



Statutory Document No. 366/08

FINANCIAL SERVICES ACT 2008

FINANCIAL SERVICES ACT 2008 (APPOINTED DAY) ORDER 2008

Laid before Tynwald 17th July 2008

In exercise of the powers conferred on the Treasury by section 53 of the Financial Services Act 2008¹, and of all other enabling powers, the following Order is hereby made:—

1. Citation and interpretation

(1) This Order may be cited as the Financial Services Act 2008 (Appointed Day) Order 2008.

(2) In this Order —

"the Act" means the Financial Services Act 2008;

"the appointed day" means the date specified in article 2(b);

"Class 1 activities" means regulated activities falling within Class 1 in Schedule 1 to the Regulated Activities Order 2008²;

"Class 5 activity" means a regulated activity falling within Class 5 in Schedule 1 to that Order;

"existing licence" means a licence or authorisation under an enactment repealed by the Act which, by virtue of paragraph 2 of Schedule 8 to the Act, has effect as a licence under the Act.

2. Commencement

Subject to articles 3 to 8, the Act shall come into operation —

(a) for the purpose of making any appointment, order, regulations, rules or Rule Book, on the date this Order is made; and

(b) for all other purposes, on 1st August 2008.

3. Saving for activities previously unregulated

(1) This article applies where —

¹ 2008 c.

² SD 367/08

Price £1.00

- (a) any person was immediately before the appointed day carrying on an activity which is a regulated activity, but
- (b) the carrying on of that activity did not require a licence or authorisation under an enactment repealed by the Act.

(2) Subject to paragraphs (3) and (4), section 4 of the Act (prohibition of unlicensed activities) shall not apply to the carrying on of that activity by that person or an employee of that person until the later of —

- (a) 1st January 2009, or
- (b) if that person has before 1st November 2008 applied for a licence to carry on that activity, —
 - (i) the end of the period within which an appeal can be brought under section 32 of the Act against the decision on the application, or
 - (ii) where an appeal is brought, the determination or withdrawal of the appeal.

(3) Paragraph (2) shall not apply in relation to a regulated activity carried on by the holder of an existing licence and authorised by the licence to be carried on by virtue of article 5(1).

(4) Where, before the appointed day, the carrying on of an activity did not require a licence or authorisation under an enactment repealed by the Act by virtue of an exemption granted by regulations under such an enactment, paragraph (2) is subject to any condition of that exemption.

(5) Nothing in this article affects an exemption conferred by regulations under section 44(2) of the Act.

4. Saving for certain activities carried on before November 2005

- (1) This article applies where —
 - (a) any person was immediately before the appointed day carrying on an activity which is a Class 5 activity, but
 - (b) by virtue of article 3 (transitional provision) of the Fiduciary Services Act 2005 (Appointed Day) Order 2005³ section 2(1) of the Corporate Service Providers Act 2000⁴ did not apply to that person in respect of that activity.

(2) The application by virtue of which the said article 3 applied to that person shall be treated for the purposes of the Act as an application for a licence to carry on the regulated activities which correspond to the Class 5 activities to which the application relates.

(3) Section 4 of the Act (prohibition of unlicensed activities) shall not apply to the carrying on of those activities by that person or an employee of that person until —

³ SD 467/05

⁴ 2000 c.13

- (a) the end of the period within which an appeal can be brought under section 32 of the Act against the decision on the application referred to in paragraph (2), or
- (b) where an appeal is brought, the determination or withdrawal of the appeal.

5. Effect of existing licences

(1) An existing licence shall authorise the holder of it to carry on any regulated activities which correspond to —

- (a) a business or activity which immediately before the appointed day he was authorised by the licence to carry on, and
- (b) any other business or activity which, by reason that he held the existing licence, he was immediately before the appointed day permitted to carry on by virtue of any exemption granted by regulations under an enactment repealed by the Act.

(2) The following conditions —

- (a) any condition to which an existing licence was subject immediately before the appointed day, and
- (b) any condition of an exemption referred to in paragraph (1)(b),

shall have effect, with any necessary modifications, as if they had been imposed under section 7(1)(b) of the Act.

(3) An existing licence shall not authorise the carrying on of any regulated activity except as provided by paragraphs (1) and (2).

6. Duration of existing licence

(1) Subject to paragraph (2), an existing licence, unless it is previously surrendered or revoked, shall cease to have effect in relation to the regulated activities referred to in article 5(1) on the expiration of the period of one year beginning with the appointed day.

(2) Where the holder of an existing licence has before the expiration of that period applied for a licence to carry on any of the regulated activities referred to in article 5(1), the existing licence shall continue to have effect in relation to the activities to which the application relates until —

- (a) the end of the period within which an appeal can be brought under section 32 of the Act against the decision on the application, or
- (b) where an appeal is brought, the determination or withdrawal of the appeal.

7. Application of existing regulatory codes etc.

(1) Where a provision of —

- (a) a regulatory code made by the Commission under an enactment repealed by this Act, or

(b) the Investment Business (Clients' Money) Regulations 1996⁵, applied to the holder of an existing licence immediately before the appointed day, that provision shall have effect, with any necessary modifications, after the appointed day as if it were a rule contained in a Rule Book under section 18 of the Act and applying to the holder of the licence in relation to the regulated activities which, by virtue of article 5(1), are authorised by the licence to be carried on.

(2) Paragraph (1) shall cease to have effect on 1st January 2009, but not so as to prevent, affect or prejudice any action for a breach, or proceedings for an offence, in relation to a contravention before that date of a provision referred to in paragraph (1)(a).

(3) The Banking Business (Compensation of Depositors) Regulations 1991⁶ shall have effect, with any necessary modifications, after the appointed day in relation to —

- (a) a banking institution within the meaning of those Regulations in respect of whom an existing licence under section 3 of the Banking Act 1998⁷ is in force; and
- (b) a licenceholder (other than a building society) licensed to carry on Class 1 activities,

as if they had been made under section 25 of the Act.

(4) Paragraph (3) shall cease to have effect on 1st January 2009, but not so as to prevent, affect or prejudice any claim, or rights of subrogation in respect of a claim, relating to an institution determined to be in default (within the meaning of those Regulations) by reason of an event occurring before that date.

8. Appeals to Tribunal

Until the coming into operation of rules made under section 8 of the Tribunals Act 2006⁸, the Financial Services Review Regulations 2001⁹ shall apply to an appeal under section 32 of the Act, with the modifications that —

- (a) a reference to an application for the review of a decision by the Commission shall be construed as a reference to such an appeal; and
- (b) a reference to the Committee shall be construed as a reference to the Financial Services Tribunal,

and with any other necessary modifications.

MADE 19th June 2008

A.R. Bell

Minister for the Treasury

⁵ SD 153/96

⁶ GC 47/91

⁷ 1998 c.4

⁸ 2006 c.1

⁹ SD 332/01

EXPLANATORY NOTE

(This note is not part of the Order.)

This Order brings the Financial Services Act 2008 into force on 1st August 2008 (article 2).

The Order includes transitional arrangements that permit previously unregulated activities to continue without a licence until 1st January 2009 (article 3). It also provides transitional arrangement for the provision of trust services without a licence but only where an application was made before November 2005 and which is still pending, until the application is determined (article 4). It also provides that licences and authorisations under enactments repealed by the Act (which have effect as if issued under the Act) authorise the holder to carry on the corresponding regulated activities for one year from that date, or until an application for a licence under the Act is determined, whichever is earlier (articles 5 and 6). The existing regulatory codes, and certain regulations, applying to those activities will continue to apply until 1st January 2009 (article 7), and the existing procedural regulations will apply to an appeal to the Financial Services Tribunal pending the making of rules under the Tribunals Act 2006 (article 8).