
STATUTORY INSTRUMENTS

2003 No. 1476

**The Financial Services and Markets Act 2000
(Regulated Activities) (Amendment) (No. 2) Order 2003**

PART 2

AMENDMENTS TO THE PRINCIPAL ORDER

Amendments to the principal Order

2. This Part of the Order amends the principal Order.

Interpretation and general

- 3.—(1) In article 3(1) (interpretation)(1)—

- (a) in the definition of “overseas person”, in paragraph (a), after “37”, insert “, 39A”; and
(b) after the definition of “regulated mortgage contract”, insert—

““relevant investment” means—

- (a) rights under a qualifying contract of insurance;
(b) rights under any other contract of insurance;
(c) any investment of the kind specified by any of articles 83, 84, 85 and 87; or
(d) any investment of the kind specified by article 89 so far as relevant to an investment falling within (a) or (c);”.

- (2) In article 4 (specified activities: general)(2)—

- (a) after paragraph (4), insert—

“(4A) Where a person, other than a person specified by Article 1.2 of the insurance mediation directive (the text of which is set out in Part 1 of Schedule 4)—

- (a) for remuneration, takes up or pursues insurance mediation or reinsurance mediation in relation to a risk or commitment located in an EEA State, and
(b) in doing so would be treated as carrying on an activity of a kind specified by a provision of this Part but for an exclusion in any of articles 30, 66 and 67,

that exclusion is to be disregarded (and accordingly that person is to be treated as carrying on an activity of the kind specified by the provision in question).”;

- (b) in paragraph (5)—

- (i) after the definition of “core investment service”, insert—

““insurance mediation” has the meaning given by Article 2.3 of the insurance mediation directive, the text of which is set out in Part II of Schedule 4;”;

(1) Amended by S.I. 2002/682 and S.I. 2003/1475.

(2) Amended by S.I. 2002/682.

- (ii) at the end of that definition, omit the word “and”; and
- (iii) at the end of the definition of “investment firm”, insert—
 - ““reinsurance mediation” has the meaning given by Article 2.4 of the insurance mediation directive, the text of which is set out in Part III of Schedule 4.”.

Activities—dealing in investments as agent

4.—(1) In article 21 (dealing in investments as agent), for “contractually based investments”, substitute “relevant investments”.

(2) In article 22 (dealing as agent with or through authorised persons), for paragraph (2), substitute—

- “(2) But the exclusion in paragraph (1) does not apply if—
 - (a) the transaction relates to a contract of insurance; or
 - (b) the agent receives from any person other than the client any pecuniary reward or other advantage, for which he does not account to the client, arising out of his entering into the transaction.”.

(3) In article 24 (other exclusions from the activity of dealing as agent)(3), for “and 72A (information society services)”, substitute “, 72A (information society services), 72B (activities carried on by a provider of relevant goods or services) and 72D (large risks contracts where risk situated outside the EEA)”.

Activities—arranging deals in investments

5.—(1) In article 25(1) (arranging deals in investments), for “contractually based investment”, substitute “relevant investment”.

(2) In article 28 (arranging transactions to which the arranger is a party), after paragraph (2), insert—

- “(3) But the exclusions in paragraphs (1) and (2) do not apply to arrangements made for or with a view to a transaction which relates to a contract of insurance, unless the person making the arrangements either—
 - (a) is the only policyholder; or
 - (b) as a result of the transaction, would become the only policyholder.”.

(3) In article 29 (arranging deals with or through authorised persons)(4), for paragraph (2), substitute—

- “(2) But the exclusion in paragraph (1) does not apply if—
 - (a) the transaction relates, or would relate, to a contract of insurance; or
 - (b) A receives from any person other than the client any pecuniary reward or other advantage, for which he does not account to the client, arising out of his making the arrangements.”.

(4) In article 30 (arranging transactions in connection with lending on the security of insurance policies)(5), in paragraph (2)—

- (a) in the definition of “relevant authorised person”, for “qualifying contracts of insurance”, substitute “contracts of insurance”; and

(3) Amended by [S.I. 2002/1776](#).

(4) Amended by [S.I. 2003/1475](#).

(5) Amended by [S.I. 2001/3544](#).

- (b) in the definition of “relevant transaction”, for “qualifying contract of insurance”, substitute “contract of insurance”.
- (5) In article 33 (introducing)(6)—
- (a) in paragraph (b)(iii), after “37”, insert “, 39A”;
 - (b) at the end of paragraph (b)(iii), omit “and”; and
 - (c) at the end of paragraph (c), insert—
 - “; and
 - (d) the arrangements are made with a view to a person entering into a transaction which does not relate to a contract of insurance.”.
- (6) In article 35 (international securities self-regulating organisations), in paragraph (4)(a), for “contractually based investments”, substitute “relevant investments”.
- (7) In article 36(1) (other exclusions from the activity of arranging deals)(7), for “and 72A (information society services)”, substitute “, 72A (information society services), 72B (activities carried on by a provider of relevant goods or services), 72C (provision of information about contracts of insurance on an incidental basis) and 72D (large risks contracts where risk situated outside the EEA)”.

Activities—managing investments

6. In article 39 (other exclusions from the activity of managing investments)(8), for “and 72A (information society services)”, substitute “, 72A (information society services) and 72C (provision of information about contracts of insurance on an incidental basis)”.

Activities—assisting in the administration and performance of a contract of insurance

7. After article 39 (other exclusions from the activity of managing investments), insert—

“CHAPTER VIIA

ASSISTING IN THE ADMINISTRATION AND PERFORMANCE OF A CONTRACT OF INSURANCE

The activity

Assisting in the administration and performance of a contract of insurance

- 39A.** Assisting in the administration and performance of a contract of insurance is a specified kind of activity.

Exclusions

Claims management on behalf of an insurer etc.

- 39B.**—(1) A person does not carry on an activity of the kind specified by article 39A if he acts in the course of carrying on the activity of—
- (a) expert appraisal;

(6) Amended by [S.I. 2003/1475](#).

(7) Amended by [S.I. 2002/1776](#) and amended by renumbered [S.I. 2003/1475](#).

(8) Amended by [2002/1776](#).

(b) loss adjusting on behalf of a relevant insurer; or
(c) managing claims on behalf of a relevant insurer,
and that activity is carried on in the course of carrying on any profession or business.

(2) In this article—

(a) “relevant insurer” means—

- (i) a person who has Part IV permission to carry on an activity of the kind specified by article 10;
- (ii) a person to whom the general prohibition does not apply by virtue of section 316(1)(a) of the Act (members of the Society of Lloyd's);
- (iii) an EEA firm falling within paragraph 5(d) of Schedule 3 to the Act (insurance undertaking); or
- (iv) a relevant reinsurer;

(b) “relevant reinsurer” means a person whose main business consists of accepting risks ceded by—

- (i) a person falling within sub-paragraph (i), (ii) or (iii) of the definition of “relevant insurer”; or
- (ii) a person who is established outside the United Kingdom who carries on an activity of the kind specified by article 10 by way of business.

Other exclusions

39C. Article 39A is also subject to the exclusions in articles 66 (trustees etc.), 67 (profession or non-investment business), 72A (information society services), 72B (activities carried on by a provider of relevant goods or services), 72C (provision of information about contracts of insurance on an incidental basis) and 72D (large risks contracts where risk situated outside the EEA).”.

Activities—safeguarding and administering

8. In article 44 (other exclusions from the activity of safeguarding and administering)(**9**), for “and 72A (information society services)”, substitute “, 72A (information society services) and 72C (provision of information about contracts of insurance on an incidental basis)”.

Activities—advising on investments

9.—(1) In article 53 (advising on investments), in paragraph (b)(i), for “contractually based investment”, substitute “relevant investment”.

(2) In article 54 (advice given in newspapers)(**10**), in paragraph (1)(b), for “contractually based investments”, substitute “relevant investments”.

(3) In article 55(1) (other exclusions from the activity of advising on investments)(**11**), for “and 72A (information society services)”, substitute “, 72A (information society services), 72B (activities carried on by a provider of relevant goods or services) and 72D (large risks contracts where risk situated outside the EEA)”.

(9) Amended by [S.I. 2002/1776](#).

(10) Amended by [S.I. 2003/1475](#).

(11) Amended by [S.I. 2002/1776](#) and amended by renumbered by [S.I. 2003/1475](#).

Exclusions applying to several activities

10.—(1) In article 66 (trustees, nominees and personal representatives)(**12**)—

(a) after paragraph (3), insert—

“(3A) Subject to paragraph (7), there is excluded from article 39A any activity carried on by a person acting as trustee or personal representative, unless he holds himself out as providing a service comprising an activity of the kind specified by article 39A.”; and

(b) in paragraph (7), after “(3)”, insert “, (3A)”.

(2) In article 67 (activities carried on in the course of a profession or non-investment business)(**13**), for “40”, substitute “39A, 40”.

(3) In article 68 (activities carried on in connection with the sale of goods or supply of services)(**14**)—

(a) in paragraph (1), in the definition of “supplier”, after “37”, insert “, 39A”;

(b) in paragraph (9), for “qualifying contract of insurance”, substitute “contract of insurance”; and

(c) in paragraph (11), for “qualifying contract of insurance”, substitute “contract of insurance”.

(4) In article 69 (groups and joint enterprises)(**15**), after paragraph (9), insert—

“(10) Paragraph (2) does not apply to a transaction for the sale or purchase of a contract of insurance.

(11) Paragraph (4) does not apply to arrangements for, or with a view to, a transaction for the sale or purchase of a contract of insurance.

(12) Paragraph (9) does not apply where the advice relates to a transaction for the sale or purchase of a contract of insurance.”.

(5) In article 70 (activities carried on in connection with the sale of a body corporate), after paragraph (6), insert—

“(7) Paragraphs (4), (5) and (6) do not apply in the case of a transaction for the sale or purchase of a contract of insurance.”.

(6) In article 72 (overseas persons)(**16**), in paragraph (6), after “37”, insert “, 39A”.

Further exclusions in connection with activities carried on in relation to contracts of insurance

11. After article 72A (information society services)(**17**), insert—

“Activities carried on by a provider of relevant goods or services

72B.—(1) In this article—

“connected contract of insurance” means a contract of insurance which—

(a) is not a contract of long-term insurance;

(12) Amended by [S.I. 2003/1475](#).

(13) Amended by [S.I. 2001/3544](#) and [S.I. 2003/1475](#).

(14) Amended by [S.I. 2001/3544](#).

(15) Amended by [S.I. 2002/682](#).

(16) Amended by [S.I. 2003/1475](#).

(17) Inserted by [S.I. 2002/1776](#).

- (b) has a total duration (or would have a total duration were any right to renew conferred by the contract exercised) of five years or less;
- (c) has an annual premium (or, where the premium is paid otherwise than by way of annual premium, the equivalent of an annual premium) of 500 euro or less, or the equivalent amount in sterling or other currency;
- (d) covers the risk of—
 - (i) breakdown, loss of, or damage to, non-motor goods supplied by the provider; or
 - (ii) damage to, or loss of, baggage and other risks linked to the travel booked with the provider (“travel risks”);
- (e) does not cover any liability risks (except, in the case of a contract which covers travel risks, where that cover is ancillary to the main cover provided by the contract);
- (f) is complementary to the non-motor goods being supplied or service being provided by the provider; and
- (g) is of such a nature that the only information that a person requires in order to carry on an activity of the kind specified by article 21, 25, 39A or 53 in relation to it is the cover provided by the contract;

“non-motor goods” means goods which are not mechanically propelled road vehicles;

“provider” means a person who supplies non-motor goods or provides services related to travel in the course of carrying on a profession or business which does not otherwise consist of the carrying on of regulated activities.

(2) There is excluded from article 21 any transaction for the sale or purchase of a connected contract of insurance into which a provider enters as agent.

(3) There are excluded from article 25(1) and (2) any arrangements made by a provider for, or with a view to, a transaction for the sale or purchase of a connected contract of insurance.

(4) There is excluded from article 39A any activity carried on by a provider where the contract of insurance in question is a connected contract of insurance.

(5) There is excluded from article 53 the giving of advice by a provider in relation to a transaction for the sale or purchase of a connected contract of insurance.

(6) For the purposes of this article, a contract of insurance which covers travel risks is not to be treated as a contract of long-term insurance, notwithstanding the fact that it contains related and subsidiary provisions such that it might be regarded as a contract of long-term insurance, if the cover to which those provisions relate is ancillary to the main cover provided by the contract.

Provision of information on an incidental basis

72C.—(1) There is excluded from articles 25(1) and (2) the making of arrangements for, or with a view to, a transaction for the sale or purchase of a contract of insurance or an investment of the kind specified by article 89, so far as relevant to such a contract, where that activity meets the conditions specified in paragraph (4).

(2) There is excluded from articles 37 and 40 any activity—

- (a) where the assets in question are rights under a contract of insurance or an investment of the kind specified by article 89, so far as relevant to such a contract; and

- (b) which meets the conditions specified in paragraph (4).
- (3) There is excluded from article 39A any activity which meets the conditions specified in paragraph (4).
- (4) The conditions specified in this paragraph are that the activity—
 - (a) consists of the provision of information to the policyholder or potential policyholder;
 - (b) is carried on by a person in the course of carrying on a profession or business which does not otherwise consist of the carrying on of regulated activities; and
 - (c) may reasonably be regarded as being incidental to that profession or business.

Large risks contracts where risk situated outside the EEA

72D.—(1) There is excluded from articles 21, 25(1) and (2), 39A and 53 any activity which is carried on in relation to a large risks contract of insurance, to the extent that the risk or commitment covered by the contract is not situated in an EEA State.

(2) In this article, a “large risks contract of insurance” is a contract of insurance the principal object of which is to cover—

- (a) risks falling within paragraph 4 (railway rolling stock), 5 (aircraft), 6 (ships), 7 (goods in transit), 11 (aircraft liability) or 12 (liability of ships) of Part 1 of Schedule 1;
- (b) risks falling within paragraph 14 (credit) or 15 (suretyship) of that Part provided that the risks relate to a business carried on by the policyholder; or
- (c) risks falling within paragraph 3 (land vehicles), 8 (fire and natural forces), 9 (damage to property), 10 (motor vehicle liability), 13 (general liability) or 16 (miscellaneous financial loss) of that Part provided that the risks relate to a business carried on by the policyholder and that the condition specified in paragraph (3) is met in relation to that business.

(3) The condition specified in this paragraph is that at least two of the three following criteria were met in the most recent financial year for which information is available—

- (a) the balance sheet total of the business (within the meaning of section 247(5) of the Companies Act 1985⁽¹⁸⁾ or article 255(5) of the Companies (Northern Ireland) Order 1986⁽¹⁹⁾) exceeded 6.2 million euro,
- (b) the net turnover (within the meaning given to “turnover” by section 262(1) of that Act or article 270(1) of that Order) exceeded 12.8 million euro,
- (c) the number of employees (within the meaning given by section 247(6) of that Act⁽²⁰⁾ or article 255(6) of that Order) exceeded 250,

and for a financial year which is a company’s financial year but not in fact a year, the net turnover of the policyholder shall be proportionately adjusted.

(4) For the purposes of paragraph (3), where the policyholder is a member of a group for which consolidated accounts (within the meaning of the Seventh Company Law Directive) are drawn up, the question whether the condition specified by that paragraph is met is to be determined by reference to those accounts.”.

⁽¹⁸⁾ 1985 c. 6; amended by S.I. 1997/220.

⁽¹⁹⁾ S.I. 1986/1032 (N.I. 6).

⁽²⁰⁾ Amended by S.I. 1996/189.

Relevant text of the insurance mediation directive

12. After Schedule 3, insert—

“SCHEDULE 4

Article 4

RELEVANT TEXT OF THE INSURANCE MEDIATION DIRECTIVE

Part 1

Article 1.2

“This Directive shall not apply to persons providing mediation services for insurance contracts if all the following conditions are met:

- (a) the insurance contract only requires knowledge of the insurance cover that is provided;
- (b) the insurance contract is not a life assurance contract;
- (c) the insurance contract does not cover any liability risks;
- (d) the principal professional activity of the person is other than insurance mediation;
- (e) the insurance is complementary to the product or service supplied by any provider, where such insurance covers:
 - (i) the risk of breakdown, loss of or damage to goods supplied by that provider; or
 - (ii) damage to or loss of baggage and other risks linked to the travel booked with that provider, even if the insurance covers life assurance or liability risks, provided that the cover is ancillary to the main cover for the risks linked to that travel;
- (f) the amount of the annual premium does not exceed EUR 500 and the total duration of the insurance contract, including any renewals, does not exceed five years.”

Part II

Article 2.3

““Insurance mediation” means the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim.

These activities when undertaken by an insurance undertaking or an employee of an insurance undertaking who is acting under the responsibility of the insurance undertaking shall not be considered as insurance mediation.

The provision of information on an incidental basis in the context of another professional activity provided that the purpose of that activity is not to assist the customer in concluding or performing an insurance contract, the management of claims of an insurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims shall also not be considered as insurance mediation.”

Part III

Article 2.4

““Reinsurance mediation” means the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of reinsurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim.

These activities when undertaken by a reinsurance undertaking or an employee of a reinsurance undertaking who is acting under the responsibility of the reinsurance undertaking are not considered as reinsurance mediation.

The provision of information on an incidental basis in the context of another professional activity provided that the purpose of that activity is not to assist the customer in concluding or performing a reinsurance contract, the management of claims of a reinsurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims shall also not be considered as reinsurance mediation.””