
STATUTORY INSTRUMENTS

2002 No. 1501

The Financial Services and Markets Act 2000
(Consequential Amendments and Transitional
Provisions) (Credit Unions) Order 2002

PART 4

RULES

Existing provisions

8. For the purposes of this Part, an “existing provision” means any provision of any enactment or subordinate legislation which—

- (a) is repealed or revoked at commencement by this Order; or
- (b) by virtue of this Order, ceases to apply to a credit union at commencement.

Designation of existing provisions to take effect as rules

9.—(1) The Authority may, before commencement, designate any existing provision which appears to it to be necessary or expedient so long as that provision could be included in a rule made by the Authority” by virtue of a provision of or made under the Act.

(2) An existing provision which is designated by the Authority” under this article has effect after commencement, with such modifications (if any) as may be made under article 10, as if it were a rule made by the Authority” under the Act; such a provision is referred to in this Part as a “continued provision”.

(3) Paragraph (2) applies in spite of any repeal, revocation or dis-application of the existing provision which occurs on commencement.

(4) To designate an existing provision, the Authority” must—

- (a) make an instrument in writing (“the designation instrument”) identifying the provision in the manner required by paragraph (5);
- (b) specify in the designation instrument the provision of, or made under, the Act under which the existing provision will be treated as having effect;
- (c) specify any modification to be made to the provision pursuant to article 10;
- (d) publish the designation instrument in the way appearing to the Authority” to be best calculated to bring it to the attention of the public;
- (e) have in place arrangements whereby a copy of the continued provision may be made available to any person on request.

(5) When the Authority” designates an existing provision, it must also—

- (a) publish an explanation of the purposes of the existing provision being designated; and

(b) publish an explanation for the Authority's reasons for believing that designating the existing provision is compatible with its general duties under section 2 of the Act.

(6) In order to identify the existing provision for the purposes of paragraph (4), the Authority must give sufficient information about—

- (a) the title of the enactment or subordinate legislation in which the provision is found,
- (b) whether the provision has been amended or whether its meaning has been affected by any subsequent provision,

to ensure that a person can ascertain with certainty the content of the provision being designated.

(7) To the extent that the designation instrument does not comply with paragraph (4)(b), it is void.

(8) The Authority may charge a reasonable fee for providing a person with a copy of a designation instrument or of the continued provision made available under paragraph (4)(e).

(9) The Authority must give a copy of any designation instrument to the Treasury.

(10) The making of a designation instrument is a legislative function for the purposes of Schedule 1 to the Act.

(11) A person is not to be taken to have contravened any continued provision if he shows that at the time of the alleged contravention the relevant designation instrument had not been published in accordance with paragraph (4)(d).

Modification of existing provisions

10.—(1) When designating an existing provision, the Authority—

- (a) must make such modifications to it as appear to the Authority necessary to ensure that, so far as possible, the existing provision has the same effect (subject to any modifications made under sub-paragraph (b)) after commencement as it did immediately before commencement;
- (b) may make such modifications to it as have the effect of limiting its application to a class of persons narrower than the class to which it applied immediately before commencement.

(2) The modifications authorised by paragraph (1)(a) include the addition of such transitional provisions as are necessary to ensure the result there mentioned.

(3) If an existing provision designated under article 9 purports to include a modification which is not authorised by this article and which would alter the effect or application of the provision, to the extent that it is not so authorised, the modification is void.

Consequences of contravention of continued provision

11.—(1) If a designation instrument provides, in relation to any of the continued provisions identified in it, as mentioned in subsection (1) of section 149 of the Act (evidential provisions), then that subsection applies as it applies where a particular rule so provides.

(2) Subsections (2) and (3) of section 149 of the Act apply for the purposes of this article as if the references to a rule (other than the references in paragraphs (a) and (b) of subsection (2)) included references to a designation instrument.

(3) Unless a designation instrument provides, in relation to a specified provision of any of the existing provisions designated in it, as mentioned in subsection (2) of section 150 of the Act (actions for damages), then that section applies as it applies to a rule not falling within subsection (4) of that section.

Verification of continued provisions

12.—(1) This article applies to continued provisions instead of section 154 of the Act (verification of rules).

(2) The production of a printed copy of a designation instrument or a continued provision purporting to be made by the Authority” on which is endorsed a certificate which—

- (a) is signed by a member of the Authority”’s staff authorised by it for that purpose, and
- (b) contains the required statement or statements,

is evidence (or in Scotland, sufficient evidence) of the facts stated in the certificate.

(3) The required statements in relation to a copy of a designation instrument are—

- (a) that the instrument was made by the Authority”;
- (b) that the copy is a true copy of the instrument; and
- (c) that on a specified date the instrument was published in accordance with article 9.

(4) The required statement in relation to a copy of a continued provision is that the text set out in the document is a continued provision within the meaning of this Part.

(5) A certificate purporting to be signed as mentioned in paragraph (2) is to be taken to have been properly signed unless the contrary is shown.

(6) A person who wishes in any legal proceedings to rely on a designation instrument or on a continued provision may require the Authority” to endorse a copy of that instrument or provision with a certificate of the kind mentioned in paragraph (2).

Revocation and alteration

13. Nothing in this Part is to be taken as implying a contrary intention for the purposes of section 14 of the Interpretation Act 1978⁽¹⁾ in relation to continued provisions and, accordingly, such rules may, after commencement, be revoked or altered in accordance with the provision of the Act under which the continued provisions have effect as made.

Guidance on continued provisions

14.—(1) This article applies to any guidance which—

- (a) relates to the operation of any continued provision; or
- (b) is consequential on or supplemental to the designation of any existing provision.

(2) Where the Authority” gives guidance to which this article applies, the Authority” is to be treated as having complied with section 157(3) of the Act in relation to that guidance.

(3) The Authority must, when it gives guidance to which this article applies, publish—

- (a) an estimate of the costs together with an analysis of the benefits that will arise from the guidance;
- (b) an explanation of the purpose of the guidance; and
- (c) an explanation of the Authority”’s reasons for believing that giving the guidance is compatible with its general duties under section 2 of the Act.

Consultation on provisions prior to commencement

15.—(1) This article applies to rules which contain provisions which have been the subject of relevant prior consultation and to guidance on any such rules.

(1) 1978 c. 30.

(2) Where the Authority” makes rules or gives guidance to which this article applies, the Authority” is to be treated as having complied with section 155 of the Act in relation to those rules or in relation to that guidance.

(3) “Relevant prior consultation” means consultation which—

- (a) took place prior to commencement;
- (b) was undertaken in relation to an existing provision; and
- (c) complies with the requirements of section 5 of the Regulatory Reform Act 2001(2).

(4) A provision is to be treated as having been the subject of relevant prior consultation if it achieves the result proposed in the relevant prior consultation, even if it achieves that result in a different way to that proposed in the relevant prior consultation (for example, by way of a rule rather than by way of an amendment to an existing provision).

(5) In making rules or giving guidance to which this article applies, the Authority” must take into account any responses to the relevant prior consultation.

(6) The Authority must, when it makes rules or gives guidance to which this article applies, publish—

- (a) an estimate of the costs together with an analysis of the benefits that will arise from the rules or guidance;
- (b) an explanation of the purpose of the rules or guidance;
- (c) an explanation of the Authority”’s reasons for believing that making the rules or giving the guidance is compatible with its general duties under section 2 of the Act; and
- (d) an account, in general terms, of the responses to the relevant prior consultation and the Authority”’s response to them.

Cost benefit analyses

16.—(1) Paragraph (3)(a) of article 14 and paragraph (6)(a) of article 15 do not apply if the Authority” considers—

- (a) that, making the appropriate comparison, there will be no increase in costs; or
- (b) that, making that comparison, there will be an increase in costs but the increase will be of minimal significance.

(2) In making the appropriate comparison, the Authority” may disregard the repeal, revocation or lapsing at commencement of any enactment, subordinate legislation or other instrument or provision.

(3) In this article, “the appropriate comparison” means a comparison between the overall position if the rules are made (or guidance is given) and the overall position if they are not made (or not given).