Po-cH NL/0138

PART B

Chancellor
Lawson

PART B

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PART B

CHANCELLOR'S 1986 PAPERS
ON BANKING LEGISLATION

Begins: 24/9/86 DD: 25 years

Ends: 7/11/86 5/9/95

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PART B

CABINET OFFICE PAPER

The following Cabinet Office papers have been removed from this file. If you require access to these papers please contact the Cabinet Office.

Reference	Date of Paper
L(86) 63	20 October 1986

This will have to be done sometime, & an early announcement will keep all this out of the Banking Bill, which is highly desirable. I would hope that we could get the Bank to meet all or part of the cost. RL 24/9

FROM: M A HALL

24 September 1986

1. MRS LOMAX
2. CHANCELLOR

c c Chief Secretary
Financial Secretary
Economic Secretary o/r
Minister of State
Sir P Middleton
Sir G Littler
Mr A Wilson
Mr Cassell
Mr Peretz
Mr J Taylor
Mr Board
Mr D Jones

Mr Hosker T.Sol

I agree with this proposal / & do the suggestion that the Bank should pay! N.

REVIEW OF BANKING LAW

This submission seeks your agreement in principle to a review of general banking law (ie other than supervision), to be announced either in the Second Reading Debate on the Banking Bill or before. We have discussed this with the Economic Secretary, who strongly favours the idea.

Background

2. There is a strong case for such a review. The Bills of Exchange Act 1882 has stood up well, but there has been no thorough review of banking law since then. The introduction of electronic transfers and other technology has created new problems, new opportunities for fraud, and wholly new concepts. The Bank of England have drawn up an exhaustive list of the kinds of issues that might be addressed. It is very much a shopping list, and no more than a guide to the possible scope of such a review.

Flag A

Why now?

3. The argument of "unripe time" has always been used to delay such a review. Technology is changing, the law is limping along, and there are no great political attractions. But there are two operational reasons for setting up such a review now.

It would in the first place be an effective means of deflecting pressures, both from the banks and from consumer lobbies during the passage of the Banking Bill. A glance at the Bank's list of issues reveals what potential horrors there are - many of them are not only controversial, but likely to complicate and delay the passage of the Bill. In achieving this general objective, we would also deal with two specific immediate difficulties:-

(a) The Law Society, supported by elements from the banking industry, are contemplating introducing a Private Member's Bill containing one or two particular amendments to the banking law. We and the Bank of England have tried to kill this idea, but it is still running. So far the BBA have taken a vigorous line, arguing that they would prefer that problems of banking law should be examined in the round, and not piecemeal. A Private Member's Bill presented purely from the bank's point of view, would be a tiresome and probably controversial diversion.

(b) We are in a particular difficulty over our undertaking in the White Paper to include in the Banking Bill an amendment to the Consumer Credit Act clarifying the law in relation to EFT/POS (Electronic Funds Transfer at Point of Sale - White Paper extract attached). We are now advised by Parliamentary Counsel - whose helpful letter on scope you should see - that we would be taking grave risks with the Banking Bill in including such a clause. The Economic Secretary wishes to drop it, and we have told the BBA this, explaining the scope problem, and also on the grounds that such matters are best not decided in isolation, but in the context of a thorough review.

Flag B

The idea of a review would clearly be welcome to the banks.

(c) It now seems certain that the European Commission will shortly bring forward a draft directive on Electronic Funds Transfer. This originated in the Consumer Affairs Directorate, but is now being considered by a working group of interested Directorates General under Delors' Cabinet. It would be unfortunate to have to formulate our policy on the hoof in response to pressures from Brussels.

5. This proposal has the support of the Bank of England and DTI. Mr Hosker and Mr A Wilson also agree that a review is timely.

6. We shall obviously have to report back to Ministers with detailed proposals on terms of reference, format and timetable if your initial reaction is favourable. Our initial view, and that of the Bank, is that the Review might be conducted by an eminent lawyer, supported by a banker and a representative of, say, the NCC. The Bank have already suggested Philip Wilkinson or Geoffrey Taylor as possible bankers - and Derek Vander Weyer is also available (though not favoured for this by the Bank). Mr Hosker has suggested Mr F R Furber - the recently retired senior banking partner in Clifford Turner as a possible lawyer. We envisage that the Review would be announced this autumn, and be up and running in the New Year. It would take at least a year, and then be followed by a report and, in due course, Green or White Paper. The terms of reference would not presuppose the need for legislation, but in our view it is inevitable that this would be the eventual consequence.

7. Resources will of course be needed. The pundits would presumably have to be remunerated, and they would need a secretary, a room, expenses and typing assistance. This could well involve them in two days work a week, probably for a year, assisted by

a full-time Civil Service or Bank secretary. FIM1 will be include a bid for £100,000 in our internal budget proposals, and this project will have to compete with other candidates for Treasury expenditure. Preliminarily and unofficially, the Bank of England have suggested that whilst they would be unwilling to offer cash, they would be prepared to provide a room, secretary and typing services. There is, however, a good case for trying to extract the whole of the costs from the Bank, though this will undoubtedly involve an approach at senior, (if not the most senior!) level in due course. With legislation likely to be involved, it would be preferable for the secretary to come from the Treasury or Treasury Solicitor, though we may be able to establish a tight enough grip on the project through a standing Steering Group.

8. It is conceivable that the Governor will raise this with you, though we doubt whether he has yet been alerted to the project.

M A HALL

BANKING LAW REVIEW: SUGGESTED TOPICS

A. ATMs

1. Liability of bank/cardholder in event of disputed or unauthorised use of a card.

2. Requirement on bank to provide a written receipt of each transaction.

3. Proof of unauthorised transaction when PIN used.

4. Duty of care on cardholder.

B. BANK-CUSTOMER RELATIONS

1. Duty of customer to examine statement and inform bank of irregularities within a specified period ("settled accounts").

2. General duty of care on banks.

3. Procedure on opening accounts - duty on bank to satisfy itself properly about the identity of a person opening an account.

4. Paying bankers' defence of contributory negligence (Tai Hing judgment).

5. Bankers' references - legal validity of customers' implied consent.

6. Customers' access to bank records (particularly manual records).

7. Right of set-off between accounts held by same customer.

8. Death of a customer - nomination
   - items in safe custody.

C. BANKING AND PAYMENT MECHANISMS AND INSTRUMENTS

Legal implications of such modern developments as:-

1. Bank Giro Credits.

2. Cheque guarantee cards.

3. Credit cards.

4. ATMs

5. BACS.

6. CHAPS.

7. EFT-POS.

8. Memory cards.

9. Automated corporate cash management/balance reporting systems.

10. SWIFT.

11. Trade documentation in electronic form.

12. Uniform Eurocheque Scheme.

13. Securitisation of debt (eg mortgages).

D. BANKING OMBUDSMAN

1. Need for Code of Good Banking practice.

2. Compulsory membership of Ombudsman scheme (like building societies).

3. Legal requirement for banks to have adequate internal procedures for handling complaints.

E. BILLS OF EXCHANGE ACT 1882

1. Status of avals.

2. Attachment of funds in Scotland (section 53(2)).

3. Status of payable orders/warrants issued by PGO, Inland Revenue, DNS, etc.

4. Definition of "sum certain".

F. CHEQUES

1. Amount - words and figures differ: question of priority.

2. Need to define/extend protection of true owner in respect of:-

   (a) Crossings.
   (b) "Not negotiable".
   (c) "Account Payee."
   (d) Payment "in due course"

3. Truncation (see below).

4. Status of payable orders/warrants issued by PGO, Inland Revenue, DNS etc.

5. Paid cheques - retention period.

6. Status of cheque guarantee card.

7. Defence of contributory negligence for paying banker (Tai Hing judgement).

8. Theft Act 1968 - question whether drawing a cheque supported by a guarantee card knowing there are insufficient funds in the account is an offence within the meaning of the Act (Court of Appeal, 9.7.86).

9. Foreign drafts - validity and time limit.

G. CHEQUE TRUNCATION

1. Section 46(2)(e) of Bills of Exchange Act 1882 - does it provide basis for truncation?

2. Waiver of presentment.

3. Right of payee to insist on physical presentation.

4. Increased risks faced by banks.

5. Acceptability of images of cheques for the evidence requirements of the Cheques Act 1957.

H ~~CONFIDENTIALITY (BANKERS' DUTY OF)~~ COMPUTER-RELATED FRAUD

Adequacy of current law to deal with unauthorised activities involving:-

1. Breach of telecommunications network.

2. Alteration or destruction of data.

3. Writing code against the interests of user.

4. Misuse of equipment.

5. Extraction of information.

6. Copying of programs etc.

7. Use of magnetic stripe card.

I. CONFIDENTIALITY (BANKERS' DUTY OF)

1. Need for express statement of the common law duty.

2. Need for procedures for banks to inform the authorities in cases where they suspect a customer is engaged in fraud, without risking proceedings for improper disclosure.

3. More generally, adequacy of the law to deal with problem of businesss secrecy (eg arising from transfers of staff between institutions).

4. Cross-selling of services.

5. Extension of the disclosure requirements of the Drug Trafficking Offences Act 1986 to cover money laundering and the proceeds of terrorism and other criminal activity.

6. Statute of Fraud Investment Act 1882 (section 6) has the effect in England and Wales of protecting banks from the consequences of employees giving fraudulent information about a customer's financial position.

J CONSUMER CREDIT ACT

1. Credit Cards - connected lender liability.

2. Application to debit cards in an EFT-POS transaction.

3. Consideration period in connection with loan agreements secured on land.

4. Cancellable agreements (section 67).

5. Canvassing.

6. Lending to minors.

7. Quotations - building societies etc.

(There are in addition a number of aspects of the Act, particularly in relation to loans for business, causing concern to the DTI.)

K. CREDITS (PAPER)

1. Legal status.

2. Time of payment and value to beneficiary.

3. Non-accounting information.

4. Responsibility.

5. Mandated dividends - to enable registrars to pay dividends direct in electronic form.

L ELECTRONIC FUNDS TRANSFER

1. Finality of payment.

2. Revocability.

3. Responsibilities of various parties, including
   - correspondent banks involved in a string of payment messages;
   - the message carrier(s).

4. Liability in event of error, delay, system failure, fraud.

5. Rules of evidence and EFT records.

6. Evidence of receipt of message.

7. Authentication rules.

8. Status of inter-bank agreements covering settlement, time of payment etc.

9. Acceptability of mandated dividends in electronic form.

M EFT-POS

Is new or amending legislation needed to:-

1. Protect consumers.

2. Define the rights, liabilities and responsibilities of all the various parties.

3. Provide for an appropriate level of competition.

4. Provide for a code of good conduct.

5. Cover the question of time of payment, revocability of payment?

N EVIDENCE

1. Bring Bank of England within the Bankers' Books Evidence Act 1879.

2. General question of admissability of EDP data as evidence.

3. Paid cheques.

O. INTERNATIONAL ASPECTS

Need to take account of a number of developments, including:-

1. UNCITRAL Convention on International Bills of Exchange and International Promissory Notes (draft A/CN 9/274).

2. UNCITRAL draft Legal Guide on Electronic Funds Transfer (A/CN.9/250 and Add.1-4 and A/CN.9/266 Add 1 and 2).

3. UNCITRAL work on legal value of computer records.

4. International Chamber of Commerce work on telecommunications and transborder data flows, documentary credits, inter-bank rules on late funds transfer, foreign exchange contracts.

5. CSCB Code of Practice for Demand Guarantees and Bonds.

6. SWIFT rules and standards.

7. International Law Association work on time of paymnent.

8. OECD work on EFT and consumers.

9. Various EEC initiatives relating to EFT.

10. Uniform Eurocheque Scheme.

P LAND AND PROPERTY

1. Equitable interests.

2. Priority of mortgages.

3. Legal status of Sale-Repurchase transactions.

Q. REGULATION

1. Statutory recognition of the rules of the various clearings.

2. Need for statutory regulation of the clearings/payments system.

3. Need for regulation of individual providers of remittance services, where no deposit-taking is involved.

R. STATUTORY DEFINITION OF A 'BANK'

Need to rationalise and incorporate more comprehensively, for example:-

1. Bank of England.

2. Building Societies (following 1986 Act).

SAMPLE OF STATUTES REFERRED TO (IMPLICITLY OR EXPLICITLY) IN THE LIST OF TOPICS FOR THE BANKING LAW REVIEW

Bankers' Books Evidence Act 1879
Banking Acts 1979, 1986/7?
Bills of Exchange Act 1882
Building Societies Act 1986
Cheques Act 1957
Civil Evidence Act 1968

Consumer Credit Act 1974
Currency and Bank Notes Act 1928
Data Protection Act 1984
Drug Trafficking Offences Act 1986
Financial Services Act 1986/7?
Police and Criminal Evidence Act 1984
Restrictive Trade Practices Act 1976
Statute of Fraud Investment Act 1882
Theft Act 1968

BANKING LAW REVIEW: DRAFT TERMS OF REFERENCE

1. To consider whether the existing law in the United Kingdom relating to banking is appropriate in the light of recent and likely future developments in banking practice, with particular reference to the use of electronic data processing methods and electronic funds transfer systems.

2. To consider whether the law relating to the respective rights and duties of banks and their customers is appropriate in modern circumstances.

3. To advise on the need for new legislation.

4. To take account in the review of any relevant developments in the European Community and other international bodies.

Office of the Parliamentary Counsel 36 Whitehall London SW1A 2AY
Telephone Direct line 01 210 6609
Switchboard 01 210

F L Croft Esq
Treasury Solicitor
Queen Anne's Chambers
28 Broadway
London SW1

12 September 1986

Dear Croft

BANKING BILL: CLAUSE 84

Thank you for your letter of 11 September.

It is impossible to pretend that the amendment of s.187 of the Consumer Credit Act 1974 is connected in some way with the other provisions of the Bill and, if it remains, it will have to be mentioned in the Long Title.

There is a doctrine in the Commons that the scope of a Bill which can fairly be regarded as having only two purposes is limited to those purposes and cannot be amended so as to include provisions for additional purposes. It is I suppose arguable that with the inclusion of the proposed amendment the Bill would have-

(a) a main purpose embracing the contents of Parts I and V; and

(b) a second purpose consisting of the amendment.

I am doubtful however whether that argument would succeed. There are other amendments of the Consumer Credit Act in clauses 83 and 84 and, although they can reasonably be regarded as falling within (a) as consequential on the main provisions and therefore as not constituting a separate subject, it is probably too much to ask of the Chairman of a Standing Committee or the Speaker to distinquish between those amendments and the amendment of s.187 in the face of claims that if there are already three amendments of the 1974 Act in the Bill there can legitimately be more.

The "two-purpose" rule does not I think form part of House of Lords doctrine and though the Lords officials tend to discourage amendments that were regarded as outside the scope of the Bill in the Commons they cannot of course prevent them being moved and they are likely to be withdrawn or rejected only if the House as a whole feels that they are not relevant to the Bill. And that requires a pretty clear case to be made out.

The result is I think therefore that you would be taking a risk on scope by including the amendment.

Could you kindly follow the usual practice of sending us a spare copy of any letter.

Yours sincerely

C H de WAAL

Enc.

RC2.7

FROM: CATHY RYDING
DATE: 26 September 1986

MR HALL

cc Chief Secretary
Financial Secretary
Economic Secretary o.r.
Minister of State
Sir P Middleton
Sir G Littler
Mr A Wilson
Mr Cassell
Mrs Lomax
Mr Peretz
Mr J Taylor
Mr Board
Mr D Jones
Mr Hosker - T.Sol

REVIEW OF BANKING LAW

The Chancellor was grateful for your minute of 24 September.

2. The Chancellor agrees with your proposal - and also the suggestion that the Bank should pay!

C.R

CATHY RYDING

1778/023

CONFIDENTIAL

FROM: ECONOMIC SECRETARY
DATE: 2 October 1985

CHANCELLOR OF THE EXCHEQUER

cc Chief Secretary
Financial Secretary
Minister of State
Sir P. Middleton
Mr Cassell
Mr Kemp
Mr Jameson
Mr Peretz
Mr Hall
Mr D.W. Jones
Mr Saunders
Mr Cropper
Mr B. Henderson, MP

Mr Bridgeman)
Mr Davis) RFS
Mr Devlin)
Ms Hindmarch)

Mr Nicolle - Bank

Mr Brummell, T. Sol.

BUILDING SOCIETY LEGISLATION - FURTHER ISSUES

We are now in the final stages of preparing the Building Societies Bill for introduction in November. We settled most of the issues earlier in the summer, and I subsequently announced the main proposals in my speech to the BSA Annual Conference at Eastbourne. But a few important issues remain to be resolved, two of which are relevant to the arrangements for banks.

Building Societies Commission

2. You will remember Michael Bridgeman's proposal (his paper of 23 May) that his prudential functions in relation to building societies should be vested in a new Commission, of which he would be ex officio Chairman, introducing two or three non-executive outsiders with relevant experience, as well as permanent Civil Service staff. To all intents and purposes, the Commission would

take over the Registry's role, except its Companies House-type functions and its dealings with other sorts of registered society. Further work is needed on the details.

3. I strongly support this idea. Not only would the introduction of outsiders increase the range of expertise available for supervision, but it would also be an important signal of our intention to accompany the new legislation by stronger supervision of the societies. We do not need to decide the composition of the Commission now, but the non-executive outsiders might have backgrounds in accounting, law and building society management and we might want to consider the possibility of the Bank nominating a member at some stage.

4. As we discussed yesterday, there are strong arguments for a similar Commission for banking supervision. But regardless of the decisions to be taken on the contents of the Banking Bill, I think we should decide now to go ahead with a commission for the Building Societies. In view of the shortage of time, I have given provisional instructions to Parliamentary Counsel. If you agree, this proposal would need to be put to the Prime Minister in view of the implications for the machinery of Government.

Appeals

5. Whether prudential decisions of the Chief Registrar should be subject to independent appeal clearly has to be considered alongside the future of the existing appeals system under the Banking Act. I have accordingly considered the two together on the basis of Mr Ilett's submission of 6 August.

6. On the main question whether we should have special appeal procedures or rely upon judicial review by the courts, I think that the system for banks and building societies should be the same. I do not think it would be politically possible to retreat from the present system of independent appeal under the Banking Act, at the same time as we give stronger powers to banking supervisors. Both HFl Division and the Treasury Solicitor consider that an appeal system is also best on its merits, because of the greater safeguard it offers to the institutions concerned, and

because of the greater expertise that a tribunal is likely to be able to bring to bear as compared with the courts. I therefore propose that an appeal system should be included in the Building Societies Bill.

7. The Bank and the Chief Registrar, however, remain concerned, particularly about the ability of a tribunal to substitute its own judgement for that of the supervisor's - even if it has not found his judgement to be unreasonable - and without having to address directly the institution's continued fitness to take deposits. In recognition of these concerns, I recommend that we should improve the system for both banks and building societies in the following ways.

(a) The onus of proof should so far as possible be shifted away from the supervisor to the institution in cases of revocation of authorisation, by requiring it to demonstrate its continued fitness to take deposits rather than requiring the supervisor to show why it should no longer be authorised. For building societies, this could be assisted by a procedure requiring a society to re-apply for authorisation.

(b) One of the problems with the existing Banking Act system has been the delays to which hearings have been subject. Officials have discussed with the Lord Chancellor's Department ways of alleviating this, and have received some helpful assurances. In addition, the supervisor should be able to direct appellant institutions to place new deposits in a separate trust fund, although the circumstances of particular institutions may seriously limit the usefulness of such a power.

(c) The composition of the appeal panel should be changed from its present two lawyers and one accountant, to consist of one lawyer, one accountant and one bank or building society person.

(d) For building societies at least, the right of appeal should be confined to refusal or revocation of authorisation,

and to the imposition of a condition related to a "fit and proper person" which may affect the livelihood of an individual. We need to consider with the Bank whether to retain the present unrestricted right of appeal on conditions or directions following revocation under the Banking Act. If we do, I believe it will be perfectly possible to defend this small difference on grounds of the differences between the two sorts of institution.

9. Finally, you will wish to consider your own role. The present Banking Act system is one of appeal to the Chancellor, who is required to appoint an advisory tribunal. This introduces an element of Parliamentary accountability for both the appeal body and major prudential decisions by the supervisor. The fact that its decisions may exceptionally be overturned by Ministers may be a useful discipline for the tribunal. On the other hand, the case for a free-standing tribunal could be argued on the grounds that a political input to the decision is likely to be unnecessary, and could be undesirable in some cases; and that the personal involvement of the Chancellor in this area alone does not achieve Parliamentary accountability for the working of the Acts as a whole. The Bank, the Chief Registrar and the JMBRC favour a continuing role for the Chancellor, but the question is finely balanced. If you agree, however, it might be useful - at least for building societies, if not for banks - to allow you to delegate the responsibility to another Minister, in view of its potentially time-consuming nature.

9. Once we have agreed these issues, we should advise the Lord Chancellor of our plans; this will also give us the opportunity to obtain firm assurance on the point in paragraph 7(b) above.

Conversion to company status

10. This is likely to be one of the more controversial aspects of the Bill, raising as it does the spectre of (possibly foreign) predatory institutions taking over traditional building societies. I have been giving careful consideration to the procedures and safeguards we should build into the legislation. There are some difficult issues here, and in some cases conflicting objectives.

In the first place, we need to provide a conversion mechanism as a safety valve for societies who outgrow the restrictions embodied in building society legislation, and not to perpetuate legal and institutional rigidities when they have outgrown their usefulness. Secondly, the conversion process will need to give full recognition to the rights of shareholding investors in the societies. But finally, if the process were too straightforward, and in particular if it allowed very attractive terms to be offered to the existing shareholders in a society, there would be a serious risk of a rush of conversions in order to be taken over by "predator" institutions. There are already people in the City preparing themselves to act as intermediaries between converting building societies and potential bidders. And it is certainly possible to identify potential suitors, including other UK financial institutions and foreign banks and investment houses, who might well regard a building society, with its extensive branch network and customer base, as cheap at a price of perhaps £200-500 million.

11. So I think we need arrangements which make conversion a relatively difficult process and which enable a former society to stand alone immediately after conversion rather than to be forced to sell out to a predator almost automatically. In this respect, I understand it is unlikely that a well-capitalised society would, initially at least, be required by the Bank to arrange more than a modest increase in its capital on conversion in order to reflect its new environment. There need to be safeguards against both the membership being bought out by a beguiling bonus payment from the society's reserves and management being induced to support a takeover proposal by the terms they have been offered personally. That said, however, we should not close the door completely on an immediate or early takeover where that is clearly in the interests of all concerned.

12. Annex A gives the recommended scheme in summary form. The normal procedure would involve a five year interim period during which no outside shareholder could own more than 15% of the equity without a special procedure for shareholder approval. This would require at least 20% of eligible investors in the society to vote in favour, a figure which experience of merger votes suggests

will not be easy to obtain. Exceptionally, an immediate takeover by an outsider, without going through the intermediate stage of an independent company would be possible. This would, however, need 50% of the society's shareholding investors to vote in favour. This is a very high hurdle indeed, but the possibility would have been left open.

13. I should welcome your approval of these proposals. They seem to me to strike the best balance between allowing structural change to continue and safeguarding the rights of investors and the integrity of the building society movement.

Other points

14. Finally, I should take this opportunity to report some less fundamental points which I have agreed with officials over the last three months. I attach a list at Annex B. These have all been taken in as the drafting of the Bill has proceeded.

IS

IAN STEWART

1778/026

CONFIDENTIAL

ANNEX A

SCHEME FOR CONVERSION TO COMPANY STATUS - MAIN FEATURES

1. Basic requirements for approval of a conversion proposal would be support of 75% of investors voting on resolution, amounting to at least 20% of all those eligible to vote, and 50% of borrowers voting.

2. After membership approval, new "shell" company set up; assets, rights and obligations of society vested in it. Share issue, with existing investors getting priority subscription rights. Shareholdings in society converted to deposits with company.

3. Scrip issue after 12 months, representing value of pre-conversion reserves. Shares issued direct to investors who subscribed and have held on to shares. For other members of old society, shares held in trust for 4 years, after which they will be realised at market price and proceeds distributed to those who have kept their deposits with company.

4. No shareholding to exceed 15% for first 5 years. This may be overridden on a vote of shareholders which achieved approval by holders of at least 50% of shares. No such vote allowed in first year after conversion.

5. There would be an exceptional variant under which the assets etc of society could be transferred immediately to an institution taking over; shareholdings with society converted to deposits with institution taking over. This would however require much higher level of membership approval than normal - at least 50% of investors eligible to vote.

6. In such cases, it would be possible to pay a cash bonus to members at the time of conversion, related to size of reserves. Possibly give former building society members additional protection of "liquidation account" - priority claim on assets equivalent to remaining pre-conversion reserves - but this needs further thought.

1778/026

CONFIDENTIAL

ANNEX B

BUILDING SOCIETY LEGISLATION - FURTHER DECISIONS TAKEN SINCE EASTBOURNE SPEECH

1. Mergers

"Disputed" approaches - that is, by the board of one society directly to the members of another, but without the agreement of the second society's board - to be allowed. New safeguards to be introduced however against abuse of merger procedures, particularly to guard against predatory large societies taking over small ones with the aid of financial inducements to boards and members. The safeguards will apply both to "disputed" and "agreed" mergers.

a. Regulations to limit bonus payments to members of one society on a merger with another, based on need to bring adequate reserves to accepting society; larger bonuses only payable on a vote of members of both societies.

b. Regulations to limit compensation payments to directors; larger payments must be approved by a special resolution separate from that on the merger itself.

c. Where the difference in asset size exceeds 8:1, the merger may go ahead only if at least 20% of all investors with the smaller society vote in favour; the Chief Registrar may waive this requirement on prudential grounds.

2. Directors' interests

The suggestion in the Green Paper that quantified limits might be placed on the volume of business transacted with firms in which directors have an interest is not being pursued. Restrictions will be introduced on loans to directors and connected persons, as for recognised banks in the Companies Act, and requirements to disclose interests in contracts etc, including fee income for services provided to society. In addition, building societies would be required to disclose fee income earned by a director's firm (solicitors or surveyors) from borrowers where that firm acted both for the society and the borrower.

3. Consumer Credit Act

The existing blanket exemption from this Act for all building society mortgage lending should be narrowed down to an exemption in respect of first mortgages for the purchase and, possibly, repair or improvement of property. Similar provisions would be applied to banks and other mortgage lenders.

4. Northern Ireland

We have agreed with the Northern Ireland Office that the Bill should extend to the United Kingdom, and not just to Great Britain as the 1962 Act does. This is subject to final confirmation by the Prime Minister.

5. Building society names

Restrictions will be introduced over the use of the words "building society" in the names of other bodies corporate.

6. Building society powers

Societies may be subject to commercial temptation to go outside their powers. The supervisor will be given powers to determine whether particular proposed ventures are within the legal powers of a society and to restrain a society acting in excess of its powers. To prevent societies from anticipating the powers to be conferred by the new legislation, directors will be required to sign a declaration when registering new powers to the effect that they have not been used in the preceding 12 months.

7. Accounts and audit

The Registry issued a consultation paper containing proposals for a thorough overhaul of these provisions, published the same day as that by the Bank on the auditing of the accounts of banks. The main features include:

a. A new summary financial statement to be sent to investors instead of the full accounts (which will remain available on request); and a business statement attached to the full annual report and accounts, including many items currently in the annual return to the Registry.

b. New duties to maintain internal records and control systems, developing the existing requirements which already go somewhat further than the Companies Act.

c. On auditors, similar proposals to those for banks, but again not identical, reflecting the different structures of the two types of institution, in particular the fact that the Registry's task extends to the protection of shareholders as well as depositors. Auditors would be required to report to the Registry on the adequacy of internal control systems.

8. Authorisation

The Bill will deem all previously authorised societies to be authorised under the new legislation. But the Chief Registrar will have power to require any society to apply for authorisation afresh; this power will initially last for 5 years only, but will be capable of renewal by order. It is expected to be used in a minority of cases where the Chief Registrar is not satisfied about the running of the society, but has insufficient grounds to revoke authorisation.

016/008

FROM: **M A HALL**

3 October 1986

Copies Please

ECONOMIC SECRETARY

c c PPS
Sir P Middleton
Mr Cassell
Mrs Lomax
Mr Board
Mr D Jones
Mr Evershed

Mr F Croft T.Sol

BANKING BILL : EFT/POS AND CONFIDENTIALITY

Mr Dennis Child has written to you about EFT/POS and about Confidentiality, on 11 and 29 September respectively. The first letter was on behalf of APACS, the second representing BBA.

EFT/POS

2. You will see from the attached note of our meeting with the BBA (paragraphs 24+) that we have already told them of our intention to drop the EFT/POS provision from the Bill, and of our plans for a review of banking law. They took it well, having reached similar conclusions themselves about the scope of the Bill. The Chancellor has now agreed the review in principle, and the way is clear to tell Mr Child. Our main objective is to avoid attempts by the banks, or a group of enthusiasts from the BBA, from bringing forward a Private Member's Bill containing selective changes to the law on banking. We also want to avoid the banks blaming the Government for the collapse of the EFT/POS scheme.

Confidentiality

3. Mr Child has accepted the deal we offered, and the Bill is being drafted on that basis. He has come forward with two suggestions, to which you were inclined to be sympathetic. We doubt whether either would actually work. On the first point in his letter we shall do our best with Counsel. But on the second, neither we nor the Bank think this is a sensible constraint

to place on ourselves, given the wide range of cases to which these rules apply.

4. We recommend that you see Mr Child, to explain the position on EFT/POS frankly to him. You could deal with confidentiality at the same time. We will supply any further briefing you might need.

M A HALL

LR1.7

CONFIDENTIAL

FROM: MRS R LOMAX
DATE: 7 October 1985

PS/ECONOMIC SECRETARY

cc PS/Chief Secretary
PS/Financial Secretary
PS/Minister of State
Sir P Middleton
Mr Cassell
Mr Kemp
Mr Jameson
Mr Peretz
Mr Hall
Mr D Jones
Mr Saunders
Mr Cropper
Mr B Henderson MP
Mr Bridgeman (RFS)
Mr Davis (RFS)
Mr Devlin (RFS)
Ms Hindmarch (RFS)
Mr Nicolle (B/E)
Mr Brummell (T.Sol)

BUILDING SOCIETY LEGISLATION - FURTHER ISSUES

The Chancellor was grateful for your minute of 2 October.

2. He is content with what is proposed with the exception of the important question of appeals. The Chancellor does not like the proposal to shift the onus of proof from the supervisor to the institution in cases of revocation of authorisation. He would however be prepared to go for judicial review. In any event, he does not favour a continuing role for the Chancellor either for banks or building societies, though he does accept the desirability of treating building societies and banks alike in this respect. (He takes the view that judicial review would remove the need for such a role.)

3. If the Economic Secretary is unhappy with this approach, the Chancellor would of course be happy to discuss; in the meantime he would welcome Sir Peter Middleton's views.

4. The Chancellor has approved the recommendations in Annexes A and B; he has however noted that the scheme recommended at Annex A might need to be amended at Committee Stage.

RL.

RACHEL LOMAX

3744/015

FROM: P D P BARNES
DATE: 7 October 1986

MR M HALL

cc PPS
Sir P Middleton
Mr Cassell
Mrs Lomax
Mr Board
Mr D Jones
Mr Evershed
Mr F Croft T. Sol

BANKING BILL : EFT/POS AND CONFIDENTIALITY

The Economic Secretary was grateful for your submission of 3 October.

2. The Economic Secretary was glad that the meeting with BBA seemed generally satisfactory.

3. The Economic Secretary said that it would be useful to have a strong line to take on why the banks had not themselves done more on EFT/POS, in case they decided to try and blame the Government.

4. The Economic Secretary also said that he thought it would be useful to announce the proposed review of banking law at the same time as the Banking Bill was introduced. This would avoid leaving our flank publicly exposed during the period between the publication of the Bill without the EFT/POS provisions, and the Second Reading, when it was originally intended that the Review should be announced.

PB

P D P BARNES
Private Secretary

RR7.76

CONFIDENTIAL

NOTE OF A MEETING IN NO.11 DOWNING STREET

ON TUESDAY 15 OCTOBER AT 3.00 PM

Present: Chancellor
Economic Secretary
Sir P Middleton
Mr Peretz
Mr Hall
Mr Saunders
Mr Dyer

BUILDING SOCIETIES BILL

The meeting discussed Mr Hall's minute of 11 October which provided an annotated agenda.

Timing

2. The Chancellor emphasised that it was most important to put the Bill to L Committee in time to allow Second Reading before Christmas: in practice, this probably meant by 26 November. Mr Hall's minute of 10 October had pointed out that to meet an already tight timetable a number of substantive clauses would need to be omitted from the first print, including those on conveyancing, appeals and conversion.

3. The Economic Secretary took the view that conversion was too important a subject to introduce at Committee but, provided that the main principles could be set out briefly in the Bill, the detailed techniques should be the subject of secondary legislation. The Chancellor thought this should be possible. It was important to erect suitably stiff hurdles in the way of Building Societies turning themselves into companies, or being taken over, eg by banks. The clause only needed to say that conversion would be subject to conditions which would be laid out in an Order, subject to affirmative resolution. A consultative paper could be published at the same time as the Bill.

Conveyancing

4. There were a number of reasons, including timing, for dropping the conveyancing clauses from the published Bill. An alternative, accepted by Counsel, would be a short clause giving the Lord Chancellor an enabling power to make provision about conveyancing services. This would enable full clauses to be substituted at Committee Stage; the detailed rules governing conveyancing by institutions would, however, be a matter for secondary legislation.

5. Mr Saunders reported that the Solicitor's Act had already been amended to permit non-solicitor conveyancers.

Mr Biffen's letter

6. The Chancellor said that the reply to Mr Biffen should not adopt too defensive a tone, and should deal with conveyancing. Mr Hall would supply a draft. The Chancellor emphasised the importance of getting as much of the Building Societies Bill out of the way as possible before the Finance Bill. He said he had spoken to the Chief Whip about the need to involve an Environment Minister.

Appeals

7. The Chancellor agreed that there should be a system of appeals for both banks and Building Societies. He suggested retainig the present appeal procedure as under the present Banking Act, but making the tribunal's decisions subject only to judicial review, rather than ad referendum to the Chancellor. Selection of the tribunal might however continue to be the Chancellor's responsibility. He asked for more details of the appeal procedure under the Financial Services Bill, and in particular the role of the Secretary of State.

8. In discussion it was noted that both the Bank and the Chief Registrar favoured some Ministerial involvement. It was highly desirable to have the same (or very similar) appeal systems for banks and building societies, and it might not be politically possible to repeal the appeals provisions already contained in the Banking Act, particularly in the light of the new Financial Services Bill which would contain appeal provisions against decisions of supervisors.

9. The Chancellor did not agree that the onus of proof should be shifted from the supervisor to the institution in cases of revocation of authorisation. He thought it would look very odd to do this and that it might be argued to be contrary to British legal tradition. In practice, it would always be up to the supervisors to demonstrate why they had taken a particular course of action. A more important issue was the composition of the appeal tribunal. It would be desirable to add retired bankers or building society board members to the panel (or panels).

Banking Bill: Timetable

10. The Chancellor stressed the importance of pressing ahead with the Banking Bill as a matter of top priority. It was vital to be in a position to introduce it right at the beginning of the 1986-87 session. But he doubted whether it was necessary to provide fully worked out instructions for the whole of the Bill by the end of January 1986. Mr Hall said he was confident of providing a full conceptual framwork for the Bill and 90 per cent of the necessary instructions by the end of February 1986. The Chancellor thought this was perfectly acceptable, and said that he would speak to First Parliamentary Counsel if necessary. He approved the terms of the draft letter to Mr Hosker attached to Mr Hall's minute of 11 October.

RL.

Distribution

Those present
Mr Cassell

RACHEL LOMAX
18 October 1985

1779/014

CONFIDENTIAL

From: DEREK JONES
Date: 16 October 1985

1. MR HALL
2. ECONOMIC SECRETARY

cc
PPS
PS/Sir P. Middleton
Mr Cassell
Mr Peretz
Mr Monger
Mr O'Hare, Inland Revenue
Mr Allen, Customs
Mr Board
Mr Grinlinton
Mr Brummell, T. Sol
Mr Nicolle, B of E
Mr Bridgeman, R. of F.S.

BANKING BILL : DISCLOSURE OF INFORMATION

The Bill will need to contain provisions for the amendment of the existing rules covering disclosure by the Bank of information obtained through its supervisory activities. What was anyway a complicated area has been made more so by interaction with the Keith Committee's proposals on the enforcement powers of the Inland Revenue, which include the possibility of new powers for the Revenue to obtain information from third parties, including Government departments and public authorities, such as the Bank of England. The purpose of this submission is to explain the background and to draw to your attention certain problems requiring early resolution. This is urgent because of the imminence of Building Society and Financial Services legislation, which also have to deal with disclosure.

Background

2. Section 19 of the Banking Act 1979 imposes on the Bank of England a duty of confidentiality with regard to information obtained under, or for the purposes of, the Act and which relates to the

business or other affairs of any person. Such information may not be disclosed, otherwise than to an officer or employee of the Bank, except in certain specified circumstances. These circumstances are broadly:

(a) with the consent of the person concerned;

(b) if the information is or has been available to the public from other sources;

(c) if the information is in the form of a summary such that personal particulars are not disclosed;

(d) if disclosure is with a view to the institution of, or otherwise for the purposes of any criminal proceedings;

(e) if disclosure is in connection with proceedings arising out of the Act or to enable the Bank to comply with its other obligations under the Act;

(f) if disclosure is to the Treasury where, in the opinion of the Bank, it is in the interest of depositors or in the public interest that the Treasury should be informed;

(g) if disclosure is to the Secretary of State, relates to a body corporate which is subject to certain provisions of the Companies Act, and in the opinion of the Bank there may be circumstances in which the Secretary of State might wish to appoint inspectors under certain sections of the Companies Act;

(h) if disclosure is to an overseas supervisor and concerns an authorised institution which carries-on or proposes to carry-on business in the relevant country and if it appears to the Bank that disclosure would assist the supervisor in the exercise of his functions.

It is an offence to disclose information, otherwise than in these circumstances, carrying the penalty of a fine or imprisonment, or both.

3. This confidentiality requirement is considered to provide compliance with Article 12 of the EC 1977 Credit Institutions Directive.

Disclosure to Other Government Departments

4. The Review Committee on banking supervision recommended in its report that the Act's existing restrictions on disclosure should be relaxed in certain respects. The Review Committee's recommendation reads as follows:

> "The Bank, with the consent of the Treasury, should be able to disclose information to other Government Departments (except the Revenue Departments) where it considers it to be in the interests of depositors or in the public interest."

5. This recommendation takes account of Bank and Treasury experience on a number of occasions where it would have been either in the public or in depositors' interests, or both, to disclose information to other Departments, notably the Northern Ireland Office and the FCO. This recommendation has attracted some criticism from the banks. In part, it has re-awakened hostility to the existing disclosure powers in S19 but it also represents fears on the part of the banks that the protection afforded by the limiting words (ie depositor or public interest) is difficult to gauge and interpretations could change over time.

6. However, the notes on clauses of the 1979 Bill noted that one instance in which the Bank might disclose information to the Treasury would be if the banking supervisors discovered information about terrorists. The disclosure of such information to the Treasury would be of little use if the Treasury were not able to disclose it further.

7. Confidentiality is an increasingly sensitive subject, particularly where personal financial information is concerned. The Review Committee's recommendation is therefore based on the judgement that the ability of the Bank to disclose to Government departments other than the Treasury should be put beyond doubt, notwithstanding the concerns mentioned above.

8. The Review Committee recommended, however, that information should not be disclosed to the Revenue departments. In reaching this view the Committee were no doubt influenced by the argument that information obtained for supervisory purposes should not be used by the authorities for completely unrelated purposes. But the Committee would also have been aware that in carrying-out its supervisory activities the Bank is dependent on the supply of voluntary information, which is provided on the basis of complete confidence. (This will continue to be so, even if provision of statistics is made obligatory.) The possibility that such information could be disclosed to the Revenue departments might therefore undermine the present willingness to supply it. The Committee would also have had regard to the confidentiality requirements of the EC Credit Institutions Directive. (The precise interpretation of the Directive is the subject of a current long-running case before the European Court, but there is an underlying presumption that information obtained for supervisory purposes will be subject to confidence and that, whilst exceptions are permitted, disclosure will not be permitted where this would seriously inhibit the provision of such information to the competent authority.

Disclosure to Other Supervisory Authorities

9. The Review Committee also referred to the special problems raised by the supervision of conglomerate financial institutions, where different parts of the group are the responsibility of different supervisory authorities and where no one supervisor has responsibility for supervision of the group as a whole. This problem is not new, but the likely growth of conglomerate institutions in the coming years will make it essential for supervisors to be able to co-operate and to exchange supervisory information where that is necessary for either party properly to carry out its functions. (The problem is not confined to conglomerates; one institution may be subject to more than one supervisor in its own right.) The Committee noted that Section 19 of the Act created a barrier to such exchanges which should be removed.

10. Much of the responsibility for the supervision of institutions, other than banks, falls to the DTI. The importance of exchanges of information between supervisors has also been accepted by the DTI and was referred to in the White Paper on Financial Services regulation. The Financial Services Bill, which will implement the proposals in the White Paper, will shortly be introduced and will contain provisions to allow appropriate disclosure of information by the various supervisory bodies established or recognised by the Bill. These provisions will not provide for disclosure to the Revenue departments. They will allow disclosure by such bodies to inter alia the Bank of England and it has been agreed between officials that a complementary amendment to Section 19 of the Banking Act should be made to allow disclosure by the Bank to, inter alia, supervisory bodies under the Financial Services Bill. (It has also been agreed that the new Building Societies Bill should contain similar two-way provisions.)

Disclosure to Auditors

11. The Review Committee also recommended that a mechanism should be established to enable a regular dialogue to take place between the Bank and supervised banks' auditors. Clearly, such a dialogue might involve disclosure of information, by both parties. In the case of the Bank, the dialogue could again be contrary to Section 19. In the case of auditors, their fear in that they may be prevented from disclosing information by the duty of confidentiality owed to the client bank.

12. The Committee proposed that [such] existing confidentiality restraints as there may be on both parties should be unequivocally removed, initially by obtaining the agreement of each bank and, as soon as possible, by legislation. The Committee also recommended that the Bank should be enabled to pass information to the relevant professional body where the performance of auditors, or other professional advisers, is found to be seriously deficient, so that the possibility of disciplinary proceedings could be considered.

13. DTI also are considering disclosure to auditors by supervisory bodies under the Financial Services Bill.

The Keith Committee Proposals

14. The Inland Revenue are currently consulting Government departments and other public bodies on the Keith recommendation that the Revenue's existing powers to require information from third parties should be replaced by a new general information power enabling the Inspector to require production of any information which, in his reasonable opinion, was relevant to any purpose of direct taxation. The Inspector would be empowered to serve a notice upon any person, including a Government department or other public authority, whom he reasonably believed to be in possession of relevant information. The power would be accompanied by a right of appeal, to a commission, against an information notice. The commission would determine whether or not the balance of the public interest lay in disclosure. It is intended that the proposed power would override any requirement for confidentiality contained in any legislation under which the information was originally obtained.

15. The present position is that Treasury Ministers have authorised consultation but that no decision has yet been taken. If, following consultation, it were decided to implement these recommendations, it is intended that the necessary powers would be provided in the 1986 Finance Bill.

Summary and Conclusions

16. On present policy, Section 19 of the Banking Act should be amended to allow, subject to certain safeguards, disclosure of information:

(i) with the consent of the Treasury, to other Government departments where, in the opinion of the Bank, it is in the interests of depositors or in the public interest to do so;

(ii) to the auditors of authorised institutions and to the relevant professional bodies where, in the opinion of the Bank, it is in the interests of depositors to do so (in the first case) and it would assist that professional body to discharge its obligations (in the second case);

(iii) to other supervisory authorities, where in the opinion of the Bank disclosure would be likely to assist the Bank or the other supervisory authority to carry-out its supervisory functions.

(iv) by auditors to the Bank of England [the terms of such disclosure and the legislative provisions required have yet to be decided].

17. It is for consideration whether these amendments to Section 19 should await new banking legislation in the 1986-87 Session or whether the opportunity should be taken to include some or all of them in the Financial Services Bill (1985-86 Session). For the purposes of clarity, new banking legislation would be preferred. But that legislation is more exposed to the exigencies of Parliamentary affairs and in any event the delay involved could cause difficulties during a time when supervisory authorities will face major challenges. We consider that, on balance, these are the more important considerations in the case of disclosure between supervisors and that the earlier, Financial Services Bill route should be adopted to provide the necessary amendment to Section 19 of the Banking Act. Disclosure to other Government departments and to auditors should await banking legislation. If you agree, we will approach DTI on this basis.

18. However, it is clear that the Keith recommendation, if adopted, would conflict (at least as a matter of principle) with the Review Committee's recommendation on disclosure to the Revenue departments and with the proposed new disclosure provisions in the FS Bill (which would not include disclosure to the Revenue departments). The timing for resolution of this conflict is tight. The Financial Services and Building Societies Bills are to be introduced early in the next Session. The Revenue are planning to publish a Consultative Paper on the implementation of Keith sometime during the Autumn, to be followed by legislation in the Finance Bill. These steps will provoke a debate on disclosure issues and both

during the Bill's proceedings and in the context of the Consultative Paper, the Government will need to explain its policy on this aspect of disclosure. This process is also likely to determine what can be done later in the Banking Bill, and the policy will have to be determined quickly because of the pressures on the Building Societies and Financial Services Bills. We also plan, of course, to publish a banking White Paper in December.

19. The Revenue will in due course submit advice to you on the Keith proposal, in the light of their consultations. We have recently discussed with Revenue officials the particular supervisory issues and the timing difficulties. We do not think it right to make firm recommendations at this stage (save for that in paragraph 17 above which is not affected by the Keith issue) since the Bank's position cannot be treated in isolation and much will depend on the overall judgement taken about information held in confidence by Government departments or public bodies, including other supervisors. The Revenue will no doubt receive representations from a number of organisations in positions analogous to the Bank's. (The Deputy Governor has recently written to Sir P. Middleton arguing that the Revenue should not be given power to override the Bank's present confidentiality protections.) We are however concerned about the conflict and the possible impact of the Keith proposal on the provision of information useful to the supervisors. We are therefore drawing your attention to the problem now and you may wish to discuss it with us. We should be grateful for decisions on the proposals in this submission not affected by Keith considerations.

pp K. B. Ridewood

DEREK JONES

VT7

CONFIDENTIAL

FROM: MRS LOMAX
DATE: 17 October 1985

PS/ECONOMIC SECRETARY

cc Sir P Middleton
Mr Cassell
Mr Peretz
Mr D Jones

BANKING BILL: DISCLOSURE OF INFORMATION

The Chancellor has seen Mr Jones' minute to the Economic Secretary of 16 October. He is concerned about paragraph 16 and would be grateful if the Economic Secretary could consider very carefully before making up his mind. The Chancellor wonders if the Bank have any reservations. (His concern is that we may amend S19 too widely).

RL.

RACHEL LOMAX

D JONES. PUP

FROM: ~~M A HALL~~

17 October 1986

MHF 17/10

1. MR M A HALL
2. ECONOMIC SECRETARY

c c PPS ←
PS/Chief Secretary
PS/Financial Secretary
PS/Sir P Middleton
Mr Cassell
Mrs Lomax

Mr Hosker)
Mr Croft) T.Sol

BANKING BILL : L COMMITTEE

The Bill is provisionally on the agenda for L Committee on 28 October. We still hope to make this, although timing is very tight and any drafting problems with Parliamentary Counsel, or printing problems, could mean putting it off until the meeting on 5 November. (That would not jeopardise introduction on the 13 November.)

2. You will need to circulate a memorandum to the members of L Committee; a draft is attached. The Cabinet Office secretariat like to circulate the memorandum a week in advance, if possible. We should therefore be grateful for your agreement on Monday (20 October).

3. The final amendments to the Bill for the L Committee point will be sent to the printers on Monday, following your meeting with Mr Child. (That will be the last occasion before L on which to decide whether to continue with the omission of the EFT-POS amendment. Mr Hall is briefing you on this separately.)

4. L Committee will want to discuss backers for the Bill. The Building Societies Bill was presented by the Chancellor with rather few backers (yourself, Mr Patten and Mr Howard). If you think it desirable to have more supporters for the Banking Bill then it might be presented by the Chancellor and supported by the Chief Secretary, Financial Secretary and yourself, together

with Mr Channon and Mr Howard. A Home Office Minister might also be appropriate, given that the Act contains a number of criminal offences and various enforcement powers that we have had to clear with the Home Office. (see also attached note on the 1978 Bill)

5. Apart from the memorandum itself, we are assuming that you will not require any additional briefing for L.

6. Also attached is the draft Explanatory and Financial Memorandum for the Bill. This will also be sent for printing on Monday.

DEREK JONES

3744/037

Note below.

FROM: P D P BARNES
DATE: 16 October 1986

MR D JONES

cc Mrs Lomax
Mr M Hall
Mr Evershed

BANKING BILL

You spoke to the Economic Secretary earlier today.

2. The Economic Secretary said that he would be grateful if you could let him know:-

X (i) Why four clauses of the 1979 Banking Act were simply being referred to in the Banking Bill, rather than incorporated into it?

(ii) Who the sponsors of the 1978 Banking Bill were?

The Economic Secretary said that he would also be grateful for suggestions (for Mr Hall) of points he might make in his speech on the Second Reading. He did not at this stage want a draft speech.

PS/Economic Secretary,

The 1978 Bill was presented by the Hon Chancellor, supported by:

Mr Millan (Sof S Scotland)
Mr Dell (Sof S Trade)
Mr Barnett (Chief Secretary)
Mr Sheldon (FST)
Mr Davies (MoS Treasury)

PB

P D P BARNES
Private Secretary

2. I will minute separately on X above.

17/10

BANKING BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

This Bill contains comprehensive provisions for the authorisation and regulation of banks and the protection of depositors. It implements proposals contained in the White Paper "Banking Supervision" (Cmnd. 9695), published in December 1985. Its provisions are intended to supersede the provisions of the Banking Act 1979. The Bill establishes a Board of Banking Supervision, which will provide a forum for independent advice on the exercise by the Bank of England of its regulatory functions.

PART I

Regulation of Deposit-taking Business

Clause 1 of the Bill sets out the functions and duties of the Bank of England, which is given general supervisory functions in addition to the regulatory functions specifically provided for elsewhere in the Bill. The Bank is to make an annual report to the Chancellor of Exchequer to be laid before Parliament, and immunity is granted to the Bank and its officials in respect of performance of its functions and duties.

The Bank is to establish the Board of Banking Supervision as soon as practicable; the Board will consist of three ex-officio members and five independent members. The duty of the independent members is to give advice on the exercise by the Bank of its functions under the Bill. The Bank is to provide the Board with the information necessary to enable it to carry out its functions. (Clause 2). Detailed provisions as to appointment, removal from office, procedure, and remuneration of Board members are provided in Schedule 1.

Clause 3 provides that, subject to exceptions which are set out in Clause 4

and Schedule 2, only authorised institutions may accept a deposit in the course of carrying out a deposit-taking business in the United Kingdom.

Clause 5 defines "deposit" for the purposes of the Bill, and Clause 6 defines "deposit-taking business".

Clause 7 empowers the Treasury to amend these definitions by Order.

Clause 8 prescribes the procedure for applications for authorisation. The Bank may grant or refuse an application (Clause 9) and is required to give notice of its decision to the institution (Clause 10). Clause 9 also gives effect to Schedule 3, which sets out the minimum criteria for authorisation. The Bank may also revoke an authorisation (and is required to do so in certain circumstances) (Clause 11), or restrict it by imposing conditions ~~including~~ or a limit on its duration (Clause 12), ~~if it is considered necessary to do so~~. Notice must be given of revocation or restriction (Clause 13) except in cases where the Bank is required to revoke, or where the Bank considers action should be taken as a matter of urgency. An authorised institution may surrender its authorisation by written notice to the Bank (Clause 15). The Bank is required to publish a statement of the principles in accordance with which it proposes to act in carrying out its duties and functions under the Bill (Clause 16) and is also required to make available a list of authorised institutions on request.

Clause 18 provides that it shall be an offence for a person falsely to describe himself as being authorised or exempt from authorisation.

Clause 19 empowers the Bank to give directions to an institution if ~~consider them~~ they are desirable in the interests of depositors and potential depositors, and Clause 20 provides a procedure for institutions to make representations about a direction.

Clause 21 prevents a person from becoming a controller of an authorised institution without having given prior notice to the Bank, and Clause 22 empowers the Bank to serve a notice of objection on such a prospective controller. Clause 23 makes contravention of Clause 21 a criminal offence. Further powers are provided in Clause 24 to enable the Bank to place restrictions on, and apply to the Court to require the sale of, shares relevant to a contravention of Clause 21.

Clause 25 allows an institution and certain third parties to appeal to an independent tribunal against a refusal or revocation of authorisation, a restriction or a direction. The tribunal's constitution is provided for in Clause 26. Clause 27 provides that the tribunal may confirm, reverse or ask the Bank to vary the decision which is the subject of the appeal if it considers the decision was unlawful or not justified by the evidence on which it was based. Clause 28 provides for costs, procedure and evidence on appeal to the tribunal, and Clause 29 provides that any decision of the tribunal is subject to appeal in the Courts on a point of law.

Clause 30 empowers the Treasury to make regulations about deposit advertisements. The Bank is also empowered to issue a direction restricting advertisements which ~~they~~ consider to be misleading Clause 31. The Treasury is also given power to regulate the making of unsolicited calls seeking deposits (Clause 32). Contravention of regulations made under Clauses 30 and 32 and directions made under Clause 31 is to be a criminal offence, as is (Clause 33) the making of a fraudulent inducement to make a deposit.

An authorised institution must given written notice to the Bank of a change of director, controller or manager (Clause 34) and must also report the entering into of certain types of transactions exposing sizable percentages of its available capital resources to the risk of loss (Clause 35). The Bank is empowered to obtain information from an institution about its business

(Clause 36) and may do so by entering the institution's premises (Clause 37). The Bank may also appoint persons to carry out investigations of an institution's business (Clause 38) and may require persons it suspects are guilty of contravention of the Bill to produce documents and answer questions (Clause 39). The Bank is given a power of entry in cases where it suspects that documents may be incomplete or may be destroyed (Clause 40).

The audited accounts of an authorised institution are to be open for inspection (Clause 41) and notice must be given to the Bank of the removal of, or decision not to reappoint, an auditor or where the auditor resigns, retires or qualifies the accounts (Clause 42). Auditors may pass information to the Bank notwithstanding any duty to which they may be subject if it is relevant to any function of the Bank under the Bill. (Clause 43).

The Bank is entitled to apply to the Court for an order directing the repayment of unauthorised deposits (Clause 44). The Court may also order a person who has profited from unauthorised deposits to pay into Court such sum as it considers just, and the Court may direct its distribution to those who made the deposits and others (Clause 45).

PART II

The Deposit Protection Scheme

Clause 46 and Schedule 4 provide for the continuation of the Deposit Protectio Board to administer the Deposit Protection Fund, the statutory scheme for the protection of depositors established by the Banking Act 1979. Authorised institutions are liable to contribute to the Fund (Clause 48) either by way of initial contribution (Clause 49) or by way of further levy in the case of the amount standing to the credit of the Fund being less than £3 million (Clause 50) or where it appears to the Board that payments are likely to

exhaust the Fund (Clause 51). The minimum initial contribution is to be not less than £10,000, and the maximum of the initial or any further contribution levied from an institution is not to exceed £300,000 or 0.3% of the institution's deposit base (Clauses 52 and 53). (These figures may be amended by Order.) Depositors in an insolvent authorised institution may be paid up to three-quarters of their deposit (Clause 54) if it is less that £10,000, and up to three-quarters of £10,000 in other cases (Clause 56). (This figure, and the proportion payable, may be amended by Order.) Provision is made for trustee and joint deposits (Clause 57) and for the Board to recover from the insolvent institution payments it makes (Clause 58) and to repay sums recovered to institutions which have contributed to the Fund (Clause 59).

Provision is also made for the Board to borrow (Clause 60) and to request the Bank to require an institution to provide information.

PART III

Banking Names and Descriptions

No person carrying on business in the United Kingdom may use any name which indicates that he is a bank or banker or is carrying on a banking business (Clause 63) unless an authorised institution with paid-up equity capital of not less than £5 million or falling within certain other exceptions set out in Clause 64. And no person may use a banking description unless an authorised institution or falling within certain other exceptions (Clause 65). When an institution applies for authorisation, the Bank is empowered to object to the name it proposes to use if the Bank considers the name misleading or otherwise undesirable (Clause 66). When the Bank gives notice of objection, the institution has a right of appeal (Clause 67). Provision is also made concerning the registration of corporate

names by oversea companies where the Bank has objected (Clause 68). Clause 69 creates an offence of contravening any of the provisions in this Part.

PART IV

Overseas Institutions with Representative Offices

Clause 70 defines "overseas institution" and "representative office". An overseas institution is prohibited from establishing a representative office in the United Kingdom unless it has given two months notice to the Bank (Clause 71), and the Bank is empowered to object to the name it proposes to use (or to any change in the name it is already using) (Clause 72). The overseas institution is entitled to appeal against a notice of objection (Clause 73), and provision is made in respect of registration of the corporate name (Clause 74). The Bank is also empowered to require an authorised institution which has established a representative office in the United Kingdom or has given notice of intention to do so, to provide such information as the Bank may reasonably require (Clause 75).

The Treasury may make regulations imposing further requirements on the representative offices of overseas based banks (Clause 76).

PART V

Restriction on Disclosure of Information

Clause 78 imposes a general restriction on the disclosure of information relating to the business or other affairs of any person received under or for the purposes of the Bill, or obtained from a person who has received it in such a way. There are various exceptions; disclosure for facilitating the discharge of functions by the Bank (Clause 79), disclosure for facilitating the discharge of functions by other supervisory bodies

(Clause 80), and to certain other bodies for allied purposes (Clause 81). Clause 83 provides for disclosure of information to the Bank by certain other supervisors.

PART VI

Miscellaneous and Supplementary

Clause 84 make minor amendments to the Consumer Credit Act 1974.

Clause 85 amends the provisions of the Companies Legislation relating to the disclosure of transactions with directors and officers and restrictions on loans etc. to directors.

The Bank is empowered to petition the Court under the Insolvency Act 1986 to wind-up an authorised institution (Clause 86).

The Bank and other prosecuting authorities are entitled to apply to the Court for an injunction against certain illegal deposit takers (Clause 87).

Offences concerning false and misleading information are created (Clause 88), and general provisions as to offences under the Bill, including making certain office holders liable for prosecution for offences committed by their institution (Clause 89).

Clause 91 makes provision for service of notices on the Bank, and Clause 92 provides for the service of other notices.

Provisions as to evidence in proceedings are made by Clause 93.

The effect of the Rehabilitation of Offenders Act 1974 is modified in certain cases (Clause 94).

The position of certain Scottish savings banks is dealt with in Clause 97.

The Bill will, if enacted, extend to Northern Ireland (Clause 102).

Transitional provisions are dealt with by Schedule 5 and consequential amendments by Schedule 6.

Financial Effects of the Bill

Under the Banking Act 1979 the Treasury currently pays the fees and expenses of the persons appointed to hear appeals under that Act. Similarly Clause 26 provides that the fees, allowances in respect of expenses and other costs of appeals tribunals constituted under that clause may be paid by the Treasury. It is estimated that these costs will be approximately £5,000 per annum. But the exact sums involved will depend on the number of appeals raised and their complexity.

Paragraph 10 of Schedule 6 amends the Housing Act 1985. The amendment to Section 447 of that Act will result in an increase in the number of recognised lending institutions to which the Secretary of State may make grants and loans to enable them to provide assistance to first-time purchasers of house property in Great Britain. This may result in a very small increase in the amount of such grants and loans. It is considered that any such increase would not be significantly in excess of £10,000.

The amendments to Section 36 and 156 of the Housing Act 1985 will result in an increase in the number of approved lending institutions for whom the recovery of mortgage loans outstanding will take precedence over a Council's right to recover discount should there be an enforced sale of a property purchased under the right to buy scheme. This may result in a small number of cases where local authorities will not recover such sums. It is not possible to quantify the public expenditure effect.

Effects of the Bill on Public Service Manpower

The Treasury will provide administrative support for the appeals tribunal established by Clause 26 but it is considered that this can be provided within present manpower resources.

004/010

Paper please.

FROM: **M A HALL**

20 October 1986

ECONOMIC SECRETARY

c c Chancellor
Financial Secretary
Sir P Middleton
Sir G Littler
Mr Cassell
Mrs Lomax
Mr Board
Mr D Jones

Mr Hosker)
Mr Jenkins) T.Sol

Mr R I L Allen BoE

BANKING BILL : EFT/POS AND THE REVIEW OF BANKING LAW

I attach a draft reply to Mr Howard's letter of 16 October, following your discussion this morning with Mr Child. I have extended the distribution to the Lord President, and to members of L Committee. I understand that the Lord President's Office have told Peter Barnes that he would like to discuss this with you, once he has received your letter.

2. The Banking Bill will now be on the agenda for L Committee on 5 November, due to Counsel's other commitments. This does not affect the timing of introduction.

3. You should have received on Friday a draft of the memorandum for L Committee, submitted by Mr Jones. I attach a redraft of the section on the EFT/POS amendment. We shall not have to use this if the matter can be solved quickly by letter.

MAH

M A HALL

003/10

Michael Howard QC MP
Parliamentary Under Secretary of State for
Corporate & Consumer Affairs
Department of Trade & Industry

REVIEW OF BANKING LAW

Thank you for your letter of 16 October. I should like to assure you at once that there ~~remains~~ is no difference between us on the desirability of amending the Consumer Credit Act in order to resolve legal doubts about the use of debit cards in an EFT/POS system. It was for this reason that the proposal was included in the White Paper on Banking Supervision, and why clauses were drafted at an earlier stage in preparation of the Bill. The doubts which persuaded me that it might be unwise to retain this provision derive from Parliamentary Counsel's advice on scope.

As you know, the draft Bill already contains amendments to Clauses 83 and 84 of the Consumer Credit Act, designed to bring the treatment of bank mortgages on to the same basis as the Building Societies Act provides for building society mortgages. Ironically, these provisions were left over to the Banking Bill because of the need to avoid widening the scope of the Building Societies Bill. Counsel's view is that these amendments can be regarded as part of the main purpose of the Bill. We had intended that the second, and minor purpose of the Bill should be to amend the Consumer Credit Act in respect of EFT/POS.

But Counsel's advice is that because of the presence in the Bill of other amendments to the Consumer Credit Act, there is considerable doubt that the Chairman of a Standing Committee or the Speaker would be prepared to distinguish between the amendments included in the Bill, and other amendments to the Consumer Credit Act which might be put forward.

It is, as you know, important that the Bill be completed swiftly. Its content at present is relatively uncontroversial, and it is clearly highly desirable that it should remain so. If Parliament took the view that inclusion of the EFT/POS amendment substantially widened the scope of the Bill, it would become vulnerable to a wide range of amendments to the Consumer Credit Act, and perhaps other consumer legislation, from banks, consumers and other interested parties. Pressures might develop, for instance, for a statutory banking ombudsman, a clarification of the rights and duties of banks and customers in respect of ATM transactions, and countervailing pressure from the banks and finance houses for a relaxation of consumer rights under the Consumer Credit Act. All of this could sour the debate on the supervisory aspects of the Bill, quite apart from extending the legislative process.

I also think that it is a mistake to tinker, by a series of random amendments tabled by interest groups, with

this complex area of banking law. As your officials have reported to you, I hope to announce a comprehensive review of the non-supervisory areas of banking law at the time the Bill is introduced. I shall be writing separately to you about this.

Nor am I - or indeed your officials - persuaded that the success or failure of the EFT/POS project hinges to a material degree on this amendment. We included it in the White Paper largely because the banks wanted it, and were prepared to drop a long shopping list of amendments if they were granted this one.

I saw Dennis Child, Chairman of the Association for Payment Clearing Services (APACS) this morning. He made it clear that the banks still attach great importance to our sticking to the White Paper proposal, though he understood our difficulties on scope. I do, incidentally, fully accept your view that we shall be criticised by the banks if plans for a national EFT/POS system do collapse, and that they will say our failure to provide this amendment is an important contributory factor - whatever the truth of the matter.

I told Dennis Child that I would reconsider including the EFT/POS amendment in the light of his representations, and of discussion with the business managers. With the Government's majority in the Commons, I think the line

can be held there, even if this amendment is specifically included in the long title, as Parliamentary Counsel advises it will have to be. I am grateful for your offer of DTI help with briefing. I am sure your plan to legislate separately in due course to amend the Consumer Credit Act should provide a welcome pressure valve.

My main concern ~~lies~~ with problems the Bill might encounter in the Lords, and I am therefore copying this letter to the Lord President. Given the wider view traditionally taken of scope in the Lords, the Bill will in any case be up to a point vulnerable to CCA-type amendments in the upper Chamber, even without inclusion of the one relating to EFT/POS. The Lord President will be in a better position to judge than I how much more unmanageable the Bill is likely to be in the Lords if we stick to the White Paper proposal. If he is satisfied that we should not be running unacceptable risks by inclusion, I am content to reinstate the EFT/POS provision in the Bill. I have arranged for it to be printed for the meeting of L Committee on 5 November with the amendment to the CCA included. I hope we can resolve this question in correspondence, ahead of L Committee.

I am copying this letter, with a copy of your letter, to the Lord President and members of L Committee, and to David Young.

IAN STEWART

ANNEX 2

New paragraphs for Memorandum for L Committee

The Bill contains other minor and consequential changes to the 1979 Act and to other statutes, including amendments to the Consumer Credit Act to bring into line the treatment under that Act of banks and building societies.

The Bill also contains provision to remove a possible constraint on the development of a nationwide system for Electronic Funds Transfer at Point of Sale (EFT/POS) to which I have referred in separate correspondence. This latter amendment is desirable and relatively minor, and much wanted by the banks. It was included as a firm proposal in the Banking Supervision White Paper. But Counsel advises that it has the effect of extending the scope of the Bill in such a way that other, quite unrelated, amendments of the Act might have to be taken.

In practice there is a good chance that these could be resisted in the Commons, both on the grounds that they are irrelevant to the purposes of the Bill and also because they could be more appropriately considered in the context either of the Department of Trade and Industry's own review of the Consumer Credit Act, or a comprehensive review of non-supervisory banking law, shortly to be announced by the Treasury at Introduction of the Bill.

In the Lords, however, a Bill including this amendment might be far more likely to attract a wide range of undesirable amendments than one from which it was omitted. The advice of L Committee is sought on whether the risks to the passage of the Bill through the Lords are likely to outweigh damage caused by hostility from the banks at omission from the Bill of a measure proposed in the White Paper.

1883/055

CONFIDENTIAL

FROM: M NEILSON
DATE: 22 October 1985

MR D JONES

cc: PS/Chancellor
Sir P Middleton
Mr Cassell
Mr Peretz
Mr Monger
Mr O'Hare - IR
Mr Allen - Customs
Mr Board
Mr Grinlinton

Mr Brummell - T.Sol
Mr Nicolle - BoE
Mr Bridgeman - RFS

BANKING BILL: DISCLOSURE OF INFORMATION

The Economic Secretary has seen your submission of 16 October. The issue for immediate decision relates to disclosure to other supervisors. The Economic Secretary is content with your recommendation that the Financial Services Bill should be used to amend Section 19 of the Banking Act to allow disclosure to other supervisory authorities. But the power to disclose should be subject to two conditions:

(i) That the information should only be used by other supervisory authorities for supervisory purposes.

(ii) That when disclosed the information should be subject to a least an equivalent degree of protection from further disclosure as is provided by Section 19 of the Banking Act.

2. The Economic Secretary has taken note that the other matters discussed in your note will have to be resolved in due course. He has commented that the implications for banking supervision will have to be taken fully into account in reaching a recommendation on Keith.

M NEILSON

005/1947

CONFIDENTIAL

FROM: M A HALL

23 October 1985

1. ECONOMIC SECRETARY

2. CHANCELLOR

c c Sir Peter Middleton
Mr Bailey
Mr Cassell
Mr Kemp
Mr Peretz
Miss Kelley
Mr Saunders

Mr Devlin RFS
Mr Davis RFS

BUILDING SOCIETIES COMMISSION

You agreed (Rachel Lomax's minute of 7 October) to the proposal in the Economic Secretary's minute of 2 October to set up a Building Societies Commission within the Registry of Friendly Societies.

2. This is not strictly speaking a machinery of Government question, since we are not proposing setting up a separate entity. But the statutory establishment of a Commission is sufficiently important change to report to the Prime Minister. I attach a draft minute, which has been agreed with the Registry of Friendly Societies. Mr Peretz thinks this might be better done as a note by officials with a short covering note.

3. The draft is self-explanatory. It does not go into the proposed working methods of the Commissioners, since these do not have to be set out in the Building Societies Bill.

4. You will wish to look carefully at paragraphs 4 and 5, which discuss the likely timescale for bringing the supervision of banks and building societies together. The draft envisages that transition to the new legislation will take place under the proposed new Commission, and that a merger of bank and building society functions will not take place before that. It is clearly important

to say this. This is our clear intention; and there would in any case be no point in setting up a new Commission if we envisaged that its active life would be no more than a year or two. There is no doubt that a shift from one supervisor to another in the midst of adapting to the new legislation would be a major disruption.

5. Ideally therefore we would not envisage unification of supervisory functions within less than a minimum of five years.

6. There is, however, one proviso. As you know, in order to assume their new functions under the Building Societies Act, the Registry will need to take on new staff, particularly at senior levels. At the same time, the Banking Supervision Division of the Bank of England will be expanding, and the SIB proposes to take on some 100 staff. It is going to be extremely difficult for the Commission/Registry to meet its recruitment target. A review is about to take place of the Registry, which will include within its terms of reference the realistic prospects for adequate recruitment. If the Registry's problems were to prove insuperable, it may be essential to move more quickly to bringing together the banking and building societies' supervisors. The draft minute therefore offers no more hostages to fortune than are necessary to sell the idea of a Commission.

7. The Registry are content with the draft, which is based on work by Mr Bridgeman. They would, however, prefer to include the section in square brackets, which, for reasons stated above, I should like to omit.

M A HALL

BUILDING SOCIETIES COMMISSION

(*) There are meetings on Monday to discuss the future supervision of banks. As background to that meeting, and because it is an important issue in its own right, you will want to be aware of the arrangements that Lawson proposes for the supervision of building societies

004/1947

CONFIDENTIAL

18:ix:85 (2nd)

DRAFT MINUTE TO PRIME MINISTER

BUILDING SOCIETIES COMMISSION

I should be grateful to know that you are content with the reorganisation of the Registry of Friendly Societies, for which I propose to provide in the Building Societies Bill. This will enable it to perform more effectively the task of supervision of building societies under the new legislation. It would remain a non-Ministerial department, but the task of supervising building societies would be vested in a Building Societies Commission, rather than in the Chief Registrar of Friendly Societies personally. In view of the tight timetable for the Bill, I have given officials contingent authority to draft instructions for Counsel. This is not strictly speaking a machinery of government question, since it involves changes within one of my small Departments. But in view of current Parliamentary interest in supervising matters, this is a visible change of which you should be aware.

Possible alternative arrangements

2. The Green Paper we published last year made it clear that the wider powers to be given to building societies would not be allowed to put at risk their reputation as a safe home for investors' money. This implies increased recognition by the directors of societies of their responsibility to protect the interests of investors. It also makes it necessary to strengthen prudential supervision.

3. I am satisfied that the right way to achieve this is to build on the existing supervisory structure. Responsibility for the framework of supervision must

continue to rest with Ministers. But there is considerable advantage in separating responsibility for day-to-day supervision, and decisions on individual cases. I therefore rule out any closer direct Ministerial involvement. Nor is self-regulation appropriate. The supervisor of deposit-taking institutions must involve himself not just with standards of behaviour, but also with future commercial plans and viability to an extent which is impossible for a self-regulatory body. No other country has placed this type of supervision with a self-regulatory organisation.

4. I am, however, seeking to remove constraints on direct competition between banks and building societies. At some point, it will ~~make~~ make almost certainly sense to bring their supervision under one authority. But I am satisfied that for an initial period after the new legislation the building societies will have to be supervised separately from banks. They will still be confined to generally less risky assets, and will require a less detailed style of supervision, [with different capital adequacy and liquidity criteria. [Moreover, an immediate merger would be likely to disrupt the more urgent tasks of implementing new legislation and developing the supervisory regime for the societies].

5. The timescale for bringing supervision of banks and building societies together must depend in part on the future institutional arrangements for banking supervision, which we are due to discuss on Monday October ~~28~~.] It will also hinge on how rapidly the ~~nature of~~ building societies themselves change, once the new legislation comes into effect, and on wider developments in financial markets.

6. The solution we adopt now must therefore make sense to building societies in a critical period of change, and facilitate the subsequent evolution of the supervisory

structure for deposit-taking. It makes no sense from either point of view to establish a new quango.

The new Commission

7. I have therefore decided to leave supervision with what is now the Registry of Friendly Societies, but to make one important structural change.

8. The wider powers and responsibilities given to the supervisor in the new legislation would be more suitably vested in a collectivity rather than in a single person. Both Parliament and the societies will be reassured that the wider powers will be consistently and fairly used if they are exercised by a group of people with appropriate experience, rather than concentrated on one individual. [I have consulted] the Chief Registrar, [who] fully supports [my] proposal that the powers should be vested in a Commission, of which he would be chairman, or First Commissioner, rather than in him alone.

9. The Commission would have, say, three full-time members who would be civil servants, and three or four part-time ones who would not. I would select the part-time members with a view to widening the expertise and experience available: they might include a recently retired building society chief executive, an accountant, a lawyer and possibly a senior banking supervisor. Collectively, well-chosen part-time members would greatly strengthen the supervisory authority.

10. The new Commission would take on only the supervision of the building societies. For it to assume all the functions of the Registry would both hinder any future reorganisation, and cause needless offence to friendly societies by ending the historic title of Registry of Friendly Societies. The department (at present 125 staff) is too small to split into two. The First Commissioner would therefore also hold the title of Chief Registrar, with statutory responsibility for

registration functions, and for the supervision of friendly societies. He would remain Head of Department and Accounting Officer. He, and not the Commission, would be responsible for the deployment of the staff resources of the Department.

11. The Commission would report annually to Parliament. The Building Societies Bill will provide for appeal against the exercise of the Commission's severer statutory powers. All its individual decisions will also, of course, be subject to judicial review. The Commission will report confidentially to Treasury Ministers.

Financing

12. I announced in the Green Paper that power would be taken to recover the costs of supervision from societies. The Commission will therefore be self-financing, although the combined Department will still have a Vote to which the normal rules of gross accounting will apply. The Chief Registrar has satisfied me that the Commission will be the most cost-effective way of securing supervision of the required standard, and in particular of securing the essential experience and expertise. Moreover, it could produce a public expenditure saving of some £800,000 in 1986-87, because it will give us reasonable cause to bring in the new charging system some six months earlier than would otherwise have been possible.

Staffing

13. It is increasingly difficult to attract suitably qualified staff to the Registry. This is at least in part due to the Victorian image of the Registry of Friendly Societies, epitomised by its now wholly inappropriate name. I share the Chief Registrar's view that the change proposed in this minute should enhance the status and attractiveness of the Registry as a place to work. This will be important as we seek to recruit supervisors who will take on the more demanding tasks implied by

the new legislation.

Announcement

14. If you are content with this proposal, I should like Ian Stewart to announce it in a speech on Friday 1 November, in which he will also be announcing other decisions which we have taken on the building societies legislation. It will be important for the Chief Registrar to give his staff prior warning of the proposal.

3744/70

PWP

FROM: P D P BARNES
DATE: 24 October 1986

MR D JONES

cc: PS/Chancellor
Mrs Lomax
Mr M Hall
Mr Evershed

BANKING BILL: SECOND READING

You came to see the Economic Secretary yesterday.

2. The Economic Secretary said that he would like to draw attention to each of the main policy changes in his speech. You agreed that these were:-

(i) the Board of Banking Supervision;

(ii) the two-tier system;

(iii) communication with auditors;

(iv) making misleading supervisors a criminal offence;

(v) large exposures;

(vi) the Deposit Protection Fund;

(vii) Banking Names;

(viii) a brief reference to those items carried forward substantially unchanged from the 1979 Act.

3. The Economic Secretary said that he would also like to mention the following matters in his speech:-

(i) the compatibility of the Banking Bill and the Financial Services Act. (Despite the fundamental

differences between the regulatory and supervisory systems, the provisions of the two pieces of legislation often apply to the same companies or groups.)

(ii) the review of Consumer-related banking questions;

(iii) the fact that the Bill contained nothing about reciprocity.

4. The Economic Secretary would also require defensive briefing, particularly on:-

(i) the Bank's proposed powers of entry;

(ii) JMB;

(iii) statements made by him and the then-Government in the debate on the 1978 Banking Bill.

5. For his wind-up speech, the Economic Secretary would require general briefing on banking matters, including:-

(i) the Labour Party's plans for a National Investment Bank;

(ii) foreign ownership or control of banks in London;

(iii) statistics on bank lending (particularly for housing) and the level of personal borrowing generally;

(iv) the Government's powers to instruct the Bank under the Bank of England Act.

6. You said that Mr Hall would be producing a Second Reading skeleton speech, incorporating the above points, which he would aim to let us have early next week. The Economic Secretary said that it would be useful if you could provide him at the same time with notes on clauses for the main policy items.

7. You also said that you hoped that a clean print of the Bill as it would be submitted to L Committee would be available in the middle of next week. Parliamentary Counsel would be deciding whether to include changes on administrator procedure, which he thought might provide a power which it would be hard to justify. Apart from this, and the change from discretionary to mandatory revocation, there were likely to be few changes to the Bill.

PB

P D P BARNES
Private Secretary

3744/78

Spare cc Chancellor
FST.
Sir P Middleton
Sir G Littler
Mr Cassell
Mrs Lomax
Mr Beard
Mr D Jones
Mr Hoskyns - T. Sols.
Mr Jenkins - T. Sols
Mr R.L. Allen - B. of E
Mr de Waal - Party Csl.

Treasury Chambers, Parliament Street SW1P 3AG

Miss Joan MacNaughton
Private Secretary
The Leader of the House of Lords
Privy Council Office
Whitehall
LONDON
SW1A 2AT

28 October 1986

Dear Joan

Your office told me earlier this afternoon that the Leader of the House would be considering whether to call a meeting with the Economic Secretary and Mr Michael Howard, if Mr Howard indicated that he still wished to press the case for the inclusion of the EFT/POS amendment in the Banking Bill. I understand that Lord Young has agreed that this amendment may be excluded.

The Leader of the House may recall that in the Economic Secretary's letter to Mr Howard of 21 October, he referred to his intention to announce a comprehensive review of banking law in areas other than banking supervision. By way of background to a possible meeting, the Leader of the House may like to see the attached draft text of a Written Parliamentary Question, for answer on the day of introduction, together with a memorandum on the likely scope of such a review. These provisional texts are to be considered at a meeting of officials from the departments directly concerned on Thursday, and the Economic Secretary will be writing to colleagues next week seeking their views on a more refined draft answer. He intends to provide further details of the review in the Second Reading Debate.

This review will cover the whole of the legal framework for EFT/POS, and it should help us in resisting amendments to the Consumer Credit Act, whether or not we leave the EFT/POS amendments in the Bill, to tell the House that an immediate review will be taking place.

I am copying this letter to Stephen Ratcliffe in Lord Young's office, and to David Roe in Mr Howard's office.

Yours sincerely,

Peter Barnes

P D P BARNES
Private Secretary

REVIEW OF BANKING LAW: ANNOUNCEMENT/TERMS OF REFERENCE

To ask Mr Chancellor of the Exchequer if, in addition to the review which has been completed of the supervisory aspects of banking law, the Government will review the body of law which governs banks' day to day dealings with their customers.

DRAFT REPLY

The Banking Bill which the Government has introduced today is designed to provide the statutory basis for the important regulatory improvements which were identified in the White Paper "Banking Supervision" in December 1985 (Cmnd 9695). It overhauls and reinforces the system of banking supervision enacted in the Banking Act 1979. The Government has also this year modernised the regulatory framework of building societies (the Building Societies Act 1986) and fundamentally recast the law relating to securities and investments (the Financial Services Act 1986). Together these measures represent a comprehensive reform of the law relating to the protection of depositors and investors.

Banks and their customers are also affected by the body of statute law and precedent which is not concerned with prudential supervision but which governs the mechanics of day to day banking (for example the Bills of Exchange Act 1882). The law should provide the necessary legal framework for the provision of banking services on fair and efficient terms. Generally UK banking law has stood up well to the test of time. But the nature of banking has changed beyond recognition since the main statute were drafted. It would be valuable to subject UK banking law to a coherent review, taking into account technological and other developments and drawing on the experience of bankers, their personal and business customers and other interested parties.

The Government has therefore decided to commission, in co-operation with the Bank of England, an independent study for this purpose. Further details of the study, whose proposed terms of reference are set out below, will be announced shortly. The study is broadly and flexibly defined to include banking services in the broadest sense but it will not be concerned with taxation or non-legal market-related judgements such as criteria for individual credit decisions, the cost and availability of credit or the competitive pricing of other banking services.

Terms of reference

The subject of the study is the impact of statute and common law on the provision of banking services within the UK to personal and business customers, including payment and remittance services; but excluding taxation, company law and other parts of the law whose relevance is to trading or to the provision of services in general, rather than particular to banking. The objectives of the study will be:

(1) to examine the subject from the points of view of banker, customer and the general public interest in the availability, reliability, security and efficient and economical operation of payment, remittance and other banking systems;

(2) to have regard to:

(a) current and prospective developments in banking and payment systems, including developments in electronic data processing and electronic funds transfer technology;

(b) areas of particular difficulty in or confusion about existing law and practice and the rights and obligations of banks and their customers respectively;

(c) other reviews of UK law where relevant;

(d) developments and trends in international payment systems;

(e) developments in the law of the European Community and in other relevant international laws and conventions;

(3) to prepare a final report, and if necessary an interim report also;

(4) if appropriate and after consultation to recommend codes of good practice (such as model contract terms, information for customers or new banking procedures);

(5) if necessary and after consultation to make proposals for legislation."

3702/34/fm

BANKING LAW REVIEW: SUGGESTED TOPICS

A. ATMs

1. Liability of bank/cardholder in event of disputed or unauthorised use of a card.

2. Requirement on bank to provide a written receipt of each transaction.

3. Proof of unauthorised transaction when PIN used.

4. Duty of care on cardholder.

B. BANK-CUSTOMER RELATIONS

1. Duty of customer to examine statement and inform bank of irregularities within a specified period ("settled accounts").

2. General duty of care on banks.

3. Procedure on opening accounts - duty on bank to satisfy itself properly about the identity of a person opening an account.

4. Banking services for minors.

5. Bankers' references - legal validity of customers' implied consent.

6. Customers' access to bank records (particularly manual records).

7. Right of set-off between accounts held by same customer.

8. Automatic deduction of charges: Notification of charges made by bank and consent for their deduction from account.

9. Death of a customer - nomination

   - items in safe custody.

C. BANKING AND PAYMENT MECHANISMS AND INSTRUMENTS

Legal implications of such modern developments as:

1. Bank Giro Credits.

2. Cheque guarantee cards.

3. Credit cards.

4. ATMs

5. **BACS**

6. **CHAPS.**

7. **EFT-POS.**

8. **Memory cards.**

9. **Automated corporate cash management/balance reporting systems.**

10. **SWIFT.**

11. **Trade documentation in electronic form.**

12. Uniform Eurocheque Scheme.

13. Legal status of sale-repurchase transactions.

D. BANKING OMBUDSMAN

1. Need for Code of Good Banking practice.

2. Compulsory membership of Ombudsman scheme (like building societies).

3. Legal requirement for banks to have adequate internal procedures for handling complaints.

E. BILLS OF EXCHANGE ACT 1882

1. Status of avals.

2. Attachment of funds in Scotland (section 53(2)).

3. Status of payable orders/warrants issued by PGO, Inland Revenue, DNS, etc.

4. Definition of "sum certain".

F. CHEQUES

1. Amount - words and figures differ: question of priority.

2. Need to define/extend protection of true owner in respect of:

   (a) Crossings.
   (b) "Not negotiable".
   (c) "Account Payee."
   (d) Payment "in due course"

3. Truncation (see below).

4. Status of payable orders/warrants issued by PGO, Inland Revenue, DNS etc.

5. Paid cheques - retention period.

6. Status of cheque guarantee card.

7. Defence of contributory negligence for paying banker (Tai Hing judgement).

8. **Aspects of Theft Act 1968 particularly affecting banking - question whether drawing a cheque supported by a guarantee card knowing there are insufficient funds in the account is an offence within the meaning of the Act (Court of Appeal, 9.7.86).**

9. **Foreign drafts - validity and time limit.**

G. CHEQUE TRUNCATION

1. Section 46(2)(e) of Bills of Exchange Act 1882 - does it provide basis for truncation?

2. Waiver of presentment.

3. Right of payee to insist on physical presentation.

4. Increased risks faced by banks.

5. Acceptability of images of cheques for the evidence requirements of the Cheques Act 1957.

H. COMPUTER-RELATED FRAUD

Adequacy of current law in specific regard to banking, having regard to relevant work of Law Commission and Scottish Law Commission in the context of fraud, to deal with unauthorised activities involving:

1. Breach of telecommunications network.

2. Alteration or destruction of data.

3. Writing code against the interests of user.

4. Misuse of equipment.

5. Extraction of information.

6. Copying of programs etc.

7. Use of magnetic stripe card.

I. CONFIDENTIALITY (BANKERS' DUTY OF)

1. Need for express statement of the common law duty.

2. Need for procedures for banks to inform the authorities in cases where they suspect a customer is engaged in fraud, without risking proceedings for improper disclosure.

3. Issues arising from transfers of staff between institutions.

4. Cross-selling of services.

5. Extension of the disclosure requirements of the Drug Trafficking Offences Act 1986 to cover money laundering and the proceeds for terrorism and other criminal activity.

6. Statute of Fraud Investment Act 1882 (section 6) has the

effect in England and Wales of protecting banks from the consequences of employees giving fraudulent information about a customer's financial position.

J. CREDITS (PAPER)

1. Legal status.

2. Time of payment and value to beneficiary.

3. Non-accounting information.

4. Responsibility.

5. Mandated dividends - to enable registrars to pay dividends direct in electronic form.

K. ELECTRONIC FUNDS TRANSFER

1. Finality of payment.

2. Revocability.

3. Responsibilities of various parties, including - correspondent banks involved in a string of payment messages;
   - the message carrier(s).

4. Liability in event of error, delay, system failure, fraud.

5. Rules of evidence and EFT records.

6. Evidence of receipt of message.

7. Authentication rules.

8. Status of inter-bank agreements covering settlement, time of payment etc. [Scottish Bank Holidays].

9. Acceptability of mandated dividends in electronic form.

L. EFT-POS

Is new or amending legislation needed to:

1. Protect consumers.

2. Define the rights, liabilities and responsibilities of all the various parties.

3. Provide for an appropriate level of competition.

4. Provide for a code of good conduct.

5. Cover the question of time of payment, revocability of payment?

M EVIDENCE

1. Bring Bank of England within the Bankers' Books Evidence Act 1879.

2. General question of admissability of EDP data as evidence.

3. **Paid cheques.**

N. INTERNATIONAL ASPECTS

Need to take account of a number of developments, including:

1. UNCITRAL Convention on International Bills of Exchange and International Promissory Notes (draft A/CN 9/274).

2. UNCITRAL draft Legal Guide on Electronic Funds Transfer (A/CN.9/250 and Add. 1-4 and A/CN.9/266 Add 1 and 2).

3. UNCITRAL work on legal value of computer records.

4. International Chamber of Commerce work on telecommunications and transborder data flows, documentary credits, inter-bank rules on late funds transfer, foreign exchange contracts.

5. CSCB Code of Practice for Demand Guarantees and Bonds.

6. SWIFT rules and standards.

7. International Law Association work on time of payment.

8. OECD work on EFT and consumers.

9. Various EEC initiatives relating to EFT.

10. Uniform Eurocheque Scheme.

O. REGULATION

1. Statutory recognition of the rules of the various clearings.

2. Need for statutory regulation of the clearings/payments system.

3. Need for regulation of individual providers of remittance services, where no deposit-taking is involved.

SAMPLE OF STATUTES REFERRED TO (IMPLICITLY OR EXPLICITLY) IN THE LIST OF TOPICS FOR THE BANKING LAW REVIEW

Bankers' Books Evidence Act 1879
Bills of Exchange Act 1882
Cheques Act 1957
Civil Evidence Act 1968
Currency and Bank Notes Act 1928
Data Protection Act 1984
Drug Trafficking Offences Act 1986
Police and Criminal Evidence Act 1984
Restrictive Trade Practices Act 1976
Statute of Fraud Investment Act 1882
Theft Act 1968

028/10

FROM: **M A HALL**

28 October 1986

ECONOMIC SECRETARY

c c PPS
PS/Sir P Middleton
Mr Cassell
Mrs Lomax
Mr D Jones
Mr Eversheds

Mr Croft T.Sol
Mr Jenkins T.Sol

BANKING BILL : PQs FROM SIR ELDON GRIFFITHS

Please see Derek Jones's minute below, which sets out very clearly the evolution of our policy on banking names. Sir Eldon's questions appear to be from the point of view of smaller institutions, which confirms the wisdom of sticking to a £5m threshold for banking names in the Banking Bill, rather than acceding to pressures from the banks themselves for a £10m threshold, at least at this stage.

2. There is a severe presentational difficulty in answering Sir Eldon's third question. This is set out in Derek Jones paragraph 8. There is nothing confidential about the information sought, and we and the Bank of England would look absurd if we said that to answer the question would be too time consuming.

3. To publish a list of institutions falling below the proposed threshold on the basis of their present paid up equity would certainly be misleading. And no doubt Hoares would be outraged.

4. I do, however, think that this is not information that can reasonably be refused; and to do so would provoke further, possibly more awkward questions. I therefore favour the idea of putting the information in the library, as being less high profile. I also suggest re-ordering the answer to question 47 to read as follows:-

"I will arrange for a list of authorised institutions with paid up equity capital at present below £5m to be placed in the library as soon as possible, and will notify the Hon Member. The Hon Member will, however, be aware that the Government intend to bring forward as soon as practicable legislation to strengthen the system of banking supervision, and whether any individual institution will be entitled to use a banking name will depend both on the precise test approved by Parliament, as well as on the position of the institution when the legislation comes into force."

MAH.

M A HALL

4032/002 NH

FROM: DEREK JONES
DATE: 28 October 1986

MW 27/10

Para 8 describes a serious practical difficulty. I have rejigged the first answer. See agreed minute MW.

1. MR M A HALL
2. ECONOMIC SECRETARY
3. PARLIAMENTARY SECTION

cc PPS
PS/Sir P Middleton
Mr Cassell
Mrs Lomax
Mr Evershed
Mr Croft, T.Sol o/r
Mr Jenkins, T.Sol

BANKING BILL: PQs FROM SIR ELDON GRIFFITHS

Sir Eldon Griffiths has tabled three PQs, for written answer, concerning the new policy on use of banking names to be included in the Bill.

Background

2. The history of our policy on banking names is as follows:

(i) under the two-tier system in the 1979 Act recognised banks are allowed to use banking names, ldts are not. (Recognised banks need £5 million net assets for authorisation as such: ldts £250,000).

(ii) the Leigh Pemberton Committee recommended abolition of the two-tier system and accepted that this implied the use of banking names by any authorised institution. They also recommended that the net assets requirement for authorisation under the 'single tier' should be £1 million.

(iii) the Bank issued consultative papers seeking views on the Committee's recommendations. (These were placed in the House Library at the time - see attached Hansard extract).

(iv) the BBA, CLSB, FHA and other consultees expressed concern that £1 million net assets was too little if it carried with it a right to use a banking name. Comments of this kind were received from:

BBA
CLSB
FHA
Law Society of Scotland
Institute of Chartered Accoutants
National Westminster
Lazards

(v) In November 1985 Sir Jeremy Morse wrote to the Chancellor and the Governor, on behalf of the BBA, arguing for a stricter test for use of banking names.

(vi) At the same time the Bank wrote to us at official level summarising the outcome of consultations; reporting the concerns in the banking community, and recommending a new simplified test for banking names.

(vii) In the light of these recommendations Ministers agreed to a new policy for inclusion in the White Paper published in December 1985. A new test of £5 million paid-up equity capital for use of a banking name was proposed: the basic test for authorisation to remain at £1 million net assets (ie paid-up capital and reserves).

(viii) One of the reasons for adopting £5 million equity as the new test was that, being close to the old £5 million net assets requirement for recognised banks, it would be unlikely to 'disenfranchise' former recognised banks which had banking names. Banks would either already meet the new test or be easily able to adjust their capital to do so. (Equity was also a simpler and more stable test.)

(ix) Following the White Paper proposal, only one recognised bank with a banking name (Hoares) made representations on the difficulty of meeting the test. In response, Ministers agreed to alter the nature of the test to allow non-distributable reserves, as well as paid-up equity, to count towards the £5 million. Details of how precisely to define the reserves in question

have still to be finalised. This change to the basic test proposed in the White Paper is not yet public, but will appear in the Bill.

(x) During the drafting of the Bill we have come under further pressure from the banks (the BBA) to increase the level to £10 million and, possibly, to switch to a net assets base. (They would have liked this to be in the publication print of the Bill). This pressure has been resisted on the grounds that the published proposal is already a departure from the Leigh Pemberton Committee's recommendation, and from the logic of a uniform system of authorisation/supervision. Also that, since there will inevitably be debate on where the line should be drawn, it would be better not to pre-empt this by further changes prior to introduction.

(xi) Earlier this month Mr Galpin wrote to Mr Cassell reporting that the new Board of Banking Supervision had considered the policy on banking names and also recommended an increase to £10 million. Although the £5 million level was a Bank recommendation, the Bank also now appear to support an increase, possibly with a transitional period to cushion any adverse effect on existing recognised banks. We have not yet replied to Mr Galpin's letter, but the intention is still to resist any changes prior to introduction.

PQs

3. Sir Eldon Griffiths has asked:

(a) if the Chancellor will place in the House Library copies of the consultative papers he sent out to interested parties in the course of his discussions with the banking industry on the Leigh Pemberton Committee's report, together with a list of the persons and institutions to which each of those papers was sent.

(b) What consultations the Chancellor had with interested parties before he published in his White Paper on Banking Superivison the proposal that only institutions with five million pounds paid up equity be allowed to use the word bank as part of their name; and if he will list the persons and institutions to whom he addressed requests for comment on this point, and

(c) if the Chancellor will publish a list of the currently authorised deposit takers that fall outside the £5 million limit in paid-up equity which he now proposes to apply before allowing the use of the word bank as part of their name.

Analysis

4. Although the only pressure of which we are aware is that from the banks and the Board for an increase in the requirement, it seems more likely from the line of questioning that Sir Eldon wishes to argue for the removal of the requirement, and a return to the original Leigh Pemberton Committee recommendation.

5. The argument would be that it was more logical, and pro-competitive, not to impose the test; that the early Consultative papers issued by the Bank - which went to all authorised institutions - took this line; and that between then and the publication of the White Paper the Government was 'got at' by the banks, who have a vested interest in retaining a size criterion, and that this was done without further consultation with the small institutions. The case implies that 'fair competition' outweighs the risk of the public being misled or put at risk by allowing all authorised institutions to use a banking name (especially bearing in mind that they will all be able to use banking descriptions).

6. On the assumption that we continue to resist any change in policy - in either direction - prior to introduction of the Bill (it would not now be practical to introduce changes for Legislation Committee on 5 November), the proposed draft replies are intended to defend the consultative process and

the policy that resulted. The strengths of our present position are that:

- the £5 million test was introduced only as a result of representations during the consultative period. There was considerable weight of feeling in favour of a test.

- the policy was clearly set out at an early stage (White Paper December 1985).

- since then we have not received strong representations against the policy, except that

- the banks think the test is too low, in which case

- it probably represents a reasonable compromise given genuine arguments on both sides.

7. The smaller institutions do not have a representative body to speak for them, nor, after the White Paper, did we receive representations from individual small institutions complaining about a £5 million test. Most FHA members are ldts, but the FHA have not opposed it either. The Bank report only one vociferous critic - Manchester Exchange Trust - an ldt which used the name Manchester Exchange Bank prior to the 1979 Act.

8. There are however some additional problems concerning question (c) above. This asks for a list of authorised institutions that would not be able to meet the proposed test. The first problem is that, while we cannot claim that the information is confidential (being available from published accounts), the institutions concerned may consider it damaging to their reputations and business to appear on such a list at this stage. Most offended would be institutions which currently have less than £5 million but intend to increase their capital before the new Act comes into force. The second problem is that we have not publicised our intention to amend the test to include non-distributable reserves, nor finalised details. We would not want to do so before the Bill is

published. Hoares would therefore appear on the list. The third problem is that the Bank advise that it will take them the best part of a week to get the capital figures from their records and to check them (because of the sensitivity mentioned above, the Bank must take some trouble to avoid mistakes and there are some 600 authorised institutions, half of which are ldts). If you wish to offer a list, then a holding reply would be needed, although the answer might alternatively take the form of a promise to place a list in the Library as soon as possible, if you would prefer that approach. Otherwise, it would be a matter of resting on a statement that a list at this stage would not be appropriate.

Draft Replies

9. The following draft replies are recommended:

(a) Question 35: "I refer my hon friend to the reply given by the Chancellor of the Exchequer to the hon Member for Stafford (Mr Cash) on 19 July 1985 (OR col. 289). The consultative papers in question were sent to all institutions at that time authorised to take deposits under the Banking Act 1979; to major UK accounting firms; to a number of UK Government Departments and supervisory authorities in other countries; and to the following bodies:

The British Bankers Association

The Committee of London Clearing Bankers

The Committee of Scottish Clearing Bankers

The Finance Houses Association

The Institute of Chartered Accountants in England and Wales

The Institute of Chartered Accountants in Ireland

The Institute of Chartered Accountants in Scotland

The National Association of Security Dealers and Investment Managers

The Registry of Friendly Societies

The Securities and Investments Board

The Stock Exchange.

The Bank of England also invited representations from any other interested individuals, institutions or representative bodies. Copies of the consultative papers were placed in the House Library at the time they were issued".

(b) Question 36: "I refer my hon friend to the reply to his previous question. The proposal that only institutions with £5 million paid-up equity capital be allowed to use the word "bank" as part of their name was made in the light of representations received following the issue of the consultative papers".

(c) Question 47: "The Government intend to bring forward as soon as practicable legislation to implement the proposals in the White Paper on Banking Supervision (Cmnd 9695). Whether any individual institution will be entitled to use a banking name will depend both on the precise nature of any test approved by Parliament and on the situation of the institution at the time when the legislation comes into force.

[The following UK incorporated institutions have paid-up equity capital below £5 million, as recorded in their latest published accounts:

LIST]

OR

[I will arrange for a list of authorised institutions with paid-up equity capital below £5 million to be placed in the Library as soon as possible, and will notify the hon Member.]"

DEREK JONES

Banking Supervision

Mr. Cash asked the Chancellor of the Exchequer how consultation is to be conducted on the report of the committee set up to consider the system of banking supervision, Cmnd. 9550.

Mr. Lawson: The Bank of England is publishing today two consultative papers, one entitled "Banking Act 1979; Proposals for Legislative Change" and the other "Large Exposures Undertaken by Institutions Authorised Under the Banking Act 1979." Copies of these papers have been sent to all institutions authorised under the Banking Act 1979, and to the main banking associations. The Bank of England has also invited representations from any interested individuals, institutions or representative bodies.

Copies of the two papers have been placed in the Library of the House. A third paper, on the proposed new arrangements between the Bank of England supervisors and the auditors of authorised institutions will be published by the bank shortly, and also placed in the Library.

3745/044

PLP

FROM: P D P BARNES
DATE: 29 October 1986

MR D JONES

cc PPS
Sir P Middleton
Mr Cassell
Mrs Lomax
Mr M Hall
Mr Evershed
Mr Croft T.Sol
Mr Jenkins T.Sol

BANKING BILL : PQS FROM SIR ELDON GRIFFITHS

The Economic Secretary was grateful for your submission of 28 October, and for Mr Hall's covering submission of the same date.

2. The Economic Secretary would like to group the replies to questions 35 and 36. The reply to these questions will be the same as the draft reply to question 35 in paragraph 9(a) of your submission, except that:-

(i) a further sentence should be inserted before the existing final sentence of the reply, to read, "all institutions were invited to comment on all matters in the consultative papers."

(ii) the second sentence of the existing draft reply to Question 36 should be added to the end of the existing reply.

3. On question 47, the Economic Secretary would like to retain the existing first sentence of the draft reply, but then simply to add "but I will write to the Hon Member after the Bill is published." The Economic Secretary thinks that it would be inadvisable to give a commitment in Hansard even to placing the list of relevant institutions in the Library.

The Economic Secretary will attempt to contact Sir E Griffiths in the House, and dissuade him from insisting on this information being made public by pointing out the sensitivities involved. The Economic Secretary would be grateful for an idea of roughly how many relevant institutions would appear on such a list.

PB

P D P BARNES
Private Secretary

RC2.57

FROM: CATHY RYDING
DATE: 29 October 1986

PS/ECONOMIC SECRETARY

cc PS/Sir P Middleton
Mr Cassell
Mrs Lomax
Mr Hall
Mr D Jones
Mr Evershed
Mr Croft - T.Sol
Mr Jenkins - T.Sol

BANKING BILL: PQs FROM SIR ELDON GRIFFITHS

The Chancellor has seen Mr Hall's minute to the Economic Secretary of 28 October.

2. The Chancellor has commented that there will clearly be considerable pressure here; and the Economic Secretary will in due course wish to consider whether, even if he does feel we have to move above £5 million, we need to go as far as £10 million.

C.R

CATHY RYDING

RA7.21

FROM: A C S ALLAN
DATE: 31 October 1986

Spare.

PS/ECONOMIC SECRETARY

cc PS/Financial Secretary
Sir P Middleton
Sir G Littler
Mr Cassell
Mrs Lomax
Mr Board
Mr D Jones
Mr Hosker - T.Sol.
Mr Jenkins - T.Sol.
Mr R I L Allen - BoE
Mr de Waal - Parly Counsel

BANKING BILL: EFT/POS AND THE REVIEW OF BANKING LAW

The Chancellor has seen your letter of 28 October to Joan MacNaughton. He has commented that this must now be resolved quickly (on our terms) and not be allowed to hold up progress on the Bill.

ACSA

A C S ALLAN

3743/1

FROM: P D P BARNES
DATE: 7 November 1986

MR D JONES

cc: PPS
PS/Chief Secretary
PS/Financial Secretary
PS/Sir P Middleton
Mr Cassell
Mrs Lomax
Mr M Hall
Mr Dyer
Mr Hosker, T/Sol
Mr Croft, T/Sol

C/content with X?
OK by me. PB CR 10/11

BANKING BILL

Your submission of 17 October suggested some names as backers for the Banking Bill.

X Subject to the Ministers in question being content, the Economic Secretary would like the backers to be: from the Treasury, the Chancellor, the Chief Secretary, the Financial Secretary and himself; and from other departments, Messrs Channon, Howard, Hurd, and Rifkind.

PB

P D P BARNES
Private Secretary

4070/1

PWP

CONFIDENTIAL

FROM: B O DYER
DATE: 7 November 1986

01-233 4749

MR D JONES - FIM

cc PS/Chancellor
PS/Economic Secretary
Mrs R Lomax
Mr M A Hall
Mr R Culpin

BANKING BILL

In the light of our telephone conversation earlier this morning, I attach a summary of key events in an idealised timetable for the Bill's passage through the Commons; which you may find helpful to have to hand in the coming weeks. It is designed more towards aiding officials handling the Bill, rather than Ministers.

B O DYER
Parliamentary Clerk

PS : Clearly, it would be helpful to know in the next couple of days the Minister's wishes on the question of which Ministerial colleagues should be invited to back the Bill. In addition to the Treasury team, I would have thought we might seek the agreement of the Secretary of State for Trade and Industry and the Home Secretary (or, at least, a representative Minister from each of these two departments).

When we have an approved list, I would be happy to seek their formal agreement if you would like me to do so.

B.D.

BANKING BILL : SUMMARY OF KEY EVENTS IN THE TIMETABLE FOR ITS PASSAGE THROUGH THE COMMONS

(NB: The informative notes may not be regarded as exhaustive)

Idealised Timetable	Events
Wednesday 12 November	Parly. Counsel hands the Bill, with notice of presentation and the list of backers, to the Public Bill Office
Thursday 13 November	Formal First Reading (EST to 'nod' it through at the commencement of public business)
Later that same day or the following morning	Publication of the Bill with Explanation and Financial Memorandum which sets out the main provisions of the Bill and their effect on public (incl. LA) expenditure and manpower (NB. Background notes for issue to the Lobby/Press are usually made available to coincide with publication).
Two weeks after publication of the Bill (conventionally 2 weekends after publication)	Second Reading Debate on the Floor of the House on the general policy and principles of the proposed legislation (NB. Notes on Clauses for Ministers participating in the debate will be required in good time for Second Reading. It is recommended that these notes are constructed in two parts. Part I should contain a short note on the purpose of the clause,

	followed by a more detailed explanation. These should be factual and as short as they can be conveniently made. Thus, Part I can be viewed and used as the 'sanitised' version which by convention is given to Members of the Standing Committee for the Bill's Committee Stage. Part II is for Ministers and supporting officials only; containing speaking notes on the main points to be made during debate and also defensive notes on likely Opposition views. These notes will be particularly helpful to the Minister winding up the Second Reading debate and will remain useful throughout the passage of the Bill).
Immediately following Second Reading (usually as exempted business for 45 minutes - ie at 10pm).	Money Resolution: a resolution, sometimes debated, to authorise any new expenditure consequent upon the passage of the Bill (followed, if necessary, by a ways and means resolution: to provide the ways and means - or revenue - to meet national expenditure and, consequently, to influence the national economy).
1/2 weeks after Second Reading	Committee of Selection meets to decide membership of Standing Committee to which the Bill has been committed for its Committee Stage (Standing Committee will comprise of Members

	from both sides of the House selected to accord with the balance of parties and to include those with a known interest in the Bill).
At least two sitting days before start of Standing Committee Stage	Table motion specifying order of proceedings in Standing Committee and timetable for sitting.
1/2 weeks after meeting of Committee of Selection	Committee Stage - first day in Standing Committee (assuming a Standing Committee is available): discusses detail of each clause, with amendments (Standing Committees usually meet on two days each week (morning), but can agree to meet additionally in the afternoon/evening also).
At conclusion of Committee Stage	Bill reprinted as amended in Committee.
At least two sitting days before Report Stage	Table any motions/resolutions required to: a) Allow new clauses to be taken at Report: b) affect order of proceedings at report.
Two weekends after completion of Committee Stage	Report Stage on the Floor of the House: an opportunity to reconsider the Bill in its latest form and to propose amendments or new clauses.

After Report Stage but before Third Reading	[Queen's and Prince of Wales' consent: only necessary if the Bill affects their prerogative, property or revenue].
ASAP after completion of Report Stage	Third Reading: similar to Second Reading in that the Bill is considered as a whole. The essential difference is that unless notice is given by at least six Members, either of an amendment to the question for Third Reading or of a motion that the question be not put, the question is put immediately and without debate.
Circa two weeks after Third Reading	The Bill passed to the Lords accompanied by a message seeking their concurrence and given a formal First Reading. [NB. The Explanatory and Financial Memorandum is revised to take account of modification made in the Commons].
	The Bills subsequent passage through the Lords is broadly similar to that in the Commons, except that there is no Standing Committee stage, but taken in Committee of the Whole House.