

2001 No. 2637

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Transitional Provisions) (Controllers) Order 2001

Made - - - - - 19th July 2001

Laid before Parliament - - - - 20th July 2001

Coming into force in accordance with article 1

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The Treasury in exercise of their powers under sections 426 to 428 of the Financial Services and Markets Act 2000^(a) hereby make the following Order—

Citation and commencement

1. This Order may be cited as the Financial Services and Markets Act 2000 (Transitional Provisions) (Controllers) Order 2001 and comes into force on the day on which section 19 comes into force.

^(a) 2000 c. 8.

Definitions

2.—(1) In this Order—

“the Act” means the Financial Services and Markets Act 2000;

“the Banking Act” means the Banking Act 1987(a);

“commencement” means the beginning of the day on which section 19 comes into force;

“the Friendly Societies Act” means the Friendly Societies Act 1992(b);

“the Insurance Companies Act” means the Insurance Companies Act 1982(c);

“the Regulator” means—

(a) in relation to provisions in the ISD Regulations, the relevant regulator within the meaning of regulation 46(5) of those Regulations;

(b) in relation to provisions in the Banking Act and the Insurance Companies Act, the Authority;

(c) in relation to provisions in the Friendly Societies Act, the Commission within the meaning of that Act;

“Schedule 2D” means Schedule 2D to the Insurance Companies Act;

“Schedule 13A” means Schedule 13A to the Friendly Societies Act;

“the ISD Regulations” means the Investment Services Regulations 1995(d).

(2) Any reference in this Order to a section is, unless the context otherwise requires, a reference to that section of the Act.

Notices of control

3.—(1) Where—

(a) a person has served a notice to which this article applies;

(b) the proposed acquisition referred to in the notice has not been approved by the Regulator before commencement and is not treated as having been so approved by the expiry of any period within which objection may be made;

(c) no notice has been served before commencement objecting to the acquisition of the interest referred to in the notice; and

(d) the person serving the notice would, but for this article, be under an obligation after commencement to serve a notice of control under section 178(1) in respect of the proposed acquisition referred to in the notice,

the notice is to be treated after commencement as a notice of control given to the Authority in accordance with section 178(1).

(2) This article applies to a notice served under—

(a) regulation 41(1)(a) of the ISD Regulations;

(b) section 21(1)(a) of the Banking Act;

(c) section 61(1)(a) or 61A(1)(a) of the Insurance Companies Act;

(d) paragraph 1(1)(a) or 2(1)(a) of Schedule 13A.

Notices of control: supplementary

4.—(1) Where the Regulator has served a request for information or documents on a person who has served a notice of control having effect under article 3 and that request has not been complied with before commencement, the request is to be treated after commencement as if it had been made by the Authority under section 182(2) and as if it required the information or documents to be provided to the Authority.

(2) In relation to a notice of control having effect under article 3, the period of consideration for the purposes of section 183—

(a) is three months beginning with the date on which the Regulator received the notice; but

(a) 1987 c. 22.

(b) 1992 c. 40.

(c) 1982 c. 50.

(d) S.I. 1995/3275.

- (b) is treated as having been extended by any period added before commencement by virtue of—
 - (i) regulation 41(4) or 42(6) of the ISD Regulations;
 - (ii) section 21(4) or 22(7) of the Banking Act;
 - (iii) paragraph 1(3) or (6) of Schedule 2D;
 - (iv) paragraph 3(3) or (6) of Schedule 13A; or
 - (v) article 6(3) below.

Approval given before commencement

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

- (a) proposes to acquire an interest by taking a step which would, after commencement, place him under an obligation to notify the Authority under section 178(1); but
- (b) has not taken the step in question.

(2) Where a person to whom this article applies has, before commencement, been served with a notice by the Regulator under a former approval power, that person is to be treated after commencement as if he had served a notice under section 178 and had received a notice of approval under section 184(1).

(3) Where a person to whom this article applies is, before commencement, treated as having been approved under a former approval power on the expiry of the period set under that power for objection to be made by the Regulator, that person is to be treated, after commencement, as if he had been approved under section 184(2).

(4) Section 184(3) applies to a person falling within paragraph (2) as if—

- (a) the reference in subsection (3)(b)(i) to the notice of approval were a reference to the notice served on that person before commencement under the former approval power; and
- (b) the reference in subsection (3)(b)(iii) to the Tribunal included a reference to a tribunal which had determined that the person concerned should receive approval.

(5) Section 184(3) applies to a person falling within paragraph (3) as if—

- (a) the reference in subsection (3)(b)(ii) to “the Authority” were a reference to the Regulator;
- (b) the reference to “subsection (2)” were a reference to the relevant provision of the former approval power; and
- (c) the reference in subsection (3)(b)(iii) to the Tribunal included a reference to a tribunal which had determined that the person concerned should receive approval.

(6) For the purposes of this article a “former approval power” is—

- (a) regulation 41(1)(b) of the ISD Regulations;
- (b) section 21(5) of the Banking Act;
- (c) section 61(1)(b) or 61A(1)(b) of the Insurance Companies Act;
- (d) paragraph 1(1)(b) or 2(1)(b) of Schedule 13A.

Preliminary notice of objection to notice of control

6.—(1) Where, before commencement, a preliminary notice was served on a person in relation to a notice to which article 3 applies, but no notice of objection was served by the Regulator in respect of that preliminary notice, then the preliminary notice ceases to have effect on commencement and the Authority must, as soon as practicable after commencement, notify any recipient of the notice of that fact.

(2) For the purposes of paragraph (1), a “preliminary notice” is a notice served under—

- (a) regulation 42(3) of the ISD Regulations;
- (b) section 22(2) of the Banking Act;
- (c) section 61(2) of the Insurance Companies Act (including as applied by section 61A(3) of that Act);
- (d) paragraph 1(3) of Schedule 13A.

(3) Paragraph (1) does not affect the power of the Authority to serve a notice under section 183(3) or 185(3) in respect of the notice of control having effect under article 3 and for the purposes of section 183, there is added to the period of consideration any time between the service of the preliminary notice and commencement.

Failure to notify proposed acquisition of interest

7.—(1) Where—

- (a) before commencement, a person had failed to comply with an obligation to serve a notice of a kind to which article 3 applies;
- (b) no preliminary notice has been served in respect of that failure by the Regulator;
- (c) the period for objection allowed in respect of that failure has not expired before commencement; and
- (d) the interest in relation to which the obligation referred to in sub-paragraph (a) arose is an interest which would, if the person had proposed to acquire it after commencement, have given rise to an obligation to notify under section 178(1),

the Authority may exercise the power in section 187(1) or (2) as if the person had failed to comply with the obligation to notify under section 178(1).

(2) Section 188(3) applies to the exercise of the power in section 187(1) pursuant to paragraph (1) as if the period of three months referred to in subsection (3)(a) began on the day on which either the Regulator or the Authority became aware of the failure to notify, whichever is the earlier.

(3) In this article “preliminary notice” has the same meaning as in article 6.

(4) The “period for objection” referred to in paragraph (1) is—

- (a) in relation to a failure to notify under regulation 41(1) of the ISD Regulations, the period mentioned in regulation 42(5) of those Regulations;
- (b) in relation to a failure to notify under section 21(1) of the Banking Act, the period mentioned in section 22(6) of that Act;
- (c) in relation to a failure to notify under sections 61(1) and 61A(1) of the Insurance Companies Act; the period mentioned in paragraph 2(2)(a) of Schedule 2D;
- (d) in relation to a failure to notify under paragraphs 1(1) and 2(1) of Schedule 13A, the period mentioned in paragraph 4(2) of that Schedule.

Preliminary notice following failure to notify

8.—(1) Where—

- (a) before commencement, the Regulator has served a preliminary notice on a person in respect of his failure to comply with an obligation to serve a notice of a kind to which article 3 applies;
- (b) no notice of objection has been served in respect of that preliminary notice;
- (c) the interest in relation to which the obligation referred to in sub-paragraph (a) arose is an interest which would, if the person had proposed to acquire it after commencement, have given rise to an obligation to notify under section 178(1),

the preliminary notice is to be treated after commencement as a warning notice given by the Authority under section 188(1).

(2) A notice having effect under paragraph (1) as a warning notice has effect—

- (a) as if it gave notice of the Authority’s intention to serve a notice of objection under section 187(1);
- (b) as if it stated that section 394 does not apply;
- (c) as if the period specified in the notice for making representations to the Authority was one month beginning with the date of service by the Regulator of the notice;
- (d) as if any reference to a right to make oral representations were omitted (without prejudice to any such representations made before commencement).

(3) Where a notice has effect under paragraph (1)—

- (a) the Authority must comply with such requirements as are prescribed under section 188(2) as appear to it to be necessary, having regard to any consultation with competent authorities which the Regulator undertook before commencement;

- (b) the Authority must decide whether to give a decision notice under section 187(1);
 - (c) in taking that decision, the Authority must consider whether the approval requirements (within the meaning of section 186) are met by the person to whom the preliminary notice relates;
 - (d) in taking that decision, the Authority must have regard to any representations made before commencement in relation to the preliminary notice.
- (4) In this article “preliminary notice” has the same meaning as in article 6.

Preliminary notice of imposition of conditions

9.—(1) Where—

- (a) before commencement, the Regulator has served a preliminary notice on a person pursuant to paragraph 3(4) of Schedule 2D or paragraph 5(3) of Schedule 13A (notice imposing conditions);
- (b) no notice requiring conditions to be complied with has been served in respect of that preliminary notice;
- (c) the interest to which the preliminary notice relates is an interest which would, if the person had proposed to acquire it after commencement, have given rise to an obligation to notify under section 178(1),

the preliminary notice is to be treated after commencement as a warning notice given by the Authority under section 185(3).

(2) A notice having effect under paragraph (1) as a warning notice has effect—

- (a) as if it gave notice of the Authority’s intention to impose conditions on the person under section 185(1);
- (b) as if it stated that section 394 does not apply;
- (c) as if the period specified in the notice for making representations to the Authority was one month beginning with the date of service by the Regulator of the notice;
- (d) as if the reference to making oral representations were omitted (without prejudice to any representations so made before commencement).

(3) Where a notice has effect under paragraph (1)—

- (a) the Authority must decide whether to give a decision notice under section 185(4);
- (b) in taking that decision, the Authority must have regard to its duty under section 41;
- (c) the Authority must have regard to any representations made before commencement in relation to the preliminary notice.

Conditions imposed before commencement

10.—(1) For the purposes of section 185(5) and (6) and 187(3)(b) conditions imposed under paragraph 3 of Schedule 2D or paragraph 5 of Schedule 13A are to be treated after commencement as if they had been imposed under section 185(1).

(2) Paragraph (1) applies only if the person concerned (within the meaning of Schedule 2D or 13A) is, after commencement, a controller of a UK authorised person within the meaning of Part XII of the Act.

Objection to existing controller: preliminary notice served before commencement

11.—(1) Where—

- (a) before commencement, the Regulator had served a preliminary notice on an existing controller (within the meaning of the provision under which the preliminary notice was served);
- (b) no notice of objection was served in respect of that preliminary notice; and
- (c) the person on whom the notice was served is, after commencement, treated as a controller of a UK authorised person for the purposes of section 187(3),

that preliminary notice has effect after commencement as a warning notice served under section 188(1) in respect of the exercise of the Authority’s power under section 187(3).

(2) A notice having effect under paragraph (1) as a warning notice has effect—

- (a) as if it gave notice of the Authority’s intention to serve a notice of objection under section 187(3);

- (b) as if it stated that section 394 does not apply;
 - (c) as if the period specified in the notice for making representations to the Authority was one month beginning with the date of service by the Regulator of the notice;
 - (d) as if any reference to a right to make oral representations were omitted (without prejudice to any such representations made before commencement).
- (3) Where a notice has effect under paragraph (1)—
- (a) the Authority must comply with such requirements as are prescribed under section 188(2) as appear to it to be necessary, having regard to any consultation with competent authorities which the Regulator undertook before commencement;
 - (b) the Authority must decide whether to give a decision notice under section 187(3);
 - (c) the Authority must have regard to any representations made before commencement in relation to the preliminary notice.
- (4) For the purposes of this article, a preliminary notice is a notice served under—
- (a) section 24(2) of the Banking Act;
 - (b) paragraph 4(2) of Schedule 2D;
 - (c) paragraph 6(2) of Schedule 13A.

Objection to existing controller: no action taken before commencement

12.—(1) For the avoidance of doubt, the Authority may exercise the power in section 187(3) regardless of whether the person acquired the interest which results in him being treated as a controller of a UK authorised person before or after commencement.

(2) In relation to a person who was, before commencement, an existing controller within the meaning of section 24 of the Banking Act, paragraph 4 of Schedule 2D or paragraph 6 of Schedule 13A, the period of three months referred to in section 187(3) is treated as beginning on the day on which either the Regulator or the Authority became aware of the matters in question, whichever is the earlier.

Improperly acquired shares

13.—(1) Where, before commencement, a direction has been served on a person pursuant to regulation 44(2) of the ISD Regulations or paragraph 7(2) of Schedule 13A, that direction is treated after commencement as if it were a restriction notice served under section 189(2)(b), but subsections (3) to (9) of that section do not apply to such a notice.

(2) Where, before commencement, a direction has been served under section 26(2) of the Banking Act or paragraph 5 of Schedule 2D, the direction is to be treated after commencement as if it were a restriction notice served under section 189(2) and subsection (3) of that section has effect as if the shares which are the subject of that notice were shares to which section 189 applies.

(3) Where, before commencement, the Authority had power to serve a direction under regulation 44 of the ISD Regulations or paragraph 7 of Schedule 13A but had not given such a direction, the Authority may exercise the power in section 189(2) but only to impose the restriction mentioned in subsection (2)(b) of that section.

(4) Where, before commencement, the Authority had power to serve a direction under section 26 of the Banking Act or paragraph 5 of Schedule 2D, but has not served such a direction, the Authority may exercise the power in section 189(2).

(5) This article applies only where the holder of the shares which are or will be subject to the restriction notice is, after commencement, a controller of a UK authorised person within the meaning of Part XII of the Act.

Notification on becoming aware of acquisition

- 14.** Where, before commencement—
- (a) a person became aware of the fact that he had become a controller for the purposes of regulation 43(2) of the ISD Regulations or section 25(2) of the Banking Act;
 - (b) he had not notified the Regulator of that fact;
 - (c) the period of fourteen days referred to in those provisions had not expired;

(d) the fact of which he became aware would, if it had occurred after commencement, have placed the person under a duty to notify the Authority under section 191(10), section 191(10) applies to him and the period of fourteen days referred to in that subsection is treated as beginning on the day on which he became aware of the fact referred to in paragraph (a).

Cessation of control

15.—(1) Where—

- (a) a person was, immediately before commencement, under an obligation to notify pursuant to regulation 45(1) of the ISD Regulations or section 37A(1) of the Banking Act^(a);
- (b) the time for notifying had not expired before commencement; and
- (c) the change in circumstances to which the obligation relates would, if it occurred after commencement place him under the obligation to notify in section 190(1),

section 190(1) applies to that person.

(2) Where—

- (a) a person was, immediately before commencement, under an obligation to notify pursuant to—
 - (i) regulation 45(5) of the ISD Regulations;
 - (ii) section 37A(5) of the Banking Act;
 - (iii) section 62(1) of the Insurance Companies Act; or
 - (iv) paragraph 8(1) of Schedule 13A;
- (b) the time for notifying had not expired before commencement; and
- (c) the change in circumstances to which the obligation relates would, if it occurred after commencement, place him under an obligation to notify in accordance with section 190(2),

section 190(2) applies to that person.

(3) Where section 190(2) applies to a person falling within paragraph (2)(a)(i) or (ii), the period of fourteen days referred to in that section begins on the date he first became aware of the circumstances giving rise to the obligation in question.

(4) Where section 190(2) applies to a person falling within paragraph (2)(a)(iii) or (iv), the period of fourteen days referred to in that section begins at commencement.

Tony McNulty
Graham Stringer

19th July 2001

Two of the Lords Commissioners of Her Majesty's Treasury

(a) Section 37A was inserted by the 2BCD Regulations, reg. 35.

EXPLANATORY NOTE

(This note does not form part of the Order)

This Order makes transitional provision for people who are subject to a regime requiring them to notify a significant shareholding in an authorised person and who will fall within Part XII of the Financial Services and Markets Act 2000 (c. 8) (“the Act”). People who are currently subject to a requirement to notify their proposed appointment, for example as a director of an authorised person, and would fall after commencement within the approved persons regime in Part V of the Act are covered by the Financial Services and Markets Act 2000 (Transitional Provisions) (Authorised Persons etc.) Order 2001 (S.I. 2001/2636).

This Order deals both with the status after commencement of people who have been approved as shareholder controllers under existing regimes and with partly completed procedures, for example, where a notification of control is outstanding when Part XII of the Act is commenced.

The Order also provides that the Authority can exercise its powers under the Act in respect of a person who has failed to comply with obligations under the existing regimes, in circumstances where that person would have been subject to an equivalent obligation under Part XII after commencement.

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