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STATUTORY INSTRUMENTS

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**2001 No. 3083**

The Financial Services and Markets Act 2000  
(Transitional Provisions and Savings) (Civil Remedies,  
Discipline, Criminal Offences etc.) (No. 2) Order 2001

PART 4

PROVISIONS RELATING TO THOSE FORMERLY  
AUTHORISED IN RELATION TO DEPOSIT TAKING

**Saving of sections 19 and 20 of the Banking Act**

**10.**—(1) The provisions of this article apply notwithstanding any repeal of section 19 or 20 of the Banking Act.

(2) If, immediately before commencement, a former authorised institution was subject to a direction given under section 19 of that Act, that direction continues to have effect after commencement.

(3) The Authority may, after commencement, give a former authorised institution a direction under section 19 of that Act where before commencement—

- (a) its authorisation under that Act had been revoked;
- (b) the former authorised institution had surrendered its authorisation under that Act;
- (c) the restricted authorisation of the institution had expired (other than by virtue of section 12(8) of that Act); or
- (d) a disqualification notice had been served on the institution under section 183 of the Financial Services Act.

(4) Section 19(2), (5), (6) and (7) had section 20 of the Banking Act continue to have effect in relation to any direction which has been given (or is to be given) under section 19 of that Act as modified by paragraph (3) or which continues to have effect by virtue of paragraph (2), subject to the following modifications to section 20—

- (a) in subsection (2), omit the words “, except one varying a previous direction with the agreement of the institution concerned” so far as they relate to section 20(2)(a);
- (b) in subsection (2)(a), for the words “section 27 below” substitute “article 10(5) of the Financial Services and Markets Act 2000 (Transitional Provisions and Savings) (Civil Remedies, Discipline, Criminal Offences etc.) (No. 2) Order 2001”;
- (c) in subsection (2)(b), for the words “section 19(3), (4) and (5)” substitute “section 19(5)”.

(5) Where—

- (a) a person is aggrieved by a decision of the Authority after commencement to give him a direction under section 19 of the Banking Act or to vary a direction given to him under that section (whether given before or after commencement), or

- (b) the effect of such a decision of the Authority is to require the removal of a person as director, controller or manager (in each case, within the meaning of the Act) of a former authorised institution,

that person may refer the matter to the Tribunal.

(6) Section 133 applies to a reference to the Tribunal under this article subject to the following modifications—

- (a) the reference in section 133(1) to “this Act” includes a reference to this article;
- (b) the reference in section 133(1)(a) to the “decision notice” includes a reference to the notice given under section 20(1) of the Banking Act and any copy of the direction given under section 20(3) of that Act;
- (c) for subsection (4), substitute—
- “(4) On a reference the Tribunal may direct the Authority to give a different direction or to vary an existing direction in a different way.”;
- (d) subsections (6) to (9) are omitted.

(7) Section 414 (service of notices) has effect as if section 20 of the Banking Act, to the extent that it requires any notice to be given, were a provision of the Act.

(8) Sections 400 (offences by bodies corporate etc.), 401 (proceedings for offences) and 403 (jurisdiction and procedure in respect of offences) have effect as if any offence committed under section 19(6) of the Banking Act after commencement were an offence under the Act.

(9) In proceedings for an offence under section 19 of the Banking Act committed after commencement it is a defence for the person charged to show that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control.

(10) Part XXV has effect as if any requirement imposed by a direction given under section 19 of that Act after commencement were a relevant requirement.

(11) In this article, “former authorised institution” means any person who—

- (a) immediately before commencement did not hold an authorisation granted (or deemed to be granted) under section 9 of the Banking Act, but formerly held such an authorisation; and
- (b) is not and never has been an authorised person within the meaning of the Act.

### **Saving of sections 43A and 43B of the Building Societies Act**

**11.**—(1) The provisions of this article apply notwithstanding any repeal of section 43A or 43B of the Building Societies Act<sup>(1)</sup>.

(2) If, immediately before commencement, a former authorised building society was subject to a direction given under section 43A of that Act, that direction continues to have effect after commencement.

(3) The Authority may, after commencement, give a former authorised building society a direction under section 43A of that Act where before commencement the authorisation of the society under the Building Societies Act had been revoked or its registration under that Act had been cancelled (including at the society’s request).

(4) Section 43A(2), (3) and (6) to (8) and section 43B of that Act continue to have effect in relation to any direction which has been given (or is to be given) under section 43A of that Act as modified by paragraph (3) or which continues to have effect by virtue of paragraph (2), subject to the following modifications—

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(1) Inserted by the Building Societies Act 1997 (c. 53) sections 19 and 20.

- (a) for each reference to the Building Societies Commission, substitute a reference to the Financial Services Authority;
  - (b) in subsection (2) of section 43A, for paragraph (b) substitute—
    - “(b) may relate to any activities of the society, whether or not they are regulated activities (within the meaning of the Financial Services and Markets Act 2000);”;
  - (c) in subsection (2)(a) of section 43B, for the words “section 46” substitute “article 11(5) of the Financial Services and Markets Act 2000 (Transitional Provisions and Savings) (Civil Remedies, Discipline, Criminal Offences etc.) (No. 2) Order 2001”;
  - (d) in subsection (2)(b) of section 43B, for the words “section 43A(4), (5) and (6)” substitute “section 43A(6)”.
- (5) Where—
- (a) a person is aggrieved by a decision of the Authority to give him a direction under section 43A of the Building Societies Act,
  - (b) the Authority, in deciding to give a direction under that section, makes a determination that a person is not a fit and proper person to hold or to remain in an office in the former authorised building society, or
  - (c) the Authority imposes a requirement that any person be removed from an office in the former authorised building society,
- that person may refer the matter to the Tribunal.
- (6) Section 133 applies to a reference to the Tribunal under this article subject to the following modifications—
- (a) the reference in section 133(1) to “this Act” includes a reference to this article;
  - (b) the reference in section 133(1)(a) to the “decision notice” includes a reference to the notice given under section 43B of the Building Societies Act and any copy of the direction given under section 43B(3) of that Act;
  - (c) for subsection (4), substitute—
    - “(4) On a reference the Tribunal may direct the Authority to give a direction imposing different requirements.”;
  - (d) subsections (6) to (9) are omitted.
- (7) Section 414 (service of notices) has effect as if section 43B of the Building Societies Act, to the extent that it requires any notice to be given, were a provision of the Act.
- (8) Sections 400 (offences by bodies corporate etc.), 401 (proceedings for offences) and 403 (jurisdiction and procedure in respect of offences) have effect as if any offence committed under section 43A(7) of the Building Societies Act after commencement were an offence under the Act.
- (9) In proceedings for an offence under section 43A of the Building Societies Act committed after commencement it is a defence for the person charged to show that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control.
- (10) Part XXV has effect as if any requirement imposed by a direction given under section 43A of that Act after commencement were a relevant requirement.
- (11) In this article, “former authorised building society” means any person who—
- (a) immediately before commencement did not hold an authorisation within the meaning of the Building Societies Act, but formerly held such an authorisation; and
  - (b) is not and never has been an authorised person within the meaning of the Act.

**Winding-up of former authorised institutions etc.**

12.—(1) Section 367 (winding-up petitions) has effect as if—

- (a) the reference in subsection (1)(a) to a body which has been an authorised person included a reference to a body which—
  - (i) is not and never has been an authorised person (within the meaning of the Act);
  - (ii) has been an authorised institution within the meaning of the Banking Act;
  - (iii) was not, immediately before commencement, authorised under that Act; and
  - (iv) continues to have any liability in respect of deposits which it accepted when it was authorised under that Act;
- (b) the reference in subsection (1)(c) to a body which has carried on a regulated activity in contravention of the general prohibition included a reference to a company or partnership which has, before commencement, contravened section 3 of the Banking Act and which continues to have any liability in respect of deposits which it accepted in contravention of that enactment.

(2) If a body specified by paragraph (1)(a) or (b) is in default on an obligation to pay a sum due and payable in respect of a deposit, within the meaning of section 5 of the Banking Act<sup>(2)</sup> (including any sum which would otherwise be excluded by subsection (3)(a), (b) or (e) of that section), it is to be treated for the purpose of subsection (3)(a) of section 367 as unable to pay its debts.

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(2) Amended by S.I.1995/1442 and modified by S.I. 1992/3218.