
STATUTORY INSTRUMENTS

2001 No. 3592

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

PART IV

COLLECTIVE INVESTMENT SCHEMES

CHAPTER I

APPLICATIONS FOR AUTHORISATION ETC.

Application for authorisation of unit trust scheme

39.—(1) Where—

- (a) an application was made under section 77(1) of the Financial Services Act for an authorisation order for a unit trust scheme;
- (b) that application had not been decided before commencement;
- (c) the scheme to which the application relates is a unit trust scheme within the meaning of section 237,

that application is to be treated after commencement as an application under section 242 for an order declaring the scheme to be an authorised unit trust scheme and accordingly section 244 applies to the application.

(2) Where before commencement the Authority has served a notice pursuant to section 80(1)(a) of the Financial Services Act proposing to refuse an application made under section 77 of that Act, the notice ceases to have effect on commencement and the Authority must, as soon as practicable after commencement, notify the applicant of that fact.

(3) Paragraph (2) does not affect the power of the Authority to serve notice under section 245 in respect of the application.

(4) Where an application is treated as an application under section 242, that application—

- (a) is treated for the purposes of section 244(1) as having been received by the Authority on the date on which it was received for the purposes of section 78(7) of the Financial Services Act;
- (b) is not to be treated as incomplete for the purposes of section 244(2) if it complied with the procedure applicable to it when it was originally made;
- (c) is to be treated as incomplete for the purposes of section 244(2) if it would have been treated as incomplete for the purposes of section 78.

(5) Paragraph (4)(b) or (c) does not affect the power of the Authority to require information under section 242(4) and (6).

Notice of proposed alteration or change of trustee of unit trust scheme

40.—(1) Where—

- (a) notice has been given under section 82(1) of the Financial Services Act of a proposed alteration to a scheme or of the proposed replacement of a trustee;
- (b) the Authority has not given either its approval to the proposal or notice that the proposal is not approved under section 82(3) of that Act;
- (c) the period of one month has not elapsed since the date on which the notice was given; and
- (d) the scheme is the subject of an authorisation order having effect after commencement, by virtue of article 65(1) of the Authorised Persons Order, as an order under section 243(1),

the notice has effect after commencement as a notice given in accordance with section 251(1).

(2) Where a notice of a proposal involving a change to the trust deed has effect as described in paragraph (1), the Authority may require the manager of the scheme to provide a certificate complying with section 251(2).

(3) A notice of proposal having effect under paragraph (1) is treated for the purposes of section 252(3) as having been given on the date on which it was given for the purposes of section 82(3) of the Financial Services Act.

Notice of proposed change of manager of unit trust scheme

41.—(1) Where—

- (a) notice has been given under section 82(2) of the Financial Services Act of a proposal to replace the manager of a scheme;
- (b) the Authority has not given either its approval to the proposal or notice that the proposal is not approved under section 82(3) of that Act;
- (c) the period of one month has not elapsed since the date on which the notice was given before commencement; and
- (d) the scheme is the subject of an authorisation order having effect after commencement by virtue of article 65(1) of the Authorised Persons Order as an order under section 243(1),

the notice has effect after commencement as a notice given in accordance with section 251(3).

(2) A notice of proposal having effect under paragraph (1) is treated for the purposes of section 252(3) as having been given on the date on which it was given for the purposes of section 82(3) of the Financial Services Act.

Notice of intention to start marketing scheme constituted in another EEA State

42.—(1) Where—

- (a) notice has been given in accordance with section 86(2) of the Financial Services Act by an operator of a scheme falling within section 86(1) of that Act;
- (b) the scheme is a collective investment scheme constituted in another EEA State within the meaning of section 264(1) and satisfies the requirements prescribed under section 264(1) (a);
- (c) either—
 - (i) no notice has been given by the Authority pursuant to section 86(2) of the Financial Services Act; or
 - (ii) a notice has been given by the Authority pursuant to section 86(2) but the period of 21 days for making representations referred to in section 86(5) of that Act has not expired before commencement; and

- (d) the period of two months mentioned in section 86(2) of that Act has not elapsed before commencement,

the notice has effect after commencement as a notice given in accordance with section 264(1)(b).

(2) Where—

- (a) notice has been given in accordance with section 86(2) of the Financial Services Act by an operator of a scheme falling within section 86(1) of that Act;
- (b) the Authority has given notice pursuant to section 86(2) of the Financial Services Act (and has not withdrawn that notice);
- (c) the period of 21 days for making representations referred to in section 86(5) of that Act has not expired before commencement,

the notice given by the Authority ceases to have effect on commencement and the Authority must, as soon as practicable after commencement, notify the operator of the scheme of that fact.

(3) Paragraph (2) does not affect the power of the Authority to serve a notice under section 264(2) in respect of a notice which has effect by virtue of paragraph (1).

(4) A notice having effect under paragraph (1) is treated for the purposes of section 264(2) as having been received on the date on which it was received for the purposes of section 86(2) of the Financial Services Act.

Notice by scheme authorised in a designated country or territory

43.—(1) Where—

- (a) the operator of a scheme falling within section 87(1) of the Financial Services Act has given notice in accordance with section 87(3) of that Act that he wishes the scheme to be recognised;
- (b) the scheme is one to which this article applies;
- (c) the Authority has not notified the operator, pursuant to section 87(3) of that Act, that the scheme is not to be recognised; and
- (d) the period prescribed⁽¹⁾ for the purposes of section 87(3) of that Act has not expired before commencement,

the notice has effect after commencement as if it had been given in accordance with section 270(1)(c).

(2) Where—

- (a) the operator of a scheme falling within section 87(1) of the Financial Services Act has given notice in accordance with section 87(3) of that Act that he wishes the scheme to be recognised;
- (b) the Authority has given notice pursuant to section 89(5)(a) of that Act that it proposes to notify the operator that it does not wish the scheme to be recognised; and
- (c) the Authority has not notified the operator pursuant to section 87(3) of that Act that the scheme is not to be recognised,

the notice given by the Authority under section 89(5) ceases to have effect on commencement and the Authority must, as soon as practicable after commencement, notify the operator of that fact.

(3) Paragraph (2) does not affect the power of the Authority to serve a notice under section 271 in respect of the operator's notice having effect under paragraph (1).

(1) This period is currently 4 months: see the Financial Services (Schemes Authorised in Designated Countries or Territories) (Notification) Regulations 1989 (S.I.1989/1584).

(4) A notice having effect under paragraph (1) is treated for the purposes of section 271(2) as having been given on the date on which it was received for the purposes of section 87(3) of the Financial Services Act.

(5) This article applies to a collective investment scheme within the meaning of Part XVII of the Act which, at commencement—

- (a) is not a recognised scheme by virtue of section 264;
- (b) is managed in, and authorised under the law of, a country or territory designated in an order made under section 270 (including one having effect as so made under article 67(1) of the Authorised Persons Order); and
- (c) is a scheme of a class specified in that designation order.

Applications by other overseas schemes for individual recognition

44.—(1) Where—

- (a) an application was made under section 77(1) of the Financial Services Act (as applied by section 88(8) of that Act) for an order declaring a scheme to be a recognised scheme under section 88 of that Act;
- (b) that application has not been decided before commencement;
- (c) the scheme to which the application relates is a collective investment scheme for the purposes of Part XVII of the Act,

that application has effect after commencement as an application under section 274 for an order declaring the scheme to be a recognised scheme.

(2) An application having effect under paragraph (1)—

- (a) is treated for the purposes of section 275(1) or (2) as having been received by the Authority on the date on which it was received for the purposes of section 88 of the Financial Services Act;
- (b) is not to be treated as incomplete for the purposes of section 275(2) if it complied with the procedure applicable to it when it was originally made;
- (c) is to be treated as incomplete for the purposes of section 275(2) if it would have been treated as incomplete for the purposes of section 88.

(3) Paragraph (2)(b) or (c) does not affect the power of the Authority to require information under section 274(3) and (5).

(4) Where, before commencement—

- (a) the Authority served a notice pursuant to section 89(5)(b) of the Financial Services Act of its intention to refuse to make a recognition order under section 88 of that Act;
- (b) the Authority has not made that order,

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

(5) Paragraph (4) does not affect the power of the Authority to serve a notice under section 276 in respect of the application.

Notice of proposed alterations in respect of an individually recognised scheme

45.—(1) Where—

- (a) notice has been given under section 82(1) of the Financial Services Act (as applied by section 88(9) of that Act) of a proposed alteration to a scheme recognised under section 88 of that Act;

- (b) the Authority has not given either its approval to the proposal or notice that the proposal is not approved;
- (c) the period of one month has not elapsed since the date on which the notice was given before commencement;
- (d) the scheme is, by virtue of article 68 of the Authorised Persons Order, treated after commencement as recognised under section 272,

the notice has effect after commencement as a notice given in accordance with section 277(1).

(2) In relation to a notice having effect under paragraph (1), section 277(2)(b) has effect as if the reference to “subsection (1)” were a reference to section 82(1) of the Financial Services Act (as applied by section 88(9) of that Act).

(3) Where—

- (a) notice has been given under section 88(9) of the Financial Services Act of a proposal to replace the operator or trustee of a scheme recognised under that section;
- (b) the period of one month since the date on which the notice was given has not elapsed before commencement;
- (c) the scheme is by virtue of article 68 of the Authorised Persons Order treated after commencement as recognised under section 272,

the notice has effect after commencement as a notice given in accordance with section 277(3).

CHAPTER II

NOTICES OF REVOCATION OF AUTHORISATION OR RECOGNITION

Notice of revocation of authorisation of unit trust scheme

46.—(1) Where—

- (a) the Authority has served notices on the manager and trustee of a unit trust scheme under section 80(1) of the Financial Services Act that it proposes to revoke the authorisation of that scheme;
- (b) the Authority has not revoked the order before commencement;
- (c) the scheme is by virtue of article 65 of the Authorised Persons Order treated after commencement as authorised under section 243,

the notices have effect after commencement as warning notices given under section 255(1) stating that the Authority proposes to make a revoking order.

(2) Notwithstanding section 392(a), sections 393 and 394 do not apply to a warning notice having effect by virtue of paragraph (1).

(3) A notice having effect as described in paragraph (1) has effect—

- (a) as if it stated that section 394 does not apply;
- (b) as if the period specified in the notice for making representations to the Authority were—
 - (i) the new period (if any) specified for this purpose in the notice pursuant to article 90; or
 - (ii) if there is no new period so specified, 28 days beginning with the date of service of the notice.

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

- (a) the Authority must decide whether to revoke the order under section 255(2);
- (b) in taking that decision, section 254 applies to the Authority;

(c) the Authority must have regard to any representations made before commencement in relation to the notices pursuant to section 80(2) of the Financial Services Act.

(5) For the purposes of paragraph (4)(b) the reference in section 254(1)(a) to the requirements for the making of the order are to be read as a reference to the requirements for the making of an order under section 243.

(6) Where before commencement a request has been made under section 79(4) of the Financial Services Act for the revocation of an order falling within article 65(1) of the Authorised Persons Order and that request has not been determined before commencement, the request is to be treated after commencement as a request under section 256(1).

Cessation of recognition of scheme in designated country or territory

47.—(1) Where—

- (a) the Authority has given notice under section 89(5) of the Financial Services Act of its intention to direct that a scheme will cease to be recognised by virtue of section 87 of that Act;
- (b) the Authority has not given such a direction;
- (c) the scheme is treated by virtue of article 67(2) of the Authorised Persons Order after commencement as recognised under section 270,

the notice has effect after commencement as a warning notice under section 280(1) that the Authority proposes to give a direction under section 279 that the scheme is to cease to be recognised under section 270.

(2) Notwithstanding section 392(a), sections 393 and 394 do not apply to a warning notice having effect by virtue of paragraph (1).

(3) A notice falling within paragraph (1) has effect—

- (a) as if it stated that section 394 does not apply;
- (b) as if the period specified in the notice for making representations to the Authority were—
 - (i) the new period (if any) specified for this purpose in the notice pursuant to article 90, or
 - (ii) if there is no new period so specified, 28 days beginning with the date of service of the notice.

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

- (a) the Authority must decide whether to give a direction in accordance with section 280(2) that the scheme is to cease to be recognised under section 270;
- (b) in taking that decision, section 279 applies to the Authority; and
- (c) the Authority must have regard to any representations made before commencement in relation to the notice pursuant to section 89(6) of the Financial Services Act.

Notice of revocation of recognition of individually recognised scheme

48.—(1) Where—

- (a) the Authority has given notice under section 89(5) of the Financial Services Act of its intention to revoke an order made under section 88 of that Act;
- (b) the Authority has not revoked the order before commencement;
- (c) the scheme is by virtue of article 68 of the Authorised Persons Order treated after commencement as recognised under section 272;

the notice has effect after commencement as a warning notice under section 280(1) that the Authority proposes to revoke the order pursuant to section 279.

(2) Notwithstanding section 392(a), sections 393 and 394 do not apply to a warning notice having effect by virtue of paragraph (1).

(3) A notice falling within paragraph (1) has effect—

(a) as if it stated that section 394 does not apply;

(b) as if the period specified in the notice for making representations to the Authority were—

(i) the new period (if any) specified for this purpose in the notice pursuant to article 90; or

(ii) if there is no new period so specified, 28 days beginning with the date of service of the notice.

(4) Where a notice takes effect under paragraph (1)—

(a) the Authority must decide whether to revoke recognition in accordance with section 280(2);

(b) in taking that decision, section 279 applies to the Authority;

(c) the Authority must have regard to any representations made before commencement in relation to the notice pursuant to section 89(6) of the Financial Services Act.

(5) For the purposes of paragraph (4)(b), the reference in section 279(c) to the requirements for the making of the order are to be read as a reference to the requirements for the making of an order under section 272.