

2001 No. 3374

FINANCIAL SERVICES AND MARKETS

**The Financial Services and Markets Act 2000
(Interim Permissions) Order 2001**

Made - - - - - 10th October 2001

Laid before Parliament 10th October 2001

Coming into force in accordance with article 1

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SCHEDULE: Application of the Act to Relevant Applicants with interim permission

The Treasury in exercise of their powers under sections 426 to 428 of the Financial Services and Markets Act 2000(a) hereby make the following Order:

Citation and commencement

1. This Order may be cited as the Financial Services and Markets Act 2000 (Interim Permissions) Order 2001 and comes into force on the twenty first day after it is laid before Parliament.

(a) 2000 c. 8.

Definitions

2.—(1) In this Order—

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

“commencement” means the beginning of the day on which section 19 comes into force;

“an interim permission” means a Part IV permission conferred by article 6 or 7(2);

“the relevant date” means—

(a) commencement, in respect of—

(i) newly regulated activities which are regulated activities immediately after commencement; and

(ii) overseas regulated activity;

(b) 1 January 2002 in respect of newly regulated activities which are not regulated activities before that date.

(2) In this Order—

“the Banking Act” means the Banking Act 1987(a);

“the Building Societies Act” means the Building Societies Act 1986(b);

“the Financial Services Act” means the Financial Services Act 1986(c);

“the Friendly Societies Act” means the Friendly Societies Act 1992(d);

“the Insurance Companies Act” means the Insurance Companies Act 1982(e);

“the 2BCD Regulations” means the Banking Coordination (Second Council Directive) Regulations 1992(f);

“the ISD Regulations” means the Investment Services Regulations 1995(g);

“the 3ID Regulations” means the Insurance Companies (Third Insurance Directives) Regulations 1994(h);

“the Authorised Persons Order” means the Financial Services and Markets Act 2000 (Transitional Provisions) (Authorised Persons etc.) Order 2001(i);

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

(3) Any reference in this Order to a section or Part is, unless the context otherwise requires, a reference to that section or Part of the Act.

Relevant Applicant

3.—(1) This Order applies to a person who—

(a) has, on or before 31 October 2001, made an application to the Authority—

(i) under section 40 for permission to carry on a newly regulated activity; or

(ii) under section 44 to add a newly regulated activity to his Part IV permission; and

(b) was at 3 September 2001 carrying on by way of business the newly regulated activity to which the application mentioned in sub-paragraph (a) relates.

(2) This Order also applies to a person who—

(a) has on or before 31 October 2001 made an application to the Authority—

(i) under section 40 for permission to carry on an overseas regulated activity; or

(ii) under section 44 for variation to add an overseas regulated activity to his Part IV permission; and

(b) was at 3 September 2001 carrying on by way of business that overseas regulated activity in a country or territory outside the United Kingdom.

(a) 1987 c. 22.

(b) 1986 c. 53.

(c) 1986 c. 60.

(d) 1992 c. 40.

(e) 1982 c. 50.

(f) S.I. 1992/3218 amended by S.I. 1993/3225, S.I. 1995/1217, S.I. 1995/1442, S.I. 1996/1669, S.I. 1999/2094 and S.I. 2000/2952.

(g) S.I. 1995/3275 amended by the Bank of England Act 1998 (c. 11) and by S.I. 1996/1669 and S.I. 2000/2952.

(h) S.I. 1994/1696.

(i) S.I. 2001/2636.

(j) S.I. 2001/544.

(3) In this Order, a person to whom this Order applies in accordance with this article is referred to as a “Relevant Applicant”.

Newly regulated activity

- 4.—(1) In this Order a “newly regulated activity” is an activity—
- (a) which the Relevant Applicant was able to carry on in the United Kingdom before commencement without contravening a regulatory enactment;
 - (b) for which the Relevant Applicant needs permission under the Act if he continues to carry on that activity after the relevant date without contravening either the general prohibition or section 20; and
 - (c) which the Relevant Applicant does not have a Part IV permission to carry on by virtue of the Authorised Persons Order.

(2) The reference in paragraph (1) to an activity which the Relevant Applicant was able to carry on without contravening a regulatory enactment does not include an activity in respect of which he was—

- (a) an exempt person under Chapter IV of Part I of the Financial Services Act;
- (b) exempt by virtue of Schedule 2 to the Banking Act.

(3) A “regulatory enactment” means—

- (a) section 3 of the Banking Act;
- (b) section 3 of the Financial Services Act;
- (c) section 2(1) of the Insurance Companies Act;
- (d) section 31(1) of the Friendly Societies Act;
- (e) section 9(1) of the Building Societies Act.

Overseas regulated activity

5. In this Order an “overseas regulated activity” is a regulated activity which the Relevant Applicant—

- (a) is regarded as carrying on in the United Kingdom after the relevant date only by virtue of section 418; and
- (b) which the Relevant Applicant was carrying on at 3 September 2001 without contravening—
 - (i) regulation 20 of the ISD Regulations;
 - (ii) regulation 22 of the 2BCD Regulations;
 - (iii) paragraph 1 or 5 of Schedule 2G to the Insurance Companies Act^(a);
 - (iv) paragraph 1 or 5 of Schedule 13B to the Friendly Societies Act^(b).

Interim permission

- 6.—(1) Subject to article 10, if—
- (a) the Relevant Applicant notifies the Authority before 31 October 2001 that he wishes to have a Part IV permission by virtue of this article; and
 - (b) his application has not been withdrawn or decided before the relevant date,

he is to be treated as having, at the relevant date, a Part IV permission to carry on any newly regulated activity or overseas regulated activity covered by his application.

- (2) For the purposes of paragraph (1)(b), an application has been decided if—
- (a) the Authority has given permission to the Relevant Applicant to carry on the activity without exercising its powers under section 42(7)(a) or (b) or section 43(1) and the grant of permission under section 42(2) takes effect from the relevant date;
 - (b) in a case where the Relevant Applicant refers the determination of his application to the Tribunal under section 55 then if the reference has been determined in respect of that activity;

(a) Schedule 2G was inserted by the 3ID Regulations.
(b) Schedule 13B was inserted by S.I. 1994/1984.

- (c) the Authority has refused permission, or given permission but exercised its power under section 42(7)(a) or (b) or section 43(1) in respect of the carrying on of the activity and the time for referring the matter to the Tribunal has expired before the relevant date without the Relevant Applicant making such a reference.

Subsidiary of person with paragraph 23 permission

- 7.—(1) This article applies where—
- (a) a person (“S”) is a subsidiary undertaking of another person (“PP”);
 - (b) PP is a person in respect of whom a paragraph 23 permission was in effect immediately before commencement;
 - (c) S has, on or before 31 October 2001, made an application to the Authority under section 40 or 44 for permission under Part IV to carry on regulated activities which relate to the paragraph 23 permitted business carried on by PP;
 - (d) PP was, at the date when S made the application referred to in sub-paragraph (c), carrying on paragraph 23 permitted business;
 - (e) PP has not made an application to the Authority under section 40 or 44 for permission under Part IV to carry on regulated activities which correspond to his paragraph 23 permitted business;
 - (f) S notifies the Authority on or before 31 October 2001 that he wishes to have a Part IV permission by virtue of this article.
- (2) In a case where this article applies—
- (a) S is to be treated as a Relevant Applicant for the purposes of this Order; and
 - (b) S is to be treated as having, at commencement, a Part IV permission to carry on the paragraph 23 permitted business covered by his application.
- (3) For the purposes of this article—
- (a) a “paragraph 23 permission” is a permission granted to a person under paragraph 23 of Schedule 1 to the Financial Services Act;
 - (b) “paragraph 23 permitted business” is business which PP was able to carry on before commencement without contravening section 3 of the Financial Services Act by reason of his paragraph 23 permission.

Duration of interim permission

8.—(1) A Relevant Applicant who has an interim permission to carry on a particular regulated activity may not after commencement withdraw his application for permission to carry on that activity, unless the Authority consents to his withdrawing it.

(2) Subject to paragraph (4) and without prejudice to the exercise by the Authority of its powers under Part IV, a Relevant Applicant’s interim permission to carry on a particular activity lapses on whichever is the earliest of the following dates—

- (a) in a case where the Relevant Applicant withdraws his application for permission to carry on that activity, then when the application is withdrawn;
- (b) in a case where the Authority gives permission to carry on the activity and does not exercise its power under section 42(7)(a) or (b) or section 43(1), then from the date when the permission given under section 42(2) takes effect;
- (c) in a case where the Relevant Applicant refers the determination of his application to the Tribunal under section 55, then when the reference is determined in respect of that activity;
- (d) in a case where—
 - (i) the Authority refuses permission or gives permission but exercises its power under section 42(7)(a) or (b) or section 43(1) in respect of the carrying on of the activity; and
 - (ii) the Relevant Applicant does not refer the matter to the Tribunal, then on the date when the right to refer the matter to the Tribunal expires.

(3) For the purposes of paragraph (1)(c), an application is decided when it has been determined and there is no possibility (or no further possibility) of the determination being reversed or varied on a reference to a tribunal or an appeal.

(4) Where—

- (a) the Authority has exercised its powers under section 53 in respect of the activities covered by a Relevant Applicant's interim permission; and
- (b) the operation of paragraph (2) would result in there being no regulated activities for which the Relevant Applicant has a Part IV permission,

the interim permission does not lapse but remains in force (as varied by the Authority under section 53) until it is cancelled by the Authority; and the Authority must cancel the interim permission once it is satisfied that it is no longer necessary to keep the interim permission in force.

Approved persons performing controlled functions for Relevant Applicant

9.—(1) Where a person (“E”) has transitional approval to perform a controlled function in relation to the carrying on by a Relevant Applicant of a regulated activity for which that Relevant Applicant has interim permission, that transitional approval lapses on whichever is the earliest of the following dates—

- (a) the date when the Relevant Applicant's interim permission lapses in accordance with article 8;
- (b) if E has applied for approval under section 59 to perform that function and that application is granted, then the date when that application is granted;
- (c) if E has applied for approval under section 59 to perform that function and the application is refused, then the date when either—
 - (i) any reference of that refusal under section 62(4) is determined by the Tribunal; or
 - (ii) the right to refer the refusal to the Tribunal expires without such a reference having been made.

(2) For the purposes of paragraph (1), E has transitional approval to perform a controlled function if he is to be taken, by virtue of the Authorised Persons Order, to have been approved by the Authority for the performance of that function.

Effect of overriding prohibition

10.—(1) Articles 6 and 8 do not apply to a Relevant Applicant who is subject, immediately before the relevant date, to an overriding prohibition.

(2) For the purposes of this article, a Relevant Applicant is subject to an “overriding prohibition” if—

- (a) his authorisation has been suspended under section 28 or section 33 of the Financial Services Act;
- (b) he is prohibited under section 65 of the Financial Services Act from entering into transactions which constitute investment business (within the meaning of that Act);
- (c) immediately before commencement he was a member of a recognised self-regulating organisation for the purposes of section 7 of the Financial Services Act but was subject to a direction imposed by that organisation preventing him from carrying on investment business (within the meaning of that Act);
- (d) he was prevented by a restriction under section 12 or a direction under section 19 of the Banking Act from accepting deposits;
- (e) he had ceased to be authorised by virtue of a direction under section 11 or section 12A of the Insurance Companies Act to effect contracts of insurance (within the meaning of those sections);
- (f) he was subject to a direction under section 40(1)(a) of the Friendly Societies Act withdrawing his authorisation to effect contracts of insurance (within the meaning of that section);
- (g) he had been forbidden under section 51(1) of the Friendly Societies Act to accept any new members;
- (h) he was subject to a condition imposed under section 42 of the Building Societies Act preventing him from issuing shares, accepting deposits or making advances or other loans;
- (i) he was prohibited under regulation 9 or 15 of the 2BCD Regulations from accepting deposits in the United Kingdom or from carrying on home-regulated investment business in the United Kingdom (within the meaning of those Regulations);

- (j) he was restricted under regulation 10 of the 2BCD Regulations from carrying on in the United Kingdom any home regulated activity (within the meaning of that regulation);
 - (k) he was prohibited under regulation 9 of the ISD Regulations from providing in the United Kingdom any listed services (within the meaning of that regulation).
- (3) Articles 6 and 8 do not apply to a Relevant Applicant who is subject, immediately before the relevant date, to a requirement which—
- (a) is imposed (or is treated, by virtue of the Authorised Persons Order, as having been imposed) on him under section 43; and
 - (b) prohibits him from carrying on the newly regulated activity or overseas regulated activity to which his application relates.

Transitional provision

11.—(1) The following transitional provisions apply until the relevant date.

(2) In sections 45, 46, 47, 48, 50, 52, 53, 54 and 55 (variation of Part IV permissions etc) sections 56 and 60 (performance of regulated activities) and section 148 (modification or waiver of rules)—

- (a) the references to an authorised person are to be read as references to a Relevant Applicant; and
- (b) references to Part IV permissions are to be read as references to interim permissions even though not yet in force.

Application of rules etc. to Relevant Applicants with interim permission

12.—(1) The Authority may direct that any relevant provision which would otherwise apply to Relevant Applicants by virtue of their interim permission is not to apply, or is to apply to them as modified in the way specified in the direction.

(2) Where the Authority makes a rule or gives guidance which applies only to persons who are Relevant Applicants with an interim permission (or only to a class of such persons), section 155 does not apply to that rule or guidance.

(3) For the purposes of paragraph (1) a relevant provision is any provision made as a result of the exercise by the Authority of its legislative functions within the meaning of paragraph 1 of Schedule 1 to the Act.

Application of the Act etc.

13. The Schedule to this Order makes provision about the application of the Act and of certain provisions made under the Act in relation to a Relevant Applicant with an interim permission.

John Heppell
Nick Ainger

10th October 2001

Two of the Lords Commissioners of Her Majesty's Treasury

SCHEDULE

APPLICATION OF THE ACT TO RELEVANT APPLICANTS WITH INTERIM PERMISSION

1. Paragraphs 2 and 3 apply to every Relevant Applicant with an interim permission.
2. For the purposes of section 20, the Relevant Applicant's interim permission is treated as having been given to him by the Authority under Part IV.
3. A Relevant Applicant's interim permission is to be disregarded for the purposes of sections 38(2), 40(2) and 42 to 44.
4. Paragraphs 5 to 13 apply to a Relevant Applicant who falls within section 31(1) only by virtue of having an interim permission.
5. A Relevant Applicant is to be treated after commencement as an authorised person for the purposes of the Act (and of any provision made under the Act), unless otherwise expressly provided for by this Schedule.
6. For the purposes of section 21(1) and 25(2)(a) a Relevant Applicant 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.
7. A Relevant Applicant may still be an appointed representative within the meaning of section 39(2) (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)).
8. A Relevant Applicant is not to be treated as an authorised person for the purposes of Chapter II of Part XVII of the Act.
9. A Relevant Applicant is not to be treated as an authorised person for the purposes of subsections (8) and (9) of section 272.
10. For the purposes of article 22 of the Regulated Activities Order, a Relevant Applicant who does not have an interim permission to carry on an activity of the kind specified by article 21 of that Order—
 - (a) is to be treated as an authorised person for the purpose of considering whether he is able to benefit from the exclusion (so that he is not “a person who is not an authorised person” for the purposes of the article); but
 - (b) is not to be treated as an authorised person for the other purposes of the article (so that a person does not benefit from the exclusion by entering into a transaction with or through the Relevant Applicant or because a Relevant Applicant has given advice to the client).
11. For the purposes of article 29 of the Regulated Activities Order, a Relevant Applicant who does not have an interim permission to carry on an activity of the kind specified by article 25 of that Order—
 - (a) is to be treated as an authorised person for the purpose of considering whether he is able to benefit from the exclusion (so that he is not “a person who is not an authorised person” for the purposes of the article); but
 - (b) is not to be treated as an authorised person for the other purposes of the article (so that a person does not benefit from the exclusion in relation to arrangements made for or with a view to a transaction which is or is to be entered into with or through a Relevant Applicant or because a Relevant Applicant has given advice to the client).
12. For the purposes of article 72(1)(a), (2)(a), (3), or (4)(a) of the Regulated Activities Order, a Relevant Applicant is not to be treated as an authorised person (so that an overseas person does not benefit from the exclusion in relation to transactions entered into with or through the Relevant Applicant).

EXPLANATORY NOTE

(This note does not form part of the Order)

This Order confers an interim permission on certain applicants who have applied to the Financial Services Authority (“the Authority”) for permission under Part IV of the Financial Services and Markets Act 2000 (c. 8) (“the Act”) and whose application is still pending on the date when the main provisions of the Act come into force. Sections 40 and 44 of the Act provide for the making of applications to the Authority for permission to carry on regulated activities within the meaning of section 22 of the Act. 3 September 2001 was the day appointed for the commencement of sections 40 and 44 for the purposes of making such applications by the Financial Services and Markets Act 2000 (Commencement No. 5) Order (S.I. 2001/2632 (C. 87)).

The scope of the Order is limited by articles 3, 4 and 5 to those applicants who are currently lawfully carrying on the activity which will be regulated for the first time under the Act. In order to ensure that their business is not disrupted by the fact that the activity becomes a regulated activity whilst their application for permission is still pending, an applicant who applies for permission before 31 October 2001 and who opts to benefit from the provisions of the Order has an interim permission to enable him to continue to carry on that activity until his application is determined. The Order does not apply to those who are carrying on an activity which is regulated under existing legislation since they will benefit from a Part IV permission conferred by the Financial Services and Markets Act 2000 (Transitional Provisions) (Authorised Persons etc.) Order 2001. According to article 10 of the Order, interim permission cannot be conferred on a person whose business was subject to a serious restriction or prohibition imposed under an existing regulatory regime.

Article 7 makes provision for a subsidiary undertaking of a person who has a permission under paragraph 23 of Schedule 1 to the Financial Services Act 1986 (c. 60). Where the subsidiary applies for a Part IV permission to carry on that activity instead of the person who currently has the permission under paragraph 23, that subsidiary may also choose to have an interim permission pending the outcome of its application.

Article 8 provides that the interim permission lapses at the time when it is superseded by the grant of the application or when the application is withdrawn or refused. Article 9 confers interim approval on people who are working for a person who benefits from interim permission if those people would need approval under Part V of the Act and article 12 confers a power on the Authority to modify the rules and guidance it makes under the Act as it applies to persons with interim permission.

Article 13 and the Schedule to the Order provide for the application of provisions in the Act, and in instruments made under the Act, which refer to “authorised persons”, indicating the instances where such provisions are to be treated as not including a person who has interim permission under this Order.

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