

SIGNIFICANT DEVELOPMENTS IN THE UNITED KINGDOM IN 1979

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1. The major statutory development in the U.K. in 1979 was the passing of the Banking Act of 1979. In spite of its name the Act is primarily concerned with the taking of deposits rather than banking functions in general. Its origins are two-fold. First, the secondary banking crisis in the U.K. in 1973/74 was thought to have revealed a number of weaknesses in the previous arrangements for the supervision of deposit-taking institutions. Secondly, it was necessary for the U.K. to pass legislation in order to comply with E.E.C. Council Directive 77/780 "on the coordination of laws, regulations and administrative provisions relating to taking up and pursuit of the business of credit institutions" (O.J. No. L. 322, December 17, 1977).

Prior to the Act the supervision of banks and other deposit-taking institutions was conducted on an essentially nonstatutory basis. Indeed, the term "banking law" in the U.K. is generally taken to refer to the private law governing relations between a bank and its customers rather than to the supervisory powers of government and government agencies over the setting up and conduct of banks. This did not mean that there was no supervision, for the Bank of England, as a matter of custom and practice, exercised a wide authority. However, the Bank's supervisory functions were haphazard and had developed usually as ancillary to its main functions. Consequently, some institutions were not supervised at all and others were inadequately supervised. Indeed, there was no single, authoritative definition of the term "bank"; varying criteria were used in the contexts of the various sections of the various Acts that referred to "banks". This led to public confusion about the status of institutions that were able to describe themselves as banks.

Irrespective of the secondary banking crisis of 1973/74 the E.E.C. Directive would have required legislation in the U.K. because of its requirement in Art. 3(1) that "Member States shall require credit institutions subject to the Directive to obtain authorization before commencing their activities". The Act in fact goes beyond credit institutions (*i.e.* institutions that both take deposits and make loans) to cover all deposit-taking institutions (*i.e.* including those that to any material extent finance their own businesses by taking deposits). The Directive, in Arts. 3(2) and (4), lays down minimum conditions for authorization. By and large the criteria in

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the Act are more specific and more demanding.

The basic provision in the Act is that no person may accept a deposit in the course of carrying on a deposit-taking business unless the deposit-taker is one of the institutions exempted from this prohibition or, less important, the transaction is one of the transactions exempted from the prohibition (S.1). The main exempted institutions (apart from the Bank of England itself) are "recognized banks", "licensed institutions", and a miscellaneous group of institutions listed in Sched. I of the Act. Sections 3 to 20 deal with the procedure for applying for recognition or a license; the criteria to be applied in considering applications; provisions for revoking recognition or a license; and the arrangements for supervising recognized or licensed institutions. The distinction between recognized banks and licensed institutions (a distinction not required by the Directive) is significant in that supervision of recognized banks continues on an essentially nonstatutory basis and only recognized banks have an unqualified right to call themselves banks. Both recognized banks and licensed institutions must meet criteria for legal form, prudence and management. Recognized banks must also meet requirements related to their range of services and reputation and standing. It is a criminal offense for a nonauthorized institution to take a deposit within the meaning of S.1.

Part Two of the Act sets up (for the first time in the U.K.) a protection scheme for depositors of failed institutions. Depositors receive 75 percent of their protected deposits from a Deposit Protection Fund financed by contributions from recognized banks and licensed institutions. The fund is intended to have a relatively small paid-up element (about £ 5 million) and will rely on a guarantee arrangement to raise further amounts, if necessary. The other main set of provisions in the Act concerns advertisements for deposits. These replace the provisions previously found in the Protection of Depositors Act of 1963.

There is a valuable commentary on the Act, namely *Banking Act 1979* by I. Morison, P. Tillett and J. Welch (Butterworth's Annotated Legislation Service, London, 1979). The Government's original legislative intentions are set out in *The Licensing and Supervision of Deposit-Taking Institutions* (Cmnd. 6584, HMSO, London, 1976). Further useful background material can be found in the evidence submitted by the Bank of England to the Committee to Review the Functioning of Financial Institutions, and the Bank is in the course of producing a four-part *Handbook of Banking Supervision* which, together with the Bank's annual reports, will be an essential guide to practice under the Act.

2. A Companies Bill is before Parliament and is likely to become law in 1980. It implements the Second E.E.C. Directive on Company Law, makes insider dealing a criminal offense, imposes a duty on directors to have regard to the interests of the company's employees as well as to the interests of its members, and restricts the making of loans to directors.

3. In October 1979 the exchange control restrictions, which had lasted for forty years, were removed.

4. The Council for the Securities Industry, the principal self-regulatory body in the City, which was established in 1978, now derives its income from two sources. In the first place a contribution is made by the bodies represented on the Council. Secondly, a levy, initially set at 60p, is made on contract notes relating to transactions in U.K. securities effected both inside and outside the central market. The levy is charged only on transactions above £ 5,000 consideration money. The cost of the Council is about £ 500,000 per year, three-quarters of which represents expenditure of the Take-over Panel.

5. In 1979 the Council published for comment two draft codes of conduct. The first code, entitled *Statement of the Responsibilities of Issuing Houses or Brokers Sponsoring Initial Issues*, sets down the points that a sponsor should consider when a company is applying for an initial listing on The Stock Exchange. The second code, entitled *Code of Conduct for Dealers in Securities*, covers market practices, the methods of remunerating dealers, the records to be kept and other related matters. The second Code is expected to be published in Spring, 1980.

6. Two stockbroking firms lodged a formal complaint with the Council against the handling by the Bank of England of two new issues of Government stock on February 22, 1979. A committee of the Council considered that the Bank had failed to provide such facilities for the receipt of applications as the investing public was entitled to expect and made certain recommendations to improve the situation. As regards the brokers who complained, the committee considered that, in the circumstances as the brokers knew them, they were running considerable risks in leaving the arrival of their representatives at the Bank's premises until five or ten minutes before the lists of applications would be opened and might thereafter immediately close.

7. In April, 1979 The Stock Exchange introduced a computerized settlement system, known as Talisman. Most equities listed on the Exchange are now covered by the system.

8. In 1979 The Stock Exchange completely reprinted the *Admission of Securities to Listing* (the Yellow Book) incorporating a number of amendments. There is now a requirement that any transaction which results in a 25 percent addition to or subtraction from the assets of a company should be subject to shareholders' approval. There is also a list of further criteria, such as net profit, against which the size of the transaction will be tested.

9. In December, 1979 The Stock Exchange published for discussion a document entitled *The Stock Exchange Unlisted Securities Market*. The object of the document is to explain the Exchange's intention to formalize its developing unlisted securities market. The outcome in due course is likely to be a two-tier system of listing.