
STATUTORY INSTRUMENTS

2001 No. 3592

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

PART IX

APPEALS

CHAPTER II

APPEALS TO THE BANKING APPEAL TRIBUNAL

Preservation of right of appeal under the Banking Act

112. Where, before commencement—

- (a) a decision has been taken against which an appeal may be brought to a tribunal constituted in accordance with section 28 of the Banking Act (“a banking appeal tribunal”);
- (b) the period in which an appeal against that decision could be made has not expired; and
- (c) no notice of appeal has been sent in relation to the decision,

section 27 of the Banking Act (as it has effect by virtue of the 2BCD Regulations) applies to that decision and the repeal of that Act does not affect the continuity of the period set by or under that Act as the period within which an appeal against that decision may be brought.

Application of the Banking Act to transitional appeals

113.—(1) Notwithstanding the repeal of the Banking Act, sections 27(4) and (5), 28, 30 and 31 of that Act apply to a transitional Banking Act appeal, subject to the modifications set out in this article.

(2) A “transitional Banking Act appeal” is

- (a) an appeal brought in accordance with section 28 of the Banking Act which has not been determined before commencement; or
- (b) an appeal brought after commencement pursuant to article 112.

(3) In section 27 of the Banking Act, for subsection (5) substitute the following—

“(5) The Tribunal may suspend the operation of a decision imposing or varying a restriction or giving or varying a direction pending the determination of an appeal in respect of that decision.”

(4) In subsection (3) of section 30 of the Banking Act, for the words “appeals under this Part of this Act” are substituted

“transitional Banking Act appeals within the meaning of article 113 of the Financial Services and Markets Act 2000 (Transitional Provisions) (Partly Completed Procedures) Order 2001”.

Task of the banking appeal tribunal in relation to a transitional Banking Act appeal

114.—(1) On a transitional Banking Act appeal brought by an institution under section 27(1) of the Banking Act, the question for the determination of the banking appeal tribunal is whether, for the reasons adduced by the appellant, the decision was unlawful or was not justified by the evidence on which it was based.

(2) On making its determination, the banking appeal tribunal must remit the matter to the Authority with such directions (if any) as the tribunal considers appropriate for giving effect to its determination.

(3) The Authority must exercise its powers under—

- (a) Part IV, V, XII or XIII of the Act;
- (b) Schedule 3 to the Act;

(c) the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001, in the manner most appropriate to give effect to the determination of, and any direction given by, the banking appeal tribunal.

(4) Notwithstanding the repeal of the Banking Act, section 29(5), (6) and (8) of that Act apply to a transitional Banking Act appeal brought by a person under section 27(2) of the Banking Act.

(5) The banking appeal tribunal must send a copy of its determination and directions (if any) to the appellant and the Authority.

Decisions taken by the Authority giving effect to banking appeal tribunal determination

115.—(1) Where the Authority implements a direction given by the banking appeal tribunal by exercising its power under section 45, sections 53, 54 and 55 do not apply to the exercise of that power.

(2) Where the Authority implements a direction given by the banking appeal tribunal by exercising its power under section 52(6) or (7), section 52(9) does not apply to the exercise of that power.

(3) Where the Authority implements a direction given by the banking appeal tribunal by exercising its power under section 186(1), 185(1) or 187, section 183(3), 185(3) or 188 (as the case may be) does not apply to the exercise of that power.

(4) Where the Authority implements a direction given by the banking appeal tribunal by exercising its power under section 196 or 200(1), section 197 and section 200(2) to (5) do not apply to the exercise of that power.

(5) Where the Authority implements a direction giving by the banking appeal tribunal by exercising any of the powers mentioned in paragraphs (1) to (4), it must exercise that power by giving the parties written notice and sections 390(7) and 391(4) apply to that notice as they apply to a final notice.

Test to be applied by banking appeal tribunal

116.—(1) Where in any transitional Banking Act appeal the issues arising for consideration included the issue whether a person was a fit and proper person to hold a particular position with an institution (within the meaning of Schedule 3 to the Banking Act), the banking appeal tribunal must consider instead whether—

- (a) the authorised person with whom that person held the position is failing or is likely to fail to satisfy the threshold conditions (within the meaning of section 41); and

- (b) whether that person is a fit and proper person to perform the functions in relation to a regulated activity which corresponds to the business in relation to which he was engaged before commencement.

(2) Where in any transitional Banking Act appeal the issues arising for consideration included the issue whether a person was a fit and proper person to be a controller of any description to which section 21 of the Banking Act applies, the banking appeal tribunal must consider instead—

- (a) in a case where, after commencement, the person would require the approval of the Authority under section 59, the question whether that person is a fit and proper person to perform functions in relation to a regulated activity corresponding to the business in relation to which he was engaged before commencement;
- (b) in a case where, after commencement, the person would have control over a UK authorised person (within the meaning of Part XII of the Act), the question whether the person meets the approval requirements within the meaning of section 186.

Modifications to Banking Appeal Tribunal Regulations 1987

117. The Banking Appeal Regulations 1987(1) and the Banking Appeal Tribunal (Scottish Appeals) Regulations 1987(2) continue to apply after commencement (notwithstanding their revocation and the repeal of the Banking Act) with the following modifications—

- (a) in regulation 2(1) after the definition of “the chairman” is inserted—
 - ““transitional Banking Act appeal” has the meaning given in article 113 of the Financial Services and Markets Act 2000 (Transitional Provisions) (Partly Completed Procedures) Order 2001;”;
- (b) at the end of regulation 2 the following paragraph is inserted—
 - “(3) In these Regulations—
 - (a) references to an appeal under section 27(1) of the Act shall be construed as references to a transitional Banking Act appeal brought by an institution under section 27(1); and
 - (b) references to an appeal under section 27(2) of the Act shall be construed as references to a transitional Banking Act appeal brought by a person under section 27(2);
 - (c) references to an appeal under section 27(3) of the Act shall be construed as references to a transitional Banking Act appeal brought by a person under section 27(3).”;
- (c) in regulation 3 for the words “appeals under Part I of the Act” are substituted “transitional Banking Act appeals”;
- (d) in regulation 8, paragraph (1) is replaced by the following—
 - “The appellant shall send to the secretary a notice setting out the grounds of appeal within—
 - (a) 28 days from the date on which the Authority served notice in writing on the appellant of its decision in the case of an appeal against the decision of the Authority (or any finding relating thereto) to revoke authorisation, and
 - (b) 14 days of serving the notice of appeal in any other case.”;
- (e) in regulation 10, paragraph (2) is omitted;

(1) S.I.1987/1299. The Regulations were amended by S.I. 1993/982 and S.I. 1998/1129.

(2) S.I. 1987/1336. The Regulations were amended by S.I. 1993/1061 (S.150) and S.I. 1998/1129.

- (f) in regulation 11(1), for the words “of the operation of any restriction or direction or any variation of a restriction or direction” are substituted the words “of a decision”;
- (g) after regulation 14 is inserted the following regulation—

“14A Hearing as to appropriate action

In the case of an appeal under section 27(1) or section 27(3), the Tribunal shall inform the parties of the directions (if any) it is minded to give to the Authority and shall afford the parties fourteen days in which to make written representations to it before making its determination.”;

- (h) in regulation 15, paragraph (1) is omitted;
- (i) in regulation 16(4) the words after “dismissed” are omitted.