
STATUTORY INSTRUMENTS

2001 No. 3646

The Financial Services and Markets Act 2000
(Transitional Provisions and Savings) (Information
Requirements and Investigations) Order 2001

PART 3

INVESTIGATIONS

Section 41 of the Banking Act

7.—(1) This article applies to an appointment, which is effective immediately before commencement, of a person under section 41(1)(1) of the Banking Act to investigate any matter.

(2) The appointment is to be treated as an appointment of that person by the Authority under section 167(1) of the Act (general investigations) to conduct an investigation on its behalf into that matter, subject to the modifications of Part XI of the Act specified by paragraph (3).

(3) The modifications specified by this paragraph are—

- (a) any investigation under section 41(2) or (3) of the Banking Act begun by that person before, but not completed by, commencement, is to be treated as an investigation under section 167(2) of the Act (whether or not it could have been begun under that section);
- (b) if the notice required by section 41(4) of the Banking Act has been given, section 167(3) of the Act does not apply in respect of any investigation specified by sub-paragraph (a);
- (c) if the notice of appointment required by section 41(1) of the Banking Act has been given, section 170(2) of the Act does not apply;
- (d) the reference in section 170(6) of the Act to the investigator's investigation includes a reference to his investigation before commencement;
- (e) any outstanding requirement imposed under section 41(5)(a) or (b) of the Banking Act is to be treated as a requirement imposed under section 171 of the Act (whether or not such a requirement could have been imposed under that section);
- (f) in its application to any statement made on or after commencement in compliance with a requirement imposed under section 41 of the Banking Act or under Part XI of the Act, section 174 of the Act (admissibility of statements) applies as if the reference in subsection (3) to section 177(4) or 398 of the Act included a reference to section 41(9) (c) or 94(4) of the Banking Act.

(4) Where, on or after commencement, a person fails to comply with an outstanding requirement imposed under section 41 of the Banking Act or purports to comply with such a requirement—

(1) Amended by the Bank of England Act 1998 (c. 11), paragraph 11, Schedule 5 and the Youth Justice and Criminal Evidence Act 1999 (c. 23), paragraph 18, Schedule 3; and amended and modified by the 2BCD Regulations.

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- (a) the court may not impose any penalty or other measure under section 177 of the Act that is more severe than the penalty or measure that it could have imposed had the Act not been passed;
- (b) in any proceedings for an offence under the Act, or in any proceedings in which a person may be dealt with under section 177(2) of the Act, it is a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the failure to comply (or purported compliance) by himself or any person under his control; and
- (c) the Authority may not impose any penalty or other disciplinary measure under the Act that is more severe than the penalty or measure that it could have imposed had the Act not been passed.