
STATUTORY INSTRUMENTS

2018 No. 1253

The Financial Services and Markets Act 2000
(Claims Management Activity) Order 2018

PART 3

Transitional provisions

CHAPTER 2

Authorisation and regulation of 2006 Act authorised persons

Investigation and prosecution after 1st April 2019 in relation to conduct before that date

55.—(1) This article applies for the purposes of—

- (a) an investigation on or after 1st April 2019 (“a relevant investigation”)—
 - (i) to determine whether an offence was committed by a person before that date under Part 2 of the 2006 Act;
 - (ii) of a complaint about the activities or professional conduct of a relevant person before that date;
 - (iii) into the professional conduct of a relevant person before that date otherwise than as a result of a complaint, where the FCA is satisfied that the Regulator could reasonably have made a decision to carry out such an investigation under regulation 35(2) of the 2006 Regulations; and
- (b) the prosecution on or after 1st April 2019 of an offence committed before that date under Part 2 of the 2006 Act (“a relevant offence”).

(2) The FCA may—

- (a) conduct any relevant investigation; or
- (b) institute and prosecute criminal proceedings in respect of any relevant offence.

(3) Paragraphs (4) to (9) apply for the purposes of paragraph (2).

(4) The following sections of the 2000 Act are to be read as if a reference to an authorised person included a person who was, at any time before 1st April 2019, a 2006 Act authorised person—

- (a) section 165 (regulators’ power to require information), except subsection (7);
- (b) section 166 (reports by skilled persons); and
- (c) section 167(1) (appointment of persons to carry out general investigations).

(5) Section 168 of the 2000 Act(2) is to be read as if, in subsection (4), after paragraph (a) there were inserted—

(1) Section 167 was amended by the Financial Services Act 2012 (c. 21), section 41.

(2) Section 168 was amended by the Counter Terrorism Act 2008 (c. 28), section 100(2), the Financial Services Act 2010 (c. 28), section 26(1)(g)(i), the Financial Services Act 2012, section 41, the Financial Guidance and Claims Act 2018 (c. 10), section 25, S.I. 2007/126, 2012/2554 and 2013/1773. There are other amendments, but none are relevant.

- “(ab) a person may be guilty of an offence under section 10, 11(1) or (2) of the Compensation Act 2006;
- (ac) a person may have contravened section 4(1) of the Compensation Act 2006 or failed to comply with a requirement made under section 8(4) of that Act;”.
- (6) In section 175 (information and documents: supplemental provisions), subsections (2), (2A) and (2B)(3) have effect as if a reference to a document produced in response to a requirement imposed under Part 11 of the 2000 Act (“Part 11”) included a document given to the Regulator in compliance with a requirement made under—
- (a) regulation 33(1) (requirements for information under section 8(4) of the 2006 Act) of the 2006 Regulations; or
 - (b) regulation 36(1) (breaches by authorised persons of condition: requirement to provide information etc) of the 2006 Regulations.
- (7) In section 177 (offences)—
- (a) subsection (3) is to be read as if the reference to an investigation being or likely to be conducted under Part 11 included a relevant investigation; and
 - (b) subsections (1) and (4) are to be read as if the references to a requirement imposed under Part 11 included a requirement made under—
 - (i) regulation 33(1) of the 2006 Regulations; or
 - (ii) regulation 36(1) of the 2006 Regulations.
- (8) In section 398 (misleading FCA: residual cases) subsection (1A)(a) is to be read as if the reference to a requirement imposed by the 2000 Act included a requirement imposed under Part 11 (information gathering and investigations) as that Part applies with the modifications in paragraphs (4) to (7).
- (9) In section 400 (offences by bodies corporate etc) a reference to an offence under the 2000 Act includes an offence under section 177(3) or (4) as that section applies with the modifications in paragraph (7).