
STATUTORY INSTRUMENTS

2001 No. 3649

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

PART 7

ENACTMENTS RELATING TO SCOTLAND

CHAPTER I

primary legislation

Agricultural Credits (Scotland) Act 1929 (19&20 Geo. V c. 13)

Repeal of redundant provision

216. Section 8 of the Agricultural Credits (Scotland) Act 1929 (registration of agricultural charges) is repealed.

Definition of “Bank”

217. In section 9 of the Agricultural Credits (Scotland) Act 1929 (interpretation) for the definition of “Bank”(1) substitute—

““Bank” means—

- (a) the Bank of England,
- (b) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits,
- (c) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits, or
- (d) the Post Office in the exercise of its powers to provide banking services,

and the expressions used in paragraphs (b) and (c) of this definition 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;”.

(1) The definition of “Bank” in section 9 was amended by the Banking Act 1987 (c. 22, S.I.F 10), section 108(1), Schedule 6 and modified by S.I. 1992/3218, regulation 82(1), Schedule 10, Pt. 1, paragraph 4.

Local Government (Scotland) Act 1973 (c. 65)

Meaning of “securities”

218. For subsection (1) of section 42(2) of the Local Government (Scotland) Act 1973 (interpretation of sections 39 and 41) substitute—

“(1) In sections 39 and 41 of this Act “securities” has the meaning given by section 92.”

Contracts deemed to be insurance policies

219. In section 86(3) of the Local Government (Scotland) Act 1973 (insurance by local authorities against accidents to members) for the words “the Insurance Companies Act 1982”(3) substitute “the Financial Services and Markets Act 2000”.

Meaning of “securities”

220.—(1) Section 92 of the Local Government (Scotland) Act 1973 (transfer of securities on alteration of area etc.) is amended as follows.

(2) In subsection (2), the definition of “securities”(4) is repealed.

(3) After that subsection insert—

“(3) “Securities” means—

- (a) shares;
- (b) instruments creating or acknowledging indebtedness;
- (c) government and public securities;
- (d) instruments giving entitlements to investments;
- (e) certificates representing securities;
- (f) units in a collective investment scheme;
- (g) rights to, or interests in, any security of the kind mentioned in paragraphs (a) to (f);
- (h) rights (whether actual or contingent) to money lent to, or deposited with—
 - (i) a society registered under the Industrial and Provident Societies Act 1965,
or
 - (ii) a building society within the meaning of the Building Societies Act 1986.

(4) 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.”

(2) Subsection (1) of section 42 was substituted by the Financial Services Act 1986 (c. 60, S.I.F 69) section 212(2), Schedule 16, paragraph 9.

(3) The words being substituted were substituted by the Insurance Companies Act 1982 (c. 50), Schedule 4, paragraph 22.

(4) The definition of “securities” was substituted by the Local Government etc. (Scotland) Act 1994 (c. 39), Schedule 13, paragraph 92(22).

National Health Service (Scotland) Act 1978 (c. 29)

Financial Services and Markets Act 2000 disappplied to certain health service schemes

221. In section 85B(5)(5) of the National Health Service (Scotland) Act 1978 (schemes for meeting losses and liabilities etc. of certain health service bodies), for the words “carrying on insurance business for the purposes of the Insurance Companies Act 1982” substitute “effecting or carrying out contracts of insurance for the purposes of the Financial Services and Markets Act 2000”.

Solicitors (Scotland) Act 1980 (c. 46)

Specification of banks where solicitors may keep accounts

222.—(1) Section 35 of the Solicitors (Scotland) Act 1980 (accounts rules) is amended as follows.

(2) In subsection (2), for paragraph (e)(6) substitute—

“(e) a person (other than a building society) who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits;

(ea) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to the Financial Services and Markets Act 2000 which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits;”.

(3) After subsection (2) of section 35 insert—

“(2A) Paragraphs (e) and (ea) 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.”.

Meaning of “authorised insurer”

223.—(1) Section 44 of the Solicitors (Scotland) Act 1980 (professional indemnity) is amended as follows.

(2) In subsection (5), for the words “authorised insurer” to the end of paragraph (b) substitute—

“an “authorised insurer” is—

(a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to effect or carry out contracts of general liability insurance;

(b) a person who has permission under Part 4 of that Act to effect or carry out contracts of insurance relating to accident, sickness, credit, suretyship, miscellaneous financial loss and legal expenses;

(c) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of general liability insurance; or

(d) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation

(5) Section 85B was inserted by the National Health Service and Community Care Act 1990 (c. 19, S.I.F 113:2), section 41.

(6) Section 35(2)(e) was substituted by the Banking Act 1987 (c. 22, S.I.F 10), section 108(1), Schedule 6, paragraph 9.

under paragraph 12 of that Schedule) to effect or carry out contracts relating to accident, sickness, credit, suretyship, miscellaneous financial loss and legal expenses;”.

(3) After subsection (5) of section 44 insert—

“(6) The definition of “authorised insurer” in subsection (5) 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.”.

Bankruptcy (Scotland) Act 1985 (c. 66)

Petitions for sequestration under Financial Services and Markets Act 2000

224. In section 10(1)(c)(7) of the Bankruptcy (Scotland) Act 1985 (concurrent proceedings for sequestration or analogous remedies), for the words “section 72 of the Financial Services Act 1986” substitute “section 372 of the Financial Services and Markets Act 2000”.

Meaning of “appropriate bank or institution”

225. In section 73 of the Bankruptcy (Scotland) Act 1985 (interpretation) for the definition of “appropriate bank or institution”**(8)** substitute—

““appropriate bank or institution” means—

- (a) the Bank of England,
- (b) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits,
- (c) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits, or
- (d) a person who is exempt from the general prohibition in respect of accepting deposits as a result of an exemption order made under section 38(1) of that Act,

and the expressions in this definition 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;”.

Housing (Scotland) Act 1987 (c. 26)

Definition of “bank”

226.—(1) Section 338 of the Housing (Scotland) Act 1987 (interpretation) is amended as follows.

(2) In subsection (1)—

(a) in the definition of “bank”, for paragraph (a) substitute—

“(a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits,

(ab) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result

(7) Section 10(1)(c) was substituted by the Financial Services Act 1986 (c. 60, S.I.F 69) section 212(2), Schedule 16, paragraph 29.

(8) The definition of “appropriate bank or institution” was substituted by the Banking Act 1987 (c. 22, S.I.F 10), section 108(1), Schedule 6, paragraph 20.

of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits, or”;

(b) for the definition of “insurance company” substitute—

““insurance company” means—

- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to effect or carry out contracts of insurance, or
- (b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of insurance;”.

(3) After subsection (1) insert—

“(1A) The definitions of “bank” and “insurance company” in subsection (1) 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.”.

Local authority indemnity for building societies: consultation requirements

227. In section 229(4) of the Housing (Scotland) Act 1987 (local authority indemnity for building societies: consultation requirements) for “Building Societies Commission” substitute “Financial Services Authority”.

The Criminal Justice (Scotland) Act 1987 (c. 41)

Competent authorities for receipt of information

228. For paragraphs (e) to (l) of section 54(5) of the Criminal Justice (Scotland) Act 1987 (competent authorities for the purposes of disclosure of information obtained in relation to serious or complex fraud) substitute—

“(e) 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;

(f) a body corporate established in accordance with section 212(1) of the Financial Services and Markets Act 2000 (compensation scheme manager);”.

Self-Governing Schools etc. (Scotland) Act 1989 (c. 39)

Specification of banks and investments

229.—(1) Section 53 of the Self-Governing Schools etc. (Scotland) Act 1989 (disposal of surplus money on winding up) is amended as follows.

(2) In subsection (1)(a), for the words “any bank” to the end substitute—
“any person who has permission under the Financial Services and Markets Act 2000 to accept deposits); and”.

(3) For subsection (4) substitute—

“(4) This section applies to any investment which is a security.”

(4) For subsection (5) substitute—

“(5) The references to accepting deposits in subsection (1)(a) and to an investment being a security in subsection (4) 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.”.

Enterprise and New Towns (Scotland) Act 1990 (c. 35)

Exclusion from financial promotion restriction

230. For section 31(2) of the Enterprise and New Towns (Scotland) Act 1990 (application and disapplication of certain provisions) substitute—

“(2) Section 21 of the Financial Services and Markets Act 2000 (restrictions on financial promotion) shall not apply to any invitation or inducement (within the meaning of that section) which Scottish Enterprise communicates in the discharge of its functions.”

Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40)

Definition of “relevant institution”

231. For section 12(13)(a) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (dormant accounts of charities in banks, etc.) substitute—

“(a) a “relevant institution” is—

- (i) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits;
- (ii) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits;
- (iii) such other person or class of persons as the Secretary of State may by regulations made under this section, prescribe;”.

Definition of “recognised financial institution”

232.—(1) Section 19 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (executory services by recognised financial institutions) is amended as follows.

(2) For subsection (2) substitute—

“(2) In this section “recognised financial institution” means—

- (a) any 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 which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits;
- (c) any subsidiary (as defined by section 736(1) of the Companies Act 1985) of a body falling within paragraph (a) or (b) above whose business or any part of whose business consists of the provision of executry services.”.

(3) After subsection (2) insert—

“(2A) The definition of “recognised financial institution” in subsection (2) above 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 (6), for the words from “section 16” to the end, substitute “rules made under section 141(1) of the Financial Services and Markets Act 2000 (which may restrict insurers to carrying on insurance business).”.

Meaning of “executry services”

233. In section 23 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (interpretation of sections 16 to 22), in the definition of “executry services” for the words “investment business within the meaning of the Financial Services Act 1986” substitute “carrying on a regulated activity within the meaning of the Financial Services and Markets Act 2000”.

Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39)

Competent authorities for the receipt of information

234. For paragraphs (e) to (l) of section 30(5) of the Criminal Law (Consolidation) (Scotland) Act 1995 (disclosure of information) substitute—

“(e) 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;

- (f) a body corporate established in accordance with section 212(1) of the Financial Services and Markets Act 2000 (compensation scheme manager);”.

Adults with Incapacity (Scotland) Act 2000 (asp 4)

Persons capable of giving “proper advice”

235.—(1) Schedule 2 to the Adults with Incapacity (Scotland) Act 2000 (management of estate of adult) is amended as follows.

(2) In paragraph 5(2), for the words “authorised to carry on investment business in the United Kingdom for the purposes of the Financial Services Act 1986 (c. 60)” substitute “who has permission for the purposes of the Financial Services and Markets Act 2000 to advise on investments”.

(3) After paragraph 5(2) insert—

“(2A) 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
- (c) Schedule 2 to that Act.”.