
STATUTORY INSTRUMENTS

2001 No. 3592

The Financial Services and Markets Act 2000 (Transitional Provisions) (Partly Completed Procedures) Order 2001

PART II

AUTHORISATIONS AND RESTRICTIONS UNDER OLD LAW

CHAPTER II

NOTICES TO WITHDRAW, SUSPEND OR RESTRICT AUTHORISATION

Notices under the 2BCD Regulations and the ISD Regulations

Notices under the ISD Regulations or the 2BCD Regulations

20.—(1) Where, before commencement—

(a) the Authority has given notice—

(i) under paragraph 1(1)(a) of Schedule 4 to the ISD Regulations of its intention to impose a prohibition under regulation 9 of those Regulations; or

(ii) under paragraph 1(1)(a) of Schedule 4 to the 2BCD Regulations of its intention to impose a prohibition under regulation 15 of those Regulations;

(b) the period within which the case could be required to be referred to the Financial Services Tribunal has not expired; and

(c) no such reference has been required,

the notice has effect after commencement as if it were a notice given under section 197(3) that the Authority proposes to impose a requirement that the authorised person refrain from carrying on the regulated activity or activities covered by the notice.

(2) Where, before commencement—

(a) the Authority has given a notice under paragraph 2(1) of Schedule 3 to the 2BCD Regulations;

(b) the Authority has not given a notice under paragraph 2(7) of that Schedule (and is not treated as having given such a notice by reason of paragraph 2(9) of that Schedule),

the notice has effect after commencement as if it were a notice given under section 197(3) that the Authority proposes to impose a requirement on the authorised person to the same effect as the prohibition or restriction proposed in the notice.

Effect of notices under the ISD Regulations or the 2BCD Regulations after commencement

21.—(1) A notice having effect under article 20 has effect—

(a) as if it informed the recipient that he may make representations to the Authority (whether or not he refers the matter to the Tribunal) within—

- (i) the new period (if any) specified for this purpose under article 90; or
 - (ii) if there is no new period so specified, 28 days from the date of service of the notice;
 - (b) as if it informed the recipient that the requirement takes effect—
 - (i) on the new date (if any) specified for this purpose under article 90; or
 - (ii) if there is no new date so specified, on the date specified in the notice as the date on which the prohibition or restriction would take effect;
 - (c) as if it informed the recipient that he has a right to refer the matter to the Tribunal—
 - (i) within the new period (if any) specified for this purpose under article 90; or
 - (ii) if there is no new period so specified, within 28 days beginning with the date of service of the notice (in the case of a notice falling within article 20(1)) or with commencement (in the case of a notice falling within article 20(2));
- (2) Where a notice having effect under article 20(1) proposed a limited prohibition within the meaning of regulation 15 of the 2BCD Regulations, the notice has effect as if it stated that the requirement would take effect—
- (a) for the new period (if any) specified for this purposes under article 90; or
 - (b) if there is no new period so specified, on the date on which it would (but for the revocation of the 2BCD Regulations) have taken effect.
- (3) Where a notice has effect under article 20—
- (a) the Authority must decide whether to issue a notice under section 197(6) or (7);
 - (b) in taking that decision, section 194 applies to the Authority; and
 - (c) the Authority must have regard to any representations made to it before commencement in relation to the notice given under the 2BCD Regulations or ISD Regulations.
- (4) Notwithstanding section 197(1)(c), where a notice having effect under article 20(2) did not specify a date on which the prohibition or restriction would be imposed, or the variation take effect, the Authority may specify in a notice given under paragraph (3)(a) the date on which the requirement is imposed (being a date not earlier than the date of that notice).

Prohibition in relation to investment services under the ISD Regulations or the 2BCD Regulations: time for reference expired

22.—(1) Where, before commencement—

- (a) the Authority has given notice—
 - (i) under paragraph 1(1)(a) of Schedule 4 to the ISD Regulations of its intention to impose a prohibition under regulation 9 of those Regulations; or
 - (ii) under paragraph 1(1)(a) of Schedule 4 to the 2BCD Regulations of its intention to impose a prohibition under regulation 15 of those Regulations;
- (b) the period within which the case could be required to be referred to the Financial Services Tribunal has expired without such a reference being required; but
- (c) the Authority has not given written notice pursuant to paragraph 1(5)(a) or (b) of the relevant Schedule in relation to the matter covered by the notice,

the Authority must, as soon as practicable after commencement, notify any recipient of the notice whether or not the notice is to be treated as a notice given under section 197(6).

(2) Where the Authority notifies the recipient that the notice is to be treated as a notice given under section 197(6)—

- (a) the notice has effect as if it imposed a requirement that the authorised person refrain from carrying on the regulated activity or activities covered by the notice;
- (b) the date on which the requirement takes effect is—
 - (i) the new date (if any) specified for this purpose under article 90; or
 - (ii) if there is no new date so specified, the date specified in the notice as the date on which the prohibition would take effect;
- (c) there is no right to refer the notice to the Tribunal;
- (d) the Authority may publish such information about the matter to which the notice relates as it considers appropriate.

(3) Where the Authority notifies the recipient that the notice is not to be treated as a notice given under section 197(6) then the notice ceases to have effect on commencement.

(4) Where the notice having effect under paragraph (2) referred to a limited prohibition, a requirement having effect by virtue of this article is to be taken to be framed so as to expire when (but for the revocation of the 2BCD Regulations) the prohibition would have expired.

(5) A limited prohibition means a prohibition which was framed so as to expire at the end of a specified period or on the occurrence of a specified event or on compliance with specified conditions.

(6) Where a requirement which by virtue of this article has effect as if imposed under section 196—

- (a) was originally imposed, or was varied, in a case where regulation 11 or 17 of the 2BCD Regulations or regulation 11 of the ISD Regulations applied; and
- (b) was imposed or varied as a matter of urgency under regulation 11(5) or 17(5) of the 2BCD Regulations or regulation 11(5) of the ISD Regulations,

it is to be treated as if section 199 had applied in its case and it had been imposed as mentioned in section 199(8)(a).

Alteration of restrictions imposed under 2BCD Regulations

23.—(1) Where, before commencement—

- (a) the Authority has issued a decision under sub-paragraph (7) of paragraph (2) of Schedule 3 to the 2BCD Regulations to which sub-paragraph (11) of that paragraph applies; and
- (b) the time for making representations referred to in paragraph 2(11) of that Schedule has not expired,

the Authority must consider any representations made pursuant to paragraph 2(11) of that Schedule and may give a written notice under section 197(7) altering the restriction.

(2) Nothing in this Order affects the period within which representations may be made in respect of that decision.

Notice by the Director General of Fair Trading of intention to impose a prohibition etc. under the ISD Regulations or 2BCD Regulations

24.—(1) Where, before commencement—

- (a) the Director General of Fair Trading (“the Director”) has given a notice pursuant to paragraph 2(2) of Schedule 5 to the ISD Regulations or to the 2BCD Regulations of his intention to impose a prohibition;
- (b) the appeal period (as defined for the purposes of that paragraph) has not expired; and

(c) no appeal has been lodged pursuant to section 41 of the Consumer Credit Act 1974⁽¹⁾ (as applied by paragraph 5 of Schedule 5 to the ISD Regulations or the 2BCD Regulations), the notice has effect as a notice under paragraph 2(2) of Schedule 16 that the Director proposes to impose a prohibition under section 203.

(2) Where a notice has effect as described in paragraph (1) the Director must, in considering whether to impose a prohibition under section 203, consider any representations made pursuant to paragraph 4 of Schedule 5 to the ISD Regulations or to the 2BCD Regulations (as the case may be).

(3) Where, before commencement—

(a) the Director has given a notice pursuant to paragraph 2(2) of Schedule 5 to the ISD Regulations or the 2BCD Regulations of his intention to impose or vary a restriction;

(b) the appeal period (as defined for the purposes of that paragraph) has not expired; and

(c) no appeal has been lodged pursuant to section 41 of the Consumer Credit Act 1974 (as applied by paragraph 5 of Schedule 5 to the ISD Regulations or the 2BCD Regulations), the notice has effect as a notice under paragraph 2(2) of Schedule 16 that the Director proposes to impose or vary a restriction (as the case may be) under section 204.

(4) Where a notice has effect as described in paragraph (3), the Director must, in considering whether to impose or vary a restriction under section 204, consider any representations made pursuant to paragraph 4 of Schedule 5 to the ISD Regulations or the 2BCD Regulations (as the case may be).

(1) 1974 c. 39.