being included in the list published by the Council for the purposes of rule 535.4 of the Rules of The Stock Exchange (permitted dealings in foreign securities) or any rule of The Stock Exchange having substantially the same effect<sup>(10)</sup>;

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

“relevant debt security” means a debt security which is commercial paper or a medium term note;

“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<sup>(11)</sup>;

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

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(3) 1985 c. 6; relevant amendments to which are noted below.

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

(5) 1965 c. 12.

(6) 1969 c. 24 (N.I.).

(7) 1979 c. 34.

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

(9) 1986 c. 60.

(10) The list and the Rules may be obtained from the Quotations Department, The Stock Exchange, London EC2N 1HP.

(11) 1985 c. 6; section 736 is substituted by section 144 of the Companies Act 1989 (c. 40) with effect from a day to be appointed.

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

- (b) in regulation 7(3)(a) by inserting after the words “of the other part” the words “(as amended by qualifying resolutions of Participating Societies (as therein defined) dated 29th May 1989)” and by inserting before the word “amended” the word “subsequently”;
- (c) regulation 12 shall be revoked;
- (d) by substituting for regulation 13 the following new regulation–

**“Relevant debt securities**

**13.** The acceptance of a deposit by a person (not being a body listed in Schedule 2 to these Regulations) on terms involving the issue of any relevant debt security is an exempt transaction if

- (a) the person accepting the deposit is–
  - (i) a company whose shares or debt securities have been admitted to the Official List (and are not the subject of a notice issued by the Council cancelling or suspending the listing or suspending dealings) or are dealt in on the Unlisted Securities Market (and are not the subject of a notice issued by the Council cancelling or suspending dealings); or
  - (ii) a company not falling within sub-paragraph (a)(i) above which is incorporated in the United Kingdom or whose shares or debt securities have been admitted to listing on a Recognised Overseas Exchange (and are not the subject of official action taken in accordance with the rules of the Recognised Overseas Exchange cancelling or suspending the listing or suspending dealings), which has complied with the requirements of Schedule 3 to these Regulations; or
  - (iii) the government of any country or territory, or a public authority, outside the United Kingdom the debt securities of which are admitted to trading on the Stock Exchange or on a Recognised Overseas Exchange (and are not the subject of a notice issued by the Council or official action taken in accordance with the rules of the Recognised Overseas Exchange (as the case may be) cancelling or suspending the admission to trading or suspending dealings); or
  - (iv) a person who does not fall within sub-paragraphs (a)(i) to (iii) above, if either a company which falls within sub-paragraph (a)(i) or an authorised institution has guaranteed to the holder of the relevant debt security the repayment of the principal and the payment of any interest or premium in connection therewith;
- (b) in the case of a company falling within sub-paragraph (a)(i) or (ii) above, its net assets, or, in the case of a person falling within sub-paragraph (a)(iv) above where the guarantor is not an authorised institution, the guarantor’s net assets, were shown in its last audited individual or group accounts (as the case may be) to be not less than £25 million (or an amount of equivalent value denominated wholly or partly otherwise than in sterling);
- (c) in consideration of the deposit a single debt security is issued, in the form of a relevant debt security, which has a redemption value of not less than £100,000 (or an amount of equivalent value denominated wholly or partly otherwise than in sterling), the whole or part of which may be transferred only if the redemption value of each relevant debt security being transferred is not less than £100,000

(or an amount of equivalent value denominated wholly or partly otherwise than in sterling); and

- (d) the relevant debt security—
- (i) if commercial paper, bears the rubric “commercial paper issued in accordance with regulations made under section 4 of the Banking Act 1987”;
  - (ii) if a medium term note, bears the rubric “medium term note issued in accordance with regulations made under section 4 of the Banking Act 1987”;
  - (iii) states the name of the issuer and that the issuer is not an authorised institution and either states that repayment of the principal and the payment of any interest or premium in connection with the relevant debt security have not been guaranteed, or, if they have been guaranteed, states that this is the case, the name of the guarantor and whether or not the guarantor is an authorised institution; and
  - (iv) if it is issued by a company falling within sub-paragraph (a)(i) or (ii) above, or where it is not issued by such a company but is guaranteed by a company falling within sub-paragraph (a)(i) above, and is not offered by a prospectus to which section 56 or 72 of the Companies Act 1985(12) or the corresponding Northern Ireland legislation applies, includes a statement made by the company accepting the deposit or the guarantor (as the case may be) that the relevant company has complied with its obligations under the relevant rules and that, since the last publication in compliance with the relevant rules of information about the relevant company, the relevant company, having made all reasonable enquiries, has not become aware of any change in circumstances which could reasonably be regarded as significantly and adversely affecting its ability to meet its obligations in respect of the relevant debt security as they fall due. In this paragraph “the relevant rules” means—
    - (aa) in the case of a company whose shares or debt securities have been admitted to the Official List, the listing rules, or
    - (bb) in the case of a company whose shares or debt securities are dealt in on the Unlisted Securities Market, the terms and conditions of entry to the Unlisted Securities Market, or
    - (cc) in the case of a company not falling within sub-paragraph (aa) or (bb) above, Schedule 3 to these Regulations.”;
- (e) Schedule 1 hereto shall be substituted for Schedule 1 to the principal Regulations; and
- (f) Schedule 2 hereto shall be substituted for Schedule 3 to the principal Regulations.

8th January 1990

*Stephen Dorrell*  
*Kenneth Carlisle*  
Two of the Lords Commissioners of Her  
Majesty’s Treasury.

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(12) 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.

SCHEDULE 1

Regulation 3(e)

SUBSTITUTED SCHEDULE 1 TO THE PRINCIPAL REGULATIONS

“SCHEDULE 1

Regulation 7

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 persons who have deposited money with or who have withdrawable shares in 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 4(4) of the Banking Act 1987 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 and that its withdrawable share capital shall be included within the definition of “Deposit” for the purposes of the Scheme.

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 withdrawable share capital and loan capital of a co-operative society and 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) interest unless compounded and added to capital; or
- (b) deposits whether or not secured, having an original term to maturity of more than 5 years; or
- (c) 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

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- (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 1st April 1980.

(6) In this Deed:—

“director” shall mean any person who occupies the position of a director by whatever name 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.

“depositor” shall mean a person who has deposited money with or who is the holder of withdrawable share capital in a 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 sub clause 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 £300 nor greater than £23,000, 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 £500,000 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 as 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 £15,000;

(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 £20,000, 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;

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- (iii) in determining the total liability of such Society to a depositor for the purposes of this and the previous sub-clause, 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 by 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 £500,000 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 1987 cease to accept new Deposits (with the exception of withdrawable share capital) and shall within the period of 9 months from the receipt by the Union of such written notice either (i) repay all Deposits (with the exception of withdrawable share capital) held by it or (ii) secure protection for those Deposits (with the exception of withdrawable share capital) under Part II of the Banking Act 1987. 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

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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) or (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 (with exception of withdrawable share capital) 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. (NOTE: By a qualifying resolution of Participating Societies dated 29th May 1989 the Scheme is continued in force for a further period of ten years after the initial period.)

(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 (with the exception of withdrawable share capital) shall, save under the protection of Part II of the Banking Act 1987, be accepted by Participating Societies), all the then Participating Societies shall within the period of 9 months thereafter either

- (i) repay all their Deposits (with the exception of withdrawable share capital); or
- (ii) secure protection for those Deposits (with the exception of withdrawable share capital) under Part II of the Banking Act 1987.

(2) If any Participating Society (hereinafter called “a Defaulting Society”) shall not in respect of the Deposits (with the exception of withdrawable share capital) taken by it have either

- (i) repaid them; or
- (ii) secured protection for them under Part II of the Banking Act 1987, 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 (with the exception of withdrawable share capital) 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)

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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 paid 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 authorised under the Building Societies Act 1986<sup>(13)</sup>;
- (iv) Deposits with the National Savings Bank and National Girobank;
- (v) Deposits with an authorised institution within the meaning of the Banking Act 1987.

**14.—**(1) The Bank may 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 stockbrokers' 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.

THE SCHEDULE BEFORE REFERRED TO

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(13) 1986 c. 53.

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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 (as defined in the said Deed) 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 the 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 affixed 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

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SCHEDULE 2

Regulation 3(f)

SUBSTITUTED SCHEDULE 3 TO THE PRINCIPAL REGULATIONS

“SCHEDULE 3

Regulation 13

REQUIREMENTS TO BE COMPLIED WITH BY  
CERTAIN ISSUERS OF RELEVANT DEBT SECURITIES

**Interpretation**

1. In this Schedule—

“the issuer” means a company accepting a relevant deposit;

“the relevant date” means the date on which the information set out in paragraph 2 below was first provided by the issuer to The Stock Exchange in accordance with paragraph 4 below; and

“a relevant deposit” means a deposit accepted on terms involving the issue of any relevant debt security.

**Information to have been notified to The Stock Exchange**

2. Not less than fourteen days prior to the acceptance of its first relevant deposit the issuer shall have provided the following information to The Stock Exchange:

*The issuer*

- (a) the name of the issuer and, if the relevant debt security was guaranteed, the name of the guarantor;
- (b) the country or territory of incorporation of the issuer and, if applicable, the guarantor;
- (c) the address of the registered office of the issuer (if it has one) and, if it has no registered office or if its principal place of business was not at its registered office, the address of its principal place of business;
- (d) the date on which the issuer was incorporated and, if it has a limited life, the length of its life;
- (e) the legislation under which the issuer is incorporated and the legal form which it has adopted under that legislation;
- (f) the place of registration of the issuer, if different to the country or territory of incorporation, and the number with which it is registered;
- (g) the names and addresses of the issuer’s principal bankers;
- (h) details of any legal or arbitration proceedings pending or threatened against the issuer or, if it is a member of a group, any member of the group, which might have, or might have had during the twelve months prior to the relevant date, a significant effect on the financial position of the issuer or the group (as the case may be) or, if there were no such proceedings, a statement to that effect;
- (i) the address in the City of London where copies of the documents referred to in paragraph 6 of this Schedule were available for inspection;
- (j) if the relevant debt security was guaranteed by a company falling within regulation 13(a) (i) of these Regulations, an address in the City of London where information about that company was available for inspection in accordance with the listing rules or the terms and conditions of entry to the Unlisted Securities Market (as the case may be);

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- (k) a description of the principal activities of the issuer, stating the main categories of products sold or services performed, together with, in a case where two or more activities were carried on which were material in terms of profits or losses, such figures and explanations as were necessary to determine the relative importance of each activity;
- (l) details of any patent, licence, new manufacturing process or industrial, commercial or financial contract on which the business or profitability of the issuer or its group depended to a material extent;
- (m) if the issuer is a member of a group, a brief description of the group and of the issuer's position within it and, if the issuer is a subsidiary, the name of each holding company of the issuer;

#### *Financial information*

- (n) the amount of the authorised and issued share capital of the issuer, the amount of any share capital agreed to be issued and the number and classes of the shares of which it was composed with details of their principal characteristics; if any part of the issued share capital was still to be paid up, an indication of the number, or total nominal value, and the type of the securities not then fully paid up, broken down, where applicable, according to the extent to which they had been paid up;
- (o) information with respect to the profits and losses, assets and liabilities and financial record and position of the issuer and, if it is a member of a group, of the group, set out as a comparative table for each of the latest five financial years of the issuer for which such information was available, together with copies of individual and (if applicable) group accounts for each of the latest two such financial years, including, in the case of a company incorporated in the United Kingdom, all notes, reports or other information required by the Companies Act 1985 or the Companies (Northern Ireland) Order 1986;
- (p) if more than nine months had elapsed since the end of the financial year to which the last published annual accounts related, an interim financial statement covering at least the first six months of the then current financial year and if such an interim financial statement had not been audited, a statement to this effect;
- (q) the names, addresses and qualifications of the auditors who have audited the issuer's annual accounts for the preceding two financial years and in the case of a company incorporated outside the United Kingdom a statement as to whether or not those accounts conformed to United Kingdom or generally accepted international accounting standards;
- (r) if during the two financial years of the issuer preceding the relevant date the issuer's auditors had refused to sign an auditors' report on the annual accounts of the issuer, or had qualified any such report in any way, a copy of the refusal (if in writing) or of the qualification together with details of any reasons given by the auditors for such action;
- (s) details as at the most recent practicable date (which shall have been stated) prior to the relevant date of the following, which, if the issuer is a member of a group, shall also have been provided on a consolidated basis:
  - (i) the total amount of any loan capital outstanding in any member of the group, and loan capital created but unissued, and term loans, distinguishing between loans guaranteed and unguaranteed, and those secured (whether the security is provided by the issuer or by third parties) and unsecured;
  - (ii) the total amount of all other borrowings and indebtedness in the nature of borrowing of the issuer or the group (as the case may be), distinguishing between guaranteed and unguaranteed and secured and unsecured borrowings and debts, including bank overdrafts and liabilities under acceptances (other than normal trade bills) or acceptance credits or hire purchase commitments;

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- (iii) all mortgages and charges of the issuer or the group (as the case may be); and
- (iv) the total amount of any contingent liabilities and guarantees of the issuer or the group (as the case may be);

if the issuer or the group (as the case may be) had no such loan capital, borrowings, indebtedness or contingent liabilities, this shall have been stated; no account should have been taken of liabilities between undertakings within the same group, a statement to that effect having been made if necessary;

#### *Directors*

- (t) the names, home or business addresses and functions within the issuer or its group (if applicable) of the directors of the issuer and an indication of the principal activities performed by them outside the issuer or the group (as the case may be) where these were significant with respect to the issuer or the group (as the case may be);

#### *Recent developments*

- (u) general information on the trend of the business of the issuer or its group (if applicable) since the end of the financial year to which the last published annual accounts related, in particular:
  - (i) the most significant recent trends in production, sales and stocks and the state of the order book; and
  - (ii) recent trends in costs and selling prices;

#### *Overseas companies*

- (v) where information was being provided by a company whose shares or debt securities have been admitted to listing on a Recognised Overseas Exchange, the name of the Recognised Overseas Exchange and the type of securities listed;

#### *The relevant debt securities*

- (w) the total amount which the issuer intended to raise by the issue of commercial paper and medium term notes respectively and details of the intended application of the proceeds raised;
- (x) the name and address of any issuing and paying agent for the relevant debt securities and the name and address of any managing agent, if different;
- (y) the period after which entitlement to interest or repayment of capital would lapse, or if there was no period after which such entitlement would lapse, a statement to that effect; and
- (z) details of the procedures for the delivery of the relevant debt securities to holders (including any applicable time limits) and whether temporary documents of title would be issued.

#### **Information to be available for public inspection**

6. The issuer shall have made available at an address in the City of London copies of the following documents during normal business hours for a period beginning on the relevant date and continuing at least until the acceptance of its first relevant deposit:

- (i) the memorandum and articles of association or equivalent documents of the issuer;
- (ii) any trust deed or other document constituting debt securities of the issuer;



- (iii) any contract directly relating to the issue of the relevant debt securities and any existing or proposed service contract between a director of the issuer and the issuer or any member of its group;
- (iv) any report, letter, valuation, statement, balance sheet or other document any part of which is extracted or referred to in any other document provided to The Stock Exchange under this Schedule; and
- (v) the audited accounts of the issuer and, if it is a member of a group, the consolidated audited accounts of the group, for each of the two latest financial years preceding the relevant date for which such accounts are available together with, in the case of a company incorporated in the United Kingdom, all notes, reports or other information required by the Companies Act 1985 or the Companies (Northern Ireland) Order 1986 to be attached thereto;

any reference in this paragraph 6 to a document which is not in English shall be taken to include in addition a reference to a translation of that document which is either certified to be correct by a notary public or which has been made by a person certified by a practising solicitor within the meaning of regulation 8 of these Regulations to be in his opinion competent to make such a translation.

7. Prior to the acceptance by the issuer of a further relevant deposit the issuer shall either have complied with paragraph 6 above as if such further deposit were its first relevant deposit or shall have continued to make available at the address for the time being provided to The Stock Exchange under sub-paragraph 2(i) above up-to-date copies of the documents referred to in that paragraph as soon as practicable after they became available.

#### **Information to have been notified to the Bank of England**

8. If the relevant deposit is accepted as part of a programme for the issue of relevant debt securities, the issuer, before it accepted the first deposit relating to the programme, shall have notified to the Bank of England the total amount to be raised under the programme, the maturity period of the relevant debt securities to be issued under the programme (if known) and a detailed description of the purposes for which the proceeds of the programme would be used, distinguishing in each case where possible between commercial paper and medium term notes and between issues denominated in sterling and issues not so denominated (in the latter case specifying the currency of payment), and the name of any guarantor; and if the issuer subsequently extended the programme, shall also have notified details of the increased amount to be raised and any other material changes to the information initially provided.

9. If the issuer has provided information to the Bank of England under paragraph 8 in relation to a relevant deposit, it shall also have reported to the Bank of England within one week after the end of each calendar month following the month in which such information was so provided the amount of relevant debt securities issued by it outstanding at the end of that calendar month and (in the case of a second or subsequent report) the amounts of relevant debt securities issued and redeemed by it since the date of the previous report, distinguishing in each case between commercial paper and medium term notes, between relevant debt securities guaranteed by an authorised institution and relevant debt securities not so guaranteed and between issues denominated in sterling and issues not so denominated (specifying in the latter case the currency of payment).”

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Banking Act 1987 (Exempt Transactions) Regulations 1988 (the 1988 Regulations).

First they extend from one to five years the maximum redemption period of debt securities which may be issued under the 1988 Regulations, consequent on the amendment by section 202 of the Companies Act 1989 (c. 40) of section 195 of the Financial Services Act 1986 (offers of short-dated debentures). Instruments with a maturity of one year or less are referred to in these Regulations as “commercial paper” and instruments with a maturity of between one and five years are referred to as “medium term notes”; the two together are referred to as “relevant debt securities”. These Regulations also remove the requirement that instruments coming within the 1988 Regulations must be denominated in sterling. Regulation 12 of the 1988 Regulations (sterling debt securities) is revoked.

Apart from changes throughout in nomenclature resulting from the extension of the maximum redemption period, the changes are as follows. Regulation 13(c) of the 1988 Regulations is amended to permit the redemption value to be denominated otherwise than in sterling; regulation 13(c) is also amended to make it clear that where a relevant debt security is capable of being split prior to transfer the exemption will be available only if the redemption value of each relevant debt security being transferred is not less than £100,000 (or foreign currency equivalent). Now that foreign currency issues are embraced, the requirement in regulation 13(d)(i) that the relevant debt security be issued and payable in the United Kingdom has been deleted. In paragraph 2(x) of Schedule 3 of the 1988 Regulations (information to have been notified to The Stock Exchange concerning paying and managing agents) there is no longer any reference to the paying agent being in the United Kingdom.

Regulation 13(d)(i) and (ii) now specifies that different rubrics must be used on commercial paper and medium term notes; otherwise the only places where the Regulations distinguish between the two types of instrument (apart from the definitions) are paragraphs 2(w) (information to have been notified to the Stock Exchange concerning the amount to be raised by the issue of relevant debt securities), 8 and 9 (information to have been notified to the Bank of England) of Schedule 3. Paragraphs 8 and 9 of that Schedule are also amended to require information notified to the Bank of England to distinguish between issues of relevant debt securities denominated in sterling and issues denominated in other currencies.

Secondly, these Regulations incorporate changes made to the Co-operative Deposit Protection Scheme at a meeting of Participating Societies on 29th May 1989 and Schedule 1 to the 1988 Regulations (deed establishing the Co-operative Deposit Protection Scheme) is set out in full as amended.