
DRAFT STATUTORY INSTRUMENTS

2020 No.

**The Financial Services and Markets Act 2000
(Regulated Activities) (Amendment) Order 2020**

PART 3

Transitional provisions: complaints relating to funeral plans

Interpretation

6. In this Part—

“compulsory jurisdiction” has the meaning given in section 226(8) of the Act;

“compulsory jurisdiction rules” has the meaning given in section 226(3)(1) of the Act;

“former scheme” means the complaints procedure contained in the former scheme operator’s Code of Practice and Rules in force at the time of the act or omission that is the subject of the relevant complaint;

“former scheme operator” means the Funeral Planning Authority Community Interest Company;

“former scheme rules” means the former scheme operator’s Code of Practice and Rules in force immediately before the initial commencement day;

“new scheme” means the scheme for which provision is made in Part 16 of the Act (the ombudsman scheme);

“relevant complaint” has the meaning given in article 7(1); and

“relevant date” means the date on which this Order comes fully into force in accordance with article 1(3).

Complaints made on or after the relevant date about acts or omissions before that date

7.—(1) A relevant complaint is a complaint—

- (a) about an act or omission which occurred before the relevant date;
- (b) which had not, before that date, been referred under the former scheme; and
- (c) in relation to which the conditions set out in paragraph (2) are met.

(2) The conditions are that—

- (a) the complaint is about an act or omission of a person who, at the time of that act or omission, was subject to the former scheme (regardless of whether they later ceased to be subject to it);
- (b) the act or omission occurred in the carrying on by that person of an activity to which the former scheme applied; and

- (c) in relation to the compulsory jurisdiction, the complainant is eligible within the meaning given in section 226(6) of the Act and wishes to have the complaint dealt with under the new scheme.
- (3) For the purposes of paragraph (2)(c), where the complainant is not eligible in accordance with the compulsory jurisdiction rules, an ombudsman may nonetheless, if the ombudsman considers it appropriate, treat the complainant as eligible if the complainant would have been entitled, at any time before the relevant date, to refer to the former scheme operator an equivalent complaint.
- (4) A relevant complaint—
 - (a) may be referred for determination under the new scheme; and
 - (b) upon referral is, subject to article 9, to be dealt with in the same way as any other complaint referred under the new scheme.
- (5) For the purposes of paragraph (4), it is immaterial that the conditions set out in section 226(2)(b) and (c) of the Act are not met in relation to the complaint.

Procedure for dealing with relevant complaints

8. In paragraphs 13 and 14 of Schedule 17 to the Act, each reference to a “complaint” is to be taken to include a reference to a relevant complaint.

Determination of relevant complaints

9.—(1) Subject to paragraphs (2) and (3), sections 228 to 230A of the Act apply in relation to the determination of a relevant complaint as they apply in relation to the determination of a complaint of the kind mentioned in section 226(1) (compulsory jurisdiction).

- (2) In determining, in relation to a relevant complaint—
 - (a) what is fair and reasonable in all the circumstances of the case, for the purposes of section 228(2) of the Act;
 - (b) what amount, if any, constitutes fair compensation for loss and damage suffered by the complainant, for the purposes of section 229(2)(a) of the Act; and
 - (c) what steps would be just and appropriate in any direction under section 229 of the Act, for the purposes of section 229(2)(b),
- an ombudsman may also take into account the matters set out in paragraph (3).

- (3) The matters referred to in paragraph (2) are—
 - (a) what the former scheme operator, seeking to resolve the complaint under the former scheme rules, might have recommended in the particular circumstances of the case;
 - (b) what amount, if any, the former scheme operator, seeking to resolve the complaint under the former scheme rules, might have recommended that the respondent should pay under the former scheme rules; and
 - (c) what other steps the former scheme operator, seeking to resolve the complaint under the former scheme rules, might have recommended that the respondent should take under the former scheme rules.

Funding and charges

10.—(1) In section 234(1) of the Act (industry funding), the reference to the operation of the ombudsman scheme in relation to the compulsory jurisdiction is to be taken to include its operation in relation to relevant complaints.

(2) Relevant complaints are subject to rules made under paragraph 15(1) of Schedule 17 to the Act (fees) in the same way as any other complaints referred to under the new scheme.

Exemption from liability in damages

11. Paragraph 10(1) of Schedule 17 to the Act (exemption from liability in damages) applies to the discharge, or purported discharge, of any functions by virtue of this Part in relation to dealing with a relevant complaint (“relevant functions”), and is to be read for those purposes as if—

- (a) the reference to functions under the Act included a reference to relevant functions; and
- (b) the reference to “the compulsory jurisdiction” included a reference to the jurisdiction of the new scheme which results from this Part.

Transfers of liability

12. In section 234B of the Act, the reference to a complaint falling to be dealt with under the ombudsman scheme is to be taken to include a reference to a relevant complaint falling to be dealt with under that scheme including the jurisdiction which results from this Part.

Privilege

13. In paragraph 11 of Schedule 17 to the Act (privilege), the reference to “the compulsory jurisdiction” is to be taken to include the jurisdiction of the new scheme which results from this Part.

Record-keeping and reporting requirements relating to relevant complaints

14. The FCA may make rules applying to authorised persons under the Act with respect to the keeping of records and the making of reports in relation to relevant complaints.

Information

15.—(1) Sections 231 and 232 of the Act apply in relation to a relevant complaint as they apply in relation to a complaint of the kind mentioned in section 226(1) of the Act.

(2) The reference in the table in paragraph 11 of Schedule 2 to the Data Protection Act 2018(2) (exemptions etc from the GDPR) to functions conferred upon the Financial Ombudsman by or under Part 16 of the Act is to be taken to include a reference to the functions conferred upon the Financial Ombudsman by this Order.