
STATUTORY INSTRUMENTS

2001 No. 3646

The Financial Services and Markets Act 2000
(Transitional Provisions and Savings) (Information
Requirements and Investigations) Order 2001

PART 2

INFORMATION AND REPORT REQUIREMENTS

Relevant information requirements

2.—(1) Any outstanding relevant information requirement is to be treated as a requirement imposed under section 165(1) of the Act (Authority's power to require information), whether or not it could have been imposed under that section.

(2) Such a relevant information requirement is to be treated as if it required the information to be provided, or documents to be produced, to the Authority (if it does not already do so).

(3) In relation to such a relevant information requirement—

- (a) any requirement that any information be provided or document be produced within a specified period or at a specified place is to be treated as if that period or place were specified for the purposes of section 165(2) of the Act;
- (b) any requirement that the information be provided in a particular form is to be treated as a requirement imposed under section 165(5) of the Act;
- (c) any requirement that any information be verified in a specified manner or that any document be authenticated in a specified manner is to be treated as a requirement imposed under section 165(6) of the Act.

(4) Section 174 of the Act (admissibility of statements) applies to any statement made on or after commencement in compliance with an outstanding relevant information requirement of the kind specified by paragraph (8)(b) or (d) as if that statement were a statement of the kind specified in subsection (1) of that section, and as if the reference in subsection (3) to section 177(4) or 398 of the Act including a reference to—

- (a) in relation to a requirement of the kind specified by paragraph (8)(b), section 39(11) or 94(1)(a)(1) of the Banking Act;
- (b) in relation to a requirement of the kind specified by paragraph (8)(d), section 71(1)(b), (3) or (4)(2) of the Insurance Companies Act.

(5) Section 177 of the Act (offences) does not apply to an outstanding relevant information requirement of the kind specified by paragraph (8)(a) and subsection (4) of that section does not apply to an outstanding relevant information requirement of the kind specified by paragraph (8)(c).

(1) Section 94 was amended by the Bank of England Act 1998 (c. 11) Schedule 5; modified by the 2BCD Regulations.
(2) Amended by S.I.1984/703 and S.I. 1994/1696; revoked in part by S.I. 1996/2102.

(6) Section 398 of the Act (misleading the Authority) does not apply to a person who, on or after commencement, purports to comply with an outstanding relevant information requirement of the kind specified by paragraph (8)(a) or (c).

(7) Where, on or after commencement, a person fails to comply with an outstanding relevant information requirement or purports to comply with such a requirement—

- (a) the court may not impose any penalty or other measure under section 177 of the Act that is more severe than the penalty or measure that it could have imposed had the Act not been passed; and
- (b) the Authority may not impose any penalty or other disciplinary measure under the Act that is more severe than the penalty or measure that could have been imposed, other than by the court, but whether by the Authority or otherwise, had the Act not been passed.

(8) In this article, “relevant information requirement” means—

- (a) an applicable requirement or request to provide information or to produce a document imposed on, or made to, a member of a recognised self-regulating organisation or of a recognised self-regulating organisation for friendly societies by that organisation pursuant to a power conferred on it by its rules;
- (b) a requirement to provide information or to produce a document imposed under—
 - (i) subsection (1)(a) of section 39(3) of the Banking Act;
 - (ii) subsection (3)(a) of that section; or
 - (iii) subsection (4) of that section (so far as it relates to subsection (3)(a));
- (c) a requirement to deposit a document or statement imposed under section 43(4) of the Insurance Companies Act; or
- (d) a requirement to furnish information or to produce a document imposed by the Treasury under—
 - (i) subsection (1) of section 44 of the Insurance Companies Act;
 - (ii) subsection (2)(a) of that section; or
 - (iii) subsection (3) of that section (so far as it relates to subsection (2)(a)).

(9) A requirement or request is “applicable” for the purposes of paragraph (8)(a) if it was imposed or made otherwise than in connection with an investigation.

Section 104 of the Financial Services Act

3.—(1) Any outstanding requirement to which this paragraph applies is to be treated—

- (a) as a relevant requirement for the purposes of Part XXV of the Act (injunctions); and
- (b) if the requirement was imposed on a person who is, immediately after commencement, an authorised person, as a requirement imposed on him by or under the Act for the purposes of section 205 of the Act (public censure).

(2) Paragraph (1) applies to a requirement to furnish information imposed under—

- (a) section 104(1) of the Financial Services Act(5); or
- (b) paragraph 24 of Schedule 11 to that Act(6).

(3) Amended by the Bank of England Act 1998 (c. 11) paragraph 11, Schedule 5; and by the Youth Justice and Criminal Evidence Act 1999 (c. 23), paragraph 17, Schedule 3; and amended and modified by the 2BCD Regulations.

(4) Amended by S.I. 1997/2781; and by the Youth Justice and Criminal Evidence Act 1999 (c. 23), paragraph 3, Schedule 3; functions transferred by S.I. 1998/2842.

(5) Amended by S.I. 1996/2827; modified by the 2BCD Regulations; S.I. 1994/1696; and by the ISD Regulations. Functions transferred by S.I. 1987/942.

(6) Amended by the Friendly Societies Act 1992 (c. 40) paragraph 10, Schedule 18.

(3) Any outstanding requirement imposed on a recognised professional body under section 104(2) of the Financial Services Act—

- (a) is to be treated for the purposes of section 380(2) of the Act (injunctions) as a relevant requirement; and
- (b) is to be treated for the purposes of section 398 of the Act (misleading the Authority) as a requirement imposed by or under the Act (and subsection (2) of that section does not apply).

(4) Any outstanding requirement imposed on a recognised investment exchange or recognised clearing house (in each case, within the meaning of the Financial Services Act) under section 104(2) of that Act is to be treated for the purposes of section 398 of the Act (misleading the Authority) as a requirement imposed by or under the Act (and subsection (2) of that section does not apply).

Reports by skilled persons

4.—(1) Any outstanding relevant report requirement is to be treated as a requirement imposed under section 166(1) of the Act (reports by skilled persons), whether or not it could have been imposed under that section.

(2) Such a relevant report requirement is to be treated as if it required the report to be provided to the Authority (if it does not already do so).

(3) In relation to such a relevant report requirement, any requirement as to the form of the report, and any provision relating to the form, contents or deposit of the abstract imposed under subsections (3) to (6) of section 42 of the Insurance Companies Act, is to be treated as a requirement imposed under section 166(3) of the Act.

(4) Any outstanding relevant report requirement is to be treated as if the person making the report satisfies the requirements of section 166(4) of the Act if—

- (a) in the case of a relevant requirement of the kind specified by paragraph (7)(a), that person was nominated or approved by the Authority under section 39(2) of the Banking Act;
- (b) in the case of a relevant report requirement of the kind specified by paragraph (7)(b), that person was specified in the requirement;
- (c) in the case of a relevant report requirement of the kind specified by paragraph (7)(c), that person was the actuary under section 19(1) of the Insurance Companies Act(7) acting for the person to whom the requirement relates at the time the relevant report requirement was imposed.

(5) Section 174 of the Act (admissibility of statements) applies to any statement made on or after commencement in compliance with an outstanding relevant report requirement as if that statement were a statement of the kind specified in subsection (1) of that section, and as if the reference in subsection (3) to section 177(4) or 398 of the Act included a reference to—

- (a) in the case of a requirement of the kind specified by paragraph (7)(a), section 39(11) or 94(1)(a) of the Banking Act;
- (b) in the case of a requirement of the kind specified by paragraph (7)(b), section 71(1)(b), (3) or (4) of the Insurance Companies Act.

(6) Where, on or after commencement, a person fails to comply with an outstanding relevant report requirement or purports to comply with such a requirement—

- (a) the court may not impose any penalty or other measure under section 177 of the Act that is more severe than the penalty or measure that it could have imposed had the Act not been passed; and

- (b) the Authority may not impose any penalty or other disciplinary measure under the Act that is more severe than the penalty or measure that could have been imposed, other than by the court, but whether by the Authority or otherwise, had the Act not been passed.
- (7) In this article, “relevant report requirement” means—
 - (a) a requirement to provide a report imposed under section 39(1)(b) of the Banking Act;
 - (b) a requirement to furnish a report imposed by the Treasury under section 44(2B) of the Insurance Companies Act; or
 - (c) a requirement imposed under section 42(1)(b) of that Act to cause an abstract of a report made by an actuary under section 42(1)(a) of that Act to be made.

Use of statements—information requirements

5. Notwithstanding any repeal, section 44(5) to (5B) of the Insurance Companies Act⁽⁸⁾ and section 39(12) to (12B) of the Banking Act⁽⁹⁾ continue to have effect on and after commencement, in relation to any statement made before commencement, as if—

- (a) the reference in section 44(5B) of the Insurance Companies Act to section 71(1)(b), (3) or (4) of that Act; and
 - (b) the reference in section 39(12B) of the Banking Act to section 94(1)(a) of that Act,
- included a reference to sections 177(4) and 398 of the Act.

⁽⁸⁾ Subsections (5A) and (5B) inserted by the Youth Justice and Criminal Evidence Act 1999 (c. 23), paragraph 3, Schedule 3.
⁽⁹⁾ Subsections (12A) and (12B) inserted by the Youth Justice and Criminal Evidence Act 1999 (c. 23), paragraph 17, Schedule 3.