
STATUTORY INSTRUMENTS

2009 No. 1342

**The Financial Services and Markets Act 2000
(Regulated Activities) (Amendment) Order 2009**

PART 5

TRANSITIONAL PROVISIONS

Interim permission and interim variation of permission

32.—(1) This article applies where—

(a) a person (“A”) has submitted to the Authority a completed request to carry on activity of the kind specified by any of the following articles of the Principal Order (as amended by this Order)—

(i) article 25E (arranging regulated sale and rent back agreements);

(ii) article 53D (advising on regulated sale and rent back agreements);

(iii) article 63J (entering into and administering regulated sale and rent back agreements);
or

(iv) article 64 (agreeing to carry on specified kinds of activity), so far as relevant to any of the above activities;

(b) A —

(i) has carried on such activity before 1st July 2009 and the Authority has received the request on or before 1st August 2009; or

(ii) is an authorised person with a Part IV permission.

(2) A is to be treated as having, on 1st July 2009, a Part IV permission to carry on the activity to which the request relates.

(3) A permission which A is to be treated as having is referred to in this Order as an “interim permission”.

(4) A variation of permission which A is to be treated as having is referred to in this Order as an “interim variation of permission”.

(5) Section 51 (applications under this Part) of the Act shall apply to a request made under this article; and for that purpose—

(a) a reference to an application for a Part IV permission, an application for the variation of a Part IV permission, an application under this Part and an application is taken to be a reference to a request under this article;

(b) a reference to a Part IV permission is taken to be a reference to interim permission under this article;

(c) a reference to the variation of a Part IV permission is taken to be a reference to interim variation of permission under this article; and

(d) section 51 is to be read with any other necessary modifications.

(6) A request made in accordance with this article must be determined by the Authority before the end of the period of three months beginning with the date on which it received the completed request.

(7) The Authority may give interim permission or interim variation of permission for A to carry out the regulated activity or regulated activities to which the request relates or such of them as may be specified in the permission if it has ensured that A will satisfy, and continue to satisfy, the threshold conditions set out in Schedule 6 to the Act in relation to all such activities.

(8) Should A be aggrieved by the determination of a request made under this article, A may apply to the Authority in writing for a review of the determination provided that the application for a review is made before the end of the period of 21 days beginning with the date on which the decision notice is given.

(9) Should A's request not be considered on the basis that it was received by the Authority after 1st August 2009, A may apply to the Authority in writing for a review of the refusal provided that the application for a review is made before the end of the period of 21 days beginning with the date on which the decision notice is given.

(10) The decision on review shall be made by a person of appropriate seniority who was not involved in the original decision and shall be determined before the end of the period of 28 days beginning with the date on which the application for a review was received.

(11) On an application for a review, any evidence relating to the subject matter of the review may be considered, whether or not it was available to the Authority at the material time.

(12) The person determining the review may give interim permission or interim variation of permission for A to carry out the regulated activity or regulated activities to which the request relates or such of them as may be specified in the permission if that person has ensured that A will satisfy, and continue to satisfy, the threshold conditions set out in Schedule 6 to the Act in relation to all such activities.

(13) On determining a request or an application for a review made in accordance with this article, the Authority must give A a decision notice setting out the reasons for the determination.

(14) Without prejudice to the exercise by the Authority of its powers under Part IV of the Act, an interim permission or interim variation of permission lapses—

- (a) on the date that the Authority gives A a decision notice refusing a request for interim permission or interim variation of permission made in accordance with this article;
- (b) on the date that the Authority, in accordance with paragraph (17), consents to the withdrawal of the request;
- (c) when an application for Part IV permission or a variation of a Part IV permission to carry on such activity to which the interim permission or interim variation of permission relates has been finally decided; or
- (d) on 30th June 2010;

whichever is the earliest.

(15) In this article, “refusing a request” means where the Authority has refused a request and —

- (a) A does not apply for a review, when the time for applying for a review has expired; or
- (b) A applies for a review, when the review has been determined in accordance with paragraphs (10) to (12).

(16) In this article, “finally decided” means—

- (a) subject to paragraphs (17) and (18), when the application is withdrawn;
- (b) when the Authority grants permission under section 42 of the Act (giving permission) to carry on the activity in question;

- (c) when the Authority varies a permission under section 44 of the Act (variation etc. at request of authorised person) to add the activity in question;
- (d) where the Authority has refused an application and the matter is not referred to the Tribunal, when the time for referring the matter to the Tribunal has expired;
- (e) where the Authority has refused an application and the matter is referred to the Tribunal, when—
 - (i) if the reference is determined by the Tribunal (including a determination following remission back to the Tribunal for rehearing in accordance with section 137(3)(a) of the Act (appeal on a point of law)), the time for bringing an appeal has expired; or
 - (ii) on an appeal from a determination of the Tribunal on a point of law, the Court itself determines the application in accordance with section 137 of the Act.

(17) Should A make a request for interim permission or interim variation of permission, the application may not be withdrawn without A first having obtained the consent of the Authority.

(18) Should A hold an interim permission or interim variation of permission and make an application for Part IV permission or a variation of a Part IV permission in relation to an activity to which the interim permission or interim variation of permission relates, the application may not be withdrawn without A first having obtained the consent of the Authority.

(19) Where—

- (a) the Authority exercises its powers under section 45 of the Act (variation etc. on the Authority's own initiative) in relation to an authorised person who holds an interim permission; and
- (b) as a result of the variation there are no longer any regulated activities for which the authorised person has permission,

the Authority must, once it is satisfied that it is no longer necessary to keep the interim permission in force, cancel it.