
STATUTORY INSTRUMENTS

2001 No. 2967

The Financial Services and Markets Act 2000
(Transitional Provisions, Repeals and Savings)
(Financial Services Compensation Scheme) Order 2001

PART 2

INVESTMENT BUSINESS COMPENSATION SCHEMES

Transitional applications

3.—(1) The following are pending applications—

- (a) an application for compensation made under an investment business compensation scheme before commencement, in relation to which—
 - (i) a relevant default occurred, and
 - (ii) a terminating event did not occurbefore commencement; and
- (b) an application for compensation made in accordance with paragraph (2).

(2) A person may, after commencement, make an application to the scheme manager under an investment business compensation scheme (as modified by rules made by the Authority under article 4(3)), but only if a relevant default occurred before commencement.

(3) An application may be made under paragraph (2) even if the investment business compensation scheme in question has otherwise ceased to exist.

(4) Except as provided for in paragraph (2), no application may be made under an investment business compensation scheme after commencement.

(5) A post-commencement application means an application for compensation which may be made under paragraph (6).

(6) Notwithstanding anything in Part XV of the Act, a person may after commencement make an application to the scheme manager for compensation under the new scheme as modified by rules made by the Authority under article 6(2), if—

- (a) the application—
 - (i) is not a claim of the kind referred to in section 213(3)(a) of the Act; and
 - (ii) could, had it been made before commencement, have been entertained under an investment business compensation scheme;
 - (b) no relevant default occurred before commencement; and
 - (c) the person making the application has not also made a pending application arising out of the same set of facts.
- (7) For the purposes of paragraph (6)—

- (a) an application is not to be regarded as falling outside paragraph (6)(a)(ii) merely because no relevant default occurred before commencement; and
- (b) the reference to an application that could have been entertained under an investment business compensation scheme is a reference to an application which, had it been made under such a scheme at any time before commencement, would have been an application of a kind in respect of which a payment of compensation could have been made in accordance with that scheme.

Pending applications

4.—(1) A pending application is to be assessed and determined after commencement by the scheme manager in accordance with the relevant former scheme as modified by rules made by the Authority under paragraph (3), even if that former scheme has otherwise ceased to exist.

(2) Where the scheme manager exercises functions under paragraph (1) in relation to a pending application of the kind referred to in article 3(1)(a), the acts and omissions of the former manager before commencement in connection with the application are, for the purpose of the assessment and determination of the application by the scheme manager, deemed to be the acts and omissions of the scheme manager.

(3) The Authority must by rules make such modifications to investment business compensation schemes as it considers are required to enable pending applications to be made, received, assessed and determined by the scheme manager in accordance with this Order.

(4) The Authority may make rules enabling the scheme manager, in respect of pending application made under the PIA indemnity scheme or the ABI scheme, to require, as a condition of making any payment of compensation, the assignment by the applicant for compensation to the scheme manager of such rights of the applicant in connection with his claim against the relevant defaulter as the scheme manager may determine.

The Investor Compensation Scheme Regulations 1998

5. Notwithstanding the revocation of the Investor Compensation Scheme Regulations 1998(1) by Part II of Schedule 2, regulation 2(2) of those Regulations continues to have effect in relation to the payment by the scheme manager of compensation in relation to a pending application made under the Section 43 scheme.

Post-commencement applications

6.—(1) A post-commencement application is to be assessed and determined by the scheme manager under the new scheme as modified by rules made by the Authority under paragraph (2).

(2) The Authority must make rules modifying the new scheme to enable post-commencement applications to be made, received, assessed and determined by the scheme manager in accordance with this Order.

Power to require information—post-commencement applications

7. For the purposes of assessing and determining a post-commencement application—

- (a) section 219 of the Act applies as if the references to the relevant person included a reference to a relevant defaulter in respect of whom the post-commencement application was made; and

(1) S.I. 1998/2169.

- (b) section 221 of the Act applies as if the reference to a requirement under section 219 included a reference to a requirement imposed under section 219 as it applies by virtue of this article.

Insolvency of relevant defaulter—post-commencement applications

8. For the purposes of assessing and determining a post-commencement application where the relevant defaulter is insolvent, sections 220, 221 and 224 of the Act apply as if—

- (a) references to a relevant person included references to the relevant defaulter in respect of whom the post-commencement application was made;
- (b) the reference in section 221 to a failure to permit documents to be inspected under section 220 included a reference to a failure to permit documents to be inspected under section 220 as it applies by virtue of this article; and
- (c) the reference in section 224(1)(a) to the compensation scheme includes a reference to that scheme as modified by rules made by the Authority under article 6(2).