
STATUTORY INSTRUMENTS

2001 No. 3623

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act
2000 (Exemption) (Amendment) Order 2001

Made - - - - 7th November 2001
Laid before Parliament 8th November 2001
Coming into force - - 1st December 2001

The Treasury, in exercise of the powers conferred on them by sections 38 and 428(3) of the Financial Services and Markets Act 2000(1), hereby make the following Order:

1. This Order may be cited as the Financial Services and Markets Act 2000 (Exemption) (Amendment) Order 2001 and comes into force on 1st December 2001.
2. This Order amends the Financial Services and Markets Act 2000 (Exemption) Order 2001(2).
3. In article 6, omit the words “of the Credit Unions (Northern Ireland) Order 1985(3)”.
4. After paragraph 24 of the Schedule, insert—

“24A. A credit union, within the meaning of the Credit Unions (Northern Ireland) Order 1985.”.
5. In paragraph 37 (Operators) of the Schedule, for sub-paragraph (1) substitute—

“(1) An Operator, in so far he carries on—

 - (a) any regulated activity for the purposes of the performance of his functions as an Operator under the Uncertificated Securities Regulations 1995(4); or
 - (b) any other regulated activity for the purposes of operating a computer-based system and procedures which—
 - (i) enable title to investments to be evidenced and transferred without a written instrument; or
 - (ii) facilitate matters supplementary or incidental to those specified in sub-paragraph (i),

(1) 2000 c. 8.

(2) S.I. 2001/1201.

(3) S.I. 1985/1205 (N.I. 12); relevant amendments are made by paragraphs 28 and 29 of Schedule 21 to the Friendly Societies Act 1992 (c. 40) and by S.I. 1997/2984 (N.I. 22).

(4) S.I. 1995/3272; amended by S.I. 1996/2827, S.I. 1999/506, S.I. 2000/311 and S.I. 2000/1682.

other than a regulated activity in respect of which a recognised clearing house is exempt from the general prohibition by virtue of section 285(3) of the Act.”.

6. In paragraph 39 (insolvency practitioners) of the Schedule, at the end insert “or article 3 of the Insolvency (Northern Ireland) Order 1989(5)”.

7. In paragraph 48 (social housing) of the Schedule—

(a) at the end of sub-paragraph (b), insert “or any body corporate the objects of which correspond to those of such a housing association and which, pursuant to a contract with Scottish Homes, is registered in a register kept for the purpose by Scottish Homes”;

(b) at the end insert—

“(e) the body established under article 9 of the Housing (Northern Ireland) Order 1981(6) known as the Northern Ireland Housing Executive.”.

8. After paragraph 48 of the Schedule, insert—

“Electricity industry

49.—(1) NGC is exempt from the general prohibition in respect of any regulated activity of the kind specified by article 14, 21, 25 or 53 of the Regulated Activities Order (dealing in investments as principal or agent, arranging deals in investments or advising on investments) which it carries on in the course of—

(a) its participation in the Balancing and Settlement Arrangements as operator of the electricity transmission system in England and Wales under the Transmission Licence; or

(b) the acquisition by it of Balancing Services in accordance with the Electricity Act 1989(7) and the Transmission Licence.

(2) ELEXON Clear Limited is exempt from the general prohibition in respect of any regulated activity of the kind specified by article 14, 21 or 25 of that Order which it carries on in the course of its participation in the Balancing and Settlement Arrangements as clearer for the purposes of (among other things) receiving from and paying to BSC Parties trading and reconciliation charges arising under the Balancing and Settlement Arrangements.

(3) Each BSC Party is exempt from the general prohibition in respect of any regulated activity of the kind specified by article 14, 21, 25 or 53 of that Order which it carries on in the course of—

(a) its participation in the Balancing and Settlement Arrangements; or

(b) the provision by it (or, in the case of an activity of the kind specified by article 21 of that Order, its principal) of Balancing Services to NGC.

(4) ELEXON Limited is exempt from the general prohibition in respect of any regulated activity of the kind specified by article 25 of that Order which it carries on in the course of its participation in the Balancing and Settlement Arrangements as administrator.

(5) Each BSC Agent and each Volume Notification Agent is exempt from the general prohibition in respect of any regulated activity of the kind specified by article 25 of that Order which it carries on in that capacity.

(5) S.I. 1989/2405 (N.I. 19).

(6) S.I. 1981/156 (N.I.13); substituted by the Housing (Northern Ireland) Order 1983 (S.I./1118) (N.I. 15), article 85.

(7) 1989 c. 29.

(6) NGC, Energy Pool Funds Administration Limited and ESIS Limited are exempt from the general prohibition in respect of any regulated activity of the kind specified by article 14, 21, 25 or 53 of that Order which they carry on—

- (a) under, or relating to, the Pooling and Settlement Agreement or relating to transactions that calculate a price by reference to the Pooling and Settlement Agreement; or
- (b) under, or relating to the settlement and reconciliation of, transactions made under the Pooling and Settlement Agreement.

(7) In this paragraph—

“Ancillary Services” means services which generators and suppliers of electricity and those making transfers of electricity across an Interconnector are required (as a condition of their connection to the transmission system in England and Wales), or have agreed, to make available to NGC for the purpose of securing the stability of the electricity transmission or any distribution system in England and Wales or any system linked to it by an Interconnector;

“Balancing and Settlement Arrangements” means—

- (a) the Balancing Mechanism; and
- (b) arrangements—
 - (i) for the determination and allocation to BSC Parties of the quantities of electricity that have been delivered to and taken off the electricity transmission system and any distribution system in England and Wales; and
 - (ii) which set, and provide for the determination and financial settlement of, BSC Parties' obligations arising by reference to the quantities referred to in sub-paragraph (i), including the difference between such quantities (after taking account of accepted bids and offers in the Balancing Mechanism) and the quantities of electricity contracted for sale and purchase between BSC Parties;

“Balancing Mechanism” means the arrangements pursuant to which BSC Parties may make, and NGC may accept, offers or bids to increase or decrease the quantities of electricity to be delivered to or taken off the electricity transmission system or any distribution system in England and Wales at any time or during any period so as to assist NGC in operating and balancing the electricity transmission system, and arrangements for the settlement of financial obligations arising from the acceptance of such offers and bids;

“Balancing Services” means—

- (a) offers and bids made in the Balancing Mechanism;
- (b) Ancillary Services; and
- (c) other services available to NGC which assist it in operating the electricity transmission system in accordance with the Electricity Act 1989 and the Transmission Licence;

“BSC Agents” means the persons for the time being engaged by or on behalf of ELEXON Limited for the purpose of providing services to all BSC Parties, NGC, ELEXON Limited and ELEXON Clear Limited in connection with the operation of the Balancing and Settlement Arrangements;

“BSC Framework Agreement” means the agreement of that title in the form approved by the Secretary of State for the purpose of conditions (inserted by the Secretary of

State under powers granted by section 15A of the Electricity Act 1989⁽⁸⁾) of (among other things) the Transmission Licence, and which is dated 14th August 2000;

“BSC Parties” means those persons (other than NGC, ELEXON Limited and ELEXON Clear Limited) who have signed or acceded to (in accordance with the terms of the BSC Framework Agreement), and not withdrawn from, the BSC Framework Agreement;

“Interconnector” means the electric lines and electrical plant used for the transfer of electricity to or from the electricity transmission system and distribution systems in England and Wales into or out of England and Wales;

“NGC” means The National Grid Company plc;

“the Pooling and Settlement Agreement” means the agreement of that title date 30th March 1990 (as it has effect on the coming into force of this article) to which a person generating or supplying electricity may be required to become party by the licence granted to him under section 6 of the Electricity Act 1989;

“the Transmission Licence” means the licence to transmit electricity in England and Wales granted to NGC under section 6(1)(b) of the Electricity Act 1989; and

“Volume Notification Agents” means the persons for the time being appointed and authorised under and in accordance with the Balancing and Settlement Arrangements on behalf of BSC Parties to notify to the BSC Agent designated for that purpose pursuant to the Balancing and Settlement Arrangements quantities of electricity contracted for the sale and purchase between those BSC Parties to be taken into account for the purposes of the Balancing and Settlement Arrangements.”.

7th November 2001

Nick Ainger
Anne McGuire
Two of the Lords Commissioners of Her
Majesty’s Treasury

⁽⁸⁾ Section 15A was inserted by the Utilities Act 2000 (c. 27) s 68(1).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Financial Services and Markets Act 2000 (Exemption) Order 2001 (S.I.2001/1201) (“the Exemption Order”). That Order provides for certain persons to be exempt from the general prohibition which is imposed by section 19 of the Financial Services and Markets Act 2000 (“the Act”). This Order does not contain any provision that restricts or removes an exemption provided by that Order.

Articles 2 and 3 relate to credit unions within the meaning of the Credit Unions (Northern Ireland) Order 1985 (S.I. 1985/1205); article 2 removes these persons from the transitional exemption for deposit taking by credit unions in article 6 of the Exemption Order and article 3 provides a permanent exemption for these bodies. Article 5 amends the exemption of an Operator. Article 6 exempts insolvency practitioners in Northern Ireland and article 7 exempts certain bodies corporate which have objects that correspond to those of a housing association and the Northern Ireland Housing Executive.

Article 8 inserts an exemption in relation to certain parts of the new wholesale electricity trading arrangements which replace the Electricity Pool of England and Wales. Article 8 largely replicates, in relation to the Act, the effect of the exemption from the requirement to be authorised under the Financial Services Act 1986 conferred by the Financial Services Act 1986 (Electricity Industry Exception) Order 2001 (S.I. 2001/598).

Copies of the BSC Framework Agreement may be ordered from ELEXON Limited, 3rd Floor, 1 Triton Square, London NW1 3DX, telephone 020 7380 4100. An up to date list of BSC Parties may be viewed at or printed from www.elexon.co.uk. Copies of the current version of the Pooling and Settlement Agreement may be ordered from ELEXON Limited, 3rd Floor, 1 Triton Square, London, NW1 3DX, telephone 020 7380 4100. Copies of the Transmission Licence may be ordered from the Library, Office or Gas and Electricity Markets, 9 Millbank, London SW19 3GE, telephone 020 7901 7002, or viewed at or printed from www.ofgem.gov.uk.