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STATUTORY INSTRUMENTS

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**1992 No. 3218**

**The Banking Coordination (Second Council Directive) Regulations 1992**

**PART IV**

**AMENDMENTS OF BANKING ACT**

*Restrictions on disclosure of information*

**Disclosure for facilitating discharge of functions by the Bank**

**38.** In subsection (1) of section 83 of the Banking Act (disclosure for facilitating discharge of functions by the Bank), for the words “its functions under this Act” there shall be substituted the following paragraphs—

- “(a) its function as a monetary authority; or
- (b) its functions as a monetary authority; or
- (c) its functions as a supervisor of money market and gilt market institutions”.

**Disclosure for facilitating discharge of functions by other supervisory bodies**

**39.—**(1) For the purpose of facilitating references to them, the entries in the Table in subsection (1) of section 84 of the Banking Act<sup>(1)</sup> (disclosure for facilitating discharge of functions by other supervisory bodies) shall be numbered 1 to 19.

(2) For subsection (5) of that section there shall be substituted the following subsections—

“(5) Section 82 above does not preclude the disclosure by the Bank of information to the Treasury if disclosure appears to the Bank to be—

- (a) desirable or expedient in the interests of depositors; or
- (b) in the public interest,

and (in either case) in accordance with article 12(7) of the First Council Directive<sup>(2)</sup>.

(5A) Section 82 above does not preclude the disclosure by the Bank of information to the Secretary of State for purposes other than those specified in relation to him in subsection (1) above if the disclosure is made with the consent of the Treasury and—

- (a) the information relates to an authorised institution or former authorised institution and does not enable the financial affairs of any other identifiable person to be

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(1) The Panel on Take Overs was added to the table in subsection (1) by S.I.1987/1292; the table was amended by the Companies Act 1989 (c. 40), sections 81 and 171(7), and repealed in part (entry relating to the Financial Services Act 1986, sections 94, 106 and 107) by section 212 of and Schedule 24 to the Companies Act 1989; other relevant amending instruments are S.I. 1989/2405 (N.I.19) and 1990/1504 (N.I.10.).

(2) Council Directive 77/780/EEC (OJNo. L322, 17.12.77, p.30); article 12 was substituted by article 16 of Council Directive 89/646/EEC (OJ No. L386, 30.12.89, p.1).

ascertained and disclosure appears to the Bank to be necessary in the interests of depositors or in the public interest; or

(b) in any other case, disclosure appears to the Bank to be necessary in the interests of depositors;

and (in either case) disclosure appears to the Bank to be in accordance with article 12(7) of the First Council Directive.”

(3) In subsection (6)(a) of that section, at the end of sub-paragraph (i) there shall be inserted the words “or the Banking Coordination (Second Council Directive) Regulations 1992”.

(4) After that subsection there shall be inserted the following subsections—

“(7) Subsection (6) above does not apply in relation to disclosures to an authority which is not a supervisory authority in another member State unless the Bank is satisfied that the authority is subject to restrictions on further disclosures at least equivalent to those imposed by this Part of this Act.

(8) Information which is disclosed to a person in pursuance of subsection (1), (4) or (6) above shall not be used otherwise than for the purpose mentioned in that subsection.

(9) Any person who uses information in contravention of subsection (8) above shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding the fifth level on the standard scale or to both.

(10) Any reference in this section to enabling or assisting any person to discharge or exercise any functions is a reference to enabling or assisting that person to discharge or exercise those functions in relation to—

(a) a financial market; or

(b) persons carrying on the business of banking or insurance, Consumer Credit Act businesses or the business of providing other financial services;

and in this subsection 'Consumer Credit Act business' has the same meaning as in the Banking Coordination (Second Council Directive) Regulations 1992.”

### **Other permitted disclosures**

**40.**—(1) In subsection (1) of section 85 of the Banking Act(3) (other permitted disclosures), paragraph (g) shall be omitted.

(2) After that subsection there shall be inserted the following subsection—

“(1A) The disclosures permitted by subsection (1)(f) above do not include the disclosure of information relating to a person who (not being a director, controller or manager of the institution) is or has been, to the knowledge of the person making the disclosure, involved in an attempt to secure the survival of the institution as a going concern.”

### **Information supplied to Bank by relevant overseas authority etc.**

**41.** For section 86 of the Banking Act there shall be substituted the following section—

#### **“86 Information supplied to Bank by relevant overseas authority etc.**

(1) Section 82 above applies also to information which—

(a) has been supplied to the Bank for the purposes of any relevant functions by the relevant supervisory authority in a country or territory outside the United Kingdom; or

- (b) has been obtained for those purposes by the Bank, or by a person acting on its behalf, in another member State.
- (2) Subject to subsections (3) and (4) below, information supplied or obtained as mentioned in subsection (1)(a) or (b) above shall not be disclosed except as provided by section 82 above or—
  - (a) for the purpose of enabling or assisting the Bank to discharge any relevant functions; or
  - (b) with a view to the institution of, or otherwise for the purposes of, criminal proceedings, whether under this Act or otherwise.
- (3) Information supplied to the Bank for the purposes of any relevant functions by the relevant supervisory authority in another member State may be disclosed—
  - (a) to a relevant recipient, if the authority consents to its disclosure and the case is one in which information to which section 82 above applies could be so disclosed by virtue of section 84(1) or (2) above; or
  - (b) to the Treasury or the Secretary of State, if the authority consents to its disclosure and the case is one in which information to which section 82 above applies could be so disclosed by virtue of section 84(5) or (5A) above.
- (4) Information obtained as mentioned in subsection (1)(b) above may be disclosed—
  - (a) to a relevant recipient, if the relevant supervisory authority in the member State concerned consents to its disclosure and the case is one in which information to which section 82 above applies could be so disclosed by virtue of section 84(1) or (2) above; or
  - (b) to the Treasury or the Secretary of State, if that authority consents to its disclosure and the case is one in which information to which section 82 above applies could be so disclosed by virtue of section 84(5) or (5A) above.
- (5) In this section—
  - 'relevant functions', in relation to the Bank, means its functions under this Act, its functions as a monetary authority and its functions as a supervisor of money market and gilt market institutions;
  - 'relevant recipient' means a person specified in any of entries 1 to 8, 13 to 15 and 17 in the Table in section 84(1) above."

#### **Disclosure of information obtained under other Acts**

**42.** After subsection (3) of section 87 of the Banking Act (disclosure of information obtained under other Acts) there shall be inserted the following subsection—

- “(3A) Information disclosed by the Building Societies Commission to the Bank for the purpose of enabling or assisting it to discharge any relevant functions may be disclosed—
  - (a) to a relevant recipient, if the Commission consents to its disclosure and the case is one in which information to which section 82 above applies could be so disclosed by virtue of section 84(1) or (2) above; or
  - (b) to the Treasury or the Secretary of State, if the Commission consents to its disclosure and the case is one in which information to which section 82 above applies could be so disclosed by virtue of section 84(5)(a) or (5A) above;

and in this subsection 'relevant functions' has the same meaning as in section 86 above and 'relevant recipient' means a person specified in any of entries 1 to 8, 13 to 15 and 17 in the Table in section 84(1) above.”

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

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