

1990 No. 349

FINANCIAL SERVICES

The Financial Services Act 1986 (Restriction of Scope of Act and Meaning of Collective Investment Scheme) Order 1990

<i>Made</i> - - - -	<i>26th February 1990</i>
<i>Laid before Parliament</i>	<i>28th February 1990</i>
<i>Coming into force</i>	<i>26th March 1990</i>

The Secretary of State, in exercise of the powers conferred on him by sections 2 and 75(9) of the Financial Services Act 1986 (a) and of all other powers enabling him in that behalf, hereby makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Financial Services Act 1986 (Restriction of Scope of Act and Meaning of Collective Investment Scheme) Order 1990 and shall come into force on 26th March 1990.

(2) In this Order, “the Act” means the Financial Services Act 1986.

National Savings

2.—(1) The following Note shall be added to paragraph 3 of Schedule 1 to the Act—

“(3) This paragraph does not apply to any instrument creating or acknowledging indebtedness in respect of money received by the Director of Savings as deposits or otherwise in connection with the business of the National Savings Bank or in respect of money raised under the National Loans Act 1968(b) under the auspices of the Director of Savings or in respect of money treated as having been so raised by virtue of section 11(3) of the National Debt Act 1972(c).”.

(2) Paragraph 9 of Schedule 1 to the Act shall be amended in the following manner—

- (a) the word “Notes” shall be substituted for the word “Note.”;
- (b) the existing Note shall be numbered (1); and
- (c) the following Note shall be added—

“(2) This paragraph does not apply to rights under any contract under which money is received by the Director of Savings as deposits or otherwise in connection with the business of the National Savings Bank or raised under the National Loans Act 1968 under the auspices of the Director of Savings or under which money raised is treated as having been so raised by virtue of section 11(3) of the National Debt Act 1972.”.

Dealings as principal

3. Paragraph 17(4) of Schedule 1 to the Act (d) shall be amended by deleting the words “, other than a transaction of a kind described in paragraph 3(a) or (b) above,”.

(a) 1986 c.60.

(b) 1968 c.13.

(c) 1972 c.65.

(d) Paragraph 17(4) of Schedule 1 to the Financial Services Act 1986 has been amended by article 3 of the Financial Services Act 1986 (Restriction of Scope of Act) Order 1988 (S.I. 1988/318). The words deleted by article 3 of the present Order were contained in the amendment made by the earlier Order.

Sale of goods and supply of services

4. Paragraph 19 of Schedule 1 to the Act(a) shall be amended by the substitution, in paragraph 19(3)(b), of the figure "5" for the figure "6".

Advice given in sound, television or cable programmes

5. For paragraph 25A of Schedule 1 to the Act(b) there shall be substituted—

"Advice given in sound, television or cable programmes

25A.—(1) Paragraph 15 above does not apply in respect of any advice given in any programme or teletext transmission—

- (a) broadcast, or made for broadcasting, by the British Broadcasting Corporation or by the Independent Broadcasting Authority in accordance with the provisions of the Broadcasting Act 1981(c); or
- (b) included, or made for inclusion, in a cable programme service which is, or does not require to be, licensed under the Cable and Broadcasting Act 1984(d); or
- (c) broadcast, or made for broadcasting, by the Independent Broadcasting Authority in a DBS service.

(2) In this paragraph—

- (a) "DBS service" has the same meaning as in section 37(3) of the Cable and Broadcasting Act 1984;
- (b) "programme", in relation to a television or sound broadcasting service or a cable programme service, includes an advertisement and any other item included in that service; and
- (c) "teletext transmission" has the same meaning as in section 14(6) of the Broadcasting Act 1981 and includes any such transmission broadcast in a DBS service or in a service which is an additional teletext service within the meaning of section 47(2) of the Cable and Broadcasting Act 1984."

Amendment of section 75 of the Act

6. In section 75 of the Act—

- (a) subsections (5A), (5B) and (6)(e) are hereby repealed(e); and
- (b) for paragraphs (l) to (n)(f) of subsection (6) there shall be substituted the following paragraph—

"(l) arrangements which by virtue of paragraph 34 or 35 of Schedule 1 to this Act are not collective investment schemes for the purposes of that Schedule."

Collective Investment Schemes

7. In Schedule 1 to the Act after paragraph 33 there shall be added the following paragraphs—

34.—(1) For the purposes of this Schedule arrangements are not a collective investment scheme if—

- (a) the property to which the arrangements relate (other than cash awaiting investment) consists of shares;

(a) Paragraph 19 of Schedule 1 to the Financial Services Act 1986 has been amended by article 3 of the Financial Services Act 1986 (Extension of Scope of Act and Meaning of Collective Investment Scheme) Order 1988 (S.I. 1988/496).

(b) Paragraph 25A of Schedule 1 to the Financial Services Act 1986 was inserted by article 5 of the Financial Services Act 1986 (Restriction of Scope of Act) Order 1988 (S.I. 1988/318).

(c) 1981 c.68.

(d) 1984 c.46.

(e) Subsections (5A) and (5B) of section 75 were inserted by article 5(a) of the Financial Services Act 1986 (Restriction of Scope of Act and Meaning of Collective Investment Scheme) Order 1988 (S.I. 1988/803). Subsection (6)(e) of section 75 was inserted by article 4 of the Financial Services Act 1986 (Extension of Scope of Act and Meaning of Collective Investment Scheme) Order 1988 (S.I. 1988/496).

(f) Paragraphs (l) to (n) of section 75(6) were inserted by article 5(b) of the Financial Services Act 1986 (Restriction of Scope of Act and Meaning of Collective Investment Scheme) Order 1988 (S.I. 1988/803).

- (b) they constitute a complying fund;
- (c) each participant is the owner of a part of the property to which the arrangements relate and, to the extent that his part of that property—
 - (i) comprises relevant shares of a class which are admitted to the Official List of any member State or to dealings on a recognised investment exchange, he is entitled to withdraw it at any time after the end of the period of five years beginning with the date on which the shares in question were issued;
 - (ii) comprises relevant shares which do not fall within sub-paragraph (i) above, he is entitled to withdraw it at any time after the end of the period of two years beginning with the date upon which the period referred to in sub-paragraph (i) above expired;
 - (iii) comprises any other shares, he is entitled to withdraw it at any time after the end of the period of six months beginning with the date upon which the shares in question ceased to be relevant shares; and
 - (iv) comprises cash which the operator has not agreed (conditionally or unconditionally) to apply in subscribing for shares, he is entitled to withdraw it at any time; and
- (d) the arrangements would meet the conditions described in section 75(5)(c) of this Act were it not for the fact that the operator is entitled to exercise all or any of the rights conferred by shares included in the property to which the arrangements relate.

(2) For the purposes of this paragraph—

- (a) “shares” means investments falling within paragraph 1 of this Schedule;
- (b) shares shall be regarded as being relevant shares if and so long as they are shares in respect of which neither—
 - (i) a claim for relief made in accordance with section 306 of the Income and Corporation Taxes Act 1988(a) has been disallowed; nor
 - (ii) an assessment has been made pursuant to section 307 of that Act withdrawing or refusing relief by reason of the body corporate in which the shares are held having ceased to be a body corporate which is a qualifying company for the purposes of section 293 of that Act; and
- (c) arrangements shall be regarded as constituting a complying fund if they provide that—
 - (i) the operator will, so far as practicable, make investments each of which, subject to each participant’s individual circumstances, qualify for relief by virtue of Chapter III of Part VII of the Income and Corporation Taxes Act 1988; and
 - (ii) the minimum subscription to the arrangements made by each participant must be not less than £2,000.

35. For the purposes of this Schedule the following are not collective investment schemes—

- (a) arrangements where the entire contribution of each participant is a deposit within the meaning of section 5 of the Banking Act 1987(b) or a sum of a kind described in subsection (3) of that section;
- (b) arrangements under which the rights or interests of the participants are represented by the following—
 - (i) investments falling within paragraph 2 of this Schedule which are issued by a single body corporate which is not an open-ended investment company or which are issued by a single issuer which is not a body corporate and are guaranteed by the government of the United Kingdom, of Northern Ireland, or of any country or territory outside the United Kingdom; or

(a) 1988 c.1.

(b) 1987 c.22.

- (ii) investments falling within sub-paragraph (i) above which are convertible into or exchangeable for investments falling within paragraph 1 of this Schedule provided that those latter investments are issued by the same person as issued the investments falling within sub-paragraph (i) above or are issued by a single other issuer; or
 - (iii) investments falling within paragraph 3 of this Schedule issued by the same government, local authority or public authority; or
 - (iv) investments falling within paragraph 4 of this Schedule which are issued otherwise than by an open-ended investment company and which confer rights in respect of investments, issued by the same issuer, falling within paragraph 1 of this Schedule or within sub-paragraph (i), (ii) or (iii) above;
- (c) arrangements which would fall within paragraph (b) above were it not for the fact that the rights or interests of a participant ("the counterparty") whose ordinary business involves him in engaging in activities which fall within Part II of this Schedule or would do so apart from Part III or IV are or include rights or interests under a swap arrangement, that is to say, an arrangement the purpose of which is to facilitate the making of payments to participants whether in a particular amount or currency or at a particular time or rate of interest or all or any combination of those things, being an arrangement under which—
- (i) the counterparty is entitled to receive amounts (whether representing principal or interest) payable in respect of any property subject to the scheme or sums determined by reference to such amounts; and
 - (ii) the counterparty makes payments (whether or not of the same amount and whether or not in the same currency as those referred to in sub-paragraph (i) above) which are calculated in accordance with an agreed formula by reference to the amounts or sums referred to in sub-paragraph (i) above;
- (d) arrangements under which the rights or interests of participants are rights to or interests in money held in a common account in circumstances in which the money so held is held on the understanding that an amount representing the contribution of each participant is to be applied either in making payments to him or in satisfaction of sums owed by him or in the acquisition of property or the provision of services for him;
- (e) arrangements under which the rights and interests of participants are rights and interests in a fund which is a trust fund within the meaning of section 42(1) of the Landlord and Tenant Act 1987(a).".

Revocations

8. There are hereby revoked—

- (a) in the Financial Services Act 1986 (Restriction of Scope of Act) Order 1988(b), article 5;
- (b) in the Financial Services Act 1986 (Extension of Scope of Act and Meaning of Collective Investment Scheme) Order 1988(c), article 4; and
- (c) in the Financial Services Act 1986 (Restriction of Scope of Act and Meaning of Collective Investment Scheme) Order 1988(d), article 5.

John Redwood
Parliamentary Under Secretary of State,
Department of Trade and Industry

26th February 1990

(a) 1987 c.31.

(b) S.I. 1988/318. Article 5 of the present order replaces the provision inserted by article 5 of S.I. 1988/318.

(c) S.I. 1988/496. Paragraph 35(a) inserted into Schedule 1 to the Financial Services Act 1986 by article 7 of the present order reproduces the provisions inserted into section 75 of that Act by article 4 of S.I. 1988/496.

(d) S.I. 1988/803. Paragraphs 34 and 35(b) to (d) inserted into Schedule 1 to the Financial Services Act 1986 by article 7 of the present order reproduce the provisions inserted into section 75 of the Financial Services Act 1986 by article 5 of S.I. 1988/803.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order restricts the scope of the Financial Services Act 1986 in two respects. It also consolidates the provisions of earlier orders amending the references to a collective investment scheme in Schedule 1 to and elsewhere in the Financial Services Act 1986 and makes certain amendments to Schedule 1 to that Act to clarify the effect of earlier orders amending that Schedule.

Article 2 restricts the scope of paragraphs 3 and 9 of Schedule 1 by excluding certain National Savings products from those paragraphs. Article 3 deletes from paragraph 17(4) of Schedule 1 certain unnecessary words which were included in an earlier amendment made to that paragraph. Article 4 makes an amendment to paragraph 19 of Schedule 1 which is consequential upon an earlier amendment made to that paragraph. Article 5 further restricts the scope of the Act as it applies to advice given in sound, television or cable programmes by substituting, for the provision inserted into Schedule 1 to the Act by an earlier order, a new provision which extends to television broadcasting services provided by means of the technique known as direct broadcasting by satellite. Articles 6 and 7 consolidate the provisions of earlier orders amending the references to a collective investment scheme in Schedule 1 to and elsewhere in the Act and also amend those references so that they do not include arrangements which are trust funds within the meaning of section 42(1) of the Landlord and Tenant Act 1987. Article 8 makes consequential revocations.