
STATUTORY INSTRUMENTS

1993 No. 3225

BANKING

The Banking Coordination (Second Council Directive) (Amendment) Regulations 1993

<i>Made</i>	- - - -	<i>22nd December</i> <i>1993</i>
<i>Laid before Parliament</i>		<i>22nd December</i> <i>1993</i>
<i>Coming into force</i>	- -	<i>1st January 1994</i>

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;

Now, therefore, the Treasury in exercise of the powers conferred on them by section 2(2) of that Act and by section 2(2)(b) of the European Economic Area Act 1993(3) and of all other powers enabling them in that behalf hereby make the following Regulations:—

Citation and commencement

1.—(1) These Regulations may be cited as the Banking Coordination (Second Council Directive) (Amendment) Regulations 1993.

(2) These Regulations shall come into force on 1st January 1994.

Amendment of the principal Regulations

2. The Banking Coordination (Second Council Directive) Regulations 1992(4) are amended as follows:

- (a) in regulation 2(1), after “1993” in the definition of “the commencement date” there are inserted the words “except in relation to the application of these Regulations as they have effect by virtue of section 2(1) of the European Economic Area Act 1993 to the carrying

(1) S.I.1990/1304.

(2) 1972 c. 68; by virtue of the amendment of section 1(2) of the European Communities Act by section 1 of the European Economic Area Act 1993 (c. 51) regulations may be made under section 2(2) of the European Communities Act to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed at Brussels on 17th March 1993 (Cm 2183).

(3) 1993 c. 51.

(4) S.I. 1992/3218.

on by credit institutions and financial institutions incorporated in or formed under the law of a member State of the Communities of listed activities in a relevant EFTA State and to the carrying on by credit institutions and financial institutions incorporated in or formed under the law of a relevant EFTA State of listed activities in the European Economic Area, where it means 1st January 1994;”;

- (b) in regulation 2(1), after the definitions of “member” and “rules” there are inserted the following:

““member State” means a member State of the Communities or a relevant EFTA State;”;

- (c) in regulation 2(1), after the definition of “recognised self—regulatory organisation” there are inserted the following:

““relevant EFTA State” means any of Austria, Finland, Iceland, Norway and Sweden;”;

- (d) after regulation 2, the following regulation is added:

“Iceland

2A.—(1) For the period commencing with 1st January 1994 and ending on the implementation date and subject to paragraph (2) below, wherever the expressions “another member State”, “member State” and “relevant EFTA State” are used in these Regulations they have effect for the purposes of these Regulations as if they did not include a reference to Iceland.

- (2) Paragraph (1) above does not apply to—

- (a) the definition of “the commencement date” in regulation 2(1) above where it has effect in relation to the provisions described in sub—paragraph (e) below;
- (b) regulation 22(1), (2) and (3) below;
- (c) regulation 24(1) and (3) below;
- (d) paragraphs 1 to 7 of Schedule 6 to these Regulations;
- (e) paragraphs 2 and 3 of Schedule 11 to these Regulations;
- (f) the definitions of “another member State”, “relevant supervisory authority” and “supervisory authority” in section 106 of the Banking Act as inserted by regulation 45 below in so far as those definitions are used in the following provisions of the Banking Act—
- (i) section 9(7) as inserted by regulation 26 below;
- (ii) section 11(1A)(f) as inserted by regulation 28(1) below;
- (iii) section 12A(1) and (3)(b) as inserted by regulation 29 below;
- (iv) section 13(3A) as inserted by regulation 30(1) below;
- (v) section 15(4) as inserted by regulation 30(2) below;
- (vi) section 22(1A) as inserted by regulation 31(2) below; and
- (vii) section 86(1)(b), (3) and (4) as substituted by regulation 41 below;
- (g) the definitions of “another member State”, “relevant supervisory authority” and “supervisory authority” in section 119(2A) of the Building Societies Act as inserted by regulation 81 below in so far as those definitions are used in the following provisions of the Building Societies Act—
- (i) section 43(1A)(f) as inserted by regulation 71(1) below;
- (ii) section 45A(1) and (3)(b) as inserted by regulation 74 below;

- (iii) section 54(3B) as inserted by regulation 77(1) below; and
- (iv) section 54(6) as inserted by regulation 77(2) below.

(3) In relation to a credit institution incorporated in or formed under the law of Iceland, any reference to the commencement date in paragraphs 1, 6 and 7 of Schedule 11 to these Regulations is construed as a reference to the implementation date.

(4) In this regulation “the implementation date” means the date, to be notified in the London, Edinburgh and Belfast Gazettes, on which the EFTA Surveillance Authority to be established under Article 108 of the Agreement on the European Economic Area is notified by Iceland that it has implemented the Second Council Directive, or 1st January 1995, whichever is the sooner.”;

- (e) in regulation 5(1), for “paragraph (2)” there is substituted “paragraphs (2) and (3)”;
- (f) in regulation 5, the following paragraph is added after paragraph (2)—

“(3) Paragraph (1)(a) above shall not apply in relation to a European institution in respect of which a determination under regulation 13A below is in force.”;
- (g) after regulation 13, the following regulation is added:

“Treasury determinations for implementing decisions

13A.—(1) For the purpose of implementing a relevant decision within the meaning of section 26A(1) of the Banking Act(5) the Treasury may following consultation with the Bank make a determination in respect of a credit institution if—

- (a) it is incorporated in or formed under the law of a relevant EFTA State;
- (b) it is the subsidiary undertaking of a parent undertaking governed by the laws of a third country whose treatment of credit institutions from the European Economic Area or any part of it gave rise to the relevant decision; and
- (c) it conforms to regulation 3(2)(b) and (c) above but not to regulation 3(2)(d).

(2) A determination made under paragraph (1) shall prohibit a credit institution in respect of which it is made from thereafter carrying on in the United Kingdom by the provision of services any home—regulated activity or establishing a branch in the United Kingdom for the purpose of carrying on such an activity notwithstanding that the requirements of paragraph 1 of Schedule 2 to these Regulations are at any time complied with in relation to its carrying on of the activity or, as the case may be, its establishment of the branch.

(3) A determination made under paragraph (1) above may relate to a particular institution or class of institution.

(4) A determination made under paragraph (1) above may be withdrawn at any time by the Treasury, but such withdrawal shall not affect anything done in accordance with the determination before it was withdrawn.

(5) Notice of a determination made under paragraph (1) above in respect of a particular institution or of the withdrawal of such a determination shall be given in writing by the Treasury to that institution and notice of any determination made under paragraph (1) or of the withdrawal of any determination shall be published in the London, Edinburgh and Belfast Gazettes on the date of the determination or, as the case may be, on the date of the withdrawal, or as soon as practicable thereafter.

(6) A credit institution which fails to comply with a determination made under paragraph (1) shall be guilty of an offence and liable on summary conviction to a fine not

(5) Section 26A was inserted by regulation 32 of the Banking Coordination (Second Council Directive) Regulations 1992.

exceeding level 5 on the standard scale; but such a contravention shall not invalidate any transaction.

(7) In proceedings brought against a credit institution for an offence under paragraph (6) 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.”;

(h) Sub—paragraph (3) of paragraph 3 of Schedule 11 is revoked.

Tim Wood

Irvine Patnick

Two of the Lords Commissioners of Her
Majesty’s Treasury

22nd December 1993

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Banking Coordination (Second Council Directive) Regulations 1992 to give effect to the adaptations made 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 (OJNo. L368, 30.12.89, p.1) in its application to the European Economic Area by paragraph 16 of Annex IX to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) as amended by the Protocol adjusting the Agreement signed at Brussels on 17th March 1993 (Cm 2183). The European Economic Area will comprise the territory of the member States of the European Communities together with that of certain members of the European Free Trade Association (EFTA). Within this area there shall be free movement of goods, persons, services and capital to the extent specified in the Agreement.

Section 2(1) of the European Economic Area Act 1993 provides for the general substitution on and after the date on which the Agreement comes into force of limitations in enactments by reference to the European Economic Area for limitations by reference to the Communities where the enactments concern a matter to which the Agreement relates. The Agreement, together with the Protocol dated 17th March 1993, enters into force in respect of all the Contracting Parties except Liechtenstein on 1st January 1994.

Specific amendments to the 1992 Regulations are needed both for clarity and to give effect to adaptations to the Second Council Directive by the Agreement in its application to the European Economic Area.

The 1992 Regulations are stated to apply from 1st January 1994 in relation to the carrying on by credit institutions and financial institutions based in the European Communities of listed activities in a relevant EFTA State and the carrying on by credit institutions and financial institutions based in a relevant EFTA State of listed activities in the European Economic Area (regulation 2(a)). Relevant EFTA States are the member States of EFTA in respect of which the Agreement and the Protocol are to enter into force (regulation 2(c)).

A new regulation 2A is inserted in the 1992 Regulations to give effect to paragraph 16(c) of Annex IX to the Agreement under which Iceland is to implement the Second Council Directive by 1st January 1995. Although Iceland is immediately to recognise authorisations granted to credit institutions by the other Contracting Parties, authorisations granted to credit institutions by the Icelandic authorities are not to have EEA-wide validity before the full application of the Directive to Iceland. The expressions “another member State”, “member State” and “relevant EFTA State” in the 1992 Regulations are not to apply to Iceland except in relation to UK-based credit institutions operating in Iceland until the date Iceland notifies its implementation of the Second Council Directive (regulation 2(d)).

The Regulations also insert a new regulation 13A in the 1992 Regulations to give effect to the provision in paragraph 16(a) 2(b) of Annex IX to the Agreement concerning the treatment of credit institutions within the European Economic Area which are the subsidiaries of undertakings based in third countries which impose restrictions on credit institutions based in the European Economic Area. The Treasury is empowered, following consultation with the Bank of England, to determine that certain credit institutions authorised in a relevant EFTA State which are not allowed to carry on listed activities in the UK because they have not yet complied with paragraph 1 of Schedule 2 to the 1992 Regulations shall not thereafter be allowed to do so (regulation 2(g)). Determinations are to be made in respect of credit institutions which are the subsidiaries of undertakings based in a

Status: *This is the original version (as it was originally made).*

third country which is the subject of a decision by the Council or the Commission under article 9.4 of the Second Council Directive. Failure to comply with a determination is to be an offence and the prohibition on unauthorised deposit— taking in section 3(1) of the Banking Act 1987 shall apply to an institution in respect of which a determination is in force (regulation 2(f) and (g)).

UK credit institutions which do not notify the Bank of England under Part I of Schedule 11 to the 1992 Regulations of listed activities which they were carrying on in relevant EFTA States before 1st January 1994 will not commit an offence (regulation 2(h)).