
STATUTORY INSTRUMENTS

2001 No. 3650

The Financial Services and Markets Act
2000 (Miscellaneous Provisions) Order 2001

PART III

MISCELLANEOUS PROVISION

Interpretation

13.—(1) In this Part—

“the 2BCD Regulations” means the Banking Coordination (Second Council Directive) Regulations 1992(1);

“the Act” means the Financial Services and Markets Act 2000;

“the Authorised Persons Order” means the Financial Services and Markets Act 2000 (Transitional Provisions) (Authorised Persons etc.) Order 2001(2);

“the Banking Act” means the Banking Act 1987(3);

“the Building Societies Act” means the Building Societies Act 1986(4);

“commencement” means the beginning of 1 December 2001;

“the Financial Services Act” means the Financial Services Act 1986(5);

“the Friendly Societies Act” means the Friendly Societies Act 1992(6);

“the Insurance Companies Act” means the Insurance Companies Act 1982(7);

“the ISD Regulations” means the Investment Services Regulations 1995(8).

(2) In this Part, any reference to a section or Schedule is, unless the context otherwise requires, a reference to that section of or Schedule to the Act.

Winding up of persons previously authorised under the Financial Services Act etc.

14.—(1) This article applies in the case of a body of a kind mentioned in section 367(1) (winding-up petitions) which was, immediately before commencement, an authorised person or appointed representative (in each case within the meaning of the Financial Services Act) to whom section 72(1) of that Act applied.

(1) S.I.1992/3218 as amended by S.I. 1993/3225, S.I. 1995/1217, S.I. 1995/1442, S.I. 1996/1669, S.I. 1999/2094 and S.I. 2000/2952.

(2) S.I. 2001/2636.

(3) 1987 c. 22.

(4) 1986 c. 53.

(5) 1986 c. 60.

(6) 1992 c. 40.

(7) 1982 c. 50.

(8) S.I. 1995/3275 amended by the Bank of England Act 1998 (c. 11) and by S.I. 1996/1669 and S.I. 2000/2952.

(2) In such a case, subsection (5) of section 367 has effect as if it provided for “agreement” to include (in addition to such an agreement as is mentioned in that subsection) any investment agreement, within the meaning of the Financial Services Act.

Winding up of persons previously authorised under the Banking Act

15.—(1) This article applies in the case of a body of a kind mentioned in section 367(1) which was, immediately before commencement, an authorised institution within the meaning of the Banking Act.

(2) Such a body is to be treated for the purpose of section 367(3)(a) as unable to pay its debts if it is in default on an obligation to pay a sum due and payable in respect of a deposit.

(3) In paragraph (2), “deposit” has the meaning given by section 5 of the Banking Act except that it includes any sum which would otherwise be excluded from that meaning by paragraph (a), (b) or (e) of subsection (3) of that section.

(4) This article does not affect the application of section 367(4) and (5).

The Rehabilitation of Offenders Act 1974

16.—(1) Notwithstanding—

- (a) any repeal of section 189 of, or Part I of Schedule 14 to, the Financial Services Act(9);
- (b) any repeal of section 95(2) of the Banking Act(10);
- (c) any amendment or revocation of article 5(2) of, or paragraph 8 of Schedule 3 to, the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975(11) which comes into force on or after commencement,

those provisions continue to have effect in relation to any proceedings which are specified in those provisions, whether or not those proceedings have been initiated before commencement, as if they had not been repealed, amended or revoked (as the case may be).

(2) In paragraph (1), “proceedings” means proceedings before a judicial authority within the meaning of section 4(6) of the Rehabilitation of Offenders Act 1974(12).

Disqualification of members of the Financial Services Tribunal

17. Notwithstanding—

- (a) paragraphs 1(a), 2(a) and 7(3)(a) of Schedule 20 (which omit provisions in the House of Commons Disqualifications Act 1975(13), the Northern Ireland Assembly Disqualification Act 1975(14) and the Judicial Pensions and Retirement Act 1993(15) relating to the Financial Services Tribunal), and
- (b) the corresponding repeals in Schedule 22,

the provisions so omitted continue to have effect for so long as the Financial Services Tribunal continues to have functions conferred by or under any enactment.

(9) Amended by the Friendly Societies Act 1992 (c. 40) Schedule 14 and section 189 repealed from a day to be appointed by the Police Act 1997 (c. 50) Schedule 10.

(10) Amended by the Bank of England Act 1998 (c. 11) Schedule 5 and modified by S.I. 1992/3218. Repealed from a day to be appointed by the Police Act 1997 (c. 50) Schedule 10.

(11) S.I. 1975/1023; relevant amendments made by S.I.1986/2268.

(12) 1974 c. 53.

(13) 1975 c. 24.

(14) 1975 c. 25.

(15) 1993 c. 8.

Duty of auditors to communicate matters to the Authority

18.—(1) Notwithstanding any repeal of the enactments specified by paragraph (2), those enactments, and any rules, regulations or orders made under those enactments in force immediately before commencement, continue to have effect in relation to any matter of which an auditor becomes aware in his capacity as an auditor that relates to things done (or not done) before commencement, subject to the modifications in paragraph (4) and, where relevant, paragraph (3).

(2) The enactments specified by this paragraph are—

- (a) section 109 of the Financial Services Act(**16**) (communication by auditor with Authority), to the extent that it relates to the obligation to communicate a matter;
- (b) section 47 of the Banking Act(**17**) (communication by auditor with the Authority), to the extent that it relates to the obligation to communicate a matter;
- (c) section 21A of the Insurance Companies Act(**18**) (communication by auditor), to the extent that it relates to the obligation to communicate a matter;
- (d) section 82(8) to (11) of the Building Societies Act(**19**) (auditors' duties to Commission), to the extent that it relates to the obligation to furnish information; and
- (e) section 79(8) to (11) of the Friendly Societies Act(**20**) (auditors' duties to Commission), to the extent that it relates to the obligation to furnish information.

(3) For each reference to the Secretary of State, the Treasury, the Building Societies Commission or the Friendly Societies Commission, there is substituted a reference to the Authority (and so any communication made pursuant to those enactments must be made to the Authority).

(4) Where an enactment specified by paragraph (2) refers to an auditor of a person (“A”) who has a particular status, that enactment applies after commencement as if that reference was to A having that status immediately before commencement.

Reports under the Financial Services Act and the Banking Act

19.—(1) The first report of the Authority made under paragraph 10(1) of Schedule 1 must include the last Financial Services Act report and the last Banking Act report.

(2) The “last Financial Services Act report” is the report, in respect of the year during which commencement occurs, which the Authority would be required by section 117(1) of the Financial Services Act to make, but for the repeal of that section.

(3) The “last Banking Act report” is a report on the Authority’s activities under the Banking Act during the financial year (within the meaning of section 1(3) of that Act) during which commencement occurs.

Report under the Insurance Companies Act

20.—(1) Notwithstanding any repeal of section 98 of the Insurance Companies Act (annual report by the Treasury), the Treasury must, when they lay the first copy of the Authority’s annual report in accordance with paragraph 10(3) of Schedule 1, lay before Parliament a general report of matters within the Insurance Companies Act that covers the relevant period.

(16) Modified by S.I. 1992/3218, S.I. 1995/3275, S.I. 1996/1669. See also the Auditors (Financial Services Act 1986) Rules 1994 (S.I. 1994/526) as modified S.I. 1996/1669.

(17) Amended by the Bank of England Act 1998 (c. 11) Schedule 5 and S.I. 1996/1669 and modified by S.I. 1992/3218. See also the Accountants (Banking Act 1987) Regulations 1994 (S.I. 1994/524) as modified by S.I. 1996/1669.

(18) Inserted by the Financial Services Act s. 135 and amended by S.I. 1996/1669 and S.I. 1997/2781. See also the Auditors (Insurance Companies Act 1982) Regulations 1994 (S.I. 1994/449) as modified by S.I. 1996/1669.

(19) Amended by the Building Societies Act 1997 (c. 40), Schedule 7 and 9, S.I. 1991/1729 and S.I. 1996/1669. See also the Buildings Societies (Auditors) Order 1994 (S.I. 1994/525) as modified by S.I. 1996/1669.

(20) Amended by S.I. 1996/1669. See also the Friendly Societies (Auditors) Order 1994 (S.I. 1994/132) as modified by S.I. 1996/1669.

(2) In paragraph (1), the relevant period is the period from (but not including) the last day of the period to which the last report under section 98 of the Insurance Companies Act related to commencement.

Transfer of property, rights and liabilities

21.—(1) The Authority must make a scheme under this article for the transfer to it of such of the property, rights and liabilities of each transferor body as appear to the Authority appropriate to be so transferred as a consequence of the Act coming into force.

(2) Provided that the transferor body notifies the Authority of its agreement to the Scheme, the property, rights and liabilities of the transferor body to which a scheme under this article relates, shall on the date specified by the scheme (or, if different dates are specified in the scheme in relation to different property, rights or liabilities, on the relevant date specified by the scheme), by virtue of this article and without further assurance, be transferred to and vested in the Authority in accordance with the provisions of the scheme.

(3) The property, rights and liabilities capable of being transferred in accordance with a scheme under this article may include property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the transferor body.

(4) A scheme made under this article may make such supplemental, consequential and transitional provision for the purposes of, or in connection with, any transfer of property, rights or liabilities for which the scheme provides or in connection with such other provisions contained in the scheme as the Authority considers appropriate.

(5) Each of the following is a “transferor body” for the purposes of this article—

- (a) the Personal Investment Authority Limited;
- (b) the Investment Management Regulatory Organisation Limited;
- (c) the Securities and Futures Authority Limited.

Transfer of liabilities

22.—(1) Notwithstanding any term of any scheme made under article 21 any liability incurred by a transferor body as a result of an act or omission occurring before commencement is to be treated on and after commencement as a liability of the Authority.

(2) The reference to liabilities in paragraph (1) and in article 21 does not include any liability transferred as a result of article 17 of the Financial Services and Markets Act 2000 (Transitional Provisions) (Ombudsman Scheme and Complaints Scheme) Order 2001(21).

Legal proceedings

23.—(1) If, at commencement, a transferor body is a party to any legal proceedings the Authority is substituted for the transferor body in those proceedings.

(2) Where legal proceedings for an injunction commenced under a provision of the Financial Services Act or the Banking Act are concluded on or after commencement, the court may, instead of granting an injunction restraining a contravention of the kind mentioned in that provision, grant an injunction restraining (or in Scotland, an interdict prohibiting) such conduct as the court considers appropriate, having regard to any provision made by or under the Act.

(3) For the purposes of this article, “transferor body” has the same meaning as in article 21.

Exemption from liability in damages

24.—(1) Notwithstanding their repeal, the provisions mentioned in paragraph (2) continue to have effect—

- (a) in relation to things done or omitted to be done before commencement, and
- (b) in relation to anything done on or after commencement for the purposes of or in connection with any proceedings arising from anything done or omitted to be done before commencement.

(2) The provisions mentioned in this paragraph are—

- (a) section 1(4) of the Banking Act (immunity in relation to things done or omitted in discharge of functions);
- (b) section 43(5) of the Financial Services Act (listed money market institutions)**(22)**;
- (c) section 187 of the Financial Services Act (exemption from liability for damages) (including as extended in relation to the Authority by regulation 56(1) of the ISD Regulations and in relation to the recognised self-regulating organisations by regulation 30 of the ISD Regulations);
- (d) section 171(6A) of the Companies Act 1989**(23)** (certain money market institutions).

(3) Notwithstanding the revocation of the Financial Markets and Insolvency (Money Market) Regulations 1995**(24)**, regulation 29 of those Regulations continues to have effect to the extent provided for by paragraph 20(5) of Schedule 1 to the Bank of England Act 1998 (Consequential Amendments to Subordinate Legislation) Order 1998**(25)**.

(4) The reference in paragraph (2)(a) to section 1(4) of the Banking Act is a reference to that provision—

- (a) as amended by paragraph 2 of Schedule 5 to the Bank of England Act 1998;
- (b) as continued in effect without those amendments by paragraph 1 of Schedule 8 to that Act (but as if the references in paragraphs (1) above to “commencement” were to 1st June 1998); and
- (c) as extended by paragraph 2 of Schedule 8 to the 2BCD Regulations.

(5) The Authority may rely on section 187(1) of the Financial Services Act in relation to any liability transferred to it by virtue of paragraph (1) of article 22 or of article 21 to the same extent as the transferor body from which the liability was transferred could have relied on it before commencement in relation to that liability.

(6) For the avoidance of doubt, the Authority’s functions for the purposes of paragraph 19 of Schedule 1 (exemption from liability in damages) include any functions exercisable by the Authority after commencement as a result of any saving made by or under the Act from the effect of any repeal or revocation so made.

Fees for the exercise of certain Authority functions

25.—(1) For the purposes of paragraph 17 of Schedule 1 (fees) the following are to be treated as functions of the Authority under the Act—

- (a) the Authority’s functions under—
 - (i) the Financial Services Act (other than Part IV of that Act);
 - (ii) the Banking Act;

(22) Subsection (5) was inserted into section 43 by the Bank of England Act 1998 (c. 11), section 25(1).

(23) 1989 c. 40. Subsection (6A) was inserted into section 171 by the Bank of England Act 1998, section 25(3).

(24) S.I. 1995/2049.

(25) S.I. 1998/1129.

(iii) the 2BCD Regulations;

(iv) the ISD Regulations,

with respect to which the Authority incurs expenditure after commencement;

(b) any function exercisable by the Authority after commencement as a result of any saving made by or under the Act from the effect of any repeal or revocation so made.

(2) For the purposes of paragraph 17 of Schedule 1, expenditure incurred in meeting a liability transferred to the Authority by virtue of paragraph (1) of article 22 or of article 21 is to be treated as having been incurred in connection with the discharge by the Authority of functions under the Act.

(3) For the purposes of section 99(2), expenditure incurred in meeting a liability arising from the exercise by the Authority of its functions as the competent authority under Part IV of the Financial Services Act is to be treated as having been incurred in carrying out its functions as competent authority under Part VI of the Act.

Fees under the Insurance Companies Act

26.—(1) Any relevant authorised person who has not paid the final Insurance Companies Act fee must, by or on his final day, pay to the Authority his relevant pre-commencement fee.

(2) By 26th April 2002—

(a) the Authority must inform the Treasury of the amount which it has received pursuant to paragraph (1) (“X”); and

(b) the Treasury must inform the Authority of the amount which they received before commencement as fees under the 2001 Fees Order (“Y”).

(3) On or before 31st December 2002—

(a) if two-thirds of X exceeds one third of Y, the Authority must pay the difference to the Treasury;

(b) if one third of Y exceeds two thirds of X, the Treasury must pay the difference to the Authority.

(4) Any sum received by the Treasury under paragraph (3) must be paid into the Consolidated Fund.

(5) In this article—

“the 2001 Fees Order” means the Insurance (Fees) Order 2001(26);

“final day”, in relation to any person, means the day by which that person would have been required to deposit documents with the Treasury under section 22(1) of the Insurance Companies Act, but for the repeal of that Act;

“relevant authorised person” means an authorised person who was, immediately before commencement, authorised under section 3 or 4 of the Insurance Companies Act but was not an EC company (as defined by that Act);

“relevant pre-commencement fee”, in relation to any person, means the amount which, had he deposited documents under section 22(1) of the Insurance Companies Act immediately before commencement, he would have been obliged to pay to the Treasury as a fee under the 2001 Fees Order.

(6) For the purposes of this article, a person has paid the final Insurance Companies Act fee if he has, before commencement, paid to the Treasury a fee under the 2001 Fees Order.

(7) This article applies notwithstanding any repeal of section 94A of the Insurance Companies Act or any revocation of the 2001 Fees Order.

Fees in respect of the existing deficit

27.—(1) Before 30th April 2002 the Treasury must inform the Authority of an amount (“the relevant amount”), which must not exceed the existing deficit, for the purposes of this article.

(2) The Authority must make rules providing for the payment to it in the transitional period by authorised persons who have Part IV permission to effect and carry out contracts of insurance of such fees as it considers will enable it to repay the relevant amount to the Treasury.

(3) In making rules under paragraphs (2) for the first year of the transitional period, the Authority must have regard to the object of securing (so far as practicable) that the amount of fees payable in that year is equal to one half of the relevant amount.

(4) On each of 31st July 2003 and 31st July 2004, the Authority must pay to the Treasury the sums that it has received by virtue of rules made under paragraph (2) in the relevant period which expires immediately before that date.

(5) Any sums received by the Treasury pursuant to this article must be paid into the Consolidated Fund.

(6) Nothing in this article affects the Authority’s power to make rules under paragraph 17 of Schedule 1 (fees).

(7) In this article—

“the existing deficit” means the cost incurred by the Treasury in exercising functions which were, when they were exercised, relevant functions for the purposes of subsection (6) of section 94A of the Insurance Companies Act, less the amount that the Treasury received before commencement as fees by virtue of orders made under that section and any amount that the Treasury receive (or are to receive) by virtue of article 26(3);

“the relevant period” is the period running from 1st July in one year to 30th June in the next year;

“transitional period” means the period from 1st July 2002 to 30th June 2004.

The Contracting Out Order

28.—(1) The Contracting Out (Functions in Relation to Insurance) Order 1998(27) is revoked.

(2) Notwithstanding paragraph (1), any contract made between the Treasury and the Authority that relates to the exercise of functions listed in the Schedule to that Order which is subsisting immediately before commencement, continues to have effect on and after commencement, to the extent that it relates to matters ancillary to the exercise of those functions including—

(a) payment; and

(b) retention and inspection of documents.

(3) Any obligation of the Authority under such a contract which continues to have effect after commencement is to be treated as a function conferred on the Authority by or under a provision of the Act for the purposes of Schedule 1.

(4) The Authority must comply in a reasonable time with any direction that the Treasury give to it that relates to the conduct of relevant litigation or the handling of any proposal to initiate such litigation.

(5) In paragraph (4), “relevant litigation” means any litigation that arises from or relates to the exercise of the functions listed in the Schedule to that Order by the Authority, whether or not the Authority is or the Treasury are a party.

Correction of scope of permission notices as a result of this Order

29.—(1) This article applies where—

- (a) the Authority has sent before commencement a scope of permission notice under article 55 of the Authorised Persons Order to a person who has a permission conferred on him at commencement as a result of article 6, 7, 8 or 9;
- (b) that person has before commencement notified the Authority in accordance with article 56(1)(a) of that Order that he agrees with the matters stated in the notice;
- (c) the Authority has, before commencement, sent to the person a notice (“revision notice”) revising the scope of permission notice so that it includes the permission conferred on the person as a result of article 6, 7, 8 or 9 (as the case may be).

(2) In a case where this article applies, if the person has not, before commencement, notified the Authority that it objects to the revision notice, then article 57(1) of the Authorised Persons Order applies to the scope of permission notice as revised by the revision notice.

(3) If the person has notified the Authority before commencement that it objects to the revision notice then article 57(1) of the Authorised Persons Order applies as if the revision notice had not been sent.

Correction of scope of permission notices for PIA firms

30.—(1) This article applies where—

- (a) the Authority has sent, before commencement, a scope of permission notice under article 55 of the Authorised Persons Order to a person who, at the time the notice was sent, was a member of the Personal Investment Authority Limited;
- (b) that person has before commencement notified the Authority in accordance with article 56(1)(a) of that Order that he agrees with the matters stated in the notice;
- (c) the scope of permission notice thereby agreed purported to provide for the person to have a permission to agree to carry on all regulated activities so far as carried on in respect of an investment of the kind specified by article 76 of the Regulated Activities Order (shares etc.) and in relation to an “intermediate customer”;
- (d) the Authority has, before commencement, sent to the firm a notice (“a revision notice”) revising the scope of permission notice so that it states that the person has permission to agree to carry on any regulated activity which the scope of permission notice states that he has a Part IV permission to carry on (in so far as agreeing to carry on that activity itself constitutes, by virtue of article 64 of the Regulated Activities Order, a regulated activity).

(2) In a case where this article applies, if the person has not, before commencement, notified the Authority that it objects to the revision notice, then article 57(1) of the Authorised Persons Order applies to the scope of permission notice as revised by the revision notice.

(3) If the person has notified the Authority before commencement that it objects to the revision notice then article 57(1) of the Authorised Persons Order applies as if the revision notice had not been sent.

(4) For the purpose of this article “the Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(28).

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*
