STATUTORY INSTRUMENTS

1989 No. 465

BANKS AND BANKING

The Banking Act 1987 (Exempt Transactions) (Amendment) Regulations 1989

Made - - - -	*14th March 1989*
Laid before Parliament	*14th March 1989*
Coming into force	*4th April 1989*

The Treasury, in exercise of the powers conferred upon them by section 4(4), (5) and (6) of the Banking Act 1987(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Banking Act 1987 (Exempt Transactions) (Amendment) Regulations 1989 and shall come into force on 4th April 1989.

Interpretation

2. In these Regulations "the principal Regulations" means the Banking Act 1987 (Exempt Transactions) Regulations 1988(b).

Amendment of principal Regulations

3. The principal Regulations shall be amended as follows:

(a) in regulation 1(2) of the principal Regulations–

(i) by inserting after the definition of "exempt transaction" the following new definition–

" "financial year" has the meaning ascribed to it by section 742 of the Companies Act 1985;";

(ii) by inserting after the definition of "the Official List" the following new definition–

" "Recognised Overseas Exchange" means an exchange, market place or association for the time being included in the list published by the Council for the purposes of rule 535.4a of the Rules of The Stock Exchange (permitted dealings in foreign securities) (or any rule of The Stock Exchange having substantially the same effect)(c);"; and

(iii) by substituting for the definition of "successor to the British Steel Corporation" the following new definition–

" "successor", in relation to a body, means any company in which property, rights and liabilities of the body shall have become vested by virtue of an Act; and";

(b) in regulation 10(2) by deleting the words "to the British Steel Corporation";

(a) 1987 c.22.
(b) S.I. 1988/646.
(c) The list and the Rules may be obtained from the Quotations Department, The Stock Exchange, London EC2N 1HP.

(c) by substituting for regulation 13 of the principal Regulations the following new regulation–

"**13.** The acceptance of a deposit by a person (not being a body listed in Schedule 2 to these Regulations) on terms involving the issue of any sterling commercial paper is an exempt transaction if–

(a) the person accepting the deposit is–

(i) a company whose shares or debt securities have been admitted to the Official List (and are not the subject of a notice issued by the Council cancelling or suspending the listing or suspending dealings) or are dealt in on the Unlisted Securities Market (and are not the subject of a Council notice cancelling or suspending dealings); or

(ii) a company not falling within sub-paragraph (a)(i) above which is incorporated in the United Kingdom or whose shares or debt securities have been admitted to listing on a Recognised Overseas Exchange (and are not the subject of official action taken in accordance with the rules of the Recognised Overseas Exchange cancelling or suspending the listing or suspending dealings), which has complied with the requirements of Schedule 3 to these Regulations; or

(iii) the government of any country or territory, or a public authority, outside the United Kingdom the debt securities of which are admitted to trading on The Stock Exchange or on a Recognised Overseas Exchange (and are not the subject of a notice issued by the Council or official action taken in accordance with the rules of the Recognised Overseas Exchange (as the case may be) cancelling or suspending the admission to trading or suspending dealings); or

(iv) a person who does not fall within sub-paragraphs (a)(i) to (iii) above, if either a company which falls within sub-paragraph (a)(i) or an authorised institution has guaranteed to the holder of the sterling commercial paper the repayment of the principal and the payment of any interest or premium in connection therewith;

(b) in the case of a company falling within sub-paragraph (a)(i) or (ii) above, its net assets or, in the case of a person falling within sub-paragraph (a)(iv) above where the guarantor is not an authorised institution, the guarantor's net assets were shown in its last audited individual or group accounts (as the case may be) to be not less than £25 million (or an amount of equivalent value denominated wholly or partly otherwise than in sterling);

(c) in consideration of the deposit a single debt security is issued, in the form of sterling commercial paper, which has a redemption value of not less than £100,000, the whole or part of which may be transferred only if the aggregate redemption value of sterling commercial paper being transferred is not less than £100,000; and

(d) the sterling commercial paper–

(i) is issued and payable in the United Kingdom,

(ii) bears the rubric

"sterling commercial paper issued in accordance with regulations made under section 4 of the Banking Act 1987",

(iii) states the name of the issuer and that the issuer is not an authorised institution and either states that repayment of the principal and the payment of any interest or premium in connection with the sterling commercial paper have not been guaranteed, or, if they have been guaranteed, states that this is the case, the name of the guarantor and whether or not the guarantor is an authorised institution, and

(iv) if it is issued by a company falling within sub-paragraph (a)(i) or (ii) above, or guaranteed by a company falling within sub-paragraph (a)(i) above, and is not offered by a prospectus to which section 56 or 72 of the Companies Act 1985 or the corresponding Northern Ireland legislation applies, includes a statement made by the company accepting the deposit or the guarantor (as the case may be) that the relevant company has complied with its obligations under the relevant rules and that, since the last publication in compliance with the relevant rules of information about the relevant

company, the relevant company, having made all reasonable enquiries, has not become aware of any change in circumstances which could reasonably be regarded as significantly and adversely affecting its ability to meet its obligations in respect of the sterling commercial paper as they fall due. In this paragraph "the relevant rules" means–

(aa) in the case of a company whose shares or debt securities have been admitted to the Official List, the listing rules, or

(bb) in the case of a company whose shares or debt securities are dealt in on the Unlisted Securities Market, the terms and conditions of entry to the Unlisted Securities Market, or

(cc) in the case of a company not falling within sub-paragraph (aa) or (bb) above, Schedule 3 to these Regulations.";

(d) in Schedule 2–

(i) after the entry relating to an Area Board within the meaning of section 1(3) of the Electricity Act 1947 there shall be inserted the following new entry–

"Any successor to such an Area Board.";

(ii) the entries relating to the British Steel Corporation and any successor to the British Steel Corporation shall be deleted;

(iii) after the entry relating to the Central Electricity Generating Board there shall be inserted the following new entry–

"Any successor to the Central Electricity Generating Board.";

(iv) after the entry relating to the Housing Corporation there shall be inserted the following new entry–

"London Regional Transport.";

(v) after the entry relating to the North of Scotland Hydro-Electric Board there shall be inserted the following new entry–

"Any successor to the North of Scotland Hydro-Electric Board.";

(vi) for the entry relating to the Northern Ireland Electricity Service there shall be substituted the words "Northern Ireland Electricity.";

(vii) after the entry relating to the Northern Ireland Transport Holding Company there shall be inserted the following new entry–

"The Post Office."; and

(viii) after the entry relating to the South of Scotland Electricity Board there shall be inserted the following new entry–

"Any successor to the South of Scotland Electricity Board."; and

(e) by the addition after Schedule 2 of the following new Schedule–

"SCHEDULE 3 Regulation 13

REQUIREMENTS TO BE COMPLIED WITH BY CERTAIN ISSUERS OF STERLING COMMERCIAL PAPER

Interpretation

1. In this Schedule–

"the issuer" means a company accepting a relevant deposit;

"the relevant date" means the date on which the information set out in paragraph 2 below was first provided by the issuer to The Stock Exchange in accordance with paragraph 4 below; and

"a relevant deposit" means a deposit accepted on terms involving the issue of any sterling commercial paper.

Information to have been notified to The Stock Exchange

2. Not less than fourteen days prior to the acceptance of its first relevant deposit the issuer shall have provided the following information to The Stock Exchange:

The issuer

(a) the name of the issuer and, if the sterling commercial paper was guaranteed, the name of the guarantor;

(b) the country or territory of incorporation of the issuer and, if applicable, the guarantor;

(c) the address of the registered office of the issuer (if it has one) and, if it has no registered office or if its principal place of business was not at its registered office, the address of its principal place of business;

(d) the date on which the issuer was incorporated and, if it has a limited life, the length of its life;

(e) the legislation under which the issuer is incorporated and the legal form which it has adopted under that legislation;

(f) the place of registration of the issuer, if different to the country or territory of incorporation, and the number with which it is registered;

(g) the names and addresses of the issuer's principal bankers;

(h) details of any legal or arbitration proceedings pending or threatened against the issuer or, if it is a member of a group, any member of the group, which might have, or might have had during the twelve months prior to the relevant date, a significant effect on the financial position of the issuer or the group (as the case may be) or, if there were no such proceedings, a statement to that effect;

(i) the address in the City of London where copies of the documents referred to in paragraph 6 of this Schedule were available for inspection;

(j) if the sterling commercial paper was guaranteed by a company falling within regulation 13(a)(i) of these Regulations, an address in the City of London where information about that company was available for inspection in accordance with the listing rules or the terms and conditions of entry to the Unlisted Securities Market (as the case may be);

(k) a description of the principal activities of the issuer, stating the main categories of products sold or services performed, together with, in a case where two or more activities were carried on which were material in terms of profits or losses, such figures and explanations as were necessary to determine the relative importance of each activity;

(l) details of any patent, licence, new manufacturing process or industrial, commercial or financial contract on which the business or profitability of the issuer or its group depended to a material extent;

(m) if the issuer is a member of a group, a brief description of the group and of the issuer's position within it and, if the issuer is a subsidiary, the name of each holding company of the issuer;

Financial information

(n) the amount of the authorised and issued share capital of the issuer, the amount of any share capital agreed to be issued and the number and classes of the shares of which it was composed with details of their principal characteristics; if any part of the issued share capital was still to be paid up, an indication of the number, or total nominal value, and the type of the securities not then fully paid up, broken down, where applicable, according to the extent to which they had been paid up;

(o) information with respect to the profits and losses, assets and liabilities and financial record and position of the issuer and, if it is a member of a group, of the group, set out as a comparative table for each of the latest five financial years of the issuer for which such information was available, together with copies of individual and (if applicable) group accounts for each of the latest two such financial years, including, in the case of a company incorporated in the United Kingdom, all notes, reports or other information required by the Companies Act 1985 or the Companies (Northern Ireland) Order 1986;

(p) if more than nine months had elapsed since the end of the financial year to which the last published annual accounts related, an interim financial statement covering at least the first six months of the then current financial year and if such an interim financial statement had not been audited, a statement to this effect;

(q) the names, addresses and qualifications of the auditors who have audited the issuer's annual accounts for the preceding two financial years and in the case of a company incorporated outside the United Kingdom a statement as to whether or not those accounts conformed to United Kingdom or generally accepted international accounting standards;

(r) if during the two financial years of the issuer preceding the relevant date the issuer's auditors had refused to sign an auditors' report on the annual accounts of the issuer, or had qualified any such report in any way, a copy of the refusal

(if in writing) or of the qualification together with details of any reasons given by the auditors for such action;

(s) details as at the most recent practicable date (which shall have been stated) prior to the relevant date of the following, which, if the issuer is a member of a group, shall also have been provided on a consolidated basis:

(i) the total amount of any loan capital outstanding in any member of the group, and loan capital created but unissued, and term loans, distinguishing between loans guaranteed and unguaranteed, and those secured (whether the security is provided by the issuer or by third parties) and unsecured;

(ii) the total amount of all other borrowings and indebtedness in the nature of borrowing of the issuer or the group (as the case may be), distinguishing between guaranteed and unguaranteed and secured and unsecured borrowings and debts, including bank overdrafts and liabilities under acceptances (other than normal trade bills) or acceptance credits or hire purchase commitments;

(iii) all mortgages and charges of the issuer or the group (as the case may be); and

(iv) the total amount of any contingent liabilities and guarantees of the issuer or the group (as the case may be);

if the issuer or the group (as the case may be) had no such loan capital, borrowings, indebtedness or contingent liabilities, this shall have been stated;

no account should have been taken of liabilities between undertakings within the same group, a statement to that effect having been made if necessary;

Directors

(t) the names, home or business addresses and functions within the issuer or its group (if applicable) of the directors of the issuer and an indication of the principal activities performed by them outside the issuer or the group (as the case may be) where these were significant with respect to the issuer or the group (as the case may be);

Recent developments

(u) general information on the trend of the business of the issuer or its group (if applicable) since the end of the financial year to which the last published annual accounts related, in particular:

(i) the most significant recent trends in production, sales and stocks and the state of the order book; and

(ii) recent trends in costs and selling prices;

Overseas companies

(v) where information was being provided by a company whose shares or debt securities have been admitted to listing on a Recognised Overseas Exchange, the name of the Recognised Overseas Exchange and the type of securities listed;

The sterling commercial paper

(w) the total amount which the issuer intended to raise by the issue of sterling commercial paper and details of the intended application of the proceeds raised;

(x) the name and address of any issuing and paying agent for the sterling commercial paper in the United Kingdom and the name and address of any managing agent, if different;

(y) the period after which entitlement to interest or repayment of capital would lapse, or if there was no period after which such entitlement would lapse, a statement to that effect; and

(z) details of the procedures for the delivery of the sterling commercial paper to holders (including any applicable time limits) and whether temporary documents of title would be issued.

3. Prior to the acceptance by the issuer of a further relevant deposit the issuer shall either have complied with paragraph 2 above as if such further deposit were its first relevant deposit or–

(a) the issuer shall have provided to The Stock Exchange details of all material changes to the information provided under paragraph 2 above (other than the information provided under sub-paragraphs (n) to (s) (financial information)) as soon as practicable after each such change occurred;

(b) if no information was required to be provided under sub-paragraph 2(p) above, but the nine months period referred to in that sub-paragraph has since elapsed, the issuer shall have provided the information specified in that sub-paragraph to The Stock Exchange; and

(c) if more than twelve months has elapsed since the relevant date, the issuer shall have provided to The Stock Exchange an updated version of all the information required by paragraph 2 above at intervals of not more than twelve months.

4. The information set out in paragraphs 2 and 3 above shall have been provided in English and in good faith to the Quotations Department of The Stock Exchange in the form of three copies of a document which, in the case of information provided under paragraphs 2 or 3(c) above, shall have been annotated to indicate where each item set out in paragraph 2 above had been met and (in those cases) shall have been accompanied by a declaration by the directors of the issuer in the following form–

"The Directors of the Company accept responsibility for the information provided. To the best of the knowledge and belief of the Directors (who have taken all reasonable care to ensure that such is the case) the information is in accordance with the facts and does not omit anything likely to affect the import of such information.".

5. The issuer shall have made arrangements with The Stock Exchange for The Stock Exchange to make available to the public all information provided to The Stock Exchange by the issuer under this Schedule and at the date of acceptance of the relevant deposit such arrangements are in force.

Information to be available for public inspection

6. The issuer shall have made available at an address in the City of London copies of the following documents during normal business hours for a period beginning on the relevant date and continuing at least until the acceptance of its first relevant deposit:

(i) the memorandum and articles of association or equivalent documents of the issuer;

(ii) any trust deed or other document constituting debt securites of the issuer;

(iii) any contract directly relating to the issue of the sterling commercial paper and any existing or proposed service contract between a director of the issuer and the issuer or any member of its group;

(iv) any report, letter, valuation, statement, balance sheet or other document any part of which is extracted or referred to in any other document provided to The Stock Exchange under this Schedule; and

(v) the audited accounts of the issuer and, if it is a member of a group, the consolidated audited accounts of the group, for each of the two latest financial years preceding the relevant date for which such accounts are available together with, in the case of a company incorporated in the United Kingdom, all notes, reports or other information required by the Companies Act 1985 or the Companies (Northern Ireland) Order 1986 to be attached thereto;

any reference in this paragraph 6 to a document which is not in English shall be taken to include in addition a reference to a translation of that document which is either certified to be correct by a notary public or which has been made by a person certified by a practising solicitor within the meaning of regulation 8 of these Regulations to be in his opinion competent to make such a translation.

7. Prior to the acceptance by the issuer of a further relevant deposit the issuer shall either have complied with paragraph 6 above as if such further deposit were its first relevant deposit or shall have continued to make available at the address for the time being provided to The Stock Exchange under sub-paragraph 2(i) above up-to-date copies of the documents referred to in that paragraph as soon as practicable after they became available.

Information to have been notified to the Bank of England

8. If the relevant deposit is accepted as part of a programme for the issue of sterling commercial paper, the issuer, before it accepted the first deposit relating to the programme, shall have notified to the Bank of England the total amount to be raised under the programme, the maturity period of the sterling commercial paper to be issued under the programme (if known) and a detailed description of the purposes for which the proceeds of the programme would be used; and if the issuer subsequently extended the programme, shall also have notified details of the increased amount to be raised and any other material changes to the information initially provided.

9. If the issuer has provided information to the Bank of England under paragraph 8 in relation to a relevant deposit, it shall also have reported to the Bank of England within one week after the end of each calendar month following the month in which such information was so provided the amount of sterling commercial paper issued by it outstanding at the end of that calendar month and (in the case of a second or subsequent report) the amounts of sterling commercial paper issued and redeemed by it since the date of the previous report, distinguishing in each case between sterling commercial paper guaranteed by an authorised institution and sterling commercial paper not so guaranteed.".

Kenneth Carlisle
Alan Howarth
Two of the Lords Commissioners
of Her Majesty's Treasury

14th March 1989

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations amend the Banking Act 1987 (Exempt Transactions) Regulations 1988.

First they make changes to the exemption for sterling commercial paper. The main changes are as follows. The classes of person who can accept deposits under the exemption are widened to include companies whose shares or debt are traded on the Unlisted Securities Market, other unlisted UK companies, overseas companies whose shares or debt are listed on certain overseas stock exchanges and overseas governments and public authorities whose debt is traded on The Stock Exchange or on certain overseas exchanges. Others may also issue sterling commercial paper if the paper is guaranteed by an institution authorised under the Banking Act 1987 or by a company whose shares or debt are listed or traded on the Official List of The Stock Exchange or on the Unlisted Securities Market. The minimum net asset requirement (which does not apply to overseas governments and public authorities) is reduced from £50 million to £25 million. The minimum denomination of sterling commercial paper is reduced from £500,000 to £100,000. Unlisted UK companies (whose shares or debt are not traded on the Unlisted Securities Market) and companies whose shares or debt are listed or traded on overseas stock exchanges are required to disclose certain information set out in a new Schedule 3 to the Regulations.

Secondly they amend the list of public undertakings in Schedule 2, the main changes being the deletion of references to the British Steel Corporation and the insertion of references to London Regional Transport, the Post Office and successors to the electricity boards.