
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).

Restrictions and directions under the Banking Act

Restrictions under section 12 of the Banking Act

- 38.—(1) This article applies where immediately before commencement a person was subject to a restriction on authorisation imposed under section 12 of the Banking Act.
- (2) Any conditions imposed by the restriction have effect after commencement as if they were requirements imposed on the person under section 43.
- (3) If the restriction imposes a limit on the duration of the person's authorisation under the Banking Act, to the extent that it does so it has effect after commencement as if it were a requirement, imposed under section 43, that after the relevant date he refrain from carrying on any activity of the kind referred to in article 11 and which he has a Part IV permission to carry on.
- (4) The relevant date is the date when (but for the repeal of the Banking Act) the authorisation under the Banking Act would have expired.
- (5) A requirement having effect by virtue of paragraph (3) may not be cancelled, and may not be varied so as to allow the person to carry on after the permitted period any activity mentioned in that paragraph.
- (6) The permitted period is the period of three years beginning with the date on which the restriction under section 12 of the Banking Act was first imposed.

Directions under section 19 of the Banking Act

- 39.—(1) Where—

(a) immediately before commencement a person was subject to a direction given under section 19 of the Banking Act; and

(b) by virtue of this Order he has a Part IV permission on commencement,

the direction has effect, after commencement, as if it were a requirement (or requirements) imposed on him under section 43.

(2) If the direction was one falling within section 20(2) of the Banking Act but was not confirmed under that section before commencement, the requirement having effect under paragraph (1) ceases to have effect at the end of 28 days beginning with the day on which the direction was given.

(3) References in paragraphs (1) and (2) to a direction do not include references to a direction varying a previous direction; but where a direction has been varied before commencement the references in paragraph (1) are to the direction as varied even in a case where, by virtue of section 20(2)(b) of the Banking Act, the variation was due to cease to have effect at a time falling after commencement unless confirmed by the Authority before that time.

(4) A requirement having effect under paragraph (1) ceases to have effect on the occurrence of a relevant event.

(5) In the case of a person who immediately before commencement held an authorisation granted (or deemed to be granted) under section 9 of the Banking Act, the reference in paragraph (4) to a relevant event is to be read as follows—

- (a) if the requirement originally had effect as a direction given by virtue of section 19(1)(a) or (b) of the Banking Act (cases where Banking Act authorisation was to be revoked), and—
- (i) the Authority decides to discontinue the proceedings originated by the proposal to revoke the person's authorisation under the Banking Act; or
- (ii) the decision to revoke the authorisation is reversed by a tribunal,

the giving of the notice of discontinuance under section 389, or the tribunal's determination, is a relevant event;

- (b) if the requirement originally had effect as a direction given by virtue of section 19(1)(d) of the Banking Act (notice of surrender of authorisation) and the person subject to it withdraws the application, the withdrawal of the application is a relevant event.

(6) In the case of a person who immediately before commencement did not hold an authorisation granted (or deemed to be granted) under section 9 of the Banking Act, but formerly held such an authorisation, the reference in paragraph (4) to a relevant event is to the person's ceasing to have any liability in respect of deposits (within the meaning of the Banking Act) for which he had a liability at a time when he held that authorisation.

(7) Nothing in paragraphs (2) or (4) prevents the Authority from exercising its power under section 45 to vary the person's Part IV permission in order to continue in effect the requirement having effect under paragraph (1).

Directions and requirements under the Insurance Companies Act

Directions under sections 11 and 12A of the Insurance Companies Act

40.—(1) This article applies where immediately before commencement a person was subject to—

- (a) a direction given under section 11 of the Insurance Companies Act; or
- (b) a direction given under section 12A of that Act and confirmed under that section.

(2) The direction 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 under section 43, that he refrain

from carrying on an activity which immediately before commencement he was prevented by the direction from carrying on;

- (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 4, as if it were a requirement, imposed under section 196, that he refrain as mentioned in sub-paragraph (a).

Requirements under sections 38, 39, 40, 41, 43 and 45 of the Insurance Companies Act

41.—(1) This article applies where immediately before commencement a person was—

- (a) authorised under section 3 or 4 of the Insurance Companies Act; and
- (b) subject to a requirement imposed under section 38, 39, 40, 41, 43 or 45 of that Act.

(2) The 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 4, as if it were a requirement imposed on him under section 196.

(3) Where by virtue of this article a requirement originally imposed under the Insurance Companies Act has effect as—

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

subsections (4) to (11) of section 48 apply accordingly.

(4) In relation to a requirement originally imposed under section 40 of the Insurance Companies Act (custody of assets)—

- (a) 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; and
- (b) any consent which was given under subsection (4) of that section and was effective immediately before commencement has effect after commencement as if given under section 48(6).

(5) Where section 48(8) applies in relation to a requirement originally imposed under section 40 of the Insurance Companies Act, any notice in relation to the requirement given to a trustee under section 40(3) of that Act is to be treated as given under section 48(8).

(6) In relation to a requirement which has effect under paragraph (2) and which was originally imposed under section 43 of the Insurance Companies Act, the requirement is that where the person is required by the Authority's rules to deposit any accounts or statement of the kind referred to in section 43 of that Act, he must do so on or before the date specified by the requirement originally imposed.

Order of the court under section 40A of the Insurance Companies Act

42.—(1) This article applies to a person where there is in force against him immediately before commencement an order of the court made under section 40A of the Insurance Companies Act(1).

(2) A person to whom this article applies is to be treated after commencement as if he were subject to an assets requirement within the meaning of section 48(3)(a) prohibiting him from disposing of or otherwise dealing with his assets in any manner which would have been prohibited by the order

(1) Section 40A was inserted by S.I.1994/1696 reg. 22 and has been amended by S.I. 1997/2781, art. 8, Sch, Pt I, paras 1, 25.

as it had effect immediately before commencement (having regard to any subsequent orders made under section 40A(2) of the Insurance Companies Act) and section 48(4) and (5) apply accordingly.

(3) On commencement the order of the court referred to in paragraph (1) ceases to have effect.

(4) Where—

(a) before commencement, a person (“P”) was subject to an order made under section 40A of the Insurance Companies Act;

(b) the Authority had, at any time after the making of this Order, given notice of that order to an institution with whom P keeps an account;

(c) P is subject to a requirement after commencement by virtue of paragraph (2),

that notice is to be treated after commencement as if it had been given under section 48(4)(b).

Requirements imposed on former Lloyd’s underwriting members

43.—(1) This article applies to a former member of Lloyd’s who, immediately before commencement, was treated by virtue of regulation 3(1)(b) of the Insurance (Lloyd’s) Regulations 1996⁽²⁾ as if he were a UK company to which Part II of the Insurance Companies Act applied.

(2) Where immediately before commencement, a person to whom this article applies was subject to a requirement imposed under section 45 of the Insurance Companies Act in respect of any liability of his under contracts of insurance entered into by him as a member of Lloyd’s, that requirement takes effect after commencement as if it were a requirement imposed on him under section 320(3) (whether or not he is a former underwriting member for the purposes of that section).

Requirements and directions under Schedule 2F to the Insurance Companies Act

44.—(1) This article applies where immediately before commencement an EEA firm was subject to—

(a) a requirement imposed under section 45 of the Insurance Companies Act by virtue of paragraph 15 of Schedule 2F to that Act; or

(b) a direction given under paragraph 16 or 17 of that Schedule.

(2) In a case where this article applies, the requirement or direction 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 permission to carry on as a result of Schedule 3 or 4, as if it were a requirement imposed on him under section 196.

Conditions and directions under the Friendly Societies Act

Conditions imposed under the Friendly Societies Act

45.—(1) This article applies where immediately before commencement a friendly society was subject to a condition imposed—

(a) at the society’s request under section 32(4) of the Friendly Societies Act;

(b) under section 34 of the Friendly Societies Act (including any conditions imposed pursuant to section 35 of that Act);

(2) S.I. 1996/3011.

(c) under section 36 of the Friendly Societies Act (including those deemed to be imposed under that section pursuant to a direction given under section 36A of that Act⁽³⁾;

(2) The condition has effect after commencement as if it were a requirement imposed on the society under section 43.

(3) Where a condition imposed pursuant to a direction given under section 36A of the Friendly Societies Act has effect after commencement under paragraph (2), that requirement is not to be treated as limited in time, notwithstanding section 36A(2) of that Act.

Direction under section 40 of the Friendly Societies Act

46.—(1) This article applies where—

(a) immediately before commencement a friendly society was subject to a direction given under section 40 of the Friendly Societies Act; and

(b) on commencement, that friendly society has a Part IV permission.

(2) The direction has effect after commencement as if it were a requirement imposed under section 43 that the society refrain from carrying on any activity which immediately before commencement it was prevented by the direction from carrying on (having regard to any subsequent grant of authorisation as mentioned in section 40(5) of the Friendly Societies Act).

(3) A direction having effect under paragraph (2) may be varied or revoked in accordance with section 44, notwithstanding section 40(5)(b) of the Friendly Societies Act.

Direction under section 51 of the Friendly Societies Act

47.—(1) This article applies where—

(a) immediately before commencement a friendly society was subject to a direction given under section 51 of the Friendly Societies Act; and

(b) on commencement, that friendly society has a Part IV permission.

(2) Subject to paragraph (3), the direction has effect after commencement as if it were a requirement imposed under section 43 that the society refrain from accepting any new members.

(3) If a direction given under section 51 of the Friendly Societies Act before commencement has, by reason of section 58(3) of that Act, not come into force before commencement—

(a) that fact does not prevent a person from being treated as subject to the direction for the purposes of this article; but

(b) the direction has effect as described in paragraph (2) only if the period within which an appeal can be brought against the direction expires without such an appeal being brought.

Order of the court under section 52A of the Friendly Societies Act

48.—(1) This article applies to a friendly society where there is in force against it immediately before commencement an order of the court made under section 52A of the Friendly Societies Act⁽⁴⁾ and where that society has, at commencement, a Part IV permission.

(2) A society to which this article applies is to be treated after commencement as if it were subject to an assets requirement within the meaning of section 48(3)(a), prohibiting the society from disposing of or otherwise dealing with its assets in any manner which would have been prohibited by the order as it had effect immediately before commencement (having regard to any subsequent

(3) Section 36A was inserted by S.I. [1993/2519](#), reg. 2(1).

(4) Section 52A was inserted by S.I. [1994/1984](#) and has been amended by S.I. [1997/2849](#).

orders made under section 52A(3) of the Friendly Societies Act) and section 48(4) and (5) applies accordingly.

(3) On commencement, the order of the court referred to in paragraph (1) ceases to have effect.

(4) Where—

(a) before commencement, a person (“P”) was subject to an order made under section 52A of the Friendly Societies Act;

(b) the Authority had, at any time after the making of this Order, given notice of that order to an institution with whom P keeps an account;

(c) P is subject to a requirement after commencement by virtue of paragraph (2),

that notice is to be treated after commencement as if it had been given under section 48(4)(b).

Direction under section 53 of the Friendly Societies Act

49.—(1) This article applies where—

(a) immediately before commencement a friendly society was subject to a direction given under section 53 of the Friendly Societies Act; and

(b) that friendly society has, at commencement, a Part IV permission.

(2) The direction has effect after commencement as if it were a requirement imposed by the Authority under section 43.

Conditions and directions under the Building Societies Act

Conditions and directions imposed under the Building Societies Act

50.—(1) This article applies where immediately before commencement a building society was subject to—

(a) a condition imposed under section 9(5) of the Building Societies Act;

(b) a condition imposed under section 41 of that Act;

(c) a condition imposed under section 42 of that Act (including any which was imposed as a matter of urgency pursuant to section 42A of that Act⁽⁵⁾ if it has been confirmed by a notice given under section 42A(8) of that Act);

(d) a condition imposed under section 44 of that Act;

(e) a direction given under section 50 of that Act.

(2) Where this article applies, the condition or direction has effect after commencement as if it were a requirement imposed on the building society under section 43.

Direction under section 43A of the Building Societies Act

51.—(1) Where—

(a) immediately before commencement, a building society was subject to a direction given under 43A of the Building Societies Act⁽⁶⁾; and

(b) by virtue of this Order the building society has a Part IV permission on commencement, the direction has effect, after commencement, as if it were a requirement (or requirements) imposed on the society under section 43.

⁽⁵⁾ Section 42A was inserted by the Building Societies Act 1997 s. 16.

⁽⁶⁾ Section 43A was inserted by the Building Societies Act 1997 s. 19.

(2) If the direction was one falling within section 43B(2) of the Building Societies Act(7) but was not confirmed under that section before commencement, the requirement having effect under paragraph (1) ceases to have effect at the end of 28 days beginning with the day on which the direction was given.

(3) References in paragraphs (1) and (2) to a direction do not include a direction varying a previous direction; but where a direction has been varied before commencement, the references in paragraph (1) are to the direction as varied even in a case where, by virtue of section 43B(2)(b) of the Building Societies Act, the variation was due to cease to have effect at a time falling after commencement unless confirmed by the Authority before that time.

(4) A requirement having effect under paragraph (1) ceases to have effect on the occurrence of a relevant event.

(5) In the case of a society which immediately before commencement held an authorisation granted for the purposes of the Building Societies Act, the reference in paragraph (4) to a relevant event is to be read as follows—

- (a) if the requirement originally had effect as a direction given by virtue of section 43A(1)(a) or (b) of the Building Societies Act (cases where authorisation was to be revoked), and—
 - (i) the Authority decides to discontinue the proceedings originated by the proposal to revoke the society’s authorisation under the Building Societies Act; or
 - (ii) the decision to revoke the authorisation is reversed by a tribunal,the giving of a notice of discontinuance under section 389, or the tribunal’s determination, is a relevant event;
- (b) if the requirement originally had effect as a direction given by virtue of section 43A(1) (d) of the Building Societies Act (request to revoke authorisation or cancel registration) and the society subject to it withdraws the application, the withdrawal of the application is a relevant event.

(6) In the case of a society which immediately before commencement did not hold an authorisation for the purposes of the Building Societies Act, but formerly held such an authorisation, the reference in paragraph (4) to a relevant event is to the society ceasing to have any liability in respect of shares or deposits (within the meaning of the Building Societies Act) for which it had a liability at a time when it held that authorisation.

(7) Nothing in paragraph (2) or (4) prevents the Authority from exercising its power under section 45 to vary the society’s Part IV permission in order to continue in effect the requirement having effect under paragraph (1).

Prohibitions and restrictions under the 2BCD and ISD Regulations

Prohibitions and restrictions under regulations 9, 10 and 15 of the 2BCD Regulations and regulation 9 of the ISD Regulations

52.—(1) Where immediately before commencement a person was subject to a prohibition or restriction imposed (or deemed to be imposed) under regulation 9, 10, or 15 of the 2BCD Regulations or regulation 9 of the ISD Regulations, the prohibition or restriction has effect after commencement as if it were a requirement imposed on him under section 196.

(2) In the case of a limited prohibition, a requirement having effect by virtue of this article is to be taken to be framed so as to expire when (but for the revocation of those Regulations) the prohibition would have expired.

(7) Section 43B was inserted by the Building Societies Act 1997 s. 20.

(3) A limited prohibition means a prohibition 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.

(4) Where a requirement which by virtue of this article has effect as if imposed under section 196—

- (a) was originally imposed, or was varied, in a case where regulation 11 or 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 11(5) or 17(5) of the 2BCD Regulations or 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).

Prohibitions and restrictions under regulations 18 and 19 of the 2BCD Regulations and regulations 15 and 16 of the ISD Regulations

53.—(1) Where immediately before commencement a person was subject to a prohibition imposed under regulation 18 of the 2BCD Regulations or regulation 15 of the ISD Regulations—

- (a) the prohibition has effect after commencement as if it were a prohibition imposed on him by the Director General of Fair Trading under section 203(1); and
- (b) the reference in paragraph 15(3) of Schedule 3 to the Director's having exercised the power conferred by section 203 is to be read accordingly.

(2) Accordingly, the reference in subsection (5) of section 203 to the notice given under subsection (1) includes a reference to the notice imposing the prohibition.

(3) Where immediately before commencement a person was subject to a restriction imposed under regulation 19 of the 2BCD Regulations or regulation 16 of the ISD Regulations, the restriction has effect after commencement as if it were a restriction imposed on him under section 204.

(4) Where paragraph (1) or (3) of this article applies, any direction given under paragraph 2(3) of Schedule 5 to the 2BCD or ISD Regulations which was effective immediately before commencement has effect after commencement as if given under paragraph 2(3) of Schedule 16.

(5) If a prohibition or restriction imposed before commencement as mentioned in paragraph (1) or (3) has, by reason of paragraph 2(4) of Schedule 5 to the 2BCD or ISD Regulations, not come into force before commencement—

- (a) the fact that it has not come into force does not prevent a person from being treated as subject to the prohibition or restriction for the purposes of paragraph (1) or (as the case may be) (3) of this article; and
- (b) this article is not to be taken to alter the date when the prohibition or restriction takes effect.

Supplemental

Supplemental

54.—(1) Section 43(5) (and, in consequence, (6)) does not apply in relation to a requirement under section 43 or 196 having effect by virtue of any provision of this Part or of article 3(4) or 28(5).

(2) Where a pre-commencement requirement was framed so as to come into effect at a time after commencement—

- (a) that fact does not prevent a person from being subject to the requirement for the purposes of this Order; and
- (b) nothing in this Order is to be taken as altering the time when the requirement is to come into effect.

(3) Where—

- (a) a pre-commencement requirement was varied before commencement; but
- (b) the variation had not taken effect before commencement,

the variation takes effect on the date when (but for the repeal or revocation of the provision under which the variation was made) it would have taken effect.

(4) In this article, “pre-commencement requirement” means any prohibition, requirement, restriction or direction imposed before commencement as mentioned in any provision of this Part, any suspension of authorisation as mentioned in article 3(3) and any direction as mentioned in article 28(1).