

2001 No. 1227

FINANCIAL SERVICES AND MARKETS

**The Financial Services and Markets Act 2000 (Professions)
(Non-Exempt Activities) Order 2001**

Made - - - - - 27th March 2001

Coming into force in accordance with article 1(2) and (3)

Whereas:

(1) This Order contains the first provision to be made in exercise of the power conferred by section 327(6) of the Financial Services and Markets Act 2000(a);

(2) In accordance with section 429(6) and (7) of that Act, a draft of this Order has been laid before, and approved by a resolution of, each House of Parliament;

Now, therefore, the Treasury, in exercise of the powers conferred on them by sections 327(6) and 428(3) of that Act, hereby make the following Order:-

Citation and commencement

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001.

(2) Subject to paragraph (3), this Order comes into force on the day on which section 19 of the Act comes into force.

(3) This Order comes into force—

(a) for the purposes of article 4(g), on 1st January 2002; and

(b) for the purposes of article 4(h), nine months after the day on which section 19 of the Act comes into force.

Interpretation

2.—(1) In this Order—

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

“contractually based investment” has the meaning given by article 3(1) of the Regulated Activities Order;

“occupational pension scheme” and “personal pension scheme” have the meaning given by section 1 of the Pension Schemes Act 1993(b);

(a) 2000 c. 8.

(b) 1993 c. 48. The definition of “personal pension scheme” in section 1 was amended by the Welfare Reform and Pensions Act 1999 (c. 30), Schedule 2, para. 3(1)(a).

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

“relevant investment” means a security or a contractually based investment;

“security” has the meaning given by article 3(1) of the Regulated Activities Order;

“syndicate” has the meaning given by article 3(1) of the Regulated Activities Order.

(2) For the purposes of this Order, a person is a member of a personal pension scheme if he is a person to or in respect of whom benefits are or may become payable under the scheme.

Activities to which exemption from the general prohibition does not apply

3. The activities in articles 4 to 8 are specified for the purposes of section 327(6) of the Act.

4. An activity of the kind specified by any of the following provisions of the Regulated Activities Order—

- (a) article 5 (accepting deposits);
- (b) article 10 (effecting and carrying out contracts of insurance);
- (c) article 14 (dealing in investments as principal);
- (d) article 51 (establishing etc. a collective investment scheme);
- (e) article 52 (establishing etc. a stakeholder pension scheme);
- (f) article 57 (managing the underwriting capacity of a Lloyd’s syndicate);
- (g) article 59 (funeral plan contracts);
- (h) article 61 (regulated mortgage contracts).

5.—(1) An activity of the kind specified by article 37 of the Regulated Activities Order (managing investments) in so far as it consists of buying or subscribing for a relevant investment.

(2) Paragraph (1) does not apply—

- (a) if all routine or day to day decisions, so far as relating to that activity, are taken by an authorised person with permission to carry on that activity or by a person who is an exempt person in relation to such an activity; or
- (b) to an activity undertaken in accordance with the advice of an authorised person with permission to give advice in relation to such an activity or a person who is an exempt person in relation to the giving of such advice.

6.—(1) An activity of the kind specified by article 53 of the Regulated Activities Order (advising on investments) where the advice in question falls within either paragraph (2) or (3).

(2) Subject to paragraph (4), advice falls within this paragraph in so far as—

- (a) it is given to an individual (or his agent) other than where the individual acts—
 - (i) in connection with the carrying on of a business of any kind by himself or by an undertaking of which he is, or would become as a result of the transaction to which the advice relates, a controller; or
 - (ii) in his capacity as a trustee of an occupational pension scheme;
- (b) it consists of a recommendation to buy or subscribe for a particular relevant investment; and
- (c) the transaction to which the advice relates would be made—
 - (i) with a person acting in the course of carrying on the business of buying, selling, subscribing for or underwriting the relevant investment, whether as principal or agent;
 - (ii) on an investment exchange or any other market to which that investment is admitted for dealing; or
 - (iii) in response to an invitation to subscribe for a relevant investment which is, or is to be, admitted for dealing on an investment exchange or any other market.

(3) Subject to paragraph (4), advice falls within this paragraph in so far as it consists of a recommendation to a member of a personal pension scheme (or his agent) to dispose of any rights or interests which the member has in or under the scheme.

(a) S.I. 2001/544.

(4) Advice does not fall within paragraph (2) or (3) if it endorses a corresponding recommendation given to the individual (or, as the case may be, the member) by an authorised person with permission to give advice in relation to the proposed transaction or a person who is an exempt person in relation to the giving of such advice.

7.—(1) Advising a person to become a member of a particular Lloyd's syndicate.

(2) Paragraph (1) does not apply to advice which endorses that of an authorised person with permission to give such advice or a person who is an exempt person in relation to the giving of such advice.

8. Agreeing to carry on any of the activities mentioned in articles 4 to 7 other than the activities mentioned in article 4(a), (b), (d) and (e).

27th March 2001

Greg Pope
Clive Betts
Two of the Lords Commissioners of
Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order specifies under section 327(6) of the Financial Services and Markets Act 2000 (“the Act”) certain regulated activities which do not fall within the exemption under Part XX of the Act (provision of financial services by members of the professions) from the general prohibition under section 19 of the Act. Section 19 prohibits persons who are not authorised or exempt from carrying on any regulated activity in the United Kingdom. A regulated activity is an activity of a kind specified by the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 which is carried on by way of business in relation to an investment of a kind also specified by that Order.

Articles 1 and 2 make provision for the citation, commencement and interpretation of the Order.

Article 3 specifies the activities in articles 4 to 8.

Article 4 covers accepting deposits; effecting and carrying out contracts of insurance; dealing as principal; various activities connected with the running of collective investment schemes and stakeholder pension schemes; acting as a managing agent at Lloyd’s; entering into funeral plan contracts and mortgage lending.

Article 5 covers the circumstances in which the activity of managing investments is specified.

Article 6 covers the circumstances in which the activity of advising on investments is specified.

Article 7 covers the circumstances in which advice to someone to become a member of a Lloyd’s syndicate is specified.

Article 8 covers agreements to carry on certain activities.

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