
STATUTORY INSTRUMENTS

2001 No. 2659

The Financial Services and Markets Act 2000 (Consequential and Transitional Provisions) (Miscellaneous) (No. 2) Order 2001

Other transitional modifications of the Act

3.—(1) The following transitional provisions apply until commencement.

(2) Subsection (1)(b) of section 45 (variation etc. of Part IV permission on Authority's own initiative) and subsection (1)(d) of section 254 (revocation of authorisation order in respect of unit trust scheme otherwise than by consent) do not apply.

(3) In sections 44, 45, 46, 47, 48, 50, 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 references to a pending authorised person or a transitional authorised person;
- (b) references to Part IV permissions are to be read as references to—
 - (i) Part IV permissions even though not yet in force; and
 - (ii) transitional permissions.

(4) In sections 42(3), (4) and (5) (giving permission), 56(8) (prohibition orders) and 329(1) (orders in relation to the general prohibition), the references to a person who is exempt from the general prohibition, or to whom the general prohibition does not apply by virtue of any provision, are to be read as references to any person who is of such a description, and with respect to whom such conditions are met, that (if he is of that description, and if those conditions are met, when the provision comes into force) he will then be so exempt, or the general prohibition will not then apply to him.

(5) In sections 194, 195, 196 and 197 (incoming firms: intervention by the Authority), the references to an “incoming firm” are to be read as references to any person who is of such a description, and with respect to whom such conditions are met, that (if he is of that description, and if those conditions are met, immediately before commencement) he will, at commencement, be treated as being an “incoming firm” by virtue of the Authorised Persons Order.

(6) In section 250(2) (modification or waiver of trust scheme rules or scheme particulars rules), the reference to a person to whom any rules apply is to be read as a reference to any person who is of such a description, and with respect to whom such conditions are met, that (if he is of that description, and if those conditions are met, at or after commencement) any rules will then apply to him.

(7) In sections 251 (alteration of authorised unit trust schemes etc.), 252 (procedure when refusing approval of change of manager or trustee) and 257(1)(b) (powers of intervention), references to an authorised unit trust scheme are to be read as references to—

- (a) a scheme in respect of which an order has been made under section 243 (even though the order is not yet in force); or
- (b) a scheme—
 - (i) as respects which there is in force an order made under section 78(1) of the Financial Services Act (or having effect as if so made); and

(ii) which is a unit trust scheme within the meaning of section 237;

(which will, if it is still such a scheme immediately before commencement, be treated at commencement as an authorised unit trust scheme under section 243 by virtue of the Authorised Persons Order).

(8) In section 264(2) (recognition of collective investment schemes constituted in other EEA States), the reference to the Authority giving a notification “within two months of receiving the notice under subsection (1)” is to be read as a reference to the Authority giving a notification within that period or (if later) on the day on which section 19 comes into force.

(9) In sections 277(1) (alteration of schemes etc.) and 281 (directions), the references to a scheme recognised by virtue of (or under) section 270 or 272 are to be read as references to—

- (a) a scheme in respect of which the Authority has given approval under section 270(1)(d) (i), or in respect of which an order has been made under section 272 (even though the approval or order is not yet in force); or
- (b) a scheme of such a description, and with respect to which such conditions are met that (if it is of that description, and if those conditions are met, immediately before commencement) it will, at commencement, be treated as a recognised scheme under section 270 or 272 by virtue of the Authorised Persons Order.

(10) In section 294 (modification or waiver of rules applying to recognised bodies), references to a recognised body are to be read as references to—

- (a) a body or association in respect of which a recognition order has been made (even though the order is not yet in force); or
- (b) a body or association which is a recognised investment exchange or a recognised clearing house under the Financial Services Act (which will, if it still has that status immediately before commencement, be treated at commencement as a recognised investment exchange or a recognised clearing house under the Act by virtue of regulation 9 of the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001(1)).

(11) In sections 296 to 298 (directions in relation to recognised bodies etc.), in subsections (1), (4), (5), (7) and (8) of section 311 (exclusion from the Competition Act 1998: the Chapter I prohibition), and for the purposes of subsection (1)(b) of section 312 (the Chapter II prohibition), references to a recognised body are to be read as references to a body or association in respect of which a recognition order has been made (even though the order is not yet in force).

(12) In paragraph 5(1) of Schedule 4 (Treaty firms), the reference to a Treaty firm which qualifies for authorisation under that Schedule is to be read as a reference to a Treaty firm which will so qualify for authorisation when paragraph 2 of that Schedule comes into force.