
STATUTORY INSTRUMENTS

2001 No. 3083

The Financial Services and Markets Act 2000
(Transitional Provisions and Savings) (Civil Remedies,
Discipline, Criminal Offences etc.) (No. 2) Order 2001

PART 4

PROVISIONS RELATING TO THOSE FORMERLY
AUTHORISED IN RELATION TO DEPOSIT TAKING

Saving of sections 43A and 43B of the Building Societies Act

11.—(1) The provisions of this article apply notwithstanding any repeal of section 43A or 43B of the Building Societies Act⁽¹⁾.

(2) If, immediately before commencement, a former authorised building society was subject to a direction given under section 43A of that Act, that direction continues to have effect after commencement.

(3) The Authority may, after commencement, give a former authorised building society a direction under section 43A of that Act where before commencement the authorisation of the society under the Building Societies Act had been revoked or its registration under that Act had been cancelled (including at the society's request).

(4) Section 43A(2), (3) and (6) to (8) and section 43B of that Act continue to have effect in relation to any direction which has been given (or is to be given) under section 43A of that Act as modified by paragraph (3) or which continues to have effect by virtue of paragraph (2), subject to the following modifications—

- (a) for each reference to the Building Societies Commission, substitute a reference to the Financial Services Authority;
- (b) in subsection (2) of section 43A, for paragraph (b) substitute—

“(b) may relate to any activities of the society, whether or not they are regulated activities (within the meaning of the Financial Services and Markets Act 2000);”;
- (c) in subsection (2)(a) of section 43B, for the words “section 46” substitute “article 11(5) of the Financial Services and Markets Act 2000 (Transitional Provisions and Savings) (Civil Remedies, Discipline, Criminal Offences etc.) (No. 2) Order 2001”;
- (d) in subsection (2)(b) of section 43B, for the words “section 43A(4), (5) and (6)” substitute “section 43A(6)”.

(5) Where—

- (a) a person is aggrieved by a decision of the Authority to give him a direction under section 43A of the Building Societies Act,

- (b) the Authority, in deciding to give a direction under that section, makes a determination that a person is not a fit and proper person to hold or to remain in an office in the former authorised building society, or
- (c) the Authority imposes a requirement that any person be removed from an office in the former authorised building society,

that person may refer the matter to the Tribunal.

(6) Section 133 applies to a reference to the Tribunal under this article subject to the following modifications—

- (a) the reference in section 133(1) to “this Act” includes a reference to this article;
- (b) the reference in section 133(1)(a) to the “decision notice” includes a reference to the notice given under section 43B of the Building Societies Act and any copy of the direction given under section 43B(3) of that Act;
- (c) for subsection (4), substitute—

“(4) On a reference the Tribunal may direct the Authority to give a direction imposing different requirements.”;
- (d) subsections (6) to (9) are omitted.

(7) Section 414 (service of notices) has effect as if section 43B of the Building Societies Act, to the extent that it requires any notice to be given, were a provision of the Act.

(8) Sections 400 (offences by bodies corporate etc.), 401 (proceedings for offences) and 403 (jurisdiction and procedure in respect of offences) have effect as if any offence committed under section 43A(7) of the Building Societies Act after commencement were an offence under the Act.

(9) In proceedings for an offence under section 43A of the Building Societies Act committed after commencement it is a defence for the person charged to show that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control.

(10) Part XXV has effect as if any requirement imposed by a direction given under section 43A of that Act after commencement were a relevant requirement.

(11) In this article, “former authorised building society” means any person who—

- (a) immediately before commencement did not hold an authorisation within the meaning of the Building Societies Act, but formerly held such an authorisation; and
- (b) is not and never has been an authorised person within the meaning of the Act.