
STATUTORY INSTRUMENTS

2001 No. 2636

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

PART III

EFFECT OF RESTRICTIONS AND PROHIBITIONS IMPOSED UNDER OLD LAW

Prohibitions and requirements under the Financial Services Act

Prohibitions and requirements under sections 65 to 68 of the Financial Services Act

34.—(1) Where immediately before commencement a person was subject to a prohibition or requirement imposed under any of sections 65 to 68 of the Financial Services Act, that prohibition or requirement has effect after commencement—

- (a) if it relates to the carrying on of an activity or activities which the person has a Part IV permission to carry on, then as if it were a requirement imposed on him under section 43;
- (b) if it relates to the carrying on of an activity or activities which he has a permission to carry on as a result of Schedule 3 or 4, then as if it were a requirement imposed on him under section 196.

(2) Where by virtue of this article (and, where applicable, article 36(3)(a)), a requirement originally imposed as mentioned in paragraph (1) has effect as—

- (a) an assets requirement, as defined by section 48(3); or
- (b) a requirement to which section 201 applies,

section 48(4) to (7) and (9) to (11) applies accordingly; but section 48(8) does not apply.

(3) For the purposes of paragraph (1), a prohibition imposed under section 65 of the Financial Services Act as respects activities carried on in connection with or for the purposes of an activity mentioned in paragraph (1)(a) or (b) is to be taken to relate to the carrying on of that activity,

Prohibitions and requirements imposed by recognised self-regulating organisations or recognised professional bodies

35.—(1) This article applies where immediately before commencement a person was subject to a prohibition or requirement—

- (a) imposed by a recognised self-regulating organisation or a recognised professional body under a relevant rule; or
- (b) pursuant to an agreement between a person and a recognised self-regulating organisation that he should be subject to a prohibition or requirement of a kind which could have been imposed on him under a relevant rule.

(2) The prohibition or requirement has effect after commencement—

- (a) if it relates to the carrying on of an activity or activities which the person has a Part IV permission to carry on, as if it were a requirement imposed on him under section 43;
- (b) if it relates to the carrying on of an activity or activities which he has a permission to carry on as a result of Schedule 3 or 4, as if it were a requirement imposed on him under section 196.

(3) For the purposes of paragraph (2), a prohibition or requirement imposed or agreed as respects activities carried on in connection with or for the purposes of an activity mentioned in paragraph (2) (a) or (b) is to be taken to relate to the carrying on of that activity.

(4) Where by virtue of this article (and, where applicable, article 36(3)(a)), a requirement originally imposed or agreed as mentioned in paragraph (1) has effect as—

- (a) an assets requirement, as defined by section 48(3); or
- (b) a requirement to which section 201 applies,

section 48(4) to (7) and (9) to (11) applies accordingly; but section 48(8) does not apply.

(5) Where, immediately before commencement, a person was a member of a recognised self-regulating organisation for the purposes of section 7 of the Financial Services Act but was prevented by relevant rules from carrying on any investment business (within the meaning of that Act) that person is to be treated after commencement—

- (a) as if he is an authorised person with a Part IV permission; but
- (b) as if his Part IV permission included a requirement imposed under section 43 that he refrain from carrying on any regulated activity.

(6) For the purposes of this article a relevant rule is—

- (a) a rule of a recognised self-regulating organisation which makes provision as described in section 48(2)(a) or (b) of the Financial Services Act;
- (b) a rule of a recognised self-regulating organisation or recognised professional body conferring powers corresponding to the powers conferred by sections 65 to 68 of that Act;
- (c) a rule of a recognised self-regulating organisation or recognised professional body conferring power on that organisation or body to impose conditions (however described) on a member when admitting him to membership, or to vary those conditions or impose new conditions during his membership;
- (d) a rule of a recognised self-regulating organisation or recognised professional body conferring power on that organisation or body to direct a member (in whatever manner specified by the rule) to take specified steps.

Supplemental provision relating to requirements under section 67 of the Financial Services Act etc.

36.—(1) This article applies in relation to a requirement having effect by virtue of article 34 or 35 which was originally imposed—

- (a) under section 67 of the Financial Services Act (vesting of assets in trustee); or
- (b) by a recognised self-regulating organisation or recognised professional body for purposes corresponding to those of that section.

(2) Any approval of a trustee by the Authority which was effective for the purposes of the requirement immediately before commencement continues to have effect for those purposes after commencement.

(3) If the requirement includes provision requiring the approval of a trustee by a recognised self-regulating organisation or recognised professional body—

- (a) it is to be taken instead to require the approval of the trustee by the Authority; and

- (b) if, immediately before commencement, an approval of a trustee by a recognised self-regulating organisation or recognised professional body was effective for the purposes of the requirement, the approval has effect after commencement as if given by the Authority.

(4) Paragraph (5) applies to any direction allowing assets to be released or dealt with which was given—

- (a) under subsection (3) of section 67 of the Financial Services Act; or
- (b) by a recognised self-regulating organisation or recognised professional body for purposes corresponding to those of that subsection,

if the direction was effective immediately before commencement.

(5) The direction has effect after commencement as if it were a consent given by the Authority under section 48(6).

Requirements imposed under the Financial Services Act by virtue of the 2BCD or ISD Regulations as a matter of urgency

37. Where a requirement which by virtue of article 34 has effect as if imposed under section 196—

- (a) was originally imposed, or was varied, in a case where regulation 17 of the 2BCD Regulations or regulation 11 of the ISD Regulations applied; and
- (b) was imposed or varied as a matter of urgency under regulation 17(5) of the 2BCD Regulations or (as the case may be) regulation 11(5) of the ISD Regulations,

it is to be treated as if section 199 had applied in its case and it had been imposed as mentioned in section 199(8)(a).