
STATUTORY INSTRUMENTS

2001 No. 3592

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Transitional Provisions) (Partly Completed Procedures) Order 2001

<i>Made</i>	- - - -	<i>6th November 2001</i>
<i>Laid before Parliament</i>		<i>6th November 2001</i>
<i>Coming into force</i>	- -	<i>1st December 2001</i>

The Treasury in exercise of their powers under sections 426 to 428 of the Financial Services and Markets Act 2000⁽¹⁾ hereby make the following Order—

PART I

GENERAL

Citation and commencement

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Transitional Provisions) (Partly Completed Procedures) Order 2001.

(2) This Order comes into force on 1st December 2001.

Definitions

2.—(1) In this Order—

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

“the Authorised Persons Order” means the Financial Services and Markets Act 2000 (Transitional Provisions) (Authorised Persons etc.) Order 2001⁽²⁾;

“commencement” means the beginning of 1st December 2001;

“decided”, in relation to an application, has the meaning given by paragraph (4);

“recognised professional body” has the same meaning as in the Financial Services Act;

(1) 2000 c. 8.

(2) S.I. 2001/2636.

“recognised self-regulating organisation” has the same meaning as in the Financial Services Act, except that it includes a recognised self-regulating organisation for friendly societies within the meaning of that Act;

“the Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001⁽³⁾.

(2) In this Order—

“the Banking Act” means the Banking Act 1987⁽⁴⁾;

“the Building Societies Act” means the Building Societies Act 1986⁽⁵⁾;

“the Financial Services Act” means the Financial Services Act 1986⁽⁶⁾;

“the Friendly Societies Act” means the Friendly Societies Act 1992⁽⁷⁾;

“the Insurance Companies Act” means the Insurance Companies Act 1982⁽⁸⁾;

“the 2BCD Regulations” means the Banking Coordination (Second Council Directive) Regulations 1992⁽⁹⁾;

“the ISD Regulations” means the Investment Services Regulations 1995⁽¹⁰⁾;

“the 3ID Regulations” means the Insurance Companies (Third Insurance Directives) Regulations 1994⁽¹¹⁾.

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

(4) For the purposes of this Order an application is decided when it has been determined and there is no possibility (or no further possibility) of the determination being reversed or varied on a reference to a tribunal or an appeal.

(5) Any reference in this Order to a person—

(a) having a Part IV permission or a permission under Schedule 3 or 4;

(b) being subject to a requirement imposed under section 43 or 196;

(c) satisfying or not satisfying the conditions in paragraph 13 or 14 of Schedule 3;

includes a reference to a person who has such a permission, is subject to such a requirement, or is or is not treated as satisfying those conditions by virtue of the Authorised Persons Order.

(3) S.I. 2001/544.

(4) 1987 c. 22.

(5) 1986 c. 53.

(6) 1986 c. 60.

(7) 1992 c. 40.

(8) 1982 c. 50.

(9) S.I. 1992/3218 amended by S.I. 1993/3225, S.I. 1995/1217, S.I. 1995/1442, S.I. 1996/1669, S.I. 1999/2094 and S.I. 2000/2952.

(10) S.I. 1995/3275 amended by the Bank of England Act 1998 (c. 11) and by S.I. 1996/1669 and S.I. 2000/2952.

(11) S.I. 1994/1696.

PART II
AUTHORISATIONS AND RESTRICTIONS UNDER OLD LAW
CHAPTER I
APPLICATIONS, NOTICES OF INTENTION TO
REFUSE AND SURRENDERS OF AUTHORISATION

Applications

Applications for authorisation

3.—(1) Where an application to which this article applies was made but had not been decided before commencement by the body to which it was made, it is to be treated as an application for permission made to the Authority under section 40 or, where the person making the application has a Part IV permission, as an application under section 44 for the variation of that permission.

(2) The applications to which this article applies are—

- (a) an application by a person for membership of a recognised self-regulating organisation;
- (b) an application by a person for a certificate to be issued by a recognised professional body for the purposes of Part I of the Financial Services Act (but subject to paragraph (3));
- (c) an application under section 26 of the Financial Services Act;
- (d) an application for the variation of a direction under section 33(3) of the Financial Services Act;
- (e) an application for admission to the list maintained for the purposes of section 43 of the Financial Services Act;
- (f) an application under section 8 of the Banking Act;
- (g) an application for authorisation made under section 5 of the Insurance Companies Act;
- (h) an application to the Committee of Lloyd's by a body to have its name entered in the register of underwriting agents⁽¹²⁾.

(3) This article applies to an application falling within paragraph (2)(b) only if the applicant notifies the Authority, in such form as the Authority may direct, that he wishes his application to be treated as an application under the Act.

Applications for variation or cancellation of suspension or restriction

4.—(1) Where an application to which this article applies—

- (a) related to a requirement, prohibition or other matter having effect after commencement as a requirement under section 43; and
- (b) had not been decided before commencement,

it is to be treated as an application made to the Authority under section 44 and as relating to the requirement under section 43.

(2) Where an application to which this article applies—

- (a) related to a requirement, prohibition or other matter having effect after commencement as a requirement under section 196; and
- (b) had not been decided before commencement,

⁽¹²⁾ Such an application is made under the Lloyd's Underwriting Agents' Byelaw (No. 4 of 1984)

it is to be treated as an application made to the Authority under section 200 and as relating to the requirement under section 196.

(3) The applications to which this article applies are—

- (a) an application under section 28(5) of the Financial Services Act;
- (b) an application under section 69 of that Act;
- (c) an application to a recognised self-regulating organisation or recognised professional body for the variation or withdrawal of a prohibition or requirement imposed by the organisation or body;
- (d) an application for the variation or withdrawal of a limit or condition imposed under section 12 of the Banking Act;
- (e) an application for the variation or revocation of a direction under section 19 of that Act;
- (f) an application under regulation 15(3) of the 2BCD Regulations or regulation 9(3) of the ISD Regulations;
- (g) an application for the variation or withdrawal of a restriction imposed under regulation 10 of the 2BCD Regulations.

Notices of intention to refuse applications for authorisation or variation of suspension

Notice of intention to refuse application for authorisation or variation of suspension under the Financial Services Act

5.—(1) Where, before commencement—

- (a) a notice was given under section 29(1) of the Financial Services Act of intention to refuse an application under section 26 or 28(5) of that Act;
- (b) the period within which the case could be required to be referred to the Financial Services Tribunal under that Act had not expired;
- (c) no such reference had been required by the applicant,

the notice ceases to have effect on commencement and the Authority must, as soon as practicable after commencement, notify the applicant (and any person to whom a copy of the notice was given under section 29(3) of that Act) of that fact.

(2) Paragraph (1) does not affect the power of the Authority to serve a notice under section 52(7) in respect of the application (as effective by virtue of article 3 or 4(1)).

(3) Where, before commencement—

- (a) a notice was given under section 29(1) of the Financial Services Act of intention to refuse an application under section 26 or 28(5) of that Act;
- (b) the period within which the case could be required to be referred to the Financial Services Tribunal under that Act expired without such a reference being required by the applicant; and
- (c) no notice under section 29(5) of that Act had been given,

the notice of intention has effect after commencement as if it were a decision notice given under section 52(9)(c), except that there is no right to refer the matter to the Tribunal under section 55(1).

(4) A decision notice having effect by virtue of paragraph (3) has effect as if—

- (a) it gave notice of the Authority's decision to refuse the application (as effective by virtue of article 3 or 4(1));
- (b) it stated that section 394 does not apply;

- (c) it indicated that there is no right to have the matter referred to the Tribunal.

Notice of intention to refuse application for authorisation under the Banking Act

6.—(1) Where, before commencement—

- (a) a notice has been given under section 10(2) of the Banking Act of intention to refuse an application under section 8 of that Act; but
- (b) no notice has been given under section 10(1) or (5) of that Act,

the notice ceases to have effect on commencement and the Authority must, as soon as practicable after commencement, notify the applicant (and any person to whom a copy of the notice was given under section 10(3)) of that fact.

(2) Paragraph (1) does not affect the power of the Authority to serve a notice under section 52(7) in respect of the application (as effective by virtue of article 3).

Notice of intention to refuse application for variation of limited prohibition under the 2BCD or ISD Regulations

7.—(1) Where, before commencement—

- (a) a notice was given under paragraph 1(1) of Schedule 4 to the 2BCD Regulations or ISD Regulations of intention to refuse an application under regulation 15(3) of the 2BCD Regulations or regulation 9(3) of the ISD Regulations;
- (b) the period within which the case could be required to be referred to the Financial Services Tribunal under the Financial Services Act had not expired; and
- (c) no such reference had been required by the applicant,

the notice ceases to have effect on commencement and the Authority must, as soon as practicable after commencement, notify the applicant (and any person to whom a copy of the notice was given under paragraph 1(3) of the relevant Schedule) of that fact.

(2) Paragraph (1) does not affect the power of the Authority to serve a notice under section 200(4) in respect of the application (as effective by virtue of article 3(2)).

(3) Where, before commencement—

- (a) a notice was given under paragraph 1(1) of Schedule 4 to the 2BCD Regulations or ISD Regulations of intention to refuse an application under regulation 15(3) of the 2BCD Regulations or regulation 9(3) of the ISD Regulations;
- (b) the period within which the case could be required to be referred to the Financial Services Tribunal under the Financial Services Act had expired without such a reference being required by the applicant; and
- (c) no notice under paragraph 1(5) of the relevant Schedule had been given,

the notice of intention has effect after commencement as if it were a decision notice given under section 200(5)(a), except that there is no right to refer the matter to the Tribunal under section 200(5)(b).

(4) A decision notice having effect by virtue of paragraph (3) is to be treated as if—

- (a) it gave notice of the Authority's decision to refuse the application (as effective by virtue of article 3(2));
- (b) it stated that section 394 does not apply;
- (c) it indicated that there is no right to have the matter referred to the Tribunal under section 200(5)(b).

*Surrenders of authorisations***Surrenders of authorisations**

8.—(1) This article applies to—

- (a) a request by a person for cancellation of his membership of a recognised self-regulating organisation (but subject to paragraph (3));
- (b) a request by a person under section 30(1) of the Financial Services Act for his authorisation to be withdrawn;
- (c) a notice of surrender of authorisation given by a person under section 15(1) of the Banking Act; or
- (d) a request by a person for a direction under section 11(1) of the Insurance Companies Act,

which had not been granted or (in the case of a notice) taken effect before commencement.

(2) If the person who made the request or gave the notice to which this article applies has a Part IV permission, the request or notice is to be treated as an application made to the Authority under section 44 for variation of that Part IV permission by removing from that permission the regulated activities corresponding to the activities to which the request or notice related.

(3) This article does not apply to an application falling within paragraph (1)(a) where the person making the request is a person who is treated by virtue of article 35(5) of the Authorised Persons Order as being subject to a requirement under section 43 that he refrain from carrying on any regulated activity; but section 44(4) applies to that person as if his position were the result of a variation of his Part IV permission under that section.

*Determination of applications***Procedure**

9.—(1) Section 52 has effect in relation to an application, notice or request which is treated, pursuant to a provision in this Part, as an application under section 40 or 44 subject to the provisions of this article.

(2) If the body to whom the application, notice or request was originally made or sent was subject to an express requirement to determine it within a particular period and had not determined it for the purposes of that requirement before commencement—

- (a) subsection (1) of section 52 is to be read as if that period were substituted for the period of six months mentioned in that subsection;
- (b) the application is to be treated for the purposes of section 52(1) and (2) as having been received by the Authority on the date on which it was received by the body to whom it was originally made or sent.

(3) In a case where the body to whom the application, notice or request was originally made or sent was—

- (a) not subject to an express requirement to determine it within a particular period, or
- (b) was subject to such a requirement but had, for the purposes of that requirement, determined it before commencement,

the application is to be treated for the purposes of section 52(1) and (2) as if it had been received by the Authority on commencement.

(4) The application is not to be treated as incomplete for the purposes of section 52(2) if it complied with the procedure applicable to it when it was originally made or sent.

(5) The application is to be treated as incomplete for the purposes of section 52(2) if it would have been treated as incomplete for the purposes of the provision under which it was originally made or sent.

(6) Nothing in this article affects the power of the Authority to require information under section 51(4) and (6).

CHAPTER II

NOTICES TO WITHDRAW, SUSPEND OR RESTRICT AUTHORISATION

Notices under the Financial Services Act

Notice of intention to withdraw or suspend authorisation under section 29 of the Financial Services Act: time for reference not expired

10.—(1) Where, before commencement—

- (a) a notice was given under section 29(1) of the Financial Services Act of intention to withdraw or suspend an authorisation;
- (b) the period within which the case could be required to be referred to the Financial Services Tribunal has not expired; and
- (c) no such reference has been required,

the notice has effect after commencement as if it were a notice given under section 53(4).

(2) Such a notice has effect—

- (a) as if it stated that the Authority proposes to vary the authorised person's permission by imposing a requirement that he refrain from carrying on the regulated activity or activities covered by the notice;
- (b) as if it informed the recipient that he may make representations to the Authority (whether or not he refers the matter to the Tribunal) within—
 - (i) the new period (if any) specified for this purpose under article 90; or
 - (ii) if there is no new period so specified, 28 days beginning with the date of service of the notice;
- (c) as if it informed the recipient that the variation takes effect on—
 - (i) the new date (if any) specified for this purpose under article 90; or
 - (ii) if there is no new date so specified, the date when (but for the repeal of the Financial Services Act) the withdrawal or suspension of authorisation would have taken effect;
- (d) (in the case of a notice proposing suspension) as if it informed the recipient that the variation takes effect—
 - (i) for the new period (if any) specified for this purpose under article 90; or
 - (ii) if there is no new period so specified, then for the period for which (but for the repeal of the Financial Services Act) the suspension of authorisation would have had effect;
- (e) as if it informed the recipient that he has a right to refer the matter to the Tribunal—
 - (i) within the new period (if any) specified for this purpose under article 90; or
 - (ii) if there is no new period so specified, within 28 days beginning with the date of service of the notice.

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

- (a) the Authority must decide whether to issue a notice under section 53(7) or (8);

- (b) in taking that decision, section 41 applies to the Authority; and
- (c) the Authority must have regard to any representations made before commencement in relation to the notice given under section 29 of the Financial Services Act.

Withdrawal or suspension of authorisation under section 29 of the Financial Services Act: time for reference expired

11.—(1) Where, before commencement—

- (a) a notice of intention to withdraw or suspend an authorisation was given under section 29(1) of the Financial Services Act;
 - (b) the period within which the case could be required to be referred to the Financial Services Tribunal has expired without such a reference being required; but
 - (c) no notice under section 29(5) of that Act has been given in respect of the notice of intention,
- the Authority must, as soon as practicable after commencement, notify any recipient of the notice whether or not the notice is to be treated as a notice given under section 53(7).

(2) Where the Authority notifies the recipient that the notice is to be treated as a notice given under section 53(7)—

- (a) the notice has effect as if it varied the authorised person's permission by imposing a requirement that he refrain from carrying on the regulated activity or activities covered by the notice;
- (b) the date on which the requirement takes effect is—
 - (i) the new date (if any) specified for this purpose under article 90; or
 - (ii) if there is no new date so specified, the date when (but for the repeal of the Financial Services Act) the withdrawal of authorisation would have taken effect;
- (c) (in the case of a notice proposing suspension) the period for which the requirement has effect is—
 - (i) the new period (if any) specified for this purpose under article 90; or
 - (ii) if there is no new period so specified, the period for which (but for the repeal of the Financial Services Act), the suspension of authorisation would have taken effect;
- (d) there is no right to refer the matter to the Tribunal;
- (e) the Authority may publish such information about the matter to which the notice relates as it considers appropriate.

(3) Where the Authority notifies the recipient that the notice is not to be treated as a notice given under section 53(7) then the notice ceases to have effect on commencement.

Notice of intention to terminate or suspend authorisation under section 33 of the Financial Services Act: time for reference not expired

12.—(1) Where, before commencement—

- (a) the Authority has given notice under section 34 of the Financial Services Act that it intends to give a direction (pursuant to section 33(1)(a) or (b) of that Act) that a person cease to be an authorised person under section 31 of that Act or that a person's authorisation under that section be suspended;
- (b) the period within which the case could be required to be referred to the Financial Services Tribunal has not expired; and
- (c) no such reference has been required,

the notice has effect after commencement as if it were a notice given under 197(3).

(2) Such a notice has effect—

- (a) as if it stated that the Authority proposes to impose a requirement that the authorised person refrain from carrying on the regulated activity or activities covered by the notice;
- (b) as if it informed the recipient that he may make representations to the Authority (whether or not he refers the matter to the Tribunal) within—
 - (i) the new period (if any) specified for this purpose under article 90; or
 - (ii) if there is no new period so specified, 28 days from the date of service of the notice;
- (c) as if it informed the recipient that the requirement takes effect—
 - (i) on the new date specified for this purpose under article 90; or
 - (ii) if there is no new date so specified, on the date when (but for the repeal of the Financial Services Act) authorisation would have been terminated or suspended;
- (d) (in the case of a notice proposing suspension) as if it informed the recipient that the requirement takes effect—
 - (i) for the new period (if any) specified for this purpose under article 90; or
 - (ii) if there is no new period so specified, then for the period for which (but for the repeal of the Financial Services Act) the authorisation would have been suspended;
- (e) as if it informed the recipient that he has a right to refer the matter to the Tribunal within—
 - (i) the new period (if any) specified for this purpose under article 90; or
 - (ii) if there is no new period so specified, 28 days beginning with the date of service of the notice.

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

- (a) the Authority must decide whether to issue a notice under section 197(6) or (7),
- (b) in taking that decision, section 194 applies to the Authority; and
- (c) the Authority must have regard to any representations made before commencement in respect of the notice given under section 34 of the Financial Services Act.

Termination or suspension of authorisation under section 33 of the Financial Services Act: time for reference expired

13.—(1) Where, before commencement—

- (a) the Authority has given notice under section 34 of the Financial Services Act that it intends to give a direction (pursuant to section 33(1)(a) or (b) of that Act) that a person cease to be an authorised person under section 31 of that Act or that his authorisation under that section be suspended;
 - (b) the period within which the case could be required to be referred to the Financial Services Tribunal has expired without such a reference being required; but
 - (c) no notice under section 34(5) of that Act has been given in respect of the notice of intention,
- the Authority must, as soon as practicable after commencement, notify any recipient of the notice whether or not the notice is to be treated as a notice given under section 197(6).

(2) Where the Authority notifies the recipient that the notice is to be treated as a notice given under section 197(6)—

- (a) the notice has effect as if it imposed a requirement that the authorised person refrain from carrying on the regulated activity or activities covered by the notice;
- (b) the date on which the requirement has effect is—

- (i) the new date (if any) specified for that purpose under article 90; or
 - (ii) if there is no new date so specified, the date when (but for the repeal of the Financial Services Act) the authorisation would have been terminated or suspended;
 - (c) (in the case of a notice proposing suspension) the period for which the suspension has effect is—
 - (i) the period (if any) specified for this purpose under article 90; or
 - (ii) if there is no new period so specified, then the period for which (but for the repeal of the Financial Services Act) the authorisation would have been suspended;
 - (d) there is no right to refer the notice to the Tribunal;
 - (e) the Authority may publish such information about the matter to which the notice relates as it considers appropriate.
- (3) Where the Authority notifies the recipient that the notice is not to be treated as a notice given under section 197(6) then the notice ceases to have effect on commencement.

Notices under the Banking Act

Notices under the Banking Act

14.—(1) Where, before commencement—

- (a) a notice has been given under section 13(1) of the Banking Act of intention to revoke an authorisation;
- (b) the Authority has not given a notice under section 13(7) of the Banking Act (and is not treated as having given such a notice by reason of subsection (10) of that section),

the notice has effect after commencement as if it were a notice given under section 53(4) that the Authority proposes to vary the authorised person's permission by imposing a requirement that he refrain from carrying on the regulated activity or activities covered by the notice.

(2) Where, before commencement—

- (a) a notice was given under section 13(1) of the Banking Act of intention to impose a restriction or to vary a restriction;
- (b) the Authority has not given a notice under section 13(7) of the Banking Act (and is not treated as having given such a notice by reason of subsection (10) of that section),

the notice has effect after commencement as if it were a notice given under section 53(4) that the Authority proposes to vary the authorised person's permission by imposing or varying a requirement having the same effect as the restriction or variation described in the notice.

(3) Where, before commencement—

- (a) a notice had been given under section 14(2) of the Banking Act imposing or varying a restriction as a matter of urgency pursuant to section 14(1)(b) of that Act;
- (b) no notice under subsection (7) of section 14 of the Banking Act has been given,

that notice has effect after commencement as if it were a notice given under section 53(4) that the Authority has varied the authorised person's permission with immediate effect by imposing a restriction or varying the restriction in the manner set out in the notice.

Effect of Banking Act notices after commencement

15.—(1) A notice having effect under article 14 has effect—

- (a) as if it informed the recipient that he may make representations to the Authority (whether or not he refers the matter to the Tribunal) within—
 - (i) the new period (if any) specified for this purpose under article 90; or
 - (ii) if there is no new period so specified, within fourteen days beginning with the day on which the notice was given;
 - (b) (in the case of notices having effect under article 14(1) and (2)) as if it informed the recipient that the variation takes effect on—
 - (i) the new date (if any) specified for this purpose under article 90; or
 - (ii) if no new date is so specified, then on the date (if any) specified in the notice as the date on which the revocation would take effect or the restriction be imposed or varied (as the case may be);
 - (c) as if it informed the recipient that he has a right to refer the matter to the Tribunal—
 - (i) within the new period (if any) specified for this purpose under article 90; or
 - (ii) if there is no new period so specified, within 28 days from commencement.
- (2) Where a notice has effect under article 14—
- (a) the Authority must decide whether to issue a notice under section 53(7) or (8);
 - (b) in taking that decision, section 41 applies to the Authority;
 - (c) the Authority must have regard to any representations made before commencement in relation to the notice given under the Banking Act.
- (3) Notwithstanding section 53(2)(c), where the notice having effect under article 14(1) or (2) did not specify a date on which the revocation would take effect or on which the restriction would be imposed or varied, the Authority may specify in the notice given under paragraph (2)(a) the date on which the variation takes effect (being a date not earlier than the date of that notice).

Decision notified under section 13(7) of the Banking Act

- 16.—**(1) Where, before commencement—
- (a) the Authority has issued a decision under section 13(7) of the Banking Act to which subsection (9) of that section applies; and
 - (b) the time for making representations referred to in section 13(9) of that Act has not expired,
- the Authority must consider any representations made pursuant to section 13(9) of that Act and may give a written notice under section 53(8) altering the restrictions.
- (2) Nothing in this Order affects the period within which representations may be made in respect of that decision.

Notices under the Insurance Companies Act

Notices under the Insurance Companies Act

- 17.—**(1) Where, before commencement—
- (a) the Treasury have served a notice under section 12(1) of the Insurance Companies Act that they are considering giving a direction under section 11(1) of that Act;
 - (b) no direction has been given in respect of that notice,
- the notice has effect after commencement as if it stated that the Authority proposes to impose a requirement that the company refrain from carrying on the regulated activity of effecting contracts of insurance, or contracts of any description specified in the notice.

(2) Where, before commencement—

(a) the Treasury have served a written notice giving a direction under section 12A(3) of the Insurance Companies Act⁽¹³⁾;

(b) the Treasury have not confirmed the direction pursuant to section 12A(6) of that Act, the notice has effect after commencement as if it stated that the Authority proposes to impose a requirement that the company refrain immediately from carrying on the regulated activity of effecting contracts of insurance, or contracts of any description specified in the notice (except to the extent allowed by section 12A(2)(a) of the Insurance Companies Act).

(3) Where—

(a) before commencement the Treasury have served a notice under section 46(2) of the Insurance Companies Act;

(b) the Treasury have not, following the service of that notice, exercised any power or powers conferred by sections 38 to 45 of that Act in the manner proposed in the notice;

(c) the company on which the notice was served is, immediately after commencement, an authorised person,

the notice has effect after commencement as if it stated that the Authority proposes to impose a requirement to the effect described in the notice.

Effect of notices under the Insurance Companies Act after commencement

18.—(1) A notice having effect under article 17 has effect—

(a) as if it were a notice under section 53(4) in so far as it relates to the carrying on of regulated activity for which the company has a Part IV permission and as if it were a notice under section 197(3) in so far as it relates to the carrying on of regulated activity for which the company has permission under Schedule 4;

(b) as if it informed the company that it may make representations to the Authority (whether or not it refers the matter to the Tribunal) within—

(i) the new period (if any) specified for this purpose under article 90; or

(ii) if there is no new period so specified, within one month from the date of service of the notice;

(c) as if it informed the company that it has a right to refer the matter to the Tribunal—

(i) within the new period (if any) specified for this purpose under article 90; or

(ii) if there is no new period specified, within 28 days from commencement;

(d) as if any reference to a right to make oral representations were omitted (without prejudice to any such representations made before commencement).

(2) In the case of a notice having effect under article 17(1), it has effect after commencement as if it informed the company that the requirement would be imposed—

(a) on the new date (if any) specified for this purpose under article 90; or

(b) if no new date is so specified, then on the date, if any, specified in the notice as the date on which the direction would take effect.

(3) In the case of a notice having effect under article 17(3)—

(a) where the notice specifies that the requirement to be imposed will be framed as described in section 46(5) of the Insurance Companies Act, the notice has effect as if the notice

⁽¹³⁾ Section 12A was inserted by the 3ID Regulations and has been amended by S.I. [1997/2781](#).

informed him that the requirement would be imposed at the end of the specified period (but without the reference to the person ceasing to hold office);

- (b) where the notice does not specify as described in sub-paragraph (a) it has effect as if it stated that the requirement would take effect on—

(i) the new date (if any), specified for this purpose under article 90; or

(ii) if no new date is so specified, then on the date, if any, specified in the notice as the date on which the powers would be exercised.

- (4) Where a notice has effect under article 17—

(a) the Authority must decide whether to issue a notice under section 53(7) or (8) or under section 197(6) or (7) (as the case may be);

(b) in taking that decision, section 41 or 194 applies to the Authority (as the case may be);

(c) the Authority must have regard to any representations made before commencement pursuant to the Insurance Companies Act.

(5) Notwithstanding section 53(2)(c) or section 197(1)(c), where the notice having effect under article 17(1) or (3) did not specify a date on which the direction would take effect, the Authority may specify in the notice given under paragraph (4)(a) the date on which the requirement is imposed (being a date not earlier than the date of that notice).

(6) Notwithstanding the repeal of section 12A of the Insurance Companies Act, a person on whom a notice was served under section 12A(4) of that Act may make written representations to the Authority about the matters covered in that notice within the period of one month from the date of service of the notice.

Notice of grounds of unfitness of person under the Insurance Companies Act

19. Where, before commencement—

(a) the Treasury have served a notice under section 12(2) of the Insurance Companies Act on a person whose fitness is in question but have not served a notice under section 12(1) of that Act on the company on the grounds set out in section 12(2A) arising from that alleged unfitness; or

(b) the Treasury have served a notice under section 46(1) of the Insurance Companies Act because of the unfitness of a person but have not served a notice under section 46(2) of that Act in respect of the matter covered by the notice,

that notice ceases to have effect on commencement and the Authority must, as soon as practicable after commencement, notify the person on whom the notice was served of that fact.

Notices under the 2BCD Regulations and the ISD Regulations

Notices under the ISD Regulations or the 2BCD Regulations

20.—(1) Where, before commencement—

(a) the Authority has given notice—

(i) under paragraph 1(1)(a) of Schedule 4 to the ISD Regulations of its intention to impose a prohibition under regulation 9 of those Regulations; or

(ii) under paragraph 1(1)(a) of Schedule 4 to the 2BCD Regulations of its intention to impose a prohibition under regulation 15 of those Regulations;

(b) the period within which the case could be required to be referred to the Financial Services Tribunal has not expired; and

(c) no such reference has been required,
the notice has effect after commencement as if it were a notice given under section 197(3) that the Authority proposes to impose a requirement that the authorised person refrain from carrying on the regulated activity or activities covered by the notice.

(2) Where, before commencement—

(a) the Authority has given a notice under paragraph 2(1) of Schedule 3 to the 2BCD Regulations;

(b) the Authority has not given a notice under paragraph 2(7) of that Schedule (and is not treated as having given such a notice by reason of paragraph 2(9) of that Schedule),

the notice has effect after commencement as if it were a notice given under section 197(3) that the Authority proposes to impose a requirement on the authorised person to the same effect as the prohibition or restriction proposed in the notice.

Effect of notices under the ISD Regulations or the 2BCD Regulations after commencement

21.—(1) A notice having effect under article 20 has effect—

(a) as if it informed the recipient that he may make representations to the Authority (whether or not he refers the matter to the Tribunal) within—

(i) the new period (if any) specified for this purpose under article 90; or

(ii) if there is no new period so specified, 28 days from the date of service of the notice;

(b) as if it informed the recipient that the requirement takes effect—

(i) on the new date (if any) specified for this purpose under article 90; or

(ii) if there is no new date so specified, on the date specified in the notice as the date on which the prohibition or restriction would take effect;

(c) as if it informed the recipient that he has a right to refer the matter to the Tribunal—

(i) within the new period (if any) specified for this purpose under article 90; or

(ii) if there is no new period so specified, within 28 days beginning with the date of service of the notice (in the case of a notice falling within article 20(1)) or with commencement (in the case of a notice falling within article 20(2));

(2) Where a notice having effect under article 20(1) proposed a limited prohibition within the meaning of regulation 15 of the 2BCD Regulations, the notice has effect as if it stated that the requirement would take effect—

(a) for the new period (if any) specified for this purposes under article 90; or

(b) if there is no new period so specified, on the date on which it would (but for the revocation of the 2BCD Regulations) have taken effect.

(3) Where a notice has effect under article 20—

(a) the Authority must decide whether to issue a notice under section 197(6) or (7);

(b) in taking that decision, section 194 applies to the Authority; and

(c) the Authority must have regard to any representations made to it before commencement in relation to the notice given under the 2BCD Regulations or ISD Regulations.

(4) Notwithstanding section 197(1)(c), where a notice having effect under article 20(2) did not specify a date on which the prohibition or restriction would be imposed, or the variation take effect, the Authority may specify in a notice given under paragraph (3)(a) the date on which the requirement is imposed (being a date not earlier than the date of that notice).

Prohibition in relation to investment services under the ISD Regulations or the 2BCD Regulations: time for reference expired

22.—(1) Where, before commencement—

(a) the Authority has given notice—

(i) under paragraph 1(1)(a) of Schedule 4 to the ISD Regulations of its intention to impose a prohibition under regulation 9 of those Regulations; or

(ii) under paragraph 1(1)(a) of Schedule 4 to the 2BCD Regulations of its intention to impose a prohibition under regulation 15 of those Regulations;

(b) the period within which the case could be required to be referred to the Financial Services Tribunal has expired without such a reference being required; but

(c) the Authority has not given written notice pursuant to paragraph 1(5)(a) or (b) of the relevant Schedule in relation to the matter covered by the notice,

the Authority must, as soon as practicable after commencement, notify any recipient of the notice whether or not the notice is to be treated as a notice given under section 197(6).

(2) Where the Authority notifies the recipient that the notice is to be treated as a notice given under section 197(6)—

(a) the notice has effect as if it imposed a requirement that the authorised person refrain from carrying on the regulated activity or activities covered by the notice;

(b) the date on which the requirement takes effect is—

(i) the new date (if any) specified for this purpose under article 90; or

(ii) if there is no new date so specified, the date specified in the notice as the date on which the prohibition would take effect;

(c) there is no right to refer the notice to the Tribunal;

(d) the Authority may publish such information about the matter to which the notice relates as it considers appropriate.

(3) Where the Authority notifies the recipient that the notice is not to be treated as a notice given under section 197(6) then the notice ceases to have effect on commencement.

(4) Where the notice having effect under paragraph (2) referred to 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 the 2BCD Regulations) the prohibition would have expired.

(5) 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.

(6) 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).

Alteration of restrictions imposed under 2BCD Regulations

23.—(1) Where, before commencement—

- (a) the Authority has issued a decision under sub-paragraph (7) of paragraph (2) of Schedule 3 to the 2BCD Regulations to which sub-paragraph (11) of that paragraph applies; and
- (b) the time for making representations referred to in paragraph 2(11) of that Schedule has not expired,

the Authority must consider any representations made pursuant to paragraph 2(11) of that Schedule and may give a written notice under section 197(7) altering the restriction.

(2) Nothing in this Order affects the period within which representations may be made in respect of that decision.

Notice by the Director General of Fair Trading of intention to impose a prohibition etc. under the ISD Regulations or 2BCD Regulations

24.—(1) Where, before commencement—

- (a) the Director General of Fair Trading (“the Director”) has given a notice pursuant to paragraph 2(2) of Schedule 5 to the ISD Regulations or to the 2BCD Regulations of his intention to impose a prohibition;
- (b) the appeal period (as defined for the purposes of that paragraph) has not expired; and
- (c) no appeal has been lodged pursuant to section 41 of the Consumer Credit Act 1974⁽¹⁴⁾ (as applied by paragraph 5 of Schedule 5 to the ISD Regulations or the 2BCD Regulations),

the notice has effect as a notice under paragraph 2(2) of Schedule 16 that the Director proposes to impose a prohibition under section 203.

(2) Where a notice has effect as described in paragraph (1) the Director must, in considering whether to impose a prohibition under section 203, consider any representations made pursuant to paragraph 4 of Schedule 5 to the ISD Regulations or to the 2BCD Regulations (as the case may be).

(3) Where, before commencement—

- (a) the Director has given a notice pursuant to paragraph 2(2) of Schedule 5 to the ISD Regulations or the 2BCD Regulations of his intention to impose or vary a restriction;
- (b) the appeal period (as defined for the purposes of that paragraph) has not expired; and
- (c) no appeal has been lodged pursuant to section 41 of the Consumer Credit Act 1974 (as applied by paragraph 5 of Schedule 5 to the ISD Regulations or the 2BCD Regulations),

the notice has effect as a notice under paragraph 2(2) of Schedule 16 that the Director proposes to impose or vary a restriction (as the case may be) under section 204.

(4) Where a notice has effect as described in paragraph (3), the Director must, in considering whether to impose or vary a restriction under section 204, consider any representations made pursuant to paragraph 4 of Schedule 5 to the ISD Regulations or the 2BCD Regulations (as the case may be).

(14) 1974 c. 39.

PART III
MUTUAL SOCIETIES
CHAPTER I
PROCEDURES TAKING EFFECT AFTER
COMMENCEMENT AS PROCEDURES UNDER THE ACT

Interpretation

25. In this Part—

“the Mutual Societies Order” means the Financial Services and Markets Act 2000 (Mutual Societies) Order 2001⁽¹⁵⁾;

“Schedule 3” means Schedule 3 to the Building Societies Act;

“Schedule 13” means Schedule 13 to the Friendly Societies Act⁽¹⁶⁾.

Applications for authorisation

26.—(1) Subject to paragraph (2), where an application for authorisation has been made by a friendly society under section 32 of the Friendly Societies Act or by a building society under section 9 of the Building Societies Act but that application has not been decided before commencement, it is to be treated after commencement as an application for permission made to the Authority under section 40 or, where the society making the application has a Part IV permission, as an application under section 44 for the variation of that permission.

(2) Paragraph (1) does not apply to an application for authorisation—

(a) which was made pursuant to a direction given under section 39 of the Friendly Societies Act or under section 41 of the Building Societies Act; and

(b) which has not been granted or refused before commencement,

and any such application lapses on commencement.

(3) An application which is treated by virtue of paragraph (1) as an application under section 40 or 44 is treated for the purposes of section 52(1) or (2) as having been received by the Authority—

(a) in the case of an application from a friendly society, on the date from which the period of 6 months referred to in paragraph 2(5) of Schedule 13 started to run;

(b) in the case of an application from a building society, on the date on which it was received by the Building Societies Commission.

(4) An application which is treated pursuant to paragraph (1) as an application under section 40 or 44 is not to be treated as incomplete for the purposes of section 52(2) if it complied with the procedure applicable to it when it was originally made.

(5) Paragraph (4) does not affect the power of the Authority to require information under section 51(4) and (6).

(6) Where, in any particular case—

(a) information has been required—

(i) by the Friendly Societies Commission pursuant to paragraph 2 of Schedule 13; or

(ii) by the Building Societies Commission pursuant to paragraph 2(2) of Schedule 3; and

⁽¹⁵⁾ S.I. 2001/2617.

⁽¹⁶⁾ Schedule 13 was amended by S.I. 1994 1984.

(b) that information has not been provided before commencement, the requirement has effect after commencement as if it had been imposed by the Authority under section 51(4).

Notice of intention to refuse application or to impose conditions

27.—(1) This article applies to—

- (a) a notice given to a friendly society under paragraph 7 or 8 of Schedule 13 (as applied by paragraph 3(1) of that Schedule) of intention to impose conditions following an application for authorisation (other than a notice served pursuant to paragraph 9 of that Schedule);
- (b) a notice given to a friendly society under paragraph 3(2) of Schedule 13;
- (c) a notice given to a building society under paragraph 4(1) or 5(2) of Schedule 3 (as applied by paragraph 2(3) of that Schedule) of intention to impose conditions following an application for authorisation (other than a notice served pursuant to paragraph 9 of that Schedule);
- (d) a notice given to a building society under paragraph 2(4) of Schedule 3.

(2) Where, before commencement—

- (a) a notice to which this article applies has been served on a society;
- (b) the application to which the notice relates has not been refused or granted in accordance with Schedule 13 or Schedule 3 (as the case may be);

the notice ceases to have effect on commencement and the Authority must, as soon as practicable after commencement, notify every recipient of the notice of that fact.

(3) Paragraph (2) does not affect the power of the Authority to serve a notice under section 52(6) or (7) in respect of the application (as effective by virtue of article 26).

Surrenders of authorisation

28.—(1) This article applies where—

- (a) a request by a friendly society for a direction under section 40(3) of the Friendly Societies Act was made but no notice has been given under paragraph 10(6) of Schedule 13 before commencement;
- (b) a request by a building society under section 43(3)(a) or (b) of the Building Societies Act was made but was not granted before commencement.

(2) If the society which made the request has on commencement a Part IV permission, the request is to be treated after commencement as an application made to the Authority under section 44 for variation of that Part IV permission.

Notice of intention to withdraw or revoke authorisation

29.—(1) Where—

- (a) before commencement a notice has been served on a friendly society under paragraph 10(1) of Schedule 13;
- (b) no notice of a decision has been served under paragraph 10(4) of that Schedule; and
- (c) the society has a Part IV permission on commencement,

the notice has effect after commencement as if it were a notice given by the Authority under section 53(4).

(2) Where—

(a) before commencement, a notice has been served on a building society under paragraph 6(1) of Schedule 3;

(b) no notice has been served under paragraph 6(3) of that Schedule; and

(c) the society has a Part IV permission on commencement,

the notice has effect after commencement as if it were a notice given by the Authority under section 53(4).

- (3) A notice having effect under paragraph (1) or (2) has effect—
- (a) as if it gave notice that the Authority proposes to vary the society’s permission by imposing a requirement that it refrain from carrying on the activity or activities (whether regulated or not) covered by the notice;
- (b) as if it informed the society and any relevant recipients that they may make representations to the Authority (whether or not the matter has been referred to the Tribunal) within—
- (i) the new period (if any) specified for this purpose under article 90; or
- (ii) if there is no new period so specified, within the period specified in the notice for the purpose of paragraph 10(1)(c) of Schedule 13 or paragraph 6(1)(c) of Schedule 3;
- (c) as if it informed the recipient that the variation takes effect on—
- (i) the new date (if any) specified for this purpose under article 90; or
- (ii) if no new date is so specified, then on the date (if any) specified in the notice as the date on which the direction would be given or the revocation take effect;
- (d) as if it informed the society and any relevant recipients that they have a right to refer the matter to the Tribunal—
- (i) within the new period (if any) specified for this purpose under article 90; or
- (ii) if there is no new period so specified, within 28 days from commencement.
- (4) Where a notice has effect under paragraph (1) or (2)—
- (a) the Authority must decide whether to issue a notice under section 53(7) or (8);
- (b) in taking that decision, section 41 applies to the Authority;
- (c) the Authority must have regard to any representations made before commencement in relation to the notice given under Schedule 13 or Schedule 3.
- (5) Notwithstanding section 53(2)(c), where the notice having effect under paragraph (1) or (2) did not specify a date on which the direction would be given or the revocation take effect, the Authority may specify in the notice given under paragraph (4)(a) the date on which the variation takes effect (being a date not earlier than the date of that notice).
- (6) For the purposes of this article, a “relevant recipient” is a person who was served with the notice pursuant to paragraph 10(2) of Schedule 13 or paragraph 6(2) of Schedule 3.

Mutual societies: notice of intention to impose conditions

- 30.**—(1) This article applies to—
- (a) a notice served under paragraph 7(1) of Schedule 13 or, where one or more notices have been served under paragraph 8(2) of that Schedule proposing to impose more onerous conditions than proposed in the first notice, then to the latest notice;
- (b) a notice served under paragraph 4(1) of Schedule 3 or, where one or more notices have been served under paragraph 5(2) of that Schedule proposing to impose more onerous conditions than proposed in the first notice, then to the latest notice.
- (2) Where—

- (a) a notice falling within paragraph (1)(a) has been served proposing to impose conditions on a current authorisation pursuant to section 36 of the Friendly Societies Act but no notice has been served (following that notice) under paragraph 7(5) or 8(6) of Schedule 13; or
- (b) a notice falling within paragraph (1)(b) has been served proposing to impose conditions on a current authorisation pursuant to section 42 of the Building Societies Act but no notice has been served (following that notice) under paragraph 4(3) or 5(4) of Schedule 3; and
- (c) in either case, the society has a Part IV permission at commencement,

the notice has effect after commencement as if it were a notice given by the Authority under section 53(4).

(3) Paragraphs (3) to (6) of article 29 apply to a notice having effect under paragraph (2) with the following modifications—

- (a) the references in those paragraphs to a notice having effect under article 29(1) or (2) are read as references to a notice having effect under paragraph (2) of this article;
- (b) the requirement referred to in article 29(3)(a) is a requirement that the society act in the manner which would be required by the proposed conditions or refrain from acting in the manner which would be prohibited by the proposed conditions;
- (c) the reference in article 29(5) to the date on which the direction would be given or the revocation take effect were a reference to the date on which the conditions would be imposed;
- (d) the reference in article 29(6) to paragraph 10(2) of Schedule 13 is a reference to paragraph 7(2) or 8(3) of that Schedule;
- (e) the reference in article 29(6) to paragraph 6(2) of Schedule 3 is a reference to paragraph 4(2) or 5(3) of that Schedule.

(4) The references in paragraph (2)(a) and (b) to a notice served proposing to impose conditions include reference to a notice served following a direction given—

- (a) under section 59(7) or (10) of the Friendly Societies Act from a tribunal constituted in accordance with that section; or (as the case may be)
- (b) under section 47(6) or (7) of the Building Societies Act from a tribunal constituted in accordance with that section.

Notice of intention to give a direction under section 51 of Friendly Societies Act

31.—(1) Where—

- (a) before commencement a notice has been served on a friendly society under section 51(2) of the Friendly Societies Act;
- (b) no direction has been given under section 51(6) as a result of that notice and the society has not been notified of a decision not to give a direction; and
- (c) at commencement, the friendly society has a Part IV permission,

the notice has effect after commencement as if it were a notice given by the Authority under section 53(4).

(2) Paragraphs (3) to (5) of article 29 apply to a notice having effect under paragraph (1) with the following modifications—

- (a) the references in those paragraphs to a notice having effect under article 29(1) or (2) are read as references to a notice having effect under paragraph (1) of this article;
- (b) the references in those paragraphs to relevant recipients are omitted;

- (c) the requirement referred to in article 29(3)(a) is a requirement that the society refrain from accepting any new members.

Proceedings under section 52A of the Friendly Societies Act

32.—(1) Subject to paragraph (2), any proceedings pending before the court for an injunction under section 52A(17) of the Friendly Societies Act lapse on commencement.

(2) Any court before which proceedings under section 52A of the Friendly Societies Act are pending at commencement may by order make provision for such incidental, consequential and supplementary matters (including as to costs) as are appropriate having regard to paragraph (1).

Conditions imposed under section 42A of the Building Societies Act but not confirmed before commencement

33.—(1) Where, before commencement—

- (a) a notice has been given under section 42A(3) of the Building Societies Act imposing or varying conditions under section 42 of that Act as a matter of urgency;
- (b) no notice has been given under section 42A(8) of that Act of a decision under section 42A(7) of that Act,

the notice has effect after commencement as if it were a notice given by the Authority under section 53(4).

(2) Paragraphs (3) to (6) of article 29 apply to a notice having effect under paragraph (1) with the following modifications—

- (a) the references in those paragraphs to a notice having effect under article 29(1) or (2) are read as references to a notice having effect under paragraph (1) of this article;
- (b) the requirement referred to in article 29(3)(a) is a requirement that the society act in the manner which would be required by the proposed conditions or refrain from acting in the manner which would be prohibited by the proposed conditions;
- (c) the reference in article 29(5) to the date on which the direction would be given or the revocation take effect were a reference to the date on which the conditions would be imposed;
- (d) the reference in article 29(6) to paragraph 6(2) of Schedule 3 is a reference to section 42A(5) of the Building Societies Act;
- (e) the reference in article 29(6) to paragraph 10(2) of Schedule 13 is omitted.

Notice of intention to give a direction under section 50 of the Building Societies Act

34.—(1) Where—

- (a) a notice was given to a building society before commencement under section 50(3) of the Building Societies Act;
- (b) no direction has been given following that notice under section 50(5) of that Act and the society has not been notified of a decision not to give a direction,

the notice has effect after commencement as if it were a notice given by the Authority under section 53(4).

(2) Paragraphs (3) to (5) of article 29 apply to a notice having effect under paragraph (1) with the following modifications—

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

- (a) the references in those paragraphs to a notice having effect under article 29(1) or (2) are read as references to a notice having effect under paragraph (1) of this article;
- (b) the references in those paragraphs to relevant recipients are omitted;
- (c) the requirement referred to in article 29(3)(a) is a requirement that the building society act in a manner which would be required by the proposed direction and refrain from acting in a manner which would be prohibited by the proposed direction.

CHAPTER II

PROCEDURES TAKING EFFECT AFTER COMMENCEMENT AS PROCEDURES UNDER THE AMENDED BUILDING SOCIETIES ACT

Interpretation

35. In this Chapter—

- (a) references to “the original Building Societies Act” are references to that Act as it had effect immediately before commencement;
- (b) references to “the amended Building Societies Act” are references to that Act as it has effect immediately after commencement by virtue of Schedule 18 to the Act, the Mutual Societies Order and any other Order made under the Act.

Notice of proposed directions under section 36 of the Building Societies Act

36.—(1) This article applies to a notice served under paragraph 2(1) of Schedule 7A to the original Building Societies Act⁽¹⁸⁾ or, where one or more notices has been served under paragraph 3(2) of that Schedule proposing to give a more onerous direction than proposed in the first notice, then to the latest notice.

(2) Where—

- (a) a notice falling within paragraph (1) has been served before commencement proposing to give a direction under section 36(3), (5), (6), (7) or (10) of the original Building Societies Act⁽¹⁹⁾;
- (b) no notice has been served (following that notice) of a decision under paragraph 2(3)(b) or 3(4)(b) of Schedule 7A to that Act;

the notice has effect (subject to paragraph (3)) after commencement as if it were a warning notice given by the Authority under section 46A(1) of the amended Building Societies Act⁽²⁰⁾ (by virtue of paragraph (a) of that subsection).

(3) Notwithstanding section 46A(8)(d)(i) of the amended Building Societies Act, section 394 does not apply to a notice having effect under paragraph (2).

(4) Where a copy of the notice falling within paragraph (2)(a) above was served on any person in accordance with paragraph 2(2) or 3(3) of Schedule 7A to the original Building Societies Act, that notice is treated after commencement as if it was a copy of the warning notice given to that person under section 393(1).

(5) A notice having effect under paragraph (2) has effect—

- (a) as if it gave notice that the Authority proposes to give a direction in the terms set out in the notice;

⁽¹⁸⁾ Schedule 7A was inserted by the Building Societies Act 1997, Schedule 3.

⁽¹⁹⁾ Section 36 was substituted by the Building Societies Act 1997, section 13(1).

⁽²⁰⁾ Section 46A was inserted by paragraph 148 of Schedule 3 to the Mutual Societies Order.

- (b) as if it informed the society and any relevant recipients that they may make representations to the Authority within 28 days or within the period (if longer than 28 days) specified in the notice for the purpose of paragraph 2(1)(d) or 3(2)(c) of Schedule 7A to the original Building Societies Act (as the case may be);
- (c) as if it stated that section 394 does not apply.

(6) Where a notice has effect under paragraph (2) the Authority must have regard when deciding whether to give a decision notice under section 46A(3) of the amended Building Societies Act to any representations made before commencement in relation to the notice given under Schedule 7A to the original Building Societies Act.

(7) For the purposes of this article, a “relevant recipient” is a person who was served with the notice pursuant to paragraph 2(2) or 3(3) of Schedule 7A to the original Building Societies Act.

Prohibition orders under section 36A of the Building Societies Act

37.—(1) Where, before commencement—

- (a) a notice has been served under section 36A(1) of the original Building Societies Act⁽²¹⁾ of intention to make a prohibition order directed to a society;
- (b) no prohibition order has been made under section 36A(6) of that Act and the society has not been notified of a decision not to issue such an order,

the notice has effect after commencement as if it were a warning notice given under section 36A(5) of the amended Building Societies Act⁽²²⁾.

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

- (a) as if it stated that section 394 of the Act does not apply;
- (b) as if it informed the society that it may make representations to the Authority within a period of 28 days or within the period (if longer) specified for the purpose of section 36A(5)(c) of the original Building Societies Act.

Unconfirmed directions under section 42B of the Building Societies Act

38.—(1) Where, before commencement—

- (a) a direction has been given under section 42B(1)(a) or (b) of the original Building Societies Act⁽²³⁾, being a direction which requires confirmation pursuant to section 42C(2)(b) of that Act⁽²⁴⁾;
- (b) that direction has not ceased to have effect by virtue of section 42C(2)(b);
- (c) the direction has not been confirmed pursuant to section 42C(2)(b),

the direction has effect after commencement (subject to paragraph (2)) as if it were a warning notice given by the Authority under section 46A(1) (by virtue of paragraph (b) of that subsection) of the amended Building Societies Act⁽²⁵⁾.

(2) Notwithstanding section 46A(8)(d)(i) of the amended Building Societies Act, sections 393 and 394 do not apply to a notice having effect under paragraph (1).

(3) A notice having effect under paragraph (1) has effect—

- (a) as if it gave notice that the Authority proposes to give a direction under section 42B(1) of the amended Building Societies Act;

⁽²¹⁾ Section 36A was inserted by the Building Societies Act 1997, section 14.

⁽²²⁾ Section 36A(5) was substituted by paragraph 142(c) of Schedule 3 to the Mutual Societies Order.

⁽²³⁾ Section 42B was inserted by the Building Societies Act 1997, section 17.

⁽²⁴⁾ Section 42C was inserted by the Building Societies Act 1997, section 18.

⁽²⁵⁾ Section 46A was inserted by paragraph 148 of the Schedule 3 to the Mutual Societies Order.

(b) as if it informed the society that it may make representations to the Authority within 28 days;

(c) as if it stated that section 394 does not apply.

(4) Where a notice has effect under paragraph (1) the Authority must have regard when deciding whether to give a decision notice under section 46A(3) of the amended Building Societies Act, to any representations made before commencement pursuant to section 42C(3) of the original Building Societies Act.

(5) Where, in respect of a direction having effect under paragraph (1)—

(a) a person was entitled pursuant to section 46 of the original Building Societies Act to bring an appeal against the direction;

(b) the period in which an appeal could be brought has not expired before commencement;

(c) that person has not brought an appeal in relation to the direction,

the right of appeal lapses at commencement, without prejudice to any right that person may have to refer the matter to the Financial Services and Markets Tribunal if a decision notice is subsequently given under section 46A(3) of the amended Building Societies Act⁽²⁶⁾.

PART IV

COLLECTIVE INVESTMENT SCHEMES

CHAPTER I

APPLICATIONS FOR AUTHORISATION ETC.

Application for authorisation of unit trust scheme

39.—(1) Where—

(a) an application was made under section 77(1) of the Financial Services Act for an authorisation order for a unit trust scheme;

(b) that application had not been decided before commencement;

(c) the scheme to which the application relates is a unit trust scheme within the meaning of section 237,

that application is to be treated after commencement as an application under section 242 for an order declaring the scheme to be an authorised unit trust scheme and accordingly section 244 applies to the application.

(2) Where before commencement the Authority has served a notice pursuant to section 80(1)(a) of the Financial Services Act proposing to refuse an application made under section 77 of that Act, the notice ceases to have effect on commencement and the Authority must, as soon as practicable after commencement, notify the applicant of that fact.

(3) Paragraph (2) does not affect the power of the Authority to serve notice under section 245 in respect of the application.

(4) Where an application is treated as an application under section 242, that application—

(a) is treated for the purposes of section 244(1) as having been received by the Authority on the date on which it was received for the purposes of section 78(7) of the Financial Services Act;

⁽²⁶⁾ Section 46A(3) was inserted by paragraph 148 of Schedule 3 to the Mutual Societies Order.

(b) is not to be treated as incomplete for the purposes of section 244(2) if it complied with the procedure applicable to it when it was originally made;

(c) is to be treated as incomplete for the purposes of section 244(2) if it would have been treated as incomplete for the purposes of section 78.

(5) Paragraph (4)(b) or (c) does not affect the power of the Authority to require information under section 242(4) and (6).

Notice of proposed alteration or change of trustee of unit trust scheme

40.—(1) Where—

(a) notice has been given under section 82(1) of the Financial Services Act of a proposed alteration to a scheme or of the proposed replacement of a trustee;

(b) the Authority has not given either its approval to the proposal or notice that the proposal is not approved under section 82(3) of that Act;

(c) the period of one month has not elapsed since the date on which the notice was given; and

(d) the scheme is the subject of an authorisation order having effect after commencement, by virtue of article 65(1) of the Authorised Persons Order, as an order under section 243(1),

the notice has effect after commencement as a notice given in accordance with section 251(1).

(2) Where a notice of a proposal involving a change to the trust deed has effect as described in paragraph (1), the Authority may require the manager of the scheme to provide a certificate complying with section 251(2).

(3) A notice of proposal having effect under paragraph (1) is treated for the purposes of section 252(3) as having been given on the date on which it was given for the purposes of section 82(3) of the Financial Services Act.

Notice of proposed change of manager of unit trust scheme

41.—(1) Where—

(a) notice has been given under section 82(2) of the Financial Services Act of a proposal to replace the manager of a scheme;

(b) the Authority has not given either its approval to the proposal or notice that the proposal is not approved under section 82(3) of that Act;

(c) the period of one month has not elapsed since the date on which the notice was given before commencement; and

(d) the scheme is the subject of an authorisation order having effect after commencement by virtue of article 65(1) of the Authorised Persons Order as an order under section 243(1),

the notice has effect after commencement as a notice given in accordance with section 251(3).

(2) A notice of proposal having effect under paragraph (1) is treated for the purposes of section 252(3) as having been given on the date on which it was given for the purposes of section 82(3) of the Financial Services Act.

Notice of intention to start marketing scheme constituted in another EEA State

42.—(1) Where—

(a) notice has been given in accordance with section 86(2) of the Financial Services Act by an operator of a scheme falling within section 86(1) of that Act;

- (b) the scheme is a collective investment scheme constituted in another EEA State within the meaning of section 264(1) and satisfies the requirements prescribed under section 264(1)(a);
- (c) either—
 - (i) no notice has been given by the Authority pursuant to section 86(2) of the Financial Services Act; or
 - (ii) a notice has been given by the Authority pursuant to section 86(2) but the period of 21 days for making representations referred to in section 86(5) of that Act has not expired before commencement; and
- (d) the period of two months mentioned in section 86(2) of that Act has not elapsed before commencement,

the notice has effect after commencement as a notice given in accordance with section 264(1)(b).

(2) Where—

- (a) notice has been given in accordance with section 86(2) of the Financial Services Act by an operator of a scheme falling within section 86(1) of that Act;
- (b) the Authority has given notice pursuant to section 86(2) of the Financial Services Act (and has not withdrawn that notice);
- (c) the period of 21 days for making representations referred to in section 86(5) of that Act has not expired before commencement,

the notice given by the Authority ceases to have effect on commencement and the Authority must, as soon as practicable after commencement, notify the operator of the scheme of that fact.

(3) Paragraph (2) does not affect the power of the Authority to serve a notice under section 264(2) in respect of a notice which has effect by virtue of paragraph (1).

(4) A notice having effect under paragraph (1) is treated for the purposes of section 264(2) as having been received on the date on which it was received for the purposes of section 86(2) of the Financial Services Act.

Notice by scheme authorised in a designated country or territory

43.—(1) Where—

- (a) the operator of a scheme falling within section 87(1) of the Financial Services Act has given notice in accordance with section 87(3) of that Act that he wishes the scheme to be recognised;
- (b) the scheme is one to which this article applies;
- (c) the Authority has not notified the operator, pursuant to section 87(3) of that Act, that the scheme is not to be recognised; and
- (d) the period prescribed⁽²⁷⁾ for the purposes of section 87(3) of that Act has not expired before commencement,

the notice has effect after commencement as if it had been given in accordance with section 270(1)(c).

(2) Where—

- (a) the operator of a scheme falling within section 87(1) of the Financial Services Act has given notice in accordance with section 87(3) of that Act that he wishes the scheme to be recognised;

⁽²⁷⁾ This period is currently 4 months: see the Financial Services (Schemes Authorised in Designated Countries or Territories) (Notification) Regulations 1989 (S.I. [1989/1584](#)).

- (b) the Authority has given notice pursuant to section 89(5)(a) of that Act that it proposes to notify the operator that it does not wish the scheme to be recognised; and
- (c) the Authority has not notified the operator pursuant to section 87(3) of that Act that the scheme is not to be recognised,

the notice given by the Authority under section 89(5) ceases to have effect on commencement and the Authority must, as soon as practicable after commencement, notify the operator of that fact.

(3) Paragraph (2) does not affect the power of the Authority to serve a notice under section 271 in respect of the operator's notice having effect under paragraph (1).

(4) A notice having effect under paragraph (1) is treated for the purposes of section 271(2) as having been given on the date on which it was received for the purposes of section 87(3) of the Financial Services Act.

(5) This article applies to a collective investment scheme within the meaning of Part XVII of the Act which, at commencement—

- (a) is not a recognised scheme by virtue of section 264;
- (b) is managed in, and authorised under the law of, a country or territory designated in an order made under section 270 (including one having effect as so made under article 67(1) of the Authorised Persons Order); and
- (c) is a scheme of a class specified in that designation order.

Applications by other overseas schemes for individual recognition

44.—(1) Where—

- (a) an application was made under section 77(1) of the Financial Services Act (as applied by section 88(8) of that Act) for an order declaring a scheme to be a recognised scheme under section 88 of that Act;
- (b) that application has not been decided before commencement;
- (c) the scheme to which the application relates is a collective investment scheme for the purposes of Part XVII of the Act,

that application has effect after commencement as an application under section 274 for an order declaring the scheme to be a recognised scheme.

(2) An application having effect under paragraph (1)—

- (a) is treated for the purposes of section 275(1) or (2) as having been received by the Authority on the date on which it was received for the purposes of section 88 of the Financial Services Act;
- (b) is not to be treated as incomplete for the purposes of section 275(2) if it complied with the procedure applicable to it when it was originally made;
- (c) is to be treated as incomplete for the purposes of section 275(2) if it would have been treated as incomplete for the purposes of section 88.

(3) Paragraph (2)(b) or (c) does not affect the power of the Authority to require information under section 274(3) and (5).

(4) Where, before commencement—

- (a) the Authority served a notice pursuant to section 89(5)(b) of the Financial Services Act of its intention to refuse to make a recognition order under section 88 of that Act;
- (b) the Authority has not made that order,

the notice ceases to have effect on commencement and the Authority must, as soon as practicable after commencement, notify the applicant of that fact.

(5) Paragraph (4) does not affect the power of the Authority to serve a notice under section 276 in respect of the application.

Notice of proposed alterations in respect of an individually recognised scheme

45.—(1) Where—

- (a) notice has been given under section 82(1) of the Financial Services Act (as applied by section 88(9) of that Act) of a proposed alteration to a scheme recognised under section 88 of that Act;
- (b) the Authority has not given either its approval to the proposal or notice that the proposal is not approved;
- (c) the period of one month has not elapsed since the date on which the notice was given before commencement;
- (d) the scheme is, by virtue of article 68 of the Authorised Persons Order, treated after commencement as recognised under section 272,

the notice has effect after commencement as a notice given in accordance with section 277(1).

(2) In relation to a notice having effect under paragraph (1), section 277(2)(b) has effect as if the reference to “subsection (1)” were a reference to section 82(1) of the Financial Services Act (as applied by section 88(9) of that Act).

(3) Where—

- (a) notice has been given under section 88(9) of the Financial Services Act of a proposal to replace the operator or trustee of a scheme recognised under that section;
- (b) the period of one month since the date on which the notice was given has not elapsed before commencement;
- (c) the scheme is by virtue of article 68 of the Authorised Persons Order treated after commencement as recognised under section 272,

the notice has effect after commencement as a notice given in accordance with section 277(3).

CHAPTER II

NOTICES OF REVOCATION OF AUTHORISATION OR RECOGNITION

Notice of revocation of authorisation of unit trust scheme

46.—(1) Where—

- (a) the Authority has served notices on the manager and trustee of a unit trust scheme under section 80(1) of the Financial Services Act that it proposes to revoke the authorisation of that scheme;
- (b) the Authority has not revoked the order before commencement;
- (c) the scheme is by virtue of article 65 of the Authorised Persons Order treated after commencement as authorised under section 243,

the notices have effect after commencement as warning notices given under section 255(1) stating that the Authority proposes to make a revoking order.

(2) Notwithstanding section 392(a), sections 393 and 394 do not apply to a warning notice having effect by virtue of paragraph (1).

(3) A notice having effect as described in paragraph (1) has effect—

- (a) as if it stated that section 394 does not apply;
- (b) as if the period specified in the notice for making representations to the Authority were—

- (i) the new period (if any) specified for this purpose in the notice pursuant to article 90; or
 - (ii) if there is no new period so specified, 28 days beginning with the date of service of the notice.
- (4) Where a notice has effect under paragraph (1)—
 - (a) the Authority must decide whether to revoke the order under section 255(2);
 - (b) in taking that decision, section 254 applies to the Authority;
 - (c) the Authority must have regard to any representations made before commencement in relation to the notices pursuant to section 80(2) of the Financial Services Act.
- (5) For the purposes of paragraph (4)(b) the reference in section 254(1)(a) to the requirements for the making of the order are to be read as a reference to the requirements for the making of an order under section 243.
- (6) Where before commencement a request has been made under section 79(4) of the Financial Services Act for the revocation of an order falling within article 65(1) of the Authorised Persons Order and that request has not been determined before commencement, the request is to be treated after commencement as a request under section 256(1).

Cessation of recognition of scheme in designated country or territory

- 47.—**(1) Where—
- (a) the Authority has given notice under section 89(5) of the Financial Services Act of its intention to direct that a scheme will cease to be recognised by virtue of section 87 of that Act;
 - (b) the Authority has not given such a direction;
 - (c) the scheme is treated by virtue of article 67(2) of the Authorised Persons Order after commencement as recognised under section 270,
- the notice has effect after commencement as a warning notice under section 280(1) that the Authority proposes to give a direction under section 279 that the scheme is to cease to be recognised under section 270.
- (2) Notwithstanding section 392(a), sections 393 and 394 do not apply to a warning notice having effect by virtue of paragraph (1).
 - (3) A notice falling within paragraph (1) has effect—
 - (a) as if it stated that section 394 does not apply;
 - (b) as if the period specified in the notice for making representations to the Authority were—
 - (i) the new period (if any) specified for this purpose in the notice pursuant to article 90, or
 - (ii) if there is no new period so specified, 28 days beginning with the date of service of the notice.
 - (4) Where a notice has effect under paragraph (1)—
 - (a) the Authority must decide whether to give a direction in accordance with section 280(2) that the scheme is to cease to be recognised under section 270;
 - (b) in taking that decision, section 279 applies to the Authority; and
 - (c) the Authority must have regard to any representations made before commencement in relation to the notice pursuant to section 89(6) of the Financial Services Act.

Notice of revocation of recognition of individually recognised scheme

48.—(1) Where—

- (a) the Authority has given notice under section 89(5) of the Financial Services Act of its intention to revoke an order made under section 88 of that Act;
- (b) the Authority has not revoked the order before commencement;
- (c) the scheme is by virtue of article 68 of the Authorised Persons Order treated after commencement as recognised under section 272;

the notice has effect after commencement as a warning notice under section 280(1) that the Authority proposes to revoke the order pursuant to section 279.

(2) Notwithstanding section 392(a), sections 393 and 394 do not apply to a warning notice having effect by virtue of paragraph (1).

(3) A notice falling within paragraph (1) has effect—

- (a) as if it stated that section 394 does not apply;
- (b) as if the period specified in the notice for making representations to the Authority were—
 - (i) the new period (if any) specified for this purpose in the notice pursuant to article 90; or
 - (ii) if there is no new period so specified, 28 days beginning with the date of service of the notice.

(4) Where a notice takes effect under paragraph (1)—

- (a) the Authority must decide whether to revoke recognition in accordance with section 280(2);
- (b) in taking that decision, section 279 applies to the Authority;
- (c) the Authority must have regard to any representations made before commencement in relation to the notice pursuant to section 89(6) of the Financial Services Act.

(5) For the purposes of paragraph (4)(b), the reference in section 279(c) to the requirements for the making of the order are to be read as a reference to the requirements for the making of an order under section 272.

PART V**OTHER PROCEDURES PENDING AT COMMENCEMENT****CHAPTER I****APPROVED PERSONS****Applications for approval**

49.—(1) Where an application to which this article applies was made in accordance with the procedure applicable to it and had not been decided before commencement, it is to be treated after commencement as an application made under section 60 for the Authority's approval under section 59.

(2) This article applies to any application to a recognised self-regulating organisation for its approval of the performance by a particular person of a function which is a controlled function after commencement.

(3) In relation to the application, section 61(3) has effect as if for the reference to the date on which the Authority receives an application made under section 60 there were substituted a reference to commencement.

Notices under section 60 of the Insurance Companies Act

50.—(1) Where—

- (a) a person has served a notice under section 60(1)(a) of the Insurance Companies Act⁽²⁸⁾;
- (b) no notice has been served before commencement objecting to or approving the appointment referred to in the notice;
- (c) the period mentioned in section 60(1)(b) of the Insurance Companies Act has not elapsed;
- (d) the appointment has not taken effect before commencement; and
- (e) the performance after commencement by the person of the functions of the post for which he is proposed would require the approval of the Authority under section 59,

the notice is to be treated as an application made by the authorised person under section 60 for the Authority's approval under section 59.

(2) In relation to an application having effect under paragraph (1), the period of consideration for the purposes of section 183—

- (a) is three months beginning with the date on which the notice served under section 60 of the Insurance Companies Act was received; but
- (b) is treated as having been extended by any period added before commencement by virtue of paragraph 1(3) of Schedule 2D to the Insurance Companies Act⁽²⁹⁾.

(3) Where, before commencement a preliminary notice was served on a person under section 60(3A) of the Insurance Companies Act⁽³⁰⁾ but no notice of objection has been served 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 the recipients of the notice of that fact.

(4) Paragraph (3) does not affect the power of the Authority to serve a notice under section 62(2) in respect of the application (effective by virtue of paragraph (1)).

(5) Where a request for information has been made under paragraph 1(2) of Schedule 2D to the Insurance Companies Act and it has not been complied with before commencement, that request has effect after commencement as a request made under section 60(3).

Notices under section 61 of the Insurance Companies Act

51.—(1) Where—

- (a) a person has served a notice under section 61(1)(a) of the Insurance Companies Act;
- (b) no notice has been served before commencement objecting to or approving the appointment referred to in the notice;
- (c) the period mentioned in section 61(1)(b) of the Insurance Companies Act has not elapsed;
- (d) the appointment has not taken effect before commencement; and
- (e) the performance after commencement by the person of the functions of the post for which he is proposed would require the approval of the Authority under section 59,

(28) Section 60 has been amended by the 3ID Regulations and by the Transfer of Functions (Insurance) Order 1997 (S.I. 1997/2781).

(29) Schedule 2D to the Insurance Companies Act was inserted by the 3ID Regulations and has been amended by S.I. 1997/2781.

(30) Subsection (3A) was substituted for the original subsection (3) by the 3ID Regulations and has been amended by S.I. 1997/2781.

the company mentioned in the notice is to be treated as if it had made an application in accordance with section 60 for the Authority's approval under section 59 for the performance by the person of the functions involved in the appointment.

(2) In relation to an application having effect under paragraph (1), the period of consideration for the purposes of section 183—

- (a) is three months beginning with the date on which the notice served under section 61 of the Insurance Companies Act was received; but
- (b) is treated as having been extended by any period added before commencement by virtue of paragraph 1(3) of Schedule 2D to the Insurance Companies Act.

(3) Where, before commencement a preliminary notice was served on a person under section 61(2) of the Insurance Companies Act but no notice of objection has been served 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 the recipients of the notice of that fact.

(4) Paragraph (3) does not affect the power of the Authority to serve a notice under section 62(2) in respect of the application (effective by virtue of paragraph (1)).

Insurance Companies Act: miscellaneous provisions

52.—(1) A preliminary notice served under paragraph 2(3) or 3(4) of Schedule 2D to the Insurance Companies Act ceases to have effect on commencement and the Authority must, as soon as practicable after commencement, notify the person on whom the notice was served of that fact (but this is without prejudice to the power of the Authority to serve a notice under section 63 on the person).

(2) Where—

- (a) before commencement, a preliminary notice has been served under paragraph 4(2) of Schedule 2D to the Insurance Companies Act;
- (b) no notice of objection has been served under paragraph 4(1) of that Schedule in respect of the matter covered in the notice;
- (c) the person to whom the notice relates is a person who is treated as a person who has been approved by the Authority for the purposes of section 59,

the notice has effect after commencement as a warning notice served under section 63(3) giving notice of the Authority's intention to withdraw its approval.

(3) The Authority must, as soon as practicable after commencement, serve a copy of the notice on any interested party (within the meaning of section 63) who has not previously received a copy.

(4) Notwithstanding section 392(a), sections 393 and 394 do not apply to a warning notice having effect by virtue of paragraph (2).

(5) A notice having effect under paragraph (2) is to be treated as if—

- (a) it gave notice that the Authority proposes to withdraw its approval for that person;
- (b) it stated that section 394 does not apply;
- (c) it stated that representations could be made to the Authority within one month of the service of the notice;
- (d) the reference to making oral representations were omitted (without prejudice to any representations already made).

Notices in respect of bank or investment firm partners

53.—(1) Where—

- (a) a person has served a proposed partner notice before commencement;
- (b) the proposed appointment referred to in the notice has not been approved by the Regulator before commencement and is not treated as having been approved by the expiry of any period within which objection may be made;
- (c) no notice has been served before commencement objecting to the appointment of the partner proposed in the notice;
- (d) the appointment has not taken effect before commencement; and
- (e) the performance after commencement by the person of the functions of the post for which he is proposed would require the approval of the Authority under section 59,

the authorised person mentioned in the proposed partner notice is to be treated as if it had made an application under section 60 for the Authority's approval under section 59 for the performance by the proposed partner of the functions involved in the appointment.

(2) In relation to an application having effect under paragraph (1), the period of consideration for the purposes of section 61(3)—

- (a) is three months beginning with the date on which the Authority received the proposed partner notice; but
- (b) is treated as having been extended by any period added before commencement by virtue of section 21(4) of the Banking Act or regulation 41(4) of the ISD Regulations.

(3) Where, before commencement a preliminary notice was served on a person under section 22(2) of the Banking Act or regulation 42(3) of the ISD Regulations in response to a proposed partner notice but no notice of objection has been served 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 the recipients of the notice of that fact.

(4) Paragraph (3) does not affect the power of the Authority to serve a notice under section 62(2) in respect of the application (effective by virtue of paragraph (1)).

(5) A “proposed partner notice” means a notice served—

- (a) under section 21(1) of the Banking Act in respect of an appointment falling within section 21(2) of that Act;
- (b) under regulation 41(1) of the ISD Regulations in respect of an appointment falling within regulation 41(2) of those Regulations.

(6) The “Regulator” means—

- (a) in respect of the provisions of the Banking Act, the Authority;
- (b) in respect of the provisions of the ISD Regulations, the relevant regulator within the meaning of regulation 46(5) of those Regulations.

CHAPTER II

MISCELLANEOUS

Public statements under section 60 of the Financial Services Act

54.—(1) Where, before commencement—

- (a) the Authority has given a written notice under section 60(2) of the Financial Services Act;
- (b) the period within which the case could be required to be referred to the Financial Services Tribunal under that Act has not expired;

(c) no such reference has been required,
the notice ceases to have effect on commencement and the Authority must, as soon as practicable after commencement, notify the authorised person (and any person to whom a copy of the notice was given under section 60(3) of the Financial Services Act) of that fact.

(2) Where, before commencement—

- (a) the Authority has given a written notice under section 60(2) of the Financial Services Act;
- (b) the period within which the case could be required to be referred to the Financial Services Tribunal under that Act has expired;
- (c) no such reference has been required in respect of the matter;
- (d) the Authority has not published the statement (whether or not notice pursuant to section 60(5) of the Financial Services Act has been given),

the Authority must proceed in the manner described in paragraph (3).

(3) Where paragraph (2) applies, the Authority must either—

- (a) give a final notice (to which section 390(3) applies) and publish the statement in accordance with that notice; or
- (b) give a notice of discontinuance (to which section 389 applies).

Disqualification directions

55.—(1) Where, before commencement—

- (a) a notice was given under section 59(4)(a) of the Financial Services Act of a proposal to give a disqualification direction;
- (b) the period within which the case could be required to be referred to the Financial Services Tribunal under that Act has not expired; and
- (c) no such reference has been required,

the notice has effect as if it were a warning notice given under section 57(1).

(2) Notwithstanding section 392(a), sections 393 and 394 do not apply to a warning notice having effect by virtue of paragraph (1).

(3) A notice having effect under paragraph (1) has effect—

- (a) as if it stated that the action which the Authority proposes to take is to prohibit the recipient from performing any functions in relation to regulated activities which correspond to the kinds of investment business referred to in the notice;
- (b) as if it stated that the prohibition order will relate to any authorised person who is mentioned or described in the notice;
- (c) as if it stated that section 394 does not apply;
- (d) as if it stated that representations may be made to the Authority within 28 days of commencement.

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

- (a) the Authority must decide whether to give a decision notice under section 57(3);
- (b) in taking that decision the Authority must consider the question set out in section 56(1).

(5) Where—

- (a) a person is the subject of a disqualification direction which has effect pursuant to article 79 of the Authorised Persons Order as a prohibition order under section 56;

- (b) before commencement that person applied for the Authority's consent or for a variation of such consent under section 59(3) of the Financial Services Act and the application has not been decided before commencement,

the application is to be treated as an application for a variation made to the Authority under section 56(7).

(6) Where, before commencement—

- (a) a notice was given under section 59(4)(b) of the Financial Services Act of intention to refuse an application;
- (b) the period within which the case could be required to be referred to the Financial Services Tribunal under that Act had not expired; and
- (c) no such reference had been required,

the notice ceases to have effect and the Authority must, as soon as practicable after commencement, notify the applicant of that fact.

(7) Paragraph (6) does not affect the power of the Authority to serve a notice under section 58(3) in respect of the application (as effective by virtue of paragraph (5)).

PART VI

PROCEEDINGS OF RECOGNISED SELF-REGULATING ORGANISATIONS

CHAPTER I

INCOMPLETE DISCIPLINARY PROCEEDINGS

Interpretation

56.—(1) In this Part—

“IMRO” means the Investment Management Regulatory Organisation Limited and “IMRO rules” means the rules of IMRO;

“PIA” means the Personal Investment Authority Limited and “PIA rules” means the rules of the PIA;

“SFA” means The Securities and Futures Authority Limited and “SFA rules” means the rules of the SFA.

(2) For the purposes of this Part, “disciplinary proceedings” are proceedings brought—

- (a) by IMRO under Rules 4.6 and 5.1 of Chapter VIII of the IMRO rules;
- (b) by the PIA serving a notice of proposed order under rule 10.1.4(1) or (2) or issuing formal proceedings under rule 10.1.2(3) of the PIA rules;
- (c) by the SFA under Rule 7-23A or 7-24A of the SFA rules.

(3) For the purposes of this Part, a person is treated as being subject to incomplete disciplinary proceedings where—

- (a) disciplinary proceedings have been brought against him by a recognised self-regulating organisation in accordance with the rules of that organisation; and
- (b) he has not been informed, before commencement, whether or not the organisation has determined to impose on him a disciplinary measure within the meaning of article 76 in respect of the matters which were the subject of the proceedings,

and a person who was, immediately before commencement, subject to incomplete disciplinary proceedings is described as being “in discipline”.

(4) Disciplinary proceedings are to be treated as proceedings begun against the person who was subject to them for the purposes of section 66(4).

(5) In this Part, references to “the Civil Remedies Order” are to the Financial Services and Markets Act 2000 (Transitional Provisions and Savings) (Civil Remedies, Discipline, Criminal Offences etc.) Order (No. 2) 2001⁽³¹⁾;

(6) In this Part—

- (a) “the relevant SRO” in relation to a person in discipline is whichever of IMRO, the PIA or the SFA commenced incomplete disciplinary proceedings against him; and
- (b) “the relevant SRO” in relation to incomplete disciplinary proceedings means whichever of IMRO, the PIA or the SFA is the organisation in accordance with the rules of which those proceedings were commenced.

Application of this Chapter

57. This Chapter applies only where the person in discipline is—

- (a) an authorised person (within the meaning of the Act) who was a member of IMRO, the PIA or the SFA immediately before commencement; or
- (b) a person who was, immediately before commencement—
 - (i) a registered individual for the purposes of Rule 1.2.(2) to (4) of Chapter IV and Chapter VIII of the IMRO rules or a person who had, before commencement, ceased to be a registered individual but who was treated as a registered individual for the purposes of Rule 1.2(2) to (4) of Chapter IV and Chapter VIII of the IMRO rules;
 - (ii) a registered individual or former registered individual for the purposes of the PIA rules;
 - (iii) a registered person or former registered person for the purposes of SFA rules.

Determination of incomplete disciplinary proceedings

58.—(1) Subject to article 64(2), the Authority may, before the end of the period of six months beginning at commencement, refer the incomplete disciplinary proceedings of a person in discipline to the interim tribunal established in accordance with Chapter IV of this Part.

(2) Where the Authority refers the incomplete disciplinary proceedings to the interim tribunal under paragraph (1), it must notify the person in discipline that it has done so and of the effect of this Order.

(3) The interim tribunal has jurisdiction to determine the incomplete disciplinary proceedings referred to it under paragraph (1) and must—

- (a) determine what (if any) is the appropriate action for the Authority to take against the person who was the subject of the incomplete disciplinary proceedings referred to it, in the exercise of the Authority’s powers under the Act; and
- (b) on determining the reference, remit the matter to the Authority with such directions (if any) as the interim tribunal considers appropriate for giving effect to its determination.

(4) The Authority must act in accordance with the determination of, and any direction given by, the interim tribunal.

(31) S.I. 2001/3083.

Test to be applied by interim tribunal

59.—(1) Where the issues arising for determination in the incomplete disciplinary proceedings included the issue whether a person who was authorised under the Financial Services Act was a fit and proper person, the interim tribunal must consider instead whether that person is failing or is likely to fail to satisfy the threshold conditions (within the meaning of section 41(1)).

(2) Where the issues arising for determination in the incomplete disciplinary proceedings included the issue whether a person was a fit and proper person to be employed in connection with investment business (within the meaning of the Financial Services Act) or investment business of a particular kind, the interim tribunal must consider instead whether that person is a fit and proper person to perform the functions in relation to the regulated activity corresponding to that investment business which he was performing before commencement.

Appropriate decisions on determination by interim tribunal

60.—(1) The interim tribunal must not direct the Authority to take action against the person in discipline if the rules of the relevant SRO in respect of that person did not confer a power to take similar action against him.

(2) The Authority must not, in giving effect to any direction of the interim tribunal, impose on a person in discipline a penalty under section 66(3)(a) or 206 that exceeds the penalty which the relevant SRO could have imposed in relation to that conduct at the conclusion of the incomplete disciplinary proceedings.

(3) The Authority must, in giving effect to any direction of the interim tribunal by imposing a penalty on a person in discipline under section 66(3)(a) or 206, have regard to any statement made by the relevant SRO which was in force when the conduct in question took place with respect to its policy on the imposition of and amount of penalties (whether issued as guidance, contained in the rules of that organisation or otherwise).

(4) The interim tribunal must not direct the Authority to exercise its powers under section 66 in respect of a person in discipline unless the Authority would have been able, by virtue of article 9(3) of the Civil Remedies Order, to exercise those powers against that person in respect of his failure, misconduct or other contravention in the absence of the incomplete disciplinary proceedings.

Decisions taken by the Authority giving effect to interim tribunal directions

61.—(1) Where the Authority implements a direction from the interim tribunal by exercising its power under section 45, sections 53, 54 and 55 do not apply to the exercise of that power.

(2) Where the Authority implements a direction from the interim tribunal by exercising its power under section 63(1), subsections (3) to (6) of that section do not apply to the exercise of that power.

(3) Where the Authority implements a direction from the interim tribunal by exercising its power under section 66(3), section 67 does not apply to the exercise of that power.

(4) Where the Authority implements a direction from the interim tribunal by exercising its power under section 196 or 200(1), section 197 and section 200(2) to (5) do not apply to the exercise of that power.

(5) Where the Authority implements a direction from the interim tribunal by exercising its power under section 205 or 206, sections 207 and 208 do not apply to the exercise of that power.

(6) Where the Authority implements a direction from the interim tribunal by exercising its power under section 384(5), sections 385 and 386 do not apply to the exercise of that power.

(7) Where the Authority implements a direction from the interim tribunal by exercising any of the powers mentioned in paragraphs (1) to (6), it must exercise that power by giving written notice

to the person concerned and sections 390(3), (4), (5) and (7) to (9) and 391(4) apply to that notice as they apply to a final notice.

Appeal from determination of interim tribunal

62.—(1) Where a person in discipline or the Authority is aggrieved by the determination by the interim tribunal of the incomplete disciplinary proceedings to which that person was subject immediately before commencement, that person or the Authority may refer the matter to the Financial Services and Markets Tribunal.

(2) Section 133 applies to the Tribunal when it is considering a reference made under paragraph (1) with the following modifications—

- (a) as if subsection (3) provided that on such a reference, the Tribunal may consider only the evidence that was considered by the interim tribunal unless fresh evidence comes to light which could not reasonably have been made available to the interim tribunal by the party now seeking to adduce it;
- (b) as if subsection (4) provided that on determining a reference from an interim tribunal the Tribunal must decide whether the determination of the interim tribunal was unlawful or was not justified by the evidence and must remit the matter to the Authority with such directions (if any) as the Tribunal considers appropriate having regard to its decision;
- (c) as if subsections (6), (7), (8), (9) and (12) did not apply.

(3) Article 60 applies to the power of the Tribunal under this article, and to the Authority in giving effect to a direction from the Tribunal as it applies to directions given by the interim tribunal under article 58 and to the action of the Authority in giving effect to such directions.

Modification of Tribunal Rules

63. The Schedule to this Order has effect for the purpose of modifying the Financial Services and Markets Tribunal Rules 2001⁽³²⁾ as they apply to references made under article 62.

Substitution of proceedings under the Act for proceedings before interim tribunal

64.—(1) This article applies to a notice given by the Authority to a person in discipline which is—

- (a) a notice under section 53(4) that it proposes to vary, or varies with immediate effect, that person's Part IV permission;
- (b) a warning notice under section 54(1) stating that it proposes to cancel his Part IV permission;
- (c) a warning notice under section 63(3) stating that it proposes to withdraw approval under section 63(1);
- (d) a warning notice under section 67(1) stating that it proposes to take action under section 66 (as applied by article 9 of the Civil Remedies Order);
- (e) a warning notice under section 207(1) stating that it proposes to take action under section 205 or 206 (as applied by articles 7 and 8 of the Civil Remedies Order);
- (f) a notice under section 197(3) that it proposes to impose, or imposes with immediate effect, a requirement under section 196;
- (g) a warning notice under section 385(1) stating that it proposes to exercise the power under section 384(5) (as applied by article 3 of the Civil Remedies Order); or
- (h) a decision notice pursuant to article 68, 69, 70, 71, 73, 74 or 75,

(32) S.I. 2001/2476.

provided in each case that the reasons stated in the notice why the Authority proposes to take action relate to or arise from the same failure, misconduct or other contravention which was the subject of the incomplete disciplinary proceedings to which the person to whom the notice is given was subject immediately before commencement (“the corresponding incomplete disciplinary proceedings”).

(2) The Authority may not after giving a notice to which this article applies, refer the corresponding incomplete disciplinary proceedings to the interim tribunal under article 58(1).

(3) If the Authority gives a notice to which this article applies after having referred the corresponding incomplete disciplinary proceedings to the interim tribunal under article 58(1), the proceedings before the interim tribunal lapse, without prejudice to the power of the interim tribunal under article 89(4).

Service of warning or decision notice

65. The Authority must not give a notice by virtue of which proceedings before an interim tribunal will lapse in accordance with article 64(3) unless—

- (a) the person in discipline consents to the Authority doing so (but that consent is not to be treated as an admission in relation to any matter set out in the notice); or
- (b) the interim tribunal to which the incomplete disciplinary proceedings have been referred approves the giving of the notice

CHAPTER II

EXPEDITED DECISION NOTICES, ETC.

General

Conditions making it appropriate to give a decision notice without a warning notice

66.—(1) Where a provision of this Chapter provides that the Authority may, if the expedited decision conditions are satisfied, give a person (“A”) a decision notice under a provision of the Act without having given A a warning notice, the expedited decision conditions referred to are that—

- (a) the reasons stated in the decision notice given to A relate to or arise from the same failure, misconduct or other contravention which was the subject of the incomplete disciplinary proceedings to which A was subject immediately before commencement;
- (b) A had, before commencement, been given a reasonable opportunity in the course of the incomplete disciplinary proceedings to make representations to the relevant SRO in respect of the failure, misconduct or other contravention which was the subject of the incomplete disciplinary proceedings; and
- (c) the Authority has taken any representations so made by A into account in deciding whether to give A a decision notice and on the terms of that notice.

(2) The Financial Services and Markets Tribunal may take into account, in considering a decision notice referred to it, whether or not the expedited decision conditions were satisfied in relation to that decision notice; but a finding that they were not so satisfied does not affect the validity of the notice.

Decision notices issued pursuant to this Chapter

67. Where, pursuant to a provision in this Chapter, the Authority gives a decision notice without having given a warning notice, that notice is to be treated for the purposes of section 133(6) as if it had been preceded by a warning notice stating that the Authority proposed to take the action referred to in the decision notice.

*Members of self-regulating organisations***Public censure**

68.—(1) This article applies where—

- (a) the Authority proposes to publish a statement about a person (“P”) under section 205, pursuant to the power conferred on it by article 7 of the Civil Remedies Order;
- (b) the reasons for which the Authority proposes to take action relate to or arise from the same failure, misconduct or other contravention which was the subject of incomplete disciplinary proceedings to which P was subject immediately before commencement;
- (c) the relevant SRO in relation to those incomplete disciplinary proceedings would have had power to make a statement about P corresponding to the power of the Authority under section 205 at the conclusion of those proceedings;
- (d) the expedited decision conditions are satisfied.

(2) In a case where this article applies, the Authority may give a decision notice under section 208(1)(a) without having given a warning notice.

Financial penalty

69.—(1) This article applies where—

- (a) the Authority proposes to impose a penalty on a person (“P”) under section 206, pursuant to the power conferred on it by article 8 of the Civil Remedies Order;
- (b) the reasons for which the Authority proposes to take action relate to or arise from the same failure, misconduct or other contravention which was the subject of incomplete disciplinary proceedings to which P was subject immediately before commencement;
- (c) the relevant SRO in relation to those incomplete disciplinary proceedings would have had power to impose a penalty on P corresponding to the power of the Authority under section 206 at the conclusion of those proceedings;
- (d) the expedited decision conditions are satisfied.

(2) In a case where this article applies, the Authority may give a decision notice under section 208(1)(b) without having given a warning notice.

Power to order restitution

70.—(1) This article applies where—

- (a) the Authority proposes to require a person (“P”) to make payments under section 384(5), pursuant to the power conferred on it by article 3 of the Civil Remedies Order;
- (b) the reasons for which the Authority proposes to take action relate to or arise from the same failure, misconduct or other contravention which was the subject of the incomplete disciplinary proceedings to which P was subject immediately before commencement;
- (c) the relevant SRO in relation to those incomplete disciplinary proceedings would have had power to order P to make payments corresponding to the power of the Authority under section 384(5) at the conclusion of those proceedings;
- (d) the expedited decision conditions are satisfied.

(2) In a case where this article applies, the Authority may give a decision notice under section 386(1) without having given a warning notice.

Cancellation of Part IV permission

71.—(1) This article applies where—

- (a) the Authority proposes to cancel a person's Part IV permission under section 54;
- (b) the reasons for which the Authority proposes to take action relate to or arise from the same failure, misconduct or other contravention which was the subject of the incomplete disciplinary proceedings to which P was subject immediately before commencement;
- (c) the relevant SRO in relation to those incomplete disciplinary proceedings would have had power to expel P from membership at the conclusion of those proceedings;
- (d) the expedited decision conditions are satisfied.

(2) In a case where this article applies, the Authority may give a decision notice under section 54(2) without having given a warning notice.

Exercise of own initiative powers

72.—(1) This article applies where—

- (a) the Authority proposes to exercise its powers to vary a person's Part IV permission under section 53 or to impose a requirement under section 196;
- (b) the reasons for which the Authority proposes to take action relate to or arise from the same failure, misconduct or other contravention which was the subject of incomplete disciplinary proceedings to which that person ("P") was subject immediately before commencement;
- (c) the relevant SRO in relation to those incomplete disciplinary proceedings would have had power—
 - (i) to suspend in whole or in part P's entitlement to carry on investment business (within the meaning of the Financial Services Act);
 - (ii) to terminate part of P's entitlement to carry on such business;
 - (iii) to impose conditions on P in respect of his carrying on such business.

(d) the conditions specified in paragraph (3) are satisfied.

(2) In a case where this article applies, the Authority may specify in a notice given under section 53(4) or section 197(3) that the variation has immediate effect.

(3) The conditions specified in this paragraph are that—

- (a) P had, before commencement, been given a reasonable opportunity to make representations to the relevant SRO in respect of the failure, misconduct or other contravention which was the subject of the incomplete disciplinary proceedings; and
- (b) the Authority has taken any representations so made by P into account in deciding whether to specify that the variation has immediate effect.

Discipline of registered individuals or persons

Public statement about registered person or individual

73.—(1) This article applies where—

- (a) the Authority proposes to publish a statement about a person ("RI") under section 66(3)
- (b), pursuant to the power conferred on it by article 9 of the Civil Remedies Order;

- (b) the reasons for which the Authority proposes to take action relate to or arise from the same failure, misconduct or other contravention which was the subject of the incomplete disciplinary proceedings to which RI was subject immediately before commencement;
- (c) the relevant SRO in relation to those incomplete disciplinary proceedings would have had power to make a statement about RI corresponding to the power of the Authority under section 66(3)(b) at the conclusion of those proceedings;
- (d) the expedited decision conditions are satisfied.

(2) In a case where this article applies, the Authority may give a decision notice under section 67(4) without having given a warning notice.

Penalty imposed on registered person or individual

74.—(1) This article applies where—

- (a) the Authority proposes to impose a penalty on a person (“RI”) under section 66(3)(a), pursuant to the power conferred on it by article 9 of the Civil Remedies Order;
- (b) the reasons for which the Authority proposes to take action relate to or arise from the same failure, misconduct or other contravention which was the subject of the incomplete disciplinary proceedings to which RI was subject immediately before commencement;
- (c) the relevant SRO in relation to those incomplete disciplinary proceedings would have had power to impose a penalty on RI corresponding to the power of the Authority under section 66(3)(a) at the conclusion of those proceedings;
- (d) the expedited decision conditions are satisfied.

(2) In a case where this article applies, the Authority may give a decision notice under section 67(4) without having given a warning notice.

Withdrawal of approval of registered person or individual

75.—(1) This article applies where—

- (a) the Authority proposes to withdraw its approval from a person (“RI”) under section 63(1);
- (b) the reasons for which the Authority proposes to take action relate to or arise from the same failure, misconduct or other contravention which was the subject of the incomplete disciplinary proceedings to which RI was subject immediately before commencement;
- (c) the relevant SRO in relation to those incomplete disciplinary proceedings would have had power to remove the registered individual or person from its register corresponding to the power of the Authority under section 63(1) against RI at the conclusion of those proceedings;
- (d) the expedited decision conditions are satisfied.

(2) In a case where this article applies, the Authority may give a decision notice under section 63(4) without having given a warning notice.

CHAPTER III

INCOMPLETE APPEALS

Definition of “disciplinary measure”

76.—(1) In this Chapter, a “disciplinary measure” means—

- (a) any measure imposed by a disciplinary tribunal in accordance with Rule 6.7(6) of Chapter VIII of the IMRO rules;

- (b) any measure imposed by a tribunal in accordance with Rule 10.4.3 of Chapter 10 of the PIA rules;
 - (c) any measure imposed by a disciplinary tribunal in accordance with rule 7–30 (penalties), 7–30A (terms and conditions) or 7–31 (compensation orders) of Chapter 7 of the SFA rules.
- (2) This Chapter applies only to a disciplinary measure imposed—
- (a) on an authorised person (within the meaning of the Act) who was a member of the recognised self-regulating organisation immediately before commencement; or
 - (b) in respect of post commencement actionable misconduct by an individual who was immediately before commencement—
 - (i) a registered individual for the purposes of Rule 1.2.(2) to (4) of Chapter IV and Chapter VIII of the IMRO rules or a person who had, before commencement, ceased to be a registered individual but who was treated as a registered individual for the purposes of Rule 1.2.(2) to (4) of Chapter IV and Chapter VIII of the IMRO rules;
 - (ii) a registered individual or former registered individual for the purposes of the PIA rules;
 - (iii) a registered person or former registered person for the purposes of SFA rules.
- (3) “Post commencement actionable misconduct” for the purposes of paragraph (2)(b) is any failure, misconduct or contravention—
- (a) in respect of which the Authority would have power, by virtue of article 9(3) of the Civil Remedies Order, to take action after commencement under section 66, or
 - (b) which the Authority would be entitled to take into account in the exercise of its powers under section 63.

Incomplete appeals against disciplinary measure

77.—(1) This article applies where—

- (a) a disciplinary measure was imposed on a person;
- (b) that person has exercised a right to appeal against the imposition of that measure before commencement; but
- (c) that appeal has not been determined before commencement.

(2) In a case where this article applies, the Authority must, as soon as practicable after commencement, refer the matter to the interim tribunal to determine the appeal and must notify the appellant that it has done so and of the effect of this Order.

(3) The interim tribunal has jurisdiction to determine the appeal referred to it under paragraph (2).

(4) For the purposes of paragraph (1)(b), a right to appeal means—

- (a) in respect of a disciplinary measure imposed by IMRO, a right under Rule 6.7(10) in Chapter VIII of the IMRO rules to refer the matter to the Appeals Tribunal constituted in accordance with that Chapter;
- (b) in respect of a disciplinary measure imposed by the PIA, a right under Rule 10.5.2(1) of Chapter 10 of the PIA rules to refer the matter to the Appeal Commissioner having jurisdiction in accordance with that Chapter;
- (c) in respect of a disciplinary measure imposed by the SFA, a right under rule 7–34(3) and 7–34(4) of Chapter 7 of the SFA rules to refer the matter to the Disciplinary Appeal Tribunal constituted in accordance with that Chapter.

Task of interim tribunal when determining an appeal against disciplinary measure

78.—(1) Where the interim tribunal hears an appeal referred to it under article 77(2), it must—

- (a) determine whether the imposition of the disciplinary measure was unlawful or was not justified by the evidence on which it was based;
- (b) remit the matter to the Authority with such directions (if any) as the interim tribunal considers appropriate for giving effect to its determination.

(2) The interim tribunal may consider only the evidence which was considered in the course of the proceedings which resulted in the imposition of the disciplinary measure, unless fresh evidence come to light which could not reasonably have been made available then by the party now seeking to adduce it.

(3) Articles 59, 60 and 61 apply to the determination of the interim tribunal and to the action taken by the Authority following a direction by the interim tribunal under paragraph (1).

Preservation of right of appeal against disciplinary measure

79.—(1) Where before commencement—

- (a) a disciplinary measure has been imposed on a person;
- (b) the period set by the rules of the organisation which imposed the disciplinary measure during which a right to appeal may be exercised has not expired;
- (c) the right to appeal has not been exercised in accordance with the rules of that body,

the person who had a right to appeal against the imposition of the measure may refer the matter to the Financial Services and Markets Tribunal.

(2) Section 133 applies to the Tribunal in respect of a reference made under paragraph (1) with the following modifications—

- (a) section 133(1)(a) applies as if the period mentioned was so much of the period referred to in paragraph (1)(b) above as had not expired at commencement;
- (b) as if subsection (3) provided that on such a reference, the Tribunal may consider only the evidence which was considered in the course of the proceedings which resulted in the imposition of the disciplinary measure, unless fresh evidence comes to light which could not reasonably have been made available then by the party now seeking to adduce it;
- (c) as if subsection (4) provided that on determining the appeal, the Tribunal must determine whether the imposition of the disciplinary measure was unlawful or was not justified by the evidence and must remit the matter to the Authority with such directions (if any) as the Tribunal considers appropriate having regard to its determination;
- (d) as if subsections (6), (7), (8), (9) and (12) did not apply.

(3) For the purposes of paragraph (1) a right to appeal has the same meaning as in article 77(4).

(4) Article 60 applies to the power of the Tribunal under this article, and to the Authority in giving effect to a direction from the Tribunal as it applies to directions given by the interim tribunal under article 58 and to the action of the Authority in giving effect to such directions.

Modification of Tribunal Rules

80. The Schedule to this Order has effect for the purposes of modifying the Financial Services and Markets Tribunal Rules 2001 as they apply to references made under article 79.

Definition of “intervention measure”

81. In this Chapter, an “intervention measure” means—

- (a) an Intervention within the meaning of Rule 2.1 and 2.2 of Chapter VIII of the IMRO rules;
- (b) an intervention notice given under Rule 9.3 of the PIA rules;
- (c) an intervention order imposed by Rule 7–12 of the SFA rules.

Intervention measure stayed before commencement

82.—(1) This article applies where before commencement—

- (a) an intervention measure had been imposed on an authorised person (within the meaning of the Act) who was a member of a recognised self-regulating organisation immediately before commencement; and
- (b) a stay had been granted preventing the intervention measure from coming into effect at any time before commencement.

(2) In a case where this article applies—

- (a) the person on whom the intervention measure was imposed is not to be treated as subject to that measure immediately before commencement for the purposes of article 35 of the Authorised Persons Order; and
- (b) any proceedings in respect of an appeal brought by the person against the measure lapse at commencement.

Intervention measure not stayed before commencement

83.—(1) This article applies where before commencement—

- (a) an intervention measure had been imposed on an authorised person (within the meaning of the Act) who was a member of a recognised self-regulating organisation immediately before commencement; and
- (b) no stay had been granted preventing the intervention measure from coming into effect at any time before commencement;
- (c) the measure has effect after commencement as a requirement imposed under section 43 or 196 of the Act by virtue of article 35 of the Authorised Persons Order; and
- (d) either—
 - (i) the person on whom the measure was imposed has exercised a right to appeal in respect of the imposition of that measure but that appeal has not been determined before commencement; or
 - (ii) the period (if any) set by the rules of the organisation for the exercise of the right to appeal in respect of that measure has not expired and no appeal has been lodged in accordance with the rules of that body.

(2) In a case where this article applies—

- (a) any appeal proceedings in train at commencement in respect of the measure lapse;
- (b) the person may refer the measure having effect by virtue of article 35 of the Authorised Persons Order to the Tribunal under section 55(2).

(3) Where the imposition of an intervention measure is referred to the Tribunal under paragraph (2), section 133 and the Financial Services and Markets Tribunal Rules 2001 apply to the reference as if the notice by which the intervention measure was imposed before commencement were a supervisory notice.

(4) For the purposes of paragraph (1) a right to appeal means—

- (a) in respect of an intervention measure imposed by IMRO, a right under rule 2.3(5) of Chapter VIII of the IMRO rules to appeal to the Appeal Tribunal constituted in accordance with Section 7 of that Chapter;
- (b) in respect of an intervention measure imposed by the PIA, a right—
 - (i) under Rule 9.4(2) or 9.7.1(1) of the PIA rules to refer the matter to the Membership and Disciplinary Tribunal; or
 - (ii) under Rules 9.7.2(2) and 11.2.1(2) to refer the matter from the Membership and Disciplinary Tribunal to the PIA Appeals Commissioner;
- (c) in respect of an intervention measure imposed by the SFA, a right under rule 7–20 of the SFA Rules to refer the matter to the chairman or a deputy chairman of the Tribunal Panel in accordance with that rule.

Intervention measure against registered individual or person

84.—(1) This article applies where before commencement—

- (a) an intervention measure had been imposed on a registered person or individual;
- (b) the measure would (but for this article) have effect after commencement as a limitation on the approval of that person under section 59 by virtue of article 72(2)(b) or 73(3) of the Authorised Persons Order; and
- (c) either—
 - (i) the person on whom the measure was imposed has exercised a right to appeal in respect of the imposition of that measure but that appeal has not been determined before commencement; or
 - (ii) the period (if any) set by the rules of the body imposing the measure for the exercise of the right to appeal in respect of that measure has not expired and no appeal has been lodged in accordance with the rules of that body.

(2) In a case where this article applies (and whether or not a stay was granted before commencement)—

- (a) the intervention measure is to be disregarded for the purposes of article 72(2)(b) or 73(3) of the Authorised Persons Order;
- (b) any appeal proceedings in train in respect of the measure lapse at commencement.

(3) For the purposes of paragraph (1), a right to appeal has the same meaning it has for the purposes of article 83(1).

Summary fine imposed before commencement

85.—(1) This article applies where—

- (a) a summary fine was imposed on a person before commencement; and
- (b) either—
 - (i) the person on whom the fine was imposed has exercised a right to appeal against the imposition of that fine but that appeal has not been determined before commencement; or
 - (ii) the period set by the rules of the organisation which imposed the fine for the exercise of the right to appeal against that fine has not expired and no appeal has been lodged in accordance with the rules of that body.

(2) In a case where this article applies, the Authority must, if the person on whom the fine was imposed requests, refer the matter to the interim tribunal.

- (3) For the purposes of this article, a summary fine is a fine imposed—
 - (a) by IMRO under Rule 3.1 of Chapter VIII of the IMRO rules;
 - (b) by the SFA under Rule 7–45 of the SFA Rules.
- (4) Where the imposition of a summary fine is referred to the interim tribunal under paragraph (2) the interim tribunal must—
 - (a) consider whether the decision to impose it was unlawful or was not justified by the evidence on which it was based;
 - (b) either cancel the fine or remit the matter to the Authority with a direction to impose a penalty under section 66(3)(a).
- (5) Where the Authority imposes a penalty on a person under section 66(3)(a) following a direction from the interim tribunal, section 67 does not apply to the exercise of that power but—
 - (a) the Authority must exercise the power by giving written notice to the person concerned; and
 - (b) sections 390(3), (4), (5), (8) and (9) and 391(4) apply to that notice as they apply to a final notice.

CHAPTER IV

THE INTERIM TRIBUNAL

President of the interim tribunal

86.—(1) The Treasury must as soon as practicable appoint a person to be the President of the interim tribunal.

(2) The President of the interim tribunal is to hold and vacate office in accordance with the terms of his appointment and may be removed by the Treasury on the ground of incapacity or misbehaviour.

(3) The President may at any time resign office by notice in writing to the Treasury but is eligible for re-appointment if he ceases to hold office.

Constitution of the interim tribunal

87.—(1) On a reference to the interim tribunal, the President must appoint the required number of the most appropriate people to act as members of the interim tribunal for the purposes of hearing and determining the reference.

- (2) For the purposes of paragraph (1), the following are the most appropriate people—
 - (a) a person who was a member of the panel appointed by the relevant SRO before which—
 - (i) the incomplete disciplinary proceedings (in the case of a reference under article 58(1)); or
 - (ii) the appeal (in the case of a reference under article 77(2) or 85(2));which form or forms the subject of the reference were or was being heard immediately before commencement;
 - (b) where it is not reasonably practicable to appoint the required number of members from persons falling within sub-paragraph (a), then a person who was eligible to be appointed by the relevant SRO to a panel to determine incomplete disciplinary proceedings (in the case of a reference under article 58) or an appeal (in the case of a reference under article 77(2) or 85(2));
 - (c) where it is not reasonably practicable to appoint the required number of members from persons falling within sub-paragraph (a) or (b), then a person appearing to the President

to be qualified by experience or otherwise to deal with the matter referred to the interim tribunal.

(3) For the purpose of this article the “required number” of members of the interim tribunal to hear and determine a particular case is the number of people who would, in accordance with the rules of the relevant SRO, have formed the panel or other body by whom the matter would have been determined but for the repeal of the Financial Services Act.

(4) If, in relation to a particular case, the President falls within the class of the most appropriate people, he may sit as one of the required number of members.

Power of the Authority to make arrangements for the interim tribunal

88. The Authority may make such arrangements as appear to it to be necessary or expedient for the purpose of establishing and maintaining the interim tribunal and in particular may—

- (a) enter into contracts for the provision of accommodation and any other facilities required by the interim tribunal;
- (b) pay the persons appointed to serve on the interim tribunal (including the President) such remuneration and allowances as it determines, having regard to the remuneration and allowances that were payable to persons falling within article 87(2)(a) before commencement.

Procedure of the interim tribunal

89.—(1) Subject to paragraphs (2) and (3), the interim tribunal must when determining any matter referred to it, adopt, so far as reasonably practicable, the same procedure as would have been adopted by the panel or other body by whom the matter would have been determined but for the repeal of the Financial Services Act (treating the Authority for these purposes as the relevant SRO).

(2) In considering the procedure to be adopted in determining any matter referred to it the interim tribunal—

- (a) must have regard to the desirability of avoiding undue prolongation of proceedings and unnecessary costs being incurred by the parties to the proceedings; and
- (b) for that purpose, may take into account evidence or submissions given or made to the relevant SRO before commencement as if they were given or made to the interim tribunal.

(3) Before remitting any matter to the Authority with directions under article 58(3), 78(1) or 85(4), the interim tribunal must give the parties to the proceedings before it an opportunity to make representations as to what directions it should give the Authority.

(4) Where proceedings before the interim tribunal lapse by virtue of article 64(3), the tribunal may make an order providing for such incidental, consequential or supplementary matters as it considers just and expedient.

(5) Where a matter has been referred to the interim tribunal, that tribunal may, on the application of either of the parties to the proceedings, suspend the effect of a disciplinary or intervention measure (or prevent it from taking effect) until the determination of the reference.

PART VII

SUPPLEMENTAL

Adaptation of dates and duration of periods in notices continued in effect

90.—(1) A notice given before commencement may specify a new date by or on which, or a new period within or for which—

- (a) representations may be made to the Authority;
- (b) action will be taken by the Authority;
- (c) a requirement will be imposed or a condition take effect;
- (d) action must be taken by the recipient of the notice; or
- (e) certain conduct on the part of the recipient must cease,

if commencement occurs before the corresponding original date occurs or the corresponding original period elapses.

(2) Where a notice provides a new date or period as mentioned in paragraph (1), then if—

- (a) commencement occurs before the corresponding original date occurs or period elapses; and
- (b) the notice has effect after commencement as a notice given under the Act,

that new date or period takes effect and replaces the original date or original period (if any).

(3) For the purposes of this article, an “original date” or “original period” is the relevant date or period which would have applied but for the repeal or revocation of the provision under which the notice was originally given.

(4) When specifying a new period for the purposes of this article, the person giving the notice must specify a period starting with commencement.

Explanation of notices continued in effect

91. A notice shall not have effect, pursuant to any provision of this Order, as a notice under the Act unless the person giving the notice also gave the recipient (either at the same time as the notice or after giving the notice but allowing a reasonable time before commencement) an explanation of the effect that this Order will have on the notice if commencement occurs before the matters referred to in the notice are decided.

Validity of notices continued in effect

92. Where, by virtue of any provision in this Order, a notice has effect as a notice given under the Act, its validity is not affected by—

- (a) the omission from the notice of any matter which is required by the Act but which was not required by the provision under which the notice was originally given; or
- (b) a failure to follow any procedure which is required by the Act but which was not required by the provision under which the notice was originally given,

and that omission or failure may not be taken into account by the Tribunal in considering any matter referred to it.

Effect of lapsed notices

93. Where a notice given before commencement does not take effect, by virtue of this Order, as a notice given under the Act, that fact does not of itself preclude the Authority from taking into account, when exercising its powers under the Act, the matters which were the subject of the notice.

Right of third party to receive notice of post commencement decision

94.—(1) Where a notice served before commencement has effect by virtue of this Order as if it were a notice served under section 53(4) or section 197(3), a third party recipient of that notice must be given a copy of any notice issued by the Authority under section 53(7) or (8), or under section 197(6) or (7) (as the case may be) in relation to the matter covered by that notice.

(2) For the purposes of this article a “third party recipient” is a person who was given a copy of the notice pursuant to—

- (a) section 29(3) or 34(3) of the Financial Services Act;
- (b) section 13(4) of the Banking Act;
- (c) section 12(2), 12A(4) or 46(1) of the Insurance Companies Act;
- (d) paragraph 1(3) of Schedule 4 to the 2BCD Regulations;
- (e) paragraph 1(3) of Schedule 4 to the ISD Regulations;
- (f) paragraph 2(4) of Schedule 3 to the 2BCD Regulations;
- (g) paragraph 7(2), 8(3) or 10(2) of Schedule 13 to the Friendly Societies Act;
- (h) paragraph 4(2), 5(3) or 6(2) of Schedule 3 to the Building Societies Act;
- (i) section 42A(5) of the Building Societies Act.

Right of third party to refer matter to the Tribunal

95.—(1) This article applies where—

- (a) a notice served before commencement has effect by virtue of article 10, 12 or 20 of this Order as if it were a notice served under section 53(4) or section 197(3);
- (b) a person (“the third party”) was given a copy of that notice pursuant to—
 - (i) section 29(3) or 34(3) of the Financial Services Act;
 - (ii) paragraph 1(3) of Schedule 4 to the 2BCD Regulations; or
 - (iii) paragraph 1(3) of Schedule 4 to the ISD Regulations;
- (c) the third party had immediately before commencement a right to refer that notice to the Financial Services Tribunal under section 97 of the Financial Services Act but had not exercised that right; and
- (d) the Authority, after commencement, gives a notice under section 53(7) or (8)(b) or section 197(6) or (7)(b) in respect of the matter covered by the notice mentioned in subparagraph (a) above.

(2) In a case where this article applies, the third party may refer to the Financial Services and Markets Tribunal the question whether the reasons stated in the notice mentioned in paragraph (1) (b) above are substantiated.

(3) The Schedule to this Order has effect for the purposes of modifying the Financial Services and Markets Tribunal Rules 2001 as they apply to references made under paragraph (2).

PART VIII

PARTLY COMPLETED EXERCISE OF EEA RIGHTS

CHAPTER 1

EEA FIRMS

EEA firms seeking to establish a branch

- 96.**—(1) This article applies in relation to an EEA firm which at commencement—
- (a) is seeking to establish a branch as mentioned in paragraph 12(1) of Schedule 3; and
 - (b) has not satisfied the establishment conditions in paragraph 13 of Schedule 3.
- (2) Subject to paragraph (4), if, before commencement a notice in accordance with—
- (a) paragraph 3 of Schedule 2 to the 2BCD Regulations; or
 - (b) paragraph 3 of Schedule 3 to the ISD Regulations,

was received as respects the firm for the purposes of paragraph 1(2)(b) of Schedule 2 to the 2BCD Regulations or paragraph 1(2)(b) of Schedule 3 to the ISD Regulations, the notice is to be treated as the consent notice required by paragraph 13(1)(a) of Schedule 3 and as satisfying the requirements of paragraph 13(1)(b) of that Schedule.

(3) If, before commencement a notice and certificate as mentioned in paragraph 1(2)(a) of Schedule 2F to the Insurance Companies Act were received as respects the firm, the notice and certificate are to be treated as the consent notice required by paragraph 13(1)(a) of Schedule 3 and as satisfying the requirements of paragraph 13(1)(b) of that Schedule.

(4) This article does not apply in respect of an EEA firm which is taken to have complied with the requirements of Schedule 2 to the 2BCD Regulations only by virtue of having complied with the corresponding requirements under the law of Gibraltar (within the meaning of regulation 2C(2) of the 2BCD Regulations⁽³³⁾).

EEA firms seeking to provide services

- 97.**—(1) This article applies in relation to an EEA firm which at commencement—
- (a) is seeking to provide services as mentioned in paragraph 12(2) of Schedule 3; and
 - (b) has not satisfied the service conditions in paragraph 14 of Schedule 3.

(2) If before commencement a notice in accordance with paragraph 2 of Schedule 3 to the ISD Regulations was given by the firm for the purposes of paragraph 1(1)(a) of that Schedule, the notice is to be treated as the notice of intention required by paragraph 14(1)(a) of Schedule 3.

(3) If before commencement a notice and certificate as mentioned in paragraph 8(2)(a) of Schedule 2F to the Insurance Companies Act were received as respects the firm, the notice and certificate are to be treated as the regulator's notice required by paragraph 14(1)(b) of Schedule 3.

EC companies seeking to carry on reinsurance business

98.—(1) This article applies in relation to an EC company (within the meaning of the Insurance Companies Act) which at commencement—

- (a) is seeking to carry on reinsurance business through a branch in the United Kingdom; and

⁽³³⁾ Reg. 2C was inserted by S.I. [1999/2094](#), reg. 2(1), (3). The status of an EEA firm which has complied with corresponding requirements within the meaning of that regulation is provided for in the Financial Services and Markets Act 2000 (Gibraltar) Order 2001 (S.I. [2001/3084](#)).

(b) neither has permission to carry on that activity by virtue of Schedule 4 nor has a Part IV permission to carry it on.

(2) If before commencement the company had, in accordance with paragraph 4(2)(a)(i) of Schedule 2F to the Insurance Companies Act, served a notice of its intention to carry on reinsurance business, the notice is to be treated as an application for permission made under section 40.

(3) Article 9 applies in relation to an application treated under this article as an application under section 40 or 44 as it applies to an application so treated pursuant to a provision in Part II.

Authority's duties as respects incoming firms

99. Where—

- (a) under article 96 or 97 a notice is treated as the consent notice required by paragraph 13(1) of Schedule 3 or the regulator's notice required by paragraph 14(1)(b) of that Schedule; and
- (b) the Authority has before commencement taken action in respect of that notice corresponding to any of the action required by paragraph 13(2) or 14(2) of that Schedule,

the Authority need only take such action (if any) under paragraph 13(2) or 14(2) of that Schedule as, having regard to the action taken before commencement, it considers necessary.

CHAPTER II

UK FIRMS

Establishment of a branch by UK firm

100.—(1) This article applies to a UK firm within the meaning of Schedule 3.

(2) But this article does not apply where the conditions in paragraph 19(2) to (5) of that Schedule are by virtue of article 77 of the Authorised Persons Order treated as satisfied.

(3) If, before commencement—

- (a) a notice in accordance with paragraph 2 of Schedule 6 to the 2BCD Regulations or ISD Regulations was given by the firm for the purposes of paragraph 1(2)(a) of that Schedule; or
- (b) a notice was given by the firm in accordance with paragraph 1(2)(a) of Schedule 2G⁽³⁴⁾ to the Insurance Companies Act or paragraph 1(2)(a) of Schedule 13B⁽³⁵⁾ to the Friendly Societies Act,

and the case does not fall within paragraph (4), the notice is to be treated as the notice of intention required by paragraph 19(2) of Schedule 3 (and hence as satisfying the first condition for the purposes of paragraph 19(6) and (7)) and, if it was not given to the Authority as required by paragraph 1(2), as having been so given.

(4) The case falls within this paragraph if in response to the notice a notice of refusal was given to the firm under—

- (a) paragraph 4(6) of Schedule 6 to the 2BCD or ISD Regulations; or
- (b) paragraph 1(5) of Schedule 2G to the Insurance Companies Act or of Schedule 13B to the Friendly Societies Act,

and the refusal was not at commencement capable of being reversed on an appeal, a reference to a tribunal or a review as mentioned in paragraph 4(6) of Schedule 6 to the 2BCD or ISD Regulations.

(5) If, before commencement—

⁽³⁴⁾ Schedule 2G was inserted by the 3ID Regulations and has been amended by S.I. 1997/2781.

⁽³⁵⁾ Schedule 13B was inserted by S.I. 1994/1984 and has been amended by S.I. 1997/2489.

- (a) a notice as mentioned in paragraph 3(1) or (2) of Schedule 6 to the 2BCD Regulations was given as respects the firm under paragraph 1(2)(b) of that Schedule;
- (b) a notice as mentioned in paragraph 3 of Schedule 6 to the ISD Regulations was given as respects the firm under paragraph 1(2)(b) of that Schedule; or
- (c) a notice and certificate were given as respects the firm under paragraph 1(2)(b) of Schedule 2G to the Insurance Companies Act or paragraph 1(2)(b) of Schedule 13B to the Friendly Societies Act,

the notice is (or the notice and certificate are) to be treated as the consent notice required by paragraph 19(4) of Schedule 3 and, if given otherwise than by the Authority, as having been given by the Authority.

Provision of services by UK firm

101.—(1) This article applies to a UK firm within the meaning of Schedule 3.

(2) But this article does not apply where—

- (a) the condition in paragraph 20(1) of Schedule 3 is by virtue of article 77(4) of the Authorised Persons Order treated as satisfied; or
- (b) by virtue of article 77(6) of the Authorised Persons Order, the consent notice is deemed to have been given by the Authority under paragraph 20(3A)(a) of Schedule 3 and the notice required by paragraph 20(4B) of that Schedule is deemed to have been received by the firm.

(3) If, before commencement a notice was given by the firm under—

- (a) paragraph 5(2)(a) of Schedule 2G to the Insurance Companies Act; or
- (b) paragraph 5(2)(a) of Schedule 13B to the Friendly Societies Act,

and the case does not fall within paragraph (4), the notice is to be treated as the notice of intention required by paragraph 20(1) of Schedule 3 and, if it was not given to the Authority as required by paragraph 20(1), as having been so given.

(4) The case falls within this paragraph if in response to the notice a notice of refusal was given to the firm under paragraph 5(6) of Schedule 2G to the Insurance Companies Act or paragraph 5(6) of Schedule 13B to the Friendly Societies Act.

(5) If before commencement a notice and certificate were given as respects the firm under paragraph 5(2)(b) of Schedule 2G to the Insurance Companies Act or paragraph 5(2)(b) of Schedule 13B to the Friendly Societies Act, the notice and certificate are to be treated as the consent notice required by paragraph 20(3A)(a) of Schedule 3 and, if given otherwise than by the Authority, as having been given by the Authority.

PART IX

APPEALS

CHAPTER I

REFERENCES TO THE FINANCIAL SERVICES TRIBUNAL

Interpretation

102. In this Chapter—

- (a) references to section 97 are references to section 97 of the Financial Services Act (as it has effect by virtue of the 2BCD Regulations and ISD Regulations);

- (b) “the Financial Services Tribunal” means the Financial Services Tribunal established under Chapter IX of Part I of the Financial Services Act.

Request for reference: further consideration by the Authority

103.—(1) This article applies where before commencement—

- (a) a person has required the Authority under section 97(1)(a) to refer a matter to the Financial Services Tribunal;
- (b) the period of 28 days referred in section 97(1) has not expired, and
- (c) the Authority has not served on the person a written notice under section 97(2) or (3).

(2) Where this article applies and the notice to which the request for a reference relates was served under section 29, 34, 59(4) or 60(2) of the Financial Services Act (or is treated for the purposes of section 97(1) as having been so served⁽³⁶⁾), the Authority may, before the expiry of the period mentioned in section 97(1), notify the person (and any person on whom a copy of the notice had been served) that it has decided—

- (a) to grant the application (where the notice proposed the refusal of an application);
- (b) not to take action in relation to the matter covered by the notice (where the notice proposed the withdrawal or suspension of authorisation or the giving of a direction or publishing of a statement); or
- (c) to withdraw its objection (where the notice was a notice of objection to the acquisition of control).

(3) Where this article applies, the notice to which the request for a reference relates was served under section 70 of the Financial Services Act and the matter was the refusal of an application for the rescission or variation of a prohibition or requirement, the Authority may, before the expiry of the period mentioned in section 97(1), notify the person (and any person on whom a copy of the notice had been served) that it has decided to grant the application.

(4) Where this article applies, the notice to which the request for a reference relates was served under section 70 of the Financial Services Act and the matter was the imposition or variation of a prohibition or requirement which has not yet taken effect, the Authority may, before the expiry of the period mentioned in section 97(1), notify the person (and any person on whom a copy of the notice had been served) that it has decided not to take action in relation to the matter covered by the notice.

(5) Where this article applies and the request for a reference relates to a decision to refuse to give a notice under paragraph 3 or 7(1) of Schedule 6 to the ISD Regulations, the Authority may, before the expiry of the period mentioned in section 97(1), notify the person that it has decided to give (as the case may be)—

- (a) a consent notice under paragraph 19 of Schedule 3; or
- (b) a notice under regulation 11(5)(a) of the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001⁽³⁷⁾.

(6) Where, before commencement, a substituted notice complying with section 97(5) was served by the Authority pursuant to section 97(4) this article has effect in relation to that notice as if the period mentioned in paragraph (1)(b) was the period of 28 days after the date of service of the original notice or 14 days after the date of service of the substituted notice, whichever ends later.

⁽³⁶⁾ The reference in section 97 to a notice served under section 29 of the Financial Services Act includes a reference to a notice served under Schedule 4, paragraph 1 to the 2BCD Regulations or to the ISD Regulations (imposing a prohibition under regulation 15) (see Schedule 4 paragraph 2 of the ISD Regulations and the 2BCD Regulations); the reference in section 97 to a notice served under section 59(4) includes a reference to a notice of objection served by the Authority under regulation 42 of the ISD Regulations (see regulation 42(10) of the ISD Regulations).

⁽³⁷⁾ S.I. 2001/2511.

Effect of notification pursuant to article 103

104.—(1) Where the Authority notifies the person as described in article 103(2), (3) or (4) the Authority must not refer the matter to the Financial Services Tribunal.

(2) Where the Authority notifies the person pursuant to article 103(2)(a) or (3) that it has decided to grant an application, it must grant the application as it has effect after commencement by virtue of article 3 or 4 of this Order.

(3) Where the Authority notifies the person pursuant to article 103(5) it must (as the case may be)—

- (a) give the consent notice and otherwise comply with the relevant procedure set out in paragraph 19 of Schedule 3; or
- (b) comply with regulation 11(5) of the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001.

Transitional reference to Financial Services Tribunal

105.—(1) Where the Authority does not notify the person as described in article 103(2), (3), (4) or (5), the Authority must refer the matter to the Financial Services Tribunal.

(2) Notwithstanding the repeal of the Financial Services Act, sections 96, 97(6), 99, 100 and 101 of Schedule 6 to that Act continue to have effect in relation to transitional references with the modifications set out in article 108.

(3) A “transitional reference” is—

- (a) a reference—
 - (i) which was made by the Authority before commencement to the Financial Services Tribunal pursuant to section 97(1);
 - (ii) which was not withdrawn before commencement; and
 - (iii) on which the tribunal has not reported before commencement; or
- (b) a reference made by the Authority to the Financial Services Tribunal under paragraph (1).

Task of the Financial Services Tribunal on transitional reference

106.—(1) On a transitional reference made at the request of a person falling within section 97(1)(a), the Financial Services Tribunal must—

- (a) investigate the case and report on it to the Authority,
- (b) state in that report its recommendations as to what would be the appropriate action (if any) for the Authority to take in the exercise of the powers conferred on the Authority by or under the Act and give the reasons for those recommendations.

(2) The Authority must exercise its powers in the manner most appropriate to give effect to the Financial Services Tribunal’s recommendations.

(3) The Financial Services Tribunal must send a copy of its report to the person at whose request the case was referred to it.

Appropriate decisions on determination of transitional reference

107.—(1) Where the transitional reference made at the request of a person falling within section 97(1)(a) concerned a notice served under section 29, 34, or 70 of the Financial Services Act, the Authority may not exercise its powers under section 205 or 206 of the Act in giving effect to the recommendations of the Financial Services Tribunal.

(2) Where the transitional reference made at the request of a person falling within section 97(1)(a) concerned a notice served under section 59(4) or 60 of the Financial Services Act, the Authority may not exercise its powers under Part IV or Part XIII of the Act in giving effect to the recommendations of the Financial Services Tribunal.

Modification of section 100 of Financial Services Act in relation to transitional reference

108.—(1) Section 100 of the Financial Services Act has effect in relation to a transitional reference as if the following were substituted for subsection (2)—

“(2) The Authority may at any such time withdraw any reference made at the request of a person on whom a notice was served under any of the provisions mentioned in subsection (1) (a) of section 97 above if it decides—

- (a) to grant the application (where the notice proposed the refusal of an application);
- (b) not to take action in relation to the matter covered by the notice (where the notice proposed the withdrawal or suspension of authorisation or the giving of a direction or publishing of a statement);
- (c) to withdraw its objection (where the notice was a notice of objection to an acquisition of control);
- (d) to give a consent notice (where the Authority had refused consent under paragraph 3 or 7 of Schedule 6 to the ISD Regulations);
- (e) to consent to a change of details (where the Authority had refused consent pursuant to regulation 11(6) of the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001),

and notifies the person who requested the reference of that decision.

(2A) But a reference may not be withdrawn under subsection (2) unless the decision to withdraw it is made and the notice is given before any prohibition, requirement or variation has taken effect.”.

(2) Section 100 of the Financial Services Act has effect in relation to a transitional reference as if the following were substituted for subsection (5)—

“(5) Where a person on whom a notice was served under section 29, 34 or 60 above withdraws a case from the Tribunal, the Financial Services and Markets Act 2000 (Transitional Provisions) (Partly Completed Procedures) Order 2001 applies to him as if the period for such a reference had expired before commencement (within the meaning of that Order) without such a reference being required and the Authority had given notice (as the case may be)—

- (a) under section 29(5)(a);
- (b) under section 34(5)(a);
- (c) under section 60(5) that the statement is to be published;
- (d) under paragraph 1(5)(a) of Schedule 4 to the Banking Coordination (Second Council Directive) Regulations 1992; or
- (e) under paragraph 1(5)(a) of Schedule 4 to the Investment Services Regulations 1995.”.

Test to be applied by the Financial Services Tribunal

109.—(1) Where in any transitional reference the issues arising for consideration included the issue whether a person authorised under the Financial Services Act was a fit and proper person to carry on investment business (within the meaning of that Act), the Financial Services Tribunal must

consider instead whether that person is failing or is likely to fail to satisfy the threshold conditions (within the meaning of section 41 of the Act).

(2) Where in any transitional reference the issues arising for consideration included the issue whether a person was a fit and proper person to be employed in connection with investment business (within the meaning of the Financial Services Act) or investment business of a particular kind, the Financial Services Tribunal must consider instead whether that person is a fit and proper person to perform the functions in relation to a regulated activity corresponding to that investment business which he was performing before commencement.

(3) Where in any transitional reference the issues arising for consideration included the issue whether a person was a fit and proper person to be a controller of any description to which regulation 41 of the ISD Regulations applies, the Financial Services Tribunal must consider instead—

- (a) in a case where, after commencement, the person would require the approval of the Authority under section 59, the question whether that person is a fit and proper person to perform the functions in relation to a regulated activity corresponding to the investment business which he was performing before commencement;
- (b) in a case where, after commencement, the person would have control over a UK authorised person (within the meaning of Part XII of the Act), the question whether the person meets the approval requirements within the meaning of section 186.

Decisions taken by the Authority giving effect to Financial Services Tribunal recommendations

110.—(1) Where the Authority gives effect to a recommendation of the Financial Services Tribunal by exercising its power under section 45, sections 53, 54 and 55 do not apply to the exercise of that power.

(2) Where the Authority gives effect to a recommendation of the Financial Services Tribunal by exercising its power under section 52(6) or (7), section 52(9) does not apply to the exercise of that power.

(3) Where the Authority gives effect to a recommendation of the Financial Services Tribunal by exercising its power under section 56, sections 57 and 58 do not apply to the exercise of that power.

(4) Where the Authority gives effect to a recommendation of the Financial Services Tribunal by exercising its power under section 186(1), 185(1) or 187, section 183(3), 185(3) or 188 (as the case may be) does not apply to the exercise of that power.

(5) Where the Authority gives effect to a recommendation of the Financial Services Tribunal by exercising its power under section 196 or 200(1), section 197 and section 200(2) to (5) do not apply to the exercise of that power.

(6) Where the Authority gives effect to a recommendation of the Financial Services Tribunal by exercising its power under section 205 or 206, sections 207, 208 and 210(7) do not apply to the exercise of that power.

(7) Where the Authority gives effect to a recommendation of the Financial Services Tribunal by exercising any of the powers mentioned in paragraphs (1) to (6), it shall exercise that power by giving to the parties to the transitional reference a written notice and sections 390(3), (4) and (7) and 391(4) apply to that notice as they apply to a final notice.

Modification of Financial Services Tribunal Rules

111. The Financial Services Tribunal (Conduct of Investigations) Rules 1988(38) have effect after commencement (notwithstanding the repeal of the Financial Services Act) in relation to a transitional reference with the following modifications—

- (a) references in the rules to a matter referred to the Tribunal under section 97 must be read as references to transitional references within the meaning of article 105(3);
- (b) for rule 17 substitute the following—

“In a transitional reference made at the request of a person falling within section 97(1)(a) of the Act, the Tribunal shall inform the relevant authority and the applicant of the recommendation it is minded to give as to the appropriate action (if any) for the relevant authority to take and shall afford the applicant and the relevant authority fourteen days in which to make written or oral representations to it before making its report.”.

CHAPTER II**APPEALS TO THE BANKING APPEAL TRIBUNAL****Preservation of right of appeal under the Banking Act**

112. Where, before commencement—

- (a) a decision has been taken against which an appeal may be brought to a tribunal constituted in accordance with section 28 of the Banking Act (“a banking appeal tribunal”);
- (b) the period in which an appeal against that decision could be made has not expired; and
- (c) no notice of appeal has been sent in relation to the decision,

section 27 of the Banking Act (as it has effect by virtue of the 2BCD Regulations) applies to that decision and the repeal of that Act does not affect the continuity of the period set by or under that Act as the period within which an appeal against that decision may be brought.

Application of the Banking Act to transitional appeals

113.—(1) Notwithstanding the repeal of the Banking Act, sections 27(4) and (5), 28, 30 and 31 of that Act apply to a transitional Banking Act appeal, subject to the modifications set out in this article.

(2) A “transitional Banking Act appeal” is

- (a) an appeal brought in accordance with section 28 of the Banking Act which has not been determined before commencement; or
- (b) an appeal brought after commencement pursuant to article 112.

(3) In section 27 of the Banking Act, for subsection (5) substitute the following—

“(5) The Tribunal may suspend the operation of a decision imposing or varying a restriction or giving or varying a direction pending the determination of an appeal in respect of that decision.”

(4) In subsection (3) of section 30 of the Banking Act, for the words “appeals under this Part of this Act” are substituted

“transitional Banking Act appeals within the meaning of article 113 of the Financial Services and Markets Act 2000 (Transitional Provisions) (Partly Completed Procedures) Order 2001”.

Task of the banking appeal tribunal in relation to a transitional Banking Act appeal

114.—(1) On a transitional Banking Act appeal brought by an institution under section 27(1) of the Banking Act, the question for the determination of the banking appeal tribunal is whether, for the reasons adduced by the appellant, the decision was unlawful or was not justified by the evidence on which it was based.

(2) On making its determination, the banking appeal tribunal must remit the matter to the Authority with such directions (if any) as the tribunal considers appropriate for giving effect to its determination.

(3) The Authority must exercise its powers under—

(a) Part IV, V, XII or XIII of the Act;

(b) Schedule 3 to the Act;

(c) the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001, in the manner most appropriate to give effect to the determination of, and any direction given by, the banking appeal tribunal.

(4) Notwithstanding the repeal of the Banking Act, section 29(5), (6) and (8) of that Act apply to a transitional Banking Act appeal brought by a person under section 27(2) of the Banking Act.

(5) The banking appeal tribunal must send a copy of its determination and directions (if any) to the appellant and the Authority.

Decisions taken by the Authority giving effect to banking appeal tribunal determination

115.—(1) Where the Authority implements a direction given by the banking appeal tribunal by exercising its power under section 45, sections 53, 54 and 55 do not apply to the exercise of that power.

(2) Where the Authority implements a direction given by the banking appeal tribunal by exercising its power under section 52(6) or (7), section 52(9) does not apply to the exercise of that power.

(3) Where the Authority implements a direction given by the banking appeal tribunal by exercising its power under section 186(1), 185(1) or 187, section 183(3), 185(3) or 188 (as the case may be) does not apply to the exercise of that power.

(4) Where the Authority implements a direction given by the banking appeal tribunal by exercising its power under section 196 or 200(1), section 197 and section 200(2) to (5) do not apply to the exercise of that power.

(5) Where the Authority implements a direction giving by the banking appeal tribunal by exercising any of the powers mentioned in paragraphs (1) to (4), it must exercise that power by giving the parties written notice and sections 390(7) and 391(4) apply to that notice as they apply to a final notice.

Test to be applied by banking appeal tribunal

116.—(1) Where in any transitional Banking Act appeal the issues arising for consideration included the issue whether a person was a fit and proper person to hold a particular position with an institution (within the meaning of Schedule 3 to the Banking Act), the banking appeal tribunal must consider instead whether—

(a) the authorised person with whom that person held the position is failing or is likely to fail to satisfy the threshold conditions (within the meaning of section 41); and

- (b) whether that person is a fit and proper person to perform the functions in relation to a regulated activity which corresponds to the business in relation to which he was engaged before commencement.
- (2) Where in any transitional Banking Act appeal the issues arising for consideration included the issue whether a person was a fit and proper person to be a controller of any description to which section 21 of the Banking Act applies, the banking appeal tribunal must consider instead—
 - (a) in a case where, after commencement, the person would require the approval of the Authority under section 59, the question whether that person is a fit and proper person to perform functions in relation to a regulated activity corresponding to the business in relation to which he was engaged before commencement;
 - (b) in a case where, after commencement, the person would have control over a UK authorised person (within the meaning of Part XII of the Act), the question whether the person meets the approval requirements within the meaning of section 186.

Modifications to Banking Appeal Tribunal Regulations 1987

117. The Banking Appeal Regulations 1987⁽³⁹⁾ and the Banking Appeal Tribunal (Scottish Appeals) Regulations 1987⁽⁴⁰⁾ continue to apply after commencement (notwithstanding their revocation and the repeal of the Banking Act) with the following modifications—

- (a) in regulation 2(1) after the definition of “the chairman” is inserted—
 - ““transitional Banking Act appeal” has the meaning given in article 113 of the Financial Services and Markets Act 2000 (Transitional Provisions) (Partly Completed Procedures) Order 2001;”;
- (b) at the end of regulation 2 the following paragraph is inserted—
 - “(3) In these Regulations—
 - (a) references to an appeal under section 27(1) of the Act shall be construed as references to a transitional Banking Act appeal brought by an institution under section 27(1); and
 - (b) references to an appeal under section 27(2) of the Act shall be construed as references to a transitional Banking Act appeal brought by a person under section 27(2);
 - (c) references to an appeal under section 27(3) of the Act shall be construed as references to a transitional Banking Act appeal brought by a person under section 27(3).”;
- (c) in regulation 3 for the words “appeals under Part I of the Act” are substituted “transitional Banking Act appeals”;
- (d) in regulation 8, paragraph (1) is replaced by the following—
 - “The appellant shall send to the secretary a notice setting out the grounds of appeal within—
 - (a) 28 days from the date on which the Authority served notice in writing on the appellant of its decision in the case of an appeal against the decision of the Authority (or any finding relating thereto) to revoke authorisation, and
 - (b) 14 days of serving the notice of appeal in any other case.”;
- (e) in regulation 10, paragraph (2) is omitted;

⁽³⁹⁾ S.I. 1987/1299. The Regulations were amended by S.I. 1993/982 and S.I. 1998/1129.

⁽⁴⁰⁾ S.I. 1987/1336. The Regulations were amended by S.I. 1993/1061 (S.150) and S.I. 1998/1129.

- (f) in regulation 11(1), for the words “of the operation of any restriction or direction or any variation of a restriction or direction” are substituted the words “of a decision”;
- (g) after regulation 14 is inserted the following regulation—

“14A Hearing as to appropriate action

In the case of an appeal under section 27(1) or section 27(3), the Tribunal shall inform the parties of the directions (if any) it is minded to give to the Authority and shall afford the parties fourteen days in which to make written representations to it before making its determination.”;

- (h) in regulation 15, paragraph (1) is omitted;
- (i) in regulation 16(4) the words after “dismissed” are omitted.

CHAPTER III

APPEALS TO FRIENDLY SOCIETIES ACT TRIBUNAL

Interpretation

118. In this Chapter—

- (a) references to “the original Friendly Societies Act” are references to that Act as it had effect immediately before commencement;
- (b) references to “the amended Friendly Societies Act” are references to that Act as it has effect immediately after commencement by virtue of Schedule 18, the Financial Services and Markets Act 2000 (Mutual Societies) Order 2001 or any other order made under the Act.

Preservation of right of appeal under Friendly Societies Act

119.—(1) In this article a “pre-commencement decision” means—

- (a) a decision falling within section 58(1) of the original Friendly Societies Act;
- (b) a determination or requirement falling within section 58(2) of that Act.

(2) Where, before commencement—

- (a) a pre-commencement decision has been taken against which an appeal may be brought to a tribunal constituted in accordance with section 59 of the original Friendly Societies Act (“a friendly society tribunal”);
- (b) the period in which an appeal against that decision could be brought has not expired; and
- (c) no notice of appeal has been sent in relation to the decision,

an appeal may be brought against that decision under section 58(1) or (2) of the original Friendly Societies Act and the repeal of those subsections or the repeal or amendment of the section under which the decision was taken does not affect the continuity of the period set by or under the original Friendly Societies Act as the period within which an appeal against that decision may be brought.

Application of Friendly Societies Act to transitional appeals

120.—(1) Notwithstanding any repeal or amendment—

- (a) subsection (6) of section 58, subsections (1), (2), (3), (3A)(41) (6) and (13) of section 59 and sections 60 and 61 of the original Friendly Societies Act apply to transitional friendly society appeals, subject to the modifications set out in this article;
- (b) section 58(7) of the original Friendly Societies Act applies to a transitional friendly society appeal brought by a person under subsection (2) of that section (but as if the reference to subsection (8) were omitted).
- (2) A “transitional friendly society appeal” is—
 - (a) an appeal which has been brought in accordance with section 58 of the original Friendly Societies Act but which has not been determined before commencement; or
 - (b) an appeal brought after commencement pursuant to article 119.
- (3) For the purposes of this Chapter, in the provisions mentioned in paragraph (1)—
 - (a) references to appeals brought under section 58 of the original Friendly Societies Act are to be read as references to transitional friendly society appeals; and
 - (b) references to appeals brought under section 58(2) are to be read as references to transitional friendly society appeals brought under that subsection.
- (4) In section 61(1) of the original Friendly Societies Act, the reference to “the Commission” is to be read as a reference to the Authority and this Chapter applies to any matter remitted to the friendly society tribunal pursuant to that section as it applies to a transitional friendly society appeal.

Task of friendly society tribunal in relation to a transitional friendly society appeal

121.—(1) On a transitional friendly society appeal brought by a society under section 58(1) of the original Friendly Societies Act, the question for the determination of the friendly society tribunal is whether, for the reasons adduced by the appellant, the decision was unlawful or was not justified by the evidence on which it was based.

(2) On making its determination the friendly society tribunal must remit the matter to the Authority with such directions (if any) as the tribunal considers appropriate for giving effect to its determination.

(3) The Authority must exercise its powers under Part IV of the Act (or under the amended Friendly Societies Act) in the manner most appropriate to give effect to the friendly society tribunal’s directions.

Decisions taken by the Authority giving effect to friendly society tribunal determinations

122.—(1) Where the Authority implements a direction given by a friendly society tribunal by exercising its power under section 45, sections 53, 54 and 55 do not apply to the exercise of that power.

(2) Where the Authority implements a direction given by a friendly society tribunal by exercising its power under section 52(6) or (7), section 52(9) does not apply to the exercise of that power.

(3) Where the Authority implements a direction given by a friendly society tribunal by exercising a power under the amended Friendly Societies Act the procedure provided for under that Act does not apply to the exercise of that power.

(4) Where the Authority implements a direction given by a friendly society tribunal by exercising the powers mentioned in paragraph (1), (2) or (3), it must exercise that power by giving the parties written notice and sections 390(7) and 391(4) apply to that notice as they apply to a final notice.

(41) Subsection (3A) was inserted by the Judicial Pensions and Retirement Act 1993.

Test to be applied by friendly society tribunal

123.—(1) Where in any transitional friendly society appeal the issues arising for consideration included the society's actual or anticipated failure to satisfy one or more of the criteria of prudent management in section 50(3) of the original Friendly Societies Act, the friendly society tribunal must consider instead whether that society is failing or is likely to fail to satisfy the threshold conditions (within the meaning of section 41).

(2) Where in any transitional friendly society appeal the issues arising for consideration included the question whether a person was a fit and proper person to hold the particular position that he held, the friendly society tribunal must consider instead whether that person is a fit and proper person to perform the controlled functions in relation to the regulated activities which correspond to the functions which he was performing before commencement.

Modifications to Friendly Societies Appeal Tribunal Regulations 1993

124. The Friendly Societies Appeal Tribunal Regulations 1993(42) apply to transitional friendly society appeals after commencement (notwithstanding their revocation and the repeal of section 60 of the original Friendly Societies Act) with the following modifications—

- (a) the existing text of regulation 2 is numbered as paragraph (1) and after the definition of “the secretary” is inserted—
 - ““transitional friendly society appeal” has the meaning given in article 120 of Financial Services and Markets Act 2000 (Transitional Provisions) (Partly Completed Procedures) Order 2001;”;
- (b) after regulation 2(1) the following paragraph is inserted—
 - “(2) In these Regulations references to an appeal under section 58(2) of the Act shall be construed as references to a transitional friendly society appeal brought by a person under section 58(2).”
- (c) in regulation 3 for the words “appeals under section 58 of the Act against decisions of the Commission” are substituted “transitional friendly society appeals”;
- (d) in regulation 5(2) for the words “the Commission” the first time they occur are substituted “the Authority”;
- (e) in regulation 7 for the words “the Commission” are substituted “the Authority”;
- (f) in regulation 9 for the words “the Commission” are substituted the first time they occur the words “the Authority” and the words “or the Authority” are inserted after the words “the Commission” the second time they occur;
- (g) in regulations 10, 11, 12 and 13, for the words “the Commission” wherever they appear are substituted the words “the Authority”;
- (h) after regulation 13 is inserted the following regulation—

“Hearing as to appropriate action

13A The Tribunal shall inform the parties of the directions (if any) it is minded to give to the Authority and shall afford the parties fourteen days in which to make written representations to it before making its determination.”;

- (i) in regulation 14(1), for the words “the Commission” are substituted “the Authority”;
- (j) in regulation 15 for the words “the Commission” wherever they occur are substituted “the Authority”;

(42) S.I. 1993/2002.

- (k) in regulation 19 for the words “the Commission” both times they appear are substituted the words “the Authority”.

CHAPTER IV

APPEALS TO BUILDING SOCIETIES ACT TRIBUNAL

Interpretation

125. In this Chapter—

- (a) references to “the original Building Societies Act” are references to that Act as it has effect immediately before commencement;
- (b) references to “the amended Building Societies Act” are references to that Act as it has effect immediately after commencement by virtue of Schedule 18, the Financial Services and Markets Act 2000 (Mutual Societies) Order 2001 or any other order made under the Act.

Preservation of right of appeal under Building Societies Act

126. In this article a “pre-commencement decision” means—

- (a) a decision falling within section 46(1) of the original Building Societies Act (as it has effect by virtue of paragraph 9 of Schedule 6 to the 2BCD Regulations);
- (b) a determination or requirement falling within section 46(2) of that Act.

(2) Where, before commencement—

- (a) a pre-commencement decision was taken against which an appeal may be brought to a tribunal constituted in accordance with section 47 of the original Building Societies Act (“a building society tribunal”);
- (b) the period in which an appeal against that decision could be brought has not expired; and
- (c) no notice of appeal has been sent in relation to the decision,

an appeal may be brought against that decision under section 46(1) or (2) of the original Building Societies Act and the repeal of that section or the repeal or amendment of the section under which the decision was taken does not affect the continuity of the period set by or under that Act as the period within which an appeal against that decision may be brought.

Application of original Building Societies Act to transitional appeals

127.—(1) Notwithstanding the repeal or amendment of provisions in the original Building Societies Act subsections (5) and (6) of section 46, subsections (1), (2), (3), (3A), (5) and (11) of section 47 and sections 48 and 49 of that Act apply to transitional building society appeals, subject to the modifications set out in this article.

(2) A “transitional building society appeal” is—

- (a) an appeal which has been brought in accordance with section 46 of the original Building Societies Act but which has not been determined before commencement; or
- (b) an appeal brought after commencement pursuant to article 126.

(3) For the purposes of this Chapter, in the provisions mentioned in paragraph (1)—

- (a) references to appeals brought under section 46 of the original Building Societies Act are to be read as references to transitional building society appeals; and

- (b) references to appeals brought under section 46(2) are to be read as references to transitional building society appeals against pre-commencement decisions falling within article 126(1)(b).

(4) In section 46(5) of the original Building Societies Act, the reference to subsection (3) of that section is omitted.

(5) In section 49 of the original Building Societies Act, the reference to “the Commission” is to be read as a reference to the Authority and this Chapter applies to any matter remitted to the building society tribunal pursuant to that section as it applies to a transitional building society appeal.

Task of the building society tribunal in relation to a transitional building society appeal

128.—(1) On a transitional building society appeal brought under section 46(1) or (2) of the original Building Societies Act, the question for the determination of the building society tribunal is whether, for the reasons adduced by the appellant, the decision was unlawful or was not justified by the evidence on which it was based.

(2) On making its determination the building society tribunal must remit the matter to the Authority with such directions (if any) as the tribunal considers appropriate for giving effect to its determination.

(3) The Authority must exercise its powers under—

- (a) Parts IV and V of the Act;
- (b) Schedule 3 to the Act;
- (c) the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001;
- (d) the amended Building Societies Act,

in the manner most appropriate to give effect to the building society tribunal’s direction.

Decisions taken by the Authority giving effect to building society tribunal determinations

129. Article 122 applies (with appropriate modifications) where the Authority gives effect to a direction given by a building society tribunal as it applies in respect of directions given by a friendly society tribunal.

Test to be applied by building society tribunal

130.—(1) Where in any transitional building society appeal the issues arising for consideration included the society’s actual or anticipated failure to satisfy one or more of the criteria of prudent management in section 45 of the original Building Societies Act, the building society tribunal must consider instead whether that society is failing or is likely to fail to satisfy the threshold conditions (within the meaning of section 41).

(2) Where in any transitional building society appeal the issues arising for consideration included whether a person was a fit and proper person to hold the particular position that he held, the building society tribunal must consider instead whether that person is a fit and proper person to perform the controlled functions in relation to the regulated activities which correspond to the functions he was performing before commencement.

Modifications to Building Societies Appeal Tribunal Regulations 1987

131. The Building Societies Appeal Tribunal Regulations 1987⁽⁴³⁾ apply to transitional building society appeals after commencement (notwithstanding their revocation and the repeal of section 48 of the original Building Societies Act) with the following modifications—

- (a) in regulation 2(1), after the definition of “the secretary” is inserted—
 - ““transitional building society appeal” has the meaning given in article 127 of the Financial Services and Markets Act 2000 (Transitional Provisions) (Partly Completed Procedures) Order 2001”;
- (b) at the end of regulation 2, the following paragraph is inserted—
 - “(3) In these Regulations references to an appeal under section 46(2) of the Act shall be construed as references to a transitional building society appeal brought by a person under section 46(2).”
- (c) in regulation 3 for the words “appeals under section 46 of the Act against decisions of the Commission” are substituted “transitional building society appeals”;
- (d) in regulation 5(2) for the words “the Commission” the first time they occur are substituted “the Authority”;
- (e) in regulation 7 for the words “the Commission” are substituted “the Authority”;
- (f) in regulation 9 for the words “the Commission” are substituted the first time they occur the words “the Authority” and the words “or the Authority” are inserted after the words “the Commission” the second time they occur;
- (g) in regulations 10, 11, 12 and 13, for the words “the Commission” wherever they occur are substituted the words “the Authority”;
- (h) after regulation 13 is inserted the following regulation—

“Hearing as to appropriate action

13A The Tribunal shall inform the parties of the directions (if any) it is minded to give to the Authority and shall afford the parties fourteen days in which to make written representations to it before making its determination.”;

- (i) in regulation 14(1) for the words “the Commission” are substituted “the Authority”;
- (j) in regulation 15 for the words “the Commission” wherever they occur are substituted “the Authority”;
- (k) in regulation 19 for the words “the Commission” both times they occur are substituted the words “the Authority”.

6th November 2001

Tony McNulty
Graham Stringer
 Two of the Lords Commissioners of Her
 Majesty’s Treasury

⁽⁴³⁾ S.I. 1987/891. The Regulations have been amended by the 2BCD Regulations, by S.I. 1993/983 and S.I. 1999/678.

SCHEDULE

Articles 63, 80 and 95

Modification of the Financial Services and Markets Tribunal Rules

1. In this Schedule—
 - (a) “the Rules” means The Financial Services and Markets Tribunal Rules 2001;
 - (b) “the Tribunal” means the Financial Services and Markets Tribunal established under Part IX of the Act;
 - (c) a reference to a rule by number alone means the rule so numbered in the Rules.
2. The Tribunal may adapt the Rules when considering a reference made under article 62, 79 or 95 in any manner it considers necessary or expedient having regard to the provisions of Part VI of this Order and the modifications made to the Rules by this Schedule are without prejudice to that power.
3. Where a matter is referred to the Tribunal under article 62, the Rules apply to that reference with the modifications set out in paragraphs 4 to 12.
4. The references in the following rules to “the Authority notice” are to be taken as references to the determination of the interim tribunal under article 58(3)—
 - (a) rule 4(2), (3)(e) and (5);
 - (b) rule 10(1)(e) and (6);
5. In a reference where the applicant is the Authority, rule 4(7) has effect as if—
 - (a) the reference to the applicant were a reference to the Authority;
 - (b) the reference to the Authority were a reference to the other party.
6. In a case where the Authority is not the applicant rule 5(1) and (2) applies as if the references to the referred action were references to the determination of the interim tribunal.
7. In a case where the Authority is the applicant—
 - (a) rule 5(1) applies as if for the words “in support of the referred action” were substituted “identifying all the matters contained in the determination of the interim tribunal that it disputes, giving the reasons for disputing them”;
 - (b) rule 5(2) applies as if the references to the referred action were references to the incomplete disciplinary proceedings which the interim tribunal had determined.
8. In a case where the Authority is the applicant, the following rules apply as if references to the applicant were references to the other party—
 - (a) rule 6 (applicant’s reply);
 - (b) rule 7 (secondary disclosure by the Authority);
 - (c) rule 8 (exceptions to disclosure);
 - (d) rule 10(9)(b) (omission of reference particulars from the register);
 - (e) rule 11 (filing of subsequent notices);
 - (f) rule 14(3)(c) (failure to file reply within time);
 - (g) rule 17(3)(b)(ii)(hearings in public);
 - (h) rule 31(3)(b)(sending notices).
9. Rule 10(2)
applies as if the words from “interests of justice” to the end of that paragraph were omitted.

10. Rule 11 applies as if the reference to the referred action were a reference to the failure, misconduct or other contravention which was the subject of the incomplete disciplinary proceedings determined by the interim tribunal.

11. In a case where the Authority is the applicant, rule 14 has effect as if the references to the Authority in paragraphs (2) and (3)(a) were references to the other party.

12. The duties of the Authority to set out information under rule 5(2) (statement of case) or to list material under rule 5(3) or 7(1) (lists of documents and further material) apply only to information, documents or material which relates to the issue that the Tribunal may consider in accordance with article 62(2)

13. Where a matter is referred to the Tribunal under article 79, the Rules apply to that reference with the modifications set out in paragraphs 14 to 16.

14. The references in the following rules to “the Authority notice” are to be taken to be references to the decision to impose a disciplinary measure within the meaning of article 76—

- (a) rule 4(5) (filing of copy of decision);
- (b) rule 10(1)(e) and (6) (direction suspending effect of decision);
- (c) rule 10(2) (notification of right to make reference).

15. The references in the following rules to the “referred action” are to be taken to be references to the decision to impose a disciplinary measure within the meaning of article 76—

- (a) rule 5 (Authority’s Statement of case);
- (b) rule 10(2)(a) (notification of right to make reference).

16. The duties of the Authority to set out information under rule 5(2) (statement of case) or to list material under rule 5(3) or 7(1) (lists of documents and further material) apply only to information, documents or material which relate to the issues that the Tribunal may consider in accordance with article 79(2).

17. Where a matter is referred to the Tribunal by a third party under article 95(2), the Rules apply to that reference—

- (a) as if the references to the “Authority’s notice” were to the Authority’s notice under section 53(7) or (8)(b) or section 197(6) or (7)(b) which was copied to the applicant pursuant to article 94;
- (b) as if “referred action” means the action set out in the notice given under 53(7) or (8)(b) or section 197(6) or (7)(b);
- (c) the duties of the Authority to set out information under rule 5(2) (statement of case) or to list material under rule 5(3) or 7(1) (lists of documents and further material) apply only to information documents or material which relate to the matters referred to the Tribunal in accordance with article 95(2).

EXPLANATORY NOTE

(This Note does not form part of the Order)

This Order makes transitional provision for procedures which are partly completed on 1st December 2001 which is the day when the main provisions of the Financial Services and Markets Act 2000 (c. 8) (“the Act”) come into force. On that day, the legislative provisions under which those procedures were commenced will be repealed and replaced by the provisions of the Act.

Part I of the Order provides that the Order comes into force on 1st December 2001. This date is referred to in the Order as “commencement”.

Chapter I of Part II sets out how applications which have been made under the legislation to be repealed are to be treated after commencement. Applications, for example for authorisation to carry on certain activities or for the lifting or variation of restrictions imposed under the earlier legislation, are generally carried forward as if they were made to the Authority under the corresponding provision of the Act. Where before commencement, the Authority has indicated that it is minded to refuse an application, that notification lapses and the Authority must reconsider the application in accordance with the Act.

Chapter II of Part II concerns the position where, before commencement, the Authority has started proceedings on its own initiative to withdraw, suspend or restrict authorisation under an existing provision. In these circumstances, the notice served by the Authority is treated after commencement as a notice served under the corresponding provision of the Act. The Order provides for how the contents of the original notice are to be construed having regard to the requirements for notices served under the Act.

Part III of the Order deals with similar matters relating to friendly societies and building societies. Applications for authorisation, or partly completed proceedings to impose restrictions on such societies, will be carried forward under the corresponding provisions of the Act. Articles 35 to 38 deal with provisions of the Building Societies Act 1986 which are amended on commencement rather than repealed. The Financial Services and Markets Act 2000 (Mutual Societies) Order 2001 (S.I.2001/2671) amends certain sections of that 1986 Act to bring the procedures into line with those set out in the Financial Services and Markets Act 2000 and the provisions in this Order transfer partly completed proceedings brought under the original provisions into proceedings under the amended provisions.

Part IV concerns pending authorisations of unit trust schemes and recognition of collective investment schemes under Chapter VIII of Part I of the Financial Services Act 1986. The notices are generally carried forward on commencement as if they had been served under the corresponding provision in Part XVII of the Act.

Part V provides for the transition of other partly completed procedures, namely those in relation to applications by people who will need to be approved persons for the purposes of Part V of the Act, to the making of public statements of misconduct under section 60 of the Financial Services Act and to persons who are subject to proceedings for disqualification under the Financial Services Act. The provisions relating to approved persons deal in part with the carrying forward of proceedings which are pending under the regimes for controllers in Part VII of the ISD Regulations, sections 21 to 26 of the Banking Act and sections 60 and 61 of the Insurance Companies Act and which relate to persons who will fall within Part V of the Act after commencement. Pending proceedings under those existing regimes which relate to persons who will fall within Part XII of the Act after commencement are provided for in the Financial Services and Markets Act 2000 (Transitional Provisions) (Controllers) Order 2001 (S.I. 2001/2637).

Part VI provides for the partly completed procedures of the recognised self-regulating organisations established under the Financial Services Act 1986. Since these organisations will cease to exist after the new Act is commenced, their proceedings will be transferred to the interim tribunal set up under Chapter IV of this Part. Alternatively the Financial Services Authority may bring proceedings under the Act against a person who was subject to incomplete disciplinary proceedings at commencement and, where this is appropriate, may adopt an expedited procedure by issuing a decision notice under the Act without first issuing a warning notice. The Order provides that appeals from the decisions of the interim tribunal may be referred to the Financial Services and Markets Tribunal.

Part VII contains supplemental provisions regarding the content of notices served before commencement which are to be carried forward as a notice under an equivalent provision in the Act. It provides for the person giving the notice to include in the notice alternative dates and periods, for example on which a restriction will take effect or within which representations may be made, where the notice may be pending at the date of commencement. Article 91 provides that notices given before commencement must explain to the recipient what the effect of the Order will be on the notice if commencement occurs before the notice has effect. Where a notice is not carried forward by a provision in the Order after commencement, that does not stop the Authority from taking into account matters covered by the notice at a later date.

Part VIII deals with the position where an EEA firm is part way through exercising its EEA right to establish a branch or provide services in the United Kingdom and where a UK firm is part way through exercising its EEA right to “passport” into another member State.

Part IX of the Order contains the transitional provisions relating to appeals which are pending at commencement and to cases where a right of appeal is still extant at commencement. Cases which were pending before the Financial Services Tribunal (or which arise when a person exercises, after commencement, a right to make a reference to that Tribunal) continue to be heard by that Tribunal. However, the provisions of Chapter I of this Part adapt the functions of the Tribunal, in particular the kinds of recommendations it can make when remitting the matter to the Authority, so that they are relevant to the legislative framework of the Act after commencement. Similarly, tribunals under the Banking Act 1987, the Friendly Societies Act 1992 and the Building Societies Act 1986 will continue to be seized of matters which were referred to them before commencement (or which are referred to them as a result of the exercise after commencement of an extant right of appeal) but their powers are modified to take account of the Act.

The Schedule to the Order sets out the modifications needed to the Rules of the Financial Services and Markets Tribunal established under Part IX of the Act when it hears references of procedures covered by the Order. These are primarily in relation to matters which were pending before a recognised self-regulating organisation before commencement.