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STATUTORY INSTRUMENTS

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**2001 No. 3650**

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

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.”

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

**Financial promotion exemption for appointed representatives**

**4.**—(1) The Financial Services and Markets Act 2000 (Financial Promotion) Order 2001(1) 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 subparagraph (a).”

**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 sub-paragraph (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 sub-paragraph (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.”