
STATUTORY INSTRUMENTS

2007 No. 3510

FINANCIAL SERVICES AND MARKETS

**The Financial Services and Markets Act 2000
(Regulated Activities) (Amendment) (No. 2) Order 2007**

Approved by both Houses of Parliament

Made - - - - 13th December 2007

Laid before Parliament 13th December 2007

Coming into force in accordance with article 1(2)

In the opinion of the Treasury one of the effects of the following Order is that an activity which is not a regulated activity (within the meaning of the Financial Services and Markets Act 2000⁽¹⁾) will become a regulated activity.

The Treasury make the following Order in exercise of the powers conferred by sections 22(1) and (5), 426(1), 427 and 428(3) of, and paragraph 25 of Schedule 2 to, the Financial Services and Markets Act 2000:

PART 1

GENERAL

Citation and commencement

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2007.

(2) This Order comes into force—

(a) for the purposes of enabling applications to be made, pursuant to the amendments made to article 72B of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001⁽²⁾ by article 2 of this Order, for—

(i) a Part IV permission, or a variation of a Part IV permission, in relation to activities of the kind specified by article 21, 25(1), 25(2), 39A, 53 or, so far as relevant to any such activity, article 64 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001; or

⁽¹⁾ 2000 c. 8.

⁽²⁾ S.I. 2001/544; amended by S.I. 2003/1476 (which, in addition to other amendments, inserted articles 39A and 72B) and S.I. 2006/3384; there are other amending instruments but none is relevant.

- (ii) the Authority's approval under section 59 of the Financial Services and Markets Act 2000 in relation to any of those activities, on 30th June 2008;
- (b) for all other purposes, on 1st January 2009.

PART 2

AMENDMENT OF THE REGULATED ACTIVITIES ORDER

Amendment of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

2.—(1) Article 72B of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (activities carried on by a provider of relevant goods or services) is amended as follows.

(2) For paragraph (1)(d)(ii) substitute—

“(ii) damage to, or loss of, baggage and other risks linked to the travel booked with the provider (“travel risks”) in circumstances where—

(aa) the travel booked with the provider relates to attendance at an event organised or managed by that provider and the party seeking insurance is not an individual (acting in his private capacity) or a small business; or

(bb) the travel booked with the provider is only the hire of an aircraft, vehicle or vessel which does not provide sleeping accommodation”.

(3) In paragraph (1) at the end of the definition of “provider” insert—

“For these purposes, the transfer of possession of an aircraft, vehicle or vessel under an agreement for hire which is not—

(a) a hire-purchase agreement within the meaning of section 189(1) of the Consumer Credit Act 1974⁽³⁾, or

(b) any other agreement which contemplates that the property in those goods will also pass at some time in the future,

is the provision of a service related to travel, not a supply of goods.”

“small business” means—

(a) subject to paragraph (b) a sole trader, body corporate, partnership or an unincorporated association which had a turnover in the last financial year of less than £1,000,000;

(b) where the business concerned is a member of a group within the meaning of section 262(1) of the Companies Act 1985⁽⁴⁾ (and after the repeal of that section within the meaning of section 474(1) of the Companies Act 2006⁽⁵⁾), reference to its turnover means the combined turnover of the group.

“turnover” means the amounts derived from the provision of goods and services falling within the business's ordinary activities, after deduction of trade discounts, value added tax and any other taxes based on the amounts so derived.”.

(3) 1974 c. 39.

(4) 1985 c. 6.

(5) 2006 c. 46.

PART 3

TRANSITIONAL PROVISIONS

Interpretation

3. In this Part—

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

“commencement” means the beginning of 1st January 2009;

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

Interim permission

4.—(1) This article applies where—

(a) a person who is a provider within the meaning of article 72B of the Regulated Activities Order (“the applicant”) has submitted to the Authority an application for Part IV permission or a variation of a Part IV permission to the extent that the application—

(i) relates to an activity of the kind specified in any of the following articles of the Regulated Activities Order—

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

(bb) article 25(1) and (2) (arranging deals in investments);

(cc) article 39A (assisting in the administration and performance of a contract of insurance);

(dd) article 53 (advising on investments); or

(ee) article 64 (agreeing to carry on specified kinds of activity) in so far as it relates to any of the activities mentioned in (aa) to (dd); and

(ii) is made pursuant to the amendments made to article 72B of the Regulated Activities Order by article 2 of this Order;

(b) the Authority received the application on or before 15th November 2008; and

(c) the application has not been finally decided before commencement.

(2) The applicant is to be treated as having on commencement the permission to which the application relates.

(3) A permission which an applicant is to be treated as having is referred to in this Part as an “interim permission”.

(4) Without prejudice to the exercise by the Authority of its powers under Part 4 of the Act, an interim permission lapses—

(a) when the application has been finally decided; or

(b) at the end of 31st December 2009,

whichever is the earlier.

(5) In this article “finally decided” means—

(a) when the application is withdrawn;

(b) when the Authority grants permission under section 42 of the Act (giving permission) to carry on the activity in question;

- (c) when the Authority varies a permission under section 44 of the Act (variation etc. at request of authorised person) to add the activity in question;
 - (d) where the Authority has refused an application and the matter is not referred to the Tribunal, when the time for referring the matter to the Tribunal has expired;
 - (e) where the Authority has refused an application and the matter is referred to the Tribunal, when—
 - (i) if the reference is determined by the Tribunal (including a determination following remission back to the Tribunal for rehearing in accordance with section 137(3)(a) of the Act (appeal on a point of law)), the time for bringing an appeal has expired; or
 - (ii) on an appeal from a determination by the Tribunal on a point of law, the Court itself determines the application in accordance with section 137 of the Act.
- (6) An applicant who is treated as having an interim permission may not withdraw the application without first obtaining the consent of the Authority.
- (7) Where—
- (a) the Authority exercises its powers under section 45 (variation etc. on the Authority’s own initiative) in relation to an authorised person who holds an interim permission; and
 - (b) as a result of the variation there are no longer any regulated activities for which the authorised person has permission,

the Authority must, once it is satisfied that it is no longer necessary to keep the interim permission in force, cancel it.

Interim approval

5.—(1) This article applies where—

- (a) the applicant (within the meaning of article 4(1)(a)) has submitted to the Authority an application made under section 60 of the Act (applications for approval) pursuant to the amendments made to article 72B of the Regulated Activities Order by article 2 of this Order; and
- (b) the application has not been finally decided before commencement.

(2) The person in respect of whom the application is made is to be treated as having on commencement the approval of the Authority for the purposes of section 59 of the Act (approval for particular arrangements) in relation to the functions to which the application relates.

(3) An approval which a person is to be treated as having is referred to in this Part as an “interim approval”.

(4) Without prejudice to the exercise by the Authority of its powers under Part 5 of the Act, an interim approval lapses—

- (a) when the application has been finally decided; or
- (b) at the end of 31st December 2009,

whichever is the earlier.

(5) In this article, “finally decided” means—

- (a) when the application is withdrawn;
- (b) when the Authority grants the application for approval under section 62 of the Act (applications for approval: procedure and right to refer to the Tribunal);
- (c) where the Authority has refused an application and the matter is not referred to the Tribunal, when the time for referring the matter to the Tribunal has expired;

- (d) where the Authority has refused an application and the matter is referred to the Tribunal, when—
- (i) if the reference is determined by the Tribunal (including a determination following remission back to the Tribunal for rehearing in accordance with section 137(3)(a) of the Act), the time for bringing an appeal has expired; or
 - (ii) on an appeal from a determination by the Tribunal on a point of law, the Court itself determines the application in accordance with section 137 of the Act.

Application of the Authority’s rules etc to persons with an interim permission or an interim approval

6.—(1) The Authority may direct in writing that any relevant provision which would otherwise apply to a person by virtue of his interim permission or interim approval is not to apply or is to apply to him as modified in the way specified in the direction.

(2) Where the Authority makes a rule, gives guidance or issues a statement or code which applies only to persons with an interim permission or an interim approval (or only to a class of such persons), sections 65 (statements and codes: procedure), 155 (consultation) and 157(3) (guidance) of the Act do not apply to that rule, guidance, statement or code.

(3) For the purposes of paragraph (1) a “relevant provision” is any provision made as a result of the exercise by the Authority of any of its legislative functions mentioned in paragraph 1(2) of Schedule 1 to the Act (the Financial Services Authority).

Application of the Act to persons with an interim permission or an interim approval.

7.—(1) This article applies to every person with interim permission.

(2) For the purpose of section 20 (authorised persons acting without permission), a person’s interim permission is treated as having been given to him under Part 4 of the Act.

(3) A person’s interim permission is to be disregarded for the purposes of—

- (a) section 38(2) (exemption orders);
- (b) section 40(2) (application for permission);
- (c) subject to article 8(4), section 42 (giving permission);
- (d) section 43 (imposition of requirements); and
- (e) section 44(1), (4) and (5) (variation etc. at request of authorised person).

8.—(1) This article applies to a person who falls within section 31(1) (authorised persons) by virtue only of having an interim permission.

(2) A person with an interim permission is to be treated on or after commencement as an authorised person for the purposes of the Act (and any provision made under the Act), unless otherwise expressly provided for by this Part.

(3) For the purposes of section 21(2) (restrictions on financial promotion), a person with an interim permission is not to be treated as an authorised person for the purposes of communicating or approving the content of a communication except where the communication invites or induces a person to enter into (or offer to enter into) an agreement the making or performance of which constitutes a controlled activity which corresponds to a regulated activity which is covered by his interim permission.

(4) A person with an interim permission may still be an appointed representative within the meaning of section 39(2) (exemption of appointed representatives) (and hence may be treated as

exempt from the general prohibition as a result of section 39(1) for the purposes of section 42(3) (a) (giving permission)).

(5) Subsection (3)(a) of section 213 (the compensation scheme) does not apply to—

- (a) a person who is a relevant person, within the meaning of that section, by virtue only of having an interim permission; or
- (b) an appointed representative of such person.

9. A person with an interim approval is to be treated on or after commencement as an approved person for the purposes of the Act (and any provision made under the Act).

13th December 2007

Frank Roy
Claire Ward
Two of the Lords Commissioners of Her
Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends article 72B(1)(d)(ii) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (“the Regulated Activities Order”) to limit the exemption from regulation in respect of the activities specified in articles 21, 25(1) and (2), 39A, 53 and 64 of the Regulated Activities Order for travel insurance to circumstances where a contract of insurance is linked to (a) travel to an event organised by the travel provider where the person seeking insurance is not an individual or a business with a group annual turnover of less than £1,000,000; or (b) the hire of a vehicle.

Article 4 confers an interim permission on certain applicants who have applied for permission under Part 4 of the Financial Services and Markets Act 2000 (“FSMA”) to carry on activities specified in article 21, 25(1), 25 (2), 39A, 53 or 64 of the Regulated Activities Order in relation to the sale of travel insurance and whose application is pending on the commencement of Part 2 of this Order (1st January 2009).

Article 5 confers interim approval, in similar terms to those in article 4, on people who are the subject of an application for approval under Part 5 of FSMA which is pending on 1st January 2009.

Article 6 enables the Financial Services Authority to modify, amongst other things, its rules in their application to persons with an interim permission or approval.

Articles 7 and 8 provide for the application of provisions in FSMA to persons with an interim permission, indicating where such provisions are to be treated as including or not including such persons.

Article 9 provides for the application of provisions in FSMA to persons with an interim approval.

A Regulatory Impact Assessment of the effect of this instrument on the costs of business has been prepared and may be obtained from the Financial Stability and Risk Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. It is also available on HM Treasury’s website (www.hm-treasury.gov.uk). A copy has been placed in the library of both Houses of Parliament.