
STATUTORY INSTRUMENTS

2004 No. 1862

The Financial Conglomerates and Other
Financial Groups Regulations 2004

PART 5

Miscellaneous

Consultation on change of control

13.—(1) The Financial Services and Markets Act 2000 (Consultation with Competent Authorities) Regulations 2001⁽¹⁾ are amended as follows.

- (2) In regulation 2 (definitions), after the definition of “EEA credit institution”, insert—
““EEA insurance undertaking” means an EEA firm falling within paragraph 5(d) of Schedule 3 to the Act;”.
- (3) In regulation 3, for “paragraph (1), (2) or (3)”, substitute “paragraph (1), (2), (3) or (4)”.
- (4) In regulation 4(a), for “paragraph (1), (2) or (3)”, substitute “paragraph (1), (2), (3) or (4)”.
- (5) In regulation 5—
- (a) in paragraph (1), for sub-paragraph (c), substitute—
“**(c)** the acquirer is any of the following—
(i) an EEA investment firm;
(ii) an EEA credit institution;
(iii) an EEA insurance undertaking; or
(iv) the parent undertaking of an EEA firm of a kind specified by paragraph (i), (ii) or (iii);”;
- (b) in paragraph (2), for sub-paragraph (c), substitute—
“**(c)** the acquirer is any of the following—
(i) an EEA investment firm;
(ii) an EEA credit institution;
(iii) an EEA insurance undertaking; or
(iv) the parent undertaking of an EEA firm of a kind specified by paragraph (i), (ii) or (iii);”;
- (c) in paragraph (3), for sub-paragraph (c), substitute—
“**(c)** the acquirer is any of the following—
(i) an EEA investment firm;
(ii) an EEA credit institution;

- (iii) an EEA insurance undertaking;
 - (iv) an EEA management company; or
 - (v) the parent undertaking of an EEA firm of a kind specified by paragraph (i), (ii), (iii) or (iv);”;
- (d) after paragraph (3), insert—
- “(4) This paragraph applies where—
- (a) a person (“the acquirer”) proposes to acquire or has acquired control, an additional kind of control or an increase in a relevant kind of control over a UK authorised person in circumstances falling within section 178(1) or (2) of the Act;
 - (b) that UK authorised person has permission to effect or carry on contracts of insurance (within the meaning of the Regulated Activities Order);
 - (c) the acquirer is any of the following—
 - (i) an EEA investment firm;
 - (ii) an EEA credit institution;
 - (iii) an EEA insurance undertaking; or
 - (iv) the parent undertaking of an EEA firm of a kind specified by paragraph (i), (ii) or (iii); and
 - (d) as a result of the acquisition or proposed acquisition, the acquirer is or would become a parent undertaking of the UK authorised person.”.
- (6) For regulation 6, substitute—
- “6. The requirement specified by this regulation is that the Authority must, as the case may be, consult the home state regulator of any EEA firm that is mentioned in paragraph (1) (c), (2)(c), (3)(c) or (4)(c) of regulation 5.”.
- (7) After regulation 6, insert—
- “7.—(1) Where paragraph (3) applies, the requirement specified by paragraph (5) is prescribed for the purposes of section 183(2) of the Act and so must be complied with by the Authority before it determines whether to approve the change of control or give a warning notice under section 183(3) or 185(3) of the Act.
- (2) Where paragraph (4) applies, the requirement specified by paragraph (5) is prescribed for the purposes of section 188(2) of the Act and so must be complied with by the Authority before it gives a warning notice under section 188(1) of the Act.
- (3) This paragraph applies where—
- (a) a person (“the acquirer”) proposes to acquire or has acquired control, an additional kind of control or an increase in a relevant kind of control over a UK authorised person in circumstances falling within section 178(1) or (2) of the Act;
 - (b) that UK authorised person has an EEA right to carry on an activity in an EEA State other than the United Kingdom which derives from any of—
 - (i) the insurance directives;
 - (ii) the banking consolidation directive;
 - (iii) the investment services directive; or
 - (iv) the UCITS directive; and

- (c) that UK authorised person is a member of a financial conglomerate (within the meaning of article 2(14) of Directive [2002/87/EC](#) of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives [73/239/EEC](#), [79/267/EEC](#), [92/49/EEC](#), [93/6/EEC](#), [93/22/EEC](#) and Directives [98/78/EC](#) and [2000/12/EC](#) of the European Parliament and of the Council).
- (4) This paragraph applies where—
 - (a) a circumstance has arisen in respect of which the Authority may give a decision notice to a UK authorised person under section 187 of the Act;
 - (b) that UK authorised person has an EEA right to carry on activity in an EEA State other than the United Kingdom which derives from any of—
 - (i) the insurance directives;
 - (ii) the banking consolidation directive;
 - (iii) the investment services directive; or
 - (iv) the UCITS directive;
 - (c) that UK authorised person is a member of a financial conglomerate (within the meaning of article 2(14) of Directive [2002/87/EC](#) of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives [73/239/EEC](#), [79/267/EEC](#), [92/49/EEC](#), [93/6/EEC](#), [93/22/EEC](#) and Directives [98/78/EC](#) and [2000/12/EC](#) of the European Parliament and of the Council).
- (5) The requirement specified by this paragraph is that the Authority must, where it considers that the action it proposes to take—
 - (a) constitutes a major sanction or an exceptional measure; and
 - (b) is of importance for the supervisory tasks of the home state regulator of any EEA firm that is a member of a financial conglomerate and is—
 - (i) an EEA investment firm;
 - (ii) an EEA credit institution; or
 - (iii) an EEA insurance undertaking,consult that home state regulator.
- (6) But paragraph (5) does not apply where the Authority—
 - (a) considers that there is an urgent need to act;
 - (b) considers that such consultation may jeopardise the effectiveness of any action to be taken by it; or
 - (c) has already consulted that home state regulator regarding that matter.
- (7) Where paragraph (5) does not apply by virtue of paragraph (6)(a) or (b), the Authority must inform the home state regulator in question as soon as is reasonably practicable.”.

References to existing directives

14.—(1) In section 119(2B) of the Building Societies Act 1986 (definition of “Banking Consolidation Directive”)(2), at the end insert “(as last amended by Directive 2002/87/EC of the European Parliament and of the Council)”.

(2) In section 17(7C) of the Bank of England Act 1998 (power to obtain information)(3), after “Council Directive 2000/12/EC of the European Parliament and the Council”, insert “(as last amended by Directive 2002/87/EC of the European Parliament and of the Council)”.

(3) In article 2(3) of the Cash Ratio Deposits (Eligible Liabilities) Order 1998 (interpretation)(4), at the end, insert “(as last amended by Directive 2002/87/EC of the European Parliament and of the Council)”.

(4) In the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001(5), in regulation 2(5)(e)(i) and regulation 3(3)(e)(i) (content of consent and regulator’s notice), after “first non-life insurance directive”, insert “(as last amended by Directive 2002/87/EC of the European Parliament and of the Council)”.

Extension of power to vary Part IV permissions

15.—(1) Subject to paragraph (2), the Authority may exercise its own-initiative power (within the meaning of section 45 of the Act (variation etc. on the Authority’s own initiative)) in relation to an authorised person, if it appears to it that it is desirable to do so for the purpose of—

- (a) carrying out supplementary supervision in accordance with the conglomerates directive;
- (b) acting in accordance with any of Articles 54, 55a or 56 of the banking consolidation directive (as they are applied by that directive or by article 7(2) or (3) of the capital adequacy directive); or
- (c) acting in accordance with Article 8(2) or Annex I.1.B of Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance undertakings in an insurance group.

(2) The Authority may exercise its own-initiative power, for the purposes set out in paragraph (1), to vary a Part IV permission in any of the ways mentioned in section 44(1) of the Act (variation etc. at request of authorised person); and this extends to including any provision in the permission as varied that could be included if a fresh permission were given in response to an application under section 40 of the Act (application for permission).

(3) The duty imposed by subsection (2) of section 41 of the Act (the threshold conditions) does not prevent the Authority from exercising its own-initiative power for the purposes set out in paragraph (1).

(2) 1986 c. 53; definition inserted by S.I. 1996/1669, substituted by S.I. 2000/2952.

(3) 1998 c. 11; section 17(7C) was inserted by S.I. 2001/3649.

(4) S.I. 1998/1130; article 2(3) was amended by S.I. 2000/2952.

(5) S.I. 2001/2511; regulation 2 was amended by S.I. 2002/765 and S.I. 2003/2066 and regulation 3 was amended by S.I. 2003/1473 and S.I. 2003/2066.