
STATUTORY INSTRUMENTS

1992 No. 3218

BANKING

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

Made - - - - *16th December 1992*

Coming into force - - *1st January 1993*

Whereas the Treasury are 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;

And whereas a draft of these Regulations has been approved by a resolution of each House of Parliament pursuant to section 2(2) of and paragraph 2(2) of Schedule 2 to that Act;

Now, therefore, the Treasury in exercise of the powers conferred on them by section 2(2) of that Act and of all other powers enabling them in that behalf hereby make the following Regulations:—

PART I
GENERAL

Citation and commencement

1.—(1) These Regulations may be cited as the Banking Coordination (Second Council Directive) Regulations 1992.

(2) These Regulations shall come into force on 1st January 1993.

Interpretation: general

2.—(1) In these Regulations—

“the Banking Act” means the Banking Act 1987⁽³⁾;

“the Building Societies Act” means the Building Societies Act 1986⁽⁴⁾;

(1) S.I. 1990/1304.
(2) 1972 c. 68.
(3) 1987 c. 22.
(4) 1986 c. 53.

“the Consumer Credit Act” means the Consumer Credit Act 1974⁽⁵⁾;

“the Financial Services Act” means the Financial Services Act 1986⁽⁶⁾;

“the Insurance Companies Act” means the Insurance Companies Act 1982⁽⁷⁾;

“another member State” means a member State other than the United Kingdom;

“appointed representative” has the same meaning as in the Financial Services Act;

“authorised or permitted”, in relation to the carrying on of a listed activity, shall be construed in accordance with regulation 4 or, as the case may be, regulation 21 below;

“the Bank” means the Bank of England;

“the Board” means The Securities and Investments Board⁽⁸⁾;

“branch” means one or more places of business established or proposed to be established in the same member State for the purpose of carrying on home-regulated activities;

“the commencement date” means 1st January 1993;

“the Commission” means the Building Societies Commission;

“connected UK authority”, in relation to a credit or financial institution carrying on or proposing to carry on a listed activity in the United Kingdom, means an authority in the United Kingdom which has regulatory functions in relation to that activity;

“constituent instrument”, in relation to an institution, includes any memorandum or articles of the institution;

“Consumer Credit Act business” means consumer credit business, consumer hire business or ancillary credit business;

“consumer credit business”, “consumer hire business” and “ancillary credit business” have the same meanings as in the Consumer Credit Act;

“credit institution” means a credit institution as defined in article 1 of the First Council Directive, that is to say, an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account;

“delegation order” and “designated agency” have the same meanings as in the Financial Services Act;

“deposit” has the same meaning as in the Banking Act;

“the Director” means the Director General of Fair Trading;

“ecu” means the European currency unit as defined in Article 1 of Council Regulation No. 3180/78/EEC⁽⁹⁾;

“establish”, in relation to a branch, means establish the place of business or, as the case may be, the first place of business which constitutes the branch;

“the European Commission” means the Commission of the Communities;

“European institution”, “European authorised institution” and “European subsidiary” have the meanings given by regulation 3 below;

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- (5) 1974 c. 39.
- (6) 1986 c. 60; various functions of the Secretary of State under the Financial Services Act 1986 have been transferred to the Treasury by the Transfer of Functions (Financial Services) Order 1992 (S.I. 1992/1315).
- (7) 1982 c. 50.
- (8) Various functions under the Financial Services Act 1986 have been transferred to the Securities and Investments Board by the Financial Services Act 1986 (Delegation) Order 1987 (S.I. 1987/942), the Financial Services Act 1986 (Delegation) (No.2) Order 1988 (S.I. 1988/738), the Companies (Commencement No.3, Transitional Provisions and Transfer of Functions under the Financial Services Act 1986) Order 1990 (S.I. 1990/354), the Financial Services Act 1986 (Delegation) Order 1991 (S.I. 1991/200) and the Financial Services Act 1986 (Delegation) (No.2) Order 1991 (S.I. 1991/256).
- (9) OJ No. L379, 30.12.78; the relevant amending instrument is Council Regulation (EEC) No. 1971/89, OJ No. L189, 4.7.89 p.1.

“financial institution” means a financial institution as defined in article 1 of the Second Council Directive, that is to say, an undertaking other than a credit institution the principal activity of which is to acquire holdings or to carry on one or more of the activities listed in points 2 to 12 in the Annex (the text of which is set out in Schedule 1 to these Regulations);

“the First Council Directive” means the First Council Directive on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (No. [77/780/EEC](#))(10);

“home-regulated activity” shall be construed in accordance with regulation 3(7) or, as the case may be, regulation 20(6) below;

“home-regulated investment business”, in relation to a European institution or quasi-European authorised institution, means investment business which consists in carrying on one or more listed activities—

- (a) in relation to which a supervisory authority in its home State has regulatory functions; and
- (b) which, in the case of a European subsidiary, it is carrying on its home State;

“home State”, in relation to an institution incorporated in or formed under the law of another member State, means that State;

“initial capital” means capital as defined in points 1 and 2 of article 2(1) of the Council Directive on the own funds of credit institutions (No. [89/299/EEC](#))(11);

“investment business” has the same meaning as in the Financial Services Act;

“listed activity” means an activity listed in the Annex to the Second Council Directive (list of activities subject to mutual recognition), the text of which is set out in Schedule 1 to these Regulations;

“member” and “rules”, in relation to a recognised self-regulating organisation, have the same meanings as in the Financial Services Act;

“own funds” means own funds as defined in the Council Directive on the own funds of credit institutions (No. [89/299/EEC](#));

“principal”, in relation to an appointed representative, has the same meaning as in the Financial Services Act;

“quasi-European institution”, “quasi-European authorised institution” and “quasi-European subsidiary” have the meanings given by regulation 3(4) below;

“recognised self-regulating organisation” has the same meaning as in the Financial Services Act;

“the relevant supervisory authority”, in relation to another member State, means the authority in that State which has regulatory functions in relation to the acceptance of deposits from the public, whether or not it also has such functions in relation to one or more other listed activities;

“requisite details”, in relation to a branch in the United Kingdom or another member State (whether established or proposed to be established), means—

- (a) particulars of the programme of operations of the business to be carried on from the branch, including a description of the particular home-regulated activities to be carried on and of the structural organisation of the branch;
- (b) the name under which the business is to be carried on and the address in the member State from which information about the business may be obtained; and

(10) OJ No. L322, 17.12.77, p.30, as amended by Council Directive [86/524/EEC](#) (OJ No. L309, 4.11.86, p.15), and by Council Directive No. [89/646/EEC](#) (OJ No. L386, 30.12.89, p.1.).

(11) OJ No. L124, 5.5.89, p.16, as amended by Council Directives [91/633/EEC](#) (OJ No. L339, 11.12.91, p.33) and [92/16/EEC](#) (OJ No. L75, 21.3.92, p.48).

(c) the names of the managers of the business;

“the Second Council Directive” means the Second Council Directive on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions and amending the First Council Directive (No. 89/646/EEC)(12);

“the Solvency Ratio Directive” means the Council Directive on a solvency ratio for credit institutions (No. 89/647/EEC)(13);

“supervisory authority”, in relation to another member State, means an authority in that State which has regulatory functions in relation to one or more listed activities;

“the UK authority”, “UK institution”, “UK authorised institution” and “UK subsidiary” have the meanings given by regulation 20 below;

“voting rights”, in relation to an undertaking, shall be construed in accordance with paragraph 2 of Schedule 10A to the Companies Act 1985(14) or paragraph 2 of Schedule 10A to the Companies (Northern Ireland) Order 1986(15).

(2) In these Regulations “parent undertaking”, “share”, “subsidiary undertaking” and “undertaking” have the same meanings as in Part VII of the Companies Act 1985(16) or Part VIII the Companies (Northern Ireland) Order 1986(17) except that—

(a) “subsidiary undertaking” also includes, in relation to an institution incorporated in or formed under the law of another member State, any undertaking which is a subsidiary undertaking within the meaning of any rule of law in force in that State for purposes connected with the implementation of the Seventh Company Law Directive based on article 54(3)(g) of the Treaty on consolidated accounts (No. 83/349/EEC)(18); and

(b) “parent undertaking” shall be construed accordingly.

(3) For the purposes of these Regulations a subsidiary undertaking of an institution is a 90 per cent. subsidiary undertaking of the institution if the institution holds 90 per cent. or more of the voting rights in the subsidiary undertaking.

(4) Any reference in these Regulations to the carrying on of home-regulated investment business in the United Kingdom—

(a) is a reference to the carrying on of such business in reliance on regulation 5(1)(b) below; and

(b) shall be construed in accordance with section 1(3) of the Financial Services Act.

(12) OJ No. L386, 30.12.89, p.1.

(13) OJ No. L386, 30.12.89, p.14, as amended by Commission Directive 91/31/EEC (OJ No. L17, 23.1.91, p.20).

(14) 1985 c. 6; Schedule 10A was inserted by the Companies Act 1989 (c. 40), section 21(2).

(15) S.I. 1986/1032 (N.I.6); Schedule 10A was inserted by the Companies (Northern Ireland) Order 1990 (S.I. 1990/593 (N.I.5)), Article 23(2).

(16) Section 258 was inserted by the Companies Act 1989 (c. 40), section 21(1), and section 259 was inserted by section 22 of the Companies Act 1989.

(17) Article 266 was inserted by the Companies (Northern Ireland) Order 1990 (S.I. 1990/593 (N.I.5)), Article 23(1), and Article 267 was inserted by Article 24 of the Companies (Northern Ireland) Order 1990.

(18) OJ No. L193, 18.7.83, p.1; the relevant amending instrument is Council Directive 90/605/EEC (OJ No. L316, 16.11.90, p.60).

PART II

RECOGNITION OF EUROPEAN INSTITUTIONS

Preliminary

European institutions

3.—(1) In these Regulations “European institution” means a European authorised institution or a European subsidiary.

(2) A credit institution is a European authorised institution for the purposes of these Regulations if—

- (a) it is incorporated in or formed under the law of another member State;
- (b) its principal place of business is in that State;
- (c) it is for the time being authorised to act as a credit institution by the relevant supervisory authority in that State; and
- (d) the requirements of paragraph 1 of Schedule 2 to these Regulations have been complied with in relation to its carrying on of an activity or its establishment of a branch.

(3) A financial institution is a European subsidiary for the purposes of these Regulations if—

- (a) it is incorporated in or formed under the law of another member State;
- (b) it is a 90 per cent. subsidiary undertaking of a credit institution which—
 - (i) is incorporated in or formed under the law of that State; and
 - (ii) is a European authorised institution or a quasi-European authorised institution;
- (c) the conditions mentioned in paragraph (6) below are fulfilled in relation to it; and
- (d) the requirements of paragraph 1 of Schedule 2 to these Regulations have been (and continue to be) complied with in relation to its carrying on of an activity or its establishment of a branch.

(4) In these Regulations “quasi-European institution” means an institution—

- (a) which is not a European institution; but
- (b) which would be such an institution if the requirements of paragraph 1 of Schedule 2 to these Regulations had been (and continued to be) complied with in relation to its carrying on of an activity or its establishment of a branch;

and “quasi-European authorised institution” and “quasi-European subsidiary” shall be construed accordingly.

(5) For the purposes of paragraph (3)(b) above, any two or more European authorised institutions or quasi-European authorised institutions which—

- (a) are incorporated in or formed under the law of the same member State; and
- (b) hold voting rights in the same undertaking,

shall be regarded as a single institution; and in these Regulations “parent undertaking”, in relation to an institution which is a European subsidiary or quasi-European subsidiary by virtue of this paragraph, shall be construed accordingly.

(6) The conditions referred to in paragraph (3)(c) above are—

- (a) that each home-regulated activity stated in the institution’s recognition notice is carried on by it in its home State;
- (b) that the constituent instrument of the institution permits it to carry on each such activity;

- (c) that the consolidated supervision of the institution’s parent undertaking or, if more than one, any of them effectively includes supervision of the institution; and
- (d) that the institution’s parent undertaking has guaranteed or, if more than one, they have jointly and severally guaranteed, with the consent of the relevant supervisory authority in its or their home State, the institution’s obligations;

and in this paragraph “recognition notice”, in relation to an institution, means a notice given by it in accordance with paragraph 2 of Schedule 2 to these Regulations.

(7) In these Regulations “home-regulated activity”, in relation to a European institution or quasi-European authorised institution, means any listed activity—

- (a) in relation to which a supervisory authority in its home State has regulatory functions; and
- (b) which, in the case of a European subsidiary, it is carrying on in its home State.

(8) Schedule 2 to these Regulations (which contains requirements to be complied with by or in relation to European institutions) shall have effect.

Authorised and permitted activities

4.—(1) For the purposes of these Regulations a European authorised institution is authorised to carry on in its home State any listed activity which its authorisation as a credit institution authorises it to carry on.

(2) For the purposes of these Regulations a European subsidiary is permitted to carry on in its home State any listed activity which it is lawful for it to carry on, and it is carrying on, in that State.

Effect of recognition

Authorisations and licences not required

5.—(1) Subject to paragraph (2) below, nothing in the following enactments, namely—

- (a) section 3 of the Banking Act (restriction on acceptance of deposits);
- (b) sections 3 and 4 of the Financial Services Act (restrictions on carrying on investment business);
- (c) sections 21, 39(1) and 147(1) of the Consumer Credit Act (Consumer Credit Act businesses needing a licence); and
- (d) section 2 of the Insurance Companies Act(19) (restriction on carrying on insurance business),

shall prevent a European institution from carrying on in the United Kingdom any listed activity which it is authorised or permitted to carry on in its home State.

(2) In relation to a European institution in respect of which a prohibition under these Regulations is in force—

- (a) paragraph (1)(a) above shall not apply if the prohibition is under regulation 9 below;
- (b) paragraph (1)(b) above shall not apply if the prohibition is under regulation 15 below; and
- (c) paragraph (1)(c) above shall not apply if the prohibition is under regulation 18 below.

Procedural requirements for carrying on listed activities

6.—(1) A European institution shall not—

(19) 1982 c. 50; section 2 has been amended by S.I. 1987/2130.

- (a) carry on in the United Kingdom by the provision of services any home-regulated activity; or
- (b) establish a branch in the United Kingdom for the purpose of carrying on such an activity, unless the requirements of paragraph 1 of Schedule 2 to these Regulations have been (and, in the case of a European subsidiary, continue to be) complied with in relation to its carrying on of the activity or, as the case may be, its establishment of the branch.

(2) A European institution shall not change the requisite details of a branch established by it in the United Kingdom unless the requirements of paragraph 4 of Schedule 2 to these Regulations have been complied with in relation to its making of the change.

(3) An institution which contravenes paragraph (1) or (2) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale; but such a contravention shall not invalidate any transaction.

(4) In proceedings brought against an institution for an offence under paragraph (3) above it shall be a defence for the institution to show that it took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Effect of non-recognition

Prohibition on carrying on certain listed activities

7.—(1) A quasi-European authorised institution shall not—

- (a) carry on in the United Kingdom by the provision of services any home-regulated activity; or
 - (b) establish a branch in the United Kingdom for the purpose of carrying on such an activity.
- (2) An institution which contravenes paragraph (1) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale; but such a contravention shall not invalidate any transaction.

(3) In proceedings brought against an institution for an offence under paragraph (2) above it shall be a defence for the institution to show that it took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Functions of Bank

Duty to prepare for supervision

8.—(1) In any case where—

- (a) the Bank receives from the relevant supervisory authority in an institution's home State a notice given in accordance with paragraph 3 of Schedule 2 to these Regulations; and
 - (b) the notice states that the institution intends to establish a branch in the United Kingdom,
- the Bank shall, before the expiry of the period of two months beginning with the day on which it received the notice, draw to the attention of the institution such provisions of these Regulations, the relevant Acts or regulations or rules made under those Acts as, having regard to the activities mentioned in the notice, the Bank considers appropriate.

(2) In any case where the Bank receives from the relevant supervisory authority in an institution's home State such a notice as is mentioned in paragraph (1) above—

- (a) the Bank shall also, before the expiry of the said period of two months, consider whether the situation as respects the institution is such that the powers conferred by paragraph (2) of regulation 9 below are likely to become exercisable; and
- (b) if it considers that the situation is such as is mentioned in sub-paragraph (a) above, the Bank may impose, as soon as the requirements of paragraph 1 of Schedule 2 to these Regulations have been complied with in relation to the institution, such restriction under regulation 10 below as appears to it desirable.

(3) In any case where the Bank receives from an institution a notice given in accordance with paragraph 4 of Schedule 2 to these Regulations, the Bank shall, before the expiry of the period of one month beginning with the day on which it received the notice, draw to the attention of the institution such provisions of these Regulations, the relevant Acts or regulations or rules made under those Acts as, having regard to the proposed change mentioned in the notice, the Bank considers appropriate.

(4) Nothing in this regulation shall require the Bank to draw to the attention of an institution any provision which, in connection with the same notice, has been or will be drawn to its attention under regulation 14 below.

(5) In this regulation and regulation 9 below “the relevant Acts” means the Banking Act(20), the Financial Services Act(21), the Consumer Credit Act(22) and the Insurance Companies Act(23).

Power to prohibit the acceptance of deposits

9.—(1) In this regulation “prohibition” means a prohibition on accepting deposits in the United Kingdom.

(2) Subject to paragraph (3) and regulation 11 below, the Bank may impose a prohibition on a European institution if—

- (a) the institution is a European authorised institution which has established a branch in the United Kingdom and it appears to the Bank that the branch is not or may not be maintaining or, as the case may be, will not or may not maintain adequate liquidity;
- (b) the Bank is informed by the relevant supervisory authority in the institution’s home State that it has failed to take any or sufficient steps to cover risks arising from its open positions on financial markets in the United Kingdom;
- (c) it appears to the Bank that the institution has failed to comply with any obligation imposed on it by these Regulations or by or under any of the relevant Acts;
- (d) the Bank is informed by a supervisory authority in the institution’s home State that it has failed to comply with any obligation imposed on it by or under any rule of law in force in that State for purposes connected with the implementation of the Second Council Directive(24);
- (e) it appears to the Bank that it has been provided with false, misleading or inaccurate information by or on behalf of the institution or by or on behalf of a person who is or is to be a director, controller or manager of the institution; or
- (f) it appears to the Bank that the situation as respects the institution is such that, if it were authorised by the Bank under the Banking Act, the Bank could revoke the authorisation.

(3) The Bank may not impose a prohibition on a European institution on the ground mentioned in paragraph (2)(f) above unless—

(20) 1987 c. 22.

(21) 1986 c. 53.

(22) 1974 c. 39.

(23) 1982 c. 50.

(24) Council Directive 89/646/EEC (OJ No. L386, 30.12.89).

- (a) the Bank has requested the relevant supervisory authority in the institution's home State to take all appropriate measures for the purpose of securing that the institution remedies the situation; and
- (b) the Bank is satisfied either—
 - (i) that that authority has failed or refused to take measures for that purpose; or
 - (ii) that the measures taken by that authority have proved inadequate for that purpose.

(4) Any prohibition imposed under this regulation may be withdrawn by written notice served by the Bank on the institution concerned; and any such notice shall take effect on such date as is specified in the notice.

(5) In the case of a European institution which is a member of a self-regulating organisation, the reference in paragraph (2)(c) above to any obligation imposed by or under the relevant Acts shall be taken to include a reference to any obligation imposed by the rules of that organisation.

(6) In this regulation “controller”, “director” and “manager” have the same meanings as in the Banking Act.

(7) Schedule 3 to these Regulations (which makes supplemental provision with respect to prohibitions imposed under this regulation and restrictions imposed under regulation 10 below) shall have effect.

Power to restrict listed activities

10.—(1) In this regulation “restriction” means a direction that a European institution or former European institution—

- (a) may not carry on in the United Kingdom any home-regulated activity (other than the acceptance of deposits) which is specified in the direction; or
- (b) may not carry on in the United Kingdom, otherwise than in accordance with such condition or conditions as may be specified in the direction, any homeregulated activity which is so specified.

(2) Where it appears to the Bank that the situation as respects a European institution is such that the powers conferred by paragraph (2) of regulation 9 above are exercisable, the Bank may, instead of or as well as imposing a prohibition, impose such restriction as appears to it desirable.

(3) Where it appears to the Bank that the situation as respects a former European authorised institution is such that the powers conferred by paragraph (2) of regulation 9 above would be exercisable if the institution were still a European authorised institution, the Bank may impose such restriction as appears to it desirable.

(4) Subsection (4) of section 12 of the Banking Act (examples of conditions that may be imposed) applies for the purposes of this regulation as it applies for the purposes of that section.

(5) Any restriction imposed under this regulation—

- (a) may be withdrawn; or
- (b) may be varied with the agreement of the institution concerned,

by written notice served by the Bank on the institution; and any such notice shall take effect on such date as is specified in the notice.

(6) An institution which fails to comply with a restriction shall be guilty of an offence and liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

(7) The fact that a restriction has not been complied with (whether or not constituting an offence under paragraph (6) above) shall not invalidate any transaction but, in the case of a European institution, shall be a ground for the imposition of a prohibition under regulation 9 above.

(8) In this regulation “former European authorised institution” means an institution which was formerly a European authorised institution and continues to have a liability in respect of any deposit for which it had a liability when it was a European authorised institution.

Limitations on Bank’s powers

11.—(1) This regulation applies where it appears to the Bank that the situation as respects a European institution is such that the Bank’s power—

- (a) to impose a prohibition or restriction on the institution; or
- (b) to vary otherwise than with the agreement of the institution any restriction imposed on the institution,

is exercisable by virtue of regulation 9(2)(a) above, or by virtue of any failure to comply with a requirement imposed under section 39 of the Banking Act (information and production of documents) for statistical purposes.

(2) The Bank shall require the institution in writing to remedy the situation.

(3) If the institution fails to comply with the requirement under paragraph (2) above within a reasonable time, the Bank shall give a notice to that effect to the relevant 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 remedies the situation; and
- (b) to inform the Bank of the measures it proposes to take or has taken or the reasons for not taking any such measures.

(4) Subject to paragraph (5) below, the Bank shall not take any steps to impose a prohibition or restriction on a European institution, or to vary otherwise than with the agreement of a European institution any restriction imposed on the institution, unless it is satisfied—

- (a) that the relevant supervisory authority has failed or refused to take measures for the purpose mentioned in sub-paragraph (a) of paragraph (3) above; or
- (b) that the measures taken by that authority have proved inadequate for that purpose.

(5) Where the Bank considers that the prohibition, restriction or variation should be imposed as a matter of urgency, it may take steps to impose the prohibition, restriction or variation—

- (a) before complying with paragraphs (2) and (3) above; or
- (b) where it has complied with those paragraphs, without being satisfied as mentioned in paragraph (4) above;

but in such a case the Bank shall, at the earliest opportunity, inform the relevant supervisory authority in the institution’s home State and the European Commission of the steps taken.

(6) In any case where—

- (a) by virtue of paragraph (5) above, the Bank has imposed a prohibition or restriction on a European institution, or varied a restriction imposed on such an institution, before complying with paragraphs (2) and (3) above or, as the case may be, before it is satisfied as mentioned in paragraph (4) above; and
- (b) the European Commission decides under the Second Council Directive that the Bank must withdraw or vary the prohibition, restriction or variation,

the Bank shall in accordance with the decision withdraw or vary the prohibition, restriction or variation.

(7) In any case where—

- (a) the Bank has given notice to a European institution under paragraph 2 of Schedule 3 to these Regulations of a proposal to impose a prohibition or restriction or vary a restriction;
- (b) the prohibition, restriction or variation has not taken effect; and
- (c) the European Commission decides under the Second Council Directive that the Bank must withdraw or vary the notice,

the Bank shall in accordance with the decision withdraw or vary the notice.

(8) This regulation shall not apply—

- (a) as respects the imposition of a restriction in pursuance of regulation 8(2) above; or
- (b) in any case where regulation 12 below applies.

Prohibition or restriction on information from supervisory authority

12.—(1) This regulation applies where in the case of a European institution—

- (a) the Bank is informed by the relevant supervisory authority in the institution's home State that it has failed to take any or sufficient steps to cover risks arising from its open positions on financial markets in the United Kingdom; or
- (b) the Bank is informed by a supervisory authority in that State that the institution is failing to comply with an obligation imposed by or under any rule of law in force in that State for purposes connected with the implementation of the Second Council Directive.

(2) The Bank shall as soon as practicable send a copy of the information received by it to every other authority which it knows is a connected UK authority.

(3) The Bank shall also—

- (a) consider whether to exercise its powers under regulation 9 or 10 above; and
- (b) notify its decision, and any action which it has taken or intends to take, to the supervisory authority and to every other authority which it knows is a connected UK authority.

Obligation of Bank where institution ceases to be a European institution etc.

13. Where the Bank is informed that—

- (a) an institution has ceased to be a European institution; or
- (b) a European institution has ceased to carry on any particular home-regulated activity in the United Kingdom,

the Bank shall inform every other authority which it knows is a connected UK authority of that fact.

Functions of Board

Duty to prepare for supervision

14.—(1) In any case where—

- (a) the Board receives from the Bank under paragraph 3 of Schedule 2 to these Regulations a copy of a notice given in accordance with that paragraph; and
- (b) the notice states that the institution concerned intends to establish a branch in the United Kingdom for the purpose of carrying on a home-regulated activity appearing to the Board to constitute investment business,

the Board shall, before the expiry of the period of two months beginning with the day on which the Bank received the notice, draw to the attention of the institution such provisions of these Regulations, the Financial Services Act or rules or regulations made under that Act as, having regard to the activities mentioned in the notice, it considers appropriate.

(2) In any case where—

- (a) the Board receives from the Bank under paragraph 4 of Schedule 2 to these Regulations a copy of a notice given in accordance with that paragraph; and
- (b) the institution concerned is, or as a result of the proposed change mentioned in the notice will be, carrying on in the United Kingdom a home-regulated activity appearing to the Board to constitute investment business,

the Board shall, before the expiry of the period of one month beginning with the day on which the Bank received the notice, draw to the attention of the institution such provisions of these Regulations, the Financial Services Act or rules or regulations made under that Act as, having regard to the proposed change mentioned in the notice, it considers appropriate.

Power to prohibit the carrying on of investment business

15.—(1) If it appears to the Board that a European institution—

- (a) has contravened or is likely to contravene any provision of the Financial Services Act(25) or any rules or regulations made under it;
- (b) in purported compliance with any such provision, has furnished it with false, inaccurate or misleading information;
- (c) has contravened or is likely to contravene any prohibition or requirement imposed under that Act; or
- (d) has failed to comply with any statement of principle issued under that Act,

it may impose on the institution a prohibition under this regulation, that is to say, a prohibition on carrying on, or purporting to carry on, home-regulated investment business in the United Kingdom.

(2) Where the institution is a member of a recognised self-regulating organisation—

- (a) the reference in paragraph (1) above to rules made under the Financial Services Act shall be taken to include a reference to the rules of that organisation; and
- (b) the reference in that paragraph to any prohibition or requirement imposed under that Act shall be taken to include a reference to any prohibition or requirement imposed by virtue of the rules of that organisation.

(3) A prohibition under this regulation—

- (a) may be absolute; or
- (b) may be limited, that is to say, imposed for a specified period or until the occurrence of a specified event or until specified conditions are complied with;

and any period, event or conditions specified in the case of a limited prohibition may be varied by the Board on the application of the institution concerned.

(4) Any prohibition imposed under this regulation may be withdrawn by written notice served by the Board on the institution concerned; and any such notice shall take effect on such date as is specified in the notice.

(5) Schedule 4 to these Regulations (which makes supplemental provision with respect to prohibitions imposed under this regulation) shall have effect.

Power to restrict the carrying on of investment business

16.—(1) Where it appears to the Board that the situation as respects a European institution carrying on home-regulated investment business in the United Kingdom is such that the power conferred by regulation 15(1) above is exercisable, the Board may, instead of or as well as imposing a prohibition, exercise—

- (a) in relation to the institution; or
- (b) except in the case of the power conferred by section 65 of that Act, in relation to any appointed representative of the institution,

the powers conferred on the Board by Chapter VI of Part I of the Financial Services Act.

(2) Except where they are required to be exercised by virtue of section 128C of that Act⁽²⁶⁾ (enforcement in support of overseas regulatory authority), the powers conferred by that Chapter shall not, subject to paragraph (3) below, be exercisable in relation to—

- (a) a European institution carrying on home-regulated investment business in the United Kingdom which is a member of a recognised self-regulating organisation and is subject to the rules of such an organisation in carrying on all the homeregulated investment business carried on by it; or
- (b) an appointed representative whose principal or, in the case of such a representative with more than one principal, each of whose principals is—
 - (i) a member of a recognised self-regulating organisation; and
 - (ii) subject to the rules of such an organisation in carrying on the home-regulated investment business in respect of which it has accepted responsibility for the appointed representative's activities.

(3) The powers conferred by section 67(1)(b) of the Financial Services Act may on any of the grounds specified in regulation 15(1) above be exercised in relation to a person mentioned in paragraph (2) above at the request of any recognised self-regulating organisation of which he or, in the case of an appointed representative, any of his principals is a member.

Limitations on Board's powers

17.—(1) This regulation applies where it appears to the Board that the situation is such that its power—

- (a) to impose a prohibition under regulation 15 above;
- (b) to publish a statement with respect to a European institution under section 60 of the Financial Services Act;
- (c) to make an application with respect to such an institution under section 61(1) of that Act;
- (d) to impose a prohibition or requirement on such an institution under Chapter VI of Part I of that Act;
- (e) to vary a prohibition or requirement imposed on such an institution under that Chapter; or
- (f) to refuse an application for the variation or rescission of such a prohibition or requirement,

is exercisable by virtue of any contravention of a requirement to furnish information for statistical purposes imposed under that Act.

(2) The Board shall require the institution in writing to remedy the situation.

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

⁽²⁶⁾ Section 128C is amended by paragraph 36 of Schedule 9 to these Regulations.

- (a) to take all appropriate measures for the purpose of ensuring that the institution concerned remedies the situation which has given rise to the issue of the notice; and
- (b) to inform the Board of the measures it proposes to take or has taken or the reasons for not taking such measures.

(4) Subject to paragraph (5) below, the Board shall not take any such action as is mentioned in sub-paragraphs (a) to (f) of paragraph (1) above with respect to a European institution unless it is satisfied—

- (a) that the relevant supervisory authority has failed or refused to take measures for the purpose mentioned in sub-paragraph (a) of paragraph (3) above; or
- (b) that the measures taken by that authority have proved inadequate for that purpose.

(5) Where the Board decides that it should take action as mentioned in any of subparagraphs (a) to (e) of paragraph (1) above with respect to a European institution as a matter of urgency in order to protect the interests of investors, it may take that action—

- (a) before complying with paragraphs (2) and (3) above; or
- (b) where it has complied with those requirements, before it is satisfied as mentioned in paragraph (4) above;

but in such a case it shall, at the earliest opportunity, inform the relevant supervisory authority in the institution's home State and the European Commission of the action taken.

(6) In any case where—

- (a) by virtue of paragraph (5) above, the Board has—
 - (i) imposed a prohibition under regulation 15 above;
 - (ii) published a statement with respect to a European institution under section 60 of the Financial Services Act;
 - (iii) made an application under section 61(1) of that Act with respect to such an institution;
 - (iv) imposed on such an institution a prohibition or requirement under Chapter VI of Part I of that Act; or
 - (v) varied a prohibition or requirement imposed on such an institution under that Chapter,

before complying with paragraphs (2) and (3) above or, as the case may be, before it is satisfied as mentioned in paragraph (4) above; and

- (b) the European Commission decides under the Second Council Directive that the Board must withdraw or amend the statement, withdraw the application, or rescind or vary the prohibition or requirement,

the Board shall in accordance with the decision withdraw or amend the statement, withdraw the application, or rescind or vary the prohibition or requirement.

(7) For the purposes of paragraph (6)(b) above the Board shall be taken to withdraw or amend a statement if it publishes a further statement retracting or, as the case may be, correcting it; and the Board shall after publication of the further statement send a copy of it to any person to whom a copy of the previous statement was sent under section 60(5) of the Financial Services Act.

(8) In any case where—

- (a) the Board has, by virtue of sub-paragraph (5) above, given notice to a European institution under subsection (2) of section 60 of the Financial Services Act before complying with paragraphs (2) and (3) above or, as the case may be, before it is satisfied as mentioned in paragraph (4) above;

- (b) the statement to which the notice relates has not been published; and
 - (c) the European Commission decides under the Second Council Directive that the Board must not publish the statement, or must publish a different statement under that section,
- the Board shall in accordance with the decision withdraw the notice or give a different notice in substitution.

Functions of Director

Power to prohibit the carrying on of Consumer Credit Act business

18.—(1) If it appears to the Director that paragraph (2) below has been or is likely to be contravened as respects a European institution, he may impose on the institution a prohibition under this regulation, that is to say, a prohibition on carrying on, or purporting to carry on, in the United Kingdom any Consumer Credit Act business which consists of or includes carrying on one or more home-regulated activities.

(2) This paragraph is contravened as respects a European institution if—

- (a) the institution or any of the institution’s employees, agents or associates (whether past or present); or
- (b) where the institution is a body corporate, any controller of the institution or an associate of any such controller,

does any of the things specified in paragraphs (a) to (d) of section 25(2) of the Consumer Credit Act(27).

(3) A prohibition under this regulation may be absolute or may be imposed for a specified period or until the occurrence of a specified event or until specified conditions are complied with; and any period, event or conditions specified in the case of a prohibition may be varied by the Director on the application of the institution concerned.

(4) Any prohibition imposed under this regulation may be withdrawn by written notice served by the Director on the institution concerned; and any such notice shall take effect on such date as is specified in the notice.

(5) In this regulation “associate” has the same meaning as in section 25(2) of the Consumer Credit Act and “controller” has the meaning given by section 189(1) of that Act.

(6) Schedule 5 to these Regulations (which makes supplemental provision with respect to prohibitions imposed under this regulation and restrictions imposed under regulation 19 below) shall have effect.

Power to restrict the carrying on of Consumer Credit Act business

19.—(1) In this regulation “restriction” means a direction that a European institution may not carry on in the United Kingdom, otherwise than in accordance with such condition or conditions as may be specified in the direction, any Consumer Credit Act business which—

- (a) consists of or includes carrying on one or more home-regulated activities; and
- (b) is specified in the direction.

(2) Where it appears to the Director that the situation as respects a European institution is such that the powers conferred by paragraph (1) of regulation 18 above are exercisable, the Director may, instead of imposing a prohibition, impose such restriction as appears to him desirable.

(3) Any restriction imposed under this regulation—

(27) 1974 c. 39.

(a) may be withdrawn; or
 (b) may be varied with the agreement of the institution concerned,
 by written notice served by the Director on the institution; and any such notice shall take effect on such date as is specified in the notice.

(4) An institution which contravenes or fails to comply with a restriction shall be guilty of an offence and liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

(5) The fact that a restriction has not been complied with (whether or not constituting an offence under paragraph (4) above) shall be a ground for the imposition of a prohibition under regulation 18 above.

PART III

RECOGNITION IN OTHER MEMBER STATES OF UK INSTITUTIONS

Preliminary

UK institutions etc.

20.—(1) In these Regulations “UK institution” means a UK authorised institution or a UK subsidiary.

- (2) A credit institution is a UK authorised institution for the purposes of these Regulations if—
- (a) it is incorporated in or formed under the law of any part of the United Kingdom;
 - (b) its principal place of business is in the United Kingdom; and
 - (c) it is for the time being authorised by the Bank under the Banking Act(28) or by the Commission under the Building Societies Act(29).
- (3) A financial institution is a UK subsidiary for the purposes of these Regulations if—
- (a) it is incorporated in or formed under the law of any part of the United Kingdom;
 - (b) it is a 90 per cent. subsidiary undertaking of a UK authorised institution; and
 - (c) the conditions mentioned in paragraph (5) below are fulfilled in relation to it.

(4) For the purposes of paragraph (3)(b) above, any two or more UK authorised institutions which hold voting rights in the same undertaking shall be regarded as a single institution; and in these Regulations “parent undertaking”, in relation to an institution which is a UK subsidiary by virtue of this paragraph, shall be construed accordingly.

- (5) The conditions referred to in paragraph (3)(c) above are—
- (a) that each listed activity stated in the institution’s recognition notice is carried on by it in the United Kingdom;
 - (b) that the constituent instrument of the institution permits it to carry on each such activity;
 - (c) that the consolidated supervision of the institution’s parent undertaking or, if more than one, any of them effectively includes supervision of the institution; and

(28) 1987 c. 22.

(29) 1986 c. 53.

- (d) that the institution's parent undertaking has guaranteed or, if more than one, they have each jointly and severally guaranteed, with the consent of the UK authority, the institution's obligations;

and in this paragraph and regulation 23(1) below "recognition notice", in relation to an institution, means a notice given by it in accordance with paragraph 2 of Schedule 6 to these Regulations.

- (6) In these Regulations "home-regulated activity"—
 - (a) in relation to a UK authorised institution, means any listed activity;
 - (b) in relation to a UK subsidiary, means any listed activity which it is carrying on in the United Kingdom.
- (7) In these Regulations "the UK authority"—
 - (a) in relation to a UK authorised institution which is authorised by the Bank under the Banking Act or a UK subsidiary whose parent undertaking (or each of whose parent undertakings) is so authorised, means the Bank;
 - (b) in relation to a UK authorised institution which is authorised by the Commission under the Building Societies Act or a UK subsidiary whose parent undertaking (or each of whose parent undertakings) is so authorised, means the Commission;
 - (c) in relation to a UK subsidiary of whose parent undertakings one is authorised by the Bank under the Banking Act and another is authorised by the Commission under the Building Societies Act, means such one of the Bank and the Commission as may be agreed between them.
- (8) An agreement made for the purposes of sub-paragraph (c) of paragraph (7) above—
 - (a) may relate to particular UK subsidiaries or to UK subsidiaries of particular descriptions; and
 - (b) shall provide that the UK authority in relation to any UK subsidiary falling within that sub-paragraph shall keep the other party informed of anything done by it in relation to that subsidiary.
- (9) In the case of a UK authorised institution which is authorised by the Commission under the Building Societies Act, the power conferred by section 18(1)(b) of that Act to guarantee the discharge of the liabilities of the bodies corporate there mentioned includes power, with the consent of the Commission, to guarantee their obligations for the purposes of this regulation.

Authorised and permitted activities

21.—(1) For the purposes of these Regulations a UK authorised institution is authorised to carry on in the United Kingdom any listed activity which it is lawful for it to carry on in the United Kingdom.

(2) For the purposes of these Regulations a UK subsidiary is permitted to carry on in the United Kingdom any listed activity which it is lawful for it to carry on, and it is carrying on, in the United Kingdom.

Procedural requirements

Procedural requirements for carrying on certain listed activities

- 22.**—(1) Subject to paragraph (2) below, a UK institution shall not—
 - (a) carry on in another member State by the provision of services any listed activity which it is authorised or permitted to carry on in the United Kingdom; or
 - (b) establish a branch in another member State for the purpose of carrying on such an activity,

unless the requirements of paragraph 1 of Schedule 6 to these Regulations have been (and, in the case of a UK subsidiary, continue to be) complied with in relation to its carrying on of the activity or, as the case may be, its establishment of the branch.

- (2) Paragraph (1) above shall not apply in relation to a UK subsidiary if—
- (a) there has been no compliance with the requirements of paragraph 1 of Schedule 6 to these Regulations in relation to its carrying on of an activity or its establishment of a branch; or
 - (b) each such compliance has ceased to have effect.
- (3) A UK institution shall not change the requisite details of a branch established by it in another member State unless the requirements of paragraph 5 of Schedule 6 to these Regulations have been complied with in relation to its making of the change.
- (4) An institution which contravenes paragraph (1) or (3) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) In proceedings brought against an institution for an offence under paragraph (4) above it shall be a defence for the institution to show that it took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
- (6) Schedule 6 to these Regulations (which contains requirements to be complied with by or in relation to UK institutions) shall have effect.

Regulation of UK subsidiaries for recognition purposes

Restriction on activities of UK subsidiaries

23.—(1) In this regulation “restriction” means a direction that a UK subsidiary to which section 22(1) above applies—

- (a) may not carry on in the United Kingdom any listed activity stated in its recognition notice which is specified in the direction; or
- (b) may not carry on in the United Kingdom, otherwise than in accordance with such condition or conditions as may be specified in the direction, any such activity which is so specified.

(2) Where it appears to the UK authority that the situation as respects a UK subsidiary is such that, if it were authorised by the Bank under the Banking Act, the Bank could revoke its authorisation on the ground specified in section 11(1)(a) of that Act, the UK authority may impose on the institution such restriction as appears to it desirable.

(3) Subsection (4) of section 12 of the Banking Act (examples of conditions that may be imposed) applies for the purposes of this regulation as it applies for the purposes of that section; and Schedule 3 to that Act (minimum criteria for authorisation) as applied by this regulation shall have effect as if—

- (a) paragraph 6 (minimum initial capital) were omitted; and
- (b) where the Commission is the UK authority, the reference to that Act in paragraph 4(8) were a reference to the Building Societies Act.

(4) Any restriction imposed under this regulation—

- (a) may be withdrawn; or
- (b) may be varied with the agreement of the institution concerned,

by written notice served by the UK authority on the institution; and any such notice shall take effect on such date as is specified in the notice.

(5) An institution which contravenes or fails to comply with a restriction shall be guilty of an offence and liable—

- (a) on conviction on indictment, to a fine;

(b) on summary conviction, to a fine not exceeding the statutory maximum.

(6) The fact that a restriction has not been complied with (whether or not constituting an offence under paragraph (5) above) shall not invalidate any transaction.

(7) Schedule 7 to these Regulations (which makes supplemental provision with respect to restrictions imposed under this regulation) shall have effect.

Restriction on information from supervisory authority

24.—(1) This regulation applies where in the case of a UK subsidiary the UK authority is informed by a supervisory authority in another member State that the institution is failing to comply with an obligation imposed by or under any rule of law in force in that State for purposes connected with the implementation of the Second Council Directive.

(2) The UK authority shall as soon as practicable send a copy of the information received by it to every other authority which it knows is a connected UK authority.

(3) The UK authority shall also—

(a) consider whether to exercise its powers under regulation 23 above; and

(b) notify its decision, and any action which it has taken or intends to take, to the supervisory authority and to every other authority which it knows is a connected UK authority.

PART IV

AMENDMENTS OF BANKING ACT

Authorisations

Applications for authorisation

25. At the end of section 8(1) of the Banking Act⁽³⁰⁾ (applications for authorisation) there shall be inserted the words

“other than—

(a) a credit institution incorporated in or formed under the law of any part of the United Kingdom whose principal place of business is outside the United Kingdom; and

(b) a credit institution incorporated in or formed under the law of another member State”.

Grant and refusal of authorisation

26. After subsection (6) of section 9 of the Banking Act (grant and refusal of authorisation) there shall be inserted the following subsection—

“(7) Before granting an authorisation to a credit institution incorporated in or formed under the law of any part of the United Kingdom which is—

(a) a subsidiary undertaking;

(b) a subsidiary undertaking of the parent undertaking; or

(c) controlled by the parent controller,

(30) 1987 c. 22.

of a credit institution which is for the time being authorised to act as such an institution by the relevant supervisory authority in another member State, the Bank shall consult that authority.”

Minimum criteria for authorisation

27.—(1) In sub-paragraph (2) of paragraph 4 (business to be conducted in a prudent manner) of Schedule 3 to the Banking Act (minimum criteria for authorisation), for the words “net assets” there shall be substituted the words “own funds”.

(2) For sub-paragraph (3) of that paragraph there shall be substituted the following sub-paragraphs—

“(3) The particular factors referred to above are—

- (a) the nature and scale of the institution’s operations; and
- (b) the risks inherent in those operations and in the operations of any other undertaking in the same group so far as capable of affecting the institution.

(3A) An institution shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain own funds which amount to not less than ecu 5 million (or an amount of equal value denominated wholly or partly in another unit of account).”

(3) For sub-paragraph (10) of that paragraph there shall be substituted the following sub-paragraph—

“(10) In this paragraph 'ecu' and 'own funds' have the same meanings as in the Banking Coordination (Second Council Directive) Regulations 1992.”

(4) For paragraph 6 of that Schedule there shall be substituted the following paragraph—

“**6.**—(1) The institution will at the time when authorisation is granted to it have initial capital amounting to not less than ecu 5 million (or an amount of equal value denominated wholly or partly in another unit of account).

(2) In this paragraph 'ecu' and 'initial capital' have the same meanings as in the Banking Coordination (Second Council Directive) Regulations 1992.”

Revocation of authorisation

28.—(1) After subsection (1) of section 11 of the Banking Act(31) (revocation of authorisation) there shall be inserted the following subsection—

“(1A) The Bank may revoke the authorisation of a credit institution incorporated in or formed under the law of any part of the United Kingdom if—

- (a) it appears to the Bank that the institution’s principal place of business is or may be outside the United Kingdom;
- (b) it appears to the Bank that the institution has carried on in the United Kingdom or elsewhere a listed activity (other than the acceptance of deposits from the public) without having given prior notice to the Bank of its intention to do so;
- (c) the Bank is informed by The Securities and Investments Board, or a connected UK authority having regulatory functions in relation to the provision of financial services, that the institution—
 - (i) has contravened any provision of the Financial Services Act 1986 or any rules or regulations made under it;

- (ii) in purported compliance with any such provision, has furnished that Board or authority with false, misleading or inaccurate information;
 - (iii) has contravened any prohibition or requirement imposed under that Act; or
 - (iv) has failed to comply with any statement of principle issued under that Act;
 - (d) the Bank is informed by the Director General of Fair Trading that the institution, or any of the institution's employees, agents or associates (whether past or present) or, where the institution is a body corporate, any controller of the institution or an associate of any such controller, has done any of the things specified in paragraphs (a) to (d) of section 25(2) of the Consumer Credit Act 1974;
 - (e) it appears to the Bank that the institution has failed to comply with any obligation imposed on it by the Banking Coordination (Second Council Directive) Regulations 1992; or
 - (f) the Bank is informed by a supervisory authority in another member State that the institution has failed to comply with any obligation imposed on it by or under any rule of law in force in that State for purposes connected with the implementation of the Second Council Directive.”
- (2) After subsection (3) of that section there shall be inserted the following subsection—
- “(3A) In relation to a credit institution incorporated in or formed under the law of any part of the United Kingdom, subsection (3) above shall have effect as if the words 'and shall do so if that country or territory is a member State' were omitted.”
- (3) After subsection (9) of that section there shall be inserted the following subsection—
- “(10) The rules and prohibitions referred to in subsection (1A)(c) above include the rules of any recognised self-regulating organisation of which the institution is a member and any prohibition imposed by virtue of those rules; and in subsection (1A)(d) above—
- 'associate' has the same meaning as in section 25(2) of the Consumer Credit Act 1974;
- 'controller' has the meaning given by section 189(1) of that Act.”

Revocation or restriction on information from supervisory authority

29. After section 12 of the Banking Act there shall be inserted the following section—

“Revocation or restriction on information from supervisory authority.

12A.—(1) This section applies where, in the case of an authorised institution which is a credit institution incorporated in or formed under the law of any part of the United Kingdom, the Bank is informed by a supervisory authority in another member State that the institution is failing to comply with an obligation imposed by or under any rule of law in force in that State for purposes connected with the implementation of the Second Council Directive.

(2) The Bank shall as soon as practicable send a copy of the information received by it to every other authority which it knows is a connected UK authority.

(3) The Bank shall also—

- (a) consider whether to exercise its powers under section 11 or 12 above; and
- (b) notify its decision, and any action which it has taken or intends to take, to the supervisory authority and to every other authority which it knows is a connected UK authority.”

Notice of revocation, restriction or surrender

30.—(1) After subsection (3) of section 13 of the Banking Act (notice of revocation or restriction) there shall be inserted the following subsection—

“(3A) Where the Bank gives a notice under subsection (1) above to a credit institution incorporated in or formed under the law of any part of the United Kingdom, it shall give a copy of that notice to every other authority which the Bank knows is—

- (a) a connected UK authority; or
- (b) a supervisory authority in another member State in which the institution is carrying on a listed activity.”

(2) After subsection (3) of section 15 of that Act (surrender of authorisation) there shall be inserted the following subsection—

“(4) Where the Bank receives a notice of surrender under subsection (1) above from a credit institution incorporated in or formed under the law of any part of the United Kingdom, it shall give a copy of that notice to every other authority which the Bank knows is—

- (a) a connected UK authority; or
- (b) a supervisory authority in another member State in which the institution is carrying on a listed activity.”

Objections to controllers

Objections to controllers

31.—(1) In subsection (1) of section 21 of the Banking Act (notification of new or increased control), for the words from the beginning to “unless” there shall be substituted the words “No person shall become a minority, 10 per cent., 20 per cent., 33 per cent., majority or principal shareholder controller, a parent controller or an indirect controller of an authorised institution unless”.

(2) After subsection (1) of section 22 of that Act (objection to new or increased control) there shall be inserted the following subsection—

“(1A) Before deciding whether or not to serve a notice of objection under this section in any case where—

- (a) the person concerned is, or is a parent controller of, a credit institution which is for the time being authorised to act as such an institution by the relevant supervisory authority in another member State; and
- (b) the notice under section 21 above stated an intention to become a parent controller, the Bank shall consult that authority.”

Implementation of certain EC decisions

Implementation of certain EC decisions

32.—(1) After section 26 of the Banking Act there shall be inserted the following section—

“Implementation of certain EC decisions

Treasury directions for implementing decisions.

26A.—(1) In this section 'relevant decision' means any decision of the Council or Commission of the Communities under article 9(4) of the Second Council Directive (relations with third countries: limitation or suspension of decisions regarding applications for authorisations).

(2) For the purpose of implementing a relevant decision, the Treasury may direct the Bank—

- (a) to refuse an application for authorisation made by a credit institution incorporated in or formed under the law of any part of the United Kingdom;
- (b) to defer its decision on such an application either indefinitely or for such period as may be specified in the direction; or
- (c) to serve a notice of objection on a person—
 - (i) who has given notice under section 21 above of his intention to become a parent controller of any description of such an institution; or
 - (ii) who has become such a controller without giving the required notice under that section.

(3) A direction to the Bank may relate to a particular institution or a class of institution and may be given before the application in question or, as the case may be, any notice under section 21 above is received.

(4) Any notice of objection served by virtue of a direction falling within subsection (2)(c) above shall state the grounds on which it is served.

(5) A direction under this section may be revoked at any time by the Treasury, but such revocation shall not affect anything done in accordance with the direction before it was revoked.”

(2) In consequence of the provision made by paragraph (1) above—

- (a) in section 10(5) of that Act (notice of grant or refusal), after the words “refusal and” there shall be inserted the words “(except in the case of a refusal in pursuance of a direction under section 26A below)”;
- (b) in section 23(1)(a) of that Act (objection by direction of the Treasury), after the word “institution” there shall be inserted the words “which is not a credit institution”; and
- (c) at the end of section 27(1)(a) of that Act (rights of appeal) there shall inserted the words “otherwise than in a case in which the refusal is in pursuance of a direction under section 26A above”.

Information and investigations

Notification of controllers

33. After section 36 of the Banking Act(32) there shall be inserted the following section—

“Annual notification of shareholder controllers.

36A.—(1) An authorised institution which is a credit institution incorporated in or formed under the law of any part of the United Kingdom shall at least once in each year give

to the Bank written notice of the name of each person who, to the institution's knowledge, is a shareholder controller of the institution at the date of the notice.

(2) A notice under subsection (1) above shall also, in relation to each such person, state to best of the institution's knowledge—

- (a) whether he is a minority, 10 per cent., 20 per cent., 33 per cent. or 50 per cent. shareholder controller;
- (b) what percentage of the shares of the institution he holds either alone or with any associate or associates; and
- (c) what percentage of the voting power at a general meeting of the institution he is entitled to exercise, or control the exercise of, either alone or with any associate or associates;

and in this subsection 'share' has the same meaning as in Part VII of the Companies Act 1985⁽³³⁾ or Part VIII of the Companies (Northern Ireland) Order 1986⁽³⁴⁾.

(3) An institution which fails to give a notice required by this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding the fifth level on the standard scale.”

Notification of acquisition of significant shareholding

34. For subsection (2) of section 37 of the Banking Act (notification of significant shareholding) there shall be substituted the following subsection—

“(2) For the purposes of this section 'a significant shareholder', in relation to an institution, means a person who is not a shareholder controller but who, either alone or with any associate or associates—

- (a) holds 5 per cent. or more of the shares in the institution or another institution of which it is a subsidiary undertaking; or
- (b) is entitled to exercise, or control the exercise of, 5 per cent. or more of the voting power at any general meeting of the institution or of another institution of which it is such an undertaking;

and in this subsection 'share' has the same meaning as in Part VII of the Companies Act 1985 or Part VIII of the Companies (Northern Ireland) Order 1986.”

Prior notification of ceasing to be a relevant controller

35. After section 37 of the Banking Act there shall be inserted the following section—

“Prior notification of ceasing to be a relevant controller.

37A.—(1) A person shall not cease to be a minority, 10 per cent., 20 per cent., 33 per cent. or 50 per cent. shareholder controller or a parent controller of an authorised institution which is a credit institution incorporated in or formed under the law of any part of the United Kingdom unless he has first given to the Bank written notice of his intention to cease to be such a controller of the institution.

(2) If, after ceasing to be such a controller of such an institution, a person will, either alone or with any associate or associates—

⁽³³⁾ 1985 c. 6; section 258 was inserted by the Companies Act 1989 (c. 40), section 21(2), and section 259 was inserted by section 22 of the Companies Act 1989.

⁽³⁴⁾ S.I. 1986/1032 (N.I.6); Article 266 was inserted by the Companies (Northern Ireland) Order 1990 (S.I. 1990/593 (N.I.5)), Article 23(1), and Article 267 was inserted by Article 24 of the Companies (Northern Ireland) Order 1990.

- (a) still hold 10 per cent. or more of the shares in the institution or another institution of which it is a subsidiary undertaking;
- (b) still be entitled to exercise or control the exercise of 10 per cent. or more of the voting power at any general meeting of the institution or of another institution of which it is such an undertaking; or
- (c) still be able to exercise a significant influence over the management of the institution or another institution of which it is such an undertaking by virtue of—
 - (i) a holding of shares in; or
 - (ii) an entitlement to exercise, or control the exercise of, the voting power at any general meeting of,the institution or, as the case may be, the other institution concerned,

his notice under subsection (1) above shall state the percentage of the shares or voting power which he will (alone or with any associate or associates) hold or be entitled to exercise or control; and in this subsection 'share' has the same meaning as in Part VII of the Companies Act 1985 or Part VIII of the Companies (Northern Ireland) Order 1986.

(3) Subject to subsection (4) below, any person who contravenes subsection (1) or (2) above shall be guilty of an offence.

(4) Subject to subsection (5) below, a person shall not be guilty of an offence under subsection (3) above if he shows that he did not know of the acts or circumstances by virtue of which he ceased to be a controller of the relevant description in sufficient time to enable him to comply with subsection (1) above.

(5) Notwithstanding anything in subsection (4) above, a person who ceases to be a controller of a relevant description without having complied with subsection (1) above shall be guilty of an offence if, within fourteen days of becoming aware of the fact that he has ceased to be such a controller—

- (a) he fails to give the Bank written notice of that fact; or
- (b) he gives the Bank such a notice but the notice fails to comply with subsection (2) above.

(6) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding the fifth level on the standard scale.”

Information and production of documents

36. For subsections (6) and (7) of section 39 of the Banking Act (information and production of documents) there shall be substituted the following subsections—

“(6) If it appears to the Bank to be desirable in the interests of the depositors or potential depositors of an authorised institution to do so, it may also exercise the powers conferred by subsections (1) and (3) above in relation to any undertaking which is or has at any relevant time been—

- (a) a parent undertaking, subsidiary undertaking or related company of that institution;
- (b) a subsidiary undertaking of a parent undertaking of that institution;
- (c) a parent undertaking of a subsidiary undertaking of that institution; or
- (d) an undertaking in the case of which a shareholder controller of that institution, either alone or with any associate or associates, holds 50 per cent. or more of the shares or is entitled to exercise, or control the exercise of, more than 50 per cent. of the voting power at a general meeting;

or in relation to any partnership of which that institution is or has at any relevant time been a member.

(7) If it appears to the Bank to be desirable to do so in the interests of the depositors or potential depositors of an authorised institution which is a partnership ('the authorised partnership'), it may also exercise the powers conferred by subsections (1) and (3) above in relation to—

- (a) any other partnership having a member in common with the authorised partnership;
- (b) any undertaking which is or has at any time been a member of the authorised partnership;
- (c) any undertaking in the case of which the partners in the authorised partnership, either alone or with any associate or associates, hold 20 per cent. or more of the shares or are entitled to exercise, or control the exercise of, more than 50 per cent. of the voting power at a general meeting; or
- (d) any subsidiary undertaking or parent undertaking of any such undertaking as is mentioned in paragraph (b) or (c) above or any parent undertaking of any such subsidiary undertaking.

(7A) In subsections (6) and (7) above 'share' has the same meaning as in Part VII of the Companies Act 1985 or Part VIII of the Companies (Northern Ireland) Order 1986."

Investigations on behalf of the Bank

37. For subsections (2) and (3) of section 41 of the Banking Act (investigations on behalf of the Bank) there shall be substituted the following subsections—

“(2) If a person appointed under subsection (1) above thinks it necessary for the purposes of his investigation, he may also investigate the business of any undertaking which is or has at any relevant time been—

- (a) a parent undertaking, subsidiary undertaking or related company of the institution under investigation;
- (b) a subsidiary undertaking or related company of a parent undertaking of that institution;
- (c) a parent undertaking of a subsidiary undertaking of that institution; or
- (d) an undertaking in the case of which a shareholder controller of that institution, either alone or with any associate or associates, holds 20 per cent. or more of the shares or is entitled to exercise, or control the exercise of, more than 20 per cent. of the voting power at a general meeting;

or the business of any partnership of which that institution is or has at any relevant time been a member.

(3) If a person appointed under subsection (1) above thinks it necessary for the purposes of his investigation in the case of an authorised institution which is a partnership ('the authorised partnership'), he may also investigate the business of—

- (a) any other partnership having a member in common with the authorised partnership;
- (b) any undertaking which is or has at any time been a member of the authorised partnership;
- (c) any undertaking in the case of which the partners in the authorised partnership, either alone or with any associate or associates, hold 20 per cent. or more of the

shares or are entitled to exercise, or control the exercise of, more than 20 per cent. of the voting power at a general meeting; or

- (d) any subsidiary undertaking, related company or parent undertaking of any such undertaking as is mentioned in paragraph (b) or (c) above or any parent undertaking of any such subsidiary undertaking.

(3A) In subsections (2) and (3) above 'share' has the same meaning as in Part VII of the Companies Act 1985 or Part VIII of the Companies (Northern Ireland) Order 1986.”

Restrictions on disclosure of information

Disclosure for facilitating discharge of functions by the Bank

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

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

Disclosure for facilitating discharge of functions by other supervisory bodies

39.—(1) For the purpose of facilitating references to them, the entries in the Table in subsection (1) of section 84 of the Banking Act⁽³⁵⁾ (disclosure for facilitating discharge of functions by other supervisory bodies) shall be numbered 1 to 19.

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

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

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

and (in either case) in accordance with article 12(7) of the First Council Directive⁽³⁶⁾.

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

- (a) the information relates to an authorised institution or former authorised institution and does not enable the financial affairs of any other identifiable person to be ascertained and disclosure appears to the Bank to be necessary in the interests of depositors or in the public interest; or
- (b) in any other case, disclosure appears to the Bank to be necessary in the interests of depositors;

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

⁽³⁵⁾ The Panel on Take Overs was added to the table in subsection (1) by S.I. 1987/1292; the table was amended by the Companies Act 1989 (c. 40), sections 81 and 171(7), and repealed in part (entry relating to the Financial Services Act 1986, sections 94, 106 and 107) by section 212 of and Schedule 24 to the Companies Act 1989; other relevant amending instruments are S.I. 1989/2405 (N.I.19) and 1990/1504 (N.I.10.).

⁽³⁶⁾ Council Directive 77/780/EEC (OJ No. L322, 17.12.77, p.30); article 12 was substituted by article 16 of Council Directive 89/646/EEC (OJ No. L386, 30.12.89, p.1).

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

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

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

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

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

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

(a) a financial market; or

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

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

Other permitted disclosures

40.—(1) In subsection (1) of section 85 of the Banking Act(37) (other permitted disclosures), paragraph (g) shall be omitted.

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

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

Information supplied to Bank by relevant overseas authority etc.

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

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

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

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

(b) has been obtained for those purposes by the Bank, or by a person acting on its behalf, in another member State.

(2) Subject to subsections (3) and (4) below, information supplied or obtained as mentioned in subsection (1)(a) or (b) above shall not be disclosed except as provided by section 82 above or—

- (a) for the purpose of enabling or assisting the Bank to discharge any relevant functions; or
 - (b) with a view to the institution of, or otherwise for the purposes of, criminal proceedings, whether under this Act or otherwise.
- (3) Information supplied to the Bank for the purposes of any relevant functions by the relevant supervisory authority in another member State may be disclosed—
- (a) to a relevant recipient, if the authority consents to its disclosure and the case is one in which information to which section 82 above applies could be so disclosed by virtue of section 84(1) or (2) above; or
 - (b) to the Treasury or the Secretary of State, if the authority consents to its disclosure and the case is one in which information to which section 82 above applies could be so disclosed by virtue of section 84(5) or (5A) above.
- (4) Information obtained as mentioned in subsection (1)(b) above may be disclosed—
- (a) to a relevant recipient, if the relevant supervisory authority in the member State concerned consents to its disclosure and the case is one in which information to which section 82 above applies could be so disclosed by virtue of section 84(1) or (2) above; or
 - (b) to the Treasury or the Secretary of State, if that authority consents to its disclosure and the case is one in which information to which section 82 above applies could be so disclosed by virtue of section 84(5) or (5A) above.
- (5) In this section—
- 'relevant functions', in relation to the Bank, means its functions under this Act, its functions as a monetary authority and its functions as a supervisor of money market and gilt market institutions;
- 'relevant recipient' means a person specified in any of entries 1 to 8, 13 to 15 and 17 in the Table in section 84(1) above."

Disclosure of information obtained under other Acts

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

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

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

Interpretation

Meaning of “controller” and “associate”

43.—(1) In paragraph (c) of subsection (3) of section 105 of the Banking Act (meaning of “director, controller” etc.), for the words from “either alone” to the end there shall be substituted the words “satisfies the requirements of this paragraph”; and at the end of that subsection there shall be inserted the words “and

(e) a person who is, or would be if he were an undertaking, a parent undertaking of the institution.”

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

“(3A) A person satisfies the requirements of subsection (3)(c) above in relation to an institution if, either alone or with any associate or associates—

- (a) he holds 10 per cent. or more of the shares in the institution or another institution of which it is a subsidiary undertaking;
- (b) he is entitled to exercise, or control the exercise of, 10 per cent. or more of the voting power at any general meeting of the institution or another institution of which it is such an undertaking; or
- (c) he is able to exercise a significant influence over the management of the institution or another institution of which it is such an undertaking by virtue of—
 - (i) a holding of shares in; or
 - (ii) an entitlement to exercise, or control the exercise of, the voting power at any general meeting of,

the institution or, as the case may be, the other institution concerned;

and in this subsection 'share' has the same meaning as in Part VII of the Companies Act 1985 or Part VIII of the Companies (Northern Ireland) Order 1986.

(4) A person who is a controller of an institution by virtue of subsection (3)(c) above is in this Act referred to as a "shareholder controller" of the institution; and in this Act—

- (a) a "minority shareholder controller" means a shareholder controller not falling within paragraph (a) or (b) of subsection (3A) above;
- (b) a "10 per cent. shareholder controller" means a shareholder controller in whose case the percentage referred to in the relevant paragraph is 10 or more but less than 20;
- (c) a "20 per cent. shareholder controller" means a shareholder controller in whose case that percentage is 20 or more but less than 33;
- (d) a "33 per cent. shareholder controller" means a shareholder controller in whose case that percentage is 33 or more but less than 50;
- (e) a "50 per cent. shareholder controller" means a shareholder controller in whose case that percentage is 50 or more;
- (f) a "majority shareholder controller" means a shareholder controller in whose case that percentage is 50 or more but less than 75; and
- (g) a "principal shareholder controller" means a shareholder in whose case that percentage is 75 or more;

and in this subsection "the relevant paragraph", in relation to a shareholder controller, means whichever one of paragraphs (a) and (b) of subsection (3A) above gives the greater percentage in his case.”

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

“(5A) A person who is a controller of an institution by virtue of subsection (3)(e) above is in this Act referred to as a 'parent controller' of the institution.”

(4) For subsections (9) and (10) of that section there shall be substituted the following subsections—

“(9) In this Act 'associate', in relation to a person entitled to exercise or control the exercise of voting power in relation to, or holding shares in, an undertaking, means—

- (a) the wife or husband or son or daughter of that person;
- (b) the trustees of any settlement under which that person has a life interest in possession or, in Scotland, a life interest;
- (c) any company of which that person is a director;
- (d) any person who is an employee or partner of that person;
- (e) if that person is a company—
 - (i) any director of that company;
 - (ii) any subsidiary undertaking of that company; and
 - (iii) any director or employee of any such subsidiary undertaking; and
- (f) if that person has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in that undertaking or body corporate or under which they undertake to act together in exercising their voting power in relation to it, that other person.

(10) For the purposes of subsection (9) above—

'son' includes stepson and 'daughter' includes stepdaughter;

'settlement' includes any disposition or arrangement under which property is held in trust.”

Meaning of “related company”

44.—(1) For subsection (1) of section 105A of the Banking Act(38) (meaning of “related company”) there shall be substituted the following subsection—

“(1) In this Act a 'related company', in relation to an institution or the parent undertaking of an institution, means a body corporate (other than a subsidiary undertaking) in which the institution or parent undertaking holds a qualifying capital interest.”

(2) In subsection (2) of that section, for the words “holding company” there shall be substituted the words “parent undertaking”.

Other interpretation of Banking Act

45.—(1) In subsection (1) of section 106 of the Banking Act (interpretation)—

(a) after the definition of “municipal bank” there shall be inserted the following definition—

“'parent controller' has the meaning given in section 105(5A) above;”;

(b) for the definition of “relevant supervisory authority” there shall be substituted the following definition—

“'relevant supervisory authority'—

(38) 1987 c. 22; section 105A was inserted by the Companies Act 1989 (c. 40), section 23, Schedule 10, Part II, paragraph 37(3).

- (a) in relation to another member State, has the meaning given in regulation 2 of the Banking Coordination (Second Council Directive) Regulations 1992;
 - (b) in relation to any other country or territory outside the United Kingdom, means the authority discharging in that country or territory functions corresponding to those of the Bank under this Act;”; and
- (c) for the definition of “shareholder controller” and related definitions there shall be substituted the following definitions—
- “shareholder controller’, ‘minority shareholder controller’, ‘10 per cent. shareholder controller’, ‘20 per cent. shareholder controller’, ‘33 per cent. shareholder controller’, ‘50 per cent. shareholder controller’, ‘majority shareholder controller’ and ‘principal shareholder controller’ have the meanings given in section 105(4) above”.
- (2) After subsection (2) of that section there shall be inserted the following subsection—
- “(2A) In this Act the following expressions, namely—
- another member State;
 - connected UK authority;
 - credit institution;
 - European authorised institution;
 - the First Council Directive;
 - home State;
 - listed activity;
 - parent undertaking;
 - recognised self-regulating organisation;
 - relevant supervisory authority;
 - the Second Council Directive;
 - subsidiary undertaking;
 - supervisory authority;
 - undertaking,
- have the same meanings as in the Banking Coordination (Second Council Directive) Regulations 1992.”

Miscellaneous

Savings for certain institutions

- 46.** The Banking Act(39) shall have effect—
- (a) in relation to institutions which are not credit institutions incorporated in or formed under the law of a part of the United Kingdom, without the amendments made by regulations 27, 31(1), 34, 36, 37 and 43 to 45 above; and
 - (b) in relation to information relating to the business or other affairs of institutions which are authorised institutions within the meaning of that Act but are not credit institutions, without the amendments made by regulations 38, 39(2) to (4) and 40 to 42 above.

Other amendments of Banking Act

47. The provisions of the Banking Act which are mentioned in Schedule 8 to these Regulations shall have effect subject to the amendments there specified.

PART V

AMENDMENTS OF FINANCIAL SERVICES ACT

Authorisation by membership of recognised self-regulating organisations

48.—(1) Section 7 of the Financial Services Act (authorisation by membership of recognised self-regulating organisation) shall have effect as if it included provision that an institution which—

- (a) is a European institution or quasi-European authorised institution; and
- (b) is a member of a recognised self-regulating organisation,

is not, by virtue of its membership of that organisation, an authorised person as respects any home-regulated investment business.

(2) Paragraph 2 of Schedule 2 to that Act⁽⁴⁰⁾ (requirements for recognition of self-regulating organisations) shall have effect as if it included provision that the rules and practices of the organisation must be such as to secure that where—

- (a) a UK authorised institution applies for admission as a member of the organisation; and
- (b) the institution states in its application that it proposes to carry on investment business which consists of or includes a listed activity,

the institution shall not be admitted as a member unless the UK authority has notified the organisation that, were the institution so admitted, the UK authority would not by reason of that proposal exercise any of its relevant powers.

(3) In this regulation “relevant powers” means—

- (a) in relation to the Bank, the powers conferred on it by section 11 or 12 of the Banking Act (power to revoke or restrict authorisations);
- (b) in relation to the Commission, the powers conferred on it by section 42 or 43 of the Building Societies Act (power to impose conditions on or revoke authorisations).

Applications for authorisation

49. Section 26 of the Financial Services Act (applications for authorisation) shall have effect as if it included provision that an application for authorisation in respect of any home-regulated investment business may not be made by—

- (a) a European authorised institution or quasi-European authorised institution; or
- (b) a European subsidiary which has not applied for a direction under paragraph 5 of Schedule 2 to these Regulations.

Grant and refusal of authorisation

50.—(1) Section 27 of the Financial Services Act (grant and refusal of authorisation) shall have effect as if it included provision that—

⁽⁴⁰⁾ 1986 c. 60; Schedule 2 has been amended by sections 203, 204 and 206 of, and Schedule 23 to, the Companies Act 1989 (c. 40).

- (a) where a European institution or quasi-European authorised institution holds an authorisation granted under that section, the institution is not by virtue of that authorisation an authorised person as respects any home-regulated investment business;
 - (b) where an application for authorisation in respect of any home-regulated investment business is made by a European subsidiary which has applied for a direction under paragraph 5 of Schedule 2 of these Regulations, the Secretary of State shall not grant the application unless he is satisfied that the institution will cease to be a European subsidiary on or before the date when the authorisation takes effect; and
 - (c) for the purposes of determining whether to grant or refuse an application in respect of any other investment business made by a European subsidiary, the fact that the subsidiary is subject to supervision pursuant to article 18(2) of the Second Council Directive shall be taken into account.
- (2) That section shall also have effect as if it included provision that where—
- (a) a UK authorised institution applies for authorisation; and
 - (b) the institution states in its application that it proposes to carry on investment business which consists of or includes a listed activity,

the Board shall not grant the authorisation unless the UK authority has notified the Board that, were the authorisation granted, the UK authority would not by reason of that proposal exercise any of its relevant powers.

- (3) In this regulation “relevant powers” has the same meaning as in regulation 48 above.

Authorisation in other member State

51. Section 31 of the Financial Services Act (authorisation in other member State) shall have effect as if it included provision that an institution to which that section applies and which is a European institution or quasi-European authorised institution is not, by virtue of that section, an authorised person as respects any home-regulated investment business.

Exempted persons

52.—(1) Section 43 of the Financial Services Act (listed money market institutions) shall have effect as if it included provision that an institution which—

- (a) is a European institution or quasi-European authorised institution; and
- (b) is for the time being included in a list maintained for the purposes of that section,

is not, by virtue of its inclusion in that list, an exempted person as respects any homeregulated investment business.

(2) That section shall also have effect as if it included provision that the conditions and arrangements referred to in subsection (2) must be such as to secure that no European institution, other than one on which an absolute prohibition has been imposed under regulation 15 of these Regulations, is refused admission to the list, or removed from it, for reasons relating to—

- (a) the fitness of the institution to be included in the list;
- (b) the financial standing of the institution; or
- (c) any other matter for which, under the Second Council Directive, responsibility is reserved to a supervisory authority in the institution’s home State.

Reciprocal facilities for banking business

53.—(1) No notice shall be served under section 183 of the Financial Services Act (reciprocal facilities for financial business) on a credit institution incorporated in or formed under the law of any part of the United Kingdom which—

- (a) appears to the Secretary of State or the Treasury to be a subsidiary undertaking of a person connected with a country outside the United Kingdom; and
- (b) is carrying on, or appears to the Secretary of State or the Treasury to intend to carry on, any investment, insurance or banking business in, or in relation to, the United Kingdom,

if the sole ground for giving that notice is the ground specified in paragraph (2) below.

(2) The ground referred to in paragraph (1) above is that it appears to the Secretary of State or the Treasury that by reason of—

- (a) the law of the country concerned; or
- (b) any action taken by, or the practices of, the government or any other authority or body in that country,

credit institutions connected with the United Kingdom are unable to carry on banking business in, or in relation to, that country on terms as favourable as those on which credit institutions connected with that country are able to carry on such business in, or in relation to, the United Kingdom.

The Board's functions under the Regulations

54. The functions of the Board under these Regulations shall be treated for the purposes of the Financial Services Act and the Transfer of Functions (Financial Services) Order 1992(41) as if they were functions under Chapter VI of Part I of that Act which—

- (a) had been functions of the Secretary of State; and
- (b) had been transferred to the Board by the Financial Services Act 1986 (Delegation) Order 1987(42).

Other amendments of Financial Services Act

55. The provisions of the Financial Services Act which are mentioned in Schedule 9 to these Regulations shall have effect subject to the amendments there specified.

Construction of Part V

56.—(1) In this Part of these Regulations “authorised person” has the same meaning as in the Financial Services Act.

(2) If and to the extent that a European institution is an authorised person, nothing in this Part of these Regulations, except regulations 48(1), 50(1) and 51 and paragraphs 5, 6, 11(2), 20 and 30 of Schedule 9, shall affect the operation of the Financial Services Act in relation to it.

(41) S.I. 1992/1315.

(42) S.I. 1987/942.

PART VI

AMENDMENTS OF CONSUMER CREDIT ACT

Effect of standard licence

57.—(1) Section 22 of the Consumer Credit Act⁽⁴³⁾ (standard and group licences) shall have effect as if it included provision that a standard licence held by a European institution or quasi-European authorised institution does not cover the carrying on by that institution of any home-regulated activities.

(2) In this regulation and regulation 58 below “standard licence” has the meaning given by section 22(1)(a) of the Consumer Credit Act.

Grant of standard licence

58.—(1) Section 25 of the Consumer Credit Act (licensee to be a fit person) shall have effect as if—

- (a) it included provision that a standard licence shall not be issued to a European institution or quasi-European authorised institution in respect of any homeregulated activities; and
 - (b) the reference in subsection (2)(b) to any provision made by or under that Act, or by or under any enactment regulating the provision of credit to individuals or other transactions with individuals, included a reference to any corresponding provision in force in another member State.
- (2) That section shall also have effect as if it included provision that where—
- (a) a UK authorised institution applies for a standard licence; and
 - (b) the institution states in its application that it proposes to carry on a Consumer Credit Act business which consists of or includes one or more listed activities, the Director shall not grant the licence unless the UK authority has notified the Director that, were the licence granted, the UK authority would not by reason of that proposal exercise any of its relevant powers.
- (3) In paragraph (2) above “relevant powers” means—
- (a) in relation to the Bank, the powers conferred on it by section 11 or 12 of the Banking Act (power to revoke or restrict authorisations);
 - (b) in relation to the Commission, the powers conferred on it by section 42 or 43 of the Building Societies Act (power to impose conditions on or revoke authorisations).

Conduct of business

59.—(1) Section 26 of the Consumer Credit Act (conduct of business), and any existing regulations made otherwise than by virtue of section 54 of that Act, shall have effect as if any reference to a licensee included a reference to a European institution carrying on a Consumer Credit Act business.

(2) Section 54 of that Act (conduct of business regulations), and any existing regulations made by virtue of that section, shall have effect as if any reference to a licensee who carries on a consumer credit business, a consumer hire business or a business of credit brokerage, debt-adjusting or debt-counselling included a reference to a European institution who carries on such a business.

(3) In this regulation “existing regulations” means regulations made under section 26 of that Act before the commencement date.

(43) 1974 c. 39.

The register

60. Section 35 of the Consumer Credit Act (the register) shall have effect as if the particulars to be included in the register included—

- (a) particulars of information received by the Director under regulation 13 above;
- (b) particulars of prohibitions and restrictions imposed by him under regulation 18 or 19 above;
- (c) such particulars of documents received by him under paragraph 3(3), 4(3) or 5(4) of Schedule 2 to these Regulations as he thinks fit; and
- (d) particulars of such other matters (if any) arising under these Regulations as he thinks fit.

Enforcement of agreements

61.—(1) Section 40 of the Consumer Credit Act (enforcement of agreements by unlicensed trader) shall have effect as if the reference in subsection (1) to a regulated agreement, other than a non-commercial agreement, made when the creditor or owner was unlicensed did not include a reference to such an agreement made when the creditor or owner was a relevant institution.

(2) Section 148 of that Act (enforcement of agreement for services of unlicensed trader) shall have effect as if the reference in subsection (1) to an agreement for the services of a person carrying on an ancillary credit business made when that person was unlicensed did not include a reference to such an agreement made when that person was a relevant institution.

(3) Section 149 of that Act (enforcement of regulated agreements made on the introduction of an unlicensed credit-broker) shall have effect as if references in subsections (1) and (2) to introductions by an unlicensed credit-broker did not include references to introductions by a credit-broker who was a relevant institution.

(4) In this regulation “relevant institution” means a European institution—

- (a) to which regulation 5(1)(c) above applies; and
- (b) which is not precluded from making the agreement or introductions in question by a restriction imposed under regulation 19 above.

Restrictions on disclosure of information

62. Section 174 of the Consumer Credit Act(44) (restrictions on disclosure of information) shall have effect as if in subsection (3A)—

- (a) the reference to the Bank’s functions under the Banking Act included a reference to its functions under these Regulations; and
- (b) the reference to the Director’s functions under the Consumer Credit Act included a reference to his functions under these Regulations.

Power to modify subordinate legislation in relation to European institutions

63.—(1) If the Secretary of State is satisfied that it is necessary to do so for the purpose of implementing the Second Council Directive so far as relating to any particular European institution, he may, on the application or with the consent of the institution, by order direct that all or any of the provisions of—

- (a) any regulations made under section 26 of the Consumer Credit Act(45); or

(44) Section 174(3A) was inserted by section 87(1) of the Banking Act 1987 (c. 22).

(45) 1974 c. 39; regulations made to date are the Consumer Credit (Conduct of Business) (Credit References) Regulations 1977 (S.I. 1977/330) and the Consumer Credit (Conduct of Business) (Pawn Records) Regulations 1983 (S.I. 1983/1565).

(b) any regulations or orders made under Parts IV to VIII of that Act⁽⁴⁶⁾, shall not apply to the institution or shall apply to it with such modifications as may be specified in the order.

(2) An order under this regulation may be subject to conditions.

(3) An order under this regulation may be revoked at any time by the Secretary of State; and the Secretary of State may at any time vary any such order on the application or with the consent of the European institution to which it applies.

PART VII

AMENDMENTS OF INSURANCE COMPANIES ACT

Withdrawal of authorisation

64. Section 13 of the Insurance Companies Act⁽⁴⁷⁾ (final withdrawal of authorisation) shall have effect as if it included provision that, where a European subsidiary is authorised under section 3 of that Act to carry on insurance business of any class, the Secretary of State may, on the application of that institution, direct that it shall cease to be authorised to carry on business of that class.

Application of Part II of Act

65. Part II of the Insurance Companies Act (regulation of insurance companies) shall not apply to a European institution by reason only that it carries on in the United Kingdom a listed activity which it is authorised or permitted to carry on in its home State.

Meaning of “insurance business”

66. For the purposes of section 95 of the Insurance Companies Act (insurance business), a European institution carrying on a listed activity which it is authorised or permitted to carry on in its home State shall be treated as if it were carrying on a banking business.

PART VIII

AMENDMENTS OF BUILDING SOCIETIES ACT

Constitution

Establishment of building societies

67. At the end of subsection (1) of section 5 of the Building Societies Act⁽⁴⁸⁾ (establishment, constitution and powers) there shall be inserted the words “and its principal office is in the United Kingdom”.

⁽⁴⁶⁾ The principal regulations and orders (some of which have been amended) are: the Consumer Credit (Total Charge for Credit) Regulations 1980 (S.I. 1980/51); the Consumer Credit (Agreements) Regulations 1983 (S.I. 1983/1553); the Consumer Credit (Prescribed Periods for Giving Information) Regulations 1983 (S.I. 1983/1569); the Consumer Credit (Increase of Monetary Limits) Order 1983 (S.I. 1983/1878); the Consumer Credit (Advertisements) Regulations 1989 (S.I. 1989/1125); and the Consumer Credit (Quotations) Regulations 1989 (S.I. 1989/1126). A complete and up to date list of relevant regulations and orders can be obtained from the Department of Trade and Industry or the Director General of Fair Trading.

⁽⁴⁷⁾ 1982 c. 50; sections 13(2A) and 13(2B) were inserted by section 129 of, and paragraph 7(2) of Schedule 10 to, the Financial Services Act 1986 (c. 60).

⁽⁴⁸⁾ 1986 c. 53.

Initial authorisation to raise funds and borrow money

68.—(1) In subsection (4) of section 9 of the Building Societies Act (initial authorisation to raise funds and borrow money), the word “and” immediately following paragraph (c) shall be omitted and after that paragraph there shall be inserted the following paragraph—

“(cc) each of the persons who, either alone or with any associate or associates, has a qualifying holding in the society is a fit and proper person to have such a holding; and”.

(2) In subsection (13) of that section—

(a) in the definition of “the prescribed minimum”, for the words “£100,000” there shall be substituted the words “ecu 1 million (or an amount of equal value denominated wholly or partly in another unit of account)”; and

(b) the word “and” immediately preceding the definition of “qualifying deferred shares” shall be omitted and after that definition there shall be inserted the following definition—

“‘qualifying holding’, in relation to a building society, means a holding of deferred shares in the society which—

- (a) represents 10 per cent. or more of the qualifying deferred shares in the society;
- (b) entitles the holder to exercise or control the exercise of 10 per cent. or more of the voting power at any general meeting of the society; or
- (c) enables the holder to exercise a significant influence over the management of the society.”

Powers of control of Commission

Power to direct application to renew authorisation

69. In subsection (6) of section 41 of the Building Societies Act(**49**) (power to direct application to renew authorisation), the word “and” immediately following paragraph (d) shall be omitted and after that paragraph there shall be inserted the following paragraph—

“(dd) each of the persons who, either alone or with any associate or associates, has a qualifying holding in the society is a fit and proper person to have such a holding; and”.

Imposition of conditions on current authorisation

70. In subsection (5) of section 42 of the Building Societies Act (imposition of conditions on current authorisation), the word “and” immediately before paragraph (c) shall be omitted and after that paragraph there shall be inserted the words “and

(d) require any person who, either alone or with any associate or associates, has a qualifying holding in the society so to reduce that holding that it ceases to be such a holding.”

Revocation of authorisation

71.—(1) After subsection (1) of section 43 of the Building Societies Act (revocation of authorisation) there shall be inserted the following subsection—

“(1A) The Commission may, subject to subsection (4) below, revoke a building society’s authorisation if—

(49) 1986 c. 53; section 41 was continued in force by S.I. 1991/1518.

- (a) it appears to the Commission that the society’s principal place of business is or may be outside the United Kingdom;
- (b) it appears to the Commission that the society has carried on in the United Kingdom or elsewhere a listed activity (other than the acceptance of deposits or other repayable funds from the public) without having given prior notice to the Commission of its intention to do so;
- (c) the Commission is informed by The Securities and Investments Board, or a connected UK authority having regulatory functions in relation to the provision of financial services, that the society—
 - (i) has contravened any provision of the Financial Services Act 1986 or any rules or regulations made under it;
 - (ii) in purported compliance with any such provision, has furnished that Board or authority with false, misleading or inaccurate information;
 - (iii) has contravened any prohibition or requirement imposed under that Act; or
 - (iv) has failed to comply with any statement of principle issued under that Act;
- (d) the Commission is informed by the Director General of Fair Trading that the society, or any of the society’s employees, agents or associates (whether past or present), has done any of the things specified in paragraphs (a) to (d) of section 25(2) of the Consumer Credit Act 1974;
- (e) it appears to the Commission that the society has failed to comply with any obligation imposed on it by the Banking Coordination (Second Council Directive) Regulations 1992; or
- (f) the Commission is informed by a supervisory authority in another member State that the society has failed to comply with any obligation imposed on it by or under any rule of law in force in that State for purposes connected with the implementation of the Second Council Directive.”

(2) In subsection (4) of that section, for the words “subsection (1)” there shall be substituted the words “subsection (1) or (1A)”.

(3) In subsection (5) of that section, for the words “subsection (1) or (3)” there shall be substituted the words “subsection (1), (1A) or (3)”.

(4) After subsection (9) of that section there shall be inserted the following subsection—

“(9A) The rules and prohibitions referred to in subsection (1A)(c) above include the rules of any recognised self-regulating organisation of which the society is a member and any prohibition imposed by virtue of those rules; and in subsection (1A)(d) above ‘associate’ has the same meaning as in section 25(2) of the Consumer Credit Act 1974.”

Reauthorisation

72.—(1) In subsection (4) of section 44 of the Building Societies Act (reauthorisation), the word “and” immediately following paragraph (d) shall be omitted and after that paragraph there shall be inserted the following paragraph—

“(dd) each of the persons who, either alone or with any associate or associates, has a qualifying holding in the society is a fit and proper person to have such a holding; and”.

(2) After subsection (9) of that section there shall be inserted the following subsection—

“(9A) Any expression used in this section to which a meaning is given by section 9(13) has that meaning in this section.”

Criteria for prudent management

73. In subsection (3) of section 45 of the Building Societies Act (criteria for prudent management), for the first criterion there shall be substituted the following criterion—

“1. Maintenance of—

- (a) adequate reserves and other designated capital resources; and
- (b) own funds which amount to not less than the sum which, for the purposes of section 9, is the prescribed minimum in relation to qualifying capital.”

Exercise of powers on information from supervisory authority

74. After section 45 of the Building Societies Act there shall be inserted the following section—

“Exercise of powers on information from supervisory authority.

45A.—(1) This section applies where, in the case of a building society for which an authorisation is in force, the Commission is informed by a supervisory authority in another member State that the society is failing to comply with an obligation imposed by or under any rule of law in force in that State for purposes connected with the implementation of the Second Council Directive.

(2) The Commission shall as soon as practicable send a copy of the information received by it to every other authority which it knows is a connected UK authority.

(3) The Commission shall also—

- (a) consider whether to exercise its powers—
 - (i) under section 42, to impose conditions on the society’s authorisation, or
 - (ii) under section 43, to revoke the society’s authorisation; and
- (b) notify its decision, and any action which it has taken or intends to take, to the supervisory authority and to every other authority which it knows is a connected UK authority.”

Information

Power of Commission to obtain information and documents etc.

75. In subsection (1) of section 52 of the Building Societies Act (powers to obtain information and documents etc.), for the words from “any of its functions” to the end there shall be substituted the following paragraphs—

- “(a) any of its functions under Part I, section 9, the foregoing sections of this Part, Part X and sections 107 and 108; and
- (b) any of its functions under the Banking Coordination (Second Council Directive) Regulations 1992.”

Confidentiality of certain information obtained by Commission

76.—(1) In subsection (2) of section 53 of the Building Societies Act (confidentiality of certain information obtained by Commission), paragraph (g) shall be omitted.

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

“(2A) As regards the disclosure of information with a view to the institution of, or otherwise for the purposes of, any proceedings in respect of the society under the

Bankruptcy (Scotland) Act 1985⁽⁵⁰⁾ or the Insolvency Act 1986⁽⁵¹⁾, the disclosures permitted by subsection (2)(b) above do not include the disclosure of information relating to a person who (not being a director or other officer of the society) is or has been, to the knowledge of the Commission, involved in an attempt to secure the survival of the society as a going concern.”

(3) In subsection (4)(a) of that section, after sub-paragraph (ii) there shall be inserted the words “and (in either case) the disclosure would, in its opinion, be in accordance with article 12(7) of the First Council Directive”.

(4) In subsection (5) of that section⁽⁵²⁾, for paragraph (b) there shall be substituted the following paragraph—

“(b) by the Bank, of any of its functions under the Banking Act 1987 or as a monetary authority or supervisor of money market and gilt market institutions;”.

(5) In subsection (6) of that section, for the words from “it is desirable” to the end there shall be substituted the following paragraphs—

“(a) it is desirable or expedient that the information should be disclosed in the interests of shareholders or depositors or, in the case of information for the Secretary of State, in the public interest; and

(b) disclosure is in accordance with article 12(7) of the First Council Directive.”

(6) At the end of subsection (7) of that section there shall be inserted the words “if the disclosure is made with a view to facilitating the discharge of any of the functions mentioned in paragraph (b) or, as the case may be, paragraph (c) above”.

(7) At the end of subsection (8) of that section there shall be inserted the words “if the disclosure is made with a view to facilitating the discharge of any prescribed functions of the authority”.

(8) In subsection (9)(a) of that section, for the words “the functions” there shall be substituted the words “the supervisory functions”.

(9) After subsection (11) of that section there shall be inserted the following subsection—

“(11A) Subsection (11) above does not apply in relation to disclosures to an overseas regulatory authority which is not a supervisory authority in another member State unless the Commission is satisfied that the authority is subject to restrictions on further disclosures at least equivalent to those imposed by this section and section 54.”

(10) After subsection (13) of that section there shall be inserted the following subsections—

“(13A) Information which is disclosed to a person with a view to facilitating or assisting the discharge of any functions shall not be used otherwise than with a view to facilitating or assisting the discharge of those functions.

(13B) Any person who uses information in contravention of subsection (13A) above shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both.”

(11) After subsection (14) of that section there shall be inserted the following subsections—

“(15) Any reference in this section to facilitating or assisting the discharge of any functions is a reference to facilitating or assisting the discharge of those functions in relation to—

(a) a financial market; or

⁽⁵⁰⁾ 1985 c. 66.

⁽⁵¹⁾ 1986 c. 45.

⁽⁵²⁾ 1986 c. 53; section 53(5) has been amended by paragraph 26(4) of Schedule 6 to the Banking Act 1987 (c. 22).

(b) persons carrying on the business of banking or insurance, Consumer Credit Act businesses or the business of providing other financial services;
and in this subsection 'Consumer Credit Act business' has the same meaning as in the Banking Coordination (Second Council Directive) Regulations 1992.

(16) Any reference in this section or section 54 to the Commission's functions under this Act includes a reference to its functions under those Regulations."

Information disclosed to Commission from other sources

77.—(1) After subsection (3) section 54 of the Building Societies Act(53) (information disclosed to Commission from other sources) there shall be inserted the following subsections—

“(3A) If information is disclosed by the Bank of England to the Commission for the purpose of enabling it better to discharge its functions under this Act—

- (a) subsection (1) of section 53 applies to that information as it applies to information obtained or furnished under or for the purposes of this Act; but
- (b) the references in subsections (2) to (11) of that section to the disclosure of information do not extend to the disclosure of that information unless—
 - (i) the Bank of England consents to the disclosure; and
 - (ii) the disclosure is for the purpose of enabling the Commission better to discharge its functions under this Act.

(3B) If information is disclosed to the Commission by the relevant supervisory authority in another member State, or is obtained by the Commission, or by a person acting on its behalf, in another member State—

- (a) subsection (1) of section 53 applies to that information as it applies to information obtained or furnished under or for the purposes of this Act; but
- (b) the references in subsections (2) to (11) of that section to the disclosure of information do not extend to the disclosure of that information unless—
 - (i) in the case of information disclosed to the Commission by the relevant supervisory authority in another member State, that authority consents to its disclosure; or
 - (ii) in the case of information obtained by the Commission, or by a person acting on its behalf, in another member State, the relevant supervisory authority in that State consents to its disclosure.”

(2) In subsection (6) of that section, after the words “overseas regulatory authority” there shall be inserted the words “which is not the relevant supervisory authority in another member State”.

Accounts and audit

Accounting records and systems of business control etc.

78. After subsection (10) of section 71 of the Building Societies Act(54) (accounting records and systems of business control etc.) there shall be inserted the following subsection—

“(10A) The Commission may, for the purpose of implementing the Council Directive on the supervision of credit institutions on a consolidated basis (No. 92/30/EEC)(55), direct

(53) 1986 c. 53; subsections (4) and (5) of section 54 were omitted by paragraph 26(5) of Schedule 6 to the Banking Act 1987 (c. 22).

(54) 1986 c. 53; section 71 was amended by S.I. 1991/1729.

(55) OJ No. L110, 28.4.92, p.52.

that subsection (10) above shall have effect in relation to any building society specified in the direction as if any associated body of the society so specified were linked to it by resolution.”

Miscellaneous and supplemental

Service of notices

79. After subsection (1) of section 115 of the Building Societies Act (service of notices) there shall be inserted the following subsection—

“**1A)** This section also has effect in relation to any notice or other document required or authorised by or under any provision of the Banking Coordination (Second Council Directive) Regulations 1992 to be served on any person by the Commission.”

Meaning of “associate”

80. After section 118 of the Building Societies Act there shall be inserted the following section—

“**Associates.**

118A.—(1) In this Act 'associate', in relation to a person holding deferred shares in, or entitled to exercise or control the exercise of voting power in relation to, a building society, means—

- (a) the wife or husband or son or daughter of that person;
- (b) the trustees of any settlement under which that person has a life interest in possession or, in Scotland, a life interest;
- (c) any company of which that person is a director;
- (d) any person who is an employee or partner of that person;
- (e) if that person is a company—
 - (i) any director of that company;
 - (ii) any subsidiary undertaking of that company; and
 - (iii) any director or employee of any such subsidiary undertaking; and
- (f) if that person has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of deferred shares in that society or under which they undertake to act together in exercising their voting power in relation to it, that other person.

(2) For the purposes of this section—

'son' includes stepson and "daughter' includes stepdaughter;

'settlement' includes any disposition or arrangement under which property is held in trust.”

Other interpretation of Building Societies Act

81. After subsection (2) of section 119 of the Building Societies Act (interpretation) there shall be inserted the following subsection—

“(2A) In this Act the following expressions, namely—
another member State;

connected UK authority;
ecu;
the First Council Directive;
listed activity;
own funds;
recognised self-regulating organisation;
relevant supervisory authority;
the Second Council Directive;
supervisory authority,
have the same meanings as in the Banking Coordination (Second Council Directive) Regulations 1992.”

PART IX SUPPLEMENTAL

Minor and consequential amendments

82.—(1) The provisions mentioned in Schedule 10 to these Regulations shall have effect subject to the amendments there specified, being minor amendments or amendments consequential on the provisions of these Regulations.

(2) Any deed, contract or other instrument made before the commencement date shall have effect, unless the context otherwise requires, as if any reference to an institution authorised by the Bank under the Banking Act (however expressed) included a reference to a European deposit-taker.

(3) In this regulation and Schedule 10 to these Regulations “European deposit-taker” means a European authorised institution which has lawfully established a branch in the United Kingdom for the purpose of accepting deposits.

Transitional provisions and savings

83. Schedule 11 to these Regulations shall have effect with respect to the transitional and other matters there mentioned.

16th December 1992

Irvine Patnick
Gregory Knight
Two of the Lords Commissioners of Her
Majesty’s Treasury

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SCHEDULE 1

Regulation 2(1).

ANNEX TO THE SECOND COUNCIL DIRECTIVE

“ANNEX

LIST OF ACTIVITIES SUBJECT TO MUTUAL RECOGNITION

1. Acceptance of deposits and other repayable funds from the public.
2. Lending (1).
3. Financial leasing.
4. Money transmission services.
5. Issuing and administering means of payment (e.g. credit cards, travellers' cheques and bankers' drafts).
6. Guarantees and commitments.
7. Trading for own account or for account of customers in:
 - (a) money market instruments (cheques, bills, CDs, etc.);
 - (b) foreign exchange;
 - (c) financial futures and options;
 - (d) exchange and interest rate instruments;
 - (e) transferable securities.
8. Participation in securities issues and the provision of services relating to such issues.
9. Advice to undertakings on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings.
10. Money broking.
11. Portfolio management and advice.
12. Safekeeping and administration of securities.
13. Credit reference services.
14. Safe custody services.
 - (1) Including inter alia:
 - consumer credit,
 - mortgage credit,
 - factoring, with or without recourse,
 - financing of commercial transactions (including forfaiting).”

SCHEDULE 2

Regulation 3(8).

REQUIREMENTS AS RESPECTS EUROPEAN INSTITUTIONS

Requirements for carrying on activities etc.

1.—(1) In relation to the carrying on of a home-regulated activity by the provision of services, the requirements of this paragraph are that the institution has given to the relevant supervisory authority in its home State a notice in accordance with paragraph 2 below.

- (2) In relation to the establishment of a branch, the requirements of this paragraph are—
- (a) that the institution has given to the relevant supervisory authority in its home State a notice in accordance with paragraph 2 below;
 - (b) that the Bank has received from that authority a notice in accordance with paragraph 3 below; and
 - (c) that either—
 - (i) the Bank has informed the institution that it may establish the branch; or
 - (ii) the period of two months beginning with the day on which the Bank received the notice mentioned in paragraph (b) above has elapsed.

2. A notice given by an institution to the relevant supervisory authority in its home State is given in accordance with this paragraph if it states—

- (a) the United Kingdom to be a member State in which the institution proposes to carry on home-regulated activities;
- (b) whether the institution intends to establish a branch in the United Kingdom;
- (c) if the notice states that the institution does not intend to establish such a branch, the home-regulated activities in relation to which the notice is given; and
- (d) if the notice states that the institution intends to establish such a branch, the requisite details of the branch.

3.—(1) A notice given in respect of a European authorised institution or quasi-European authorised institution by the relevant supervisory authority in its home State is in accordance with this paragraph if it—

- (a) certifies that the institution is a credit institution which is for the time being authorised to act as such an institution by the authority;
- (b) contains the information stated in the institution's notice; and
- (c) if the institution intends to establish a branch in the United Kingdom, contains—
 - (i) a statement of the amount of the institution's own funds and the solvency ratio of the institution (calculated in accordance with the Solvency Ratio Directive⁽⁵⁶⁾); and
 - (ii) details of any deposit guarantee scheme which is intended to secure the protection of depositors in the branch.

(2) A notice given in respect of a European subsidiary or quasi-European subsidiary by the relevant supervisory authority in its home State is in accordance with this paragraph if it—

- (a) certifies that the institution is a financial institution which is a 90 per cent. subsidiary undertaking of a European institution incorporated in or formed under the law of that State;

⁽⁵⁶⁾ Council Directive 89/647/EEC (OJ No. L386, 30.12.89, p.14), as amended by Commission Directive 91/31/EEC (OJ No. L17, 23.1.91, p.20).

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- (b) certifies that the conditions mentioned in regulation 3(6) of these Regulations are fulfilled in relation to the institution;
- (c) certifies that the institution's business is being conducted in a prudent manner;
- (d) contains the information stated in the institution's notice; and
- (e) if the institution intends to establish a branch in the United Kingdom, contains a statement of the amount of the institution's own funds and the consolidated solvency ratio of the institution's parent undertaking (calculated in accordance with the Solvency Ratio Directive).

(3) The Bank shall as soon as practicable send a copy of any notice received by it in accordance with this paragraph, and a note of the date of its receipt, to every other authority which it knows is a connected UK authority.

Requirements for changing requisite details of branch

4.—(1) Subject to sub-paragraph (2) below, the requirements of this paragraph are—

- (a) that the institution has given a notice to the Bank, and to the relevant supervisory authority in its home State, stating the details of the proposed change;
- (b) that the Bank has received from that authority a notice stating those details; and
- (c) that either the Bank has informed the institution that it may make the change, or the period of one month beginning with the day on which it gave the Bank the notice mentioned in paragraph (a) above has elapsed.

(2) In the case of a change occasioned by circumstances beyond the institution's control, the requirements of this paragraph are that the institution has, as soon as practicable (whether before or after the change), given a notice to the Bank, and to the relevant supervisory authority in its home State, stating the details of the change.

(3) The Bank shall as soon as practicable send a copy of any notice received by it in accordance with this paragraph, and a note of the date of its receipt, to every other authority which it knows is a connected UK authority.

Cancellation of compliance with certain requirements

5.—(1) The Bank may, on an application by a European subsidiary, direct that any compliance with the requirements of paragraph 1 above in relation to—

- (a) its carrying on of any activity; or
- (b) its establishment of a branch,

shall cease to have effect as from such date as may be specified in the direction.

(2) The Bank shall not give a direction under this paragraph unless—

- (a) the applicant has given notice of the application to the relevant supervisory authority in its home State; and
- (b) the Bank has agreed with that authority that the direction should be given.

(3) The date specified in a direction under this paragraph—

- (a) shall not be earlier than the date requested in the application; but
- (b) subject to that, shall be such date as may be agreed between the Bank and the relevant supervisory authority.

(4) The Bank shall as soon as practicable send a copy of any direction given under this paragraph to the applicant, to the relevant supervisory authority and to every other authority which it knows is a connected UK authority.

SCHEDULE 3

Regulation 9(7).

PROHIBITIONS AND RESTRICTIONS BY THE BANK

Preliminary

1. In this Schedule—

“prohibition” means a prohibition under regulation 9 of these Regulations;

“restriction” means a restriction under regulation 10 of these Regulations.

Notice of prohibition or restriction in non-urgent cases

2.—(1) Subject to paragraph 3 below, where the Bank proposes, in relation to a European institution—

(a) to impose a prohibition;

(b) to impose a restriction; or

(c) to vary a restriction otherwise than with the agreement of the institution,

the Bank shall give notice of its proposal to the institution and to every other authority which it knows is a connected UK authority.

(2) If the proposed action is within paragraph (b) or (c) of sub-paragraph (1) above, the notice under that sub-paragraph shall specify the proposed restriction or, as the case may be, the proposed variation.

(3) A notice under sub-paragraph (1) above shall state the grounds on which the Bank proposes to act and give particulars of the institution’s rights under sub-paragraph (5) below.

(4) Where a proposed restriction consists of or includes a condition requiring the removal of any person as director, controller or manager, the Bank shall give that person a copy of the notice mentioned in sub-paragraph (1) above, together with a statement of his rights under sub-paragraph (5) below.

(5) An institution which is given a notice under sub-paragraph (1) above and a person who is given a copy under sub-paragraph (4) above may, within the period of 14 days beginning with the day on which the notice was given, make representations to the Bank.

(6) After giving a notice under sub-paragraph (1) above and taking into account any representations made under sub-paragraph (5) above, the Bank shall decide whether—

(a) to proceed with the action proposed in the notice;

(b) to take no further action;

(c) if the proposed action was the imposition of a prohibition, to impose a restriction instead of or in addition to the prohibition; or

(d) if the proposed action was the imposition or variation of a restriction, to impose a different restriction or make a different variation.

(7) The Bank shall give—

(a) the institution;

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- (b) any such person as is mentioned in sub-paragraph (4) above; and
- (c) the relevant supervisory authority in the institution's home State,

written notice of its decision and, except where the decision is to take no further action, the notice shall state the reasons for the decision and give particulars of the rights conferred by sub-paragraph (11) below and section 27 of the Banking Act⁽⁵⁷⁾.

- (8) A notice under sub-paragraph (7) above shall be given—
 - (a) within the period of 28 days beginning with the day on which the notice under sub-paragraph (1) above was given; or
 - (b) where a reply of the relevant supervisory authority to a notice under regulation 11(3) of these Regulations was received during the second half of that period, within the period of 14 days beginning with the day on which that reply was so received;

and where such a reply was so received, the Bank shall give notice of that fact to the institution and to any such person as is mentioned in sub-paragraph (4) above.

(9) If no notice under sub-paragraph (7) above is given within the period mentioned in sub-paragraph (8) above, the Bank shall be treated as having at the end of that period given a notice under that sub-paragraph to the effect that no further action is to be taken.

(10) A notice under sub-paragraph (7) above imposing a prohibition or a restriction on an institution or varying a restriction shall, subject to section 27(4) of the Banking Act, have the effect of prohibiting the institution from accepting deposits in the United Kingdom or restricting its activities or varying the restriction in the manner specified in the notice.

(11) Where the decision notified under sub-paragraph (7) above is to impose or vary a restriction otherwise than as stated in the notice given under sub-paragraph (1) above—

- (a) the institution concerned; and
- (b) in the case of a European institution, the relevant supervisory authority,

may, within the period of seven days beginning with the day on which the notice was given under sub-paragraph (7) above, make written representations to the Bank with respect to the restriction or variation and the Bank may, after taking those representations into account, alter the restriction.

(12) The Bank may omit from the copy given to a person under sub-paragraph (4) above and from a notice given to him under sub-paragraph (7) above any matter which does not relate to him.

Notice of prohibition or restriction in urgent cases

3.—(1) No notice need be given in accordance with paragraph 2 above in respect of—

- (a) the imposition of a prohibition;
- (b) the imposition of a restriction; or
- (c) the variation of a restriction otherwise than with the agreement of the institution concerned,

in any case in which the Bank considers that the prohibition or restriction should be imposed, or the variation should be made, as a matter of urgency.

(2) In any such case the Bank may by written notice to the institution impose the prohibition or restriction or make the variation.

(3) Any such notice shall state the reasons for which the Bank has acted and particulars of the rights conferred by sub-paragraph (5) below and by section 27 of the Banking Act.

(57) 1987 c. 22.

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(4) Where a restriction consists of or includes a condition requiring the removal of any person as director, controller or manager, the Bank shall give that person a copy of the notice mentioned in sub-paragraph (2) above, together with a statement of his rights under sub-paragraph (5) below.

(5) An institution to which a notice is given under this paragraph and a person who is given a copy of it by virtue of sub-paragraph (4) above may within the period of 14 days beginning with the day on which the notice was given make representations to the Bank.

(6) After giving a notice under sub-paragraph (2) above and taking into account any representations made in accordance with sub-paragraph (5) above, the Bank shall decide whether—

- (a) to confirm or rescind its original decision; or
- (b) to impose a different restriction or to vary the restriction in a different manner.

(7) The Bank shall, within the period of 28 days beginning with the day on which the notice was given under sub-paragraph (2) above, give—

- (a) the institution; and
- (b) the relevant supervisory authority in the institution's home State,

written notice of its decision under sub-paragraph (6) above and, except where the decision is to rescind the original decision, the notice shall state the reasons for the decision.

(8) Where the notice under sub-paragraph (7) above is of a decision to take the action specified in sub-paragraph (6)(b) above, the notice under sub-paragraph (7) shall have the effect of imposing the prohibition or restriction, or making the variation specified in the notice, with effect from the date on which it is given.

Appeals

4.—(1) Section 27 of the Banking Act (rights of appeal) shall have effect as if—

- (a) the decisions mentioned in subsection (1) included a decision of the Bank to impose a prohibition or impose or vary a restriction; and
- (b) the reference in subsection (4) to the revocation of an institution's authorisation included a reference to the imposition of a prohibition on the institution.

(2) Section 29 of that Act (determination of appeals) shall have effect as if in subsection (2)(a)—

- (a) the reference to revoking an authorisation included a reference to imposing a prohibition; and
- (b) the reference to restricting an authorisation instead included a reference to imposing instead a restriction.

(3) That section shall also have effect as if it included provision that, in the case of any appeal by a European institution, notice of the tribunal's determination, together with a statement of its reasons, shall be given to the relevant supervisory authority in the institution's home State.

Statement of principles

5.—(1) The Bank shall, as soon as practicable after the coming into force of these Regulations, publish in such manner as it thinks appropriate a statement of the principles in accordance with which it is acting or proposing to act in exercising its power to impose a prohibition on or to restrict the listed activities of a European institution.

(2) Subsection (2) of section 16 of the Banking Act (statement of principles) shall apply for the purposes of sub-paragraph (1) above as it applies for the purpose of subsection (1) of that section.

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SCHEDULE 4

Regulation 15(5).

PROHIBITIONS BY THE BOARD

Notice of prohibition

1.—(1) Where the Board proposes—

- (a) to impose a prohibition on a European institution under regulation 15 of these Regulations; or
- (b) to refuse an application made by a European institution under paragraph (3) of that regulation,

it shall give the institution on which it proposes to impose the prohibition, or whose application it proposes to refuse, written notice of its intention to do so, stating the reasons for which it proposes to act.

(2) In the case of a proposed prohibition the notice shall state the date on which it is proposed that the prohibition should take effect and, in the case of a limited prohibition, its proposed duration.

(3) Where the reasons stated in a notice under sub-paragraph (1) above relate specifically to matters which—

- (a) refer to a person identified in the notice other than the institution concerned; and
- (b) are in the opinion of the Board prejudicial to that person in any office or employment,

the Board shall, unless it considers it impracticable to do so, serve a copy of the notice on that person.

(4) A notice under sub-paragraph (1) above shall give particulars of the right to require the case to be referred to the Financial Services Tribunal under section 97 of the Financial Services Act.

(5) Where a case is not required to be referred to that Tribunal by an institution on whom a notice is served under sub-paragraph (1) above, the Board shall, at the expiration of the period within which such a requirement can be made—

- (a) give that institution written notice of the prohibition or refusal; or
- (b) give that institution written notice that the prohibition is not to be imposed or, as the case may be, written notice of the grant of the application,

and the Board may give public notice of any decision notified by it under paragraph (a) or (b) above and the reasons for the decision, except that it shall not do so in the case of a decision notified under paragraph (b) unless the institution concerned consents to its doing so.

(6) Where the Board gives a notice under sub-paragraph (1) or (5)(a) or (b) above, it shall serve a copy of the notice—

- (a) on the Bank; and
- (b) on the relevant supervisory authority in the institution's home State.

References to the Financial Services Tribunal

2. Section 97 of the Financial Services Act(58) (references to the Tribunal) shall have effect as if—

- (a) any reference to a notice served under section 29 of that Act included a reference to a notice served under paragraph 1 above;

(58) 1986 c. 60.

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- (b) any reference to a copy of a notice served under the said section 29 included a reference to a copy of a notice served under sub-paragraph (3) of that paragraph;
- (c) any reference to the withdrawal of an authorisation included a reference to the imposition of an absolute prohibition under regulation 15 of these Regulations; and
- (d) any reference to the suspension of an authorisation included a reference to the imposition of a limited prohibition under regulation 15 of these Regulations,

and any reference in that section to a decision not to withdraw or suspend an authorisation shall be construed accordingly.

3.—(1) Section 98 of the Financial Services Act (decisions on references by applicant or authorised person etc.) shall have effect as if—

- (a) the applications mentioned in paragraph (a) of subsection (2) included an application for the variation of a limited prohibition imposed under regulation 15 of these Regulations; but
- (b) as if the applications mentioned in paragraph (b) of that subsection did not include an application for the rescission of any prohibition imposed under that regulation.

(2) Subsection (3)(b) of that section shall have effect as if the provisions there referred to included regulation 15 of these Regulations.

(3) That section shall have effect as if it included provision that paragraph 1 above shall not apply to any action taken by the Board in accordance with the Tribunal's report.

4.—(1) Subsection (2) of section 100 of the Financial Services Act (withdrawal of references) shall have effect as if the reference to the provisions mentioned in section 97(1)(a) of that Act included a reference to paragraph 1 above.

(2) That section shall have effect as if it included provision that where a person on whom a notice was served under paragraph 1 above withdraws a case from the Tribunal, sub-paragraph (5) of that paragraph shall apply to him as if he had not required the case to be referred.

SCHEDULE 5

Regulation 18(6).

PROHIBITIONS AND RESTRICTIONS BY THE DIRECTOR

Preliminary

1. In this Schedule—

- “appeal period” has the same meaning as in the Consumer Credit Act(59);
- “prohibition” means a prohibition under regulation 18 of these Regulations;
- “restriction” means a restriction under regulation 19 of these Regulations.

Notice of prohibition or restriction

2.—(1) This paragraph applies where the Director proposes, in relation to a European institution—

- (a) to impose a prohibition;
- (b) to impose a restriction; or

(59) 1974 c. 39.

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- (c) to vary a restriction otherwise than with the agreement of the institution.
- (2) The Director shall, by notice—
 - (a) inform the institution that, as the case may be, the Director proposes to impose the prohibition or restriction or vary the restriction, stating his reasons; and
 - (b) invite the institution to submit representations to the proposal in accordance with paragraph 4 below.
- (3) If he imposes the prohibition or restriction or varies the restriction, the Director may give directions authorising the institution to carry into effect agreements made before the coming into force of the prohibition, restriction or variation.
- (4) A prohibition, restriction or variation shall not come into force before the end of the appeal period.
- (5) Where the Director imposes a prohibition or restriction or varies a restriction, he shall serve a copy of the prohibition, restriction or variation—
 - (a) on the Bank; and
 - (b) on the relevant supervisory authority in the institution's home State.

Application to revoke prohibition or restriction

- 3.**—(1) This paragraph applies where the Director proposes to refuse an application made by a European institution for the revocation of a prohibition or restriction.
- (2) The Director shall, by notice—
 - (a) inform the institution that the Director proposes to refuse the application, stating his reasons; and
 - (b) invite the institution to submit representations in support of the application in accordance with paragraph 4 below.

Representations to Director

- 4.**—(1) Where this paragraph applies to an invitation by the Director to an institution to submit representations, the Director shall invite the institution, within 21 days after the notice containing the invitation is given to it, or such longer period as the Director may allow—
 - (a) to submit its representations in writing to the Director; and
 - (b) to give notice to the Director, if it thinks fit, that it wishes to make representations orally; and where notice is given under paragraph (b) above the Director shall arrange for the oral representations to be heard.
- (2) In reaching his determination the Director shall take into account any representations submitted or made under this paragraph.
 - (3) The Director shall give notice of his determination to the institution.

Appeals

- 5.** Section 41 of the Consumer Credit Act(60) (appeals to the Secretary of State) shall have effect as if—

(60) 1974 c. 39.

- (a) the following determinations were mentioned in column 1 of the table set out at the end of that section, namely—
 - (i) imposition of a prohibition or restriction or the variation of a restriction; and
 - (ii) refusal of an application for the revocation of a prohibition or restriction; and
- (b) the European institution concerned were mentioned in column 2 of that table in relation to those determinations.

SCHEDULE 6

Regulation 22(6).

REQUIREMENTS AS RESPECTS UK INSTITUTIONS

Requirements for carrying on activities etc.

1.—(1) In relation to the carrying on of a home-regulated activity by the provision of services, the requirements of this paragraph are that the institution has given to the UK authority a notice in accordance with paragraph 2 below.

- (2) In relation to the establishment of a branch, the requirements of this paragraph are—
 - (a) that the institution has given to the UK authority a notice in accordance with paragraph 2 below;
 - (b) that the UK authority has given to the relevant supervisory authority in the member State concerned the notice which, subject to paragraph 4 below, it is required by paragraph 3(1) or (2) below to give; and
 - (c) that either—
 - (i) the relevant supervisory authority has informed the institution that it may establish the branch; or
 - (ii) the period of two months beginning with the day on which the UK authority gave the relevant supervisory authority the notice mentioned in paragraph (b) above has elapsed.

2. A notice given by an institution to the UK authority is given in accordance with this paragraph if it states—

- (a) the member State in which the institution proposes to carry on home-regulated activities;
- (b) whether the institution intends to establish a branch in that member State;
- (c) if the notice states that the institution does not intend to establish such a branch, the home-regulated activities in relation to which the notice is given; and
- (d) if the notice states that the institution intends to establish such a branch, the requisite details of the branch.

3.—(1) The notice which, subject to paragraph 4 below, the UK authority is required to give in respect of a UK authorised institution is a notice which is addressed to the relevant supervisory authority in the member State identified in the institution's notice under paragraph 2 above and which—

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- (a) certifies that the institution is a credit institution which is for the time being authorised by the UK authority under the Banking Act(61) or, as the case may be, the Building Societies Act(62);
- (b) contains the information stated in the institution's notice; and
- (c) if the institution intends to establish a branch in the member State, contains—
 - (i) a statement of the amount of the institution's own funds and the solvency ratio of the institution (calculated in accordance with the Solvency Ratio Directive(63)); and
 - (ii) details of any deposit guarantee scheme which is intended to secure the protection of depositors in the branch.

(2) The notice which, subject to paragraph 4 below, the UK authority is required to give in respect of a UK subsidiary is a notice which is addressed to the relevant supervisory authority in the member State identified in the institution's notice under paragraph 2 above and which—

- (a) certifies that the institution is a financial institution which is a 90 per cent. subsidiary undertaking of a UK authorised institution;
- (b) certifies that the conditions mentioned in regulation 20(5) of these Regulations are fulfilled in relation to the institution;
- (c) certifies that the institution's business is being conducted in a prudent manner;
- (d) contains the information stated in the institution's notice; and
- (e) if the institution intends to establish a branch in the member State, contains a statement of the amount of the institution's own funds and the consolidated solvency ratio of the institution's parent undertaking (calculated in accordance with the Solvency Ratio Directive).

4.—(1) Where the institution's notice under paragraph 2 above states that the institution does not intend to establish a branch in the member State, the notice referred to in paragraph 3(1) or (2) above shall be given within the period of one month beginning with the date on which the institution's notice was received by the UK authority.

(2) Where the institution's notice under paragraph 2 above states that the institution intends to establish a branch in the member State, the UK authority shall, within the period of three months beginning with the date on which the institution's notice was received—

- (a) give the notice referred to in paragraph 3(1) or (2) above; or
- (b) refuse to give such a notice.

(3) The UK authority may not refuse to give such a notice unless, having regard to the homeregulated activities proposed to be carried on, the UK authority doubts the adequacy of the administrative structure or the financial situation of the institution.

(4) Before determining to give or to refuse to give such a notice, the UK authority—

- (a) shall seek and take into account the views of every other authority which it knows is a connected UK authority in relation to any of the home-regulated activities proposed to be carried on; and
- (b) may regard itself as satisfied in relation to any matter relating to those activities which is relevant to the decision if any such authority informs the UK authority that it is so satisfied.

(61) 1987 c. 22.

(62) 1986 c. 53.

(63) Council Directive 89/647/EEC (OJ No. L386, 30.12.89, p.14), as amended by Commission Directive 91/31/EEC (OJ No. L17, 23.1.91, p.20).

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(5) In reaching a determination as to the adequacy of the administrative structure, the UK authority may have regard to the adequacy of management, systems and controls and the presence of relevant skills needed for the activities proposed to be carried on.

(6) Where the institution's notice under paragraph 2 above states that the institution proposes to establish a branch, the UK authority shall, within the period of three months referred to in subparagraph (2) above, notify the institution—

- (a) that it has given the notice referred to in paragraph 3(1) or (2) above, stating the date on which it did so; or
- (b) that it has refused to give the notice, stating the reasons for the refusal and giving particulars of the rights conferred by section 27 of the Banking Act or, as the case may be, section 46 of the Building Societies Act.

Requirements for changing requisite details of branch

5.—(1) Subject to sub-paragraph (2) below, the requirements of this paragraph are—

- (a) that the institution has given a notice to the UK authority, and to the relevant supervisory authority in the member State in which it has established the branch, stating the details of the proposed change;
- (b) that that authority has received from the UK authority a notice under paragraph 6(1) below; and
- (c) that either that authority has informed the institution that it may make the change, or the period of one month beginning with the day on which it gave that authority the notice mentioned in paragraph (a) above has elapsed.

(2) In the case of a change occasioned by circumstances beyond the institution's control, the requirements of this paragraph are that the institution has, as soon as practicable (whether before or after the change), given a notice to the UK authority, and to the relevant supervisory authority in the member State in which it has established the branch, stating the details of the change.

6.—(1) The UK authority shall, within the period of one month beginning with the date on which the notice under paragraph 5(1) above was received—

- (a) give a notice to the relevant supervisory authority informing it of the details of the proposed change; or
- (b) refuse to give such a notice.

(2) The UK authority may not refuse to give a notice under sub-paragraph (1) above unless, having regard to the changes and to the home-regulated activities proposed to be carried on, the UK authority doubts the adequacy of the administrative structure or the financial situation of the institution.

(3) Before determining to give or to refuse to give such a notice, the UK authority—

- (a) shall seek and take into account the views of any connected UK authority in relation to any changes to the home-regulated activities proposed to be carried on; and
- (b) may regard itself as satisfied in relation to any matter relating to those activities which is relevant to the decision if any such authority informs the UK authority that it is so satisfied.

(4) In reaching a determination as to the adequacy of the administrative structure, the UK authority may have regard to the adequacy of management, systems and controls and the presence of relevant skills needed for the activities proposed to be carried on.

(5) The UK authority shall, within the period of one month referred to in sub-paragraph (1) above, notify the institution—

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- (a) that it has given the notice referred to in that sub-paragraph, stating the date on which it did so; or
- (b) that it refused to give the notice, stating the reasons for the refusal and giving particulars of the rights conferred by section 27 of the Banking Act or, as the case may be, section 46 of the Building Societies Act.

Cancellation of compliance with certain requirements

7.—(1) The UK authority may, on an application by a UK subsidiary, direct that any compliance with the requirements of paragraph 1 above in relation to—

- (a) its carrying on of any activity in another member State; or
- (b) its establishment of a branch in another member State,

shall cease to have effect as from such date as may be specified in the direction.

(2) The UK authority shall not give a direction under this paragraph unless—

- (a) the applicant has given notice of the application to the relevant supervisory authority in the member State concerned; and
- (b) the UK authority has agreed with the relevant supervisory authority that the direction should be given.

(3) The date specified in a direction under this paragraph—

- (a) shall not be earlier than the date requested in the application; but
- (b) subject to that, shall be such date as may be agreed between the UK authority and the relevant supervisory authority.

(4) The UK authority shall as soon as practicable send a copy of any direction given under this paragraph to the applicant, to the relevant supervisory authority and to every other authority which it knows is a connected UK authority.

Appeals

8.—(1) Section 27 of the Banking Act(64) (rights of appeal) shall have effect as if the decisions mentioned in subsection (1) included a decision of the Bank to refuse to give a notice under paragraph 3(1) or (2) or 6(1) above.

(2) Section 29 of the Banking Act (determination of appeals) shall have effect as if it included provision that, where the tribunal reverses a decision of the Bank to refuse to give a notice under paragraph 3(1) or (2) or 6(1) above, the tribunal shall direct the Bank to give the notice.

9.—(1) Section 46 of the Building Societies Act(65) (rights of appeal) shall have effect as if—

- (a) the decisions mentioned in subsection (1) included a decision of the Commission to refuse to give a notice under paragraph 3(1) or (2) or 6(1) above; and
- (b) in relation to such a decision, the reference in that subsection to a building society included a reference to a UK subsidiary.

(2) Section 47 of the Building Societies Act (determination of appeals) shall have effect as if it included provision that, where the tribunal reverses a decision of the Commission to refuse to give a notice under paragraph 3(1) or (2) or 6(1) above, the tribunal shall direct the Commission to give the notice.

(64) 1987 c. 22.

(65) 1986 c. 53.

SCHEDULE 7

Regulation 23(7).

RESTRICTIONS BY THE UK AUTHORITY

Preliminary

1. In this Schedule “restriction” means a restriction under regulation 23 of these Regulations.

Notice of restriction in non-urgent cases

2.—(1) Subject to paragraph 3 below, where the UK authority proposes, in relation to a UK subsidiary—

- (a) to impose a restriction; or
- (b) to vary a restriction otherwise than with the agreement of the institution,

the UK authority shall give notice of its proposal to the institution and to every other authority which it knows is a connected UK authority.

(2) A notice under sub-paragraph (1) above shall—

- (a) specify the proposed restriction or, as the case may be, the proposed variation; and
- (b) state the grounds on which the UK authority proposes to act and give particulars of the institution’s rights under sub-paragraph (4) below.

(3) Where—

- (a) a proposed restriction consists of or includes a condition requiring the removal of any person as director, controller or manager; or
- (b) the ground or a ground for a proposal to impose or vary a restriction is that it appears to the UK authority that the criterion in paragraph 1 of Schedule 3 to the Banking Act is not or has not been fulfilled, or may not or may not have been fulfilled, in the case of any person,

the UK authority shall give that person a copy of the notice mentioned in sub-paragraph (1) above, together with a statement of his rights under sub-paragraph (4) below.

(4) An institution which is given a notice under sub-paragraph (1) above and a person who is given a copy under sub-paragraph (3) above may, within the period of 14 days beginning with the day on which the notice was given, make representations to the UK authority.

(5) After giving a notice under sub-paragraph (1) above and taking into account any representations made under sub-paragraph (4) above, the UK authority shall decide whether—

- (a) to proceed with the action proposed in the notice;
- (b) to take no further action; or
- (c) to impose a different restriction or, as the case may be, make a different variation.

(6) The UK authority shall give—

- (a) the institution; and
- (b) any such person as is mentioned in sub-paragraph (4) above,

written notice of its decision and, except where the decision is to take no further action, the notice shall state the reasons for the decision and give particulars of the rights conferred by sub-paragraph (10) below and section 27 of the Banking Act or, as the case may be, section 46 of the Building Societies Act.

(7) A notice under sub-paragraph (6) above shall be given within the period of 28 days beginning with the day on which the notice under sub-paragraph (1) above was given.

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(8) If no notice under sub-paragraph (6) above is given within the period mentioned in subparagraph (7) above, the UK authority shall be treated as having at the end of that period given a notice under that sub-paragraph to the effect that no further action is to be taken.

(9) A notice under sub-paragraph (6) above imposing a restriction on an institution or varying a restriction shall have the effect of restricting the institution's activities or varying the restriction in the manner specified in the notice.

(10) Where the decision notified under sub-paragraph (6) above is to impose or vary a restriction otherwise than as stated in the notice given under sub-paragraph (1) above—

- (a) the institution concerned may, within the period of seven days beginning with the day on which the notice was given under sub-paragraph (6) above, make written representations to the UK authority with respect to the restriction or variation; and
- (b) the UK authority may, after taking those representations into account, alter the restriction.

(11) The UK authority may omit from the copy given to a person under sub-paragraph (4) above and from a notice given to him under sub-paragraph (6) above any matter which does not relate to him.

Notice of restriction in urgent cases

3.—(1) No notice need be given in accordance with paragraph 2 above in respect of—

- (a) the imposition of a restriction; or
- (b) the variation of a restriction otherwise than with the agreement of the institution concerned,

in any case in which the UK authority considers that the restriction should be imposed, or the variation should be made, as a matter of urgency.

(2) In any such case the UK authority may by written notice to the institution impose the restriction or make the variation.

(3) Any such notice shall state the reasons for which the UK authority has acted and particulars of the rights conferred by sub-paragraph (5) below and by section 27 of the Banking Act or, as the case may be, section 46 of the Building Societies Act.

(4) Where—

- (a) a restriction consists of or includes a condition requiring the removal of any person as director, controller or manager; or
- (b) the ground or a ground for a restriction or variation of a restriction is that it appears to the UK authority that the criterion in paragraph 1 of Schedule 3 to the Banking Act is not or has not been fulfilled, or may not or may not have been fulfilled, in the case of any person,

the UK authority shall give that person a copy of the notice mentioned in sub-paragraph (2) above, together with a statement of his rights under sub-paragraph (5) below.

(5) An institution to which a notice is given under this paragraph and a person who is given a copy of it by virtue of sub-paragraph (4) above may within the period of 14 days beginning with the day on which the notice was given make representations to the UK authority.

(6) After giving a notice under sub-paragraph (2) above and taking into account any representations made in accordance with sub-paragraph (5) above, the UK authority shall decide whether—

- (a) to confirm or rescind its original decision; or
- (b) to impose a different restriction or to vary the restriction in a different manner.

(7) The UK authority shall, within the period of 28 days beginning with the day on which the notice was given under sub-paragraph (2) above, give the institution written notice of its decision

under sub-paragraph (6) above and, except where the decision is to rescind the original decision, the notice shall state the reasons for the decision.

(8) Where the notice under sub-paragraph (7) above is of a decision to take the action specified in sub-paragraph (6)(b) above, the notice under sub-paragraph (7) shall have the effect of imposing the restriction, or making the variation specified in the notice, with effect from the date on which it is given.

Appeals

4. Section 27 of the Banking Act (rights of appeal) shall have effect as if the decisions mentioned in subsection (1) included a decision of the Bank to impose or vary a restriction.

5.—(1) Section 46 of the Building Societies Act (rights of appeal) shall have effect as if—

- (a) the decisions mentioned in subsection (1) included a decision of the Commission to impose or vary a restriction; and
- (b) in relation to such a decision, the reference in that subsection to a building society included a reference to a UK subsidiary.

(2) Section 47 of that Act⁽⁶⁶⁾ (determination of appeals) shall have effect as if it included provision enabling the tribunal to vary any decision of the Commission to impose or vary a restriction by directing the Commission to impose a different restriction or make a different variation.

Statement of principles

6.—(1) The Bank shall, as soon as practicable after the coming into force of these Regulations, publish in such manner as it thinks appropriate a statement of the principles in accordance with which it is acting or proposing to act in exercising its power to restrict the listed activities of a UK subsidiary.

(2) Subsection (2) of section 16 of the Banking Act (statement of principles) shall apply for the purposes of sub-paragraph (1) above as it applies for the purpose of subsection (1) of that section.

SCHEDULE 8

Regulation 47.

AMENDMENTS OF BANKING ACT

Preliminary

1. In this Schedule—

“the Act” means the Banking Act⁽⁶⁷⁾;

“former European institution” means an institution which was formerly a European institution and continues to have a liability in respect of any deposit for which it had a liability when it was a European institution, and “former European authorised institution” shall be construed accordingly;

“former UK subsidiary” means an institution which was formerly a UK subsidiary and continues to have a liability in respect of any deposit for which it had a liability when it was a UK subsidiary.

⁽⁶⁶⁾ 1986 c. 53; section 47(3) has been amended by paragraph 68 of Schedule 10 to the Courts and Legal Services Act 1990 (c. 41).

⁽⁶⁷⁾ 1987 c. 22.

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The Bank and the Board of Banking Supervision

2. Section 1 of the Act (functions and duties of the Bank) shall have effect as if—
 - (a) the reference in subsection (3) to the Bank’s activities under the Act included a reference to its activities under these Regulations; and
 - (b) the reference in subsection (4) to the Bank’s functions under the Act included a reference to its functions under these Regulations.
3. Section 2 of the Act (the Board of Banking Supervision) shall have effect as if references in subsection (3) to the Bank’s functions under the Act included references to its functions under these Regulations.

Meaning of “deposit”

4. Section 5 of the Act (meaning of “deposit”) shall have effect as if the reference in subsection (3) to an authorised institution included a reference to a European authorised institution which has lawfully established a branch in the United Kingdom for the purpose of accepting deposits.

Authorisations

- 5.—(1) Section 17 of the Act (information as to authorised institutions) shall have effect as if—
 - (a) references in subsections (1) and (2) to the institutions which are authorised under the Act included references to European authorised institutions in respect of which the Bank has received a notice given in accordance with paragraph 3 of Schedule 2 to these Regulations; and
 - (b) the reference in subsection (3) to the fact that an institution has ceased to be so authorised included a reference to the fact that an institution has ceased to be a European authorised institution.

(2) That section shall also have effect as if it included provision that any such list as is mentioned in subsection (1) shall indicate the European authorised institutions as respects which the Bank is satisfied that they are entitled to accept deposits in the United Kingdom in the course of carrying on a deposit-taking business (within the meaning of the Act).

- 6.—(1) Section 18 of the Act (false statements as to authorised status) shall have effect as if subsection (1) also precluded any person other than a European institution from—
 - (a) describing himself as a European institution; or
 - (b) so holding himself out as to indicate or be reasonably understood to indicate that he is a European institution.

(2) That section shall also have effect as if any reference in subsection (2) to an authorised institution included a reference to a European institution.

Invitations to make deposits

7. Section 33 of the Act (advertisement directions) shall have effect as if the reference in subsection (1) to an authorised institution included a reference to a European authorised institution.

Information

8.—(1) Section 39 of the Act(**68**) (power to obtain information and require production of documents) shall have effect as if—

- (a) references to an authorised institution included references to a European institution, a quasi-European authorised institution or a UK subsidiary;
- (b) references to the Bank’s functions under the Act included references to its functions under these Regulations;
- (c) references to an officer, servant or agent of the Bank included references to an officer, servant or agent of the relevant supervisory authority in a European institution’s or quasi-European authorised institution’s home State;
- (d) references to such information or documents as the Bank may reasonably require for the performance of its functions under the Act included references to such information or documents as such an authority may reasonably require for the performance of any of its functions corresponding to those of the Bank under the Act or these Regulations or those of a connected UK authority; and
- (e) the reference to a former authorised institution included a reference to a former European institution.

(2) That section shall also have effect as if it included provision empowering the Bank to exercise the powers conferred by that section for the purpose of assisting a supervisory authority in a European institution’s home State in the performance of any functions corresponding to those of the Bank under the Act or these Regulations or to those of a connected UK authority.

(3) A person who is guilty of an offence under subsection (11) of that section by virtue of this paragraph shall not be liable to imprisonment for a term exceeding three months.

9.—(1) Section 40 of the Act (right of entry to obtain information and documents) shall have effect as if the reference in subsection (2) to any officer, servant or agent of the Bank included a reference to any officer, servant or agent of a supervisory authority in a European institution’s or quasi-European authorised institution’s home State.

(2) A person who is guilty of an offence under subsection (3) of that section by virtue of this paragraph shall not be liable to imprisonment for a term exceeding three months.

Investigations

10.—(1) Section 41 of the Act(**69**) (investigations on behalf of the Bank) shall have effect as if—

- (a) references to an authorised institution included references to a European institution or a quasi-European authorised institution; and
- (b) the reference to a former authorised institution included a reference to a former European institution.

(2) That section shall also have effect as if it included provision empowering the Bank to exercise the powers conferred by that section for the purpose of assisting a supervisory authority in a European institution’s home State in the performance of any functions corresponding to those of the Bank under the Act or these Regulations or those of a connected UK authority.

(68) Section 39 is amended by regulation 36 of these Regulations, and its application as amended is subject to the savings in regulation 46.

(69) Section 41 is amended by regulation 37 of these Regulations, and its application as amended is subject to the savings in regulation 46.

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(3) A person who is guilty of an offence under subsection (9) of that section by virtue of this paragraph shall not be liable to imprisonment for a term exceeding three months.

Accounts and auditors

11. Section 45 of the Act (audited accounts to be open for inspection) shall have effect as if the reference in subsection (1) to an authorised institution included a reference to a European authorised institution.

12. Section 47 of the Act (communications by auditor etc. with the Bank) shall have effect as if—

- (a) references to authorised institutions included references to European institutions and UK subsidiaries;
- (b) the reference in subsection (1) to any function of the Bank under the Act included a reference to any function of the Bank under these Regulations; and
- (c) the reference in subsection (7) to a former authorised institution included a reference to a former European institution.

The deposit protection scheme

13. Section 50 of the Act (the Deposit Protection Board) shall have effect as if the reference in subsection (2) to authorised institutions included a reference to European authorised institutions which accept deposits in the United Kingdom.

14.—(1) Subject to sub-paragraph (2) below, section 52 of the Act (contributory institutions and general provisions as to contributions) shall have effect as if the reference in subsection (1) to authorised institutions included a reference to European authorised institutions which accept deposits in the United Kingdom.

(2) The Deposit Protection Board may, with the consent of the Treasury, waive (in whole or in part) all or any contributions from a European authorised institution which accepts deposits in the United Kingdom if it is satisfied that it is appropriate to do so, having regard to the extent to which sterling deposits with the United Kingdom offices of the institution are protected—

- (a) under the law of the institution's home State; or
- (b) by virtue of any arrangements which are in force there.

15. Section 58 of the Act (compensation payments to depositors) shall have effect as if in subsection (1)—

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

16. Section 60 of the Act (protected deposits) shall have effect as if in subsection (6)—

- (a) the reference to a former authorised institution included a reference to an institution which—
 - (i) was formerly a European authorised institution which accepted deposits in the United Kingdom; and

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

Banking names and descriptions

17. Section 68 of the Act (exemptions from section 67) shall have effect as if the reference in subsection (3) to an authorised institution included a reference to a European authorised institution.

18. Section 69 of the Act (restriction on use of banking descriptions) shall have effect as if the reference in subsection (1) to an authorised institution included a reference to a European authorised institution.

19.—(1) Section 70 of the Act (power to object to institution’s names) shall have effect as if—

- (a) subsection (1) included provision enabling the Bank to give notice in writing to a European institution or quasi-European institution whose recognition notice stated an intention to establish a branch in the United Kingdom that it objects to the name stated in that notice as one of the requisite details of the branch;
- (b) the reference in subsection (1) to an institution applying for an authorisation under the Act included a reference to a European institution or quasi-European institution whose recognition notice stated no such intention;
- (c) the reference in subsection (2) to an authorised institution included a reference to a European institution;
- (d) the reference in subsection (3) to an authorised institution to which section 67 of the Act applies included a reference to a European authorised institution; and
- (e) the reference in paragraph (b) of that subsection to the said section 67 included a reference to section 68(3) of the Act.

(2) In this paragraph “recognition notice”, in relation to a European institution or quasi-European institution, means a notice given by it in accordance with paragraph 2 of Schedule 2 to these Regulations.

20. Section 71 of the Act (effect of notices under section 70 and appeals) shall have effect as if the reference in subsection (1) to an authorised institution included a reference to a European institution.

Overseas institutions

21. Section 74 of the Act (meaning of “overseas institution” and “representative office”) shall have effect as if the reference in subsection (1) to an authorised institution included a reference to a European institution.

Disclosure of information

22. Section 82 of the Act (restrictions on disclosure) shall have effect as if the reference to the Bank’s functions under the Act included a reference to its functions under these Regulations.

23. Section 83 of the Act⁽⁷⁰⁾ (disclosure for facilitating discharge of functions by Bank) shall have effect as if—

⁽⁷⁰⁾ Section 83 is amended by regulation 38 of these Regulations, and its application as amended is subject to the savings in regulation 46.

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- (a) the reference to the Bank's functions under the Act included a reference to its functions under these Regulations;
- (b) references to an authorised institution included references to a European institution or UK subsidiary; and
- (c) the reference to a former authorised institution included a reference to a former European institution or former UK subsidiary.

24. Section 84 of the Act (disclosure for facilitating discharge of functions by other supervisory authorities) shall have effect as if the reference in subsection (5A)(a)(**71**) to an authorised institution or former authorised institution included a reference to a European institution or former European institution.

25. Section 86 of the Act(**72**) (information supplied to Bank by overseas authority etc.) shall have effect as if the references in subsections (1) to (3) to the Bank's functions under the Act included a reference to its functions under these Regulations.

26. Section 87 of the Act(**73**) (disclosure of information obtained under other Acts) shall have effect as if the reference in subsection (3A) to the Bank's functions under the Act included a reference to its functions under these Regulations.

Miscellaneous and supplementary

27. Section 93 of the Act (injunctions) shall have effect as if the reference in subsection (1) to a direction under section 19 of the Act included a reference to a restriction under regulation 10 or 23 of these Regulations.

28. Section 94 of the Act (false and misleading information) of that Act shall have effect as if—

- (a) the reference in subsection (1) to a requirement imposed by or under the Act included a reference to a requirement imposed by or under these Regulations;
- (b) references in subsections (1) and (3) to the Bank's functions under the Act included references to its functions under these Regulations;
- (c) the reference in subsection (3) to an authorised institution included a reference to a European institution or UK subsidiary; and
- (d) the reference in that subsection to a former authorised institution included a reference to a former European institution or former UK subsidiary.

29. Section 95 of the Act (restriction of Rehabilitation of Offenders Act 1974) shall have effect as if in subsection (4)—

- (a) the reference to imposing a restriction included a reference to imposing a restriction under regulation 10 or 23 of these Regulations;
- (b) the reference to an authorised institution included a reference to a European institution or UK subsidiary; and
- (c) the reference to a former authorised institution included a reference to a former European institution or former UK subsidiary.

30. Section 99 of the Act (service of notices on Bank) shall have effect as if the reference in subsection (1) to a notice required by that Act to be given to or served on the Bank included a reference to a notice required by these Regulations to be so given or served.

(71) Section 84(5A) is substituted by regulation 39(2) of these Regulations, and its application is subject to the savings in regulation 46.

(72) Section 86 is substituted by regulation 41 of these Regulations, and its application is subject to the savings in regulation 46.

(73) Section 87(3A) is inserted by regulation 42 of these Regulations, and its application is subject to the savings in regulation 46.

31. Section 100 of the Act (service of other notices) shall have effect in relation to a European institution which has not established a branch in the United Kingdom as if in subsection (4) the words from “except that” to the end were omitted.

32.—(1) Section 101 of the Act (evidence) shall have effect as if in subsection (1)—

- (a) the reference to an authorised institution included a reference to a European institution or UK subsidiary;
- (b) the reference to the date on which a particular institution became or ceased to be authorised included a reference to the date on which a particular institution became or ceased to be a European institution or UK subsidiary; and
- (c) the reference to whether or not a particular institution’s authorisation is or was restricted included a reference to whether or not a restriction under regulation 10 or 23 of these Regulations has or had been imposed on a particular European institution or UK subsidiary.

(2) In giving a certificate under subsection (1) of that section in relation to a European institution, the Bank may rely on any information supplied to it by the relevant supervisory authority in the institution’s home State.

33. Section 106 of the Act (interpretation) shall have effect as if the reference in the definition of “former authorised institution” in subsection (1) to an institution which was formerly an authorised institution did not include a reference to a European authorised institution.

SCHEDULE 9

Regulation 55.

AMENDMENTS OF FINANCIAL SERVICES ACT

Preliminary

1. In this Schedule—

“the Act” means the Financial Services Act(74);

“investment agreement” has the same meaning as in the Act.

Restriction on carrying on business

2. Section 5 of the Act (agreements made by or through unauthorised persons) shall have effect as if the persons mentioned in subsection (1)(b)(i) included a European institution acting in the course of home-regulated investment business carried on by it in the United Kingdom.

Authorised persons

3. Section 10 of the Act (grant and refusal of recognition of self-regulating organisations) shall have effect as if the excepted cases mentioned in subsection (3) included the case where the member is a European institution and the business is home-regulated investment business.

4. Section 13 of the Act(75) (alteration of rules of recognised self-regulating organisation for protection of investors) shall have effect as if the excepted cases mentioned in subsection (2) (both

(74) 1986 c. 60.

(75) 1986 c. 60; section 13 has been amended by sections 206 and 212 of, and Schedules 23 and 24 to, the Companies Act 1989 (c. 40) subject to the savings provided for in the Companies Act 1989 (Commencement, Transitional Provisions and Transfer of Functions under the Financial Services Act 1986) Order 1990 (S.I. 1990/354).

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as amended and as originally enacted) included the case where the member is a European institution and the business is home-regulated investment business.

5. Section 28 of the Act (withdrawal and suspension of authorisation) shall have effect in relation to an authorisation granted to a European institution as if the reference in subsection (1)(a) to the investment business which the holder of the authorisation is carrying on or proposing to carry on did not include a reference to any home-regulated investment business.

6. Section 32 of the Act (notice of commencement of business) shall have effect in relation to a notice given under subsection (1) by a European institution or quasi-European authorised institution as if the reference in subsection (2)(a) to the investment business which is proposed to be carried on did not include a reference to any home-regulated investment business.

Exempted persons

7. Section 44 of the Act (appointed representatives) shall have effect as if any reference to an authorised person included a reference to a European institution carrying on home-regulated investment business in the United Kingdom.

8. Section 45 of the Act (miscellaneous exemptions) shall have effect as if the reference in subsection (2) to a partnership which is an authorised person included a reference to a partnership which is or was a European institution carrying on home-regulated investment business in the United Kingdom.

Conduct of business

9.—(1) Section 47A of the Act⁽⁷⁶⁾ (statements of principle) shall have effect as if—

- (a) the reference in subsection (1) to the conduct expected of persons authorised to carry on investment business included a reference to the conduct expected of European institutions carrying on home-regulated investment business in the United Kingdom; and
- (b) the reference in subsection (4) to the withdrawal or suspension of authorisation under section 28 of the Act included a reference to the imposition of a prohibition under regulation 15 of these Regulations.

(2) That section shall also have effect as if it included provision that a statement of principle issued under that section shall not include, as respects any European institution—

- (a) provision as to the fitness of the institution to carry on any home-regulated investment business; or
- (b) provision as to any other matter for which, under the Second Council Directive, responsibility is reserved to the relevant supervisory authority in the institution's home State.

10.—(1) Section 48 of the Act⁽⁷⁷⁾ (conduct of business rules) shall have effect as if—

- (a) the reference in subsection (1) to the conduct of investment business by authorised persons included a reference to the conduct of home-regulated investment business carried on in the United Kingdom by European institutions; and
- (b) the reference in subsection (2) to an authorised person included a reference to a European institution carrying on home-regulated investment business in the United Kingdom.

⁽⁷⁶⁾ Section 47A was inserted by section 192 of the Companies Act 1989 (c. 40).

⁽⁷⁷⁾ Section 48 has been amended by sections 206 and 212 of, and Schedules 23 and 24 to, the Companies Act 1989 (c. 40).

(2) That section shall have effect as if it included provision that rules under that section shall not include, as respects any European institution—

- (a) provision prohibiting the institution from carrying on, or holding itself out as carrying on, any home-regulated investment business; or
- (b) provision as to any matter for which, under the Second Council Directive, responsibility is reserved to the relevant supervisory authority in the institution's home State.

11.—(1) Section 49 of the Act(**78**) (financial resources rules) shall have effect as if it included provision that rules under that section shall not include, as respects any European institution which is a member of a recognised self-regulating organisation, provision requiring the institution to have and maintain financial resources in respect of any home-regulated investment business carried on by it.

(2) Subsection (2) of that section shall also have effect in relation to an authorised person who is a European institution as if the reference in paragraph (b) to any business (whether or not investment business) carried on by the person concerned did not include a reference to any homeregulated investment business.

12.—(1) Section 51 of the Act (cancellation rules) shall have effect as if the reference in subsection (1) to a person who has entered or offered to enter into an investment agreement with an authorised person included a reference to a person who has entered or offered to enter into an investment agreement to which sub-paragraph (2) below applies.

(2) This sub-paragraph applies to an investment agreement which is made by a European institution in the course of the carrying on by it of home-regulated investment business in the United Kingdom.

13.—(1) Section 52 of the Act(**79**) (notification regulations) shall have effect as if any reference to authorised persons, or an authorised person, included a reference to European institutions, or a European institution, carrying on home-regulated investment business in the United Kingdom.

(2) That section shall also have effect as if it included provision that regulations under that section shall not require European institutions to furnish information which is not reasonably required for purposes connected with the exercise of functions under the Act or these Regulations.

14. Section 53 of the Act (indemnity rules) shall have effect as if the reference in subsection (1) to civil liability incurred by an authorised person in connection with his investment business included a reference to civil liability incurred by a European institution in connection with home-regulated investment business carried on by it in the United Kingdom.

15. Section 54 of the Act(**80**) (compensation fund) shall have effect as if—

- (a) it included provision that rules establishing a scheme under that section may include in the scheme provision for compensating investors in cases where persons who are or have been European institutions are unable, or likely to be unable, to satisfy claims in respect of any civil liability incurred by them in connection with home-regulated investment business carried on by them in the United Kingdom; and
- (b) any reference in subsection (2) to authorised persons included a reference to European institutions carrying on home-regulated investment business in the United Kingdom.

(78) Section 49 has been amended by section 206 of, and Schedule 23 to, the Companies Act 1989 (c. 40).

(79) Section 52 has been amended by section 206 of, and Schedule 23 to, the Companies Act 1989 (c. 40).

(80) Section 54 has been amended by article 389 of, and Schedule 9 to, the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I.19)).

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16. Section 55 of the Act⁽⁸¹⁾ (clients' money) shall have effect as if any reference to authorised persons, or an authorised person, included a reference to European institutions, or a European institution, carrying on home-regulated investment business in the United Kingdom.

17. Section 57 of the Act (restrictions on advertising) shall have effect as if any reference to an authorised person included a reference to a European institution carrying on home-regulated investment business in the United Kingdom.

18. Section 59 of the Act (employment of prohibited persons) shall have effect as if any reference to authorised persons, or an authorised person, included a reference to European institutions, or a European institution, carrying on home-regulated investment business in the United Kingdom.

19. Section 60 of the Act (public statement as to person's misconduct) shall have effect as if—

- (a) the reference in subsection (1) to a person who is or was an authorised person by virtue of section 25 of that Act included a reference to a person who is or was a European institution carrying on home-regulated investment business in the United Kingdom;
- (b) the reference in subsection (3) to the authorised person included a reference to the European institution; and
- (c) it included provision that where any notice under that section is given to a person who is or was a European institution, a copy of the notice shall be served on the Bank.

20. Section 64 of the Act (scope of powers of intervention) shall have effect in relation to an authorised person who is a European institution as if the reference in subsection (1) to investment business of a particular kind did not include a reference to any home-regulated investment business which the authorised person is carrying on or proposing to carry on.

21. Section 65 of the Act (restriction of business) shall have effect as if the reference in subsection (1) to an authorised person included a reference to a European institution carrying on home-regulated investment business in the United Kingdom.

22. Section 66 of the Act (restriction on dealing with assets) shall have effect as if—

- (a) the reference in subsection (1) to an authorised person included a reference to a European institution carrying on home-regulated investment business in the United Kingdom; and
- (b) it included provision that a prohibition may not be imposed under that section in relation to a European institution unless the relevant supervisory authority in the institution's home State has requested that measures be taken for the purpose of ensuring that the institution has sufficient assets available to cover risks arising from open positions on financial markets in the United Kingdom.

23. Section 67 of the Act (vesting of assets in trustee) shall have effect as if—

- (a) any reference to an authorised person included a reference to a European institution carrying on home-regulated investment business in the United Kingdom; and
- (b) it included provision that a requirement may not be imposed under that section in relation to a European institution unless the relevant supervisory authority in the institution's home State has requested that measures be taken for the purpose of ensuring that the institution has sufficient assets available to cover risks arising from open positions on financial markets in the United Kingdom.

⁽⁸¹⁾ Section 55 has been amended by section 206 of, and Schedule 23 to, the Companies Act 1989 (c. 40).

Collective investment schemes

24. Section 75 of the Act⁽⁸²⁾ (collective investment schemes: interpretation) shall have effect as if the reference in subsection (6) to an authorised person included a reference to a European institution carrying on home-regulated investment business in the United Kingdom.

25. Section 76 of the Act (restrictions on promotion) shall have effect as if any reference to an authorised person included a reference to a European institution carrying on home-regulated investment business in the United Kingdom.

26. Section 93 of the Act (applications to the court) shall have effect as if the reference in subsection (1) to an authorised person included a reference to a European institution.

Information

27. Section 102 of the Act (register of authorised persons etc.) shall have effect as if it included provision that—

- (a) the register kept under that section shall contain an entry in respect of each institution which appears to the Board to be a European institution carrying on home-regulated investment business in the United Kingdom;
- (b) the entry in respect of each such institution shall consist of—
 - (i) information as to the services which the institution holds itself out as able to provide; and
 - (ii) such other information as the Board may determine;
- (c) where it appears to the Board that any person in respect of whom there is an entry in the register by virtue of paragraph (a) above has ceased to be a European institution carrying on home-regulated investment business in the United Kingdom, the Board shall make a note to that effect in the entry together with the reason why the person in question is no longer such an institution; and
- (d) an entry in respect of which a note is made by virtue of paragraph (c) above may be removed from the register at the end of such period as the Board thinks fit.

28. Section 104 of the Act (power to call for information) shall have effect as if—

- (a) the reference in subsection (1) to a person who is authorised to carry on investment business by virtue of any of the provisions there mentioned included a reference to a European institution carrying on home-regulated investment business in the United Kingdom; and
- (b) references to functions under the Act included references to functions under these Regulations.

29. Section 106 of the Act⁽⁸³⁾ (exercise of investigation powers by officer etc.) shall have effect as if it included provision that—

- (a) where the Secretary of State or the Board authorises a person other than one of his or its officers to exercise any powers under section 105 of the Act (investigation powers) in relation to any home-regulated investment business of a European institution, the Secretary of State or, as the case may be, the Board may determine that subsection (3) of section 106 shall not apply; and
- (b) where such a determination is made, the person authorised to exercise the powers shall make a report to the relevant supervisory authority in the institution's home State, in such

⁽⁸²⁾ Section 75 has been amended by the Financial Services Act 1986 (Restriction of Scope of Act and meaning of Collective Investment Scheme) Order 1990 (S.I.1990/349).

⁽⁸³⁾ Section 106 has been amended by section 73 of the Companies Act 1989 (c. 40).

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manner as that authority may require, on the exercise of those powers and the results of exercising them.

Auditors

30. Subsection (3) of section 107 of the Act(**84**) (appointment of auditors) shall have effect in relation to an auditor appointed by an authorised person which is a European institution as if the reference to the accounts of the authorised person did not include a reference to any accounts relating to a home-regulated activity.

31. Section 109 of the Act (communication by auditor with supervisory authorities) shall have effect as if in subsection (1)—

- (a) the reference to an authorised person included a reference to a European institution; and
- (b) the reference to functions under the Act included a reference to functions under these Regulations.

32. Subsection (3) of section 110 of the Act (overseas business) shall have effect in relation to a European institution as if any reference to investment business did not include a reference to home-regulated investment business; and the reference in paragraph (b) of that subsection to the powers and duties of an auditor shall be construed accordingly.

Fees

33. Section 113 of the Act (periodical fees) shall have effect as if it included provision that a European institution carrying on home-regulated investment business in the United Kingdom shall pay such periodical fees to the Board as may be prescribed by regulations made under that section.

Prevention of restrictive practices

34. Section 119 of the Act(**85**) (recognised self-regulating organisations, investment exchanges and clearing houses) shall have effect as if any reference in subsections (1) and (2) to the protection of investors included a reference to compliance with the Second Council Directive.

35. Section 121 of the Act(**86**) (designated agencies) shall have effect as if any reference in subsections (1) and (2) to the protection of investors included a reference to compliance with the Second Council Directive.

Relations with other regulatory authorities

36.—(1) Section 128C of the Act(**87**) (enforcement in support of overseas regulatory authority) shall have effect as if it—

- (a) required the powers mentioned in subsection (1) to be exercised at the request of the relevant supervisory authority in another member State if their exercise is necessary for the purposes of complying with the Second Council Directive; and
- (b) included provision that, in relation to the exercise of those powers in such a case, subsections (4) and (5) shall not apply and the Board shall notify the action taken by it to that authority.

(84) Section 107 has been amended by section 206 of, and Schedule 23 to, the Companies Act 1989 (c. 40).

(85) Section 119 has been amended by sections 206 and 212 of, and Schedules 23 and 24 to, the Companies Act 1989 (c. 40).

(86) Section 121 has been amended by section 206 of, and Schedule 23 to, the Companies Act 1989 (c. 40).

(87) Section 128C was inserted by section 196 of the Companies Act 1989 (c. 40).

(2) That section shall also have effect as if the reference in subsection (2) to the power to withdraw or suspend authorisation under section 28 of the Act included a reference to the power to impose a prohibition under regulation 15 of these Regulations.

Official listing of securities

37. Section 154 of the Act (advertisements etc. in connection with listing applications) shall have effect as if—

- (a) it included provision that, where a European institution carrying on home-regulated investment business in the United Kingdom contravenes that section, it shall be treated as having contravened rules made under Chapter V of Part I of the Act, or in the case of an institution which is a member of a recognised self-regulating organisation, the rules of that organisation; and
- (b) the reference in subsection (3) to a person other than an authorised person did not include a reference to such an institution.

Offers of unlisted securities

38. Section 171 of the Act⁽⁸⁸⁾ (contraventions in relation to offers of unlisted securities) shall have effect as if—

- (a) it included provision that, where a European institution carrying on home-regulated investment business in the United Kingdom does any of the things specified in paragraphs (a) to (c) of subsection (1), it shall be treated as having contravened rules made under Chapter V of Part I of the Act, or in the case of an institution which is a member of a recognised self-regulating organisation, the rules of that organisation; and
- (b) the reference in subsection (3) to a person other than an authorised person did not include a reference to such an institution.

Insider dealing

39.—(1) Section 178 of the Act (penalty for failure to co-operate with section 177 investigations) shall have effect as if—

- (a) the reference in subsection (3) to an authorised person included a reference to a European institution; and
- (b) the notices which may be served on a European institution under that subsection included a notice—
 - (i) directing that regulation 5(1)(b) of these Regulations shall not apply in relation to the institution after the expiry of a specified period after the service of the notice; or
 - (ii) directing that during a specified period that provision shall apply in relation to the institution only as respects the performance of contracts entered into before the notice comes into force;
- (c) the reference in subsection (4) to the period mentioned in paragraphs (a) and (c) of subsection (3) included a reference to the period mentioned in paragraph (b)(i) and (ii) above;
- (d) any reference in subsection (5) to an unauthorised person did not include a reference to a European institution carrying on home-regulated investment business in the United Kingdom; and

⁽⁸⁸⁾ Section 171 has been amended by section 198 of the Companies Act 1989 (c. 40).

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- (e) the reference in that subsection to any authorised person included a reference to such a European institution.
- (2) That section shall also have effect as if it included provision that if, it appears to the Secretary of State—
- (a) that a person on whom he serves a notice under subsection (3) is a European institution carrying on home-regulated investment business in the United Kingdom; or
 - (b) that a person on whom he serves a revocation notice under subsection (7) was such an institution at the time when the notice which is being revoked was served,
- he shall serve a copy of the notice on the Board or, in the case of an institution which is a member of a recognised self-regulating organisation, that organisation.

Restrictions on disclosure of information

40. Section 179 of the Act(**89**) (restrictions on disclosure of information) shall have effect as if the reference in subsection (2) to functions under the Act included a reference to functions under these Regulations.

41. Section 180 of the Act(**90**) (exceptions from restriction on disclosure of information) shall have effect as if—

- (a) the reference in paragraph (g) of subsection (1) to functions under the Banking Act included a reference to functions under these Regulations;
- (b) the reference in that subsection to functions under the Building Societies Act included a reference to functions under these Regulations; and
- (c) the reference in that subsection to an authorised person included a reference to a European institution carrying on home-regulated investment business in the United Kingdom.

Miscellaneous and supplementary

42. Section 191 of the Act (occupational pension schemes) shall have effect as if any reference to an authorised person included a reference to a European institution carrying on home-regulated investment business in the United Kingdom.

43. Section 206 of the Act(**91**) shall have effect as if the reference in subsection (1) to authorised persons included a reference to European institutions.

Activities constituting investment business

44.—(1) Paragraph 17 of Schedule 1 to the Act(**92**) (investments and investment business) shall have effect as if any reference to authorised persons, or an authorised person, included a reference to European institutions, or a European institution, carrying on home-regulated investment business in the United Kingdom.

(2) Paragraph 18 of that Schedule shall have effect as if the reference in sub-paragraph (2) to an authorised person included a reference to a European institution carrying on home-regulated investment business in the United Kingdom.

(89) Section 179 has been amended by sections 75 and 212 of, and Schedule 24 to, the Companies Act 1989 (c. 40).

(90) Section 180 has been amended by section 108 of, and paragraph 27(3) of Schedule 6 to, the Banking Act 1987 (c. 22) and by sections 75 and 212 of, and Schedule 24 to, the Companies Act 1989 (c. 40).

(91) Section 206 has been amended by section 206 of, and Schedule 23 to, the Companies Act 1989 (c. 40).

(92) Paragraph 17 has been amended by section 206 of, and Schedule 23 to, the Companies Act 1989 (c. 40) and by the Financial Services Act 1986 (Restriction of Scope of Act and Meaning of Collective Investment Scheme) Order 1990 (S.I. 1990/349).

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(3) Paragraph 26 of that Schedule shall have effect as if any reference to an authorised person, or authorised persons, included a reference to a European institution, or European institutions, carrying on home-regulated investment business in the United Kingdom.

Requirements for recognition of self-regulating organisation

45.—(1) Paragraph 2 of Schedule 2 to the Act (requirements for recognition of self-regulating organisation) shall have effect as if it included provision that the rules and practices of the organisation must be such as to secure that no European institution, other than one on which an absolute prohibition has been imposed under regulation 15 of these Regulations, is refused admission to the organisation, or expelled from it, for reasons relating to the institution’s fitness to carry on any home-regulated investment business.

(2) Paragraph 3 of that Schedule(**93**) shall have effect as if it included provision that the rules of the organisation must not include, as respects any European institution—

- (a) provision requiring the institution to have and maintain financial resources in respect of any home-regulated investment business carried on by it; or
- (b) provision as to any other matter for which, under the Second Council Directive, responsibility is reserved to a supervisory authority in the institution’s home State.

(3) That paragraph shall also have effect as if—

- (a) the reference in sub-paragraph (3) to Chapter VI of Part I of the Act included a reference to regulation 16 of these Regulations; and
- (b) it included provision that the rules of the organisation must be such as to secure that, where a power falling within that sub-paragraph is exercisable by virtue of a European institution’s contravention of a requirement to furnish information for statistical purposes, the exercise of the power shall be subject to such restrictions as are necessary for the purposes of complying with article 21 of the Second Council Directive.

(4) Paragraph 7 of that Schedule shall have effect as if it included provision that, for the purposes of complying with the Second Council Directive, the organisation must be able and willing to co-operate, by the sharing of information and otherwise, with supervisory authorities in other member States.

Qualifications of designated agency

46.—(1) Paragraph 4 of Schedule 7 to the Act(**94**) (qualifications of designated agency) shall have effect as if any reference to authorised persons included a reference to European institutions carrying on home-regulated investment business in the United Kingdom.

(2) Paragraph 5 of that Schedule shall have effect as if it included provision that, for the purposes of complying with the Second Council Directive, the agency must be able and willing to co-operate, by the sharing of information and otherwise, with supervisory authorities in other member States.

Principles applicable to designated agency’s legislative provisions

47. Schedule 8 to the Act(**95**) (principles applicable to designated agency’s legislative provisions) shall have effect as if any reference to an authorised person included a reference to a European institution carrying on home-regulated investment business in the United Kingdom.

(93) Paragraph 3 has been amended by section 203 of the Companies Act 1989 (c. 40).

(94) Schedule 7 has been amended by sections 204 and 206 of, and Schedule 23 to, the Companies Act 1989 (c. 40).

(95) Schedule 8 has been amended by section 206 of, and Schedule 23 to, the Companies Act 1989 (c. 40).

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SCHEDULE 10

Regulation 82(1).

MINOR AND CONSEQUENTIAL AMENDMENTS

PART I

PRIMARY LEGISLATION

Judicial Factors Act 1849 (c. 51)

1. Section 5(1) of the Judicial Factors Act 1849(96) (factor to lodge monies in one bank) shall have effect as if the reference to an institution authorised under the Banking Act included a reference to a European deposit-taker.

Bankers' Books Evidence Act 1879 (c. 11)

2. Section 9(1) of the Bankers' Books Evidence Act 1879(97) (meaning of “bank” etc.) shall have effect as if the reference to an institution authorised under the Banking Act included a reference to a European deposit-taker.

Agricultural Credits Act 1928 (c. 43)

3. Section 5(7) of the Agricultural Credits Act 1928(98) (meaning of “bank” etc.) shall have effect as if the reference to an institution authorised under the Banking Act included a reference to a European deposit-taker.

Agricultural Credits (Scotland) Act 1929 (c. 13)

4. Section 9(2) of the Agricultural Credits (Scotland) Act 1929(99) (meaning of “bank” etc.) shall have effect as if the reference to an institution authorised under the Banking Act included a reference to a European deposit-taker.

Superannuation Act 1972 (c. 11)

5. Sections 1, 9 and 10 of the Superannuation Act 1972(100) (superannuation of civil servants etc.) shall each have effect as if the reference in subsection (2A) to any authorised provider included a reference to any European institution acting in the course of home-regulated investment business carried on by it in the United Kingdom.

(96) Section 5(1) has been amended by section 7(a) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55), and by section 74(1) of, and paragraph 21(1)(a) of Schedule 8 to, the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40).

(97) Section 9 was substituted by the Banking Act 1979 (c. 37), and subsection (1)(a) was substituted by section 108(1) of, and paragraph 1 of Schedule 6 to, the Banking Act 1987 (c. 22).

(98) Relevant amendments to section 5(7) have been made by section 51(1) of, and paragraphs 2 and 14 of Schedule 6 to, the Banking Act 1979 (c. 37), and by section 108(1) of, and paragraph 2(1) of Schedule 6 to, the Banking Act 1987 (c. 22).

(99) Relevant amendments to section 9(2) have been made by section 51(1) of, and paragraphs 3 and 15 of Schedule 6 to, the Banking Act 1979 (c. 37), and by section 108(1) of, and paragraph 3(1) of Schedule 6 to, the Banking Act 1987 (c. 22).

(100) Sections 1(2A), 9(2A) and 10(2A) were inserted by sections 8(1), 8(3) and 8(5) respectively of the Pensions (Miscellaneous Provisions) Act 1990 (c. 7); other amendments not relevant to these Regulations were also made to sections 1, 9 and 10 of the Superannuation Act 1972 (c. 11) by the Pensions (Miscellaneous Provisions) Act 1990.

Superannuation (Northern Ireland) Order 1972 (S.I.1972/1073 (N.I. 10))

6. Articles 3, 11 and 12 of the Superannuation (Northern Ireland) Order 1972 (superannuation of civil servants etc.) shall each have effect as if the reference in paragraph (1A) or, as the case may be, paragraph (2A) to any authorised provider included a reference to any European institution acting in the course of home-regulated investment business carried on by it in the United Kingdom.

Consumer Credit Act 1974 (c. 39)

7. Section 16(1)(h) of the Consumer Credit Act 1974(**101**) (exclusion of authorised institution's agreements from Act) shall have effect as if the reference to an institution authorised under the Banking Act included a reference to a European deposit-taker.

Solicitors Act 1974 (c. 47)

8.—(1) Section 23(2) of the Solicitors Act 1974(**102**) (unqualified person not to prepare papers for probate etc.) shall have effect as if the reference to an institution authorised by the Bank, under the Banking Act, to carry on a deposit-taking business included a reference to a European deposit-taker.

(2) Section 87(1) of that Act(**103**) (interpretation) shall have effect as if the reference to an institution authorised under the Banking Act included a reference to a European deposit-taker.

Credit Unions Act 1979 (c. 34)

9. Section 31(1) of the Credit Unions Act 1979(**104**) (interpretation) shall have effect as if the reference to an institution authorised under the Banking Act included a reference to a European deposit-taker.

Crown Agents Act 1979 (c. 43)

10. Section 8(5) of the Crown Agents Act 1979(**105**) (pre-funding of agency activities) shall have effect as if the reference to an institution authorised under the Banking Act included a reference to a European deposit-taker.

Solicitors (Scotland) Act 1980 (c. 46)

11. Section 35(2) of the Solicitors (Scotland) Act 1980(**106**) (accounts rules) shall have effect as if the reference to an institution authorised under the Banking Act included a reference to a European deposit-taker.

British Telecommunications Act 1981 (c. 38)

12. Section 67(4) of the British Telecommunications Act 1981(**107**) (general classes of acts not infringing postal privilege) shall have effect as if the reference to an institution authorised under the Banking Act included a reference to a European deposit-taker.

(**101**) Section 16(1)(h) was inserted by section 88(2) of the Banking Act 1987 (c. 22), and a definition of "authorised institution" was inserted in section 189(1) by section 88(4) of the Banking Act 1987.

(**102**) Section 23(2) was substituted by section 54(1) of the Courts and Legal Services Act 1990 (c. 54).

(**103**) Section 87(1) has been amended by section 108(1) of, and paragraph 5 of Schedule 6 to, the Banking Act 1987 (c. 22).

(**104**) Section 31(1) has been amended by section 108 of, and paragraph 7(2) of Schedule 6, and Part I of Schedule 7 to, the Banking Act 1987 (c. 22).

(**105**) Section 8(5) has been amended by section 108(1) of, and paragraph 8 of Schedule 6 to, the Banking Act 1987 (c. 22).

(**106**) Relevant amendments to section 35(2) have been made by section 108 of, and paragraph 9 of Schedule 6 and Part I of Schedule 7 to, the Banking Act 1987 (c. 22).

(**107**) Section 67(4) has been amended by section 108(1) of, and paragraph 10 of Schedule 6 to, the Banking Act 1987 (c. 22).

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Housing (Northern Ireland) Order 1981 (S.I. 1981/156 (N.I.3))

13. In Schedule 10 to the Housing (Northern Ireland) Order 1981(**108**), paragraph 4(b) shall have effect as if the reference to institutions authorised under the Banking Act included a reference to European deposit-takers.

Duchy of Cornwall Management Act 1982 (c. 47)

14. Section 6(4) of the Duchy of Cornwall Management Act 1982(**109**) (banking) shall have effect as if the reference to an institution authorised under the Banking Act included a reference to a European deposit-taker.

Data Protection Act 1984 (c. 35)

15. Section 30 of the Data Protection Act 1984 (exemption for regulation of financial services etc.) shall have effect as if—

- (a) the reference in subsection (1) to prejudicing the proper discharge of statutory functions to which that section applies included a reference to contravening article 12 of the First Council Directive(**110**); and
- (b) the reference in subsection (2) to any enactment included a reference to these Regulations.

Companies Act 1985 (c. 6)

16. Section 446 of the Companies Act 1985(**111**) (investigation of share dealings) shall have effect as if the references in subsection (4)(c) to (e) to an authorised person within the meaning of the Financial Services Act included a reference to a European institution carrying on home-regulated investment business in the United Kingdom.

Company Securities (Insider Dealing) Act 1985 (c. 8)

17. Section 13 of the Company Securities (Insider Dealing) Act 1985(**112**) (definition of “offmarket dealer” etc.) shall have effect as if the reference in subsection (3) to an authorised person within the meaning of the Financial Services Act included a reference to a European institution carrying on home-regulated investment business in the United Kingdom.

Bankruptcy (Scotland) Act 1985 (c. 66)

18. Section 73(1) of the Bankruptcy (Scotland) Act 1985(**113**) (interpretation) shall have effect as if the reference to an institution authorised under the Banking Act included a reference to a European deposit-taker.

(**108**) Schedule 10 has been amended by section 108(1) of, and paragraph 12 of Schedule 6 to, the Banking Act 1987 (c. 22).

(**109**) Section 6(4) has been amended by section 108(1) of, and paragraph 14(b) of Schedule 6 to, the Banking Act 1987 (c. 22).

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

(**111**) Section 446(4) was substituted by section 212 of, and paragraph 21 of Schedule 16 to, the Financial Services Act 1986 (c. 60).

(**112**) Section 13(3) was substituted by section 174(4)(b) of the Financial Services Act 1986 (c. 60).

(**113**) Section 73(1) has been amended by section 108(1) of, and paragraph 20 of Schedule 6 to, the Banking Act 1987 (c. 22).

Housing Act 1985 (c. 68)

19. Section 622 of the Housing Act 1985(**114**) (minor definitions: general) shall have effect as if the reference to an institution authorised under the Banking Act included a reference to a European deposit-taker.

Housing Associations Act 1985 (c. 69)

20. Section 106(1) of the Housing Associations Act 1985(**115**) (minor definitions: general) shall have effect as if the reference to an institution authorised under the Banking Act included a reference to a European deposit-taker.

Credit Unions (Northern Ireland) Order 1985 (S.I. 1985/1205 (N.I.12))

21. Article 2(2) of the Credit Unions (Northern Ireland) Order 1985(**116**) (interpretation) shall have effect as if the reference in the definition of “authorised bank” to an institution authorised under the Banking Act included a reference to a European deposit-taker.

Building Societies Act 1986 (c. 53)

22. In the Building Societies Act—

- (a) section 7(4)(**117**) (power to raise funds and borrow money);
- (b) section 25(5)(**118**) (the Investor Protection Fund);
- (c) section 98(3)(**119**) (transfers of business: supplementary provisions); and
- (d) in Part IV of Schedule 8 (powers to provide services), paragraph 7(**120**) (interpretation),

shall each have effect as if the reference to an authorised institution for the purposes of, or an institution authorised under, the Banking Act included a reference to a European deposit-taker.

Financial Services Act 1986 (c. 60)

23. In Part I of Schedule 5 to the Financial Services Act (listed money market institutions), paragraph 2(2)(**121**) shall have effect as if the reference to an authorised institution within the meaning of the Banking Act included a reference to a European deposit-taker.

Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I.6))

24. Article 439 of Companies (Northern Ireland) Order 1986(**122**) (investigation of share dealings) shall have effect as if the references in paragraph (4)(c) to (e) to an authorised person within the meaning of the Financial Services Act included a reference to a European institution carrying on home-regulated investment business in the United Kingdom.

(**114**) Section 622 has been amended by section 108(1) of, and paragraph 21 of Schedule 6 to, the Banking Act 1987 (c. 22).

(**115**) Section 106(1) has been amended by section 108(1) of, and paragraph 22 of Schedule 6 to, the Banking Act 1987 (c. 22).

(**116**) Article 2(2) has been amended by section 108(1) of, and paragraph 23(1) of Schedule 6 to, the Banking Act 1987 (c. 22).

(**117**) Section 7(4) has been amended by S.I. 1987/1670.

(**118**) Section 25(5) has been amended by section 108 of, and paragraph 26(2) of Schedule 6 and Part I of Schedule 7 to, the Banking Act 1987 (c. 22).

(**119**) Section 98(3) has been amended by section 108(1) of, and paragraph 26(6) of Schedule 6 to, the Banking Act 1987 (c. 22).

(**120**) Schedule 8 was substituted by S.I. 1988/1141 and subsequently amended by S.I. 1989/839.

(**121**) Paragraph 2(2) has been amended by section 108(1) of, and paragraph 27(6) of Schedule 6 to, the Banking Act 1987 (c. 22).

(**122**) Article 439 has been amended by paragraph 38 of Schedule 16 to the Financial Services Act 1986 (c. 60).

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Company Securities (Insider Dealing) (Northern Ireland) Order 1986 (S.I. 1986/1034 (N.I.8))

25. Article 7 of Company Securities (Insider Dealing) (Northern Ireland) Order 1986(123) (definition of “off-market dealer” etc.) shall have effect as if the reference in paragraph (3) to an authorised person within the meaning of the Financial Services Act included a reference to a European institution carrying on home-regulated investment business in the United Kingdom.

Housing (Scotland) Act 1987 (c. 26)

26. Section 338(1) of the Housing (Scotland) Act 1987 (minor definitions: general) shall have effect as if the reference in the definition of “bank” to an institution authorised under the Banking Act included a reference to a European deposit-taker.

Consumer Protection Act 1987 (c. 43)

27. Section 22 of the Consumer Protection Act 1987 (application to provision of services and facilities) shall have effect as if it included provision that references in Part III of that Act to services or facilities shall not include references to services or facilities which are provided by a European institution in the course of carrying on home-regulated investment business in the United Kingdom.

Consumer Protection (Northern Ireland) Order 1987 (S.I. 1987/2049 (N.I. 20))

28. Article 15 of the Consumer Protection (Northern Ireland) Order 1987 (application to provision of services and facilities) shall have effect as if it included provision that references in Part III of that Order to services or facilities shall not include references to services or facilities which are provided by a European institution in the course of carrying on home-regulated investment business in the United Kingdom.

Companies Act 1989 (c. 40)

29. Section 176 of the Companies Act 1989 (power to make provision about certain charges) shall have effect as if the reference in subsection (2) to an authorised person within the meaning of the Financial Services Act included a reference to a European institution carrying on homeregulated investment business in the United Kingdom.

Local Government and Housing Act 1989 (c. 42)

30. Section 43(2) of the Local Government and Housing Act 1989 (borrowing powers) shall have effect as if the reference to an authorised institution within the meaning of the Banking Act included a reference to a European deposit-taker.

Courts and Legal Services Act 1990 (c. 41)

31. In the Courts and Legal Services Act 1990—

- (a) section 37(8) (authorisation of practitioners);
- (b) section 48(4) (investigations on behalf of Board); and
- (c) section 52(6) (Board’s intervention powers: supplemental provisions),

shall each have effect as if the reference to an institution which is authorised by the Bank under Part I of the Banking Act to carry on a deposit-taking business included a reference to a European deposit-taker.

(123)Article 7(1) to (3) was substituted by Article 27 of the Companies (Northern Ireland) Order 1989 (S.I. 1989/2404 (N.I.18)).

Companies (No.2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I.10))

32. Article 98 of the Companies (No.2) (Northern Ireland) Order 1990 (power to make provision about certain charges) shall have effect as if the reference in paragraph (2) to an authorised person within the meaning of the Financial Services Act included a reference to a European institution carrying on home-regulated investment business in the United Kingdom.

Charities Act 1992 (c. 41)

33. Section 18(8) of the Charities Act 1992 (dormant bank accounts of charities) shall have effect as if the reference to an institution which is authorised by the Bank to operate a deposit-taking business under the Banking Act included a reference to a European deposit-taker.

PART II

SUBORDINATE LEGISLATION

National Savings Stock Register Regulations 1976 (S.I. 1976/2012)

34. Regulation 30(1A) of the National Savings Stock Register Regulations 1976(**124**)(minors) shall have effect as if the reference to an authorised institution (within the meaning of the Banking Act) included a reference to a European deposit-taker.

Estate Agents (Accounts) Regulations 1981 (S.I. 1981/1520)

35. In the Schedule to the Estate Agents (Accounts) Regulations 1981 (institutions authorised for keeping of client accounts), paragraph 2 shall have effect as if it included a reference to a European deposit-taker.

Building Societies (Mobile Homes) Order 1986 (S.I. 1986/1877)

36. Article 2 of the Building Societies (Mobile Homes) Order 1986(**125**)(interpretation) shall have effect as if the reference to an authorised institution for the purposes of the Banking Act included a reference to a European deposit-taker.

Insolvency Regulations 1986 (S.I. 1986/1994)

37. Regulation 2 of the Insolvency Regulations 1986(**126**)(interpretation) shall have effect as if, in the definition of “bank”, the reference to any authorised institution in England and Wales within the meaning of the Banking Act included a reference to a European deposit-taker in England and Wales.

Money Purchase Contracted-out Schemes Regulations 1987 (S.I. 1987/1101)

38. In the Schedule to the Money Purchase Contracted-out Schemes Regulations 1987 (permitted investments), paragraph 4(**127**) shall have effect as if the reference to an institution authorised under Part I of the Banking Act included a reference to a European deposit-taker.

(124) Regulation 30(1A) was inserted by S.I. 1989/2046.

(125) Article 2 has been amended by S.I. 1987/1670.

(126) The definition of “bank” in regulation 2 was inserted by S.I. 1987/1959.

(127) Paragraph 4 was substituted by S.I. 1988/474.

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Local Government Superannuation (Scotland) Regulations 1987 (S.I. 1987/1850)

39. Regulation P6(4)(b)(iii) of the Local Government Superannuation (Scotland) Regulations 1987(**128**)(use and investment of superannuation fund’s moneys) shall have effect as if the reference to an institution authorised for the purposes of section 3 of the Banking Act included a reference to a European deposit-taker.

*Data Protection (Regulation of Financial Services etc.)
(Subject Access Exemption) Order 1987 (S.I. 1987/1905)*

40.—(1) Schedule 1 to the Data Protection (Regulation of Financial Services etc.) (Subject Access Exemption) Order 1987(**129**)(functions designated for purposes of section 30 of Data Protection Act 1984) shall have effect as if the reference in the last but one entry relating to the Financial Services Act to any person authorised under that Act included a reference to a European institution carrying on home-regulated investment business in the United Kingdom.

(2) That Schedule shall also have effect as if at the end there were inserted the following entry—

“Banking Coordination (Second Council Directive) Regulations 1992	Functions of Bank of England and Building Societies Commission under Regulations.”
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Friendly Societies (Long Term Insurance Business) Regulations 1987 (S.I. 1987/2132)

41. Regulation 34 of the Friendly Societies (Long Term Insurance Business) Regulations 1987 (interpretation) shall have effect as if the reference to an institution authorised, or deemed to be authorised, under the Banking Act on and after the date on which section 3 of that Act comes into force included a reference to a European deposit-taker.

*Money Purchase Contracted-out Schemes Regulations
(Northern Ireland) 1987 (S.R.(N.I.) 1987/279)*

42. In the Schedule to the Money Purchase Contracted-out Schemes Regulations (Northern Ireland) 1987 (permitted investments), paragraph 4(**130**) shall have effect as if the reference to an institution authorised under Part I of the Banking Act included a reference to a European deposit-taker.

Personal Pension Schemes (Appropriate Schemes) Regulations 1988 (S.I. 1988/137)

43. Regulation 3(3) of the Personal Pension Schemes (Appropriate Schemes) Regulations 1988(**131**) (bodies which may establish schemes) shall have effect as if the reference to an institution authorised under Part I of the Banking Act included a reference to a European deposit-taker.

*Financial Services Act 1986 (Investment Advertisements)
(Exemptions) Order 1988 (S.I. 1988/316)*

44. Article 9 of the Financial Services Act 1986 (Investment Advertisements) (Exemptions) Order 1988(**132**) (advertisements issued to persons sufficiently expert to understand the risks

(128) There is an amendment not relevant to these Regulations.

(129) There is an amendment not relevant to these Regulations.

(130) Paragraph 4 was substituted by S.R.(N.I.) 1988/107, regulation 4, and there is another amendment not relevant to these Regulations.

(131) Regulation 3(3) has been amended by S.I. 1988/830.

(132) The relevant amending instrument is S.I. 1992/274.

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involved) shall have effect as if any reference to an authorised person (within the meaning of the Financial Services Act) included a reference to a European institution carrying on home-regulated investment business in the United Kingdom.

Banking Act 1987 (Advertisements) Regulations 1988 (S.I. 1988/645)

45. Regulation 2 of the Banking Act 1987 (Advertisements) Regulations 1988 (application of Regulations) shall have effect as if the reference in paragraph (7) to a person authorised under Chapter III of Part I of the Financial Services Act included a reference to a European institution carrying on home-regulated investment business in the United Kingdom.

Banking Act 1987 (Exempt Transactions) Regulations 1988 (S.I. 1988/646)

46.—(1) In the Banking Act 1987 (Exempt Transactions) Regulations 1988—

- (a) regulation 13(**133**) (relevant debt securities); and
- (b) Schedule 3(**134**) (relevant debt securities),

shall each have effect as if the reference to an authorised institution within the meaning of the Banking Act included a reference to a European deposit-taker.

(2) Regulation 14 of those Regulations(**135**) shall have effect as if—

- (a) the reference in subsection (1) to a person who is an authorised person under the Financial Services Act included a reference to a European institution carrying on home-regulated investment business in the United Kingdom; and
- (b) the reference in paragraph (2) to such an authorised person included a reference to a European institution.

Security (Payments on Account, Overpayments and Recovery) Regulations 1988 (S.I. 1988/664)

47. Regulation 10 of the Social Security (Payments on Account, Overpayments and Recovery) Regulations 1988(**136**) (conversion of payments made in a foreign currency) shall have effect as if the reference to any institution authorised under the Banking Act included a reference to a European deposit-taker.

Public Companies (Disclosure of Interests in Shares) (Investment Management Exclusion) Regulations 1988 (S.I. 1988/706)

48. Regulation 3 of the Public Companies (Disclosure of Interests in Shares) (Investment Management Exclusion) Regulations 1988 shall have effect as if the reference in paragraph (b) to an authorised person under Chapter III of Part I of the Financial Services Act included a reference to a European institution carrying on home-regulated investment business in the United Kingdom.

Services Act 1986 (Investment Advertisements) (Exemptions) (No. 2) Order 1988 (S.I. 1988/716)

49. Article 7 of the Financial Services Act 1986 (Investment Advertisements) (Exemptions) (No. 2) Order 1988 (advertisements issued to persons of particular kinds) shall have effect as if the reference in paragraph (1) to an authorised person (within the meaning of the Financial Services

(133) Regulation 13 was substituted by S.I. 1990/20.

(134) Schedule 3 was inserted by S.I. 1989/465, and then substituted by S.I. 1990/20.

(135) There are amendments not relevant to these Regulations.

(136) Regulation 10 has been amended by S.I. 1988/688.

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Act) included a reference to a European institution carrying on home-regulated investment business in the United Kingdom.

Building Societies (Supplementary Capital) Order 1988 (S.I. 1988/777)

50. In Part III of the Schedule to the Building Societies (Supplementary Capital) Order 1988 (interpretation), paragraph 4 shall have effect as if the reference to an authorised institution for the purposes of the Banking Act included a reference to a European deposit-taker.

Control of Misleading Advertisements Regulations 1988 (S.I. 1988/915)

51. Regulation 3 of the Control of Misleading Advertisements Regulations 1988 (application) shall have effect as if—

- (a) the reference in paragraph (a) to an authorised person (within the meaning of the Financial Services Act) included a reference to a European institution carrying on homeregulated investment business in the United Kingdom; and
- (b) the reference in that paragraph to the authorised person in question included a reference to the European institution in question.

*Personal Pension Schemes (Appropriate Schemes)
Regulations (Northern Ireland) 1988 (S.R.(N.I.) 1988/34)*

52. Regulation 3(3)(c) of the Personal Pension Schemes (Appropriate Schemes) Regulations (Northern Ireland) 1988(**137**) (bodies which may establish schemes) shall have effect as if the reference to an institution authorised under Part I of the Banking Act included a reference to a European deposit-taker.

*Security (Payments on Account, Overpayments and Recovery)
Regulations (Northern Ireland) 1988 (S.R.(N.I.) 1988/142)*

53. Regulation 10 of the Social Security (Payments on Account, Overpayments and Recovery) Regulations (Northern Ireland) 1988 (conversion of payments made in a foreign currency) shall have effect as if the reference to any institution authorised under the Banking Act included a reference to a European deposit-taker.

Consumer Credit (Exempt Agreements) Order 1989 (S.I. 1989/869)

54. Article 2(2) of the Consumer Credit (Exempt Agreements) Order 1989 (exemption of agreements secured on land) shall have effect as if the reference to an authorised institution under the Banking Act included a reference to a European deposit-taker.

Consumer Credit (Advertisements) Regulations 1989 (S.I.1989/1125)

55. Regulation 2(3) of the Consumer Credit (Advertisements) Regulations 1989 (general rules) shall have effect as if the reference to an institution authorised under the Banking Act included a reference to a European deposit-taker.

(137)Regulation 3(3)(c) has been amended by S.R.(N.I.) 1988/176.

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Consumer Credit (Quotations) Regulations 1989 (S.I. 1989/1126)

56. Regulation 2(5) of the Consumer Credit (Quotations) Regulations 1989 (form and content of quotations) shall have effect as if the reference to an institution authorised under the Banking Act included a reference to a European deposit-taker.

Collection Fund (England) Regulations 1989 (S.I. 1989/2336)

57. Schedule 2 to the Collection Fund (England) Regulations 1989(**138**) (prescribed investments) shall have effect as if the reference to an institution authorised under Part I of the Banking Act included a reference to a European deposit-taker.

Collection Fund (Wales) Regulations 1989 (S.I. 1989/2363)

58. Schedule 2 to the Collection Fund (Wales) Regulations 1989(**139**) (prescribed investments) shall have effect as if the reference to an institution authorised under Part I of the Banking Act included a reference to a European deposit-taker.

Local Authorities (Capital Finance) (Approved Investments) Regulations 1990 (S.I. 1990/426)

59. Regulation 2 of the Local Authorities (Capital Finance) (Approved Investments) Regulations 1990(**140**) (approved investments) shall have effect as if the reference to an authorised institution within the meaning of the Banking Act included a reference to a European deposit-taker.

Building Societies (Designation of Qualifying Bodies) Order 1990 (S.I. 1990/1434)

60. In Part II of the Schedule to the Building Societies (Designation of Qualifying Bodies) Order 1991 (interpretation, paragraph 7 shall have effect as if each reference to an authorised institution for the purposes of the Banking Act included a reference to a European deposit-taker.

Building Societies (Designation of Qualifying Bodies) Order 1991 (S.I. 1991/357)

61. In Part II of the Schedule to the Building Societies (Designation of Qualifying Bodies) Order 1991 (interpretation, paragraph 4(2)(c) shall have effect as if the reference to an authorised institution for the purposes of the Banking Act included a reference to a European deposit-taker.

Building Societies (Designated Capital Resources) (Permanent Interest Bearing Shares) Order 1991 (S.I. 1991/702)

62. Article 4(4) of the Building Societies (Designated Capital Resources) (Permanent Interest Bearing Shares) Order 1991 (interpretation) shall have effect as if the reference to institutions authorised for the purposes of the Banking Act included a reference to European deposit-takers.

Building Societies (Designation of Qualifying Bodies) (No.2) Order 1991 (S.I. 1991/2581)

63. In Part II of the Schedule to the Building Societies (Designation of Qualifying Bodies) (No.2) Order 1991 (interpretation, paragraph 3(2) shall have effect as if the reference to an authorised institution for the purposes of the Banking Act included a reference to a European deposit-taker.

(138) There are amendments not relevant to these Regulations.

(139) There are amendments not relevant to these Regulations.

(140) There are amendments not relevant to these Regulations.

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Insolvency Regulations (Northern Ireland) 1991 (S.R.(N.I.) 1991/388)

64. Regulation 2 of the Insolvency Regulations (Northern Ireland) 1991 (interpretation) shall have effect as if, in the definition of “bank”, the reference to any authorised institution in Northern Ireland within the meaning of the Banking Act included a reference to a European deposit-taker in Northern Ireland.

Building Societies (Designation of Qualifying Bodies) Order 1992 (S.I. 1992/649)

65. In Part II of the Schedule to the Building Societies (Designation of Qualifying Bodies) Order 1992 (interpretation, paragraph 6(2) shall have effect as if the reference to an authorised institution for the purposes of the Banking Act included a reference to a European deposit-taker.

Building Societies (Designation of Qualifying Bodies) (No.2) Order 1992 (S.I. 1992/650)

66. In Part II of the Schedule to the Building Societies (Designation of Qualifying Bodies) (No.2) Order 1992 (interpretation, paragraph 3(2) shall have effect as if the reference to an authorised institution for the purposes of the Banking Act included a reference to a European deposit-taker.

Building Societies (Designation of Qualifying Bodies) (No.3) Order 1992 (S.I. 1992/651)

67. In Part II of the Schedule to the Building Societies (Designation of Qualifying Bodies) (No.3) Order 1992 (interpretation, paragraph 4(2) shall have effect as if the reference to an authorised institution for the purposes of the Banking Act included a reference to a European deposit-taker.

Building Societies (Designation of Qualifying Bodies) (No.4) Order 1992 (S.I. 1992/652)

68. In Part II of the Schedule to the Building Societies (Designation of Qualifying Bodies) (No.4) Order 1992 (interpretation, paragraph 6(2) shall have effect as if the reference to an authorised institution for the purposes of the Banking Act included a reference to a European deposit-taker.

SCHEDULE 11

Regulation 83.

TRANSITIONAL PROVISIONS AND SAVINGS

PART I

RECOGNITION OF INSTITUTIONS

European authorised institutions

1.—(1) This paragraph applies to a credit institution incorporated in or formed under the law of another member State which immediately before the commencement date is authorised to act as a credit institution by the relevant supervisory authority in that State.

(2) If an institution to which this paragraph applies—

- (a) is immediately before the commencement date carrying on in the United Kingdom by the provision of services any home-regulated activity; or
- (b) has established in the United Kingdom for the purpose of carrying on such an activity a branch which immediately before that date is in existence,

it shall be treated for all purposes of these Regulations as if the requirements of paragraph 1 of Schedule 2 to these Regulations had been complied with in relation to its carrying on of the activity or, as the case may be, its establishment of the branch.

UK authorised institutions

2.—(1) This paragraph applies to a credit institution incorporated in or formed under the law of any part of the United Kingdom which immediately before the commencement date is authorised by the Bank under the Banking Act(141) or by the Commission under the Building Societies Act(142).

(2) If an institution to which this paragraph applies—

- (a) is immediately before the commencement date carrying on in another member State by the provision of services any listed activity; or
- (b) has established in another member State for the purpose of carrying on such an activity a branch which immediately before that date is in existence,

it shall be treated for all purposes of these Regulations as if the requirements of paragraph 1 of Schedule 6 to these Regulations had been complied with in relation to its carrying on of the activity or, as the case may be, its establishment of the branch.

3.—(1) An institution which by virtue of paragraph 2 above is treated as if the requirements of paragraph 1 of Schedule 6 to these Regulations had been complied with in relation to its carrying on of one or more listed activities shall, before the end of the period of three months beginning with the commencement date, give to the UK authority a notice stating the activity or activities in question.

(2) An institution which by virtue of paragraph 2 above is treated as if the requirements of paragraph 1 of Schedule 6 to these Regulations had been complied with in relation to its establishment of a branch shall, before the end of the period of three months beginning with the commencement date, give to the UK authority a notice stating the requisite details of the branch.

(3) An institution which fails to comply with sub-paragraph (1) or (2) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

PART II

AMENDMENTS OF BANKING ACT

Requirement as to minimum initial capital

4.—(1) This paragraph applies to a credit institution incorporated in or formed under the law of any part of the United Kingdom which immediately before the commencement date is authorised by the Bank under the Banking Act.

(2) Paragraph 4(3A) of Schedule 3 to the Banking Act (c) (institution to have own funds amounting to ecu 5 million or equivalent) shall have effect in relation to an institution to which this paragraph applies as if the reference to ecu 5 million were a reference to the relevant amount.

(3) Subject to sub-paragraphs (4) to (7) below, the relevant amount is the amount of own funds which the institution has on the commencement date.

(141) 1987 c. 22.

(142) 1986 c. 53.

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(4) If, at any time after 22nd December 1989, the institution had or has own funds of a greater amount than the amount of its own funds on the commencement date, the relevant amount is that greater amount, or ecu 5 million, whichever is the less.

(5) Subject to sub-paragraph (6) below if, at any time after the commencement date, there is any change in the person who is the parent controller of the institution (not being a parent controller which is a subsidiary undertaking of another parent controller of the institution) the relevant amount is ecu 5 million.

(6) If—

- (a) the institution merges with another institution which is also an institution to which this paragraph applies; and
- (b) the Bank is satisfied that in the circumstances the merged institution need not have own funds amounting to not less than ecu 5 million,

then, subject to sub-paragraph (7) below, the relevant amount in relation to the merged institution is the aggregate own funds of the merging institutions on the date of the change, or ecu 5 million, whichever is the less.

(7) If, at any time after the commencement date, the merged institution has own funds of ecu 5 million or more, the relevant amount is ecu 5 million.

(8) Any reference in this paragraph to ecu 5 million includes a reference to an amount of equal value denominated wholly or partly in a different unit of account.

Revocation of authorisation

5.—(1) This paragraph applies to a credit institution incorporated in or formed under the law of any part of the United Kingdom which immediately before the commencement date is authorised by the Bank under the Banking Act.

(2) If an institution to which this paragraph applies is immediately before the commencement date carrying on in the United Kingdom or elsewhere a listed activity (other than the acceptance of deposits from the public), it shall be treated for the purposes of subsection (1A)(b) of section 11 of the Banking Act(**143**) (revocation of authorisation) as if it had given prior notice to the Bank of its intention to carry on that activity.

Restriction of authorisation

6.—(1) This paragraph applies to a credit institution incorporated in or formed under the law of another member State which immediately before the commencement date—

- (a) is authorised to act as a credit institution by the relevant supervisory authority in that State; and
- (b) is authorised by the Bank under the Banking Act.

(2) Subject to sub-paragraph (3) below, if immediately before the commencement date the authorisation of an institution to which this paragraph applies is subject to a restriction under section 12 of the Banking Act (restriction of authorisation), the restriction shall, if and to the extent that it is capable after that date of being imposed under regulation 10 of these Regulations, have effect as if it had been so imposed.

(3) If the restriction under that section imposes a limit on the duration of the authorisation, the restriction shall, at the time when (but for these Regulations) the authorisation would have

(143)1987 c. 22; section 11(1A) is inserted by regulation 28(1) of these Regulations.

expired, have effect as if it were a prohibition imposed on the institution under regulation 9 of these Regulations.

(4) The Bank shall, as soon as practicable after the commencement date, give written notice of every restriction under that section having effect as mentioned in sub-paragraph (2) or (3) above—

- (a) to the institution;
- (b) to the relevant supervisory authority in the institution's home State; and
- (c) to every other authority which the Bank knows is a connected UK authority.

Information and documents

7. Where a notice served on an institution to which paragraph 6 above applies under—

- (a) section 39 of the Banking Act (power to obtain information and require production of documents); or
- (b) section 41 of that Act (investigations on behalf of Bank),

is in force immediately before the commencement date, the notice shall have effect on and after that date as if it had been served under that section as extended by paragraph 8 or, as the case may be, paragraph 10 of Schedule 8 to these Regulations.

PART III

AMENDMENTS OF FINANCIAL SERVICES ACT

Preliminary

8.—(1) Any reference in this Part of this Schedule to a statement of principle or to rules or regulations is a reference to a statement of principle issued, or to rules or regulations made, before the commencement date.

(2) Expressions used in this Part of this Schedule which are also used in Schedule 9 to these Regulations have the same meanings as in that Schedule.

Statements of principle

9.—(1) A statement of principle issued under section 47A of the Financial Services Act(144) shall, unless the contrary intention appears, apply to a European institution carrying on home-regulated investment business in the United Kingdom to the same extent as it would apply if the institution were an authorised person as respects that business.

(2) If the Board is satisfied that it is necessary to do so for the purpose of implementing the Second Council Directive so far as relating to any particular European institution, the Board may, on the application or with the consent of the institution, by order direct that all or any of the provisions of such a statement—

- (a) shall not apply to the institution; or
- (b) shall apply to it with such modifications as may be specified in the order.

(144) Section 47A was inserted by section 192 of the Companies Act 1989 (c. 40).

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Conduct of business rules

10.—(1) Rules made under section 48 of the Financial Services Act(**145**) (conduct of business rules) shall, unless the contrary intention appears, apply in relation to the conduct of homeregulated investment business carried on by a European institution in the United Kingdom to the same extent as they would apply if the institution were an authorised person as respects that business.

(2) If the Board is satisfied that it is necessary to do so for the purpose of implementing the Second Council Directive so far as relating to any particular European institution, the Board may, on the application or with the consent of the institution, by order direct that all or any of the provisions of such rules—

- (a) shall not apply in relation to the conduct of home-regulated investment business carried on by the institution; or
- (b) shall apply in relation to the conduct of such business with such modifications as may be specified in the order.

(3) A member of a recognised self-regulating organisation who contravenes a rule applying to him by virtue of this paragraph shall be treated as having contravened the rules of the organisation.

Financial resources rules

11. If the Board is satisfied that it is necessary to do so for the purpose of implementing the Second Council Directive so far as relating to any particular institution which is a European institution and an authorised person, the Board may, on the application or with the consent of the institution, by order direct that all or any of the provisions of rules under section 49 of the Financial Services Act(**146**) (financial resources rules)—

- (a) shall not apply to the institution; or
- (b) shall apply to it with such modifications as may be specified in the order.

Cancellation rules

12.—(1) Rules made under section 51 of the Financial Services Act (cancellation rules) shall, unless the contrary intention appears, apply in relation to a person who has entered or offered to enter into an investment agreement to which sub-paragraph (2) below applies as they apply in relation to a person mentioned in that section.

(2) This sub-paragraph applies to an investment agreement which is made by a European institution in the course of the carrying on by it of home-regulated investment business in the United Kingdom.

Notification regulations

13.—(1) Regulations made under section 52 of the Financial Services Act(**147**) (notification regulations) shall, unless the contrary intention appears, apply in relation to a European institution carrying on home-regulated investment business in the United Kingdom to the same extent as they would apply if the institution were an authorised person as respects that business.

(2) If the Board is satisfied that it is necessary to do so for the purpose of implementing the Second Council Directive so far as relating to any particular European institution, the Board may, on

(145) Section 48 has been amended by sections 206 and 212 of, and Schedules 23 and 24 to, the Companies Act 1989 (c. 40).

(146) Section 49 has been amended by section 206 of, and Schedule 23 to, the Companies Act 1989 (c. 40).

(147) Section 52 has been amended by section 206 of, and Schedule 23 to, the Companies Act 1989 (c. 40).

the application or with the consent of the institution, by order direct that all or any of the provisions of such regulations—

- (a) shall not apply to the institution; or
- (b) shall apply to it with such modifications as may be specified in the order.

Compensation fund

14.—(1) Rules under section 54 of the Financial Services Act (compensation fund) shall, unless the contrary intention appears, apply in cases where a person who is or has been a European institution is unable, or likely to be unable, to satisfy claims in respect of any description of civil liability incurred by it in connection with home-regulated investment business carried on by it in the United Kingdom to the same extent as they would apply if the institution were an authorised person as respects that business.

(2) If the Board is satisfied that it is necessary to do so for the purpose of implementing the Second Council Directive so far as relating to any particular person who is or has been a European institution, the Board may, on the application or with the consent of that person, by order direct that all or any of the provisions of such rules—

- (a) shall not apply in relation to cases where that person is unable, or likely to be unable, to satisfy claims in respect of any description of civil liability incurred by it in connection with home-regulated investment business carried on by it; or
- (b) shall apply in relation to such cases with such modifications as may be specified in the order.

Clients' money

15.—(1) Regulations under section 55 of the Financial Services Act(**148**) (clients' money) shall, unless the contrary intention appears, apply in relation to money which a European institution holds in the course of home-regulated investment business carried on by it in the United Kingdom to the same extent as they would apply if the institution were an authorised person as respects that business.

(2) If the Board is satisfied that it is necessary to do so for the purpose of implementing the Second Council Directive so far as relating to any particular European institution, the Board may, on the application or with the consent of the institution, by order direct that all or any of the provisions of such regulations—

- (a) shall not apply in relation to money which the institution holds in the course of homeregulated investment business carried on by it; or
- (b) shall apply in relation to such money with such modifications as may be specified in the order.

(3) A member of a recognised self-regulating organisation who contravenes a regulation applying to him by virtue of this paragraph shall be treated as having contravened the rules of the organisation.

Unsolicited calls

16.—(1) Regulations under section 56 of the Financial Services Act(**149**) (unsolicited calls) shall, unless the contrary intention appears, apply in relation to a European institution carrying on home-regulated investment business in the United Kingdom to the same extent as they would apply if the institution were an authorised person.

(148) Section 55 has been amended by section 206 of, and Schedule 23 to, the Companies Act 1989 (c. 40).

(149) Section 56 has been amended by section 206 of, and Schedule 23 to, the Companies Act 1989 (c. 40).

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(2) A member of a recognised self-regulating organisation who contravenes a regulation applying to him by virtue of this paragraph shall be treated as having contravened the rules of the organisation.

Supplemental

17.—(1) An order under this Part of this Schedule may be subject to conditions.

(2) Such an order may be revoked at any time by the Board; and the Board may at any time vary any such order on the application or with the consent of the European institution to which it applies

PART IV

AMENDMENTS OF BUILDING SOCIETIES ACT

Requirements as to qualifying capital and own funds

18.—(1) This paragraph applies to a building society which immediately before the commencement date is authorised by the Commission under the Building Societies Act(150).

(2) In relation to a society to which this paragraph applies—

- (a) sections 41(6)(a) and 44(4)(a) of the Building Societies Act (society to have on renewal of authorisation or reauthorisation qualifying capital of not less than the prescribed minimum); and
- (b) the first criterion in section 45(3) of that Act(151) (society to have own funds amounting to not less than that minimum),

shall have effect as if the reference to the prescribed minimum were a reference to the relevant amount.

(3) Subject to sub-paragraphs (4) to (6) below, the relevant amount for the purposes of subparagraph (2)(a) above is the amount of qualifying capital which the society has on the commencement date.

(4) If, at any time after 22nd December 1989, the society had or has qualifying capital of a greater amount than the amount of its qualifying capital on the commencement date, the relevant amount is that greater amount, or the prescribed minimum, whichever is the less.

(5) If—

- (a) the society merges with another society which is also a society to which this paragraph applies; and
- (b) the Commission is satisfied that in the circumstances the merged society need not have qualifying capital amounting to not less than the prescribed minimum,

then, subject to sub-paragraph (6) below, the relevant amount in relation to the merged society is the aggregate qualifying capital of the merging societies on the date of the change, or the prescribed minimum, whichever is the less.

(6) If, at any time after the commencement date, the merged society has qualifying capital of not less than the prescribed minimum, the relevant amount is the prescribed minimum.

(7) Sub-paragraphs (3) to (6) above shall apply for the purposes of sub-paragraph (2)(b) above with the following modifications, namely, that for the references to qualifying capital there shall be substituted references to own funds.

(150) 1986 c. 53.

(151) Section 45(3) is amended by regulation 73 of these Regulations.

(8) In this paragraph “the prescribed minimum” and “qualifying capital” have the meanings given by section 9(13) of the Building Societies Act(152).

(9) A society merges with another for the purposes of this paragraph if either—

- (a) it amalgamates with the other by establishing a building society as their successor under section 93 of the Building Societies Act (amalgamations); or
- (b) it transfers all of its engagements to the other under section 94 of that Act (transfers of engagements);

and references in this paragraph to the merged society or the merging societies shall be construed accordingly.

Revocation of authorisation

19.—(1) This paragraph applies to a building society which immediately before the commencement date is authorised by the Commission under the Building Societies Act.

(2) If a society to which this paragraph applies is immediately before the commencement date carrying on in the United Kingdom or elsewhere a listed activity (other than the acceptance of deposits or other repayable funds from the public), it shall be treated for the purposes of subsection (1A)(b) of section 43 of the Building Societies Act(153) (revocation of authorisation) as if it had given prior notice to the Commission of its intention to carry on that activity.

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations give effect to the Second Council Directive [89/646/EEC](#) on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (OJ No. L386, 30.12.89, p.1), and to certain provisions of Council Directive [77/780/EEC](#) (OJ No. L322, 17.12.77, p.30), which is amended by the Second Council Directive. They also give effect to the Council Directive [92/30/EEC](#) on the supervision of credit institutions on a consolidated basis (OJ No. L110, 28.4.92, p.52). The Regulations come into force on 1st January 1993.

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

Part II of the Regulations makes provision for the recognition of certain credit institutions authorised in other member States, and of certain subsidiaries of such institutions, for the purposes of carrying on listed activities in the United Kingdom. “Listed activities” are the activities which are set out in Schedule 1. Subject to compliance with the notification requirements contained in Schedule 2, nothing in certain specified provisions of the Banking Act [1987 \(c. 22\)](#), the Financial Services Act [1986 \(c. 60\)](#), the Consumer Credit Act [1974 \(c. 39\)](#) and the Insurance Companies Act [1982 \(c. 50\)](#) is to prevent a “European institution” (regulation 3) from carrying on in the United Kingdom, whether by the provision of services or the establishment of a branch, any listed activity which it is authorised or permitted to carry on in its “home state” (regulation 5). Certain offences in connection

(152) Section 9(13) is amended by regulation 68(2) of these Regulations.

(153) Section 43(1A) is inserted by regulation 71(1) of these Regulations.

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with carrying on listed activities and the establishment of branches are created by regulations 5 and 6. There are requirements concerning changes to the “requisite details” of a branch of a European institution (regulation 6(2)). Prohibitions and restrictions on a European institution in relation to carrying on listed activities may be imposed by the Bank of England (regulations 8 to 12), the Securities and Investments Board (regulations 15 to 17) and the Director General of Fair Trading (regulations 18 and 19), in the circumstances and in accordance with the conditions set out in the Regulations. Schedules 3, 4 and 5 make supplemental provision in connection with such prohibitions and restrictions imposed by the Bank, the Board and the Director General respectively. The Bank (regulation 8) and the Board (regulation 14) also have certain duties to prepare for supervision when a European institution is establishing a branch in the United Kingdom pursuant to the Regulations.

Part III of the Regulations makes provision for the carrying on of listed activities in other member States by “UK Institutions”, which means certain credit institutions (“UK authorised institutions”) which are authorised under the Banking Act or Building Societies Act, and certain subsidiaries (“UK subsidiaries”) of such institutions (regulation 20). For the purposes of the Regulations, a UK authorised institution is authorised to carry on in the UK any listed activity which it is lawful for it to carry on in the UK; a UK subsidiary is permitted to carry on in the UK any listed activity which it is lawful for it to carry on, and it is carrying on in the UK (regulation 21). Subject to certain qualifications relating to UK subsidiaries, a UK institution is not to carry on in another member State by the provision of services any listed activity which it is authorised or permitted to carry on in the UK, or establish a branch for the purpose of carrying on such an activity, unless the notification requirements of Schedule 6 have been complied with (regulation 22). There are also requirements concerning changes to the “requisite details” of a branch of a UK institution established in another member State. The “UK authority” (regulation 20(7))—which will be the Bank of England or the Building Societies Commission—is given powers to impose a restriction on the carrying on in the UK of any listed activities by a UK subsidiary (regulations 23 and 24), and Schedule 7 makes supplemental provision in that regard.

Part IV of the Regulations amends the Banking Act 1987 in relation to credit institutions authorised by the Bank of England. The principal changes relate to applications for authorisation (regulation 25), “own funds” and initial capital requirements for authorisation (regulation 27), powers of revocation, including powers in relation to the carrying on of listed activities without having given the Bank prior notice (regulation 28), powers of revocation following information from a supervisory authority in another member State (regulation 29), implementation of certain EC decisions relating to third countries (regulation 32), holdings in credit institutions (regulations 31, and 33 to 35), information and investigations (regulations 36 and 37), and disclosure of information (regulations 38 to 42). Further amendments to the Banking Act 1987 are made by Schedule 8, in particular in relation to European institutions.

Part V of the Regulations amends the Financial Services Act 1986. The principal changes relate to membership of self-regulating organisations (regulation 48), applications for, and grant and refusal of, authorisation under that Act (regulations 49 and 50), and reciprocal facilities for banking business (regulation 53). Further amendments to the Financial Services Act 1986 are made by Schedule 9, in particular in relation to European institutions.

Part VI of the Regulations amends the Consumer Credit Act 1974. The principal changes relate to the effect of standard licences (regulation 57), the grant of standard licences (regulation 58), conduct of business (regulation 59), disclosure of information (regulation 62), and modification of subordinate legislation in relation to European institutions (regulation 63).

Part VII of the Regulations amends the Insurance Companies Act 1982, principally in relation to the withdrawal of authorisation under that Act of a European subsidiary (regulation 64), and the application of Part II of the Act to a European institution (regulation 65).

Part VIII of the Regulations amends the Building Societies Act 1986. The principal changes relate to the establishment of building societies (regulation 67), minimum capital requirements (regulation 68), powers in respect of “qualifying holdings” in building societies (regulations 68 to 70

and 72), revocation powers, including powers in relation to the carrying on of listed activities without having given the Building Societies Commission prior notice (regulation 71), powers of revocation following information from a supervisory authority in another member State (regulation 74), disclosure of information (regulations 76 and 77), and accounting records and systems of business control (regulation 78).

Schedule 2 sets out procedural requirements as respects European institutions relating to the carrying on in the UK of listed activities by the provision of services, the establishment of a branch, and changes to the requisite details of a branch. It also specifies the procedure whereby cancellation of compliance with notification requirements by a European subsidiary may be effected.

Schedule 6 sets out procedural requirements as respects UK institutions relating to the carrying on in another member State of listed activities by the provision of services, the establishment of a branch, and changes to the requisite details of a branch. It also specifies the procedure whereby cancellation of compliance with notification requirements by a UK subsidiary may be effected.

Schedule 10 contains minor and consequential amendments to primary and secondary legislation.

Schedule 11 contains transitional provisions and savings, making further amendments to the Banking Act 1987, the Financial Services Act 1986, and the Building Societies Act 1986.