
STATUTORY INSTRUMENTS

2001 No. 2636

The Financial Services and Markets Act 2000 (Transitional Provisions) (Authorised Persons etc.) Order 2001

PART II

AUTHORISATION AND PERMISSION FOR
PERSONS AUTHORISED ETC. UNDER OLD LAW

CHAPTER I

permissions under part iv of the act

Persons authorised or exempted under the Financial Services Act

Authorisation under section 25 of the Financial Services Act

3.—(1) Any person who immediately before commencement was authorised under section 25 of the Financial Services Act is to be treated as having, at commencement, a Part IV permission to carry on regulated activities of a kind which, and on a scale which, and in relation to persons for whom he was, immediately before commencement—

- (a) by reason of that authorisation, able to carry on in the United Kingdom without contravening section 3 of the Financial Services Act; and
- (b) able to carry on there without contravening any rules made under section 48(2)(a) or (b) of that Act.

(2) The reference in paragraph (1) to the regulated activities which immediately before commencement the person was able to carry on “by reason of” his authorisation under section 25 of the Financial Services Act does not include a reference to any activity—

- (a) as respects which he was then also an exempted person; or
- (b) as respects which he was then also an authorised person by virtue of section 24 or 24A of that Act.

(3) Where immediately before commencement a person would have been authorised under section 25 of the Financial Services Act but for the suspension of his authorisation under section 28 of that Act, paragraph (1) applies as if the authorisation had not been suspended.

(4) Where paragraph (3) applies, the suspension has effect after commencement as if it were a requirement—

- (a) imposed under section 43; and
- (b) framed so as to expire when (but for the repeal of the Financial Services Act) the suspension would have expired,

that the person refrain from carrying on any activity which, under paragraphs (1) to (3), he has by virtue of the suspended authorisation a Part IV permission to carry on.

Authorisation under section 7 of the Financial Services Act

4.—(1) Any person who immediately before commencement was authorised under section 7 of the Financial Services Act is to be treated as having, at commencement, a Part IV permission to carry on any regulated activities which he was, immediately before commencement—

- (a) by reason of that authorisation able to carry on in the United Kingdom without contravening section 3 of the Financial Services Act; and
- (b) able to carry on there without contravening any rules of a recognised self-regulating organisation of the kind described in section 10(3) of that Act.

(2) The reference in paragraph (1) to the regulated activities which immediately before commencement the person was able to carry on “by reason of” his authorisation under section 7 of the Financial Services Act does not include a reference to any activity—

- (a) as respects which he was then also an exempted person; or
- (b) as respects which he was then also an authorised person by virtue of section 24 or 24A of that Act.

Persons certified by designated professional bodies

5.—(1) Any person who immediately before commencement was authorised under section 15 of the Financial Services Act by virtue of holding a certificate issued by a designated professional body and who has given notice in accordance with paragraph (3) is to be treated as having, at commencement, a Part IV permission to carry on any regulated activities which he was, immediately before commencement—

- (a) by reason of that certificate, able to carry on in the United Kingdom without contravening section 3 of the Financial Services Act; and
- (b) able to carry on there without contravening any rules of the recognised professional body of the kind described in section 18(3) of that Act.

(2) “Designated professional body” means a recognised professional body that at commencement was a body designated under section 326(1).

(3) The notice given by the person mentioned in paragraph (1) must—

- (a) state that the person wishes to have a Part IV permission by virtue of this article;
- (b) be in such form as the Authority may direct; and
- (c) be given by the person to the Authority at least one month before commencement or where the person is authorised under section 15 of the Financial Services Act within that period then within a reasonable period after he is so authorised.

(4) The reference in paragraph (1) to the activities which immediately before commencement the person was able to carry on “by reason of” his certificate does not include a reference to any activity as respects which he was then also an exempted person.

(5) The notice referred to in paragraph (3) may state that the person wishes to have a Part IV permission at commencement only for regulated activities of a kind specified in the notice, or only for regulated activities on a scale or in relation to a class of persons so specified.

Listed institutions

6.—(1) Any person (“P1”) who immediately before commencement was—

- (a) a listed institution within the meaning of section 43 of the Financial Services Act;
- (b) an exempted person by reason of his inclusion in the list maintained under that section;

- (c) able, in accordance with any relevant conditions or arrangements applicable to him, to carry on the activities set out in Parts I, II and III of Schedule 5 to the Financial Services Act,

is to be treated as having, at commencement, a Part IV permission to carry on any regulated activities mentioned in paragraph (2).

- (2) The regulated activities mentioned in this paragraph are—
 - (a) activities of the kind specified by articles 14, 21 and 25 of the Regulated Activities Order and the activity of the kind specified by article 64 of that Order, in so far as it relates to those activities;
 - (b) the activity of the kind specified by article 53 of the Regulated Activities Order (and by article 64 of that Order, in so far as it relates to article 53) where the advice given by P1—
 - (i) is given in connection with a transaction in the course of which the only regulated activities carried on by P1 are regulated activities of the kind mentioned in subparagraph (a); and
 - (ii) relates to the carrying on by P1 of those activities in the course of that transaction, when those activities are carried on in relation to investments specified by any of articles 77 to 80, 83, 84 and 85 of that Order or by article 89 of that Order as it relates to investments specified by those articles.

- (3) Any person (“P2”) who immediately before commencement was—
 - (a) a listed institution within the meaning of section 43 of the Financial Services Act;
 - (b) an exempted person by reason of his inclusion in the list maintained under that section;
 - (c) able, in accordance with any relevant conditions or arrangements applicable to him, to carry on only the activities set out in Part III of Schedule 5 to the Financial Services Act,

is to be treated as having, at commencement, a Part IV permission to carry on any regulated activities mentioned in paragraph (4).

- (4) The regulated activities mentioned in this paragraph are—
 - (a) the activity of the kind specified by article 25 of the Regulated Activities Order and the activity of the kind specified by article 64 of that Order, in so far as it relates to that activity;
 - (b) the activity of the kind specified by article 53 of the Regulated Activities Order (and by article 64 of that Order in so far as it relates to article 53) where the advice given by P2—
 - (i) is given in connection with a transaction in the course of which the only regulated activities carried on by P2 are the activities of the kind mentioned in subparagraph (a); and
 - (ii) relates to the carrying on by P2 of those activities in the course of that transaction, when those activities are carried on in relation to investments specified by any of articles 77 to 80, 83, 84 and 85 of that Order or by article 89 of that Order as it relates to investments specified by those articles.

(5) “Relevant conditions or arrangements” in paragraphs (1) and (3) means conditions imposed or arrangements made under section 43(2) of the Financial Services Act.

Lloyd’s underwriting agents

7. Any person who, immediately before commencement, was an underwriting agent within the meaning of section 2(1) of Lloyd’s Act 1982(1) is to be treated as having, at commencement, a Part

IV permission to carry on any regulated activities which immediately before commencement he was permitted under that Act to carry on.

Lloyd's members' advisers

8.—(1) This article applies in the case of a person (“L”) where—

- (a) L does not have permission at commencement to carry on an article 56 activity;
- (b) L was, immediately before commencement, lawfully carrying on by way of business in the United Kingdom an article 56 activity; and
- (c) L has made before commencement, and has not withdrawn, an application for permission to carry on an article 56 activity in accordance with Part IV of the Act and that application has not been refused (or, if the application has been refused, L has referred the matter to the Tribunal within the period mentioned in section 133(1) of the Act and the reference has not been decided).

(2) The general prohibition does not apply to the carrying on by L of an article 56 activity until his application is decided and permission for him to carry on that activity is refused.

(3) For the purposes of this article an “article 56 activity” is a regulated activity of the kind specified by article 56 (advice on syndicate participation at Lloyd's) of the Regulated Activities Order.

(4) For the purposes of paragraph (2), an application is decided when it has been determined and there is no possibility (or further possibility) of the determination being reversed or varied on a reference to a tribunal or an appeal.

Appointed representatives

9. Any person who—

- (a) immediately before commencement was an exempted person under section 44 of the Financial Services Act (appointed representatives); and
- (b) is at commencement an authorised person (and so excluded from the operation of section 39(1) (exemption of appointed representatives other than authorised persons)),

is to be treated as having, at commencement, a Part IV permission to carry on any regulated activity in respect of which he was, immediately before commencement, an exempted person by reason of section 44 of the Financial Services Act.

Investment business carried on overseas before commencement

10.—(1) A person (“A”) who was, immediately before commencement—

- (a) authorised under the Financial Services Act; and
- (b) carrying on overseas investment business,

is to be treated as having, at commencement, a Part IV permission to carry on any corresponding overseas regulated activities in the country or territory where he carried on that overseas investment business.

(2) In this article—

“corresponding overseas regulated activities” means regulated activities which—

- (a) A carries on after commencement by virtue of continuing to carry on his overseas investment business; and
- (b) A is regarded as carrying on in the United Kingdom by virtue of section 418;

“overseas investment business” means business which—

- a) was investment business within the meaning of section 1(2) of the Financial Services Act;
- b) A was carrying on in a country or territory outside the United Kingdom without contravening regulation 20 of the ISD Regulations or any relevant rules.

(3) For the purposes of paragraph (2) “relevant rules” in relation to a person means such of the following rules as were applicable to him immediately before commencement—

- (a) rules under section 48(2)(a) or (b) of the Financial Services Act;
- (b) rules of a recognised self-regulating organisation made pursuant to section 10(3) of the Financial Services Act or of a kind falling within article 35(6);
- (c) rules of a recognised professional body of the kind described in section 18(3) of the Financial Services Act.

Persons authorised under the Banking Act

Persons authorised under the Banking Act

11.—(1) Any person who immediately before commencement held an authorisation granted (or deemed to be granted) under section 9 of the Banking Act is to be treated as having, at commencement, a Part IV permission to carry on any regulated activities which, immediately before commencement, he was by reason of that authorisation able to carry on in the United Kingdom without contravening section 3 of that Act.

(2) The condition set out in paragraph 1(2) (legal status) of Schedule 6 (threshold conditions) does not apply in relation to a person falling within paragraph (1) if he did not meet that condition immediately before commencement.

(3) Where, immediately before commencement, a decision to revoke a person’s authorisation had been taken but had not come into effect by virtue of section 27(4) of the Banking Act—

- (a) paragraph (1) applies to the person as if that decision had not been taken; but
- (b) his Part IV permission to carry on the regulated activities referred to in paragraph (1) lapses at the end of the period within which an appeal can be brought against that decision, unless such an appeal is brought within that period.

Banking business carried on overseas before commencement

12.—(1) A person (“A”) who, immediately before commencement—

- (a) held an authorisation granted (or deemed to be granted) under the Banking Act; and
- (b) was carrying on overseas banking business,

is to be treated as having, at commencement, a Part IV permission to carry on any corresponding overseas regulated activities in the country or territory where he carried on that overseas banking business.

(2) In this article—

“corresponding overseas regulated activities” means regulated activities which—

- (a) A carries on after commencement by virtue of continuing to carry on his overseas banking business; and
- (b) A is regarded as carrying on in the United Kingdom by virtue of section 418;

“overseas banking business” means business which was deposit-taking business within the meaning of section 6 of the Banking Act and which A was carrying on in a country or territory outside the United Kingdom without contravening regulation 22 of the 2BCD Regulations.

Permission to carry on non-banking listed activities

13.—(1) This article applies to a person who, immediately before commencement—

- (a) held an authorisation granted (or deemed to be granted) under the Banking Act; or
- (b) was authorised or treated as authorised for the purposes of the Building Societies Act.

(2) Subject to paragraphs (3) and (4), a person to whom this article applies is to be treated as having, at commencement, a Part IV permission to carry on any regulated activity which was a non-banking listed activity and which he had described in a notice given by him in accordance with paragraph 2 of Schedule 6 to the 2BCD Regulations as an activity—

- (a) which he proposed to carry on in a particular member State by the provision of services; or
- (b) which he proposed to carry on in a particular member State from a branch in that state.

(3) The permission referred to in paragraph (2) extends only to carrying on that regulated activity in the particular member State which was mentioned in the notice referred to in paragraph (2).

(4) The permission referred to in paragraph (2) does not extend to carrying on the regulated activity referred to in that paragraph from a branch in that state unless—

- (a) the UK authority gave a notice to the relevant supervisory authority under paragraph 3(1) of Schedule 6 to the 2BCD Regulations referring to that non-banking listed activity; and
- (b) either the relevant supervisory authority informed the institution that it could establish the branch or the period of two months beginning with the day on which the UK authority gave the relevant supervisory authority notice elapsed.

(5) Where a person to whom this article applies—

- (a) was, immediately before the relevant date, carrying on in another member State by the provision of services a non-banking listed activity; or
- (b) had, before the relevant date, established in another member State for the purposes of carrying on such an activity a branch which was in existence immediately before the relevant date,

he is to be treated, for the purposes of this article, as if he had, in relation to that activity, given the notice referred to in paragraph (2).

(6) In this article—

“non-banking listed activity” means an activity listed in Annex 1 to the banking co-ordination directive other than the first activity so listed;

“relevant date” means the commencement date within the meaning of paragraph 2 of Schedule 11 to the 2BCD Regulations;

“relevant supervisory authority” has the meaning given in regulation 2 of the 2BCD Regulations;

“UK authority” has the meaning given in regulation 20(7) of those Regulations.

*Insurance companies***Companies authorised under the Insurance Companies Act**

14.—(1) This article applies to a person who, immediately before commencement, was authorised under section 3 or 4 of the Insurance Companies Act.

(2) Subject to paragraph (3), the person is to be treated as having, at commencement, a Part IV permission to carry on—

- (a) any regulated activities which, immediately before commencement, he was by reason of that authorisation able to carry on in the United Kingdom without contravening section 2(1) of the Insurance Companies Act; and
- (b) any regulated activities which he would then have been able so to carry on but for a direction under section 11 or 12A of that Act⁽²⁾.

(3) Where paragraph (2) would otherwise apply so as to treat a person as having a Part IV permission to carry on reinsurance business, it does not so apply if the person has on commencement (whether by virtue of this Order or otherwise) permission under Schedule 4 to carry on reinsurance business.

(4) If a person to whom this article applies was also, immediately before commencement, authorised under section 22 of the Financial Services Act, any Part IV permission which he is to be treated under this article as having includes permission to carry on any regulated activities which he was by reason of that authorisation then able to carry on in the United Kingdom without contravening section 3 of that Act.

(5) If a person to whom this article applies also, immediately before commencement, fell within paragraph 8 of Schedule 2 to the Banking Act, any Part IV permission which he is to be treated under this article as having includes permission to carry on any regulated activity which he was by reason of that paragraph then able to carry on in the United Kingdom without contravening section 3 of the Banking Act.

(6) The condition set out in paragraph 1(1) of Schedule 6 does not apply in relation to a person falling within paragraph (2) above if he did not meet that condition immediately before commencement.

(7) The condition set out in paragraph 1(2) (legal status) of Schedule 6 (threshold conditions) does not apply in relation to a person falling within paragraph (5) above if he did not meet that condition immediately before commencement.

EC companies carrying on reinsurance business

15.—(1) This article applies to a person who was, immediately before commencement, an EC company within the meaning of the Insurance Companies Act and was by reason of compliance with—

- (a) the requirements of paragraph 4 of Schedule 2F to the Insurance Companies Act ⁽³⁾;
- (b) Gibraltar requirements (within the meaning of paragraph 28(2) of Schedule 2F to that Act) corresponding to those in that paragraph,

able to carry on reinsurance business through a branch in the United Kingdom without contravening section 2(1) of that Act.

(2) Subject to paragraph (3), the person is to be treated as having, at commencement, a Part IV permission to carry on any regulated activity which immediately before commencement he was—

- (a) by reason of compliance with the requirements mentioned in paragraph (1)(a) or (b) (as the case may be) able to carry on through a branch in the United Kingdom without contravening paragraph 4 of Schedule 2F to that Act; and
- (b) able so to carry on without contravening paragraph 5 of that Schedule.

(3) Paragraph (2) does not apply—

- (a) to a person falling within paragraph (1)(b) unless he is, at commencement, carrying on a regulated activity in the United Kingdom;

(2) Section 12A was inserted by the 31D Regulations, reg. 11.

(3) Schedule 2F was inserted by the 31D Regulations, reg. 45(2), Sch 6.

- (b) where the person falling within paragraph (1) has (whether by virtue of this Order or otherwise) permission under Schedule 4 to carry on reinsurance business.

EC companies carrying on investment business

16.—(1) This article applies to a person who immediately before commencement was—

- (a) an EC company within the meaning of the Insurance Companies Act; and
- (b) an authorised person (within the meaning of the Financial Services Act) by reason of regulation 57 of the 3ID Regulations.

(2) But this article applies only if there is an activity (a “relevant investment activity”)—

- (a) which immediately before commencement the person was, by reason of that regulation, able to carry on in the United Kingdom without contravening section 3 of the Financial Services Act;
- (b) which he was then carrying on in the United Kingdom, or had previously carried on there;
- (c) which he has no EEA right to carry on; and
- (d) which he does not by virtue of Schedule 4 have permission to carry on as mentioned in paragraph 4(1) of that Schedule.

(3) A person to whom this article applies is to be treated as having, at commencement, a Part IV permission to carry on any regulated activity which is a relevant investment activity.

Insurance business carried on overseas before commencement

17.—(1) A person (“A”) who was, immediately before commencement—

- (a) authorised under the Insurance Companies Act; and
- (b) carrying on overseas insurance business,

is to be treated as having, at commencement, a Part IV permission to carry on any corresponding overseas regulated activities in the country or territory where he carried on that overseas insurance business.

(2) In this article—

“corresponding overseas regulated activities” means regulated activities which—

- (a) A carries on after commencement by virtue of continuing to carry on his overseas insurance business; and
- (b) A is regarded as carrying on in the United Kingdom by virtue of section 418;

“overseas insurance business” means business which constituted insurance business within the meaning of section 2 of the Insurance Companies Act and which A was carrying on in a country or territory outside the United Kingdom without contravening either paragraph 1 or 5 of Schedule 2G to that Act(4).

Friendly societies etc.

Friendly societies authorised under the Friendly Societies Act

18.—(1) This article applies to a friendly society which was, immediately before commencement, authorised under section 32 of the Friendly Societies Act or deemed to have been authorised under that section.

(4) Schedule 2G was inserted by the 3ID Regulations.

(2) A friendly society to which this article applies is to be treated as having, at commencement, a Part IV permission to carry on—

- (a) any regulated activities which, immediately before commencement, it was by reason of its authorisation under section 32 of the Friendly Societies Act able to carry on without contravening section 31(1) of that Act⁽⁵⁾; and
- (b) any regulated activities which it would then have been able so to carry on but for—
 - (i) a restriction imposed under section 32(4) of the Friendly Societies Act⁽⁶⁾; or
 - (ii) a direction given under section 40 of that Act⁽⁷⁾ (withdrawal of authorisation in respect of new business);
- (c) any regulated activity of the kind specified by article 5 of the Regulated Activities Order (accepting deposits) which it had power to carry on by virtue of section 7(2) or (4) of the Friendly Societies Act.

(3) Where immediately before commencement a direction that a society cease to be authorised has been given under section 41 of the Friendly Societies Act⁽⁸⁾ but that direction has not come into effect by virtue of section 58(3) of that Act—

- (a) paragraph (2) applies to that society as if no direction had been given; but
- (b) the permission to carry on the regulated activities referred to in paragraph (2) lapses at the end of the period within which an appeal can be brought against the direction unless such an appeal is brought within that period.

(4) Where a date falling after commencement (“the expiry date”) had been fixed for the expiry of the society’s authorisation under section 39(5) of the Friendly Societies Act, the society’s permission to carry on the regulated activities referred to in paragraph (2) (to the extent that those activities relate to contracts of insurance covered by the direction) lapses on whichever is the later of—

- (a) the expiry date; or
- (b) the end of the period within which the society can bring an appeal against the decision to refuse authorisation,

but that permission does not so lapse if an appeal is brought within the period mentioned in subparagraph (b).

Friendly societies: other permissions

19.—(1) A friendly society is to be treated as having, at commencement, a Part IV permission to carry on any regulated activity which it was, immediately before commencement, able by virtue of section 31(2) or (3) of the Friendly Societies Act to carry on without contravening section 31(1) of that Act.

(2) Any friendly society which immediately before commencement was authorised under section 23 of the Financial Services Act is to be treated as having, at commencement, a Part IV permission to carry on any regulated activities which it was, immediately before commencement, by reason of that authorisation able to carry on in the United Kingdom without contravening section 3 of that Act.

(3) Any friendly society which has, on commencement, a Part IV permission by virtue of this Order (apart from this paragraph) is to be treated as having, on commencement, permission to

(5) In relation to the effect of authorisation under Part IV of the Friendly Societies Act, relevant amendments to that Part were made by S.I.1993/2519 and S.I. 1994/1984.

(6) Section 32(4) of the Friendly Societies Act was substituted by reg. 4 of S.I. 1994/1984.

(7) Section 40 was amended by S.I. 1994/1984.

(8) Section 41 was amended by S.I. 1994/1984 and S.I. 1997/2849.

carry on any regulated activity which it was, immediately before commencement, able by virtue of paragraph 6 of Schedule 2 to the Banking Act to carry on without contravening section 3 of that Act.

(4) The conditions set out in paragraph 1 (legal status) of Schedule 6 (threshold conditions) do not apply in relation to a society falling within this article if it did not meet those conditions immediately before commencement.

Societies registered under the Friendly Societies Act 1974

20.—(1) Paragraph (2) applies to a society which—

- (a) is registered under the Friendly Societies Act 1974⁽⁹⁾;
- (b) was, immediately before commencement, exempted from the need for authorisation under the Banking Act by virtue of paragraph 6 or 7 of Schedule 2 to that Act;
- (c) does not have, on commencement, a Part IV permission.

(2) Subject to paragraphs (3) and (4), a society to which this paragraph applies is to be treated after commencement as being exempt from the general prohibition in respect of any regulated activity of the kind specified by article 5 of the Regulated Activities Order (accepting deposits).

(3) Where a society to which this article applies is a registered friendly society within the meaning of section 7(1)(a) of the Friendly Societies Act 1974, paragraph (2) applies only to the extent that the regulated activity being carried on is permitted by the rules of the society.

(4) Paragraph (2) does not apply to the St Paul’s Mutual Aid Society or the Leicester Foresters Investment Society but those societies are exempt from the general prohibition in respect of any regulated activity of the kind referred to in paragraph (2) until 1st July 2002.

Insurance business carried on overseas by friendly societies before commencement

21.—(1) A friendly society which was, immediately before commencement—

- (a) authorised under the Friendly Societies Act to carry on insurance business (within the meaning of that Act); and
- (b) carrying on overseas insurance business,

is to be treated as having, at commencement, a Part IV permission to carry on any corresponding overseas regulated activities in the country or territory where it carried on that overseas insurance business.

(2) In this article—

“corresponding overseas regulated activities” means regulated activities which—

- (a) the society carries on after commencement by virtue of continuing to carry on its overseas insurance business; and
- (b) the society is regarded as carrying on in the United Kingdom by virtue of section 418;

“overseas insurance business” means business which constituted insurance business within the meaning of section 21(1) of the Friendly Societies Act and which the society was carrying on in a country or territory outside the United Kingdom without contravening either paragraph 1 or 5 of Schedule 13B to that Act.

(9) 1974 c. 36.

Building societies

Building societies authorised under the Building Societies Act

22.—(1) A building society which, immediately before commencement, was authorised or treated as authorised for the purposes of the Building Societies Act is to be treated as having, at commencement, a Part IV permission to carry on any regulated activities which, immediately before commencement, it was by reason of that authorisation able to carry on in the United Kingdom without contravening section 9(1) of that Act.

(2) Where, immediately before commencement, a society's authorisation has been revoked under section 43 of the Building Societies Act but that revocation has not come into effect by virtue of section 46(3) of that Act⁽¹⁰⁾—

- (a) paragraph (1) applies to that society as if the authorisation had not been revoked; but
- (b) its permission to carry on the regulated activities referred to in paragraph (1) lapses at the end of the period within which an appeal can be brought against the decision to revoke unless such an appeal is brought within that period.

(3) Where a date falling after commencement (“the expiry date”) had been fixed for the expiry of the society's authorisation under section 41(7) of the Building Societies Act⁽¹¹⁾, the society's permission to carry on the regulated activities referred to in paragraph (1) lapses on whichever is the later of—

- (a) the expiry date; or
- (b) the end of the period within which the society can bring an appeal against the decision to refuse authorisation,

but the permission does not so lapse if an appeal is brought within the period mentioned in subparagraph (b).

Banking business carried on overseas by building societies before commencement

23.—(1) A building society which was, immediately before commencement—

- (a) authorised or treated as authorised for the purposes of the Building Societies Act; and
- (b) carrying on overseas banking business,

is to be treated as having, at commencement, a Part IV permission to carry on any corresponding overseas regulated activities in the country or territory where it carried on that overseas banking business.

(2) In this article—

“corresponding overseas regulated activities” means regulated activities which—

- (a) the society carries on after commencement by virtue of continuing to carry on its overseas banking business; and
- (b) the society is regarded as carrying on in the United Kingdom by virtue of section 418; “overseas banking business” means business which constituted raising money from members or accepting deposits for the purposes of section 9 of the Building Societies Act and which it was carrying on in a country or territory outside the United Kingdom without contravening regulation 22 of the 2BCD Regulations.

⁽¹⁰⁾ Section 46 was substituted by the Building Societies Act 1997, s. 23.

⁽¹¹⁾ Section 41(7) was amended by S.I. 1996/1669 and sub-paragraphs (a) and (b) were substituted by the Building Societies Act 1997 s. 43 and Sch. 7 para 12(3).

*Supplemental***Persons with more than one old authorisation etc.**

24. Where a person falls within more than one of the preceding articles of this Part, he is not to be treated as having more than one Part IV permission (which is not a possibility under the Act) but is to be treated as having a single Part IV permission to carry on all the regulated activities which the provisions in question state that he is to be treated as having a Part IV permission to carry on.

CHAPTER II

authorisation and permission under schedule 3

*EEA firms with “passports” under the 2BCD or ISD Regulations***EEA firms with “passports” under the 2BCD or ISD Regulations**

25.—(1) This article applies to an EEA firm which immediately before commencement was—

- (a) a European institution within the meaning of the 2BCD Regulations; or
- (b) a European investment firm within the meaning of the ISD Regulations.

(2) Subject to paragraph (3)—

- (a) if the requirements of paragraph 1 of Schedule 2 to the 2BCD Regulations or paragraph 1 of Schedule 3 to the ISD Regulations (whichever is applicable) have been complied with in relation to the firm’s establishment of a branch, then the firm is to be treated as satisfying the establishment conditions in paragraph 13 of Schedule 3;
- (b) if those requirements have been complied with in relation to the firm’s provision of a service, then the firm is to be treated as satisfying the service conditions in paragraph 14 of Schedule 3,

and, accordingly, is to be treated as qualifying for authorisation under Schedule 3 as a result of paragraph 12 of that Schedule (and as being an “incoming firm” for the purposes of Part XIII of the Act).

(3) Where the EEA firm is taken to have complied with the requirements of paragraph 1 of Schedule 2 to the 2BCD Regulations only by virtue of having complied with the corresponding requirements under the law of Gibraltar (within the meaning of regulation 2C(2) of the 2BCD Regulations⁽¹²⁾), paragraph (2) applies to the firm only if it is, at commencement, carrying on a regulated activity in the United Kingdom.

(4) In relation to an EEA firm which was, immediately before commencement, a European institution within the meaning of the 2BCD Regulations, each activity which it was—

- (a) by reason of regulation 5(1) of the 2BCD Regulations or regulation 5(1) of the ISD Regulations, able to carry on in the United Kingdom without contravening any relevant regulator enactment; and
- (b) able to carry on there without contravening regulation 6 of the 2BCD Regulations,

is a permitted activity for the purposes of paragraph 15 of Schedule 3 as it applies to the firm.

(5) In relation to an EEA firm which was, immediately before commencement, a European investment firm but not a European authorised institution, each activity which immediately before commencement the firm was—

(12) Reg. 2C was inserted by S.I. 1999/2094, reg. 2(1), (3).

(a) by reason or regulation 5(1) of the ISD Regulations, able to carry on in the United Kingdom without contravening any relevant regulatory enactment; and
(b) able to carry on there without contravening regulation 6 of the ISD Regulations,
is a permitted activity for the purposes of paragraph 15 of Schedule 3 as it applies to the firm.

(6) For the purposes of paragraphs (4) and (5) each of the following is a relevant regulatory enactment—

- (a) section 3 of the Banking Act;
- (b) section 3 of the Financial Services Act;
- (c) section 2(1) of the Insurance Companies Act; and
- (d) sections 21 and 39(1) of the Consumer Credit Act 1974⁽¹³⁾ (including as applied by section 147(1) of that Act).

(7) For the purposes of paragraph 15 of Schedule 3 as it applies to the firm, each activity which would fall within paragraph (4) or (5) but for a prohibition under regulation 9, 15 or 18 of the 2BCD Regulations or a prohibition under regulation 9 or 15 of the ISD Regulations is also a permitted activity.

(8) The references in paragraph 15(2) of Schedule 3 to the consent notice, the notice of intention and the regulator’s notice are to be read, in relation to the firm, as references to—

- (a) the corresponding notices under Schedule 2 to the 2BCD Regulations or (as the case may be) Schedule 3 to the ISD Regulations; and
- (b) any later notices under paragraph 4 of Schedule 2 to the 2BCD Regulations or paragraph 4 or 5 of Schedule 3 to the ISD Regulations (change of activities etc.) that are relevant.

EEA firms with “passports” under the Insurance Companies Act

EC companies carrying on direct insurance through UK branch

26.—(1) This article applies to an EEA firm which was, immediately before commencement—

- (a) an EC company within the meaning of the Insurance Companies Act; and
- (b) by reason of compliance with the requirements of paragraph 1 of Schedule 2F to that Act, able to carry on direct insurance business through a branch in the United Kingdom without contravening section 2(1) of that Act.

(2) The firm is to be treated as satisfying the establishment conditions in paragraph 13 of Schedule 3 and, accordingly, is to be treated—

- (a) as qualifying for authorisation under Schedule 3 as a result of paragraph 12 of that Schedule; and
- (b) as being an “incoming firm” for the purposes of Part XIII of the Act.

(3) For the purposes of paragraph 15(1) of Schedule 3 as it applies to the firm, each activity which immediately before commencement the firm was—

- (a) by reason of compliance with the requirements of paragraph 1 of Schedule 2F to the Insurance Companies Act, able to carry on through a branch in the United Kingdom without contravening that paragraph, and
- (b) able so to carry on without contravening paragraph 2 of that Schedule,

is a permitted activity.

(13) 1974 c. 39.

(4) The reference in paragraph 15(2) of Schedule 3 to the consent notice is to be read, in relation to the firm, as a reference to—

- (a) the notice and certificate under paragraph 1(2)(a) of Schedule 2F to the Insurance Companies Act; and
- (b) any later notices under paragraph 2 of that Schedule that are relevant.

EC companies providing insurance in UK

27.—(1) This article applies to an EEA firm which was, immediately before commencement—

- (a) an EC company within the meaning of the Insurance Companies Act; and
- (b) by reason of compliance with the requirements of paragraph 8 of Schedule 2F to that Act able to provide insurance in the United Kingdom (within the meaning given by paragraph 26(2)(a) of that Schedule) without contravening that paragraph.

(2) The firm is to be treated as satisfying the service conditions in paragraph 14 of Schedule 3 and, accordingly, is to be treated—

- (a) as qualifying for authorisation under Schedule 3 as a result of paragraph 12 of that Schedule; and
- (b) as being an “incoming firm” for the purposes of Part XIII of the Act.

(3) For the purposes of paragraph 15(1) of Schedule 3 as it applies to the firm, each activity which immediately before commencement the firm was—

- (a) by reason of compliance with the requirements of paragraph 8 of Schedule 2F to the Insurance Companies Act, able to carry on without contravening that paragraph; and
- (b) able to carry on without contravening paragraph 9 or 11 of that Schedule,

is a permitted activity.

(4) The reference in paragraph 15(2) of Schedule 3 to the regulator’s notice is to be read, in relation to the firm, as a reference to—

- (a) the notice and certificate under paragraph 8(2)(a) of Schedule 2F to the Insurance Companies Act; and
- (b) any later notices under paragraph 9 of that Schedule that are relevant.

CHAPTER III

authorisation, permission etc. under schedule 4

Treaty firms authorised under section 31 of the Financial Services Act

Treaty firms authorised under section 31 of the Financial Services Act

28.—(1) This article applies to a Treaty firm which immediately before commencement—

- (a) was authorised under section 31 of the Financial Services Act; or
- (b) would have been so authorised but for a direction under section 33 of that Act.

(2) If no such notice as is required by paragraph 3(2) of Schedule 4 has been given as respects the firm in relation to a relevant activity which the firm has received home state authorisation to carry on, the notice is deemed to have been given.

(3) A relevant activity is a regulated activity which, immediately before commencement, the firm was by reason of its authorisation under section 31 of the Financial Services Act (or would have been but for a direction under section 33 of that Act) able to carry on in the United Kingdom without contravening section 3 of that Act.

(4) Any notice of the firm's intention to carry on a regulated activity in the United Kingdom which was given by the firm before commencement—

(a) under section 32 of the Financial Services Act; or

(b) in accordance with rules or regulations as mentioned in section 48(2)(a)(ii) of that Act, is to be treated for the purposes of paragraph 5 of Schedule 4 as having been a written notice of that intention given to the Authority in accordance with that paragraph.

(5) Where the firm was, immediately before commencement, subject to a direction under section 33 of the Financial Services Act, the direction has effect after commencement as if it were a requirement, imposed under section 196, that the firm refrain from carrying on any activity which immediately before commencement it was prevented by the direction from carrying on.

(6) In the case of a limited direction, a requirement having effect by virtue of paragraph (5) is to be taken to be framed so as to expire when (but for the repeal of the Financial Services Act) the direction would have expired.

(7) A limited direction means a direction which was framed so as to expire at the end of a specified period or on the occurrence of a specified event or on compliance with specified conditions.

Certificates under section 31(4) of the Financial Services Act

29. Any certificate issued under section 31(4) of the Financial Services Act as respects a particular EEA State shall, if in force immediately before commencement, have effect after commencement as if it were a certificate, issued by the Treasury under paragraph 3(4) of Schedule 4, that the provisions of the law of that State afford equivalent protection (within the meaning of that Schedule) in relation to the activities specified in the certificate.

Treaty firms which are insurance companies

EC companies carrying on reinsurance business through UK branch

30.—(1) This article applies to a Treaty firm which has received home state authorisation to carry on reinsurance business and which immediately before commencement was—

(a) an EC company within the meaning of the Insurance Companies Act; and

(b) by reason of compliance with the requirements of paragraph 4 of Schedule 2F to that Act, able to carry on reinsurance business through a branch in the United Kingdom without contravening section 2(1) of that Act.

(2) But this article applies only if the condition in paragraph 3(1)(b) of Schedule 4 is satisfied as respects reinsurance business.

(3) The statement served by the firm as required by paragraph 4(2)(a)(ii) of Schedule 2F to the Insurance Companies Act is to be treated as the notice required by paragraph 3(2) of Schedule 4.

(4) The notice served by the firm as required by paragraph 4(2)(a)(i) of Schedule 2F to the Insurance Companies Act of its intention to carry on reinsurance business is to be treated for the purposes of paragraph 5 of Schedule 4 as having been a notice of that intention given to the Authority in accordance with that paragraph.

EC companies carrying on investment business as Treaty firms

31.—(1) This article applies to a Treaty firm which immediately before commencement was—

(a) an EC company within the meaning of the Insurance Companies Act; and

- (b) an authorised person (within the meaning of the Financial Services Act) by reason of regulation 57 of the 3ID Regulations.
- (2) But this article applies only if there is an activity (a “relevant investment activity”)—
 - (a) which immediately before commencement the firm was, by reason of that regulation, able to carry on in the United Kingdom without contravening section 3 of the Financial Services Act;
 - (b) which it was then carrying on in the United Kingdom, or had previously carried on there;
 - (c) which it has received home state authorisation to carry on;
 - (d) which it has no EEA right to carry on; and
 - (e) as respects which the condition in paragraph 3(1)(b) of Schedule 4 is satisfied.
- (3) Where this article applies—
 - (a) if no such notice as is required by paragraph 3(2) of Schedule 4 has been given as respects the firm in relation to a relevant investment activity, the notice is deemed to have been given; and
 - (b) if no such notice of intention as is required by paragraph 5 of Schedule 4 was given by the firm as respects its intention to carry on a relevant investment activity, the notice is deemed to have been given.

Status for purposes of Part XIII of the Act

Status for purposes of Part XIII of the Act

32. For the avoidance of doubt, where article 28, 30 or 31 applies, the Treaty firm is to be taken to be an “incoming firm” for the purposes of Part XIII of the Act.

CHAPTER IV

supplemental

Old transitional provision

33.—(1) References in this Part to compliance with any requirements of Schedule 2 to the 2BCD Regulations, Schedule 3 to the ISD Regulations or Schedule 2F to the Insurance Companies Act include references to deemed compliance by virtue of paragraph 1 of Schedule 11 to the 2BCD or ISD Regulations or regulation 69 of the 3ID Regulations (“old transitional provision”).

(2) In relation to a person who by virtue of an old transitional provision was deemed to have complied with the requirements of—

- (a) paragraph 1 of Schedule 2 to the 2BCD Regulations;
- (b) paragraph 1 of Schedule 3 to the ISD Regulations; or
- (c) paragraph 1 or 8 of Schedule 2F to the Insurance Companies Act,

and to whom article 25, 26 or 27 accordingly applies, neither article 25(8), 26(4) or 27(4) (as the case may be), nor paragraph 15(2) of Schedule 3, has effect.

(3) In relation to a Treaty firm which by virtue of regulation 69 of the 3ID Regulations was deemed to have complied with paragraph 4 of Schedule 2F to the Insurance Companies Act and to which article 30 applies, article 30 has effect as if for paragraphs (3) and (4) of that article there were substituted provision that—

- (a) if no such notice as is required by paragraph 3(2) of Schedule 4 has been given as respects the firm in relation to reinsurance business, the notice is deemed to have been given; and

- (b) if no such notice of intention as is required by paragraph 5 of Schedule 4 was given by the firm as respects its intention to carry on reinsurance business, the notice is deemed to have been given.