
EXPLANATORY NOTE

(This Note does not form part of the Order)

This Order makes transitional provision for procedures which are partly completed on 1st December 2001 which is the day when the main provisions of the Financial Services and Markets Act 2000 (c. 8) (“the Act”) come into force. On that day, the legislative provisions under which those procedures were commenced will be repealed and replaced by the provisions of the Act.

Part I of the Order provides that the Order comes into force on 1st December 2001. This date is referred to in the Order as “commencement”.

Chapter I of Part II sets out how applications which have been made under the legislation to be repealed are to be treated after commencement. Applications, for example for authorisation to carry on certain activities or for the lifting or variation of restrictions imposed under the earlier legislation, are generally carried forward as if they were made to the Authority under the corresponding provision of the Act. Where before commencement, the Authority has indicated that it is minded to refuse an application, that notification lapses and the Authority must reconsider the application in accordance with the Act.

Chapter II of Part II concerns the position where, before commencement, the Authority has started proceedings on its own initiative to withdraw, suspend or restrict authorisation under an existing provision. In these circumstances, the notice served by the Authority is treated after commencement as a notice served under the corresponding provision of the Act. The Order provides for how the contents of the original notice are to be construed having regard to the requirements for notices served under the Act.

Part III of the Order deals with similar matters relating to friendly societies and building societies. Applications for authorisation, or partly completed proceedings to impose restrictions on such societies, will be carried forward under the corresponding provisions of the Act. Articles 35 to 38 deal with provisions of the Building Societies Act 1986 which are amended on commencement rather than repealed. The Financial Services and Markets Act 2000 (Mutual Societies) Order 2001 (S.I.2001/2671) amends certain sections of that 1986 Act to bring the procedures into line with those set out in the Financial Services and Markets Act 2000 and the provisions in this Order transfer partly completed proceedings brought under the original provisions into proceedings under the amended provisions.

Part IV concerns pending authorisations of unit trust schemes and recognition of collective investment schemes under Chapter VIII of Part I of the Financial Services Act 1986. The notices are generally carried forward on commencement as if they had been served under the corresponding provision in Part XVII of the Act.

Part V provides for the transition of other partly completed procedures, namely those in relation to applications by people who will need to be approved persons for the purposes of Part V of the Act, to the making of public statements of misconduct under section 60 of the Financial Services Act and to persons who are subject to proceedings for disqualification under the Financial Services Act. The provisions relating to approved persons deal in part with the carrying forward of proceedings which are pending under the regimes for controllers in Part VII of the ISD Regulations, sections 21 to 26 of the Banking Act and sections 60 and 61 of the Insurance Companies Act and which relate to persons who will fall within Part V of the Act after commencement. Pending proceedings under those existing regimes which relate to persons who will fall within Part XII of the Act after commencement are provided for in the Financial Services and Markets Act 2000 (Transitional Provisions) (Controllers) Order 2001 (S.I. 2001/2637).

Changes to legislation: *There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Transitional Provisions) (Partly Completed Procedures) Order 2001. (See end of Document for details)*

Part VI provides for the partly completed procedures of the recognised self-regulating organisations established under the Financial Services Act 1986. Since these organisations will cease to exist after the new Act is commenced, their proceedings will be transferred to the interim tribunal set up under Chapter IV of this Part. Alternatively the Financial Services Authority may bring proceedings under the Act against a person who was subject to incomplete disciplinary proceedings at commencement and, where this is appropriate, may adopt an expedited procedure by issuing a decision notice under the Act without first issuing a warning notice. The Order provides that appeals from the decisions of the interim tribunal may be referred to the Financial Services and Markets Tribunal.

Part VII contains supplemental provisions regarding the content of notices served before commencement which are to be carried forward as a notice under an equivalent provision in the Act. It provides for the person giving the notice to include in the notice alternative dates and periods, for example on which a restriction will take effect or within which representations may be made, where the notice may be pending at the date of commencement. Article 91 provides that notices given before commencement must explain to the recipient what the effect of the Order will be on the notice if commencement occurs before the notice has effect. Where a notice is not carried forward by a provision in the Order after commencement, that does not stop the Authority from taking into account matters covered by the notice at a later date.

Part VIII deals with the position where an EEA firm is part way through exercising its EEA right to establish a branch or provide services in the United Kingdom and where a UK firm is part way through exercising its EEA right to “passport” into another member State.

Part IX of the Order contains the transitional provisions relating to appeals which are pending at commencement and to cases where a right of appeal is still extant at commencement. Cases which were pending before the Financial Services Tribunal (or which arise when a person exercises, after commencement, a right to make a reference to that Tribunal) continue to be heard by that Tribunal. However, the provisions of Chapter I of this Part adapt the functions of the Tribunal, in particular the kinds of recommendations it can make when remitting the matter to the Authority, so that they are relevant to the legislative framework of the Act after commencement. Similarly, tribunals under the Banking Act 1987, the Friendly Societies Act 1992 and the Building Societies Act 1986 will continue to be seized of matters which were referred to them before commencement (or which are referred to them as a result of the exercise after commencement of an extant right of appeal) but their powers are modified to take account of the Act.

The Schedule to the Order sets out the modifications needed to the Rules of the Financial Services and Markets Tribunal established under Part IX of the Act when it hears references of procedures covered by the Order. These are primarily in relation to matters which were pending before a recognised self-regulating organisation before commencement.

Changes to legislation:

There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Transitional Provisions) (Partly Completed Procedures) Order 2001.