
STATUTORY INSTRUMENTS

1995 No. 1442

BANKING

**The Credit Institutions (Protection
of Depositors) Regulations 1995**

<i>Made</i>	- - - -	<i>6th June 1995</i>
<i>Laid before Parliament</i>		<i>7th June 1995</i>
<i>Coming into force</i>	- -	<i>1st July 1995</i>

The Treasury, being a government department designated(1) for the purposes of section 2(2) of the European Communities Act 1972(2) in relation to measures relating to credit and financial institutions and to the taking of deposits or other repayable funds from the public, in exercise of the powers conferred on them by that section and of all other powers enabling it in that behalf, hereby make the following Regulations:

Part I

General

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Credit Institutions (Protection of Depositors) Regulations 1995.

(2) These Regulations shall come into force on 1st July 1995.

(3) These Regulations extend to Northern Ireland.

Interpretation

2.—(1) In these Regulations—

“the 1986 Act” means the Building Societies Act 1986(3);

“the 1987 Act” means the Banking Act 1987(4);

(1) S.I.1990/1304.

(2) 1972 c. 68; by virtue of the amendment of section 1(2) made by section 1 of the European Economic Area Act 1993

(3) 1986 c. 53.

(4) 1987 c. 22.

“the 1992 Regulations” means the Banking Coordination (Second Council Directive) Regulations 1992⁽⁵⁾;

“the Bank” means the Bank of England;

“building society” means a building society incorporated (or deemed to be incorporated) under the 1986 Act;

“the commencement date” means 1st July 1995;

“the Commission” means the Building Societies Commission;

“the Deposit Protection Board” means the Deposit Protection Board continued in existence by Part II of the 1987 Act;

“the deposit protection scheme” means the scheme for the protection of depositors continued in force by that Part;

“EEA institution” means a European authorised institution (within the meaning of the 1992 Regulation);

“EEA State” means a State which is a Contracting Party of the Agreement on the European Economic Area signed at Oporto on 2nd May 1992⁽⁶⁾ as adjusted by the Protocol signed at Brussels on 17th March 1993⁽⁷⁾;

“home State”, in relation to an EEA institution or a non-EEA institution, means the EEA State, or the country or territory, in which it is incorporated or under the law of which it is formed;

“home State scheme”—

- (a) in relation to an EEA institution, means a scheme for the protection of depositors which is in force in the institution’s home State and in which the institution participates;
- (b) in relation to a non-EEA institution, means a scheme or other arrangement for the protection of depositors which is in force in the institution’s home State and in which the institution participates;

“host State scheme”, in relation to a UK institution or building society, means a scheme for the protection of depositors which is in force in an EEA State other than the United Kingdom and in which the institution or society participates;

“investment”, in relation to a building society or an Irish building society which, in accordance with Chapter I or Part II of these Regulations, is participating in the investor protection scheme, means a deposit with or a share in the society;

“the Investor Protection Board” means the Building Societies Investor Protection Board established by Part IV of the 1986 Act;

“the investor protection scheme” means the scheme for the protection of investors established by that Part;

“Irish building society” means an EEA institution which is incorporated in or formed under the law of the Republic of Ireland and whose characteristics correspond as nearly as may be to those of a building society;

“non-EEA institution” means an authorised institution (within the meaning of the 1987 Act) which is incorporated in or formed under the law of a country or territory outside the European Economic Area;

“supervisory authority”, in relation to an EEA State other than the United Kingdom or a country or territory outside the European Economic Area, means an authority in that State, country or territory which has regulatory functions in relation to the acceptance of deposits;

⁽⁵⁾ S.I. 1992/3218; amended by S.I. 1993/3225.

⁽⁶⁾ Cm 2073.

⁽⁷⁾ Cm 2183.

“UK institution” means an authorised institution (within the meaning of the 1987 Act) which is incorporated in or formed under the law of any part of the United Kingdom;

“UK scheme” means the deposit protection scheme or the investor protection scheme.

(2) In these Regulations, unless the context otherwise requires, references to deposits include references to investments, and references to depositors or intending depositors shall be construed accordingly.

Part II

Participation in host State schemes

Chapter I

Participation in UK scheme by EEA institution

Main provisions

Eligibility to participate in scheme

3.—(1) An EEA institution which accepts or proposes to accept deposits through offices in the United Kingdom shall be eligible to participate in a UK scheme if the Deposit Protection Board (“the Board”) determines under this regulation, on an application made by the institution, that it is so eligible; and an application under this paragraph may state a preference for one or other of the UK schemes.

(2) The Board shall not make a determination under this regulation unless, after consultation with such of the relevant authorities (if any) as it considers appropriate, it is satisfied that—

- (a) the scope of the protection afforded to depositors by the institution’s home State scheme; or
- (b) the level of the protection so afforded,

is less than that afforded to depositors by the UK scheme specified in the determination.

(3) Whether or not the Board is satisfied as mentioned in paragraph (2) above, it shall decide which of the UK schemes appears to be the more appropriate for the institution, having regard to whether the institution’s characteristics correspond more closely to those of a UK institution or to those of a building society.

(4) The Board shall not under paragraph (3) above—

- (a) decide in favour of the investor protection scheme except with the consent of the Investor Protection Board; or
- (b) decide in favour of the deposit protection scheme, in a case where the application stated a preference for the investor protection scheme, except after consulting with that Board.

(5) Written notice of a decision of the Board under paragraph (2) or (3) above, stating the reasons for it, shall be given to the institution—

- (a) within 90 days after the day on which the institution’s application is received by the Board; or
- (b) within that period and such additional period, not exceeding 30 days, as the Bank may in exceptional circumstances allow.

(6) In this regulation and regulation 6 below “the relevant authorities” means—

- (a) the Bank, the Commission and the supervisory authority in the institution’s home State; and

- (b) the Investor Protection Board and the authority responsible for the institution's home State scheme.

Participation in scheme

4.—(1) An EEA institution which is eligible to participate in the deposit protection scheme by virtue of a determination under regulation 3 above shall cease to be so eligible unless, within two months after the date of the determination—

- (a) it commences its participation in that scheme by paying to the Deposit Protection Board the amount which is specified in the determination in accordance with paragraph (2) below; or
- (b) in the case of an institution which was participating in that scheme immediately before the commencement date and whose application under paragraph (1) of that regulation was made within six months of that date, it resumes its participation in that scheme by giving notice to that Board of its decision to do so.

(2) Where—

- (a) a determination under regulation 3 above specifies the deposit protection scheme; and
- (b) the institution is not such an institution as is mentioned in paragraph (1)(b) above,

the determination shall also specify the amount which the Deposit Protection Board considers would be determined in accordance with subsection (2) or (3) of section 53 of the 1987 Act (initial contributions) if the institution participated in the scheme.

(3) An EEA institution which is eligible to participate in the investor protection scheme by virtue of a determination under regulation 3 above shall cease to be so eligible unless, within two months after date of the determination, it commences its participation in that scheme by giving to the Investor Protection Board notice of its decision to do so.

(4) No initial contribution shall be levied under section 53 of the 1987 Act from an EEA institution which commences or resumes its participation in the deposit protection scheme in accordance with paragraph (1) above.

(5) The amount payable under sub-paragraph (a) of paragraph (1) above by an EEA institution which has withdrawn under regulation 5 below, or has been excluded under regulation 6 below, from participation in the deposit protection scheme shall be reduced by the aggregate of—

- (a) any amount previously paid by the institution under that sub-paragraph;
- (b) so much of any further contribution levied on the institution under section 54 of the 1987 Act as was attributable to an order under subsection (2) of that section; and
- (c) if any previous participation in that scheme was resumed in accordance with sub-paragraph (b) of that paragraph, the amount of the initial contribution levied on the institution under section 53 of that Act.

Withdrawal from scheme

5.—(1) An EEA institution which is participating in a UK scheme may withdraw from participation in that scheme by giving to the relevant Board not less than six months notice of its intention to do so.

(2) In this regulation and regulation 7 below “the relevant Board”—

- (a) in relation to the deposit protection scheme, means the Deposit Protection Board; and
- (b) in relation to the investor protection scheme, means the Investor Protection Board.

Exclusion where institution no longer eligible

6.—(1) An EEA institution which is participating in a UK scheme shall be excluded from participation in that scheme if the Deposit Protection Board (“the Board”) determines under this regulation that it is no longer eligible to participate in that scheme.

(2) The Board shall not make a determination under this regulation unless, after consultation with such of the relevant authorities (if any) as it considers appropriate, it is satisfied that—

- (a) the scope of the protection afforded to depositors by the institution’s home State scheme; and
- (b) the level of the protection so afforded,

are each not less than that afforded to depositors by the UK scheme in which the institution is participating.

(3) Written notice of a decision of the Board under paragraph (2) above, stating the reasons for it, shall be given to the institution.

(4) An exclusion under this regulation shall not have effect—

- (a) until the time for appealing under regulation 8 below against the Board’s decision under paragraph (2) above has expired; or
- (b) if an appeal is made under that regulation, unless and until that decision is confirmed by the Chancellor of the Exchequer.

Exclusion where institution in default

7.—(1) This regulation applies where an EEA institution which is participating in a UK scheme (“the scheme”) is in default by reason of—

- (a) any failure to pay in whole or in part any contribution due from it under the scheme; or
- (b) any failure to produce any documents or provide any information to the relevant Board which it is required to produce or provide under section 65 of the 1987 Act or, as the case may be, section 29A of the 1986 Act.

(2) Where this regulation applies the relevant Board shall give notice of the default to the supervisory authority in the institution’s home State (“the supervisory authority”) requesting that authority—

- (a) to take all appropriate measures for the purpose of ensuring that the default is remedied; and
- (b) to inform the Board of the measures which it proposes to take or has taken or of the reasons for not taking any such measures.

(3) If the relevant Board is satisfied either—

- (a) that the supervisory authority has failed or refused to take measures for the purpose mentioned in paragraph (2)(a) above; or
- (b) that the measures taken by the authority have proved inadequate for that purpose,

it may give notice to the institution that if the default is not remedied before the end of the period of 12 months beginning with the date of the notice, the institution may be excluded from participation in the scheme.

(4) If the default has not been remedied before the end of the period of 12 months referred to in paragraph (3) above the relevant Board may, with the consent of the supervisory authority, by notice to the institution exclude the institution from participation in the scheme.

(5) Nothing in paragraph (4) above shall prohibit recovery by the relevant Board of any unpaid amount.

Appeals against decisions of Board

8.—(1) An EEA institution which is aggrieved by a decision under regulation 3(2) or (3), 6(2) or 7(3) above may, within 28 days after the day on which it received notice of the decision, appeal against the decision to the Chancellor of the Exchequer.

(2) An appeal under this regulation shall be made by sending to the Chancellor of the Exchequer (with copies to the relevant Board)—

- (a) a notice of appeal, including a statement of the grounds of appeal;
- (b) written representations in support of those grounds; and
- (c) any documents that may be relevant for the purposes of the appeal;

and the procedure for determining such an appeal shall be as the Chancellor of the Exchequer may direct.

(3) On such an appeal the Chancellor of the Exchequer may confirm or vary the decision which is the subject of the appeal.

(4) Written notice of the Chancellor of the Exchequer's decision, stating the reasons for it, shall be given to the appellant and to the relevant Board; and, unless the Chancellor of the Exchequer otherwise directs, the decision shall take effect when the notice is so given.

(5) In this regulation "the relevant Board"—

- (a) in relation to a decision under regulation 3(2) or 6(2) above, means the Deposit Protection Board;
- (b) in relation to a decision under regulation 3(3) above, means the Deposit Protection Board and the Investor Protection board; and
- (c) in relation to a decision under regulation 7(3) above, has the same meaning as in that regulation.

Supplementary provisions

Duty of institution to notify withdrawal or exclusion

9.—(1) Where an EEA institution withdraws or is excluded from participation in a UK scheme, it shall as soon as practicable take all such steps as may be necessary to bring the withdrawal or exclusion to the notice of depositors whose deposits were made with United Kingdom offices of the institution.

(2) Where it appears to the Bank that an EEA institution has failed to comply with paragraph (1) above, the Bank shall require the institution by notice in writing to take all such steps as appear to it necessary to comply with that paragraph and are specified in the notice.

(3) If an EEA institution fails to comply with a requirement under paragraph (2) above within a reasonable time, the Bank shall give notice to that effect to the supervisory authority in the institution's home State requesting that authority—

- (a) to take all appropriate measures for the purpose of ensuring that the institution complies with that requirement; and
- (b) to inform the Bank of the measures which it proposes to take or has taken or of the reasons for not taking any such measures.

Duty of Board to consult with home State authority

10.—(1) As soon as practicable after an EEA institution commences or resumes its participation in a UK scheme, the relevant Board shall, if it has not already done so in connection with another such institution's participation in the UK scheme—

- (a) consult with the authority having responsibility for the institution's home State scheme; and
- (b) come to an agreement with that authority as to the rules and procedures to be adopted for determining, in the event of such institutions becoming insolvent (within the meaning of the relevant Part), the respective amounts of compensation which, after any deductions by way of set-off, would be payable under that scheme and the UK scheme.

(2) As soon as practicable after an EEA institution which is participating in a UK scheme becomes insolvent (within the meaning of the relevant Part), the relevant Board shall—

- (a) consult with the authority having responsibility for the institution's home State scheme; and
- (b) come to an agreement with that authority as to the respective amounts of compensation which, after any deductions by way of set-off, are payable under that scheme and the UK scheme.

(3) In this regulation "the relevant Board" and "the relevant Part" mean respectively—

- (a) in relation to the deposit protection scheme, the Deposit Protection Board and Part II of the 1987 Act;
- (b) in relation to the investor protection scheme, the Investor Protection Board and Part IV of the 1986 Act.

(4) Any reference in this regulation to an EEA institution includes a reference to an institution which was formerly an EEA institution and continues to have a liability in respect of any deposit for which it had a liability at a time when it was an EEA institution.

Power of Board to make agency and information agreements

11.—(1) Where an EEA institution commences or resumes its participation in a UK scheme, the relevant Board may enter into an agency or information agreement with the authority responsible for the institution's home State scheme.

(2) In this regulation—

"agency agreement" means an agreement between the relevant Board and the authority responsible for the institution's home State scheme under which either agrees, whether or not for a consideration, to make on the other's behalf any payments falling to be made under the scheme for which the other is responsible;

"information agreement" means an agreement between the relevant Board and the authority responsible for the institution's home State scheme under which either agrees, whether or not for a consideration, to disclose to the other any information in its possession which would or might assist the other to discharge its functions;

"the relevant Board" has the same meaning as in regulation 10 above.

Duty of Board to maintain list of participating EEA institutions

12. The Deposit Protection Board and the Investor Protection Board shall each compile and maintain a list of the EEA institutions which are participating in the UK scheme for which it is the responsible authority.

Chapter II

Participation in EEA scheme by UK institution or building society

Duty of institution or society to notify withdrawal or exclusion

13. Where a UK institution or building society withdraws or is excluded from a scheme for the protection of depositors which is in force in an EEA State other than the United Kingdom, it shall as soon as practicable take all such steps as may be necessary to bring the withdrawal or exclusion to the notice of depositors whose deposits were made with offices of the institution or society in that State.

Liability of institution or society in respect of payments under host State scheme

14.—(1) Where a UK institution or building society which is participating in a host State scheme becomes insolvent (within the meaning of the relevant Part), the relevant enactment shall have effect as if—

- (a) any reference to the relevant Board included a reference to the authority responsible for the host State scheme; and
- (b) any reference to the making of a payment under any provision of the relevant Part included a reference to the making of a payment under that scheme.

(2) In this regulation “the relevant Board”, “the relevant enactment” and “the relevant Part” mean respectively—

- (a) in relation to a UK institution, the Deposit Protection Board, section 62 of the 1987 Act and Part II of that Act;
- (b) in relation to a building society, the Investor Protection Board, section 28 of the 1986 Act and Part IV of that Act.

(3) Any reference in this regulation to a UK institution includes a reference to an institution which was formerly a UK institution and continues to have a liability in respect of any deposit for which it had a liability at a time when it was a UK institution.

Duty of Board to consult with host State authority

15.—(1) As soon as practicable after a UK institution or building society commences or resumes its participation in a host State scheme, the relevant Board shall, if it has not already done so in connection with another such institution’s or society’s participation in that scheme—

- (a) consult with the authority having responsibility for that scheme; and
- (b) come to an agreement with that authority as to the rules and procedures to be adopted for determining, in the event of such institutions or societies becoming insolvent (with the meaning of the relevant Part), the respective amounts of compensation which, after any deductions by way of set-off, would be payable under that scheme and the relevant UK scheme.

(2) As soon as practicable after a UK institution or building society which is participating in a host State scheme becomes insolvent (within the meaning of the relevant Part), the relevant Board shall—

- (a) consult with the authority having responsibility for that scheme; and
- (b) come to an agreement with that authority as to the respective amounts of compensation which, after any deductions by way of set-off, are payable under that scheme and the relevant UK scheme.

(3) In this regulation “the relevant Board”, “the relevant Part” and “the relevant UK scheme” mean respectively—

- (a) in relation to a UK institution, the Deposit Protection Board, Part II of the 1987 Act and the deposit protection scheme;
- (b) in relation to a building society, the Investor Protection Board, Part IV of the 1986 Act and the investor protection scheme.

(4) Any reference in this regulation to a UK institution includes a reference to an institution which was formerly a UK institution and continues to have a liability in respect of any deposit for which it had a liability at a time when it was a UK institution.

Power of Board to make agency and information agreements

16.—(1) Where a UK institution or building society commences or resumes its participation in a host State scheme, the relevant Board may enter into an agency or information agreement with the authority responsible for that scheme.

(2) In this regulation—

“agency agreement” means an agreement between the relevant Board and the authority responsible for the host State scheme under which either one agrees, whether or not for a consideration, to make on the other’s behalf any payments falling to be made under the scheme for which the other is responsible;

“information agreement” means an agreement between the relevant Board and the authority responsible for the host State scheme under which either agrees, whether or not for a consideration, to disclose to the other any information in its possession which would or might assist the other to discharge its functions;

“the relevant Board” has the same meaning as in regulation 15 above.

Duty of Bank or Commission to declare that deposits are no longer available

17.—(1) Where a UK institution or building society which is or has been a participating institution has become insolvent, it shall be the duty of the relevant authority—

- (a) to make a declaration that deposits held by the institution or society are no longer available; and
- (b) to send a copy of the declaration to the authority responsible for each scheme which is or has been a host State scheme in relation to the institution or society.

(2) Where a UK institution or building society which is or has been a participating institution has ceased to be insolvent, it shall be the duty of the relevant authority—

- (a) to withdraw the declaration made by it under paragraph (1) above; and
- (b) to notify the withdrawal to each authority to which it has sent a copy of that declaration.

(3) In this regulation—

- (a) references to a participating institution are references to an institution which is participating in a host State scheme; and
- (b) references to becoming or ceasing to be insolvent shall be construed in accordance with the relevant enactment.

(4) In this regulation “the relevant authority” and “the relevant enactment” mean respectively—

- (a) in relation to a UK institution, the Bank and section 59 of the 1987 Act;
- (b) in relation to a building society, the Commission and section 25A of the 1986 Act.

Powers of authority responsible for host State scheme

18.—(1) Where a UK institution or building society which is participating in a host State scheme becomes insolvent (within the meaning of the relevant Part), the relevant enactments (which enable the relevant Board to obtain information) shall have effect as if—

- (a) any reference to the relevant Board included a reference to the authority having responsibility for the host State scheme;
- (b) any reference to the relevant Part included a reference to the corresponding provision of the law of the EEA State in which the host State scheme is in force; and
- (c) any reference (however expressed) to a deposit protected by, or to a payment under, the relevant UK scheme included a reference to a deposit protected by, or to a payment under, the host State scheme.

(2) In this regulation “the relevant Board”, “the relevant enactments”, “the relevant Part” and “the relevant UK scheme” mean respectively—

- (a) in relation to a UK institution, the Deposit Protection Board, section 58(8) and (9) and section 65(3) and (4) of the 1987 Act, Part II of that Act and the deposit protection scheme;
- (b) in relation to a building society, the Investor Protection Board, section 29A(3) and (4) of the 1986 Act, Part IV of that Act and the investor protection scheme.

(3) Any reference in this regulation to a UK institution includes a reference to an institution which was formerly a UK institution and continues to have a liability in respect of any deposit for which it had a liability at a time when it was a UK institution.

(4) Nothing in section 65(3) of the 1987 Act (as modified by this regulation), or section 29A(3) of the 1986 Act (as so modified), shall entitle an authority having responsibility for a host State scheme to require information to be provided or furnished, or documents, books or papers to be produced, at a place outside the United Kingdom.

Chapter III

Non-participation in deposit protection scheme by non-EEA institution

Main provisions

Eligibility not to participate in scheme

19.—(1) A non-EEA institution shall be eligible not to participate in the deposit protection scheme (“the scheme”) if the Deposit Protection Board (“the Board”) determines under this regulation, on an application made by the institution, that it is so eligible.

(2) The Board shall not make such a determination under this regulation unless after consultation with such of the relevant authorities (if any) as it considers appropriate, it is satisfied that—

- (a) the scope of the protection afforded by the institution’s home State scheme to depositors with United Kingdom offices; and
- (b) the level of the protection so afforded,

are each not less than that afforded to such depositors by the scheme.

(3) Written notice of the Board’s decision under paragraph (2) above, stating the reasons for it, shall be given to the institution—

- (a) within 90 days after the day on which the institution’s application is received by the Board; or
- (b) within that period and such additional period, not exceeding 30 days, as the Bank may in exceptional circumstances allow.

- (4) In this regulation and regulation 21 below “the relevant authorities” means—
- (a) the Bank and the supervisory authority in the institution’s home State; and
 - (b) the authority responsible for the institution’s home State scheme.

Election not to participate in scheme

20. A non-EEA institution which is eligible not to participate in the deposit protection scheme by virtue of a determination under regulation 19 above shall cease to be so eligible unless, within two months after the date of the determination, it elects not to participate in that scheme by giving notice of its election to the Deposit Protection Board.

Election to cease to have effect where institution no longer eligible

21.—(1) An election by a non-EEA institution not to participate in the deposit protection scheme (“the scheme”) shall cease to have effect if the deposit Protection Board (“the Board”) determines under this regulation that it is no longer eligible not to participate in the scheme.

(2) The Board shall not make a determination under this regulation unless, after consultation with such of the relevant authorities (if any) as it considers appropriate, it is satisfied that—

- (a) the scope of the protection afforded to depositors by the institution’s home State scheme; or
- (b) the level of the protection so afforded,

is less than that afforded to depositors by the scheme.

(3) Written notice of a decision of the Board under paragraph (2) above, stating the reasons for it, shall be given to the institution.

(4) An election shall not cease to have effect by virtue of this regulation—

- (a) until the time for appealing under regulation 22 below against the Board’s decision under paragraph (2) above has expired; or
- (b) if an appeal is made under that regulation, unless and until that decision is confirmed by the Chancellor of the Exchequer.

(5) Where an election ceases to have effect by virtue of this regulation, the amount of the initial contribution levied on the institution under section 53 of the 1987 Act shall be reduced by the aggregate of—

- (a) the amount of any previous initial contribution levied on the institution under that section; and
- (b) so much of any further contribution levied on the institution under section 54 of that Act as was attributable to an order under subsection (2) of that section.

Appeals against decisions of Board

22.—(1) A non-EEA institution which is aggrieved by a decision under regulation 19(2) or 21(2) above may, within 28 days after the day on which it received notice of the decision, appeal against the decision to the Chancellor of the Exchequer.

(2) An appeal under this regulation shall be made by sending to the Chancellor of the Exchequer (with copies to the Deposit Protection Board)—

- (a) a notice of appeal, including a statement of the grounds of appeal;
- (b) written representations in support of those grounds; and
- (c) any documents that may be relevant for the purposes of the appeal;

and the procedure for determining such an appeal shall be as the Chancellor of the Exchequer may direct.

(3) On such an appeal the Chancellor of the Exchequer may confirm or vary the decision which is the subject of the appeal.

(4) Written notice of the Chancellor of the Exchequer's decision, stating the reasons for it, shall be given to the appellant and to the Deposit Protection Board; and, unless the Chancellor of the Exchequer otherwise directs, the decision shall take effect when the notice is so given.

Supplementary provisions

Duty of institution to notify election not to participate

23. Where a non-EEA institution elects not to participate in the deposit protection scheme, it shall as soon as practicable take all such steps as may be necessary to bring the election to the notice of depositors whose deposits were made with United Kingdom offices of the institution.

Duty of Board to maintain list of participating non-EEA institutions

24. The Deposit Protection Board shall compile and maintain a list of the non-EEA institutions which are participating in the deposit protection scheme.

Part III

Amendments of Part II of 1987 Act

Functions of Deposit Protection Board

25. In subsection (2) of section 50 of the 1987 Act (functions of Deposit Protection Board), in paragraph (b), for the words "authorised institutions" there shall be substituted the words "contributory institutions."

The Deposit Protection Fund

26. After subsection (3) of section 51 of the 1987 Act (the Deposit Protection Fund) there shall be inserted the following subsection—

“(3A) In subsection (3) above, the reference to Treasury bills includes a reference to bills and other short-term instruments issued by the government of another EEA State and appearing to the Bank to correspond as nearly as may be to Treasury bills.”

Contributory institutions etc.

27.—(1) For subsection (1) of section 52 of the 1987 Act⁽⁸⁾ (contributory institutions and general provisions as to contributions) there shall be substituted the following subsection—

“(1) All UK institutions and participating institutions shall be liable to contribute to the Fund and are in this Part of this Act referred to as 'contributory institutions'.”

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

“(2A) Where—

⁽⁸⁾ 1987 c. 22; section 52 was amended by the Banking Coordination (Second Council Directive) Regulations 1992 (S.I. 1992/3218), regulation 47 and Schedule 8, paragraph 14.

- (a) a notice under subsection (2) above is served on a contributory institution; and
- (b) the amount specified in the notice remains unpaid after the period of twenty-one days mentioned in that subsection,

the Board shall as soon as practicable give written notice of that fact to the Bank.”

- (3) For subsection (4) of that section there shall be substituted the following subsections—

“(4) Subject to subsection (4B) and section 57 below, the deposit base of an institution in relation to any contribution is the amount which the Board determines as representing the average, over such period preceding the levying of the contribution as appears to the Board to be appropriate, of deposits in EEA currencies with the United Kingdom offices of that institution other than—

- (a) secured deposits;
- (b) deposits which are own funds within the meaning given by Article 2 of Directive [89/299/EEC\(9\)](#);
- (c) deposits which fall within item 1 or 2 of Annex I to Directive [94/19/EC\(10\)](#); and
- (d) deposits in respect of which the institution has in the United Kingdom issued a certificate of deposit in an EEA currency.

(4A) In its application to UK institutions, subsection (4) above shall have effect as if the reference to United Kingdom offices included a reference to offices in other EEA States.

(4B) In the case of a participating EEA institution, the amount determined under subsection (4) above shall be reduced by the amount given by the formula—

$$PA \times \frac{HS}{UK}$$

where—

PA = so much of the amount so determined as is attributable to deposits which are protected by the institution’s home State scheme;

HS = the level of protection (expressed in ecus) afforded by that scheme at the time when the determination is made, or the level of protection mentioned below, whichever is the less;

UK = the level of protection (so expressed) afforded by this Part of this Act at that time.”

- (4) After subsection (5) of that section there shall be inserted the following subsections—

“(6) In this Part of this Act—

‘the 1995 Regulations’ means the Credit Institutions (Protection of Depositors) Regulations 1995;

‘administrator’, in relation to an institution, means an administrator of the institution under Part II of the Insolvency Act 1986(11) or Part III of the Insolvency (Northern Ireland) Order 1989(12);

‘building society’ means a building society incorporated (or deemed to be incorporated) under the Building Societies Act 1986;

(9) O.J. L124, 5.5.89, page 16.

(10) O.J. L135, 31.5.94, page 5.

(11) 1986 c. 45.

(12) S.I. 1989/2405 (N.I. 19).

‘the deposit protection scheme’ means the scheme for the protection of depositors continued in force by this Part of this Act;

‘ecu’ means—

- (a) the European currency unit as defined in Article 1 of Council Regulation No. 3320/94/EC⁽¹³⁾; or
- (b) except in section 60(1) below, any other unit of account which is defined by reference to the European currency unit as so defined;

‘EEA currency’ means the currency of an EEA State or ecus;

‘EEA State’ means a State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992⁽¹⁴⁾ as adjusted by the Protocol signed at Brussels on 17th March 1993⁽¹⁵⁾;

‘former authorised institution’ does not include any institution which is a former UK institution or a former participating institution;

‘former participating institution’ means an institution which was formerly a participating institution and continues to have a liability in respect of any deposit for which it had a liability at a time when it was a participating institution, and ‘former participating EEA institution’ and ‘former participating non-EEA institution’ shall be construed accordingly;

‘former UK institution’ means an institution which was formerly a UK institution and continues to have a liability in respect of any deposit for which it had a liability at a time when it was a UK institution;

‘home State scheme’ has the same meaning as in the 1995 Regulation;

‘participating EEA institution’ means a European authorised institution which, in accordance with Chapter I of Part II of the 1995 Regulations, is participating in the deposit protection scheme;

‘participating institution’ means a participating EEA institution or a participating non-EEA institution;

‘participating non-EEA institution’ means an authorised institution which is incorporated in or formed under the law of a country or territory outside the European Economic Area, not being one—

- (a) which has, in accordance with Chapter III of Part II of the 1995 Regulations, elected not to participate in the deposit protection scheme; and
- (b) whose election under that Chapter is still in force;

‘UK institution’ means an authorised institution which is incorporated in or formed under the law of any part of the United Kingdom.

(7) In its application to this Part, section 5(3) above shall have effect as if—

- (a) the references in paragraph (a) to an authorised institution included references to a building society and to any credit institution which is incorporated in or formed under the law of a country or territory outside the United Kingdom; and
- (b) in Schedule 2 to this Act, paragraph 5 (building societies) were omitted.”

⁽¹³⁾ O.J. L350, 31.12.94, page 1.

⁽¹⁴⁾ Cm 2073.

⁽¹⁵⁾ Cm 2183.

Initial contributions

28. After subsection (2) of section 53 of the 1987 Act (initial contributions) there shall be inserted the following subsection—

“(2A) In its application to participating EEA institutions, subsection (2) above shall have effect as if the reference to a basis of equality were a reference to a basis of parity.”

Calculation of deposit base of transferee institutions

29.—(1) In subsections (2) to (4) of section 57 of the 1987 Act (deposit base of transferee institutions)—

- (a) for the words “sterling deposits”, in each place where they occur, there shall be substituted the words “deposits in EEA currencies”; and
- (b) for the words “sterling certificates of deposit”, in each place where they occur, there shall be substituted the words “certificates of deposit in EEA currencies”.

(2) After subsection (4) of that section there shall be inserted the following subsection—

“(4A) In their application to UK institutions, subsections (2) to (4) above shall have effect as if references to United Kingdom offices included references to offices in other EEA States.”

Compensation payments to depositors

30.—(1) For subsections (1) and (2) of section 58 of the 1987 Act⁽¹⁶⁾ (compensation payments to depositors) there shall be substituted the following subsections—

“(1) Subject to the provisions of this section, if at any time an institution to which this subsection applies becomes insolvent, the Board—

- (a) shall as soon as practicable pay out of the Fund to depositors who have protected deposits with that institution which are due and payable amounts equal to nine-tenths of their protected deposits; and
- (b) shall in any event secure that, before the end of the relevant period, it is in a position to make those payments as soon as they fall to be made.

(2) Subsection (1) above applies to an institution which—

- (a) is a UK institution or participating institution;
- (b) is a former UK institution or a former participating institution; or
- (c) is a former authorised institution (not being a recognised bank or licensed institution excluded by an order under section 23(2) of the Banking Act 1979);

and if at any time such an institution ceases to be insolvent, subsection (1) above shall cease to apply in relation to that institution.

(2A) In subsection (1) above ‘the relevant period’ means—

- (a) the period of three months beginning with the time when the institution becomes insolvent; or
- (b) that period and such additional period or periods, being not more than three and of not more than three months each, as the Bank may in exceptional circumstances allow.

⁽¹⁶⁾ 1987 c. 22; section 58 was amended by the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405) (N.I. 19), article 381(2) and Schedule 9, Part II, paragraph 50 and by the Banking Coordination (Second Council Directive) Regulations 1992 (S.I. 1992/3218), regulation 47 and Schedule 8, paragraph 15.

(2B) A person claiming to be entitled to a payment under subsection (1) above in respect of a protected deposit with a participating institution shall make his claim in such form, with such evidence proving it, and within such period, as the Board directs.

(2C) The amount of any payment which falls to be made under subsection (1) above in respect of a protected deposit made with an office of a UK institution in another EEA State shall not exceed such amount as the Board may determine is or would be payable, in respect of an equivalent deposit made with an institution authorised in that State, under any corresponding scheme for the protection of depositors or investors which is in force in that State.

(2D) Where, in the case of a participating EEA institution, the Board is satisfied that a depositor has received or is entitled to receive a payment in respect of his protected deposit under any home State scheme, the Board shall deduct an amount equal to that payment from the payment that would otherwise be made to the depositor under subsection (1) above.”

(2) In subsection (3) of that section—

- (a) for the words from “Where” to “depositor” there shall be substituted the words “Where, in the case of a UK institution or participating non-EEA institution, the Board is satisfied that a depositor has received or will receive a payment”; and
- (b) the words “or (2)” shall be omitted.

(3) In subsection (5) of that section, the words “or (2)” shall be omitted.

(4) For subsection (6) of that section there shall be substituted the following subsection—

“(6) There shall be deducted from any payment to be made by the Board under subsection (1) above in respect of a deposit any payment already made in respect of that deposit by a liquidator or administrator of the institution; and in this subsection, in relation to an institution formed under the law of a country or territory outside the United Kingdom, the reference to a liquidator or administrator includes a reference to a person whose functions appear to the Board to correspond as nearly as may be to those of a liquidator or administrator.”

(5) In subsection (7) of that section—

- (a) for the words “subsections (1), (2) and (6)” there shall be substituted the words “subsection (1)”; and
- (b) for the words “those subsections” there shall be substituted the words “that subsection”.

(6) In subsection (8) of that section—

- (a) in paragraph (a), after the word “document” there shall be inserted the words “required to be sent to a creditor of the institution under Part II of the Insolvency Act 1986 or under Part III of the Insolvency (Northern Ireland) Order 1989, or”;
- (b) in paragraph (b)(ii), for the words “section 301” there shall be substituted the words “section 26 or 301”; and
- (c) in paragraph (b)(v), for the words “Article 274” there shall be substituted the words “Article 38 or 274”.

(7) For subsection (10) of that section there shall be substituted the following subsection—

“(10) References in this section and sections 59 and 60 below to a former authorised institution include references to an institution which—

- (a) was formerly a European authorised institution which accepted deposits in the United Kingdom; and
- (b) continues to have a liability in respect of any deposit for which it had a liability when it was such an institution;

and references in section 60 below to ceasing to be an authorised institution include references to ceasing to be a European authorised institution which accepted deposits in the United Kingdom.”

Meaning of insolvency etc.

31. For section 59 of the 1987 Act there shall be substituted the following section—

“Meaning of insolvency etc.

59.—(1) For the purposes of this Part of this Act, a UK institution or participating non-EEA institution becomes insolvent—

- (a) on the making by the Bank of a determination that, for reasons which directly relate to the institution’s financial circumstances, the institution—
 - (i) is unable to repay deposits which are due and payable; and
 - (ii) has no current prospect of being able to do so;
- (b) on the making by a court in any part of the United Kingdom, or in another EEA State, or a judicial ruling which—
 - (i) directly relates to the institution’s financial circumstances; and
 - (ii) has the effect of suspending the ability of depositors to make claims against the institution; or
- (c) in the case of a participating non-EEA institution, on the making by a court in any country or territory outside the European Economic Area of a judicial ruling which appears to the Board to correspond as nearly as may be to such a judicial ruling as is mentioned in paragraph (b) above,

but only if deposits made with the institution have become due and payable and have not been repaid.

(2) For those purposes, a participating EEA institution becomes insolvent—

- (a) on the making by the supervisory authority in the institution’s home State of a declaration that deposits held by the institution are no longer available; or
- (b) on the making by a court in any part of the United Kingdom, or in an EEA State other than the institution’s home State, of a judicial ruling which—
 - (i) directly relates to the institution’s financial circumstances; and
 - (ii) has the effect of suspending the ability of depositors to make claims against the institution,

but only if, in a case falling within paragraph (b) above, deposits made with the institution have become due and payable and have not been repaid.

(3) For those purposes—

- (a) an institution which has become insolvent by virtue of such a determination or declaration as is mentioned in subsection (1)(a) or (2)(a) above ceases to be insolvent on any withdrawal of the determination or declaration; and
- (b) an institution which has become insolvent by virtue of such a judicial ruling as is mentioned in subsection (1)(b) or (c) or (2)(b) above ceases to be insolvent on any reversal of the ruling (whether on appeal or otherwise).

(4) In relation to a UK institution or participating non-EEA institution, it shall be the duty of the Bank—

- (a) to make such a determination as is mentioned in subsection (1)(a) above within 21 days of its being satisfied as there mentioned; and
 - (b) to withdraw such a determination within 21 days of its ceasing to be so satisfied.
- (5) In this section—
- (a) any reference to a UK institution includes references to a former UK institution, and to a former authorised institution which is incorporated in or formed under the law of any part of the United Kingdom;
 - (b) any reference to a participating EEA institution includes references to a former participating EEA institution, and to a former authorised institution which is incorporated in or formed under the law of an EEA State other than the United Kingdom; and
 - (c) any reference to a participating non-EEA institution includes references to a former participating non-EEA institution, and to a former authorised institution which is incorporated in or formed under the law of a country or territory which is outside the European Economic Area.”

Protected deposits

32.—(1) For subsections (1) to (4) of section 60 of the 1987 Act⁽¹⁷⁾ (protected deposits) there shall be substituted the following subsections—

“(1) Subject to the provisions of this section, in relation to an institution in respect of which a payment falls to be made under section 58(1) above, any reference in this Act to a depositor’s protected deposit is a reference to the liability of the institution to him in respect of—

- (a) the principal amount of each deposit in an EEA currency which was made by him with a United Kingdom office of the institution before the time when the institution became insolvent and has become due and payable; and
- (b) accrued interest on any such deposit up to the time when it became due and payable,

but so that the total liability of the institution to him in respect of such deposits does not exceed £20,000, or the sterling equivalent of 22,222 ecus immediately before the time when the institution became insolvent, whichever is the greater.

(2) In calculating a depositor’s protected deposit for the purposes of subsection (1) above, the amount to be taken into account as regards any deposit made in another EEA currency shall be its sterling equivalent immediately before the time when the institution became insolvent, or the time when the deposit became due and payable, whichever is the later.

(2A) In its application to UK institutions, subsection (1) above shall have effect as if any reference to United Kingdom offices included a reference to offices in other EEA States.

(3) For the purposes of subsection (1) above no account shall be taken of any liability unless—

- (a) proof of the debt, or a claim for repayment of the deposit, which gives rise to the liability has been lodged with a liquidator or administrator of the institution; or
- (b) the depositor has provided the Board with all such written authorities, information and documents as, in the event of a liquidator or administrator being appointed, the Board will need for the purpose of lodging and pursuing, on the depositor’s

⁽¹⁷⁾ 1987 c. 22; section 60 was amended by the Banking Coordination (Second Council Directive) Regulations 1992 (S.I. 1992/3218), regulation 47 and Schedule 8, paragraph 16.

behalf, a proof of the debt, or a claim for the repayment of the deposit, which gives rise to the liability.

(4) In subsection (3) above, in relation to an institution incorporated in or formed under the law of a country or territory outside the United Kingdom—

- (a) references to a liquidator or administrator include references to a person whose functions appear to the Board to correspond as nearly as may be to those of a liquidator or administrator; and
- (b) references to the lodging, or the lodging and pursuing, of a proof of the debt, or a claim for the repayment of the deposit, which gives rise to the liability include references to the doing of an act or acts which appear to the Board to correspond as nearly as may be to the lodging, or the lodging and pursuing, of such a proof or claim.”

(2) In subsection (5) of that section, for the words “subsections (1) and (2)” there shall be substituted the words “subsection (1)”.

(3) For subsection (6) of that section there shall be substituted the following subsections—

“(6) In determining the liability or total liability of an institution to a depositor for the purposes of subsection (1) above, no account shall be taken of any liability in respect of a deposit if—

- (a) it is a secured deposit; or
- (b) it is a deposit which is own funds within the meaning given by Article 2 of Directive [89/299/EEC\(18\)](#); or
- (c) it is a deposit which the Board is satisfied was made in the course of a money-laundering transaction; or
- (d) it is a deposit by a person mentioned in item 1 or 2 of Annex I to Directive [94/19/EC\(19\)](#) which was made otherwise than as trustee for a person not so mentioned; or
- (e) the institution is a former UK institution or former authorised institution and the deposit was made after it ceased to be a UK institution or authorised institution unless, at the time the deposit was made, the depositor did not know, and could not reasonably be expected to have known, that it had ceased to be a UK institution or authorised institution; or
- (f) the institution is a former participating EEA institution and the deposit was made after it ceased to be a participating EEA institution; or
- (g) the institution is a former participating non-EEA institution and the deposit was made after it ceased to be a participating non-EEA institution unless the Board is satisfied—
 - (i) that the depositor is entitled under the institution’s home State scheme to a payment in respect of the deposit; and
 - (ii) that he has not received, and has no prospect of receiving, that payment;and references in paragraph (e) above to an institution ceasing to be an authorised institution include references an institution ceasing to be a recognised bank or licensed institution under the Banking Act 1979.

(6A) A transaction in connection with which an offence has been committed under—

(18) O.J. L124, 5.5.89, page 16.

(19) O.J. L135, 31.5.94, page 5.

- (a) any enactment specified in regulation 2(3) of the Money Laundering Regulations 1993⁽²⁰⁾; or
 - (b) any enactment in force in another EEA State, or in a country or territory outside the European Economic Area, which has effect for the purpose of prohibiting money laundering within the meaning of Article 1 of Directive 91/308/EEC⁽²¹⁾, is a money-laundering transaction for the purposes of subsection (6)(c) above at any time if, at that time, a person stands convicted of the offence or has been charged with the offence and has not been tried.”
- (4) In subsection (7) of that section—
- (a) the words “or (2)”, in both places where they occur, shall be omitted; and
 - (b) for the words “or, as the case may be, subject to the administration order against any such sterling deposit” there shall be substituted the words “against any such deposit in an EEA currency”.
- (5) Subsection (8) of that section shall be omitted.

Trustee deposits, joint deposits etc.

33. After subsection (10) of section 61 of the 1987 Act (trustee deposits, joint deposits etc.) there shall be inserted the following subsection—

“(11) In the application of this section in relation to deposits made with an office of a UK institution in another EEA State, references to persons entitled in any of the following capacities, namely—

- (a) as trustees;
- (b) as bare trustees;
- (c) as members of a partnership; or
- (d) as persons jointly entitled,

shall be construed as references to persons entitled under the law of that State in a capacity appearing to the Board to correspond as nearly as may be to that capacity.”

Liability of institution in respect of compensation payments

34.—(1) In subsection (1) of section 62 of the 1987 Act⁽²²⁾ (liability of institution in respect of compensation payments), the following shall be omitted, namely—

- (a) in paragraph (a), the words “or an administration order is in force in relation to it”; and
- (b) in paragraph (b), the words “or of the making of that order”.

(2) In subsection (2) of that section—

- (a) for the words “that is insolvent” there shall be substituted the words “that is being wound up”; and
- (b) in paragraph (a), for the words “became insolvent” there shall be substituted the words “began to be wound up”.

(3) In subsection (4) of that section, for the words “in relation to which an administration order is in force” there shall be substituted the words “that is not being wound up”.

⁽²⁰⁾ S.I. 1993/1933.

⁽²¹⁾ O.J. L166, 28.6.91, page 77.

⁽²²⁾ 1987 c. 22; section 62 was amended by the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405) (N.I. 19), article 381(2) and Schedule 9, Part II, paragraph 52.

(4) In subsection (5) of that section, for the words “becomes insolvent after an administration order has been in force relation to it” there shall be substituted the words “is wound up after it has become insolvent”.

Power to obtain information

35.—(1) For subsection (2) of section 65 of the 1987 Act⁽²³⁾ (power to obtain information) there shall be substituted the following subsection—

“(2) Subsections (4), (5), (11) and (13) of section 39 above shall have effect in relation to any requirement imposed under subsection (1) above on a UK institution or participating non-EEA institution as they have effect in relation to a requirement imposed under this section.”

(2) In subsection (3) of that section, for the words from “the liquidator” to “require him” there shall be substituted the words “an insolvent institution or, where a person has been appointed as liquidator or administrator of such an institution, on that person, require the institution or person”.

(3) In subsection (4) of that section—

- (a) for the words “having become insolvent” there shall be substituted the words “being wound up”; and
- (b) for the words “the Official Assignee for company liquidations or in bankruptcy” there shall be substituted the words “the Official Receiver for Northern Ireland”.

Part IV

Amendments of Part IV of 1986 Act

Function of Investor Protection Board

36.—(1) In subsection (1) of section 24 of the 1986 Act (the Investor Protection Board), for paragraph (b) there shall be substituted the following paragraph—

“(b) shall, if a participating institution becomes insolvent, levy contributions to the Fund from other participating institutions in accordance with section 26; and.”

(2) In subsection (3) of that section, for the words “sections 25 to 29” there shall be substituted the words “sections 25 to 29A”.

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

“(4) In this section and the protective scheme provisions—

‘the 1992 Regulations’ means the Banking Coordination (Second Council Directive) Regulations 1992⁽²⁴⁾;

‘the 1995 Regulations’ means the Credit Institutions (Protection of Depositors) Regulations 1995;

‘ecu’ means—

- (a) the European currency unit as defined in Article 1 of Council Regulation No. 3320/94/EC⁽²⁵⁾; or

⁽²³⁾ 1987 c. 22; section 65 was amended by the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405) (N.I. 19), article 381(2) and Schedule 9, Part II, paragraph 53.

⁽²⁴⁾ S.I. 1992/3218; amended by S.I. 1993/3225.

⁽²⁵⁾ O.J. L35, 31.12.94, page 1.

(b) except in section 27(5A), any other unit of account which is defined by reference to the European currency unit as so defined;

‘EEA currency’ means the currency of an EEA State or ecus;

‘EEA State’ means a State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992(26) as adjusted by the Protocol signed at Brussels on 17th March 1993(27);

‘European authorised institution’ has the same meaning as in the 1992 Regulations;

‘home State’ and ‘home State scheme’ have the same meaning as in the 1995 Regulations;

‘Irish building society’ means an institution which is incorporated in or formed under the laws of the Republic of Ireland and whose characteristics correspond as nearly as may be to those of a building society;

‘participating EEA institution’ means—

(a) a European authorised institution which, in accordance with Chapter I of Part II of the 1995 Regulations, is participating in the scheme established by the protective scheme provisions; or

(b) an institution which was formerly such an institution and continues to have a liability in respect of any investment for which it had a liability when it was such an institution;

‘participating institution’ means a building society or participating EEA institution.”

The Investor Protection Fund

37.—(1) In subsection (1) of section 25 of the 1986 Act(28) (the Investor Protection Fund), for the words “building societies” there shall be substituted the words “participating institutions”.

(2) After subsection (3) of that section there shall be inserted the following subsection—

“(3A) In subsection (3) above, the reference to Treasury bills includes a reference to bills and other short-term instruments issued by the government of another EEA State and appearing to the Bank of England to correspond as nearly as may be to Treasury bills:”

(3) In subsection (5) of that section, in the definition of “the expenses attributable to the insolvency”, for the words “building society” there shall be substituted the words “participating institution”.

Meaning of insolvency etc.

38. After section 25 of the 1986 Act there shall be inserted the following section—

“Meaning of insolvency etc.

25A.—(1) For the purpose of the protective scheme provisions of this Part, a building society becomes insolvent—

(a) on the making by the Commission of a determination that, for reasons which directly relate to the society’s financial circumstances, the society—

(26) Cm 2073.

(27) Cm 2183.

(28) 1986 c. 53; section 25 was amended by the Banking Act 1987 (c. 22), section 108(1) and Schedule 6, paragraph 26(2) and (3), and section 108(2) and Schedule 7, Part I, and extended by the Banking Coordination (Second Council Directive) Regulations 1992 (S.I. 1992/3218), regulation 82(1) and Schedule 10, paragraph 22.

- (i) is unable to repay investments which are due and payable; and
 - (ii) has no current prospect of being able to do so; or
 - (b) on the making by a court in any part of the United Kingdom, or in another EEA State, of a judicial ruling which—
 - (i) directly relates to the society's financial circumstances; and
 - (ii) has the effect of suspending the ability of investors to make claims against the society,but only if investments made with the society have become due and payable and have not been repaid; and the occurrence of any of those events in those circumstances constitutes a 'participating institution insolvency' for the purposes of those provisions.
- (2) For the purposes of the protective scheme provisions of this Part, a participating EEA institution becomes insolvent—
 - (a) on the making by the supervisory authority in the institution's home State of a declaration that investments held by the institution are no longer available; or
 - (b) on the making by a court in any part of the United Kingdom, or in an EEA State other than the institution's home State, of a judicial ruling which—
 - (i) directly relates to the institution's financial circumstances; and
 - (ii) has the effect of suspending the ability of investors to make claims against the institution,but only if, in a case falling within paragraph (b) above, investments made with the society have become due and payable and have not been repaid; and the occurrence of any of those events, in those circumstances in a case falling within that paragraph, constitutes a 'participating institution insolvency' for the purposes of those provisions.
- (3) For the purposes of the protective scheme provisions of this Part—
 - (a) a participating institution which has become insolvent by virtue of such a determination or declaration as is mentioned in subsection (1)(a) or (2)(a) above ceases to be insolvent on any withdrawal of the determination or declaration; and
 - (b) a participating institution which has become insolvent by virtue of such a judicial ruling as is mentioned in subsection (1)(b) or (2)(b) above ceases to be insolvent on any reversal of the ruling (whether on appeal or otherwise).
- (4) In relation to a building society, it shall be the duty of the Commission—
 - (a) to make such a determination as is mentioned in subsection (1)(a) above within 21 days of its being satisfied as there mentioned; and
 - (b) to withdraw such a determination within 21 days of its ceasing to be so satisfied.
- (5) In this section 'investment'—
 - (a) in relation to a building society or Irish building society, means a deposit with or a share in the society;
 - (b) in relation to any other participating institution, means a deposit with the institution."

Duty to levy contributions etc.

39.—(1) In section 26 of the 1986 Act⁽²⁹⁾ (power to levy contributions etc.), subsection (1), which is superseded by regulation 38 above, shall be omitted.

(2) For subsections (2) to (6) of that section there shall be substituted the following subsections—

“(2) If a participating institution becomes insolvent the Board shall levy contributions to the Fund for the purpose of making insolvency payments to investors at such level of investor protection as is provided for by section 27 and meeting the other expenses attributable to the insolvency.

(3) All institutions (other than the insolvent institution) which on the date of the insolvency are—

- (a) authorised building societies; or
- (b) European authorised institutions which, in accordance with Chapter I of Part II of the 1995 Regulations, are participating in the scheme established by the protective scheme provisions,

are liable to contribute to the Fund and are in the protective scheme provisions of this Part referred to as ‘contributory institutions’.

(4) If a participating institution becomes insolvent—

- (a) the Board shall, subject to subsection (10) below, levy a contribution from each of the contributory institutions; and
- (b) the amount of the contribution due from an institution shall be determined by applying to its share and deposit base a percentage determined by the Board for the purpose of the contributions levied to meet the expenses attributable to the insolvency.

(5) In determining the percentage to be applied under subsection (4) above to the share and deposit bases of contributory institutions, the Board shall have regard to the factors specified in subsection (6) below.

(6) Those factors are—

- (a) the amount available to meet the expenses attributable to the insolvency from the contributions leviable from contributory institutions; and
- (b) the amount of the expenses attributable to the insolvency at the level of investor protection provided for by section 27.”

(3) In subsection (7) of that section—

- (a) for the words “building society” there shall be substituted the words “participating institution”;
- (b) for the words “determined by the Board under” there shall be substituted the words “provided for by”; and
- (c) for the words “contributory societies” there shall be substituted the words “contributory institutions”.

(4) In subsection (8) of that section—

- (a) for the words “contributory society” there shall be substituted the words “contributory institution”; and
- (b) for the words “the society”, in both places where they occur, there shall be substituted the words “the institution”.

⁽²⁹⁾ 1986 c. 53; section 26 was amended by the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405) (N.I. 19), article 381(2) and Schedule 9, Part II, paragraph 42.

(5) For subsection (9) of that section there shall be substituted the following subsections—

“(8A) Where—

- (a) a notice under subsection (8) above is served on a contributory institution; and
- (b) the amount specified in the notice remains unpaid after the period of twenty-one days mentioned in that subsection,

the Board shall as soon as practicable give written notice of that fact to the Commission.

(9) In relation to any contribution, the share and deposit base of an authorised building society is such amount as represents the aggregate of so much of the society’s liabilities as is referable to sums deposited with the society, or to shares in the society, as shown in the latest balance sheet sent to the Commission in accordance with section 81.

(9A) In relation to any contribution, the share and deposit base of a participating EEA institution is the difference between—

- (a) such amount as represents the aggregate of so much of the institution’s liabilities as is referable to sums deposited with the institution, or (in the case of an Irish building society) to shares in the institution, as shown in the latest balance sheet sent to the supervisory authority in its home State; and
- (b) the amount mentioned in subsection (9B) below.

(9B) The amount referred to in subsection (9A) above is the amount given by the formula

—

$$PA \times \frac{HS}{UK}$$

where—

PA = so much of the first-mentioned amount as is attributable to deposits which are protected by the institution’s home State scheme;

HS = the level of protection (expressed in ecus) afforded by that scheme at the time as at which the balance sheet was drawn up, or the level of protection mentioned below, whichever is the less;

UK = the level of protection (so expressed) afforded by this Part of this Act at that time.”

(6) In subsection (10) of that section—

- (a) for the words “contributory society” there shall be substituted the words “contributory institution”;
- (b) for the words “building society” there shall be substituted the words “participating institution”; and
- (c) for the word “society's” there shall be substituted the word “institution's”.

(7) In subsection (11) of that section—

- (a) for the words “a society” there shall be substituted the words “an institution”; and
- (b) for the words “contributory societies” there shall be substituted the words “contributory institutions”.

(8) In subsection (14) of that section, for the words “building society” there shall be substituted the words “participating institution”.

(9) In subsection (15) of that section, for the words “contributory societies” there shall be substituted the words “contributory institutions”.

(10) In subsection (16) of that section—

- (a) for the words “building society” there shall be substituted the words “participating institution”; and
- (b) for the words “contributory societies” there shall be substituted the words “contributory institutions”.

Payments to investors

40.—(1) For subsections (1) and (2) of section 27 of the 1986 Act⁽³⁰⁾ (payments to investors) there shall be substituted the following subsections—

“(1) Subject to the following provisions of this section, if at any time a participating institution becomes insolvent, the Board—

- (a) shall as soon as practicable pay out of the Fund to persons who have at that time protected investments in the institution which are due and payable amounts equal to 90 per cent of their protected investments; and
- (b) shall in any event secure that, before the end of the relevant period, it is in a position to make those payments as soon as they fall to be made.

(2) If at any time a participating institution ceases to be insolvent, subsection (1) above shall cease to apply in relation to that institution.

(2A) In subsection (1) above “the relevant period” means—

- (a) the period of three months beginning with the time when the institution becomes insolvent; or
- (b) that period and such additional period or periods, being not more than three and of not more than three months each, as the Commission may in exceptional circumstances allow.”

(2) In subsection (3) of that section, for the words “insolvent building society” there shall be substituted the words “insolvent participating institution”.

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

“(3A) The amount of any payment which falls to be made under subsection (1) above in respect of a protected investment made with an office of a building society in another EEA State shall not exceed such amount as the Board may determine is or would be payable, in respect of an equivalent investment or deposit made with an institution authorised in that State, under any corresponding scheme for the protection of investors or depositors which is in force in that State.

(3B) Where the Board is satisfied that an investor has received or is entitled to receive, under any home State scheme, a payment in respect of a protected investment made with a United Kingdom office of a participating EEA institution, the Board shall deduct an amount equal to that payment from the payment that would otherwise be made to the investor under subsection (1) above.”

(4) In subsection (4) of that section, for the word “society's” there shall be substituted the word “institution's”.

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

“(4A) There shall be deducted from any payment to be made by the Board under subsection (1) above in respect of a protected investment any payment already made in respect of that investment by a liquidator of the institution; and in this subsection, in relation to an institution formed under the law of a country or territory outside the United Kingdom,

⁽³⁰⁾ 1986 c. 53; section 27 was amended by the Banking Act 1987 (c. 22), section 108(1) and Schedule 6, paragraph 26(3) and by the Building Societies Investor Protection Scheme (Maximum Protected Investment) Order 1987 (S.I. 1987/1349), article 2.

the reference to a liquidator includes a reference to a person whose functions appear to the Board to correspond as nearly as may be to those of a liquidator.

(5) For the purposes of this section in its application in relation to a participating institution which has become insolvent—

- (a) a person has at any time a protected investment in the institution if he has a deposit with the institution in an EEA currency or, in the case of a building society or Irish building society, a share in the society; and
- (b) his protected investment is the total liability of the institution to him, limited to the maximum mentioned in subsection (5A) below, which is referable to sums deposited with the institution or, in the case of a building society or Irish building society, to shares in the society.

(5A) The maximum is £20,000 or the sterling equivalent of 22,222 ecus immediately before the institution became insolvent, whichever is the greater.

(5B) In calculating a person's protected investment for the purposes of subsection (5) above, the amount to be taken into account as regards any deposit made in another EEA currency shall be its sterling equivalent immediately before the time when the institution became insolvent, or the time when the investment became due and payable, whichever is the later.

(5C) In its application to a participating EEA institutions, subsection (5) above shall have effect as if any reference to a deposit with, or sums deposited with, the institution were a reference to a deposit with or sums deposited with, a United Kingdom office of the institution.”

(6) In subsection (6) of that section—

- (a) in paragraph (a), for the words “subsection (2)” there shall be substituted the words “subsection (1)” and for the words “such other percentage” there shall be substituted the words “such greater percentage”; and
- (b) for paragraph (b) there be substituted the following paragraph—

“(b) amend subsection (5A) above so as to substitute for either sum for the time being specified in that subsection such greater sum as may be specified in the order.”

(7) For subsections (8) and (9) of that section there shall be substituted the following subsections

“(8) In determining whether a person has a protected investment in a participating institution and the amount of it there shall be disregarded—

- (a) any deposit or shares which are own funds within the meaning given by Article 2 of Directive [89/299/EEC](#)(**31**);
- (b) any deposit made or share acquired by a credit institution on its own behalf and for its own account;
- (c) any deposit or share which the Board is satisfied was made or acquired in the course of a money-laundering transaction;
- (d) any deposit by a person mentioned in item 1 or 2 of Annex I to Directive [94/19/EC](#)(**32**) which was made otherwise than as trustee for a person not so mentioned;
- (e) any deposit, security or liability which falls within item 10 or 12 of that Annex; and

(31) O.J. L124, 5.5.89, page 16.

(32) O.J. L135, 31.5.94, page 5.

- (f) in the case of an institution which has ceased to be a European authorised institution which, in accordance with Chapter I of Part II of the 1995 Regulations, is participating in the scheme established by the protective scheme provisions, any deposit made with the institutions after it ceased to be a such an institution.

(8A) Paragraph (b) of subsection (8) above has effect subject to the provisions of Schedule 6 to this Act; and a transaction in connection with which an offence has been committed under—

- (a) any enactment specified in a regulation 2(3) of the Money Laundering Regulations 1993⁽³³⁾; or
- (b) any enactment in force in another EEA State, or in a country or territory outside the European Economic Area, which has effect for the purpose of prohibiting money laundering within the meaning of Article 1 of Directive 91/308/EEC⁽³⁴⁾,

is a money-laundering transaction for the purposes of paragraph (c) of that subsection at any time if, at that time, a person stands convicted of the offence or has been charged with the offence and has not been tried.

(9) In determining what is a protected investment of an investor, no account shall be taken of any liability unless—

- (a) proof of the debt, or a claim for repayment of the investment, which gives rise to the liability has been lodged with a liquidator of the institution; or
- (b) the investor has provided the Board with all such written authorities, information and documents as, in the event of a liquidator being appointed, the Board will need for the purpose of lodging and pursuing, on the investor's behalf, a proof of the debt, or a claim for the repayment of the investment, which gives rise to the liability.

(9A) In subsection (9) above, in relation to an institution incorporated in or formed under the law of an EEA State other than the United Kingdom—

- (a) references to a liquidator include references to a person whose functions appear to the Board to correspond as nearly as may be to those of a liquidator; and
- (b) references to the lodging, or the lodging and pursuing, of a proof of the debt, or a claim for the repayment of the deposit, which gives rise to the liability include references to the doing of an act or acts which appear to the Board to correspond as nearly as may be to the lodging, or the lodging and pursuing, of such a proof or claim,”

(8) In subsection (10) of that section—

- (a) for the words “building society” there shall be substituted the words “participating institution”; and
- (b) for the words “the society”, in both places where they occur, there shall be substituted the words “the institution”.

(9) In subsection (11) of that section, for the words “building society” there shall be substituted the words “participating institution”.

⁽³³⁾ S.I. 1993/1933.

⁽³⁴⁾ O.J. L166, 28.6.91, page 77.

Liability of insolvent institution in respect of payments made by Board

41.—(1) For subsection (1) of section 28 of the 1986 Act⁽³⁵⁾ (liability of insolvent society in respect of payments by Board) there shall be substituted the following subsection—

“(1) This section applies where—

- (a) a participating institution becomes insolvent, and
- (b) the Board, by reason of the insolvency, has made, or is under a liability to make, an insolvency payment to an investor in respect of his protected investment.”

(2) In subsection (2) of that section—

- (a) after the words “Where this section applies” there shall be inserted the words “in respect of an institution that is being wound up”;
- (b) for the words “insolvent society” there shall be substituted the word “institution”;
- (c) for the words “the society”, in each place where they occur, there shall be substituted the words “the institution”;
- (d) for the words “became insolvent” there shall be substituted the words “began to be wound up”; and
- (e) for the words “insolvent building society” there shall be substituted the word “institution”.

(3) In subsection (3) of that section, for the word “society's” there shall be substituted the word “institution's”.

(4) After subsection (5) of that section there shall be inserted the following subsections—

“(5A) Where this section applies in respect of an institution that is not being wound up—

- (a) the institution shall, at the time when the insolvency payment falls to be made by the Board, become liable to the Board for an amount equal to that payment; and
- (b) the liability of the institution to the investor shall be reduced by an amount equal to that payment.

(5B) Where a participating institution is wound up after it has become insolvent subsections (2) to (5) above shall not apply to any insolvency payment to the extent to which the Board has received a payment in respect of it by virtue of subsection (5A)(a) above.”

(5) In subsection (6) of that section, for the word “society” there shall be substituted the word “institution”.

(6) Subsections (7) and (8) of that section (which are superseded by regulation 43 below) shall be omitted.

(7) In subsection (9) of that section, after the words “this section” there shall be inserted the words “and section 29A(3) to (5)”.

Repayments in respect of contributions

42.—(1) In subsection (1) of section 29 of the 1986 Act (repayments in respect of contributions), for the words “building society” there shall be substituted the words “participating institution”.

(2) In subsection (2) of that section—

- (a) for the words “building society” there shall be substituted the words “participating institution”;
- (b) for the words “contributory societies” there shall be substituted the words “contributory institutions”; and

⁽³⁵⁾ 1986 c. 53; section 28 was amended by the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405) (N.I. 19), article 381(2) and Schedule 9, Part II, paragraph 43.

- (c) for the words “such society” there shall be substituted the words “such institution”.
- (3) In subsection (3) of that section, for the words “building society” there shall be substituted the words “participating institution”.
- (4) In subsection (4) of that section—
 - (a) for the words “building societies” there shall be substituted the words “participating institutions”;
 - (b) for the words “building society”, in both places where they occur, there shall be substituted the words “participating institution”; and
 - (c) for the words “those societies”, in both places where they occur, there shall be substituted the words “those institutions”.
- (5) In subsection (5) of that section, for the word “societies”, in both places where it occurs, there shall be substituted the word “institutions”.
- (6) In subsection (7) of that section—
 - (a) for the words “contributory societies” there shall be substituted the words “contributory institutions”; and
 - (b) for the word “society” there shall be substituted the word “institution”.
- (7) In subsection (8) of that section—
 - (a) for the words “building societies” there shall be substituted the words “participating institutions”; and
 - (b) for the words “contributory societies” there shall be substituted the words “contributory institutions”.

Power to obtain information

43. After section 29 of the 1986 Act there shall be inserted the following section—

“Power to obtain information.

29A.—(1) If required to do so by a request in writing made by the Board, the Commission may by notice in writing served on a contributory institution require the institution, within such time and at such place as may be specified in the notice, to furnish the Board with such information and to produce to it such documents, or documents of such a description, as the Board may reasonably require for the purpose of determining the contributions of the institution under this Part of this Act.

(2) Subsections (6) to (10) of section 52⁽³⁶⁾ shall have effect in relation to any requirement imposed under subsection (1) above on a building society as they have effect in relation to a requirement imposed under that section.

(3) The Board may by notice in writing served on an insolvent participating institution or, where a person has been appointed as liquidator of such an institution, on that person, require the institution or person, at such time or times and at such place as may be specified in the notice—

- (a) to furnish the Board with such information; and
- (b) to produce to the Board such books or papers specified in the notice,

as the Board may reasonably require to enable it to carry out its functions under the protective scheme provisions of this Part.

⁽³⁶⁾ Section 52 was amended by the Banking Coordination (Second Council Directive) Regulations 1992 (S.I. 1992/3218), regulation 75.

(4) Where, as a result of a participating institution being wound up, any books or papers have come into the possession of the office-holder mentioned in subsection (5) below, he shall permit any person duly authorised by the Board to inspect the books or papers for the purpose of establishing—

- (a) the identity of those of the institution's investors to whom the Board is liable to make an insolvency payment; and
 - (b) the amount of the protected investment held by each of those investors.
- (5) The office-holder referred to in subsection (4) above is—
- (a) in England and Wales, the Official Receiver;
 - (b) in Scotland, the liquidator; and
 - (c) in Northern Ireland, the Official Receiver for Northern Ireland.”

Trusts and joint or client account holdings

44. After paragraph 7 of Schedule 6 to the 1986 Act (trusts and joint or client account holdings) there shall be inserted the following paragraph—

“(8) In the application of this Schedule in relation to investments in an office of a building society in another EEA State, references to persons entitled in any of the following capacities, namely—

- (a) as trustees;
- (b) as partners; or
- (c) as persons jointly entitled other than as trustees,

shall be construed as references to persons entitled under the law of that State in a capacity appearing to the Board to correspond as nearly as may be to that capacity.”

Part V

Miscellaneous and supplemental

Miscellaneous

Meaning of “deposit” in 1987 Act

45.—(1) In subsection (1) of section 5 of the 1987 Act (meaning of “deposit”), after the word “money” in the first place where it occurs, there shall be inserted the words “(whether denominated in a currency or in ecus)”.

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

“(1A) In subsection (1) above ‘ecu’ means—

- (a) the European currency unit as defined in Article 1 of Council Regulation No. 3320/94/EC(37)
- (b) any other unit of account which is defined by reference to the European currency unit as so defined.”

Information to be supplied on request

46.—(1) Each of the following, namely, a UK institution, a building society, an EEA institution and a non-EEA institution, shall secure that the information required by paragraph (4) below is supplied to any depositor or intending depositor who requests it—

- (a) immediately in a case of a request made at a United Kingdom office of the institution; and
- (b) as soon as practicable in any other case.

(2) In its application to UK institutions or building societies which accept deposits at offices in EEA States other than the United Kingdom, paragraph (1) above shall have effect as if the reference to a United Kingdom office included a reference to an office in such a State.

(3) Any information supplied in pursuance of paragraph (1) above shall be supplied in English except that, where the request is made at an office in an EEA State other than the United Kingdom, it shall be supplied instead in an official language of that State.

(4) The information required by this paragraph is as follows—

- (a) in the case of a UK institution or building society—
 - (i) a summary of the provisions of the relevant UK scheme; and
 - (ii) where the institution or society participates in a relevant host State scheme, details of the level and scope of the supplementary protection afforded by that scheme;
- (b) in the case of an EEA institution—
 - (i) a summary of the provisions of its home State scheme; and
 - (ii) where the institution participates in a UK scheme, details of the level and scope of the supplementary protection afforded by that scheme;
- (c) in the case of a non-EEA institution which is participating in the deposit protection scheme, a summary of the provisions of that scheme;
- (d) in the case of a non-EEA institution which is not so participating, a summary of the provisions of its home State scheme.

(5) Any reference in paragraph (4) above to a summary of the provisions of a scheme is a reference to a summary of those provisions which includes (but is not limited to) details of the level and scope of the protection afforded by the Scheme.

(6) Any reference in paragraph (4) above—

- (a) to a summary of the provisions of a scheme; or
- (b) to details of the level and scope of the supplementary protection afforded by a scheme,

includes a reference to a summary of any conditions that must be fulfilled, and any procedural steps that must be taken, before payments may be made in pursuance of the scheme.

(7) A host State scheme is a relevant host State scheme for the purposes of paragraph (4) above if the request is made at or is communicated to an office in the EEA State in which that scheme is in force.

(8) If the relevant authority is satisfied that it is necessary to do so—

- (a) for the purpose of enabling a UK institution or building society which is participating in a host State scheme to comply both—
 - (i) with the provisions of this regulation; and
 - (ii) with the corresponding provisions of the law of the EEA State in which that scheme is in force; or
- (b) for the purpose of enabling an EEA institution to comply both—
 - (i) with the provision of this regulation; and

(ii) with the corresponding provisions of the law of its home State,
the relevant authority may, on the application or with the consent of the institution or society, by order direct that any of the provisions of this regulation shall apply in relation to the institution or society with such modifications as may be specified in the order.

(9) In this regulation—
“the relevant authority”—

(a) in relation to a UK institution or EEA institution, means the Bank;

(b) in relation to a building society, means the Commission;

“the relevant UK scheme”—

(a) in relation to a UK institution, means the deposit protection scheme;

(b) in relation to a building society, means the investor protection scheme.

(10) For the purposes of this regulation and regulations 47 and 48 below—

(a) any reference to an EEA institution’s home State scheme includes a reference to any alternative permitted system or arrangement for the protection of depositors which is in force in the institution’s home State and in which the institution participates;

(b) any reference to an EEA institution participating in a UK scheme is a reference to it doing so in accordance with Chapter I of Part II of these Regulations;

(c) any reference to a non-EEA institution participating in the deposit protection scheme is a reference to it not being one—

(i) which has, in accordance with Chapter III of Part II of these Regulations, elected not to participate in that scheme; and

(ii) whose election under that Chapter is still in force; and

(d) any reference to a non-EEA institution not so participating shall be construed accordingly.

Information in explanatory literature

47.—(1) Each of the following, namely, a UK institution, a building society, an EEA institution and a non-EEA institution, shall secure that either the information required by regulation 46(4) above or the information required by paragraphs (2) and (3) below is included in any explanatory literature which—

(a) relates to the making of deposits; and

(b) is supplied to depositors or intending depositors by the institution or society in the ordinary course of business.

(2) The information required by this paragraph is as follows—

(a) in the case of a UK institution or a building society, a statement to the effect—

(i) that most relevant deposits with the institution or society are protected by the relevant UK scheme; and

(ii) where the institution or society participates in a relevant host State scheme, that supplemental protection is afforded to such deposits by that scheme;

(b) in the case of an EEA institution, a statement to the effect—

(i) that most relevant deposits with the institution are protected by its home State scheme; and

(ii) where the institution participates in a UK scheme, that supplemental protection is afforded to such deposits by that scheme;

- (c) in the case of a non-EEA institution which is participating in the deposit protection scheme, a statement to the effect that most relevant deposits with the institution are protected by that scheme;
 - (d) in the case of a non-EEA institution which is not participating in the deposit protection scheme, a statement to the effect that most relevant deposits with the institution are protected by its home State scheme.
- (3) The information required by this paragraph is as follows—
- (a) a statement as to the level of the protection afforded by the scheme or, as the case may be, each of the schemes as respects which a statement is required by paragraph (2) above; and
 - (b) a statement to the effect that additional information about that scheme or each of those schemes may, in accordance with regulation 46 above, be obtained by any depositor or intending depositor who requests it.
- (4) A host State scheme is a relevant host State scheme for the purposes of paragraph (2) above if the explanatory literature is sent from an office in the EEA State in which that scheme is in force.
- (5) Paragraph (8) of regulation 46 above applies for the purposes of this regulation as it applies for the purposes of that regulation.
- (6) In this regulation—
- “ecu” means—
- (a) the European currency unit as defined in Article 1 of Council Regulation No. 3320/94/EC(38); or
 - (b) any other unit of account which is defined by reference to the European currency unit as so defined;
- “EEA currency” means the currency of an EEA State or ecus;
- “relevant deposit”, in relation to a UK institution, a building society, an EEA institution or a non-EEA institution, means a deposit in an EEA currency—
- (a) made with a United Kingdom office of the institution or society; or
 - (b) in the case of a UK institution or building society, made with an office of the institution or society in another EEA State;
- “the relevant UK scheme” has the same meaning as in regulation 46 above.

Information in advertisements

48.—(1) In this regulation “deposit advertisement” means any advertisement containing—

- (a) an invitation to make a deposit; or
- (b) information which is intended or might reasonably be presumed to be intended to lead directly or indirectly to the making of a deposit,

and for the purposes of this regulation an advertisement includes any means of bringing such an invitation or such information to the notice of the person or persons to whom it is addressed and any reference to the issue of an advertisement shall be construed accordingly.

(2) Subject to the provisions of this regulation, no deposit advertisement which is issued in the United Kingdom and relates to any of the following, namely, a UK institution, a building society, an EEA institution and a non-EEA institution, shall include any information about—

- (a) the protection available to its depositors under the relevant UK scheme; or
- (b) the protection so available under any host State scheme or home State scheme.

- (3) A deposit advertisement may include—
- (a) if it relates to a UK institution or a building society, a statement to the effect—
 - (i) that most relevant deposits with the institution or society are protected by the relevant UK scheme; and
 - (ii) where the institution or society participates in a host State scheme, that supplemental protection is afforded to such deposits by that scheme;
 - (b) if it relates to an EEA institution, a statement to the effect—
 - (i) that most relevant deposits with the institution are protected by its home State scheme; and
 - (ii) where the institution participates in a UK scheme, that supplemental protection is afforded to such deposits by that scheme;
 - (c) if it relates to a non-EEA institution which is participating in the deposit protection scheme, a statement to the effect that most relevant deposits with the institution are protected by that scheme;
 - (d) if it relates to a non-EEA institution which is not participating in the deposit protection scheme, a statement to the effect that most relevant deposits with the institution are protected by its home State scheme.
- (4) A deposit advertisement which includes a statement authorised by paragraph (3) above may also include—
- (a) a statement as to the level of the protection afforded by the scheme or, as the case may be, each of the schemes referred to in the statement so authorised; and
 - (b) a statement to the effect that additional information about that scheme or each of those schemes may, in accordance with regulation 46 above, be obtained by any depositor or intending depositor who requests it.
- (5) Nothing in this regulation shall be taken to prohibit the inclusion, in any explanatory literature which relates to the making of deposits and is supplied to depositors or intending depositors in the ordinary course of business, of any information required by regulation 46(4) above.
- (6) In this regulation—
- “relevant deposit” has the same meaning as in regulation 47 above;
 - “the relevant UK scheme”—
 - (a) in relation to a UK institution, means the deposit protection scheme;
 - (b) in relation to a building society, means the investor protection scheme;
 - (c) in relation to a participating EEA institution, means the UK scheme in which it is participating.
- (7) Subsections (6) and (7) of section 32 of the 1987 Act (advertisement regulations) shall apply for the purposes of this regulation as they apply for the purposes of that section; and in subsection (6) of that section as it so applies the reference to deposits shall be construed in accordance with regulation 2(2) above.

Supplemental

Enforcement: UK and non-EEA institutions

49.—(1) In subsection (1A)(**39**) of section 11 of the 1987 Act (revocation of authorisation)—

- (a) in paragraph (e), after the words “the Banking Coordination (Second Council Directive) Regulations 1992” there shall be inserted the words “or the Credit Institutions (Protection of Depositors) Regulations 1995”; and
- (b) in paragraph (f), after the words “Second Council Directive” there shall be inserted the words “or Directive [94/19/EC](#) on deposit-guarantee schemes”.

(2) in its application to a UK institution or participating non-EEA institution, subsection (2) of section 12 of the 1987 Act (restriction of authorisation) shall have effect as if the reference in paragraph (b) to the protection of the institution’s depositors or potential depositors included references to—

- (a) securing the payment by the institution of unpaid contributions; and
- (b) in the case of a UK institution, securing that the institution complies with any obligation imposed by or under the law of another EEA State in connection with its participation in a scheme for the protection of depositors or investors which is in force in that State.

(3) Where the Bank—

- (a) is informed by the Deposit Protection Board of an unpaid contribution of a UK institution or participating non-EEA institution; or
- (b) is informed by a supervisory authority in another EEA State that a UK institution is failing to comply with such an obligation as is mentioned in paragraph (2)(b) above,

the Bank shall, after such consultation with that Board or supervisory authority as it considers appropriate, consider whether to exercise its powers under section 11 or 12 of the 1987 Act.

(4) In this regulation “unpaid contribution”, in relation to an institution, means any amount specified in a notice served on the institution under subsection (2) of section 52 of the 1987 Act which remains unpaid after the period of 21 days mentioned in that subsection.

Enforcement: EEA institutions

50.—(1) In that paragraph (2)(c) of regulation 9 of the 1992 Regulations (power to prohibit the acceptance of deposits), for the words from “by these Regulations” to the end there shall be substituted—

- “(i) by these Regulations or by or under any of the relevant Acts; or
- (ii) by the Credit Institutions (Protection of Depositors) Regulations 1995:.”

(2) In paragraph (2)(d) of that regulation for the words “the implementation of the second Council Directive” there shall be substituted—

- “(i) the implementation of the Second Council Directive; or
- (ii) the implementation of Directive [94/19/EC](#) on deposit-guarantee schemes;.”

(39) Subsection (1A) was inserted by the Banking Coordination (Second Council Directive) Regulations 1992 (S.I. [1992/3218](#)), regulation 28(1).

Enforcement: building societies

51.—(1) In relation to any building society, subsection (1) of section 42 of the 1986 Act⁽⁴⁰⁾ (imposition of conditions on authorisation) shall have effect as if the reference to protecting the investments of the society’s shareholders or depositors included references to—

- (a) securing the payment by the society of unpaid contributions; and
- (b) securing that the society complies with any obligation imposed by or under the law of another EEA State in connection with its participation in a scheme for the protection of depositors or investors which is in force in that State.

(2) In subsection (1A) of section 43 of the 1986 Act⁽⁴¹⁾ (revocation of authorisation)—

- (a) after paragraph (b) there shall be inserted the following paragraph—
 - “(bb) it appears to the Commission that the society has failed to comply with any obligation imposed on it by or under Part IV of this Act;”
- (b) in paragraph (e), after the words “the Banking Coordination (Second Council Directive) Regulations 1992” there shall be inserted the words “or the Credit Institutions (Protection of Depositors) Regulations 1995”; and
- (c) in paragraph (f), after the words “the Second Council Directive” there shall be inserted the words “or Directive [94/19/EC](#) on deposit-guarantee schemes”.

(3) Where the Commission—

- (a) is informed by the Investor Protection Board of an unpaid contribution of a building society; or
- (b) is informed by a supervisory authority in another EEA State that a building society is failing to comply with such an obligation as is mentioned in paragraph (1)(b) above,

the Commission shall, after such consultation with that Board or supervisory authority as it considers appropriate, consider whether to exercise its powers under section 42 or 43 of the 1986 Act.

(4) In this regulation “unpaid contribution”, in relation to a building society, means any amount specified in a notice served on the institution under subsection (8) of section 26 of the 1986 Act which remains unpaid after the period of 21 days mentioned in that subsection.

Consequential amendments

52.—(1) In subsection (2A)⁽⁴²⁾ of section 119 of the 1986 Act (interpretation), after the word “ecu” there shall be inserted the words “(except in Part IV)”.

(2) In the Banking Act 1987 (Advertisements) Regulations 1988⁽⁴³⁾, regulation 6 shall be omitted.

(3) In Schedule 9 to the Insolvency (Northern Ireland) Order 1989⁽⁴⁴⁾ (amendments), paragraphs 42, 43(a), 50(a) and (c) and 51 (which are superseded by regulations 30, 31, 39 and 41 above) shall be omitted.

(4) In Schedule 8 to the 1992 Regulations (amendments of 1987 Act), paragraphs 13 to 16 (which are superseded by Part III of these Regulations) shall be omitted.

⁽⁴⁰⁾ 1986 c. 53; section 42 was amended by the Banking Coordination (Second Council Directive) Regulations 1992 (S.I. 1992/3218), regulation 70.

⁽⁴¹⁾ 1986 c. 53; section 43 was amended by the Banking Coordination (Second Council Directive) Regulations 1992 (S.I. 1992/3218), regulation 71.

⁽⁴²⁾ Subsection (2A) was inserted by regulation 81 of the Banking Coordination (Second Council Directive) Regulations 1992 (S.I. 1992/3218).

⁽⁴³⁾ S.I. 1988/645; amended by S.I. 1992/3218.

⁽⁴⁴⁾ S.I. 1989/2405 (N.I. 19).

Transitional provisions and savings

53.—(1) The provisions of Part III of these Regulations shall not apply in any case where—

- (a) an institution becomes insolvent (within the meaning of Part II of the 1987 Act) at any time before the commencement date and at that time—
 - (i) it is an authorised institution; or
 - (ii) it is a former authorised institution (not being a recognised bank or licensed institution excluded by an order under section 23(2) of the Banking Act 1979; or
- (b) an administration order is made in relation to an institution under section 8 of the Insolvency Act 1986 or under Article 21 of the Insolvency (Northern Ireland) Order 1989 at any time before the commencement date and at that time it is such an institution as is mentioned in sub-paragraph (a)(i) or (ii) above.

(2) The provisions of Part IV of these Regulations shall not apply in any case where a building society becomes insolvent (within the meaning of Part IV of the 1986 Act) at any time before the commencement date.

(3) Where, as regards a UK institution or non-EEA institution, the Bank is satisfied before the commencement date that, for reasons which directly relate to the institution’s financial circumstances, the institution—

- (a) is unable to repay protected deposits which are due and payable; and
- (b) has no current prospect of being able to do so,

the 21 days mentioned in subsection (4)(a) of section 59 of the 1987 Act shall begin to run on that date.

(4) Where, as regards a building society, the Commission is satisfied before the commencement date that, for reasons which directly relate to the society’s financial circumstances, the society—

- (a) is unable to repay investments which are due and payable; and
- (b) has no current prospect of being able to do so,

the 21 days mentioned in subsection (4)(a) of section 25A of the 1986 Act shall begin to run on that date.

(5) In this regulation “authorised institution” and “former authorised institution” have the same meanings as in the 1987 Act.

Transitory provisions

54.—(1) This regulation applies to any institution which—

- (a) is authorised to act as a credit institution by a supervisory authority in Spain or Greece;
- (b) is listed in Annex III to Directive [94/19/EC](#) on deposit-guarantee schemes; and
- (c) accepts or proposes to accept deposits in the United Kingdom.

(2) In relation to any time before 1st January 2000, these Regulations, Part II of the 1987 Act and Part IV of the 1986 Act shall each have effect in relation to an institution to which this regulation applies as if—

- (a) the institution were an authorised institution (within the meaning of the 1987 Act); and
- (b) Spain or, as the case may require, Greece were not an EEA State.

6th June 1995

Timothy Kirkhope
Timothy Wood
Two of the Lords Commissioners of Her
Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations give effect to Directive [94/19/EC](#) on deposit-guarantee schemes. The Directive applies to EEA States which are not EC member States by virtue of Decision No. 18/94 of the EEA Joint Committee dated 28 October 1994. The Regulations come into force on 1st July 1995.

Part I defines various words and expressions for the purposes of the Regulations.

Part II of the Regulations makes provision for credit institutions authorised in other EEA States (“EEA institutions”) to participate in the deposit protection scheme under the Banking Act 1987 (“the 1987 Act”) or the investor protection scheme under the Building Societies Act 1986 (“the 1986 Act”), regulates participation in deposit protection schemes in other EEA States by institutions authorised under the Banking Act (“UK institutions”) and building societies and enables authorised institutions which are not EEA institutions (“non-EEA institutions”) to leave the deposit protection scheme. EEA institutions accepting deposits in the UK may participate in either the deposit protection scheme or the investor protection scheme if the Deposit Protection Board determines that the institution’s home State scheme affords less protection than the corresponding UK scheme (regulation 3). An EEA institution must pay a contribution to the Deposit Protection Board or notify participation to the Investor Protection Board (regulation 4). An EEA institution may withdraw from participation (regulation 5) or be excluded (regulation 6). The Deposit Protection Board’s decisions are subject to appeal (regulation 8). An EEA institution must notify its UK depositors of withdrawal or exclusion from a UK scheme (regulation 9). The relevant Board must consult the home State scheme on an EEA institution’s participation in a UK scheme (regulation 10) and may enter into agreements with that scheme (regulation 11). The Boards must maintain a list of participating EEA institutions (regulation 12). UK institutions and building societies which withdraw or are excluded from host State schemes in other EEA States must notify their depositors there (regulation 13). The 1986 and 1987 Acts are modified to allow the recovery of payments made by host State schemes and the provision of information to them (regulations 14 and 18). The Boards may enter into agreements with host State schemes (regulation 16) and on a UK institution or building society becoming insolvent a declaration is to be made to any relevant host state scheme (regulation 17). Non-EEA institutions need not participate in the 1987 Act scheme if the Deposit Protection Board decides that equivalent protection is afforded to UK depositors under the institution’s home State scheme (regulation 19). A non-EEA institution must notify non-participation in the 1987 Act scheme to the Board (regulation 20). If the Board determines that the institution’s home State scheme offers less cover than the 1987 Act scheme its participation will resume (regulation 21). The Board’s decisions are subject to appeal (regulation 22). A non-EEA institution must notify its UK depositors of non-participation in the scheme (regulation 23) and the Board must maintain a list of participating non-EEA institutions (regulation 24).

Part III of the Regulations amends the 1987 Act as required to give effect to the Directive in the UK. The principal changes relate to the calculation contributions payable by EEA institutions (regulation 27), compensation payments to depositors with UK and EEA institutions (regulation 30), the definition of insolvency (regulation 31) and the definition of protected deposits (regulation 32). Deposits with offices of UK institutions in other EEA States are protected and deposits with UK offices of participating EEA institutions are protected for the excess of the 1987 Act cover over home State cover. Deposits in all EEA currencies and in ecus are protected. Compensation will be payable in and insolvency in respect of nine-tenths of protected deposits up to the higher of £20,000 or the sterling equivalent of 22,222 ecu.

Part IV of the Regulations makes parallel amendments to the 1986 Act with similar effect. Insolvency is defined (regulation 38), the provisions for the levying of contributions and payment of compensation to investors are amended (regulations 39 and 40) and a power for the Board to obtain information is introduced (regulation 43).

Part V of the Regulations contains miscellaneous and supplementary provisions. The 1987 Act is amended to extend to ecu deposits (regulation 45), UK institutions, building societies, EEA institutions and non-EEA institutions are required to provide depositors and intending depositors with information about deposit protection under any applicable scheme (regulations 46 and 47), the deposit protection information which may be included in deposit advertisements issued in the UK is restricted (regulation 48), sanctions are introduced for breach of the Regulations and the Directive by UK institutions, building societies, EEA and non-EEA institutions (regulations 49, 50 and 51) and consequential amendments, transitional provisions and savings and transitory provisions are made (regulations 52, 53 and 54).