

2001 No. 1821

FINANCIAL SERVICES AND MARKETS

**The Financial Services and Markets Act 2000
(Consequential and Transitional Provisions)
(Miscellaneous) Order 2001**

<i>Made</i> - - - - -	<i>9th May 2001</i>
<i>Laid before Parliament</i>	<i>10th May 2001</i>
<i>Coming into force</i> - -	<i>18th June 2001</i>

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

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Consequential and Transitional Provisions) (Miscellaneous) Order 2001 and comes into force on 18th June 2001 (“the appointed day”).

(2) In this Order, except where otherwise specified, references to numbered sections or Schedules are references to sections of, or Schedules to, the Act.

The Financial Services Authority

2.—(1) On and after the appointed day—

- (a) paragraphs 1 and 2 of Schedule 7 to the Financial Services Act 1986(b) (which are superseded by paragraphs 2 to 5 of Schedule 1) cease to apply to the Authority;
- (b) the reference to the Authority’s functions in paragraph 5 of Schedule 1 includes its functions as a designated agency under the Financial Services Act 1986; and
- (c) the reference to the Authority’s legislative functions in that paragraph includes its functions of issuing statements of principle, rules, regulations and codes of practice under that Act.

(2) On and after the appointed day, a person who immediately before the appointed day holds office as chairman of, or as a member of, the governing body of the Authority is to be treated as having been appointed under paragraph 2(3) of Schedule 1.

Application of definition of “consumer” to users of regulated services before commencement

3.—(1) In section 138 (Authority’s general rule-making power), “consumers” means (in addition to persons defined as “consumers” in subsection (7)) persons—

- (a) who used any of the services provided before commencement by persons who were then regulated persons in carrying on relevant activities;

(a) 2000 c. 8.

(b) 1986 c. 60; paragraph 1 of Schedule 7 was amended by S.I. 1992/1315, Schedule 4, paragraph 4; paragraph 2 of Schedule 7 was amended by the Companies Act 1989 (c. 40), Schedule 23, paragraph 22.

- (b) who have rights or interests which are derived from, or are otherwise attributable to, the use of any such services by other persons; or
 - (c) who have rights or interests which may be adversely affected by the use of any such services by persons acting on their behalf or in a fiduciary capacity in relation to them.
- (2) The definition of “consumers” in paragraph (1) is referred to in this article as “the extended definition”.
- (3) For the purposes of the extended definition, subsections (8) and (9) of section 138 apply as if—
- (a) references to an authorised person were references to a regulated person; and
 - (b) references to a regulated activity were references to a relevant activity.
- (4) In subsection (3) of section 5 (the protection of consumers), subsection (7) of section 10 (the Consumer Panel), and subsection (5) of section 14 (cases in which the Treasury may arrange independent inquiries), in each case—
- (a) the extended definition applies for the purposes of paragraph (a); and
 - (b) in paragraph (b), the references to “authorised persons” and “regulated activities” are to be treated as including references to regulated persons and relevant activities, respectively.
- (5) The extended definition also applies for the purposes of subsection (6) of section 186 (objection to acquisition of control) and subsection (11) of section 391 (publication of notices).
- (6) But the extended definition does not apply for the purposes of paragraph 1 of Schedule 4 (Treaty rights).
- (7) In this article—
- “commencement” means the beginning of the day on which section 19 comes into force;
- “regulated person” means—
- (a) an authorised person within the meaning of the Financial Services Act 1986;
 - (b) a person who is an exempted person by virtue of section 43(a) (listed money market institutions) or section 44(b) (appointed representatives) of that Act;
 - (c) an authorised institution within the meaning of the Banking Act 1987(c);
 - (d) a person who is authorised under section 3 or 4 of the Insurance Companies Act 1982(d);
 - (e) a European institution within the meaning of the Banking Coordination (Second Council Directive) Regulations 1992(e);
 - (f) a European investment firm within the meaning of the Investment Services Regulations 1995(f);
 - (g) an EC company within the meaning of the Insurance Companies Act 1982 which, by virtue of paragraph 1 or 8 of Schedule 2F to that Act(g), is able to carry on direct insurance business through a branch in the United Kingdom or provide insurance in the United Kingdom;
 - (h) a friendly society which is authorised or treated as authorised for the purposes of Part IV of the Friendly Societies Act 1992(h), or which is permitted by virtue of section 31(2) or (3) of that Act to carry on any activities without authorisation under that Part; or
 - (i) a building society which is authorised or treated as authorised for the purposes of the Building Societies Act 1986(i);
- “relevant activities” means—

(a) Amended by the Bank of England Act 1998 (c. 11) sections 23, 25 and 26 and modified by S.I. 1992/3218, S.I. 1995/3275 and S.I. 1996/1669.

(b) Modified by S.I. 1992/3218 and S.I. 1995/3275.

(c) 1987 c. 22.

(d) 1982 c. 50; section 3 was amended by S.I. 1997/2781.

(e) S.I. 1992/3218; relevant amendments are made by S.I. 1999/2094.

(f) S.I. 1995/3275; to which there are amendments not relevant to this Order.

(g) Inserted by S.I. 1994/1696 and amended by S.I. 1997/2781.

(h) 1992 c. 40.

(i) 1986 c. 53.

- (a) in relation to persons falling within sub-paragraph (a), (b), (e) or (f) of the definition of “regulated person”, activities constituting investment business within the meaning of the Financial Services Act 1986;
- (b) in relation to persons falling within sub-paragraph (c), (e) or (i) of that definition, activities constituting a deposit-taking business within the meaning of the Banking Act 1987;
- (c) in relation to persons falling within sub-paragraph (d) or (g) of that definition, activities constituting insurance business within the meaning of the Insurance Companies Act 1982;
- (d) in relation to persons falling within sub-paragraph (h) of that definition, activities constituting insurance business within the meaning of the Friendly Societies Act 1992.

Ombudsman scheme operator: budget

4.—(1) Paragraph 9(3) of Schedule 17 (which makes provision as to the contents of the scheme operator’s annual budget) does not apply to the scheme operator’s first budget.

(2) The scheme operator’s “first budget” is its budget for the financial year during which the appointed day occurs.

Jim Dowd
Greg Pope

9th May 2001

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes consequential and transitional provisions for the purposes of the Financial Services and Markets Act 2000 (“the Act”) and in consequence of the Financial Services and Markets Act 2000 (Commencement No. 3) Order (S.I. 2001/1820) which brought into force the provisions of the Act relating to the constitution and rule making powers of the Financial Services Authority (“the Authority”) and of the scheme operator of the Ombudsman scheme.

Article 2 disapplies certain provisions of Schedule 7 to the Financial Services Act 1986 which are superseded by Schedule 1 to the Act. It also provides that any person who held office as the chair or member of the governing body of the Authority immediately before this Order comes into force is to be treated as having been appointed by the Treasury under Schedule 1 to the Act.

Article 3 extends the definition of “consumer” in sections 138 (the Authority’s rule-making power), 5 (protection of consumers), 10 (the Consumer Panel), 14 (cases in which the Treasury may arrange independent inquiries), 186 (objection to acquisition of control) and 391 (publication of notices) to include those who before commencement of section 19 of the Act, (the general prohibition) used the services provided by the regulated persons in carrying on relevant activities (as defined in article 3).

Article 4 disapplies paragraph 9(3) of Schedule 17 (which relates to the requirements of the budget of the scheme operator of the Ombudsman scheme) for the first year of the operation of the scheme operator.

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