

2002 No.704

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Permission and Applications) (Credit Unions etc.) Order 2002

<i>Made - - - - -</i>	<i>14th March 2002</i>
<i>Laid before Parliament</i>	<i>15th March 2002</i>
<i>Coming into force - -</i>	
<i>For the purposes of articles 3, 4, 7 and 8</i>	<i>8th April 2002</i>
<i>For all other purposes</i>	<i>2nd July 2002</i>

The Treasury, in exercise of the powers conferred upon them by sections 426 to 428 of the Financial Services and Markets Act 2000(a), hereby make the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000(Permission and Applications) (Credit Unions etc.) Order 2002.

(2) This Order comes into force on 8th April 2002 for the purposes of articles 3, 4, 7 and 8 and on 2nd July 2002 for all other purposes.

(3) In this Order—

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

“the 1979 Act” means the Credit Unions Act 1979(b);

“commencement” means the beginning of 2nd July 2002;

“credit union” means a society registered under the Industrial and Provident Societies Act 1965(c) by virtue of section 1 of the 1979 Act(d);

“deposit” has the same meaning as in article 5 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(e);

“unauthorised credit union” means a credit union which, immediately before commencement, is not an authorised person.

Credit unions registered at commencement

2.—(1) Any unauthorised credit union is to be treated as having, at commencement, a Part IV permission to accept deposits by way of subscription for its shares.

(2) The permission acquired by virtue of paragraph (1) is subject to any requirement imposed by virtue of article 5(1).

(a) 2000 c. 8.

(b) 1979 c. 34.

(c) 1965 c. 12.

(d) Amended by S.I. 1996/1189 and S.I. 2001/2617.

(e) S.I. 2000/544; amended by S.I. 2001/3544.

Requirement to reapply for Part IV permission

3.—(1) At any time on or before 1st July 2004, the Authority may give a direction under this article to a class of credit unions which is specified in the direction.

(2) A direction under this article is a direction that each credit union falling within the class specified in the direction must, before a date so specified, apply to the Authority under section 40 of the Act for a fresh permission to carry on the regulated activities which it wishes to carry on.

(3) Section 40(2) of the Act does not apply in relation to an application made in pursuance of the direction.

(4) If a credit union fails to comply with the direction, its Part IV permission ceases to have effect on the date specified under paragraph (2).

(5) If a credit union complies with the direction but the application which it makes in pursuance of it is refused, its Part IV permission ceases to have effect when the application is decided.

(6) If a credit union complies with the direction and in response to its application the Authority gives it a Part IV permission, that permission has effect, from the time when the application is decided, in place of the Part IV permission which the credit union had by virtue of this Order.

(7) For the purposes of this article, an application is decided when it has been determined and there is no possibility (or no further possibility) of the determination being reversed or varied on a reference to a tribunal or an appeal.

(8) No direction given under this article before commencement has effect until commencement.

Requirement to reapply: procedure

4.—(1) A direction given under article 3 must state the reasons why it has been given to the class of credit unions specified in the direction.

(2) The date specified in the direction under article 3(2) must be such as to allow a reasonable time for compliance, and in any event must fall after the end of three months beginning with the date when the direction has effect.

(3) If the Authority gives a direction under article 3, it must as soon as practicable, and in any event not later than the due date, give a copy to each credit union which does, or which it considers may on the due date, fall within the class of credit unions specified in the direction.

(4) “The due date” means the date three months before the date specified in the direction.

(5) If the Authority fails to give a copy of the direction to a credit union by the due date, the direction does not apply to it (and therefore article 3(4) does not apply to it) but if the Authority gives it a copy of the direction after the due date, the direction has effect in relation to that credit union as if the date specified in it under article 3(2) were three months after the date on which the copy was given to that credit union, and the copy must indicate that fact.

(6) Any failure by the Authority to comply with paragraph (3) does not invalidate the direction in relation to any credit union to which a copy is given in accordance with that paragraph.

Effect of restrictions and prohibitions under 1979 Act

5.—(1) Where immediately before commencement an unauthorised credit union was subject to a direction under section 19 of the 1979 Act(a), that direction has effect after commencement as if it were a requirement imposed on that credit union under section 43 of the Act.

(a) Amended by S.I. 2001/2617.

(2) For the purposes of the rules and guidance made prior to commencement by the Authority under Part X of the Act that relate to credit unions^(a), a credit union which, immediately before commencement, did not hold a certificate under section 11C of the 1979 Act^(b) is to be treated from commencement as a version 1 credit union (and so, by virtue of rule 10.3.2 of the Credit Union Sourcebook^(c), such a credit union may not lend more than £10,000 in excess of the borrowing member's shareholding).

(3) For the purposes of those rules and that guidance, a credit union which, immediately before commencement, held a certificate under that section is to be treated from commencement as a version 2 credit union (and so, by virtue of rule 10.3.4 of the Credit Union Sourcebook, such a credit union may lend up to £10,000 in excess of the borrowing member's shareholding or 1.5% of the total shares in the credit union in excess of the borrowing member's shareholding, whichever is the greater).

(4) Paragraphs (2) and (3) are subject to anything done by or under the Act after commencement.

Approved persons

6.—(1) Subject to paragraph (2), where at commencement a person (“E”) is performing a function for an unauthorised credit union under an arrangement entered into by that credit union or by a contractor of that credit union, then if E's continued performance of that function after commencement would, but for this article, require the approval of the Authority under section 59(1) or (2) of the Act, then that continued performance by E of that function after commencement is to be taken to have been approved by the Authority for the purposes of section 59 of the Act.

(2) Paragraph (1) does not apply if E performs a function by virtue of the fact that he holds or has held an office in a credit union and, immediately before commencement, E was ineligible by virtue of section 27 of the 1979 Act to hold that office.

Pre-commencement applications etc.

7.—(1) The following provisions apply until commencement.

(2) In sections 44, 45 (but not subsection (1)(b)), 46, 47, 48, 49, 50, 51(2), 52, 53, 54 and 55 (variation of Part IV permissions etc.), sections 56 and 60 (performance of regulated activities) and section 148 (modification or waiver of rules)—

- (a) the references to an authorised person are to be read as including a reference to an unauthorised credit union; and
- (b) the references to Part IV permissions are to be read as including a reference to the Part IV permission which an authorised credit union will be treated as having at commencement by virtue of article 2.

(3) Nothing done under the Act by virtue of paragraph (2) (including the determination of any application) may come into force or have any effect before commencement.

Information gathering

8.—(1) Section 165 of the Act (Authority's power to require information) has effect until commencement as if—

- (a) each reference to an authorised person (except the references in subsections (7)(b) and (8)) included a reference to a credit union which the Authority has reasonable grounds to believe will be an authorised person immediately after commencement;
- (b) the reference to subsection (4) to functions conferred on the Authority by or under the Act included a reference to functions conferred by or under the Act which the Authority has reasonable grounds to believe will be exercisable by it at commencement.

(a) See Authority's Handbook.

(b) Sections 11A to 11D inserted by S.I. 1996/1189; amended by S.I. 2001/2617; repealed by the Financial Services and Markets Act 2000 as from 2nd July 2002.

(c) The Credit Unions Sourcebook, which forms part of the Authority's Handbook, was made by the Authority on 20th December 2001. It was amended by the Credit Union Sourcebook and Consequential Amendments Instrument 2002 made on 21st February 2002.

(2) In determining whether a person is connected with a credit union under section 165(11) of the Act, Part I of Schedule 15 to the Act has effect as if each reference to an authorised person were a reference to a credit union.

(3) Until commencement, the reference to a requirement imposed by the Authority under section 165 in section 176(11) of the Act does not include a requirement imposed under that section as modified by this article.

(4) At commencement—

- (a) any requirement imposed under section 165 or subsection (1) of section 175 of the Act (information and documents: supplementary provisions) ceases to have effect if it could not be imposed under that enactment immediately after commencement;
- (b) any requirement imposed under subsection (2) or (3) of section 175 of the Act (a “supplementary requirement”) ceases to have effect if the requirement pursuant to which the supplementary requirement was imposed ceases to have effect at commencement by virtue of sub-paragraph (a) (and no such supplementary requirement may be imposed thereafter); and
- (c) no action may be taken or continued under or pursuant to the Act in relation to any requirement which ceases to have effect by virtue of this paragraph.

St. Paul’s Mutual Aid Society

9.—(1) St. Paul’s Mutual Aid Society (“the Society”) is to be treated as having, at commencement, a Part IV permission to accept deposits but only—

- (a) by monthly or other subscriptions from its members; and
- (b) to the extent permitted by its rules.

(2) Where at commencement a person (“E”) is performing a function for the Society under an arrangement entered into by the Society or by a contractor of it, then if E’s continued performance of that function after commencement would, but for this article, require the approval of the Authority under section 59(1) or (2) of the Act, then that continued performance by E of that function after commencement is to be taken to have been approved by the Authority for the purposes of section 59 of the Act.

Tony McNulty
John Heppell

14th March 2002

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order sets out the transitional provisions relating to the expiry, on 2nd July 2002, of the transitional exemption of credit unions from the general prohibition imposed by section 19 of the Financial Services and Markets Act 2000 (“the Act”) (see article 6 of the Financial Services and Markets Act 2000 (Exemption) Order 2001 (S.I. 2001/1201)). Article 2 provides that all unauthorised credit unions are to be treated, at 2nd July 2002 (“commencement”), as having permission to accept deposits by way of subscription for their shares. Article 3 enables the Authority to require credit unions of a specified description to reapply for permission. If a credit union which falls within a specified description fails to reapply for permission by the date specified in the direction, its permission ceases to have effect. The Authority may impose such a requirement before commencement but the requirement does not have the effect until commencement. Article 4 sets out procedural provisions that relate to the requirement to reapply for permission.

Article 5 provides that restrictions imposed under section 19 of the Credit Unions Act 1979 have effect from commencement as if they were requirements imposed under section 43 of the Act. Article 5 also makes transitional provisions in relation to the lending powers of credit unions.

Article 6 makes transitional provisions for people working for credit unions who will, after commencement, be subject to the regime for approved persons in Part V of the Act. Such persons are taken to have been approved by the Authority for the purposes of section 59 of the Act.

Article 7 enables credit unions from 8th April 2002 (“applications day”), to apply for a variation of a requirement to which they will, by virtue of article 5, be subject from commencement. Applications may also be made for approval of persons who will, after commencement, be subject to the regime established under Part V of the Act (approved persons). The Authority may also initiate action under section 45 of the Act (exercise of own initiative powers) or section 56 (prohibition orders) from applications day. Nothing done under the Act by virtue of article 7 takes effect before commencement.

Article 8 enables the Authority, from applications day, to exercise its powers under section 165 of the Act (information gathering) in relation to those credit unions which it has reasonable grounds to believe will be authorised persons at commencement.

Article 9 makes certain transitional provisions in relation to St. Paul’s Mutual Aid Society. By virtue of article 20(4) of the Financial Services and Markets Act 2000 (Transitional Provisions) (Authorised Persons etc.) Order 2001 (S.I. 2001/2636), the Society was exempt from the general prohibition imposed by section 19 of the Act until 1st July 2002.

A copy of the Authority’s Handbook (which includes the Credit Union Sourcebook) may be obtained from The Financial Services Authority by logging on to their website or applying to their principal offices at 25 The North Colonnade, Canary Wharf, London E14 5HS.

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