

Draft Order laid before Parliament under paragraph 26(1) and (2) of Schedule 2 to the Financial Services and Markets Act 2000 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2020 No.

FINANCIAL SERVICES AND MARKETS

**The Financial Services and Markets Act 2000
(Regulated Activities) (Amendment) Order 2020**

Made - - - -

Coming into force in accordance with article 1

The Treasury make the following Order in exercise of the powers conferred by sections 21(9), (10) and (15), 22(1) and (5), 39(1), 235(5), 417(1)(1), 426, 427 and 428(3) of, and paragraph 25 of Schedule 2 to, the Financial Services and Markets Act 2000(2).

In the opinion of the Treasury, one of the effects of the following Order is that an activity which is not a regulated activity (within the meaning given in section 22 of that Act) will become a regulated activity.

Accordingly, a draft of this Order was laid before Parliament and approved by a resolution of each House of Parliament pursuant to paragraph 26(1) and (2)(3) of Schedule 2 to that Act.

PART 1

Introductory provisions

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2020.

(2) This Order comes into force on the day (“the initial commencement day”) after the day on which it is made, for the following purposes only—

(a) enabling the FCA—

(1) See the definition of “prescribed”.

(2) 2000 c.8. Paragraph 25 of Schedule 2 was amended by section 8 of the Financial Services Act 2012 (c.21) and section 27 of the Financial Guidance and Claims Act 2018 (c.10).

(3) Paragraph 26 was substituted by section 8 of the Financial Services Act 2012 and paragraph 26(1) was amended by section 27 of the Financial Guidance and Claims Act 2018.

- (i) to make or approve rules;
 - (ii) to give guidance; and
 - (iii) to give directions.
- (b) enabling applications for—
- (i) a Part 4A(4) permission under section 55A(5) of the Act;
 - (ii) a variation of a Part 4A permission under section 55H(6) of the Act; and
 - (iii) approval under Part 5 of the Act;
- to be made and determined in relation to any activity which becomes a regulated activity by virtue of this Order;
- (c) enabling the FCA to exercise any of its powers under Part 4A or Part 5 of the Act in relation to any activity which becomes a regulated activity by virtue of this Order; and
- (d) enabling the scheme operator—
- (i) to make rules; and
 - (ii) to give guidance.
- (3) This Order comes into force for all other purposes on the first day following the expiry of a period of eighteen calendar months beginning on the day after the initial commencement day.
- (4) In this Order—
- “the Act” means the Financial Services and Markets Act 2000;
 - “the Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(7); and
 - “scheme operator” has the meaning given in section 225(2) of the Act.

PART 2

Amendments to secondary legislation made under the Act

The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

- 2.—(1) The Regulated Activities Order is amended as follows.
- (2) In article 3 (interpretation)(8), in the definition of “contract of insurance”, omit “(or a contract which would be a funeral plan contract but for the exclusion in article 60)”.
- (3) In article 21(1) (dealing in investments as agent)(9), omit “(other than investments of the kind specified by article 87, or article 89 so far as relevant to that article)”.
- (4) In article 59 (funeral plan contracts)—
- (a) after paragraph (1), insert—
 - “(1A) Carrying out a funeral plan contract as provider is a specified kind of activity.”;
 - (b) in paragraph (2), omit “(other than one excluded by article 60)”; and

(4) Part 4A was inserted by section 11 of the Financial Services Act 2012.

(5) Section 55A was inserted by section 11 of the Financial Services Act 2012 and amended by [S.I. 2018/135](#).

(6) Sections 40 to 55 of the Act were substituted for a new Part 4A consisting of sections 55A to 55Z4 by section 11 of the Financial Services Act 2012.

(7) [S.I. 2001/544](#).

(8) Article 3 was amended by [S.I. 2003/1476](#). There are other amendments to article 3 which are not relevant to this Order.

(9) Article 21 was renumbered and amended by [S.I. 2003/1476](#), and further amended by [S.I. 2006/3384](#) and [S.I. 2017/488](#).

(c) after paragraph (2), insert—

“(2A) For the purposes of paragraph (1A), “provider” includes a person who has assumed the undertaking referred to in paragraph (2)(b) as a result of the novation, assignment or transfer by operation of law of an existing funeral plan contract.”

(5) Omit article 60 (plans covered by insurance or trust arrangements).

(6) Before paragraph 60A(10), insert—

“Local authorities

60ZA. Article 59 is subject to the exclusion in article 72G (local authorities).”

(7) In article 72G (local authorities)(11), after paragraph (3B)(12), insert—

“(3C) There is excluded from article 59(1) and (1A) any activity which is carried on by a local authority.”

(8) For article 89(3) (rights to or interests in investments)(13), substitute—

“Paragraph (1) does not include any right or interest acquired as a result of entering into a funeral plan contract.”

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

3. For paragraph 18(14) of the Schedule to the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001(15), substitute—

“Funeral plan contracts

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

The Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001

4.—(1) The Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001(16) are amended as follows.

(2) In regulation 1(2)(17), at the appropriate place, insert—

““funeral plan contract” has the same meaning as in article 59 of the Regulated Activities Order;”

(3) For regulation 2(1)(za) (descriptions of business for which appointed representatives are exempt)(18), substitute—

“(za) an activity of the kind specified by article 21 of the Regulated Activities Order (dealing in investments as agent), where the transaction relates to—

(i) a contract of insurance which is not a qualifying contract of insurance or a contract of long-term care insurance; or

(10) Article 60A was inserted by [S.I. 2002/1776](#).

(11) Article 72G was inserted by [S.I. 2014/366](#). There are amendments to article 72G which are not relevant to this Order.

(12) Paragraph (3B) was substituted by [S.I. 2016/392](#).

(13) There are amendments to article 89 which are not relevant to this Order.

(14) Paragraph 18 of the Schedule was substituted by [S.I. 2001/3650](#).

(15) [S.I. 2001/1062](#).

(16) [S.I. 2001/1217](#).

(17) Regulation 1(2) was amended by [S.I. 2003/1476](#). There are other amendments to regulation 1(2) which are not relevant to this Order.

(18) Regulation 2(1)(za) was inserted by [S.I. 2003/1476](#), amended by [S.I. 2004/453](#) and renumbered by [S.I. 2012/1906](#).

(ii) a funeral plan contract.”.

The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005

5.—(1) Schedule 1 to the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005⁽¹⁹⁾ is amended as follows.

(2) In paragraph 3(1)⁽²⁰⁾ (dealing in securities and contractually based investments), omit “(other than investments of the kind specified by paragraph 25, or paragraph 27 so far as relevant to that paragraph)”.

(3) In paragraph 9 (providing funeral plan contracts)—

(a) after sub-paragraph (1), insert—

“(1A) Carrying out a qualifying funeral plan contract as provider is a controlled activity.”; and

(b) for sub-paragraph (2)(c), substitute—

“the provider is a person who carries on a regulated activity specified in article 59 of the Regulated Activities Order and includes a person who has assumed the undertaking referred to in article 59(2)(b) of that Order as a result of the novation, assignment or transfer by operation of law of an existing qualifying funeral plan contract.”.

PART 3

Transitional provisions: complaints relating to funeral plans

Interpretation

6. In this Part—

“compulsory jurisdiction” has the meaning given in section 226(8) of the Act;

“compulsory jurisdiction rules” has the meaning given in section 226(3)⁽²¹⁾ of the Act;

“former scheme” means the complaints procedure contained in the former scheme operator’s Code of Practice and Rules in force at the time of the act or omission that is the subject of the relevant complaint;

“former scheme operator” means the Funeral Planning Authority Community Interest Company;

“former scheme rules” means the former scheme operator’s Code of Practice and Rules in force immediately before the initial commencement day;

“new scheme” means the scheme for which provision is made in Part 16 of the Act (the ombudsman scheme);

“relevant complaint” has the meaning given in article 7(1); and

“relevant date” means the date on which this Order comes fully into force in accordance with article 1(3).

Complaints made on or after the relevant date about acts or omissions before that date

7.—(1) A relevant complaint is a complaint—

⁽¹⁹⁾ [S.I. 2005/1529](#).

⁽²⁰⁾ Paragraph 3(1) of Schedule 1 was amended by [S.I. 2017/488](#).

⁽²¹⁾ Section 226(3) was amended by section 39 of, and paragraph 1 of Schedule 11 to, the Financial Services Act 2012.