
DRAFT STATUTORY INSTRUMENTS

2001 No.

The Uncertificated Securities Regulations 2001

PART 2

THE OPERATOR

APPROVAL AND COMPLIANCE

Applications for approval

4.—(1) Any person may apply to the Treasury for their approval of him as Operator of a relevant system.

(2) The application shall be made in such manner as the Treasury may direct and shall be accompanied by—

- (a) a copy of the rules and any guidance to be issued by the applicant; and
- (b) such other information as the Treasury may reasonably require for the purpose of determining the application.

(3) At any time after receiving an application and before determining it, the Treasury may require the applicant to provide such further information as they reasonably consider necessary to enable them to determine the application.

(4) Information which the Treasury require under this regulation shall, if they so require, be provided in such form, or verified in such manner, as they may direct.

(5) Different directions may be given, or requirements imposed, by the Treasury with respect to different applications.

Grant and refusal of approval

5.—(1) If, on an application made under regulation 4, it appears to the Treasury that the requirements of Schedule 1 (which imposes requirements which must appear to the Treasury to be satisfied with respect to an Operator, his rules and practices and the relevant system) are satisfied with respect to the application, they may—

- (a) subject to the payment of any fee charged by virtue of regulation 6(1); and
- (b) subject to the provisions of Schedule 2,

approve the applicant as Operator of a relevant system.

(2) In considering an application, the Treasury may have regard to any information which they consider is relevant to the application.

(3) An approval under this regulation shall be by instrument in writing and shall state the date on which it is to take effect.

(4) Schedule 3 shall have effect in relation to a decision to refuse an application made under regulation 4 as if references to an Operator were to the applicant.

(5) Provided that it had not been withdrawn before these Regulations came into force, an approval granted to a person under regulation 5 of the 1995 Regulations shall be treated as having been granted under this regulation.

Fees charged by the Treasury

6.—(1) The Treasury may charge a fee to a person seeking approval as Operator of a relevant system.

(2) The Treasury may charge an Operator a periodical fee.

(3) Any fee chargeable by the Treasury under this regulation shall not exceed an amount which reasonably represents the amount of costs incurred—

- (a) in the case of a fee charged to a person seeking approval, in determining whether to grant approval; and
- (b) in the case of a periodical fee, in satisfying themselves that the Operator, his rules and practices and the relevant system continue to meet the requirements of Schedule 1 and that the Operator is complying with any obligations imposed on him by or under these Regulations.

(4) For the purposes of paragraph (3), the costs incurred by the Treasury shall be determined on the basis that they include such proportion of the following matters as are properly attributable to the performance of the relevant function—

- (a) expenditure on staff, equipment, premises, facilities, research and development;
- (b) the allocation, over a period of years, whether before or after the coming into force of these Regulations, of any initial expenditure incurred wholly and exclusively to perform the function or to prepare for its performance;
- (c) any notional interest incurred on any capital expended on or in connection with the performance of the function or in preparing for its performance and, in a case in which any function is exercisable by the designated agency, any actual interest payable on any sums borrowed which have been so expended; and
- (d) any other matter which, in accordance with generally accepted accounting principles, may properly be taken account of in ascertaining the costs properly attributable to the performance of the function.

(5) For the purposes of paragraph (4)(c)—

- (a) “notional interest” means any interest which that person might reasonably have been expected to have been liable to pay had the sums expended been borrowed at arm’s length; and
- (b) “actual interest” means the actual interest paid on sums borrowed in a transaction at arm’s length and, where a sum has been borrowed otherwise than in such a transaction, means whichever is the lesser of the interest actually paid and the interest that might reasonably have been expected to be paid had the transaction been at arm’s length.

(6) Any fee received by the Treasury under this regulation shall be paid into the Consolidated Fund.

(7) Any fee received by the designated agency under this regulation may be retained by it.

SUPERVISION

Withdrawal of approval

7.—(1) The Treasury may withdraw an Operator’s approval at the request, or with the consent, of the Operator.

(2) If it appears to the Treasury that—

- (a) any requirement of Schedule 1 is not satisfied in relation to an Operator; or
- (b) an Operator is failing or has failed to comply with any obligation imposed on him by or under these Regulations,

they may withdraw approval from that Operator by written instrument even though the Operator does not wish his approval to be withdrawn.

(3) Schedule 3 shall have effect as regards the procedure to be followed before withdrawing an Operator’s approval under paragraph (2).

(4) An instrument withdrawing an Operator’s approval shall state the date on which it is to take effect.

(5) In the case of an instrument withdrawing an Operator’s approval under paragraph (2), the date stated shall not be earlier than the end of the period of three months beginning with the day on which the instrument is executed.

(6) An instrument withdrawing an Operator’s approval may contain such transitional provisions as the Treasury think necessary or expedient.

Compliance orders and directions

8.—(1) This regulation applies if it appears to the Treasury that—

- (a) any requirement of Schedule 1 is not satisfied, or is likely not to be satisfied, in relation to an Operator; or
- (b) an Operator has failed to comply with any obligation imposed on him by or under these Regulations.

(2) The Treasury may—

- (a) make an application to the court; or
- (b) subject to paragraph (4), direct the Operator to take specified steps for the purpose of securing—
 - (i) that the relevant requirement of Schedule 1 is satisfied in relation to the Operator; or
 - (ii) the Operator’s compliance with any obligation of the kind in question.

(3) If on any application by the Treasury under paragraph (2)(a) the court is satisfied that the relevant requirement of Schedule 1 is not satisfied or is likely not to be satisfied, or, as the case may be, that the Operator has failed to comply with the obligation in question, it may order the Operator to take such steps as the court directs for securing that the requirement is satisfied or that the obligation is complied with.

(4) Schedule 3 shall have effect as regards the procedure to be followed before giving a direction under paragraph (2)(b).

(5) A direction under paragraph (2)(b) is enforceable, on the application of the Treasury, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988(1).

(6) The jurisdiction conferred by paragraph (3) shall be exercisable by the High Court and the Court of Session.

(7) The fact that a rule made or condition imposed by an Operator has been altered in response to a direction given by the Treasury under paragraph (2)(b) or an order of the court under paragraph (3) does not prevent it from being subsequently altered or revoked by the Operator.

Injunctions and restitution orders

9.—(1) If on the application of the Treasury the court is satisfied—

- (a) that there is a reasonable likelihood that any person will contravene a relevant rule; or
- (b) that any person has contravened a relevant rule, and that there is a reasonable likelihood that the contravention will continue or be repeated,

the court may make an order restraining (or in Scotland an interdict prohibiting) the contravention.

(2) If on the application of the Treasury the court is satisfied—

- (a) that any person has contravened a relevant rule; and
- (b) that there are steps which could be taken for remedying the contravention,

the court may make an order requiring that person and any other person who appears to the court to have been knowingly concerned in the contravention to take such steps as the court may direct to remedy it.

(3) No application shall be made by the Treasury under paragraph (1) or (2) in respect of a relevant rule unless it appears to them that the Operator of the relevant system is unable or unwilling to take appropriate steps to restrain the contravention or to require the person concerned to take such steps as are mentioned in paragraph (2)(b).

(4) If on the application of the Treasury the court is satisfied that any person may have—

- (a) contravened a relevant rule; or
- (b) been knowingly concerned in the contravention of a relevant rule,

the court may make an order restraining (or in Scotland an interdict prohibiting) him from disposing of, or otherwise dealing with, any assets of his which it is satisfied he is reasonably likely to dispose of or otherwise deal with.

(5) The court may, on the application of the Treasury, make an order under paragraph (6) if it is satisfied that a person has contravened a relevant rule, or been knowingly concerned in the contravention of such a rule, and—

- (a) that profits have accrued to him as a result of the contravention; or
- (b) that one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.

(6) The court may order the person concerned to pay to the Treasury such sum as appears to the court to be just having regard—

- (a) in a case within subparagraph (a) of paragraph (5), to the profits appearing to the court to have accrued;
- (b) in a case within subparagraph (b) of that paragraph, to the extent of the loss or other adverse effect; or
- (c) in a case within both of those subparagraphs, to the profits appearing to the court to have accrued and to the extent of the loss or other adverse effect.

(7) Subsections (3) to (5) and (8) of section 382 of the 2000 Act shall apply in relation to an application of the Treasury under paragraph (5) as they have effect in relation to an application of the Authority under subsection (1) of that section; and in those subsections as they so apply—

- (a) the references to subsections (1) and (2) shall be taken to be references to paragraphs (5) and (6) respectively;
 - (b) the references to paragraphs (a) and (b) of subsection (1) shall be taken to be references to subparagraphs (a) and (b) respectively of paragraph (5).
- (8) The jurisdiction conferred by this Regulation shall be exercisable by the High Court and the Court of Session.
- (9) Nothing in this regulation affects the right of any person other than the Treasury to bring proceedings in respect of matters to which this regulation applies.
- (10) In this regulation, “relevant rule” means any provision of the rules of an Operator to which the person in question is subject and which regulate the carrying on by that person of business of any of the following kinds—
- (a) dealing in investments as principal;
 - (b) dealing in investments as agent;
 - (c) arranging deals in investments;
 - (d) managing investments;
 - (e) safeguarding and administering investments;
 - (f) sending dematerialised instructions;
 - (g) establishing etc. a collective investment scheme;
 - (h) advising on investments; or
 - (i) agreeing to carry on any of the activities mentioned in paragraphs (a) to (h).
- (11) In paragraph (2), references to remedying a contravention include references to mitigating its effect.
- (12) Paragraph (10) shall be read with—
- (a) section 22 of the 2000 Act;
 - (b) any relevant order under that section; and
 - (c) Schedule 2 to that Act.

Provision of information by Operators

10.—(1) The Treasury may, in writing, require an Operator to give them such information as they may specify.

(2) The Treasury may also, in writing, require an Operator to give them, at such times or in respect of such periods as they may specify, such information relating to that Operator as they may specify.

(3) Any information required to be given under this regulation shall be only such as the Treasury may reasonably require for the exercise of their functions under these Regulations.

(4) The Treasury may require information to be given by a specified time, in a specified form and to be verified in a specified manner.

(5) If an Operator—

- (a) alters or revokes any of his rules or guidance; or
- (b) makes new rules or issues new guidance,

he shall give written notice to the Treasury without delay.

Delegation of Treasury functions

11.—(1) Subject to paragraphs (2) and (5), the Treasury may by instrument in writing delegate all or any of the functions conferred by this Part of these Regulations to the Authority; and references in these Regulations to the “designated agency” are references to the Authority so far as such functions are so delegated.

(2) The functions conferred on the Treasury by regulation 12 may not be delegated.

(3) The designated agency shall send to the Treasury a copy of any guidance issued by virtue of these Regulations and any requirements imposed by it on an Operator by virtue of regulation 10, and give them written notice of any amendment or revocation of, or addition to, any such guidance or requirements.

(4) The designated agency shall—

- (a) send to the Treasury a copy of any guidance issued by it which is intended to have continuing effect and is issued in writing or other legible form; and
- (b) give them written notice of any amendment or revocation of, or addition to, guidance issued by it,

but notice need not be given of the revocation of guidance other than is mentioned in subparagraph (a) or of any amendment or addition which does not result in or consist of such guidance as is there mentioned.

(5) The Treasury shall not delegate any function to the Authority unless they are satisfied that—

- (a) any guidance issued by it in the exercise of its functions under these Regulations;
- (b) any requirements imposed by it on an Operator by virtue of regulation 10;
- (c) any guidance proposed to be issued by it in the exercise of its functions under these Regulations; and
- (d) any requirements it proposes to impose on an Operator by virtue of regulation 10,

do not have, and are not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition, or if they have or are intended or likely to have that effect to any significant extent, that the effect is not greater than is necessary for the protection of investors.

(6) The powers conferred by paragraph (7) shall be exercisable by the Treasury if at any time it appears to them that—

- (a) any guidance issued by the designated agency in the exercise of its functions under these Regulations;
- (b) any requirements imposed by the designated agency on an Operator by virtue of regulation 10; or
- (c) any practices of the designated agency followed in the exercise of its functions under these Regulations,

have, or are intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition and that the effect is greater than is necessary for the protection of investors.

(7) The powers exercisable under this paragraph are—

- (a) to resume all or any of the functions delegated to the designated agency by the written instrument referred to in paragraph (1); or
- (b) to direct the designated agency to take specified steps for the purpose of securing that the guidance, requirements or practices in question do not have the effect mentioned in paragraph (6).

(8) The Treasury may by written instrument—

- (a) at the request or with the consent of the designated agency; or

(b) if at any time it appears to them that the designated agency is unable or unwilling to discharge all or any of the functions delegated to it,

resume all or any of the functions delegated to the designated agency under paragraph (1).

(9) Neither the designated agency nor any person who is, or is acting as, a member, officer or member of staff of the designated agency shall be liable in damages for anything done or omitted in the discharge or purported discharge of functions delegated under paragraph (1) unless the act or omission is shown to have been in bad faith.

(10) In this regulation—

(a) any reference to guidance issued to an Operator by the designated agency is a reference to any guidance issued or any recommendation made by the designated agency in writing, or other legible form, which is intended to have continuing effect, and is issued or made to an Operator; and

(b) references to the practices of the designated agency are references to the practices of the designated agency in its capacity as such.

(11) If under paragraph (1) the Treasury delegate to the designated agency the Treasury's function of making applications to the court under regulation 9(5), the reference to the Treasury in regulation 9(6) shall, unless the Treasury otherwise provide in the instrument by which that function is delegated, be taken as a reference to the designated agency.

International obligations

12.—(1) If it appears to the Treasury that any action proposed to be taken by an Operator or the designated agency would be incompatible with Community obligations or any other international obligations of the United Kingdom they may direct the Operator or the designated agency, as the case may be, not to take that action.

(2) If it appears to the Treasury that any action which an Operator or the designated agency has power to take is required for the purpose of implementing any such obligations, they may direct the Operator or the designated agency, as the case may be, to take that action.

(3) A direction under this regulation—

(a) may include such supplemental or incidental requirements as the Treasury consider necessary or expedient; and

(b) is enforceable, on an application made by the Treasury, by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

Prevention of restrictive practices

13. Schedule 2 (prevention of restrictive practices) shall have effect.