
STATUTORY INSTRUMENTS

2001 No. 3592

The Financial Services and Markets Act 2000 (Transitional Provisions) (Partly Completed Procedures) Order 2001

PART IX

APPEALS

CHAPTER I

REFERENCES TO THE FINANCIAL SERVICES TRIBUNAL

Interpretation

102. In this Chapter—

- (a) references to section 97 are references to section 97 of the Financial Services Act (as it has effect by virtue of the 2BCD Regulations and ISD Regulations);
- (b) “the Financial Services Tribunal” means the Financial Services Tribunal established under Chapter IX of Part I of the Financial Services Act.

Request for reference: further consideration by the Authority

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

- (a) a person has required the Authority under section 97(1)(a) to refer a matter to the Financial Services Tribunal;
- (b) the period of 28 days referred in section 97(1) has not expired, and
- (c) the Authority has not served on the person a written notice under section 97(2) or (3).

(2) Where this article applies and the notice to which the request for a reference relates was served under section 29, 34, 59(4) or 60(2) of the Financial Services Act (or is treated for the purposes of section 97(1) as having been so served⁽¹⁾), the Authority may, before the expiry of the period mentioned in section 97(1), notify the person (and any person on whom a copy of the notice had been served) that it has decided—

- (a) to grant the application (where the notice proposed the refusal of an application);
- (b) not to take action in relation to the matter covered by the notice (where the notice proposed the withdrawal or suspension of authorisation or the giving of a direction or publishing of a statement); or
- (c) to withdraw its objection (where the notice was a notice of objection to the acquisition of control).

(1) The reference in section 97 to a notice served under section 29 of the Financial Services Act includes a reference to a notice served under Schedule 4, paragraph 1 to the 2BCD Regulations or to the ISD Regulations (imposing a prohibition under regulation 15) (see Schedule 4 paragraph 2 of the ISD Regulations and the 2BCD Regulations); the reference in section 97 to a notice served under section 59(4) includes a reference to a notice of objection served by the Authority under regulation 42 of the ISD Regulations (see regulation 42(10) of the ISD Regulations).

(3) Where this article applies, the notice to which the request for a reference relates was served under section 70 of the Financial Services Act and the matter was the refusal of an application for the rescission or variation of a prohibition or requirement, the Authority may, before the expiry of the period mentioned in section 97(1), notify the person (and any person on whom a copy of the notice had been served) that it has decided to grant the application.

(4) Where this article applies, the notice to which the request for a reference relates was served under section 70 of the Financial Services Act and the matter was the imposition or variation of a prohibition or requirement which has not yet taken effect, the Authority may, before the expiry of the period mentioned in section 97(1), notify the person (and any person on whom a copy of the notice had been served) that it has decided not to take action in relation to the matter covered by the notice.

(5) Where this article applies and the request for a reference relates to a decision to refuse to give a notice under paragraph 3 or 7(1) of Schedule 6 to the ISD Regulations, the Authority may, before the expiry of the period mentioned in section 97(1), notify the person that it has decided to give (as the case may be)—

- (a) a consent notice under paragraph 19 of Schedule 3; or
- (b) a notice under regulation 11(5)(a) of the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001(2).

(6) Where, before commencement, a substituted notice complying with section 97(5) was served by the Authority pursuant to section 97(4) this article has effect in relation to that notice as if the period mentioned in paragraph (1)(b) was the period of 28 days after the date of service of the original notice or 14 days after the date of service of the substituted notice, whichever ends later.

Effect of notification pursuant to article 103

104.—(1) Where the Authority notifies the person as described in article 103(2), (3) or (4) the Authority must not refer the matter to the Financial Services Tribunal.

(2) Where the Authority notifies the person pursuant to article 103(2)(a) or (3) that it has decided to grant an application, it must grant the application as it has effect after commencement by virtue of article 3 or 4 of this Order.

(3) Where the Authority notifies the person pursuant to article 103(5) it must (as the case may be)—

- (a) give the consent notice and otherwise comply with the relevant procedure set out in paragraph 19 of Schedule 3; or
- (b) comply with regulation 11(5) of the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001.

Transitional reference to Financial Services Tribunal

105.—(1) Where the Authority does not notify the person as described in article 103(2), (3), (4) or (5), the Authority must refer the matter to the Financial Services Tribunal.

(2) Notwithstanding the repeal of the Financial Services Act, sections 96, 97(6), 99, 100 and 101 of Schedule 6 to that Act continue to have effect in relation to transitional references with the modifications set out in article 108.

(3) A “transitional reference” is—

- (a) a reference—
 - (i) which was made by the Authority before commencement to the Financial Services Tribunal pursuant to section 97(1);

- (ii) which was not withdrawn before commencement; and
 - (iii) on which the tribunal has not reported before commencement; or
- (b) a reference made by the Authority to the Financial Services Tribunal under paragraph (1).

Task of the Financial Services Tribunal on transitional reference

106.—(1) On a transitional reference made at the request of a person falling within section 97(1)(a), the Financial Services Tribunal must—

- (a) investigate the case and report on it to the Authority,
- (b) state in that report its recommendations as to what would be the appropriate action (if any) for the Authority to take in the exercise of the powers conferred on the Authority by or under the Act and give the reasons for those recommendations.

(2) The Authority must exercise its powers in the manner most appropriate to give effect to the Financial Services Tribunal’s recommendations.

(3) The Financial Services Tribunal must send a copy of its report to the person at whose request the case was referred to it.

Appropriate decisions on determination of transitional reference

107.—(1) Where the transitional reference made at the request of a person falling within section 97(1)(a) concerned a notice served under section 29, 34, or 70 of the Financial Services Act, the Authority may not exercise its powers under section 205 or 206 of the Act in giving effect to the recommendations of the Financial Services Tribunal.

(2) Where the transitional reference made at the request of a person falling within section 97(1)(a) concerned a notice served under section 59(4) or 60 of the Financial Services Act, the Authority may not exercise its powers under Part IV or Part XIII of the Act in giving effect to the recommendations of the Financial Services Tribunal.

Modification of section 100 of Financial Services Act in relation to transitional reference

108.—(1) Section 100 of the Financial Services Act has effect in relation to a transitional reference as if the following were substituted for subsection (2)—

“(2) The Authority may at any such time withdraw any reference made at the request of a person on whom a notice was served under any of the provisions mentioned in subsection (1)(a) of section 97 above if it decides—

- (a) to grant the application (where the notice proposed the refusal of an application);
- (b) not to take action in relation to the matter covered by the notice (where the notice proposed the withdrawal or suspension of authorisation or the giving of a direction or publishing of a statement);
- (c) to withdraw its objection (where the notice was a notice of objection to an acquisition of control);
- (d) to give a consent notice (where the Authority had refused consent under paragraph 3 or 7 of Schedule 6 to the ISD Regulations);
- (e) to consent to a change of details (where the Authority had refused consent pursuant to regulation 11(6) of the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001),

and notifies the person who requested the reference of that decision.

(2A) But a reference may not be withdrawn under subsection (2) unless the decision to withdraw it is made and the notice is given before any prohibition, requirement or variation has taken effect.”

(2) Section 100 of the Financial Services Act has effect in relation to a transitional reference as if the following were substituted for subsection (5)—

“(5) Where a person on whom a notice was served under section 29, 34 or 60 above withdraws a case from the Tribunal, the Financial Services and Markets Act 2000 (Transitional Provisions) (Partly Completed Procedures) Order 2001 applies to him as if the period for such a reference had expired before commencement (within the meaning of that Order) without such a reference being required and the Authority had given notice (as the case may be)—

- (a) under section 29(5)(a);
- (b) under section 34(5)(a);
- (c) under section 60(5) that the statement is to be published;
- (d) under paragraph 1(5)(a) of Schedule 4 to the Banking Coordination (Second Council Directive) Regulations 1992; or
- (e) under paragraph 1(5)(a) of Schedule 4 to the Investment Services Regulations 1995.”

Test to be applied by the Financial Services Tribunal

109.—(1) Where in any transitional reference the issues arising for consideration included the issue whether a person authorised under the Financial Services Act was a fit and proper person to carry on investment business (within the meaning of that Act), the Financial Services Tribunal must consider instead whether that person is failing or is likely to fail to satisfy the threshold conditions (within the meaning of section 41 of the Act).

(2) Where in any transitional reference the issues arising for consideration included the issue whether a person was a fit and proper person to be employed in connection with investment business (within the meaning of the Financial Services Act) or investment business of a particular kind, the Financial Services Tribunal must consider instead whether that person is a fit and proper person to perform the functions in relation to a regulated activity corresponding to that investment business which he was performing before commencement.

(3) Where in any transitional reference the issues arising for consideration included the issue whether a person was a fit and proper person to be a controller of any description to which regulation 41 of the ISD Regulations applies, the Financial Services Tribunal must consider instead—

- (a) in a case where, after commencement, the person would require the approval of the Authority under section 59, the question whether that person is a fit and proper person to perform the functions in relation to a regulated activity corresponding to the investment business which he was performing before commencement;
- (b) in a case where, after commencement, the person would have control over a UK authorised person (within the meaning of Part XII of the Act), the question whether the person meets the approval requirements within the meaning of section 186.

Decisions taken by the Authority giving effect to Financial Services Tribunal recommendations

110.—(1) Where the Authority gives effect to a recommendation of the Financial Services Tribunal by exercising its power under section 45, sections 53, 54 and 55 do not apply to the exercise of that power.

(2) Where the Authority gives effect to a recommendation of the Financial Services Tribunal by exercising its power under section 52(6) or (7), section 52(9) does not apply to the exercise of that power.

(3) Where the Authority gives effect to a recommendation of the Financial Services Tribunal by exercising its power under section 56, sections 57 and 58 do not apply to the exercise of that power.

(4) Where the Authority gives effect to a recommendation of the Financial Services Tribunal by exercising its power under section 186(1), 185(1) or 187, section 183(3), 185(3) or 188 (as the case may be) does not apply to the exercise of that power.

(5) Where the Authority gives effect to a recommendation of the Financial Services Tribunal by exercising its power under section 196 or 200(1), section 197 and section 200(2) to (5) do not apply to the exercise of that power.

(6) Where the Authority gives effect to a recommendation of the Financial Services Tribunal by exercising its power under section 205 or 206, sections 207, 208 and 210(7) do not apply to the exercise of that power.

(7) Where the Authority gives effect to a recommendation of the Financial Services Tribunal by exercising any of the powers mentioned in paragraphs (1) to (6), it shall exercise that power by giving to the parties to the transitional reference a written notice and sections 390(3), (4) and (7) and 391(4) apply to that notice as they apply to a final notice.

Modification of Financial Services Tribunal Rules

111. The Financial Services Tribunal (Conduct of Investigations) Rules 1988(3) have effect after commencement (notwithstanding the repeal of the Financial Services Act) in relation to a transitional reference with the following modifications—

(a) references in the rules to a matter referred to the Tribunal under section 97 must be read as references to transitional references within the meaning of article 105(3);

(b) for rule 17 substitute the following—

“In a transitional reference made at the request of a person falling within section 97(1)(a) of the Act, the Tribunal shall inform the relevant authority and the applicant of the recommendation it is minded to give as to the appropriate action (if any) for the relevant authority to take and shall afford the applicant and the relevant authority fourteen days in which to make written or oral representations to it before making its report.”.

CHAPTER II

APPEALS TO THE BANKING APPEAL TRIBUNAL

Preservation of right of appeal under the Banking Act

112. Where, before commencement—

(a) a decision has been taken against which an appeal may be brought to a tribunal constituted in accordance with section 28 of the Banking Act (“a banking appeal tribunal”);

(b) the period in which an appeal against that decision could be made has not expired; and

(c) no notice of appeal has been sent in relation to the decision,

section 27 of the Banking Act (as it has effect by virtue of the 2BCD Regulations) applies to that decision and the repeal of that Act does not affect the continuity of the period set by or under that Act as the period within which an appeal against that decision may be brought.

Application of the Banking Act to transitional appeals

113.—(1) Notwithstanding the repeal of the Banking Act, sections 27(4) and (5), 28, 30 and 31 of that Act apply to a transitional Banking Act appeal, subject to the modifications set out in this article.

(2) A “transitional Banking Act appeal” is

- (a) an appeal brought in accordance with section 28 of the Banking Act which has not been determined before commencement; or
- (b) an appeal brought after commencement pursuant to article 112.

(3) In section 27 of the Banking Act, for subsection (5) substitute the following—

“(5) The Tribunal may suspend the operation of a decision imposing or varying a restriction or giving or varying a direction pending the determination of an appeal in respect of that decision.”

(4) In subsection (3) of section 30 of the Banking Act, for the words “appeals under this Part of this Act” are substituted

“transitional Banking Act appeals within the meaning of article 113 of the Financial Services and Markets Act 2000 (Transitional Provisions) (Partly Completed Procedures) Order 2001”.

Task of the banking appeal tribunal in relation to a transitional Banking Act appeal

114.—(1) On a transitional Banking Act appeal brought by an institution under section 27(1) of the Banking Act, the question for the determination of the banking appeal tribunal is whether, for the reasons adduced by the appellant, the decision was unlawful or was not justified by the evidence on which it was based.

(2) On making its determination, the banking appeal tribunal must remit the matter to the Authority with such directions (if any) as the tribunal considers appropriate for giving effect to its determination.

(3) The Authority must exercise its powers under—

- (a) Part IV, V, XII or XIII of the Act;
- (b) Schedule 3 to the Act;
- (c) the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001,

in the manner most appropriate to give effect to the determination of, and any direction given by, the banking appeal tribunal.

(4) Notwithstanding the repeal of the Banking Act, section 29(5), (6) and (8) of that Act apply to a transitional Banking Act appeal brought by a person under section 27(2) of the Banking Act.

(5) The banking appeal tribunal must send a copy of its determination and directions (if any) to the appellant and the Authority.

Decisions taken by the Authority giving effect to banking appeal tribunal determination

115.—(1) Where the Authority implements a direction given by the banking appeal tribunal by exercising its power under section 45, sections 53, 54 and 55 do not apply to the exercise of that power.

(2) Where the Authority implements a direction given by the banking appeal tribunal by exercising its power under section 52(6) or (7), section 52(9) does not apply to the exercise of that power.

(3) Where the Authority implements a direction given by the banking appeal tribunal by exercising its power under section 186(1), 185(1) or 187, section 183(3), 185(3) or 188 (as the case may be) does not apply to the exercise of that power.

(4) Where the Authority implements a direction given by the banking appeal tribunal by exercising its power under section 196 or 200(1), section 197 and section 200(2) to (5) do not apply to the exercise of that power.

(5) Where the Authority implements a direction giving by the banking appeal tribunal by exercising any of the powers mentioned in paragraphs (1) to (4), it must exercise that power by giving the parties written notice and sections 390(7) and 391(4) apply to that notice as they apply to a final notice.

Test to be applied by banking appeal tribunal

116.—(1) Where in any transitional Banking Act appeal the issues arising for consideration included the issue whether a person was a fit and proper person to hold a particular position with an institution (within the meaning of Schedule 3 to the Banking Act), the banking appeal tribunal must consider instead whether—

- (a) the authorised person with whom that person held the position is failing or is likely to fail to satisfy the threshold conditions (within the meaning of section 41); and
- (b) whether that person is a fit and proper person to perform the functions in relation to a regulated activity which corresponds to the business in relation to which he was engaged before commencement.

(2) Where in any transitional Banking Act appeal the issues arising for consideration included the issue whether a person was a fit and proper person to be a controller of any description to which section 21 of the Banking Act applies, the banking appeal tribunal must consider instead—

- (a) in a case where, after commencement, the person would require the approval of the Authority under section 59, the question whether that person is a fit and proper person to perform functions in relation to a regulated activity corresponding to the business in relation to which he was engaged before commencement;
- (b) in a case where, after commencement, the person would have control over a UK authorised person (within the meaning of Part XII of the Act), the question whether the person meets the approval requirements within the meaning of section 186.

Modifications to Banking Appeal Tribunal Regulations 1987

117. The Banking Appeal Regulations 1987(4) and the Banking Appeal Tribunal (Scottish Appeals) Regulations 1987(5) continue to apply after commencement (notwithstanding their revocation and the repeal of the Banking Act) with the following modifications—

- (a) in regulation 2(1) after the definition of “the chairman” is inserted—
 - ““transitional Banking Act appeal” has the meaning given in article 113 of the Financial Services and Markets Act 2000 (Transitional Provisions) (Partly Completed Procedures) Order 2001;”;
- (b) at the end of regulation 2 the following paragraph is inserted—

(4) S.I. 1987/1299. The Regulations were amended by S.I. 1993/982 and S.I. 1998/1129.

(5) S.I. 1987/1336. The Regulations were amended by S.I. 1993/1061 (S.150) and S.I. 1998/1129.

- “(3) In these Regulations—
- (a) references to an appeal under section 27(1) of the Act shall be construed as references to a transitional Banking Act appeal brought by an institution under section 27(1); and
 - (b) references to an appeal under section 27(2) of the Act shall be construed as references to a transitional Banking Act appeal brought by a person under section 27(2);
 - (c) references to an appeal under section 27(3) of the Act shall be construed as references to a transitional Banking Act appeal brought by a person under section 27(3).”;
- (c) in regulation 3 for the words “appeals under Part I of the Act” are substituted “transitional Banking Act appeals”;
- (d) in regulation 8, paragraph (1) is replaced by the following—
- “The appellant shall send to the secretary a notice setting out the grounds of appeal within—
- (a) 28 days from the date on which the Authority served notice in writing on the appellant of its decision in the case of an appeal against the decision of the Authority (or any finding relating thereto) to revoke authorisation, and
 - (b) 14 days of serving the notice of appeal in any other case.”;
- (e) in regulation 10, paragraph (2) is omitted;
- (f) in regulation 11(1), for the words “of the operation of any restriction or direction or any variation of a restriction or direction” are substituted the words “of a decision”;
- (g) after regulation 14 is inserted the following regulation—

“14A Hearing as to appropriate action

In the case of an appeal under section 27(1) or section 27(3), the Tribunal shall inform the parties of the directions (if any) it is minded to give to the Authority and shall afford the parties fourteen days in which to make written representations to it before making its determination.”;

- (h) in regulation 15, paragraph (1) is omitted;
- (i) in regulation 16(4) the words after “dismissed” are omitted.

CHAPTER III

APPEALS TO FRIENDLY SOCIETIES ACT TRIBUNAL

Interpretation

118. In this Chapter—

- (a) references to “the original Friendly Societies Act” are references to that Act as it had effect immediately before commencement;
- (b) references to “the amended Friendly Societies Act” are references to that Act as it has effect immediately after commencement by virtue of Schedule 18, the Financial Services and Markets Act 2000 (Mutual Societies) Order 2001 or any other order made under the Act.

Preservation of right of appeal under Friendly Societies Act

119.—(1) In this article a “pre-commencement decision” means—

- (a) a decision falling within section 58(1) of the original Friendly Societies Act;
- (b) a determination or requirement falling within section 58(2) of that Act.

(2) Where, before commencement—

- (a) a pre-commencement decision has been taken against which an appeal may be brought to a tribunal constituted in accordance with section 59 of the original Friendly Societies Act (“a friendly society tribunal”);
- (b) the period in which an appeal against that decision could be brought has not expired; and
- (c) no notice of appeal has been sent in relation to the decision,

an appeal may be brought against that decision under section 58(1) or (2) of the original Friendly Societies Act and the repeal of those subsections or the repeal or amendment of the section under which the decision was taken does not affect the continuity of the period set by or under the original Friendly Societies Act as the period within which an appeal against that decision may be brought.

Application of Friendly Societies Act to transitional appeals

120.—(1) Notwithstanding any repeal or amendment—

- (a) subsection (6) of section 58, subsections (1), (2), (3), (3A)(6) (6) and (13) of section 59 and sections 60 and 61 of the original Friendly Societies Act apply to transitional friendly society appeals, subject to the modifications set out in this article;
- (b) section 58(7) of the original Friendly Societies Act applies to a transitional friendly society appeal brought by a person under subsection (2) of that section (but as if the reference to subsection (8) were omitted).

(2) A “transitional friendly society appeal” is—

- (a) an appeal which has been brought in accordance with section 58 of the original Friendly Societies Act but which has not been determined before commencement; or
- (b) an appeal brought after commencement pursuant to article 119.

(3) For the purposes of this Chapter, in the provisions mentioned in paragraph (1)—

- (a) references to appeals brought under section 58 of the original Friendly Societies Act are to be read as references to transitional friendly society appeals; and
- (b) references to appeals brought under section 58(2) are to be read as references to transitional friendly society appeals brought under that subsection.

(4) In section 61(1) of the original Friendly Societies Act, the reference to “the Commission” is to be read as a reference to the Authority and this Chapter applies to any matter remitted to the friendly society tribunal pursuant to that section as it applies to a transitional friendly society appeal.

Task of friendly society tribunal in relation to a transitional friendly society appeal

121.—(1) On a transitional friendly society appeal brought by a society under section 58(1) of the original Friendly Societies Act, the question for the determination of the friendly society tribunal is whether, for the reasons adduced by the appellant, the decision was unlawful or was not justified by the evidence on which it was based.

(6) Subsection (3A) was inserted by the Judicial Pensions and Retirement Act 1993.

(2) On making its determination the friendly society tribunal must remit the matter to the Authority with such directions (if any) as the tribunal considers appropriate for giving effect to its determination.

(3) The Authority must exercise its powers under Part IV of the Act (or under the amended Friendly Societies Act) in the manner most appropriate to give effect to the friendly society tribunal's directions.

Decisions taken by the Authority giving effect to friendly society tribunal determinations

122.—(1) Where the Authority implements a direction given by a friendly society tribunal by exercising its power under section 45, sections 53, 54 and 55 do not apply to the exercise of that power.

(2) Where the Authority implements a direction given by a friendly society tribunal by exercising its power under section 52(6) or (7), section 52(9) does not apply to the exercise of that power.

(3) Where the Authority implements a direction given by a friendly society tribunal by exercising a power under the amended Friendly Societies Act the procedure provided for under that Act does not apply to the exercise of that power.

(4) Where the Authority implements a direction given by a friendly society tribunal by exercising the powers mentioned in paragraph (1), (2) or (3), it must exercise that power by giving the parties written notice and sections 390(7) and 391(4) apply to that notice as they apply to a final notice.

Test to be applied by friendly society tribunal

123.—(1) Where in any transitional friendly society appeal the issues arising for consideration included the society's actual or anticipated failure to satisfy one or more of the criteria of prudent management in section 50(3) of the original Friendly Societies Act, the friendly society tribunal must consider instead whether that society is failing or is likely to fail to satisfy the threshold conditions (within the meaning of section 41).

(2) Where in any transitional friendly society appeal the issues arising for consideration included the question whether a person was a fit and proper person to hold the particular position that he held, the friendly society tribunal must consider instead whether that person is a fit and proper person to perform the controlled functions in relation to the regulated activities which correspond to the functions which he was performing before commencement.

Modifications to Friendly Societies Appeal Tribunal Regulations 1993

124. The Friendly Societies Appeal Tribunal Regulations 1993(7) apply to transitional friendly society appeals after commencement (notwithstanding their revocation and the repeal of section 60 of the original Friendly Societies Act) with the following modifications—

(a) the existing text of regulation 2 is numbered as paragraph (1) and after the definition of "the secretary" is inserted—

““transitional friendly society appeal” has the meaning given in article 120 of Financial Services and Markets Act 2000 (Transitional Provisions) (Partly Completed Procedures) Order 2001;”;

(b) after regulation 2(1) the following paragraph is inserted—

“(2) In these Regulations references to an appeal under section 58(2) of the Act shall be construed as references to a transitional friendly society appeal brought by a person under section 58(2).”

- (c) in regulation 3 for the words “appeals under section 58 of the Act against decisions of the Commission” are substituted “transitional friendly society appeals”;
- (d) in regulation 5(2) for the words “the Commission” the first time they occur are substituted “the Authority”;
- (e) in regulation 7 for the words “the Commission” are substituted “the Authority”;
- (f) in regulation 9 for the words “the Commission” are substituted the first time they occur the words “the Authority” and the words “or the Authority” are inserted after the words “the Commission” the second time they occur;
- (g) in regulations 10, 11, 12 and 13, for the words “the Commission” wherever they appear are substituted the words “the Authority”;
- (h) after regulation 13 is inserted the following regulation—

“Hearing as to appropriate action

13A The Tribunal shall inform the parties of the directions (if any) it is minded to give to the Authority and shall afford the parties fourteen days in which to make written representations to it before making its determination.”;

- (i) in regulation 14(1), for the words “the Commission” are substituted “the Authority”;
- (j) in regulation 15 for the words “the Commission” wherever they occur are substituted “the Authority”;
- (k) in regulation 19 for the words “the Commission” both times they appear are substituted the words “the Authority”.

CHAPTER IV

APPEALS TO BUILDING SOCIETIES ACT TRIBUNAL

Interpretation

125. In this Chapter—

- (a) references to “the original Building Societies Act” are references to that Act as it has effect immediately before commencement;
- (b) references to “the amended Building Societies Act” are references to that Act as it has effect immediately after commencement by virtue of Schedule 18, the Financial Services and Markets Act 2000 (Mutual Societies) Order 2001 or any other order made under the Act.

Preservation of right of appeal under Building Societies Act

126. In this article a “pre-commencement decision” means—

- (a) a decision falling within section 46(1) of the original Building Societies Act (as it has effect by virtue of paragraph 9 of Schedule 6 to the 2BCD Regulations);
 - (b) a determination or requirement falling within section 46(2) of that Act.
- (2) Where, before commencement—
- (a) a pre-commencement decision was taken against which an appeal may be brought to a tribunal constituted in accordance with section 47 of the original Building Societies Act (“a building society tribunal”);
 - (b) the period in which an appeal against that decision could be brought has not expired; and
 - (c) no notice of appeal has been sent in relation to the decision,

an appeal may be brought against that decision under section 46(1) or (2) of the original Building Societies Act and the repeal of that section or the repeal or amendment of the section under which the decision was taken does not affect the continuity of the period set by or under that Act as the period within which an appeal against that decision may be brought.

Application of original Building Societies Act to transitional appeals

127.—(1) Notwithstanding the repeal or amendment of provisions in the original Building Societies Act subsections (5) and (6) of section 46, subsections (1), (2), (3), (3A), (5) and (11) of section 47 and sections 48 and 49 of that Act apply to transitional building society appeals, subject to the modifications set out in this article.

(2) A “transitional building society appeal” is—

- (a) an appeal which has been brought in accordance with section 46 of the original Building Societies Act but which has not been determined before commencement; or
- (b) an appeal brought after commencement pursuant to article 126.

(3) For the purposes of this Chapter, in the provisions mentioned in paragraph (1)—

- (a) references to appeals brought under section 46 of the original Building Societies Act are to be read as references to transitional building society appeals; and
- (b) references to appeals brought under section 46(2) are to be read as references to transitional building society appeals against pre-commencement decisions falling within article 126(1)(b).

(4) In section 46(5) of the original Building Societies Act, the reference to subsection (3) of that section is omitted.

(5) In section 49 of the original Building Societies Act, the reference to “the Commission” is to be read as a reference to the Authority and this Chapter applies to any matter remitted to the building society tribunal pursuant to that section as it applies to a transitional building society appeal.

Task of the building society tribunal in relation to a transitional building society appeal

128.—(1) On a transitional building society appeal brought under section 46(1) or (2) of the original Building Societies Act, the question for the determination of the building society tribunal is whether, for the reasons adduced by the appellant, the decision was unlawful or was not justified by the evidence on which it was based.

(2) On making its determination the building society tribunal must remit the matter to the Authority with such directions (if any) as the tribunal considers appropriate for giving effect to its determination.

(3) The Authority must exercise its powers under—

- (a) Parts IV and V of the Act;
- (b) Schedule 3 to the Act;
- (c) the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001;
- (d) the amended Building Societies Act,

in the manner most appropriate to give effect to the building society tribunal’s direction.

Decisions taken by the Authority giving effect to building society tribunal determinations

129. Article 122 applies (with appropriate modifications) where the Authority gives effect to a direction given by a building society tribunal as it applies in respect of directions given by a friendly society tribunal.

Test to be applied by building society tribunal

130.—(1) Where in any transitional building society appeal the issues arising for consideration included the society’s actual or anticipated failure to satisfy one or more of the criteria of prudent management in section 45 of the original Building Societies Act, the building society tribunal must consider instead whether that society is failing or is likely to fail to satisfy the threshold conditions (within the meaning of section 41).

(2) Where in any transitional building society appeal the issues arising for consideration included whether a person was a fit and proper person to hold the particular position that he held, the building society tribunal must consider instead whether that person is a fit and proper person to perform the controlled functions in relation to the regulated activities which correspond to the functions he was performing before commencement.

Modifications to Building Societies Appeal Tribunal Regulations 1987

131. The Building Societies Appeal Tribunal Regulations 1987⁽⁸⁾ apply to transitional building society appeals after commencement (notwithstanding their revocation and the repeal of section 48 of the original Building Societies Act) with the following modifications—

- (a) in regulation 2(1), after the definition of “the secretary” is inserted—
 - ““transitional building society appeal” has the meaning given in article 127 of the Financial Services and Markets Act 2000 (Transitional Provisions) (Partly Completed Procedures) Order 2001”;
- (b) at the end of regulation 2, the following paragraph is inserted—
 - “(3) In these Regulations references to an appeal under section 46(2) of the Act shall be construed as references to a transitional building society appeal brought by a person under section 46(2).”
- (c) in regulation 3 for the words “appeals under section 46 of the Act against decisions of the Commission” are substituted “transitional building society appeals”;
- (d) in regulation 5(2) for the words “the Commission” the first time they occur are substituted “the Authority”;
- (e) in regulation 7 for the words “the Commission” are substituted “the Authority”;
- (f) in regulation 9 for the words “the Commission” are substituted the first time they occur the words “the Authority” and the words “or the Authority” are inserted after the words “the Commission” the second time they occur;
- (g) in regulations 10, 11, 12 and 13, for the words “the Commission” wherever they occur are substituted the words “the Authority”;
- (h) after regulation 13 is inserted the following regulation—

“Hearing as to appropriate action

13A The Tribunal shall inform the parties of the directions (if any) it is minded to give to the Authority and shall afford the parties fourteen days in which to make written representations to it before making its determination.”;

- (i) in regulation 14(1) for the words “the Commission” are substituted “the Authority”;
- (j) in regulation 15 for the words “the Commission” wherever they occur are substituted “the Authority”;

⁽⁸⁾ S.I. 1987/891. The Regulations have been amended by the 2BCD Regulations, by S.I. 1993/983 and S.I. 1999/678.

- (k) in regulation 19 for the words “the Commission” both times they occur are substituted the words “the Authority”.