
STATUTORY INSTRUMENTS

1990 No. 354 (C.12)

FINANCIAL SERVICES

**The Companies Act 1989 (Commencement No. 3,
Transitional Provisions and Transfer of Functions
under the Financial Services Act 1986) Order 1990**

Made - - - - 26th February 1990

The Secretary of State, in exercise of his powers under sections 203(3), 206(2) and (3) and 215(2) and (3) of the Companies Act 1989(1), hereby makes the following Order —

Citation and interpretation

1. This Order may be cited as the Companies Act 1989 (Commencement No. 3, Transitional Provisions and Transfer of Functions under the Financial Services Act 1986) Order 1990.

2. In this Order: —

“SIB” means the body known as The Securities and Investments Board;

“the 1986 Act” means the Financial Services Act 1986(2); and

“the 1989 Act” means the Companies Act 1989.

Provisions of the 1989 Act commenced by this Order

3. The following provisions of the 1989 Act shall come into force on 15th March 1990 subject to the transitional provisions and savings set out in article 6 below: Section 192 insofar as it inserts section 47A into the 1986 Act Section 193 insofar as is necessary in order to enable regulations to be made under section 62A of, and paragraph 22A of Schedule 11 to, the 1986 Act as amended by the 1989 Act Sections 194 to 200 Sections 203 to 205 Section 206(1) except insofar as it relates to the insertion by paragraph 32 of Schedule 23 to the 1989 Act of paragraph 13B into Schedule 11 to the 1986 Act Section 206(2) to (4) Schedule 23 (except that paragraph 32 of the said Schedule shall come into force only insofar as it inserts paragraph 13A into Schedule 11 to the 1986 Act) Section 212 and Schedule 24 to the extent that they relate to the repeals in, or of, sections 48, 55, 119, 159 and 160 of, and paragraphs 4, 10 and 14 of Schedule 11 to, the 1986 Act.

(1) 1989 c. 40.

(2) 1986 c. 60.

Transfer of functions

4.—(1) All those functions of the Secretary of State which are specified in paragraphs (2) and (3) of this article shall be transferred to SIB on 15th March 1990, in the case of those functions specified in paragraph (2), without limitation and, in the case of those functions specified in paragraph (3), subject to the limitations specified in the said paragraph (3).

(2) The functions specified in this paragraph are —

- (a) all functions under section 63A of the 1986 Act;
- (b) all functions under section 128A of the 1986 Act.

(3) The functions specified in this paragraph are —

- (a) all functions under section 47A of the 1986 Act except that the function of taking disciplinary action under that section is transferred only to the extent that the functions under the provisions referred to in section 47A(4) have been transferred to SIB;
- (b) all functions under section 63C of the 1986 Act insofar as those functions relate to:
 - (i) statements of principle; and
 - (ii) rules and regulations the function of making of which has been transferred to SIB;
- (c) all functions under section 128B(1) to (4) of the 1986 Act to the extent that such functions relate to functions of the Secretary of State under the 1986 Act which have been transferred to SIB;
- (d) all functions under section 128C of the 1986 Act except that:
 - (i) the function of taking disciplinary action under that section is transferred only to the extent that the functions under the provisions referred to in section 128C(2) have been transferred to SIB; and
 - (ii) the function of prescribing functions under section 128C(3)(c) is not transferred.

(4) The references in paragraphs (2) and (3) of this article to the 1986 Act are to the 1986 Act as amended by those provisions of the 1989 Act brought into force by this Order.

(5) Where any amendment made by Part I of Schedule 23 to the 1989 Act to the provisions contained in Chapters III to XI of Part I of the 1986 Act or to section 206 of the 1986 Act confers a new function on the Secretary of State or alters a function already conferred on him by the 1986 Act the new function or the function as altered, as the case may be, is hereby transferred to SIB.

(6) Sections 204(2) and (3) of the 1989 Act shall have effect as if the references to the Secretary of State therein were to SIB and in relation to a recognised self-regulating organisation for friendly societies or transferee body the references to the Secretary of State in the said sections 204(2) and (3) (which by virtue of section 204(7) of the 1989 Act are to be construed as references to the Registrar (within the meaning of Schedule 11 to the 1986 Act)) shall have effect as if they were references to SIB.

5.—(1) All the functions of the Registrar (within the meaning of Schedule 11 to the 1986 Act) under paragraphs 13A, 22B and 22D of Schedule 11 to the 1986 Act (as amended by those provisions of the 1989 Act brought into force by this Order) are hereby transferred to SIB.

(2) Where any amendment made by Part II of Schedule 23 to the 1989 Act to the provisions contained in paragraphs 2 to 25 and 38 of Schedule 11 to the 1986 Act confers a new function on the Registrar (within the meaning of Schedule 11 to the 1986 Act) or alters a function already conferred on him by the 1986 Act the new function or the function as altered, as the case may be, is hereby transferred to SIB.

Transitional provisions and savings

6.—(1) For a transitional period as mentioned in subsection (3) of section 203 of the 1989 Act beginning on 15th March 1990, a self-regulating organisation or professional body may elect whether to comply with the new requirement having effect by virtue of subsection

(1) or (2) of that section or with the requirement which it replaces (“the equivalence test”).

(2) For the transitional period referred to above: —

(a) statements of principle, rules, regulations and codes of practice to which (in the case of a self-regulating organisation) its members or (in the case of a professional body) persons certified by it are subject under Chapter V of Part I of the 1986 Act (as amended by those provisions of the 1989 Act brought into force by this Order) shall be taken into account for the purposes of the equivalence test, so that —

(i) in the case of a self-regulating organisation the requirement is for the rules of the organisation governing the carrying on of investment business of any kind by its members, together with any relevant statements of principle, rules, regulations or codes of practice as mentioned above, to afford investors protection at least equivalent to that afforded in respect of investment business of that kind by the statements of principle, rules, regulations and codes of practice for the time being in force under Chapter V of Part I of the 1986 Act (as amended by those provisions of the 1989 Act brought into force by this Order);

(ii) in the case of a professional body the requirement is for the rules regulating the carrying on of investment business of any kind by persons certified by it, together with any relevant statements of principle, rules, regulations or codes of practice as mentioned above, to afford to investors protection at least equivalent to that afforded in respect of investment business of that kind by the statements of principle, rules, regulations and codes of practice for the time being in force under Chapter V of Part I of the 1986 Act (as amended by those provisions of the 1989 Act brought into force by this Order);

(b) the amendments made to section 13 of the 1986 Act by paragraph 1 of Schedule 23 to the 1989 Act and the omission of paragraph 7 of Schedule 11 to the 1986 Act by paragraph 29 of Schedule 23 to the 1989 Act shall not have effect in any case where the equivalence test applies.

(3) Any election under this article shall be notified in writing to SIB which shall send a copy of the notice to the Secretary of State and, where the election is made by a self-regulating organisation for friendly societies, to the Registrar (within the meaning of Schedule 11 to the 1986 Act); the Secretary of State shall send a copy of any notice received by him to the Director General of Fair Trading.

(4) The amendments made to section 55 of the 1986 Act by paragraph 6 of Schedule 23 to the 1989 Act and to paragraph 19 of Schedule 11 to the 1986 Act by paragraph 34 of the said Schedule 23 and the related repeals under Schedule 24 to the 1989 Act shall not affect the validity or application of any regulations which have been made under the said section 55 or the said paragraph 19.

26th February 1990

John Redwood
Parliamentary Under-Secretary of State
Department of Trade and Industry

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force on 15th March 1990 certain provisions of the Companies Act 1989 (“the 1989 Act”) which amend the Financial Services Act 1986 (“the 1986 Act”).

Article 3 of the Order brings into force all the provisions of Part VIII of the Companies Act 1989 other than sections 192 (in part), 193 (in part), 201, 202, 206(1) (in part) and paragraph 32 of Schedule 23 (in part). Section 202 came into force on Royal Assent and the other provisions remain to be brought into force.

Articles 4 and 5 transfer certain functions of the Secretary of State, the Chief Registrar of friendly societies and the Registrar of Friendly Societies for Northern Ireland which are conferred on them by the 1986 Act, as amended by the 1989 Act, to the Securities and Investments Board. Those functions of the Secretary of State which are specified in article 4(3) are only partially transferred to the Securities and Investments Board. These partial transfers reflect earlier partial transfers contained in the Financial Services Act 1986 (Delegation) Order 1987 (S.I.1987/942).

Article 6 contains transitional provisions and savings.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

The following provisions of the Companies Act 1989 have been brought into force by commencement orders made before the date of this Order:

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Ss.1 and 15 but only for the purpose of inserting a new section 251 into the Companies act 1985 (subject to certain transitional and saving provisions)	1.3.1990	S.I. 1990/142
S.24 but only for the purposes of any provision brought into force by article 3 of S.I. 1990/142	1.3.1990	S.I. 1990/142
S.30	1.3.1990	S.I. 1990/142
S.31 but only for purposes relating to the recognition of supervisory bodies under Schedule 11 to the Companies Act 1989 (“the 1989 Act”) and for the purpose of enabling the Secretary of State to approve a qualification under	1.3.1990	S.I. 1990/142

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
section 31(4) and (5) of the 1989 Act		
Ss.32 and 33	1.3.1990	S.I. 1990/142
Ss. 37 to 40	1.3.1990	S.I. 1990/142
S.41(1) and (4) but only for the purposes of an application under any provision brought into force by article 3 of S.I. 1990/142 or of any requirement imposed under any such provision	1.3.1990	S.I. 1990/142
S.41(3)	1.3.1990	S.I. 1990/142
S.41(5) and (6) but only for the purposes of s.41(3) of the 1989 Act	1.3.1990	S.I. 1990/142
Ss.42 to 44 but only for the purposes of any provision brought into force by article 3 of S.I. 1990/142	1.3.1990	S.I. 1990/142
S.45	1.3.1990	S.I. 1990/142
S. 47(1)	1.3.1990	S.I. 1990/142
S.48(1) and (2)	1.3.1990	S.I. 1990/142
S.49 but only for the purposes of any provision brought into force by article 3 of S.I. 1990/142	1.3.1990	S.I. 1990/142
Ss.50 and 51	1.3.1990	S.I. 1990/142
Ss.52 to 54 but only for the purposes of any provision brought into force by article 3 of S.I. 1990/142	1.3.1990	S.I. 1990/142
Ss.55 to 64	21.2.1990	S.I. 1990/142
S.65(1)	21.2.1990	S.I. 1990/142
S.65(2) except to the extent that it refers to Part VII of the 1989 Act and except, in the case of s.65(2)(g), to the extent that the said paragraph refers to a body established under s.46 of the 1989 Act	21.2.1990	S.I. 1990/142
S.65(3) to (7)	21.2.1990	S.I. 1990/142
Ss.66 to 74	21.2.1990	S.I. 1990/142

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<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
S.75(1)	21.2.1990	S.I. 1990/142
S.75(2)	25.1.1990	S.I. 1990/98
S.75(3), insofar as it provides for the insertion in s.180(1) of the Financial Services act 1986 of a new paragraph (oo)	25.1.1990	S.I. 1990/98
S.75(3) except insofar as brought into force as referred to above, except to the extent that it refers to Part VII of the 1989 Act and except, in the case of s.75(3)(c), to the extent that it refers to a body established by order under s.46 of the 1989 Act	21.2.1990	S.I. 1990/142
S.75(4) insofar as it provides a definition of “public servant” for the purposes of the new s.180(1)(oo) of the Financial Services Act 1986	25.1.1990	S.I. 1990/98
S.75(4) except insofar as brought into force as referred to above	21.2.1990	S.I. 1990/142
S.75(6)	21.2.1990	S.I. 1990/142
S.75(7)	25.1.1990	S.I. 1990/98
Ss. 76 to 79	21.2.1990	S.I. 1990/142
S.80 except to the extent that it refers to Part VII of the 1989 Act	21.2.1990	S.I. 1990/142
S.81(1)	21.2.1990	S.I. 1990/142
S.81(2) except to the extent that it refers to Part VII of the 1989 Act	21.2.1990	S.I. 1990/142
S.81(3) and (4)	21.2.1990	S.I. 1990/142
S.81(5) except to the extent that it refers to Part VII of the 1989 Act	21.2.1990	S.I. 1990/142
Ss.82 to 86	21.2.1990	S.I. 1990/142
S.87(1) to (3)	21.2.1990	S.I. 1990/142
S.87(4) except to the extent that it refers to Part VII of the 1989 Act	21.2.1990	S.I. 1990/142
S.87(5) and (6)	21.2.1990	S.I. 1990/142

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
S.88 to 91	21.2.1990	S.I. 1990/142
S.145 but only insofar as it relates to paragraphs 1, 8, 9, 12, 19 and 21 of Schedule 19 to the 1989 Act	1.3.1990	S.I. 1990/142
S.146	1.4.1990	S.I. 1990/142
S.151	1.4.1990	S.I. 1990/142
S.152	1.3.1990	S.I. 1990/142
S.153 but only insofar as it relates to paragraphs 1, 13, 17, 21 and 26 of Schedule 20 to the 1989 Act	1.4.1990	S.I. 1990/142
S.208	1.3.1990	S.I. 1990/142
S.209	21.2.1990	S.I. 1990/142
S.210	1.4.1990	S.I. 1990/142
S.212 insofar as it relates to the repeals effected by Schedule 24 to the 1989 Act in the Companies Act 1985, the Financial Services Act 1986 and the Banking Act 1987 referred to below	21.2.1990	S.I. 1990/142
S.212 insofar as it relates to the repeal in s.21(2) of the Company Directors Disqualification Act 1986	1.3.1990	S.I. 1990/142
S.212 insofar as it relates to repeals in or of ss.46(3) and 85 of the Fair Trading Act 1973	1.4.1990	S.I. 1990/142
Ss.213 to 215 insofar as they were not already in force at the time of the making of S.I. 1990/142	2.2.1990	S.I. 1990/142
S.216	25.1.1990	S.I. 1990/142
Schedules 11 and 12	1.3.1990	S.I. 1990/142
Schedule 14	1.3.1990	S.I. 1990/142
Schedule 19, paragraphs 1, 8, 9, 12, 19 and 21	1.3.1990	S.I. 1990/98
Schedule 20, paragraphs 1, 13, 17, 21 and 26	1.4.1990	S.I. 1990/142
Schedule 24 insofar as it relates to repeals in or of	21.2.1990	S.I. 1990/142

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<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
ss.435, 440, 443, 446, 447, 449, 452 and 735A of the Companies Act 1985, ss.94, 105, 179, 180, 198(1) and 199 of the Financial Services Act 1986 and s.84(1) of the Banking Act 1987		
Schedule 24 insofar as it relates to the repeal in s.21(2) of the Company Directors Disqualification Act 1986	1.3.1990	S.I. 1990/142
Schedule 24 insofar as it relates to repeals in or of ss.46(3) and 85 of the Fair Trading Act 1973	1.4.1990	S.I. 1990/142