STATUTORY INSTRUMENTS

2001 No. 1062

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001

Made - - - -	*19th March 2001*
Laid before Parliament	*19th March 2001*
Coming into force in accordance with article 1	

The Treasury, in exercise of the powers conferred on them by section 235(5) of the Financial Services and Markets Act 2000[M1], hereby make the following Order:

Marginal Citations
M1 2000 c.8.

Citation and commencement

1. This Order may be cited as the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001 and comes into force on the day on which section 19 of the Act comes into force.

Commencement Information
I1 Reg. 1 in force 1.12.2001 see reg. 1 and S.I. 2001/3538, **art. 2**

Interpretation

2. In this Order—

"the Act" means the Financial Services and Markets Act 2000;

"the 1988 Act" means the Income and Corporation Taxes Act 1988;

"authorised unit trust scheme" has the meaning given by section 237(3) of the Act;

"contract of insurance" and "contract of long term insurance" have the meaning given by article 3(1) of the Regulated Activities Order;

"feeder fund" means an authorised unit trust scheme the sole object of which is investment in units of a single authorised unit trust scheme or shares in a single open-ended investment company;

"franchise arrangements" means arrangements under which a person earns profits or income by exploiting a right conferred by the arrangements to use a trade mark or design or other intellectual property or the good-will attached to it;

"funeral plan contract" has the meaning given by article 59 of the Regulated Activities Order;

"individual pension account" has the meaning given by regulation 4 of the Personal Pension Schemes (Restriction on Discretion to Approve) (Permitted Investments) Regulations 2001;

[[F1]"occupational pension scheme" has the meaning given by section 1 of the Pension Schemes Act 1993 but with paragraph (b) of the definition omitted;**]**

[F2] . . . . . .

"the operator" has the meaning given by section 237(2) of the Act;

[[F1]"personal pension scheme" means a scheme or arrangement which is not an occupational pension scheme and which is comprised in one or more instruments or agreements, having or capable of having effect so as to provide benefits to or in respect of people—

(a) on retirement,

(b) on having reached a particular age, or

(c) on termination of service in an employment;**]**

"personal pension unit trust" means a personal pension scheme which is an authorised unit trust scheme of a kind mentioned in Part I of Schedule 1 to the Personal Pension Schemes (Appropriate Schemes) Regulations 1997;

"recognised scheme" has the meaning given by section 237(3) of the Act;

"the Regulated Activities Order" means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

"timeshare rights" has the meaning given by section 1 of the Timeshare Act 1992.

Textual Amendments

F1 Words in art. 2 inserted (6.4.2007) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2006 (S.I. 2006/1969), arts. 1(3), **8(3)**

F2 Words in art. 2 omitted (6.4.2007) by virtue of The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2006 (S.I. 2006/1969), arts. 1(3), **8(2)**

Commencement Information

I2 Reg. 2 in force 1.12.2001 see reg. 1 and S.I. 2001/3538, **art. 2**

Arrangements not amounting to a collective investment scheme

3. Arrangements of the kind specified by the Schedule to this Order do not amount to a collective investment scheme.

Commencement Information

I3 Reg. 3 in force 1.12.2001 see reg. 1 and S.I. 2001/3538, **art. 2**

Greg Pope
Jim Dowd
Two of the Lords Commissioners of Her Majesty's Treasury

SCHEDULE Article 3

ARRANGEMENTS NOT AMOUNTING TO A COLLECTIVE INVESTMENT SCHEME

Individual investment management arrangements

1. Arrangements do not amount to a collective investment scheme if—

(a) the property to which the arrangements relate (other than cash awaiting investment) consists of investments of one or more of the following kinds:

(i) an investment of the kind specified by any of articles 76 to 80 of the Regulated Activities Order;

(ii) an investment of the kind specified by article 81 of that Order (units in a collective investment scheme) so far as relating to authorised unit trust schemes, recognised schemes or shares in an open-ended investment company; or

(iii) a contract of long term insurance;

(b) each participant is entitled to a part of that property and to withdraw that part at any time; and

(c) the arrangements do not have the characteristics mentioned in section 235(3)(a) of the Act and have those mentioned in section 235(3)(b) only because the parts of the property to which different participants are entitled are not bought and sold separately except where a person becomes or ceases to be a participant.

Commencement Information

I4 Sch. para. 1 in force 1.12.2001 see reg. 1 and S.I. 2001/3538, **art. 2**

Enterprise initiative schemes

2.—(1) Arrangements do not amount to a collective investment scheme if—

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

(b) the arrangements constitute a complying fund;

(c) each participant is entitled to a part of the property to which the arrangements relate and—

(i) to the extent that the property to which he is entitled comprises relevant shares of a class which are admitted to official listing in an EEA 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) to the extent that the property to which he is entitled comprises other relevant shares, he is entitled to withdraw it at any time after the end of the period of seven years beginning with the date on which the shares in question were issued;

(iii) to the extent that the property to which he is entitled comprises shares other than relevant shares, he is entitled to withdraw it at any time after the end of the period of six months beginning with the date on which the shares in question ceased to be relevant shares; and

(iv) to the extent that the property comprises cash which the operator has 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 paragraph 1(c) 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) In sub-paragraph (1)—

(a) "shares" means investments of the kind specified by article 76 of the Regulated Activities Order (shares etc.) and shares are to be regarded as 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 1988 Act has been disallowed; nor

(ii) an assessment has been made pursuant to section 307 of the 1988 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 that Act;

(b) "complying fund" means arrangements which provide that—

(i) the operator will, so far as is 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 1988 Act; and

(ii) the minimum contribution to the arrangements which each participant must make is not less than £2000.

Commencement Information

I5 Sch. para. 2 in force 1.12.2001 see reg. 1 and S.I. 2001/3538, **art. 2**

Pure deposit based schemes

3. Arrangements do not amount to a collective investment scheme if the whole amount of each participant's contribution is a deposit which is accepted by an authorised person with permission to carry on an activity of the kind specified by article 5 of the Regulated Activities Order (accepting deposits) or a person who is an exempt person in relation to such an activity.

Commencement Information

I6 Sch. para. 3 in force 1.12.2001 see reg. 1 and S.I. 2001/3538, **art. 2**

Schemes not operated by way of business

4. Arrangements do not amount to a collective investment scheme if they are operated otherwise than by way of business.

Commencement Information

I7 Sch. para. 4 in force 1.12.2001 see reg. 1 and S.I. 2001/3538, **art. 2**

Debt issues

5.—(1) Arrangements do not amount to a collective investment scheme if they are arrangements under which the rights or interests of participants are, except as provided in sub-paragraph (2), represented by investments of one, and only one, of the following descriptions:

(a) investments of the kind specified by article 77 **[**[F3]or 77A**]** of the Regulated Activities Order **[**[F4](debt instruments)**]** which are—

(i) issued by a single body corporate other than an open-ended investment company; or

(ii) issued by a single issuer who is not a body corporate and which are guaranteed by the government of the United Kingdom, the Scottish Administration, the Executive Committee of the Northern Ireland Assembly, the National Assembly for Wales or the government of any country or territory outside the United Kingdom;

and which are not convertible into or exchangeable for investments of any other description;

(b) investments falling within sub-paragraph (a)(i) or (ii) ("the former investments") which are convertible into or exchangeable for investments of the kind specified by article 76 of the Regulated Activities Order ("the latter investments") provided that the latter investments are issued by the same person who issued the former investments or are issued by a single other issuer;

(c) investments of the kind specified by article 78 of the Regulated Activities Order (government and public securities) which are issued by a single issuer; or

(d) investments of the kind specified by article 79 of the Regulated Activities Order (instruments giving entitlement to investments) which are issued otherwise than by an open-ended investment company and which confer rights in respect of investments, issued by the same issuer, of the kind specified by article 76 of that Order or within any of paragraphs (a) to (c).

(2) Arrangements which would otherwise not amount to a collective investment scheme by virtue of the provisions of sub-paragraph (1) are not to be regarded as amounting to such a scheme by reason only that one or more of the participants ("the counterparty") is a person—

(a) whose ordinary business involves him in carrying on activities of the kind specified by any of articles 14 (dealing in investments as principal), 21 (dealing in investments as agent), 25 (arranging deals in investments), **[**[F5]25D (operating a multilateral trading facility),**]** 37 (managing investments), 40 (safeguarding and administering investments), 45 (sending dematerialised instructions), 51 (establishing etc. a collective investment scheme), 52 (establishing etc. a stakeholder pension scheme) and 53 (advising on investments) or, so far as relevant to any of those articles, article 64 of the Regulated Activities Order (agreeing to carry on specified kinds of activities), or would do so apart from any exclusion from any of those articles made by that Order; and

(b) whose rights or interests in the arrangements are or include rights or interests under a swap arrangement.

(3) In sub-paragraph (2), "swap arrangement" means 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 the counterparty—

(a) is entitled to receive amounts, whether representing principal or interest, payable in respect of any property subject to the arrangements or sums determined by reference to such amounts; and

(b) makes payments, whether or not of the same amount or in the same currency as the amounts or sums referred to in paragraph (a), which are calculated in accordance with an agreed formula by reference to those amounts or sums.

Textual Amendments

F3 Words in Sch. para. 5(1)(a) inserted (24.2.2010) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2010 (S.I. 2010/86), arts. 1(2), **3(2)**

F4 Words in Sch. para. 5(1)(a) substituted (24.2.2010) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2010 (S.I. 2010/86), arts. 1(2), **3(2)**

F5 Words in Sch. para. 5(2)(a) inserted (1.4.2007 for specified purposes, 1.11.2007 in so far as not already in force) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), arts. 1(2), **36(2)**

Commencement Information

I8 Sch. para. 5 in force 1.12.2001 see reg. 1 and S.I. 2001/3538, **art. 2**

Common accounts

6. Arrangements do not amount to a collective investment scheme if—

(a) they are arrangements under which the rights or interests of participants are rights to or interests in money held in a common account; and

(b) that money is held in the account on the understanding that an amount representing the contribution of each participant is to be applied—

(i) in making payments to him;

(ii) in satisfaction of sums owed by him; or

(iii) in the acquisition of property for him or the provision of services to him.

Commencement Information

I9 Sch. para. 6 in force 1.12.2001 see reg. 1 and S.I. 2001/3538, **art. 2**

[[F6]Certain funds relating to leasehold property

7. Arrangements do not amount to a collective investment scheme if the rights or interests of the participants are rights or interests—

(a) in a fund which is a trust fund within the meaning of section 42(1) of the Landlord and Tenant Act 1987 or which would be such a trust fund if the landlord were not an exempt landlord within the meaning of section 58(1) of that Act; or

(b) in money held in a designated account by the scheme administrator under a tenancy deposit scheme within the meaning of section 212(2) of the Housing Act 2004.**]**

Textual Amendments

F6 Sch. para. 7 substituted (6.4.2007) by The Financial Services and Markets Act 2000 (Collective Investment Schemes) (Amendment) Order 2007 (S.I. 2007/800), arts. 1, **2(2)**; S.I. 2007/305, art. 2; S.I. 2007/1068, art. 2(a)

Certain employee share schemes

8.—(1) Arrangements do not amount to a collective investment scheme if they are operated by a person ("A"), a member of the same group as A or a relevant trustee for the purpose of enabling or facilitating—

(a) transactions in shares in, or debentures issued by, A between, or for the benefit of, any of the persons mentioned in sub-paragraph (2); or

(b) the holding of such shares or debentures by, or for the benefit of, any such persons.

(2) The persons referred to in sub-paragraph (1) are—

(a) the bona fide employees or former employees of A or of another member of the same group; or

(b) the wives, husbands, widows, widowers, **[**[F7]civil partners, surviving civil partners,**]** or children or step-children under the age of eighteen of such employees or former employees.

(3) For the purposes of this paragraph—

(a) "shares" and "debentures" have the meaning given by article 71(6)(a) of the Regulated Activities Order:

(b) "relevant trustee" means a person who, in pursuance of the arrangements, holds shares in or debentures issued by A.

Textual Amendments

F7 Words in Sch. para. 8(2)(b) inserted (5.12.2005) by The Civil Partnership Act 2004 (Amendments to Subordinate Legislation) Order 2005 (S.I. 2005/2114), art. 1, **Sch. 16 para. 3**

Commencement Information

I10 Sch. para. 8 in force 1.12.2001 see reg. 1 and S.I. 2001/3538, **art. 2**

[[F8]**Schemes entered into for commercial purposes wholly or mainly related to existing business**

9.—(1) Arrangements first entered into before 15th July 2008 do not amount to a collective investment scheme if—

(a) by virtue of paragraph 9 of the Schedule to the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001 as it had effect immediately before 15th July 2008 they did not then do so provided that all participants are permitted participants; or

(b) in the case of arrangements which amounted to a collective investment scheme immediately before 15th July 2008—

(i) all participants are permitted participants; and

(ii) at any time each person which is at that time a participant irrevocably agrees in writing that the arrangements do not amount to a collective investment scheme.

(2) Arrangements first entered into on or after 15th July 2008 do not amount to a collective investment scheme if all participants are permitted participants.

(3) The exclusion in sub-paragraph (2) shall not apply to arrangements falling within that sub-paragraph if each person which is at that time a permitted participant at any time irrevocably agrees in writing that that the arrangements do not amount to a collective investment scheme.

(4) If at any time a person which is not a permitted participant participates in arrangements then for as long as that person is a participant but not a permitted participant the exclusion in sub-paragraph (1) or, as the case may be, sub-paragraph (2) shall not apply to the arrangements.

(5) For the purposes of this paragraph—

"permitted participant" means a participant which—

(a) at the time of entering into the arrangements carries on a business which is not a specified business (the "first business") but which may be in addition to any specified business carried on by that participant at that time and—

(i) does not carry on that first business solely by virtue of being—

(a) a participant in the arrangements; or

(b) a member, partner or trust beneficiary of a body corporate, unincorporated association, partnership or trust which is itself a participant in the arrangements; and

(ii) enters into the arrangements for commercial purposes wholly or mainly related to the first business; or

(b) is a body corporate, unincorporated association partnership, or trustee of a trust (unless that trustee is an individual) which—

(i) does not carry on a specified business; and

(ii) only has as its members, partners or trust beneficiaries persons which themselves qualify, or would qualify if they participated in the arrangements, as participants of the kind mentioned in paragraph (a) of this paragraph; and

"specified business" means the business of engaging in any regulated activity of the kind specified by any of articles 14, 21, 25, 25D, 37, 40, 45, 51 to 53 or, so far as relevant to any of those articles, article 64 of the Regulated Activities Order.

(6) For the purposes of this paragraph, neither the entry into arrangements by any person as a further participant nor the exit from arrangements by any participant shall in itself constitute the creation of new arrangements.

(7) An agreement made in accordance with the provisions of sub-paragraph (1)(b)(ii) or sub-paragraph (3) is not affected by the entry into arrangements by any person as a further participant nor the exit from arrangements by any participant.**]**

Textual Amendments

F8 Sch. para. 9 substituted (15.7.2008) by The Financial Services and Markets Act 2000 (Collective Investment Schemes) (Amendment) Order 2008 (S.I. 2008/1641), arts. 1(2), **2**

Group schemes

10. Arrangements do not amount to a collective investment scheme if each of the participants is a body corporate in the same group as the operator.

Commencement Information

I11 Sch. para. 10 in force 1.12.2001 see reg. 1 and S.I. 2001/3538, **art. 2**

Franchise arrangements

11. Franchise arrangements do not amount to a collective investment scheme.

Commencement Information
I12 Sch. para. 11 in force 1.12.2001 see reg. 1 and S.I. 2001/3538, **art. 2**

Trading schemes

12. Arrangements do not amount to a collective investment scheme if—

(a) the purpose of the arrangements is that participants should receive, by way of reward, payments or other benefits in respect of the introduction by any person of other persons who become participants;

(b) the arrangements are such that the payments or other benefits referred to in paragraph (a) are to be wholly or mainly funded out of the contributions of other participants; and

(c) the only reason why the arrangements have either or both of the characteristics mentioned in section 235(3) of the Act is because, pending their being used to fund those payments or other benefits, contributions of participants are managed as a whole by or on behalf of the operator of the scheme.

Commencement Information
I13 Sch. para. 12 in force 1.12.2001 see reg. 1 and S.I. 2001/3538, **art. 2**

Timeshare schemes

13. Arrangements do not amount to a collective investment scheme if the rights or interests of the participants are timeshare rights.

Commencement Information
I14 Sch. para. 13 in force 1.12.2001 see reg. 1 and S.I. 2001/3538, **art. 2**

Other schemes relating to use or enjoyment of property

14. Arrangements do not amount to a collective investment scheme if—

(a) the predominant purpose of the arrangements is to enable the participants to share in the use or enjoyment of property or to make its use or enjoyment available gratuitously to others; and

(b) the property to which the arrangements relate does not consist of the currency of any country or territory and does not consist of or include any investment of the kind specified by Part III of the Regulated Activities Order or which would be of such a kind apart from any exclusion made by that Part of the Order.

Commencement Information
I15 Sch. para. 14 in force 1.12.2001 see reg. 1 and S.I. 2001/3538, **art. 2**

Schemes involving the issue of certificates representing investments

15. Arrangements do not amount to a collective investment scheme if the rights or interests of the participants are investments of the kind specified by article 80 of the Regulated Activities Order (certificates representing certain securities).

Commencement Information
I16 Sch. para. 15 in force 1.12.2001 see reg. 1 and S.I. 2001/3538, **art. 2**

Clearing services

16. Arrangements do not amount to a collective investment scheme if their purpose is the provision of clearing services and they are operated by an authorised person, a recognised clearing house or a recognised investment exchange.

Commencement Information
I17 Sch. para. 16 in force 1.12.2001 see reg. 1 and S.I. 2001/3538, **art. 2**

Contracts of insurance

17. A contract of insurance does not amount to a collective investment scheme.

Commencement Information
I18 Sch. para. 17 in force 1.12.2001 see reg. 1 and S.I. 2001/3538, **art. 2**

[[F9] Funeral plan contracts

18. Arrangements do not amount to a collective investment scheme if they consist of, or are made pursuant to—

(a) a funeral plan contract; or

(b) a contract which would be a funeral plan contract but for—

(i) the proviso to article 59(2) of the Regulated Activities Order, or

(ii) the exclusion in article 60 of that Order.**]**

Textual Amendments
F9 Sch. para. 18 substituted (1.12.2001) by The Financial Services and Markets Act 2000 (Miscellaneous Provisions) Order 2001 (S.I. 2001/3650), arts. 1(a), **2(3)**

Individual pension accounts

19. An individual pension account does not amount to a collective investment scheme.

Commencement Information
I19 Sch. para. 19 in force 1.12.2001 see reg. 1 and S.I. 2001/3538, **art. 2**

Occupational and personal pension schemes

20.—(1) An occupational pension scheme does not amount to a collective investment scheme.

(2) A personal pension scheme does not amount to a collective investment scheme.

(3) Sub-paragraph (2) does not extend to a personal pension unit trust which is constituted as a feeder fund or comprises feeder funds.

Commencement Information
I20 Sch. para. 20 in force 1.12.2001 see reg. 1 and S.I. 2001/3538, **art. 2**

[[F10] Bodies corporate etc.

21.—(1) Subject to sub-paragraph (2), no body incorporated under the law of, or any part of, the United Kingdom relating to building societies or industrial and provident societies or registered under any such law relating to friendly societies, and no other body corporate other than an open-ended investment company, amounts to a collective investment scheme.

(2) Sub-paragraph (1) does not apply to any body incorporated as a limited liability partnership.**]**

Textual Amendments
F10 Sch. para. 21 substituted (1.12.2001) by The Financial Services and Markets Act 2000 (Miscellaneous Provisions) Order 2001 (S.I. 2001/3650), arts. 1(a), **2(4)**

EXPLANATORY NOTE

(This note is not part of the Order)
This Order prescribes particular arrangements which do not amount to collective investment schemes for the purposes of section 235(5) of the Financial Services and Markets Act 2000. They are individual investment management arrangements; enterprise initiative schemes; pure deposit based schemes; schemes not operated by way of business; certain debt issues; common accounts; certain funds relating to leasehold property; certain employee share schemes; schemes entered into for commercial purposes related to an existing business; group schemes; franchise arrangements; trading schemes; timeshare schemes; certain other schemes relating to the use or enjoyment of property; schemes involving the issue of certificates representing investments; clearing services; contracts of insurance; funeral plan contracts; individual pension accounts; occupational pension schemes; personal pension schemes (though not feeder funds); and certain bodies corporate.

Status:
Point in time view as at 24/02/2010.

Changes to legislation:
There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001.