
STATUTORY INSTRUMENTS

2001 No. 3592

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

PART IX

APPEALS

CHAPTER III

APPEALS TO FRIENDLY SOCIETIES ACT TRIBUNAL

Interpretation

118. In this Chapter—

- (a) references to “the original Friendly Societies Act” are references to that Act as it had effect immediately before commencement;
- (b) references to “the amended Friendly Societies Act” are references to that Act as it has effect immediately after commencement by virtue of Schedule 18, the Financial Services and Markets Act 2000 (Mutual Societies) Order 2001 or any other order made under the Act.

Preservation of right of appeal under Friendly Societies Act

119.—(1) In this article a “pre-commencement decision” means—

- (a) a decision falling within section 58(1) of the original Friendly Societies Act;
- (b) a determination or requirement falling within section 58(2) of that Act.

(2) Where, before commencement—

- (a) a pre-commencement decision has been taken against which an appeal may be brought to a tribunal constituted in accordance with section 59 of the original Friendly Societies Act (“a friendly society tribunal”);
- (b) the period in which an appeal against that decision could be brought has not expired; and
- (c) no notice of appeal has been sent in relation to the decision,

an appeal may be brought against that decision under section 58(1) or (2) of the original Friendly Societies Act and the repeal of those subsections or the repeal or amendment of the section under which the decision was taken does not affect the continuity of the period set by or under the original Friendly Societies Act as the period within which an appeal against that decision may be brought.

Application of Friendly Societies Act to transitional appeals

120.—(1) Notwithstanding any repeal or amendment—

- (a) subsection (6) of section 58, subsections (1), (2), (3), (3A)(1) (6) and (13) of section 59 and sections 60 and 61 of the original Friendly Societies Act apply to transitional friendly society appeals, subject to the modifications set out in this article;
 - (b) section 58(7) of the original Friendly Societies Act applies to a transitional friendly society appeal brought by a person under subsection (2) of that section (but as if the reference to subsection (8) were omitted).
- (2) A “transitional friendly society appeal” is—
- (a) an appeal which has been brought in accordance with section 58 of the original Friendly Societies Act but which has not been determined before commencement; or
 - (b) an appeal brought after commencement pursuant to article 119.
- (3) For the purposes of this Chapter, in the provisions mentioned in paragraph (1)—
- (a) references to appeals brought under section 58 of the original Friendly Societies Act are to be read as references to transitional friendly society appeals; and
 - (b) references to appeals brought under section 58(2) are to be read as references to transitional friendly society appeals brought under that subsection.
- (4) In section 61(1) of the original Friendly Societies Act, the reference to “the Commission” is to be read as a reference to the Authority and this Chapter applies to any matter remitted to the friendly society tribunal pursuant to that section as it applies to a transitional friendly society appeal.

Task of friendly society tribunal in relation to a transitional friendly society appeal

121.—(1) On a transitional friendly society appeal brought by a society under section 58(1) of the original Friendly Societies Act, the question for the determination of the friendly society tribunal is whether, for the reasons adduced by the appellant, the decision was unlawful or was not justified by the evidence on which it was based.

(2) On making its determination the friendly society tribunal must remit the matter to the Authority with such directions (if any) as the tribunal considers appropriate for giving effect to its determination.

(3) The Authority must exercise its powers under Part IV of the Act (or under the amended Friendly Societies Act) in the manner most appropriate to give effect to the friendly society tribunal’s directions.

Decisions taken by the Authority giving effect to friendly society tribunal determinations

122.—(1) Where the Authority implements a direction given by a friendly society tribunal by exercising its power under section 45, sections 53, 54 and 55 do not apply to the exercise of that power.

(2) Where the Authority implements a direction given by a friendly society tribunal by exercising its power under section 52(6) or (7), section 52(9) does not apply to the exercise of that power.

(3) Where the Authority implements a direction given by a friendly society tribunal by exercising a power under the amended Friendly Societies Act the procedure provided for under that Act does not apply to the exercise of that power.

(4) Where the Authority implements a direction given by a friendly society tribunal by exercising the powers mentioned in paragraph (1), (2) or (3), it must exercise that power by giving the parties written notice and sections 390(7) and 391(4) apply to that notice as they apply to a final notice.

(1) Subsection (3A) was inserted by the Judicial Pensions and Retirement Act 1993.

Test to be applied by friendly society tribunal

123.—(1) Where in any transitional friendly society appeal the issues arising for consideration included the society’s actual or anticipated failure to satisfy one or more of the criteria of prudent management in section 50(3) of the original Friendly Societies Act, the friendly society tribunal must consider instead whether that society is failing or is likely to fail to satisfy the threshold conditions (within the meaning of section 41).

(2) Where in any transitional friendly society appeal the issues arising for consideration included the question whether a person was a fit and proper person to hold the particular position that he held, the friendly society tribunal must consider instead whether that person is a fit and proper person to perform the controlled functions in relation to the regulated activities which correspond to the functions which he was performing before commencement.

Modifications to Friendly Societies Appeal Tribunal Regulations 1993

124. The Friendly Societies Appeal Tribunal Regulations 1993(2) apply to transitional friendly society appeals after commencement (notwithstanding their revocation and the repeal of section 60 of the original Friendly Societies Act) with the following modifications—

- (a) the existing text of regulation 2 is numbered as paragraph (1) and after the definition of “the secretary” is inserted—
 - ““transitional friendly society appeal” has the meaning given in article 120 of Financial Services and Markets Act 2000 (Transitional Provisions) (Partly Completed Procedures) Order 2001;”;
- (b) after regulation 2(1) the following paragraph is inserted—
 - “(2) In these Regulations references to an appeal under section 58(2) of the Act shall be construed as references to a transitional friendly society appeal brought by a person under section 58(2).”
- (c) in regulation 3 for the words “appeals under section 58 of the Act against decisions of the Commission” are substituted “transitional friendly society appeals”;
- (d) in regulation 5(2) for the words “the Commission” the first time they occur are substituted “the Authority”;
- (e) in regulation 7 for the words “the Commission” are substituted “the Authority”;
- (f) in regulation 9 for the words “the Commission” are substituted the first time they occur the words “the Authority” and the words “or the Authority” are inserted after the words “the Commission” the second time they occur;
- (g) in regulations 10, 11, 12 and 13, for the words “the Commission” wherever they appear are substituted the words “the Authority”;
- (h) after regulation 13 is inserted the following regulation—

“Hearing as to appropriate action

13A The Tribunal shall inform the parties of the directions (if any) it is minded to give to the Authority and shall afford the parties fourteen days in which to make written representations to it before making its determination.”;

- (i) in regulation 14(1), for the words “the Commission” are substituted “the Authority”;
- (j) in regulation 15 for the words “the Commission” wherever they occur are substituted “the Authority”;

- (k) in regulation 19 for the words “the Commission” both times they appear are substituted the words “the Authority”.