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STATUTORY INSTRUMENTS

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**2011 No. 2832**

The Financial Services and Markets Act 2000  
(Permissions, Transitional Provisions and Consequential  
Amendments) (Northern Ireland Credit Unions) Order 2011

PART 1

Permissions and Applications etc.

**Credit unions registered at commencement**

2.—(1) An unauthorised credit union is to be treated as having, at commencement, a Part 4 permission to accept deposits—

- (a) by way of subscription for its shares; and
- (b) from a person who is under the age at which they may become a member of the credit union by virtue of Article 15 of the 1985 Order.

(2) The permission acquired by virtue of paragraph (1) is subject to any restrictions imposed by virtue of article 3(1) or (2).

(3) In this Part—

“deposits” has the meaning given by article 5(2) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(1);

“P” is the person defined as such in article 4(1);

“Part 4 permission” has the meaning given in section 40(4) of the Act;

“unauthorised credit union” means a credit union which immediately before commencement is not an authorised person.

**Effect of restrictions and prohibitions under the 1985 Order**

3.—(1) Where immediately before commencement an unauthorised credit union was subject to a direction under Article 59 of the 1985 Order, that direction has effect from commencement as if it were a requirement imposed on that credit union under section 43 of the Act (imposition of requirements).

(2) For the purposes of rules and guidance made before commencement by the Authority under Part 10 of the Act (rules and guidance) that relate to credit unions(2), a credit union which, immediately before commencement—

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(1) [S.I. 2001/544](#); article 5 was amended by [S.I. 2002/682](#), article 3(1).

(2) See the Authority’s Handbook. When made by the Authority, new rules and guidance for credit unions will be available at <http://fsahandbook.info/FSA/html/handbook/CREDS>.

- (a) did not hold a certificate under Article 28C of the 1985 Order<sup>(3)</sup> is to be treated from commencement as a version 1 credit union for the purposes of the Credit Unions Sourcebook<sup>(4)</sup>; or
- (b) held a certificate under that Article is to be treated from commencement as a version 2 credit union for the purposes of the Credit Unions Sourcebook.

(3) Paragraphs (1) and (2) are subject to anything done under the Act that has effect from or after commencement.

### Approved persons

4.—(1) Where, at commencement, a person (“P”) is performing a function for an unauthorised credit union under an arrangement entered into by that credit union or by a contractor of that credit union, if P’s continued performance of that function after commencement would, but for this article, require the approval of the Authority under section 59(1) or (2) of the Act (approval), then that continued performance by P of that function after commencement is to be taken to have been approved by the Authority for the purposes of section 59 of the Act.

(2) Paragraph (1) does not apply if P performs a function by virtue of the fact that P holds or has held an office in a credit union and, immediately before commencement, P was ineligible by virtue of Article 39 of the 1985 Order to hold that office.

### Requirement to reapply for Part 4 permission

5.—(1) At any time on or before 31st March 2014, the Authority may give a direction under this article to a named unauthorised credit union or a specified class of unauthorised credit unions.

(2) A direction under this article is a direction that each credit union named or falling within the specified class must, before a date so specified, apply to the Authority under section 40 of the Act for permission to carry on the regulated activities which it wishes to carry on.

(3) Section 40(2) of the Act does not apply in relation to an application made in pursuance of the direction.

(4) If a credit union fails to comply with the direction, the Authority must consider whether to exercise the power in section 45 of the Act (variation etc. on the Authority’s own initiative)<sup>(5)</sup> and, for this purpose, section 45(1) applies as if there was added after sub-paragraph (c)—

“; or

- (d) the person has failed to comply with a direction given by the Authority under article 5(1) of the Financial Services and Markets Act 2000 (Permissions, Transitional Provisions and Consequential Amendments) (Northern Ireland Credit Unions) Order 2011”.

(5) If a credit union complies with the direction but the application which it makes pursuant to it is refused, its Part 4 permission ceases to have effect on such date as the Authority may in its decision notice specify or, if no date is specified, when the matter is no longer open to review.

(6) If a credit union complies with the direction and the Authority gives it a Part 4 permission, that permission has effect on such date as may be specified in the Authority’s written notice in place of the Part 4 permission which the credit union had by virtue of article 2.

(7) For the purposes of this article and article 6, whether a matter is open to review is to be determined in accordance with section 391(8) of the Act.

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(3) S.I. 1205/1985 (N.I. 12); Article 28C was inserted by S.I. 1997/2984 (N.I. 22), Article 3, Schedule 1.

(4) The Credit Unions Sourcebook is part of the Authority’s Handbook. See <http://fsahandbook.info/FSA/html/handbook/CREDS>.

(5) Section 45 was amended by the Financial Services Act 2010 (c.28), section 3(1) and (3) and S.I. 2007/126.

(8) A direction given under this article or article 6 before commencement has effect on commencement.

### **Requirement to reapply for approved person status**

6.—(1) At any time on or before 31st March 2014, the Authority may give a direction under this article to a named unauthorised credit union or a specified class of unauthorised credit unions.

(2) A direction under this article is a direction that each credit union named or falling within the specified class must, before a date so specified, apply to the Authority under section 60 of the Act (applications for approval) for approval under section 59(1) or (2) of the Act in relation to the performance by P of the function referred to in article 4(1).

(3) If a credit union fails to comply with the direction, the Authority must consider whether to exercise the power in section 63(1) of the Act (withdrawal of approval) to withdraw the approval P is taken to have by virtue of article 4(1), and for this purpose, section 63 applies as if for “given under section 59” there is substituted “taken to have been given under section 59 by virtue of article 4(1) of the Financial Services and Markets Act 2000 (Permissions, Transitional Provisions and Consequential Amendments) (Northern Ireland Credit Unions) Order 2011”.

(4) If a credit union complies with the direction but the application which it makes in pursuance of it is refused, P’s performance of the function ceases to be taken to have been approved by the Authority on such date as the Authority may in its decision notice specify or, if no date is specified, when the matter is no longer open to review.

(5) If a credit union complies with the direction and in response to its application the Authority approves the performance by P of the controlled function, that approval has effect on such date as may be specified in the Authority’s written notice in place of the approval which the credit union was taken to have by virtue of article 4(1).

### **Requirements to reapply: procedure**

7.—(1) A direction given under article 5 or 6 must state the reasons why it has been given to the named credit union or specified class of credit unions.

(2) The date specified in a direction under article 5(2) or 6(2) must be such as to allow a reasonable time for compliance, and in any event must fall after the end of three months beginning with the date when the direction has effect.

(3) If the Authority gives a direction under article 5 or 6, it must as soon as practicable, and in any event not later than the due date, give a copy to each named credit union and to each credit union which falls, or which it considers may on the due date, fall within the specified class of credit unions.

(4) If the Authority fails to give a copy of the direction to a credit union by the due date, the direction (and therefore articles 5(4) and 6(3)) do not apply to it. But if the Authority gives the credit union a copy of the direction after the due date the direction has effect in relation to that credit union as if the date specified under article 5(2) or 6(2) were three months after the date on which the copy was given to that credit union, and the copy must indicate that fact.

(5) In this article, “due date” means the date three months before the date specified in a direction.

(6) Any failure by the Authority to comply with paragraph (3) does not invalidate the direction in relation to any credit union to which a copy is given in accordance with this article.

### **Pre-commencement applications etc.**

8.—(1) Sections 44 (variation etc. at request of authorised person)(6), 45 (except subsections (1)(b), (2A) or (2B)), 46 (variation of permission on acquisition of control), 47 (exercise of power in support of overseas regulator), 48 (prohibitions and restrictions), 49(1) (persons connected with an applicant), 51 (except subsection (1)) (applications), 52 (determination of applications), 53 (exercise of own-initiative power: procedure), 54 (cancellation of Part 4 permission: procedure), 55 (references to the Tribunal), 56 to 58 (prohibition orders), 60 to 63 and 148 (modification or waiver of rules)(7) apply until commencement with the following modifications—

- (a) the references to an authorised person are to be read as including a reference to an unauthorised credit union;
- (b) the references to a Part 4 permission are to be read as including a reference to the Part 4 permission which an unauthorised credit union will be treated as having at commencement by virtue of article 2; and
- (c) the references to the Authority’s approval under section 59 are to be read as including a reference to the approval which a person will be taken to have by virtue of article 4.

(2) Nothing done under the Act by virtue of paragraph (1) (including the determination of any application) may come into force or have any effect before commencement.

### **Information gathering and investigations**

9.—(1) Sections 165 (Authority’s power to require information)(8) and 167 (general investigations)(9) of the Act have effect until commencement as if—

- (a) each reference to an authorised person (except for the references in subsections 165(7)(b) and (8)) included a reference to a credit union;
- (b) the reference in section 165(4) to functions conferred on the Authority by or under the Act included a reference to functions conferred by or under the Act which the Authority has reasonable grounds to believe will be exercisable by it at commencement.

(2) In determining whether a person is connected with a credit union under section 165(11) of the Act, Part 1 of Schedule 15 to the Act has effect as if each reference to an authorised person were a reference to a credit union.

(3) At commencement—

- (a) any requirement imposed under section 165, 171(1) or (2) or 175(1) of the Act ceases to have effect if it could not be imposed under that enactment immediately after commencement;
- (b) any requirement imposed under section 175(2) or (3) of the Act ceases to have effect if the requirement pursuant to which the supplementary requirement was imposed ceases to have effect at commencement by virtue of sub-paragraph (a) (and no such supplementary requirement may be imposed thereafter); and
- (c) no action may be taken or continued under or pursuant to the Act in relation to any requirement which ceases to have effect by virtue of this paragraph.

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(6) Section 44(3) was substituted by the Financial Services Act 2010, section 3(1) and (2).

(7) Section 148 was amended by [S.I. 2007/1973](#).

(8) Section 165 was amended by the Financial Services Act 2010, section 24(1) and (2), Schedule 2, Part 1, paragraphs 1 and 15.

(9) Section 167 was amended by [S.I. 2007/126](#).

### **Information sharing by the registrar**

**10.**—(1) Until commencement Article 2A of the 1985 Order (the registrar and assistant registrar)(**10**) is amended as follows.

(2) After Article 2A(3) insert—

“(4) The registrar may share with the Financial Services Authority any information held or obtained by the registrar relating to credit unions which that Authority might reasonably require for the performance by it of any function relating to credit unions which that Authority exercises or has reasonable grounds to believe will be exercisable by it on 31st March 2012.”.

### **Application of wider definition of “consumer” to customers of credit unions**

**11.** Section 425B of the Act(**11**) (consumers: regulated activities carried on by others) applies for the purposes of section 391(6) of the Act (publication) until 31st March 2014 in addition to the definition of “consumers” in section 425A of the Act (consumers: regulated activities etc. carried on by authorised persons) in relation to activities carried on by credit unions.

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(**10**) Article 2A was inserted by the Friendly Societies Act 1992 (c.40), section 120, Schedule 21, Part 2, paragraph 29.

(**11**) 2000 c. 8. Sections 425A and 425B were inserted by the Financial Services Act 2010, section 24(1), (2), Schedule 2, Part 1, paragraphs 1, 32.