

2007 No. 125

FINANCIAL SERVICES AND MARKETS

**The Financial Services and Markets Act 2000 (Exemption)
(Amendment) Order 2007**

Made - - - - - *24th January 2007*

Coming into force - - - - - *1st November 2007*

This Order contains provision removing an exemption provided by an earlier order^(a) made under section 38 of the Financial Services and Markets Act 2000^(b);

A draft of this Order has been approved by a resolution of each House of Parliament pursuant to section 429(3) and (5) of that Act;

The Treasury make the following Order in exercise of the powers conferred on them by sections 38 and 428(3) of that Act:

Citation and commencement

1. This Order may be cited as the Financial Services and Markets Act 2000 (Exemption) (Amendment) Order 2007 and comes into force on 1st November 2007.

Amendment of the Exemption Order

2. The Financial Services and Markets Act 2000 (Exemption) Order 2001 is amended as follows.

3. In article 2 (interpretation), in the appropriate places, insert—

““credit institution” has the meaning given by the Regulated Activities Order;

“investment firm” has the meaning given by the Regulated Activities Order;”.

4. In article 5 (persons exempt in respect of particular regulated activities), after paragraph (1)(c), insert—

“(ca) article 25D (operating a multilateral trading facility);”.

5. In Part 3 of the Schedule (persons exempt in respect of any regulated activity mentioned in article 5(1)), paragraph 36 is revoked.

6. In Part 4 of the Schedule (persons exempt in respect of particular regulated activities)—

(a) in paragraph 40 (enterprise schemes), after sub-paragraph (2) insert—

“(3) This paragraph does not apply where an investment firm or credit institution—

(a) S.I. 2001/1201; relevant amending instruments are S.I. 2001/3623 and 2005/592.

(b) 2000 c.8.

- (a) provides or performs investment services and activities on a professional basis, and
 - (b) in doing so, but for the operation of this paragraph, it would be treated as carrying on an activity of a kind specified by Part 2 of the Regulated Activities Order.”;
- (b) in paragraph 42 (gas industry)—
- (i) in sub-paragraph (1), for “or 25” substitute “, 25 or 25D”, and for “or arranging deals in investments” substitute “, arranging deals in investments or operating a multilateral trading facility”;
 - (ii) in sub-paragraph (2), for “or 25” substitute “, 25 or 25D”, and for “or arranging deals in investments” substitute “, arranging deals in investments or operating a multilateral trading facility”;
- (c) in paragraph 49 (electricity industry)—
- (i) in sub-paragraph (1), after “25” insert “, 25D”, and after “arranging deals in investments” insert “, operating a multilateral trading facility”;
 - (ii) in sub-paragraph (2), for “or 25” substitute “, 25 or 25D”;
 - (iii) in sub-paragraph (3), after “25” insert “, 25D”;
 - (iv) in sub-paragraph (4), after “25” insert “or 25D”;
 - (v) in sub-paragraph (5), after “25” insert “or 25D”.

Kevin Brennan
Claire Ward

24th January 2007

Two of the Lords Commissioners of Her Majesty’s Treasury

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.

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