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STATUTORY INSTRUMENTS

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**2001 No. 3646**

The Financial Services and Markets Act 2000  
(Transitional Provisions and Savings) (Information  
Requirements and Investigations) Order 2001

PART 3

INVESTIGATIONS

**Section 43A of the Insurance Companies Act**

6.—(1) This article applies to an appointment, which is effective immediately before commencement, of a person under section 43A(1)(a)(1) of the Insurance Companies Act to investigate any matter.

(2) The appointment is to be treated as an appointment of that person by the Authority under section 167(1) of the Act (general investigations) to conduct an investigation on its behalf into that matter, subject to the modifications of Part XI of the Act specified by paragraph (3).

(3) The modifications specified by this paragraph are—

- (a) if the notice of appointment required by section 43A(1) of the Insurance Companies Act has been given, section 170(2) of the Act does not apply;
- (b) the reference in section 170(6) of the Act to the investigator's investigation includes a reference to his investigation before commencement;
- (c) any outstanding requirement imposed under section 43A(2)(a) or (b) of the Insurance Companies Act is to be treated as a requirement imposed under section 171 of the Act (whether or not such a requirement could have been imposed under that section);
- (d) in its application to any statement made on or after commencement in compliance with a requirement imposed under section 43A of the Insurance Companies Act or under Part XI of the Act, section 174 of the Act (admissibility of statements) applies as if the reference in subsection (3) to section 177(4) or 398 of the Act included a reference to section 71(1) (b) or (3) of the Insurance Companies Act.

(4) Where, on or after commencement, a person fails to comply with an outstanding requirement imposed under section 43A of the Insurance Companies Act or purports to comply with such a requirement—

- (a) the court may not impose any penalty or other measure under section 177 of the Act that is more severe than the penalty or measure that it could have imposed had the Act not been passed; and
- (b) the Authority may not impose any penalty or other disciplinary measure under the Act that is more severe than the penalty or measure that could have been imposed, other than by the court, but whether by the Authority or otherwise, had the act not been passed.

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(1) Inserted by the Insurance Companies (Third Insurance Directives) Regulations 1994, (S.I.1994/1696) and amended by the Youth Justice and Criminal Evidence Act 1999 (c. 23) paragraph 2, Schedule 3 and by S.I. 1997/2781.

## Section 41 of the Banking Act

7.—(1) This article applies to an appointment, which is effective immediately before commencement, of a person under section 41(1)(2) of the Banking Act to investigate any matter.

(2) The appointment is to be treated as an appointment of that person by the Authority under section 167(1) of the Act (general investigations) to conduct an investigation on its behalf into that matter, subject to the modifications of Part XI of the Act specified by paragraph (3).

(3) The modifications specified by this paragraph are—

- (a) any investigation under section 41(2) or (3) of the Banking Act begun by that person before, but not completed by, commencement, is to be treated as an investigation under section 167(2) of the Act (whether or not it could have been begun under that section);
- (b) if the notice required by section 41(4) of the Banking Act has been given, section 167(3) of the Act does not apply in respect of any investigation specified by sub-paragraph (a);
- (c) if the notice of appointment required by section 41(1) of the Banking Act has been given, section 170(2) of the Act does not apply;
- (d) the reference in section 170(6) of the Act to the investigator's investigation includes a reference to his investigation before commencement;
- (e) any outstanding requirement imposed under section 41(5)(a) or (b) of the Banking Act is to be treated as a requirement imposed under section 171 of the Act (whether or not such a requirement could have been imposed under that section);
- (f) in its application to any statement made on or after commencement in compliance with a requirement imposed under section 41 of the Banking Act or under Part XI of the Act, section 174 of the Act (admissibility of statements) applies as if the reference in subsection (3) to section 177(4) or 398 of the Act included a reference to section 41(9) (c) or 94(4) of the Banking Act.

(4) Where, on or after commencement, a person fails to comply with an outstanding requirement imposed under section 41 of the Banking Act or purports to comply with such a requirement—

- (a) the court may not impose any penalty or other measure under section 177 of the Act that is more severe than the penalty or measure that it could have imposed had the Act not been passed;
- (b) in any proceedings for an offence under the Act, or in any proceedings in which a person may be dealt with under section 177(2) of the Act, it is a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the failure to comply (or purported compliance) by himself or any person under his control; and
- (c) the Authority may not impose any penalty or other disciplinary measure under the Act that is more severe than the penalty or measure that it could have imposed had the Act not been passed.

## Section 94 of the Financial Services Act

8.—(1) This article applies to an appointment, which is effective immediately before commencement, of a person under section 94(3) of the Financial Services Act to investigate any matter.

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- (2) Amended by the Bank of England Act 1998 (c. 11), paragraph 11, Schedule 5 and the Youth Justice and Criminal Evidence Act 1999 (c. 23), paragraph 18, Schedule 3; and amended and modified by the 2BCD Regulations.
  - (3) Amended and repealed in part by the Companies Act 1989 (c. 40), section 72, Schedule 24. The functions under section 94 are exercisable by the Authority concurrently with the Secretary of State by virtue of the Financial Services Act 1986 (Delegation) (No. 2) Order 1988 (S.I. 1988/738).

(2) The appointment is to be treated as an appointment of that person under section 284(1) of the Act (investigations of collective investment schemes) to investigate that matter by—

- (a) where the Secretary of State appointed that person, the Secretary of State; or
- (b) where the Authority appointed that person, the Authority,

subject to the modifications of section 284 and Part XI of the Act (as applied by that section) specified by paragraph (3).

(3) The modifications specified by this paragraph are—

- (a) the reference in section 170(6) of the Act to the investigator's investigation includes a reference to his investigation before commencement;
- (b) any direction given under section 94(8), (8A), (8B) or (9) of the Financial Services Act which is effective immediately before commencement is to be treated as a direction given under section 170(7) of the Act;
- (c) in its application to any statement made on or after commencement by a person in response to a question put to him by an investigator in exercise of powers conferred by section 434 of the Companies Act 1985(4), as applied by section 94 of the Financial Services Act, or under Part XI of the Act, section 174 of the Act (admissibility of statements) applies as if subsection (3)(d) were omitted;
- (d) any investigation under section 94(2) of the Financial Services Act begun by that person before, but not completed by, commencement, is to be treated as an investigation under section 284(2) of the Act (whether or not it could have been begun under that section);
- (e) any outstanding requirement imposed under section 434(1)(b) or (2) of the Companies Act 1985, as applied by section 94(3) of the Financial Services Act, is to be treated as a requirement imposed under section 284(3) of the Act (whether or not such a requirement could have been imposed under that section);
- (f) any consent or authorisation given under section 94(7) of the Financial Services Act which was effective before commencement is to be treated as if given under section 284(9) of the Act.

(4) Where, on or after commencement, a person fails to comply with an outstanding requirement imposed under section 434 of the Companies Act 1985, as applied by section 94 of the Financial Services Act—

- (a) the court may not impose any penalty or other measure under section 177 of the Act that is more severe than the penalty or measure that it could have imposed had the Act not been passed; and
- (b) the Authority may not impose any penalty or other disciplinary measure under the Act that is more severe than the penalty or measure that it could have imposed had the Act not been passed.

### **Section 177 of the Financial Services Act**

**9.—(1)** This article applies to an appointment, which is effective immediately before commencement, of a person under section 177(5) of the Financial Services Act to investigate any matter.

(2) The appointment is to be treated as an appointment of that person by the Secretary of State under section 168(3) of the Act, by virtue of section 168(2)(a) (offence under Part V of the

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(4) 1985 c. 6; amended by the Companies Act 1989 (c. 40), section 56; and by the Youth Justice and Criminal Evidence Act 1999 (c. 23), paragraph 5, Schedule 3.

(5) Amended by the Criminal Justice Act 1993 (c. 33), paragraph 9, Schedule 5; the Companies Act 1989 (c. 40), section 74 and the Youth Justice and Criminal Evidence Act 1999 (c. 23), paragraph 12, Schedule 3.

Criminal Justice Act 1993(6)), to conduct an investigation on his behalf into that matter, subject to the modifications of Part XI of the Act specified by paragraph (3).

- (3) The modifications specified by this paragraph are—
- (a) the reference in section 170(6) of the Act to the investigator’s investigation includes a reference to his investigation before commencement;
  - (b) any—
    - (i) provision made under subsection (2) of section 177 of the Financial Services Act;
    - (ii) variation made under subsection (2A) of that section; or
    - (iii) direction under subsection (5) or (5A) of that section,
 which is effective immediately before commencement is to be treated as a direction given under section 170(7) of the Act;
  - (c) any outstanding requirement imposed under section 177(3) of the Financial Services Act is to be treated as a requirement imposed under section 173 of the Act (whether or not such a requirement could have been imposed under that section);
  - (d) in its application to any statement made on or after commencement by a person in compliance with a requirement imposed under section 177 of the Financial Services Act or under Part XI of the Act, section 174 of the Act (admissibility of statements) applies as if the reference in subsection (3) to section 177(4) or 398 of the Act included a reference to section 200(1) of the Financial Services Act; and
  - (e) any consent or authorisation given under section 177(8) of the Financial Services Act which was effective before commencement is to be treated as if given under section 175(5) of the Act.
- (4) Where, on or after commencement, a person fails to comply with an outstanding requirement imposed under section 177 of the Financial Services Act—
- (a) the court may not impose any penalty or other measure under section 177 of the Act that is more severe than the penalty or measure that it could have imposed had the Act not been passed; and
  - (b) the Authority may not impose any penalty or other disciplinary measure under the Act that is more severe than the penalty or measure that it could have been imposed had the Act not been passed.

### **Notices and directions**

**10.**—(1) This article applies to an investigation if, by virtue of this Order, the appointment of the investigator is to be treated as an appointment made under the Act.

(2) The person who has appointed the investigator (the Secretary of State or the Authority, as the case may be) (“the investigating authority”) must, as soon as practicable after commencement, give written notice of the provision of the Act under which, by virtue of this Order, the investigator is to be treated as having been appointed and (where applicable) the provision under which the investigation is to be treated as being conducted under, to the person who is the subject of the investigation unless he believes that such a notice would be likely to result in the investigation being frustrated.

(3) A direction by the investigating authority under section 170(7) of the Act in respect of an investigation to which this article applies may, in particular, provide that steps taken by the investigator before commencement are not to be duplicated under the powers conferred on him by the Act.

### **Savings or sections 94 and 177 of the Financial Services Act**

**11.** Any repeal of section 94 or 177 of the Financial Services Act does not affect—

- (a) the power of the court under subsection (10) of section 94 of the Financial Services Act where a person is convicted on a prosecution instituted as a result of any investigation under that section; or
- (b) the power of the court under subsection (11) of section 177 of that Act where a person is convicted on a prosecution instituted as a result of any investigation under that section,

where the appointment of the investigator under section 94 or 177 (as the case may be) was not effective immediately before commencement.

### **Savings of sections 105 and 106 of the Financial Services Act**

**12.—(1)** Any repeal of section 105(7) or 106(8) of the Financial Services Act (investigation powers), and any revocation of the 2BCD Regulations or the ISD Regulations, does not affect—

- (a) any outstanding requirement imposed under subsection (3) or (4) of section 105 of the Financial Services Act (subject to section 105(6) and section 106(2) and (2A) of that Act);
- (b) the application of subsection (8) of section 105 of that Act in relation to a document produced after commencement pursuant to such an outstanding requirement;
- (c) the application of subsection (10) of that section in relation to a failure after commencement to comply with such an outstanding requirement;
- (d) the power of the court under subsection (11) of that section where a person is convicted after commencement on a prosecution instituted as a result of any investigation under that section;
- (e) any power of the Secretary of State or the Authority under subsection (4)(a) or (b) of that section in relation to any document produced (or not produced) after commencement pursuant to any outstanding requirement to which sub-paragraph (a) applies;
- (f) any authorisation granted to any person under section 106(1) of that Act so far as it relates to an outstanding requirement to which sub-paragraph (a) applies;
- (g) any duty of a person incurred before commencement under section 106(3) of that Act to make a report;
- (h) any determination made before commencement under paragraph 29 of Schedule 9 to the 2BCD Regulations or paragraph 27 of Schedule 7 to the ISD Regulations; or
- (i) the application of section 200(1) of that Act (false and misleading statements) in relation to any information furnished in purported compliance with an outstanding requirement to which sub-paragraph (a) applies.

(2) Section 400 (offences by bodies corporate), 401 (proceedings for offences) and 403 of the Act (jurisdiction and procedure in respect of offences) have effect as if any offence committed under section 105(10) or 200 of the Financial Services Act after commencement were an offence under the Act.

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(7) Amended and repealed in part by the Companies Act 1989 (c. 40), section 73 and Schedule 24 and amended by the Youth Justice and Criminal Evidence Act 1999 (c. 23), paragraph 11, Schedule 3; functions exercisable by the Authority concurrently with the Secretary of State by virtue of S.I. 1987/942.

(8) Amended by the Companies Act 1989 (c. 40), section 73 and modified by the 2BCD Regulations and the ISD Regulations.

### **Saving of section 42 of the Banking Act**

- 13.**—(1) Any repeal of section 42 of the Banking Act<sup>(9)</sup> does not affect—
- (a) any outstanding requirement imposed under subsection (1) of section 42 of the Banking Act (subject to subsection (6) of that section);
  - (b) any power of a person under subsection (2) of that section in relation to a document produced pursuant to such an outstanding requirement;
  - (c) the application of subsection (4) of that section in relation to a failure to comply with such an outstanding requirement;
  - (d) any authorisation granted to any person for the purposes of subsection (2) of that section; or
  - (e) the application of section 94 of the Banking Act (false and misleading information) in relation to any information furnished in purported compliance with an outstanding requirement to which sub-paragraph (a) applies.
- (2) Any outstanding requirement imposed under section 42(1)(a) or (b) of the Banking Act is to be treated as an information requirement for the purposes of section 176(2) of the Act.
- (3) Sections 400 (offences by bodies corporate), 401 (proceedings for offences) and 403 of the Act (jurisdiction and procedure in respect of offences) have effect as if any offence committed under section 42(4) or 94 of the Banking Act after commencement were an offence under the Act.
- (4) In proceedings for any such offence, it is a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the failure to comply (or purported compliance) by himself or any person under his control.

### **Use of statements—investigations**

- 14.** Notwithstanding any repeal, section 43A(5) to (7) of the Insurance Companies Act, sections 41(10) to (10B) and 42(5) to (5B) of the Banking Act and sections 105(5) to (5B) and 177(6) to (6A) of the Financial Services Act continue to have effect on and after commencement (including in relation to statements made after commencement) as if—
- (a) the reference in section 43A(7) of the Insurance Companies Act to section 71(1)(b) or (3) of that Act;
  - (b) the references in section 41(10B) and 42(5B) of the Banking Act to section 94 of that Act; and
  - (c) the references in section 105(5B) and 177(6A) of the Financial Services Act to section 200(1) of that Act,
- included a reference to sections 177(4) and 398 of the Act.

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(9) Amended by the Bank of England Act 1998 (c. 11), paragraph 11, Schedule 5; and by the Youth Justice and Criminal Evidence Act 1999 (c. 23), paragraph 19, Schedule 3.