

SCHEDULES

SCHEDULE 2

Section 9.

RULES FOR DETERMINING STATUS OF AGENTS

- 1 This Schedule sets out rules for determining, for the purposes of this Act only, whether an agent through whom a consumer insurance contract is effected is acting as the agent of the consumer or of the insurer.
- 2 The agent is to be taken as the insurer's agent in each of the following cases—
 - (a) when the agent does something in the agent's capacity as the appointed representative of the insurer for the purposes of the Financial Services and Markets Act 2000 (see section 39 of that Act),
 - (b) when the agent collects information from the consumer, if the insurer had given the agent express authority to do so as the insurer's agent,
 - (c) when the agent enters into the contract as the insurer's agent, if the insurer had given the agent express authority to do so.
- 3 (1) In any other case, it is to be presumed that the agent is acting as the consumer's agent unless, in the light of all the relevant circumstances, it appears that the agent is acting as the insurer's agent.
 - (2) Some factors which may be relevant are set out below.
 - (3) Examples of factors which may tend to confirm that the agent is acting for the consumer are—
 - (a) the agent undertakes to give impartial advice to the consumer,
 - (b) the agent undertakes to conduct a fair analysis of the market,
 - (c) the consumer pays the agent a fee.
 - (4) Examples of factors which may tend to show that the agent is acting for the insurer are—
 - (a) the agent places insurance of the type in question with only one of the insurers who provide insurance of that type,
 - (b) the agent is under a contractual obligation which has the effect of restricting the number of insurers with whom the agent places insurance of the type in question,
 - (c) the insurer provides insurance of the type in question through only a small proportion of the agents who deal in that type of insurance,
 - (d) the insurer permits the agent to use the insurer's name in providing the agent's services,
 - (e) the insurance in question is marketed under the name of the agent,
 - (f) the insurer asks the agent to solicit the consumer's custom.
- 4 (1) If it appears to the Treasury that the list of factors in sub-paragraph (3) or (4) of paragraph 3 has become outdated, the Treasury may by order made by statutory instrument bring the list up to date by amending the sub-paragraph so as to add, omit or alter any factor.

Status: This is the original version (as it was originally enacted).

- (2) A statutory instrument containing an order under sub-paragraph (1) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.