
STATUTORY INSTRUMENTS

2009 No. 774

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act
2000 (Controllers) (Exemption) Order 2009

<i>Made</i>	- - - -	<i>24th March 2009</i>
<i>Laid before Parliament</i>		<i>24th March 2009</i>
<i>Coming into force</i>	- -	<i>15th April 2009</i>

The Treasury, in exercise of the powers conferred upon them by sections 192(a) and 428(3) of the Financial Services and Markets Act 2000(1), make the following Order:

Citation and commencement

1. This Order may be cited as the Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009 and comes into force on 15th April 2009.

Interpretation

2. In this Order—

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

“authorised building society” means any UK authorised person(2) which is a building society within the meaning of section 119 of the Building Societies Act 1986 (interpretation)(3);

“relevant friendly society” means any UK authorised person which is a friendly society to which neither subsection (2) nor subsection (3) of section 37 of the Friendly Societies Act 1992 (restriction on combinations of business)(4) applies; and

“relevant UK authorised person” means a UK authorised person other than—

(a) a credit institution authorised under the banking consolidation directive(5);

(1) 2000 c.8. Section 192(a) was amended by regulation 4(a) of the Financial Services and Markets Act 2000 (Controllers) Regulations 2009 (S.I. 2009/534).

(2) “UK authorised person” is defined in section 191G of the Act (as inserted by S.I. 2009/534, see Regulation 3 and Schedule 1).

(3) 1986 c.53. There are amendments to section 119 which are not relevant to this Order.

(4) 1992 c.40. There are amendments to section 37 which are not relevant to this Order.

(5) “Credit institution” is defined in section 191G of the Act (as inserted by S.I. 2009/534, see Regulation 3 and Schedule 1) and “banking consolidation directive” is defined in section 425(1) of and Schedule 3 to the Act (as amended by S.I. 2003/2066 and S.I. 2006/3221).

- (b) an investment firm authorised under the markets in financial instruments directive(6);
- (c) a management company as defined in Article 1a.2 of the UCITS directive, authorised under that directive(7);
- (d) an undertaking pursuing the activity of direct insurance within the meaning of—
 - (i) Article 2 of the life assurance consolidation directive, authorised under that directive(8); or
 - (ii) Article 1 of the first non-life insurance directive, authorised under that directive(9); or
- (e) an undertaking pursuing the activity of reinsurance within the meaning of Article 2.1(a) of the reinsurance directive, authorised under that directive(10).

Matters affecting calculations under this Order

3. For the purposes of calculations under this Order—
- (a) the holding of shares or voting power by a person (“A1”) includes any shares or voting power held by another (“A2”) if A1 and A2 are acting in concert; and
 - (b) the provisions of section 184 of the Act (disregarded holdings)(11) apply.

General exemption in respect of certain non-directive firms

4.—(1) This article provides exemptions from the obligations in sections 178 and 191D of the Act (notifying the Authority)(12) in relation to a person (“A”) who decides to acquire, increase, reduce or cease to have control over a relevant UK authorised person (“B”).

(2) This article does not apply where B is an authorised building society or a relevant friendly society.

(3) Where A decides to acquire or increase control over B, A is exempt from the obligation imposed by section 178 unless giving effect to the decision would result in A beginning to be in the position of holding—

- (a) 20% or more of the shares in B or in a parent undertaking of B (“P”);
- (b) 20% or more of the voting power in B or P; or
- (c) shares or voting power in B or P as a result of which A is able to exercise significant influence over the management of B.

(4) Where A decides to reduce or cease to have control over B, A is exempt from the obligation imposed by section 191D unless giving effect to the decision would result in A ceasing to be in the position of holding—

- (a) 20% or more of the shares in B or in a parent undertaking of B (“P”);
- (b) 20% or more of the voting power in B or P; or

(6) “Investment firm” is defined in section 424A of the Act (as inserted by [S.I. 2006/2975](#) and amended by [S.I. 2007/126](#)) and “markets in financial instruments directive” is defined in section 425(1) of and Schedule 3 to the Act (as amended by [S.I. 2003/2066](#) and [S.I. 2006/2975](#)).

(7) “UCITS directive” is defined in section 425(1) of and Schedule 3 to the Act (as amended by [S.I. 2003/2066](#)).

(8) “Life assurance consolidation directive” is defined in section 425(1) of and Schedule 3 to the Act (as amended by [S.I. 2003/2066](#) and [S.I. 2004/3379](#)).

(9) “First non-life insurance directive” is defined in section 425(1) of and Schedule 3 to the Act (as amended by [S.I. 2003/2066](#)).

(10) “Reinsurance directive” is defined in section 425(1) of and Schedule 3 to the Act (as amended by [S.I. 2003/2066](#) and [S.I. 2007/3253](#)).

(11) Section 184 of the Act was substituted [S.I. 2009/534](#) (see Regulation 3 and Schedule 1).

(12) Sections 178 was substituted and 191D inserted by [S.I. 2009/534](#) (see Regulation 3 and Schedule 1).

- (c) shares or voting power in B or P as a result of which A is able to exercise significant influence over the management of B.

Specific exemptions in respect of authorised building societies

5.—(1) This article provides exemptions from the obligations in sections 178 and 191D of the Act in relation to a person (“A”) who decides to acquire, increase, reduce or cease to have control over an authorised building society (“B”).

(2) Where A decides to acquire or increase control over B, A is exempt from the obligation imposed by section 178 unless giving effect to the decision would result in A beginning to be in the position of holding 20% or more of the capital of B.

(3) Where A decides to reduce or cease to have control over B, A is exempt from the obligation imposed by section 191D unless giving effect to the decision would result in A ceasing to be in the position of holding 20% or more of the capital of B.

(4) For the purposes of this article “capital”, in relation to an authorised building society, consists of the following—

- (a) any shares of a class defined as deferred shares for the purposes of section 119 of the Building Societies Act 1986⁽¹³⁾ which have been issued by that society; and
- (b) the general reserves of that society.

Specific exemptions in respect of friendly societies

6.—(1) This article provides exemptions from the obligations in sections 178 and 191D of the Act in relation to a person (“A”) who decides to acquire, increase, reduce or cease to have control over a relevant friendly society (“B”).

(2) Where A decides to acquire or increase control over B, A is exempt from the obligation imposed by section 178.

(3) Where A decides to reduce or cease to have control over B, A is exempt from the obligation imposed by section 191D.

Revocations

7. The following are revoked—

- (a) the Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2001⁽¹⁴⁾;
- (b) the Financial Services and Markets Act 2000 (Controllers) (Exemption) (No. 2) Order 2001⁽¹⁵⁾; and
- (c) regulation 21 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003⁽¹⁶⁾.

⁽¹³⁾ See the Building Societies (Deferred Shares) Order 1991(S.I. 1991/701).

⁽¹⁴⁾ S.I. 2001/2638.

⁽¹⁵⁾ S.I. 2001/3338.

⁽¹⁶⁾ S.I. 2003/1476.

24th March 2009

Dave Watts
Frank Roy
Two of the Lords Commissioners of Her
Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under sections 192(a) and 428(3) of the Financial Services and Markets Act 2000 to create exemptions from the obligations to notify the Financial Services Authority when acquiring, increasing, reducing or ceasing to have control over certain UK authorised persons (financial services firms).

Article 4 applies general exemptions in relation to UK authorised persons which are not subject to supervision under the relevant EC directives on financial services. It provides that the obligations to notify apply at the threshold of a 20% holding of shares or voting power (rather than at thresholds of 10%, 20%, 30% and 50%).

Article 5 applies specific exemptions in relation to building societies. This also provides that the obligations to notify apply at the threshold of a 20% holding. In the case of building societies, the relevant holding relates to 20% of the capital of the society.

Article 6 applies specific exemptions in relation to friendly societies.

Article 7 revokes provisions superseded by this Order.

An impact assessment of the effect of the changes made by this Order and the Financial Services and Markets Act 2000 (Controllers) Regulations 2009 (S.I. 2009/534) has been made. This may be obtained from the Financial Services Strategy Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. It is also available on the Treasury's website (www.hm-treasury.gov.uk) and is published along the Explanatory Memorandum for this instrument on the OPSI website (www.opsi.gov.uk).