

2001 No. 2966

FINANCIAL SERVICES AND MARKETS

**The Financial Services and Markets Act 2000
(Consequential Amendments) (Pre-Commencement
Modifications) Order 2001**

Made - - - - - 23rd August 2001

Laid before Parliament 24th August 2001

Coming into force - - 3rd September 2001

The Treasury in exercise of their powers under sections 426 and 427 of the Financial Services and Markets Act 2000(a) hereby make the following Order:

PART 1

GENERAL

Citation and commencement

1. This Order may be cited as the Financial Services and Markets Act 2000 (Consequential Amendments) (Pre-Commencement Modifications) Order 2001 and comes into force on 3rd September 2001.

Interpretation

2. In this Order—
“the Act” means the Financial Services and Markets Act 2000; and
“commencement” means the beginning of the day on which section 19 of the Act comes into force.

Modifications to primary and secondary legislation

3. The modifications made by Parts 2 and 3 of this Order have effect until commencement.

(a) 2000 c. 8.

PART 2

MODIFICATIONS TO PRIMARY LEGISLATION

Consumer Credit Act 1974 (c. 39)

Restriction on disclosure of information

4. Section 174(3A)(a) of the Consumer Credit Act 1974 has effect as if the reference to the functions of the Financial Services Authority under the Banking Act 1987 included a reference to the functions of the Authority under or as a result of the Act.

Companies Act 1985 (c. 6)

Provision for security of information obtained

5.—(1) Subsection (1) of section 449 of the Companies Act 1985 (“the 1985 Act”) has effect as if after paragraph (ba)(b) there were inserted—

“(bb) with a view to the institution of, or otherwise for the purposes of, any proceedings before the Tribunal;”.

(2) In that subsection, paragraph (fa)(c) has effect as if the functions mentioned in subparagraphs (i) to (iii) included the functions of the Authority under or as a result of the Act.

Building Societies Act 1986 (c. 53)

Confidentiality of certain information obtained by the Commission

6. Nothing in section 53(1) of the Building Societies Act 1986 prohibits—
- (a) the disclosure of information to any person with a view to the institution of, or otherwise for the purposes of, proceedings before the Tribunal;
 - (b) the disclosure of information to the Authority in circumstances where, in the opinion of the Commission, it is desirable or expedient that the information should be disclosed with a view to facilitating the discharge by the Authority of any of its functions under or as a result of the Act; or
 - (c) further disclosure by the Authority in accordance with sections 348 and 349 of the Act of any information disclosed under paragraph (b).

Companies Act 1989 (c. 40)

Exceptions from restrictions on disclosure

7. Section 87 of the Companies Act 1989 has effect as if—
- (a) the relevant proceedings referred to in subsection (1)(a) included proceedings before the Tribunal; and
 - (b) the relevant functions specified in relation to the Authority(d) in subsection (4) included its functions under or as a result of the Act.

(a) Subsection (3A) was inserted by the Banking Act 1987, section 87, and subsequently amended by the Bank of England Act 1998, section 23(1), Schedule 5, paragraph 60(a), (b).

(b) Paragraph (ba) was inserted by the Insolvency Act 1985, section 109, Schedule 6, paragraph 4, and amendments not relevant to this Order made by the Insolvency Act 1986, section 439(1), Schedule 13, Part I.

(c) Paragraph (fa) was substituted, together with paragraph (f), by the Bank of England Act 1998, section 23, Schedule 5, paragraph 62(2), for paragraph (f) as inserted by the Financial Services Act 1986, section 182, Schedule 13, paragraph 9.

(d) The entry relating to the Financial Services Authority was inserted into the table in subsection (4) by the Bank of England Act 1998, section 23(1), Schedule 5, paragraph 66(3).

Exceptions from restrictions on disclosure

8. Section 50 of the Courts and Legal Services Act 1990 has effect as if—
- (a) the functions of the Authority mentioned in subsection (1)(fa)(a) included its functions under or as a result of the Act;
 - (b) the reference to the Financial Services Tribunal and its functions under the Financial Services Act 1986 in subsection (1)(r) included a reference to the Tribunal and its functions under the Act.

Friendly Societies Act 1992 (c. 40)

Exceptions from restrictions on disclosure

9. Section 64 of the Friendly Societies Act 1992 has effect as if—
- (a) the relevant proceedings referred to in subsection (1)(a) included proceedings before the Tribunal; and
 - (b) the relevant functions mentioned in relation to the Authority(b) in subsection (5) included its functions under or as a result of the Act.

Pension Schemes Act 1993 (c. 48)

Disclosure of information by the Secretary of State or the Inland Revenue

10. Section 158A(c) of the Pension Schemes Act 1993 has effect as if the functions specified in relation to the Financial Services Authority in the Table in subsection (1)(d) included the functions of the Authority under or as a result of the Act.

Pension Schemes (Northern Ireland) Act 1993 (c. 49)

Disclosure of information by the Department or the Inland Revenue

11. Section 154A(e) of the Pension Schemes (Northern Ireland) Act 1993 has effect as if the functions specified in relation to the Financial Services Authority in subsection (1)(f) included the functions of the Authority under or as a result of the Act.

Bank of England Act 1998 (c. 11)

Restrictions on disclosure of information

12. Paragraph 3 of Schedule 7 to the Bank of England Act 1998 has effect as if the functions specified in relation to the Authority in the Table in sub-paragraph (1) included the functions of the Authority under or as a result of the Act.

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- (a) Paragraph (fa) was inserted by the Bank of England Act 1998, section 23(1), Schedule 5, paragraph 67(a).
 - (b) The reference to the Financial Services Authority in subsection (5) was inserted by the Bank of England Act 1998, section 23(1), Schedule 5, paragraph 68.
 - (c) Section 158A was inserted by the Pensions Act 1995, section 173, Schedule 6, paragraph 9. As a result of subsection (1A), inserted by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2) section 6, Schedule 6, paragraph 8, information received by the Inland Revenue in connection with their functions under Part III of this Act (certification of pensions schemes) may be disclosed in accordance with section 158A(1).
 - (d) The entry in the table relating to the Financial Services Authority was inserted by the Bank of England Act 1998, section 23(2), Schedule 5, paragraph 69(3).
 - (e) Section 154A was inserted by the Pensions (Northern Ireland) Order 1995, SI 1995/3213 (NI 22) article 165, Schedule 4, paragraph 9. As a result of subsection (1A), inserted by the Social Security Contributions (Transfer of Functions etc.) (Northern Ireland) Order 1999, SI 1999/671, article 6, Schedule 5, paragraph 8, information received by the Inland Revenue in connection with their functions under Part III of this Act (certification of pensions schemes) may be disclosed in accordance with section 154A(1).
 - (f) The entry in the table relating to the Financial Services Authority was inserted by the Bank of England Act 1998, section 23(2), Schedule 5, sub-paragraph 70(3).

PART 3
MODIFICATIONS TO SECONDARY LEGISLATION

Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6))

Provision for security of information obtained

13.—(1) In paragraph (1) of Article 442 of the Companies (Northern Ireland) Order 1986, sub-paragraph (fa)(a) has effect as if the functions mentioned in paragraphs (I) to (iii) included the functions of the Authority under or as a result of the Act.

(2) That paragraph has effect as if after sub-paragraph (m)(b) there was inserted—
“(mm) for the purposes of any proceedings before the Tribunal;”.

Estate Agents (Specified Offences) (No 2) Order 1991 (S.I. 1991/1091)

Specified Offences

14. The Estate Agents (Specified Offences) (No 2) Order 1991 has effect as if the offences listed in the Schedule (and thereby specified for the purposes of section 3 of the Estate Agents Act 1979(c)) included offences committed under paragraph 11(3) of Schedule 13 to the Act (failure in relation to attendance at, and evidence etc. before the Financial Services and Markets Tribunal).

John Heppell
Tony McNulty

23rd August 2001

Two of the Lords Commissioners of Her Majesty's Treasury

(a) Paragraph (fa) was substituted together with paragraph (f), by the Bank of England Act 1998, section 23, Schedule 5, sub-paragraph 63(2), for paragraph (f) as inserted by the Financial Services Act 1986, section 182, Schedule 13, paragraph 13.

(b) Paragraph (m) was originally inserted by the Financial Services Act 1986, section 182, Schedule 13, paragraph 9, and substituted by the Companies (No. 2) (N.I.) Order 1990, Article 13(1)(2).

(c) 1979 c. 38.

EXPLANATORY NOTE

(This note is not part of the Order)

The modifications made by this Order are consequential on a number of provisions of the Financial Services and Markets Act 2000 ("the Act") which are brought into force by the Financial Services and Markets Act 2000 (Commencement No 5 and Transitional Provisions) Order 2001. Provisions brought into force by that Order from 3rd September include provisions relating to the making of applications and the granting of permissions to come into force on the day on which section 19 of the Act comes into force; the doing of other preparatory acts by the Financial Services Authority ("the Authority") in advance of that day; and provisions relating to the Financial Services and Markets Tribunal ("the Tribunal").

The Authority may need to receive restricted or confidential information from regulators or investigators carrying out functions under other statutes for the purposes of those preparatory functions under the Act, and accordingly this Order makes the necessary modifications to permit such information to be disclosed to the Authority. Because references may be made to the Tribunal in relation to the granting of permissions or other preparatory acts carried on by the Authority, this Order also makes the necessary modifications to permit such information to be disclosed for the purposes of proceedings before the Tribunal.

The modifications made by this Order will cease to have effect on the day when section 19 of the Act comes into force. On that day, the consequential amendments made under the Act to all other legislation, including the provisions modified by the Order, will come into force.

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