
STATUTORY INSTRUMENTS

2001 No. 1534

The Financial Services and Markets Act 2000
(Transitional Provisions and Savings) (Rules) Order 2001

PART II

DESIGNATION OF PRE-COMMENCEMENT PROVISIONS

Designation of pre-commencement provisions to take effect as rules

- 3.—(1) This article applies to a pre-commencement provision which—
- (a) has been designated by the Authority in accordance with article 4;
 - (b) could, with the modifications (if any) made to it under article 5, be made in whole or in part under a provision of the Act conferring power on the Authority to make rules; and
 - (c) has not been amended or revoked at any time between its designation and commencement.
- (2) Where a pre-commencement provision—
- (a) has been designated by the Authority in accordance with article 4; and
 - (b) has been amended at any time between its designation and commencement by a further such provision which has itself been so designated,

this article applies to the original provision, subject to that amendment.

(3) A pre-commencement provision to which this article applies has effect after commencement—

- (a) with such modifications (if any) as may be made under article 5; and
- (b) to the extent that (with those modifications) it could have been made under a provision of or under the Act conferring power on the Authority to make rules,

as if it were a rule made under that provision.

(4) Paragraph (3) applies in spite of any repeal, revocation or other lapsing of the pre-commencement provision which occurs on commencement.

Designation of pre-commencement provisions

4.—(1) The Authority may, before commencement, designate such pre-commencement provisions as appear to it to be necessary or expedient.

- (2) To designate a pre-commencement provision, the Authority must—
- (a) make an instrument in writing identifying the provision in the manner required by paragraph (3);
 - (b) specify in the instrument the provision of or under the Act under which the pre-commencement provision will be treated as having effect;
 - (c) specify any modification to be made to the provision pursuant to article 5;

- (d) identify the class of persons to whom the continued rule will apply;
- (e) include in the instrument an explanation of the purposes of the pre-commencement provision being designated;
- (f) include in the instrument an explanation of the Authority's reasons for believing that designating the pre-commencement provision is compatible with its general duties under section 2;
- (g) publish the instrument in the way appearing to the Authority to be best calculated to bring it to the attention of the public;
- (h) have in place arrangements whereby a copy of the continued rule (incorporating any modifications made under article 5) may be made available to any person on request.

(3) In order to identify the pre-commencement provision for the purposes of paragraph (2) the Authority must give sufficient information about—

- (a) the date, title, author and source of the enactment, subordinate legislation or other instrument in which the provision is found;
- (b) whether the provision comprises the whole of that enactment, subordinate legislation or other instrument or only a part of it (in which case identifying which part);
- (c) whether the provision has been amended or whether its meaning has been affected by any subsequent provision,

to ensure that a person can ascertain with certainty the content of the provision being designated.

(4) To the extent that the instrument does not comply with paragraph 2(b), it is void.

(5) The Authority may charge a reasonable fee for providing a person with a copy of an instrument made under this article or of the continued rule made available under paragraph (2)(h).

(6) The Authority must give a copy of any designation instrument to the Treasury without delay.

(7) The making of an instrument under this article is a legislative function for the purposes of Schedule 1.

(8) A person is not to be taken to have contravened any continued rule if he shows that at the time of the alleged contravention the designation instrument concerned had not been published in accordance with paragraph (2)(g).

Modification of pre-commencement provisions

5.—(1) When designating a pre-commencement provision, the Authority must make such modifications to it (if any) as appear to the Authority necessary to ensure—

- (a) that, so far as possible, the pre-commencement provision has the same effect after commencement as it did immediately before commencement; and
- (b) in particular, that the class of persons to whom the continued rule applies at any time after commencement consists of persons of the same description as the class of persons to whom it would have applied at that time if the Act had not been passed and the provision had remained as it had effect immediately before commencement.

(2) When designating a pre-commencement provision, the Authority may make such modifications to it as have the effect of limiting its application to a class of persons narrower than the class to which it applied immediately before commencement; and paragraph (1) is not to be taken—

- (a) as preventing any modification under this paragraph; or
- (b) as requiring any modification which is inconsistent with a modification that has been made under this paragraph.

(3) The modifications authorised by paragraph (1)(a) include the addition of such transitional provisions as are necessary to ensure the result there mentioned.

(4) If a pre-commencement provision designated under this Part purports to include a modification which is not authorised by this Order and would alter the effect or application of the provision, to the extent that it is not so authorised, the modification is void.

Consequences of contravention of continued rules

6.—(1) If a designation instrument provides, in relation to any of the continued rules identified in it, as mentioned in subsection (1) of section 149 (evidential provisions), then that subsection applies as it applies where a particular rule so provides.

(2) Subsections (2) and (3) of section 149 apply for the purposes of this article as if the references to a rule (other than the references in paragraphs (a) and (b) of subsection (2)) were references to a designation instrument.

(3) Unless a designation instrument provides, in relation to a specified provision of any of the pre-commencement provisions designated in it, as mentioned in subsection (2) of section 150 (actions for damages), then that section applies as it applies to a rule not falling within subsection (4) of that section.

Verification of continued rules

7.—(1) This article applies to continued rules instead of section 154 (verification of rules).

(2) The production of a printed copy of a designation instrument or a continued rule purporting to be made by the Authority on which is endorsed a certificate which—

- (a) is signed by a member of the Authority's staff authorised by it for that purpose; and
- (b) contains the required statement or statements,

is evidence (or in Scotland sufficient evidence) of the facts stated in the certificate.

(3) The required statements in relation to a copy of a designation instrument are—

- (a) that the instrument was made by the Authority;
- (b) that the copy is a true copy of the instrument; and
- (c) that on a specified date the instrument was published in accordance with article 4.

(4) The required statement in relation to a copy of a continued rule is that the text set out in the document is a continued rule within the meaning of article 2.

(5) A certificate purporting to be signed as mentioned in paragraph (2) is to be taken to have been properly signed unless the contrary is shown.

(6) A person who wishes in any legal proceedings to rely on a designation instrument or on a continued rule may require the Authority to endorse a copy of that instrument or rule with a certificate of the kind mentioned in paragraph (2).

Waiver or modification as respects particular persons

8.—(1) This article applies where—

- (a) immediately before commencement a waiver or modification of a pre-commencement provision is in operation as respects a person;
- (b) the pre-commencement provision to which the waiver or modification relates is designated in accordance with article 4; and
- (c) the person to whom the waiver or modification has been granted would, but for this article, be subject to the continued rule resulting from that designation.

(2) In a case where this article applies, the waiver or modification has effect after commencement as if it were a direction under subsection (2) of section 148—

- (a) that the continued rule is not to apply to the person; or
- (b) as the case may be, that the continued rule is to apply to him with the modification in question.

(3) Any condition subject to which the waiver or modification was granted has effect after commencement as if imposed under section 148(5).

(4) Section 148(6) does not apply to a direction having effect by virtue of this article.

(5) Section 148(9) applies to a direction having effect by virtue of this article as it applies to a direction given after commencement.

(6) In this article references to a waiver or modification—

- (a) are to a waiver or modification granted in writing;
- (b) include references to any partial disapplication of the provision or rule, however described.

Statements of principle requiring compliance with code etc.

9.—(1) This article applies where the Authority designates under article 4 a statement of principle made under the Financial Services Act 1986⁽¹⁾ which requires compliance with a code or rules mentioned in section 143(1) (endorsement of codes etc. issued by other bodies) or with any provision of such a code or rules.

(2) Article 5(1)(a) is to be read as authorising the Authority to make such modification of the statement as is necessary to ensure that, on and after commencement, the effect of the statement is to endorse the code, rules or provision concerned as mentioned in that section.

Revocation and alteration

10. Nothing in this Order is to be taken as implying a contrary intention for the purposes of section 14 of the Interpretation Act 1978⁽²⁾ in relation to continued rules and, accordingly, such rules may, after commencement, be revoked or altered in accordance with the provision of the Act under which the continued rules have effect as made.

Guidance

11.—(1) This article applies where the Authority proposes to give any guidance under section 157 in relation to any continued rules and, apart from this paragraph, subsection (3) of that section would apply.

(2) “Guidance” includes any such recommendation as is mentioned in section 157(5).

(3) To the extent that the guidance—

- (a) states that any pre-commencement guidance will still apply (or states that it will still apply but with such necessary modifications as are specified); or
- (b) reproduces any pre-commencement guidance (with any necessary modifications),

any procedure which by reason of section 157(3) must be complied with in relation to the guidance is to be treated as having been so complied with.

(4) In paragraph (3)—

(1) 1986 c. 60.

(2) 1978 c. 30.

- (a) “pre-commencement guidance” means any guidance in writing or other legible form which was given, by the Authority or otherwise, before commencement; and
- (b) “necessary modifications” means such modifications as appear to the Authority necessary to ensure that, so far as possible, the pre-commencement guidance has the same effect after commencement as it did immediately before it.