

2001 No. 1201

FINANCIAL SERVICES AND MARKETS

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

Made - - - - - 26th March 2001

Coming into force - - - In accordance with article 1

ARRANGEMENT OF ORDER

1. Citation and commencement
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4. Persons exempt in respect of accepting deposits
5. Persons exempt in respect of particular regulated activities
6. Transitional exemption for credit unions

THE SCHEDULE

- Part I Persons exempt in respect of any regulated activity other than insurance business
Part II Persons exempt in respect of accepting deposits
Part III Persons exempt in respect of any regulated activity mentioned in article 5(1)
Part IV Persons exempt in respect of particular regulated activities

Whereas this Order is the first Order to be made, or to contain provisions made, under section 38 of the Financial Services and Markets Act 2000(a);

And whereas a draft of this Order has been approved by a resolution of each House of Parliament pursuant to section 429(3) and (5) of that Act;

Now, therefore, the Treasury, in exercise of the powers conferred on them by sections 38 and 428(3) of that Act, hereby make the following Order:

Citation and commencement

1. This Order may be cited as the Financial Services and Markets Act 2000 (Exemption) Order 2001 and comes into force on the day on which section 19 of the Act comes into force.

(a) 2000 c. 8.

Interpretation

2. In this Order—

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

“charity” —

(a) in relation to Scotland, means a recognised body within the meaning of section 1(7) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990(a); and

(b) otherwise, has the meaning given by section 96(1) of the Charities Act 1993(b) or by section 35 of the Charities Act (Northern Ireland) 1964(c);

“deposit” has the meaning given by the Regulated Activities Order;

“industrial and provident society” has the meaning given by section 417(1) of the Act but does not include a credit union within the meaning of the Credit Unions Act 1979(d) or the Credit Unions (Northern Ireland) Order 1985(e);

“local authority” means—

(a) in England and Wales, a local authority within the meaning of the Local Government Act 1972(f), the Greater London Authority, the Common Council of the City of London or the Council of the Isles of Scilly;

(b) in Scotland, a local authority within the meaning of the Local Government (Scotland) Act 1973(g); and

(c) in Northern Ireland, a district council within the meaning of the Local Government Act (Northern Ireland) 1972(h);

“the Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(i).

Persons exempt in respect of any regulated activity other than insurance business

3. Each of the persons listed in Part I of the Schedule is exempt from the general prohibition in respect of any regulated activity other than an activity of the kind specified by article 10 of the Regulated Activities Order (effecting and carrying out contracts of insurance).

Persons exempt in respect of accepting deposits

4. Subject to the limitations, if any, expressed in relation to him, each of the persons listed in Part II of the Schedule is exempt from the general prohibition in respect of any regulated activity of the kind specified by article 5 of the Regulated Activities Order (accepting deposits).

Persons exempt in respect of particular regulated activities

5.—(1) Subject to the limitation, if any, expressed in relation to him, each of the persons listed in Part III of the Schedule is exempt from the general prohibition in respect of any regulated activity of the kind specified by any of the following provisions of the Regulated Activities Order, or article 64 of that Order (agreeing to carry on specified kinds of activity) so far as relevant to any such activity—

(a) article 14 (dealing in investments as principal);

(b) article 21 (dealing in investments as agent);

(c) article 25 (arranging deals in investments);

(d) article 37 (managing investments);

(e) article 40 (safeguarding and administering investments);

(f) article 45 (sending dematerialised instructions);

(a) 1990 c. 40.

(b) 1993 c. 10.

(c) 1964 c. 33 (N.I.).

(d) 1979 c. 34; amended by the Deregulation (Credit Unions) Order 1996 (S.I. 1996/1189).

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

(f) 1972 c. 70; the definition of “local authority” in section 270 has been repealed in part by Schedule 17 to the Local Government Act 1985 (c. 51), and amended by section 1(5) of the Local Government (Wales) Act 1994 (c. 19).

(g) 1973 c. 65; the definition of “local authority” in section 235 was substituted by paragraph 92(66) of Schedule 13 to the Local Government etc. (Scotland) Act 1994 (c. 39).

(h) 1972 c. 9 (N.I.).

(i) S.I. 2001/544.

- (g) article 51 (establishing etc. a collective investment scheme);
- (h) article 52 (establishing etc. a stakeholder pension scheme);
- (i) article 53 (advising on investments).

(2) Subject to the limitation, if any, expressed in relation to him, each of the persons listed in Part IV of the Schedule is exempt from the general prohibition in respect of any regulated activity of the kind referred to in relation to him, or an activity of the kind specified by article 64 of the Regulated Activities Order so far as relevant to any such activity.

Transitional exemption for credit unions

6. A credit union, within the meaning of the Credit Unions Act 1979 or the Credit Unions (Northern Ireland) Order 1985, is exempt from the general prohibition in respect of any regulated activity of the kind specified by article 5 of the Regulated Activities Order, but only until 1st July 2002.

26th March 2001

Jim Dowd
Greg Pope
Two of the Lords Commissioners of
Her Majesty's Treasury

PART I

PERSONS EXEMPT IN RESPECT OF ANY REGULATED ACTIVITY OTHER THAN INSURANCE BUSINESS

1. The Bank of England.
2. The central bank of an EEA State other than the United Kingdom.
3. The European Central Bank.
4. The European Community.
5. The European Atomic Energy Community.
6. The European Coal and Steel Community.
7. The European Investment Bank.
8. The International Bank for Reconstruction and Development.
9. The International Finance Corporation.
10. The International Monetary Fund.
11. The African Development Bank.
12. The Asian Development Bank.
13. The Caribbean Development Bank.
14. The Inter-American Development Bank.
15. The European Bank for Reconstruction and Development.

PART II

PERSONS EXEMPT IN RESPECT OF ACCEPTING DEPOSITS

16. A municipal bank, that is to say a company which was, immediately before the coming into force of this Order, exempted from the prohibition in section 3 of the Banking Act 1987(a) by virtue of section 4(1) of, and paragraph 4 of Schedule 2 to, that Act.

17. (1) Keesler Federal Credit Union, in so far as it accepts deposits from members, or dependants of members, of a visiting force of the United States of America, or from members, or dependants of members, of a civilian component of such a force.

(2) In sub-paragraph (1), “member”, “dependent” and “visiting force” have the meanings given by section 12 of the Visiting Forces Act 1952(b) and “member of a civilian component” has the meaning given by section 10 of that Act.

18. A body of persons certified as a school bank by the National Savings Bank or by an authorised person who has permission to accept deposits.

19. A local authority.

20. (1) Any body which by virtue of any enactment has power to issue a precept to a local authority in England or Wales or a requisition to a local authority in Scotland, or to the expenses of which, by virtue of any enactment, a local authority in the United Kingdom is or can be required to contribute.

(2) In sub-paragraph (1), “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.

21. The Council of Europe Resettlement Bank.

(a) 1987 c. 22; section 3 was amended by paragraph 3 of Schedule 5 to the Bank of England Act 1998 (c. 11). “Municipal bank” was defined in section 103 of the Banking Act 1987, which was amended by paragraph 22 of Schedule 3 to the Local Government Act 1992 (c. 19) and by paragraph 21 of Schedule 3 to the Local Government and Rating Act 1997 (c. 29).

(b) 1952 c. 67; the definition of “visiting force” was amended by paragraph 14 of Schedule 15 to the Criminal Justice Act 1988 (c. 33).

- 22.** A charity, in so far as it accepts deposits—
- (a) from another charity; or
 - (b) in respect of which no interest or premium is payable.
- 23.** The National Children’s Charities Fund in so far as—
- (a) it accepts deposits in respect of which no interest or premium is payable; and
 - (b) the total value of the deposits made by any one person does not exceed £10,000.
- 24.** An industrial and provident society, in so far as it accepts deposits in the form of withdrawable share capital.
- 25.** (1) The Student Loans Company Limited, in so far as it accepts deposits from the Secretary of State or the Scottish Ministers in connection with, or for the purposes of, enabling eligible students to receive loans.
- (2) In sub-paragraph (1), “eligible student” means—
- (a) any person who is an eligible student pursuant to regulations made under Part II of the Teaching and Higher Education Act 1998(a);
 - (b) any person to whom, or in respect of whom, loans may be paid under section 73(f) of the Education (Scotland) Act 1980(b);
 - (c) any person who is an eligible student pursuant to regulations made under article 3 of the Education (Student Support) (Northern Ireland) Order 1998(c); or
 - (d) any person who is in receipt of or who is eligible to receive a loan of the kind mentioned in article 3(1) of the Teaching and Higher Education Act 1998 (Commencement No. 2 and Transitional Provisions) Order 1998(d) or article 3(1) of the Education (Student Support) (Northern Ireland) Order 1998 (Commencement and Transitional Provisions) Order (Northern Ireland) 1998(e).

PART III

PERSONS EXEMPT IN RESPECT OF ANY REGULATED ACTIVITY MENTIONED IN ARTICLE 5(1)

- 26.** The National Debt Commissioners.
- 27.** Treasury Taskforce.
- 28.** The International Development Association.
- 29.** The English Tourist Board.
- 30.** The Wales Tourist Board.
- 31.** The Scottish Tourist Board.
- 32.** The Northern Ireland Tourist Board.
- 33.** Scottish Enterprise.
- 34.** The Multilateral Investment Guarantee Agency.
- 35.** A person acting as an official receiver within the meaning of section 399 of the Insolvency Act 1986(f) or article 2 of the Insolvency (Northern Ireland) Order 1989(g).
- 36.** (1) A person who provides the trading facilities which constitute a regulated market, in so far as he carries on a regulated activity in connection with, or for the purposes of, the provision of those trading facilities.
- (2) In sub-paragraph (1), “regulated market” means a market which—
- (a) appears on the list drawn up by an EEA State other than the United Kingdom pursuant to Article 16 of the investment services directive; and
 - (b) operates without any requirement that a person dealing on the market should have a physical presence in the EEA State from which the trading facilities are provided or on any trading floor that the market may have.

(a) 1998 c. 30; see section 22 by regulations made under that section.
 (b) 1980 c. 44; amended section 29 of the Teaching and Higher Education Act 1998 (c. 30).
 (c) S.I. 1998/1760 (N.I. 14); see article 3 and regulations made under that article.
 (d) S.I. 1998/2004 (C. 46).
 (e) S.I. 1998/306 (C. 14).
 (f) 1986 c. 45.
 (g) S.I. 1989/2405 (N.I. 19); to which there are amendments not relevant to this Order.

37. (1) An Operator, in so far as he carries on any regulated activity for the purposes of the performance of his functions as an Operator under the Uncertificated Securities Regulations 1995(a), other than a regulated activity in respect of which a recognised clearing house is exempt from the general prohibition by virtue of section 285(3) of the Act.

(2) In sub-paragraph (1), “Operator” means a person approved as such by the Treasury under the Uncertificated Securities Regulations 1995.

38. A person acting as a judicial factor.

39. A person acting as an insolvency practitioner within the meaning of section 388 of the Insolvency Act 1986(b).

PART IV

PERSONS EXEMPT IN RESPECT OF PARTICULAR REGULATED ACTIVITIES

Enterprise schemes

40. (1) Any body corporate which has as its principal object (or one of its principal objects)—
- (a) the promotion or encouragement of industrial or commercial activity or enterprise in the United Kingdom or in any particular area of it; or
 - (b) the dissemination of information concerning persons engaged in such activity or enterprise or requiring capital to become so engaged;

is exempt from the general prohibition in respect of any regulated activity of the kind specified by article 25 of the Regulated Activities Order (arranging deals in investments) so long as it does not carry on that activity for, or with the prospect of, direct or indirect pecuniary gain.

(2) For the purposes of this paragraph, such sums as may reasonably be regarded as necessary to meet the costs of carrying on the activity mentioned in sub-paragraph (1) do not constitute a pecuniary gain.

Employee share schemes in electricity industry shares

41. (1) Each of the persons to whom this paragraph applies is exempt from the general prohibition in respect of any regulated activity of the kind specified by article 14, 21 or 25 of the Regulated Activities Order (dealing in investments as principal or agent or arranging deals in investments) which he carries on for the purpose of—

- (a) enabling or facilitating transactions in electricity industry shares or debentures between or for the benefit of any qualifying person; or
- (b) the holding of electricity industry shares or debentures by or for the benefit of any qualifying person.

(2) This paragraph applies to—

- (a) The National Grid Holding plc;
- (b) Electricity Association Limited;
- (c) any body corporate in the same group as the person mentioned in sub-paragraph (a) or (b);
- (d) any company listed in Schedule 1 to the Electricity Act 1989 (Nominated Companies) (England and Wales) Order 1990(c); and
- (e) a person holding shares in or debentures of a body corporate as trustee in pursuance of arrangements made for either of the purposes mentioned in sub-paragraph (1) by the Secretary of State, by any of the bodies mentioned in sub-paragraphs (a) to (c) or by an electricity successor company or by some or all of them.

(3) In this paragraph—

- (a) “electricity industry shares or debentures” means—
 - (i) any investment of the kind specified by article 76 or 77 of the Regulated Activities Order (shares or instruments creating or acknowledging indebtedness) in or of an electricity successor company;
 - (ii) any investment of the kind specified by article 79 or 80 of that Order (instruments giving entitlement to investments and certificates representing certain securities), so far as relevant to the investments mentioned in sub-paragraph (i); and

(a) S.I. 1995/3272; amended by S.I. 1996/2827, S.I. 1997/251, S.I. 1999/506, S.I. 2000/311 and S.I. 2000/1682.

(b) 1986 c. 45. Amended by the Bankruptcy (Scotland) Act 1993 (c. 6) section 11 and by S.I. 1994/2421.

(c) S.I. 1990/224.

- (iii) any investment of the kind specified by article 89 of that Order (rights to or interests in investments) so far as relevant to the investments mentioned in sub-paragraphs (i) and (ii);
- (b) “qualifying person” means—
 - (i) the bona fide employees or former employees of The National Grid Holding plc, Electricity Association Limited or any other body corporate in the same group as either of them; and
 - (ii) the wives, husbands, widows, widowers or children (including, in Northern Ireland, adopted children) or step-children under the age of eighteen of such employees or former employees;
- (c) references to an electricity successor company include any body corporate that is in the same group and “electricity successor company” means a body corporate which is a successor company for the purposes of Part II of the Electricity Act 1989(a);
- (d) “former employees” of a person (“the employer”) include any person who has never been employed by the employer so long as he occupied a position in relation to some other person of such a kind that it may reasonably be assumed that he would have been a former employee of the employer had the reorganisation of the electricity industry under Part II of the Electricity Act 1989 been affected before he ceased to occupy the relevant position.

Gas industry

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

- (a) in its capacity as a gas transporter under the Transco Licence; and
- (b) for the purposes of enabling or facilitating gas shippers to buy or sell an investment of the kind specified by article 84 or 85 of the Regulated Activities Order (futures or contracts for differences etc.).

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

- (a) in its capacity as the operator of the balancing market; and
- (b) for the purpose of enabling or facilitating Transco plc and relevant gas shippers, for the purpose of participating in the balancing market, to buy or sell investments of the kind specified by article 84 or 85 of that Order (futures or contracts for differences etc.).

(3) Transco plc and relevant gas shippers are exempt from the general prohibition in respect of any regulated activity of the kind specified by article 14 or 21 of the Regulated Activities Order (dealing in investments as principal or agent) in so far as that activity relates to an investment of the kind specified by article 84 or 85 of that Order (futures or contracts for differences etc.) and is carried on for the purpose of participating in the balancing market.

(4) In this paragraph—

- (a) “the balancing market” means the market to regulate the delivery and off-take of gas in Transco plc’s pipeline system for the purpose of balancing the volume of gas in that system;
- (b) “gas shipper” has the same meaning as in Part I of the Gas Act 1986(b);
- (c) “relevant gas shippers” means gas shippers who have entered into a subscription agreement with ENMO Ltd. for the purpose of participating in the balancing market;
- (d) “Transco Licence” means the licence treated as granted to Transco plc as a gas transporter under section 7 of the Gas Act 1986(c);
- (e) the reference to enabling or facilitating includes acting pursuant to rules governing the operation of the balancing market which apply in the event of one of the participants appearing to be unable, or likely to become unable, to meet his obligations in respect of one or more contracts entered into through the balancing market.

Trade unions and employers’ associations

43. (1) A trade union or employers’ association is exempt from the general prohibition in respect of any regulated activity of the kind specified by article 10 of the Regulated Activities Order (effecting and carrying out contracts of insurance) which it carries on in order to provide provident benefits or strike benefits for its members.

(a) 1989 c. 29.

(b) 1986 c. 44; see section 7A which was inserted by section 6(1) of the Gas Act 1995 (c. 45).

(c) Substituted by the Gas Act 1995 (c. 45) and amended by the Utilities Act 2000 (c. 27) section 76 (although this amendment was not in force on the day on which this Order was laid).

(2) In sub-paragraph (1), “trade union” and “employers’ association” have the meanings given by section 1 and section 122(1) of the Trade Union and Labour Relations (Consolidation) Act 1992(a) or, in Northern Ireland, the meanings given by article 3(1) and article 4(1) of the Industrial Relations (Northern Ireland) Order 1992(b).

Charities

44. (1) A charity is exempt from the general prohibition in respect of any regulated activity of the kind specified by article 51 of the Regulated Activities Order (establishing etc. a collective investment scheme) which it carries on in relation to a fund established under—

- (a) section 22A of the Charities Act 1960(c);
- (b) section 25 of the Charities Act 1993(d); or
- (c) section 25 of the Charities Act (Northern Ireland) 1964(e).

(2) A charity is exempt from the general prohibition in respect of any regulated activity of the kind specified by article 51 of the Regulated Activities Order (establishing etc. a collective investment scheme) which it carries on in relation to a pooling scheme fund established under—

- (a) section 22 of the Charities Act 1960; or
- (b) section 24 of the Charities Act 1993.

(3) In sub-paragraph (2), “pooling scheme fund” means a fund established by a common investment scheme the trusts of which provide that property is not to be transferred to the fund except by or on behalf of a charity, the charity trustees (within the meaning of section 97(1) of the Charities Act 1993) of which are the trustees appointed to manage the fund.

Schemes established under the Trustee Investments Act 1961

45. A person acting in his capacity as manager or operator of a fund established under section 11 of the Trustee Investments Act 1961(f) is exempt from the general prohibition in respect of any regulated activity of the kind specified by article 51 of the Regulated Activities Order (establishing etc. a collective investment scheme) which he carries on in relation to that fund.

Former members of Lloyd’s

46. Any person who ceased to be an underwriting member (within the meaning of Lloyd’s Act 1982(g)) of Lloyd’s before 24th December 1996 is exempt from the general prohibition in respect of any regulated activity of the kind specified by article 10(2) of the Regulated Activities Order (carrying out contracts of insurance) which relates to contracts of insurance that he has underwritten at Lloyd’s.

Local authorities

47. A local authority is exempt from the general prohibition in respect of any regulated activity of the kind specified by article 61 of the Regulated Activities Order (regulated mortgage contracts).

Social housing

48. Each of the following is exempt from the general prohibition in respect of any regulated activity of the kind specified by article 61 of the Regulated Activities Order (regulated mortgage contracts)—

- (a) a registered social landlord within the meaning of Part I of the Housing Act 1996(h);
- (b) a housing association registered in the register maintained by Scottish Homes under section 3 of the Housing Associations Act 1985(i);
- (c) the Housing Corporation;
- (d) Scottish Homes.

(a) 1992 c. 52.

(b) S.I. 1992/807 (NI 5); to which there are amendments not relevant to this Order.

(c) 1960 c. 58. Inserted by section 16 of the Charities Act 1992 (c. 41); repealed by the Charities Act 1993 (c. 10) Schedule 7.

(d) 1993 c. 10.

(e) 1964 c. 33 (N.I.).

(f) 1961 c. 62; amended by the Local Government Act 1963 (c. 33) Schedule 8; and by the Local Government Act 1985 (c.51) Schedule 17.

(g) 1982 c. 14.

(h) 1996 c. 52.

(i) 1985 c. 69. Amended by the Housing Act 1988 (c. 50) Schedule 6, paragraph 3 and by S.I. 1996/2325. Repealed in relation to England and Wales by the Housing Act 1996 (c. 52) Schedule 19.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for certain persons to be exempt from the general prohibition which is imposed by section 19 of the Financial Services and Markets Act 2000 (c. 8) (“the Act”). Exempt persons are not required to be authorised to carry on regulated activities. Regulated activities are activities of a kind specified by the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) which relate to an investment of a kind specified by that Order and which are carried on by way of business.

The persons listed in Part I of the Schedule to this Order are exempt from the general prohibition in respect of any regulated activity other than effecting and carrying out contracts of insurance. The list comprises certain persons who were previously exempted persons under the Banking Act 1987 (c. 22) (by way of Schedule 2 to that Act) and/or the Financial Services Act 1986 (c. 60) (by way of section 35 of that Act and the Financial Services Act 1986 (Miscellaneous Exemptions) Order 1988 (S.I. 1988/350)). The list also includes the European Central Bank.

The persons listed in Part II of the Schedule are exempt from the general prohibition in so far as they accept deposits. The list includes certain persons who were previously exempted persons under the Banking Act 1987 (by way of Schedule 2 to that Act or the Banking Act 1987 (Exempt Transactions) Regulations 1997 (S.I. 1997/817)).

The persons listed in Part III of the Schedule are exempt from the general prohibition in respect of the conduct of investment business (but not, among other activities, effecting and carrying out contracts of insurance, accepting deposits or entering into a regulated mortgage contract). The persons listed in Part IV of the Schedule are exempt from the general prohibition in respect of any regulated activity of the kind specified in that Part. The lists in Parts III and IV of the Schedule include certain persons who were previously exempted persons under the Financial Services Act 1986 (by way of section 45 of that Act or orders made under section 46 of that Act).

Article 6 of the Order contains a transitional exemption for credit unions in so far as they accept deposits. This exemption will cease to have effect on 1st July 2002.

2001 No. 1201

FINANCIAL SERVICES AND MARKETS

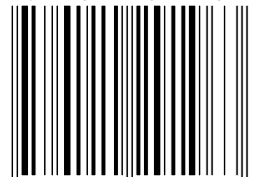
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