

2003 No. 1476

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003

Made - - - - - 5th June 2003

Laid before Parliament 5th June 2003

Coming into force - - - in accordance with article 1

Approved by Parliament

Whereas, in the opinion of the Treasury, one of the effects of the following Order is that an activity which is not a regulated activity (within the meaning of the Financial Services and Markets Act 2000(a)) will become a regulated activity;

The Treasury, in exercise of the powers conferred upon them by sections 22(1) and (5), 192(a), 426, 427 and 428(3) of, and paragraph 25 of Schedule 2 to, the Financial Services and Markets Act 2000, 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 (Regulated Activities) (Amendment) (No. 2) Order 2003.

(2) Articles 22 to 27 of this Order come into force on 1st January 2004.

(3) The other provisions of this Order come into force—

- (a) in so far as they relate to contracts of long-term care insurance, on 31st October 2004;
- (b) for all other purposes, on 14th January 2005.

(4) In this Order—

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

“contract of long-term care insurance” means a contract of insurance (within the meaning of the principal Order) in respect of which the following conditions are met—

- (a) the purpose (or one of the purposes) of the policy is to protect the policyholder against the risk of becoming unable to live independently without assistance in consequence of a deterioration of mental or physical health, injury, sickness or other infirmity;
- (b) benefits under the contract are payable in respect of—
 - (i) services,
 - (ii) accommodation, or

(a) 2000 c. 8.

- (iii) goods,
which are (or which is) necessary or desirable due to a deterioration of mental or physical health, injury, sickness or other infirmity;
 - (c) the contract is expressed to be in effect until the death of the policyholder (except that the contract may give the policyholder the option to surrender the policy); and
 - (d) the benefits under the contract are capable of being paid throughout the life of the policyholder;
- “the principal Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(a).

PART 2

AMENDMENTS TO THE PRINCIPAL ORDER

Amendments to the principal Order

- 2. This Part of the Order amends the principal Order.

Interpretation and general

- 3.—(1) In article 3(1) (interpretation)(b)—
 - (a) in the definition of “overseas person”, in paragraph (a), after “37”, insert “, 39A”; and
 - (b) after the definition of “regulated mortgage contract”, insert—
 - ““relevant investment” means—
 - (a) rights under a qualifying contract of insurance;
 - (b) rights under any other contract of insurance;
 - (c) any investment of the kind specified by any of articles 83, 84, 85 and 87; or
 - (d) any investment of the kind specified by article 89 so far as relevant to an investment falling within (a) or (c);”.
- (2) In article 4 (specified activities: general)(c)—
 - (a) after paragraph (4), insert—
 - “(4A) Where a person, other than a person specified by Article 1.2 of the insurance mediation directive (the text of which is set out in Part 1 of Schedule 4)—
 - (a) for remuneration, takes up or pursues insurance mediation or reinsurance mediation in relation to a risk or commitment located in an EEA State, and
 - (b) in doing so would be treated as carrying on an activity of a kind specified by a provision of this Part but for an exclusion in any of articles 30, 66 and 67,that exclusion is to be disregarded (and accordingly that person is to be treated as carrying on an activity of the kind specified by the provision in question).”; and
 - (b) in paragraph (5)—
 - (i) after the definition of “core investment service”, insert—
 - ““insurance mediation” has the meaning given by Article 2.3 of the insurance mediation directive, the text of which is set out in Part II of Schedule 4;”;
 - (ii) at the end of that definition, omit the word “and”; and
 - (iii) at the end of the definition of “investment firm”, insert—
 - ““reinsurance mediation” has the meaning given by Article 2.4 of the insurance mediation directive, the text of which is set out in Part III of Schedule 4.”.

(a) S.I. 2001/544; amended by S.I. 2001/3544; S.I. 2002/682; S.I. 2002/1310, S.I. 2002/1776, S.I. 2002/1777 and S.I. 2003/1475.

(b) Amended by S.I. 2002/682 and S.I. 2003/1475.

(c) Amended by S.I. 2002/682.

Activities—dealing in investments as agent

4.—(1) In article 21 (dealing in investments as agent), for “contractually based investments”, substitute “relevant investments”.

(2) In article 22 (dealing as agent with or through authorised persons), for paragraph (2), substitute—

“(2) But the exclusion in paragraph (1) does not apply if—

- (a) the transaction relates to a contract of insurance; or
- (b) the agent receives from any person other than the client any pecuniary reward or other advantage, for which he does not account to the client, arising out of his entering into the transaction.”.

(3) In article 24 (other exclusions from the activity of dealing as agent)(a), for “and 72A (information society services)”, substitute “, 72A (information society services), 72B (activities carried on by a provider of relevant goods or services) and 72D (large risks contracts where risk situated outside the EEA)”.

Activities—arranging deals in investments

5.—(1) In article 25(1) (arranging deals in investments), for “contractually based investment”, substitute “relevant investment”.

(2) In article 28 (arranging transactions to which the arranger is a party), after paragraph (2), insert—

“(3) But the exclusions in paragraphs (1) and (2) do not apply to arrangements made for or with a view to a transaction which relates to a contract of insurance, unless the person making the arrangements either—

- (a) is the only policyholder; or
- (b) as a result of the transaction, would become the only policyholder.”.

(3) In article 29 (arranging deals with or through authorised persons)(b), for paragraph (2), substitute—

“(2) But the exclusion in paragraph (1) does not apply if—

- (a) the transaction relates, or would relate, to a contract of insurance; or
- (b) A receives from any person other than the client any pecuniary reward or other advantage, for which he does not account to the client, arising out of his making the arrangements.”.

(4) In article 30 (arranging transactions in connection with lending on the security of insurance policies)(c), in paragraph (2)—

- (a) in the definition of “relevant authorised person”, for “qualifying contracts of insurance”, substitute “contracts of insurance”; and
- (b) in the definition of “relevant transaction”, for “qualifying contract of insurance”, substitute “contract of insurance”.

(5) In article 33 (introducing)(d)—

- (a) in paragraph (b)(iii), after “37”, insert “, 39A”;
- (b) at the end of paragraph (b)(iii), omit “and”; and
- (c) at the end of paragraph (c), insert—

“; and

- (d) the arrangements are made with a view to a person entering into a transaction which does not relate to a contract of insurance.”.

(6) In article 35 (international securities self-regulating organisations), in paragraph (4)(a), for “contractually based investments”, substitute “relevant investments”.

(a) Amended by S.I. 2002/1776.

(b) Amended by S.I. 2003/1475.

(c) Amended by S.I. 2001/3544.

(d) Amended by S.I. 2003/1475.

(7) In article 36(1) (other exclusions from the activity of arranging deals)(a), for “and 72A (information society services)”, substitute “, 72A (information society services), 72B (activities carried on by a provider of relevant goods or services), 72C (provision of information about contracts of insurance on an incidental basis) and 72D (large risks contracts where risk situated outside the EEA)”.

Activities—managing investments

6. In article 39 (other exclusions from the activity of managing investments)(b), for “and 72A (information society services)”, substitute “, 72A (information society services) and 72C (provision of information about contracts of insurance on an incidental basis)”.

Activities—assisting in the administration and performance of a contract of insurance

7. After article 39 (other exclusions from the activity of managing investments), insert—

“CHAPTER VIIA

ASSISTING IN THE ADMINISTRATION AND PERFORMANCE OF A CONTRACT OF INSURANCE

The activity

Assisting in the administration and performance of a contract of insurance

39A. Assisting in the administration and performance of a contract of insurance is a specified kind of activity.

Exclusions

Claims management on behalf of an insurer etc.

39B.—(1) A person does not carry on an activity of the kind specified by article 39A if he acts in the course of carrying on the activity of—

- (a) expert appraisal;
- (b) loss adjusting on behalf of a relevant insurer; or
- (c) managing claims on behalf of a relevant insurer,

and that activity is carried on in the course of carrying on any profession or business.

(2) In this article—

- (a) “relevant insurer” means—
 - (i) a person who has Part IV permission to carry on an activity of the kind specified by article 10;
 - (ii) a person to whom the general prohibition does not apply by virtue of section 316(1)(a) of the Act (members of the Society of Lloyd’s);
 - (iii) an EEA firm falling within paragraph 5(d) of Schedule 3 to the Act (insurance undertaking); or
 - (iv) a relevant reinsurer;
- (b) “relevant reinsurer” means a person whose main business consists of accepting risks ceded by—
 - (i) a person falling within sub-paragraph (i), (ii) or (iii) of the definition of “relevant insurer”; or
 - (ii) a person who is established outside the United Kingdom who carries on an activity of the kind specified by article 10 by way of business.

(a) Amended by S.I. 2002/1776 and amended by renumbered S.I. 2003/1475.

(b) Amended by 2002/1776.

Other exclusions

39C. Article 39A is also subject to the exclusions in articles 66 (trustees etc.), 67 (profession or non-investment business), 72A (information society services), 72B (activities carried on by a provider of relevant goods or services), 72C (provision of information about contracts of insurance on an incidental basis) and 72D (large risks contracts where risk situated outside the EEA).”.

Activities—safeguarding and administering

8. In article 44 (other exclusions from the activity of safeguarding and administering)(a), for “and 72A (information society services)”, substitute “, 72A (information society services) and 72C (provision of information about contracts of insurance on an incidental basis)”.

Activities—advising on investments

9.—(1) In article 53 (advising on investments), in paragraph (b)(i), for “contractually based investment”, substitute “relevant investment”.

(2) In article 54 (advice given in newspapers)(b), in paragraph (1)(b), for “contractually based investments”, substitute “relevant investments”.

(3) In article 55(1) (other exclusions from the activity of advising on investments)(c), for “and 72A (information society services)”, substitute “, 72A (information society services), 72B (activities carried on by a provider of relevant goods or services) and 72D (large risks contracts where risk situated outside the EEA)”.

Exclusions applying to several activities

10.—(1) In article 66 (trustees, nominees and personal representatives)(d)—

(a) after paragraph (3), insert—

“(3A) Subject to paragraph (7), there is excluded from article 39A any activity carried on by a person acting as trustee or personal representative, unless he holds himself out as providing a service comprising an activity of the kind specified by article 39A.”; and

(b) in paragraph (7), after “(3)”, insert “, (3A)”.

(2) In article 67 (activities carried on in the course of a profession or non-investment business)(e), for “40”, substitute “39A, 40”.

(3) In article 68 (activities carried on in connection with the sale of goods or supply of services)(f)—

(a) in paragraph (1), in the definition of “supplier”, after “37”, insert “, 39A”;

(b) in paragraph (9), for “qualifying contract of insurance”, substitute “contract of insurance”; and

(c) in paragraph (11), for “qualifying contract of insurance”, substitute “contract of insurance”.

(4) In article 69 (groups and joint enterprises)(g), after paragraph (9), insert—

“(10) Paragraph (2) does not apply to a transaction for the sale or purchase of a contract of insurance.

(11) Paragraph (4) does not apply to arrangements for, or with a view to, a transaction for the sale or purchase of a contract of insurance.

(12) Paragraph (9) does not apply where the advice relates to a transaction for the sale or purchase of a contract of insurance.”.

(a) Amended by S.I. 2002/1776.

(b) Amended by S.I. 2003/1475.

(c) Amended by S.I. 2002/1776 and amended by renumbered by S.I. 2003/1475.

(d) Amended by S.I. 2003/1475.

(e) Amended by S.I. 2001/3544 and S.I. 2003/1475.

(f) Amended by S.I. 2001/3544.

(g) Amended by S.I. 2002/682.

(5) In article 70 (activities carried on in connection with the sale of a body corporate), after paragraph (6), insert—

“(7) Paragraphs (4), (5) and (6) do not apply in the case of a transaction for the sale or purchase of a contract of insurance.”.

(6) In article 72 (overseas persons)(a), in paragraph (6), after “37”, insert “, 39A”.

Further exclusions in connection with activities carried on in relation to contracts of insurance

11. After article 72A (information society services)(b), insert—

“Activities carried on by a provider of relevant goods or services

72B.—(1) In this article—

“connected contract of insurance” means a contract of insurance which—

- (a) is not a contract of long-term insurance;
- (b) has a total duration (or would have a total duration were any right to renew conferred by the contract exercised) of five years or less;
- (c) has an annual premium (or, where the premium is paid otherwise than by way of annual premium, the equivalent of an annual premium) of 500 euro or less, or the equivalent amount in sterling or other currency;
- (d) covers the risk of—
 - (i) breakdown, loss of, or damage to, non-motor goods supplied by the provider; or
 - (ii) damage to, or loss of, baggage and other risks linked to the travel booked with the provider (“travel risks”);
- (e) does not cover any liability risks (except, in the case of a contract which covers travel risks, where that cover is ancillary to the main cover provided by the contract);
- (f) is complementary to the non-motor goods being supplied or service being provided by the provider; and
- (g) is of such a nature that the only information that a person requires in order to carry on an activity of the kind specified by article 21, 25, 39A or 53 in relation to it is the cover provided by the contract;

“non-motor goods” means goods which are not mechanically propelled road vehicles;

“provider” means a person who supplies non-motor goods or provides services related to travel in the course of carrying on a profession or business which does not otherwise consist of the carrying on of regulated activities.

(2) There is excluded from article 21 any transaction for the sale or purchase of a connected contract of insurance into which a provider enters as agent.

(3) There are excluded from article 25(1) and (2) any arrangements made by a provider for, or with a view to, a transaction for the sale or purchase of a connected contract of insurance.

(4) There is excluded from article 39A any activity carried on by a provider where the contract of insurance in question is a connected contract of insurance.

(5) There is excluded from article 53 the giving of advice by a provider in relation to a transaction for the sale or purchase of a connected contract of insurance.

(6) For the purposes of this article, a contract of insurance which covers travel risks is not to be treated as a contract of long-term insurance, notwithstanding the fact that it contains related and subsidiary provisions such that it might be regarded as a contract of long-term insurance, if the cover to which those provisions relate is ancillary to the main cover provided by the contract.

(a) Amended by S.I. 2003/1475.

(b) Inserted by S.I. 2002/1776.

Provision of information on an incidental basis

72C.—(1) There is excluded from articles 25(1) and (2) the making of arrangements for, or with a view to, a transaction for the sale or purchase of a contract of insurance or an investment of the kind specified by article 89, so far as relevant to such a contract, where that activity meets the conditions specified in paragraph (4).

(2) There is excluded from articles 37 and 40 any activity—

- (a) where the assets in question are rights under a contract of insurance or an investment of the kind specified by article 89, so far as relevant to such a contract; and
- (b) which meets the conditions specified in paragraph (4).

(3) There is excluded from article 39A any activity which meets the conditions specified in paragraph (4).

(4) The conditions specified in this paragraph are that the activity—

- (a) consists of the provision of information to the policyholder or potential policyholder;
- (b) is carried on by a person in the course of carrying on a profession or business which does not otherwise consist of the carrying on of regulated activities; and
- (c) may reasonably be regarded as being incidental to that profession or business.

Large risks contracts where risk situated outside the EEA

72D.—(1) There is excluded from articles 21, 25(1) and (2), 39A and 53 any activity which is carried on in relation to a large risks contract of insurance, to the extent that the risk or commitment covered by the contract is not situated in an EEA State.

(2) In this article, a “large risks contract of insurance” is a contract of insurance the principal object of which is to cover—

- (a) risks falling within paragraph 4 (railway rolling stock), 5 (aircraft), 6 (ships), 7 (goods in transit), 11 (aircraft liability) or 12 (liability of ships) of Part 1 of Schedule 1;
- (b) risks falling within paragraph 14 (credit) or 15 (suretyship) of that Part provided that the risks relate to a business carried on by the policyholder; or
- (c) risks falling within paragraph 3 (land vehicles), 8 (fire and natural forces), 9 (damage to property), 10 (motor vehicle liability), 13 (general liability) or 16 (miscellaneous financial loss) of that Part provided that the risks relate to a business carried on by the policyholder and that the condition specified in paragraph (3) is met in relation to that business.

(3) The condition specified in this paragraph is that at least two of the three following criteria were met in the most recent financial year for which information is available—

- (a) the balance sheet total of the business (within the meaning of section 247(5) of the Companies Act 1985^(a) or article 255(5) of the Companies (Northern Ireland) Order 1986^(b)) exceeded 6.2 million euro,
- (b) the net turnover (within the meaning given to “turnover” by section 262(1) of that Act or article 270(1) of that Order) exceeded 12.8 million euro,
- (c) the number of employees (within the meaning given by section 247(6) of that Act^(c) or article 255(6) of that Order) exceeded 250,

and for a financial year which is a company’s financial year but not in fact a year, the net turnover of the policyholder shall be proportionately adjusted.

(a) 1985 c. 6; amended by S.I. 1997/220.

(b) S.I. 1986/1032 (N.I. 6).

(c) Amended by S.I. 1996/189.

(4) For the purposes of paragraph (3), where the policyholder is a member of a group for which consolidated accounts (within the meaning of the Seventh Company Law Directive) are drawn up, the question whether the condition specified by that paragraph is met is to be determined by reference to those accounts.”.

Relevant text of the insurance mediation directive

12. After Schedule 3, insert—

“SCHEDULE 4

Article 4

RELEVANT TEXT OF THE INSURANCE MEDIATION DIRECTIVE

Part 1

Article 1.2

“This Directive shall not apply to persons providing mediation services for insurance contracts if all the following conditions are met:

- (a) the insurance contract only requires knowledge of the insurance cover that is provided;
- (b) the insurance contract is not a life assurance contract;
- (c) the insurance contract does not cover any liability risks;
- (d) the principal professional activity of the person is other than insurance mediation;
- (e) the insurance is complementary to the product or service supplied by any provider, where such insurance covers:
 - (i) the risk of breakdown, loss of or damage to goods supplied by that provider; or
 - (ii) damage to or loss of baggage and other risks linked to the travel booked with that provider, even if the insurance covers life assurance or liability risks, provided that the cover is ancillary to the main cover for the risks linked to that travel;
- (f) the amount of the annual premium does not exceed EUR 500 and the total duration of the insurance contract, including any renewals, does not exceed five years.”

Part II

Article 2.3

““Insurance mediation” means the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim.

These activities when undertaken by an insurance undertaking or an employee of an insurance undertaking who is acting under the responsibility of the insurance undertaking shall not be considered as insurance mediation.

The provision of information on an incidental basis in the context of another professional activity provided that the purpose of that activity is not to assist the customer in concluding or performing an insurance contract, the management of claims of an insurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims shall also not be considered as insurance mediation.”

Part III

Article 2.4

““Reinsurance mediation” means the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of reinsurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim.

These activities when undertaken by a reinsurance undertaking or an employee of a reinsurance undertaking who is acting under the responsibility of the reinsurance undertaking are not considered as reinsurance mediation.

The provision of information on an incidental basis in the context of another professional activity provided that the purpose of that activity is not to assist the customer in concluding or performing a reinsurance contract, the management of claims of a reinsurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims shall also not be considered as reinsurance mediation.””.

PART 3

MEMBERS OF THE PROFESSIONS AND APPOINTED REPRESENTATIVES

Register of unauthorised persons carrying on insurance mediation activities

13. After article 91 of the principal Order, insert—

“PART V

UNAUTHORISED PERSONS CARRYING ON INSURANCE MEDIATION ACTIVITIES

Interpretation

92. In this Part—

“designated professional body” means a body which is for the time being designated by the Treasury under section 326 of the Act (designation of professional bodies)(a);

“insurance mediation activity” means any regulated activity of the kind specified by article 21, 25(1) or (2), 39A or 53, or, so far as relevant to any of those articles, article 64, which is carried on in relation to a contract of insurance;

“the record” means the record maintained by the Authority under section 347 of the Act (public record of authorised persons etc.);

“recorded insurance intermediary” has the meaning given by article 93(4);

“a relevant member”, in relation to a designated professional body, means a member (within the meaning of section 325(2) of the Act) of the profession in relation to which that designated professional body is established, or a person who is controlled or managed by one or more such members.

Duty to maintain a record of unauthorised persons carrying on insurance mediation activities

93.—(1) Subject to articles 95 and 96, the Authority must include in the record every person who—

- (a) as a result of information obtained by virtue of its rules or by virtue of a direction given, or requirement imposed, under section 51(3) of the Act (procedure for applications under Part IV), appears to the Authority to fall within paragraph (2); or
- (b) as a result of information obtained by virtue of article 94, appears to the Authority to fall within paragraph (3).

(2) A person falls within this paragraph if he is, or has entered into a contract by virtue of which he will be, an appointed representative who carries on any insurance mediation activity.

(3) A person falls within this paragraph if—

- (a) he is a relevant member of a designated professional body who carries on, or is proposing to carry on, any insurance mediation activity; and
- (b) the general prohibition does not (or will not) apply to the carrying on of those activities by virtue of section 327 of the Act (exemption from the general prohibition).

(4) In this Part, “recorded insurance intermediary” means a person who is included in the record by virtue of paragraph (1).

(5) The record must include—

- (a) in the case of any recorded insurance intermediary, its address; and
- (b) in the case of a recorded insurance intermediary which is not an individual, the name of the individuals who are responsible for the management of the business carried on by the intermediary, so far as it relates to insurance mediation activities.

(a) See S.I. 2001/1226 made under s. 326 of the Act.

Members of designated professional bodies

94.—(1) A designated professional body must, by notice in writing, inform the Authority of—

- (a) the name,
- (b) the address, and
- (c) in the case of a relevant member which is not an individual, the name of the individuals who are responsible for the management of the business carried on by the member, so far as it relates to insurance mediation activities,

of any relevant member who falls within paragraph (2).

(2) A relevant member of a designated professional body falls within this paragraph if, in accordance with the rules of that body, he carries on, or proposes to carry on any insurance mediation activity but does not have, and does not propose to apply for, Part IV permission on the basis that the general prohibition does not (or will not) apply to the carrying on of that activity by virtue of section 327 of the Act.

(3) A designated professional body must also, by notice in writing, inform the Authority of any change in relation to the matters specified in sub-paragraphs (a) to (c) of paragraph (1).

(4) A designated professional body must inform the Authority when a relevant member to whom paragraph (2) applies ceases, for whatever reason, to carry on insurance mediation activities.

(5) The Authority may give directions to a designated professional body as to the manner in which the information referred to in paragraphs (1), (3) and (4) must be provided.

Exclusion from record where not fit and proper to carry on insurance mediation activities

95.—(1) If it appears to the Authority that a person who falls within article 93(2) (appointed representatives) (“AR”) is not a fit and proper person to carry on insurance mediation activities, it may decide not to include him in the record or, if that person is already included in the record, to remove him from the record.

(2) Where the Authority proposes to make a determination under paragraph (1), it must give AR a warning notice.

(3) If the Authority makes a determination under paragraph (1), it must give AR a decision notice.

(4) If the Authority gives AR a decision notice under paragraph (3), AR may refer the matter to the Tribunal.

(5) The Authority may, on the application of AR, revoke a determination under paragraph (1).

(6) If the Authority decides to grant the application, it must give AR written notice of its decision.

(7) If the Authority proposes to refuse the application, it must give AR a warning notice.

(8) If the Authority decides to refuse the application, it must give AR a decision notice.

(9) If the Authority gives AR a decision notice under paragraph (8), AR may refer the matter to the Tribunal.

(10) Sections 393 and 394 of the Act (third party rights and access to Authority material) apply to a warning notice given in accordance with paragraph (2) or (7) and to a decision notice given in accordance with paragraph (3) or (8).

Exclusion from the record where Authority has exercised its powers under Part XX of the Act

96.—(1) If a person who appears to the Authority to fall within article 93(3) (member of a designated professional body) falls within paragraph (2) or (3), the Authority must not include him in the record or, if that person is already included in the record, must remove him from the record.

(2) A person falls within this paragraph if, by virtue of a direction given by the Authority under section 328(1) of the Act (directions in relation to the general prohibition), section 327(1) of the Act does not apply in relation to the carrying on by him of any insurance mediation activity.

(3) A person falls within this paragraph if the Authority has made an order under section 329(2) of the Act (orders in relation to the general prohibition) disapplying section 327(1) of the Act in relation to the carrying on by him of any insurance mediation activity.”.

PART 4

AMENDMENTS TO OTHER INSTRUMENTS MADE UNDER THE ACT

Amendment to the Appointed Representatives Regulations

14.—(1) The Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001(a) are amended as follows.

(2) In regulation 1(2) (interpretation), for “and “contractually based investment””, substitute, “; “contract of insurance”, “contract of general insurance” and “relevant investment””.

(3) In regulation 2(1) (descriptions of business for which appointed representatives are exempt)—

(a) before sub-paragraph (a), insert—

“(aa) an activity of the kind specified by article 21 of the Regulated Activities Order (dealing in investments as agent), where the transaction relates to a contract of general insurance;”;

(b) in sub-paragraph (a)—

(i) for “the Regulated Activities Order”, substitute “that Order”; and

(ii) for “contractually based investments”, substitute “relevant investments”;

(c) after sub-paragraph (ab)(b), insert—

“(ac) an activity of the kind specified by article 39A of that Order (assisting in the administration and performance of a contract of insurance), where the activity relates to a contract of general insurance;”;

(d) in sub-paragraph (d), for “paragraph (a), (ab),”, substitute “sub-paragraph (aa), (a), (ab), (ac)”.

(4) In regulation 3 (requirements applying to contracts between authorised persons and appointed representatives)—

(a) in paragraph (2)—

(i) before sub-paragraph (a), insert—

“(aa) he enters into investment transactions as agent (in circumstances constituting the carrying on of an activity of the kind specified by article 21 of the Regulated Activities Order) for other counterparties;”;

(ii) in sub-paragraph (a), for “the Regulated Activities Order”, substitute “that Order”;

(iii) after sub-paragraph (a), insert—

“(ab) he assists in the administration and performance of a contract of insurance (in circumstances constituting the carrying on of an activity of the kind specified by article 39A of that Order) for other counterparties;”;

(a) S.I. 2001/1217; amended by S.I. 2001/2508 and S.I. 2003/1475.

(b) Inserted by S.I. 2003/1475.

- (iv) for “contractually based investment”, substitute “relevant investment”; and
- (b) after paragraph (3)(c), insert—

“(4) Where the contract between the principal and the representative permits or requires the representative to carry on business which includes an activity—

- (a) of the kind specified by article 21, 25, 39A or 53 of the Regulated Activities Order or an activity of the kind specified by article 64 of that Order, so far as relevant to any of those articles, and
- (b) which relates to a contract of insurance,

paragraph (5) applies.

(5) Where this paragraph applies, it is also a prescribed requirement for the purposes of subsection (1)(a)(ii) of section 39 of the Act that the contract between the principal and the representative contain a provision providing that the representative is not permitted or required to carry on business, so far as it comprises an activity of the kind specified by paragraph (4), unless he is included in the record maintained by the Authority under section 347 of the Act by virtue of article 93 of the Regulated Activities Order (recorded insurance intermediaries).”.

Amendment to the Compensation Scheme: Electing Participants Regulations

15.—(1) The Financial Services and Markets Act 2000 (Compensation Scheme: Electing Participants) Regulations 2001(a) are amended as follows.

(2) In regulation 1(2) (interpretation), after the definition of “home State investor-compensation scheme”, insert—

““insurance intermediary” means an insurance intermediary (within the meaning of Article 2(5) of the insurance mediation directive) or a reinsurance intermediary (within the meaning of Article 2(6) of that Directive);”.

(3) In regulation 2 (persons not to be regarded as relevant persons)—

- (a) at the end of paragraph (a), omit “and”; and
- (b) after paragraph (b), insert—
“; and
- (c) any insurance intermediary.”.

(4) In regulation 3(1) (persons who may elect to participate)—

- (a) at the end of sub-paragraph (a), omit “and”; and
- (b) after sub-paragraph (b), insert—
; and
- (c) any insurance intermediary which is not an investment firm or a credit institution.”.

(5) In regulation 4 (persons in respect of whom inspection under section 224 does not apply)—

- (a) at the end of paragraph (a), omit “and”; and
- (b) after paragraph (b), insert—
“; and
- (c) any insurance intermediary.”.

Amendment to the Non-Exempt Activities Order

16.—(1) The Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001(b) is amended as follows.

(2) In article 2(1) (interpretation)—

- (a) after the definition of “the Act”, insert—
““contract of insurance” has the meaning given by article 3(1) of the Regulated Activities Order;”;

(a) S.I. 2001/1783.

(b) S.I. 2001/1227; amended by S.I. 2001/3650, S.I. 2002/682, S.I. 2002/1777 and S.I. 2003/1475.

- (b) after the definition of “occupational pension scheme”, insert—
 - ““record of insurance intermediaries” means the record maintained by the Authority under section 347 of the Act (the public record) by virtue of article 93 of the Regulated Activities Order (recorded insurance intermediaries);” and
- (c) for the definition of “relevant investment”, substitute—
 - ““relevant investment” has the meaning given by article 3(1) of the Regulated Activities Order;”.
- (3) After article 4, insert—
 - “**4A.** An activity of the kind specified by article 21 or 25 of the Regulated Activities Order (dealing in investments as agent or arranging deals in investments) in so far as it—
 - (a) relates to a transaction for the sale or purchase of rights under a contract of insurance; and
 - (b) is carried on by a person who is not included in the record of insurance intermediaries.”.
- (4) In article 5(1), for “relevant investment”, substitute “security or contractually based investment”.
- (5) After article 5, insert—
 - “**5A.** An activity of the kind specified by article 39A of the Regulated Activities Order (assisting in the administration and performance of a contract of insurance) if it is carried on by a person who is not included in the record of insurance intermediaries.”.
- (6) In article 6—
 - (a) in paragraph (1), for “either paragraph (2) or (3)”, substitute “paragraph (2), (3) or (5)”;
 - (b) in paragraph (2)—
 - (i) in sub-paragraph (b), for “relevant investment” substitute “security or contractually based investment”;
 - (ii) in sub-paragraph (c)—
 - (aa) in sub-paragraph (i), for “relevant investment”, substitute “security or contractually based investment”; and
 - (bb) in sub-paragraph (iii), for “a relevant investment”, substitute “such an investment”; and
 - (c) after paragraph (4), insert—
 - “(5) Advice falls within this paragraph in so far as—
 - (a) it relates to a transaction for the sale or purchase of rights under a contract of insurance; and
 - (b) it is given by a person who is not included in the record of insurance intermediaries.”.

Misleading statements and practices

17.—(1) The Financial Services and Markets Act 2000 (Misleading Statements and Practices) Order 2001(a) is amended as follows.

- (2) In article 2 (interpretation)—
 - (a) after the definition of “the Act”, insert—
 - ““contract of insurance” has the meaning given by article 3(1) of the Regulated Activities Order;” and
 - (b) after the definition of “the Financial Promotion Order”, insert—
 - ““Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(b);”.
- (3) In article 3—
 - (a) in paragraph (d), for “the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001”, substitute “the Regulated Activities Order”; and

(a) S.I. 2001/3645; amended by S.I. 2002/1777.

(b) S.I. 2001/544; amended by S.I. 2001/3544; S.I. 2002/682; S.I. 2002/1310; S.I. 2002/1776 and S.I. 2003/1475.

(b) after paragraph (d), insert—

“;

(e) (so far as not already specified by paragraph (a)), an activity of the kind specified by—

- (i) article 14 of the Regulated Activities Order (dealing in investments as principal),
- (ii) article 21 of that Order (dealing in investments as agent),
- (iii) article 25(1) or (2) of that Order (arranging deals in investments),
- (iv) article 39A of that Order (assisting in the administration and performance of a contract of insurance),
- (v) article 53 of that Order (advising on investments), or
- (vi) so far as relevant to any of those articles, article 64 of that Order (agreeing),

so far as it relates to a contract of insurance.”.

Amendment to the By Way of Business Order

18.—(1) The Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001(a) is amended as follows.

(2) In article 1(2) (interpretation), at the beginning of sub-paragraph (b), insert ““contract of insurance”,”.

(3) In article 3 (investment business)—

(a) in paragraph (1), for “this article applies”, substitute “paragraph (2) applies”;

(b) in paragraph (2)—

(i) for “This article”, substitute “This paragraph”; and

(ii) for sub-paragraph (j), substitute—

“(j) article 64 (agreeing) so far as relevant to any of the articles mentioned in sub-paragraphs (a) to (i),

but does not apply to any insurance mediation activity.”;

(c) in paragraph (3), for “This article”, substitute “Paragraph (1)”;

(d) after paragraph (3), insert—

“(4) A person is not to be regarded as carrying on by way of business any insurance mediation activity unless he takes up or pursues that activity for remuneration.

(5) In this article, “insurance mediation activity” means any activity of the kind specified by article 21, 25(1) or (2), 39A or 53 of the Regulated Activities Order, or, so far as relevant to any of those articles, article 64 of that Order, which is carried on in relation to a contract of insurance.”.

PART 5

MISCELLANEOUS

Amendment of the threshold conditions

19. In paragraph 2 of Schedule 6 to the Act (threshold conditions: location of offices)(b)—

(a) at the beginning of sub-paragraph (1), insert “Subject to sub-paragraph (3),”; and

(b) after sub-paragraph (2), insert—

“(3) If the regulated activity concerned is an insurance mediation activity, sub-paragraph (1) does not apply.

(a) S.I. 2001/1177; amended by S.I. 2003/1475.

(b) Amended by S.I. 2001/2507, S.I. 2002/682 and S.I. 2002/2707.

- (4) If the regulated activity concerned is an insurance mediation activity, the person concerned—
- (a) if he is a body corporate constituted under the law of any part of the United Kingdom, must have its registered office, or if it has no registered office, its head office, in the United Kingdom;
 - (b) if he is a natural person, is to be treated for the purposes of sub-paragraph (2), as having his head office in the United Kingdom if his residence is situated there.
- (5) “Insurance mediation activity” means any of the following activities—
- (a) dealing in rights under a contract of insurance as agent;
 - (b) arranging deals in rights under a contract of insurance;
 - (c) assisting in the administration and performance of a contract of insurance;
 - (d) advising on buying or selling rights under a contract of insurance;
 - (e) agreeing to do any of the activities specified in sub-paragraph (a) to (d).
- (6) Paragraph (5) must be read with—
- (a) section 22;
 - (b) any relevant order under that section; and
 - (c) Schedule 2.”.

Amendment of section 49 of the Act

20.—(1) Section 49 of the Act (persons connected with an applicant for Part IV permission) is amended as follows.

(2) In subsection (2)(a), after “EEA firm”, insert “(other than an EEA firm falling within paragraph 5(e) of Schedule 3 (insurance and reinsurance intermediaries))”.

(3) After subsection (2), insert—

“(2A) But subsection (2) does not apply to the extent that the permission in question relates to an insurance mediation activity (within the meaning given by paragraph 2(5) of Schedule 6).”.

Controllers of insurance intermediaries

21.—(1) In any case where a person (“the acquirer”)—

- (a) proposes to take, in relation to a UK insurance intermediary (“A”), such a step as is mentioned in section 178(1) of the Act (obligation to notify the Authority of control over authorised persons), or
- (b) acquires control, an additional kind of control or an increase in a relevant kind of control over a UK insurance intermediary without himself taking any such step,

the acquirer is exempt from any obligation imposed by section 178 of the Act to notify the Authority of his proposal or acquisition unless paragraph (2) applies.

(2) This paragraph applies—

- (a) where the acquirer falls within paragraph (1)(a), if the acquirer does not currently, but would if he took the proposed step, fall within any of the cases in paragraph (3); or
- (b) where the acquirer falls within paragraph (1)(b), if the acquirer did not immediately before acquiring control, but as a result of that acquisition does, fall within any of those cases.

(3) The cases are where the acquirer—

- (a) holds 20% or more of the shares in A;
- (b) is able to exercise significant influence over the management of A by virtue of his shareholding in A;
- (c) holds 20% or more of the shares in a parent undertaking (“P”) of A;
- (d) is able to exercise significant influence over the management of P by virtue of his shareholding in P;
- (e) is entitled to exercise, or control the exercise of, 20% or more of the voting power in A;
- (f) is able to exercise significant influence over the management of A by virtue of his voting power in A;

- (g) is entitled to exercise, or control the exercise of, 20% or more of the voting power in P; or
 - (h) is able to exercise a significant influence over the management of P by virtue of his voting power in P.
- (4) In paragraph (3), “the acquirer” means—
- (a) the acquirer;
 - (b) any of the acquirer’s associates; or
 - (c) the acquirer and any of his associates.
- (5) In any case where a controller of A—
- (a) proposes to take, in relation to A, such a step as is mentioned in section 190(1) of the Act (obligation to notify the Authority of a reduction in control over an authorised person), or
 - (b) ceases to have, or reduces a relevant kind of, control over A without himself taking any such step,
- the controller is exempt from any obligation imposed by subsection (1) or (2) of section 190 of the Act to notify the Authority unless paragraph (6) applies.
- (6) This paragraph applies if—
- (a) the percentage of shares held by the controller in A decreases (or would decrease) from 20% or more to less than 20%;
 - (b) the percentage of shares held by the controller in a parent undertaking (“P”) of A decreases (or would decrease) from 20% or more to less than 20%;
 - (c) the percentage of voting power which the controller is entitled to exercise, or control the exercise of, in A decreases (or would decrease) from 20% or more to less than 20%; or
 - (d) the percentage of voting power which the controller is entitled to exercise, or control the exercise of, in P decreases (or would decrease) from 20% or more to less than 20%.
- (7) In paragraph (6), “the controller” means—
- (a) the controller;
 - (b) any of the controller’s associates; or
 - (c) the controller and any of his associates.
- (8) References in this article to acquiring control, or an additional kind of control, increasing control and reducing control are to be read with Part XII of the Act.
- (9) In this article—
- “associate”, “shares” and “voting power” have the same meaning as in section 422 of the Act;
- “UK insurance intermediary” means any UK authorised person (within the meaning of section 178(4) of the Act) who has Part IV permission to carry on any regulated activity of the kind specified by article 21, 25(1) or (2), 39A or 53 of the principal Order, or, so far as relevant to any of those articles, article 64 of that Order, which is carried on in relation to a contract of insurance, but who does not have Part IV permission to carry on any other regulated activity.

PART 6

TRANSITIONAL PROVISIONS

Interpretation

22. In this Part—

“commencement” means the beginning of 14th January 2005;

“general insurance mediation activity” means any regulated activity of the kind specified by article 21, 25(1) or (2), 39A or 53 of the principal Order, or, so far as relevant to any of those articles, article 64 of that Order, which is carried on in relation to a contract of insurance which is not—

- (a) a qualifying contract of insurance; or

(b) a contract of long-term care insurance;

“long-term care insurance mediation activity” means any regulated activity of the kind specified by article 21, 25(1) or (2), 39A or 53 of the principal Order, or, so far as relevant to any of those articles, article 64 of that Order, which is carried on in relation to a contract of insurance which is a contract of long-term care insurance.

Applications for Part IV permission—general insurance mediation

23.—(1) This article applies to any completed application for Part IV permission which is made before 14th July 2004 by a person who is not an authorised person, to the extent that the application relates to any general insurance mediation activity (“an early Part IV application”).

(2) Section 52(1) of the Act (applications to be determined by the Authority within six months) does not apply to early Part IV applications.

(3) If the Authority has not determined an early Part IV application before the end of the period of six months beginning on the date on which it received the completed application, it must inform the applicant of the progress being made on the application (unless it has already done so).

(4) In any event, the Authority must determine all early Part IV applications before 14th January 2005.

Application for approval—general insurance mediation

24.—(1) This article applies to any application made before 14th October 2004 under section 59 of the Act (approval of the performance of controlled functions) by a person who is not an authorised person for the Authority’s approval of the performance by a person of any controlled function (within the meaning of section 59(3) of the Act), to the extent that that function relates to the carrying on of any general insurance mediation activity (“an early Part V application”).

(2) Section 61(3) of the Act (applications to be determined by the Authority within three months) does not apply to early Part V applications.

(3) If the Authority has not determined an early Part V application before the end of the period of six months beginning on the date on which it received the application, it must inform the applicant of the progress being made on the application (unless it has already done so).

(4) In any event, the Authority must determine all early Part V applications before 14th January 2005.

Applications for Part IV permission—long-term care insurance mediation

25.—(1) This article applies to any completed application for Part IV permission which is made before 30th April 2004 by a person who is not an authorised person, to the extent that the application relates to any long-term care insurance mediation activity (“an early Part IV long-term care application”).

(2) Section 52(1) of the Act (applications to be determined by the Authority within six months) does not apply to early Part IV long-term care applications.

(3) If the Authority has not determined an early Part IV long-term care application before the end of the period of six months beginning on the date on which it received the completed application, it must inform the applicant of the progress being made on the application (unless it has already done so).

(4) In any event, the Authority must determine all early Part IV long-term care applications before 31st October 2004.

Application for approval—long-term care insurance mediation

26.—(1) This article applies to any application made before 31st July 2004 under section 59 of the Act (approval of the performance of controlled functions) by a person who is not an authorised person for the Authority’s approval of the performance by a person of any controlled function (within the meaning of section 59(3) of the Act), to the extent that that function relates to the carrying on of any long-term care insurance mediation activity (“an early Part V long-term care application”).

(2) Section 61(3) of the Act (applications to be determined by the Authority within three months) does not apply to early Part V long-term care applications.

(3) If the Authority has not determined an early Part V long-term care application before the end of the period of six months beginning on the date on which it received the application, it must inform the applicant of the progress being made on the application (unless it has already done so).

(4) In any event, the Authority must determine all early Part V long-term care applications before 31st October 2004.

Modifications and waivers

27.—(1) Before commencement, section 148 of the Act (modification or waiver of rules) has effect as if the references to “authorised person” (except in subsection (9)) included a reference to a person who has Part IV permission to carry on any general insurance mediation activity or any long-term care insurance mediation activity, albeit that that permission is not in force.

(2) To the extent that it relates to any general insurance mediation activity, any direction given by the Authority under section 148(2) of the Act as modified by paragraph (1) may not come into force before commencement.

(3) To the extent that it relates to any long-term care insurance mediation activity, any such direction may not come into force before 31st October 2004.

Philip Woolas

John Heppell

5th June 2003

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order implements in part the European Parliament and Council Directive 2002/92/EC on insurance mediation (“the Directive”). A Transposition Note setting out how the main elements of the Directive will be transposed into UK law is available from the Banking and General Insurance Team, HM Treasury, 1 Horseguards Road, London SW1A 2HQ. The Transposition Note is also on HM Treasury’s website (www.hm-treasury.gov.uk).

Part 2 of the Order amends the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (“the Regulated Activities Order”). It provides for insurance mediation activities (dealing as agent in contracts of insurance, arranging deals in contracts of insurance, assisting in the performance and administration of a contract of insurance and advising on the merits of buying or selling a contract of insurance) to be regulated activities, to the extent that such activities are not already regulated. Part 2 also amends the exclusions in the Regulated Activities Order from specified kinds of activities. In particular, this Order inserts a number of new exclusions in relation to activities in relation to contracts of insurance sold as part of a package (including travel insurance and extended warranties) and in relation to the provision of information on an incidental basis in the context of another professional activity.

Part 3 of the Order amends the Regulated Activities Order so as to make provision for appointed representatives (within the meaning of section 39 of the Financial Services and Markets Act 2000—“the Act”) and members of a designated professional body (within the meaning of Part XX of the Act) who carry on insurance mediation activities without being authorised persons (within the meaning of the Act). In accordance with the provisions of the Directive, the amendments require the Financial Services Authority to maintain a record of such persons.

Part 4 of the Order makes a number of miscellaneous amendments to legislation made under the Act. Article 14 amends the Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001 (S.I. 2001/1217) so as to permit appointed representatives to carry on certain insurance mediation activities. These Regulations are also amended so as to require that the contract between the appointed representative and his principal must provide that the representative is not permitted or required to carry on certain activities in relation to a contract of insurance unless he is included in the record of insurance intermediaries maintained by the Financial Services Authority under section 347 of the Act. Article 15 amends the Financial Services and Markets Act 2000 (Compensation Scheme: Electing Participants) Regulations 2001 (S.I. 2001/1783) so as to provide that EEA firms who exercise their right to establish a branch, or to provide services, in the UK pursuant to the Directive are not automatically subject to the Financial Services Compensation Scheme established pursuant to the Act. Article 16 amends the Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001 (S.I. 2001/1227) to ensure that members of certain professional bodies can, in accordance with the provisions of Part XX of the Act, carry on insurance mediation activities. Article 17 amends the Financial Services and Markets Act 2000 (Misleading Statements and Practices) Order 2001 (S.I. 2001/3645) so as to make section 397 of the Act (misleading statements and practices) apply to all insurance mediation activities. Article 18 amends the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001 (S.I. 2001/1177) so as to provide that a person is not to be regarded as carrying on by way of business any insurance mediation activity unless he takes up or pursues that activity for remuneration.

Part 5 makes certain provisions in relation to insurance mediation activities. Article 19 makes a number of amendments to Schedule 6 to the Act (threshold conditions). These amendments reflect the provisions of the Directive which relate to the location of offices of an insurance intermediary. Article 20 amends section 49 of the Act (consultation of relevant home state regulators when considering application for, or variation or cancellation of, Part IV permission) in so far as it relates to those who carry on insurance mediation activities. Article 21 confers a conditional exemption from the obligations imposed by Part XII of the Act on controllers of insurance intermediaries to notify the Financial Services Authority of any change of control.

Part 6 makes transitional provisions in relation to this Order. In particular, it extends the time in which the Financial Services Authority must determine applications for permission under Part IV of the Act to carry on regulated activities in relation to contracts of insurance and the time in which the Financial Services Authority must determine applications for approval for persons to carry on certain functions in relation to those regulated activities. Separate provision is made in relation to applications in connection with the mediation of long-term care insurance in consequence of the commencement provisions of this Order.

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