
STATUTORY INSTRUMENTS

2001 No. 3592

The Financial Services and Markets Act 2000 (Transitional Provisions) (Partly Completed Procedures) Order 2001

PART III

MUTUAL SOCIETIES

CHAPTER I

PROCEDURES TAKING EFFECT AFTER
COMMENCEMENT AS PROCEDURES UNDER THE ACT

Interpretation

25. In this Part—

“the Mutual Societies Order” means the Financial Services and Markets Act 2000 (Mutual Societies) Order 2001(1);

“Schedule 3” means Schedule 3 to the Building Societies Act;

“Schedule 13” means Schedule 13 to the Friendly Societies Act(2).

Applications for authorisation

26.—(1) Subject to paragraph (2), where an application for authorisation has been made by a friendly society under section 32 of the Friendly Societies Act or by a building society under section 9 of the Building Societies Act but that application has not been decided before commencement, it is to be treated after commencement as an application for permission made to the Authority under section 40 or, where the society making the application has a Part IV permission, as an application under section 44 for the variation of that permission.

(2) Paragraph (1) does not apply to an application for authorisation—

(a) which was made pursuant to a direction given under section 39 of the Friendly Societies Act or under section 41 of the Building Societies Act; and

(b) which has not been granted or refused before commencement,

and any such application lapses on commencement.

(3) An application which is treated by virtue of paragraph (1) as an application under section 40 or 44 is treated for the purposes of section 52(1) or (2) as having been received by the Authority—

(a) in the case of an application from a friendly society, on the date from which the period of 6 months referred to in paragraph 2(5) of Schedule 13 started to run;

(b) in the case of an application from a building society, on the date on which it was received by the Building Societies Commission.

(1) S.I.2001/2617.

(2) Schedule 13 was amended by S.I. 1994 1984.

(4) An application which is treated pursuant to paragraph (1) as an application under section 40 or 44 is not to be treated as incomplete for the purposes of section 52(2) if it complied with the procedure applicable to it when it was originally made.

(5) Paragraph (4) does not affect the power of the Authority to require information under section 51(4) and (6).

(6) Where, in any particular case—

(a) information has been required—

(i) by the Friendly Societies Commission pursuant to paragraph 2 of Schedule 13; or

(ii) by the Building Societies Commission pursuant to paragraph 2(2) of Schedule 3; and

(b) that information has not been provided before commencement,

the requirement has effect after commencement as if it had been imposed by the Authority under section 51(4).

Notice of intention to refuse application or to impose conditions

27.—(1) This article applies to—

(a) a notice given to a friendly society under paragraph 7 or 8 of Schedule 13 (as applied by paragraph 3(1) of that Schedule) of intention to impose conditions following an application for authorisation (other than a notice served pursuant to paragraph 9 of that Schedule);

(b) a notice given to a friendly society under paragraph 3(2) of Schedule 13;

(c) a notice given to a building society under paragraph 4(1) or 5(2) of Schedule 3 (as applied by paragraph 2(3) of that Schedule) of intention to impose conditions following an application for authorisation (other than a notice served pursuant to paragraph 9 of that Schedule);

(d) a notice given to a building society under paragraph 2(4) of Schedule 3.

(2) Where, before commencement—

(a) a notice to which this article applies has been served on a society;

(b) the application to which the notice relates has not been refused or granted in accordance with Schedule 13 or Schedule 3 (as the case may be);

the notice ceases to have effect on commencement and the Authority must, as soon as practicable after commencement, notify every recipient of the notice of that fact.

(3) Paragraph (2) does not affect the power of the Authority to serve a notice under section 52(6) or (7) in respect of the application (as effective by virtue of article 26).

Surrenders of authorisation

28.—(1) This article applies where—

(a) a request by a friendly society for a direction under section 40(3) of the Friendly Societies Act was made but no notice has been given under paragraph 10(6) of Schedule 13 before commencement;

(b) a request by a building society under section 43(3)(a) or (b) of the Building Societies Act was made but was not granted before commencement.

(2) If the society which made the request has on commencement a Part IV permission, the request is to be treated after commencement as an application made to the Authority under section 44 for variation of that Part IV permission.

Notice of intention to withdraw or revoke authorisation

29.—(1) Where—

- (a) before commencement a notice has been served on a friendly society under paragraph 10(1) of Schedule 13;
- (b) no notice of a decision has been served under paragraph 10(4) of that Schedule; and
- (c) the society has a Part IV permission on commencement,

the notice has effect after commencement as if it were a notice given by the Authority under section 53(4).

(2) Where—

- (a) before commencement, a notice has been served on a building society under paragraph 6(1) of Schedule 3;
- (b) no notice has been served under paragraph 6(3) of that Schedule; and
- (c) the society has a Part IV permission on commencement,

the notice has effect after commencement as if it were a notice given by the Authority under section 53(4).

(3) A notice having effect under paragraph (1) or (2) has effect—

- (a) as if it gave notice that the Authority proposes to vary the society's permission by imposing a requirement that it refrain from carrying on the activity or activities (whether regulated or not) covered by the notice;
- (b) as if it informed the society and any relevant recipients that they may make representations to the Authority (whether or not the matter has been referred to the Tribunal) within—
 - (i) the new period (if any) specified for this purpose under article 90; or
 - (ii) if there is no new period so specified, within the period specified in the notice for the purpose of paragraph 10(1)(c) of Schedule 13 or paragraph 6(1)(c) of Schedule 3;
- (c) as if it informed the recipient that the variation takes effect on—
 - (i) the new date (if any) specified for this purpose under article 90; or
 - (ii) if no new date is so specified, then on the date (if any) specified in the notice as the date on which the direction would be given or the revocation take effect;
- (d) as if it informed the society and any relevant recipients that they have a right to refer the matter to the Tribunal—
 - (i) within the new period (if any) specified for this purpose under article 90; or
 - (ii) if there is no new period so specified, within 28 days from commencement.

(4) Where a notice has effect under paragraph (1) or (2)—

- (a) the Authority must decide whether to issue a notice under section 53(7) or (8);
- (b) in taking that decision, section 41 applies to the Authority;
- (c) the Authority must have regard to any representations made before commencement in relation to the notice given under Schedule 13 or Schedule 3.

(5) Notwithstanding section 53(2)(c), where the notice having effect under paragraph (1) or (2) did not specify a date on which the direction would be given or the revocation take effect, the Authority may specify in the notice given under paragraph (4)(a) the date on which the variation takes effect (being a date not earlier than the date of that notice).

(6) For the purposes of this article, a “relevant recipient” is a person who was served with the notice pursuant to paragraph 10(2) of Schedule 13 or paragraph 6(2) of Schedule 3.

Mutual societies: notice of intention to impose conditions

30.—(1) This article applies to—

- (a) a notice served under paragraph 7(1) of Schedule 13 or, where one or more notices have been served under paragraph 8(2) of that Schedule proposing to impose more onerous conditions than proposed in the first notice, then to the latest notice;
- (b) a notice served under paragraph 4(1) of Schedule 3 or, where one or more notices have been served under paragraph 5(2) of that Schedule proposing to impose more onerous conditions than proposed in the first notice, then to the latest notice.

(2) Where—

- (a) a notice falling within paragraph (1)(a) has been served proposing to impose conditions on a current authorisation pursuant to section 36 of the Friendly Societies Act but no notice has been served (following that notice) under paragraph 7(5) or 8(6) of Schedule 13; or
- (b) a notice falling within paragraph (1)(b) has been served proposing to impose conditions on a current authorisation pursuant to section 42 of the Building Societies Act but no notice has been served (following that notice) under paragraph 4(3) or 5(4) of Schedule 3; and
- (c) in either case, the society has a Part IV permission at commencement,

the notice has effect after commencement as if it were a notice given by the Authority under section 53(4).

(3) Paragraphs (3) to (6) of article 29 apply to a notice having effect under paragraph (2) with the following modifications—

- (a) the references in those paragraphs to a notice having effect under article 29(1) or (2) are read as references to a notice having effect under paragraph (2) of this article;
- (b) the requirement referred to in article 29(3)(a) is a requirement that the society act in the manner which would be required by the proposed conditions or refrain from acting in the manner which would be prohibited by the proposed conditions;
- (c) the reference in article 29(5) to the date on which the direction would be given or the revocation take effect were a reference to the date on which the conditions would be imposed;
- (d) the reference in article 29(6) to paragraph 10(2) of Schedule 13 is a reference to paragraph 7(2) or 8(3) of that Schedule;
- (e) the reference in article 29(6) to paragraph 6(2) of Schedule 3 is a reference to paragraph 4(2) or 5(3) of that Schedule.

(4) The references in paragraph (2)(a) and (b) to a notice served proposing to impose conditions include reference to a notice served following a direction given—

- (a) under section 59(7) or (10) of the Friendly Societies Act from a tribunal constituted in accordance with that section; or (as the case may be)
- (b) under section 47(6) or (7) of the Building Societies Act from a tribunal constituted in accordance with that section.

Notice of intention to give a direction under section 51 of Friendly Societies Act

31.—(1) Where—

- (a) before commencement a notice has been served on a friendly society under section 51(2) of the Friendly Societies Act;
- (b) no direction has been given under section 51(6) as a result of that notice and the society has not been notified of a decision not to give a direction; and

(c) at commencement, the friendly society has a Part IV permission, the notice has effect after commencement as if it were a notice given by the Authority under section 53(4).

(2) Paragraphs (3) to (5) of article 29 apply to a notice having effect under paragraph (1) with the following modifications—

- (a) the references in those paragraphs to a notice having effect under article 29(1) or (2) are read as references to a notice having effect under paragraph (1) of this article;
- (b) the references in those paragraphs to relevant recipients are omitted;
- (c) the requirement referred to in article 29(3)(a) is a requirement that the society refrain from accepting any new members.

Proceedings under section 52A of the Friendly Societies Act

32.—(1) Subject to paragraph (2), any proceedings pending before the court for an injunction under section 52A(3) of the Friendly Societies Act lapse on commencement.

(2) Any court before which proceedings under section 52A of the Friendly Societies Act are pending at commencement may by order make provision for such incidental, consequential and supplementary matters (including as to costs) as are appropriate having regard to paragraph (1).

Conditions imposed under section 42A of the Building Societies Act but not confirmed before commencement

33.—(1) Where, before commencement—

- (a) a notice has been given under section 42A(3) of the Building Societies Act imposing or varying conditions under section 42 of that Act as a matter of urgency;
- (b) no notice has been given under section 42A(8) of that Act of a decision under section 42A(7) of that Act,

the notice has effect after commencement as if it were a notice given by the Authority under section 53(4).

(2) Paragraphs (3) to (6) of article 29 apply to a notice having effect under paragraph (1) with the following modifications—

- (a) the references in those paragraphs to a notice having effect under article 29(1) or (2) are read as references to a notice having effect under paragraph (1) of this article;
- (b) the requirement referred to in article 29(3)(a) is a requirement that the society act in the manner which would be required by the proposed conditions or refrain from acting in the manner which would be prohibited by the proposed conditions;
- (c) the reference in article 29(5) to the date on which the direction would be given or the revocation take effect were a reference to the date on which the conditions would be imposed;
- (d) the reference in article 29(6) to paragraph 6(2) of Schedule 3 is a reference to section 42A(5) of the Building Societies Act;
- (e) the reference in article 29(6) to paragraph 10(2) of Schedule 13 is omitted.

Notice of intention to give a direction under section 50 of the Building Societies Act

34.—(1) Where—

(3) Section 52A was inserted by S.I. [1994/1984](#) and has been amended by S.I. [1997/2849](#).

- (a) a notice was given to a building society before commencement under section 50(3) of the Building Societies Act;
- (b) no direction has been given following that notice under section 50(5) of that Act and the society has not been notified of a decision not to give a direction,

the notice has effect after commencement as if it were a notice given by the Authority under section 53(4).

(2) Paragraphs (3) to (5) of article 29 apply to a notice having effect under paragraph (1) with the following modifications—

- (a) the references in those paragraphs to a notice having effect under article 29(1) or (2) are read as references to a notice having effect under paragraph (1) of this article;
- (b) the references in those paragraphs to relevant recipients are omitted;
- (c) the requirement referred to in article 29(3)(a) is a requirement that the building society act in a manner which would be required by the proposed direction and refrain from acting in a manner which would be prohibited by the proposed direction.