

2001 No. 3646

FINANCIAL SERVICES AND MARKETS

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

Made - - - - - *9th November 2001*
Laid before Parliament *9th November 2001*
Coming into force - - *1st December 2001*

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The Treasury, in exercise of the powers conferred upon them by sections 426, 427 and 428(3) of the Financial Services and Markets Act 2000(a), hereby make the following Order:

PART 1

GENERAL

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Transitional Provisions and Savings) (Information Requirements and Investigations) Order 2001 and comes into force on 1st December 2001.

(2) In this Order—

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

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

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

“commencement” means 1st December 2001;

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

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

“investment business” has the same meaning as in the Financial Services Act;

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

“member”, in relation to a recognised self-regulating organisation or recognised self-regulating organisation for friendly societies, includes any person who, immediately before commencement, was—

(a) a registered person for the purposes of the rules of The Securities and Futures Authority Limited; or

(b) a registered individual for the purposes of the rules of the Personal Investment Authority Limited or of the Investment Management Regulatory Organisation Limited;

“recognised professional body”, “recognised self-regulating organisation” and “recognised self-regulating organisation for friendly societies” have the same meanings as in the Financial Services Act;

“rules”, in relation to a recognised self-regulating organisation, has the meaning given by section 8(3) of the Financial Services Act.

(3) For the purposes of this Order, a requirement is outstanding if it was imposed before commencement and—

(a) the date by which it must be complied with is, or the period within which it must be complied with expires, on or after commencement; and

(b) it was not complied with before commencement.

(a) 2000 c. 8.

(b) 1987 c. 22.

(c) S.I. 1992/3218; amended by the Bank of England Act 1998 (c. 11) Chapter II of Part I, Schedule 5; 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.

(d) 1986 c. 60.

(e) 1982 c. 50.

(f) S.I. 1995/3275; to which there are amendments that are not relevant to this Order.

PART 2

INFORMATION AND REPORT REQUIREMENTS

Relevant information requirements

2.—(1) Any outstanding relevant information requirement is to be treated as a requirement imposed under section 165(1) of the Act (Authority's power to require information), whether or not it could have been imposed under that section.

(2) Such a relevant information requirement is to be treated as if it required the information to be provided, or documents to be produced, to the Authority (if it does not already do so).

(3) In relation to such a relevant information requirement—

- (a) any requirement that any information be provided or document be produced within a specified period or at a specified place is to be treated as if that period or place were specified for the purposes of section 165(2) of the Act;
- (b) any requirement that the information be provided in a particular form is to be treated as a requirement imposed under section 165(5) of the Act;
- (c) any requirement that any information be verified in a specified manner or that any document be authenticated in a specified manner is to be treated as a requirement imposed under section 165(6) of the Act.

(4) Section 174 of the Act (admissibility of statements) applies to any statement made on or after commencement in compliance with an outstanding relevant information requirement of the kind specified by paragraph (8)(b) or (d) as if that statement were a statement of the kind specified in subsection (1) of that section, and as if the reference in subsection (3) to section 177(4) or 398 of the Act including a reference to—

- (a) in relation to a requirement of the kind specified by paragraph (8)(b), section 39(11) or 94(1)(a)(a) of the Banking Act;
- (b) in relation to a requirement of the kind specified by paragraph (8)(d), section 71(1)(b), (3) or (4)(b) of the Insurance Companies Act.

(5) Section 177 of the Act (offences) does not apply to an outstanding relevant information requirement of the kind specified by paragraph (8)(a) and subsection (4) of that section does not apply to an outstanding relevant information requirement of the kind specified by paragraph (8)(c).

(6) Section 398 of the Act (misleading the Authority) does not apply to a person who, on or after commencement, purports to comply with an outstanding relevant information requirement of the kind specified by paragraph (8)(a) or (c).

(7) Where, on or after commencement, a person fails to comply with an outstanding relevant information requirement 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.

(8) In this article, “relevant information requirement” means—

- (a) an applicable requirement or request to provide information or to produce a document imposed on, or made to, a member of a recognised self-regulating organisation or of a recognised self-regulating organisation for friendly societies by that organisation pursuant to a power conferred on it by its rules;
- (b) a requirement to provide information or to produce a document imposed under—
 - (i) subsection (1)(a) of section 39(c) of the Banking Act;
 - (ii) subsection (3)(a) of that section; or

(a) Section 94 was amended by the Bank of England Act 1998 (c. 11) Schedule 5; modified by the 2BCD Regulations.

(b) Amended by S.I. 1984/703 and S.I. 1994/1696; revoked in part by S.I. 1996/2102.

(c) 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 17, Schedule 3; and amended and modified by the 2BCD Regulations.

- (iii) subsection (4) of that section (so far as it relates to subsection (3)(a));
- (c) a requirement to deposit a document or statement imposed under section 43(a) of the Insurance Companies Act; or
- (d) a requirement to furnish information or to produce a document imposed by the Treasury under—
 - (i) subsection (1) of section 44 of the Insurance Companies Act;
 - (ii) subsection (2)(a) of that section; or
 - (iii) subsection (3) of that section (so far as it relates to subsection (2)(a)).

(9) A requirement or request is “applicable” for the purposes of paragraph (8)(a) if it was imposed or made otherwise than in connection with an investigation.

Section 104 of the Financial Services Act etc

- 3.—(1) Any outstanding requirement to which this paragraph applies is to be treated—
- (a) as a relevant requirement for the purposes of Part XXV of the Act (injunctions); and
 - (b) if the requirement was imposed on a person who is, immediately after commencement, an authorised person, as a requirement imposed on him by or under the Act for the purposes of section 205 of the Act (public censure).
- (2) Paragraph (1) applies to a requirement to furnish information imposed under—
- (a) section 104(1) of the Financial Services Act(b); or
 - (b) paragraph 24 of Schedule 11 to that Act(c).
- (3) Any outstanding requirement imposed on a recognised professional body under section 104(2) of the Financial Services Act—
- (a) is to be treated for the purposes of section 380(2) of the Act (injunctions) as a relevant requirement; and
 - (b) is to be treated for the purposes of section 398 of the Act (misleading the Authority) as a requirement imposed by or under the Act (and subsection (2) of that section does not apply).
- (4) Any outstanding requirement imposed on a recognised investment exchange or recognised clearing house (in each case, within the meaning of the Financial Services Act) under section 104(2) of that Act is to be treated for the purposes of section 398 of the Act (misleading the Authority) as a requirement imposed by or under the Act (and subsection (2) of that section does not apply).

Reports by skilled persons

- 4.—(1) Any outstanding relevant report requirement is to be treated as a requirement imposed under section 166(1) of the Act (reports by skilled persons), whether or not it could have been imposed under that section.
- (2) Such a relevant report requirement is to be treated as if it required the report to be provided to the Authority (if it does not already do so).
- (3) In relation to such a relevant report requirement, any requirement as to the form of the report, and any provision relating to the form, contents or deposit of the abstract imposed under subsections (3) to (6) of section 42 of the Insurance Companies Act, is to be treated as a requirement imposed under section 166(3) of the Act.
- (4) Any outstanding relevant report requirement is to be treated as if the person making the report satisfies the requirements of section 166(4) of the Act if—
- (a) in the case of a relevant requirement of the kind specified by paragraph (7)(a), that person was nominated or approved by the Authority under section 39(2) of the Banking Act;
 - (b) in the case of a relevant report requirement of the kind specified by paragraph (7)(b), that person was specified in the requirement;

(a) Amended by S.I. 1997/2781; and by the Youth Justice and Criminal Evidence Act 1999 (c. 23), paragraph 3, Schedule 3; functions transferred by S.I. 1998/2842.

(b) Amended by S.I. 1996/2827; modified by the 2BCD Regulations; S.I. 1994/1696; and by the ISD Regulations. Functions transferred by S.I. 1987/942.

(c) Amended by the Friendly Societies Act 1992 (c. 40) paragraph 10, Schedule 18.

- (c) in the case of a relevant report requirement of the kind specified by paragraph (7)(c), that person was the actuary under section 19(1) of the Insurance Companies Act(a) acting for the person to whom the requirement relates at the time the relevant report requirement was imposed.

(5) Section 174 of the Act (admissibility of statements) applies to any statement made on or after commencement in compliance with an outstanding relevant report requirement as if that statement were a statement of the kind specified in subsection (1) of that section, and as if the reference in subsection (3) to section 177(4) or 398 of the Act included a reference to—

- (a) in the case of a requirement of the kind specified by paragraph (7)(a), section 39(11) or 94(1)(a) of the Banking Act;
- (b) in the case of a requirement of the kind specified by paragraph (7)(b), section 71(1)(b), (3) or (4) of the Insurance Companies Act.

(6) Where, on or after commencement, a person fails to comply with an outstanding relevant report requirement 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.

(7) In this article, “relevant report requirement” means—

- (a) a requirement to provide a report imposed under section 39(1)(b) of the Banking Act;
- (b) a requirement to furnish a report imposed by the Treasury under section 44(2B) of the Insurance Companies Act; or
- (c) a requirement imposed under section 42(1)(b) of that Act to cause an abstract of a report made by an actuary under section 42(1)(a) of that Act to be made.

Use of statements—information requirements

5. Notwithstanding any repeal, section 44(5) to (5B) of the Insurance Companies Act(b) and section 39(12) to (12B) of the Banking Act(c) continue to have effect on and after commencement, in relation to any statement made before commencement, as if—

- (a) the reference in section 44(5B) of the Insurance Companies Act to section 71(1)(b), (3) or (4) of that Act; and
- (b) the reference in section 39(12B) of the Banking Act to section 94(1)(a) of that Act, included a reference to sections 177(4) and 398 of the Act.

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)(d) 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).

(a) Amended by S.I. 1997/2781.

(b) Subsections (5A) and (5B) inserted by the Youth Justice and Criminal Evidence Act 1999 (c. 23), paragraph 3, Schedule 3.

(c) Subsections (12A) and (12B) inserted by the Youth Justice and Criminal Evidence Act 1999 (c. 23), paragraph 17, Schedule 3.

(d) 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.

- (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.

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)(a) 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.

(a) 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.

(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(a) of the Financial Services Act to investigate any matter.

(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(b), 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.

(a) 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).

(b) 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.

(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(a) 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 Criminal Justice Act 1993(b)), 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.

(a) 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.
(b) 1993 c. 36.

(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(a) or 106(b) 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.

(a) 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.

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

(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.

Saving of section 42 of the Banking Act

13.—(1) Any repeal of section 42 of the Banking Act^(a) 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.

John Heppell
Tony McNulty

9th November 2001

Two of the Lords Commissioners of Her Majesty's Treasury

^(a) 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.

EXPLANTORY NOTE

(This note is not part of the Order)

This Order makes transitional provisions for requirement to provide information made under the Banking Act 1987 (“the Banking Act”), the Financial Services Act 1986 (“the Financial Services Act”) and the Insurance Companies Act 1982 (“the Insurance Companies Act”) and requirements made by recognised self-regulating organisations that are outstanding on 1st December 2001 (“commencement”). From that date, these requirements are treated as requirements under section 165 of the Financial Services and Markets Act 2000 (“the Act”) with certain modifications.

The Order also makes transitional provisions for requirements to supply a report by a skilled person that are pending at commencement which were made under the Banking Act or Insurance Companies Act. Such requirements are treated as requirements imposed under section 166 of the Act with certain modifications.

The Order also makes transitional provisions for investigators appointed under the Insurance Companies Act, the Banking Act and the Financial Services Act where the investigations are in progress at commencement. After commencement, the appointment of the investigator has effect as if it were an appointment under Part XI or section 284 of the Act with certain modification (including the modification of criminal sanctions under the Act). Under article 10, the investigating authority that has appointed the inspector must notify the person who is the subject of the investigation of the provision of the Act the investigator is treated as having been appointed under by virtue of this Order unless this would frustrate the investigation.

The Order also makes savings of certain provisions of the Financial Services Act and of the Banking Act for connected purposes.

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