
STATUTORY INSTRUMENTS

2001 No. 544

The Financial Services and Markets Act
2000 (Regulated Activities) Order 2001

PART I
GENERAL

Citation

1. This Order may be cited as the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

Commencement

2.—(1) Except as provided by paragraph (2), this Order comes into force on the day on which section 19 of the Act comes into force.

(2) This Order comes into force—

- (a) for the purposes of articles 59, 60 and 87 (funeral plan contracts) on 1st January 2002; and
- (b) for the purposes of articles 61 to 63, 88, 90 and 91 (regulated mortgage contracts) nine months after section 19 of the Act comes into force.

Interpretation

3.—(1) In this Order—

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

“annuities on human life” does not include superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged, or who have been engaged, in any particular profession, trade or employment, or of the dependants of such persons;

“buying” includes acquiring for valuable consideration;

“close relative” in relation to a person means—

- (a) his spouse;
- (b) his children and step children, his parents and step-parents, his brothers and sisters and his step-brothers and step-sisters; and
- (c) the spouse of any person within sub-paragraph (b);

“contract of general insurance” means any contract falling within Part I of Schedule 1;

“contract of insurance” means any contract of insurance which is a contract of long-term insurance or a contract of general insurance, and includes—

- (a) fidelity bonds, performance bonds, administration bonds, bail bonds, customs bonds or similar contracts of guarantee, where these are—

- (i) effected or carried out by a person not carrying on a banking business;
- (ii) not effected merely incidentally to some other business carried on by the person effecting them; and
- (iii) effected in return for the payment of one or more premiums;
- (b) tontines;
- (c) capital redemption contracts or pension fund management contracts, where these are effected or carried out by a person who—
 - (i) does not carry on a banking business; and
 - (ii) otherwise carries on a regulated activity of the kind specified by article 10(1) or (2);
- (d) contracts to pay annuities on human life;
- (e) contracts of a kind referred to in article 1(2)(e) of the first life insurance directive (collective insurance etc.); and
- (f) contracts of a kind referred to in article 1(3) of the first life insurance directive (social insurance);

but does not include a funeral plan contract (or a contract which would be a funeral plan contract but for the exclusion in article 60);

“contract of long-term insurance” means any contract falling within Part II of Schedule 1;

“contractually based investment” means—

- (a) rights under a qualifying contract of insurance;
- (b) any investment of the kind specified by any of articles 83, 84, 85 and 87; or
- (c) any investment of the kind specified by article 89 so far as relevant to an investment falling within (a) or (b);

“deposit” has the meaning given by article 5;

“funeral plan contract” has the meaning given by article 59;

“instrument” includes any record whether or not in the form of a document;

“joint enterprise” means an enterprise into which two or more persons (“the participators”) enter for commercial purposes related to a business or businesses (other than the business of engaging in a regulated activity) carried on by them; and, where a participator is a member of a group, each other member of the group is also to be regarded as a participator in the enterprise;

“local authority” means—

- (a) in England and Wales, a local authority within the meaning of the Local Government Act 1972(1), 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(2);
- (c) in Northern Ireland, a district council within the meaning of the Local Government Act (Northern Ireland) 1972(3);

“managing agent” means a person who is permitted by the Council of Lloyd’s in the conduct of his business as an underwriting agent to perform for a member of Lloyd’s one or more of the following functions—

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

(2) 1973 c. 65. The definition of “local authority” in section 235 of the 1973 Act was substituted by para. 92(66) of Sch. 13 to the Local Government etc. (Scotland) Act 1994 (c. 39).

(3) 1972 c. 9 (N.I.).

- (a) underwriting contracts of insurance at Lloyd's;
- (b) reinsuring such contracts in whole or in part;
- (c) paying claims on such contracts;

“occupational pension scheme” means any scheme or arrangement which is comprised in one or more instruments or agreements and which has, or is capable of having, effect in relation to one or more descriptions or categories of employment so as to provide benefits, in the form of pensions or otherwise, payable on termination of service, or on death or retirement, to or in respect of earners with qualifying service in an employment of any such description or category;

“overseas person” means a person who—

- (a) carries on activities of the kind specified by any of articles 14, 21, 25, 37, 40, 45, 51, 52 and 53 or, so far as relevant to any of those articles, article 64 (or activities of a kind which would be so specified but for the exclusion in article 72); but
- (b) does not carry on any such activities, or offer to do so, from a permanent place of business maintained by him in the United Kingdom;

“pension fund management contract” means a contract to manage the investments of pension funds (other than funds solely for the benefit of the officers or employees of the person effecting or carrying out the contract and their dependants or, in the case of a company, partly for the benefit of officers and employees and their dependants of its subsidiary or holding company or a subsidiary of its holding company); and for the purposes of this definition, “subsidiary” and “holding company” are to be construed in accordance with section 736 of the Companies Act 1985⁽⁴⁾ or article 4 of the Companies (Northern Ireland) Order 1986⁽⁵⁾;

“property” includes currency of the United Kingdom or any other country or territory;

“qualifying contract of insurance” means a contract of long-term insurance which is not—

- (a) a reinsurance contract; nor
- (b) a contract in respect of which the following conditions are met—
 - (i) the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or infirmity;
 - (ii) the contract provides that benefits are payable on death (other than death due to an accident) only where the death occurs within ten years of the date on which the life of the person in question was first insured under the contract, or where the death occurs before that person attains a specified age not exceeding seventy years;
 - (iii) the contract has no surrender value, or the consideration consists of a single premium and the surrender value does not exceed that premium; and
 - (iv) the contract makes no provision for its conversion or extension in a manner which would result in it ceasing to comply with any of the above conditions;

“regulated mortgage contract” has the meaning given by article 61(3);

“security” means (except where the context otherwise requires) any investment of the kind specified by any of articles 76 to 82 or, so far as relevant to any such investment, article 89;

“selling”, in relation to any investment, includes disposing of the investment for valuable consideration, and for these purposes “disposing” includes—

- (a) in the case of an investment consisting of rights under a contract—

⁽⁴⁾ 1985 c. 6. Section 736 was substituted by section 144(1) of the Companies Act 1989 (c. 40).

⁽⁵⁾ S.I.1986/1032 (N.I. 6). Article 4 was substituted by article 62 of the Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504) (N.I. 10).

- (i) surrendering, assigning or converting those rights; or
- (ii) assuming the corresponding liabilities under the contract;
- (b) in the case of an investment consisting of rights under other arrangements, assuming the corresponding liabilities under the arrangements; and
- (c) in the case of any other investment, issuing or creating the investment or granting the rights or interests of which it consists;

“stakeholder pension scheme” has the meaning given by section 1 of the Welfare Reform and Pensions Act 1999⁽⁶⁾;

“syndicate” means one or more persons, to whom a particular syndicate number has been assigned by or under the authority of the Council of Lloyd's, carrying out or effecting contracts of insurance written at Lloyd's;

“voting shares”, in relation to a body corporate, means shares carrying voting rights attributable to share capital which are exercisable in all circumstances at any general meeting of that body corporate.

(2) For the purposes of this Order, a transaction is entered into through a person if he enters into it as agent or arranges, in a manner constituting the carrying on of an activity of the kind specified by article 25(1), for it to be entered into by another person as agent or principal.

(3) For the purposes of this Order, a contract of insurance is to be treated as falling within Part II of Schedule 1, notwithstanding the fact that it contains related and subsidiary provisions such that it might also be regarded as falling within Part I of that Schedule, if its principal object is that of a contract falling within Part II and it is effected or carried out by an authorised person who has permission to effect or carry out contracts falling within paragraph I of Part II of Schedule 1.

⁽⁶⁾ 1993 c. 30.