

2004 No. 2615

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Transitional Provisions) (Mortgages) Order 2004

Made - - - - - 7th October 2004

Laid before Parliament 8th October 2004

Coming into force in accordance with article 1(2)

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 (Transitional Provisions) (Mortgages) Order 2004.

(2) This Order comes into force—

- (a) for the purposes of article 4, on 29th October 2004;
- (b) for all other purposes, on 31st October 2004.

(3) In this Order—

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

“an approved person” means a person in relation to whom the Authority has given its approval under section 59 of the Act;

“commencement” means 31st October 2004;

“an interim approval” means an approval conferred by article 3;

“an interim permission” means a Part IV permission conferred by article 2;

“the Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(b);

“the Tribunal” means the Financial Services and Markets Tribunal.

Interim permission

2.—(1) This article applies where before commencement—

- (a) the Authority has received a completed application for a Part IV permission, or to vary a Part IV permission, to the extent that the application relates to a regulated activity of the kind specified by article 25A or 53A of the Regulated Activities Order(c), or article 64 of that Order so far as relevant to any such activity;
- (b) the application has been refused or the applicant has received a warning notice stating that the Authority proposes to refuse the application; and
- (c) the application has not been finally decided.

(a) 2000 c. 8.

(b) S.I. 2001/544; a relevant amending instrument is S.I. 2003/1475.

(c) Articles 25A (arranging regulated mortgage contracts) and 53A (advising on regulated mortgage contracts) were inserted by S.I. 2003/1475, arts. 4 and 13, and come into force on 31st October 2004.

(2) The applicant is to be treated as having at commencement the relevant permission to which the application relates (“an interim permission”) until the permission lapses in accordance with paragraph (3).

(3) Without prejudice to the exercise by the Authority of its powers under Part IV of the Act, an interim permission lapses on whichever is the earliest of the following dates—

- (a) when the application has been finally decided;
- (b) 31st October 2005.

(4) For the purposes of this article, an application has been finally decided—

- (a) when the application is (with the consent of the Authority) withdrawn;
- (b) when the Authority grants permission under section 42 of the Act to carry on the activity in question;
- (c) where the Authority has refused an application and the matter is not referred to the Tribunal, on the date on which the right to refer the matter to the Tribunal expires;
- (d) where the Authority has refused an application and the matter is referred to the Tribunal, when the reference is determined by the Tribunal.

(5) Where—

- (a) the Authority has exercised its powers under section 53 of the Act in respect of the activities covered by a person’s interim permission; and
- (b) the operation of paragraph (3) would result in there being no regulated activities for which that person has a Part IV permission,

the interim permission does not lapse but remains in force (as varied by the Authority under section 53) until it is cancelled by the Authority; and the Authority must cancel the interim permission once it is satisfied that it is no longer necessary to keep the interim permission in force.

Interim approval

3.—(1) This article applies where before commencement—

- (a) the Authority has received a completed application made under section 60 of the Act (applications for approval by the Authority of persons carrying on controlled functions under section 59) from a person who has submitted an application falling within article 2(1);
- (b) the application has been refused or the applicant has received a warning notice stating that the Authority proposes to refuse the application; and
- (c) the application has not been finally decided.

(2) The person in respect of whom the application is made is to be treated, as from commencement, as having the Authority’s approval (“an interim approval”) for the purposes of section 59 of the Act in relation to the functions to which the application relates until the approval lapses in accordance with paragraph (3).

(3) Without prejudice to the exercise by the Authority of its powers under Part V of the Act, an interim approval lapses on whichever is the earliest of the following dates—

- (a) when the application has been finally decided;
- (b) 31st October 2005.

(4) For the purposes of this article, an application has been finally decided—

- (a) when the application is withdrawn;
- (b) when the Authority grants an application for approval under section 62 of the Act;
- (c) where the Authority has refused an application and the matter is not referred to the Tribunal, on the date on which the right to refer the matter to the Tribunal expires;
- (d) where the Authority has refused an application and the matter is referred to the Tribunal, when the reference is determined by the Tribunal.

Application of the Authority’s rules etc to persons with interim permission or interim approval

4.—(1) The Authority may direct that any relevant provision which would otherwise apply to a person by virtue of his interim permission or interim approval is not to apply, or is to apply to him as modified in the way specified in the direction.

(2) Where the Authority makes a rule, gives guidance or issues a statement or code which applies only to persons with an interim permission or an interim approval (or only to a class of such persons), sections 65, 155 and 157(3) of the Act do not apply to that rule, guidance, statement or code.

(3) For the purposes of paragraph (1) a relevant provision is any provision made as a result of the exercise by the Authority of its legislative functions within the meaning of paragraph 1 of Schedule 1 to the Act.

(4) Where the Authority takes action pursuant to this article before 1st December 2004, paragraph 5(2) of Schedule 1 to the Act does not (to the extent that it otherwise would) apply.

Application of the Act etc

5. The Schedule to this Order makes provision about the application of the Act and of certain provisions made under the Act in relation to persons with an interim permission or an interim approval.

Joan Ryan
Jim Murphy

7th October 2004

Two of the Lords Commissioners of Her Majesty's Treasury

**APPLICATION OF THE ACT TO PERSONS WITH AN INTERIM PERMISSION
OR AN INTERIM APPROVAL**

1. Paragraphs 2 and 3 apply to every person with an interim permission.
2. For the purposes of section 20, a person's interim permission is treated as having been given to him under Part IV of the Act.
3. A person's interim permission is to be disregarded for the purposes of sections 38(2), 40(2), 42, 43 and 44(1), (4) and (5).
4. Paragraphs 5(1), 6 to 9 and 11 to 12 apply to a person who falls within section 31(1) only by virtue of having an interim permission.
- 5.—(1) A person with an interim permission is to be treated after commencement as an authorised person for the purposes of the Act (and of any provision made under the Act), unless otherwise expressly provided for by this Schedule.
(2) A person with an interim approval is to be treated after commencement as an approved person for the purposes of the Act (and of any provision made under the Act), unless otherwise expressly provided for by this Schedule.
6. For the purposes of sections 21(1) and 25(2)(a), a person with an interim permission is not to be treated as an authorised person for the purposes of communicating or approving the content of a communication except where the communication invites or induces a person to enter into (or offer to enter into) an agreement the making or performance of which constitutes a controlled activity which corresponds to a regulated activity which is covered by his interim permission.
7. A person with an interim permission may still be an appointed representative within the meaning of section 39(2) (and hence may be treated as exempt from the general prohibition as a result of section 39(1) for the purposes of section 42(3)(a)).
8. Section 213(3)(a) does not apply to persons who are relevant persons, within the meaning of that section, only by virtue of having an interim permission.
9. Section 347(1)(a) is disapplied, in relation to persons with an interim permission, until 30th April 2005.
10. Section 347(1)(h) is disapplied, in relation to persons with an interim approval, until 30th April 2005.
11. For the purposes of articles 22 and 29 of the Regulated Activities Order, a person with an interim permission—
 - (a) is to be treated as an authorised person for the purpose of considering whether he is able to benefit from the exclusion; but
 - (b) is not to be treated as an authorised person for the other purposes of the articles.
12. For the purposes of article 72(1)(a), (2)(a), (3) or (4)(a) of the Regulated Activities Order, a person with an interim permission is not to be treated as an authorised person.

EXPLANATORY NOTE

(This note is not part of the Order)

Article 2 of this Order confers an interim permission on certain applicants who have applied to the Financial Services Authority (“the Authority”) for permission under Part IV of the Financial Services and Markets Act 2000 (c. 8) (“the Act”) to carry on certain mortgage mediation activities (viz. arranging or advising on regulated mortgage contracts) and whose application is pending on the date (31st October 2004) when those activities become (by reason of S.I.2003/1475) regulated activities within the meaning of section 22 of the Act.

Article 3 confers interim approval, in similar terms to those in article 2, on people who are working for a person who benefits from an interim permission and who would need approval under Part V of the Act.

Article 4 allows the Authority to modify, amongst other things, its rules in their application to persons with an interim permission or an interim approval.

Article 5 and the Schedule provide for the application of provisions in, or made under, the Act to persons with an interim permission or an interim approval, indicating where such provisions are to be treated as not including such persons.

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