
STATUTORY INSTRUMENTS

2001 No. 2636

The Financial Services and Markets Act 2000 (Transitional Provisions) (Authorised Persons etc.) Order 2001

PART VI

APPROVED PERSONS

General rule

72.—(1) Subject to paragraph (2), where at commencement a person (“E”) is performing a function for a person (“A”) under an arrangement entered into by A or by a contractor of A, then if E’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), then that continued performance by E of that function after commencement is to be taken to have been approved by the Authority for the purposes of section 59.

(2) Paragraph (1) does not apply if—

(a) a notice of objection had been served on the person under—

- (i) regulation 42 of the ISD Regulations;
- (ii) section 22(1) or 24(1) of the Banking Act;
- (iii) paragraph 2(2) or 4(1) of Schedule 2D to the Insurance Companies Act;
- (iv) paragraph 4(2) or 6(1) of Schedule 13A to the Friendly Societies Act;

(b) immediately before commencement, the performance by E of that function would have constituted a contravention of a rule of a recognised self-regulating organisation to which either E or A was subject.

Persons previously approved subject to conditions

73.—(1) This article applies in relation to an arrangement falling within article 72(1) if—

- (a) the performance by E of the function to which the arrangement relates was approved by a recognised self-regulating organisation subject to conditions and that approval was effective immediately before commencement; or
- (b) the Authority had served a notice under paragraph 3(2) or (3) of Schedule 2D to the Insurance Companies Act or under paragraph 5(2) of Schedule 13A to the Friendly Societies Act specifying conditions with which E or A must comply and those conditions were effective immediately before commencement.

(2) An arrangement falling within paragraph (1)(a) is not to be taken to be excluded from article 72 by paragraph (2)(b) of that article, even if there has been a breach of the conditions mentioned in paragraph (1) of this article.

(3) But where this article applies, any approval which has effect by virtue of article 72(1) is not to be taken to extend to approval of anything that, had it been done before commencement, would have breached any of the conditions mentioned in paragraph (1) of this article.

Appointment approved but not taken up before commencement: section 60 of the Insurance Companies Act

74.—(1) This article applies to an appointment where—

- (a) a notice has been given under section 60(1)(a) of the Insurance Companies Act in respect of a proposed appointment;
- (b) the notice has not, before commencement, ceased to be effective for the purposes of section 60(1) of that Act;
- (c) the appointment has not taken effect before commencement; and
- (d) the performance, after commencement, by the proposed managing director or chief executive of the functions of that post requires the approval of the Authority under section 59.

(2) If, before commencement, in relation to an appointment to which this article applies—

- (a) a notice was given under paragraph (b) of section 60(1) of the Insurance Companies Act stating that there is no objection to the appointment; or
- (b) the period mentioned in that paragraph elapsed without a notice of objection being given in relation to the appointment,

the appointment is to be taken to have been approved by the Authority under section 59 provided that the person takes up the appointment within the period mentioned in paragraph 1(4) of Schedule 2D to the Insurance Companies Act.

Appointment approved but not taken up before commencement: section 61 of the Insurance Companies Act

75.—(1) This article applies to a controllership where—

- (a) a notice has been given under section 61(1)(a) of the Insurance Companies Act in respect of the proposed controllership;
- (b) the notice has not, before commencement, ceased to be effective for the purposes of section 61(1) of that Act;
- (c) the controllership has not taken effect before commencement; and
- (d) the performance, after commencement, by the proposed controller of the functions of that post requires the approval of the Authority under section 59.

(2) If, before commencement—

- (a) a notice was given under paragraph (b) of section 61(1) of the Insurance Companies Act stating that there is no objection to the controllership; or
- (b) the period mentioned in that paragraph elapsed without a notice of objection being given in relation to the controllership,

that controllership is to be taken to have been approved by the Authority under section 59(1) provided that the person takes up the controllership within the period mentioned in paragraph 1(4) of Schedule 2D to the Insurance Companies Act.

Appointment of partner approved but not taken up before commencement

76.—(1) This article applies where—

- (a) a notice was served under section 21(2) of the Banking Act or regulation 41(2) of the ISD Regulations in respect of the proposed appointment of a partner;
 - (b) the appointment had not taken effect before commencement; and
 - (c) the performance, after commencement, by the proposed partner of the functions of that post requires the approval of the Authority under section 59.
- (2) If, before commencement—
- (a) a notice was given under section 21(1)(b) of the Banking Act or regulation 41(1)(b)(i) of the ISD Regulations stating that there was no objection to the appointment;
 - (b) the period mentioned in that section or regulation had elapsed without notice of objection being given in relation to the appointment; or
 - (c) a notice of objection had been served but had been quashed on appeal,

the appointment is to be taken to have been approved by the Authority under section 59 provided that the person takes up the appointment within the period mentioned in section 21(5) of the Banking Act or regulation 41(5) of the ISD Regulations (as the case may be).