
STATUTORY INSTRUMENTS

2001 No. 3649

**The Financial Services and Markets Act 2000
(Consequential Amendments and Repeals) Order 2001**

PART 2

AMENDMENTS TO THE COMPANIES LEGISLATION

Companies Act 1985 (c. 6)

Membership of holding company

4.—(1) Section 23 (membership of holding company) of the Companies Act 1985(1) is amended as follows.

(2) In paragraph (b) of subsection (3B), for “section 75 of the Financial Services Act 1986” substitute “section 236 of the Financial Services and Markets Act 2000”.

(3) For paragraphs (d) and (e) of that subsection substitute—

“(d) “insurance business” means business which consists of the effecting or carrying out of contracts of insurance;

(e) “securities” includes—

(i) options,

(ii) futures, and

(iii) contracts for differences,

and rights or interests in those investments;”.

(4) In paragraph (f) of that subsection, for “section 75(8) of the Financial Services Act 1986” substitute “section 237(2) of the Financial Services and Markets Act 2000”.

(5) After that subsection, insert—

“(3BA) Subsection (3B) must be read with—

(a) section 22 of the Financial Services and Markets Act 2000;

(b) any relevant order under that section; and

(c) Schedule 2 to that Act.”.

Meaning of “offer to the public”

5. Sections 59 and 60 of the 1985 Act(2) (so far as those sections continue to have effect) are repealed.

(1) Section 23 was substituted by the Companies Act 1989 (c. 40), section 129 and amended by S.I. 1990/1392, article 8; S.I. 1990/1707, article 8; S.I. 1997/2306, regulations 2 and 3.

(2) Repealed in part by the Financial Services Act 1986 (c. 60), Schedule 17; section 60 was amended by S.I. 1991/2000, regulation 5.

Purchase by company of its own shares: definition of “off-market” and “market” purchase

6.—(1) Section 163 of the 1985 Act (meaning of “off-market” and “market” purchase)(3) is amended as follows.

(2) In subsection (2)(a) for “Part IV of the Financial Services Act 1986” substitute “Part 6 of the Financial Services and Markets Act 2000”.

(3) For subsection (4) substitute—

“(4) “Recognised investment exchange” means a recognised investment exchange other than an overseas investment exchange.

(5) Expressions used in the definition contained in subsection (4) have the same meaning as in Part 18 of the Financial Services and Markets Act 2000.”.

Duty of company as to issue of certificates

7. For subsection (4) of section 185 of the 1985 Act (duty of company to issue certificates in relation to shares allotted or transferred)(4) substitute—

“(4) Subsection (4A) applies in relation to a company—

- (a) of which shares or debentures are allotted to a financial institution,
- (b) of which debenture stock is allotted to a financial institution, or
- (c) with which a transfer for transferring shares, debentures or debenture stock to a financial institution is lodged.

(4A) The company is not required, in consequence of that allotment or transfer, to comply with subsection (1).

(4B) “Financial institution” means—

- (a) a recognised clearing house acting in relation to a recognised investment exchange; or
- (b) a nominee of—
 - (i) a recognised clearing house acting in that way; or
 - (ii) a recognised investment exchange.

(4C) No person may be a nominee for the purposes of this section unless he is a person designated for those purposes in the rules of the recognised investment exchange in question.

(4D) Expressions used in subsections (4B) and (4C) have the same meaning as in Part 18 of the Financial Services and Markets Act 2000.”.

Disclosure of interests in shares: interests to be disclosed

8.—(1) Section 199 of the 1985 Act (interests in shares required to be disclosed)(5) is amended as follows.

(2) In subsection (2A), in paragraph (a) for “authorised to” substitute “who may lawfully”.

(3) For subsections (6) and (7) substitute—

“(6) For the purposes of subsection (2A), a person (“A”) may lawfully manage investments belonging to another if—

(3) Amended by the Financial Services Act 1986 (c. 60), Schedule 16, paragraph 17.

(4) Amended by the Financial Services Act 1986 (c. 60), section 194.

(5) Amended by S.I. 1993/1819, regulation 4; S.I. 1996/2827, Schedule 8, paragraph 5; S.I. 2001/1228, Schedule 7, paragraph 4.

- (a) A can manage those investments in accordance with a permission which A has under Part 4 of the Financial Services and Markets Act 2000;
 - (b) A is an EEA firm of the kind mentioned in sub-paragraph (a) or (b) of paragraph 5 of Schedule 3 to that Act, and can manage those investments in accordance with its EEA authorisation;
 - (c) A can, in accordance with section 327 of that Act, manage those investments without contravening the prohibition contained in section 19 of that Act; or
 - (d) A can lawfully manage those investments in another Member State and would, if he were to manage those investments in the United Kingdom, require permission under Part 4 of that Act.
- (7) References in this section to the management of investments must be read with—
- (a) section 22 of the Financial Services and Markets Act 2000;
 - (b) any relevant order under that section; and
 - (c) Schedule 2 to that Act.”.
- (4) In subsection (8)—
- (a) in paragraph (b) for the words from the beginning to “conferred” substitute “is certified by the competent authority in that member State as complying with the conditions imposed”; and
 - (b) for “subsection (8) of section 86 of the Financial Services Act 1986” substitute “subsection (5) of section 264 of the Financial Services and Markets Act 2000”.

Disclosure of interests in shares: interests to be disregarded

9. For section 209(2) of the 1985 Act (interests in shares to be disregarded for purposes of disclosure requirements)(6) substitute—

- “(2) An interest in shares is an exempt security interest for the purposes of subsection (1)
- (c) if the condition mentioned in subsection (2A) is satisfied and it is held by—
- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits;
 - (b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act;
 - (c) a person authorised under the law of a member State other than the United Kingdom to accept deposits who—
 - (i) would not qualify for authorisation under paragraph 12 of Schedule 3 to that Act; and
 - (ii) would require permission under another provision of that Act to accept such deposits in the United Kingdom;
 - (d) an authorised insurance undertaking;
 - (e) a person authorised under the law of a member State to deal in securities or derivatives, who deals in securities or derivatives on a relevant stock exchange or a relevant investment exchange, whether as a member or otherwise;
 - (f) a relevant stock exchange;
 - (g) a relevant investment exchange;
 - (h) a recognised clearing house;
 - (i) the Bank of England; or

(6) Substituted by [S.I. 1993/1819](#), regulation 8; subsection (2) amended by [S.I. 1993/2689](#), regulation 3.

(j) the central bank of a member State other than the United Kingdom.

(2A) The condition is that the interest in the shares must be held by way of security only for the purposes of a transaction entered into in the ordinary course of his or its business as a person or other body falling within any of paragraphs (a) to (j) of subsection (2).

(2B) Paragraphs (a) to (c) of subsection (2) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.

(2C) But paragraph (a) of subsection (2) does not include—

- (a) a building society incorporated, or deemed to be incorporated, under the Building Societies Act 1986; or
- (b) a credit union, within the meaning of the Credit Unions Act 1979 of the Credit Unions (Northern Ireland) Order 1985.”.

Disclosure of interests in shares: interpretation

10.—(1) Subsection (1) of section 220 of the 1985 Act (interpretation of Part 6)(7) is amended in accordance with paragraphs (2) to (8).

(2) The definitions of “authorised credit institution” and “designated agency” are repealed.

(3) In the definition of “authorised unit trust scheme” for “Chapter VIII of Part I of the Financial Services Act 1986” substitute “Part 17 of the Financial Services and Markets Act 2000”.

(4) For the definition of “derivatives” substitute—

““derivatives” means options and futures in relation to shares;”.

(5) After the definition of “derivatives” insert—

““EEA authorisation” has the same meaning as in paragraph 6 of Schedule 3 to the Financial Services and Markets Act 2000;”.

(6) In the definition of “operator” for “section 75(8) of the Financial Services Act 1986” substitute “section 237(2) of the Financial Services and Markets Act 2000”.

(7) For the definition which begins ““recognised clearing house”,” substitute—

““recognised clearing house” has the same meaning as in the Financial Services and Markets Act 2000;

““recognised scheme” has the same meaning as in Part 17 of the Financial Services and Markets Act 2000;”.

(8) In the definition of “units” for “section 75 of the Financial Services Act 1986” substitute “section 237(2) of the Financial Services and Markets Act 2000”.

(9) After section 220(1) of the 1985 Act insert—

“(1A) References in subsection (1) to contracts of insurance (of any description), options and futures must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.”.

(7) Subsection (1) was substituted by [S.I. 1993/1819](#), regulation 9; relevant amendments were made by [S.I. 2000/2952](#), regulation 2.

Limitations on exemptions for small and medium-sized companies in relation to accounts etc.

11.—(1) Section 247A of the 1985 Act (limitations on exemptions for small and medium-sized companies in relation to accounts etc.)(**8**) is amended as follows.

(2) In subsection (1), for paragraph (a) substitute—

“(a) the company is, or was at any time within the financial year to which the accounts relate—

(i) a public company,

(ii) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to carry on one or more regulated activities, or

(iii) a person who carries on insurance market activity;”.

(3) In subsection (2), for paragraphs (b) to (d) substitute—

“(b) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to carry on a regulated activity, or

(c) a person who carries on an insurance market activity.”.

Limitations on exemptions for small and medium-sized groups

12. In subsection (2) of section 248 of the Act (exemption for small and medium-sized groups), for paragraphs (b) to (d) substitute—

“(b) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to carry on a regulated activity, or

(c) a person who carries on an insurance market activity.”.

Limitations on exemptions for dormant companies

13 In subsection (3) of section 249AA of the Act (dormant companies)(**9**), for paragraphs (a) and (b) substitute—

“(a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to carry on one or more regulated activities; or

(b) a person who carries on insurance market activity”.

Cases where exemptions not available

14.—(1) Subsection (1) of section 249B of the Act (cases where exemptions not available) is amended as follows.

(2) For paragraph (b) substitute—

“(b) it was a person who had permission under Part 4 of the Financial Services and Markets Act 2000 to carry on a regulated activity;”.

(3) After paragraph (b) insert—

“(bb) it carried on an insurance market activity;”.

(4) For paragraph (d) substitute—

“(d) it was an appointed representative, within the meaning of section 39 of the Financial Services and Markets Act 2000;”.

(**8**) Section 247A was inserted by [S.I. 1997/220](#), regulation 4.

(**9**) Section 249AA was inserted by [S.I. 2000/1430](#), regulation 3.

Summary financial statements by listed public companies

15. In section 251(1) of the 1985 Act (summary financial statements by listed public companies)(10), for the definition of “listed”, and the word “and” preceding it, substitute—

““listed” means included in the official list by the competent authority for the purposes of Part 6 of the Financial Services and Markets Act 2000 (official listing); and
“the official list” has the meaning given in section 103(1) of that Act.”.

Meaning of “banking partnership”

16.—(1) For subsection (2) of section 255D of the 1985 Act (power to apply provisions to banking)(11) substitute—

“(2) A “banking partnership” means a partnership which has permission under Part 4 of the Financial Services and Markets Act 2000.

(2A) But a partnership is not a banking partnership if it has permission to accept deposits only for the purpose of carrying on another regulated activity in accordance with that permission.”.

(2) After subsection (4) of that section insert—

“(5) Subsections (2) and (2A) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.”.

Other distributions by investment companies

17.—(1) Section 265 of the 1985 Act (other distributions by investment companies)(12) is amended as follows.

(2) In subsection (4)(a) the words “within the meaning of the Financial Services Act 1986” are repealed.

(3) After subsection (4) insert—

“(4A) In subsection (4)(a) “recognised investment exchange” and “overseas investment exchange” have the same meaning as in Part 18 of the Financial Services and Markets Act 2000.”.

Realised profits of an insurance company with long term business

18.—(1) Section 268 of the 1985 Act (realised profits of insurance company with long term business) is amended as follows.

(2) In subsection (1)—

- (a) for “an insurance company to which Part II of the Insurance Companies Act 1982 applies” substitute “an authorised insurance company”; and
- (b) in paragraph (a), for “in accordance with section 30(1) of that Act or carried forward unappropriated as mentioned in section 30(7) of that Act” substitute “or, as the case may be, carried forward unappropriated, in accordance with asset identification rules made under section 142(2) of the Financial Services and Markets Act 2000”.

(10) Substituted for certain purposes by the Companies Act 1989 (c. 40) s.1-23; subsection (1) amended by S.I. 1992/3003, regulation 3.

(11) Inserted by the Companies Act 1989 (c. 40), section 18(2).

(12) Amended by the Financial Services Act 1986 (c. 60), Schedule 16, paragraph 19.

- (3) In subsection (3)—
- (a) for paragraph (a) substitute—
- “(a) “actuarial investigation” means—
- (i) an investigation made into the financial condition of an authorised insurance company in respect of its long term business, carried out once in every period of twelve months in accordance with rules made under Part 10 of the Financial Services and Markets Act 2000 by an actuary appointed as actuary to that company; or
- (ii) an investigation made into the financial condition of an authorised insurance company in respect of its long term business carried out in accordance with a requirement imposed under section 166 of that Act by an actuary appointed as actuary to that company;”;
- (b) for paragraph (b) substitute—
- “(b) “long term business” means business which consists of effecting or carrying out contracts of long term insurance.”.
- (4) After subsection (3) insert—
- “(4) The definition of “long term business” in subsection (3) must be read with—
- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.”.

Exceptions to rules relating to substantial property transactions involving directors

19. In section 321(4) of the 1985 Act (exceptions to rules in section 320: transactions through independent broker on recognised investment exchange)(**13**), for “Financial Services Act 1986” substitute “Financial Services and Markets Act 2000”.

Duty of company to notify recognised investment exchange of certain matters concerning directors notified to the company

20.—(1) Section 329 of the 1985 Act (duty of company to notify recognised investment exchange of matters notified to it under sections 324 or 328)(**14**) is amended as follows.

(2) In subsection (1) the words “within the meaning of the Financial Services Act 1986” are repealed.

(3) After subsection (3) insert—

 “(4) In subsection (1) “recognised investment exchange” and “overseas investment exchange” have the same meaning as in Part 18 of the Financial Services and Markets Act 2000.”.

Investigation of share dealing

21. In section 446 of the 1985 Act (investigation of share dealing)(**15**), for subsection (4) substitute—

(13) Subsection (4) inserted by the Companies Act 1989 (c. 40), Schedule 19, paragraph 8.

(14) Amended by the Financial Services Act 1986 (c. 60), Schedule 16, paragraph 20.

(15) Subsection (4) was amended by the Financial Services Act 1986 (c. 60), Schedule 16, paragraph 21.

“(4) Sections 434 to 436 apply for the purposes of an investigation under this section to the following persons as they apply to officers of the company or of the other body corporate—

- (a) an authorised person;
- (b) a relevant professional;
- (c) a person not falling within paragraph (a) or (b) who may carry on a regulated activity without contravening the prohibition imposed by section 19 of the Financial Services and Markets Act 2000; and
- (d) in relation to an authorised person, to a relevant professional or to a person falling within paragraph (c)—
 - (i) if it is a body corporate, any person who is or has been an officer of it;
 - (ii) if it is a partnership, any person who is or has been a partner in it;
 - (iii) if it is an unincorporated association, any person who is or has been a member of its governing body or an officer of it.

(4A) In subsection (4)—

“authorised person” has the meaning given in section 31(2) of the Financial Services and Markets Act 2000;

“relevant professional” means a member of a profession in relation to which a body has been designated under section 326(1) of that Act, and, in relation to such a profession, “member” has the meaning given in section 325(2) of that Act.”.

Provision for security of information obtained

22.—(1) Section 449 of the 1985 Act (provision for security of information obtained under section 447 of that Act)⁽¹⁶⁾ is amended as follows.

(2) In subsection (1), the following are repealed—

- (a) in paragraph (c), the words “, or under section 94 or 177 of the Financial Services Act 1986,”;
- (b) in paragraph (d), the words “the Insurance Companies Act 1982,”;
- (c) paragraphs (de) and (df); and
- (d) paragraph (i).

(3) In subsection (1)(cc), for the words from “or appointed” to “Financial Services Act 1986” substitute “section 447 of this Act”.

(4) After subsection (1)(cc) insert—

- “(cd) for the purposes of enabling or assisting a person appointed under—
- (i) section 167 of the Financial Services and Markets Act 2000 (general investigations),
 - (ii) section 168 of that Act (investigations in particular cases),
 - (iii) section 169(1)(b) of that Act (investigation in support of overseas regulator),
 - (iv) section 284 of that Act (investigations into affairs of certain collective investment schemes), or

⁽¹⁶⁾ Amended by the Financial Services Act 1986 (c. 60), Schedule 13, paragraph 9 and Schedule 17; the Companies Act 1989 (c. 60), section 65 and Schedule 24; the Friendly Societies Act 1992 (c. 40), Schedule 21, paragraph 7 and Schedule 22; the Bank of England Act 1998 (c. 11), Schedule 5, paragraph 62; S.I. 1992/1315, Schedule 4, paragraph 1; S.I. 1994/1696, Schedule 13, paragraph 9; and S.I. 1995/710, regulation 5.

- (v) regulations made as a result of section 262(2)(k) of that Act (investigations into open-ended investment companies),
to conduct an investigation to discharge his functions;”.
- (5) In subsection (1)(d), for words from “the Financial Services Act 1986” to the end substitute “, Part 2, 3 or 7 of the Companies Act 1989 or the Financial Services and Markets Act 2000;”.
- (6) For paragraphs (fa) to (h) of subsection (1) substitute—
- “(fa) for the purposes of enabling or assisting the Financial Services Authority to discharge its functions under the legislation relating to friendly societies or to industrial and provident societies, under the Building Societies Act 1986, under Part 7 of the Companies Act 1989 or under the Financial Services and Markets Act 2000;
 - (fb) for the purposes of enabling or assisting the competent authority for the purposes of Part 6 of the Financial Services and Markets Act 2000 to discharge its functions under that Part;
 - (g) for the purposes of enabling or assisting a body corporate established in accordance with section 212(1) of the Financial Services and Markets Act 2000 (compensation scheme manager) to discharge its functions;
 - (h) for the purposes of any proceedings before the Financial Services Tribunal by virtue of the Financial Services and Markets Act 2000 (Transitional Provisions) (Partly Completed Procedures) Order 2001;
 - (ha) with a view to the institution of, or otherwise for the purposes of, proceedings before the Financial Services and Markets Tribunal;
 - (hb) for the purpose of enabling or assisting a recognised investment exchange or a recognised clearing house to discharge its functions as such;
 - (hc) for the purpose of enabling or assisting a body designated under section 326(1) of the Financial Services and Markets Act 2000 (designated professional bodies) to discharge its functions in its capacity as a body designated under that section;”.
- (7) In subsection (1A), before paragraph (a) insert—
- “(aa) in paragraph (hb) “recognised investment exchange” and “recognised clearing house” has the same meaning as in section 285 of the Financial Services and Markets Act 2000;”.
- (8) Subsection (1D) is repealed.
- (9) In subsection (3)(b)(17), the words “or under section 94 or 177 of the Financial Services Act 1986” are repealed.
- (10) After subsection (3)(b) insert—
- “(ba) a person appointed under—
 - (i) section 167 of the Financial Services and Markets Act 2000 (general investigations),
 - (ii) section 168 of that Act (investigations in particular cases),
 - (iii) section 169(1)(b) of that Act (investigation in support of overseas regulator),
 - (iv) section 284 of that Act (investigations into affairs of certain collective investment schemes), or
 - (v) regulations made as a result of section 262(2)(k) of that Act (investigations into open-ended investment companies),

(17) Subsection (3) was substituted by the Financial Services Act 1986, and further substituted by the Companies Act 1989, section 65.

to conduct an investigation;”.

(11) In subsection (3), in paragraph (c), for the words from “under” to “Financial Services Act 1986” substitute “under section 447 of this Act”.

(12) In subsection (3), for paragraphs (ha) to (k)(18) substitute—

“(ha) the Financial Services Authority;”.

Punishment for destroying etc documents of an authorised insurance company

23.—(1) Section 450 of the 1985 Act (punishment for destroying, mutilating etc company documents) is amended as follows.

(2) In subsection (1)(19) the words “, or of an insurance company to which Part II of the Insurance Companies Act 1985 applies,” are repealed.

(3) After that subsection insert—

“(1A) Subsection (1) applies to an officer of an authorised insurance company which is not a body corporate as it applies to an officer of a company.”.

Disclosure of information by inspectors

24. For subsection (3) of section 451A of the 1985 Act (disclosure of information by inspectors)(20) substitute—

“(3) Information to which this section applies may also be disclosed by an inspector appointed under this Part to—

- (a) another inspector appointed under this Part;
- (b) a person appointed under—
 - (i) section 167 of the Financial Services and Markets Act 2000 (general investigations),
 - (ii) section 168 of that Act (investigations in particular cases),
 - (iii) section 169(1)(b) of that Act (investigation in support of overseas regulator),
 - (iv) section 284 of that Act (investigations into affairs of certain collective investment schemes), or
 - (v) regulations made as a result of section 262(2)(k) of that Act (investigations into open-ended investment companies),
 to conduct an investigation; or
- (c) a person authorised to exercise powers under—
 - (i) section 447 of this Act; or
 - (ii) section 84 of the Companies Act 1989 (exercise of powers to assist overseas regulatory authority).”.

Production of documents subject to customer confidentiality

25.—(1) Section 452 of the 1985 Act (privileged information) is amended as follows.

(18) Paragraph (ha) was inserted by the Bank of England Act 1998 (c. 11), section 23(1), Schedule 5, paragraph 62(1),(3), and paragraph (jj) was inserted by the Friendly Societies Act 1992 (c. 40), section 120(2), Schedule 22.

(19) Subsection (1) was amended by the Companies Act 1989 (c. 40), section 66(1).

(20) Inserted by the Financial Services Act 1986 (c. 60), Schedule 13, paragraph 10; substituted by the Companies Act 1989 (c. 40), section 68 and amended by S.I. 1994/1696, Schedule 8, paragraph 9.

(2) In subsection (3)(21), for the words from “or the customer is a person on whom a requirement has been imposed under that section,” to the end of that subsection, substitute

“or the customer is—

- (a) a person on whom a requirement has been imposed under that section, or
- (b) a person on whom a requirement to produce information or documents has been imposed by the Secretary of State, or by a person appointed by the Secretary of State to conduct an investigation, under section 171 or 173 of the Financial Services and Markets Act 2000.”.

Companies to which section 460 applies

26. For subsection (1) of section 460 of the 1985 Act (order on application of the Secretary of State) substitute—

“(1) If it appears to the Secretary of State that—

- (a) the affairs of a company to which this subsection applies are being or have been conducted in a manner which is unfairly prejudicial to the interests of its members generally or of some part of its members, or
- (b) any actual or proposed act or omission of a company to which this subsection applies, including an act or omission on its behalf, is or would be so prejudicial,

he may himself (in addition to or instead of presenting a petition for the winding up of the company) apply to the court by petition for an order under this Part.

(1A) Subsection (1) applies to a company in respect of which—

- (a) the Secretary of State has received a report under section 437 of this Act;
- (b) the Secretary of State has exercised his powers under section 447 or 448 of this Act;
- (c) the Secretary of State or the Financial Services Authority has exercised his or its powers under Part 11 of the Financial Services and Markets Act 2000; or
- (d) the Secretary of State has received a report from an investigator appointed by him or the Financial Services Authority under that Part.”.

Application of section 720 to insurers

27.—(1) Section 720 of the 1985 Act (certain companies to publish periodical statement) is amended as follows.

(2) In subsection (1) for “insurance company” substitute “insurer”.

(3) In subsection (5) for “insurance company” substitute “insurer”.

(4) For subsection (6) substitute—

“(6) This section does not apply to an insurer which is—

- (a) an insurance company which is subject to, and complies with, rules made by the Financial Services Authority under Part 10 of the Financial Services and Markets Act 2000 as to the accounts and balance sheet to be prepared annually and deposited; or
- (b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to the Financial Services and Markets Act 2000, if the firm complies with the provisions

(21) Subsection (3) was amended by the Companies Act 1989 (c. 40), section 69(4), and by S.I. 1994/1696, Schedule 8, paragraph 9(4).

of law of its home State as to the accounts and balance sheets to be prepared annually and deposited.”.

(5) After subsection (7) insert—

“(8) For the purposes of this section—

- (a) “insurer” means a person who effects or carries out contracts of insurance in the United Kingdom; and
- (b) “contract of insurance” includes a contract of insurance under which the benefits provided by the insurer are exclusively or primarily benefits in kind in the event of accident to or breakdown of a vehicle.

(9) Subsection (8) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that Schedule; and
- (c) Schedule 2 to that Act.”.

References to the Companies Acts in certain provisions to include references to the Financial Services and Markets Act 2000

28. In section 735B of the 1985 Act (construction of certain references to the Companies Acts)⁽²²⁾ for “Parts IV and V of the Financial Services Act 1986” substitute “Part 6 of the Financial Services and Markets Act 2000”.

Meaning of “offer to the public”, “banking company”, “insurance company” and “authorised insurance company”

29. After section 742 of the 1985 Act, insert—

“Meaning of “offer to the public”

742A.—(1) Any reference in Part IV (allotment of shares and debentures) or Part VII (accounts) to offering shares or debentures to the public is to be read as including a reference to offering them to any section of the public, however selected.

(2) This section does not require an offer to be treated as made to the public if it can properly be regarded, in all the circumstances—

- (a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer; or
- (b) as being a domestic concern of the persons receiving and making it.

(3) An offer of shares in or debentures of a private company (other than an offer to which subsection (5) applies) is to be regarded (unless the contrary is proved) as being a domestic concern of the persons making and receiving it if—

- (a) it is made to—
 - (i) an existing member of the company making the offer,
 - (ii) an existing employee of that company,
 - (iii) the widow or widower of a person who was a member or employee of that company,

⁽²²⁾ Inserted by the Companies Act 1989 (c. 40), section 127 and amended by the Deregulation and Contracting Out Act 1994 (c. 40), Schedule 16, paragraph 10.

- (iv) a member of the family of a person who is or was a member or employee of that company, or
- (v) an existing debenture holder; or
- (b) it is an offer to subscribe for shares or debentures to be held under an employee's share scheme.
- (4) Subsection (5) applies to an offer—
 - (a) which falls within paragraph (a) or (b) of subsection (3); but
 - (b) which is made on terms which permit the person to whom it is made to renounce his right to the allotment of shares or issue of debentures.
- (5) The offer is to be regarded (unless the contrary is proved) as being a domestic concern of the persons making and receiving it if the terms are such that the right may be renounced only in favour—
 - (a) of any person mentioned in subsection (3)(a); or
 - (b) in the case of an employee's share scheme, of a person entitled to hold shares or debentures under the scheme.
- (6) For the purposes of subsection (3)(a)(iv), the members of a person's family are—
 - (a) the person's spouse and children (including step-children) and their descendants, and
 - (b) any trustee (acting in his capacity as such) of a trust the principal beneficiary of which is the person him or herself or of any of those relatives.
- (7) Where an application has been made to the competent authority in any EEA State for the admission of any securities to official listing, then an offer of those securities for subscription or sale to a person whose ordinary business it is to buy or sell shares or debentures (whether as principal or agent) is not to be regarded as an offer to the public for the purposes of this Part.
- (8) For the purposes of subsection (7)—
 - (a) "competent authority" means a competent authority appointed for the purposes of the Council Directive of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities; and
 - (b) "official listing" means official listing pursuant to that directive.

Meaning of "banking company"

- 742B.**—(1) Subject to subsection (2), "banking company" means a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits.
- (2) A banking company does not include—
 - (a) a person who is not a company, and
 - (b) a person who has permission to accept deposits only for the purpose of carrying on another regulated activity in accordance with that permission.
 - (3) This section must be read with—
 - (a) section 22 of the Financial Services and Markets Act 2000;
 - (b) any relevant order under that section; and
 - (c) Schedule 2 to that Act.

Meaning of “insurance company” and “authorised insurance company”

742C.—(1) For the purposes of this Act, “insurance company” has the meaning given in subsection (2) and “authorised insurance company” has the meaning given in subsection (4).

(2) Subject to subsection (3), “insurance company” means a person (whether incorporated or not)—

- (a) who has permission under Part 4 of the Financial Services and Markets Act 2000 to effect or carry out contracts of insurance; or
- (b) who carries on insurance market activity; or
- (c) who may effect or carry out contracts of insurance under which the benefits provided by that person are exclusively or primarily benefits in kind in the event of accident to or breakdown of a vehicle, and does not fall within paragraph (a).

(3) An insurance company does not include a friendly society, within the meaning of section 116 of the Friendly Societies Act 1992.

(4) An “authorised insurance company” means a person falling within paragraph (a) of subsection (2).

(5) References in this section to contracts of insurance and the effecting or carrying out of such contracts must be read with -

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.”.

Interpretation of the 1985 Act

30. In section 744 of the 1985 Act (interpretation)(**23**)—

- (a) the definitions of “banking company” and “insurance company” are repealed;
- (b) after the definition of “the insider dealing legislation” insert—
 - ““insurance market activity” has the meaning given in section 316(3) of the Financial Services and Markets Act 2000;”;
 - and
- (c) before the definition of “the registrar of companies” insert—
 - ““regulated activity” has the meaning given in section 22 of the Financial Services and Markets Act 2000;”.

Table of defined expressions

31. In the Table in section 744A (index of defined expressions)(**24**)—

- (a) after the entry relating to “articles” insert—

“authorised insurance company	section 742C”
<ul style="list-style-type: none"> (b) in the second column of the entry relating to “banking company”, for “section 744” substitute “section 742B”; (c) in the second column of the entry relating to “insurance company”, for “section 744” substitute “section 742C”; (d) after the entry relating to “insurance company” insert— 	

(23) Relevant amendments made by the Companies Act 1989 (c. 40), Schedule 10, paragraph 16.

(24) Inserted by the Companies Act 1989 (c. 40), section 145, Schedule 19, paragraph 20.

“insurance market activity	section 744”;
(e) after the entry relating to “registrar and registrar of companies” insert—	
“regulated activity	section 744”.

Form and content of company accounts

32. For paragraph 84 of Schedule 4 to the 1985 Act (form and content of company accounts: listed investments)(25) substitute—

- “84.—(1) “Listed investment” means an investment as respects which there has been granted a listing on—
 - (a) a recognised investment exchange other than an overseas investment exchange; or
 - (b) a stock exchange of repute outside Great Britain.
- (2) “Recognised investment exchange” and “overseas investment exchange” have the meaning given in Part 18 of the Financial Services and Markets Act 2000.”.

Disclosure of information: emoluments and other benefits of directors and others

33.—(1) Paragraph 1(5) of Schedule 6 to the 1985 Act (disclosure of information: emoluments and other benefits of directors and others)(26) is amended as follows.

(2) For the definition of “listed company” substitute—

““listed company” means a company—

- (a) whose securities have been admitted to the official list in accordance with the provisions of Part 6 of the Financial Services and Markets Act 2000; or
- (b) dealings in whose securities are permitted on any recognised investment exchange approved by the Treasury in accordance with regulations made under section 2(2) of the European Communities Act 1972 with respect to dealings in unlisted securities;”.

(3) After the definition of “net value” insert—

““the official list” has the meaning given in section 103(1) of the Financial Services and Markets Act 2000;”.

(4) After the definition of “qualifying services” insert—

““recognised investment exchange” has the same meaning as in the Financial Services and Markets Act 2000;”.

Form and content of company accounts: small companies

34. For paragraph 54 of Schedule 8 to the 1985 Act (form and content of company accounts for small companies: listed investments)(27) substitute—

- “54.—(1) “Listed investment” means an investment as respects which there has been granted a listing on—
 - (a) a recognised investment exchange other than an overseas investment exchange; or

(25) Amended by the Financial Services Act 1986 (c. 40), Schedule 16, paragraph 23.
 (26) Schedule 6 was inserted by the Companies Act 1989 (c. 40), Schedule 4, paragraph 3; paragraph 1 of Schedule 6 was substituted by S.I. 1997/570, paragraph 4.
 (27) Substituted by S.I. 1997/220, Schedule 1.

(b) a stock exchange of repute outside Great Britain.

(2) “Recognised investment exchange” and “overseas investment exchange” have the meaning given in Part 18 of the Financial Services and Markets Act 2000.”.

Meaning of “deposit-taking business”, “chief executive” and “manager”

35.—(1) Schedule 9 to the 1985 Act (special provisions for banking companies and groups) is amended as follows.

(2) In Part II (consolidated accounts)(**28**), in paragraph 1 (undertakings to be included in consolidation)—

- (a) in sub-paragraph (1) for “banking business” substitute “deposit-taking business”; and
- (b) for sub-paragraph (2) substitute—

“(2) For the purposes of this paragraph “deposit-taking business” means the activity of accepting deposits by way of business, but does not include accepting deposits only for the purpose of carrying on another regulated activity.”;

- (c) after sub-paragraph (2) insert—

“(3) References in sub-paragraph (2) to deposits and their acceptance, and to regulated activities must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.”.

(3) In Part IV of that Schedule (additional disclosure: emoluments and other benefits of directors and others), in sub-paragraph (1)(b) of paragraph 3 (other transactions and agreements) for “within the meaning of the Banking Act 1987” substitute “within the meaning of the Financial Services and Markets Act 2000”.

Form and content of accounts of insurance companies and groups

36.—(1) Schedule 9A to the 1985 Act (form and content of accounts of insurance companies and groups)(**29**) is amended in Part I (individual accounts) as follows.

(2) In paragraph 6—

- (a) the existing text is numbered sub-paragraph (1);
- (b) for “to business within Classes 1 and 2 of Schedule 2 to the 1982 Act” substitute “to business which consists of effecting or carrying out relevant contracts of general insurance”;
- (c) after sub-paragraph (1) insert—

“(2) For the purposes of paragraph (1), a contract of general insurance is a relevant contract if the risk insured against relates to—

- (a) accident; or
- (b) sickness.

(3) Sub-paragraph (2) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and

(28) Part II was inserted by the Companies Act 1989 (c. 40), section 18, Schedule 7.

(29) Substituted for Parts I and II of Schedule 9, as originally enacted, by S.I. 1993/3246, regulation 4, Schedule 1.

- (c) Schedule 2 to that Act.”.
- (3) In Part I, in paragraph 9—
- (a) the existing text is numbered sub-paragraph (1);
 - (b) in sub-paragraph (1)(a), for “business within the classes of insurance specified in Schedule 2 to the 1982 Act” substitute “business which consists of effecting or carrying out contracts of general insurance”;
 - (c) in sub-paragraph (1)(b), for “business within the classes of insurance specified in Schedule 1 to that Act” substitute “business which consists of effecting or carrying out contracts of long term insurance”; and
 - (d) after sub-paragraph (1) insert—
 - “(2) In sub-paragraph (1), references to—
 - (a) contracts of general or long term insurance; and
 - (b) the effecting or carrying out of such contracts,must be read with section 22 of the Financial Services and Markets Act 2000, any relevant order under that section, and Schedule 2 to that Act.”.
- (4) In Section B (the required format for accounts), in note (24) (Equalisation provision)(**30**) of the Notes on the balance sheet format for “the amount of any reserve maintained by the company under section 34A of the Insurance Companies Act 1982” substitute “the amount of any equalisation reserve maintained in respect of general business by the company, in accordance with rules made by the Financial Services Authority under Part X of the Financial Services and Markets Act 2000”.
- (5) In paragraph 11 (managed funds), for sub-paragraph (1)(a) substitute—
- “(a) the management of which constitutes long term insurance business, and”.
- (6) In Part I, for paragraph 50 (equalisation reserves)(**31**) substitute—
- “**50.** The amount of any equalisation reserve maintained in respect of general business, in accordance with rules made by the Financial Services Authority under Part X of the Financial Services and Markets Act 2000, shall be determined in accordance with such rules.”.
- (7) In paragraph 81 (interpretations of Part I), in sub-paragraph (1)—
- (a) omit the definition of “the 1982 Act”;
 - (b) for the definition of “general business” substitute—
 - ““general business” means business which consists of effecting or carrying out contracts of general insurance;”;
 - (c) for the definition of “long term business” substitute—
 - ““long term business” means business which consists of effecting or carrying out contracts of long term insurance;”;
 - (d) in the definition of “long term fund” for “in accordance with the provisions of the 1982 Act” substitute “in accordance with rules made by the Financial Services Authority under Part X of the Financial Services and Markets Act 2000”; and
 - (e) for the definition of “policy holder” substitute—

(30) Note (24) was amended (and the words substituted by this Order inserted) by the Insurance Companies (Reserves) Act 1995, section 3(1), (2).

(31) Paragraph 50 was substituted by the Insurance Companies (Reserves) Act 1995 (c. 29), section 3(1), (3), and further substituted by S.I. 1996/946, regulation 13.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

““policy holder” has the meaning given in any relevant order under section 424(2) of the Financial Services and Markets Act 2000;”.

Share dealing by directors etc.: supplementary provision

37.—(1) Paragraph 11 of Schedule 13 to the 1985 Act (share dealing by directors etc.: provision supplementary to sections 324 to 328)(**32**) is amended as follows.

(2) The existing provision becomes sub-paragraph (1).

(3) In that sub-paragraph, in paragraph (a), the words “within the meaning of the Financial Services Act 1986” are repealed.

(4) After that sub-paragraph, insert—

“(2) “Unit trust scheme” and “authorised unit trust scheme” have the meaning given in section 237 of the Financial Services and Markets Act 2000.”.