
STATUTORY INSTRUMENTS

2001 No. 2657

**The Financial Services and Markets Act 2000
(Transitional Provisions and Savings) (Civil Remedies,
Discipline, Criminal Offences etc.) Order 2001**

PART 3

DISCIPLINARY POWERS

Public statements in respect of pre-commencement contraventions of the Financial Services Act

6.—(1) Paragraph (3) applies if—

- (a) the Authority considers that an authorised person contravened a pre-commencement provision that related to him before commencement; and
- (b) the Authority has not given a written notice under section 60(2) of the Financial Services Act in respect of that contravention.

(2) Paragraph (3) also applies if—

- (a) the Authority considers that an authorised person contravened a pre-commencement friendly societies provision that related to him before commencement;
- (b) that person was, immediately before commencement, a regulated friendly society other than a member society; and
- (c) the Authority has not given a written notice under paragraph 21 of Schedule 11 to the Financial Services Act⁽¹⁾ in respect of that contravention.

(3) The Authority may exercise the power conferred by section 205 (public censure) as if the contravention of the pre-commencement provision or pre-commencement friendly societies provision were a contravention of a requirement imposed by or under the Act.

(4) “Pre-commencement provision”, in relation to an authorised person (“A”), means—

- (a) if immediately before commencement A was a regulated person—
 - (i) any rule or regulation made under Chapter V of Part I of the Financial Services Act;
 - (ii) section 56 or 59 of that Act; or
 - (iii) any condition imposed under section 50 of that Act;
- (b) if immediately before commencement A was an authorised person (within the meaning of that Act), any prohibition or requirement imposed under Chapter VI of Part I of that Act (powers of intervention);
- (c) if immediately before commencement A was a manager or trustee (within the meaning of that Act) of an authorised unit trust scheme (within the meaning of that Act), any

(1) Functions transferred by S.I.1987/925.

- direction given to an authorised unit trust scheme under section 91 of that Act (directions to authorised unit trust schemes); or
- (d) any direction under regulation 18 of the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996 to which A was subject.
- (5) “Pre-commencement friendly societies provision” means—
- (a) any rule or regulation made under Schedule 11 to the Financial Services Act;
- (b) section 56 or 59 of that Act;
- (c) any condition imposed under section 50 of that Act as it applied by virtue of paragraph 14(3) of Schedule 11 to that Act;
- (d) any prohibition or requirement imposed under Chapter VI of Part I of that Act as it applied by virtue of paragraph 23 of that Schedule; or
- (e) any requirement imposed by paragraph 24 of that Schedule.
- (6) For the purposes of paragraph (2)(b), “regulated friendly society” and “member society” have the meanings given by the Financial Services Act.
- (7) For the purposes of paragraph (4)(a), “regulated person” means any of—
- (a) an authorised person under the Financial Services Act by virtue of—
- (i) section 22 (authorised insurers)(2);
- (ii) section 24 (operators and trustees of recognised schemes);
- (iii) section 25 (authorisation by the Authority)(3); or
- (iv) section 31 (authorisation in other member State)(4);
- (b) a European institution carrying on home-regulated investment business in the United Kingdom, within the meaning of the 2BCD Regulations; or
- (c) a European investment firm carrying on home-regulated investment business in the United Kingdom, within the meaning of the ISD Regulations.

Public statements in respect of pre-commencement contraventions of the rules of self-regulating organisations

- 7.—(1) Paragraph (2) applies if the Authority considers that—
- (a) an authorised person (within the meaning of the Act) was, immediately before commencement, a member of a recognised self-regulating organisation or a recognised self-regulating organisation for friendly societies;
- (b) that person contravened a requirement imposed by a rule of that organisation which regulated the carrying on by him of investment business; and
- (c) that organisation had, immediately before commencement, a power to make a statement corresponding to the power of the Authority under section 205 (public censure) in relation to that contravention but had not exercised that power in relation to that contravention.
- (2) The Authority may exercise the power conferred by section 205 as if the contravention of that requirement were a contravention of a requirement imposed by or under the Act.

(2) Modified by S.I. 1994/1696.

(3) Functions transferred by S.I. 1987/942.

(4) Modified by S.I. 1992/3218 and S.I. 1995/3275.

Imposition of penalties in respect of pre-commencement contraventions of the rules of self-regulating organisations

8.—(1) Paragraph (2) applies if the Authority considers that—

- (a) an authorised person (within the meaning of the Act) was, immediately before commencement, a member of a recognised self-regulating organisation or a recognised self-regulating organisation for friendly societies;
- (b) that person contravened a requirement imposed by a rule of that organisation which regulated the carrying on by him of investment business (“a relevant pre-commencement requirement”); and
- (c) that organisation had, immediately before commencement, a power to impose a penalty corresponding to the power of the Authority under section 206 (financial penalties) in relation to that contravention but had not exercised that power in relation to that contravention.

(2) The Authority may exercise the power conferred by section 206 as if the contravention of that relevant pre-commencement requirement were a contravention of a requirement imposed by or under the Act.

(3) The Authority may not, in the case of any particular contravention of a relevant pre-commencement requirement, impose under section 206 a penalty that exceeds the penalty which the relevant recognised self-regulating organisation or recognised self-regulating organisation for friendly societies could have imposed in relation to that contravention immediately before commencement.

(4) In exercising, or deciding whether to exercise, its powers under section 206 in relation to a contravention of a relevant pre-commencement requirement, the Authority must, in the case of any particular contravention, have regard to any statement issued by the relevant recognised self-regulating organisation or recognised self-regulating organisation for friendly societies of its policy with respect to the imposition of, and amount of, penalties which was in force at the time when the contravention in question occurred.

Disciplinary powers in relation to persons registered with self-regulating organisations

9.—(1) Paragraph (2) applies where—

- (a) a person was, immediately before commencement—
 - (i) a registered person or former registered person for the purposes of the rules of The Securities and Futures Authority Limited (“SFA rules”);
 - (ii) a registered individual for the purposes of Rule 1.2(2) to (4) of Chapter IV of the rules of the Investment Management Regulatory Organisation Limited (“IMRO rules”); or
 - (iii) a registered individual or former registered individual for the purposes of the rules of the Personal Investment Authority Limited (“PIA rules”);
- (b) it appears to the Authority that that person, before commencement, contravened a requirement imposed by a SFA, IMRO or PIA rule which applied to him in his capacity as a person who performed (or was to perform) a function of the kind which, if performed immediately after commencement, would have been a controlled function within the meaning of Part V (“a relevant pre-commencement requirement”); and
- (c) that organisation had, immediately before commencement, a power to make a statement or impose a penalty corresponding to the power of the Authority under section 66(3)(a) or (b) (imposition of penalties and statements of misconduct) in relation to that contravention but had not exercised that power in relation to that contravention.

(2) The Authority may exercise the power conferred by subsection (3)(a) or (b) (as appropriate) of section 66 as if the person were guilty of misconduct within the meaning of subsection (2) of that section, subject to the condition specified by paragraph (3).

(3) The condition specified by this paragraph is that where the person—

(a) was, immediately before commencement—

(i) a former registered person, for the purposes of the SFA rules,

(ii) a person who had, before commencement, ceased to be a registered individual but who was treated as a registered individual for the purposes of Rule 1.2(2) to (4) of Chapter IV of the IMRO rules, or

(iii) a former registered individual for the purposes of the PIA rules,

(b) is a person, other than a person of the kind specified by sub-paragraph (a), who was not, immediately after commencement, an approved person (within the meaning of Part V), or

(c) was, immediately after commencement, an approved person, but has ceased to be an approved person,

the Authority may not exercise the power conferred by section 66 in relation to a contravention of a relevant pre-commencement requirement after the relevant period has expired.

(4) For the purposes of paragraph (3), the relevant period is the period in which the relevant, recognised self-regulating organisation had, before commencement, power to impose such a measure after a person ceased to be a registered person or registered individual (as the case may be), running from—

(a) in the case of a person specified by paragraph (3)(a), the time at which the person ceased to be a registered person or registered individual;

(b) in the case of a person specified by paragraph (3)(b), commencement;

(c) in the case of a person specified by paragraph (3)(c), the time at which the person ceased to be an approved person.

(5) For the purposes of section 66(4), if the Authority is proposing to take action under section 66 in relation to a contravention of a relevant pre-commencement requirement, the Authority is deemed to know of the misconduct on the first day on which the relevant recognised self-regulating organisation knew of the contravention of the requirement or had information from which the contravention could reasonably have been inferred.

(6) The Authority may not, in the case of any particular contravention of a relevant pre-commencement requirement, impose under section 66 a penalty that exceeds the penalty which the relevant recognised self-regulating organisation could have imposed in relation to that contravention immediately before commencement.

(7) In exercising, or deciding whether to exercise, its powers under section 66 in relation to a contravention of a relevant pre-commencement requirement, the Authority must, in the case of any particular contravention, have regard to any statement issued by the relevant recognised self-regulating organisation of its policy with respect to the imposition of, and amount of, penalties which was in force at the time when the contravention in question occurred.