

2001 No. 3640 (S.23)

FINANCIAL SERVICES AND MARKETS, SCOTLAND

**The Financial Services and Markets Act 2000 (Savings,
Modifications and Consequential Provisions)
(Rehabilitation of Offenders) (Scotland) Order 2001**

Made - - - - - 8th November 2001

Laid before Parliament 9th November 2001

Coming into force - - 1st December 2001

The Treasury, in exercise of the powers conferred on them by sections 426, 427 and 428(3) of the Financial Services and Markets Act 2000(a), hereby make the following Order:

Citation, commencement and duration

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Savings, Modifications and Consequential Provisions) (Rehabilitation of Offenders) (Scotland) Order 2001 and comes into force on 1st December 2001.

(2) This Order ceases to have effect at the beginning of the day on which an order made under section 4(4) or 7(4) of the Rehabilitation of Offenders Act 1974(b) that—

- (a) extends to Scotland; and
- (b) excludes or modifies the application of any of the provisions of that Act, or which provides for exceptions from the provisions of that Act, in connection with financial services,

comes into force.

Section 95 of the Banking Act 1987

2.—(1) Notwithstanding any repeal of section 95 of the Banking Act 1987(c) (restriction of Rehabilitation of Offenders Act 1974), that section continues to have effect in Scotland but with the following modifications.

(2) For subsections (2) to (6), substitute—

“(2) Nothing in section 4(1) (restriction on evidence as to spent convictions in proceedings) shall prevent the determination in any proceeding (including proceedings on appeal to any court) arising out of any relevant decision of the Authority, or prevent the admission or requirement in any such proceedings of any evidence, relating to a person’s previous convictions for any such offence as is mentioned in subsection (1) or the circumstances ancillary thereto.

(a) 2000 c. 8.

(b) 1974 c. 53.

(c) 1987 c. 22. Amended by the Bank of England Act 1998 (c. 11) Schedule 5; modified by S.I. 1992/3218.

(3) A conviction for such an offence as is mentioned in subsection (1) shall not be regarded as spent for the purposes of section 4(2) (questions relating to an individual's previous convictions) if—

- (a) the question is put by or on behalf of the Authority and the individual is a person who is or is seeking to become a director, controller or manager of a person who—
 - (i) has or had Part IV permission to accept deposits; or
 - (ii) has made an application for such permission which has not been determined; or
- (b) the question is put by or on behalf of such a person and the individual is or is seeking to become a director, controller or manager of that person,

and the person questioned is informed that by virtue of this section convictions for any such offence are to be disclosed.

(4) Section 4(3)(b) (spent convictions not to be ground for excluding person from office, occupation etc.) shall not—

- (a) prevent the Authority from—
 - (i) refusing to give, varying or cancelling Part IV permission to accept deposits on the ground that an individual is not a fit and proper person to be a director, controller or manager of the person concerned;
 - (ii) imposing a requirement under Part IV of the 2000 Act requiring the removal of an individual as director, controller or manager of such a person; or
 - (iii) exercising its powers of intervention (within the meaning of section 196 of the 2000 Act) requiring the removal of an individual as director, controller or manager of a person who has permission to accept deposits as a result of qualifying for authorisation under Schedule 3 to that Act; or
- (b) prevent a person who—
 - (i) has made an application which has not been determined for Part IV permission to accept deposits;
 - (ii) has or had such permission; or
 - (iii) has or had permission to accept deposits as a result of qualifying for authorisation under Schedule 3 to the 2000 Act,

from dismissing or excluding an individual from being a director, controller or manager, by reason, or partly by reason, of a spent conviction of that individual for such an offence as is mentioned in subsection (1) or any circumstances ancillary to such a conviction or of a failure (whether or not by that individual) to disclose such a conviction or any such circumstances.

(5) For the purposes of subsections (3) and (4) above an application for Part IV permission by a person is not determined until the determination of the Authority is communicated to the person.

(6) In this section—

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

“director”, “controller”, “manager” and “Part IV permission” have the meanings given by the 2000 Act;

“relevant decision” means a decision—

- (a) to refuse an application for Part IV permission to accept deposits;
- (b) to impose a requirement under Part IV of the 2000 Act that relates to the acceptance of deposits;
- (c) to vary or to cancel Part IV permission to accept deposits;
- (d) to refuse to vary or cancel such permission;
- (e) to serve a warning notice under section 183(3) or 185(3) of the 2000 Act; or
- (f) to serve a decision notice under section 187(3) of the 2000 Act,

except any such decision made by the Authority as a result of a direction under section 405 of the 2000 Act (directions in relation to third countries).”.

Section 189 of the Financial Services Act 1986

3.—(1) Notwithstanding any repeal of section 189 of the Financial Services Act 1986(a) (restriction of Rehabilitation of Offenders Act 1974), that section continues to have effect in Scotland but with the following modifications.

(2) In subsection (4)(b), omit the words “or 4”.

(3) For subsection (6), substitute—

“(6) In this section and that Schedule—

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

“associate”, in relation to any person (“A”), means—

(a) where A is a body corporate, a director, manager or controller of A;

(b) where A is a partnership, a partner or manager of A;

(c) where A is a registered friendly society, a trustee, manager or member of the committee of the society;

(d) where A is an unincorporated association, a member of its governing body or an officer, manager or controller of A;

(e) where A is an individual, a manager of A;

“authorised unit trust scheme”, “collective investment scheme”, “operator”, “recognised scheme” and “trustee” have the meanings given by Part XVII of the 2000 Act.

(6A) In subsection (6), “director”, “manager” and “controller” have the meanings given by the 2000 Act.”.

Schedule 14 to the Financial Services Act 1986

4.—(1) Notwithstanding any repeal of Schedule 14 to the Financial Services Act 1986(b), that Schedule continues to have effect in Scotland but with the following modifications.

(2) In Part I (exempted proceedings)—

(a) for paragraph 1, substitute—

“1. Any proceedings with respect to a decision or proposed decision of the Financial Services Authority—

(a) to refuse an application for Part IV permission to carry on relevant activities;

(b) to impose a requirement under Part IV of the 2000 Act that relates to relevant activities or to refuse to vary or cancel such a requirement;

(c) to vary or to cancel Part IV permission to carry on relevant activities;

(d) to refuse to vary or cancel such permission;

(e) to make a prohibition order under section 56 of the 2000 Act that relates to relevant activities or to refuse an application for the variation or revocation of such an order; or

(f) to refuse to make or to revoke an authorisation order under section 243 of that Act or an order under section 272 of that Act declaring a scheme to be a recognised scheme, to refuse to give its approval to a scheme being recognised by virtue of section 270 of that Act or to direct that a scheme recognised under that section is to cease to be recognised.”;

(b) omit paragraphs 2 and 3;

(c) in paragraph 4, for “under Part IV of this Act”, substitute “for listing under Part VI of the 2000 Act”;

(d) for paragraph 5, substitute—

“5. Any proceedings with respect to a decision or proposed decision of the Financial Services Authority, in relation to a friendly society which has or which is applying for Part IV permission to carry on relevant activities, to impose a requirement under Part IV of the 2000 Act that relates to relevant activities, to refuse to vary or cancel such a requirement or to vary or to cancel such permission.”; and

(a) 1986 c. 60. Amended by the Friendly Societies Act 1992 (c. 40), Schedule 22, and amended and repealed in part by the Criminal Justice Act 1993 (c. 36) Schedule 5, paragraphs 7 and 11 and Schedule 6.

(b) Amended by the Friendly Societies Act 1992 (c. 40), Schedule 18, paragraph 9.

- (e) omit paragraph 6.
- (3) In Part II (exempted questions)—
- (a) for paragraph 1, substitute—
- “1. The Financial Services Authority.
- (a) A person with Part IV permission to carry on relevant activities.
- (b) An applicant for Part IV permission to carry on relevant activities whose application has not been determined.
- (c) The operator or trustee of a collective investment scheme in respect of which a notice has been given under section 270 of the 2000 Act or an application has been made under section 272 of that Act.
- (d) An individual who is an associate of a person (whether or not an individual) described in paragraph (a), (b) or (c).”;
- (b) for paragraphs 2 to 4, substitute—
- “2. A person (whether or not an individual) described in paragraph 1(a), (b) or (c).
- An individual who is or is seeking to become an associate of the person in column 1.”;
- (c) in paragraphs 5 and 6—
- (i) after “competent authority” in each case insert the words “for listing under Part VI of the 2000 Act”; and
- (ii) for “Part IV of this Act” in each case, substitute “Part VI of the 2000 Act”;
- (d) in paragraph 7—
- (i) for “The Friendly Societies Commission or a transferee body”, substitute “The Financial Services Authority”; and
- (ii) for “society which is authorised under section 23 of this Act”, substitute “friendly society with Part IV permission to carry on relevant activities”; and
- (e) omit paragraph 8.
- (4) In Part III (exempted actions)—
- (a) in paragraph 1, for the entry in column 1, substitute “The Financial Services Authority or the competent authority for listing under Part VI of the 2000 Act.”;
- (b) in paragraph 2, for the entry in column 1, substitute “A person (whether or not an individual) described in paragraph 1(a), (b) or (c) of Part II of this Schedule.”;
- (c) in paragraph 3, for “Part IV of this Act” substitute “Part VI of the 2000 Act”; and
- (d) omit paragraph 4.
- (5) In Part IV (supplemental)—
- (a) in paragraph 2(a), for “authorisation, membership or certification” substitute “permission”;
- (b) for paragraph 2(b), substitute—
- “(b) references to an application for listing under Part VI of the 2000 Act are references to an application the decision on which has not yet been communicated to the applicant and which is not taken, by virtue of section 76(2) of the 2000 Act, to have been refused.”; and
- (c) in paragraph 3—
- (i) for “Paragraph 1(d)”, substitute “Paragraph 1(c)”;

- (ii) for “paragraph 1(e)”, substitute “paragraph 1(d)”;
- (iii) for sub-paragraphs (b) and (c) substitute—
 - “(b) apply in the case of a scheme in respect of which a notice has been given under section 270 of 2000 Act only until the end of the period within which the Financial Services Authority may give its approval or, if earlier, the receipt by the scheme of such approval;
 - (c) apply in the case of a scheme in respect of which an application has been made under section 272 of that Act only until the applicant has been informed of the determination of the application.”; and
- (d) insert after paragraph 3—
 - “4. In this Schedule—
 - “friendly society” and “Part IV permission” have the meanings given by section 417 of that Act;
 - “relevant activities” means any regulated activity of the kind specified by any of the following provisions of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(a), or article 64 of that Order (agreeing to carry on specified kinds of activity) so far as relevant to any such activity—
 - (a) article 14 (dealing in investments as principal);
 - (b) article 21 (dealing in investments as agent);
 - (c) article 25 (arranging deals in investments);
 - (d) article 37 (managing investments);
 - (e) article 40 (safeguarding and administering investments);
 - (f) article 45 (sending dematerialised instructions);
 - (g) article 51 (establishing etc. a collective investment scheme);
 - (h) article 53 (advising on investments);
 - “security” has the meaning given by section 74 of the 2000 Act.”

Amendment of the Exceptions Order

5.—(1) The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975(b) is amended as follows.

- (2) In article 2(1) (interpretation)—
 - (a) after the definition of “the Act”, insert—
 - ““insurer” means any person who is carrying on a regulated activity of the kind specified by article 10(1) or (2) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (effecting and carrying out contracts of insurance) but who is not—
 - (a) exempt from the general prohibition (within the meaning of the Financial Services and Markets Act 2000) in respect of that regulated activity;
 - (b) a friendly society (within the meaning of that Act); or
 - (c) a person who effects or carries out contracts or insurance all of which fall within paragraphs 14 to 18 of Part I of Schedule 1 to that Order in the course of, or for the purposes of, a banking business;
 - and, in relation to an insurer, “director” has the meaning given by section 417 of that Act, “controller” has the meaning given by section 422 of that Act and “manager” has the meaning given by section 423 of that Act;
 - “Part IV permission” has the meaning given by section 417 of the Financial Services and Markets Act 2000;”;
 - (b) omit the definition of the “Building Societies Commission” and, after the definition of “relevant offence”, ““authorisation”,”.
- (3) In article 3 (exceptions from section 4(2) of the Rehabilitation of Offenders Act 1974), in paragraph (ab), for “Building Societies Commission” substitute “Financial Services Authority”.

(a) S.I. 2001/544.

(b) S.I. 1975/1023; amended by the Osteopaths Act 1993 (c. 21), section 39; the Chiropractors Act 1994 (c. 17), section 40; S.I. 1986/1249; S.I. 1986/2268; S.I. 1988/872 and S.I. 2001/1192; and modified by S.I. 1994/1696.

(4) In article 4 (exceptions from section 4(3)(b) of the Act), for sub-paragraphs (i) to (iii) of paragraph (d) substitute—

- “(i) the refusal by the Financial Services Authority to give a building society Part IV permission to accept deposits;
- (ii) the cancellation by the Financial Services Authority of the Part IV permission of a building society to accept deposits;
- (iii) the imposition by the Financial Services Authority of a requirement that relates to the Part IV permission of a building society to accept deposits;”.

(5) For article 5(2) (exceptions from section 4(1) of the Act), substitute—

“(2) The proceedings referred to in paragraph (1) are—

(a) any proceedings before the Financial Services Authority—

- (i) on an application by a building society for Part IV permission to accept deposits;
- (ii) for the cancellation of the Part IV permission of a building society to accept deposits;
- (iii) for the imposition of a requirement that relates to the Part IV permission of a building society to accept deposits or for the variation or cancellation of such a requirement; and

(b) any proceedings by way of review of, or reference from, any decision taken by the Financial Services Authority following any proceedings falling within sub-paragraph (a).”.

(6) In Part III of Schedule 1 (regulated occupations), for paragraph 3 substitute—

“3 Director, controller or manager of an insurer.”.

(7) In Part IV of that Schedule (interpretation), omit the definition of “insurance company”.

(8) For paragraph 8 of Schedule 3 (excepted proceedings), substitute—

“8 Proceedings—

- (a) in respect of an application under the Financial Services and Markets Act 2000 for Part IV permission to effect or carry out contracts of insurance;
- (b) in respect of a decision or proposed decision to impose a requirement under Part IV of that Act on an insurer on the ground that a director or a manager of that person is not, or may not be, a fit and proper person;
- (c) in relation to a notice of control given under section 178 of that Act (acquiring or increasing control) in respect of an insurer.”.

John Heppell
Nick Ainger

8th November 2001

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, in relation to Scotland only, makes amendments, savings and modifications that relate to the Rehabilitation of Offenders Act 1974 (“the 1974 Act”). These provisions are necessary for the purposes of the Financial Services and Markets Act 2000 (“the Act”) and in consequence of the repeal under the Act of the Insurance Companies Act 1982, the Financial Services Act 1986 and the Banking Act 1987 and the amendments made to the Building Societies Act 1986. The Order ceases to have effect at the beginning of the day on which an order made under the 1974 Act which extends to Scotland and which relates to financial services comes into force.

Article 2 saves section 95 of the Banking Act 1987 which provides for certain exceptions to the rehabilitative provisions of the 1974 Act which relate to deposit taking. This section is modified so that, for example, the reference to authorisation under the Banking Act 1987 is treated as a reference to the equivalent authorisation under the Act.

Articles 3 and 4 save with modifications section 189 of, and Schedule 14 to, the Financial Services Act 1986, which make exceptions from the provisions of the 1974 Act which relate to financial services and listing of securities. These provisions are modified so that the references to, for example, an application for listing under that Act are treated as references to an application for listing under the Act.

Article 5 makes consequential amendments to the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (S.I. 1975/1023) in order to bring it into line with the provisions of the Act. These amendments relate to insurers and building societies.

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The Financial Services and Markets Act 2000 (Savings,
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(Rehabilitation of Offenders) (Scotland) Order 2001

£2.00

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Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.
E1968 1/2002 675992 19585

ISBN 0-11-039142-X



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