
STATUTORY INSTRUMENTS

2007 No. 3510

**The Financial Services and Markets Act 2000
(Regulated Activities) (Amendment) (No. 2) Order 2007**

PART 3

TRANSITIONAL PROVISIONS

Interpretation

3. In this Part—

“the Act” means the Financial Services and Markets Act 2000;

“commencement” means the beginning of 1st January 2009;

“the Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

Interim permission

4.—(1) This article applies where—

(a) a person who is a provider within the meaning of article 72B of the Regulated Activities Order (“the applicant”) has submitted to the Authority an application for Part IV permission or a variation of a Part IV permission to the extent that the application—

(i) relates to an activity of the kind specified in any of the following articles of the Regulated Activities Order—

(aa) article 21 (dealing in investments as agent);

(bb) article 25(1) and (2) (arranging deals in investments);

(cc) article 39A (assisting in the administration and performance of a contract of insurance);

(dd) article 53 (advising on investments); or

(ee) article 64 (agreeing to carry on specified kinds of activity) in so far as it relates to any of the activities mentioned in (aa) to (dd); and

(ii) is made pursuant to the amendments made to article 72B of the Regulated Activities Order by article 2 of this Order;

(b) the Authority received the application on or before 15th November 2008; and

(c) the application has not been finally decided before commencement.

(2) The applicant is to be treated as having on commencement the permission to which the application relates.

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

(4) Without prejudice to the exercise by the Authority of its powers under Part 4 of the Act, an interim permission lapses—

- (a) when the application has been finally decided; or
- (b) at the end of 31st December 2009,

whichever is the earlier.

(5) In this article “finally decided” means—

- (a) when the application is withdrawn;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 by the Tribunal on a point of law, the Court itself determines the application in accordance with section 137 of the Act.

(6) An applicant who is treated as having an interim permission may not withdraw the application without first obtaining the consent of the Authority.

(7) Where—

- (a) the Authority exercises its powers under section 45 (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.

Interim approval

5.—(1) This article applies where—

- (a) the applicant (within the meaning of article 4(1)(a)) has submitted to the Authority an application made under section 60 of the Act (applications for approval) pursuant to the amendments made to article 72B of the Regulated Activities Order by article 2 of this Order; and
- (b) the application has not been finally decided before commencement.

(2) The person in respect of whom the application is made is to be treated as having on commencement the approval of the Authority for the purposes of section 59 of the Act (approval for particular arrangements) in relation to the functions to which the application relates.

(3) An approval which a person is to be treated as having is referred to in this Part as an “interim approval”.

(4) Without prejudice to the exercise by the Authority of its powers under Part 5 of the Act, an interim approval lapses—

- (a) when the application has been finally decided; or

(b) at the end of 31st December 2009,
whichever is the earlier.

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

- (a) when the application is withdrawn;
- (b) when the Authority grants the application for approval under section 62 of the Act (applications for approval: procedure and right to refer to the Tribunal);
- (c) 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;
- (d) 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), the time for bringing an appeal has expired; or
 - (ii) on an appeal from a determination by the Tribunal on a point of law, the Court itself determines the application in accordance with section 137 of the Act.

Application of the Authority’s rules etc to persons with an interim permission or an interim approval

6.—(1) The Authority may direct in writing that any relevant provision which would otherwise apply to a person by virtue of his interim permission or interim approval is not to apply or is to apply to him as modified in the way specified in the direction.

(2) Where the Authority makes a rule, gives guidance or issues a statement or code which applies only to persons with an interim permission or an interim approval (or only to a class of such persons), sections 65 (statements and codes: procedure), 155 (consultation) and 157(3) (guidance) of the Act do not apply to that rule, guidance, statement or code.

(3) For the purposes of paragraph (1) a “relevant provision” is any provision made as a result of the exercise by the Authority of any of its legislative functions mentioned in paragraph 1(2) of Schedule 1 to the Act (the Financial Services Authority).

Application of the Act to persons with an interim permission or an interim approval.

7.—(1) This article applies to every person with interim permission.

(2) For the purpose of section 20 (authorised persons acting without permission), a person’s interim permission is treated as having been given to him under Part 4 of the Act.

(3) A person’s interim permission is to be disregarded for the purposes of—

- (a) section 38(2) (exemption orders);
- (b) section 40(2) (application for permission);
- (c) subject to article 8(4), section 42 (giving permission);
- (d) section 43 (imposition of requirements); and
- (e) section 44(1), (4) and (5) (variation etc. at request of authorised person).

8.—(1) This article applies to a person who falls within section 31(1) (authorised persons) by virtue only of having an interim permission.

(2) A person with an interim permission is to be treated on or after commencement as an authorised person for the purposes of the Act (and any provision made under the Act), unless otherwise expressly provided for by this Part.

(3) For the purposes of section 21(2) (restrictions on financial promotion), a person with an interim permission is not to be treated as an authorised person for the purposes of communicating or approving the content of a communication except where the communication invites or induces a person to enter into (or offer to enter into) an agreement the making or performance of which constitutes a controlled activity which corresponds to a regulated activity which is covered by his interim permission.

(4) A person with an interim permission may still be an appointed representative within the meaning of section 39(2) (exemption of appointed representatives) (and hence may be treated as exempt from the general prohibition as a result of section 39(1) for the purposes of section 42(3) (a) (giving permission)).

(5) Subsection (3)(a) of section 213 (the compensation scheme) does not apply to—

- (a) a person who is a relevant person, within the meaning of that section, by virtue only of having an interim permission; or
- (b) an appointed representative of such person.

9. A person with an interim approval is to be treated on or after commencement as an approved person for the purposes of the Act (and any provision made under the Act).