

2001 No. 3650

FINANCIAL SERVICES AND MARKETS

**The Financial Services and Markets Act 2000
(Miscellaneous Provisions) Order 2001**

Made - - - - - 9th November 2001

Laid before Parliament 9th November 2001

Coming into force in accordance with article 1

ARRANGEMENT OF ORDER

PART I

General

1. Citation and commencement

PART II

AMENDMENTS TO ORDERS MADE UNDER THE ACT

*The Financial Services and Markets Act 2000 (Collective Investment Schemes)
Order 2001 (S.I. 2001/1062)*

2. Arrangements not amounting to collective investment schemes

*The Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities)
Order 2001 (S.I. 2001/1227)*

3. Mortgage activities carried on by members of the professions

*The Financial Services and Markets Act 2000 (Financial
Promotion) Order 2001 (S.I. 2001/1335)*

4. Financial promotion exemption for appointed representatives
5. Interests in funeral plan contracts

*The Financial Services and Markets Act 2000 (Transitional Provisions) (Authorised
Persons etc.) Order 2001 (S.I. 2001/2636)*

6. Persons authorised under the Banking Act 1987
7. Companies authorised under the Insurance Companies Act 1982
8. Friendly societies authorised under the Friendly Societies Act 1992
9. Building societies authorised under the Building Societies Act 1986
10. Disqualification directions on the public record

The Financial Services and Markets Act 2000 (Transitional Provisions) (Controllers) Order 2001 (S.I. 2001/2637)

11. Definition of “the Regulator”
12. Controller approved by self-regulating organisation before commencement

PART III

MISCELLANEOUS PROVISIONS

13. Interpretation
14. Winding up of persons previously authorised under the Financial Services Act etc.
15. Winding up of persons previously authorised under the Banking Act
16. The Rehabilitation of Offenders Act 1974
17. Disqualification of members of the Financial Services Tribunal
18. Duty of auditors to communicate matters to the Authority
19. Reports under the Financial Services Act and the Banking Act
20. Report under the Insurance Companies Act
21. Transfer of property, rights and liabilities
22. Transfer of liabilities
23. Legal proceedings
24. Exemption from liability in damages
25. Fees for the exercise of certain Authority functions
26. Fees under the Insurance Companies Act
27. Fees in respect of the existing deficit
28. The Contracting Out Order
29. Correction of scope of permission notices as a result of this Order
30. Correction of scope of permission notices for PIA firms

The Treasury, in exercise of the powers conferred on them by sections 21(5), (9) and (10), 235(5), 327(6), and 426 to 428 of, and paragraph 25 of Schedule 2 to, the Financial Services and Markets Act 2000(a) and all other powers enabling them in that behalf, hereby make the following order:

PART I

GENERAL

Citation and commencement

1. This Order may be cited as the Financial Services and Markets Act 2000 (Miscellaneous Provisions) Order 2001 and comes into force—
 - (a) save as provided for in paragraph (b), on 1st December 2001;
 - (b) for the purposes of article 3, on 1st September 2002.

(a) 2000 c. 8.

PART II

AMENDMENTS TO ORDERS MADE UNDER THE ACT

*The Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001
(S.I. 2001/1062)*

Arrangements not amounting to collective investment schemes

2.—(1) The Schedule to the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001 (arrangements not amounting to a collective investment scheme) is amended as follows.

(2) In paragraph 9 (schemes entered into for commercial purposes related to existing business), for sub-paragraph (1)(a) substitute—

“(a) carries on a business other than the business of engaging in any regulated activity of the kind specified by any of articles 14, 21, 25, 37, 40, 45, 51 to 53 or, so far as relevant to any of those articles, article 64 of the Regulated Activities Order;”.

(3) For paragraph 18 (funeral plan contracts), substitute—

“Funeral plan contracts

18. Arrangements do not amount to a collective investment scheme if they consist of, or are made pursuant to—

(a) a funeral plan contract; or

(b) a contract which would be a funeral plan contract but for—

(i) the proviso to article 59(2) of the Regulated Activities Order, or

(ii) the exclusion in article 60 of that Order.”.

(4) For paragraph 21 (bodies corporate), substitute—

“Bodies corporate etc.

21.—(1) Subject to sub-paragraph (2), no body incorporated under the law of, or any part of, the United Kingdom relating to building societies or industrial and provident societies or registered under any such law relating to friendly societies, and no other body corporate other than an open-ended investment company, amounts to a collective investment scheme.

(2) Sub-paragraph (1) does not apply to any body incorporated as a limited liability partnership.”.

*The Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order
2001 (S.I. 2001/1227)*

Mortgage activities carried on by members of the professions

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

(a) in article 1(3)(b), for “article 4(h)” substitute “article 6A”;

(b) in article 4, paragraph (h) is revoked;

(c) after article 6 insert—

“6A.—(1) An activity of the kind specified by article 61(1) or (2) of the Regulated Activities Order (regulated mortgage contracts).

(2) Paragraph (1) does not apply to an activity carried on by a person in his capacity as a trustee or personal representative where the borrower under the regulated mortgage contract in question is a beneficiary under the trust, will or intestacy.”

Financial promotion exemption for appointed representatives

4.—(1) The Financial Services and Markets Act 2000 (Financial Promotion) Order 2001(a) is amended as follows.

(2) In article 16 (exempt persons), the current text is numbered as paragraph (1) and after that paragraph insert—

“(2) The financial promotion restriction does not apply to any unsolicited real time communication made by a person (“AR”) who is an appointed representative (within the meaning of section 39(2) of the Act) where—

- (a) the communication is made by AR in carrying on the business—
 - (i) for which his principal (“P”) has accepted responsibility for the purposes of section 39 of the Act; and
 - (ii) in relation to which AR is exempt from the general prohibition by virtue of that section; and
- (b) the communication is one which, if it were made by P, would comply with any rules made by the Authority under section 145 of the Act (financial promotion rules) which are relevant to a communication of that kind.”

Interests in funeral plan contracts

5. In paragraph 27 of Schedule 1 to the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (rights to or interests in investments) after paragraph (2) insert—

“(2A) Sub-paragraph (1) does not apply to any right or interest acquired as a result of entering into a funeral plan contract (and for this purpose a “funeral plan contract” is a contract of a kind described in paragraph 9(2)(a) and (b)).”

*The Financial Services and Markets Act 2000 (Transitional Provisions)
(Authorised Persons etc.) Order 2001 (S.I. 2001/2636)*

Persons authorised under the Banking Act 1987

6. In article 11 of the Financial Services and Markets Act 2000 (Transitional Provisions) (Authorised Persons etc.) Order 2001 (persons authorised under the Banking Act), after paragraph (3) insert—

“(4) A person who has a Part IV permission by virtue of paragraph (1) is also to be treated as having, at commencement, a Part IV permission to carry on any regulated activities which he was able, by virtue of section 2(4) of the Insurance Companies Act, to carry on in the United Kingdom without contravening section 2(1) of that Act and which he was, immediately before commencement, so carrying on.

(5) A person who has a Part IV permission by virtue of paragraph (1) and who was not, immediately before commencement, authorised under the Financial Services Act, is also to be treated as having, at commencement, a Part IV permission to carry on regulated activities—

- (a) of the kind specified by article 14 of the Regulated Activities Order (dealing in investments as principal) in so far as it consists of his entering into a transaction of the kind mentioned in article 16 of that Order (dealing in contractually based investments); and
- (b) of the kind specified by article 64 of that Order (agreeing to carry on specified kinds of activity) in so far as it relates to the activity mentioned in sub-paragraph (a).”

(a) This Order has been amended by S.I. 2001/2633.

Companies authorised under the Insurance Companies Act 1982

7. In article 14 of the Financial Services and Markets Act 2000 (Transitional Provisions) (Authorised Persons etc.) Order 2001 (companies authorised under the Insurance Companies Act) after paragraph (4) insert—

“(4A) If a person to whom this article applies was not, immediately before commencement, authorised under the Financial Services Act, any Part IV permission which he is to be treated under this article as having includes permission to carry on regulated activities—

- (a) of the kind specified by article 14 of the Regulated Activities Order (dealing in investments as principal) in so far as it consists of his entering into a transaction of the kind mentioned in article 16 of that Order (dealing in contractually based investments); and
- (b) of the kind specified by article 64 of that Order (agreeing to carry on specified kinds of activity) in so far as the activity relates to the activity mentioned in subparagraph (a),

in so far as those activities are carried on in connection with or for the purposes of the regulated activities referred to in paragraph (2).”

Friendly societies authorised under the Friendly Societies Act 1992

8. In article 19 of the Financial Services and Markets Act 2000 (Transitional Provisions) (Authorised Persons etc.) Order 2001 (friendly societies: other permissions) after paragraph (2) insert—

“(2A) Any friendly society which was not, immediately before commencement, authorised under the Financial Services Act is to be treated as having, at commencement a Part IV permission to carry on regulated activities—

- (a) of the kind specified by article 14 of the Regulated Activities Order (dealing in investments as principal) in so far as it consists of the society entering into a transaction of the kind mentioned in article 16 of that Order (dealing in contractually based investments); and
- (b) of the kind specified by article 64 of that Order (agreeing to carry on specified kinds of activity) in so far as the activity relates to the activity mentioned in subparagraph (a),

in so far as those activities are carried on for or in connection with the regulated activities referred to in article 18(2)(a).”

Building societies authorised under the Building Societies Act 1986

9. In article 22 of the Financial Services and Markets Act 2000 (Transitional Provisions) (Authorised Persons etc.) Order 2001 (building societies authorised under the Building Societies Act), after paragraph (3) insert—

“(4) A society having a Part IV permission by virtue of paragraph (1) is also to be treated as having, at commencement, a Part IV permission to carry on any regulated activities which it was able, by virtue of section 2(4) of the Insurance Companies Act, to carry on in the United Kingdom without contravening section 2(1) of that Act and which it was, immediately before commencement, so carrying on.

(5) A society having a Part IV permission by virtue of paragraph (1) and which was not, immediately before commencement, authorised under the Financial Services Act, is also to be treated as having, at commencement, a Part IV permission to carry on regulated activities—

- (a) of the kind specified by article 14 of the Regulated Activities Order (dealing in investments as principal) in so far as it consists of the society entering into a transaction of the kind mentioned in article 16 of that Order (dealing in contractually based investments); and
- (b) of the kind specified by article 64 of that Order (agreeing to carry on specified kinds of activity) in so far as the activity relates to the activity mentioned in subparagraph (a).”

Disqualification directions on the public record

10. In article 79 of the Financial Services and Markets Act 2000 (Transitional Provisions) (Authorised Persons etc.) Order 2001 (employment of prohibited persons: disqualification directions), after paragraph (2) insert—

“(3) Paragraph (4) applies where—

- (a) a person (“I”) is subject to a prohibition order having effect under paragraph (1); and
- (b) information about I has been placed on the record maintained in accordance with section 347(1)(g) as required by section 347(2) (“transitional information”).

(4) Subsections (5) and (6) of section 347 apply to the record to the extent that it comprises transitional information—

- (a) as if subsection (5)(a) required the Authority to exclude the transitional information from the record made available for inspection unless—
 - (i) the person seeking to inspect the record has asked the Authority whether I is subject to a prohibition order; or
 - (ii) the Authority is otherwise satisfied that the person has a good reason for seeking to inspect the transitional information;
- (b) as if subsection (5)(b) required the Authority to exclude the transitional information from any certified copy of the record provided in accordance with that subsection;
- (c) as if subsection (5)(b) further provided that the Authority may only provide a certified copy of the part of the record containing the transitional information if—
 - (i) the person requesting the copy of that part has asked the Authority whether I is subject to a prohibition order; or
 - (ii) the Authority is otherwise satisfied that the person has good reason for requesting a copy of the part of the record which includes the transitional information;
- (d) as if subsection (6) did not apply to the record in so far as it contains the transitional information.

(5) Paragraph (4) applies to transitional information until 18 January 2002 or, if on or before that date, I applies to the Authority under section 58 for the revocation of the prohibition order, then until that application is determined and there is no possibility (or no further possibility) of the determination being reversed or varied on a reference to the Tribunal or an appeal.”

*The Financial Services and Markets Act 2000 (Transitional Provisions) (Controllers)
Order 2001 (S.I. 2001/2637)*

Definition of “the Regulator”

11. In article 2(1) of the Financial Services and Markets Act 2000 (Transitional Provisions) (Controllers) Order 2001 (definitions) after paragraph (c) of the definition of “the Regulator” insert—

“(d) in relation to each of the provisions mentioned in sub-paragraph (e), (f) or (g) of article 5(6), the body mentioned in that sub-paragraph.”

Controller approved by self-regulating organisation before commencement

12. In article 5 of the Financial Services and Markets Act 2000 (Transitional Provisions) (Controllers) Order 2001 (approval given before commencement) after sub-paragraph (d) of paragraph (6) insert—

- “(e) rule 6.1(4) of the rules of the Personal Investment Authority Limited;
- (f) rule 2-23A(1) of the rules of the Securities and Futures Authority Limited;
- (g) rule 2.1 of Chapter IV of the rules of the Investment Management Regulatory Organisation Limited.”

PART III

MISCELLANEOUS PROVISION

Interpretation

13.—(1) In this Part—

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

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

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

“the Banking Act” means the Banking Act 1987(**c**);

“the Building Societies Act” means the Building Societies Act 1986(**d**);

“commencement” means the beginning of 1 December 2001;

“the Financial Services Act” means the Financial Services Act 1986(**e**);

“the Friendly Societies Act” means the Friendly Societies Act 1992(**f**);

“the Insurance Companies Act” means the Insurance Companies Act 1982(**g**);

“the ISD Regulations” means the Investment Services Regulations 1995(**h**).

(2) In this Part, any reference to a section or Schedule is, unless the context otherwise requires, a reference to that section of or Schedule to the Act.

Winding up of persons previously authorised under the Financial Services Act etc.

14.—(1) This article applies in the case of a body of a kind mentioned in section 367(1) (winding-up petitions) which was, immediately before commencement, an authorised person or appointed representative (in each case within the meaning of the Financial Services Act) to whom section 72(1) of that Act applied.

(2) In such a case, subsection (5) of section 367 has effect as if it provided for “agreement” to include (in addition to such an agreement as is mentioned in that subsection) any investment agreement, within the meaning of the Financial Services Act.

Winding up of persons previously authorised under the Banking Act

15.—(1) This article applies in the case of a body of a kind mentioned in section 367(1) which was, immediately before commencement, an authorised institution within the meaning of the Banking Act.

(2) Such a body is to be treated for the purpose of section 367(3)(a) as unable to pay its debts if it is in default on an obligation to pay a sum due and payable in respect of a deposit.

(3) In paragraph (2), “deposit” has the meaning given by section 5 of the Banking Act except that it includes any sum which would otherwise be excluded from that meaning by paragraph (a), (b) or (e) of subsection (3) of that section.

(4) This article does not affect the application of section 367(4) and (5).

The Rehabilitation of Offenders Act 1974

16.—(1) Notwithstanding—

(a) any repeal of section 189 of, or Part I of Schedule 14 to, the Financial Services Act(**i**);

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

(b) S.I. 2001/2636.

(c) 1987 c. 22.

(d) 1986 c. 53.

(e) 1986 c. 60.

(f) 1992 c. 40.

(g) 1982 c. 50.

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

(i) Amended by the Friendly Societies Act 1992 (c. 40) Schedule 14 and section 189 repealed from a day to be appointed by the Police Act 1997 (c. 50) Schedule 10.

- (b) any repeal of section 95(2) of the Banking Act(a);
- (c) any amendment or revocation of article 5(2) of, or paragraph 8 of Schedule 3 to, the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975(b) which comes into force on or after commencement,

those provisions continue to have effect in relation to any proceedings which are specified in those provisions, whether or not those proceedings have been initiated before commencement, as if they had not been repealed, amended or revoked (as the case may be).

(2) In paragraph (1), “proceedings” means proceedings before a judicial authority within the meaning of section 4(6) of the Rehabilitation of Offenders Act 1974(c).

Disqualification of members of the Financial Services Tribunal

17. Notwithstanding—

- (a) paragraphs 1(a), 2(a) and 7(3)(a) of Schedule 20 (which omit provisions in the House of Commons Disqualifications Act 1975(d), the Northern Ireland Assembly Disqualification Act 1975(e) and the Judicial Pensions and Retirement Act 1993(f) relating to the Financial Services Tribunal), and
- (b) the corresponding repeals in Schedule 22,

the provisions so omitted continue to have effect for so long as the Financial Services Tribunal continues to have functions conferred by or under any enactment.

Duty of auditors to communicate matters to the Authority

18.—(1) Notwithstanding any repeal of the enactments specified by paragraph (2), those enactments, and any rules, regulations or orders made under those enactments in force immediately before commencement, continue to have effect in relation to any matter of which an auditor becomes aware in his capacity as an auditor that relates to things done (or not done) before commencement, subject to the modifications in paragraph (4) and, where relevant, paragraph (3).

(2) The enactments specified by this paragraph are—

- (a) section 109 of the Financial Services Act(g) (communication by auditor with Authority), to the extent that it relates to the obligation to communicate a matter;
- (b) section 47 of the Banking Act(h) (communication by auditor with the Authority), to the extent that it relates to the obligation to communicate a matter;
- (c) section 21A of the Insurance Companies Act(i) (communication by auditor), to the extent that it relates to the obligation to communicate a matter;
- (d) section 82(8) to (11) of the Building Societies Act(j) (auditors’ duties to Commission), to the extent that it relates to the obligation to furnish information; and
- (e) section 79(8) to (11) of the Friendly Societies Act(k) (auditors’ duties to Commission), to the extent that it relates to the obligation to furnish information.

(3) For each reference to the Secretary of State, the Treasury, the Building Societies Commission or the Friendly Societies Commission, there is substituted a reference to the Authority (and so any communication made pursuant to those enactments must be made to the Authority).

(a) Amended by the Bank of England Act 1998 (c. 11) Schedule 5 and modified by S.I. 1992/3218. Repealed from a day to be appointed by the Police Act 1997 (c. 50) Schedule 10.

(b) S.I. 1975/1023; relevant amendments made by S.I.1986/2268.

(c) 1974 c. 53.

(d) 1975 c. 24.

(e) 1975 c. 25.

(f) 1993 c. 8.

(g) Modified by S.I. 1992/3218, S.I. 1995/3275, S.I. 1996/1669. See also the Auditors (Financial Services Act 1986) Rules 1994 (S.I. 1994/526) as modified S.I. 1996/1669.

(h) Amended by the Bank of England Act 1998 (c. 11) Schedule 5 and S.I. 1996/1669 and modified by S.I. 1992/3218. See also the Accountants (Banking Act 1987) Regulations 1994 (S.I. 1994/524) as modified by S.I. 1996/1669.

(i) Inserted by the Financial Services Act s. 135 and amended by S.I. 1996/1669 and S.I. 1997/2781. See also the Auditors (Insurance Companies Act 1982) Regulations 1994 (S.I. 1994/449) as modified by S.I. 1996/1669.

(j) Amended by the Building Societies Act 1997 (c. 40), Schedule 7 and 9, S.I. 1991/1729 and S.I. 1996/1669. See also the Buildings Societies (Auditors) Order 1994 (S.I. 1994/525) as modified by S.I. 1996/1669.

(k) Amended by S.I. 1996/1669. See also the Friendly Societies (Auditors) Order 1994 (S.I. 1994/132) as modified by S.I. 1996/1669.

(4) Where an enactment specified by paragraph (2) refers to an auditor of a person (“A”) who has a particular status, that enactment applies after commencement as if that reference was to A having that status immediately before commencement.

Reports under the Financial Services Act and the Banking Act

19.—(1) The first report of the Authority made under paragraph 10(1) of Schedule 1 must include the last Financial Services Act report and the last Banking Act report.

(2) The “last Financial Services Act report” is the report, in respect of the year during which commencement occurs, which the Authority would be required by section 117(1) of the Financial Services Act to make, but for the repeal of that section.

(3) The “last Banking Act report” is a report on the Authority’s activities under the Banking Act during the financial year (within the meaning of section 1(3) of that Act) during which commencement occurs.

Report under the Insurance Companies Act

20.—(1) Notwithstanding any repeal of section 98 of the Insurance Companies Act (annual report by the Treasury), the Treasury must, when they lay the first copy of the Authority’s annual report in accordance with paragraph 10(3) of Schedule 1, lay before Parliament a general report of matters within the Insurance Companies Act that covers the relevant period.

(2) In paragraph (1), the relevant period is the period from (but not including) the last day of the period to which the last report under section 98 of the Insurance Companies Act related to commencement.

Transfer of property, rights and liabilities

21.—(1) The Authority must make a scheme under this article for the transfer to it of such of the property, rights and liabilities of each transferor body as appear to the Authority appropriate to be so transferred as a consequence of the Act coming into force.

(2) Provided that the transferor body notifies the Authority of its agreement to the Scheme, the property, rights and liabilities of the transferor body to which a scheme under this article relates, shall on the date specified by the scheme (or, if different dates are specified in the scheme in relation to different property, rights or liabilities, on the relevant date specified by the scheme), by virtue of this article and without further assurance, be transferred to and vested in the Authority in accordance with the provisions of the scheme.

(3) The property, rights and liabilities capable of being transferred in accordance with a scheme under this article may include property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the transferor body.

(4) A scheme made under this article may make such supplemental, consequential and transitional provision for the purposes of, or in connection with, any transfer of property, rights or liabilities for which the scheme provides or in connection with such other provisions contained in the scheme as the Authority considers appropriate.

(5) Each of the following is a “transferor body” for the purposes of this article—

- (a) the Personal Investment Authority Limited;
- (b) the Investment Management Regulatory Organisation Limited;
- (c) the Securities and Futures Authority Limited.

Transfer of liabilities

22.—(1) Notwithstanding any term of any scheme made under article 21 any liability incurred by a transferor body as a result of an act or omission occurring before commencement is to be treated on and after commencement as a liability of the Authority.

(2) The reference to liabilities in paragraph (1) and in article 21 does not include any liability transferred as a result of article 17 of the Financial Services and Markets Act 2000 (Transitional Provisions) (Ombudsman Scheme and Complaints Scheme) Order 2001(a).

(a) S.I. 2001/2326.

Legal proceedings

23.—(1) If, at commencement, a transferor body is a party to any legal proceedings the Authority is substituted for the transferor body in those proceedings.

(2) Where legal proceedings for an injunction commenced under a provision of the Financial Services Act or the Banking Act are concluded on or after commencement, the court may, instead of granting an injunction restraining a contravention of the kind mentioned in that provision, grant an injunction restraining (or in Scotland, an interdict prohibiting) such conduct as the court considers appropriate, having regard to any provision made by or under the Act.

(3) For the purposes of this article, “transferor body” has the same meaning as in article 21.

Exemption from liability in damages

24.—(1) Notwithstanding their repeal, the provisions mentioned in paragraph (2) continue to have effect—

- (a) in relation to things done or omitted to be done before commencement, and
- (b) in relation to anything done on or after commencement for the purposes of or in connection with any proceedings arising from anything done or omitted to be done before commencement.

(2) The provisions mentioned in this paragraph are—

- (a) section 1(4) of the Banking Act (immunity in relation to things done or omitted in discharge of functions);
- (b) section 43(5) of the Financial Services Act (listed money market institutions)(a);
- (c) section 187 of the Financial Services Act (exemption from liability for damages) (including as extended in relation to the Authority by regulation 56(1) of the ISD Regulations and in relation to the recognised self-regulating organisations by regulation 30 of the ISD Regulations);
- (d) section 171(6A) of the Companies Act 1989(b) (certain money market institutions).

(3) Notwithstanding the revocation of the Financial Markets and Insolvency (Money Market) Regulations 1995(c), regulation 29 of those Regulations continues to have effect to the extent provided for by paragraph 20(5) of Schedule 1 to the Bank of England Act 1998 (Consequential Amendments to Subordinate Legislation) Order 1998(d).

(4) The reference in paragraph (2)(a) to section 1(4) of the Banking Act is a reference to that provision—

- (a) as amended by paragraph 2 of Schedule 5 to the Bank of England Act 1998;
- (b) as continued in effect without those amendments by paragraph 1 of Schedule 8 to that Act (but as if the references in paragraphs (1) above to “commencement” were to 1st June 1998); and
- (c) as extended by paragraph 2 of Schedule 8 to the 2BCD Regulations.

(5) The Authority may rely on section 187(1) of the Financial Services Act in relation to any liability transferred to it by virtue of paragraph (1) of article 22 or of article 21 to the same extent as the transferor body from which the liability was transferred could have relied on it before commencement in relation to that liability.

(6) For the avoidance of doubt, the Authority’s functions for the purposes of paragraph 19 of Schedule 1 (exemption from liability in damages) include any functions exercisable by the Authority after commencement as a result of any saving made by or under the Act from the effect of any repeal or revocation so made.

Fees for the exercise of certain Authority functions

25.—(1) For the purposes of paragraph 17 of Schedule 1 (fees) the following are to be treated as functions of the Authority under the Act—

- (a) the Authority’s functions under—

(a) Subsection (5) was inserted into section 43 by the Bank of England Act 1998 (c. 11), section 25(1).
(b) 1989 c. 40. Subsection (6A) was inserted into section 171 by the Bank of England Act 1998, section 25(3).
(c) S.I. 1995/2049.
(d) S.I. 1998/1129.

- (i) the Financial Services Act (other than Part IV of that Act);
- (ii) the Banking Act;
- (iii) the 2BCD Regulations;
- (iv) the ISD Regulations,

with respect to which the Authority incurs expenditure after commencement;

- (b) any function exercisable by the Authority after commencement as a result of any saving made by or under the Act from the effect of any repeal or revocation so made.

(2) For the purposes of paragraph 17 of Schedule 1, expenditure incurred in meeting a liability transferred to the Authority by virtue of paragraph (1) of article 22 or of article 21 is to be treated as having been incurred in connection with the discharge by the Authority of functions under the Act.

(3) For the purposes of section 99(2), expenditure incurred in meeting a liability arising from the exercise by the Authority of its functions as the competent authority under Part IV of the Financial Services Act is to be treated as having been incurred in carrying out its functions as competent authority under Part VI of the Act.

Fees under the Insurance Companies Act

26.—(1) Any relevant authorised person who has not paid the final Insurance Companies Act fee must, by or on his final day, pay to the Authority his relevant pre-commencement fee.

(2) By 26th April 2002—

- (a) the Authority must inform the Treasury of the amount which it has received pursuant to paragraph (1) (“X”); and
- (b) the Treasury must inform the Authority of the amount which they received before commencement as fees under the 2001 Fees Order (“Y”).

(3) On or before 31st December 2002—

- (a) if two-thirds of X exceeds one third of Y, the Authority must pay the difference to the Treasury;
- (b) if one third of Y exceeds two thirds of X, the Treasury must pay the difference to the Authority.

(4) Any sum received by the Treasury under paragraph (3) must be paid into the Consolidated Fund.

(5) In this article—

“the 2001 Fees Order” means the Insurance (Fees) Order 2001(a);

“final day”, in relation to any person, means the day by which that person would have been required to deposit documents with the Treasury under section 22(1) of the Insurance Companies Act, but for the repeal of that Act;

“relevant authorised person” means an authorised person who was, immediately before commencement, authorised under section 3 or 4 of the Insurance Companies Act but was not an EC company (as defined by that Act);

“relevant pre-commencement fee”, in relation to any person, means the amount which, had he deposited documents under section 22(1) of the Insurance Companies Act immediately before commencement, he would have been obliged to pay to the Treasury as a fee under the 2001 Fees Order.

(6) For the purposes of this article, a person has paid the final Insurance Companies Act fee if he has, before commencement, paid to the Treasury a fee under the 2001 Fees Order.

(7) This article applies notwithstanding any repeal of section 94A of the Insurance Companies Act or any revocation of the 2001 Fees Order.

Fees in respect of the existing deficit

27.—(1) Before 30th April 2002 the Treasury must inform the Authority of an amount (“the relevant amount”), which must not exceed the existing deficit, for the purposes of this article.

(a) S.I. 2001/812; made under section 94A of the 1982 Act.

(2) The Authority must make rules providing for the payment to it in the transitional period by authorised persons who have Part IV permission to effect and carry out contracts of insurance of such fees as it considers will enable it to repay the relevant amount to the Treasury.

(3) In making rules under paragraphs (2) for the first year of the transitional period, the Authority must have regard to the object of securing (so far as practicable) that the amount of fees payable in that year is equal to one half of the relevant amount.

(4) On each of 31st July 2003 and 31st July 2004, the Authority must pay to the Treasury the sums that it has received by virtue of rules made under paragraph (2) in the relevant period which expires immediately before that date.

(5) Any sums received by the Treasury pursuant to this article must be paid into the Consolidated Fund.

(6) Nothing in this article affects the Authority's power to make rules under paragraph 17 of Schedule 1 (fees).

(7) In this article—

“the existing deficit” means the cost incurred by the Treasury in exercising functions which were, when they were exercised, relevant functions for the purposes of subsection (6) of section 94A of the Insurance Companies Act, less the amount that the Treasury received before commencement as fees by virtue of orders made under that section and any amount that the Treasury receive (or are to receive) by virtue of article 26(3);

“the relevant period” is the period running from 1st July in one year to 30th June in the next year;

“transitional period” means the period from 1st July 2002 to 30th June 2004.

The Contracting Out Order

28.—(1) The Contracting Out (Functions in Relation to Insurance) Order 1998(a) is revoked.

(2) Notwithstanding paragraph (1), any contract made between the Treasury and the Authority that relates to the exercise of functions listed in the Schedule to that Order which is subsisting immediately before commencement, continues to have effect on and after commencement, to the extent that it relates to matters ancillary to the exercise of those functions including—

- (a) payment; and
- (b) retention and inspection of documents.

(3) Any obligation of the Authority under such a contract which continues to have effect after commencement is to be treated as a function conferred on the Authority by or under a provision of the Act for the purposes of Schedule 1.

(4) The Authority must comply in a reasonable time with any direction that the Treasury give to it that relates to the conduct of relevant litigation or the handling of any proposal to initiate such litigation.

(5) In paragraph (4), “relevant litigation” means any litigation that arises from or relates to the exercise of the functions listed in the Schedule to that Order by the Authority, whether or not the Authority is or the Treasury are a party.

Correction of scope of permission notices as a result of this Order

29.—(1) This article applies where—

- (a) the Authority has sent before commencement a scope of permission notice under article 55 of the Authorised Persons Order to a person who has a permission conferred on him at commencement as a result of article 6, 7, 8 or 9;
- (b) that person has before commencement notified the Authority in accordance with article 56(1)(a) of that Order that he agrees with the matters stated in the notice;
- (c) the Authority has, before commencement, sent to the person a notice (“revision notice”) revising the scope of permission notice so that it includes the permission conferred on the person as a result of article 6, 7, 8 or 9 (as the case may be).

(a) S.I. 1998/2842.

(2) In a case where this article applies, if the person has not, before commencement, notified the Authority that it objects to the revision notice, then article 57(1) of the Authorised Persons Order applies to the scope of permission notice as revised by the revision notice.

(3) If the person has notified the Authority before commencement that it objects to the revision notice then article 57(1) of the Authorised Persons Order applies as if the revision notice had not been sent.

Correction of scope of permission notices for PIA firms

30.—(1) This article applies where—

- (a) the Authority has sent, before commencement, a scope of permission notice under article 55 of the Authorised Persons Order to a person who, at the time the notice was sent, was a member of the Personal Investment Authority Limited;
- (b) that person has before commencement notified the Authority in accordance with article 56(1)(a) of that Order that he agrees with the matters stated in the notice;
- (c) the scope of permission notice thereby agreed purported to provide for the person to have a permission to agree to carry on all regulated activities so far as carried on in respect of an investment of the kind specified by article 76 of the Regulated Activities Order (shares etc.) and in relation to an “intermediate customer”;
- (d) the Authority has, before commencement, sent to the firm a notice (“a revision notice”) revising the scope of permission notice so that it states that the person has permission to agree to carry on any regulated activity which the scope of permission notice states that he has a Part IV permission to carry on (in so far as agreeing to carry on that activity itself constitutes, by virtue of article 64 of the Regulated Activities Order, a regulated activity).

(2) In a case where this article applies, if the person has not, before commencement, notified the Authority that it objects to the revision notice, then article 57(1) of the Authorised Persons Order applies to the scope of permission notice as revised by the revision notice.

(3) If the person has notified the Authority before commencement that it objects to the revision notice then article 57(1) of the Authorised Persons Order applies as if the revision notice had not been sent.

(4) For the purpose of this article “the Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(a).

John Heppell
Tony McNulty

9th November 2001

Two of the Lords Commissioners of her Majesty’s Treasury

(a) S.I. 2001/544.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends Orders previously made under the Financial Services and Markets Act 2000 (c. 8) ("FSMA") and also makes miscellaneous additional provision needed for the implementation of FSMA.

Part I provides for commencement and interpretation. Most of the provisions come into force on 1st December 2001 when the main provisions of FSMA, in particular section 19 (the general prohibition) come into force: see Financial Services and Markets Act 2000 (Commencement No. 7) Order 2001 (S.I. 2001/3538 (C. 115)).

Part II contains amendments to earlier Orders made, most of which themselves come into force on 1 December 2001.

Article 2 amends the Schedule to the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001 (S.I. 2001/1062) which sets out the arrangements which are not to be regarded as collective investment schemes for the purposes of FSMA. Paragraph 9(1) of that Schedule excludes schemes entered into for commercial purposes related to a business. It is a condition of this exclusion that each participant in the scheme carries on a business which does not involve investment activities. The amendment made by article 2(2) of this Order provides that the activities in question are regulated activities, ie ones falling within certain provisions of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) which are carried on by way of business. The amendment made by article 2(3) ensures that unregulated as well as regulated funeral plan contracts are excluded from the definition of collective investment scheme and article 2(4) amends paragraph 21 of the Schedule to the earlier Order to provide that limited liability partnerships are capable of being collective investment schemes.

Article 3 amends the Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001 (S.I. 2001/1227), which specifies certain regulated activities as falling outside the exemption accorded to members of the professions under Part XX of FSMA. Among the activities so specified were entering into a regulated mortgage contract or administering such a contract. Article 3 provides that those activities do not fall outside the Part XX exemption where they are carried on by a person acting in this capacity as a trustee or personal representative, and the borrower under the relevant regulated mortgage contract is a beneficiary under the trust, will or intestacy.

Articles 4 and 5 of this Order amend the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (S.I. 2001/1335). Article 4 provides that appointed representatives are exempt in respect of any unsolicited real time communications they make in the course of the business for which their principal accepts responsibility. The exemption applies provided that the communication complies with any rules which would apply to the principal if he made the communication himself. Article 5 narrows the kinds of rights and interests specified by paragraph 29 of Schedule 1 to the earlier Order as a controlled investment. Interests in an investment other than a funeral plan contract (such as an insurance policy) that are acquired as a result of entering into a funeral plan, are not controlled investments, whether or not the funeral plan is itself a qualifying one for the purposes of the Schedule.

Articles 6 to 10 amend the Financial Services and Markets Act 2000 (Transitional Provisions) (Authorised Persons etc.) Order 2001 (S.I. 2001/2636). Articles 6 to 9 confer additional permissions on persons who are treated as having Part IV permissions under the Act. These provide that banks and building societies who were previously excluded from the need for authorisation under the Insurance Companies Act 1982 (c. 50) because of section 2(4) of that Act have a Part IV permission to continue to carry on any insurance business they were carrying on in reliance on that exclusion. Further, firms who were not authorised under the Financial Services Act 1986 and were therefore able to rely on the exclusion in paragraph 17(4) of Schedule 1 to that Act (being unauthorised persons for the purposes of that paragraph) are granted permission to carry on that same business because, being authorised persons for the purposes of FSMA, they will not be able to rely on the exclusion in article 16 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001. Article 10 carries forward the effect of section 103 of the Financial Services Act 1986 in relation to people who were disqualified under section 59 of that Act and whose disqualification is carried forward as a

prohibition order under section 56 of FSMA. Information about the disqualification will be included on the record maintained in accordance with section 347 of FSMA but it will not be made available for inspection, nor will a copy of it be provided, unless it is specifically requested.

Articles 11 and 12 amend the Financial Services and Markets Act 2000 (Transitional Provisions) (Controllers) Order 2001 (S.I. 2001/2637). This provides that where a person has been approved before commencement by a recognised self regulating organisation but has not yet taken the step which makes him a controller, that approval is carried forward as an approval under FSMA so that he does not need to reapply for approval.

Part III of the Order makes miscellaneous provisions other than amendments. Articles 14 and 15 modify section 367 of FSMA (winding up petitions) so that where a body is in default on sums due and payable under a relevant agreement concluded before commencement, it is to be treated as unable to pay its debts. Relevant agreements are “investment agreements” within the meaning of the Financial Services Act 1986 (article 14), and those involving the acceptance of deposits for the purposes of the Banking Act 1987 (article 15). Article 16 makes transitional provision in relation to provisions in the Financial Services Act 1986, the Banking Act 1987 and the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (S.I. 1975/1023) that confer an exception from the Rehabilitation of Offenders Act 1974. To the extent that these provisions confer an exception for proceedings under the existing regulatory regimes, those provisions continue to have effect after 1st December 2001 in relation to such proceedings. Article 17 retains in effect provisions regarding the disqualification from political office of members of the Financial Services Tribunal since that Tribunal continues to have functions after commencement. Article 18 makes transitional savings of certain enactments which oblige auditors to communicate certain matters to the regulator.

Article 19 provides that the Authority must fulfil its reporting obligations under the Financial Services Act 1986 and the Banking Act 1987 by including the relevant information in the first report it makes of its activities under FSMA. Article 20 contains similar provision in relation to the Treasury’s report under the Insurance Companies Act.

Articles 21 and 22 provide for the Authority to devise a scheme for the transfer of the property, rights and liabilities of the self-regulating organisations. All liabilities for pre-commencement acts and omissions by these bodies are transferred to the Authority by article 22 and the Authority is, by article 23, substituted for the organisation in any legal proceedings pending at commencement. Article 24 deals with immunity from liability in damages in relation to actions before commencement or under repealed enactments. Article 25 extends the Authority’s power to charge fees to expenditure incurred in the exercise of certain of its functions. Article 26 makes provision for fees that have been paid to the Treasury under the Insurance Companies Act 1982 and fees which would have been payable to the Treasury under that Act after 1st December 2001, but for the repeal of that Act, that relate to the cost of the regulation of insurance companies for the period from 1st April 2001 to 31st March 2002. Article 27 requires the Financial Services Authority to make rules which require authorised persons who have permission under Part IV of the Act to effect and carry out contracts of insurance to pay fees to the Authority. These funds are to be repaid to the Treasury. The funds raised in this way must not exceed the deficit which the Treasury have incurred in exercising functions under the Insurance Companies Act 1982. Article 28 revokes with savings the Contracting Out (Functions in Relation to Insurance) Order 1998 (S.I. 1998/2842).

Articles 29 and 30 concern corrections to scope of permission notices sent out to persons before commencement under the Financial Services and Markets Act 2000 (Transitional Provisions) (Authorised Persons etc.) Order 2001.

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