
EXPLANATORY NOTE

(This note is not part of the Order)

This Order implements in part Directive [2004/39/EC](#) of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (OJ No L 145, 30.4.2004, p1) (“the Directive”). The Directive is also implemented by other statutory instruments including the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 ([S.I. 2007/126](#)) (“the Regulations”) and the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 ([S.I. 2006/3384](#)) (“the RAO Amendment Order”) and by the Financial Services Authority using powers under the Financial Services and Markets Act [2000 \(c. 8\)](#) (“the Act”).

The RAO Amendment Order inserts the new activity of operating a multilateral trading facility into the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ([S.I. 2001/544](#)) (“the RAO”) as new article 25D. Article 4 of this Order makes a consequential amendment in article 5 of the Financial Services and Markets Act 2000 (Exemption) Order 2001 ([S.I. 2001/1201](#)) (“the Exemption Order”). Article 5 creates an exemption from financial services regulation for those persons listed in Part 3 of the Schedule to the Exemption Order in respect of the listed provisions of the RAO. A reference to the new regulated activity of operating a multilateral trading facility is inserted into the list in article 5 of the Exemption Order.

Article 5 of this Order revokes paragraph 36 in Part 3 of the Schedule to the Exemption Order. Paragraph 36 created an exemption from financial services regulation in respect of those regulated activities listed in article 5(1) of the Exemption Order, for operators of regulated markets authorised in EEA States other than the United Kingdom. Paragraph 36 is replaced by an exemption for operators of regulated markets authorised in other EEA States as respects any regulated activity which is carried on as a part of their business of operating a regulated market or multilateral trading facility, or in connection with, or for the purposes of, that business. The Regulations insert the new exemption as section 312A in Part 18 of the Act.

Paragraph 40 in Part 4 of the Schedule to the Exemption Order creates an exemption for providers of enterprise schemes who do not conduct the activity for pecuniary gain in respect of the regulated activity of arranging deals in investments. Article 6(a) of this Order disapplies the exemption in paragraph 40 in cases where the person who would benefit from the exemption is an investment firm or credit institution (within the meaning of the RAO) carrying on an activity falling within the scope of the Directive.

Article 6(b) and (c) of this Order amend paragraphs 42 and 49 in Part 4 of the Schedule to the Exemption Order. Paragraph 42 creates an exemption for certain providers in the gas industry from financial services regulation in respect of those regulated activities which are specified in that paragraph. Paragraph 49 creates a similar exemption for providers in the electricity industry. Article 6(b) inserts into the list of regulated activities which appears in paragraph 42 the regulated activity of operating a multilateral trading facility. Article 6(c) makes a similar insertion in respect of paragraph 49.

A transposition note has been prepared which sets out how the main elements of the Directive will be transposed into UK law. A Regulatory Impact Assessment of the effect of this instrument and the other instruments transposing the Directive on the costs of business has been prepared. Both may be obtained from the Financial Services Strategy Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. They are also available on HM Treasury’s website (www.hm-treasury.gov.uk). Copies of both documents have been placed in the libraries of both Houses of Parliament.