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STATUTORY INSTRUMENTS

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**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 Financial Services Act*

**Notice of intention to withdraw or suspend authorisation under section 29 of the Financial Services Act: time for reference not expired**

**10.**—(1) Where, before commencement—

- (a) a notice was given under section 29(1) of the Financial Services Act of intention to withdraw or suspend an authorisation;
- (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 53(4).

(2) Such a notice has effect—

- (a) as if it stated that the Authority proposes to vary the authorised person's permission by imposing a requirement that he refrain from carrying on the regulated activity or activities covered by the notice;
- (b) 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 beginning with the date of service of the notice;
- (c) as if it informed the recipient that the variation takes effect on—
  - (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 when (but for the repeal of the Financial Services Act) the withdrawal or suspension of authorisation would have taken effect;
- (d) (in the case of a notice proposing suspension) as if it informed the recipient that the variation takes effect—
  - (i) for the new period (if any) specified for this purpose under article 90; or

- (ii) if there is no new period so specified, then for the period for which (but for the repeal of the Financial Services Act) the suspension of authorisation would have had effect;
- (e) 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.
- (3) Where a notice has effect under paragraph (1)—
  - (a) the Authority must decide whether to issue a notice under section 53(7) or (8);
  - (b) in taking that decision, section 41 applies to the Authority; and
  - (c) the Authority must have regard to any representations made before commencement in relation to the notice given under section 29 of the Financial Services Act.

**Withdrawal or suspension of authorisation under section 29 of the Financial Services Act: time for reference expired**

- 11.—**(1) Where, before commencement—
- (a) a notice of intention to withdraw or suspend an authorisation was given under section 29(1) of the Financial Services Act;
  - (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) no notice under section 29(5) of that Act has been given in respect of the notice of intention,
- 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 53(7).
- (2) Where the Authority notifies the recipient that the notice is to be treated as a notice given under section 53(7)—
- (a) the notice has effect as if it varied the authorised person's permission by imposing a requirement that he 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 when (but for the repeal of the Financial Services Act) the withdrawal of authorisation would have taken effect;
  - (c) (in the case of a notice proposing suspension) the period for which the requirement has effect is—
    - (i) the new period (if any) specified for this purpose under article 90; or
    - (ii) if there is no new period so specified, the period for which (but for the repeal of the Financial Services Act), the suspension of authorisation would have taken effect;
  - (d) there is no right to refer the matter to the Tribunal;
  - (e) 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 53(7) then the notice ceases to have effect on commencement.

**Notice of intention to terminate or suspend authorisation under section 33 of the Financial Services Act: time for reference not expired**

12.—(1) Where, before commencement—

- (a) the Authority has given notice under section 34 of the Financial Services Act that it intends to give a direction (pursuant to section 33(1)(a) or (b) of that Act) that a person cease to be an authorised person under section 31 of that Act or that a person’s authorisation under that section be suspended;
- (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 197(3).

(2) Such a notice has effect—

- (a) as if it stated 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;
- (b) 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;
- (c) as if it informed the recipient that the requirement takes effect—
  - (i) on the new date specified for this purpose under article 90; or
  - (ii) if there is no new date so specified, on the date when (but for the repeal of the Financial Services Act) authorisation would have been terminated or suspended;
- (d) (in the case of a notice proposing suspension) as if it informed the recipient that the requirement takes effect—
  - (i) for the new period (if any) specified for this purpose under article 90; or
  - (ii) if there is no new period so specified, then for the period for which (but for the repeal of the Financial Services Act) the authorisation would have been suspended;
- (e) as if it informed the recipient that he has a right to refer 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 beginning with the date of service of the notice.

(3) Where a notice has effect under paragraph (1)—

- (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 before commencement in respect of the notice given under section 34 of the Financial Services Act.

**Termination or suspension of authorisation under section 33 of the Financial Services Act: time for reference expired**

13.—(1) Where, before commencement—

- (a) the Authority has given notice under section 34 of the Financial Services Act that it intends to give a direction (pursuant to section 33(1)(a) or (b) of that Act) that a person cease to be an authorised person under section 31 of that Act or that his authorisation under that section be suspended;

(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) no notice under section 34(5) of that Act has been given in respect of the notice of intention, 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 has effect is—
  - (i) the new date (if any) specified for that purpose under article 90; or
  - (ii) if there is no new date so specified, the date when (but for the repeal of the Financial Services Act) the authorisation would have been terminated or suspended;
- (c) (in the case of a notice proposing suspension) the period for which the suspension has effect is—
  - (i) the period (if any) specified for this purpose under article 90; or
  - (ii) if there is no new period so specified, then the period for which (but for the repeal of the Financial Services Act) the authorisation would have been suspended;
- (d) there is no right to refer the notice to the Tribunal;
- (e) 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.

### *Notices under the Banking Act*

#### **Notices under the Banking Act**

14.—(1) Where, before commencement—

- (a) a notice has been given under section 13(1) of the Banking Act of intention to revoke an authorisation;
- (b) the Authority has not given a notice under section 13(7) of the Banking Act (and is not treated as having given such a notice by reason of subsection (10) of that section),

the notice has effect after commencement as if it were a notice given under section 53(4) that the Authority proposes to vary the authorised person's permission by imposing a requirement that he refrain from carrying on the regulated activity or activities covered by the notice.

(2) Where, before commencement—

- (a) a notice was given under section 13(1) of the Banking Act of intention to impose a restriction or to vary a restriction;
- (b) the Authority has not given a notice under section 13(7) of the Banking Act (and is not treated as having given such a notice by reason of subsection (10) of that section),

the notice has effect after commencement as if it were a notice given under section 53(4) that the Authority proposes to vary the authorised person's permission by imposing or varying a requirement having the same effect as the restriction or variation described in the notice.

(3) Where, before commencement—

- (a) a notice had been given under section 14(2) of the Banking Act imposing or varying a restriction as a matter of urgency pursuant to section 14(1)(b) of that Act;
  - (b) no notice under subsection (7) of section 14 of the Banking Act has been given,
- that notice has effect after commencement as if it were a notice given under section 53(4) that the Authority has varied the authorised person's permission with immediate effect by imposing a restriction or varying the restriction in the manner set out in the notice.

### **Effect of Banking Act notices after commencement**

- 15.**—(1) A notice having effect under article 14 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, within fourteen days beginning with the day on which the notice was given;
  - (b) (in the case of notices having effect under article 14(1) and (2)) as if it informed the recipient that the variation takes effect on—
    - (i) the new date (if any) specified for this purpose under article 90; or
    - (ii) if no new date is so specified, then on the date (if any) specified in the notice as the date on which the revocation would take effect or the restriction be imposed or varied (as the case may be);
  - (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 from commencement.
- (2) Where a notice has effect under article 14—
- (a) the Authority must decide whether to issue a notice under section 53(7) or (8);
  - (b) in taking that decision, section 41 applies to the Authority;
  - (c) the Authority must have regard to any representations made before commencement in relation to the notice given under the Banking Act.
- (3) Notwithstanding section 53(2)(c), where the notice having effect under article 14(1) or (2) did not specify a date on which the revocation would take effect or on which the restriction would be imposed or varied, the Authority may specify in the notice given under paragraph (2)(a) the date on which the variation takes effect (being a date not earlier than the date of that notice).

### **Decision notified under section 13(7) of the Banking Act**

- 16.**—(1) Where, before commencement—
- (a) the Authority has issued a decision under section 13(7) of the Banking Act to which subsection (9) of that section applies; and
  - (b) the time for making representations referred to in section 13(9) of that Act has not expired,
- the Authority must consider any representations made pursuant to section 13(9) of that Act and may give a written notice under section 53(8) altering the restrictions.
- (2) Nothing in this Order affects the period within which representations may be made in respect of that decision.

*Notices under the Insurance Companies Act***Notices under the Insurance Companies Act**

17.—(1) Where, before commencement—

- (a) the Treasury have served a notice under section 12(1) of the Insurance Companies Act that they are considering giving a direction under section 11(1) of that Act;
- (b) no direction has been given in respect of that notice,

the notice has effect after commencement as if it stated that the Authority proposes to impose a requirement that the company refrain from carrying on the regulated activity of effecting contracts of insurance, or contracts of any description specified in the notice.

(2) Where, before commencement—

- (a) the Treasury have served a written notice giving a direction under section 12A(3) of the Insurance Companies Act<sup>(1)</sup>;
- (b) the Treasury have not confirmed the direction pursuant to section 12A(6) of that Act,

the notice has effect after commencement as if it stated that the Authority proposes to impose a requirement that the company refrain immediately from carrying on the regulated activity of effecting contracts of insurance, or contracts of any description specified in the notice (except to the extent allowed by section 12A(2)(a) of the Insurance Companies Act).

(3) Where—

- (a) before commencement the Treasury have served a notice under section 46(2) of the Insurance Companies Act;
- (b) the Treasury have not, following the service of that notice, exercised any power or powers conferred by sections 38 to 45 of that Act in the manner proposed in the notice;
- (c) the company on which the notice was served is, immediately after commencement, an authorised person,

the notice has effect after commencement as if it stated that the Authority proposes to impose a requirement to the effect described in the notice.

**Effect of notices under the Insurance Companies Act after commencement**

18.—(1) A notice having effect under article 17 has effect—

- (a) as if it were a notice under section 53(4) in so far as it relates to the carrying on of regulated activity for which the company has a Part IV permission and as if it were a notice under section 197(3) in so far as it relates to the carrying on of regulated activity for which the company has permission under Schedule 4;
- (b) as if it informed the company that it may make representations to the Authority (whether or not it 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, within one month from the date of service of the notice;
- (c) as if it informed the company that it 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 specified, within 28 days from commencement;

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(1) Section 12A was inserted by the 3ID Regulations and has been amended by S.I.1997/2781.

- (d) as if any reference to a right to make oral representations were omitted (without prejudice to any such representations made before commencement).
- (2) In the case of a notice having effect under article 17(1), it has effect after commencement as if it informed the company that the requirement would be imposed—
  - (a) on the new date (if any) specified for this purpose under article 90; or
  - (b) if no new date is so specified, then on the date, if any, specified in the notice as the date on which the direction would take effect.
- (3) In the case of a notice having effect under article 17(3)—
  - (a) where the notice specifies that the requirement to be imposed will be framed as described in section 46(5) of the Insurance Companies Act, the notice has effect as if the notice informed him that the requirement would be imposed at the end of the specified period (but without the reference to the person ceasing to hold office);
  - (b) where the notice does not specify as described in sub-paragraph (a) it has effect as if it stated that the requirement would take effect on—
    - (i) the new date (if any), specified for this purpose under article 90; or
    - (ii) if no new date is so specified, then on the date, if any, specified in the notice as the date on which the powers would be exercised.
- (4) Where a notice has effect under article 17—
  - (a) the Authority must decide whether to issue a notice under section 53(7) or (8) or under section 197(6) or (7) (as the case may be);
  - (b) in taking that decision, section 41 or 194 applies to the Authority (as the case may be);
  - (c) the Authority must have regard to any representations made before commencement pursuant to the Insurance Companies Act.
- (5) Notwithstanding section 53(2)(c) or section 197(1)(c), where the notice having effect under article 17(1) or (3) did not specify a date on which the direction would take effect, the Authority may specify in the notice given under paragraph (4)(a) the date on which the requirement is imposed (being a date not earlier than the date of that notice).
- (6) Notwithstanding the repeal of section 12A of the Insurance Companies Act, a person on whom a notice was served under section 12A(4) of that Act may make written representations to the Authority about the matters covered in that notice within the period of one month from the date of service of the notice.

### **Notice of grounds of unfitness of person under the Insurance Companies Act**

#### **19. Where, before commencement—**

- (a) the Treasury have served a notice under section 12(2) of the Insurance Companies Act on a person whose fitness is in question but have not served a notice under section 12(1) of that Act on the company on the grounds set out in section 12(2A) arising from that alleged unfitness; or
- (b) the Treasury have served a notice under section 46(1) of the Insurance Companies Act because of the unfitness of a person but have not served a notice under section 46(2) of that Act in respect of the matter covered by the notice,

that notice ceases to have effect on commencement and the Authority must, as soon as practicable after commencement, notify the person on whom the notice was served of that fact.

*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(2) (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).