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REPUBLIC OF KENYA
EIGHTH PARLIAMENT – (FIFTH SESSION)
REPORT
OF THE
DEPARTMENTAL COMMITTEE
ON
FINANCE, PLANNING AND TRADE
ON THE MONETARY POLICY SYSTEMS
OF THE
UNITED KINGDOM,
UNITED STATES OF AMERICA
AND
SOUTH AFRICA



JUNE, 2001

INTRODUCTION

The Central Bank of Kenya (Amendment) Bill, 2000 which seeks to regulate interest rates was passed by Parliament on 5th December, 2000. However, in exercise of his powers under section 46(4) of the Constitution, H.E. the President declined to assent to the said Bill. Consequently, H.E. the President submitted a memorandum to the Speaker of the National Assembly indicating the specific provisions of the Bill to be reconsidered by the House in accordance with section 46(5).

It is against this background that the Departmental Committee on Finance, Planning and Trade deemed it necessary to undertake a study on what is obtaining in other countries with liberalised economies regarding monetary policy with a view to contributing from informed position when the Bill is re-introduced in Parliament.

The Committee split into two groups and the sub-committee that visited the United Kingdom comprised the following:-

Hon. Simeon M. Mkalla, MP. (*Chairman and leader of the Delegation*)

Hon. John N. Michuki, MP

Hon. Peter Odoyo, MP

Hon. Adan Noor, MP

Hon. Adan Keynan, MP

Hon. Samuel K. Kiminza, MP

Hon. Joseph Donde, MP

Mrs. Florence Abonyo (*Secretary to the Delegation*)

During the visit to the United Kingdom, the sub-committee held meetings with the following:-

- ◆ The Rt. Hon. Baroness Chalker of Wallasey
- ◆ Members of the Eastern African Association
- ◆ Mr. Barrie Ireton, Director General, Programmes, Department for International Development (DFID)
- ◆ House of Lords Economic Committee
- ◆ Mr. Andrew Kilpatrick, Head of Fiscal and Macro-economic Policy, HM Treasury
- ◆ Mr. Tom Cox MP, Chairman, All-Party Kenya Group

- ◆ Capital Development Corporation, (CDC) Capital Partners
- ◆ Mr. Kevin McFarland, Business Projects Manager, Barclays Bank Africa
- ◆ Mr. Frank Baker, Head of African Department (Equatorial), Foreign and Commonwealth office
- ◆ Mr. Charlie Bean, Chief Economist and Executive Director, Monetary Stability, Bank of England
- ◆ Ms Lieselotte Burdorf-Cook, International Relations, Financial Services Authority
- ◆ Courtesy call to the Kenyan High Commissioner in London

The sub-committee that visited the United States of America and South Africa comprised the following:-

Hon. David Mwiraria, MP (*Leader of the Delegation*)

Hon. Jimmy Angwenyi, MP

Hon. Onesmus Mboko, MP

Hon. Soita Shitanda, MP

Hon. Mohamed A. Galgalo, MP

Mrs Irene Muraguri)

Mr. D. K. Zia) *Secretariat*

During the visit to the United States of America and South Africa, the sub-committee held meetings with the following:-

1. **United States of America**

- ◆ The Bank of America
- ◆ The Federal Reserve Board and the Federal Reserve Bank
- ◆ Overseas Private Investment Corporation
- ◆ The Federal Deposit Insurance Corporation
- ◆ The American Bankers Association
- ◆ The International Monetary Fund and the World Bank

2. **South Africa**

- ◆ The Wits University
- ◆ Parliamentary Portfolio Committee
- ◆ Banking Association of South Africa
- ◆ Select Committee Council of Provinces
- ◆ Micro-Finance Regulatory Council
- ◆ South African Reserve Bank and Financial Services Board

RECOMMENDATIONS

In view of the information gathered from the study tour, the Departmental Committee on Finance, Planning and Trade support the amendments and recommendations proposed by H.E. the President on the Central Bank of Kenya (Amendment) Bill, 2000 as follows:-

1. **CLAUSE 2**

The Bill does not specify the extent of application of the proposed law, particularly in relation to existing loans or advances. Accordingly, the President recommended that the Bill be amended to clarify that the proposed law shall only apply to new or renewed contracts for loans. This is a very fundamental provision which requires to be explicitly stated in the Bill to avoid legal disputes relating to interpretation on the extent of application of the proposed law.

The Committee recommends that the proposed law shall apply to all contracts for loans with effect from the date of passage of the law

2. **CLAUSE 3**

The proposed Section 39A contradicts Section 4 of the Central Bank of Kenya Act which vests the responsibility of formulating and implementing monetary policy in the Central Bank of Kenya. This engenders the appropriate macro-economic environment for enhancing price stability and is consistent with the practice worldwide. Further, the proposed transfer of the monetary formulation function to the Monetary Policy Committee would render sections 4B and 4C of the Act anomalous. Section 4B provides for the submission to the Minister of a monetary policy by the Monetary Policy Committee of the Central Bank at intervals of not more than six months while Section 4C provides for regular consultations on monetary policy between the Minister and the Bank. The latter section also empowers the Minister to intervene and direct the Bank in writing to adopt such monetary policy as the Minister may specify for a period of six months.

Consequently, H.E. the President recommended that:-

- (i) Sub-clause (4) (a) of Section 39A which proposes to vest the power to formulate Monetary Policy Committee be deleted and the following sub-clause be inserted:-

“(4) (a) to advise the Bank on the formulations and implementation of monetary policy, including the levels of the Treasury Bill rates referred to in Section 39”.

This will ensure that the Monetary Policy Committee is not seen as taking away the Central Bank’s primary role of formulation and implementation of monetary policy.

The Committee recommends that the sub-clause should not be deleted. The reason being that, the Monetary Policy Committee should be a decision making committee and not an advisory committee to the Bank. Provided that the Minister for Finance has reserve powers to intervene in the interest of price stability and employment subject to the Minister's tabling his reasons for such intervention to the House within 14 days.

- (ii) The membership of the proposed Committee under sub-clause 39A(2) comprise the following:-
- (a) the Governor of the Central Bank who shall be the Chairman;
 - (b) the Deputy-Governor of the Central Bank;
 - (c) the Chief Economist of the Central Bank;
 - (d) the Director of Financial Markets of the Central Bank;
 - (e) the Economic Secretary and the Financial Secretary, Ministry of Finance who shall be ex-officio members; and
 - (f) five other members, of whom at least two shall be women, being persons with knowledge or expertise in matters relating to monetary policy, appointed by the Minister.

The Committee recommends that the five other members in the proposed Monetary Committee shall be persons with knowledge or expertise in economics or finance and matters related to monetary policy and be appointed by the Minister for Finance in consultation with Parliament.

3. The Committee further recommends that:-

- (i) The Minister for Finance should consider the use of inflation target as a means of managing price stability in the financial market. Inflation targets should be set up and provided for in the budget speech by the Minister for Finance.
- (ii) The Monetary Policy Committee should make periodic announcements on the increase or decrease of interest rates depending on the money supply.
- (iii) The Central Bank of Kenya should strengthen its supervisory role and play its role as a regulator of commercial banks in its discharge of duties. It must abandon the now popular norm in making profits and therefore appearing like a competitor to commercial banks
- (iv) The Governor of Central Bank of Kenya who is the Chairman of the Monetary Policy Committee must appear before Parliament on quarterly basis to appraise it.
- (v) The Central Bank of Kenya should devise products to influence commercial banks to provide credit at affordable interest rates. For instance, concessionary interest rates on the deposits to Central Bank of Kenya for those commercial banks that comply with requirements of the Central Bank.
- (vi) The minimum capital required to start a bank be reviewed in a market where a few banks form cartels to dictate interest rates and therefore the operations of the money market cannot create an environment for free movement of market forces in the determination of interest rates.

This is the situation in Kenya and therefore a lower capital requirement to start a bank will introduce more players in the banking industry and hence competition resulting to lower interest rates.

- (vii) **The Departmental Committee on Finance, Planning and Trade in conjunction with the Ministry of Finance should undertake a comprehensive review of the financial sector within six months. The review may include major amendments to the Central Bank of Kenya Act, Government financing and inflation targeting.**

CONCLUSION

A broad consensus now exists that price stability is an essential pre-condition for achieving the Government's central economic objectives of high and stable levels of economic growth and employment. In this regard, Central Bank independence is rapidly becoming the norm in attaining these objectives because it is research proven that countries with independent Central Banks have more stable economies than similar economies where the monetary authorities are not independent.

SIGNED 

**Hon. Simeon Mkalla, MP
Chairman - Departmental Committee on Finance,
Planning and Trade**

DATE 18TH JUNE 2001

ANNEX A - UNITED KINGDOM

Monetary authorities undertake similar functions in every country but they differ in terms of institutional structure, nature of their primary mandate and the degree of independence.

The broad aim of monetary policy is to provide a nominal anchor in order to keep inflation under control. This can take several forms such as a rate of growth for the money supply, an exchange rate target or an inflation target.

Inflation has been treated as a serious problem for a long time in the United Kingdom and different methods have been used by successive Chancellors to control it and the target approach is currently being used.

In 1997, the new Chancellor stated that the central economic objectives of the new government were high and stable levels of growth and employment. Setting his proposals, he said that the Labour party would ensure that the decisions were taken for the long-term interest of the economy so as to create the stability needed for higher investments, high levels of growth and employment and not on the basis of short-term political pressures.

During the visit to the United Kingdom, the sub-committee's objective was to establish the following:-

- ◆ The key players in the formulation and implementation of the monetary policy;
- ◆ The institutions that influence and determine the level of the interest rates;
- ◆ Factors taken into account in determining the interest rates level;
- ◆ The role of the Bank of England in monetary policy and the nature of monetary policies;
- ◆ Powers of the monetary policy Committee, membership, appointing authority, answerability and interest rates fixing; and
- ◆ The role of the Treasury in the monetary policy and how fiscal policies are affected by taxation including the major macro-economic areas.

Based on these guidelines, the sub-committee received the following reactions:

1.0 THE NEED FOR A NEW MONETARY POLICY FRAMEWORK IN THE UNITED KINGDOM

The Government decided to overhaul the monetary policy system because of the United Kingdom's past inflation record which was not only high but also volatile. Between 1980 and 1997, the United Kingdom had the second highest average inflation rate among the G7 countries.

This performance reflected numerous shortcomings in the design and conduct of monetary policy. The Government was determined to make a decisive break with the past and reform the monetary policy. In designing the new monetary policy framework, the following coherent set of principles were taken into account:-

- (a) A platform of *stability*, including low and stable inflation necessary for high and stable levels of growth and employment.
- (b) The goal of monetary policy, price stability, be defined in terms of an inflation target which is *clear and stable* overtime.
- (c) A *symmetric inflation target* is vital so that monetary policy is forward-looking and supports the Government's objectives for growth and employment.
- (d) There should be a clear *separation of roles and responsibilities* with respect to the setting of the framework and the implementation of monetary policy to meet the inflation target.
- (e) Monetary policy should be characterised by high levels of *openness, transparency and accountability*.
- (f) An *independent Committee of experts* backed up by specific procedures, should have responsibility for implementing monetary policy to achieve the government's inflation target.

- (g) The framework must allow monetary policy to *respond sensibly* in the face of certain specific types of economic shocks.
- (h) Monetary and fiscal policy *should support each other* in promoting stability. Thus both arms of macro-economic policy must act in a co-ordinated way.

By incorporating these features, the United Kingdom monetary policy framework has been put on a sound economic footing by maintaining low inflation during a period of considerable instability in the global economy. More importantly, the credibility of the framework has increased confidence that the inflation will remain low thereby helping the United Kingdom to steer a course of stability and steady growth in contrast to the boom and bust of the past.

2.0 THE CHOICE OF INFLATION TARGETING AS A MEANS OF CONDUCTING MONETARY POLICY

Inflation targeting is the setting of a desired inflation rate and the use of monetary tools to achieve the target. The Chancellor in establishing the Monetary Policy Committee, set the inflation target at 2.5%. The theory behind inflation targeting is that, when inflation is in danger of rising, interest rates are increased by the amount deemed necessary to cushion inflationary expectations. Conversely, interest rates will be lowered when inflation is decreasing below its target. Before the adoption of the inflation targeting approach, the United Kingdom was ranked number eleven (11) in the European Economic Union (EEU) in terms of the inflation level rating.

High and uncertain inflation damages the market mechanism and makes it more difficult for individuals and organisations to make correct long term economic decisions. It also results in higher interest rates attributable to an inflation risk premium. Since demand and supply determine the level of inflation, a sound monetary policy must take into account the balance between the two to avoid the distortion of the market mechanism. Nonetheless, the balance of opinion is that low but not zero inflation is preferred and the principal argument put forward in favour of low inflation rate is that it encourages stability, investment and real economic performance.

4.0 **THE MONETARY POLICY COMMITTEE**

On 6th May 1997, within a week of taking office, the new Chancellor of the Exchequer wrote to the Governor of the Bank of England, establishing a new monetary policy framework in which the Bank was given operational responsibility for setting interest rates to deliver price stability. After operating on a *de facto* basis for 12 months, this new regime was formalised by the Bank of England Act which came into force in June, 1998 (*see annex c*). The Act gives priority to price stability as an objective of short-term macro-economic policy and also establishes the Monetary Policy Committee.

Having been given the task of controlling inflation, the Chancellor defined the Government's objectives for the Bank of England. The monetary policy objective of the Bank is to deliver price stability as defined by the Government's economic policy and without prejudice to this objective, to support the Government's wider economic policies including its objectives for growth and employment. As laid down by law, inflation target is determined by the Chancellor which is currently at 2.5%.

4.1 **Relationship between the Government and the Bank of England**

The Act clearly distinguishes the roles of the Government and the Bank of England as follows:-

- (a) It is the Government's responsibility through the Chancellor to decide what the objectives of monetary policy should be while it is the chief responsibility of the Bank through the Monetary Policy Committee to maintain price stability and ensure that the monetary policy objectives are achieved. Thus, in granting independence to the Bank of England, the Government through the Chancellor has retained certain responsibilities and reserved substantial powers in respect of monetary policy like the power to specify objectives as codified in section 12 of the Act.
- (b) Subject to this primary objective, the Act also requires the Bank to support the Government's broader economic policy objectives including those for growth and employment. In this regard, the Act also requires the Government to inform the Bank on its economic policy objectives.

- (c) The Government through the Chancellor is responsible for the setting of the inflation target and it is the responsibility of the Bank through the Monetary Policy Committee to set interest rates to achieve the inflation target set. The Governor is obliged to write a letter to the Chancellor in the event that the inflation rate deviates either side of the target by more than 1% to explain why and indicate the policy actions being taken by the Bank to deal with the divergence and bring inflation back to target. In addition to the setting of interest rates, the Monetary Policy Committee is also able to conduct monetary policy by intervening directly in the financial markets.

The advantage of setting inflation target by the Government is that it enables the Government to ensure that the Bank of England is taking into consideration the objectives of pursuing the economic programmes in general. This makes it clear that price stability is not considered to be an end in itself but is regarded as an integral part of the Government's overall economic strategy.

4.2 **Composition of the Monetary Policy Committee**

The Act specifies that the Monetary Policy Committee which is appointed by the Executive consists of the following:-

- ◆ The Governor of the Bank of England (*Chairman*);
- ◆ Two Deputy Governors of the Bank;
- ◆ Two other internal members responsible for monetary policy analysis and monetary policy operations appointed by the Bank in consultation with the Chancellor;
- ◆ Four external members appointed by the Chancellor for a three year term. These members must have knowledge and experience on monetary policy relevant to the Committee's functions;
- ◆ The Act also allows for a representative of HM Treasury to attend and speak at Monetary Policy Committee meetings but without a voting right.

4.3 Transparency and accountability of the Monetary Policy Committee

In the granting of operational independence to the Bank of England, the Act is accompanied by a range of measures aimed at improving the transparency and accountability of the Monetary Policy Committee.

- (a) One of the obvious features of the monetary policy framework that helps to improve transparency and accountability is the nature of the inflation target set by the Chancellor to the Monetary Policy Committee. Because the target variable is a widely understood economic indicator, it is clear to all parties what the Monetary Policy Committee aims to achieve. The fact that the Monetary Policy Committee has a point target also makes it easy for the public and financial markets to monitor the Monetary Policy Committee's performance. The inflation target is also the standard against which the Monetary Policy Committee is held accountable to the Government.
- (b) The Act provides for the Court of Directors of the Bank of England to keep under review the performance and procedures followed by the Monetary Policy Committee on an ongoing basis. This includes ensuring that the Monetary Policy Committee properly collects the sectoral and other information from the operations of the Bank's regional agents for purposes of formulating monetary policy. In turn, the Monetary Policy Committee is obliged to submit a monthly report on its activities to the Court of Directors.
- (c) The Monetary Policy Committee is accountable to Parliament through regular reports and evidence given to the Treasury Select Committee. The Act requires the Bank to submit to the Chancellor an annual report which must include a report by the Court of Directors on the activities of the Monetary Policy Committee. The Chancellor is obliged to lay copies of the annual reports before Parliament for scrutiny. These give Members of Parliament the opportunity to question Bank officials and their performance. Further opportunity for Parliamentary scrutiny of the performance of the Monetary Policy Committee is provided by the House of Lords Select

Committee on the Monetary Policy Committee and by debates on the Bank's annual reports.

- (d) The Monetary Policy Committee is accountable to the public at large through the publication of the minutes of the Monetary Policy Committee meetings and the Inflation Report. Section 15 of the Act requires the Monetary Policy Committee to publish the minutes of its meetings within 6 (six) weeks and as a matter of course the Committee now fulfils this obligation within 2 (two) weeks. These minutes report the discussion that took place at the meetings, record how individual members voted on particular decisions and in an annex, a summary of the data presented by the staff of Bank of England to the Monetary Policy Committee. If there is disagreement within the Monetary Policy Committee about any decision, these differing views are all published thereby giving the public more information about the range of factors that need to be considered as well as giving them an opportunity to judge for themselves whether or not the Monetary Policy Committee made the right decision.

In addition, Section 18 of the Act requires the Monetary Policy Committee to publish the Inflation Report every three months which reviews its recent monetary policy decisions, assess United Kingdom inflation developments and indicate its expected approach to meet its Section 11 obligations. The preparation of the Inflation Report also provides a comprehensive and forward looking framework.

5.0 THE ROLE OF THE TREASURY

Although the Act gives the Bank responsibility for the conduct of monetary policy, it grants HM Treasury reserve powers in certain exceptional circumstances. In particular, HM Treasury may give the Bank of England directions with respect to monetary policy if it is satisfied that they are required in the public interest and by extreme, economic circumstances.

The Treasury also keeps the Monetary Policy Committee informed of policy developments and briefs the Committee before the budget.

ANNEX B - UNITED STATES OF AMERICA AND SOUTH AFRICA

INTEREST RATES

Each Bank determines its interest rates on the basis of market forces and the discount rate of the Federal Reserve Bank. A Committee known as the Depository Institution Deregulatory Committee was set up to oversee the deregulation of interest rates for a six year period in the USA while in South Africa the Cook Commission was established..

There are dangers in putting a regulation to reduce interest rates. One such danger is that banks will tend to focus on the big customers leaving the small customer to suffer.

The Reserve Bank of South Africa doesn't regulate interest rates but there are limited exchange controls imposed on South Africans.

Beside setting the repo rate the Reserve Bank of South Africa has decided to adopt inflation target setting as part of their monetary policy .The system is expected to influence interest rates.

THE BANKING SECTORS IN SOUTH AFRICA AND USA.

American Banks do not enjoy any protection from the government and that the Government did not have any shares in the Bank of America.

Legal restriction are put in place to protect cash export or imports. The Bank Secrecy Act requires that a customer complete declaration forms disclosing some information such as the source of the cash with every deposit or withdrawal of \$10,000.

There is a specific capital requirement to start a bank .In South Africa the required capital is 250 million Rands while \$ 500,00 is required in the USA.

Banks can borrow from the Reserve Bank in the USA and in South Africa .The rates charged in South Africa is known as the Repo Rate while in the United States its called the Discount Rate.

The Community Service Act in the United States of America provides that banks invest in the communities they operate.

Banks in the USA are prohibited from forming cartels by the Banking Council Constitution and the Competition Act in South Africa .While in the USA the Sherman Anti-Trust Laws do the same.

Bank workers are not unionised in the USA .For this case ,industrial action by bank workers is rare.

Individual banks deal with cases of fraud or money laundering .Fraudulent cases have been detected in electric banking where the culprit steals identity to get bank services.

Commercial banks in the USA prepare quarterly reports .The reports are open to public scrutiny .This allows the depositors to a certain the conditions of the banks before they deposit with the banks.

There are stiff penalties for banks that commit transgression against the Banking Act .This would include the withdrawal of the charter of the affected bank

There exist the Office of Banks Adjudicator where any individual aggrieved by a bank can consult the office for redress.

TREASURY BILLS.

The USA Government buys Treasury Bills but pays immediately and hence it has no deficit. In South Africa ,the Government sells treasury bills at the auction .The sale is always at the money market.

Non-Performing Loans

The problem was rare in American Banking Sector. Where it happens, the loan can be recalled before it is due or the bank can take court action to recover the loaned cash. Loans in the corporate side are written off after 120 days. There are also bankruptcy courts where cases of the defaulters can be heard.

customers had the recourse of suing a bank which acts arbitrary in its efforts to recover a non-performing loan.

The solution to non performing loans was to strengthen bank supervision and ensure an effective judiciary.

BANK SUPERVISION

The Federal Reserve Bank of New York shares supervision role of banks with the Office of the Controller of Currency .Their role is to charter and supervise national banks .The State Bank Corporation charters and supervises state banks while the office of Thrift Supervision working with the Treasury registers and supervises savings and loan institutions.

Bank supervision is necessary because a bank that has a clean certificate of supervision demonstrates that such a bank is doing good business.

Supervision is done on a continuous basis and it is done to banks which show signs of being in problems.

OVERSEAS PRIVATE INVESTMENT CORPORATION.

This is an organization established by Government to provide political risk insurance to American investors in over 140 countries world wide .It assures for political violence, unconvertible currencies and nationalisation .

PARLIAMENTARY COMMITTEES

The role of parliamentary committee staff was to analyse Bills referred to respective committee. Where a Committee rejects a Bill the Bill is not returned to the House for debate.

THE FEDERAL RESERVE BANK IN NEWYORK AND RESERVE BANK OF SOUTH AFRICA

The Federal Reserve Bank of New York has the monopoly of making money among the twelve reserve banks.

The bank makes money through offering banking services to the Treasury and other banks in America.

The president of Federal Reserve Bank presents a report to Congress before February 20th to 20th July, annually. The reports and the testimonies are held in public.

The General Accounting Office audits for Congress and Government departments or for the Federal Reserve Bank.

The amount that a bank can borrow is not controlled by the Federal Reserve Bank.

All loans by FRB are collateralized through Treasury securities corporate bonds and other negotiable instruments

In South Africa, the Governor of the Reserve Bank appears before a parliamentary Committee on finance to explain whether he will manage to meet the inflation target set by the Treasury.

THE FEDERAL DEPOSIT INSURANCE CORPORATION

It is a Government agency which enjoys full independence. It was set up to provide insurance for banks and savings institutions. It supervises banks and thrifts and acts as a receiver for banks and thrifts.

The Corporation charges for the insurance services offered and invest the funds with the Treasury to earn interest .The basis for the interest rate charged is the capital supervisory rating.

MICRO FINANCE REGULATORY COUNCIL

The main role of the council was to regulate all credit institutions which lend to small businesses and individuals and to deal with complaints.

South Africa has 1500 micro-finance institutions so far registered since 1999.

There exists under the Council a disciplinary committee chaired by an independent advocate to deal with all disciplinary cases.

All lenders have to submit quarterly returns and a certificate of compliance to the council.

Those registered with the council can charge any percentage of interest.

Micro-financiers do not require any minimum capital before registration.

GENERAL INFORMATION FROM SOUTH AFRICA

The chairman of the Finance Committee accompanies the Minister for Finance when the latter holds negotiations with donors.

The Auditor General is selected by the Public Accounts Committee. He must have 75% support of all the Members of Parliament.

There is a Public Finance Management Act which deals with accountability and corruption.

ANNEX C (Bank of England Act 1998)



Bank of England Act 1998

CHAPTER 11



Bank of England Act 1998

CHAPTER 11

ARRANGEMENT OF SECTIONS

PART I

CONSTITUTION, REGULATION AND FINANCIAL ARRANGEMENTS

Constitution and regulation

Section

1. Court of directors.
2. Functions of court of directors.
3. Functions to be carried out by non-executive members.
4. Annual report by the Bank.
5. Custody and use of the seal.

Financial arrangements

6. Cash ratio deposits.
7. Accounts.
8. Payments in lieu of dividends.

Supplementary

9. Consequential amendments.

PART II

MONETARY POLICY

Role of the Bank

10. Operational responsibility.
11. Objectives.
12. Specification of matters relevant to objectives.

Monetary Policy Committee of the Bank

13. Monetary Policy Committee.
14. Publication of statements about decisions.
15. Publication of minutes of meetings.
16. Functions of court of directors.

Information and reports

17. Power to obtain information.
18. Reports.

Treasury's reserve powers

19. Reserve powers.

Supplementary

20. Interpretation of Part II.

PART III

TRANSFER OF SUPERVISORY FUNCTIONS OF THE BANK TO THE FINANCIAL SERVICES AUTHORITY

Transfer of functions to the Authority

21. Transfer.
22. Supplementary provisions.
23. Consequential amendments.

Authority's position in relation to transferred functions

24. Status.
25. Liability.
26. Power to charge fees.
27. Power to channel information through agent.

Consequential changes to banking bodies

28. Board of Banking Supervision.
29. Deposit Protection Board.

Supplementary

30. Interpretation of Part III.

PART IV

MISCELLANEOUS AND GENERAL

Miscellaneous

31. Qualifications of a designated agency.
32. Listed institutions: exemption of transactions with Treasury.
33. Closure of National Savings Stock Register to gilts.
34. Provision of brokerage service in connection with gilt registration.
35. Section 207 of the Companies Act 1989: bearer securities.
36. Disclosure of information: minor amendments.

General

37. Restriction on disclosure of information.
38. Offences in relation to supplying information to the Bank.
39. Offences by bodies corporate.
40. Orders.
41. General interpretation.
42. Transitional provisions and savings.
43. Repeals.

Final provisions

- Entent.
- 45. Commencement.
- 46. Short title.

SCHEDULES:

- Schedule 1—Court of directors.
- Schedule 2—Cash ratio deposits.
- Schedule 3—Monetary Policy Committee.
- Schedule 4—Transfer of functions: supplementary provisions.
- Schedule 5—Transfer of functions: consequential amendments.
 - Part I—Banking supervision.
 - Part II—Supervision under section 43 of the Financial Services Act 1986.
 - Part III—Supervision under section 171 of the Companies Act 1989.
 - Part IV—General: disclosure of information.
- Schedule 6—Banking supervision fees.
- Schedule 7—Restriction on disclosure of information.
- Schedule 8—Transitional provisions and savings.
- Schedule 9—Repeals and revocations.
 - Part I—Repeals.
 - Part II—Revocations.



Bank of England Act 1998

1998 CHAPTER 11

An Act to make provision about the constitution, regulation, financial arrangements and functions of the Bank of England, including provision for the transfer of supervisory functions; to amend the Banking Act 1987 in relation to the provision and disclosure of information; to make provision relating to appointments to the governing body of a designated agency under the Financial Services Act 1986; to amend Schedule 5 to that Act; to make provision relating to the registration of Government stocks and bonds; to make provision about the application of section 207 of the Companies Act 1989 to bearer securities; and for connected purposes. [23rd April 1998]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

CONSTITUTION, REGULATION AND FINANCIAL ARRANGEMENTS

Constitution and regulation

1.—(1) There shall continue to be a court of directors of the Bank. Court of directors

(2) The court shall consist of a Governor, 2 Deputy Governors and 16 directors of the Bank, all of whom shall be appointed by Her Majesty.

(3) On the day on which this Act comes into force, all persons who are, immediately before that day, holding office as director of the Bank shall vacate their office.

(4) Schedule 1 shall have effect with respect to the court.

2.—(1) The court of directors of the Bank shall manage the Bank's affairs, other than the formulation of monetary policy Functions of court of directors

PART I

(2) In particular, the court's functions under subsection (1) shall include determining the Bank's objectives (including objectives for its financial management) and strategy.

(3) In determining the Bank's objectives and strategy, the court's aim shall be to ensure the effective discharge of the Bank's functions.

(4) Subject to that, in determining objectives for the financial management of the Bank, the court's aim shall be to ensure the most efficient use of the Bank's resources.

Functions to be carried out by non-executive members.

3.—(1) The functions mentioned in subsection (2) shall stand delegated to a sub-committee of the court of directors of the Bank consisting of the directors of the Bank.

(2) The functions referred to are—

- (a) keeping under review the Bank's performance in relation to the objectives and strategy for the time being determined by the court of directors of the Bank,
- (b) monitoring the extent to which the objectives set by the court of directors of the Bank in relation to the Bank's financial management have been met,
- (c) keeping under review the internal financial controls of the Bank with a view to securing the proper conduct of its financial affairs, and
- (d) determining how the functions under paragraph 14 of Schedule 1 (remuneration and pensions etc. of executive members of the court) should be exercised.

(3) At a meeting of the sub-committee the quorum shall be 7.

(4) The Chancellor of the Exchequer may designate one of the directors to chair the sub-committee.

(5) If a member of the sub-committee has any direct or indirect interest in any dealing or business with the Bank which fails to be considered by the sub-committee—

- (a) he shall disclose his interest to the sub-committee when it considers the dealing or business, and
- (b) he shall have no vote in proceedings of the sub-committee in relation to any question arising from its consideration of the dealing or business, unless the sub-committee has resolved that the interest does not give rise to a conflict of interest.

(6) In any proceedings of the sub-committee, a member shall have no vote in relation to any question arising which touches or concerns him but shall withdraw and be absent during the debate of any matter in which he is concerned.

(7) Subject to subsections (3) to (6), the sub-committee shall determine its own procedure.

(8) The sub-committee may delegate any of its functions to two or more of its members.

Annual report by the Bank

4.—(1) As soon as practicable after the end of each of its financial years, the Bank shall make to the Chancellor of the Exchequer a report on its activities in that year.

(2) A report under this section shall, in particular, contain—

- (a) a report by the directors of the Bank on the matters for which the sub-committee constituted by section 3 is responsible, and
- (b) a copy of the statement for the year prepared under section 7(2) and the report of the Bank's auditors on it.

(3) The report mentioned in subsection (2)(a) shall, in particular, include a review of the Bank's performance in relation to its objectives and strategy, as determined by the court of directors of the Bank, in the financial year to which the report under this section relates.

(4) A report under this section shall also contain—

- (a) a statement of the rate or rates at which directors of the Bank have been remunerated in the financial year to which the report relates, and
- (b) a statement of the Bank's objectives and strategy, as determined by the court of directors of the Bank, for the financial year in which the report is made.

(5) The Bank shall publish every report under this section in such manner as it thinks appropriate.

(6) The Chancellor of the Exchequer shall lay copies of every report under this section before Parliament.

5.—(1) The court of directors of the Bank shall have custody of the Bank's seal. Custody and use of the seal.

(2) The seal shall only be affixed to an instrument if the affixation has been authorised by the court or by a sub-committee of the court acting in exercise of delegated authority.

(3) The affixing of the seal shall be attested by the signature of—

- (a) two members of the court,
- (b) one member of the court and the secretary to the court, or
- (c) two other officers of the Bank authorised by the court for the purpose.

Financial arrangements

6. Schedule 2 (which makes provision about the maintenance of cash deposits with the Bank by certain financial institutions) shall have effect. Cash ratio deposits

7.—(1) The Bank shall keep proper accounts and records in relation to the accounts. Accounts

(2) The Bank shall prepare for each of its financial years a statement of accounts consisting of—

- (a) a balance sheet as at the last day of the year, and
- (b) a profit and loss account.

(3) In preparing accounts under subsection (2), the Bank shall be subject to requirements corresponding to the relevant Companies Act requirements, except insofar as the accounts relate to the Issue Department.

(4) The Bank may disregard a requirement to which it is subject under subsection (2) in the extent that it considers it appropriate to do so having regard to its functions.

(5) The Bank shall appoint an auditor or auditors to audit its accounts, including any statement under subsection (2).

(6) As soon as practicable after receiving the report of its auditors on a statement prepared under subsection (2), the Bank shall send a copy of—

- (a) the report, and
- (b) the statement,

to the Chancellor of the Exchequer.

(7) The Treasury may by notice in writing to the Bank require it to publish in such manner as it thinks fit such additional information relating to its accounts as the Treasury may specify in the notice, including information which the Bank has excluded under subsection (4) from a statement under subsection (2).

(8) The Treasury shall consult the Bank before giving a notice under subsection (7).

(9) In subsection (3), the reference to the relevant Companies Act requirements is to the requirements to which the directors of a company which is a banking company for the purposes of the Companies Act 1985 are for the time being subject under that Act (except section 232) in relation to the preparation of accounts under section 226(1) of that Act.

1985 c. 6

Payments in lieu
of dividends.
1946 c. 27

8.—(1) In section 1 of the Bank of England Act 1946, in subsection (4), (amount payable to Treasury in lieu of dividends on Bank stock), for the words from “the sum” to the end there is substituted “a sum equal to 25 per cent. of the Bank’s net profits for its previous financial year, or such other sum as the Treasury and the Bank may agree.”

(2) In that section, at the end there is inserted—

“(6) In subsection (4) of this section, the reference to the Bank’s net profits for its previous financial year is to the profits shown in the audited accounts for that year less the amount of the tax charge so shown.”

(3) In Schedule 1 to that Act (supplemental provisions), after paragraph 11 there is inserted—

“11A.—(1) If, when a payment falls to be made under section 1(4) of this Act, the Bank’s accounts for the previous financial year have not been audited, the payment shall be made on the basis of the Bank’s estimate of the relevant amounts.

(2) If an amount estimated under sub-paragraph (1) of this paragraph differs from the amount shown in the audited accounts, an appropriate adjustment shall be made to the next payment under section 1(4) of this Act to be made after the difference becomes apparent.”

(4) In that Schedule, for paragraph 14 there is substituted—

“14 Any sum paid by the Bank to the Treasury in lieu of dividends shall be allowed as a deduction in assessing the Bank to corporation tax for the accounting period by reference to which the payment is calculated.”

Supplementary

- 9.—(1) In section 14 of the National Debt Reduction Act 1786 and section 32 of the Life Annuities Act 1808, for “deputy governor” there is substituted “deputy governors”.
- (2) In section 55 of the National Debt Act 1870, the first reference to the Deputy Governor of the Bank of England shall be treated as a reference to a Deputy Governor of the Bank of England.
- (3) In section 3(3) of the Bank of England Act 1946, after “this Act” there is inserted “and the Bank of England Act 1998”.

Consequential amendments
1786 c. 31
1808 c. 142.
1870 c. 71

1946 c. 27

PART II

MONETARY POLICY

Role of the Bank

10. In section 4(1) of the Bank of England Act 1946 (power of the Treasury to give directions to the Bank), at the end there is inserted “, except in relation to monetary policy”.
11. In relation to monetary policy, the objectives of the Bank of England shall be—
- (a) to maintain price stability, and
 - (b) subject to that, to support the economic policy of Her Majesty’s Government, including its objectives for growth and employment.
- 12.—(1) The Treasury may by notice in writing to the Bank specify for the purposes of section 11—
- (a) what price stability is to be taken to consist of, or
 - (b) what the economic policy of Her Majesty’s Government is to be taken to be.
- (2) The Treasury shall specify under subsection (1) both of the matters mentioned there—
- (a) before the end of the period of 7 days beginning with the day on which this Act comes into force, and
 - (b) at least once in every period of 12 months beginning on the anniversary of the day on which this Act comes into force.
- (3) Where the Treasury give notice under this section they shall—
- (a) publish the notice in such manner as they think fit, and
 - (b) lay a copy of it before Parliament.

Operational responsibility.

Objectives.

Specification of matters relevant to objectives

Monetary Policy Committee of the Bank

- 13.—(1) There shall be a committee of the Bank, to be known as the Monetary Policy Committee of the Bank of England, which shall have responsibility within the Bank for formulating monetary policy
- (2) The Committee shall consist of—
- (a) the Governor and Deputy Governors of the Bank,
 - (b) 2 members appointed by the Governor of the Bank after consultation with the Chancellor of the Exchequer, and

Monetary Policy Committee

PART II

(c) 4 members appointed by the Chancellor of the Exchequer

(3) Of the 2 members appointed under subsection (2)(b)—

(a) one shall be a person who has executive responsibility within the Bank for monetary policy analysis, and

(b) the other shall be a person who has executive responsibility within the Bank for monetary policy operations.

(4) The Chancellor of the Exchequer shall only appoint a person under subsection (2)(c) if he is satisfied that the person has knowledge or experience which is likely to be relevant to the Committee's functions.

(5) Schedule 3 shall have effect with respect to the Committee.

Publication of statements about decisions.

14.—(1) As soon as practicable after each meeting of the Monetary Policy Committee, the Bank shall publish a statement as to whether it was decided at the meeting that the Bank should take any action, other than action by way of intervening in financial markets, for the purpose of meeting its objectives under section 11 and, if it was, what the action is.

(2) If, at any meeting, the Committee decides that the Bank should intervene in financial markets, it shall also consider at the meeting whether immediate publication of the decision would be likely to impede or frustrate the achievement of the intervention's purpose.

(3) If the Committee decides under subsection (2) that immediate publication of a decision would not have the effect mentioned there, the Bank shall, when it publishes a statement under subsection (1) about the meeting, publish a statement as to what action by way of intervening in financial markets the Committee has decided the Bank should take.

(4) If the Committee decides under subsection (2) that immediate publication of a decision would have the effect mentioned there, it shall keep under consideration the question of whether publication of the decision would still have that effect.

(5) As soon as practicable after the Committee has decided that publication of a decision which has not been the subject of a statement under subsection (3) would no longer have the effect mentioned in subsection (2), the Bank shall publish a statement as to what action by way of intervening in financial markets the Committee decided the Bank should take and when the decision was made.

(6) Publication under this section shall be in such manner as the Bank thinks fit.

Publication of minutes of meetings

15.—(1) After each meeting of the Monetary Policy Committee, the Bank shall publish minutes of the meeting before the end of the period of 6 weeks beginning with the day of the meeting.

(2) Subsection (1) shall not apply to minutes of any proceedings relating to—

(a) a decision to intervene in financial markets, or

(b) a decision about the publication of a decision to intervene in financial markets.

unless the Committee has decided that publication of the decision to intervene would not be likely, or would no longer be likely, to impede or frustrate the achievement of the intervention's purpose.

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(3) Minutes of proceedings relating to—

- (a) a decision to intervene in financial markets, or
- (b) a decision about the publication of a decision to intervene in financial markets.

shall, if not required to be published before the end of the period of 6 weeks beginning with the day of the meeting, be published by the Bank before the end of the period of 6 weeks beginning with the day on which a statement about the decision to intervene is published under section 14(5).

(4) Minutes published under this section shall record, in relation to any decision of the Committee, the voting preference of the members who took part in the vote on the decision.

(5) Publication under this section shall be in such manner as the Bank thinks fit.

16.—(1) The court of directors of the Bank shall keep the procedures followed by the Monetary Policy Committee under review.

Functions of court of directors.

(2) In particular, the court's function under subsection (1) shall include determining whether the Committee has collected the regional, sectoral and other information necessary for the purposes of formulating monetary policy.

(3) The court's function under subsection (1) shall stand delegated to the sub-committee constituted by section 3.

Information and reports

17.—(1) The Bank may by notice in writing require an undertaking to which this section applies to provide the Bank with such information as may be specified in the notice, being information about the relevant financial affairs of the undertaking which the Bank considers it necessary or expedient to have for the purposes of its functions under this Part.

Power to obtain information.

(2) A notice under subsection (1) may require information to be provided—

- (a) in such form or manner as may be specified in the notice;
- (b) at such time or times as may be so specified;
- (c) in relation to such period or periods as may be so specified.

(3) An undertaking is one to which this section applies if it has a place of business in the United Kingdom and—

- (a) is an authorised institution, or a former authorised institution, within the meaning of the Banking Act 1987.
- (b) is a European institution within the meaning of the Banking Coordination (Second Council Directive) Regulations 1992 which has lawfully established a branch in the United Kingdom for the purpose of accepting deposits or other repayable funds from the public.
- (c) is a building society within the meaning of the Building Societies Act 1986.
- (d) falls within the subsector "other monetary financial institutions", as defined by paragraph 2.48 of Annex A to Council Regulation (EC) No. 2223/96, and is not a credit institution.

1987 c. 22

SI 1992/3218

1986 c. 53

PART II

- (e) carries on a business of granting credits secured on land used for residential purposes, and is not a credit institution.
- (f) is a financial holding company as defined by Article 1 of Council Directive 92/30/EEC.
- (g) has issued a relevant debt security, and is not a credit institution, or
- (h) has acted as an agent in connection with arranging or managing the issue of a relevant debt security, and is not a credit institution.

(4) The Treasury may by order provide which financial affairs of an undertaking are relevant for the purposes of this section, and may make different provision for different undertakings or classes of undertaking.

(5) The Treasury may by order amend subsection (3).

(6) Before making an order under this section, the Treasury shall consult—

- (a) the Bank,
- (b) the Office for National Statistics,
- (c) such persons as appear to them to be representative of persons likely to be materially affected by the order, and
- (d) such other persons as they consider appropriate.

(7) In this section—

“credit institution” has the same meaning as in the Banking Coordination (Second Council Directive) Regulations 1992;

“relevant debt security” has the same meaning as in the Banking Act 1987 (Exempt Transactions) Regulations 1997 (or any regulations replacing them); and

“undertaking” has the meaning given by section 259 of the Companies Act 1985.

S.I. 1992/3218.

S.I. 1997/817.

1985 c 6

Reports.

18.—(1) The Bank shall prepare and publish reports in accordance with the provisions of this section.

(2) A report under this section shall contain—

- (a) a review of the monetary policy decisions published by the Bank in the period to which the report relates,
- (b) an assessment of the developments in inflation in the economy of the United Kingdom in the period to which the report relates, and
- (c) an indication of the expected approach to meeting the Bank's objectives under section 11.

(3) A report under this section shall relate to—

- (a) a period of 3 months, or
- (b) such other period as the Treasury and the Monetary Policy Committee may agree.

(4) Periods to which reports under this section relate shall be successive, the first such period commencing on such day within the

period of 3 months ending with the day on which this Act comes into force as the Treasury shall, after consultation with the Bank, specify in relation to it.

(5) No report under this section shall be published without the approval of the Monetary Policy Committee.

(6) A report under this section shall be published as soon as practicable after the end of the period to which it relates and in such manner as the Bank thinks fit.

Treasury's reserve powers

19.—(1) The Treasury, after consultation with the Governor of the Bank, may by order give the Bank directions with respect to monetary policy if they are satisfied that the directions are required in the public interest and by extreme economic circumstances. Reserve powers.

(2) An order under this section may include such consequential modifications of the provisions of this Part relating to the Monetary Policy Committee as the Treasury think fit.

(3) A statutory instrument containing an order under this section shall be laid before Parliament after being made.

(4) Unless an order under this section is approved by resolution of each House of Parliament before the end of the period of 28 days beginning with the day on which it is made, it shall cease to have effect at the end of that period.

(5) In reckoning the period of 28 days for the purposes of subsection (4), no account shall be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than 4 days.

(6) An order under this section which does not cease to have effect before the end of the period of 3 months beginning with the day on which it is made shall cease to have effect at the end of that period.

(7) While an order under this section has effect, section 11 shall have effect.

Supplementary

20. In this Part, "the Monetary Policy Committee" means the Monetary Policy Committee of the Bank of England. Interpretation of Part II

PART III

TRANSFER OF SUPERVISORY FUNCTIONS OF THE BANK TO THE FINANCIAL SERVICES AUTHORITY

Transfer of functions to the Authority

21. The following functions of the Bank are hereby transferred to the Authority—

(a) its functions under—

- (i) the Banking Act 1987,
- (ii) the Banking Coordination (Second Council Directive) Regulations 1992, and S.I. 1992.3218

PART III
1986 c. 77

1986 c. 60
S.I. 1995 3275

1989 c. 40

Supplementary provisions.

Consequential amendments.

Status.

Liability.

(iii) section 44 of the Building Societies Act 1986, (banking supervision functions),

(b) its functions under—

(i) section 43 of the Financial Services Act 1986, and

(ii) the Investment Services Regulations 1995,

(functions relating to the listing of money market institutions), and

(c) its functions under section 171 of the Companies Act 1985 (functions relating to the listing of persons providing settlement arrangements).

22. Schedule 4 (transfer of functions: supplementary provisions) shall have effect.

23.—(1) Schedule 5 (amendments of primary, and other principal, legislation consequential on the transfer of functions by section 21) shall have effect.

(2) The Treasury may by order make such amendments to any instrument made under an Act as they think necessary or expedient in consequence of the transfer of functions by this Part.

(3) If a reference in a relevant provision to the Bank is to be treated as the continuing exercise by the Bank of any of the transferred functions, it shall, in relation to any time after the coming into force of this Act, have effect as a reference to the Authority.

(4) In subsection (3), “relevant provision” means a provision which—

- (a) has effect before, as well as after, the coming into force of this Act, and
- (b) is contained in a document other than an Act or an instrument made under an Act.

Authority's position in relation to transferred functions

24. In relation to the carrying out of any of the transferred functions—

- (a) the Authority shall not be regarded as acting on behalf of the Crown, and
- (b) its members, officers and servants shall not be regarded as Crown servants.

25.—(1) In section 43 of the Financial Services Act 1986, at the end there is inserted—

“(5) Neither the Authority nor any person who is, or is acting as, an officer or servant of the Authority shall be liable in damages for anything done or omitted in the discharge or purported discharge of any of the Authority's functions under this section, unless it is shown that the act or omission was in bad faith.”

(2) In regulation 26 of the Investment Services Regulations 1995, at the end there is inserted—

“(6) That section shall also have effect as if the reference in subsection (5) to the Authority's functions under this section included a reference to—

PART III

- (a) any function under these Regulations which is a function of the Authority by virtue of the Bank of England Act 1998, and
- (b) so much of any function of the Authority under these Regulations as is exercisable by virtue of that Act."

(3) In section 171 of the Companies Act 1989, after subsection (5) there is inserted—

"(6A) Neither the Authority nor any person who is, or is acting as, an officer or servant of the Authority shall be liable in damages for anything done or omitted in the discharge or purported discharge of any of the Authority's functions under this section, unless it is shown that the act or omission was in bad faith."

26.—(1) Schedule 6 (banking supervision fees) shall have effect.

Power to charge fees.

(2) In section 43 of the Financial Services Act 1986, after subsection (2) there is inserted—

Power to charge fees.

"(2A) Without prejudice to the generality of the Authority's power to impose conditions for admission to the list, the conditions for admission may include—

- (a) a condition having the effect of requiring the payment of an application fee, and
- (b) a condition having the effect of requiring the payment of periodic fees.

(2B) A condition of the kind referred to in subsection (2A)(a) or (b) above—

- (a) may provide for the amount payable to be such as is specified in, or determined under, the condition, and
- (b) may make different provision for different cases."

(3) In section 171 of the Companies Act 1989, after subsection (3) there is inserted—

"(3A) Without prejudice to the generality of the Authority's power to impose conditions for admission to the list, the conditions for admission may include—

- (a) a condition having the effect of requiring the payment of an application fee, and
- (b) a condition having the effect of requiring the payment of periodic fees.

(3B) A condition of the kind referred to in subsection (3A)(a) or (b)—

- (a) may provide for the amount payable to be such as is specified in, or determined under, the condition, and
- (b) may make different provision for different cases."

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Power to channel
information
through agent.
1987 c. 22

27. In section 39(1)(a) of the Banking Act 1987 (power to require the provision of information)—

- (a) after "provide the Bank," there is inserted "or such person acting on behalf of the Authority as may be specified in the notice.", and
- (b) for "specified in the notice" there is substituted "so specified".

Consequential changes to banking bodies

Board of Banking
Supervision.

28.—(1) In section 2 of the Banking Act 1987 (Board of Banking Supervision), for subsections (1) and (2) there is substituted—

"(1) There shall continue to be a committee known as the Board of Banking Supervision.

(2) The Board shall consist of—

- (a) two ex officio members, namely, the Chairman of the Authority and the holder of such other office within the Authority as the Chairman of the Authority may designate for the purposes of this provision; and
- (b) six independent members, that is to say, members appointed jointly by the Chancellor of the Exchequer and the Chairman of the Authority, being persons having no executive responsibility in the Authority.

(2A) The independent members shall elect one of their number to chair the Board."

(2) In that section, in subsections (3), (4), (6) and (7), for "Bank", wherever occurring, there is substituted "Authority".

(3) In Schedule 1 to that Act (Board of Banking Supervision), for "Bank", wherever occurring, there is substituted "Authority".

Deposit
Protection Board

29.—(1) Schedule 4 to the Banking Act 1987 (Deposit Protection Board) paragraph 1 (constitution) is amended as follows.

(2) In sub-paragraph (1), for paragraphs (a) to (c) (ex officio members of the Board) there is substituted—

- "(a) the Chairman of the Authority, who shall chair the Board;
- (b) the holder of such other office within the Authority as the Chairman of the Authority may designate for the purposes of this provision; and
- (c) the Deputy Governor of the Bank of England responsible for financial stability;"

(3) For sub-paragraph (2) there is substituted—

"(2) The Chairman of the Authority shall appoint as ordinary members of the Board—

- (a) three persons who are directors, controllers or managers of contributory institutions; and
- (b) persons who are officers or employees of the Authority "

(4) For sub-paragraph (3) there is substituted—

PART III

29. An ex officio member of the Board may appoint an alternate member to perform his duties as a member in his absence as follows—

- (a) the Chairman of the Authority or the holder of a designated office within the Authority may appoint an officer or employee of the Authority, and
- (b) the Deputy Governor of the Bank of England may appoint an officer or employee of the Bank."

(5) In sub-paragraph (4) (appointment of alternates for ordinary members), in paragraph (b), for "Bank" there is substituted "Authority".

Supplementary

30. In this Part—

"the Authority" means the Financial Services Authority;

"transferred functions" means the functions transferred to the Authority by this Part.

Interpretation of Part III.

PART IV

MISCELLANEOUS AND GENERAL

Miscellaneous

31. In paragraph 1 of Schedule 7 to the Financial Services Act 1986 (constitution of a designated agency), in sub-paragraph (2) (members of the governing body to be appointed etc. by the Treasury and Governor of the Bank acting jointly), the words "and the Governor of the Bank of England acting jointly" are omitted.

Qualifications of a designated agency 1986 c. 60

32. In Schedule 5 to the Financial Services Act 1986 (transactions in relation to which institutions listed under section 43 are exempt from authorisation)—

Listed institutions exemption of transactions with Treasury

- (a) in paragraph 1, after "with another listed institution", there is inserted ", the Treasury".
- (b) in paragraph 4(1)(b) and (2), after "listed institution" there is inserted ", the Treasury", and
- (c) in paragraph 9(a), after "with another listed institution" there is inserted ", the Treasury".

33.—(1) The Treasury may by order—

- (a) make provision excluding gilts from registration in the Register on and after a day specified in the order.
- (b) make provision for the transfer to the books of the Bank of the entries in the Register at the beginning of the day specified under paragraph (a) which relate to gilts, and
- (c) make provision for the transfer to the Bank of rights and liabilities of the Director of Savings in relation to the registration of gilts in the Register or any transaction associated therewith.

Closure of National Savings Stock Register to gilts

PART IV

(2) The power conferred by paragraph (b) of subsection (1) includes power to make provision in relation to gilts which were not registered in the Register at the beginning of the day specified under paragraph (a) of that subsection, but which should have been.

(3) An order under subsection (1) may contain such consequential, incidental, supplementary and transitional provisions as appear to the Treasury to be necessary or expedient.

(4) Without prejudice to subsection (3), an order under subsection (1) may contain—

- (a) provision requiring things done by, or in relation to, the Director of Savings, to be treated as done by, or in relation to, the Bank.
- (b) provision requiring references in documents to the Register to be construed as references to the books of the Bank, and
- (c) provision requiring certificates issued by the Director of Savings in relation to registration in the Register to be treated as issued by the Bank in relation to registration in the books of the Bank.

(5) An order under subsection (1) may—

- (a) make different provision for different cases, and
- (b) contain provision amending, or repealing or revoking, an enactment contained in—
 - (i) an Act, whenever passed, or
 - (ii) an instrument, whenever made, under an Act, whenever passed.

(6) In this section—

“gilts” means stock or bonds of any of the descriptions included in Part I of Schedule 11 to the Finance Act 1942 (whether on or after the passing of this Act); and

“the Register” means the National Savings Stock Register.

1942 c. 21.

Provision of brokerage service in connection with gilt registration.

34. In section 47 of the Finance Act 1942 (transfer and registration of Government stock), after subsection (1) there is inserted—

“(1ZA) Regulations under subsection (1) of this section may make provision with respect to the purchase and sale of such stock and bonds by any person, or any description of person, through the Bank of England and, in relation to purchase or sale under the regulations, may—

- (a) make provision with respect to the commission and fees payable, and
- (b) make provision limiting the amount which any person, or any description of person, may purchase or sell on any day.”

Section 207 of the Companies Act 1989: bearer securities.
1989 c. 40.

35. In section 207 of the Companies Act 1989 (power to make regulations enabling title to securities to be evidenced and transferred without a written instrument), there is inserted at the end—

“(10) In subsection (1), the reference to transfer without a written instrument includes, in relation to bearer securities, transfer without delivery.”

PART IV

36.—(1) In the Banking Act 1987, in section 86(2)(a), after “functions” there is inserted “or any functions in its capacity as a designated agency within the meaning of the Financial Services Act 1986”.

Disclosure of information: minor amendments. 1987 c. 22. 1986 c. 60.

(2) Section 86(5) of that Act as applied by paragraph 57(1) of Schedule 5 shall have effect with the following modifications—

(a) in the definition of “relevant functions”, at the end there is inserted “and its functions as a supervisor of systems for the transfer of funds between credit institutions and their customers”, and

(b) in the definition of “relevant recipient”, for “1 to 8” there is substituted “1 to 9”.

(3) Section 87(3A) of that Act as applied by paragraph 59(1) of Schedule 5 shall have effect with the following modifications—

(a) in the definition of “relevant functions”, at the end there is inserted “and its functions as a supervisor of systems for the transfer of funds between credit institutions and their customers”, and

(b) in the definition of “relevant recipient”, for “1 to 8” there is substituted “1 to 9”.

(4) Part V of that Act shall have effect, in relation to information relating to the business or other affairs of institutions which are authorised institutions, but not credit institutions, within the meaning of that Act, with the amendments made by the following regulations—

(a) regulations 38, 39(2) to (4) and 40 to 42 of the Banking Coordination (Second Council Directive) Regulations 1992, and S.I. 1992/3218.

(b) regulation 5 of the Financial Institutions (Prudential Supervision) Regulations 1996. S.I. 1996/1669.

General

37. Schedule 7 (which restricts the disclosure of information obtained for monetary policy or cash ratio deposit purposes) shall have effect.

Restriction on disclosure of information.

38.—(1) A person who fails without reasonable excuse to comply with any requirement imposed on him under section 17(1) or paragraph 9 of Schedule 2 shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Offences in relation to supplying information to the Bank.

(2) If after conviction of an offence under subsection (1) a person continues the failure for which he was convicted, he shall be guilty of a further offence under that subsection and liable on summary conviction to be punished accordingly.

(3) A person who in purported compliance with a requirement imposed on him under section 17(1) or paragraph 9 of Schedule 2 provides information which he knows to be false or misleading in a material particular, or recklessly provides information which is false or misleading in a material particular, shall be guilty of an offence and liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both, or

PART IV

(b) on summary conviction, to imprisonment for a term not exceeding 3 months, or to a fine not exceeding the statutory maximum, or to both.

Offences by bodies corporate.

39.—(1) Where an offence under this Part committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Orders.

40.—(1) Any power of the Treasury to make an order under this Act shall be exercisable by statutory instrument.

(2) An order under—
section 17(4) or (5),
paragraph 1(2) or 5 of Schedule 2, or
paragraph 3(2) of Schedule 7,

shall not be made unless a draft of the order has been laid before and approved by resolution of each House of Parliament.

(3) A statutory instrument containing an order under—
section 23(2),
paragraph 2(2) or 8 of Schedule 2,
paragraph 1(5) of Schedule 4, or
paragraph 3(3) of Schedule 7,

shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(4) A statutory instrument containing an order under section 33 shall be subject to annulment in pursuance of a resolution of the House of Commons.

(5) Section 19 contains its own provisions about parliamentary procedure in relation to an order under that section.

General interpretation.

41. In this Act, "the Bank" means the Bank of England.

Transitional provisions and savings.

42. Schedule 8 (transitional provisions and savings) shall have effect.

Repeals.

43. The enactments and instruments specified in Schedule 9 are hereby repealed or revoked to the extent specified in the final column of that Schedule.

Final provisions

Extent.

44.—(1) This Act extends to Northern Ireland.

(2) Section 33 extends to the Channel Islands and the Isle of Man.

PART IV

20. The extent of any amendment, repeal or revocation by this Act is the same as that of the enactment amended, repealed or revoked.

45. This Act shall come into force on such day as the Treasury may by order appoint. Commencement.

46. This Act may be cited as the Bank of England Act 1998. Short title.

SCHEDULES

Section

SCHEDULE 1

COURT OF DIRECTORS

Terms of office

1.—(1) Appointment as Governor or Deputy Governor of the Bank shall be for a period of 5 years.

(2) A person appointed as Governor or Deputy Governor of the Bank shall work exclusively for the Bank.

2. Appointment as director of the Bank shall be for a period of 3 years, except that initially some appointments may be for shorter and different periods so as to secure that appointments expire at different times.

3. A person appointed as director of the Bank in place of a person who ceased to hold office before the end of the term for which he was appointed shall be appointed for the remainder of that person's term of office.

4. A person appointed as Governor, Deputy Governor or director of the Bank may resign his office by written notice to the Bank.

Qualification for appointment

5.—(1) A person is disqualified for appointment as Governor, Deputy Governor or director of the Bank if he is a Minister of the Crown or a person serving in a government department in employment in respect of which remuneration is payable out of money provided by Parliament.

(2) A person is disqualified for appointment as director of the Bank if he is a servant of the Bank.

6. The fact that a person has held office as Governor, Deputy Governor or director of the Bank does not disqualify him for re-appointment to that office or for appointment to any other of those offices.

Removal from office

7.—(1) A person appointed as Governor or Deputy Governor of the Bank shall vacate office if he becomes a person to whom paragraph 5(1) applies.

(2) A person appointed as director of the Bank shall vacate office if he becomes a person to whom paragraph 5(1) or (2) applies.

8. The Bank may, with the consent of the Chancellor of the Exchequer, remove a person from office as Governor, Deputy Governor or director of the Bank if it is satisfied—

- (a) that he has been absent from meetings of the court for more than 3 months without the consent of the court,
- (b) that he has become bankrupt, that his estate has been sequestrated or that he has made an arrangement with or granted a trust deed for his creditors, or
- (c) that he is unable or unfit to discharge his functions as a member

Powers

9. The court may act notwithstanding the existence of one or more vacancies among its members.

10. The court may appoint such sub-committees as it thinks fit
11. The court may delegate such duties and powers as it thinks fit to—
- (a) a member of the court,
 - (b) any officer, servant or agent of the Bank,
 - (c) a sub-committee consisting of—
 - (i) members of the court, or
 - (ii) one or more members of the court and one or more of the officers, servants and agents of the Bank.

Meetings

- 12.—(1) The court shall meet at least once a month.
- (2) The Governor of the Bank (or in his absence a Deputy Governor of the Bank) may summon a meeting at any time on giving such notice as in his judgment the circumstances may require.

Proceedings

- 13.—(1) At a meeting of the court, the proceedings shall be regulated as follows.
- (2) The quorum shall be 9.
- (3) The chair shall be taken by the Governor of the Bank or, if he is not present, by the director of the Bank who is for the time being designated under subsection (4) of section 3 to chair the sub-committee constituted by that section.
- (4) If a member of the court has any direct or indirect interest in any dealing or business with the Bank—
- (a) he shall disclose his interest to the court at the time of the dealing or business being negotiated or transacted, and
 - (b) he shall have no vote in relation to the dealing or business, unless the court has resolved that the interest does not give rise to a conflict of interest.
- (5) A member of the court shall have no vote in relation to any question arising which touches or concerns him but shall withdraw and be absent during the debate of any matter in which he is concerned.
- (6) Subject to sub-paragraphs (2) to (5), the court shall determine its own procedure.

Remuneration

- 14.—(1) A person appointed as Governor or Deputy Governor of the Bank shall be entitled to be paid by the Bank such remuneration as it may determine.
- (2) The Bank may pay, or create and maintain a fund for the payment of, pensions or capital grants to members, or former members, of the court who have rendered exclusive services to the Bank
15. A director of the Bank shall be entitled to be paid by the Bank such remuneration as the Bank may determine with the approval of the Chancellor of the Exchequer.

Section 4

SCHEDULE 2

CASH RATIO DEPOSITS

Eligible institutions

1.—(1) The following are eligible institutions for the purposes of this Schedule—

- 1987 c. 22.
S.I. 1992/3218. (a) an institution authorised under the Banking Act 1987,
 - (b) a European authorised institution within the meaning of the Banking Coordination (Second Council Directive) Regulations 1992 which has lawfully established a branch in the United Kingdom for the purpose of accepting deposits or other repayable funds from the public, and
 - 1986 c. 53. (c) a building society authorised under the Building Societies Act 1986.
- (2) The Treasury may by order amend sub-paragraph (1) as they think fit.

Liability base

2.—(1) For the purposes of this Schedule, the liability base of an eligible institution at any time is the aggregate of those sterling and foreign currency liabilities of the institution which are eligible liabilities.

(2) The Treasury may by order define eligible liabilities for the purposes of this paragraph and make provision about the calculation of any description of eligible liability, including provision for the amount of a liability of any description to be treated as reduced by the amount of an asset of any description.

Call notices

3.—(1) The Bank may give an eligible institution notice under this paragraph.

(2) Notice under this paragraph (“a call notice”) shall be in writing and shall specify—

- (a) the period to which it relates, and
- (b) the amount which, in relation to that period, is the institution’s depositable amount.

(3) The period to be specified under sub-paragraph (2)(a)—

- (a) shall be a period of 6 months beginning at least 4 working days after the date of the notice, and
- (b) shall not include any part of a period specified in a previous call notice given to the institution concerned.

Calculation of depositable amount

4.—(1) In the case of any call notice, the amount to be specified under paragraph 3(2)(b) is the amount, or, as the case may be, the sum of the amounts, produced by multiplying so much of the institution’s average liability base for the reference period as falls into each value band by the ratio applicable to that band.

(2) The Bank may use such method to calculate an institution’s average liability base for the purposes of this paragraph as it thinks fit, and may use different methods for different institutions.

(3) For the purposes of this paragraph, value bands and the ratios applicable to them are such as may be specified under paragraph 5

Value bands and applicable ratios

5 The Treasury may by order specify for the purposes of paragraph 4 value bands and the ratios applicable to them

Effect of call notice

6.—(1) Where the Bank has given an eligible institution a call notice, then, at any time in the period to which the notice relates the following conditions are met, namely—

- (a) the institution is an eligible institution, and
- (b) the institution does not have on deposit in the appropriate account with the Bank the amount specified in the notice as its depositable amount in relation to that period.

the Bank may by notice in writing require the institution to make a payment in lieu of deposit.

(2) A notice under sub-paragraph (1) shall specify what period it covers, and the period specified must—

- (a) fall within the period to which the call notice relates, and
- (b) be a period throughout which the conditions mentioned in sub-paragraph (1) have been met.

(3) The amount which the Bank may by a notice under sub-paragraph (1) require an institution to pay is an amount equal to interest for the period covered by the notice, at 4% over the benchmark rate, on the average shortfall during that period.

(4) The Bank may use such method to calculate the average shortfall as it thinks fit.

(5) In sub-paragraph (1)(b), the reference to the appropriate account, in relation to an eligible institution, is to such account of the institution with the Bank as is designated by the Bank for the purposes of this Schedule.

(6) For the purposes of sub-paragraph (3), the shortfall, at any time, is the amount which the institution needs to deposit to prevent the condition mentioned in sub-paragraph (1)(b) applying.

Benchmark rate of interest

7.—(1) The benchmark rate of interest for the purposes of paragraph 6(3) shall be determined as follows.

(2) First, determine a rate of interest for each working day of the period covered by the notice under paragraph 6(1) by taking the average of the rates at which 3 month deposits in sterling are bid at 11.00 am on the day by the 5 eligible institutions having in the opinion of the Bank the largest eligible liabilities at the end of the reference period for the relevant call notice.

(3) Second, determine an average rate of interest by reference to the rates determined in accordance with sub-paragraph (2), the average rate so determined being the benchmark rate.

(4) In sub-paragraph (2), the reference to the relevant call notice is to the call notice by virtue of which the Bank is entitled to give the notice under paragraph 6(1).

8 The Treasury may by order amend or replace paragraph 7.

Power to obtain information

9 —(1) The Bank may by notice in writing require an eligible institution to provide the Bank with such information as may be specified in the notice, being information which the Bank considers it necessary or expedient to have for the purposes of its functions under this Schedule.

(2) A notice under sub-paragraph (1) may require information to be provided—

SCH. 2

- (a) in such form or manner as may be so specified;
- (b) at such time or times as may be so specified;
- (c) in relation to such period or periods as may be so specified.

Orders

10. Before making an order under this Schedule, the Treasury shall consult—
- (a) the Bank,
 - (b) such persons as appear to them to be representative of persons likely to be materially affected by the order, and
 - (c) such other persons as they think fit.

11. In exercising the power to make orders under paragraph 2(2) or 5, the Treasury shall have regard to the financial needs of the Bank.

Interpretation

12. In this Schedule—

“reference period”, in relation to a call notice, means the period of 6 months ending immediately before the month in which the notice is given; and

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

1971 c. 80

Modifications for new entrants

13.—(1) In its application to the first call notice to be given to an institution or society after it becomes an eligible institution, this Schedule shall have effect with the following modifications.

(2) In paragraph 3(3)(a), after “period of” there is inserted “not more than”.

(3) In paragraph 7(2), for “the end of the reference period for the relevant call notice” there is substituted “such time before the beginning of the period to which the relevant call notice relates as the Bank thinks fit”.

(4) In paragraph 12, in the definition of “reference period”, for the words from “the period” to the end there is substituted “such period prior to the notice as the Bank thinks fit”.

Section 13

SCHEDULE 3

MONETARY POLICY COMMITTEE

Terms of office of appointed members

1. Appointment as a member of the Committee under section 13(2)(b) or (c) shall be for a period of 3 years, except that initially some appointments may be for shorter and different periods so as to secure that appointments expire at different times.

2. A person appointed under section 13(2)(b) or (c) in place of a person who ceased to hold office before the end of the term for which he was appointed shall be appointed for the remainder of that person's term of office.

3. A person appointed under section 13(2)(b) or (c) may resign his office by written notice to the Bank.

4.—(1) A person who holds office as a member of the Committee under section 13(2)(b) or (c) shall be a servant of the Bank.

(2) The terms and conditions of service under sub-paragraph (1) shall be such as the Bank may determine.

(3) The function of determining terms and conditions of service under sub-paragraph (2) shall stand delegated to the sub-committee constituted by section 5.

Qualification for appointment

5. A person is disqualified for appointment under section 13(2)(b) or (c) if—

- (a) he is a Minister of the Crown, or a person serving in a government department in employment in respect of which remuneration is payable out of money provided by Parliament, or
- (b) he is a member of the court of directors of the Bank.

6. The fact that a person has held office under section 13(2)(b) or (c) does not disqualify him for further appointment to such office.

Removal of appointed members

7. A person appointed under section 13(2)(b) or (c) shall vacate office if he becomes a person to whom paragraph 5(a) or (b) applies.

8. A person appointed under section 13(2)(b) shall vacate office if he ceases to have executive responsibility within the Bank for monetary policy analysis or, as the case may be, monetary policy operations.

9.—(1) The Bank may, with the consent of the Chancellor of the Exchequer, remove a member appointed under section 13(2)(b) or (c) if it is satisfied—

- (a) that he has been absent from the Committee's meetings for more than 3 months without the Committee's consent,
- (b) that he has become bankrupt, that his estate has been sequestrated or that he has made an arrangement with or granted a trust deed for his creditors, or
- (c) that he is unable or unfit to discharge his functions as a member.

(2) The function of removing a member under sub-paragraph (1) shall stand delegated to the sub-committee constituted by section 5.

Meetings

10.—(1) The Committee shall meet at least once a month.

(2) The Governor of the Bank (or in his absence the Deputy Governor of the Bank with executive responsibility for monetary policy) may summon a meeting at any time on giving such notice as in his judgment the circumstances may require.

Proceedings

11.—(1) At a meeting of the Committee, the proceedings shall be regulated as follows.

(2) The quorum shall be 6, of whom 2 must hold office as Governor or Deputy Governor of the Bank.

(3) The chair shall be taken by the Governor of the Bank or, if he is not present, the Deputy Governor of the Bank with executive responsibility for monetary policy.

Section 3

(4) Decisions shall be taken by a vote of all those members present at the meeting.

(5) In the event of a tie, the chairman shall have a second casting vote.

(6) Subject to sub-paragraphs (2) to (5), the Committee shall determine its own procedure.

12. The Committee may, in relation to sub-paragraph (2), (3) or (4) of paragraph 11, determine circumstances in which a member who is not present at, but is in communication with, a meeting, is to be treated for the purposes of that sub-paragraph as present at it.

13. A representative of the Treasury may attend, and speak at, any meeting of the Committee.

Report to court of directors of the Bank

14. The Committee shall submit a monthly report on its activities to the court of directors of the Bank.

Parliamentary disqualification

1975 c. 24. 15. In Part III of Schedule 1 to the House of Commons Disqualification Act 1975 (other disqualifying offices), there is inserted at the appropriate place—

“Member of the Monetary Policy Committee of the Bank of England appointed under section 13(2)(b) or (c) of the Bank of England Act 1998.”;

1975 c. 25. and a corresponding amendment is made in Part III of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975.

Section 22.

SCHEDULE 4

TRANSFER OF FUNCTIONS: SUPPLEMENTARY PROVISIONS

Continuity of exercise of functions

1.—(1) The transfer of functions by this Part shall not affect the validity of anything done (or having effect as if done) by or in relation to the Bank before the day on which this Act comes into force (“the transfer day”).

(2) Anything which, immediately before the transfer day, is in the process of being done by or in relation to the Bank may, if it relates to any of the transferred functions, be continued by or in relation to the Authority.

(3) Anything done (or having effect as if done) by, or in relation to, the Bank before the transfer day for the purpose of, or in connection with, any of the transferred functions, shall, so far as is required for continuing its effect on and after that day, have effect as if done by, or in relation to, the Authority.

(4) Any reference to the Bank in any document constituting or relating to anything to which the foregoing provisions of this paragraph apply shall, so far as is required for giving effect to those provisions, be construed as a reference to the Authority.

(5) The Treasury may, in relation to any of the transferred functions, by order exclude, modify or supplement any of the foregoing provisions of this paragraph or make such other transitional provisions as they think necessary or expedient.

Transfer of staff

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2. The transfer of functions by this Part shall be regarded for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 1981 as the transfer of part of an undertaking, whether or not it would be so regarded apart from this provision.

S.I. 1981/1794.

Transfer of property, rights and liabilities

3.—(1) The Bank shall make a scheme under this paragraph for the transfer to the Authority of such of the Bank's property, rights and liabilities as appear to the Bank appropriate to be so transferred in consequence of the transfer of functions by this Part.

(2) A scheme under this paragraph made by the Bank shall not be capable of coming into force unless it is approved by the Treasury.

(3) The Bank may not submit a scheme under this paragraph to the Treasury for their approval without the consent of the Authority.

(4) Where a scheme under this paragraph is submitted to the Treasury for their approval, they may, before approving it, make such modifications to it as appear to them to be appropriate.

(5) Where this sub-paragraph applies, the Treasury may, after consultation with the Bank and the Authority, make a scheme under this paragraph for the transfer to the Authority of such of the Bank's property, rights and liabilities as appear to them appropriate to be so transferred in consequence of the transfer of functions by this Part.

(6) Sub-paragraph (5) applies if—

(a) the Bank fails, before such time as may be notified to it by the Treasury as the latest time for submission of a scheme under this paragraph, to submit such a scheme to them for their approval, or

(b) the Treasury decide not to approve a scheme that has been submitted to them by the Bank (either with or without modifications).

(7) A scheme under this paragraph shall come into force on such day as the Treasury may by order appoint.

(8) When a scheme under this paragraph comes into force, the property, rights and liabilities of the Bank to which the scheme relates shall, by virtue of this paragraph and without further assurance, be transferred to and vested in the Authority in accordance with the provisions of the scheme.

(9) The Bank shall provide the Treasury with all such information and other assistance as they may reasonably require for the purposes of, or otherwise in connection with, the exercise of any power conferred on them by this paragraph.

4.—(1) The property, rights and liabilities capable of being transferred in accordance with a scheme under paragraph 3 shall include property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the Bank.

(2) The transfers authorised by sub-paragraph (1) include transfers which are to take effect as if there were—

(a) no such requirement to obtain any person's consent or concurrence,

(b) no such liability in respect of a contravention of any other requirement, and

(c) no such interference with any interest or right, as there would be, in the case of any transaction apart from this Act, by reason of provisions having effect (whether under any enactment or agreement or otherwise) in relation to the terms on which the Bank is entitled or subject in relation to any property, right or liability.

5.—(1) A scheme under paragraph 3 may also contain provision—

- (a) for rights and liabilities to be transferred so as to be enforceable by or against both the Bank and the Authority,
- (b) for the creation in favour of the Bank of an interest or right in or in relation to property transferred in accordance with the scheme,
- (c) for giving effect to a transfer to the Authority in accordance with the scheme by the creation in favour of the Authority of an interest or right in or in relation to property retained by the Bank,
- (d) for imposing on the Bank and the Authority obligations to enter into such written agreements with each other as may be specified in the scheme, and
- (e) for imposing on either one of them obligations to execute such instruments in favour of the other as may be so specified.

(2) An obligation imposed by a provision included in a scheme by virtue of sub-paragraph (1)(d) or (e) shall be enforceable by civil proceedings by the Bank or the Authority for an injunction or for any other appropriate relief.

(3) A transaction of any description effected in pursuance of a provision included in a scheme by virtue of sub-paragraph (1)(d) or (e)—

- (a) shall have effect subject to the provisions of any enactment which provides for transactions of that description to be registered in any statutory register, but
- (b) subject to that, shall be binding on all other persons, notwithstanding that it would, apart from this provision, have required the consent or concurrence of any other person.

6.—(1) A scheme under paragraph 3 may make such supplemental, consequential and transitional provision for the purposes of, or in connection with, any transfer of property, rights or liabilities for which the scheme provides, or in connection with any other provisions contained in the scheme as the Bank may consider appropriate.

(2) In particular, such a scheme may provide—

- (a) that for purposes connected with any transfer made in accordance with the scheme (including the transfer of rights and liabilities under an enactment) the Authority is to be treated as the same person in law as the Bank,
- (b) that, so far as may be necessary for the purposes of or in connection with any such transfer, agreements made, transactions effected and other things done by or in relation to the Bank are to be treated as made, effected or done by or in relation to the Authority,
- (c) that, so far as may be necessary for the purposes of or in connection with any such transfer, references to the Bank in any agreement (whether or not in writing), deed, bond, instrument or other document are to have effect with such modifications as are specified in the scheme,
- (d) that proceedings commenced by or against the Bank are to be continued by or against the Authority, and
- (e) that the Bank and the Authority are to co-operate with each other for the purposes of and in connection with the scheme.

SCHEDULE 5

Section 23.

TRANSFER OF FUNCTIONS: CONSEQUENTIAL AMENDMENTS

PART I

BANKING SUPERVISION

CHAPTER I

BANKING ACT 1987

1. The Banking Act 1987 is amended as follows. 1987 c. 22.
2. In section 1—
 - (a) in subsection (1), for the words from the beginning to “Bank”)” there is substituted “The Financial Services Authority (in this Act referred to as “the Authority”)”,
 - (b) in subsections (2) and (3), for “Bank” there is substituted “Authority”, and
 - (c) in subsection (4)—
 - (i) for the words from the beginning to “Bank”, in the second place where it occurs, there is substituted “Neither the Authority nor any person who is, or is acting as, an officer or servant of the Authority”, and
 - (ii) for “Bank”, in the third place where it occurs, there is substituted “Authority”.
3. In sections 3(1) and 4(3), for “Bank” there is substituted “Authority”.
4. In sections 7 to 10, for “Bank”, wherever occurring, there is substituted “Authority”.
5. In section 11—
 - (a) for “Bank”, wherever occurring, except subsection (1A)(c), there is substituted “Authority”, and
 - (b) in subsection (1A)(c)—
 - (i) for “the Bank is informed by The Securities and Investments Board, or” there is substituted “it appears to the Authority, or the Authority is informed by”, and
 - (ii) in paragraph (ii), for “that Board or” there is substituted “the Authority or that”.
6. In section 12—
 - (a) for “Bank”, wherever occurring, there is substituted “Authority”, and
 - (b) in subsection (1)(a), for “Bank’s” there is substituted “Authority’s”
7. In sections 12A to 17, for “Bank”, wherever occurring, there is substituted “Authority”.
8. In section 19—
 - (a) for “Bank”, wherever occurring, there is substituted “Authority”, and
 - (b) in subsection (3), for “Bank’s” there is substituted “Authority’s”.
9. In sections 20 to 27, for “Bank”, wherever occurring, there is substituted “Authority”

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10. In section 29—

- (a) for "Bank", wherever occurring, there is substituted "Authority", and
- (b) in subsection (3), for "Bank's", in both places, there is substituted "Authority's".

11. In sections 30 to 34 and 36 to 42, for "Bank", wherever occurring, there is substituted "Authority".

12. In section 43(1)—

- (a) for "Bank" there is substituted "Authority", and
- (b) for "Bank's" there is substituted "Authority's".

13. In sections 46 to 49, for "Bank", wherever occurring, there is substituted "Authority".

14. In sections 52(2A), 58(2A)(b), 59(1)(a) and (4), 65(1), 67(6), 68(7) and 69(7), for "Bank" there is substituted "Authority".

15. In sections 70 to 72 and 75, for "Bank", wherever occurring, there is substituted "Authority".

16. In section 76—

- (a) for "Bank", wherever occurring, there is substituted "Authority", and
- (b) in subsection (3)(b), for "Bank's" there is substituted "Authority's".

17. In sections 77 to 80, for "Bank", wherever occurring, there is substituted "Authority".

18. In sections 92 to 96, 99 to 101 and 105, for "Bank", wherever occurring, there is substituted "Authority".

19. In section 106(1)—

- (a) in the definition of "authorisation", for "Bank" there is substituted "Authority".
- (b) after that definition there is inserted—
 "the Authority" means the Financial Services Authority; and
- (c) in the definition of "relevant supervisory authority", in paragraph (b), for "Bank" there is substituted "Authority".

20. In Schedule 3, for "Bank", wherever occurring, there is substituted "Authority".

CHAPTER II

BANKING COORDINATION (SECOND COUNCIL DIRECTIVE) REGULATIONS 1992

S.I. 1992/3218.

21. The Banking Coordination (Second Council Directive) Regulations 1992 are amended as follows.

22. In regulation 2(1)—

- (a) after the provision about the construction of "authorised or permitted" there is inserted—
 "the Authority" means the Financial Services Authority (formerly known as the Securities and Investments Board); and

(b) in the definition of "the Board", at the end there is inserted "(now known as the Financial Services Authority)".

23. In regulations 8 to 10, for "Bank", wherever occurring, there is substituted "Authority".

24. In regulation 11—

- (a) for "Bank", wherever occurring, there is substituted "Authority", and
- (b) in paragraph (1), for "Bank's" there is substituted "Authority's".

25. In regulations 12 to 13A, for "Bank", wherever occurring, there is substituted "Authority".

26. For regulation 14 there is substituted—

"14.—(1) In any case where—

- (a) the Authority receives a notice under paragraph 3 of Schedule 2 to these Regulations; 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 Authority to constitute investment business,

the Authority 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 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 Authority receives a notice under paragraph 4 of Schedule 2 to these Regulations; 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 Authority to constitute investment business,

the Authority 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 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."

27. In regulations 20, 23, 48 and 58, for "Bank", wherever occurring, there is substituted "Authority".

28. In regulation 62(a), for "Bank's" there is substituted "Authority's".

29. In Schedules 2 and 3, for "Bank", wherever occurring, there is substituted "Authority".

30. In Schedule 4, paragraph 1(6)(a) is omitted.

31. In Schedules 5 to 7, for "Bank", wherever occurring, there is substituted "Authority".

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32. In Schedule 8—

- (a) for “Bank”, wherever occurring, there is substituted “Authority”, and
- (b) for “Bank’s”, wherever occurring, there is substituted “Authority’s”.

33. In Schedule 9, in paragraph 19(c), for “Bank” there is substituted “Authority”.

34. In Schedule 10—

- (a) in paragraph 33, for “Bank” there is substituted “Authority”, and
- (b) in paragraph 40(2), for “Bank of England” there is substituted “Financial Services Authority”.

35. In Schedule 11, in paragraphs 4(6) and 5(2), for “Bank” there is substituted “Authority”.

CHAPTER III

OTHER ENACTMENTS

Consumer Credit Act 1974 (c. 39)

36. In the Consumer Credit Act 1974, in section 16(3)(f), for “Bank of England” there is substituted “Financial Services Authority”.

Insolvency Act 1986 (c. 45)

37. In the Insolvency Act 1986, in section 422(1), for “Bank of England” there is substituted “Financial Services Authority”.

Building Societies Act 1986 (c. 53)

38.—(1) Section 101 of the Building Societies Act 1986 is amended as follows.

(2) In subsection (4), for “Bank”, in both places, there is substituted “Authority”.

(3) In subsection (6)—

- (a) for the definition of “the Bank” there is substituted—
“‘the Authority’ means the Financial Services Authority”, and
- (b) in paragraph (c) of the definition of “financial institution”, for “Bank” there is substituted “Authority”.

Financial Services Act 1986 (c. 60)

39. In the Financial Services Act 1986, in sections 128C(3)(a)(iii), 185(4) and 186(7), for “Bank of England” there is substituted “Financial Services Authority”.

Insolvency (Northern Ireland) Order 1989 S.I. 1989/2405 (N.I. 19)

40. In the Insolvency (Northern Ireland) Order 1989, in Article 366, for “Bank of England” there is substituted “Financial Services Authority”.

Courts and Legal Services Act 1990 (c. 41)

41.—(1) The Courts and Legal Services Act 1990 is amended as follows.

(2) In sections 37(8)(a) and 48(4)(a), the words “by the Bank of England” are omitted.

(3) In section 52(6)—

- 5) In regulation 42(10), at the end there is inserted "in a case in which it is the relevant regulator by virtue of regulation 46(5)(b)(i) below".
- 6) In regulation 44(2), for the words from the beginning to "person, the Bank," there is substituted "The Authority".
- (7) In regulation 46(5), for paragraphs (b) and (c) there is substituted "and
(b) the Authority, in a case in which the firm in question—
(i) is subject, in providing core services, to rules made by the Authority, or
(ii) is not an authorised person and is an exempted person by virtue of being admitted to the list maintained for the purposes of section 43 of the Financial Services Act."
- (8) In regulation 54(1), for "Bank", wherever occurring, there is substituted "Authority".
- (9) In regulation 56, at the end there is inserted—
“(3) Paragraph (1) above does not have effect in relation to—
(a) any function acquired by virtue of the Bank of England Act 1998, or
(b) so much of any function as is exercisable by virtue of that Act.”
- (10) In Schedule 6, in paragraphs 4(6)(b) and 7(5)(b), for "the Bank" there is substituted "it".
- (11) In that Schedule, in paragraph 8, the existing provision becomes sub-paragraph (1) and after that sub-paragraph there is inserted—
“(2) Sub-paragraph (1) above shall not apply where the decision is in relation to a UK authorised investment firm which is an exempted person by virtue of its inclusion in the list maintained for the purposes of section 43 of the Financial Services Act and which is not an authorised person.”

PART III

SUPERVISION UNDER SECTION 171 OF THE COMPANIES ACT 1989

Companies Act 1989 (c. 40)

46. The Companies Act 1989 is amended as follows.

47.—(1) Section 171 is amended as follows.

(2) In subsection (1), for "Bank of England" there is substituted "Financial Services Authority ("the Authority")".

(3) In subsection (2), for "Bank of England", in both places, there is substituted "Authority".

(4) After that subsection there is inserted—

“(2A) In subsection (2), references to supervision by the Authority are to supervision otherwise than in its capacity as a designated agency within the meaning of the Financial Services Act 1986.”

(5) In subsection (3)(a), for "Bank of England" there is substituted "Authority".

(6) After that subsection there is inserted—

“(2C) The Authority shall consult the Bank of England before it submits to the Treasury for approval under subsection (3) its proposals for conditions or arrangements of the kind referred to in that subsection.”

(4) In subsection (4), for "Bank of England" and "Bank" there is substituted "Authority".

(5) In subsection (6), after "Bank of England" there is inserted "and the Authority".

48.—(1) Section 176 is amended as follows.

(2) In subsection (2)(b), for "Bank of England" there is substituted "Financial Services Authority".

(3) For subsection (6) there is substituted—

"(6) Before making regulations under this section relating to a description of charges defined by reference to their being granted in favour of a person included in the list maintained by the Financial Services Authority for the purposes of section 171, or in connection with exchange facilities or clearing services provided by a person included in that list, the Secretary of State and the Treasury shall consult the Authority and the Bank of England.

(6A) Before making regulations under this section relating to a description of charges defined by reference to their being granted in favour of the Bank of England, or in connection with settlement arrangements provided by the Bank, the Secretary of State and the Treasury shall consult the Bank."

Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10))

49.—(1) The Companies (No. 2) (Northern Ireland) Order 1990 is amended as follows.

50. In article 93(3), for "and the Bank of England" there is substituted ", the Bank of England and the Financial Services Authority"

51.—(1) Article 98 is amended as follows.

(2) In paragraph (2)(b), for "Bank of England" there is substituted "Financial Services Authority"

(3) For paragraph (6) there is substituted—

"(6) Before making regulations under this Article relating to a description of charges defined by reference to their being granted in favour of a person included in the list maintained by the Financial Services Authority for the purposes of section 171 of the Companies Act 1989, or in connection with exchange facilities or clearing services provided by a person included in that list, the Department shall consult the Treasury, the Authority and the Bank of England. 1989 c. 40

(6A) Before making regulations under this Article relating to a description of charges defined by reference to their being granted in favour of the Bank of England, or in connection with settlement arrangements provided by the Bank, the Department shall consult the Treasury and the Bank."

PART IV

GENERAL DISCLOSURE OF INFORMATION

CHAPTER I

BANKING ACT 1987

- 1987 c. 22. 52. The Banking Act 1987 is amended as follows.
- 53.—(1) Section 83 is amended as follows.
- (2) In subsection (1)—
- (a) for “Bank” there is substituted “Authority”,
- (b) after paragraph (a) there is inserted—
- “*(aa)* its functions in its capacity as a designated agency within the meaning of the Financial Services Act 1986; or”,
- (c) paragraph (b) is omitted.
- (d) in paragraph (c), the words “and gilt market” are omitted, and
- (e) paragraph (d), and the word “or” immediately preceding it, are omitted.
- (3) In subsections (2) and (3), for “Bank”, wherever occurring, there is substituted “Authority”.
- 54.—(1) Section 84 is amended as follows.
- (2) In subsection (1), for “Bank”, in both places, there is substituted “Authority”.
- (3) In the Table in that subsection, after entry 4 there is inserted—
- | | |
|--------------------------|--|
| “4A The Bank of England. | Functions in its capacity as a monetary authority or supervisor of systems for the transfer of funds between credit institutions and their customers.” |
|--------------------------|--|
- (4) In that Table, in entry 18, for “Bank” there is substituted “Authority”
- (5) In subsections (2), (4), (5), (5A), (6) and (7), for “Bank”, wherever occurring, there is substituted “Authority”
55. In section 85(1) and (2), for “Bank”, wherever occurring, there is substituted “Authority”
- 56 —(1) Section 86 is amended as follows
- (2) In subsections (1), (2)(a), (3) and (4A), for “Bank”, wherever occurring, there is substituted “Authority”
- (3) In subsection (5), for the definition of “relevant functions” there is substituted—
- ““relevant functions”, in relation to the Authority, means its functions under this Act and its functions as a supervisor of money market institutions.”
- 57 —(1) Section 86 shall also have effect without the amendments made by paragraph 56 above or section 36(1) above, but with the substitution of the following for the definition of “relevant functions” in subsection (5)—
- ““relevant functions”, in relation to the Bank, means its functions as a monetary authority.”
- 1986 c. 60.

(2) In its application by virtue of sub-paragraph (1), section 86 shall have effect as if the provisions of Part V of the Banking Act 1987 were not amended by the preceding paragraphs of this Part of this Schedule, but were amended as follows.

(3) In section 84, in subsection (1), in the Table, after entry 1 there is inserted—

“1A The Authority.	Functions under the Financial Services Act 1986 (other than as a designated agency within the meaning of that Act), the Banking Act 1987 or section 171 of the Companies Act 1989.”	1986 c. 60. 1989 c. 40.
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(4) In that section, for subsections (5) and (5A) there is substituted—

“(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 in the public interest and in accordance with article 12(7) of the First Council Directive.

(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—

- (a) the disclosure is made with the consent of the Treasury,
- (b) 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
- (c) disclosure appears to the Bank to be—
 - (i) in the public interest, and
 - (ii) in accordance with article 12(7) of the First Council Directive.”

58.—(1) Section 87 is amended as follows.

(2) In subsection (2)—

- (a) for “Bank” there is substituted “Authority”, and
- (b) for “subsection (3)” there is substituted “subsection (3)(ha)”.

(3) In subsection (3)—

- (a) for “Bank” there is substituted “Authority”, and
- (b) for “paragraph (3)” there is substituted “paragraph (3)(ha)”.

(4) In subsections (3A) and (4), for “Bank” there is substituted “Authority”

59.—(1) Section 87(2), (3) and (3A) shall also have effect without the amendments made by paragraph 58, but with the following modifications.

(2) In subsections (2) and (3), the words “for the purpose of enabling or assisting it to discharge its functions under this Act or” are omitted

(3) In subsection (3A)—

- (a) in paragraph (b), for “section 84(5)(a) or (5A)” there is substituted “section 84(5A)”, and
- (b) for ““relevant functions” has the same meaning as in section 86 above” there is substituted ““relevant functions”, in relation to the Bank, means its functions as a monetary authority:”

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1987 c. 22.

(4) In their application by virtue of sub-paragraph (1) section 87(2), (3) and (3A) shall have effect as if the provisions of Part V of the Banking Act 1987 were not amended by the preceding paragraphs of this Part of this Schedule, but were amended as follows.

(5) In section 84, in subsection (1), in the Table, after entry 1 there is inserted—

1986 c. 60.

"1A The Authority.

Functions under the Financial Services Act 1986 (other than as a designated agency within the meaning of that Act), the Banking Act 1987 or section 171 of the Companies Act 1989."

1989 c. 40.

(6) In that section, for subsection (5A) there is substituted—

"(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—

- (a) the disclosure is made with the consent of the Treasury, and
- (b) 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
- (c) disclosure appears to the Bank to be—
 - (i) in the public interest, and
 - (ii) in accordance with article 12(7) of the First Council Directive."

CHAPTER II

OTHER ENACTMENTS

Consumer Credit Act 1974 (c. 39)

60 In section 174(3A) of the Consumer Credit Act 1974—

- (a) for "Bank of England" there is substituted "Financial Services Authority", and
- (b) for "Bank" there is substituted "Authority"

Insurance Companies Act 1982 (c. 50)

61 —(1) Paragraph 3 of Schedule 2B to the Insurance Companies Act 1982 is amended as follows.

(2) In sub-paragraph (1), in the Table, after entry 1 there is inserted—

"1A The Financial Services Authority

Functions under the Financial Services Act 1986 (other than as a designated agency within the meaning of that Act), the Banking Act 1987 or section 171 of the Companies Act 1989."

(3) In sub-paragraph (5), at the end there is inserted ", or

- (e) the Financial Services Authority under that Act (other than in its capacity as a designated agency) or the Banking Act 1987."

Companies Act 1985 (c. 6)

62.—(1) Section 449 of the Companies Act 1985 is amended as follows.

(2) In subsection (1), for paragraph (f) there is substituted—

“(f) for the purpose of enabling or assisting the Bank of England to discharge its functions,

(fa) for the purpose of enabling or assisting the Financial Services Authority to discharge—

(i) any functions under the Financial Services Act 1986, 1986 c. 60.
other than as a designated agency within the meaning of that Act.

(ii) its functions under the Banking Act 1987, or 1987 c. 22.

(iii) its functions under section 171 of the Companies Act 1989.” 1989 c. 40.

(3) In subsection (3), after paragraph (h) there is inserted—

“(ha) the Financial Services Authority, other than in its capacity as a designated agency within the meaning of the Financial Services Act 1986.”

Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6))

63.—(1) Article 442 of the Companies (Northern Ireland) Order 1986 is amended as follows.

(2) In paragraph (1), for sub-paragraph (f) there is substituted—

“(f) for the purpose of enabling or assisting the Bank of England to discharge its functions;

(fa) for the purpose of enabling or assisting the Financial Services Authority to discharge—

(i) any functions under the Financial Services Act 1986,
other than as a designated agency within the meaning of that Act.

(ii) its functions under the Banking Act 1987, or

(iii) its functions under section 171 of the Companies Act 1989.”

(3) In subsection (3), after paragraph (h) there is inserted—

“(ha) the Financial Services Authority, other than in its capacity as a designated agency within the meaning of the Financial Services Act 1986.”

Building Societies Act 1986 (c. 53)

64.—(1) The Building Societies Act 1986 is amended as follows.

(2) In section 53, in subsection (5)—

(a) for “Bank of England”, in the first place where it occurs, there is substituted “Financial Services Authority”;

(b) for paragraph (b) there is substituted—

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

(c) for “Bank of England”, in the second place where it occurs, there is substituted “Authority”

(3) In that section, after subsection (5) there is inserted—

Section 5

in writing to the Commission or to the Bank of England, or to the disclosure of information to the Bank of England where, in the opinion of the Commission, it is desirable or expedient that the information should be disclosed with a view to facilitating the discharge—

- (a) by the Commission of any of its functions under this Act, or
- (b) by the Bank of any of its functions.

nor does subsection (1) above prohibit further disclosure of the information by the Bank of England with the consent of the Commission.”

(4) In section 54(3A)—

- (a) for “Bank of England”, in the first place where it occurs, there is substituted “Financial Services Authority, other than in its capacity as a designated agency within the meaning of the Financial Services Act 1986,” and
- (b) for “Bank of England”, in the second place where it occurs, there is substituted “Financial Services Authority”.

1986 c. 60.

Financial Services Act 1986 (c. 60)

65.—(1) The Financial Services Act 1986 is amended as follows.

(2) In section 179(3)—

- (a) after paragraph (b) there is inserted—
 - “(ba) the Financial Services Authority, other than in its capacity as a designated agency;”, and
- (b) paragraph (f) is omitted.

(3) In section 180(1)—

- (a) after paragraph (e) there is inserted—
 - “(ea) for the purpose of enabling or assisting the Financial Services Authority to discharge—
 - (i) its functions under this Act, other than as a designated agency,
 - (ii) its functions under the Banking Act 1987, or
 - (iii) its functions under section 171 of the Companies Act 1989,” and
- (b) in paragraph (f), for the words from “its” to the end there is substituted “any of its functions”

1987 c. 22.

1989 c. 40

Companies Act 1989 (c. 40)

66.—(1) The Companies Act 1989 is amended as follows.

(2) In section 82—

- (a) in subsection (2)(a)(iii) for “Bank of England” there is substituted “Financial Services Authority”, and
- (b) in subsection (5)—
 - (i) for “Bank of England” in both places, there is substituted “Financial Services Authority”, and
 - (ii) for “Bank” there is substituted “Authority”

(3) In section 87(4), in the Table, in the entry relating to the Bank of England, for the words in the second column there is substituted “Any of its functions”, and after that entry there is inserted—

"The Financial Services Authority.	Functions under the Financial Services Act 1986 (other than as a designated agency within the meaning of that Act), the Banking Act 1987 or section 171 of the Companies Act 1989."	Sec. 5 1986 c. 60. 1987 c. 22. 1989 c. 40.
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Courts and Legal Services Act 1990 (c. 41)

67. In section 50(2) of the Courts and Legal Services Act 1990—

(a) after paragraph (f) there is inserted—

“(fa) the Financial Services Authority to discharge any of its functions under the Financial Services Act 1986 (other than as a designated agency within the meaning of that Act), the Banking Act 1987 or section 171 of the Companies Act 1989;”, and

(b) in paragraph (p)(i), for “Bank of England” there is substituted “Financial Services Authority”.

Friendly Societies Act 1992 (c. 40)

68. In section 64(5) of the Friendly Societies Act 1992, in the Table, in the entry relating to the Bank of England, for the words in the second column there is substituted “Any of its functions”, and after that entry there is inserted—

"The Financial Services Authority.	Functions under the Financial Services Act 1986 (other than as a designated agency within the meaning of that Act), the Banking Act 1987 or section 171 of the Companies Act 1989."
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Pension Schemes Act 1993 (c. 48)

69. —(1) The Pension Schemes Act 1993 is amended as follows.

(2) In section 149(6)(e), for “Bank of England” there is substituted “Financial Services Authority”.

(3) In section 158A(1), in the Table, in the entry relating to the Bank of England, for the words in the second column there is substituted “Any of its functions”, and after that entry there is inserted—

Section 5 1986 c. 50	"The Financial Services Authority.	Functions under the Financial Services Act 1986 (other than as a designated agency within the meaning of that Act), the Banking Act 1987 or section 171 of the Companies Act 1989."
1987 c. 22. 1989 c. 40		

Pension Schemes (Northern Ireland) Act 1993 (c. 49)

70.—(1) The Pension Schemes (Northern Ireland) Act 1993 is amended as follows.

(2) In section 145(6)(e), for "Bank of England" there is substituted "Financial Services Authority".

(3) In section 154A(1), in the Table, in the entry relating to the Bank of England, for the words in the second column there is substituted "Any of its functions", and after that entry there is inserted—

"The Financial Services Authority.	Functions under the Financial Services Act 1986 (other than as a designated agency within the meaning of that Act), the Banking Act 1987 or section 171 of the Companies Act 1989."
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Pensions Act 1995 (c. 26)

71. In section 107(1) of the Pensions Act 1995, in the Table, in the entry relating to the Bank of England, for the words in the second column there is substituted "Any of its functions", and after that entry there is inserted—

"The Financial Services Authority	Functions under the Financial Services Act 1986 (other than as a designated agency within the meaning of that Act), the Banking Act 1987 or section 171 of the Companies Act 1989."
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Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22))

72. In Article 105(1) of the Pensions (Northern Ireland) Order 1995, in the Table, in the entry relating to the Bank of England, for the words in the second column there is substituted "Any of its functions", and after that entry there is inserted—

"The Financial Services Authority	Functions under the Financial Services Act 1986 (other than as a designated agency within the meaning of that Act), the Banking Act 1987 or section 171 of the Companies Act 1989."
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SCHEDULE 6

Section 21

BANKING SUPERVISION FEES

Powers

1.—(1) Every application for authorisation under the Banking Act 1987 and every notice given to the Authority under section 75 of that Act (notice by overseas institution of establishment of representative office in the United Kingdom) shall be accompanied by such fee as the Authority may by regulations prescribe: and no such application or notice shall be regarded as duly made or given unless this sub-paragraph is complied with. 1987 c. 22.

(2) Every authorised institution and every European authorised institution which has lawfully established a branch in the United Kingdom for the purpose of accepting deposits or other repayable funds from the public shall pay such periodical fees to the Authority as it may by regulations prescribe.

(3) The powers conferred by this paragraph may be used to prescribe such fees as will enable the Authority—

- (a) to meet the expenses which it incurs in carrying out the transferred functions or for any incidental purposes, and
- (b) to repay the principal of, and pay any interest on, any money which it has borrowed and which has been used for the purpose of meeting expenses which it has incurred in relation to the transfer to it of the transferred functions.

(4) Regulations under this paragraph shall specify the time when the fees are to be paid and may—

- (a) provide for the determination of the fees in accordance with a specified scale or other specified factors,
- (b) provide for the return or abatement of any fees, and
- (c) make different provision for different cases.

(5) In this paragraph—

“authorised” has the same meaning as in the Banking Act 1987;

“European authorised institution” has the same meaning as in the Banking Coordination (Second Council Directive) Regulations 1992; S.I. 1992/3218.

“institution” has the same meaning as in the Banking Act 1987

Consultation

2.—(1) Before making regulations under paragraph 1, the Authority shall—

- (a) publish the proposed regulations in such manner as appears to it best calculated to bring the proposals to the attention of those likely to be affected by them, together with a statement that representations about the proposals can be made to the Authority within a specified time, and
- (b) have regard to any representations duly made in accordance with the statement.

(2) Sub-paragraph (1) does not apply where the Authority considers that the delay involved in complying with it would be prejudicial to the interests of depositors.

Mode of exercise

3. Power to make regulations under paragraph 1 is exercisable by instrument in writing which shall state that it is made under that paragraph.

Section 36

Publication

4.—(1) Immediately after regulations under paragraph 1 are made they shall be printed and made available to the public with or without payment.

(2) A person shall not be liable to pay a fee under regulations under paragraph 1 if he shows that, at the time the fee became payable, the regulations had not been made available as required by this paragraph.

Proof of regulations

5.—(1) The production of a printed copy of regulations purporting to be made by the Authority under paragraph 1 on which is endorsed a certificate signed by an officer of the Authority authorised by it for that purpose and stating—

- (a) that the regulations were made by the Authority,
- (b) that the copy is a true copy of the regulations, and
- (c) that on a specified date the regulations were made available to the public as required by paragraph 4,

shall be prima facie evidence or, in Scotland, sufficient evidence of the facts stated in the certificate.

(2) Any certificate purporting to be signed as mentioned in sub-paragraph (1) shall be deemed to have been duly signed unless the contrary is shown.

(3) Any person wishing in any legal proceedings to cite regulations under paragraph 1 may require the Authority to cause a copy of them to be endorsed with such a certificate as is mentioned in this paragraph.

Section 37

SCHEDULE 7

RESTRICTION ON DISCLOSURE OF INFORMATION

Restricted information

1.—(1) Subject to sub-paragraph (2), information is restricted information for the purposes of this paragraph if—

- (a) it is obtained by the Bank by virtue of the power conferred by section 17(1) or paragraph 9 of Schedule 2 (whether or not it was obtained pursuant to a notice under that provision), and
- (b) it relates to the business or other affairs of any person.

(2) Information is not restricted information for the purposes of this paragraph if—

- (a) it has been made available to the public from other sources, or
- (b) it is in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

(3) Except as permitted by the following provisions of this Schedule, restricted information shall not be disclosed by—

- (a) the Bank or any officer or servant of the Bank, or
- (b) any person obtaining the information directly or indirectly from the Bank,

without the consent of the person from whom the Bank obtained the information and, if different, the person to whom the information relates.

(4) Any person who discloses information in contravention of this paragraph shall be guilty of an offence and liable —

- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both;
- (b) on summary conviction, to imprisonment for a term not exceeding 3 months, or to a fine not exceeding the statutory maximum, or to both.

Disclosure for the purposes of the Bank's functions

2.—(1) Paragraph 1 does not preclude the disclosure of information in any case in which disclosure is for the purpose of enabling or assisting the Bank to discharge—

- (a) its functions as a monetary authority,
- (b) its functions as a supervisor of systems for the transfer of funds between credit institutions and their customers, or
- (c) its functions under Schedule 2.

(2) In sub-paragraph (1)(b), “credit institution” has the same meaning as in the Banking Coordination (Second Council Directive) Regulations 1992.

S.I. 1992/3218.

Disclosure by the Bank to other authorities

3.—(1) Paragraph 1 does not preclude the disclosure by the Bank of information to any authority specified in the first column of the following Table if the Bank considers that the disclosure would enable or assist that authority to discharge any of the functions specified in relation to it in the second column of that Table.

TABLE

<i>Authority</i>	<i>Functions</i>
The Treasury.	Functions under the Insurance Companies Act 1982 or the Financial Services Act 1986. 1982 c. 50. 1986 c. 60.
An inspector appointed under Part XIV of the Companies Act 1985, section 94 or 177 of the Financial Services Act 1986 or Part XV of the Companies (Northern Ireland) Order 1986.	Functions under that Part or section. 1985 c. 6. S.I. 1986/1032 (N.I. 6).
A person authorised to exercise powers or appointed under section 43A or 44 of the Insurance Companies Act 1982, section 447 of the Companies Act 1985, section 106 of the Financial Services Act 1986, article 440 of the Companies (Northern Ireland) Order 1986 or section 84 of the Companies Act 1989.	Functions under that section or article. 1989 c. 40.
A designated agency within the meaning of the Financial Services Act 1986.	Functions under that Act or Part VII of the Companies Act 1989.
The Financial Services Authority.	Functions under the Financial Services Act 1986 (other than as a designated agency within the meaning of that Act), the Banking Act 1987 or section 171 of the Companies Act 1989. 1987 c. 22.
The Office for National Statistics.	Functions under the Statistics of Trade Act 1947. 1947 c. 39.

<p>2001</p> <p>1986 c. 50</p> <p>1986 c. 53</p> <p>1993 c. 48.</p> <p>1995 c. 26.</p>	<p>The Financial Services Commission</p> <p>The Building Societies Commission.</p> <p>The Occupational Pensions Regulatory Authority.</p>	<p>Functions under the enactments relating to friendly societies or under the Financial Services Act 1986.</p> <p>Functions under the Building Societies Act 1986 and protecting the interests of the shareholders and depositors of building societies.</p> <p>Functions under the Pension Schemes Act 1993 or the Pensions Act 1995 or any enactment in force in Northern Ireland corresponding to either of them.</p>
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- (2) The Treasury may by order amend the Table in sub-paragraph (1) by—
- (a) adding any public or other authority and specifying functions in relation to it,
 - (b) removing any authority for the time being specified in the Table, or
 - (c) altering the functions for the time being specified in the Table in relation to any authority.

(3) The Treasury may by order restrict the circumstances in which, or impose conditions subject to which, disclosure is permitted in the case of any authority for the time being specified in the Table

(4) Before making an order under this paragraph, the Treasury shall consult the Bank.

Onward disclosure

4 —(1) Paragraph 1 does not preclude the disclosure by any authority specified in the first column of the Table in paragraph 3(1) of information obtained by it by virtue of that provision if it makes the disclosure—

- (a) with the consent of the Bank, and
- (b) for the purpose of enabling or assisting it to discharge any functions specified in relation to it in the second column of that Table.

(2) Before deciding whether to give its consent to disclosure under this paragraph, the Bank shall take account of such representations as the authority proposing to make the disclosure may make about the desirability of or necessity for the disclosure

Other permitted disclosures

5 Paragraph 1 does not preclude the disclosure of information —

- (a) with a view to the institution of, or otherwise for the purposes of, any proceedings in connection with a payment due under Schedule 2 (payment in lieu of cash ratio deposit),
- (b) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings, whether under this Act or otherwise, or
- (c) in pursuance of any Community obligation

SCHEDULE 3

Section 42

TRANSITIONAL PROVISIONS AND SAVINGS

Bank's immunity from suit

1. Section 1(4) of the Banking Act 1987 (immunity in relation to things done or omitted in discharge of functions under the Act) shall continue to have effect without the amendments made by paragraph 2(c) of Schedule 5—

- (a) in relation to things done or omitted before the day on which this Act comes into force, and
- (b) in relation to anything done on or after that day for the purposes of, or in connection with, any proceedings arising from anything done or omitted before that day.

Disclosure of information

2. Sections 83 to 85 of the Banking Act 1987 (exceptions to restriction on disclosure of information received under or for the purposes of the Act) shall, in relation to information received before the day on which this Act comes into force, continue to have effect without the amendments made by paragraphs 53 to 55 of Schedule 5, but with the modifications mentioned in paragraphs 3 to 5 below.

3.—(1) Section 83 is amended as follows.

(2) In subsection (1), paragraphs (a) and (c) are omitted.

(3) Subsections (2) and (3) are omitted.

4.—(1) Section 84 is amended as follows.

(2) In subsection (1), in the Table, after entry 1 there is inserted—

"1A The Financial Services Authority.	Functions under the Financial Services Act 1986 (other than as a designated agency within the meaning of that Act), the Banking Act 1987 or section 171 of the Companies Act 1989."	1986 c. 60. 1989 c. 40.
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and in entry 18, for "Bank" there is substituted "Financial Services Authority".

(3) Subsections (2) and (3) are omitted.

(4) In subsection (6)(a)(i), for "Bank" there is substituted "Financial Services Authority"

5. In section 85(1)(f), for "Bank" there is substituted "Financial Services Authority"

Pre-commencement consultation

6. If, before the day on which this Act comes into force, anything is done which, had it been done after that day, would to any extent have satisfied—

- (a) any requirement to consult before making an order under this Act, or
 - (b) any requirement of paragraph 2(1) of Schedule 6,
- that requirement shall to that extent be taken to have been satisfied.

SCHEDULE 8

Membership of the Deposit Protection Board

7. The terms of a person's appointment as an ordinary member of the Deposit Protection Board shall, if he holds office as such immediately before the coming into force of this Act, have effect after the coming into force of this Act as if any reference to the Bank were a reference to the Financial Services Authority and any reference to the Governor of the Bank were a reference to the Chairman of the Financial Services Authority.

Section 43.

SCHEDULE 9

REPEALS AND REVOCATIONS

PART I

REPEALS

Chapter	Short title	Extent of repeal
1946 c. 27.	The Bank of England Act 1946.	Sections 2 and 4(2). Schedule 2.
1986 c. 60.	The Financial Services Act 1986.	Section 179(3)(f). In Schedule 7, in paragraph 1(2), the words "and the Governor of the Bank of England acting jointly".
1987 c. 22.	The Banking Act 1987.	In section 83(1), paragraph (b), in paragraph (c), the words "and gilt market", and paragraph (d) and the word "or" immediately preceding it.
1990 c. 41.	The Courts and Legal Services Act 1990.	In sections 37(8)(a), 48(4)(a) and 52(6), the words "by the Bank of England". In section 54(1), in the inserted subsection (2)(e)(i), the words "by the Bank of England."

PART II

REVOCATIONS

Number	Title	Extent of revocation
S.I. 1992/3218.	The Banking Coordination (Second Council Directive) Regulations 1992.	Regulation 76(4). In Schedule 4, paragraph 1(6)(a). In Schedule 10, in paragraphs 8(1) and 31, the words "by the Bank".
S.I. 1995/3275.	The Investment Services Regulations 1995.	Regulations 8(3), 13 and 14. In regulation 26(2)(b), the words "by the Bank". In Schedule 2, in paragraph 1, in sub-paragraph

Number	Title	Extent of revocation
		<p>(1)(b), the words "or in the case of a listed firm, the Bank.", in sub-paragraph (2), in paragraph (b), the words "or in the case of a listed firm, the Bank." and, in paragraph (c), in both places, the words "or, as the case may be, the Bank", in paragraph 3(2), the words "or, as the case may be, the Bank", in paragraph 4, in sub-paragraph (1), the words "or, in the case of a listed firm, to the Bank.", in sub-paragraph (2), the words "or, as the case may be, to the Bank", and, in sub-paragraph (3), the words "or, as the case may be, the Bank", in paragraph 5, in sub-paragraph (1), in paragraph (a), the words "or, in the case of a listed firm, to the Bank." and, in paragraphs (b) and (c), the words "or, as the case may be, the Bank", wherever occurring, in sub-paragraph (2), the words "or, as the case may be, to the Bank", in sub-paragraph (3), the words "or, as the case may be, the Bank", and paragraph 6.</p> <p>In Schedule 6, in paragraph 1, in sub-paragraph (1), the words "or in the case of a listed person, to the Bank." and, in sub-paragraph (2), in paragraph (a), the words "or, in the case of a listed firm, to the Bank.", and, in paragraphs (b) and (c)(ii), the words "or, as the case may be, the Bank" in paragraph 2, the words "or, as the case may be, to the Bank", in paragraphs 3 and 4, the words "or, as the case may be, the Bank", wherever occurring, in paragraph 5, in sub-paragraph (1), the words "or, in a case in</p>

SCH. 1

Number	Title	Extent of revocation
		<p>which a firm is a listed person, to the Bank" and, in sub-paragraph (2), the words "or, in the case of a firm which is a listed person, the Bank", in paragraph 6, in sub-paragraph (1), in paragraph (a), the words "or, in the case of a firm which is a listed person, to the Bank" and, in paragraph (b), the words "or, as the case may be, the Bank", and in sub-paragraph (2), the words "or, in the case of a firm which is a listed person, to the Bank", in paragraph 7, the words "or, as the case may be, the Bank", wherever occurring, and paragraph 9</p>

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